IN THE MATTER OF ROBERT GERNER, LEGAL OWNER AND ESA SPARKS GLENCO, LLC - LESSEE AND PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 15637 YORK ROAD 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 18-047-X

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OPINION

This case comes to the Board of Appeals from a final Opinion and Order dated December 21, 2017, issued by Administrative Law Judge John E. Beverungen (the "ALJ") in which the ALJ granted the Petition for Special Exception to allow a nine-acre ± solar facility on a portion of land in an RC-7 zone. The ALJ also imposed several conditions to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties.

On January 12, 2018, Petitioner's counsel sent a letter to the ALJ requesting what Petitioner considered a "clarification" of condition No. 4 ("No trees shall be removed from the site in connection with the construction and/or operation of the solar facility") requesting that Petitioner be permitted to remove trees necessary for the access road to the proposed solar field. Four days later, the ALJ signed off on the January 12, 2018 letter with the proposed language. There is nothing in the record demonstrating that Protestants were on notice of the clarification request or that the request was granted. Protestants appealed the ALJ final Opinion and Order.

The hearing in front of the Board occurred over four days, August 21-22, October 24, 2018, and November 28, 2018. Timothy M. Kotroco, Esquire appeared on behalf of Petitioner. Petitioner elicited testimony from the following witnesses: (1) Brian Quinlan, the President and Chief Executive Officer of Calvert Energy, LLC, as an expert in solar energy and the installation

of solar panels on solar farms, but also called on behalf of the Petitioner as a fact witness; (2) James Deriu, a Vice President of KCI Technologies, as an expert on environmental science, and stream and wetlands delineations; (3) Mitchell Kellman, an expert in planning and zoning, including specifically the Baltimore County zoning process; and (4) Bruce Doak, an expert in land surveying, planning, and zoning.

Protestants Sparks Glencoe Community Planning Council, William Mayo, and Gorsuch Retirement, Inc., through their counsel, H. Barnes Mowell, Esquire, presented the following witnesses: (1) John Altmeyer, who was called to address stormwater management, impervious surface, and topographical issues; (2) Lynne Jones, President of the Sparks Glencoe Community Council; (3) Edward Matczuk, a nearby neighbor to the subject property; (4) John Roemer, IV, President of Roemer Ecological Services, Inc., who was received as an expert in wetland delineations and the identification of bog turtle habitats; and (5) William Mayo, President of Gorsuch Retirement, Inc. (a family-owned business) that owns property adjacent to the subject property. Peter M. Zimmerman, Esquire, participated on behalf of the Office of People's Counsel for Baltimore County.

Factual Background

Petitioner seeks special exception approval of a solar farm at 15637 York Road. The subject property, zoned RC-7, is 30.27 acres[1], but only nine ± acres are intended for the solar panel array. The subject property is located along a section of York Road designated as a scenic route. Throughout the hearing, the property has been described as having a "bowtie" appearance, with the one part of the bow adjacent to York Road and the other part, approximately 1,100 feet from York Road, proposed to contain the solar farm. In between, the property narrows to form the

[1] The property has also been identified as consisting of 30.723 acres in the ALJ Opinion and Order. The discrepancy is not material to the resolution of this case.

"pinch" or "knot" of the bowtie.[2] At the bowtie knot, there presently is a road of sorts connecting the eastern and western halves.

The Maryland Community Solar Energy Generating System Program ("Program"), as is relevant, permits a person owning or operating a qualifying solar generating system ("subscriber organization") to contract with a third party for the third party to finance, build, own, or operate a community solar energy generating system. Md. Public Util. §7-306.2. In this case, Robert Gerner owns the property at 15637 York Road and has contracted with ESA Sparks Glenco, LLC, to finance, build, and operate a solar generating system as part of this Program.

Following the creation of the Program, Baltimore County enacted legislation to regulate the land use aspects of these community solar generating system facilities. The Council's stated purpose for the regulation sets forth (as identified in BCZR §4F-101(a)):

> Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources.

As implied above, BCZR §4F-102(a) requires petitioner to seek approval via special exception prior to construction and operation of a solar facility under the Program within, as relevant, the RC-7 zone. Further, BCZR §4F-102(a) restricts these facilities by capping power generation capacity to two megawatts and preventing proliferation of these facilities by limiting each council district to no more than 10 facilities. BCZR §4F-102(b). Petitioner proposes a solar farm that will generate 1.87 megawatts of power. At the time of this Opinion, the Third County

[2] For ease of reference, this Opinion will use the "bowtie" description to denote the property's eastern and western halves, as well as the pinch or knot, e.g. "at the bowtie knot," "the eastern half," etc.

Council District has not reached the maximum number of solar facilities allowed by BCZR §4F-102(b).

Summary of Testimony

Brian Quinlan, accepted as an expert in solar energy and the installation of solar panels on solar farms, provided expert witness and fact witness testimony regarding the subject property and the proposed use. Mr. Quinlan testified that ESA Sparks Glenco, LLC has been accepted as a subscriber by the Public Service Commission. He described the process of how the subject property came to be selected for the proposed solar farm, including noting its location off York Road, with the back nine acres (eastern half of bowtie) of the property being located approximately 1,100 feet from York Road. Its proximity to York Road assists with access to a substation and tying in distribution lines, and the eastern half of the bowtie provided ample area for the solar array and its topography allowed for the necessary solar exposure and screening.

Mr. Quinlan identified the plan for the property (which was prepared by Mr. Doak, whose testimony is addressed below). He stated that there will be an access drive from York Road, the entrance for which requires approval by State Highway Administration. The access drive, as proposed, will be approximately 20-feet wide and will be composed of crushed stone. The access drive will more or less travel the northern property boundary on the western half, continue through the bowtie pinch, and emerge on the eastern half, which will contain the solar panel array and related equipment. Also along the access drive will be wooden poles and transmission lines to connect to the BGE lines along York Road. While there will not be the need to remove any trees for the solar array, some trees in the western half of the property will likely need to be removed to construct the access drive and install the wooden poles.

Mr. Quinlan estimated that, on average, construction of a solar facility of this type takes about three months. The facility does not require anyone to be on site for operation. At least twice a year, there will be scheduled maintenance on the facility to make sure the facility is working properly. The electrical portion of the facility will have sensors and the facility will be monitored offsite. There will be a small weather station on site, which will assist in determining the existence of a problem and prompt an investigation in the event there is an unexpected discrepancy in expectations arising from the particular weather. The maintenance and monitoring will be outsourced. The panels and related equipment (*e.g.* inverter) will be contained within a secure, fenced area. Petitioner will provide the key to the local fire department so it can access the facility in the event there is an emergency.

The panels for the proposed array are made of standard polysilicone and are recyclable, just like solar panels located on houses. The panels will be mounted to steel posts and racking. The array will have a fixed 25-degree tilt facing south to maximize exposure to the sun. That angle results in the panels having a height of 7 feet, 5 ½ inches, and being 2 ½ feet off the ground, with each row to be approximately 14 feet apart. While there is no final design for the array to determine an exact location, he expects that the edge of the array will be about 150 feet from the nearest property line.

The area underneath the panels and in between rows will remain grassy, but controlled and maintained. At the end of the lease, identified as 20 years with an option, the land upon which the array sits can be restored. The steel posts can be pulled out of the ground, as well as the other equipment, and the area can be reseeded. At the outset, Petitioner will be required to enter a decommissioning agreement in order to ensure that sufficient funds remain available to restore the

land at the lease expiration. Mr. Quinlan testified that the County will require Petitioner to post a bond for financial security and Petitioner will obtain liability insurance.

As for stormwater management issues, those will be explored in more detail if the petition for special exception is approved. Mr. Quinlan testified that they are compelled to comply with the County requirements prior to obtaining a building permit. Mr. Quinlan, on cross examination, explained that Petitioner sought special exception approval prior to engaging in a more detailed environmental analysis as the costs to have the analysis at the time of special exception hearing is substantial (identifyied in rebuttal as an estimated $365,000.00) and Petitioner prefers to see if the petition will be granted prior to committing itself to such costs. The stormwater management, wetland delineation, and related environmental matters, as well as timing of such a study and whether sufficient information has been presented to the Board on those topics, form much of the dispute in this case, and will be discussed in greater detail below.

Mr. Deriu, again, an expert in environmental science and stream and wetland delineations, works for KCI Technologies and was retained by Petitioner to start evaluating the site in the event Petitioner receives special exception approval for the solar facility. Mr. Deriu visited the site on one occasion, focusing on the eastern half of the property. He believed the area of the bowtie knot was an old farm crossing and that the pipe that runs underneath the crossing, though "pretty old," appears to have supported farm equipment in the past. He witnessed some base flow in the pipe while he was present. If this matter progresses, he will perform a forest buffer analysis, steep slope analysis, and endangered species analysis.

Mitchell Kellman, an expert in planning and zoning, testified that York Road, at this location is a state road, but also designated as a County Scenic Road. He noted that the property's topography drops, with the house on the western part of the site sitting on a ridge at its highest

point. Mr. Kellman believes that the solar facility will not be visible from York Road and as such, will not affect the scenic view. Given the topography and existing landscaping, the site will not need much by way of additional landscaping, and if so, mostly because, during winter, the property is more visible.

Mr. Kellman explained that a landscape plan will be required if a development plan is required. A landscaped right of way agreement will be required before a permit is issued. Mr. Kellman echoed the testimony of Mr. Quinlan that stormwater management plans will come after the special exception hearing, if approved, and opined one is not required for the special exception hearing.

Mr. Kellman also opined that the proposed use is consistent with the existing zoning classification and regulations as the County Council expressly provided, by way of special exception, that properties within the RC-7 zone may have solar facilities. Mr. Kellman, in light of his experience in the County, testified that the Department of Environmental Protection and Sustainability ("DEPS") will require an analysis of environmental impacts and if DEPS is not satisfied, the project will not move forward. He also testified that Baltimore County Department of Permits, Approvals and Inspections ("PAI") requires Petitioner to enter into a Solar Facility Decommissioning and Security Agreement, before any building permit may be issued.

Bruce Doak prepared the plans identified as Petitioner's Exhibit 1 and 1A. Mr. Doak agreed with Mr. Kellman that, following approval, the next step is for environmental experts to conduct wetland delineations and other such work and submit that information to DEPS, who will review, and if approved, may impose conditions. In fact, Mr. Doak testified he spoke to someone at DEPS who told him there was no issue in proceeding with the special exception case prior to submitting the environmental information to DEPS.

On cross examination, Mr. Doak acknowledged the presence of a stream on site, and agreed that it is reasonable for a party seeking a special exception to present some information concerning environmental and stormwater management issues without the need for a full report at the time of the hearing. Mr. Doak also testified that he considered the solar facility an accessory use, not a principal use. He agreed that the RC-7 zoning regulation on impervious surfaces limits such surfaces to 10% of the property, but testified that grass will be under the solar panels, which is a pervious surface. Finally, Mr. Doak noted that the edge of the array could be as close as 60-70' or up to 150' from the property border. He believes that, like Mr. Kellman, the 50-foot setback applies to solar facilities, not the 300-foot setback generally applicable to RC-7 properties.

Protestants first called John Altmeyer, who worked for the County for 32 years, rising to the level of chief inspector for building permits, but also conducted environmental inspections for the County. Mr. Altmeyer testified that the impervious surface regulation applied to poles, fences and roads, but agreed that the solar panels here are not impervious surfaces under the regulation. Mr. Altmeyer presented testimony about steep slopes and methods to treat runoff. Mr. Altmeyer clearly had substantial knowledge, but ultimately appeared to agree that, though careful consideration of these issues are required, the stormwater and runoff issues may be decided after the special exception hearing. Particularly, on cross examination, Mr. Altmeyer agreed with counsel for Petitioner that if there was a plan for those items that was subsequently approved following a site visit, he would have no problem with the plan.

Lynne Jones next testified for Protestants. Ms. Jones is the President of the Sparks Glencoe Community Planning Council, an organization of 400+ members, whose territory covers much of the Third County Council District, including the site at issue. Ms. Jones's testimony was offered individually and on behalf of the organization. She visited the surrounding area four/five times

prior to her testimony. Ms. Jones was not offered as an expert, nor was her testimony received as that of an expert witness. However, Ms. Jones has taken significant efforts to become more informed about certain subject matters in order to help educate others about protecting natural resources. She estimated she put approximately 70-80 hours of work into this case.

Her testimony focused upon the special exception factors. More specifically, it was her belief that the proposed use: (1) was detrimental to the health, safety, and general welfare of the locality, particularly as to streams, waterways and wildlife (BCZR §502.1(a)); (2) presented a potential for fire, panic or other danger as there was one way in and out of the site for fire trucks (BCZR §502.1(c)); (3) was inconsistent with the zoning regulations, as she believed that there was to be no development on farmland on a RC-7 zoned property unless absolutely necessary (BCZR §502.1(g)); (4) was inconsistent with the impermeable surface and vegetative retention regulations, identifying 146,000 square feet of impervious surface (BCZR §502.1(h)); and (5) was detrimental to the environmental and natural resources of the site and vicinity, particularly as to migratory wildlife, waterways, fencing, flooding and runoff, potential bog turtle habitats, and streams and slopes (BCZR §502.1(i)).

Ms. Jones (as well as some evidence and argument from People's Counsel) suggested that soil is a natural resource, more specifically, prime and productive soils, which she contends is located on the right side of the bowtie, i.e. the location of the proposed solar facility. She noted that this matter is the only one in Baltimore County where a solar farm was proposed in a RC-7 Zone and in her reading and understanding of the relevant regulations and Master Plan 2020, that the RC-7 Zone was created to protect sensitive areas and restrict commercial development. She believed other RC zones were more appropriate for solar facilities and generally identified areas without streams or wetlands as being better options. Ms. Jones visited some of the adjacent

properties, including the property adjacent to the bowtie. She observed that the culvert had debris and was backed up.

Edward Matczuk, who lives on a nearby property to the east of the Gorsuch Retirement property that is immediately adjacent to the subject property, also testified. Mr. Matzcuk's property is not immediately adjacent to the subject property; rather, the subject property (to the southwest) and Matzcuk property (to the northeast) essentially "sandwich" the middle part of the Gorsuch Retirement property. He identified concerns over what he may see. He testified his house sits in a valley and therefore, is lower than the proposed solar field. He also identified possible flooding and runoff from the subject property, via the Gorsuch Retirement property, as issues. Like Ms. Jones, he identified existing flooding on Upper Glencoe Road. He also testified that his property has been flooded by water coming off the Gorsuch Retirement property. He testified he has to muck his pond every five-to-seven years because of the silt from the flooding.

On the last day, Protestants called John Roemer, IV, a wetland delineation expert, but also a nearby property owner (about 1-1½ miles away). He provided substantial information on identifying wetlands and identifying potential bog turtle habitats. He visited the Gorsuch Retirement home property to the northeast of the subject property, bringing his soil augur, as well as taking photographs. For his second visit, he went to the Rude property, located north of the western portion of the bowtie, walked around wetlands on that property and examined the streams. He had a third visit, at which time, he walked around the wetland area again and probed the soil. He found indicia, which in his opinion, satisfy each factor used to identify wetlands on at least one of the adjacent properties. He believes that the proposed access drive may be located within the 100-foot buffer separating wetlands from non-wetlands. As such, he believes that, if so, Petitioner will need permits from the County and State to build the access drive.

Mr. Roemer testified that if it was subsequently determined that there was encroachment into the buffer/setback, the plan may be modified during the permit review period. He felt it was beyond his area of expertise to opine whether wetland issues should be resolved prior to or during a special exception hearing.

William Mayo was the final witness. He testified individually and as President of Gorsuch Retirement, Inc. His family has owned 185 acres in the area for centuries, finding gravestones between the 1700s and 1820. Mr. Mayo lives 3/8ths of a mile from the subject property. He testified that he believes he will be able to see half of the solar field from his house due to elevation differences. He raised additional concerns about deer and runoff from the subject property. The Gorsuch property adjacent to the subject property has been steadily farmed since 1972. Mr. Mayo also identified concerns of traffic in and out of the site trying to turn on to York Road, tree cutting needed for the access drive, and the ability of fire trucks to access the eastern half of the property if necessary.

Testimony from witnesses on both sides established that the proposed area for the solar array has not been used as a farm for quite some time. Mr. Quinlan testified that he was aware that the area had been used for hay, but not farming. Mr. Doak also testified that the existing field was used for hay, but now is just mowed, which Ms. Jones echoed. Mr. Mayo also provided testimony that the subject property was recently used for hay, though not last year. He also testified the subject property had been farmed in the past. Within the immediate area, only the Gorsuch Retirement property is currently used for farming.

Relevant Law, County Code Provisions and Zoning Regulations

A. The RC-7 Zone

The RC-7 Zone is limited in terms of uses permitted by right, with BCZR §1A08.3(A) identifying only nine such uses. Subsection (B) of BCZR §1A08.3 identifies 15 enumerated uses permitted by special exception. As expected, the RC-7 Zone also has various regulations for scenic views, density, setbacks, impervious surface coverage, and historical properties, as well as performance standards for stormwater management, visibility, landscaping and signs. BCZR §§1A08.5, 1A08.6. The regulatory scheme also accounts for inconveniences arising from agricultural operations, including noise, dust, odors, fumes, and operation of machinery, among other items. BCZR §1A08.7. As noted below, BCZR §4F-102(a) adds a sixteenth use permitted by special exception in a RC-7 Zone --- a community solar facility.

B. Solar Facilities Law

In 2017, the County Council enacted new legislation regulating solar facilities, embodied in BCZR §§4F-101, *et seq*. The County Council recognized the advantages of an "abundant, renewable and environmentally sustainable source of electricity generation," that would lead to "greater local grid resiliency and security," and result in the production of clean, renewable energy and a reduction in air and water pollution. BCZR §4F-101.

In attempting to strike a balance between the benefits from solar energy production and the potential impacts to any rural and commercial areas, the County Council ensured the placement of certain safeguards by requiring proposed solar facilities in certain zones to be permitted by special exception as opposed to by right, including, as relevant, the RC-7 Zone. Id.

In addition, the County Council created ten additional "requirements" (at BCZR §4F-104) in regulating these facilities:

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.

2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.

3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

Moreover, the County Council imposed certain maintenance, abandonment, and removal regulations upon owners, lessees, and operators of these solar facilities. BCZR §§4F-106, 4F-107. Violations of the solar facility regulations are subject to code enforcement proceedings in accordance with Article 3, Title 6 of the County Code. BCZR §4F-106(D).

C. Special Exception Law

Maryland courts historically have considered special exception uses as ones conditionally compatible with uses permitted as of right in the same zone. See, *e.g.*, Creswell v. Baltimore Aviation Serv., Inc., 257 Md. 712, 719; 264 A.2d 838, 842 (1970). The Court of Appeals revisited the law on special exception in 1979 with the seminal case of Schultz v. Pritts, 291 Md. 1; 432 A.2d 1319 (1979). In Schulz, the Court of Appeals held that a special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity. 291 Md. at 11; 432 A.2d at 1325.

In 2016, the Court of Appeals in Attar v. DMS Tollgate provided additional guidance on the presumption that accompanies a proposed special exception use. 451 Md. 272; 152 A.3d 765 (2016). First, the Court reiterated that the special exception petitioner has both, the burden of production and the burden of persuasion. Attar, 451 Md. at 287; 152 A.3d at 773, *quoting* People's Counsel for Balt. Cty. V. Loyola Coll. In Md., 406 Md. 54, 109; 956 A.2d 166, 199 (2008); *see also*, Board of Appeals Rule 7(d), "the proponent of an action to be taken by the Board has the burden of proof." Second, the Court clarified that the concurrent presumption in favor of the special exception petitioner is not a mutually exclusive evidentiary burden. Attar, 451 Md. at 286; 152 A.3d at 773.

Referencing Maryland Rule 5-301(a),[3] the presumption identified by Schultz v. Pritts satisfies the burden of going forward on a fact presumed (in this case, the special exception is in the interest of the general welfare, and therefore has a presumption of validity) and "*may* satisfy the burden of persuasion if no rebuttal evidence is introduced by the other side." Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson v. Litzenberg, 115 Md. App. 549, 564; 694 A.2d 150, 157 (1997) (emphasis in original).

The presumption is that a special exception use is valid, that is, one that *can* conform to the zoning plan depending on the location, zoning classification, and impacts on the surrounding area. The presumption that inures to a special exception petitioner's benefit requires a special exception protestant to present probative evidence of any harms or other detrimental impacts, as identified in BCZR §502.1, to the surrounding neighborhood that are above and beyond the impacts that may be experienced elsewhere in the zone from this proposed use (Schultz, 291 Md. at 22-23; 432 A.2d at 1331) and/or other noncompliance with applicable zoning regulations to warrant a denial.[4] In other words, a special exception protestant must show "non-inherent adverse effects," or "unique adverse effects" to overcome the presumption that the proposed use is in the interest of the general welfare and compatibility. See, Clarksville Residents Against Mortuary

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[3] Md. Rule 5-301 sets forth:
(a) Effect. Unless otherwise provided by statute or by these rules, in all civil actions a presumption imposes on the party against whom it is directed the burden of producing evidence to rebut the presumption. If that party introduces evidence tending to disprove the presumed fact, the presumption will retain the effect of creating a question to be decided by the trier of fact unless the court concludes that such evidence is legally insufficient or is so conclusive that it rebuts the presumption as a matter of law.
(b) Inconsistent presumptions. If two presumptions arise which conflict with each other, the court shall apply the one that is founded upon weightier considerations of policy and logic. If the underlying considerations are of equal weight, the presumptions shall be disregarded.

[4] E.g., in solar facility cases, evidence that the proposed use does not meet the solar facility requirements set forth in BCZR §4F-104 may also warrant denial of a special exception petition.

Defense Fund, Inc. v. Donaldson Properties, 453 Md. 516, 543; 162 A.3d 929 (2017); Attar, 451 Md. at 287; 152 A.3d at 774.

If a special exception protestant presents sufficient evidence to create a genuine dispute of material fact as to a particular special exception factor or other zoning requirement, the evidentiary record must be sufficient to persuade the Board of Appeals that the proposed use will conform to the applicable zoning plan and satisfy the specified factors. Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson, 115 Md. App. at 564; 694 A.2d at 157.

Even still, the Board can grant the special exception petition along with certain conditions or restrictions to protect the surrounding and neighboring properties, and in solar facilities cases, "to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands." BCZR §502.2, §4F-104(10). If the burden of persuasion is not met, the Board will deny the petition.

The special exception factors to be evaluated by the Board are set forth in BCZR §502.1. As stated therein, before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

DECISION

A. BCC §33-3-108(c) Plan Requirements and Applicability To Special Exception Hearings

Before the special exception factors are discussed, the Board needs to address Protestants' argument that, pursuant to BCZR §4F-104(9), Petitioner is required to comply with the plan requirements of Baltimore County Code §33-3-108(c), which identifies an additional 18 requirements for solar facilities. Protestants further assert that Petitioner has the burden of proof and Petitioner has failed to produce evidence on various items required to be identified on the plan at issue in BCC §33-3-108(c). Therefore, the first question for the Board is what, if anything, Petitioner is required to prove with respect to BCZR §4F-104(9) during a special exception hearing.

To start, the Board looks at the language within the Code and Regulations. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted). "'Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language.'" Id. at 314–15, 987 A.2d at 52 (citations omitted). In interpreting a statute, a court first looks to the language, applying it where the statute's language "is unambiguous and clearly consistent with the statute's apparent

purpose[.]" Motor Vehicle Admin. v. Gonce, 446 Md. 100, 110, 130 A.3d 436, 442 (2016); *quoting* Lark v. Montgomery Hospice, Inc., 414 Md. 215, 227, 994 A.2d 968, 975 (2010) (citation omitted). As is well established under Maryland law, canons of statutory interpretation forbid construction of a statute so that a word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory. Oglesby v. State, 441 Md. 673; 109 A.3d 1147 (2015).

Clearly, the solar facility requirements, generally, are matters for the Board's consideration as the Board may deny a petition for special exception for a proposed solar facility for facial noncompliance. First, these requirements are set forth in the Baltimore County Zoning Regulations and, as relevant to this case, are applicable in the RC-7 Zone. Facial noncompliance with the requirements may result in a finding that the petition is inconsistent with the spirit and intent of the zoning regulations and/or run afoul of other BCZR §502.1 factors. Second, subparagraph 10 refers to the Board's authority to impose conditions if the special exception petition is approved. The implication is that the County Council intended for the Board to consider the additional solar facility requirements as part of a special exception hearing. However, the Board rejects Protestants' interpretation of BCZR §4F-104(9) that the County Council intended for the Board to review and decide the BCC §33-3-108(c) specific plan requirements as part of the special exception hearing.

Baltimore County Code §33-3-108(a) refers to a "plan" approved by "the Department" for "all development, forest harvesting operations, surface mining operations, and agricultural operations." The word "plan," as defined in BCC §33-3-101, "means a written and graphic representation of all proposed development, forest harvesting operations, surface mining operations, agricultural operations, and other land use activities not otherwise exempt from the provisions of this title that is prepared in accordance with § 33-3-108 of this title."

Baltimore County Zoning Regulation §4F-104(9) states that a "petitioner shall comply with the plan requirements of § 33-3-108 of the County Code." The word "plan," as used in BCZR §4F-104(9), neither supplements, nor alters, the definition of "plan" in BCC §33-3-101 or as applied to BCC §33-3-108(c) and therefore, the "plan" identified in BCZR §4F-104(9) is to be interpreted coextensively with the "plan" at issue in BCC §33-3-108(c).

The "Department," as used in Article 33, Title 3, is identified as "the Department of Environmental Protection and Sustainability ["DEPS"]," and the "Department" is charged with the duty to review the plan required by BCC §33-3-108. See, BCC §33-3-101(f); §33-3-108(a). In short, the "plan" at issue in the solar facility regulations is the plan required to be submitted for review and approval by DEPS. As further support, the County Code, pursuant to BCC §3-2-603, empowers DEPS to:

> (a) (1) Administer and enforce environmental laws, regulations, programs, and activities for the purpose of conserving, enhancing, and perpetuating the natural resources of the county and preserving and protecting the environmental health of its citizens; and (2) Have the duties, functions, and responsibilities provided for in the Code and assigned to it by directive of the County Administrative Officer.

In addition, DEPS has the responsibility to enforce the state laws and regulations concerning the environment upon delegation from the State. BCC §3-2-603(b). Furthermore, the County Code establishes that DEPS is the agency that enforces the provisions within Article 33, Title 3 and DEPS's Director is authorized to adopt policies and regulations, as necessary, to implement those provisions. BCC §33-3-105. It would be wholly nonsensical for both, the Board and DEPS, to independently review and assess the BCC §33-3-108(c) plan given the specific duties charged to DEPS and DEPS's expertise in the subject matter.

Furthermore, the Code provides that DEPS's Director or the Director's Designee is required to determine that the proposed development is in compliance with Article 33, Title 3

before any building or grading permit is issued by the Department of Permits, Approvals and Inspections. BCC §33-3-109. In other words, the requirements outlined by Article 33, Title 3 relate to development and do not relate to zoning.

Lastly, the County Council amended the special exception factors in connection with enacting the solar facility regulations, but the changes concerned zones other than RC-7 zones, which, to this Board, reflects an intent that the County Council intended for the Board to conduct the same review and analysis of the impacts of the environment and natural resources by the solar facility as it has for other proposed special exception uses. If the County Council wished for the Board to undertake the greater and more technical environmental analysis at issue in BCC §33-3-108(c), the County Council would have amended the BCZR §502.1 to reflect that intent or would have expressly authorized the same in Article 4F.

Taken together, the code provisions and regulations unambiguously establish that neither the ALJ, nor the Board of Appeals, reviews or approves the plan or any individual requirement identified in BCC §33-3-108 as part of a zoning special exception hearing. The only responsibility identified in BCZR §4F-104(9) is that petitioner is required to comply with the plan requirements. Notably, DEPS's comment submitted in this case stated that Petitioner will have to comply with the environmental regulations, as relevant for this discussion, found in BCC §§33-3-101 through 33-3-120, obviously inclusive of §33-3-108, and DEPS took no position on the request for special exception approval. (Petitioner's Exhibit No. 12). If Petitioner does not receive approval from DEPS, Petitioner will not receive any grading or building permit. Finally, and importantly, several witnesses testified expressly or by implication that they understood that DEPS will undertake this more comprehensive review after the Board resolves this matter, including namely Mr. Kellman, Mr. Doak, Mr. Altmeyer, and Mr. Roemer.

In light of the above, the Board concludes that Petitioner does not need to present at a special exception hearing evidence regarding each item required for a BCC §33-3-108(c) plan or, even simply, DEPS's approval of such a plan. Relatedly, the omission of such information at the time of the special exception hearing is, by itself, not fatal to a special exception petition.

B. Relevant Locality/Neighborhood

At the start, the Board must determine what the locality or neighborhood to evaluate what, if any, impact the proposed use has above and beyond effects inherently associated with a special exception use. Attar, 451 Md. at 278-284, 289; 152 A.3d at 769-772, 775. As stated by the Court of Appeals: "the Board's task is to determine if there is or likely will be a detriment to the surrounding properties" (Id., 451 Md. at 280; 152 A.3d at 769-770); the Board must assess "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 22-23; 432 A.2d 1319, 1331 (1979).

Therefore, the question is whether the expected effects from the proposed use are somehow exacerbated by the location at issue, to the detriment of those to experience such effects. For a special exception, the description of the neighborhood to be impacted by the proposed use "must be precise enough to enable a party or appellate court to comprehend the area the Board considered." Attar, 451 Md. at 282; 152 A.3d at 771.

In this case, testimony and various maps and photographs establish that Upper Glencoe and Lower Glencoe Roads form the north, east, and south sides of the locality at issue. The area contained within, using York Road as its western boundary, is overwhelmingly zoned RC-7, with some portion north and east of the subject property zoned RC-2. (Petitioner's Ex. 9). It has been

suggested York Road should be the western boundary for the Board's analysis. However, there are residences directly across the street from the subject property located on Elizabeth Court, William Court, and Kampman Court, all of which rely on access from York Road across from the subject property and therefore, should be considered as part of this analysis, though noting those residential properties are zoned RC-2 and no resident from the homes on those streets testified at the hearing or otherwise indicated opposition.

C. Special Exception Factors

At the outset of the hearing, Protestants stated that its case focused only on three of the nine special exception factors, particularly, (A) the health, safety and general welfare of the locality; (G) the inconsistency with the property's zoning classification and/or inconsistency with the spirit and intent of the zoning regulations; and (I) the detrimental impact to the environment and natural resources of the site and vicinity. In fact, much of Protestants' case and closing memorandum focused on environmental matters and inconsistency with the zoning classification and/or inconsistency with the spirit and intent. Protestants also challenged the petition for lack of evidence regarding compliance with certain solar facility requirements, which will be discussed in the section below. People's Counsel also largely confined its evidence and arguments to the environmental issues, as well as inconsistency with the classification and/or spirit and intent. Both advanced an argument regarding the visual impact.

For the special exception factors Protestants' witnesses addressed, the testimony too often amounted to speculation, which the Board cannot consider and rely upon for its findings. By way of example, Mr. Mayo testified that he had concerns that the conversion of the adjacent property will cause more deer to pass through the Gorsuch Retirement property and cause more crop damage. While the Board does not question the sincerity of Mr. Mayo's concern, there were no

facts in the record from which the Board can find, as a matter of fact, that there is a likelihood of an increase in the deer population on the Gorsuch Retirement property caused by the presence of an adjacent solar facility, which in turn will cause more crop damage to the Gorsuch Retirement property.

Protestants also raised an issue as to the impervious surface coverage as part of the RC-7 Zone regulations without reference to BCZR §502.1(H). However, Protestants' factual underpinning for this argument require the Board to conclude that the solar panels qualify as an impervious surface as contemplated by the BCZR. The Board does not so conclude.

The evidence establishes that only the vertical support posts for the array and fencing will make contact with the ground. Based on the evidentiary record, the solar panels will be fixed on an angle, leaving approximately two feet of space from the ground, with ample separation between the rows of panels. Though not specifically argued, the Board also finds that the limited removal of trees, confined to the western half of the bowtie and only in connection with the access drive construction is not inconsistent with the vegetative retention regulations.

Similarly, Protestants' witnesses testified that the crossing point at the "bowtie knot" part of the subject property may not be able to support the weight of emergency vehicles, if needed. The witnesses presented by Protestants that provided this testimony, however, were not qualified as experts. The testimony is assuredly speculative as there is no information as to the present capacity or the crossing's weight-bearing capacity following the intended improvements. It should be mentioned that, when the property was farmed, farm equipment used the crossing. Any concerns about the weight-bearing capacity at the crossing will be addressed in the permit stage. [5]

[5] The Board recognizes that Protestants do not have access to the crossing point as it is located entirely within the subject property. At the same time, the permit process related to the construction of the access road and the DEPS plan review will, by necessity, analyze the crossing point and what improvements can and will be made to move forward with this project.

In light of the above, this Board can summarily find that Protestants have not adequately rebutted the presumption on several factors, particularly, (B) congestion in roads, etc.; (C) the creation of a potential hazard from fire, panic or other danger; (D) overcrowding of land, etc.; (E) interference with schools, parks, water, sewage, transportation of other public requirements, etc.; (F) interference with adequate light and air; and (H) inconsistency with the impervious surface and vegetative retention regulations. Also, the Board finds Petitioner has satisfied its burden for those factors.

With respect to BCZR §§502.1 (A), (G), and (I), certain arguments have been raised which require some further discussion. In furtherance, Protestants presented testimony identifying visual impact, runoff, the RC-7 Zone, and the aforementioned environmental issues as concerns that touch on these special exception factors.

For example, Protestants identified the visual impact that they will experience and People's Counsel has identified the visual impact on an adjacent scenic route. Protestants argue the Baltimore County Master Plan 2020 reflects the County's policy to "preserve scenic corridors and views through proper zoning and coordination with federal and state governments," and therefore, "special exceptions should be granted sparingly." (Master Plan 2020, pp. 99, 101). Absent an express code provision mandating conformity with the Master Plan, Master Plans are understood to be guides in the zoning process. People's Counsel v. Webster, 65 Md.App. 654, 701-703; 501 A.2d 1343, 1347 (1986). In fact, Baltimore County's Master Plan is specifically designated to serve as guidance --- Baltimore County Charter §523 states: "The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county." (emphasis added).

Nevertheless, the regulations clearly establish that the County Council had awareness that any ground-based solar facility may be visible to nearby property owners and/or others passing by. The County Council accounted for and mitigated against any adverse visual impact to neighboring properties and the scenic roads by requiring a landscaping buffer for screening the facility from adjacent residential properties and public streets, as well as setting a height limit for any structure within the solar facility. See BCZR §4F-104(5) and (6). While the RC-7 Zone also has certain requirements for screening (See, e.g., BCZR §§1A08.5; 1A08.6(C)(4)), the County Council expressly allowed solar facilities within the RC-7 Zone by way of special exception. A primary rule of statutory construction that a legislature has full knowledge of existing laws and legislation pertaining to the subject matter under legislative consideration. See *e.g.*, Maryland-National Capital Park & Planning Com. v. Silkor Development Corp., 246 Md. 516, 524; 229 A.2d 135, 140 (1967). As such, the Board concludes that the visual screening required in the solar facility regulations satisfies the screening required within the RC-7 Zone and that the screening required is consistent with the Master Plan 2020's policy to preserve scenic corridors.

Leaving all of the above aside, the potential for someone on an adjacent property or on an adjacent roadway to see some part of the solar facility is obvious.[6] Protestants' evidence fails to establish an effect above and beyond those associated with the proposed use. As stated by Mr. Quinlan and seen in various photographs, the solar facility is to be located approximately 1,100 feet from York Road. Petitioner has also agreed to comply with any additional landscaping plan required by the County. The fixed angle of the panels limits their height to under eight feet when measured from the ground.

[6] These arguments are understood to contemplate different special exception factors, to wit: (A) for the neighbors, for the more immediate impact to the surrounding community, and (G) and (I) as to the impact on the scenic roadway.

Petitioner entered into evidence the Department of Planning's ("Planning") determination regarding the visual impact of the solar facility upon the scenic route. (See, Petitioner's Exhibit 10). Planning determined that, due to topography and the presence of the mature forest, the solar panels will not be visible from York Road or adjacent properties. (See Petitioner's Exhibit 10). Planning had no objection to the zoning relief. Given that the solar array will be approximately 1,100 feet from York Road, the fixed angle of the panels limits the height of the panels to under eight feet when measured from the ground, and, as testified to by Mr. Kellman, the western half of the property sits at a higher elevation than the eastern half, the Board concludes the solar facility will neither detrimentally impact the scenic route, nor the neighboring properties, to any degree greater at this location than other locations within the zone. Moreover, it is reasonable to conclude the features at this particular site help mitigate a detrimental impact where other RC-7 zoned properties, without the combination of features, will not.

Mr. Mayo and Mr. Matczuk identified concerns about runoff/flooding issues. Mr. Matzcuk's testimony revealed that he occasionally experiences flooding from Upper Glencoe Road, indicating present-day flooding independent of the Gorsuch Retirement property and/or the subject property to the west of the Gorsuch Retirement property. For this reason, Mr. Matczuk elaborated, he considered potential runoff as a possible exacerbation of the existing issues.

Protestants' Exhibit No. 16 reveals that the highest point of the proposed solar facility field straddles the boundary line with the Gorsuch Retirement property at roughly the mid-point of the subject property's northeastern edge. The topography proceeds to descend through the subject property to the southern edge of the eastern half to the property's lowest point. The topographical map suggests that water, without improvements, drains to the northwest, west, south, and

southeast. Much of that area is within the subject property's boundaries and away from the Gorsuch Retirement property, and therefore, also away from the Matzcuk property.

Mr. Roemer, via Protestants' Exhibits 28 and 28A, identified a "perennial" stream that brushes along the northern point of eastern bowtie half, then bisects the Gorsuch Retirement property, and runs more or less close to the boundary between the Gorsuch Retirement property and Mr. Matzcuk's property. Mr. Roemer explained a perennial stream is one with water flow for most of the year.

The topography and drainage plain suggest that any additional volume caused by runoff from the solar facility that flows to the northeast, which is assumed only to address this argument, would be minimal. Mr. Matzcuk's testimony reveals that the primary flooding issue he confronts comes from the north via Upper Glencoe Road. As such, the evidentiary record on this issue is insufficient from which the Board may conclude that Mr. Matzcuk's property will be adversely impacted by runoff from the solar facility. Nor can it be concluded on this record that the solar facility would exacerbate any existing flooding risk.

As alluded to above, DEPS will undertake a significant review of issues related to the runoff concerns raised. Protestants' expert, Mr. Altmeyer, testified that it would be satisfactory to him if runoff was addressed in a DEPS-approved plan, after DEPS conducted a site visit. Consistent with Mr. Altmeyer's testimony, the Board will order Petitioner to comply with DEPS's reviewed and approved plan.

Turning to factor (G), consistency with the legislative purposes and spirit and intent of the regulations, the BCZR does not identify purposes specific to the RC-7 Zone. There are findings and legislative goals, but no identified "purposes." Other Resource Conservation Zones have

defined purposes, including but not limited to, RC-2, RC-5, RC-20 and RC-50, and RCC. All Resource Conservation Zones have general purposes identified in BCZR §1A00.2:

A. Discourage present land use patterns of development and to create a framework for planned or orderly development;

B. Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;

C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development;

D. Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences; and

E. Help achieve the goals of the Chesapeake Bay Critical Area Protection Law [1] by enacting land use policies to control development within the Critical Area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat.

Section 4F-101(A) sets forth:

A. Purpose. Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources. (emphasis added).

The safeguards required by BCZR §4F-104 are reflected in the solar facility regulations and the County Council expressly permitted solar facilities in Resource Conservation Zones. As set forth above, the County Council has full knowledge of existing laws and legislation pertaining to the subject matter under legislative consideration. See *e.g.*, Maryland-National Capital Park & Planning Com., 246 Md. at 524; 229 A.2d at 140. The County Council's express inclusion of the

RC-7 Zone in the solar facility regulations means that the County Council considered the legislative findings and goals specific to the RC-7 Zone. The County Council also requires the Board to consider conditions, as stated in BCZR §4F-104(10), affording additional measures for protection as necessary. Therefore, the Board concludes the proposed use does not run afoul of BCZR §502.1(G) as to a general inconsistency with the applicable purposes or spirit and intent of the zoning regulations.

Dispensing with the arguments regarding general inconsistency, Protestants also argue a more specific inconsistency, namely, that the 300-foot setback requirement in the RC-7 Zone as established by BCZR §1A08.6(B)(5)(b) applies to this matter. Petitioner contends that the 50-foot setback requirement within BCZR §4F-104(A)(4) applies.

The Board must first determine whether there is a conflict between the two regulations. Under Maryland law, "'when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute.'" State v. Roshchin, 446 Md. 128, 142; 130 A.3d 453, 461 (2016), *quoting*, Maryland-Nat'l Capital Park & Planning Comm'n v. Anderson, 395 Md. 172, 194, 909 A.2d 694 (2006) (*quoting* State v. Ghajari, 346 Md. 101, 116; 695 A.2d 143 (1997)). Furthermore, as recently stated by the Court of Appeals, when two statutes apply to the same situation, then the court will attempt to harmonize the statutes. Blackstone v. Sharma, 461 Md. 87, 93; 191 A.3d 1188, 1191 (2018). The Blackstone Court further established:

> "Courts presume that the legislature intends its enactments to operate together as a consistent and harmonious body of law. Thus, when two statutes appear to apply to the same situation, the Court will attempt to give effect to both statutes to the extent that they are reconcilable. Nevertheless, if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute.

Id..

Protestants' reliance on BCZR §600.1 to establish which regulation controls does not aid the analysis because the regulations at issue are both contained within the BCZR. The repeated references of "these regulations" in comparison to "the provisions of any law, ordinance, regulation or private agreement," imply laws, ordinances, regulations and private agreements that are not contained within the Baltimore County Zoning Regulations. If interpreted in a manner as to apply to potential conflicts of regulations within the BCZR, the references to "these regulations" become confusing and fail to achieve the purpose of providing regulation construction guidance and hierarchy.

The Board interprets BCZR §4F-104(4) as requiring aboveground solar facility components and equipment to be a minimum of 50 feet from the tract boundary, such a minimum not applicable to any associated landscaping, security fencing, wiring, or power line. The Board interprets BCZR §1A08.6(B)(5)(b), as is relevant, as requiring for any principal building or any use that may be in conflict with any permitted agricultural operation a 300-foot setback from any adjacent property that was cultivated or used for pasture during the previous three years.

In other words, the minimum 50-foot setback is required of all solar facilities within any Resource Conservation Zone. The 300-foot setback is applicable in a RC-7 Zone, applies to more than just solar facilities, and is required if, and only if, certain conditions are met. First, there must be a principal building or a use that may be in conflict with any permitted agricultural operation on adjacent property. Also, the adjacent property must have been cultivated or used for pasture within the last three years. In short, the two regulations are not in conflict, at least, not in the context of this case.

The solar farm is not a principal building. As to the use, the only property identified as that used as a farm cultivated or used for pasture in the last three years was the Gorsuch Retirement

property. That property, however, is located within a RC-2 Zone. The 300-foot setback is to benefit adjacent RC-7-zoned properties. Once again, the County Council, when enacting the solar facility regulations, would be aware of the setback requirements for the Resource Conservation Zones. If the general 300-foot setback controlled and applied at all times, then the 50-foot setback regulation applicable to solar facilities would be rendered meaningless. If the County Council wanted to carve out exceptions to the application of the 50-foot setback or impose greater setbacks for particular Resource Conservation Zones, the County Council would have so provided. The Board concludes that the 50-foot setback in the solar facility regulations applies here, not the general 300-foot setback.

With respect to the environment and natural resources, the evidence presented by Petitioner may be fairly described as a skeleton, enough to hold the case together but primarily relying on other (and in this case, subsequent) processes to make it functional. To be clear, subsequent processes by other agencies do not excuse Petitioner from presenting sufficient evidence for the Board's consideration as part of a special exception hearing. Petitioner must still present sufficient evidence to the Board for the Board to evaluate the special exception factors and the failure to do so will result in a denial of a petition.

People's Counsel correctly argues that the special exception process involves and has some overlap with the development process. Echoing what has been stated above, even with overlap, these are two different evaluation processes and there are different purposes for those evaluation processes. The Board assesses whether the proposed use can conform to the zoning regulations without a detrimental impact to the surrounding area that is greater than what would be experienced elsewhere.

Despite the risky strategy with regard to this factor, Petitioner has met its burden. First, the site itself aids Petitioner. As referenced above, photographs and topographical information permit the Board to draw inferences and reach conclusions (*e.g.* drainage). Second, the bowtie, with confirmation as location of a water resource, appears to be the most environmentally-sensitive feature on the site and given the presence of water and proximity to other properties, effects experienced at the bowtie may also be experienced by neighboring properties via the course of water flowing from the subject property. The bowtie, however, is not the area of focus for the proposal; rather, it is the open field on the east side. The impact at the bowtie comes from the construction of the improvements related to the access road.

Mr. Roemer identified certain features on the adjacent Gorsuch Retirement property causing him to believe that the area at the properties' border qualifies as wetlands and at the subject property's northern most point along the eastern half, the border area may qualify as a potential bog turtle habitat. He considered it less likely that the bowtie area was a potential bog turtle habitat. As Mr. Roemer noted, however, the investigation he conducted was only preliminary. He relayed that a more detailed survey will be conducted as the project moves forward and that, depending on the findings, additional protective measures may be directed. He also indicated that the building permit process will require a greater study of the bowtie area as well.

As such, while Mr. Roemer identified potential issues, his testimony makes it clear that more investigation, surveying, and studying are required before any conclusions can be drawn. Moreover, his testimony, along with Mr. Altmeyer's, Mr. Doak's, and Mr. Kellman's, reveal that the additional investigations, surveying, and studying will in fact be performed and Petitioner will have to comply with the changes directed, at Petitioner's peril. Therefore, Protestants' evidence does not establish a basis for this Board to conclude a likelihood that the proposed use will result

in detrimental impacts to the environment. Nor does the record establish that the impacts are greater at this location compared to other sites in the RC-7 Zone.

Again, the Board notes that in another case, a petitioner may not obtain the relief at issue without more information. Nevertheless, in light of the testimony of Petitioner's witnesses regarding the site features (also depicted in exhibits), willingness to comply with any and all conditions and requirements, the location of the solar facility in the open field, DEPS's absence of objection or further comment, unanimity among the experts that additional investigations will take place, Petitioner has satisfied its burden on this point.

Protestants and People's Counsel raised the issue of impact to prime and productive soils, which the County Council identified in the legislative goals for the zone as a resource requiring protection. BCZR §1A08.1(B)(6). The witnesses agreed in near harmony that the subject property had not been used for farming for awhile. Nevertheless, accepting that the soils at the subject property qualify as prime and productive soils, the record establishes minimal disruption (in a relative sense) to the open field, mostly by way of the implanting the vertical poles for the racking system and surrounding fence. Much of the field will be undisturbed. No expert witness provided evidence that the presence of the solar field will cause a change in the soils to render them something other than prime and productive for future use. In addition, the evidentiary record fails to establish a basis for the Board to conclude that once the lease is up, the field will be in a condition that prevents it from being cultivated or farmed.

Therefore, the issue is more properly framed as the temporary loss of the potential to use the prime and productive soils in the eastern half of the property for farming for duration of the lease term. The Board cannot, and in any event will not, compel the property owner here to take advantage of and utilize the prime and productive soils on the owner's property. For all of these

reasons, the Board is not persuaded that a solar facility at this location, even if located on prime and productive soils, would run afoul of this factor.

Based on the evidentiary record here, the Board is persuaded that the proposed use will not detrimentally impact the environment and natural resources at the site and in the vicinity. The Board will also impose conditions to help protect the environmental and natural resources. Therefore, Petitioner has satisfied its burden on all special exception factors, though the Board will impose conditions to mitigate some of the effects and to effectuate the representations made by Petitioner upon which the Board relies in reaching this decision.

D. Solar Facility Requirements

Lastly, several requirements were expressly or impliedly addressed in the special exception factors set forth above, including (4) 50-foot setback requirement is satisfied; (5) the height of any structures will not exceed 20 feet; (6) landscape buffer and screening will be in place to mitigate visual impacts; and (7) security fencing will be in place. There is no evidence that the subject property is encumbered by an agricultural or environmental preservation easement, a rural legacy easement, or within a forest conservation easement. Similarly, there is no evidence that the property is within a historic district, nor is the property on the County Final Landmarks List.

As for the remaining solar facility regulations, Petitioner presented evidence via Mr. Quinlan that the facility will generate 1.87 megawatts of AC electricity, with the array covering only nine acres of the entire property (less than five acres per megawatt). BCZR §4F-102(B)(1). There is no evidence that granting this petition would result in exceeding the district cap for solar facilities, as identified in BCZR §4F-102(B)(2). With respect to glare, the evidentiary record establishes that the panels will be 1,100 feet from York Road and there are topographic changes in between and some trees and landscaping help screen the array from view. Mr. Kellman testified

a glare study will also be required prior to obtaining a building permit. Protestants did not present evidence that glare may present a problem. Given that, there is nothing in this record to establish that this proposal may violate the glare regulations.

In light of the above, the Board cannot conclude that this proposed solar facility fails to comply with the solar facility requirements in BCZR §§4F-101, *et seq*.

E. Conditions

The Zoning Regulations allow the Board of Appeals to "impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." In addition, if approved, BCZR §4F-104(10) empowers the Board of Appeals to:

> impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

The Board, in granting this petition, finds it necessary to impose conditions to provide some additional protections and to effectuate representations made by Petitioner that addressed concerns identified by Protestants during the course of the hearing (as well as ones identified during the ALJ hearing). The Board imposes these conditions to protect the surrounding and neighboring properties, the environment and scenic views, as well as to otherwise lessen the impacts to surrounding properties.

Therefore, the Board grants the petition, but does so with the following conditions:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Opinion & Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If, for whatever reason, this Order is reversed, Petitioner would be required to make corrections, which may include return of the subject property to its original condition.

2. Petitioner shall comply at all times with the ZAC comments submitted and requirements imposed by DEPS.

3. Petitioner shall comply with the solar facility regulations and requirements (specifically, BCZR §4F-104) at all times.

4. Petitioner shall comply at all times with the DEPS reviewed and approved plan, as identified in BCZR §4F-104(9) and BCC §33-3-108(c).

4. Petitioners shall obtain from and the State Highway Administration (SHA) and comply with the appropriate permit for entrance/access to and/from York Road.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility, the bowtie area, or the crossing point. If, following any subsequent development process, DEPS review, wetlands delineation, environmental study or survey and/or other investigation by any governmental agency, department, division, office, and/or other entity, it is determined, directed, ordered, or recommended that weed killers and/or herbicides should not be used on any other part of the subject property, Petitioner shall comply with those determinations, directives, orders, and/or recommendations.

6. Prior to the commencement of operations, Petitioner shall post on the solar facility contact information for the lessee company (including a 24-hour telephone number) and also that for a company representative so that the company and/or the company representative or agent can be notified in the event of an emergency and/or other circumstances requiring company action or response.

7. Aside from Condition No. 6, no signage or lighting shall be installed at the site in connection with the solar facility unless required by any Federal, State, or other County agency, department, division, or office, or otherwise required by law.

8. Petitioner shall submit for approval by Baltimore County a landscape plan for the site.

9. Prior to the commencement of operations, Petitioner shall provide contact information for the lessee company and also that for a company representative as well as the necessary key(s) and/or access code(s) or combination(s) with the local fire departments to ensure the local fire departments have access to the solar facility if needed.

10. Petitioner shall not use, incorporate, or attach barbed wire, razor wire, or barbed wire fencing or razor wire fencing as part of the solar facility.

11. The only trees permitted to be removed from the subject property are those on the western half of the property whose removal is necessary for the construction

of the access drive. For each tree removed, Petitioner shall replace the removed tree with per diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Should any tree become damaged as a result of the road construction or any construction activity related to the solar field so that the visual screening of the solar array is affected, Petitioner shall plant a per diameter equivalent native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Petitioner shall not remove or cause to be removed any tree in the bowtie area, crossing point or on the proposed solar field.

Conclusion

For the foregoing reasons, the Board grants the petition subject to the conditions outlined herein.

ORDER

THEREFORE, IT IS THIS 29th day of July, 2019, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan (Pet. Ex. 1), be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Opinion & Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If, for whatever reason, this Order is reversed, Petitioner would be required to make corrections, which may include return of the subject property to its original condition.

2. Petitioner shall comply at all times with the ZAC comments submitted and requirements imposed by DEPS.

3. Petitioner shall comply with the solar facility regulations and requirements (specifically, BCZR §4F-104) at all times.

4. Petitioner shall comply at all times with the DEPS reviewed and approved plan, as identified in BCZR §4F-104(9) and BCC §33-3-108(c).

4. Petitioners shall obtain from and the State Highway Administration (SHA) and comply with the appropriate permit for entrance/access to and/from York Road.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility, the bowtie area, or the crossing point. If, following any subsequent development process, DEPS review, wetlands delineation, environmental study or survey and/or other investigation by any governmental agency, department, division, office, and/or other entity, it is determined, directed, ordered, or recommended that weed killers and/or herbicides should not be used on any other part of the subject property, Petitioner shall comply with those determinations, directives, orders, and/or recommendations.

6. Prior to the commencement of operations, Petitioner shall post on the solar facility contact information for the lessee company (including a 24-hour telephone number) and also that for a company representative so that the company and/or the company representative or agent can be notified in the event of an emergency and/or other circumstances requiring company action or response.

7. Aside from Condition No. 6, no signage or lighting shall be installed at the site in connection with the solar facility unless required by any Federal, State, or other County agency, department, division, or office, or otherwise required by law.

8. Petitioner shall submit for approval by Baltimore County a landscape plan for the site.

9. Prior to the commencement of operations, Petitioner shall provide contact information for the lessee company and also that for a company representative as well as the necessary key(s) and/or access code(s) or combination(s) with the local fire departments to ensure the local fire departments have access to the solar facility if needed.

10. Petitioner shall not use, incorporate, or attach barbed wire, razor wire, or barbed wire fencing or razor wire fencing as part of the solar facility.

11. The only trees permitted to be removed from the subject property are those on the western half of the property whose removal is necessary for the construction of the access drive. For each tree removed, Petitioner shall replace the removed tree with per diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Should any tree become damaged as a result of the road construction or any construction activity related to the solar field so that the visual screening of the solar array is affected, Petitioner shall plant a per diameter equivalent native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Petitioner shall not remove or cause to be removed any tree in the bowtie area, crossing point or on the proposed solar field.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chair

Andrew M. Belt

William A. McComas

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 29, 2019

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

H. Barnes Mowell, Esquire
H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Robert K. Gerner – Legal Owner*
ESA Sparks Glenco, LLC – Lessee
Case No.: 18-047-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

Robert K. Gerner
Brian Quinlan/ESA Sparks Glenco, LLC
William Mayo
Gorsuch's Retirement, Inc.
Sparks Glencoe Community Planning Council
Lynne Jones
Edd J. Matczuk
Al Rude
Nedda Pray
Rob Webster
Lawrence M. Stahl, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 19, 2018 10:19 AM
To: Peter Max Zimmerman; Timothy M. Kotroco; barney Mowell
Cc: Wheatley, Rebecca
Subject: RE: Robert Gerner - 15637 York Road - Case No.: 2018-047-X

Good morning Counsel,

Please be advised the request to extend the Memo due date has been granted. The Memos are now due before 3:00 p.m. on Wednesday, January 9, 2019.

The deliberation date has not changed.

I hope you have a wonderful holiday season.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

-----Original Message-----
From: Peoples Counsel
Sent: Tuesday, December 18, 2018 9:02 AM
To: Timothy M. Kotroco <tkotroco@gmail.com>; barney Mowell <barneymowell@hotmail.com>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Robert Gerner - 15637 York Road - Case No.: 2018-047-X

Good Morning Gentlemen,

Attached you will find a copy of the letter our office filed today with the Board of Appeals requesting to change the memo due date to January 9, 2019. A hardcopy of the letter will follow by U.S. mail.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

Krysundra Cannington

From: Peoples Counsel
Sent: Tuesday, December 18, 2018 9:02 AM
To: Timothy M. Kotroco; barney Mowell
Cc: Krysundra Cannington
Subject: Robert Gerner - 15637 York Road - Case No.: 2018-047-X
Attachments: 20181218090131544.pdf

Good Morning Gentlemen,

Attached you will find a copy of the letter our office filed today with the Board of Appeals requesting to change the memo due date to January 9, 2019. A hardcopy of the letter will follow by U.S. mail.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 18, 2018

HAND DELIVERED
Jason S. Garber, Chairman
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Robert K. Gerner
15637 York Road
Case No.: 2018-047-X

Dear Chairman Garber:

This letter is to request an extension of the due date for the filing of memoranda in this case from Friday, January 4, 2019 until Wednesday, January 9, 2019. We have spoken with counsel for all parties and they have agreed to this extension. The deliberation is scheduled for February 19, 2019. We trust that this slight extension should not interfere with the deliberation schedule. If you have questions, please contact my office.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Timothy Kotroco, Attorney for Petitioners
H. Barnes Mowell, Attorney for Protestants

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

December 13, 2018

NOTICE OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

AGENDA: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter having been heard on August 21, 22, October 24 and concluded on November 28, 2018, a public deliberation has been scheduled for the following:

DATE AND TIME: **FEBRUARY 19, 2019 at 9:00 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on **January 4, 2019 no later than 3:00 p.m.**
(One [1] Original and three [3] copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER THE CONCLUSION OF THE DELIBERATION. A COPY OF THAT OPINION AND ORDER WILL BE SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:

Counsel for Petitioners	: Timothy Kotroco, Esquire
Petitioner/Legal Owner	: Robert Gerner
Petitioner/Lessee	: ESA Sparks Glenco, LLC
Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council
People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND 21204

Return service requested

Hasler
09/01/2018
US POSTAGE
FIRST-CLASS MAIL
AUTO
$000.37[8]

ZIP 21204
011D12603654

RECEIVED
SEP 1[illegible] 2018
BALTIMORE COUNTY
BOARD OF APPEALS

ESA Sparks Glenco, LLC
c/o Brian Quinlan, Manager
4155 St. Johns Parkway Suite 1100
Sanford, FL 32771

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RETURN TO SENDER
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UNABLE TO FORWARD
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Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 31, 2018

NOTICE OF ASSIGNMENT
Days 3 and 4

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter was heard on August 21 and August 22, 2018 but did not reach a conclusion. Therefore this matter has been

ASSIGNED FOR: **OCTOBER 24, 2018 AT 10:00 A.M. – Day 3 AND NOVEMBER 28, 2018 AT 10:00 A.M. – Day 4**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
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Al Rude
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Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, August 28, 2018 12:11 PM
To: Timothy M. Kotroco; Krysundra Cannington; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

Ms. Cannington: I am not available on the following dates, due to trials and settlement conferences on those dates: Sept. 25, October 17,18, 30, December 13, 19. The consensus from our remaining witnesses is that they would prefer the next two days to be scheduled in November or December. thanks, Barney Mowell

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Thursday, August 23, 2018 11:12 AM
To: Krysundra Cannington; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

Dear Ms. Cannington,

I am available on all of the days that you offered with the exception of three dates. Crossed out and highlighted in red are the dates that I am not available. I am available all of the rest. Thank you.

Tim K.

.....we have the following dates available on our calendar: September ~~26~~, October 3, 10, 17, 18, 24, 30, November ~~7~~, ~~13~~, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

10/10 OK for PC

From: Krysundra "Sunny" Cannington <kcannington@baltimoreco
Date: Thursday, August 23, 2018 at 8:58 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman <pzimmerman@baltimorecountymd.gov>

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Thursday, August 23, 2018 11:12 AM
To: Krysundra Cannington; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

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.....we have the following dates available on our calendar: September ~~26~~, October 3, 10, 17, 18, 24, 30, November ~~7~~, ~~13~~, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Krysundra "Sunny" Cannington <kcannington@baltimorecountymd.gov>
Date: Thursday, August 23, 2018 at 8:58 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Peter Zimmerman <peoplescounsel@baltimorecountymd.gov>
Subject: Robert Gerner Days 3 and 4

Good morning Counsel,

Without checking with the Board members, we have the following dates available on our calendar: September 26, October 3, 10, 17, 18, 24, 30, November 7, 13, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Please be advised I cannot hold these dates as we have other cases also asking for additional dates.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, August 23, 2018 10:25 AM
To: Krysundra Cannington; tkotroco@gmail.com; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: RE: Robert Gerner Days 3 and 4

Good Morning Ms. Cannington,

Mr. Zimmerman is currently available the following dates:

September 26, October 17, 18, 24, 30, November 7, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

From: Krysundra Cannington
Sent: Thursday, August 23, 2018 8:58 AM
To: tkotroco@gmail.com; barney Mowell <barneymowell@hotmail.com>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert Gerner Days 3 and 4

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Please be advised I cannot hold these dates as we have other cases also asking for additional dates.

Please let me know which dates work best for you.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Krysundra Cannington
Sent: Thursday, August 23, 2018 8:58 AM
To: tkotroco@gmail.com; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Robert Gerner Days 3 and 4

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Please be advised I cannot hold these dates as we have other cases also asking for additional dates.

Please let me know which dates work best for you.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
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Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

June 14, 2018

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter had been postponed from May 1 and May 2, 2018 and has been

REASSIGNED FOR: AUGUST 21, 2018 AT 10:00 A.M. AND AUGUST 22, 2018 AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
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- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioners : Timothy Kotroco, Esquire
Petitioner/Legal Owner : Robert Gerner
Petitioner/Lessee : ESA Sparks Glenco, LLC

Counsel for Protestants/Appellants : H. Barnes Mowell, Esquire
Protestants/Appellants : William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, April 27, 2018 2:15 PM
To: 'Tim Kotroco'; barney Mowell; Peoples Counsel
Subject: Gerner 18-047-X

Good afternoon Counsel,

I have discussed this matter with the Board and the hearing in this matter has been postponed. I will not have time to get a notice of postponement in the mail today and I will be out of the office next week. Upon my return, this matter will be rescheduled in a timely manner.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Tim Kotroco [mailto:tkotroco@gmail.com]
Sent: Friday, April 27, 2018 1:54 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Solar case next week?

Sunny,

Mr. Mowell called me to check if the postponement has been issued. He wants to let his witnesses know as do I. Thank you much.

Tim

Timothy M. Kotroco, Esq.
305 Washington Ave. Suite 502
Towson, MD 21204
Cell: 410-299-2943

TIMOTHY M. KOTROCO

Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

April 27, 2018

Board of Appeals for Baltimore County
Jefferson Building, Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
Attention: Krysundra "Sunny" Cannington, Administrator

Re: In the Matter of: Robert K. Gerner –Legal Owner
ESA Sparks Glenco
Case No. 18-047-X
Request for Postponement

Ladies and Gentlemen,

I represent Robert K. Gerner and ESA Sparks Glenco, the owner and petitioner in the above referenced case. This matter was previously set in for a hearing on two days, May 1st and 2nd, 2018. The hearing will take two days to complete as was the original purpose for setting it in on two consecutive days. I was notified yesterday afternoon that as a result of a Board conflict, the second scheduled day of this hearing was postponed. This is certainly understandable due to the busy schedule of the Board.

However, it makes little sense to start this case on May 1st only to have to continue the matter and schedule additional days at a later time, given that two days are needed. Because of this, I respectfully request that the hearing date set for May 1st also be postponed and the case be reset to a later date when two days are available on the Board's schedule.

I spoke briefly yesterday afternoon with H. Barnes Mowell, counsel for the Appellants. He stated that he would email his client, William Mayo and discuss this request with him. I have not yet heard back from Mr. Barnes, but wanted to get this request to the Board immediately for the Board's consideration as the case is set to be heard early next week. I should mention that Mr. Mayo had requested a previous postponement which we did not object to and which was granted by this Board.

It is respectfully requested that the matter be postponed and reset before the Board of Appeals on two days at the next available dates. Thank you for your consideration of this request.

Very truly yours,

Timothy M. Kotroco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of April, 2018, a copy of the foregoing Request for Postponement was mailed to H. Barnes Mowell, Esq. 16925 York Road, Monkton, Maryland 21111 and People's Counsel for Baltimore County, 105 W. Chesapeake Ave., Suite 204, Towson, Maryland 21204.

Timothy M. Kotroco, Esquire

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Friday, April 27, 2018 10:37 AM
To: Krysundra Cannington
Subject: FW: Gerner

Sunny,

I received the below email from Barney Mowell, the attorney on the other side of that solar case. He has consented to the postponement request. Please let me know the Board's decision so that I may advise my witnesses. Thanks.

Have a great weekend.

Tm K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: barney Mowell <barneymowell@hotmail.com>
Date: Friday, April 27, 2018 at 10:25 AM
To: Timothy Kotroco <tkotroco@gmail.com>
Subject: Gerner

Tim: I just left you a phone message that we consent to postponing the hearing set for next week. Barney

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Friday, April 27, 2018 9:23 AM
To: Krysundra Cannington
Subject: Re: Gerner 18-047-X
Attachments: ESA Solar-Postponement Request.pdf

Sunny,

Thank you for your email about next week's hearing. I know the Board is busy and I understand their need to postpone the second day. You may recall that we had specifically decided to set aside two days for this hearing in order to get it done at one time and not have to come back a month or two down the road. It makes little sense to begin this case on Tuesday and not finish it, only to have to come back a month or two later.

Therefore, I will be hand delivering this morning a letter requesting that the case be postponed and reset when both days can be accommodated by the Board. I called Barney Mowell yesterday afternoon after I received your email and he said he would check with his client about my request. He has not yet gotten back to me but I wanted to get my letter in ASAP for the Board's consideration.

Thank you and I will be stopping by in a few minutes.

Kind Regards,

Tim K.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Krysundra "Sunny" Cannington <kcannington@baltimorecountymd.gov>
Date: Thursday, April 26, 2018 at 11:22 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman

<peoplescounsel@baltimorecountymd.gov>
Subject: Gerner 18-047-X

Good morning Counsel,

As you know, we set this matter for hearing on Tuesday and Wednesday of next week, May 1 and 2. Unfortunately, one of our Board members has a conflict with the hearing on Wednesday. Therefore, we will be cancelling the Wednesday, May 2nd hearing. We will begin as scheduled on Tuesday, May 1, at 10:00 a.m.

Should this matter not conclude on Tuesday, additional hearing dates will be scheduled as necessary.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Krysundra Cannington

From: Krysundra Cannington
Sent: Thursday, April 26, 2018 11:22 AM
To: tkotroco@gmail.com; barney Mowell; Peoples Counsel
Subject: Gerner 18-047-X

Good morning Counsel,

As you know, we set this matter for hearing on Tuesday and Wednesday of next week, May 1 and 2. Unfortunately, one of our Board members has a conflict with the hearing on Wednesday. Therefore, we will be cancelling the Wednesday, May 2nd hearing. We will begin as scheduled on Tuesday, May 1, at 10:00 a.m.

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Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 7, 2018

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter was scheduled for April 26, 2018 and has been postponed. By agreement of Counsel, this matter has been

REASSIGNED FOR: **MAY 1, 2018 AT 10:00 A.M. – Day 1; and MAY 2, 2018 AT 10:00 A.M. – Day 2**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Appeals Board
Sent: Tuesday, March 06, 2018 8:48 AM
To: Peoples Counsel; Timothy M. Kotroco; barney Mowell
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Counsel,

Please be advised, for convenience, I will be scheduling this matter for hearing on both May 1st and 2nd. Should this matter complete in one day, the second day will be cancelled. If not, everyone will still have this matter fresh in their minds for Day 2. The notice will be issued as soon as possible.

Please let me know if you have any questions.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Monday, March 05, 2018 3:27 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Timothy M. Kotroco <tkotroco@gmail.com>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington,

People's Counsel can be available on either May 1 or May 2nd. We just ask that you notify us of the hearing date as soon as possible. We are awaiting scheduling of a case at the Court of Special Appeals during the first two weeks of May and need to write to the Court to exclude this hearing date.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

Krysundra Cannington

From: Peoples Counsel
Sent: Monday, March 05, 2018 3:27 PM
To: Appeals Board; Timothy M. Kotroco; barney Mowell
Cc: Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington,

People's Counsel can be available on either May 1 or May 2nd. We just ask that you notify us of the hearing date as soon as possible. We are awaiting scheduling of a case at the Court of Special Appeals during the first two weeks of May and need to write to the Court to exclude this hearing date.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

From: Appeals Board
Sent: Monday, March 05, 2018 3:19 PM
To: Timothy M. Kotroco <tkotroco@gmail.com>; Appeals Board <appealsboard@baltimorecountymd.gov>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Thank you Mr. Kotroco.

From: Timothy M. Kotroco [mailto:tkotroco@gmail.com]
Sent: Monday, March 05, 2018 3:04 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Dear Ms. Cannington,

We are also available on May 1st or May 2nd. Thank you.

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Monday, March 05, 2018 3:04 PM
To: Appeals Board; barney Mowell
Cc: Peoples Counsel
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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We are also available on May 1st or May 2nd. Thank you.

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Date: Monday, March 5, 2018 at 2:43 PM
To: barney Mowell <barneymowell@hotmail.com>
Cc: Timothy Kotroco <tkotroco@gmail.com>, Peter Zimmerman <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Thank you Mr. Mowell.

From: barney Mowell [mailto:barneymowell@hotmail.com]
Sent: Monday, March 05, 2018 2:34 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington: The appellants are available on May 1st or 2nd for this appeal. thanks, Barney Mowell

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Monday, March 05, 2018 2:34 PM
To: Appeals Board
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington: The appellants are available on May 1st or 2nd for this appeal. thanks, Barney Mowell

1.

Krysundra Cannington

From: Appeals Board
Sent: Wednesday, February 28, 2018 1:34 PM
To: 'barney Mowell'; tkotroco@gmail.com; Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good afternoon Counsel,

Since it does not appear you are all available on the same dates, I offer the following dates: May 1, 2, 3, 15, 16 or 17, 2018.

I kindly request a response by the end of the day on Monday, March 5th.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Wednesday, February 28, 2018 1:03 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

We are available for the hearing on April 19th. thanks, Barney Mowell

---

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, February 27, 2018 2:55 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

yes, thanks. I am waiting to hear back from one person, and will e-mail you as soon as I do. Barney Mowell

---

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Tuesday, February 27, 2018 2:49:07 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Mr. Mowell,

This is a reminder that I need to hear back from you by the close of business tomorrow (Wednesday, February 28, 2018) regarding the dates offered in April. Please respond whether these dates work for you and your clients. If the proposed dates do not work, I will offer additional dates. However, if I do not hear back from you, this matter will be scheduled and no further postponements will be granted.

Thank you in advance for your prompt response.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, February 27, 2018 2:55 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Sent: Tuesday, February 27, 2018 2:49:07 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com

Krysundra Cannington

From: Appeals Board
Sent: Tuesday, February 27, 2018 2:49 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

Krysundra Cannington

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

I am in receipt of a request for postponement filed by Mr. Mowell on February 9, 2018. Please be advised the Board has decided to grant the requested postponement. In an effort to reschedule this matter to a date that is agreeable to everyone, I offer the following dates that are currently available on the Board's calendar:

April 10, 12, 17, 18, 19, 2018.

Any hearing scheduled would begin at 10:00 a.m.

Please be advised I cannot hold these dates beyond the close of business Wednesday, February 28, 2018.

I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Tim Kotroco <tkotroco@gmail.com>
Sent: Friday, February 23, 2018 9:31 AM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

All dates are fine except for the 19th. Thank you.

Tim

Timothy M. Kotroco, Esq.
305 Washington Ave. Suite 502
Towson, MD 21204
Cell: 410-299-2943

On Feb 22, 2018 7:39 AM, "Appeals Board" <appealsboard@baltimorecountymd.gov> wrote:

Good morning Counsel,

I am in receipt of a request for postponement filed by Mr. Mowell on February 9, 2018. Please be advised the Board has decided to grant the requested postponement. In an effort to reschedule this matter to a date that is agreeable to everyone, I offer the following dates that are currently available on the Board's calendar:

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Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: 'barneymowell@hotmail.com'; tkotroco@gmail.com
Cc: Peoples Counsel
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

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Sunny

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Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com

February 9, 2018

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: In the Matter of: Robert K. Gerner - Legal Owner
ESA Sparks Glenco, LLC- Lessee
15637 York Road
8th Election District, 3rd Councilmanic District
Case No: 18-047-X
Hearing Date: April 26, 2018 at 10 a.m.

Ladies and Gentlemen:

I represent the Protestants/Appellants William Mayo, Gorsuch's Retirement, Inc. and the Sparks Glencoe Community Planning Council in the captioned case. I have been advised that William Mayo is scheduled to be in Cleveland, Ohio during the week of April 23rd, for mandatory training related to his employment. As he will be out of town on the scheduled hearing date of April 26th, I respectfully request that the hearing date be postponed.

Thank you for your cooperation in this regard.

Very truly yours,

H. Barnes Mowell

Certificate of Service

I HEREBY CERTIFY that a copy of this Letter was mailed by first class mail this 9th day of February 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Peoples' Counsel for Baltimore County, 105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204, Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120, Edd J. Matczuk, 930-932 Upper Glencoe Road, Glencoe, Maryland 21152, Al Rude, 15801 York Road, Sparks, Maryland 21152, William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Nedda Pray, 2224 Traceys Road, Sparks, Maryland 21152, and Rob Webster, 811 Upper Glencoe Road, Sparks, Maryland 21152.

H. Barnes Mowell

oard of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 24, 2018

NOTICE OF ASSIGNMENT

HE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
15637 York Road
8th Election District; 3rd Councilmanic District

18-047-X

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

ASSIGNED FOR: **APRIL 26, 2018 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in cor with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hea unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (includin PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) h required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 22, 2018

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on January 18, 2018. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c: Baltimore County Board of Appeals
People's Counsel
H. Barnes Mowell, P.A., 16925 York Road, Monkton, MD 21111
Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152

Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioners	*	CASE NO: 2018-0047-X

* * * * * * *

NOTICE OF APPEAL

Please enter my appearance as counsel on behalf of William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Gorsuch's Retirement, Inc., 921 Upper Glencoe Road, Sparks, Maryland 21152, and the Sparks Glencoe Community Planning Council, Box 937, Sparks, Maryland 21152. Please note the appeal by William Mayo, Gorsuch's Retirement, Inc., and the Sparks Glencoe Community Planning Council to the Baltimore County Board of Appeals of the Opinion and Order entered in the captioned case by the Office of Administrative Hearings on December 21, 2017.

H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111
410-329-6488
barneymowell@hotmail.com

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 19th day of January 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

H. Barnes Mowell

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com
January 18, 2018

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Suite 205
Towson, Maryland 21204

via Hand-Delivery

Re: Notice of Appeal of OAH Decision
Case NO: 2018-0047-X

Dear Mr. Jablon:

I have enclosed a Notice of Appeal of the Opinion and Order of the Office of Administrative Hearings in the captioned case, as well as my check for the $385 filing fee.

Should you have any questions, please contact me.

Very truly yours,

H. Barnes Mowell

cc: Baltimore County Board of Appeals
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioners	*	CASE NO: 2018-0047-X

* * * * * * *

NOTICE OF APPEAL

Please enter my appearance as counsel on behalf of William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Gorsuch's Retirement, Inc., 921 Upper Glencoe Road, Sparks, Maryland 21152, and the Sparks Glencoe Community Planning Council, Box 937, Sparks, Maryland 21152. Please note the appeal by William Mayo, Gorsuch's Retirement, Inc., and the Sparks Glencoe Community Planning Council to the Baltimore County Board of Appeals of the Opinion and Order entered in the captioned case by the Office of Administrative Hearings on December 21, 2017.

H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111
410-329-6488
barneymowell@hotmail.com

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 19th day of January 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

H. Barnes Mowell

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com

January 18, 2018

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Suite 205
Towson, Maryland 21204

via Hand-Delivery

Re: Notice of Appeal of OAH Decision
Case NO: 2018-0047-X

Dear Mr. Jablon:

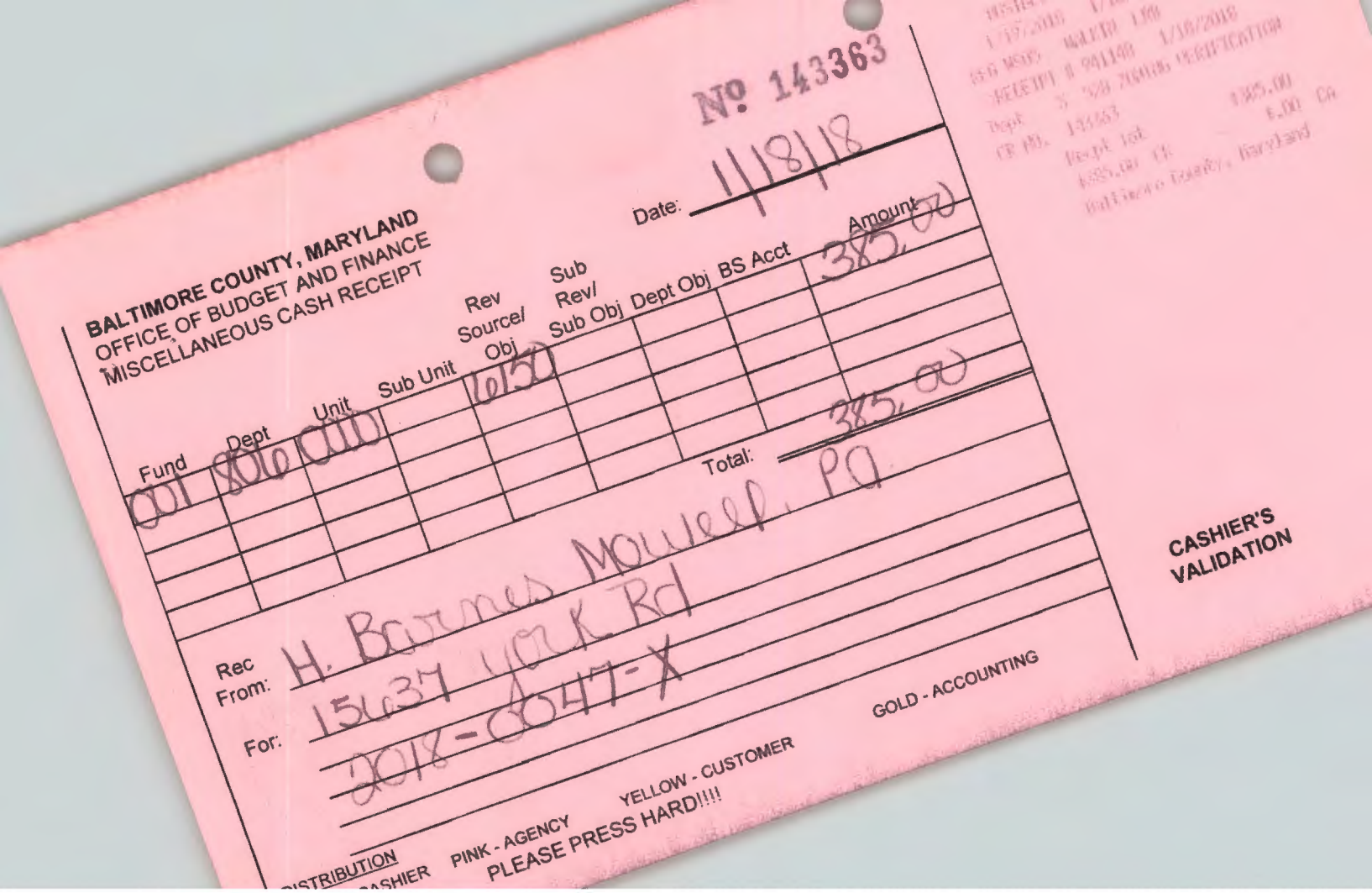
I have enclosed a Notice of Appeal of the Opinion and Order of the Office of Administrative Hearings in the captioned case, as well as my check for the $385 filing fee.

Should you have any questions, please contact me.

Very truly yours,

H. Barnes Mowell

cc: Baltimore County Board of Appeals
Office of Administrative Hearings



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No 143363

Date: 11/8/18

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				385.00

Total: 385.00

Rec From: H. Barnes Mowell, PA

For: 15637 York Rd
2018-00477-X

DISTRIBUTION
CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

12-18-17

TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

January 12, 2018

The Honorable John E. Beverungen
Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X, ESA Sparks Glenco, LLC
Letter of Clarification of Restriction #4

Dear Judge Beverungen:

I write to you regarding your recent order issued the 21st day of December, 2017, in Case No. 2018-0047-X. (Copy attached) Your Order approved our Special Exception request to locate a solar farm on our property located at 15637 York Road in Sparks, Maryland.

Restriction number 4 of your decision states that my client is prohibited from removing any trees associated with the installation and/or operation of our solar facility. The testimony at the hearing was very clear. My client stated that it would not be necessary to remove any trees in the field where the panels would be installed. In that we respect, we understand your restriction.

However, it may very well be necessary for my client to have to remove trees or bushes in order to install the driveway to our solar panels from York Road. You will recall that we are located more than 1,200 feet off of York Road and it may be necessary to remove some trees in order to install or our access road and/or for the installation of the telephone poles that will carry our newly generated electricity out to the York Road grid.

Therefore, I am requesting a simple clarification of your decision and specifically restriction number 4, that my client shall be permitted to remove any trees necessary in order to install the access road and telephone poles leading from York Road to our solar panel field. If you agree with this interpretation, I respectfully request that you sign the statement at the bottom of this letter affirming same. Thank you for your time and consideration of this matter.

This letter is intended to be for the purpose of clarifying your recent decision and is not intended to be a request for a modification of your decision. Therefore, by signing below it is acknowledged that the appeal period associated with this case shall not be extended beyond the

30 days as stated within your original decision and yourRules of Procedure. I will leave it to your further discretion as to whether this request should be considered a modification which might require an additional haring and an amended Order.

Very Truly Yours,

Timothy M. Kotroco

Timothy M. Kotroco

The applicant, ESA Sparks Glencoe LLC shall be permitted to remove any and all trees and shrubs necessary to install their access driveway and telephone poles from York Road to their solar panel facility. This request shall be treated as a clarification and accordingly, the original 30 day appeal period shall apply.

1-16-2018

Date

John E. Beverungen, ALJ

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY Case No. 2018-0047-X
Petitioners	*	

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility

would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of…scenic routes and scenic views" be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this **21st** day of **December, 2017,** by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

ORDER RECEIVED FOR FILING

Date 12/21/17

By SLN

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING
Date 12/21/17
By sln

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 21, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petitions for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152
Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2018-0047-X
DATE 12-18-2017

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Timothy M. Kotroco	305 Washington Avenue, Suite 502	Towson, MD 21204	Tkotroco@gmail.com
Brian Quinlan	12921 Buckeye Dr	Gaithersburg, MD 20878	brian@calvertenergy.com
Wayne Martin	936 Ridgebrook Road	Sparks, MD 21152	wayne.martin@KCE.com
Tom Weigand	1244 Ritchie Highway, Suite 19	Arnold, MD 21012	TWEIGAND@TREFFERGROUP.COM
Bruce Doak	3801 Bakers Schoolhouse Road	Freeland MD 21053	DOAKFARM@GMAIL.COM
Robert Gerwer	15637 York Rd	Sparks MD 21152	Kip.Gerwer@gerwerenergy.com

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2018-0047-X
DATE 12-18-2017

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
LYNNE JONES	815 STABLERS CHURCH RD	PARKTON MD 21120	dryad101@hotmail.com
EDD J. MATCZUK	930-932 UPPER GLENCOE RD	GLENCOE, MD 21152	EDDMATCZUK@GMAIL.COM
AL RUDE	15801 York RD	SPARKS MD 21152	ARUDE@GATEGROUP.com
William MAYO	921 Upper Glencoe Rd	Sparks Md 21152	BillGMayo@GMail.com
Nedda Pray	2224 Traceys Rd	Sparks MD 21152	neddacreus@Gmail.com
Ed Webster	811 Upper Glencoe Rd	Sparks MD 21152	webster4625@comcast.net

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

December 14, 2017

Robert K Gerner
15637 York Road
Sparks MD 21152

RE: Case Number: 2018-0047-X, Address: 15637 York Road

Dear Mr. Gerner:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on August 10, 2017. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
ESA Sparks Glenco, LLC, Brian Quinlan, 4155 St Johns Parkway, Suite 1100
Sanford, Florida 32771
Timothy M Kotroco, 305 Washington Avenue, Suite 502, Towson MD 21204

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

November 27, 2017

Re:
Zoning Case No. 2018-0047-X
Legal Owner: Robert Gerner
Hearing date: December 18, 2017

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **15637 York Road.**

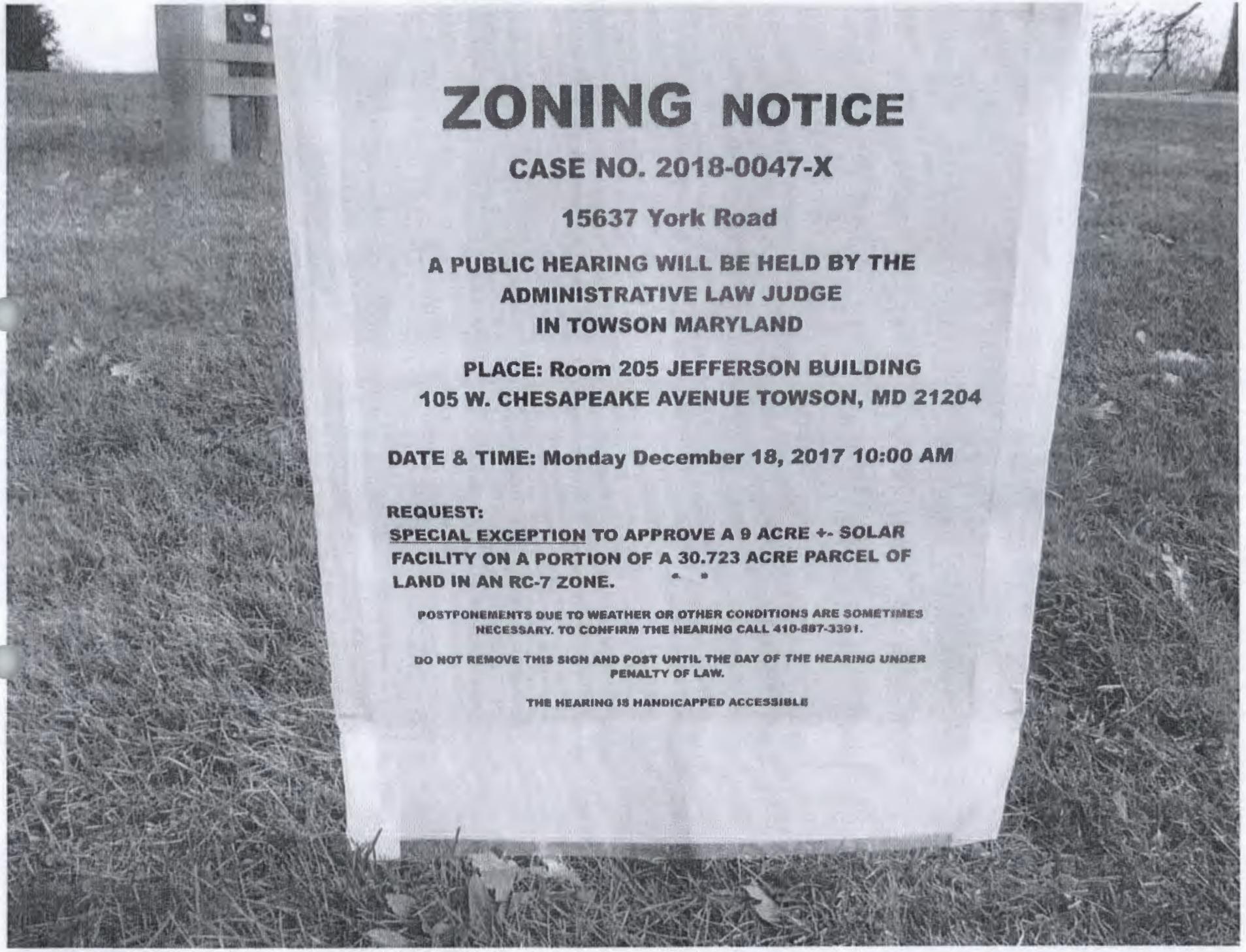
The sign was posted on **November 27, 2017.**

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor


ZONING NOTICE
CASE NO. 2018-0047-X
15637 York Road
A PUBLIC HEARING WILL BE HELD BY THE
ADMINISTRATIVE LAW JUDGE
IN TOWSON MARYLAND
PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204
DATE & TIME: Monday December 18, 2017 10:00 AM
REQUEST:
SPECIAL EXCEPTION TO APPROVE A 9 ACRE +- SOLAR FACILITY ON A PORTION OF A 30.723 ACRE PARCEL OF LAND IN AN RC-7 ZONE.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.
DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE

ZONING NOTICE
7365

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

November 14, 2017

NEW NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District – 3rd Councilmanic District
Legal Owners: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.

Hearing: Monday, December 18, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Timothy Kotroco, 305 Washington Avenue Avenue, Towson 21204
ESA Sparks Glenco, LLC, 4155 St. Johns Parkway, Ste. 1100, Sanford FL 32771
Robert Gerner, 15637 York Road, Sparks 21152
Brian Quinlan, 12921 Buckeye Drive, Gaithersburg 20878

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUES., NOVEMBER 28, 2017**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/20/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-047

INFORMATION:
Property Address: 15637 York Road
Petitioner: Robert K. Gerner
Zoning: RC 7
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for a 9 acre solar facility.

A site visit was conducted on August 23, 2017.

York Road is a Baltimore County Scenic Route at this location. Due to topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially properties.

The Department has no objection to granting the requested zoning relief conditioned upon the following:

The Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations (BCZR), as applicable, upon successfully addressing the comments listed below.

- Pursuant to BCZR §4E-104.5 the photovoltaic arrays may not exceed 20 feet in height without variance relief. The Department recommends any additional height is inconsistent with the spirit and intent of the BCZR pursuant to §1A08.4.A and will not support such relief. Petitioners shall amend the plan to show a typical array structure detail at no more than 20' above the natural finished grade.
- Petitioners shall note on the plan that the proposed solar facility will produce not more than 2 megawatts of alternating current.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4E-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.

- At the time of building permit application the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by written confirmation that the facility will not be detrimental to the adjacent residential properties pursuant to BCZR §502.1.A.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.

For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Kaylee Justice
Brian Quinlan
Timothy M. Kotroco
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

ORDER RECEIVED FOR FILING
Date 12/21/17
By

C:\Users\jwisnom\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\XEGA1Q0V\ZAC 18-0047-X 15637 York Road.doc

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: August 23, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2017
Item No. 2018-0047-X

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If Special Exception is granted a Landscape Plan is required per the requirements of the Landscape Manual, Bill No.37-17 and the CMDP.

Specific Landscape comments:
1 .York Road is a Baltimore County Scenic Route,
2. Perimeter Landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Additional Landscape buffers may be required depending on the adjacent subject properties existing topography, Scenic Views, etc.,
5. Solar panels are considered a utility and should be designed and located to harmonize with surrounds and create the least visual impact,
6. More comments may be rendered during review of the Landscape Plan.

* * * * *

VKD: CEN
cc: file

RE:	PETITION FOR SPECIAL EXCEPTION 15637 York Road; E/S York Road, 250' N of c/line of Elizabeth Court 8th Election & 3rd Councilmanic Districts Legal Owner(s): Robert K. Gerner Contract Purchaser(s): ESA Sparks Glenco, LLC by Brian Quinlan Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2018-047-X

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED
AUG 17 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2017, a copy of the foregoing Entry of Appearance was mailed to Brian Quinlan, 12921 Buckeye Drive, Gaithersburg, Maryland 20878 and Timothy Kotroco, Esquire, 305 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 8/14/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 8/14/17. A field inspection and internal review reveals that an entrance onto MD45 consistent with current State Highway Administration guidelines is required. ~~As a condition of approval for~~ , Case Number 2018-0047-X

Special Exception
Robert K. Gerner
15637 York Road
MD45

The applicant must contact the State Highway Administration to obtain an entrance permit. Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

* Applicant must contact Mr. Brian Cneiting to obtain a residential or farm entrance permit. He can be reached at 410-329-6752

WW/RAZ

Mr. Robert K. Gerner / 15637 York Road, Sparks, MD 21152

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Mr. Brian Cneiting, SHA RTE - Hereford Shop
Bruce E. Doak Consulting, LLC / 3801 Baker Schoolhouse Road
Freeland, MD 21053

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15637 York Road **which is presently zoned** RC 7

Deed References: 32699/00228 10 Digit Tax Account # 0802004200

Property Owner(s) Printed Name(s) Robert K. Gerner

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

See Attached.

3.____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

ESA Sparks Glenco, LLC c/o Brian Quinlan, Manager
Name- Type or Print

Signature

4155 St Johns Parkway, Suite 1100, Sanford, Florida
Mailing Address City State

32771 / 407-268-6455 / brian@calvertenergy.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Robert K. Gerner /
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Signature # 2

15637 York Road Sparks MD
Mailing Address City State

21152 / 443-465-5803 / kip.gerner@gernerenrgy.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Timothy M. Kotroco
Name- Type or Print

Signature

305 Washington Ave. Towson MD
Mailing Address City State

21204 / 410-299-2943 / TKotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Brian Quinlan
Name – Type or Print

Signature

12921 Buckeye Drive Gaithersburg MD
Mailing Address City State

20878 / 301-208-0153 / brian@calvertenergy.com
Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 12/24/17
By

CASE NUMBER 2018-0047-X **Filing Date** 8/10/2017 **Do Not Schedule Dates:** **Reviewer**

REV. 10/4/11

Petition Requested

Special Exception to approve a 9 acre +- Solar Facility on a portion of a 30. 723 acre parcel of land in an RC 7 zone.

Item #004

CASE #2018-0077-X

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

Zoning Description

15637 York Road- 30.723 Acres
Eighth Election District Third Councilmanic District
Baltimore County, Maryland

Beginning at a point on the east side of York Road, 250 feet northwesterly of the centerline extension of Elizabeth Court, thence leaving York Road and running with and binding on the outlines of the subject property, the fourteen following courses and distances, viz.

1) North 81 degrees 39 minutes 52 seconds East 311.00 feet
2) South 65 degrees 26 minutes 08 seconds East 924.10 feet
3) North 45 degrees 43 minutes 52 seconds East 696.50 feet
4) South 46 degrees 35 minutes 08 seconds East 1157.00 feet
5) South 33 degrees 14 minutes 38 seconds West 70.31 feet
6) South 42 degrees 04 minutes 54 seconds West 115.77 feet
7) South 33 degrees 44 minutes 57 seconds West 105.64 feet
8) North 64 degrees 46 minutes 27 seconds West 774.81 feet
9) North 64 degrees 08 minutes 22 seconds West 216.87 feet
10) North 84 degrees 19 minutes 37 seconds West 329.26 feet
11) South 01 degrees 50 minutes 28 seconds East 233.31 feet
12) South 72 degrees 58 minutes 22 seconds West 283.65 feet
13) South 42 degrees 04 minutes 19 seconds West 297.72 feet and
14) South 83 degrees 22 minutes 00 seconds West 376.54 feet to a point on the east side of York Road, thence binding on the east side of York Road and continuing to run and bind on the outlines of the subject property, the four following courses and distances, viz.
15) North 11 degrees 52 minutes 15 seconds West 547.50 feet
16) North 13 degrees 54 minutes 15 seconds West 100.09 feet
17) North 16 degrees 31 minutes 15 seconds West 181.08 feet and
18) North 17 degrees 48 minutes 15 seconds West 207.41 feet to the point of beginning

Containing 30.723 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 531
REGISTERED
PROPERTY LINE SURVEYOR

Land Use Expert and Surveyor

Item #0047

CASE#2018-0047-X

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

9/11/17
OK
S

September 7, 2017

Arnold Jablon
Baltimore County Office of Zoning
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

Subject: Zoning Hearing Case number 2018-0047-X

To Whom It May Concern:

We would like to postpone the zoning hearing for case number 2018-0047-X until December 2017. We have been pursuing community outreach with neighbors and local community associations and we would like more time to coordinate these efforts. The community outreach is critically important to the relationship with the local community and ultimately the success of the project. The additional time will allow us to appropriately interface with the community and provide them with information about the project. I appreciate your consideration.

Sincerely,

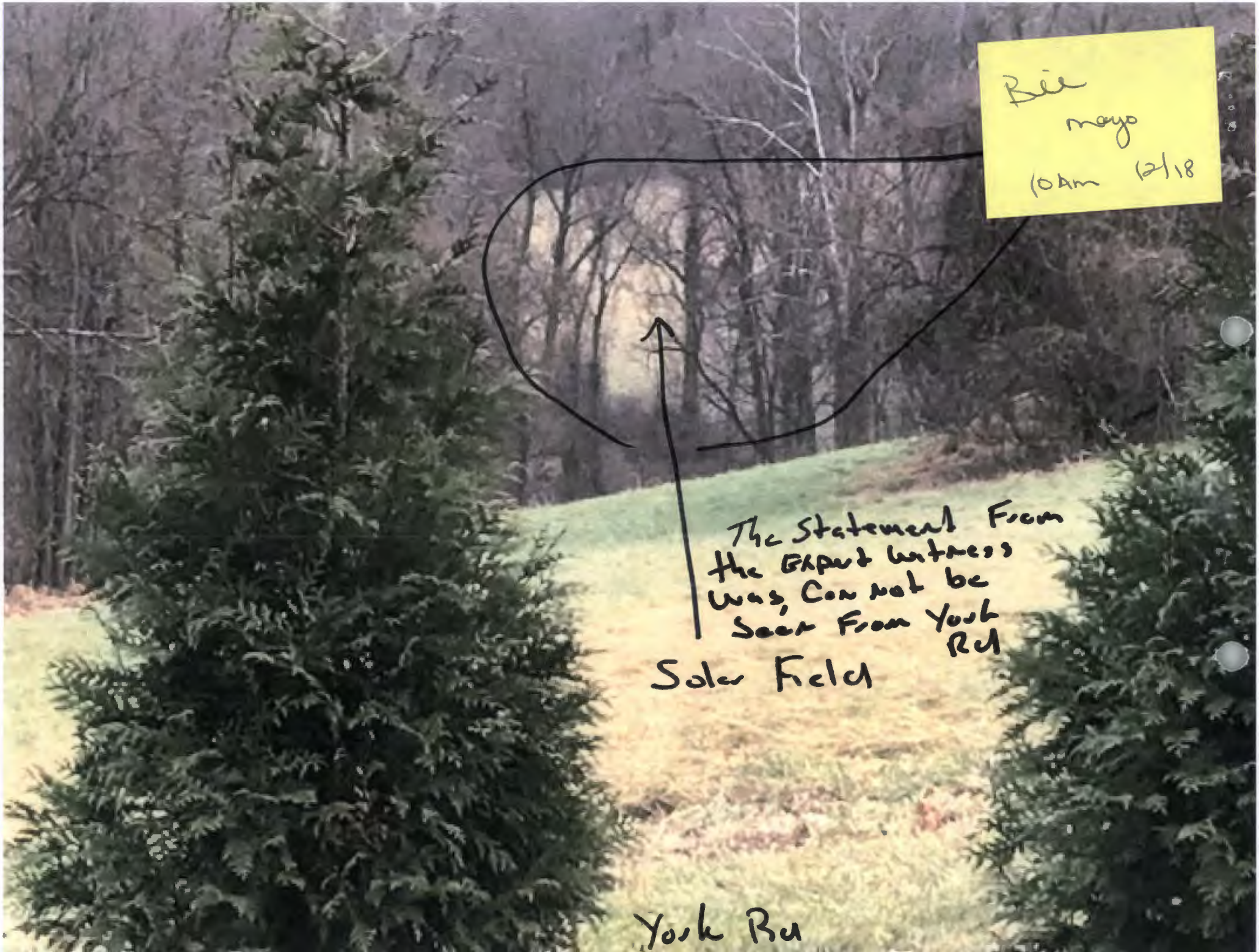
Bruce E. Doak

Land Use Expert and Surveyor

John E. Beverungen

From: Bill Mayo <billgmayo@gmail.com>
Sent: Tuesday, December 19, 2017 12:20 PM
To: John E. Beverungen
Subject: Case 2018-0047

Sent from my iPhone
Hello your honor. My name is Bill Mayo and i was in your court room yesterday concerning the solar field for the Gerner property. First let me thank you for the abundance of patience and respect you showed toward me yesterday. Without that I would have really rambled on. I have never done anything like that before and i'm sure it showed.
At the end of the hearing there was discussion as to weather the solar field could be seen from York road. My neighbor Mr Matczuk will drop off a photo at you office that i took this morning showing the solar field in the background. I hope you will have an opportunity to review it before making your decision.
Thanks again for your help and if you have any questions or just want to stop by the farm you are always welcome.


Bill
mayo
10AM 12/18
The Statement From
the Expert Witness
Was, Can not be
Seen From York
Rd
Solar Field
York Rd

Lisa Arthur
19500 Burke Rd
White Hall, MD 21161
lisaarthur19500@hotmail.com
443-695-3522

December 17, 2017

The Honorable Judge John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, MD 212204

Re: Case 2018-0047-X

Dear Honorable Judge Beverungen:

I am writing in opposition of the special exception for the Solar Facility at 15637 York Rd, Sparks MD.

I feel there needs to be more of a balance between the benefits of solar energy production with the potential impact of solar energy-producing facilities upon the County's land use policies, particularly in resource conservation and agricultural zones, as well as in commercial and industrial manufacturing zones where the impact of such facilities on surrounding residential communities must be considered.

After all, Baltimore County has spent millions of taxpayer dollars to preserve over 65,000 acres of rural land. This land should always be protected and farms already in legacy programs bought with taxpayer dollars should never be considered for this type of land use!

We should also consider the experiences of other Counties and States that have already started to charter these types of projects.

In Kent County, along a road that was once the main route to Philadelphia, Apex Clean Energy wants to install solar panels across more than 300 acres of farmland.

The facility, named Mills Branch Solar, would generate up to 60 megawatts of power — enough for every household in the county says officials for the Charlottesville-based company. They call the site ideal because it doesn't require any clearing, has no environmental concerns and is close to a transmission line.

The problem for Kent officials and residents isn't that it's a massive solar farm - it's that it's not in the right place.

The county studied how it might approach proposals for renewable energy generation back in 2010, and again more recently as farmers began receiving calls from solar companies, say Amy Moredock, who is the county planning director.

With the support of concerned residents, county officials set zoning rules encouraging such facilities to go in an area zoned for commercial and industrial use - not on agricultural land.

"It's not that you can't have solar," said Janet Christensen-Lewis, vice chairwoman of the alliance. "Our farmland is precious."

In Allegany, Dan's Mountain Wind Force wants to build 17 wind turbines along the county's highest ridge.

The group, a subsidiary of Laurel Renewable Partners LLC in Greensburg, Pa., originally planned more, but scaled back amid eight years of back-and-forth with Allegany officials concerned about impacts to scenic mountain vistas and the county's 911 communications antenna.

The county denied zoning approval for the project last December.

In Talbot County, the County Council imposed a temporary ban on new solar farms to gain time to craft zoning preferences.

In New Jersey, officials adopted incentives for developing solar farms on brownfields and limits on development of large-scale projects on farmland. That helped to stabilize the industry, said Fred Rohs, general manager for energy production for Marina Energy, which owns the solar farm in Hebron.

The Hebron project is one of the biggest in the state, but it had a smooth permitting process. And with a good fence that screens it from surrounding forest and field, Rohs said, he hasn't heard any complaints from neighbors!

The Maryland Farm Bureau is surveying its membership about solar farms on agricultural land, with some disagreement to sort out: While some farmers oppose the loss of tillable land, others want the stable income of a solar lease.

There are signs that not all of the hundreds of acres of solar panels on the table will actually materialize. The flood of solar power supply to the state has cut the income that companies can earn from renewable energy credits. Because the state is expected to exceed a goal that 0.7 percent of its electricity come from solar this year, the prices of the credits are expected to fall from $120 to $20 this year. So there is no rush for Northern Baltimore County to get in this race.

I support renewable energy projects but I think that a Solar Facility in a rural area that isn't helping to provide energy to the agricultural operation of the farm is in direct conflict with the County's preservation efforts. I'd like to see the Baltimore County take similar actions as Talbot County and imposed a temporary ban on new solar farms to gain time to craft zoning preferences

and New Jersey by imposing incentives for developing solar farms on brownfields and limits on development of large-scale projects on farmland.

For this reason and for all the other reasons presented to you today from our community, I respectfully request that the zoning variance for 15637 York Rd, Sparks MD be denied as proposed solar facility is not a good fit for the Sparks community.

Sincerely,

Lisa Arthur

Sparks-Glencoe Community Planning Council
P.O. Box 937, Sparks, MD 21152

December 11, 2017

The Honorable John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X
15637 York Road
8th Election District-3rd Councilmanic District
Legal Owner: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glencoe, LLC
Hearing Date: December 18, 2017
and
Case No. 2018-0072-X
Southeast side of Graystone Road, southwest of Old York Road
7th Election District – 3rd Councilmanic District
Legal Owner: Jerry Phillips
Contract Purchaser/Lessee: Forefront Power, LLC
Hearing Date: December 14, 2017

Dear Judge Beverungen:

The Sparks-Glencoe Community Planning Council (SGCPC) is submitting this letter regarding the two matters referenced above, the Gerner and Graystone Road cases respectively. The purpose of this letter is twofold. First, we want to state the reasons why we oppose the special exception requests in both cases. Secondly, without intending to minimize our opposition, we want to request two very important limitations in the event that the special exceptions are granted.

These are the first two cases filed under the recently passed Council Bill 37-17 which permits commercial solar power facilities in RC zones. These facilities are euphemistically referred to as "solar farms", but they are not farms and they are not agricultural. SGCPC as an organization, and its many members and supporters, strongly endorse solar power as a wonderful alternative to fossil fuel based power. The issue here is not solar power *per se*, it is solar power on prime agricultural land which could be used for farming or which could be placed in conservation easement. It also must be understood that our opposition is not directed at solar power systems which are intended to primarily serve a home or an ongoing agricultural enterprise.

Bill 37-17 was passed in the face of strong opposition by the SGCPC, the North County Community Association, the Valleys Planning Council, as well as Third District residents and their Councilman. There were a number of reasons for this opposition. First, it was viewed as an effort at commercial development in RC zones which citizen groups have been fighting for decades. The proponents of the bill were the traditional development forces.

Secondly, the bill was rushed through the Council and passed over the Fourth of July weekend with no effort to study and understand the long term effects of this development. Witnesses, including former State Senator George Della, advocated for a community solar pilot project. This project would have served as a preliminary test project so that the effects could have been studied. Instead, the Bill provides for a study to be made one year **AFTER** implementation of the special exception provision. Of course, one year later, the developers will have had the opportunity to build out the maximum number of solar facilities in the Third District, and any study will be too late. This is why the study provision in the Bill was viewed as a deeply cynical and artificial claim of due diligence to occur only after installation has already been approved and the special exceptions have been granted. I am attaching a recent article from the Baltimore Sun indicating that the Anne Arundel County Council has just voted to have an eight month moratorium on applications for commercial solar facilities in its agriculture and conservation zones in order to have time to study the issue.

Thirdly, the Third District is the area with the most available land for these projects. Though the Bill purported to authorize these facilities equally for all council districts, the most clearly affected district, as a practical matter, is the Third. Yet, the concerns of the Third District were not respected.

While our opposition is very real, we do believe it is crucial that in the event that either or both special exceptions are granted, such special exceptions should include two specific limitations that Bill 37-17 authorizes the Administrative Law Judge to make. First is a purchased irrevocable bond in an adequate amount to pay for removal of the facility and remediation of the land once the useful life of the facility has expired. This is not presently a requirement, only a condition that can be imposed as part of the special exception.

A representative of the Gerner project attended our last open meeting to explain the contours of that project. A number of issues were explained and clarified. What became clear, however, was that the only plan for remediation was the LLC's contractual obligation to do so. A facility's useful life is generally understood to be about 20 years. The only guarantee for clean-up is the continued existence and/or financial solvency of these LLCs.

There is no guarantee that the corporation set up to develop the solar facility will still be in existence when the clean-up and remediation phase must begin. Like many local development projects, once development is completed the corporation disappears either by way of bankruptcy or dissolution. The future costs of dismantling and removing the solar panels and remediating the soil so that it is once again ready for farm use is difficult to determine at the present time. The farmer/landowner may not be in a position to bear the

SENIOR BRIEFS

Annapolis Center

The following activity will be offered at the Annapolis Senior Activity Center, 119 S. Villa Ave. Information: 410-222-1818.

MUSIC WITH DJ BOB JONES, featuring holiday songs and other classics, will be held 12:30 p.m. Wednesday, Dec. 13.

CANDY MAKING WITH DIANE will be held 10 a.m. to noon Friday, Dec. 15. Registration is underway; class is limited to 10.

CARD MAKING WITH DIANE will be held 1 p.m. to 2:30 p.m. Friday, Dec. 15. Come in and make a holiday card for a special loved one. $3 is due at sign up.

ANNUAL HOLIDAY PARTY will be held 11 a.m. to 2 p.m. Tuesday, Dec. 19, at the Crowne Plaza Annapolis, 173 Jennifer Road. $30. Full payment due by Dec. 15. Entertainment by Smokey and Last Chance Entertainment.

Arnold Center

The following activities are offered at the Arnold Senior Activity Center, 44 Church Road. Information: 410-222-3922.

HOLIDAY GIFT WRAPPING SERVICE will be held 9 .m. to 11:30 a.m. Monday, Dec. 18. Cost is $1 per item. Sign up by Dec. 11.

BINGO will be held 10 a.m. Monday, Dec. 18, hosted by Mindy Adams of Chesapeake Caregiving, with prizes and fun.

MINI-MASSAGES with certified therapist Bonnie Pavlek will be offered from 10 a.m. to noon Monday, Dec. 18. Free, first come, first served.

SCRABBLE Challenge your brain by playing Scrabble from 12:45 p.m. to 3 p.m. Mondays. New participants are welcome.

MAH-JONGG Open play from 1:15 p.m. to 3:45 p.m. Tuesdays; volunteers play from 12:30 p.m. to 3:30 p.m. Wednesdays.

Brooklyn Park Center

The following activities are offered at the Brooklyn Park Activity Center, 202 Hammonds Lane. Information: 410-222-6847.

SONGS OF THE HOLIDAY The Mother's Choir will perform at 11 a.m. Tuesday, Dec. 12. Enjoy hot apple cider while listening to seasonal songs.

HOLIDAY PARTY will be held 11 a.m. to 3 p.m. Thursday, Dec. 14 at Michaels 8th Avenue.

J&J DUO will perform swinging dance music 11 a.m. Friday, Dec. 15. Lite refreshments.

ENGLISH CLASS Basic skills from 9:30 a.m. to 11:30 a.m. Wednesdays.

REGULATION SHUFFLEBOARD Play at 1 p.m. Tuesdays and 2 p.m. Thursdays.

O'Malley Center

The following activities are offered at the O'Malley Senior Activity Center, 1270 Odenton Road, in Odenton. Information: 410-222-6227.

VAN BOKKELEN ELEMENTARY SCHOOL CHORUS will perform holiday favorites at 10 a.m. Thursday, Dec. 14.

MOVIE DAY "Paper Angels" will be shown at 12:30 p.m. Friday, Dec. 15.

QUILT CLUB Members help one another with projects and donated pieces at 1 p.m. Fridays in the Annex. The club is open to new and experienced quilters.

Pasadena Center

The following activities are offered at the Pasadena Senior Activity Center, 4103 Mountain Road. Information: 410-222-0030.

INTERMEDIATE BRIDGE group meets at 12:30 p.m. Fridays, Dec. 15 and 22.

MEMOIR WRITING GROUP meets at 1 p.m. Monday, Dec. 18. If interested, contact Rita at 443-883-1178 or wmfordham@msn.com or just come to a meeting.

PINOCHLE 8:50 a.m. to 9:50 a.m. Mondays.

PAINTING CLASS with Deborah Scales, 12:30 p.m. to 2:30 p.m. Thursdays.

Pascal Center

The following activities are offered at the Pascal Senior Activity Center, 125 Dorsey Road, Glen Burnie. Information: 410-222-6680.

OBI BELL RINGERS will perform a program of holiday music at 10:30 a.m. Tuesday, Dec. 12.

THOM ROLAND DANCE BAND will perform a variety of 1940s and '50s music and holiday selections at 12:30 p.m. Thursday, Dec. 14. Dancers welcome.

VAN TRIP TO TALENT MACHINE show at St. John's College will take place Friday, Dec. 15 at 11 a.m. Non-refundable $5 fee payable to PSI due at sign-up.

VOICES IN MELODY will perform a program of holiday music at 12:30 p.m. Friday, Dec. 15.

MEXICAN TRAIN The domino game is played at 12:30 p.m. Mondays.

TABLE TENNIS 12:30 p.m. Tuesdays and Fridays.

MAH-JONGG 10:30 a.m. to 12:30 p.m. Fridays. Beginners welcome.

WII OPEN BOWLING Tuesdays at 12:30 p.m. except on the third Tuesday, when games begin at 1 p.m.

DOUBLE-DECK PINOCHLE Fridays at 12:30 p.m.

BEYOND LOSS support group meets a 11:30 a.m. Wednesdays.

South County Center

The following activities will be offered a the South County Senior Activity Center, 2 Stepneys Lane in Edgewater. Information 410-222-4927 or 410-798-4802.

VOICES IN MELODY CHORUS will per form holiday music at 12:30 p.m. Monda Dec. 11.

TUESDAYS TREASURES flea market wi be held 9:30 a.m. to 1 p.m.

CREATIVE PAPER CRAFTING will be hel 1 p.m. to 3 p.m. Tuesday, Dec. 12. Create card and gift tags for the holiday season. Cost i $7.50 and will include all supplies. Instructo is Sherahl Weadon. Sign up at the front desk

BOXWOOD TREES WORKSHOP hoste by the Four Rivers Garden Club will be held 10 a.m. to 11 a.m. Wednesday, Dec. 13. $4. A supplies will be provided. Sign up at the fron desk.

HOLIDAY MUSIC with Sylvia and Ric will be held 12:30 p.m. Wednesday, Dec. 1 featuring Christmas tunes and old favorites.

Seniors directory

The Department of Aging and Disabilities in partnership with the Senior Service Provider Group and the Friends of Arunde Seniors, has published the 2017-18 edition o "Services for Seniors, Adults with Disabili ties, and Caregivers." The free directory i available at the Heritage Office Comple 2666 Riva Road in Annapolis, the seve senior activity centers, and public libraries For more information, call 410-222-4464 o go to aacounty.org/aging.

County suspends approvals of solar parks

SOLAR, *From page 1*

County Planning and Zoning officer.

Typically the county would turn to the General Development Plan, which guides development, but that plan is "largely silent" on dispersed energy productions such as solar parks, Hager said.

The moratorium will give the county the time to review code.

"We essentially have no more than eight months to turn around something," Hager said. "The people who are requesting this and concerned about the proliferation of this use are concerned — and want something done quickly."

Bradley Harris, who lives near a proposed solar park site, was appreciative for Schuh's decision.

"We are pro-solar, but would also like to protect our farmland and our community's rural heritage," Harris said. "We feel there are more appropriate locations in our area for these industrial solar projects that can be developed such as: brown-fields, landfills, warehouses and other disturbed sites."

In other council action, members voted to make Councilman Michael Peroutka, a Millersville Republican, the next council chairman. The decision was made along party lines in a 4-3 vote.

Peroutka has been a controversial figure. Some residents have criticized his past association with the League of the South — he was a member until shortly before the 201 election. The councilman has said he believes there is only one race, the human race.

Sherry Nuffer

From: John E. Beverungen
Sent: Monday, October 02, 2017 10:52 AM
To: Debra Wiley; Sherry Nuffer
Subject: FW: Case No. 2018-0047-X

This e-mail is for the file, which I believe was never sent over.

From: Brian Quinlan [mailto:brian@calvertenergy.com]
Sent: Friday, September 29, 2017 1:40 PM
To: 'Bruce Doak' <doakfarm@gmail.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: RE: Case No. 2018-0047-X

John – I have spoken to the community organization that has been our main contact and informed them of the postponement.

Brian Quinlan
President/CEO
Calvert Energy LLC
brian@calvertenergy.com
(301) 208-0153
(301) 367-9131 (cell)
www.calvertenergy.com
CALVERT ENERGY LLC

From: Bruce Doak [mailto:doakfarm@gmail.com]
Sent: Friday, September 29, 2017 1:28 PM
To: John Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Brian Quinlan <brian@calvertenergy.com>
Subject: Re: Case No. 2018-0047-X

Good afternoon,

Thank you for your email.

The sign was not posted. We did not contact any community organizations concerning the postponement.

We can do that if you wish. I did not consider it since the sign was not posted and we asked for the postponement two weeks before the hearing.

I hope that this hearing will be removed from your calendar. We are hoping to have the hearing the beginning of December.

With regards,
Bruce
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906
bdoak@bruceedoakconsulting.com

On Sep 29, 2017, at 10:42 AM, John E. Beverungen <jbeverungen@baltimorecountymd.gov> wrote:

Mr. Doak,

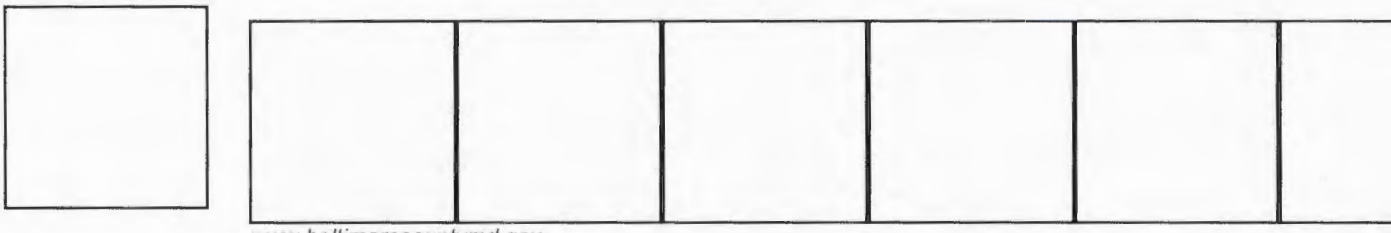
I was forwarded a copy of your letter dated September 7, 2017 requesting a postponement of the above matter, which was addressed to Mr. Jablon. It appears, based on his initials in the upper right corner of the correspondence, Mr. Jablon granted the postponement request on September 11. Even so, the case was put on the OAH calendar for a 10:00 a.m. hearing on Monday, October 2, 2017.

Can you please confirm that you are aware this case was postponed on September 11. I assume the property was never posted? Also, can you please confirm you have notified the "neighbors and local community associations" referenced in your letter that the October 2 hearing has been removed from the OAH calendar.

Thank you.

John Beverungen
ALJ

CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 11

Bill No. 37-17

Mrs. Vicki Almond, Councilwoman

By the County Council, June 5, 2017

A BILL
ENTITLED

AN ACT concerning

Solar Facilities

FOR the purpose of permitting a Solar Facility to be located in certain zones of the County by special exception; providing for a statement of purpose and defining terms; providing exceptions; providing for the requirements for a facility; providing for a required security; providing for the maintenance, abandonment, and removal of a facility; authorizing the Code Official to enforce the provisions of this Act; providing for the application of the Act; and generally relating to Solar Facilities.

BY adding
Article 4E – Solar Facilities
Sections 4E-101 to 4E-107
Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Item #0047

BY repealing and re-enacting, with amendments
Article 5 – Administration and Enforcement
Section 502.1.I.
Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Zoning Regulations read as follows:

ARTICLE 4E

SOLAR FACILITIES

§4E-101. PURPOSE AND DEFINITIONS.

§4E-101.1. PURPOSE.

SOLAR ENERGY IS RECOGNIZED AS AN ABUNDANT, RENEWABLE, AND ENVIRONMENTALLY SUSTAINABLE SOURCE OF ELECTRICITY GENERATION THAT WILL LEAD TO GREATER LOCAL GRID RESILIENCY AND SECURITY, AND PRODUCE CLEAN, RENEWABLE ENERGY AND REDUCE AIR AND WATER POLLUTION CAUSED BY THE BURNING OF TRADITIONAL FOSSIL FUELS. THE PURPOSE AND INTENT OF THIS ARTICLE IS TO PERMIT SOLAR FACILITIES IN PARTS OF THE RURAL AND COMMERCIAL AREAS OF THE COUNTY BY SPECIAL EXCEPTION, AND TO BALANCE THE BENEFITS OF SOLAR ENERGY PRODUCTION WITH ITS POTENTIAL IMPACT UPON THE COUNTY'S LAND USE POLICIES BY ENSURING SUFFICIENT SAFEGUARDS ARE IN PLACE TO PROTECT THE COUNTY'S COMMUNITIES AND ITS AGRICULTURAL LAND, FORESTS, WATERWAYS AND OTHER NATURAL RESOURCES.

§4E-101.2. DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS TO CONSUMERS.

§4E-102. LOCATION OF SOLAR FACILITIES.

A. SUBJECT TO PARAGRAPH B, A SOLAR FACILITY IS PERMITTED ONLY BY SPECIAL EXCEPTION IN THE R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, R.C.7, R.C.8, B.L., B.M., M.R., M.L.R., AND M.H. ZONES OF THE COUNTY.

B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS LIMITED TO THE FOLLOWING:

1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS ALTERNATING CURRENT (AC) OF ELECTRICITY.

2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-107.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY INSTALLATIONS:

1. A GROUND-MOUNTED SOLAR FACILITY ~~LOCATED IN A YARD AREA, BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL, AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE~~ THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL USE;

2. A ROOFTOP SOLAR FACILITY;

~~2~~ 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

~~3~~ 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE FACILITY FOR AGRICULTURAL USES ON THE FARM.

§4E-104. REQUIREMENTS.

A. A SOLAR FACILITY LOCATED IN AN R.C. ZONE IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING BUFFER AND THE SOLAR FACILITY.

8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

9. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF SECTION 33-3-108 OF THE COUNTY CODE.

10. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT OF THE FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING RESIDENTIAL PROPERTIES AND COMMUNITIES, TAKING INTO ACCOUNT SUCH FACTORS AS THE TOPOGRAPHY OF ADJACENT LAND, THE PRESENCE OF NATURAL FOREST BUFFERS, AND PROXIMITY OF STREAMS AND WETLANDS.

B. THE REQUIREMENTS OF SUBPARAGRAPHS A.6, A.7, A.8 AND A.10 SHALL APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING ZONE.

§ 4E-105. REQUIRED SECURITY.

A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL PROVIDE A SECURITY BOND OR EQUIVALENT FINANCIAL SECURITY IN THE FORM AND AMOUNT DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402 OF THE COUNTY CODE.

§4E-106. MAINTENANCE.

A. ALL PARTIES HAVING A LEASE OR OWNERSHIP INTEREST IN A SOLAR FACILITY ARE RESPONSIBLE FOR THE MAINTENANCE OF THE FACILITY.

B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS, LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

C. APPROPRIATE VEGETATION IS PERMITTED UNDER AND AROUND THE SOLAR

COLLECTOR PANELS, AND THE TRACT MAY BE USED FOR ACCESSORY AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK, APICULTURE, AND SIMILAR USES.

D. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN ACCORDANCE WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

§4E-107. ABANDONMENT; REMOVAL.

A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR OPERATOR SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER OR OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

B. REMOVAL SHALL CONSIST OF THE:

1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES, EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;

2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND

3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO MINIMIZE EROSION.

C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,

THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN ABANDONED FACILITY.

D. THE CODE OFFICIAL MAY ISSUE A CITATION TO THE OWNER OR OPERATOR FOR REMOVAL OF A SOLAR FACILITY IF:

1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILTY HAS NOT BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE ISSUED BY THE CODE OFFICIAL; OR

3. THE OWNER OR OPERATOR HAS FAILED TO REMOVE THE SOLAR FACILITY IN ACCORDANCE WITH PARAGRAPH C.

§502.1. Conditions Determining Granting of Special Exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

I. Be detrimental to the environment and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5, or R.C.7 Zone, AND FOR CONSIDERATION OF A SOLAR FACILITY USE UNDER ARTICLE 4E, THE INCLUSION OF THE R.C.3, R.C.6, AND R.C.8 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in consultation with the Departments of Planning and Environmental Protection and Sustainability,

and with participation of the Baltimore County Commission on Environmental Quality, representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the County Council and the County Executive regarding potential changes to current law.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016.

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X

DATE: February 19, 2019

BOARD/PANEL: Jason S. Garber, Panel Chairman
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception pursuant to BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the request for a solar facility and noted there were 4 days of hearings.

- The Board discussed BCZR § 4F-104 governing solar facilities. Specifically subsection (9) requires Petitioner to comply with the plan requirements of § 33-3-108 of the County Code. The Board noted that BCC § 33-3-108(a) states a plan approved by the "Department" is required for all development, etc. BCC Code § 33-3-101 identifies the "Department" as the Department of Environmental Protection and Sustainability ("DEPS"), not the Board.

- The Board discussed the County Council's intent for the solar facilities bill. The Board found that the Council did not intend for the Board of Appeals to decide if the Code § 33-3-108 plan meets the requirements. Rather, it intended that DEPS would review and make the determination. However, the Board, under BCZR § 502.1 and the solar facility regulations, can impose conditions as they deem necessary.

- The Board discussed the specific requirements of BCZR § 502.1, conditions determining granting of a Special Exception. The Board noted that many of the requirements were not contested, and addressed the ones that were, as follows:

  A) The Board noted the Protestants' concern about potential glare to be caused by the solar facility. The Board found that due the size, location, and angle of the solar panels, which will have a non-reflective coating, glare did not present a problem. One Member expressed concern about potential noise from the inverter. The Board can impose a condition regarding noise, but the Board also recognized that the County Code addressed noise issues. The Board found there would be no detriment to the health, safety or general welfare of the locality.

C) The Board noted there was no evidence of potential hazard from fire, panic or other danger. There was concern of access if there was a fire or other danger. The Board noted that building permits will govern the access road and crossing point.

G) The Board noted that solar facility regulations specifically permit solar facilities in the RC-7 zone as long as it meets the special exception criteria and additional requirements. The Board noted that the solar array will be no worse at this property than elsewhere and some of the concerns raised are ones that are found with other special exception uses. The Board found the proposal to be consistent with the purpose of the property's zoning classification and consistent with the spirit and intent of the Zoning Regulations.

I) There was limited evidence from Petitioner about a plan to protect the environment and natural resources in direct and on rebuttal. Protestants presented some testimony about concerns for the possible impacts to environmental and natural resources of the site and area. The Board noted it would have liked more evidence on those issues from both sides. However, after review of the evidence presented, the Petitioner met its burden. The Board noted that the argument regarding prime and productive soils on this site was not persuasive. The Board noted that DEPS will review and approve the project ensuring it will not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains, etc. The Board discussed the issue of potential bog turtle habitats on the property. Although they are sympathetic to the issue, they would need more evidence of the existence of habitat on site or in the area nearby.

- The Board discussed the scenic road. The Board noted that the solar array is to be located 1,100 ft. from York Road and screened with vegetative landscaping. The Board found the scenic road will not be affected.

- The Board discussed the Protestants' argument that a 300 ft. setback applies. The Board noted that a 300 ft. setback generally applies to all properties in the RC-7 zone. The solar facility regulations provide a 50 ft. setback. There was argument about whether a 50 ft. or 300 ft. setback applied. The Board disagrees with the Protestants' argument that the 300 ft. setback applied as it did not meet the criteria, but noted that DEPS will make its determinations.

- The Board discussed the requirements contained in BCZR § 4F-104, and found the Petitioner complies with the requirements the Board is supposed to review.

- The Board discussed the argument that the solar panels are an impervious surface. The Board found that the solar panels will be located 2-1/2 ft. off of the ground, and are not an impervious surface.

- The Board discussed the argument that specific conditions of the ALJ Opinion were not appealed. The Board noted that appeals to the Board from ALJ zoning decisions are heard *de novo*. If the subject matter of the ALJ decision is appealed, the Board can impose conditions as they feel fit. The Board noted that the record presented before the Board is different than the record before the ALJ.

- The Board was generally fine with the conditions in the ALJ Order, but discussed certain ones and modified them. The Board imposed additional conditions. The Board also discussed Condition #4 contained in the ALJ Order, which stated that no trees were to be removed. Several weeks after the ALJ Opinion was issued, Petitioner sent a letter to the ALJ asking for a clarification or modification to allow trees to be removed to construct the access road. Opposing counsel and parties were not provided a copy of the letter when filed, or after the ALJ signed the letter with language contained on the bottom of the letter to make the change. The Board noted that the change to the condition required public notice, a public hearing, and specific notice to the Protestants and counsel. The Petitioner could have filed a Motion for Reconsideration to request the modification. The letter as filed deprived counsel and the public the chance to participate, and therefore, the change had zero effect. The Board made it clear that sending a letter to the ALJ to change a condition, without notice, was unacceptable.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Petition for Special Exception with conditions imposed.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Tammy A. Zahner

Tammy A. Zahner

IN THE MATTER OF:	*	**BEFORE THE**
ROBERT GERNER, LEGAL OWNER AND ESA SPARKS GLENCO, LLC LESSEE	*	**BOARD OF APPEALS**
	*	**FOR**
15637 YORK ROAD	*	**BALTIMORE COUNTY**
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	
	*	**Case No. 2018-047-X**

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POST-HEARING MEMORANDUM

The Petitioner/Appellee, ESA Sparks Glenco, LLC ("ESA") by and through its undersigned Counsel, hereby submits this Post-Hearing Memorandum in support of its Special Exception and in support thereof states the following:

I. INTRODUCTION

"Every two minutes, the energy reaching the earth from the sun is equivalent to the whole annual energy use of all of humanity. All the energy… the cars, lighting, and air conditioning of the world… in one year is equivalent to two minutes of the sun." [1]

The question that arises is, "What is Baltimore County going to do about it?" The State of Maryland, through the Maryland Energy Administration, in conjunction with its Public Service Commission and the Baltimore Gas & Electric Company ("BGE") have acted by creating the Community Solar Program providing opportunities for private solar companies to construct community solar projects throughout Maryland.

In furtherance of this energy policy and in order to harness the energy of the sun, the Baltimore County Council enacted, and the County Executive signed into law, Bill 37-17[2] establishing a comprehensive solar program across every Council District of Baltimore County. As the Board of Appeals ("Board") is aware, a solar facility is permitted by special exception

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Dr. Lamya N. Fawwaz, V.P. for the International Advancement of Public Affairs at Masdar Institute of Science and Technology (MIST), Abu Dhabi.

[2] Bill 37-17 is codified as Article 4-F of the Baltimore County Zoning Regulations.

and each Council District is eligible to have up to ten permitted solar facilities. For the many months prior to its passage, the provisions of Bill 37-17 were completely vetted with the stakeholders who would be impacted by its passage, which vetting included many of the individuals and community groups who have appeared before this Board. After a tremendous amount of debate and discussion, Bill 37-17 was passed and specific requirements were established before a petition for a solar facility could be approved.

As of time of the writing of this memorandum, every single special exception filed in Baltimore County for a solar facility has been approved by Judge, John E. Beverungen. Every solar facility approved by Judge Beverungen in the 3rd Council District has been appealed to this Board. No approvals from any other Council District have been appealed to the Board. Many of the Protestants in this case have taken it upon themselves, sometimes concerning projects located miles away from their homes, to challenge the very passage Bill 37-17 by appealing and delaying the approval process for these solar facilities in the 3rd Council District, somehow asserting that solar facilities may be allowed elsewhere in Baltimore County, but not be permitted in their backyards.

However, it is important to note that these community solar projects must be spread out across the power grid and located within the communities they serve. A solar facility in Dundalk could not produce clean renewable energy for Hereford, which is why the Public Service Commission and BGE determine the amount of megawatts that each facility may produce based upon the needs of that specific community under review. That decision is not left up to the solar company.

Now I ask you to consider this. The time it took the members of this Board to collectively read this introduction, enough energy from the sun reached the earth to power the energy needs of all of humanity for one year. The overwhelming majority of Baltimore County citizens living within the 3rd Council District deserve the benefits of clean renewable energy and they should not be denied this opportunity because of the actions of a few Protestants. It is time for all of Baltimore County to get into the game. For the reasons that follow, this Board is urged to approve this request for Special Exception for a solar facility on this property.

II. THE SOLAR FARM @ 15637 YORK ROAD

This applicant, ESA is proposing to install a 1.87 mega-watt AC solar facility on a 30.27 acre property located at 15637 York Road. While the entire Gerner property comprises 30.27 acres, ESA proposes to utilize only 9 acres of the overall tract for the purpose of installing their solar panels. (See Pet. Ex. 1 & 1A) The usage of only 9 acres is important as objections have been raised by neighbors and People's Counsel as to the excessive amount of acreage that is being used at other facilities to produce solar electricity. In fact, Mr. Zimmerman, People's Counsel for Baltimore County, in his questioning of various witnesses, commended ESA for limiting their use of this land to less than 5 acres per mega-watt of AC electricity.

The Gerner property is located along York Road, a designated scenic route. The 30.27 acre parcel is unusually and irregularly shaped and its configuration has been described by the witnesses who testified as resembling that of a "bow-tie". While the Gerner property borders York Road, the solar panels are proposed to be located on the east side of the bow tie, a distance of approximately 1,100 feet from York Road. (Pet Ex. #1 & #1A.) There are also topographical changes to the land and existing vegetation that prohibit a motorist travelling on this scenic route from seeing the area where the solar panels will be displayed. An independent site visit was conducted on August 23, 2017 by the Department of Planning and a determination was made by that agency that ***"due to the topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially (sic) properties"*** The Department of Planning has no objection to the granting of the requested zoning relief. (See Pet Ex. #10.)

The Department of Planning's position as to visibility was corroborated by petitioner's witnesses Bruce Doak, Mitchell Kellman and Brian Quinlan who also testified that the solar panels will not be visible from York Road. To the contrary, Protestant's witness, Ms. Lynne Jones, who resides approximately 10 miles away from the subject site, testified that the area where the panels are proposed to be located can be seen from a particular spot on York Road and offered a photograph that she alleges depicts this view. (Prot. Ex. #19A) However, when looking at that photo, it appears from its angle, that the land in the distance is the Mayo or Gorsuch's retirement property and not the Gerner property. Given her limited knowledge of this property and the many miles that she lives from this site, it appears that she may have pointed her camera in the wrong direction.

Also, Protestant's witness, William Mayo testified that the field where the panels are to be located is visible from several nearby properties, yet he failed to produce any photographs to

prove that assertion. Instead, the only photo he offered was Protestant's Ex. #31 taken at the edge of the Gerner's property, from a row of corn looking into the Gerner site. The overwhelming testimony as well as the many exhibits entered into evidence demonstrate that the area where the solar panels are to be installed is remotely located and will be well screened by existing mature vegetation and changes in the topography to the land, just as the Department of Planning stated in their comment. The low impact of the facility makes it consistent with the spirit and intent of the Baltimore County Zoning regulation for this location.

Access to the solar panel array will be provided by a narrow road commencing at York Road and traversing the Gerner property down to the east side of the bow tie. This access road will be subject to a State Highway Administration access permit. The access road will utilize an existing culvert that crosses over a drainage area and then enters into an open field where the panels are proposed to be installed.

It was made clear at the hearing before the Board that no trees will be removed in the field where the panels will be located. However, it may be necessary to remove trees in order to install this access road. No grading will occur in the field as the solar panels are mounted on a rack system supported by a series of posts, which are augered or direct-driven into the ground similar to fence posts.

These panels are fixed, do not rotate and stand less than 8 feet from the existing surface grade. The grassy vegetation that exists in the field will remain under the panel arrays and there will be an undisturbed grassy strip of land between each row of panels equal to the length of the each panel. That is, if a panel is 8 feet in length, there will be an 8 foot open strip between the panels that will remain in grassy vegetation. The surface of the ground under all of the panels will remain pervious and in its natural vegetative state. This grassy vegetated area will collect and infiltrate any rain water that may run off of the surface of the solar panel itself. Prior to the issuance of a building permit, the applicant will have to comply with the storm-water management regulations that are applicable to solar arrays which regulations were promulgated by MDE and were submitted into evidence. (See Pet. Ex. #8)

As shown on the plan, there will be a maintenance road looping around the solar panels for access. This road will consist of gravel and stone. There will be a chain link security fence around the perimeter of the solar field, which will contain no barbed-wire and will have a top

fence bar to prevent owls, deer, raccoons and foxes from impaling themselves on the top of the chain link fence.

The entire Gerner property is zoned RC7, which is a resource conservation zone and not an agricultural zone, such as the RC2 zone. (See Pet. Ex #16, RC Zone Comparison Chart). While the area where the panels are to be installed does contain some soils that are suitable for farming, the property itself is neither prime nor productive. Mr. Mayo testified that his family, in past years, did farm this area of the Gerner property. He stated that the property was not a very good crop producer and was difficult to farm. He stated that they were successful in growing some hay on this area, but even that was a challenge. The owner is not a farmer and the economic benefit to lease the land for farming is not sufficient in the owner's opinion. There is no law that forces a property owner to have to "farm" their property, particularly when that property is less than ideal for farming. The installation of solar panels and the production of solar energy is most assuredly, the highest and best use of this particular property.

III. SPECIAL EXCEPTION APPROVED BY JUDGE BEVERUNGEN

This Special Exception request for approval of a solar facility case was originally presented for consideration before the Honorable John E. Beverungen, Administrative Law Judge for Baltimore County on the 18th day of December, 2017. After a trial on the merits of the case, Judge Beverungen granted approval of this solar facility by Order dated the 21st day of December, 2017. Judge Beverungen's approval was conditioned upon seven restrictions which were recited at the end of his decision. A copy of that decision was entered into evidence. (See People's Counsel Ex. #6)

Thereafter, a letter of clarification of Restriction #4 of Judge Beverungen's decision, dated the 12th day of January, 2017 was submitted into evidence. (See Pet. Ex.#21) Restriction #4 of his decision stated that ***"No trees shall be removed from the site in connection with the construction and/or operation of the solar facility"***. This statement is true as it relates to the area of the solar field and the area of the Gerner property where the panels will be installed. However, as anyone can see from the multitude of exhibits entered into evidence in the case before Judge Beverungen as well as before this Board, it is absolutely necessary to remove some trees in order to install the access road from York road to the solar farm.

This letter of clarification, which was submitted to Judge Beverungen on January 12, 2018, was signed and approved by Judge Beverungen on January 16, 2018. This letter was made a part of the zoning file and was included within the file and was available for inspection at the time that the appeal was filed by H. Barnes Mowell, Counsel for the Protestants as well as the People's Counsel for Baltimore County. In fact, this Board pointed out at our hearing that the letter of clarification was actually in their file, which was sent up to the Board from the ALJ's office below.

Accordingly, the appeal to this Board of Appeals involves not only the decision of Judge Beverungen, but the letter of clarification as well, which modified restriction #4 as to the removal of trees. This Appeal comes to this Board *de novo*, in accordance with Baltimore County Code ("BCC") Section 32-3-401(1).

IV. THE SPECIAL EXCEPTION STANDARD AND 502.1 OF THE BCZR

BCZR Section 502.1 contains the special exception elements that must be proven in order for a Court to approve a special exception request. These 502.1 factors must be reviewed in light of the recent cases that interpret that section of the BCZR. Before any special exception may be granted, it must appear that the use for which the special exception is requested will not impact the factors in Section 502.1. The key term in the regulation is the use of the word "appear". The special exception process is the first step in a long process for a project to be approved for construction. Many details and studies are performed after the special exception has been granted. As a result, the regulations are written to reflect the fact that if an activity/development may be granted in a particular zoning district with a special exception then it is inherently acceptable for the district.

The Court of Appeals, in *People's Counsel v. Loyola College in Maryland,* 406 Md. 54 (2008) and *Schultz v. Pritts,* 291 Md. 1 (1981) directed that when analyzing each prong of Section 502.1 the Board must consider "whether there are facts and circumstances that show that a particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with a special exception use irrespective of its location within the zone."

Furthermore and more recently in the *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), the Court of Appeals has held that "a special exception is presumed to be within the interests of

the general welfare, and therefore the special exception enjoys a presumption of validity". The Court of Appeals also stated in *Anderson v. Litzenberg,* 115 Md. App. 549 (1997) that this presumption of validity "enhances the probative value of other evidence adduced" by an applicant for special exception. *Id* at 287 Applying this presumption of validity, the applicant need only produce a *prima facie* case in support of their special exception request and once done, the protestants must then set forth sufficient evidence to prove that the proposed use would have adverse impacts above and beyond those inherently associated with such use.

This applicant, ESA presented a *prima facie* case to support the approval of our special exception request and the Protestants failed to establish that the impacts of our solar facility at this location would have a greater impact at this location above and beyond those inherently associated with the use. We now review section 502.1 of the BCZR.

V. THE APPLICATION OF SECTION 502.1 OF THE BCZR

Section 502.1 of the BCZR states: Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

502.1.A. ***Be detrimental to the health, safety or general welfare of the locality involved***;

ESA produced witnesses who testified as to the "locality involved". Messrs Quinlan, Kellman and Doak testified that the locality was defined as that area of land located on the east side of York Road and enclosed and bounded by the Upper & Lower Glencoe Roads which circle back to and connect with York Road. The applicant submitted into evidence a map of this "locality" which was accepted into evidence at Pet. Ex. #9. This testimony was unrebutted by the protestants.

Having defined locality, the witnesses then testified that the installation of solar panels on this 9 acre open field would not be detrimental to the health, safety or general welfare of the defined locality. The panels make no noise. They are unmanned and use no water or septic. They make no noise except for an inverter which is inaudible at the property line. They are supported by a simple post and rack system where the grade of the land remains intact. Little soil is disturbed. They are screened by natural existing vegetation and the topographical changes in the land. In addition, the panels will be located about 1,100 feet from York Road. They will be enclosed by a chain link security fence. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut

this testimony.

502.1.B. ***Tend to create congestion in roads, streets or alleys therein.***

This factor is easily proven and really needs no testimony as the facts basically speak for themselves. That is, these solar facilities, once constructed are unmanned, and are only periodically visited for maintenance and inspection purposes. The maintenance workers will visit the site in a small pick up truck vehicle which will easily traverse the access road. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.C. ***Create a potential hazard from fire, panic or other danger.***

The testimony of the witnesses for the applicant, particularly Mr. Quinlan demonstrated that the materials used for the solar array are basically inflammable. The post and rack support system are made of metal, the panels are made of aluminum and glass and contain little combustible material. Once properly installed, the panels should not create a potential from fire, panic or danger. The perimeter of the solar array will be secured by a chain link fence which will deter outsiders from trespassing within the solar field. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.D. ***Tend to overcrowd land and cause undue concentration of population.***

The solar panels are unmanned and will cause absolutely no undue concentration of population. They stand no more than 8 feet tall, (about the height of a cornstalk) and therefore will not overcrowd the land. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.E. ***Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements.***

The installation of solar panels and the operation of a solar facility is an extremely passive use of any parcel of land. The panels just sit there and collect the rays of the sun and send clean electricity into the local power grid. It is hard to comprehend how any of these items could be negatively impacted by this special exception request. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.F. ***Interfere with adequate light and air.***

The testimony presented by the applicant showed that the panels will stand no taller than 8 feet from the grade of the property. It is not fathomable that the panels could interfere with adequate light and air. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.G. ***Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations.***

The Baltimore County Council has spoken on this issue. They enacted new legislation, Bill 37-17, specifically permitting solar facilities on land zoned RC7 by special exception. Bill 37-17 was greatly debated by the County Council as well as the many citizens who participated in the passage of that Bill. Some of those same citizens who participated in the Bill's passage are appearing and testifying in this and other hearings before this Board. The Council, by its passage of this Bill, has already determined that this use is generally compatible with the RC7 zone and that it is appropriate to have such a use on RC7 land. If they thought otherwise, they would have excluded RC7 land from the Bill.

Furthermore, it should be noted that the Department of Planning supports the placement of solar panels in the RC7 zone and has asserted that solar panels are consistent with this RC7 zoning. In their comment dated 9/20/2017 the Director of Planning stated that her "***Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations BCZR***" and further that ***"The Department has no objection to the granting of the zoning relief***". (See Pet. Ex. #10)

The Protestants will likely argue that the installation of solar panels on this property is a waste of prime and productive soils and otherwise takes away from the opportunity to farm this land. As was stated earlier in this memo and which is worth restating here, the entire Gerner property is zoned RC7, which is a resource conservation zone and not an agricultural zone, such as the RC2 zone. (See Pet. Ex #16, RC Zone Comparison Chart)

While the area where the panels are to be installed does contain some soils that are suitable for farming, the property itself is neither prime nor productive. Mr. Mayo testified that his family, in past years, did farm this area of the Gerner property. He stated that the property was not a very good crop producer and was difficult to farm. He stated that they were successful in growing some hay on this area, but even that was a challenge. There is no law that forces a property owner to have to "farm" their property, particularly when that property is less than ideal

for farming. The landowner is not a farmer and has determined that it is not beneficial to lease the land for farming. The installation of solar panels and the production of solar energy is most assuredly, the highest and best use of this particular property.

The Protestant's will also most likely argue that the installation of the solar panels is inconsistent with the setback provisions as stated within the RC 7 zone. They rely upon section 1.A08.6.B which states that "***Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an RC 7 zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the past three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement".***

Let's first analyze the very language of this provision, because the Protestants failed to prove any of the items required to be proven by the language of this provision. First, our solar panels are not a "***principal building or a well***" nor are they a "***use that may be in conflict with any permitted agricultural operation, in an RC7 zone".*** The agricultural operation that the protestants argue is impacted by this provision, specifically the Gorsuch Retirement property located to the west of the Gerner site, is zoned RC2 and not zoned RC7 as required by this provision. The specific language of this provision requires that the impacted agricultural land be zoned RC7. That is not the case here and accordingly, this section does not apply.

Furthermore, this provision requires that the Protestants prove that the "***adjacent property… was cultivated or used for pasture during the past three years, as determined by the Department of Environmental Protection and Sustainability***". There was absolutely no testimony presented to this Board that such a determination was made by the Department of Environmental Protection and Sustainability. For these reasons, based upon simple statutory interpretation, the 300 foot setback does not apply to this Gerner property.

Moreover, the provisions of the RC7 regulations that establish a 300 foot setback are inapplicable to solar panels because that provision was superseded by the recently enacted Bill 37-17 which establishes a 50 setback for solar panels. Bill 37-17 specifically requires that all solar panels be setback at least 50 feet from the tract boundary of the property to be developed. (See §BCZR 4F-104.4) This new solar legislation was passed in 2017 as opposed to the RC7 zoning regulations which were passed in August, 2000, some 17 years prior to this solar law. (See People's Counsel Ex.#11). When a conflict in the law exists, the more recently enacted

legislation will prevail over a regulation passed many years prior. See, e.g. *State v. Ghajari*, 345 Md. 101, 115, 695 A.2d 143, 150 (1997) ***("if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute"***); *Farmer's and Merchants Bank of Hagerstown v. Schlossberg*, 306 Md. 48, 61, 507 A.2d 172, 178-179 (1986) ("***the statute whose relevant substantive provisions were enacted most recently [must] be held to have repealed by implication any conflicting provisions of the earlier statut***e").

502.1.H. ***Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations***;

The land upon which the solar panels are to be installed will remain completely vegetated. That is, the existing grassy vegetation that currently exists will remain and only a support post will be augered or direct-driven into the ground upon which the panels will be mounted. The panels will be suspended above the surface of the ground. Accordingly, the vegetation will be retained and no clearing or grading will take place. The applicant presented a *prima facie* case on this element to be considered by the Board and the Protestants offered little or no evidence to rebut this testimony.

502.1.I. ***Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.***

Based on the testimony of the witnesses who testified on behalf of this petition for special exception, the installation of the solar facility will not be detrimental to the onsite environmental and natural resources in the vicinity. The petitioners called Mr. James Deriu to testify in their case in chief. Mr. Deriu testified that he walked the subject property but had not yet performed a detailed environmental analysis of the property. He stated that based on his preliminary review of the property he did not see any wetlands in the area where the panels are to be installed. He also stated that there was a water resource in the area of the knot of the "bow tie" which is where the current access road crosses over leading down into the east side of the "bow tie" where the panels are to be installed. He stated that a permit will need to be issued to the applicant for the continued use of this culvert and that the Petitioner will have to respect any and all environmental resources on the property, if any, once they are delineated.

The Protestants offered their own wetland delineator, Mr. John Roemer, IV who testified

that he visited the adjacent property and performed a wetland analysis of the property located to the north of the Gerner property. This is the property known at the Rude property. Mr. Roemer testified that while he observed wetlands on the Rude property, he was unable to determine if wetlands exist on the Gerner property. He submitted into evidence Prot Ex. #28 which depicts two areas of the wetlands, both of which are on the Rude property and none of which are on the Gerner property.

Mr. Roemer also testified that in his opinion, conditions exist on the adjacent property owned by Mr. Rude, which might present a possible habitat for bog turtles. He admitted that he is only qualified to identify potential habitats and in no way can determine whether bog turtles actually exist. He testified that another more qualified person would need to make that determination. His opinion as to the existence of bog turtles was mere speculation and should not be considered as evidence by this Board. If the Protestants were sincere in their concern for these bog turtles, they would have taken the next step to prove their existence. They failed to undertake any further studies to identify bog turtles on the Gerner property and more specifically on any property impacted by the solar facility.

Certainly there was no concern for bog turtles when Mr. Matczuk and Mr. Mayo "mucked" out the silt and sedimentation from the two ponds on Mr. Matczuk's property. The Board may recall the testimony of nearby resident Eddie Matczuk who resides at 932 Upper Glencoe Road, who stated that every 5 years or so, he and Billy (referring to Mr. William Mayo) "muck" out his ponds. This is the very silt layer that Mr. Roemer stated might provide a habitat for bog turtles. Mr. Matczuk stated that he never saw any turtles while mucking out his ponds and never saw any trout fish either. The Board should disregard these assertions as to the existence of bog turtles or trout fish as that testimony is based on pure speculation.

It is also worth noting that the Baltimore County Department of Environmental Protection and Sustainability ("DEPS") issued a written comment dated August 21, 2017 simply stating that the applicant will have to comply with the environmental regulations found in sections 33-3-101 through 33-3-120 and sections 33-6-101 though 33-6-122 of the Baltimore County Code. Other than this, DEPS took no position on the request for special exception at the time of this zoning hearing. (See Pet. Ex. #12)

As noted earlier, these solar panels are a benign use. They require no water so no well needs to be drilled. They produce no waste, so no septic is required. Any stormwater

management that might be required will be installed in accordance with the Maryland Department of the Environment ("MDE") guidelines. (See Pet. Ex #8) There was simply no evidence offered that the development of the Gerner property with a solar facility will have any adverse impact to the environmental or natural resources on the property above and beyond those which are inherently associated with such a special exception use. Assuming this zoning request is approved, all environmental features will be delineated and field located and will be protected in accordance with the law.

VI. BILL 37-17 REQUIREMENTS

Mr. Brian Quinlan, testified regarding these requirements. Mr. Quinlan, a graduate of the United States Naval Academy with a degree in mechanical engineering was accepted as an expert in the solar energy industry. He has an extensive background in solar energy, nuclear energy and other similar disciplines. He stated he was familiar with the newly enacted County Council Bill No. 37-17 and that he participated in the many hearings and work sessions that the County Council hosted prior to the passage of this solar law. This newly enacted solar Bill 37-17 is codified in the BCZR in Article 4F entitled "Solar Facilities". We now look at those requirements.

Regarding **§4F-102A.1**, Mr. Quinlan testified that this site will be producing less than 2 Megawatts of AC electricity as required by this section. He testified that our solar facility will be producing 1.85 MW of AC electricity.

Regarding **§4F-102A.2**, the uncontradicted testimony revealed that there are no more than 10 solar facilities located in this 3rd Council District. In fact, as of the time of the submission of this memorandum, there are no permitted solar facilities in the 3rd Council District of Baltimore County. The law specifies that this limitation applies to solar facilities that are actually permitted and not the number of special exception applications that have been filed or approved.

Regarding **§4F-104A.1**, the uncontradicted testimony offered by the applicant determined that the land upon which solar panels are to be displayed is not encumbered by any Agricultural Preservation Easements, any Environmental Preservation Easements nor any Rural Legacy easements. This provision is satisfied.

Regarding **§4F-104A.2**, the uncontradicted testimony was that the land upon which the solar panels are to be displayed is not located in a Baltimore County Historic District or is on the

Baltimore County Final Landmarks List. This provision is satisfied.

Regarding **§4F-104A.4**, the uncontradicted testimony was that all of our above ground components such as solar panels, inverters, and similar equipment are setback a minimum of 50 feet from our tract boundary. It is important to note that this is the specific provision of the newly enacted Solar Facility law that overrides the older sections of the RC7 zone.

Regarding **§4F-104A.5**, the uncontradicted testimony was that all structures will be less than 20 feet in height. The solar panels themselves will be less than 8 feet in height, which is about the same height as a field of corn.

Regarding **§4F-104A.6** existing natural and mature landscaping will remain around the perimeter of our solar facility. No trees will be removed around the perimeter our solar field. The solar panels will be properly screened as a result of this dense and extensive vegetation. This fact was observed by the Department of Planning and discussed in their comment dated 9/20/2017 after they personally visited the property.

It is also very important to note that this provision of the law only requires landscaping to be provided along our solar field where there is an ***"adjacent residentially used property"***. The property adjacent to ours, known as the Mayo or Gorsuch Retirement property is not residentially used at all. It is farmland and is agriculturally zoned RC2. Mr. Mayo testified that there is no house on that property and it is only farmland. The picture he took looking into our property, (Prot. Ex. #31) was actually taken from a corn field. He also testified that he drove his gator around to neighboring properties and said that our solar field is visible from those properties as well. He offered no photographic evidence of those alleged views. Regardless, that testimony is irrelevant as none of those properties about which he testified and which he visited are ***"adjacent residentially used properties"*** as required by the law.

Regarding **§4F-104A.7** the applicant testified that a chain link security fence will be provided around the perimeter of our solar facility. Responding to the concerns raised by Ms. Lynne Jones, Mr. Quinlan testified that our security fence will contain no barbed wire and will have a cross bar on the top of the chain link to prevent animals from becoming entangled in the fencing.

Regarding **§4F-104A.8** Mr. Quinlan testified that the arrangement of our solar panels will minimize glare or reflections onto adjacent properties and roadways and will not interfere with traffic or create a safety hazard. This is easy testimony to provide given that the nearest

roadway, York Road is located approximately 1,100 feet away from our solar panels and that there are topographic changes and vegetation existing between the location of our solar panels and the roadway itself. The same holds true regarding nearby residences. This testimony was unrebutted.

§4E-104A.9 simply states that ***"A petioner shall comply with the plan requirements of section 33-3-108 of the County Code".*** This simple one line provision produced a great deal of debate at the hearing before this Board. This particular provision is found within the environmental section of the BCC and requires the applicant to submit a plan to DEPS. The plan shall contain 18 specific items all of which are enumerated within section 33-3-108(c)(1–18). The problem with this provision is that it fails to specify at which time in the permit process the petitioner must comply with 33-3-108 of the BCC.

As stated previously, DEPS, the very department to which this plan is supposed to be submitted, commented on this special exception request. DEPS' comment was accepted into evidence as Pet. Ex #12. In that comment, DEPS required this applicant to comply with ***"Sections 33-3-101 through 33-3-120 of the Baltimore County Code"***. What is obvious from that comment is the fact that DEPS failed to require compliance with these provisions prior to the granting of the special exception herein. This was a perfect opportunity for DEPS to state that the 33-3-108 plan must be prepared and submitted prior to the consideration of the special exception request. They failed to do so simply because this plan is not required to be submitted at the "zoning" portion of the development process but rather prior to the issuance of a building permit.

The witnesses for the Petitioner, Messrs, Kellman, Deriu, Quinlan and Doak all testified that the environmental studies, delineations and the other items required to be on the 33-3-108 plan are not required to be performed until after the applicant's zoning case is approved and prior to the issuance of a **permit** for the project. They testified that it is the usual custom, practice and procedure in Baltimore County, that is, to wait until after the zoning approval is granted before committing the time, money and resources into performing the required studies and analyses required by 33-3-108. It is simply too costly to perform such detailed work at this juncture of the process. Several questions were asked by this Board as to how much it would cost to comply with the requirements of 33-3-108.

On rebuttal, Mr. Quinlan presented to the Board a detailed estimate of costs prepared by

Mr. Deriu, Vice President of KCI Technologies. Mr. Deriu testified earlier in the case that he walked the property to perform a preliminary assessment of the site. His cost estimate was accepted into evidence and indicated that the costs to perform all of the studies required by 33-33-108 would be $365,000.00. (See Pet. Ex. #26)

It is unnecessarily burdensome to require any petitioner to spend that amount of money on any project before their zoning approval is granted. That is precisely why the practice and procedure in the Baltimore County development and permitting process requires the applicant to get their zoning approval first before committing such large sums of money to get their permit.

The Board's analysis on this issue should stop here. It is entirely unreasonable to require the expenditure of such a large sum of money before an applicant knows whether he has a viable project. However, should the Board still have any doubt on this issue, it need look no further than at the testimony of the Protestant's own witnesses. Mr. John Altmeyer, the Protestant's first witness clearly stated in the course of his testimony, on three separate occasions, that this applicant in this special exception request for a solar facility is not required to perform the environmental analyses required by section 33-3-108 until such time as their zoning special exception has been granted and the applicant applies for their grading and building permit. (See pages 32, 37, 41 & 42 of Pet. Ex. #27, Transcription of Altmeyer Testimony)

In addition, Mr. John C. Roemer, IV, the Protestant's environmental expert also testified that the environmental work that is required by 33-3-108 would not be performed until the time that the permit to install the solar panels is applied for and after the special exception request is approved.

Lastly and most importantly, the Maryland Court of Appeals in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), entertained a very similar issue to the one at issue in this case. In *Attar*, a group of citizens were opposing a special exception request for a WAWA gas station on Groff's Mill Road in Reisterstown. The Protestants raised an environmental issue relating to the impact that the proposed WAWA would have on the Gwynn's Falls floodplain. Tollgate, the Developer of the WAWA argued at the hearing before this Board of Appeals that any impact on the floodplain would be determined at a later date, through a different process, after the special exception request was approved. In that case, the Board of Appeals did not render a factual conclusion on the issue, stating ***"The possibility of a negative impact upon the flood plain by [The Applicants'] plans will be determined separately by way of the investigation by State and***

Federal authorities and pursuant to the Baltimore County Code." *Attar,* 451 Md. at 288.

On Appeal, the Court of Appeals confirmed the legitimacy of the Board's approach, finding that: ***"Tollgate is not prevented by the BCZR from proceeding with the request for Special Exception before receiving approval for the floodplain relocation. Because the Board did not render, nor was it required to make, a factual conclusion on this issue, and we cannot arrive at such a conclusion, there was no error from the Board for us to review.*** *Attar*, 451 Md. at 289.

For all of the above reasons, there is absolutely no requirement for the Applicant in this case to have to prepare and submit to DEPS a plan prepared in accordance with section 33-3-108 of the BCC at this time of the zoning process. The applicant is entitled to know that they have their zoning request approved, before they undertake the expense and time of performing such environmental work.

§4E-104A.10 gives the authority to the Administrative Law Judge and the Board of Appeals, to ***"impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of the surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands."***

This particular section of the newly enacted solar facility bill gives complete authority to this Board to impose whatever conditions on the approval of this special exception request that the Board deems necessary given the testimony presented at the hearing. There are many items that are considered after this zoning hearing is rules upon by this Board.

For example, the approval or denial of a State Highway Administration access permit for York Road, storm water management plans, applications to MDE and/or the Army Corp of Engineers for wetland or stream permits, to name a few. This particular "catch-all" provision is evidence that the County Council realized that there are matters that follow the special exception zoning process that might warrant the imposition of conditions or restrictions. Should the Board have any concerns about approving this or any of the special exception requests for solar facilities, it should simply utilize this "catch-all" provision to alleviate those concerns by imposing whatever restrictions they deem appropriate.

CONCLUSION

For the reasons as stated within this memorandum, and given the strong presumption in favor of the granting of this special exception use as established by applicable Maryland case law discussed herein, coupled with the failure of the Protestants or People's Counsel to provide any substantive evidence that this special exception use at this location would have a unique and different impact above and beyond those inherently associated with this special exception use irrespective of its location within the zone and in conjunction with the evidence presented that the use is not in conflict with the requirements of Section 502.1, it is respectfully requested that this Board grant the special exception request.

Respectfully Submitted,

Timothy Kotroco

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day January, 2019 a copy of the foregoing Memorandum was mailed first class, postage prepaid to H. Barnes Mowell, Esquire 16925 York Road, Monkton, Maryland 21111 Attorney for the Protestants; and to Peter M. Zimmerman, People's Counsel for Baltimore County, The Jefferson Building, Suite 204, 105 W. Chesapeake Avenue, Towson, Maryland 21204.

Timothy Kotroco

Timothy M. Kotroco, Esquire

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January 8, 2019

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: Petition for Special Exception
15637 York Road
Legal Owner: Robert K. Gerner
Lessee: ESA Sparks Glenco LLC
Case No: 2018-047-X

HAND-DELIVERED

Ladies and Gentlemen:

I have enclosed, for filing, the Protestants' Post-Hearing Memorandum for this case. Thank you for your cooperation in this regard.

Very truly yours,

H. Barnes Mowell

Certificate of Service

I HEREBY CERTIFY that a copy of this letter and Post-Hearing Memorandum were mailed this 8th day of January 2019 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and to Peter Zimmerman, Esquire, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.

H. Barnes Mowell

RE: PETITION FOR SPECIAL EXCEPTION 15637 York Road Legal Owner: Robert K. Gerner Lessee: ESA Sparks Glenco LLC 8th Election District 3rd Council District	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 2018-047-X

* * * * * * *

PROTESTANTS' POST-HEARING MEMORANDUM

The Protestants, by their attorney H. Barnes Mowell, submit this Post-Hearing Motion in support of their request that the Petition for Special Exception be denied in this case, and state as follows:

Protestants' Motion for Judgment and Petitioners' Burden of Production

The Protestants moved for judgment at the end of the Petitioners' case, arguing that the Petitioners had the burden of producing the evidence needed to allow the Board to make a reasoned decision, and they had not met their burden. Requesting permission to place over 6,000 impermeable solar panels on a sloping, 16 acre field, zoned R.C. 7, with a stream, wetlands, prime and productive soil, and located adjacent to a cultivated field owned by someone else, raises many issues. It is the Petitioners' obligation to address those issues and to explain how their project can be safely completed. Judge Murphy stated as much in his concurring opinion in People's Counsel v. Loyola, 406 Md. 54 (2008), …"the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted." *Id.* at 109. The burden of production is explained in Terumo Med. Corp. v. Greenway, 171 Md. App. 617, 626 (2006):

"In analyzing whether a proponent has met the burden of production, the court lists the constituent elements of the proposition to be proved -- the crime, the tort, the contract, etc. -- and then determines whether the evidence in the case, if given the maximum credibility and maximum weight, could permit the fact finder fairly to find each of those constituent elements."

Section 502 of the Baltimore County Zoning Regulations lists the nine "elements" to be proved in a Special Exception case. The Petitioners have the burden to produce evidence that the requested use will not, *inter alia* (I). "Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains…"

Consistent with that requirement, the new solar facilities law directs that "A Petitioner *shall* comply with the plan requirements of Section 33-3-108 of the County Code. (4F-104(9), *emphasis added*). Section 33-3-108 contains a long list of environmental information that must be included with the Plan, including (6). field delineated, marked and surveyed streams, springs, seeps, bodies of water, and wetlands, (9). soils mapped and labeled in accordance with the soil survey of the county, 10). slopes greater that 10% for areas adjacent to and within 500 feet of streams, wetlands or other bodies of water; 11). rare species, threatened species, or endangered species habitat, 12). existing vegetation, 13). location and type of stormwater management devices and practices, and 16). historical and archaeological sites.

4F-104(10) of the solar facilities law advises that:

"In granting a special exception, the administrative law judge or Board of Appeals on appeal may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands."

Read together, these laws impose a burden on the Petitioners to produce the evidence needed to allow the fact finder to decide whether this solar facility should be allowed. More than a year after filing their Petition, we have no evidence from the Petitioners about the streams on the property, or the wetlands, whether there are slopes greater than 10%, how runoff from thousands of solar panels will be controlled, the quality of the soil onsite, any endangered species

habitat (such as potential bog turtle sites), or historical or archaeological sites on the property, and whether the stream can be legally crossed with the equipment needed to construct and maintain the solar array.

On the last day of this case, Brian Quinlan offered into evidence a proposal from KCI Technologies for engineering and environmental studies for this site (Petitioners' Exhibit 27). The cost; an astounding flat fee of $365,000! The work includes a stormwater management plan, forest delineation and conservation plan, wetland and stream delineation, steep slopes and erodible soils evaluation, forest buffer easements evaluation, meetings with the Maryland Department of Environment and Corps of Engineers regarding the wetlands, and studies for any necessary culvert improvements. The KCI proposal encapsulates all of the environmental issues that the Petitioners had ignored in their case in chief, but which Protestants had raised in their presentation.

Mr. Quinlan testified that he would "look into the environmental issues" after getting zoning approval for his project. That approach ignores the clear mandate in the solar facilities law to give to the fact finder the information specified in Section 33-3-108, so that a reasoned decision can be made. His approach makes it impossible for this Board to impose conditions or restrictions on the solar facility to protect the environment. Because the Petitioners have not met their burden to produce the evidence needed for the Board to decide if this use will be detrimental to the site or the vicinity, their Petition should be denied.

300 Foot Setback from Adjacent Cultivated Property

The Gerner property is entirely within the R.C.7 (Resource Conservation) Zone. According to Section 1A08.1(A)(1) of the Baltimore County Zoning Regulations, the R.C.7 Zone was created to identify "specific resource preservation areas where valuable cultural,

historical, recreational and environmental resources are located and should be protected for the health of the local community and the community at large." The R.C.7 Zone is designed to allow only "limited development, compatible with the rural community, and at the same time protect rural resources" (1A08.1(A)(3)) and to "preserve the traditional character of rural communities by limiting the scale and intensity of development" (1A08.1(B)(11)).

Consistent with those purposes, the R.C. 7 regulations contain a unique restriction, which requires a setback to protect adjacent agricultural property. Section 1A08.6(5)(b) of the BCZR provides that:

> "Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an R.C.7 Zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the previous three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement."

Bill Mayo testified that he is the President of Gorsuch's Retirement, Inc., a family corporation that owns a field adjacent to the field where the solar panels would be installed. Mr. Mayo said that his family's adjacent field is leased to Chuck Ensor, a local farmer, who has grown corn and soybeans on the field for years. Mr. Mayo had a photograph of the corn growing in his field in August 2018, and noted that the aerial photograph of the neighborhood, on display and put into evidence by the People's Counsel, showed his field shortly after its crop had been harvested.

When confronted with this setback statute, Bruce Doak, the Petitioners' witness, said that it didn't apply to this case. He did not agree that erecting 6000 solar panels was a use "that may be in conflict with any permitted agricultural operation" on the adjacent property. He also believed that the 50 foot setback specified in the solar legislation superseded the 300 foot setback in the R.C.7 regulation.

The Gorsuch's Retirement field is adjacent to the field where the solar panels would be installed, and would receive runoff from the panels. Mr. Mayo expressed his concern about the runoff from the solar field. He also testified about the deer damage to his crops. He felt that fencing in nine acres right next to his cornfield would steer more deer into his field, causing more crop damage, and will take away nine acres of vegetation, and other food, for the deer.

Mr. Mayo also worried about glass solar panels being placed near the existing row of trees on his property line. A tree that falls from Gorsuch's Retirement property into the Gerner agricultural field is of little concern to him, at this point. A tree that falls onto glass panels in that field, however, is a different story. In light of Mr. Mayo's testimony, this Board should reject Bruce Doak's offhand and unsubstantiated opinion that the installation of solar panels would not conflict with the established agricultural operation in the adjacent field.

As to the setback, the 50 feet specified in the solar facilities law is a minimum requirement:

> "Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a ***minimum*** of 50 feet from the tract boundary." 4F-104(A)(4), emphasis added.

The setback regulations can and should be read in concert, and not as requiring a choice between the two - All solar facilities must have at least a 50 foot setback, and one installed on R.C.7 property must be set back 300 feet from an adjacent cultivated or pastured field. That interpretation is supported by Section 600.1 of the Baltimore County Zoning Regulations:

> "In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations."

Section 600.1 of the BCZR directs that the greater restrictions imposed, by two applicable laws, are the ones to be applied. Therefore, a 300 foot setback, and not a 50 foot setback, is required here. Bruce Doak's belief that the 50 foot setback in the solar law trumps the 300 foot setback in the R.C. 7 regulations is incorrect, and must also be rejected.

This array was designed in violation of the 300 setback that is afforded adjacent agricultural operations in an R.C.7 zone. It is undisputed that this solar facility cannot be built as designed, as the proposed array encroaches well into the 300 foot setback area. The Petitioners made no attempt to redesign their array after the 300 foot setback issue was raised, and their Petition should be denied.

Impervious Surface Coverage in an R.C.7 Zone

Another regulation limiting development of an R.C.7 property is contained in Section 1A08.6(6) of the Baltimore County Zoning Regulations:

"6. Impervious surface coverage – nonresidential development. Except for residential lots which are subject to a building envelope restriction, no more than 10% of any lot may be covered by impervious surfaces such as structures or pavement."

Baltimore County has afforded extra protection to properties in an R.C.7 Zone. These properties have something special; cultural, historic, recreational, or environmental resources that need to be protected. One way to do that is to be especially restrictive on nonresidential development in an R.C.7 Zone. If there is to be nonresidential development, it has to be minimal, with no more than 10% of the site covered with impervious surfaces. On cross-examination, Bruce Doak admitted that the solar panels are impervious surfaces. He admitted that 9 acres of solar panels on a 30.7 acre lot equates to more than 10% impervious surface coverage. Neither he, nor any of Petitioners' other witnesses, provided any explanation, argument, or rationale for why this project should be allowed, in light of this 10% limitation on impervious surface

coverage.

It appears, quite simply, that Brian Quinlan was not familiar with this regulation when he chose this site, nor was he alerted by any of his experts that he may have a problem. In any event, a nonresidential project that would cover almost a third of sensitive R.C.7 land is in obvious violation of the above statute, and cannot be approved.

Runoff

We heard nothing from the Petitioners to explain how runoff from over 6,000 solar panels would be controlled. To the Petitioners, that is one of the environmental issues that can wait. If these panels are installed, hard rains will hit 6,840 glass panels, each six feet long. The rainwater will stream off each panel's lower edge, and onto the ground below. What does not absorb into the ground will run off. It will run into streams, wetlands, and the Gunpowder Falls, less than half a mile away. It will run into a "Sensitive Species Project Review Area - Group 3", identified by wetlands expert John Roemer, and shown on his map. (Protestants' Exhibit 28). The Group 3 Area contains "species or natural communities of concern to DNR, but with no official status". What species live in that area? What is the concern? How much runoff will reach there? What will be the effect? We have no answers.

On the last day of the case, Brian Quinlan offered into evidence a telling e-mail that he received from Mark Staley at the Maryland Department of Natural Resources. Mr. Staley began by confirming that there was an un-named tributary to the Gunpowder Falls that flows through the Gerner property. He said that there are wild trout in tributaries around this site, and Quinlan should "proceed as if trout occur on your property." Staley noted that the Gunpowder Falls, "downstream of your project" is an area where the State stocks 5,000 adult trout each spring, and is a "very popular and heavily used recreational fishery". Mr. Staley concluded by advising that

"Any measures you can take to reduce or eliminate warm water discharges or heating to the tributary will benefit trout. Controlling sediment inputs is equally important."

The Petitioners provided no information in their case on either warm water discharges or sediment control. We do not know their position on either issue. We do not know if they are aware of either issue. We do not know the quantity of runoff from their panels, the temperature of the water running off, or its effect on stream temperature. We do not know how trout would handle a temperature change. Similarly, we have no information on the quantity of sediment that will be washed into the streams, or what effect the sediment will have on the trout.

This site contains significant slopes. John Altmeyer testified that he computed slope percentages of 13.38%, 15.83%, 16.54%, and 7.6%, at four different locations where the solar array would be installed. He then explained the Stormwater Design Guidance that the Maryland Department of the Environment has provided for solar panel installations. Those guidelines describe what is needed to control stormwater runoff. For sites between 0 and 5% slopes, all that is needed is to keep a "disconnection flow path" between rows of panels, at least equal to the width of the panels. If the panels are 8 feet wide, for example, by leaving the proper vegetation in an area 8 feet wide between the rows of panels, "the runoff from 1.0 inch of rainfall is treated." (Left unsaid is whether such a method would handle the rains that we have had recently.)

For slopes between 5% and 10%, the guidelines suggest that more may be needed, such as level spreaders, terraces, or berms. Mr. Altmeyer explained that level spreaders are gravel-filled trenches or containers situated at the drip edge of each row of panels. They are designed to slow down and catch runoff from the panels. He said that berms and terraces can also be used, by grading the area, also to slow down and redirect the runoff.

Finally, the guidelines mandate a formal stormwater management plan for slopes greater than 10%. "However, installations on slopes greater than10% will require an engineered plan that ensures adequate treatment and safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice." Although Mr. Altmeyer found slopes well over 10%, the Petitioners have provided no such engineered plan.

The Petitioners produced no stormwater management plan. Without such a Plan, this Board cannot reasonably conclude that runoff from a sloping, nine acre field, with over 6,000 solar panels, will be properly handled and contained, and will not damage the environment, or downstream property owners.

Prime and Productive Soils

The County Council Planning Board took another look at Bill 37-17 last summer, and recommended that solar facilities not be permitted on prime and productive soils. Not all of northern Baltimore County contains such soils. The Gerner property is a good example. As shown on Protestants' Exhibit 14, almost all of the Gerner field closest to York Road is Manor channery loan (15-25% slopes), which is listed as "Not prime farmland." Unfortunately, the other Gerner field, away from York Road, is the proposed solar site. Around 90% of the soils in that field, over which the solar panels would be installed, are either Glenelg loam, Glenville silt loam, or Manor loam (8-15% slopes). All of those categories are described in Protestants' Exhibit 14 as Prime Farmland, or Farmland of Statewide Importance.

It is clear that if the law is changed, a solar facility will not be allowed on this site. Section 2 of Bill 37-17 required the Planning Board, in consultation with other county agencies, the Sierra Club, and the Valleys Planning Council, to "study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these regulations, and by July 1,

2018, submit recommendations to the County Council and the County Executive regarding potential changes to the current law." The Planning Council conducted such a study and concluded that solar facilities should not be allowed on prime and productive soils. Implicit in that recommendation is their belief that the impact is unacceptable at sites with good soil, and that prime farmland should be reserved for agricultural use. This Board should carefully consider the Planning Board's recommendation to prohibit solar arrays on prime and productive soil, whether or not it is implemented by the County Council.

Incompatibility with Zoning Classification

The solar panels would be placed on property zoned R.C.7. While there are 139,053 acres zoned R.C.2 in Baltimore County, there are only 36,290 acres of R.C.7. (People's Counsel Exhibit 12). Only around 9% of Baltimore County is zoned R.C.7. Protestants are not aware of any other solar array that is being proposed on R.C.7 land. As described earlier, R.C.7 is the Resource Preservation Zone, land where something special has been identified that needs to be protected. The Legislative goals to be achieved in the R.C.7 Zone are listed in Section 1A08.1(B) of the Baltimore County Zoning Regulations. The goals include the following:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;
2. To protect forests, streams, wetlands, and floodplains;
3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;
6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone; and
7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

Allowing solar panels on the Gerner property would be inconsistent with all of these goals. Runoff from over 6,000 solar panels covering nine acres will not preserve and protect streams, wetlands, or ecosystems. It will not protect water quality. It will not protect prime and

productive soils; it will take them out of production. And one would be hard-pressed to find a use less in keeping with the "unique character of this rural area", than large, black panels, row after industrial row, covering this beautiful area of northern Baltimore County.

The Stream-Crossing

Brian Quinlan chose a field to erect 6,840 solar panels which can only be accessed through an 80 feet wide pinch-point in the Gerner property. A stream runs through the length of the pinch-point. There is no bridge over the stream, or underground pipe to carry the stream. There is, according to Bill Mayo, a pile of rocks dumped into the stream, long ago, to create a crossing used for farm machinery. The consensus from all seemed to be that an improved crossing would have to be built for this project to go forward. There were no plans presented by the Petitioners for such a crossing, nor any assurance that such an improvement can legally be built.

Article 33, Title 3 of the Baltimore County Code is entitled "Protection of Water Quality, Streams, Wetlands, and Floodplains." The legislative intent in adopting the regulations is set forth in Section 33-3-103 of the County Code:

(a) In general. The purpose of the County Council in adopting this title is to:

(1) Protect the county's streams, wetlands, and riverine floodplains;

(2) Protect the water quality of the county's watercourses, reservoirs, lakes, and the Chesapeake Bay;

(3) Protect the county's riparian and aquatic ecosystems; and

(4) Provide environmentally sound use of the county's land resources.

(b) Forest buffers.

(1) Multiple environmental protection and resource management values are provided by forest buffers.

(2) Forest buffers enhance and protect the natural ecology of stream systems; water quality; wildlife habitat; the aesthetic and scenic qualities of natural features; environmentally sensitive areas, such as aquifer recharge areas; and flora and fauna preservation sites.

(3) Forest buffers adjacent to stream systems:

(i) Restore and maintain the chemical, physical, and biological integrity of the water resources;

(ii) Filter nutrients and toxins;

(iii) Reduce erosion and control sedimentation;

(iv) Stabilize stream banks;

(v) Provide infiltration of stormwater runoff;

(vi) Maintain base flow of streams;

(vii) Provide the organic matter that is the source of food and energy for the aquatic ecosystem;

(viii) Provide tree canopy to shade streams and encourage trout and other desirable aquatic species;

(ix) Provide riparian wildlife habitat;

(x) Provide scenic value and recreational opportunity; and

(xi) Minimize public investment in waterway restoration, stormwater management, and other water resource expenditures.

John Roemer testified on behalf of the Protestants, and was accepted as an expert in the field of wetlands delineation. He investigated the forest buffer that would be required at the pinch-point. Citing to Section 33-3-111(4) in the County Code, he said that a 100 foot buffer is required because the stream is a Class III-P trout stream.

While Section 33-3-112(b)(iii) of the County Code permits agricultural operations in a forest buffer area, other activities are prohibited, as provided in Section 33-3-112(b)(2):

(i) The following practices and activities are restricted within the forest buffer.

(ii) Except as provided in subsection (c) of this section, the existing vegetation within the forest buffer may not be disturbed, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying, and grazing.

(iii) Soil disturbance may not take place within the forest buffer by grading, stripping of topsoil, plowing, cultivating, or other practices.

(iv) Filling or dumping may not occur within the forest buffer.

(v) Except as authorized by the Department, the forest buffer may not be drained by ditching, underdrains, or other drainage systems.

(vi) Pesticides may not be stored, used, or applied within the forest buffer, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service.

(vii) Animals may not be housed, grazed, or otherwise maintained within the forest buffer.

(viii) Motorized vehicles may not be stored or operated within the forest buffer, except for maintenance and emergency use approved by the Department.

(ix) Materials may not be stored within the forest buffer.

The structures, practices and activities allowed in a forest buffer are set forth in Section 33-3-112(c):

(1) The following structures, practices, and activities are permitted in the forest buffer.

(2) (i) Roads, bridges, trails, storm drainage, stormwater management devices and practices, and utilities approved by the Department are authorized within the forest buffer provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place.

(ii) The alternatives analysis shall be submitted to the Department in accordance with § 33-3-106 of this title.

(iii) These structures shall be located, designed, constructed, and maintained to:

1. Provide maximum erosion protection;

2. Have the least adverse effects on wildlife, aquatic life, and their habitats; and

3. Maintain hydrologic processes and water quality.

(iv) Following any disturbance, the impacted area shall be restored.

(3) Stream restoration projects, facilities, and activities approved by the Department are authorized within the forest buffer.

(4) Scientific studies approved by the Department, including water quality monitoring and stream gauging, are authorized within the forest buffer.

(5) Horticulture practices may be used to maintain the health of individual trees in the forest buffer.

(6) Individual trees in the forest buffer that are in danger of falling, causing damage to dwellings or other structures, or causing the blockage of streams may be removed.

(7) Other timber cutting techniques approved by the Department may be undertaken within the forest buffer under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.

As demonstrated above, Baltimore County is extremely protective of buffers around trout streams. While agricultural operations may continue, improving the stream crossing at the pinch-point, for an industrial use, is another matter. The above statutes provide that existing vegetation may not be disturbed at the stream crossing, soil cannot be graded, the 100 foot buffer area cannot be drained, and no filling or dumping is permitted. While a bridge or culvert might be allowed, an alternatives analysis must "clearly demonstrate" that 1). no other feasible alternative exists and, 2). minimal disturbance will take place.

Wetlands

The Petitioners showed no wetlands on their Site Plan. John Roemer identified two areas of wetlands, both on the Rude property. He said that wetlands are important and must be protected because so many "creatures" either live in wetlands, or need to be in wetlands for some part of their life. Mr. Roemer found one wetlands area that covers approximately ½ acre, and the other, near the pinch-point, covers 1/10 of an acre. He has been delineating wetlands for thirty years, and said there was no question that these are in fact wetlands. Like trout streams, wetlands are natural assets afforded significant protection in Baltimore County. Section 32-4-414 of the County Code is entitled "Floodplain and Wetland Protection". Section 32-4-414 (e) reads as follows:

(e). Wetlands.

1) The county may not permit dredging, filling or construction in any nontidal wetland or tidal wetland.

2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

Under 33-3-111(c) of the County Code, a complicated formula is used to determine the size of the forest buffer around wetlands. The steepness of the slopes at the site, the soil erodibility, and the vegetative cover are examined, to come up with a score, which determines how wide the buffer must be around the wetlands. The buffer could range from 25 feet to over 300 feet. John Roemer believed that the buffer around the ½ acre wetland was wide enough to encroach into the roadway planned around the solar array, and perhaps some of the panels. Given the steepness of the slopes at this site, the wetlands buffer might well cut even further into the proposed panels.

The buffer around the smaller wetland, which is right at the pinch-point, will serve to restrict any disturbance by the Petitioners at the stream crossing. As with the forest buffer, the wetlands buffer will prevent construction of a bridge or culvert at the stream crossing, unless there is no feasible alternative, and disturbance will be minimal during construction.

Viability of Petitioners

Baltimore County's law directs that "all parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility." 4F-106(A). Expected maintenance includes "painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, integrity of security measures", and access roads. Under 4F-107, the owner or operator are also responsible for removing the solar facility at the end of its useful life, or when it has been abandoned.

Brian Quinlan testified that there is a 20 year lease between ESA Sparks Glenco LLC and Robert Gerner for this project. There is a renewal option, but he did not disclose the length of the option period. There is a written lease, but he did not have a copy. The lessee, ESA Sparks Glenco LLC, is a shell company. It was formed in Maryland in November 2016. It has no

assets, no bank account, and no employees. Brian Quinlan admitted that he created this separate entity just for this project. He further admitted that he did this for "financing and *legal* reasons." In other words, he wants only his shell company to be legally liable if there is a problem.

When asked on cross-examination who would maintain the site, he said that ESA Sparks Glenco LLC would be responsible. He was quick to point out that it, and not Calvert Energy, is the Applicant in this case. When asked how ESA Sparks Glenco LLC would maintain the site with no employees, he said he was discussing "outsource monitoring" with several companies. Some companies were in Maryland, some were not. He had no further information on who would maintain the site, or how it would be done.

The financial status and reliability of the property owner, Robert Gerner, is completely unknown. He is the other party responsible for maintaining and then tearing down the site. We did not hear from him. He did not tell us his plan for maintaining the site, taking down the panels 20 or more years from now, and then restoring his property to agricultural use. We heard nothing about his financial ability to take care of the site, as required of an owner under Bill 37-17. We don't know if he is even aware of his maintenance and tear-down responsibilities under the solar law. We don't know how the lease addresses such responsibilities.

The Petitioners did not deem it necessary for the Board, or the community, to hear how they intend to maintain the site, handle any problems that arise, and then tear it down when the lease has ended. The temptation for ESA Sparks Glenco LLC to simply walk away, if a problem arises, or if the project is not profitable, will be great. Having been created for "legal reasons", it will have no assets, and nothing to lose if it doesn't fulfill its obligations under the lease or the solar law. If this venture loses money, and the solar array is abandoned, does anyone believe that ESA Sparks Glenco LLC will follow through and tear down the array? Or will the panels be left

there to rust? What if the solar array sustains damage, and stops working. Will ESA Sparks Glenco LLC make the necessary repairs? Being formed for legal reasons, and having no assets, it will likely walk away.

As part of their burden of production, the Petitioners should be required to explain their plan to maintain, monitor, and tear down the site. This is a long-term project in which the owner and lessee must be financially able to fulfill their obligations. We have no evidence to suggest that they will be up to the task.

Scenic Route

York Road is designated as a Baltimore County scenic route. It is the main north-south thoroughfare in northern Baltimore County. According to the Master Plan, "The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents." Master Plan 2020, p. 99. It is the policy of Baltimore County to "preserve scenic corridors and views through proper zoning and coordination with federal and state governments." Master Plan 2020, p.99. "For properties along scenic routes or with scenic view sheds, variances, amendments and special exceptions should be granted sparingly." Master Plan 2020, p. 101.

Conclusion

Brian Quinlan chose a bad site to erect solar panels. He would not be facing $350,000 in environmental studies had he chosen a flat field, with poor soil, no trout streams, no wetlands, and away from the Gunpowder Falls. There are many sites in northern Baltimore County fitting that description. Mr. Quinlan should have abandoned this project, certainly after seeing the proposal from KCI Technologies. He has, instead, moved forward, having chosen to deal with the myriad of environmental issues at his site by simply ignoring them for as long as possible.

His expert, Bruce Doak, ignored those issues as well. He provided little of the information required by Section 33-3-108, and the solar law, on his site plan. He made two visits to the site. This was his first solar project. He either missed, or chose to ignore, the mandate in 4F-104(9) that "A Petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code."

Mitchell Kellman, the Petitioners' other expert, did little more than stop by the site. He didn't even walk down to the pinch-point. He has testified in hundreds of zoning cases, almost always for the party seeking permission for a project. In every one of those cases, his opinion has been that the project should be permitted. To no one's surprise, his opinion in this case was that this project should be permitted. He offered nothing to shed light on any of the environmental issues.

In conclusion, the Protestants believe that the decision by this Board should be guided by the stated purpose of the Solar Bill:

"The purpose and intent of this Article is to permit solar facilities in parts of the rural and commercial areas of the County by Special Exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources." (4F 101.1)

The Petitioners can point to no safeguards that they will put in place to protect the County's natural resources. They have not shown that the benefits of solar energy production, at this unique location in Baltimore County, outweigh its potential impact on that area. For that reason, and for all of the reasons cited above, their Petition for a Special Exception should be denied.

H. Barnes Mowell, P.A.
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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 8th day of January 2019 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and to Peter Zimmerman, Esquire, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.

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H. Barnes Mowell

RE:	PETITION FOR SPECIAL EXCEPTION 15637 York Road; E/S York Road, 250' N of c/line of Elizabeth Court 8th Election & 3rd Councilmanic Districts Legal Owner(s): Robert K. Gerner Contract Purchaser(s): ESA Sparks Glenco, LLC by Brian Quinlan Petitioner(s)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY 2018-047-X

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PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S POST HEARING MEMORANDUM

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S POST HEARING MEMORANDUM

People's Counsel for Baltimore County submits this post hearing memorandum:

1. Introduction

This solar facility special exception case involves 15637 York Road in rural northern Sparks-Glencoe. Petitioners Robert Gerner, property owner, and ESA Sparks Glenco, LLC filed a petition on August 10, 2017. This *de novo* appeal follows Administrative Law Judge (ALJ) John Beverungen's December 21, 2017 conditional approval.

The County Council enacted Bill 37-17 to govern land use of community solar facilities, limited to 2 megawatts of electricity. P.C. Exh.1. The law is now codified in Baltimore County Zoning Regulation (BCZR). Article 4F. App. 9.The Bill permits solar facilities by special exception in the R.C. 2 through R.C. 8 Zones and Business and Manufacturing Zones. BCZR Sec. 4F-102.A.1. This brings into play special exception standards delineated in BCZR Sec. 502.1. App. 14. The solar facility law adds area and other standards. BCZR Secs. 4F-102.B, 4F-104.

This is the second track in the north county "magical mystery tour" ripe for decision at the County Board of Appeals (CBA). It follows the Matthews case at 20450 Middletown Road, Freeland, which awaits public deliberation.

The Sparks-Glencoe neighborhood here has its own character. The zone is the R.C. 7 Resource Preservation Zone. The York Road site occupies 30 acres in a bowtie shape. A stream system traverses the junction. The Gunpowder Falls flows nearby to the east. The 9-acre solar facility area is set away from the road but again with prime soils and at a prominent height. We address these and many other particulars as we do the analysis.

The environmental issues are especially acute here. These include impact problems at the "bowtie" junction and setback variance concerns; stormwater runoff impacts to the stream there, which traverses and flows below the site; and runoff impacts to the Gunpowder Falls. The requisite scope and timing of environmental review has emerged as a critical zoning issue. There also arise again concerns about the impact on prime and productive soils, and the visual impact on the scenic road and on residents. Petitioners do get credit for fitting within the moderate size necessary for the maximum 2 megawatts.

Despite differences, the R.C. Zone solar facility special exception cases walk a familiar path. Petitioners hire consultants who work on land use projects for developers. They are labeled as experts on all zoning issues, including legal, regardless of realistic limitations. They tell us unhesitatingly that prime and productive soils are irrelevant; environmental issues will be taken care of later; visual impacts are par for the course; and everything is copasetic. Petitioners then try to carry the so-called "presumption" in favor of special exceptions to the finish line without really proving anything. They downplay area citizens as know-nothing NIMBYs who can't match the so-called experts. We disagree that this is a winning formula. It is flawed from start to finish.

2. The Parties: Petitioners and Protestant/Appellants

Petitioner Robert Gerner did not testify. ESA Glenco is a Maryland corporation with an office listed in Potomac, Maryland. Prot. Exh. 1. Yet the petition lists a Sanford, Florida address. Brian Quinlan of Annapolis testified as owner and manager. Also, Mr. Quinlan's Calvert Energy, Inc. of Gaithersburg, Maryland dealt with KCI Technologies. Pet. Exh. 27.

Gerner and ESA Glenco did not show any lease or other contract. This all paints a blurred picture of management and responsibility for operation and compliance. This gives no confidence in the project's proper implementation even were it otherwise acceptable.

Appellant William Mayo appeared as a nearby resident and for Appellant Gorsuch Retirement, Inc., a family corporation whose ancestry has had the large adjacent farm property for centuries. Adjacent property owner Edward Maczek appeared and testified.

Appellant Sparks-Glencoe Community Planning Council (SGCPC) appeared. Lynne Jones testified as President. CBA Rule 8. Prot. Exh. 5, and individually. The property is within their area. Their concerns extend to proliferation across the north county.

Petitioners showed that Lynne Jones lives in Parkton, miles away from 15637 York Road. Pet. Exh. 19. We must restate there are "... liberal standards under Maryland law for party status at an administrative hearing." Dorsey v. Bethel A.M.E. Church 375 Md. 59, 72 (2003). Anyone expressing an interest may properly be a party, absent a specific rule to the contrary. The GIS Map shows the R.C. 7 Zone occupies 36,290 acres, along with 139,053 acres for the R.C. 2 Zone. P.C. Exh. 12. As we shall see, the two zones are complementary. Moreover, Pattey v. Board of County Comm'rs 271 Md. 352, 363 (1974), stated,

> "... the "concept of a 'neighborhood' is a flexible one and will vary according to the geographical location involved, it being axiomatic that in rural or semi-rural areas, ... the 'neighborhood' will be larger and more fluid than in a city or suburban area."

3. People's Counsel's Role

People's Counsel for Baltimore County appears in zoning cases to defend the comprehensive zoning maps and master plan in the public interest. Baltimore County Charter Sec. 524.1. App. 1. The office's function extends broadly to zoning and related cases, including special hearings and development cases with zoning issues.

In 1974, Baltimore County citizens approved the charter office to defend the comprehensive zoning maps. Bill 61-74, 11/5/74. A 1978 charter amendment added defense of the master plan. Bill 90-78, 11/7/78. Section 524.1(a)(3)A now states in pertinent part,

> **"*Powers and duties*. The People's Counsel shall have the following powers and duties:**
>
> **He shall appear as a party before the zoning commissioner of Baltimore County**, his deputy, the county board of appeals, the planning board, and the courts **on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and** in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations **as now or hereafter in force or effect, in which he may deem the public interest to be involved.**" (Emphasis supplied).

The office participates regularly in special exception cases. This includes recognition in reported opinions. See, People's Counsel v. Webster 65 Md. App. 694 (1986); People's

Counsel v. Mangione 85 Md. App. 738 (1991); Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996); Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001); People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002); Lucas v. People's Counsel 147 Md. App. 209 (2002), People's Counsel v. Loyola College 406 Md. 54 (2008); Attar v. DMS Tollgate 451 Md. 272 (2017). Other cases concluded without judicial review. The appellate courts also recognize People's Counsel's authority to appear in special hearings. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989). Later cases include Marzullo v. Kahl 366 Md. 158 (2001); Antwerpen v. Baltimore County 163 Md. App. 194 (2005) and People's Counsel v. Surina 400 Md. 662 (2007).

The Court of Appeals articulated the office's "broad charge to protect the public interest in zoning and related matters" in People's Counsel v. Crown Development Corp. 328 Md. 303 (1992). The case arose dealt with residential development involving a contested zoning issue on transfer of density. Judge McAuliffe wrote, 328 Md. at 317,

> "People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. V. MNCP & P Com'n 309 Md. 183 (1987). Although participation in the development process may often be outside the intended ambit of People's Counsel's authority, where protection against a violation of a density regulation is involved, People's Counsel has a legitimate interest."

Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996) was a landmark development case on zoning estoppel. The current leading development case involving master plan defense is HNS Development v. People's Counsel 425 Md. 436 (2012).

4. The Primary Function of the Local Zoning Process for Land Use Review of Solar Facilities in the Community Solar Pilot Program: the Only Public Hearing

"Like all detectives, must consider every possibility." Charlie Chan in Paris (1935)

Maryland has set up a Community Solar Pilot Program for facilities producing up to 2 megawatts. The county solar facility law provides land use review for such facilities.

Maryland Public Utilities law governs the application process for generating stations. As explained in Board of County Commissioners v. Perennial Solar ___ Md. App. ___, 2018 WL 59983599 (2018), the large powerful solar generating stations and transmission

lines are subject exclusively to Public Service Commission land use review for Certificates of Convenience and Necessity. But the law exempts from such PSC review certain facilities, including those which produce less than 70 megawatts and serve the local utility. Md. Code Public Utilities Article Secs. 7-207, 7-208. This explains how our local zoning process functions in the legislative scheme and BGE local program. This means the special exception process here provides the only public hearing for land use review.

At the other end of the spectrum is Baltimore County's development process. Mr. Quinlan suggested there would be further hearings, based on the scope of work outlined by James Derieu of KCI Technologies. Pet. Exh. 27. But Mr. Quinlan could provide no legal basis for this suggestion, and neither did Mr. Deriu.

The County has customarily exempted commercial facilities from development hearings, as in Matthews. County Code Sec. 32-4-106(b). These usually come about with a Development Review Committee (DRC) application. The bilateral DRC process involves only internet notice and a relatively informal meeting, no hearing, no citizen participatory rights, no explanation, and no public notice of the decision. It is a shadow process.

The present special exception process is thus the one and only time for an opportunity for a public hearing where citizens to have an opportunity to be heard. In any event, the special exception issues involve different and more in-depth standards than the relatively more perfunctory and less transparent development process. As we shall argue below, the special exception standards require a reasonable level of environmental analysis, albeit not necessarily the full development process.

5. Setting the Scene

A. The Site, the Immediate Neighborhood, and Area of Interest

The geographic facts are not genuinely in dispute. The key questions comprise application and interpretation of special exception standards and the solar facility law.

Petitioners' site plan shows the bowtie or butterfly property shape. Pet. Exh. 1, 1a. They produced aerial and site photos of the site and vicinity. Pet. Exh. 3-7. Their My Neighborhood Zoning Map shows the solar facility location and outlines an area east of York Road, with the west boundary on York Road and east boundary on Upper and Lower

Glencoe Roads. Pet. Exh. 9. They added a My Neighborhood map showing the the northerly adjacent Rude property residential subdivision lots. Pet. Exh. 20.

Protestant Lynne Jones submitted the SGCPC Rule 8 materials and then testified, with supporting Protestants' Exhibits: a prime farmlands and an aerial soils map of the property, Exh. 13-14; Class III trout stream map, Exh. 15; aerial topography maps, showing solar facility at highest point, Exh. 16, 22; site photos, Exh. 17a-D; map east .45 miles to Upper Glencoe Road and Gunpowder Falls, with photos of area flooding, Exh. 18; an aerial map of this Gunpowder Subshed and Loch Raven Watershed, more photos focusing on the environment and visibility: Exh. 19A-G, topography east to Gunpowder Falls, with the area trout stream, Exh. 19C; photos focusing on access, spring, stream/crossing, unstable soils. Exh. 20A-I; a graphic of the stream and runoff direction at the bowtie crossing, Exh. 21; photos of the stream area at or near the bowtie junction, Exh. 22Aa-g; and a scenic/historic view map, Exh. 23. These reflected a much larger area of concern than the relatively small area outlined by Petitioners.

We submitted a GIS aerial photo and ADC Street Atlas map, P.C. Exh. 1-3; a My Neighborhood soils map of the property, with the USDA web soil survey descriptions, P.C. Exh. 5; an Urban-Rural Demarcation Line (URDL), P.C. Exh. 9; the countywide R.C. 2/R.C. 7 Zone map, P.C. Exh. 12; and ADC Street Atlas excerpts, P.C. Exh. 13a, b;

John Altmeyer, retired county supervisor of building inspection, added maps and topography calculations, showing significant slopes downhill to the south/southwest to the stream running south from the property. Prot. Exh. 4. John C. Roemer IV, ecological consultant, included with his testimony a map of the streams, wetlands, and watercourses in the area, focusing on the property's "butterfly" wing junction stream system. Prot. Exh. 28.

Based on the wealth of geographic information, exhibits and other undisputed material facts, this is how we set the scene. Sparks-Glencoe is an attractive rural area north of Cockeysville and the URDL. York Road is the major north-south road, parallel to Interstate-83. The immediate neighborhood here is entirely zoned for Resource Conservation. This includes an R.C. 7 Zone area along the east side of York Road to the north and south of this property, including apparently part of the Rude property residential

subdivision to the north and the forested Reverend William Borders and Bajackson properties to the south. Across York Road, the zone is R.C. 2, but with established residential subdivisions accessed from Elizabeth Court and Williams Court. There is also R.C. 2 zoning to the northeast and east. Most prominent is the venerable remaining 167-acre Gorsuch Retirement farmland. There are also several residences in this area, featuring Protestants William Mayo and Edward Maczek.

The 30-acre R.C. 7 Zone butterfly-shaped (sideways hourglass) Gerner property extends about 1050 feet along the east side of York Road, a designated scenic road. The property extends eastward to a depth of about 2250 feet. Metaphorically, the two side-by-side butterfly wings are about equal in area, narrowing down to a junction or bottleneck about halfway in. The west wing is broader in area but with less depth than the east wing.

There is a residential use in the west wing. The east wing has been farmed. A significant feature is the stream which runs north-south through the bottleneck through a culvert and presents soil stability and access issues to the east wing. As a result, the tenant farmers of the east wing have gained access from Upper Glencoe Road to the east, with the permission of the Mayo family, instead of through the west wing and bottleneck.

This brings up the topography. The west wing slopes east mostly downward from York Road east to the spring which runs through the center of the property. The east wing rises then rises to a relatively flat area, with a high elevation about 420 feet above sea level. Prot. Exh. 4. However, as Altmeyer's topography shows, the land slopes downward off the property to the south/southwest to the stream at about 340-350'. His calculations show significant high slopes within this area, including 13% to 17%, respectively, in some areas.

A major regional stream is the Gunpowder Falls, running along Upper Glencoe Road .45 miles to the east. The land slopes down east from the butterfly east wing to the Falls. Prot. Exh. 17-19, with illustrative photos of stormwater and flooding.

Based on the USDA soil survey information, P.C. Exh. 5, Prot. Exh. 13-14, most of the west wing is not prime farmland. This includes the predominant middle area is MbD soil, Manor channery loam, 15 to 25% slopes, and the MdE area, Manor brinklow complex, 25 to 45% slopes, nearer to the stream. There is prime MaB, Manor loam, 3 to 8% slopes, in

a smaller area along York Road, with the residence, and prime GhC, Glenville silt loam, 8 to 15% slopes, in a narrow strip of toward the bottleneck.

The east wing is a different story. It is dominated by prime and productive soils and soils of statewide importance. The most prevalent soil is GdB, Glenville loam, 3 to 8% slopes, prime farmland, with the second most being MaC, Manor loam, 8 to 15% slopes, farmland of statewide importance. There is also a stretch of the GhC near the bottleneck, again prime farmland. These are open cropland areas. The remaining areas are GhB, Glenville silt loam, 3 to 8%, prime farmland, and MaD, Manor loam, 15 to 25% slopes, not prime farmland. The area which runs along the southern border is forested and is part of a large forested area to the south and east.

B. Location of the Proposed Solar Facility

The proposed solar facility would occupy 9 open areas of prime farmland and farmland of statewide importance. The site plan "Typical Array" drawing shows a height of about 20 feet, albeit suggested in testimony as maybe less. Pet. Exh. 1.

If we zoom in on the east wing, the soil survey map and chart in Protestants' Exhibit 14 show an area of 16.4 acres, a little more than half the entire property. The prime farmland --- GdB, GhB, and GhC --- comprise 9.9 acres. The farmland of statewide importance --- MaC --- occupies 4.2 acres. Together, the 14.1 acres of prime farmland and farmland of statewide importance translate as 86.4% of the 16.4 acres. Petitioners have thus chosen to place their facility on the best farmland on this property.

The facility's location also disrupts the scenic character of the road. While Petitioners say this is mitigated by the facility's location away from the road, it still will be on the highest part of the property. There also will be infrastructure, including a line of poles to the BGE connection on York Road. Moreover, by placing the facility on the east wing, the visibility issue is aggravated for the residents who live to the east of the site.

Environmentally, as noted, the east wing presents issues of stormwater runoff immediately to the south/southeast stream system. There is also the concern about runoff to Upper Glencoe Road and the Gunpowder Falls, .45 miles to the east.

6. The Structure of Zoning Law

Baltimore County tracks the traditional structure of comprehensive zoning with use, height, and area regulations. Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 380 (1926). This is known as Euclidean Zoning. Loyola College 406 Md. at 70. There are in each zone an enumerated list of uses permitted by right and by special exception. Unless a use is affirmatively listed, it is prohibited. BCZR Sec. 102.1; Kowalski v. Lamar 25 Md. App. 493, 496-99 (1975); People's Counsel v. Surina 400 Md. 662, 688 (2007).

As we shall explain, there are major differences between uses by right and special exception. A use permitted by right is permitted in the zone even if there are potential adverse impacts particular to the location, and there is disharmony or incompatibility with the area's comprehensive zoning plan. But a special exception use must go to hearing and satisfy that there are no adverse impacts or disharmony particular to the location in the zone.

Many locations may be appropriate, but others inappropriate. The task is to differentiate the appropriate and inappropriate, concordant and discordant. This involves integral evaluation of the zone, use, site, location, neighborhood, impacts. To be disapproved, it is not required that the evidence show the location be the worst in the zone, just that the impacts relate particularly to the location and not "inherent" throughout the zone, and/or that there is disharmony with the comprehensive zone. A classic "inherent" impact, i.e., not particular, would be the arguable depressing effect of a funeral home, which would occur similarly anywhere in the zone.

Bill 37-17 designates solar facilities as special exception uses rather than uses permitted by right. This means some locations are inappropriate. Otherwise, the Council would have made them by right. The Bill's legislative findings, discussed below, confirm this distinction, highlighting the necessity to safeguard the County's agricultural land.

7. Prologue to Interpretation Maryland Special Exception Law

"Sometimes, in an acute situation, such as this, often what is right can take on multiple interpretations." Jared Cohen in the film Margin Call (2011)

Maryland special exception law has evolved for 65 years. Yet the standards remain complex and polychromatic, susceptible to different points of view. Interested parties tend

to take the view which most favors the result they seek. It is our office's goal and responsibility to try to navigate the path of the law with accuracy and objectivity.

A. Linguistic Navigation: A Sunswept Zoning Odyssey: Guide for the Perplexed

""The Master replied, 'What is necessary is to rectify names ... If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success." Confucius, Analects, Book XIII Chapter 3

If we posit, as seems axiomatic, that the special exception is properly named, along with its judicially engrafted elements, let us chart a course to linguistic truth as best we can. Let us examine the core language used in Montgomery County v. Merlands 202 Md. 279, 290 (1953) and adopted in later cases, using Webster's Third New International Dictionary:

> **special: 1:** distinguished by some unusual quality: UNCOMMON, NOTEWORTHY, EXTRAORDINARY ....
>
> **exception: 1:** the act of excepting or excluding : exclusion or restriction ...by taking something out that would otherwise be included ....
>
> **limited: 1 a :** confined within limits : restricted in extent, number, or duration ... **2:** characterized by enforceable limitations prescribed ... upon the scope or exercise of powers
>
> **harmony : 3 :** combination into a consistent whole : INTEGRATION
>
> **burden:** *n* **1 a:** something that is carried : LOAD ... **c** something that is borne as a duty, obligation, or responsibility ...**3** something that oppresses, weighs down, or causes worry
>
> **burden of proof :** the duty of proving a disputed presumption, assertion, or charge .... *specif.* the duty of proving a particular position under penalty against the party upon whom the duty is imposed in a court of law
>
> **prima facie:** *adj* **1:** based on immediate impression : APPARENT **2** generally applicable but admitting of suspension in a given case ...
>
> **prima facie evidence :** evidence sufficient in law to raise a presumption of fact ...
>
> **presume: 1** to take upon oneself without leave, authority, or warrant: undertake rashly: DARE ... **2** to look confidently forward to : ANTICIPATE, EXPECT ... **3** to accept as true or credible without proof or before inquiry : ASSUME, INFER, SUPPOSE ... **4** : to raise a presumption of or that : take for granted: IMPLY
>
> **presumption ... 3** *law* **:** an inference as to the existence of the fact not certainly known from the known or proved existence of some other fact, sometimes operating as evidence, sometimes as a rule of procedure as to who must proceed with evidence on the main issue,

or as to who has the burden of proof and sometimes having no effect as evidence, once the evidence on the issue is in --- distinguished from *fiction*

presumptive : 1 a giving grounds for reasonable opinion or belief ... **b** based on probability or presumption ... **2** *archaic* presumptuous ... **3** : based on inference : APPARENT, PRESUMED ...

presume [Latin, www.archives.nd.edu] praesumo –sumere -=sumpsi –sumptum [to take beforehand; to anticipate; to take for granted]. Hence partic. preaesumptus –a –um, [taken for granted, **presume**d].

We draw two main lessons from this definitional matrix.

The first is the conflict, tension, and confusion between "special, exception, limited, burden of proof, and harmony," and "prima facie, presume, presumption, and presumptive." To meet a burden is to climb a hill, by preponderance of evidence or greater. But the "presumption" potentially sweeps the terrain into a downhill slope. Secondly, "presume," "presumption," and "presumptive" are themselves tied up in knots. The meanings range from unauthorized assumption to grounds for reasonable belief. Even in the "*law*" definition of "presumption," there is uncertainty about the nature of the inference.

Judge Charles Moylan introduced and spotlighted this perplexing subject-matter in Cooper v. Singleton 217 Md. App. 626, 627-28 (2014), footnotes omitted,

> "Harvard Law School Professor Edmund M. Morgan, one of the legendary titans of the law of presumptions, said of the subject as early as 1937:
>
> > Every writer of sufficient intelligence to appreciate the difficulties of the subject-matter has approached the topic of presumptions with a sense of hopelessness and has left it with a feeling of despair.[1]
>
> The first of the early titans was James Bradley Thayer who, even before the turn of the 20th Century, had observed:
>
> > [T]he numberless propositions figuring in our cases under the name of presumptions, are quite too heterogeneous and noncomparable in kind, and quite too loosely conceived of and expressed, to be used or reasoned about without much circumspection.[2]
>
> Dean Charles McCormick, another of the early Olympians, added to the diagnosis:
>
> > One ventures the assertion that "presumption" is the slipperiest member of the family of legal terms, except its first cousin, "burden of proof[3]"

Judge Moylan reviewed the Maryland Rule 5-301 evidentiary presumption, its history, and several approaches, including the "Thayer-Wigmore bursting bubble," "Morgan-Type" presumption, and the works of Alan Hornstein, Joseph F. Murphy, and Lynn McClain. 217 Md. App. at 646-50. In contrast, the special exception "presumption" is not and has never been an evidentiary presumption. It does not fit into any of the above categories. There has never been any shift of the burdens of production and persuasion. An applicant cannot properly just show up --- produce zero, conclusory, or propagandistic evidence --- and be entitled to approval. Judge Murphy effectively recognized this in his Loyola College rules of engagement, discussed below.

As we navigate the history and case law, we must guard against the danger that the presumption can cause unintended decision-making consequences. As in Homer's Odyssey, it may become like Circe, a seductress that bewitches serious legal analysis of the facts and special exception criteria. Like Odysseus, we must get past her charms to our own Ithaca.

"Words are for getting meaning; after one gets the meaning, one forgets the words. Where can I find people who have forgotten words, and have a word with them? Zhuangzi, Ch. 26.

B. Genesis

"You may ask yourself, Well ... how did I get here? Talking Heads, Once in a Lifetime (1980)

Montgomery County v. Merlands 202 Md. 279, 290 (1953) begins this tale. The zoning board had treated the private club special exception like a variance, requiring proof of "urgent necessity." Judge Hall Hammond explained (pages 287-88) the different legislative intent for the special exception to,

> "... delegate to the Zoning Board a ***limited authority*** to permit enumerated uses which legislative body finds in effect ***prima facie*** properly residential, absent any fact or circumstance in a particular case which changes this ***presumptive finding***. The duties given the Board are to ***judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.*** " Emphasis supplied.

Judge Hammond went on to delineate the applicant's burden of proof,

> "The applicant for such a use need not show either practical difficulty, unnecessary hardship or great urgency, but only that the project is a private club and that it would be in general harmony with the zoning plan and would not adversely affect the neighboring properties and the general neighborhood." 202 Md. at 290.

Merlands did these notable things: 1) recognize the special exception; 2) articulate the adverse effect/zoning plan disharmony standards; 3) affirm applicant's burden of proof; and 4) differentiate the variance's more onerous standards.

Merlands' allusions to *"prima facie"* and "presumptive finding" thus functioned to distinguish special exceptions from variances. They did not relieve an applicant from the burden of proof. They did not signal a *carte blanche,* green light, or perfunctory review.

C. Baltimore County Implementation; Merlands in Context and Subsequent Cases

"These shall not be forgotten years ... We will remember." Midnight Oil, Forgotten Years (1990)

In its 1955 comprehensive revision of the zoning regulations, the then Baltimore County Commissioners included BCZR Sec. 502, including Sec. 502.1. App. 12. This law survives today, supplemented by specific environmental standards, discussed below. In the ensuing decades there were a plethora of special exception opinions from Baltimore County. These illustrated the application of the adverse impact/zoning disharmony standards and showed that special exceptions are not routine, perfunctory, or semi=automatic.

Oursler v. Board of Zoning Appeals 204 Md. 397 (1954) came next, affirming restaurant grant, with conditions. The Court cited Merlands for the applicant's burden, called the use *prima facie* permitted, and sustained the conditional finding of no adverse effects. Erdman v. Board of Zoning Appeals 212 Md. 288 (1957) echoed this in affirming a gas station approval. But Dorsey Enterprises v. Shpak 219 Md. 16 (1959), affirmed denial of a junkyard – unsightliness, depreciation of property values ---, focusing on particular facts and the burden of proof. Likewise, Crowther v. Johnson 225 Md. 378 (1961) affirmed a trailer park denial, reviewing adverse impacts and the area, finding sufficient facts to support denial – departure from zoning plan, depreciation of property values.

In the 1960s, the Court continued to scrutinize adverse impacts based on the property and neighborhood geography: Montgomery County v. Mossburg 228 Md. 555 (1962), affirms restaurant grant with conditions; Bonhage v. Cruse 233 Md. 10 (1963), reverses convalescent home grant, inadequate access; Deen v. BGE 240 Md. 377 (1965), affirms transmission line grant; Bd. of Co. Comm'rs v. Luria 249 Md. 1 (1968), affirms gas station denial, failure to prove harmony with zoning plan; Brouillett v. Eudowood Shopping Plaza 249 Md. 606 (1968), affirms self-service carwash denial, failure to prove conformity with

zoning plan, absence of adverse impacts; Neumann v. Mayor & City Council 251 Md. 92 (1968), affirms grant of apartment building medical office; Eger v. Stone 253 Md. 533 (1969), affirms offstreet parking denial, traffic congestion; Tauber v. County Bd. of Appeals 257 Md. 202 (1970), affirms offstreet parking denial, traffic access; City of Takoma Park v. County Board of Appeals 259 Md. 619 (1970), affirms home occupation (slipcovers, reupholstering furniture); Gerachis v. Montgomery Co. Board of Appeals 261 Md. 153 (1971), affirms medical clinic addition denial, traffic congestion, property values, incompatibility; Cason v. Bd. Of Co. Comm'rs 261 Md. 699 (1971), affirms conditions for sand and gravel pit approval; Prince George's County v. Meininger 264 Md. 148 (1972), affirms gas station denial, traffic, lack of need; Skipjack Cove Marina v. Bd. Of Co. Comm'rs 264 Md. 381 (1972), affirms conditions for marina/motel approval; Sembly v. County Bd. Of Appeals 269 Md. 177 (1973), affirms community building grant.

These cases show 5 approvals, 4 approvals with conditions (two over applicant's objection), and 9 denials. The Court treated special exceptions as involving applicant's fair and normal burden of proof with careful, detailed scrutiny. It's not as if Petitioners come in like Novak Djokovic playing against a qualifier ranked 200 in the world.

D. The Path to Schultz v. Pritts (1981)

The Court of Appeals decisions came less frequently with the advent of the Court of Special Appeals (CSA) and certiorari jurisdiction. Such cases as Rockville Fuel & Feed Co. v. Gaithersburg 257 Md. 183 (1970) and Turner v. Hammond 270 Md. 41 (1973) restated and applied the Merlands presumption and the applicant's affirmative burden of proof.

In 1974, Judge Rita Davidson authored for the CSA Anderson v. Sawyer 23 Md. App. 612. This foreshadowed her landmark opinion in Schultz v. Pritts 291 Md. 1 (1981). Both involved funeral homes in residential areas. Anderson dissected opposition testimony as not probative of adverse traffic and other impacts. Judge Davidson explained detail that an "inherent" adverse impact, regardless of location, could not justify denial, i.e. the "depressing" effect of a funeral home. Rather, the "particular" adverse effects must be above and beyond those likely to occur generally in the zone.

In Schultz, Judge Davidson explained that by designating a use permitted by right, the legislature is deemed to understand that there would be particular adverse impacts. But such impacts would not be acceptable for a special exception, which is a conditional use.

The Court reviewed and overruled Gowl v. Atlantic Richfield 27 Md. App. 410, 417-18 (1975). The CSA had held that if an applicant could show the special exception adverse impacts to be no worse than some use permitted by right, then it would be entitled to approval. Judge Davidson rejected this purported equivalency and brought the focus back to a proper analysis of adverse impacts and zoning disharmony. This included her frequently quoted interpretation of special exception criteria, 291 Md. at 11,

> "This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.
>
> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."

The "presumption" is thus not a free pass. Judge Davidson described the zoning board's "limited authority," its duty to judge adverse impact and harmony with the comprehensive zoning plan. She reminded that the burden of proof is on the applicant to satisfy the prescribed standards relating to detriment to the neighborhood and, significantly, the public interest. She proceeded to discuss various scenarios.

Because the CSA had applied an incorrect standard, the Court vacated its decision and remanded for further consideration, especially as to the disputed traffic access issue.

Then came Board of Co. Comm'rs v. Holbrook 314 Md. 210 (1988). The Court sustained denial of a special exception for a mobile home based on the particular adverse visual impact and depreciation of value of a single-family detached dwelling. Judge Cole wrote, "The Schultz test accords with the general standard for judicial review of the ruling of an administrative agency." 314 Md. at 218. The Court reviewed the facts and deferred to the zoning board's finding of particular adverse impacts. The Court described "countless locations in the zone" where there would be no such adverse impact.

E. Court of Special Appeals Cases: Mangione, Country Ridge, Lucas

We illustrate the application of Schultz criteria in three important Baltimore County cases where the CSA sustained this CBA's denials: People's Counsel v. Mangione 85 Md. App. 738 (1991), People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002) and Lucas v. People's Counsel 147 Md. App. 209 (2002). These special exceptions involved, respectively, a convalescent home in a Lutherville residential zone; a pawnshop in an Essex business zone; and a helicopter landing area in a Greenspring Valley R.C. 2 agricultural zone. To make a long story short, this CBA focused on evidence of adverse impacts particular to the property and neighborhood. Such adverse effects were found, explicitly or by inference, above and beyond those likely to occur generally in the zone.

F. People's Counsel v. Loyola College: The Harry Potter Series "Sorting Hat" and Judge Joseph Murphy's Rules of Engagement

This brings us to People's Counsel v. Loyola College 406 Md. 54 (2008). Judge Glenn Harrell provided an encyclopedic 38-page discussion. 406 Md. at 70-107. This CBA had approved a special exception for a retreat center in the R.C. 2 Zone. We argued the CBA had failed expressly to review the evidence relative to other sites we viewed as less problematic. The Court decided that such review is not necessarily required where the evidence indicates an absence of particular adverse effects or incompatibility with the area. He also observed that a zoning board could find particular adverse effects inferentially without doing a comparative analysis based on an individualized review of the evidence.

Otherwise stated, Judge Harrell did not say a comparative analysis is irrelevant or impermissible, just that it is not required under some circumstances. Remarkably, he compared special exception analysis to a Harry Potter "Sorting Hat," 406 Md. at 106,

> "In that sense, the legislature puts on its 'Sorting Hat,' and separates permitted uses, special exceptions and all other uses."

He added footnote 33,

> "In the Harry Potter series of books, the 'Sorting Hat' is a magical artifact that is used to determine which house [names omitted] first-year students at Hogwarts School of Wizardry and Witchcraft are to be assigned.'"

Judge Joseph Murphy concurred, with these rules of engagement, 406 Md. at 109-10,

> "It may be helpful to restate the rules of engagement in special exception litigation, and review how those rules were applied in the case at bar. Although it is of no real consequence whether we say that an applicant "is entitled to a special exception, *provided that,*" or that an applicant "is *not* entitled to a special exception, *unless,*" the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. If the zoning authority is presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate the applicable legislation and/or the requirements of *Schultz,* the applicant must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.
>
> In the case at bar, the petitioners presented evidence that generated a genuine question of fact as to whether (1) an adverse "thermal" impact would result from stormwater ponds draining into a trout stream near the property, and (2) there would be an adverse "traffic impact" on the main public road used by persons traveling to and from the proposed Retreat Center. Respondent was not entitled to a special exception unless it persuaded the Board of Appeals that neither of those adverse impacts would result if the special exception was granted. The Board, applying the correct burden of persuasion, found in favor of respondent on both of these issues. Under the applicable standard of review, this Court must affirm the Board's decision."

All the parties provided substantive evidence about traffic and environmental impacts. These were not deferred to the development process. While the CBA has a degree of discretion on debatable issues, there is law to apply to the particular facts in each case.

More recently, Attar v. DMS Tollgate 451 Md. 272 (2017) affirmed, as fairly debatable, this CBA's evidentiary finding and legal conclusion that the Owings Mills fuel service station/convenience store site did not pose sufficiently adverse traffic and stormwater management impacts to warrant denial.

G. Current Baltimore County Special Exception Law

To facilitate review, we quote BCZR Sec. 502.1 and the prefatory Note, App. 14.

"NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

§ 502.1. - Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones."

The BCZR Sec. 502.1.A "health, safety, or general welfare" clause translates to the state and local police power. This is an essential function of government and is construed broadly, as confirmed in the landmark Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926). The Court of Appeals recognizes the police power extends to natural resources and

the environment. Potomac Sand and Gravel Co. v. Governor 266 Md. 358, 370-75 (1972); Mayor and City Council of Annapolis v. Annapolis Waterfront Co. 284 Md. 383 (1979).

While the locality in special exception cases ordinarily tends to focus on the surrounding area, the locality here contextually encompasses the site as well. Ruark v. Engineers Union 157 Md. 576, (1929) interpreted "locality" as follows:

> "While "locality" is a word of relative meaning, its context commonly determines its meaning . . . .
>
> * * *
>
> Thus it appears that the word "locality" has a place in important and enforced legislation; and, whatever may be the scope of its varying significance, its meaning in a particular statute is susceptible of being determined from the context, since the words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature had in view. Endlich on the Interpretation of Statutes, § 73. When so read, it is quite evident that, in the statute before the court, "locality" imports the area which embraces, not only the actual site where the public work is to be performed, but also such adjoining territory within which there then prevails a current rate of daily wages for the particular work to be done. In other words, "locality" defines a region, with the public undertaking as an axis or focal point, throughout which region the daily wage of the particular class to which the worker belongs is uniform."

The Council added BCZR Secs. 502.1.G and H in 1982. Subsection G focuses on the legislative intent of the zone. We discuss the R.C. 7 Zone legislative intent below. The scope is broad, including the panoply of water resources as well as agricultural lands and resources. Subsection H's complementary focus embraces stormwater management.

Serendipitously, the Council added Sec. 502.1.I in 2000 with Bill 74-2000. This Bill also created the R.C. 8 Zone, concurrent with the Bill 73-2000 enactment of the R.C. 7 Zone. The focus here is again broad, involving detriment to natural resources in R.C. Zones. This refers to forests and water resources, but spans all environmental and natural resources.

It is elementary linguistically that prime and productive soils are natural resources. To illustrate, the United Nations Food and Agriculture Organization recognizes it as a finite non-renewable resource. www.fao.org App. 30.

> "It is therefore a highly valuable natural resource, yet it is often overlooked. The natural area of productive soils is limited – it is under increasing pressure of intensification …."

As stated at soil-net.com, "Soil is one of the world's most important natural resources." App. 32. A Google search for soil as a natural resource reveals multiple worldwide links. App. 33. We add a global article, "Soil – A Precious Natural Resource." App. 38.

Furthermore, placement of the word "including" prior to "forests, streams, wetland, aquifers and floodplains" does not express or imply the exclusivity of these listed resources. To confirm and verify this point, Judge Alan Wilner wrote in Housing Authority v. Bennett 359 Md. 356, 371 (2000):

> "Although this Court has stated that "'[o]rdinarily, the word "including" means comprising by illustration and not by way of limitation,' " *State v. Wiegmann,* 350 Md. 585, 593, 714 A.2d 841, 845 (1998), quoting *Group Health Ass'n v. Blumenthal,* 295 Md. 104, 111, 453 A.2d 1198, 1203 (1983), we have also recognized that, "[w]hile 'include' or 'including' may introduce illustrations of a general term, the words also may signal an expansion in meaning of previous language." *Pacific Indem. v. Interstate Fire & Cas.,* 302 Md. 383, 396, 488 A.2d 486, 492 (1985).

In Wiegmann, Judge Dale Cathell had prefaced the above quote, 350 Md. at 593,

> "In construing the rule here, we are mindful of the principle that the expression of one thing is generally the exclusion of another. *Long,* 343 Md. at 666, 684 A.2d 445; *Leppo,* 330 Md. at 423, 624 A.2d 539. On the other hand, the use of the word "including" suggests that the seven enumerated powers are not exclusive."

H. R.C. 7 Zone Legislative Goals and Purposes

There is no dispute that the R.C. 7 Zone focuses on the impact to forests and water resources. There should also be no doubt that the legislative purpose extends to protection of agricultural lands, with understandable emphasis on prime and productive soils.

This includes the legislative intent of the Resource Conservation Zones generally and the R.C. 7 Zone specifically. The County Council established the initial Resource Conservation Zones in 1975: R.C. 2, R.C. 3, R.C. 4, and R.C. 5, Bill 98-75. BCZR Sec. 1A00 provides "General Provisions for All R.C. Classifications." BCZR Sec. 1A00.1 sets forth the Findings. Among other things, BCZR Sec. 1A00.1.F refers to the cost of development which involves "the consumption and use of prime agricultural land, critical watershed areas, ... and other important natural resources." Sec. 1A00.2 sets forth the Purposes. This includes BCZR Sec. 1A00.2.C:

> "C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development"

The County Council added the R.C. 7 Zone in 2000. Bill 73-2000. The legislative goals confirm the primary legislative intent to preserve resources. BCZR Sec. 1A08.1. B. App. 3. There are stated expressly the goals: "To "preserve and protect ecosystem function, including riparian and aquatic ecosystems," Sec. 1A01.B.1, and "To protect forests, streams, wetlands, and floodplains." Sec. 1A01.B.2.

At the same time, the legislative findings include, BCZR Sec. 1A08.1.A.3,

> "An R.C. 7 Zone would allow limited development, compatible with the rural community and at the same time protect rural resources."

In turn, the legislative goals highlight, BCZR Sec. 1A08.1.B.6,

> "To protect remaining prime and productive soils in areas not currently protected by the R.C. 2 Zone."

One of the goals of the R.C. 7 Zone was thus to complement the R.C. 2 Zone and give added protection to prime and productive soils. To implement this goal, the County Council included a provision which prohibits application of the R.C. 7 Zone to lands currently zoned R.C. 2. BCZR Sec. 1A03.D. The R.C. 7 Zone also has complementary strong residential density restrictions, with "a maximum density of 0.04 lot per acre of gross tract area (an average of one lot per 25 acres) …." BCZR Sec. 1A08.6.B.1.

The Citizen Guide cited by Petitioners' consultant Mitchell Kellman lists shorthand information, but does not accurately track the legislative findings and goals. There is no mention of the complementarity with the R.C. 2 Zone. Petitioners try to decontextualize and promote diversionary dead-end tracks. This does not get them anywhere.

Moreover, Bill 37-17's statement of purpose explains, BCZR Sec. 4F-101,

> "The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways, and other natural resources. Emphasis supplied

This plainly covers not only water resources, but also agricultural land.

While Bill 37-17 does not in its body add any direct explicit references to soils, such are unnecessary because the Bill incorporates the special exception standards covering the police power and legislative intent of the zone. The bottom line is that the interrelated

provisions of the solar facility law, the special exception standards, the R.C. 7 Zone legislative intent, and the County Code environmental controls come together to cover all aspects of rural environmental, natural, and/or agricultural resources.

Statutory construction involves context. Kaczorowski v. Baltimore, 309 Md. 505, 513 (1987) stated that legislation "... usually has some objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end." The Court wrote:

> "Moreover, despite Kaczorowski's pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The 'meaning of the plainest language' is controlled by the context in which it appears." 309 Md., at 514.

There was then cited Justice Holmes' concept that "the general purpose is a more important aid than any rule which grammar or formal logic may lay down." Ibid.

Board of Physicians v. Mullan 381 Md. 157, 168 (2004) reiterated,

> "...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."

Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990) also explained the importance of context,

> "Thus, we have said that a statute must be construed in context, because the meaning of the 'plainest language may be governed by the context in which it appears.'... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent."

See, e.g. Lipitz v. Hurwitz 435 Md. 273, 281-91 (2013); Blue v. Prince George's County 434 Md. 681, 689 (2013); In re Adoption of Tracy K 434 Md. 198, 206-07 (2013); and Bourgeois v. Live Nation 430 Md. 14, 26-28 (2013). These cases reinforce the focus on context, such as structure, inter-related sections, parts, clauses, words, and history.

8. The Function of Area and Other Standards

In every zone, and for every "special regulation" use, there are area and/or other specific standards. These apply to uses permitted by right and by special exception, as reflected for many targeted uses: i.e. Farm and Agricultural Operations, BCZR Sec. 404; Fuel Service Stations, Sec. 405; Junkyards, Sec. 408; Offstreet Parking, Sec. 409; Trucking Facilities, Sec. 410; Sanitary Landfills, Sec. 412; Wireless Telecommunications Facilities, Sec. 426; and Pawnshops, BCZR Sec. 436. For special exceptions, even if the area and other details may be met, this does not displace or alleviate a petitioner's independent burden to satisfy the BCZR Sec. 502.1 special exception criteria and elements.

Following this pattern, Bill 37-17 adds height, area, and other standards. BCZR Sec. 4F-104. It just means no variances are necessary. This is illustrated by People's Counsel v. Webster 65 Md. App. 694 (1986); People's Counsel v. Mangione 85 Md. App. 738 (1991), convalescent home in residential zone; People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002), pawnshop in business zone; Lucas v. People's Counsel 147 Md. App. 209 (2002), helicopter landing area in agricultural zone, People's Counsel v. Loyola College 406 Md. 54 (2008), retreat center in agricultural zone.

But where petitioners propose to deviate from these standards, they must request both special exception and variance(s). Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996), trucking facility in M.L Zone; Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001), commercial recreation in M.L. Zone.

Otherwise stated, Petitioners here must satisfy each BCZR Sec. 502.1 special exception standard independent of whether or not they satisfy the height, area, and other standards. For example, as to scenic roads and viewsheds, Bill 37-17 requires screening in accordance with the Baltimore County Landscape Manual. BCZR 4F-104.A.6. This is a minimum standard. Even if the Manual is satisfied, there still must be satisfaction of the BCZR Sec. 502.1 criteria concerning visual impact. Depending on location and situation, the landscaping may not be sufficient to prevent particular adverse impacts.

9. Land Use Breadth and Context: Master Plan, Zoning, and Development Integral to the Special Exception

The master plan, zoning, and subdivision (development) regulations are three integral parts of adequate land planning. In Board of County Comm'rs v. Gaster 285 Md. 233, 246 (1979), Judge Marvin Smith instructed, 285 Md. at 249-50,

> "Subdivision regulations perhaps have a certain analogy to special exceptions to which the floating zone concept has been likened in this Court's discussion in such cases as Bigenho v. Montgomery County, 248 Md. 386, 391, 237 A.2d 53 (1968); Board v. Turf Valley, 247 Md. 556, 561-62, 233 A.2d 753 (1967); and Chatham Corp. v. Beltram, 243 Md. 138, 149-50, 220 A.2d 589 (1966). The county here has preordained by its subdivision regulations that one who seeks to cut up a larger tract by creating a subdivision must not disrupt the master plan and that the subdivision must be compatible with that master plan."

Similarly, a special exception must be in harmony with the comprehensive zoning plan. This blends and integrates the master plan, zoning, and development law.

People's Counsel v. Surina 400 Md. 662, 688-93 (2007) revisited the integral relationship of these land use elements. Thus, zoning and development controls are "intended to complement each other in terms of the safety, health, and general welfare of the community at large." They "... serve additional common [land use] objectives ..." 400 Md. at 689. The Court quoted Wesley Chapel Bluemount Ass'n v. Baltimore County 347 Md. 125, 129 (1997) to illustrate that these complementary land use controls "... to some extent, coalesce, in that they are all designed to assure that land development occurs in a manner that is consistent with overall legislative policy and community welfare." 400 Md. at 690.

Baltimore County Zoning Regulation 600 reinforces explicitly the logical point that all laws must be satisfied. The zoning regulations set minimum standards in relation to other relevant laws. App. 14. Correlatively, other laws, ordinances, or regulations which impose higher standards must also be satisfied as minimum standards. There are no loopholes.

Bill 37-17 links zoning to development law even more directly in BCZR Sec. 4F-104.A.9. This requires the applicant to comply with County Code Sec. 33-3-108, "Plan Information," under Article 33, Title 3, "Protection of Water Quality, Streams, Wetland, and Floodplains." P.C. Exh. 15, App. 15. This includes multiple enumerated environmental elements. Other requirements of Sec. 4F-104 blend zoning/development requirements, such as for easements, historic districts, conservancy areas, landscaping, and lighting.

Master Plan 2020 also plays a role. Baltimore County Charter Sec. 523 says, App. 1:

"Sec. 523. - The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act.

The Court of Appeals recognizes the master plan as at least an advisory guide in zoning cases. The master plan does become regulatory where there is a statutory mandate, as in our development cases. See Nottingham Village v. Baltimore County 266 Md. 339, 353-55 (1972). Mayor & City Council v. Rylyns Enterprises 372 Md. 514, 530 (2002); HNS Development v. People's Counsel 425 Md. 436, 457-58 (2012).

10. Expert and Lay Opinions

"If we choose, we can live in a world of comforting illusion." Noam Chomsky

The parties in these cases have different views as to the comparative functions and weight of expert and lay testimony in zoning cases. Petitioners typically to bring in consultants who work for developers, assist them to process plans, and then render favorable mixed factual/legal opinions as the occasions arise. Protestants more often produce lay witnesses and opinions. In this case, they also produced experts. Here is our take.

For every expert opinion, there must be a valid factual and legal basis. This is a frequent problem in zoning cases, where expert opinions tend to be highly subjective. In People's Counsel v. Beachwood 107 Md. App. 627, 649-50 (1995), cert. denied 342 Md. 472 (1996), the Court rejected a series of planning opinions, Judge Charles Moylan wrote,

"A part of that *Boyce v. Sembly* opinion, … not yet discussed in this opinion, and quoted with approval by the *Dorsey* opinion, observed,

The Court of Appeals and this Court have stated than an opinion, even that of an expert, is not evidence strong or substantial enough to show some error in the comprehensive rezoning unless the reasons given by the witness as the basis for his

opinion, or other supporting facts relied on by him, are themselves substantial and strong enough to do so. ..." Internal citations omitted.

Petitioners presented James Derieu, Mitchell Kellman, and Bruce Doak.

Derieu is an environmental consultant. Pet. Exh. 14. He is not an engineer or expert on bridges. He had visited the site on June 22 but was not yet hired. He confirmed the presence of the stream and culvert at the junction. He referred to potential future environmental work. After the timing issue became more acute, Quinlan produced in "rebuttal" a letter from Derieu with a scope of work and cost estimate for the full development process. The letter also suggested there would be further hearings, but with no legal basis. He never came back to testify to support his letter.

We shall discuss below the legal issue as to timing, scope, and burden of proof to address environmental impacts in the zoning process. Derieu's letter does not answer the legal question. As we explain below, it is at best a diversionary red herring for financial sympathy. It is not only irrelevant to the law, but also misses the point that we are asking for reasonable land use baseline of environmental evaluation, not the full development process.

Zoning consultant Mitchell Kellman had visited the site three weeks earlier for 30 minutes. He was not even aware the site was farmed and could not describe significant environmental features. His main point was to claim the R.C. 7 Zone has nothing to do with agriculture generally and prime and productive soils particularly. As noted, his reliance on the informal Citizens' Guide does not pass legal scrutiny. His testimony was otherwise superficial, reflecting his limited knowledge of the site and of agriculture.

Surveyor Bruce Doak had visited the site just twice. He acknowledged the rural area and R.C. Zones are extensive and the 39,000 acre R.C. 7 span. His role seemed to be to call the solar facility an "accessory use." This is irrelevant, twisted, and wrong. As a commercial special exception use, a 2-megawatt freestanding facility is conceptually a principal use. This is reinforced by the provision which excepts ground-mounted facilities accessory to principal residential or agricultural uses. BCZR Sec. 4F-103.A.

We cited the BCZR Sec. 101.1 definition of "ACCESSORY USE." The freestanding 9-acre solar facility does not meet the criteria. There is nothing about it "incidental," or "appertaining, subordinate, or casual" in size, character or purpose. Dampman v. City of

Baltimore 231 Md. 280, 286 (1963). The appellate courts have rejected similar accessory use claims. Kowalski v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975); Arundel Supply Corp. v. Cason, 265 Md. 371, 377-378, 289 A.2d 585 (1972). Nevertheless, Petitioners persist in advancing spurious "accessory use" claims. See Petition of James and Karole Riffin, Case No. 14-094-SPH (2014), affirmed Geddes v. People's Counsel 232 Md. App. 726, 2017 WL 1193781 (2017), cert. denied 455 Md. 443 (2017), 138 S.Ct 2683 (2018); Petition of Russ and Brenda Kahn, Case No. 2010-173-SPH, affirmed Kahn v. Baltimore County 216 Md. App. 748 (2014), CSA No 350, Sept Term 2015.

In contrast, Protestants' experts provided helpful testimony within their specific spheres of expertise. They were John Altmeyer and John C. Reamer IV.

Altmeyer had experience as a county building inspector for building, electric, and plumbing inspection. He evaluated topography and provided calculations of area slopes, including downhill toward the stream. The slopes are as steep as 16 to 17%. Roemer's work showed the importance and necessity of stormwater management. Prot. Exh. 4.

Petitioners tried to turn Altmeyer's testimony against Protestants. They got Altmeyer to say that such work may be done at the permit stage. Pet. Exh. 24, pages 37-44. To be sure, for many situations, where uses are allowed by right, the stormwater management work may be done at the development or permit stage. But Altmeyer did not present himself an expert on zoning, the special exception process, or the solar facility law. He could not and did not provide a legal analysis or interpretation of zoning law. His testimony tells us nothing about the requisite scope and timing of environmental review here.

Roemer is an environmental consultant with impressive education and experience Prot. Exh. 27. He focused on the butterfly junction. Based on his specialized review and site visit, he described the proximate stream system and wetlands. Prot. Exh. 28. Among other things, he observed that the proposed access road crossing right over the stream at this location presented the necessity for variances from the required environmental setbacks. We confirmed this opinion by reference to the setbacks enumerated in County Code Sec. 33-3-111(b)(4), P.C. Exh. 15 and the variance provision, Code Sec. 33-3-106, P.C. Exh. 16.

This brings us to the citizens. Area citizens often have knowledge and experience to enable them best to depict the neighborhood, its character, and likely adverse impacts. Inevitably, their observations mix or coalesce with opinions concerning the relevant adverse impacts and the function or intent of the zone in the locality.

To illustrate, Eger v. Stone 253 Md. 533, 540-43 (1969) held admissible the testimony of area resident Irma Raker. She did a traffic investigation, with a detailed list of accidents for the key intersection. The Court found her lay research and opinion legitimately contributed to the special exception denial. The Court reminded that hearsay evidence is admissible. Tauber v. County Board of Appeals 257 Md. 202, 213 (1970) followed,

> "The applicants also urge that some of the evidence produced by the protestants was 'hearsay' and not entitled to weight in overcoming the opinion and testimony of their traffic expert, but as we stated in Eger v. Stone, *supra,*
>
> > 'We have recently decided, however, that not only is hearsay evidence admissible in administrative proceedings in contested cases but that such evidence, if credible and of sufficient probative force, may indeed be the sole basis for the decision of the administrative body. ...."

Edward Maczek, a 35-year county expatriate, lives downhill to the northeast. P.C. Exh. 1. He provided graphic testimony about the streams and ponds on his property, and the persistent flooding and necessity to muck out the ponds. He also reflected that he would endure the visual impact of the higher altitude solar facility.

William Mayo, both as a resident and family representative for Gorsuch, narrated a colorful history of the area. He described the current farming operations, both on his family's 167-acre farm and on the Gerner property, to which his family provided free access from the rear because of the bowtie junction obstacle. He believes preservation of the remaining farmland in the area is an important consideration.

Argument

> *"Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto. The lines ascribed to Sir Thomas More by Robert Bolt are not without relevance here:*
>
> > *"The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal. . . . I'm not God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager. But in the thickets of the law, oh there I'm*

> *a forester. . . . What would you do? Cut a great road through the law to get after the Devil? . . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? . . . This country's planted thick with laws from coast to coast—Man's laws, not God's—and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? . . . Yes, I'd give the Devil benefit of law, for my own safety's sake." R. Bolt, A Man for All Seasons, Act I, p. 147 (Three Plays, Heinemann ed. 1967)."* Tennessee Valley Authority v. Hill 437 U.S. 153, 194-95 (1978).

Chief Justice Burger quoted these iconic words given to Thomas More in A Man for All Seasons. He thus concluded his TVA v. Hill opinion to enforce the Endangered Species Act to stop the progress of a major dam project pending further review. He knew that many would question the "rightness" and significant consequential expenses of interrupting the project for the sake of a small fish called the snail darter. But the law must prevail.

The present case is easier to decide. What's legal also happens to be what's right.

I. Petitioners Failed to Meet the Burden of Proof on Environmental Issues

A. Timing

"Truth like oil --- will in time rise to surface." Charlie Chan's Murder Cruise (1940)

Petitioners assert they have the right to defer environmental review until a future development process. We disagree. There is no legal, equitable, or other excuse to avoid and defer such environmental review, to conceal themselves from essential review.

We do not suggest the entire development process merge with the special exception process. We do not interrupt a massive ongoing project. Rather, we ask for enough proof, per Judge Murphy's Rules of Engagement, to satisfy the explicit and cumulative criteria.

We have highlighted the Bill 37-17 statement of purpose and its balanced protection of forests, waterways, and other natural resources in the balance. BCZR Sec. 4F-101. There are then added the serial environmental plan elements listed in County Code Sec. 33-3-108.

The legislative judgment to classify solar facilities as special exception uses is itself enough to bring into play the BCZR Sec. 502.1 criteria. This begins with the Sec. 502.1.A police power standard long held to cover the environment. Potomac Sand and Gravel, *supra.* The CSA revisited its very broad general scope to protect public health, safety, and welfare in Baddock v. Baltimore County ___ Md. App. ____, 2018 WL 6187574 (2018).

More specifically, BCZR Sec. 502.1.G incorporates the Bill 37-17 environmental purposes. Sec. 502.1.H adds the explicit stormwater management criterion, and Sec. 502.1.I targets environmental and natural resources in the R.C. 7 and other R.C. Zones. These fit with Master Plan 2020, which has an extensive section devoted to protection of the water resources and stormwater management. Pages 145-58. App. 23-29.

The plain language of the aforesaid solar facility law, special exception criteria, and master plan thus compel at least a preliminary reasonable level of environmental proof to address environmental issues. It should be kept in mind, as explained in Gaster and Surina, that the zoning process generally, and special exception process specifically, inevitably involve and overlap with development aspects. They are not on different planets.

Otherwise stated, the existence of a development process does not substitute for a reasonable level of assessment and information for special exception review. As a practical matter, it should be kept in mind that parties on all sides in special exception and other zoning cases often present expert witnesses on environmental issues. The Loyola College and Surina cases are prime examples, but there are many more.

TVA v. Hill is not an anomaly. For example, in Citizens to Preserve Overton Park v. Volpe 401 U.S. 402 (1971), the Supreme Court applied the Department of Transportation Act's "feasible and prudent alternative" standard to require the Secretary to consider potentially feasibly engineered alternative highway project routes regardless of cost.

The timing issue resonates in all the special exception cases. We believe Petitioners' effort to sidestep this requirement is unacceptable. They have failed to satisfy their burden of proof under Judge Murphy's Rules of Engagement. To suggest that environmental review should be excused from the special exception process and deferred to the more closeted development process managed by the developer and bureaucracy is nonsensical and wrong.

B. Substantive Environmental Issues and the Setback Variance Problem

"To conceal oneself from law is like trying to hide in birdcage."
Charlie Chan's Greatest Case (1933)

The environmental concerns here go beyond Petitioners' effort to escape scrutiny in this process. The Protestants identified many impacts to the watershed. Petitioners paid no attention to these issues in their site selection process or proof.

The several streams present watershed protection and runoff issues. John Roemer mapped the stream system flowing through the bowtie junction. He identified the need for severe setback variances. These are subject to strict County Code Sec. 33-3-106 "practical difficulty or unreasonable hardship" standards. There are also is road stability issues, reflected by the current consensual rear access to the farm via the Gorsuch property, rather than directly from York Road. Lynne Jones and Edward Maczek brought up the stormwater and flooding issues to the east, including the Gunpowder Falls, running along Upper Glencoe Road. Ironically, Derieu effectively admitted the scale of the environmental issues in his proposed scope of work. This also itemized the need for variances.

As explained in Schultz, special exceptions are conditional uses. Where special exceptions involve variances, the "presumption" which factors favorably for special exceptions may well fall by the wayside. Board of Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 336 (1995); Umerley v. People's Counsel 108 Md. App. 497, 510-11, cert. denied 342 Md. 584 (1996).

To sum up, there is required a reasonable level of proof to show the location is particularly appropriate and not problematic. Whether called preliminary, conceptual, or formative, the special exception criteria demand a fair amount of environmental evidence.

II. Petitioners Failed to Meet their Burden Relating to Agricultural Land and Prime and Productive Soils Issues

"And therefore never send to know for whom the bell tolls; "It tolls for thee."
John Donne, No Man Is an Island (1624)

John Donne's poem conveys our connectedness in the world. It is a metaphor for tipping points. This resonates in our analysis here of the impacts on agricultural lands.

Petitioners assert that the impact on agricultural land is irrelevant in the R.C. 7 Zone. They presented no proof on the issue. We showed the solar facility law and special exception criteria embrace this issue. It follows that Petitioners again have failed to satisfy their burden of proof under Judge Murphy's Rule of Engagement.

Furthermore, the evidence shows that the impact on agricultural land is serious. The prime farmland occupies 9 acres, a much smaller area than in other cases, but still farmed and with 86.4% soils which are prime or of statewide importance. We have described the

mixed use setting, with this property bordering residential subdivisions in place across York Road and to the north, forested residential and church-owned properties to the south, and the Gorsuch farm area to the north/northeast.

Perhaps reminiscent of the Arnold Schwarzenegger movie of the same name, we asked Mr. Mayo whether this could be described as The Last Stand, given that his family's farm appears to be the only other farm area left with crops. To be sure, the forested areas to the south could also be cultivated. Mr. Mayo's response, in essence, was that it is still worthwhile to protect the remaining farmland in cultivation.

We provided the GIS map which shows over 36,200 acres in the R.C. 7 Zone, along with 139,033 acres in the R.C. 2 Zone, not to mention the other R.C. Zones. In this geographic context, there is much to be said for the proposition that solar facility operators should make an effort to find sites which do not have such prime soils. There is not the slightest evidence that Petitioners here made any effort at all. Given the totality of circumstances, even if it the burden of proof fell on Protestants, there is good reason to conclude that this is a particularly inappropriate site selection.

III. Piercing the Veil: The "Can't Be Forced to Farm" Charade

"Pretense unredacted"

Petitioners sometimes assert that no one can be forced to farm their property. This is another red herring. It does not tell us anything about the proposed use, its location, the particular impacts, and harmony with the comprehensive zone plan. A petitioner for any special exception could assert they will do nothing with their property if they don't get their special exception. This sort of charade is irrelevant and offensive legally and factually.

Furthermore, this prime farm property has been cultivated for many years. If this special exception is rejected, it would be irrational, counterproductive, and self-destructive economically for a property owner to forego income from continuing to lease the property.

IV. The Proposed Solar Facility Produces Particular Adverse Visual Impact

"All those [ugly solar facilities], where do they all come from? All those [ugly solar facilities], where do they all belong?" Inspired by The Beatles, Eleanor Rigby

Solar facilities are ugly. There is no getting around it. This facility will stand out because of its altitude. It may be up to 20 feet in height, regardless of the disclaimers. The topographic contours show it at the high point for this proximity.

The visual impact on neighboring properties is a relevant consideration. Board of County Comm'rs v. Holbrook 314 Md. 210 (1986), mobile home impact on single-family detached dwelling; People's Counsel v. Mangione 85 Md. App. 738 (1991), convalescent home impact on Lutherville single-family home neighborhood.. Here, we have the additional impact on the designated scenic road. This presents police power and natural resources conflicts under BCZR Secs. 502.1.A and I.

York Road is a scenic road. To contextualize, our office surveyed the ADC Street Atlas for the north county, including maps 13-16, 18-21, and 23-26, east-west from Harford to Carroll County lines, north-south from the Pennsylvania line to Sparks. P.C. Exh. 13a. We calculated 82% of the roads --- 59 of 73 --- are not designated as scenic roads. Moreover, a scan of the maps shows that many of these roads are significant and well-known roads in the north county. For the present case, we added ADC map excerpts 30-33, including 15637 York Road, map 32, and areas to the east and west. Our survey here showed 56% --- 19 of 34 --- are not designated as scenic.

County Council Bill 121-01 has provided a broad definition for "*Scenic viewshed.*" It is codified in Code Sec. 32-4-101(uu):

> "*Scenic viewshed.*" 'Scenic viewshed' means a scenic route or scenic view as designated in the mas0ter plan."

There follows a definition of "Scenic viewshed elements," which refers to visual elements of such quality, character, and nature for the Planning Board to designated viewsheds (scenic routes or views) in the master plan. Code Sec. 32-4-101(vv).

Master Plan 2020 again comes into play. Pages 97-102. App. 19-22. For Scenic Corridors and Views, there is provided Policy Action (9),

"(9) For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly."

Petitioners posit that the facility's placement away from York Road mitigates the visual impact. However, the east wing occupies the high elevation in the area and so will still likely be visible in all directions. There will also be the poles necessary to carry energy to the BGE infrastructure on York Road. Ironically, the east wing location magnifies the visual impact to the northeast, toward the downhill Gorsuch and Maczek properties.

To be sure, Bill 37-17 requires landscaping based on the Landscape Manual. But this is not conclusive as to the special exception criteria. Depending on the scenic character of the location, the landscaping may not be sufficient or may actually obstruct the scenic view.

V. Depth Perspective: What's It All About?

Conclusion

"Story are now completely extracted like aching tooth."
Earl Derr Biggers, House Without A Key 274 (1925)

We are trained to compartmentalize legal issues. But they can also be viewed together integrally and cumulatively. Metaphorically, it is as if we are in an art museum, such as the Tate on the banks of the Thames, viewing a J.M.W. Turner or a Monet painting. As we step away, we see more in depth and yet get closer to the heart of the matter.

In the special exception context, this translates to the often neglected but nevertheless essential requisite that the use harmonize with the comprehensive zone. So we take a balanced, collective, contextual look at the issues. Petitioners' site selection is based narrowly on economic and technological advantage, without attention to the environment, prime and productive soils, or scenic roads. They place business interests first, and then try to fit the law in as an afterthought. When contested, they claim these issues are irrelevant or should be deferred. They retain professionals to say whatever they can to get a result.

The present case involves a smaller site and special exception area than other cases. Yet it presents the most immediate and intense water resources issues, with the stream, culvert, and asset problems at the bowtie junction, and the Gunpowder Falls to the east.

The displaced farmland is not as extensive as in other cases. The area mixes residential subdivisions with and farm and forest areas. Yet there are still reasonable

concerns about every loss of prime and productive soils, as the bell tolls. The same be said of the visual impact. The facility fits into the rear, away from the scenic road. Yet there are still concerns about the elevated topography and the impact in all directions.

When we look at the issues either separately, collectively, or cumulatively, we are obligated to conclude that the particular adverse impacts and disharmony with the comprehensive zone are such as to warrant denial of the petition.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
The Jefferson Building, Suite 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January 2019, a copy of the foregoing People's Counsel for Baltimore County's Post-Hearing Memorandum was mailed by first class mail to R. Barnes Mowell, Esquire, 16925 York Road, Monkton, Maryland 21111 and Timothy Kotroco, Esquire, 305 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Board of Appeals

Case No: 18-047 X Case Name: Robert Gerner

Exhibit List

Party: [redacted] Petitioner Date: 8/21/18

Exhibit No:	Description:
✓ 1.	Site Plan without Marking
✓ 1.a	Site Plan with Marker of "Boundaries"
✓ 2a-e	Photos of the Site / from Google Earth
✓ 3.	Large Photo - My Neighborhood
✓ 3a-d	Photos of Road + House on Property
✓ 4	Large Photo / - My Neighborhood / Aerial of Property
✓ 4a-b	Photos of Trees from the Property
✓ 5	Site Photos - 12/12/17 with Key
✓ 5a-e	Photos of Surrounding Properties from Site
✓ 6	Aerial Photo showing Zoning Designation / Tree Line
✓ 7	U.S Fish + Wildlife Service
✓ 7a	"
✓ 8	Maryland Dept. of Environment / Solar Panel Installation
✓ 9.	My Neighborhood / Zoning Delineations
	VERIFIED BY KC DATE: 8/21/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: Petitioner Date: 8/21/18

Exhibit No:	Description:
✓10	2.A.C. Comments 9/20/2017
✓ 11	Comment of State Highway 9/14/17
✓ 12	Dept. 9/1/17 - Letter on 2.A.C Comment
✓ 13	8/23/7 - Letter - 2nd Comment of Bur. of Dev. Plans Review
KC 8/21/18 ✓ 14	Deris CV
KC 8/23/18 ✓ 15	CV - M. Heidi Kellner
✓ 16	Citizen Guide / Rural Zones
✓ 17	Solar Facility Decommissioning + Security Agreement
10/24 ✓ 18	SDAT of Town Property
✓ 19	Town home on My Neighborhood
✓ 20	My Neighborhood / Rudi Property
KC 10/25/18 ✓ 21	Kotroco 1/12/16 Letter + Request for Reconsideration
✓ 22	My Neighborhood / Gorsuch Retirement Home
✓ 23	Mr. Major's - Plans in relation to Solar Farm
	VERIFIED BY KC DATE: 12/10/18

Board of Appeals

Case No: 18-047X Case Name: Robert Gerner

Exhibit List

Party: Petitioner Date: 11/29/18

Exhibit No:	Description:
✓24	Transcription of John Altmyer
✓25	Master Plan 2020 / Scenic Gateway Area
✓26	E-mail / - From Mark Staley
✓27	KCI Estimate
	VERIFIED BY KC DATE: 12/10/18

Site photos 12-17-17

CALVERT ENERGY LLC

Petitioner S
CBA Exhibit 5

Case No. 18-047x - 8/21/18

Picture 1

CALVERT ENERGY LLC

5A

Picture 2

CALVERT ENERGY LLC

5B

Picture 3

CALVERT ENERGY LLC

5C

Picture 4

CALVERT ENERGY LLC

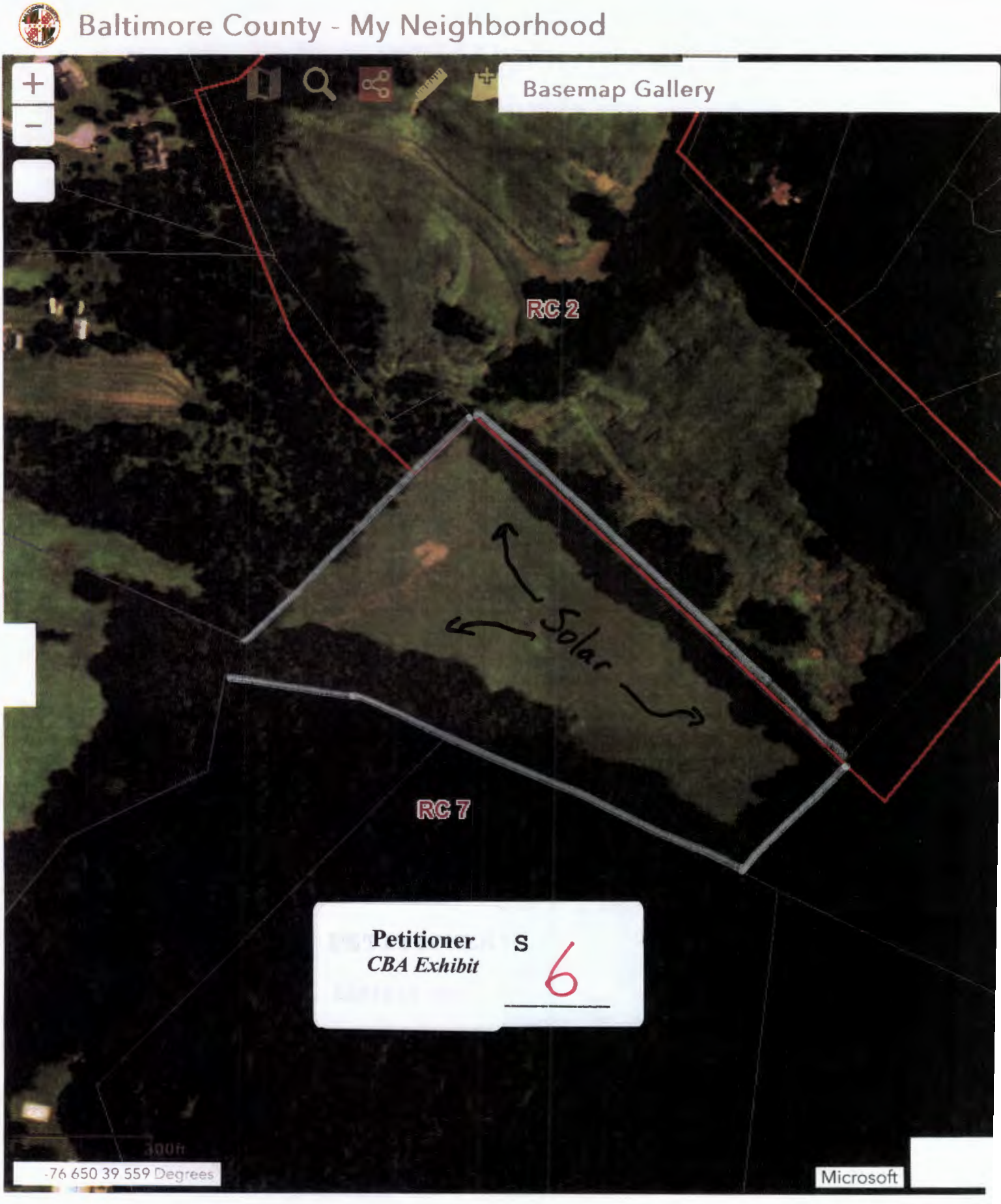
5D

Picture 5

CALVERT ENERGY LLC

5E

Tree Buffer



Case No. 18-047X 8/21/18


National Wetlands Inventory
U.S. Fish and Wildlife Service
National Wetlands Inventory
PETITIO
EXHIBIT N
ESA Sparks Glenco site wetla
Petitioner S
CBA Exhibit
7
Solar
0
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0.16 mi
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0.05
0.1
0.2 km
1:4,735
ust 16, 2018
nds
Estuarine and Marine Deepwater
tuarine and Marine Wetland
Freshwater Emergent Wetland
Freshwater Forested/St
Freshwater

Petitioner
CBA Exhibit S 8

MDE **Maryland Department of the Environment**

Stormwater Design Guidance – Solar Panel Installations

Revisions to Maryland's stormwater management regulations in 2010 require that environmental site design (ESD) be used to the maximum extent practicable (MEP) to mimic natural hydrology, reduce runoff to reflect forested wooded conditions, and minimize the impact of land development on water resources. This applies to any residential, commercial, industrial, or institutional development where more than 5,000 square feet of land area is disturbed. Consequently, stormwater management must be addressed even when permeable features like solar panel installations exceed 5,000 square feet of land disturbance.

Depending on local soil conditions and proposed imperviousness, the amount of rainfall that stormwater requirements are based on varies from 1.0 to 2.6 inches. However, addressing stormwater management does not mean that structural or micro-scale practices must be constructed to capture and treat large volumes of runoff. Using nonstructural techniques like disconnecting impervious cover reduces runoff by promoting overland filtering and infiltration. Commonly used with smaller or narrower impervious areas like driveways or open roads, the Disconnection of Non-Rooftop Runoff technique (see pp. 5.61 to 5.65 of the **2000 Maryland Stormwater Design Manual**[1]) is a low cost alternative for treating runoff in situations like rows of solar panels.

When non-rooftop disconnection is used to treat runoff, the following factors should be considered:

- The vegetated area receiving runoff must be equal to or greater in length than the disconnected surface (e.g., width of the row of solar panels)
- Runoff must sheet flow onto and across vegetated areas to maintain the disconnection
- Disconnections should be located on gradual slopes (≤ 5%) to maintain sheetflow. Level spreaders, terraces, or berms may be used to maintain sheetflow conditions if the average slope is steeper than 5%. However, installations on slopes greater than 10% will require an engineered plan that ensures adequate treatment and the safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice.
- Disconnecting impervious surfaces works best in undisturbed soils. To minimize disturbance and compaction, construction vehicles and equipment should avoid areas used for disconnection during installation of the solar panels.
- Groundcover vegetation must be maintained in good condition in those areas receiving disconnected runoff. Typically this maintenance is no different than other lawn or landscaped areas. However, areas receiving runoff should be protected (e.g., planting shrubs or trees along the perimeter) from future compaction.

Depending on the layout and number of panels installed, the disconnection of non-rooftop runoff technique may address some or all of the stormwater management requirements for an individual project. Where the imperviousness is high or there is other infrastructure (e.g., access roads, transformers), additional runoff may need to be treated. In these situations, other ESD techniques or micro-scale practices may be needed to provide stormwater management for these features.

Case No: 18-047X 8/21/18

Example 1 – Using Non-Rooftop Disconnection Where the Average Slope ≤ 5%

Several rows of solar panels will be installed in an existing meadow. The soils within the meadow are hydrologic soil group (HSG) B and the average slope does not exceed 5%. Each row of panels is 10 feet wide and the distance between rows is 20 feet. The rows of solar panels will be installed according to Figure 1 below. In this scenario, the disconnection length is the same as the distance between rows (20 feet) and is greater than the width of each row (10 feet). Therefore, each row of panels is adequately disconnected and the runoff from 1.0 inch of rainfall is treated.

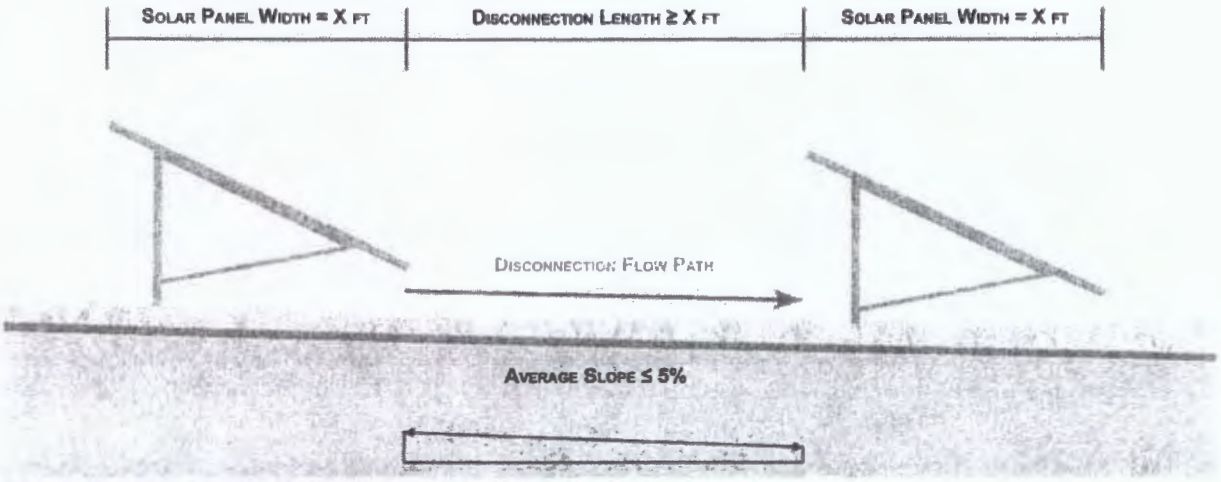


Figure 1. Typical Installation - Slope ≤ 5%

Example 2 – Using Non-Rooftop Disconnection Where the Average Slope ≥ 5% but ≤ 10%

Several rows of solar panels will be installed in an existing meadow. The soils within the meadow are hydrologic soil group (HSG) B and the average slope is greater than 5% but less than 10%. Each row of panels is 10 feet wide and the distance between rows is 20 feet. The rows of solar panels will be installed as shown in Figure 2 below. The disconnection length is the same as the distance between rows (20 feet) and is greater than the width of each row (10 feet). However, in this example, a level spreader (typically 1 to 2-foot wide and 1 foot deep) has been located at the drip edge of each row of panels to dissipate energy and maintain sheetflow.

Discussion

To meet State and local stormwater management requirements, ESD must be used to the MEP to reduce runoff to reflect forested conditions. While all reasonable options for implementing ESD must be investigated, minimally, the runoff from 1 inch of rainfall must be treated. In each of the examples above, there may be additional opportunities to implement ESD techniques or practices and reduce runoff that should be explored. However, simply disconnecting the runoff from the solar panel arrays captures and treats the runoff from 1.0 inch of rainfall. Where imperviousness is low and soil conditions less optimal (e.g., HSG C or D), this may be sufficient to completely address stormwater management requirements. In more dense applications or in sandy soils, additional stormwater management may be required.

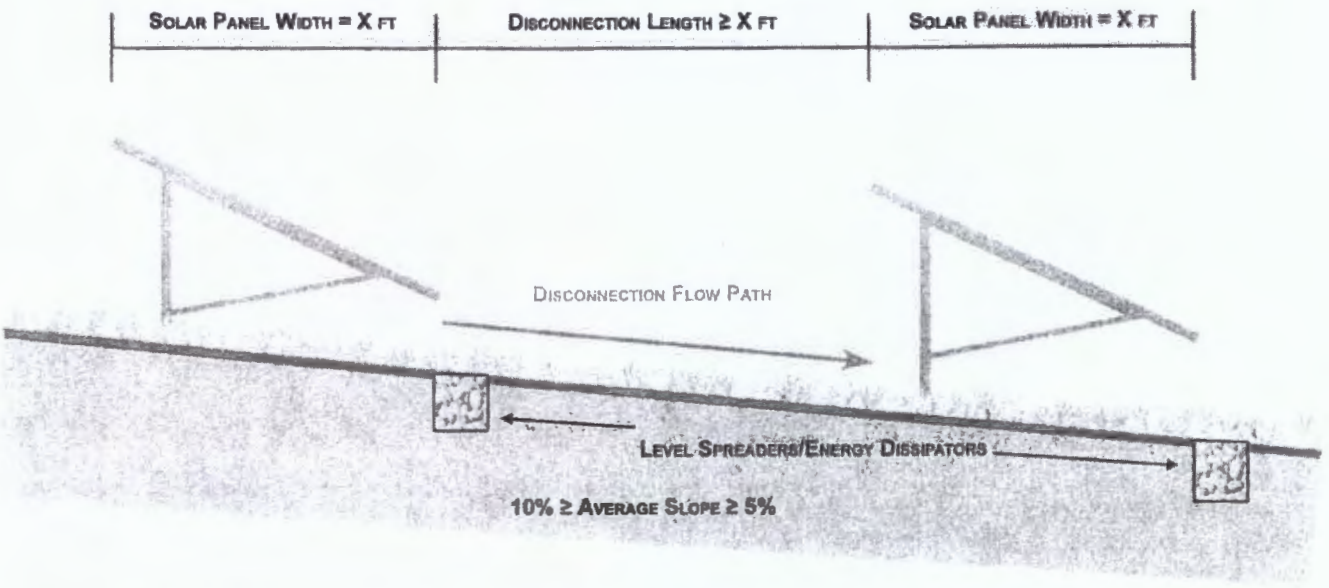


Figure 2. Typical Installation – Slope ≥ 5% but ≤ 10%

Conclusion

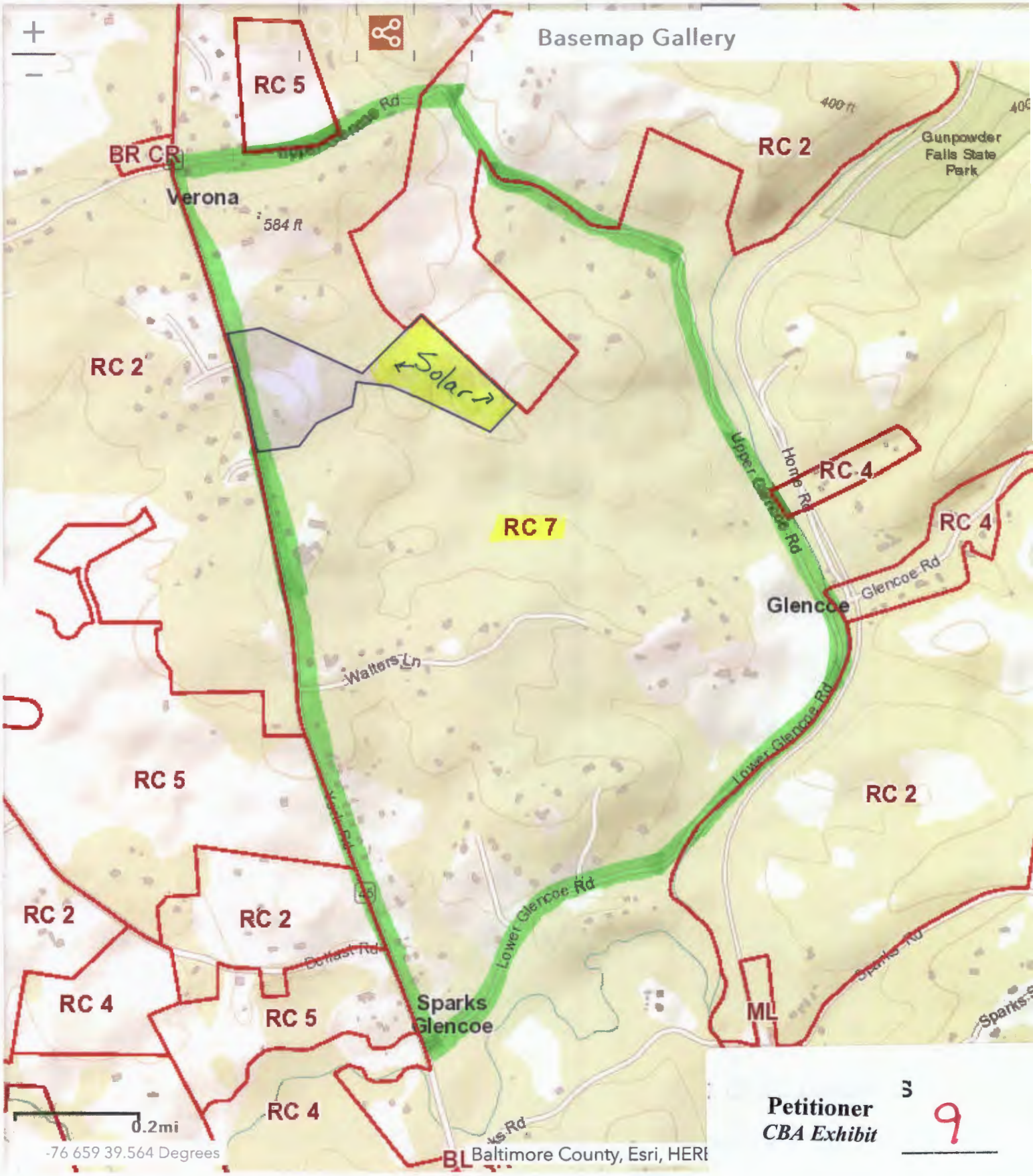
The primary purpose of Maryland's stormwater management program is to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. Any land development project that exceeds 5,000 square feet of disturbance, including solar panel projects, must address stormwater management. However, for solar panels, stormwater management may be provided in a cost-effective manner by disconnecting each row of panels and directing runoff over the vegetated areas between the individual rows.

Resources

[1] 2000 Maryland Stormwater Design Manual, Volumes I and II, MDE, October 2000 (http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/MarylandStormwaterDesignManual/Pages/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.aspx)

Locality

Baltimore County - My Neighborhood



Petitioner
CBA Exhibit
9

Case No. 18-047X

8/21/18

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/20/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-047

Petitioner
CBA Exhibit
10

INFORMATION:
Property Address: 15637 York Road
Petitioner: Robert K. Gerner
Zoning: RC 7
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for a 9 acre solar facility.

A site visit was conducted on August 23, 2017.

York Road is a Baltimore County Scenic Route at this location. Due to topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially properties.

The Department has no objection to granting the requested zoning relief conditioned upon the following:

The Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations (BCZR), as applicable, upon successfully addressing the comments listed below.

- Pursuant to BCZR §4E-104.5 the photovoltaic arrays may not exceed 20 feet in height without variance relief. The Department recommends any additional height is inconsistent with the spirit and intent of the BCZR pursuant to §1A08.4.A and will not support such relief. Petitioners shall amend the plan to show a typical array structure detail at no more than 20' above the natural finished grade.
- Petitioners shall note on the plan that the proposed solar facility will produce not more than 2 megawatts of alternating current.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4E-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.

Case. No 18-047 X

8/21/18

- At the time of building permit application the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by written confirmation that the facility will not be detrimental to the adjacent residential properties pursuant to BCZR §502.1.A.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.

For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Kaylee Justice
Brian Quinlan
Timothy M. Kotroco
Office of the Administrative Hearings
People's Counsel for Baltimore County

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 8/14/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

P Petitioner
CBA Exhibit
I 11

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 8/14/17. A field inspection and internal review reveals that an entrance onto MD45 consistent with current State Highway Administration guidelines is required. ~~As a condition of approval for~~ , Case Number 2018-0047-X

Special Exception
Robert K. Gerner
15637 York Road
MD 45

The applicant must contact the State Highway Administration to obtain an entrance permit. Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A. Zeller

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

* Applicant must contact Mr. Brian Greeting to obtain a residential or farm entrance permit. He can be reached at 410-329-6752

WW/RAZ

Mr. Robert K. Gerner / 15637 York Road, Sparks, MD 21152

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Mr. Brian Greeting, SHA Rte - Hereford Shop
Bruce E. Doak Consulting, LLC / 3801 Baker Schoolhouse Road
Freeland, MD 21053

Case No. 18-047-X 8/21/17

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

Petitioner
CBA Exhibit
12

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

PETITIONER'S
EXHIBIT NO. 12

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Case No 18-047X 8/21/17

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: August 23, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

Petitioner
CBA Exhibit
13

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2017
Item No. 2018-0047-X

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If Special Exception is granted a Landscape Plan is required per the requirements of the Landscape Manual, Bill No.37-17 and the CMDP.

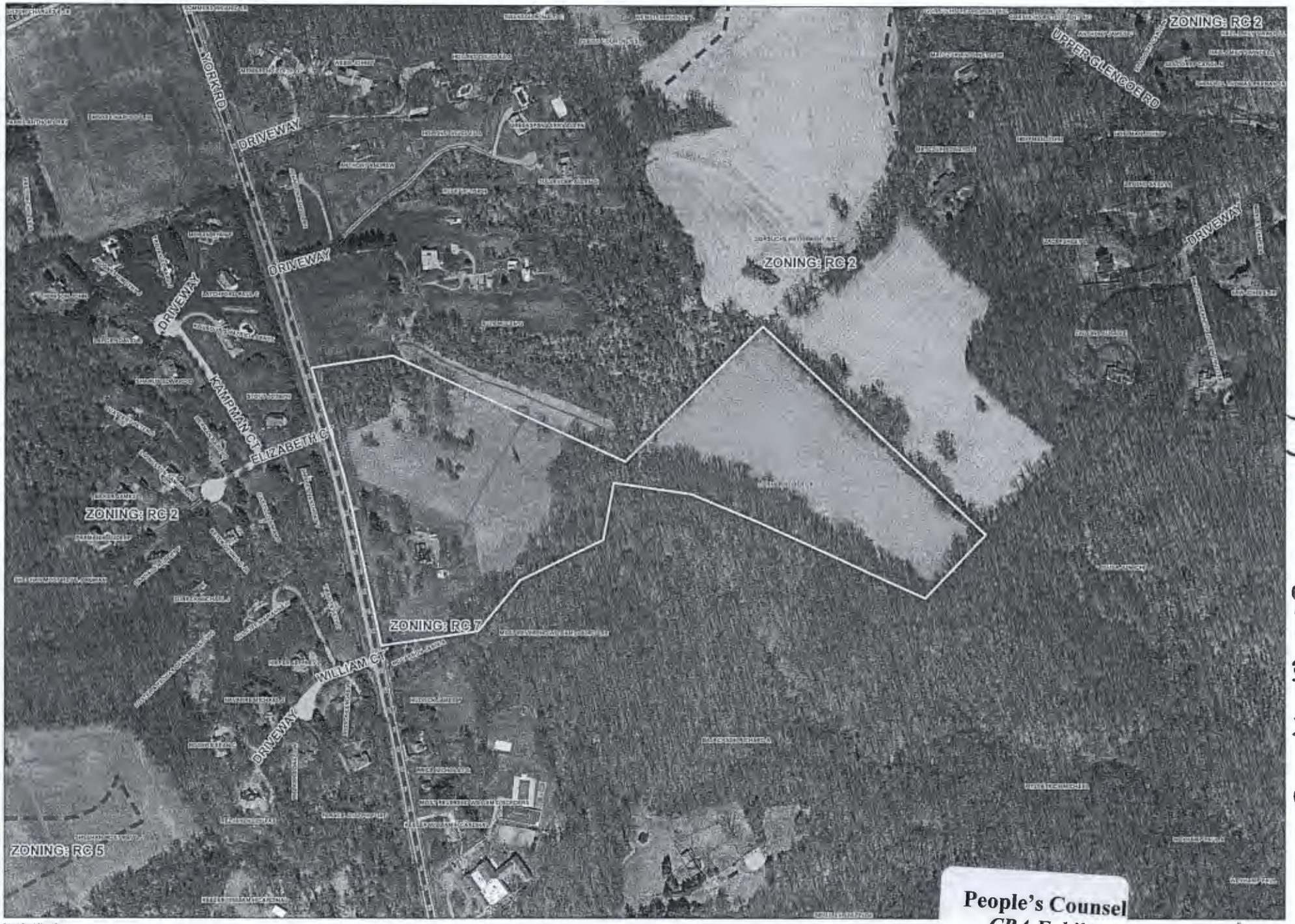
Specific Landscape comments:
1 .York Road is a Baltimore County Scenic Route,
2. Perimeter Landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Additional Landscape buffers may be required depending on the adjacent subject properties existing topography, Scenic Views, etc.,
5. Solar panels are considered a utility and should be designed and located to harmonize with surrounds and create the least visual impact,
6. More comments may be rendered during review of the Landscape Plan.

* * * * *

VKD: CEN
cc: file

Case No. 18-047-X

8/21/18



People's Counsel
CBA Exhibit
3

Case No. 18-047-X 8/21/18

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt:	**Special Tax Recapture:**		
Exempt Class:	AGRICULTURAL TRANSFER TAX		
Account Identifier:	**District** - 08 **Account Number** - 0802004200		

Owner Information

Owner Name:	GERNER ROBERT K	**Use:**	AGRICULTURAL
		Principal Residence:	YES
Mailing Address:	15637 YORK RD SPARKS MD 21152-9687	**Deed Reference:**	/32699/ 00228

Location & Structure Information

Premises Address:	15637 YORK RD SPARKS 21152-9687	**Legal Description:**	30.723 AC 15637 YORK RD ES 1500FT S UPR GLENCOE RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0015	0114		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1897	3,862 SF		30.7230 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2018	As of 07/01/2019
Land:	143,700	143,700		
Improvements	203,600	243,500		
Total:	347,300	387,200	373,900	387,200
Preferential Land:	3,700			3,700

Transfer Information

Seller: GERNER ROBERT KEITH	**Date:** 10/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32699/ 00228	**Deed2:**
Seller: GERNER ROBERT	**Date:** 04/11/2006	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /23665/ 00255	**Deed2:**
Seller: BALLARD CYNTHIA W	**Date:** 10/27/2004	**Price:** $850,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /20893/ 00079	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

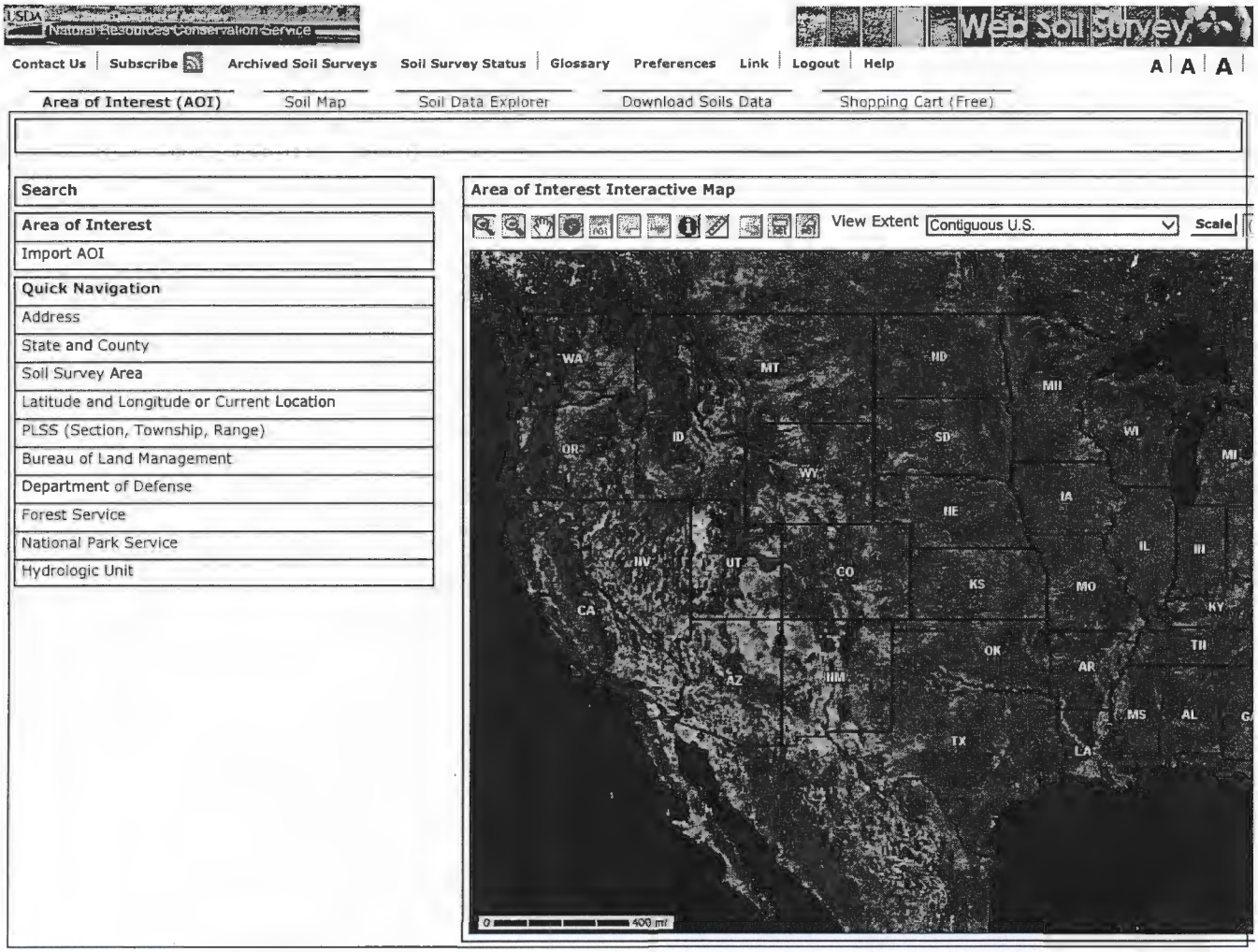
Homestead Application Status: Approved 05/15/2008

Homeowners' Tax Credit Application Information

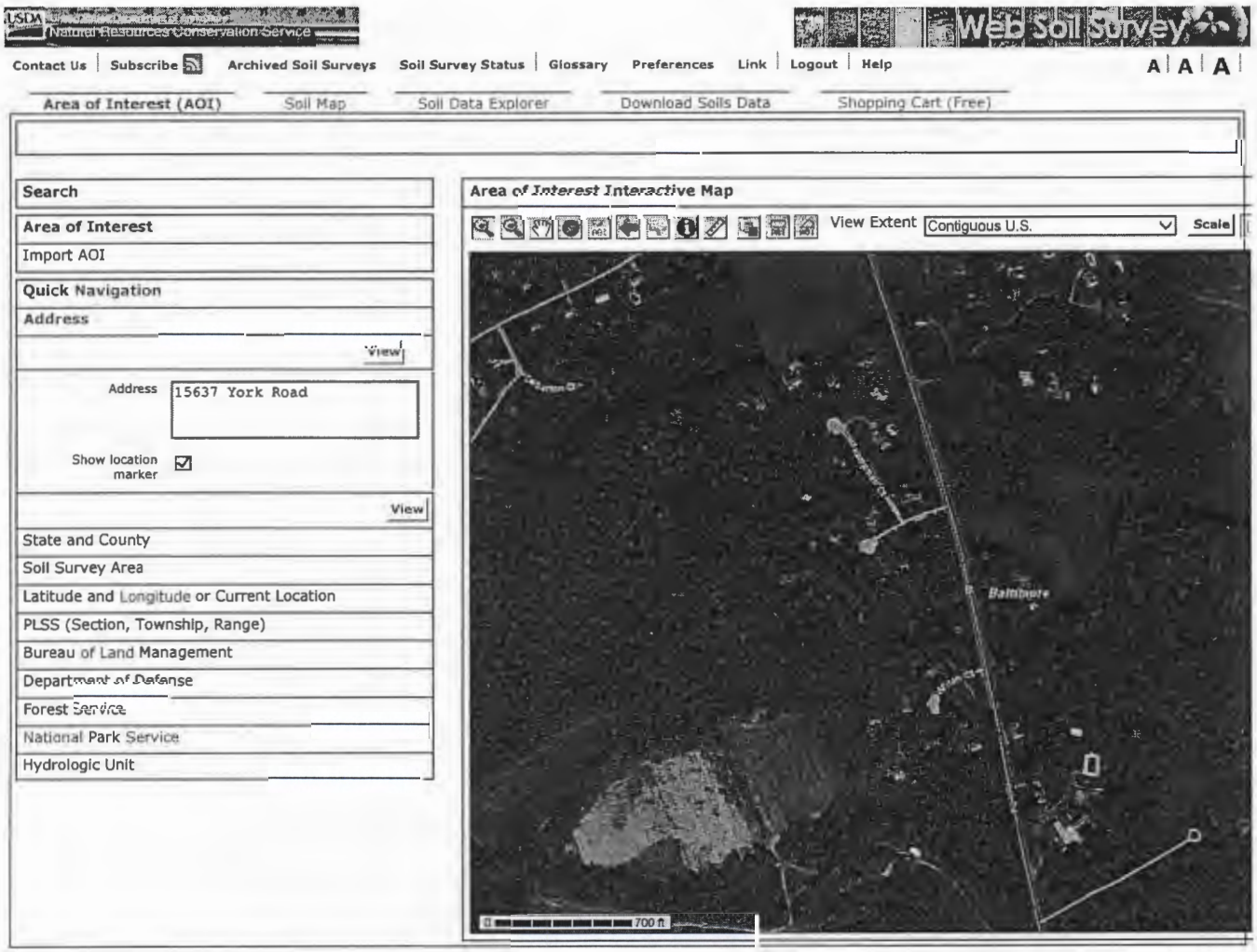
Homeowners' Tax Credit Application Status: No Application **Date:**

People's Counsel
CBA Exhibit
4

Case No. 18-047-X 8/21/18



People's Counsel
CBA Exhibit
5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Area of Interest
Import AOI
Quick Navigation
Address
View
Address
15637 York Road
Show location marker
View
State and County
Soil Survey Area
Latitude and Longitude or Current Location
PLSS (Section, Township, Range)
Bureau of Land Management
Department of Defense
Forest Service
National Park Service
Hydrologic Unit
Area of Interest Interactive Map
View Extent
Contiguous U.S.
Scale
Baltimore
700 ft
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A | A | A

Area of Interest (AOI) | Soil Map | Soil Data Explorer | Download Soils Data | Shopping Cart (Free)

Search

Area of Interest

Open All | Close All

AOI Properties

Clear AOI

AOI Information

Name

Map Unit Symbols: (•) Use Soil Survey Area Map Unit Symbols ( ) Use National Map Unit Symbols

Area (acres): 114.8

Soil Data Available from Web Soil Survey

Baltimore County, Maryland (MD005)

Data Availability: Tabular and Spatial, complete

Tabular Data: Version 12, Sep 18, 2017

Spatial Data: Version 8, Sep 19, 2016

Clear AOI

Import AOI

Export AOI

Quick Navigation

Address

View

Address: 15637 York Road

Show location marker: ☑

View

State and County

Soil Survey Area

Latitude and Longitude or Current Location

PLSS (Section, Township, Range)

Bureau of Land Management

Department of Defense

Forest Service

National Park Service

Hydrologic Unit

Area of Interest Interactive Map

View Extent: Contiguous U.S. Scale

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Search

Map Unit Legend

Baltimore County, Maryland (MD005)

Baltimore County, Maryland (MD005)

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
CfA	Codorus silt loams, 0 to 3 percent slopes	0.4	0.4%
GdB	Glenelg loam, 3 to 8 percent slopes	16.4	14.3%
GdC	Glenelg loam, 8 to 15 percent slopes	7.6	6.6%
GhB	Glenville silt loam, 3 to 8 percent slopes	10.5	9.2%
GhC	Glenville silt loam, 8 to 15 percent slopes	8.3	7.2%
MaB	Manor loam, 3 to 8 percent slopes	11.0	9.6%
MaC	Manor loam, 8 to 15 percent	13.3	11.6%

Soil Map

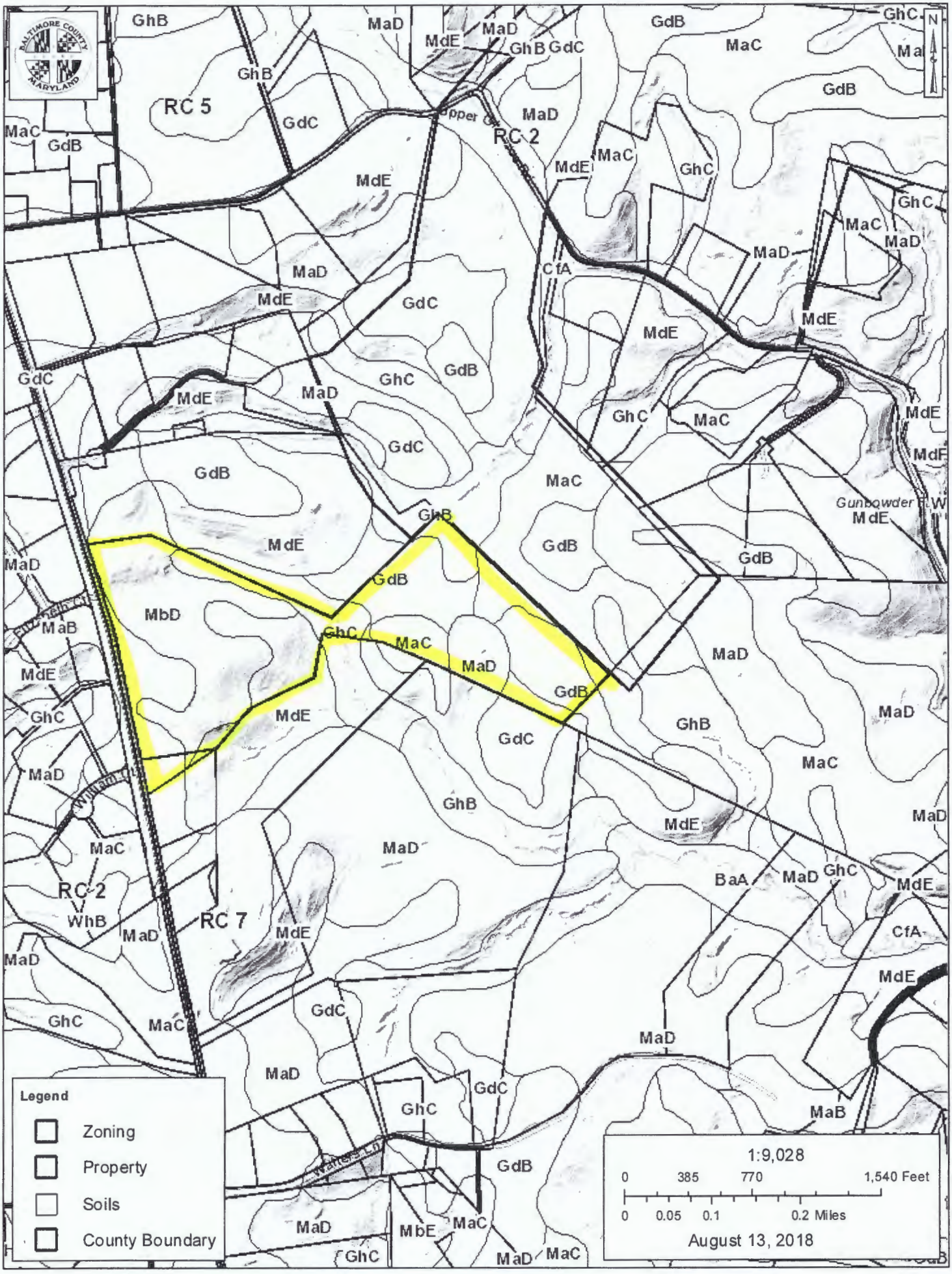
Scale (not to scale)

Warning: Soil Map may not be valid at this scale.

You have zoomed in beyond the scale at which the soil map for this area is intended to be used. Mappi
The soil surveys that comprise your AOI were mapped at 1:12,000. The design of map units and the
map are dependent on that map scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mappi
The maps do not show the small areas of contrasting soils that could have been shown at a more deta

Baltimore County - My Neighborhood



Baltimore County, Maryland

GdB—Glenelg loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2v7gp
Elevation: 30 to 1,200 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Glenelg and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenelg

Setting

Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, backslope, shoulder
Landform position (three-dimensional): Interfluve, side slope
Down-slope shape: Linear
Across-slope shape: Convex, linear, concave
Parent material: Residuum weathered from mica schist

Typical profile

Ap1 - 0 to 6 inches: loam
Ap2 - 6 to 10 inches: clay loam
Bt1 - 10 to 18 inches: clay loam
Bt2 - 18 to 25 inches: clay loam
Bt3 - 25 to 30 inches: clay loam
BCt - 30 to 42 inches: loam
CBt - 42 to 54 inches: loam
C - 54 to 76 inches: channery fine sandy loam

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.20 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: High (about 10.4 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 10 percent
Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Concave
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GdC—Glenelg loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2v7gq
Elevation: 30 to 1,050 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 180 to 220 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Glenelg and similar soils: 90 percent
Minor components: 10 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenelg

Setting

Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Interfluve, side slope
Down-slope shape: Linear
Across-slope shape: Linear, concave, convex
Parent material: Residuum weathered from mica schist

Typical profile

Ap1 - 0 to 6 inches: loam
Ap2 - 6 to 10 inches: clay loam
Bt1 - 10 to 18 inches: clay loam
Bt2 - 18 to 25 inches: clay loam
Bt3 - 25 to 30 inches: clay loam
BCt - 30 to 42 inches: loam
CBt - 42 to 54 inches: loam
C - 54 to 76 inches: channery fine sandy loam

Properties and qualities

Slope: 8 to 15 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: High (about 11.1 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Brinklow

Percent of map unit: 10 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GhB—Glenville silt loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2tmch
Elevation: 20 to 1,090 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Glenville and similar soils: 75 percent
Minor components: 25 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenville

Setting

Landform: Swales, drainageways
Landform position (two-dimensional): Footslope, backslope
Landform position (three-dimensional): Head slope, base slope, interfluve
Down-slope shape: Linear, concave
Across-slope shape: Concave, linear
Parent material: Colluvium derived from metamorphic rock over schist, gneiss or phyllite residuum

Typical profile

Ap - 0 to 11 inches: silt loam
Bt1 - 11 to 20 inches: channery silt loam
Bt2 - 20 to 30 inches: silt loam
Btx - 30 to 40 inches: silt loam
C1 - 40 to 59 inches: loam
C2 - 59 to 82 inches: loam

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: 29 to 31 inches to fragipan
Natural drainage class: Moderately well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.03 to 0.11 in/hr)
Depth to water table: About 18 to 22 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 5.1 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: C/D
Hydric soil rating: No

Minor Components

Unnamed

Percent of map unit: 15 percent
Landform: Drainageways
Landform position (two-dimensional): Footslope
Landform position (three-dimensional): Base slope
Down-slope shepe: Linear, concave
Across-slope shape: Concave, linear
Hydric soil rating: No

Baile

Percent of map unit: 10 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Footslope
Landform position (three-dimensional): Base slope
Down-slope shape: Concave, linear
Across-slope shape: Linear, concave
Hydric soil rating: Yes

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GhC—Glenville silt loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2p8wp
Elevation: 250 to 1,050 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 110 to 235 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Glenville and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenville

Setting

Landform: Swales, drainageways
Landform position (three-dimensional): Base slope, head slope
Down-slope shape: Concave
Across-slope shape: Linear
Parent material: Loamy colluvium derived from phyllite and/or loamy colluvium derived from schist

Typical profile

Ap - 0 to 8 inches: silt loam
Bt1, Bt2 - 8 to 30 inches: silt loam
Btx - 30 to 40 inches: loam
C1, C2 - 40 to 70 inches: loam

Properties and qualities

Slope: 8 to 15 percent
Depth to restrictive feature: 24 to 39 inches to fragipan
Natural drainage class: Moderately well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to moderately high (0.06 to 0.57 in/hr)
Depth to water table: About 20 to 40 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.5 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: C
Hydric soil rating: No

Minor Components

Glenelg

Percent of map unit: 15 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaB—Manor loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2lp7g
Elevation: 250 to 1,050 feet
Mean annual precipitation: 37 to 55 inches
Mean annual air temperature: 45 to 61 degrees F
Frost-free period: 110 to 255 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, interfluves, hillslopes
Landform position (two-dimensional): Backslope, shoulder, summit
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: loam
Bw1, Bw2 - 6 to 22 inches: sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 10 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Glenelg

Percent of map unit: 5 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaC—Manor loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2tkpw
Elevation: 50 to 1,080 feet
Mean annual precipitation: 35 to 50 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 220 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Hills
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Residuum weathered from mica schist

Typical profile

A1 - 0 to 2 inches: loam
A2 - 2 to 6 inches: sandy loam
Bw1 - 6 to 13 inches: fine sandy loam
Bw2 - 13 to 22 inches: fine sandy loam
C1 - 22 to 30 inches: fine sandy loam
C2 - 30 to 44 inches: channery coarse sand
C3 - 44 to 53 inches: loamy sand
C4 - 53 to 83 inches: channery loamy sand
Cr - 83 to 108 inches: bedrock
R - 108 to 138 inches: bedrock

Properties and qualities

Slope: 8 to 15 percent
Percent of area covered with surface fragments: 0.0 percent
Depth to restrictive feature: 59 to 100 inches to paralithic bedrock; 100 to 128 inches to lithic bedrock
Natural drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.01 to 0.07 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Blocktown

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope, interfluve, nose slope
Down-slope shape: Convex, linear
Across-slope shape: Convex, linear
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Footslope, toeslope
Landform position (three-dimensional): Base slope, head slope
Down-slope shape: Concave
Across-slope shape: Linear
Hydric soil rating: No

Mt. airy

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Summit, shoulder
Landform position (three-dimensional): Nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaD—Manor loam, 15 to 25 percent slopes

Map Unit Setting

National map unit symbol: 2tmcg
Elevation: 250 to 1,000 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Hillslopes
Landform position (two-dimensional): Shoulder, backslope, summit
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Residuum weathered from mica schist

Typical profile

A1 - 0 to 2 inches: loam
A2 - 2 to 6 inches: sandy loam
Bw1 - 6 to 13 inches: fine sandy loam
Bw2 - 13 to 22 inches: fine sandy loam
C1 - 22 to 30 inches: fine sandy loam
C2 - 30 to 44 inches: channery coarse sand
C3 - 44 to 53 inches: loamy sand
C4 - 53 to 83 inches: channery loamy sand
Cr - 83 to 108 inches: bedrock
R - 108 to 138 inches: bedrock

Properties and qualities

Slope: 15 to 25 percent
Percent of area covered with surface fragments: 0.0 percent
Depth to restrictive feature: 59 to 100 inches to paralithic bedrock; 100 to 128 inches to lithic bedrock
Natural drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.01 to 0.07 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.0 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Mt. airy

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope, summit, shoulder
Landform position (three-dimensional): Nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Backslope, footslope
Landform position (three-dimensional): Head slope, interfluve, base slope
Down-slope shape: Linear
Across-slope shape: Concave
Hydric soil rating: No

Blocktown

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MbD—Manor channery loam, 15 to 25 percent slopes

Map Unit Setting

National map unit symbol: 2lp79
Elevation: 250 to 1,050 feet
Mean annual precipitation: 35 to 46 inches
Mean annual air temperature: 45 to 57 degrees F
Frost-free period: 145 to 255 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Brinklow and similar soils: 10 percent
Minor components: 5 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: channery loam
Bw1, Bw2 - 6 to 22 inches: channery sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 15 to 25 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: High
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: B
Hydric soil rating: No

Description of Brinklow

Setting

Landform: Hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Parent material: Gravelly residuum weathered from schist and/or gravelly residuum weathered from phyllite

Typical profile

Ap - 0 to 10 inches: channery loam
Bt,BC - 10 to 25 inches: channery loam
Cr - 25 to 35 inches: weathered bedrock
R - 35 to 80 inches: bedrock

Properties and qualities

Slope: 15 to 25 percent
Depth to restrictive feature: 20 to 36 inches to paralithic bedrock; 28 to 40 inches to lithic bedrock
Natural drainage class: Well drained
Runoff class: High
Capacity of the most limiting layer to transmit water (Ksat): Very low (0.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: C
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MdE—Manor-Brinklow complex, 25 to 45 percent slopes, very rocky

Map Unit Setting

National map unit symbol: 2lpfp
Elevation: 250 to 4,000 feet
Mean annual precipitation: 8 to 46 inches
Mean annual air temperature: 45 to 57 degrees F
Frost-free period: 110 to 200 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 55 percent
Brinklow and similar soils: 30 percent
Rock outcrop: 5 percent
Minor components: 10 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: loam
Bw1, Bw2 - 6 to 22 inches: sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7s

Hydrologic Soil Group: B
Hydric soil rating: No

Description of Brinklow

Setting

Landform: Hillslopes, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope, free face
Parent material: Gravelly residuum weathered from schist and/or gravelly residuum weathered from phyllite

Typical profile

Ap - 0 to 10 inches: channery loam
Bt,BC - 10 to 25 inches: channery loam
Cr - 25 to 35 inches: weathered bedrock
R - 35 to 80 inches: bedrock

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: 20 to 33 inches to paralithic bedrock; 33 to 80 inches to lithic bedrock
Natural drainage class: Well drained
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Very low (0.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7s
Hydrologic Soil Group: C
Hydric soil rating: No

Description of Rock Outcrop

Typical profile

H1 - 0 to 60 inches: bedrock

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: 0 inches to lithic bedrock
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to high (0.06 to 5.95 in/hr)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 8s
Hydrologic Soil Group: D
Hydric soil rating: No

Minor Components

Blocktown

Percent of map unit: 10 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope
Landform position (three-dimensional): Side slope, interfluve, nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Land-Use Requirements for Solar Power Plants in the United States

Sean Ong, Clinton Campbell, Paul Denholm, Robert Margolis, and Garvin Heath

NREL is a national laboratory of the U.S. Department of Energy
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June 2013

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CBA Exhibit
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Case No. 18-047-X

8/21/18

Executive Summary

By the third quarter of 2012, the United States had deployed more than 2.1 gigawatts (GWac[1]) of utility-scale solar generation capacity, with 4.6 GWac under construction as of August 2012 (SEIA 2012). Continued growth is anticipated owing to state renewable portfolio standards and decreasing system costs (DOE 2012a). One concern regarding large-scale deployment of solar energy is its potentially significant land use. Efforts have been made to understand solar land use estimates from the literature (Horner and Clark 2013); however, we were unable to find a comprehensive evaluation of solar land use requirements from the research literature. This report provides data and analysis of the land use associated with U.S. utility-scale[2] ground-mounted photovoltaic (PV) and concentrating solar power (CSP) facilities.

After discussing solar land-use metrics and our data-collection and analysis methods, we present total and direct land-use results for various solar technologies and system configurations, on both a capacity and an electricity-generation basis. The total area corresponds to all land enclosed by the site boundary. The direct area comprises land directly occupied by solar arrays, access roads, substations, service buildings, and other infrastructure. We quantify and summarize the area impacted, recognizing that the quality and duration of the impact must be evaluated on a case-by-case basis. As of the third quarter of 2012, the solar projects we analyze represent 72% of installed and under-construction utility-scale PV and CSP capacity in the United States. Table ES-1 summarizes our land-use results.

[1] All capacity-based land-use intensity figures in this study are expressed in terms of MWac or GWac. This is to maintain consistency within the paper because CSP power plants are rated in terms of MWac. The conversion factor between dc-rating and ac-rating is discussed in Section 3.

[2] We define utility-scale as greater than 1 MWdc for PV plants and greater than 1 MWac for CSP plants.

Table ES-1. Summary of Land-Use Requirements for PV and CSP Projects in the United States

	Capacity-weighted average land use (acres/MWac)	Generation-weighted average land use (acres/GWh/yr)	Capacity-weighted average land use (acres/MWac)	Generation-weighted average land use (acres/GWh/yr)
Small PV (>1 MW, <20 MW)	6.9	3.1	8.3	4.1
Fixed	5.5	3.2	7.8	4.4
1-axis	8.3	2.9	8.7	3.8
2-axis flat panel	9.4	4.1	13	5.5
2-axis CPV	6.9	2.3	9.1	3.1
Large PV (>20 MW)	7.2	3.1	7.9	3.4
Fixed	5.8	2.6	7.5	3.7
1-axis	9.0	3.6	8.3	3.3
2-axis CPV	6.1	2.0	8.1	2.8
CSP	7.7	2.7	10	3.5
Parabolic trough	6.2	2.5	8.5	3.9
Tower	8.9	2.8	10	3.2
Dish Stirling	2.8	1.5	10	5.3
Linear Fresnel	2.0	1.7	4.7	4.0

We found total land-use requirements for solar power plants to have a wide range across technologies. Generation-weighted averages for total area requirements range from about 3 acres/GWh/yr for CSP towers and CPV installations to 5.5 acres/GWh/yr for small 2-axis flat panel PV power plants. Across all solar technologies, the total area generation-weighted average is 3.5 acres/GWh/yr with 40% of power plants within 3 and 4 acres/GWh/yr. For direct-area requirements the generation-weighted average is 2.9 acres/GWh/yr, with 49% of power plants within 2.5 and 3.5 acres/GWh/yr. On a capacity basis, the total-area capacity-weighted average is 8.9 acres/MWac, with 22% of power plants within 8 and 10 acres/MWac. For direct land-use requirements, the capacity-weighted average is 7.3 acre/MWac, with 40% of power plants within 6 and 8 acres/MWac. Other published estimates of solar direct land use generally fall within these ranges.

Both capacity- and generation-based solar land-use requirements have wide and often skewed distributions that are not well captured when reporting average or median values. Some solar categories have relatively small samples sizes, and the highest-quality data are not available for all solar projects; both of these factors must be considered when interpreting the robustness of reported results. Owing to the rapid evolution of solar technologies, as well as land-use practices and regulations, the results reported here reflect past performance and not necessarily future trends. Future analyses could include evaluating the quality and duration of solar land-use impacts and using larger sample sizes and additional data elements to enable a thorough investigation of additional land-use factors.

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1 Introduction

By the third quarter of 2012, the United States had deployed more than 2.1 gigawatts (GWac[3]) of utility-scale solar generation capacity, with 4.6 GWac under construction as of August 2012 (SEIA 2012). Continued growth is anticipated owing to state renewable portfolio standards and decreasing system costs (DOE 2012a). One concern regarding large-scale deployment of solar energy is its potentially significant land use. Estimates of land use in the existing literature are often based on simplified assumptions, including power plant configurations that do not reflect actual development practices to date. Land-use descriptions for many projects are available from various permitting agencies and other public sources, but we were unable to locate a single source that compiles or summarizes these datasets. The existing data and analyses limit the effective quantification of land-use impacts for existing and future solar energy generation, particularly compared with other electricity-generation technologies.

This report provides data and analysis of the land use associated with U.S. utility-scale ground-mounted photovoltaic (PV) and concentrating solar power (CSP) facilities, defined as installations with capacities greater than 1 MW. The next section (Section 2) discusses standard land-use metrics and their applicability to solar power plants. We identify two major classes of solar plant land use—direct impact (disturbed land due to physical infrastructure development) and total area (all land enclosed by the site boundary)—by which we categorize subsequent results. Section 3 describes our solar land-use data collection and analysis methods. We derived datasets from project applications, environmental impact statements, and other sources and used them to analyze land use based on the capacity and generation of solar plants. Section 4 presents our results. In addition to summarizing PV and CSP land use, we examine relationships among land use, plant configuration, location, and technology. Finally, in Section 5, we identify limitations to the existing solar land-use datasets and suggest additional analyses that could aid in evaluating land use and impacts associated with the deployment of solar energy. Appendices include tables of our solar project data as well as more detailed analyses of specific land-use relationships.

[3] All capacity-based land-use intensity figures in this study are expressed in terms of MWac or GWac. This is to maintain consistency within the paper because CSP power plants are rated in terms of MWac. The conversion factor between dc-rating and ac-rating is discussed in Section 3.

2 Solar Power Plant Land-Use Metrics

There are many existing and proposed metrics for evaluating land-use impacts. Recent methods for quantifying land use include evaluating the direct and indirect life-cycle use (Fthenakis and Kim 2009) and assessing temporary and permanent land-area requirements (Denholm et al. 2009). While there is no single, generally accepted methodology (Canals et al. 2007), at least three general categories are used to evaluate land-use impacts: (1) the area impacted, (2) the duration of the impact, and (3) the quality of the impact (Koellner and Scholz 2008). The quality of the impact (also called the "damage function") evaluates the initial state of the land impacted and the final state across a variety of factors, including soil quality and overall ecosystem quality (Koellner and Scholz 2008).

This report closely follows the methodology outlined in a National Renewable Energy Laboratory (NREL) U.S. wind power land-use study (Denholm et al. 2009). We quantify and summarize the area impacted, recognizing that the quality and duration of the impact must be evaluated on a case-by-case basis. We consider two land-use metrics. The first is the total area, which corresponds to all land enclosed by the site boundary. The perimeter of this area is usually specified in blueprint drawings and typically fenced or protected. The second metric is the direct-impact area, which comprises land directly occupied by solar arrays, access roads, substations, service buildings, and other infrastructure. The direct-impact area is smaller than the total area and is contained within the total-area boundaries. Figure 1 illustrates the two types of areas, with the total area shaded yellow and the direct-impact area shaded orange.

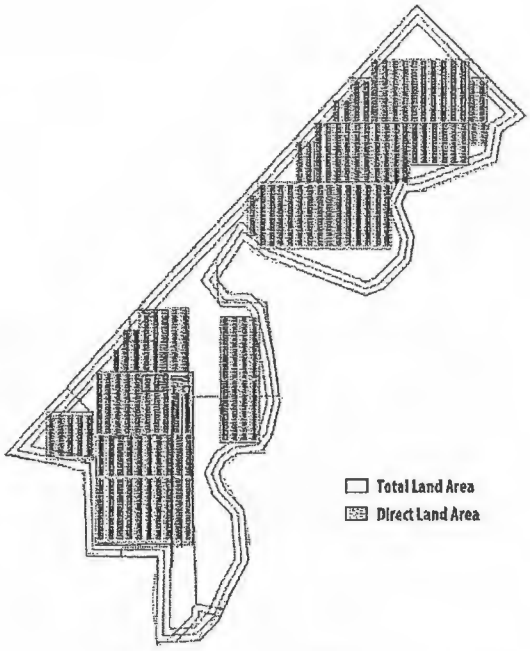


Figure 1. NREL mesa top PV system—example of direct and total land use[4]

[4] Access roads, infrastructure, and other direct impact areas are not shown in Figure 1.

3 Solar Land-Use Data and Methodology

We collected PV and CSP land-use data from four categories of sources, in the following prioritized order. First, where available, we collected official project data from federal, state, or local regulatory agencies, including environmental impact statements, environmental assessments, and project applications to regulatory bodies. These sources typically contain detailed project information, but their availability is highly dependent on federal, state, and local regulations as some states require very detailed environmental assessments, while others require little land-use analysis. Second, we collected project fact sheets, news releases, and other data provided by the project owner or developer. Data from these sources were used when additional information was needed and not found in regulatory documents. When no other source of data could be located, we used news articles, websites unaffiliated with the developer/owner or regulatory bodies, and other secondary sources. Finally, when official project drawings were unavailable or documents did not include information necessary to estimate total and direct land area, we analyzed satellite images to identify plant configuration, direct land use, and project-area boundaries. Table 1 shows the proportion of data source categories used for each technology and also indicates the percentage of sites where satellite imagery was analyzed in addition to the documents collected.

Table 1. Summary of Data Categories Used for PV and CSP Plants[5]

Technology	Official Documents (%)	Developer Documents (%)	Third-Party Sources (%)	Satellite Imagery Required (%)
PV	18%	36%	48%	40%
CSP	44%	28%	28%	40%

For PV, we used these datasets to analyze the relationship between land-use intensity (defined as land use per unit of capacity or generation) and stated PV module efficiency, array configuration, and tracking type. For CSP, we analyzed the land-use intensity of several different technologies. For PV and CSP, we limited the analysis to systems larger than 1 MW in capacity. We classified systems smaller than 20 MW as "small" and those larger than 20 MW as "large."

We quantified land-use requirements on a capacity (area/MWac) and a generation (area/GWh/yr[6]) basis. Capacity-based results are useful for estimating land area and costs for new projects because power plants are often rated in terms of capacity. The generation basis provides a more consistent comparison between technologies that differ in capacity factor and enables evaluation of land-use impacts that vary by solar resource differences, tracking configurations, and technology and storage options. Most of the data collected for this analysis included the reported capacity of power plants but not annual generation. Because capacity-based land-use requirements are based on reported data, the capacity-based results are expected to have less uncertainty than the generation-based results.

[5] Percentages add up to over 100% because power plants evaluated with satellite imagery also required additional data sources to determine solar plant characteristics.

[6] Generation results are reported in area/(GWh per year) which we display as area/GWh/yr.

We simulated PV and CSP electricity generation using the System Advisor Model (SAM; Gilman and Dobos 2012). When available, we used project-specific inputs, such as location, array configuration, derate factor, and tracking technology. When project-specific inputs were unavailable, we used SAM default assumptions (e.g., if the tilt angle for fixed-tilt PV was unknown, we used SAM's latitude-tilt default assumption). The PV derate factor[7] was determined by dividing the AC reported capacity by the DC reported capacity for each project. The weighted-average derate factor (0.85) was used for projects that did not report both AC and DC capacity. All capacity-based land-use intensity figures in this study are expressed in terms of MWac. For CSP projects, a range of solar multiple[8] values was used to simulate annual generation output (see Appendix A for CSP solar multiple assumptions). Hourly solar resource and weather data for all projects were obtained from the NREL Solar Prospector tool[9] for each project's latitude and longitude. Each power plant was assigned to a cell within the National Solar Radiation Database (Wilcox 2007) equal in area to 0.1 degrees in latitude and longitude (approximately equal to a 10 km x 10 km square) (Perez et al. 2002). PV and CSP projects were simulated with typical direct-radiation-year weather data[10] (NREL 2012).

[7] The derate factor is used to determine the AC power rating at Standard Test Conditions (STC). The overall DC to AC derate factor accounts for losses from the DC nameplate power rating. We do not calculate the derate factor from component losses, but rather estimate the derate factor from the reported AC and DC power rating at each plant. For a discussion on derate factors, see http://rredc.nrel.gov/solar/calculators/pvwatts/version1/change.html#derate (accessed April 2013).

[8] The solar multiple is the CSP field aperture area expressed as a multiple of the aperture area required to operate the power cycle at its design capacity (NREL 2012).

[9] The Solar Prospector is a mapping and analysis tool designed to provide access to geospatial data relevant to the solar industry. For more information, visit http://maps.nrel.gov/prospector (accessed May 2013).

[10] For consistency, PV and CSP data were both simulated using typical direct-radiation-year (TDY) weather data. Normally, CSP power plants are simulated using TDY data and PV power plants are simulated using typical meteorological year (TMY) data.

4 Results

We obtained land-use data for 166 projects completed or under construction (as of August 2012), representing 4.8 GWac of capacity, and 51 proposed projects, representing approximately 8 GWac of capacity (Table 2).

Table 2. Summary of Collected Solar Power Plant Data (as of August 2012)

	Small PV (<20 MW)		Large PV (>20 MW)		CSP	
	Projects	Capacity (MWac)	Projects	Capacity (MWac)	Projects	Capacity (MWac)
Completed	103	413	10	258	9	508
Under construction	17	165	20	1,846	7	1,610
Proposed	6	70	36	6,376	9	1,570
Total	126	762	66	8,961	25	3,688

We collected data on 4.8 GWac (72%) of the 6.7 GWac of completed or under-construction U.S. utility-scale solar capacity reported by SEIA (SEIA 2012). Figure 2 maps the solar projects evaluated. Appendix B and Appendix C detail all the projects and data sources. There are over 24 GWac of PV and CSP proposed (under development but not under construction) as of August 2012[11] (SEIA 2012), and the results reported in this study must be taken in light of a rapidly growing installed base. The results reported in this study reflect past performances and not necessarily future trends. For example, many of the largest PV systems currently proposed consist primarily of thin-film technology on fixed-tilt arrays, which may have different land use requirements than the results presented in this study.

[11] As of February 2013, there are 26 GWac of PV and CSP proposed (SEIA 2013)

Figure 2. Map of PV and CSP installations evaluated

4.1 Summary Results

Figure 3 summarizes capacity-based total and direct land-use results for small and large utility-scale PV and CSP projects. Direct land-use requirements for small and large PV installations range from 2.2 to 12.2 acres/MWac, with a capacity-weighted average of 6.9 acres/MWac. Direct land-use intensity for CSP installations ranges from 2.0 to 13.9 acres/MWac, with a capacity-weighted average of 7.7 acres/MWac. Figure 4 shows generation-based total and direct land-use results. Direct land-use requirements for PV installations range from 1.6 to 5.8 acres/GWh/yr, with a generation-weighted average of 3.1 acres/GWh/yr. Direct land-use intensity for CSP installations ranges from 1.5 to 5.3 acres/GWh/yr, with a generation-weighted average of 2.7 acres/GWh/yr.

Solar direct land-use estimates in the literature generally fall within these ranges but are often smaller than the PV capacity-weighted averages we report and on par or larger for CSP capacity-weighted averages we report. Hand et al. (2012) estimate 4.9 acres/MWac for PV and 8.0 acres/MWac for CSP. Denholm and Margolis (2008) estimate 3.8 acres/MWac for fixed-tilt PV systems and 5.1 acres/MWac for 1-axis tracking PV systems. Our results indicate 5.3 acres/MWac for fixed-tilt PV and 6.3 acres/MWac for 1-axis tracking PV (capacity-weighted average direct land-use requirements for systems under 20 MW; see Table 4 in Section 4.2). Horner and Clark (2013) report 3.8 acres/GWh/yr for PV and 2.5 acres/GWh/yr for CSP. Fthenakis and Kim (2009) estimate 4.1 acres/GWh/yr for CSP troughs and 2.7 acres/GWh/yr for

CSP towers. Our results indicate 2.3 acres/GWh/yr for CSP troughs and 2.8 acres/GWh/yr for CSP towers (see Table 7 in Section 4.3).[12]

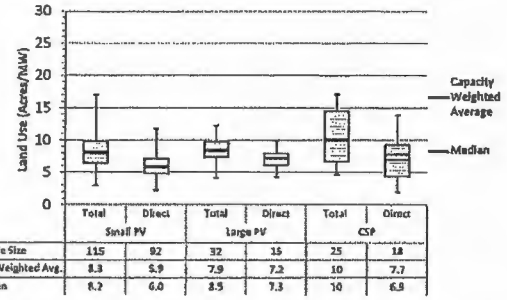
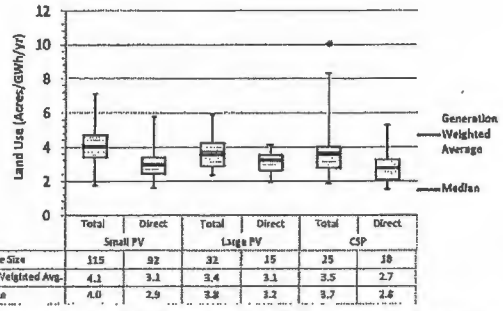


Figure 3. Distribution of solar land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

[12] Comparisons of generation-based land use results should be taken in light of the fact that annual generation (GWh) varies with solar resource (location). For example, generation-based results determined from solar power plants in a specific location may differ from results presented in this study, which includes solar plants from a variety of locations throughout the United States.



	Total	Direct	Total	Direct	Total	Direct
	Small PV		Large PV		CSP	
Sample Size	115	92	32	15	25	18
Gen. Weighted Avg.	4.1	3.1	3.4	3.1	3.5	2.7
Median	4.0	2.9	3.8	3.2	3.7	2.8

Figure 4. Distribution of generation-based solar land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates. Blue dot represents eSolar's Sierra Sun Tower (10 acres/GWh/yr), separated for clarity (but not considered an outlier)

4.2 PV Land-Use Results

Table 3 and Table 4 summarize PV land requirements by tracking type for total and direct area, respectively. Total-area data were available for all systems evaluated; however, direct-area data were only available for a subset of these systems. Fixed-tilt and 1-axis PV systems account for a majority (96%) of projects evaluated.

On average, fixed-tilt systems use 13% less land than 1-axis tracking on a capacity basis but use 15% more land on a generation basis. This difference is due to increased generation resulting from tracking technologies. One-axis tracking systems can increase PV generation 12%–25% relative to fixed-tilt systems, and 2-axis tracking systems can increase PV generation by 30%–45% (Drury et al. 2012). We evaluated ten 2-axis PV plants: four flat panel (non-concentrating) projects and six concentrating PV (CPV) projects. Two-axis, flat panel systems appear to use more land than fixed and 1-axis plants on a capacity and generation basis, but general conclusions should not be drawn until the sample size is increased.

Table 3. Total Land-Use Requirements by PV Tracking Type[13]

Tracking Type	Projects	Total Area: Capacity (MWac)	Total Area: Capacity-weighted average area requirements (acres/MWac)	Total Area: Generation-weighted average area requirements (acres/GWh/yr)
Small PV (less than 20 MW)				
Fixed	52	231	7.6	4.4
1-axis	55	306	8.7	3.8
2-axis flat panel	4	5	13	5.5
2-axis CPV	4	7	9.1	3.1
Large PV (greater than 20 MW)				
Fixed	14	1,756	7.6	3.7
1-axis	16	1,637	8.3	3.3
2-axis CPV	2	158	8.1	2.8

Table 4. Direct Land-Use Requirements by PV Tracking Type[14]

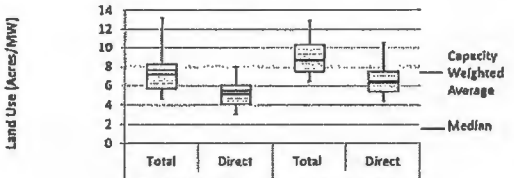
Tracking Type	Projects	Direct Area: Capacity (MWac)	Direct Area: Capacity-weighted average area requirements (acres/MWac)	Direct Area: Generation-weighted average area requirements (acres/GWh/yr)
Small PV (less than 20 MW)				
Fixed	43	184	5.5	3.2
1-axis	41	168	6.3	2.9
2-axis flat panel	4	5	9.4	4.1
2-axis CPV	4	7	6.9	2.3
Large PV (greater than 20 MW)				
Fixed	7	744	5.8	2.8
1-axis	7	630	9.0	3.5
2-axis CPV	1	31	6.1	2.0

Figure 5 shows the capacity-based total and direct land-use requirement distributions for PV plants smaller than 20 MW. Direct land-use requirements for fixed-tilt PV installations range from 2.2 to 8.0 acres/MWac, with a capacity-weighted average of 5.5 acres/MWac. Direct land-use requirements for 1-axis tracking PV installations range from 4.2 to 10.6 acres/MWac, with a capacity-weighted average of 6.3 acres/MWac. Figure 6 shows the capacity-based total and

[13] Forty-two proposed projects representing 5,842 MWac could not be categorized by tracking type owing to insufficient information. These projects are not represented in this table.
[14] Forty-two proposed projects representing 5,842 MWac could not be categorized by tracking type due to insufficient information. These projects are not represented in this table.

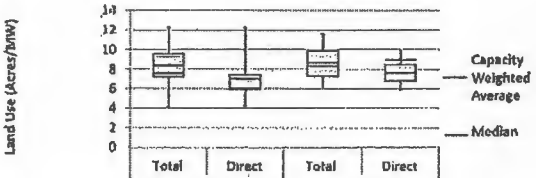
direct land-use requirement distributions for PV plants larger than 20 MW. Relatively large deviations between the median and weighted average values are due to a few very large PV installations (over 100 MW) contributing heavily to weighted average results. We found that PV system size appears to have no significant impact on land-use requirements per unit of capacity (see Appendix D).

We also evaluated the impacts of efficiency on land-use intensity. We would expect land-use intensity to decrease with increasing module efficiencies, but we observed no significant trends between land-use intensity and module efficiency for small and large PV systems (see Appendix D). Variations in land-use intensity that remain after isolating for module efficiency and tracking type are not clearly understood. One source of variability could be the large range of packing factors described in the next section.



	Total	Direct	Total	Direct
	Fixed Axis (< 20 MW)		1-Axis (< 20 MW)	
Sample Size	52	43	55	41
Cap. Weighted Avg.	7.6	5.5	8.7	6.3
Median	7.1	5.1	8.7	6.5

Figure 5. Distribution of small PV land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates



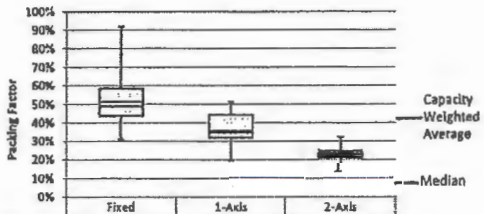
	Total	Direct	Total	Direct
	Fixed Axis (> 20 MW)		1-Axis (> 20 MW)	
Sample Size	14	7	16	7
Cap. Weighted Avg.	7.5	5.8	8.3	9.0
Median	8.4	7.0	8.7	7.7

Figure 6. Distribution of large PV land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

4.2.1 Evaluation of PV Packing Factors

We evaluated array spacing for various PV tracking technologies. The area between arrays is quantified using the packing factor metric, which is the ratio of array area to actual land area for a system[15] (DOE 2012b). Figure 7 shows the average packing factor for each tracking technology evaluated. An evaluation of system packing factors shows that there is large variability in array spacing. Packing factors range from 13% (Prescott Airport CPV, Arizona) to 92% (Canton Landfill Solar Project, Massachusetts). Fixed-tilt systems have a capacity-weighted average packing factor of 47%, followed by 1-axis systems with 34% and 2-axis systems with 25%. Packing factor estimates from the research literature range from 20% to 67% (Horner and Clark 2013). The large variability in packing factor may contribute to the variability in land-use intensity observed, given an expectation that packing factor directly impacts land-use intensity. We did not attempt to isolate the impacts of packing factor, efficiency, capacity, and other factors on land-use intensity due to limited data availability. The availability of more data elements and larger sample sizes will enable a robust evaluation of these factors on land-use intensity.

[15] We display the packing factor ratio as a percentage. A 100% packing factor would represent complete coverage of solar panels with no spacing between arrays.



	Fixed	1-Axis	2-Axis
Sample Size	39	35	9
Cap. Weighted Avg.	47%	34%	25%
Median	51%	36%	22%

Figure 7. Capacity-weighted average packing factor for PV projects evaluated—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

4.2.2 Impact of Location and Tracking Configuration on PV Land Use

Given the relatively small amount of data, it is difficult to isolate the impact of any single factor on land-use requirements. This section isolates the theoretical impact of tracking arrays by simulating the performance of PV in multiple locations holding all other factors constant.

Table 5 summarizes the relative impacts of tracking on land-use intensity, simulated for a variety of locations throughout the United States. Although tracking systems generate more energy than fixed-tilt systems, they also require more land per unit of capacity, as shown in Section 4.2. We assume the capacity-weighted average land-use requirements (as reported in Table 4) for PV systems smaller than 20 MW when evaluating the impact of tracking arrays: 5.5 acres/MWac for fixed-tilt systems, 6.3 acres/MWac for 1-axis tracking systems, and 9.4 acres/MWac for 2-axis tracking systems. These results indicate that the expected increase in energy yield from 1-axis tracking systems (12%–22%) is partially countered by increases in land-use requirements per unit of capacity. While the land use per unit of generation generally decreases for 1-axis tracking systems compared with fixed-tilt systems, this metric generally increases for 2-axis tracking systems compared with fixed-tilt systems. This is because the spacing required for 2-axis tracking increases more than the relative increase in energy yield. The land-use advantage of 1-axis tracking is more pronounced in regions with higher direct normal irradiation (DNI) levels. Similarly, the negative land-use impacts of 2-axis tracking are less pronounced in regions with higher DNI levels. Denholm and Margolis (2008) estimated that land use per unit of generation would increase moving from fixed systems to 1-axis tracking systems and moving from fixed systems to 2-axis tracking systems.

Table 5. Impacts of 1-Axis Tracking on Land-Use Intensity Compared With Fixed-Axis Mounting

Region	Direct normal radiation (kWh/m²/yr)	Estimated energy production (kWh/kW)			1-axis tracking increase in energy yield relative to fixed	2-axis tracking increase in energy yield relative to fixed	Land-use intensity (acres/kWac)			1-axis tracking change in land-use intensity relative to fixed	2-axis tracking change in land-use intensity relative to fixed
		Fixed	1-axis	2-axis			Fixed	1-axis	2-axis		
San Francisco, CA	1,843	1,681	1,826	1,953	17.9%	25.8%	4.94	4.72	5.44	-4.40%	9.30%
San Diego, CA	1,965	1,607	1,864	1,974	16.0%	22.8%	4.77	4.65	5.39	-2.70%	11.40%
Alamosa, CO	2,530	1,813	2,200	2,606	21.3%	43.7%	4.23	3.93	4.08	-7.50%	-3.60%
Phoenix, AZ	2,518	1,733	2,113	2,419	21.9%	39.6%	4.42	4.1	4.4	-8.00%	-0.60%
Jacksonville, FL	1,907	1,560	1,834	1,904	18.6%	9.0%	5.56	5.29	7.07	-4.90%	21.40%
Newark, NJ	1,263	1,268	1,422	1,321	12.1%	4.3%	8.03	8.04	8.08	0.70%	24.90%
Seattle, WA	1,112	1,100	1,249	1,136	13.5%	3.3%	6.87	6.92	8.37	-0.60%	25.50%

4.3 CSP Land-Use Results

Table 6 and Table 7 summarize total and direct land-use requirements by CSP technology, respectively. Note there are significantly fewer CSP projects in the United States than PV projects, and due to reliance on solar DNI resource, most CSP projects are in the Southwest (Figure 2). We collected data for 25 CSP projects, with only one linear Fresnel project and one dish Stirling project. It is more important to evaluate CSP in terms of land use per unit of generation because of the effect of storage and solar multiple, which can increase the amount of energy produced per unit of capacity (Turchi et al. 2010). Direct land-use requirements for CSP trough technology range from 2.0 to 4.5 acres/GWh/yr, with a generation-weighted average of 2.5 acres/GWh/yr. Direct land-use requirements for CSP tower technology range from 2.1 to 5.3 acres/GWh/yr, with a generation-weighted average of 2.8 acres/GWh/yr. We found that system size appears to have little impact on generation-based CSP land-use requirements (see Appendix E).

Table 6. Total Land-Use Requirements by CSP Technology

Technology	Total Area			
	Projects	Capacity (MWac)	Capacity-weighted average area requirements (acres/MWac)	Generation-weighted average area requirements (acres/GWh/yr)
All	25	3,747	10	3.5
Trough	8	1,380	8.5	3.9
Tower	14	2,358	10	3.2
Dish Stirling	1	2	10	5.3
Linear Fresnel	1	8	4.7	4.0

Table 7. Direct Land-Use Requirements by CSP Technology

Technology	Direct Area			
	Projects	Capacity (MWac)	Capacity-weighted average area requirements (acres/MWac)	Generation-weighted average area requirements (acres/GWh/yr)
All	18	2,216	7.7	2.7
Trough	7	851	6.2	2.5
Tower	9	1,358	8.9	2.8
Dish Stirling	1	2	2.8	1.5
Linear Fresnel	1	8	2.0	1.7

Data for CSP with multi-hour energy storage were also collected. Eight facilities included thermal storage technology, ranging from 3 to 15 hours of storage. One of the eight CSP facilities with storage is a parabolic trough system, while the remaining seven are tower systems. Little correlation is observed between storage and land-use intensity, both on a capacity and generation basis (see Appendix E). We would expect to see a trend of decreasing generation-based land use with increasing storage and increasing capacity-based land use with increasing storage based on modeled results as shown in Figure 8 (Turchi et al. 2010). Given the relatively

small amount of data, it is difficult to isolate the impact of any single factor on land-use requirements. Higher sample sizes and additional data elements will enable a more robust evaluation of CSP land use.

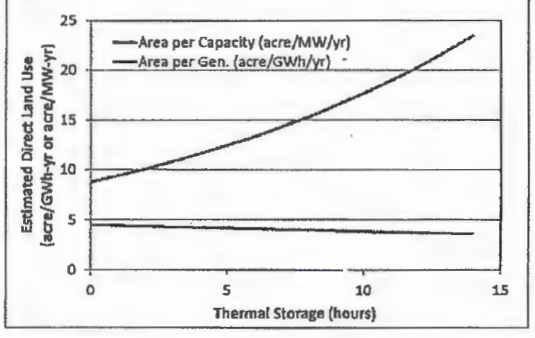


Figure 8. Modeled data showing relationship between CSP thermal storage and land-use intensity
Source: Turchi et al. 2010

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Inlands Empire Utility Solar Farm	CA	1.0	12.5	8.0	1 axis	20%	Complete	Developer
West County Waste Water PV Plant	CA	1.0	11.7	8.0	2 axis flat	14%	Complete	Developer
Nichols Farms PV Plant	CA	1.0	8.0	8.0	2 axis CPV	25%	Complete	Third party
Budweiser PV Plant	CA	1.1	8.4	7.2	1 axis	15%	Complete	Official documents
Wal-Mart Apple Valley PV Plant	CA	1.1	10.7	7.8	1 axis	15%	Complete	Official documents
Rancho California PV Plant	CA	1.1	12.5	8.9	1 axis	15%	Complete	Developer
Hayward Wastewater PV Plant	CA	1.2	13.2	8.8	1 axis	14%	Complete	Third party
Chuckawalla State Prison PV Plant	CA	1.2	8.4	4.8	fixed	14%	Complete	Official documents
Ironwood State Prison PV Plant	CA	1.2	14.4	9.0	1 axis	13%	Complete	Official documents
Sacramento Solell	CA	1.3	10.9	8.1	fixed	11%	Complete	Developer
USMC 29 Palms	CA	1.3	10.6	7.9	fixed		Complete	Developer
Ben Canyon Camp Pendleton	CA	1.4	9.6	5.8	fixed	14%	Complete	Third party
Vaca-Dixon Solar Station	CA	2.6	17.8	11.6	fixed	14%	Complete	Developer
Newberry Springs PV Plant	CA	3.0	25.6		1 axis		Proposed	Third party
Sunset Reservoir	CA	5.0	16.3	16.3	fixed		Complete	Third party
Aera Jol Solar Project	CA	6.0	47.0	32.3	1 axis		Complete	Developer
CALRENEW-1	CA	6.2	60.4	46.5	fixed	9%	Complete	Third party
Porterville Solar Plant	CA	8.8	37.8	31.4	fixed	14%	Complete	Third party
Palm Springs project 1	CA	8.6	42.9		1 axis	14%	Construction	Third party
DiLuzi Solar Farm	CA	12.0	94.3	70.4	1 axis	15%	Complete	Developer
China Lake PV Plant	CA	13.8	138.6		1 axis	20%	Construction	Third party
Brunsville Solar Farm	CA	16.4	131.1	93.9	1 axis	18%	Complete	Official documents
Kamererer Solar Farm	CA	16.8	128.1	111.1	1 axis	18%	Complete	Official documents
Antelope Solar Farm	CA	20.0	234.8		Unknown		Proposed	Developer
Mojave Solar	CA	20.8	204.4		Unknown		Proposed	Developer

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Tarzee Energy Antelope Plant	CA	20.0	211.4		Unknown		Proposed	Third party
Grandmen/Wallasen Solar Farm	CA	21.1*	183.5	117.8	Fixed	11%	Complete	Official documents
Adelte Solar	CA	23.5*	167.5		Unknown		Proposed	Developer
Orion Solar	CA	23.5*	311.2		Unknown		Proposed	Developer
Atwell Island Solar Project	CA	23.6	188.0		Unknown		Construction	Third party
PSE Blythe	CA	26.2	223.2	161.3	Fixed	16%	Complete	Developer
Imperial Valley Solar Company	CA	28.7	153.5		Unknown	15%	Proposed	Third party
McHaney Solar Farm	CA	29.4*	180.9		1 axis	16%	Construction	Developer
Del Sur Solar Project	CA	34.0	219.8		Unknown		Construction	Third party
Lucerne Valley Solar	CA	40.5	495.8	455.8	Fixed	16%	Construction	Official documents
Chocolate Mountains PV Plant	CA	48.9	378.8		Unknown		Construction	Developer
Calpeatria Solar Farm 2	CA	50.0	352.4		Unknown		Proposed	Third party
Salton Sea 1	CA	50.0	375.8		Unknown		Proposed	Developer
Avenal SunCity SandDrag Avenal Park	CA	57.7	641.3	442.6	Fixed	9%	Complete	Developer
Copper Mountain PV Plant	CA	58.9	459.2	293.9	Fixed	18%	Proposed	Third party
Midway Solar Farm 1	CA	58.7*	352.4	323.3	Unknown		Proposed	Developer
Regulus Solar	CA	75.0	672.7		Unknown		Proposed	Developer
Calpeatria Solar Farm 1	CA	82.2*	352.4	288.9	Unknown		Proposed	Developer
Salton Sea 2	CA	100.0	730.8		Unknown		Proposed	Third party
Quinto Plant	CA	110.0	1,101.0		1 axis	20%	Proposed	Official documents
Imperial Solar Energy Center South	CA	130.0	1,111.1		1 axis	11%	Proposed	Developer
Imperial Solar Energy Center West	CA	150.0	1,241.8		2 axis CPV	23%	Proposed	Developer
Midway Solar Farm 2	CA	162.1*	1,097.5		Unknown		Proposed	Third party
Calexico Solar Farm 1	CA	234.9*	1,468.2		Unknown		Proposed	Developer
Calexico Solar Farm 2	CA	234.9*	1,468.2		Unknown		Proposed	Developer

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Moons Signal PV Plant	CA	234.9*	1,644.2		Unknown		Proposed	Developer
AV Solar Ranch One	CA	254.0	2,993.0	2,414.0	1 axis	11%	Proposed	Developer
California Valley Solar Ranch	CA	293.6*	2,037.8		1 axis		Construction	Developer
Centinela Solar	CA	323.6*	2,417.7		Unknown		Proposed	Developer
Superstition Solar 1	CA	500.0	6,562.1		Unknown		Proposed	Official documents
Edwards Air Force Base	CA	500.0	3,736.4		Unknown		Proposed	Developer
Desert Sunlight	CA	568.0*	4,985.9	3,539.4	Fixed	16%	Proposed	Official documents
Topaz Solar Farm	CA	648.0*	4,110.8		Fixed	11%	Construction	Developer
Alamosa Water Treatment Facility PV Plant	CO	0.6	6.5	5.6	1 axis	16%	Complete	Official documents
Rifle Pump Station	CO	0.6	6.3	4.3	1 axis	13%	Complete	Official documents
SunEdison Alamosa PV Plant (Fixed-Tilt)	CO	0.6	7.0	3.8	Fixed	14%	Complete	Official documents
Arvada Ralston Water Treatment Plant	CO	0.6	7.1	4.5	1 axis	16%	Complete	Official documents
NREL Mesa Top PV Project	CO	0.7	5.9	3.3	1 axis	16%	Complete	Official documents
SunEdison Alamosa PV Plant (2 Axis)	CO	1.0	14.0	7.3	2 axis flat	14%	Complete	Official documents
NREL National Wind Technology Center	CO	1.1	11.5	7.1	1 axis	13%	Complete	Official documents
Buckley Air Force Base	CO	1.1	4.5	3.8	Fixed	14%	Complete	Official documents
Denver Federal Center Solar Park Phase 1	CO	1.2	7.8	6.0	Fixed	13%	Complete	Official documents
Colorado State University Pueblo Plant	CO	1.2	8.1	4.1	Fixed		Complete	Third party
Denver International Airport Phase 2 (Fuel Farm)	CO	1.6	10.8	9.3	Fixed		Complete	Developer
Rifle Waste Water Reclamation Facility	CO	1.7	14.0	9.8	1 axis	14%	Complete	Official documents
Colorado State University FL Collins Phase 1	CO	2.0	17.8	19.0	1 axis		Complete	Third party

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Denver International Airport 1 Pena Blvd	CO	2.0	11.7	11.7	1 axis		Complete	Developer
FL Carson PV Plant	CO	2.0	14.7	12.6	Fixed	11%	Complete	Developer
Colorado State University FL Collins Phase 2	CO	2.3	15.4	14.0	Fixed		Complete	Third party
Denver International Airport Phase 3	CO	4.4	35.2	26.9	Fixed		Complete	Developer
Air Force Academy CO Springs	CO	8.0	50.5	31.4	1 axis		Complete	Third party
SunEdison Alamosa PV Plant (1 Axis)	CO	8.8	74.1	38.6	1 axis	14%	Complete	Official documents
Greater Sand Hill Solar Plant	CO	20.0	306.5	132.6	1 axis	20%	Complete	Third party
San Luis Valley Solar Ranch	CO	35.2	258.1		1 axis	20%	Complete	Developer
Cogentrix Alamosa Solar Generating Project	CO	37.0	271.0	224.0	2 axis CPV	31%	Construction	Developer
Kent County Waste Water	DE	1.2	7.0	6.6	Fixed		Construction	Third party
Dover Sun Park	DE	11.7*	121.0	59.1	1 axis	20%	Complete	Third party
NASA PV	FL	1.0	6.1	2.8	Fixed		Complete	Developer
Stanton Energy Center	FL	5.8	41.1	29.1	1 axis		Complete	Developer
Reinhart Solar Farm	FL	8.0	28.2		Unknown	16%	Construction	Third party
Space Coast	FL	11.7*	52.8	35.2	Fixed		Complete	Developer
Jacksonville Solar	FL	15.0	114.4	63.9	Fixed	11%	Construction	Third party
DeSoto Plant	FL	25.0	253.2	201.6	1 axis	19%	Complete	Developer
Sorrento Eagle Dunes phase 1	FL	40.0	184.4		Fixed	14%	Construction	Developer
Sorrento Eagle Dunes phase 2	FL	60.0	422.8		Fixed	16%	Proposed	Third party
Babcock Ranch Solar	FL	75.0	468.8		Unknown		Proposed	Developer
Liberty County Solar Farm	FL	100.0	1174.5		Unknown		Proposed	Third party
Hardee County Solar Farm	FL	200.0	2,349.1		Unknown		Proposed	Third party
Gadsden Solar Farm	FL	400.0	4,698.1		Unknown		Proposed	Third party
Skiffsville Plant	GA	1.0	8.7		Fixed		Complete	Third party

Name	State	MW-DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Kapolei Switchable Energy Park	HI	1.2	4.7	3.2	Fixed	14%	Complete	Third party
Kalaeloa Oahu	HI	5.0	47.0		1 axis	18%	Construction	Official documents
Ersion City Solar	IL	10.0	48.2	37.6	1 axis		Complete	Developer
Grand Ridge Solar Plant	IL	23.0	167.9		Unknown	12%	Construction	Third party
Indianapolis Airport Solar Farm	IN	10.0	70.8		Fixed		Construction	Third party
Bowling Greens Solar Farm	KY	2.0	15.3	10.8	1 axis		Complete	Third party
William Stanley Business Park	MA	1.9	10.9	7.3	Fixed	14%	Complete	Official documents
Berkshire School	MA	2.0	19.8	8.4	Fixed	15%	Complete	Third party
Northfield Mountain	MA	2.0	12.9	9.3	Fixed		Complete	Third party
Indian Orchard Solar	MA	2.3	14.1		Unknown		Complete	Third party
Springfield Plant	MA	4.2	72.8	47.0	Unknown		Complete	Third party
Mueller Road Holyoke Plant	MA	4.5	22.3		Fixed	15%	Complete	Third party
Canton Landfill	MA	5.7	17.2	12.8	Fixed	15%	Complete	Official documents
Mount St. Mary's University	MD	17.4	158.6	105.7	Fixed	11%	Construction	Third party
Progress Energy	NC	1.2	11.3	9.1	1 axis	14%	Complete	Official documents
Mayberry/Mt. Airy Solar Farm	NC	1.2	7.8		Fixed	14%	Complete	Third party
Neuse River Waste Water	NC	1.3	11.7		Fixed	14%	Complete	Third party
SAS Solar Farm 1 and 2	NC	2.2	20.0	14.1	1 axis	15%	Complete	Developer
Kings Mountain Solar Farm	NC	5.0	31.9		Unknown		Complete	Third party
Murfreesboro	NC	8.4	34.7	30.8	1 axis	18%	Complete	Developer
Davidson County Solar	NC	17.3	221.8	129.3	1 axis		Complete	Developer
Trenton Solar Farm	NJ	1.3	6.5	5.2	Fixed		Complete	Third party
Silver Lake Solar Farm	NJ	2.1	8.4	6.7	Fixed	14%	Complete	Third party
Mars Solar Garden	NJ	2.2	14.4	11.9	Fixed	16%	Complete	Developer
NJMC Landfill	NJ	3.0	15.3		Fixed		Complete	Third party
Linden Solar Farm	NJ	3.2	11.7		Unknown		Complete	Third party

Name	State	MW-DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Janssen Pharmaceutical	NJ	4.1	29.4	21.9	1 axis		Complete	Third party
Woodland	NJ	4.1	32.9	17.6	Fixed		Complete	Developer
Yardville Solar Farm	NJ	4.4	18.4	16.8	Fixed	14%	Complete	Third party
Hamdel Solar Farm	NJ	4.8	39.9	18.9	1 axis		Proposed	Third party
Princeton University	NJ	5.3	31.7		1 axis	19%	Complete	Third party
Lawrenceville School	NJ	6.1	38.2		1 axis	15%	Complete	Third party
NJ Oak Solar Farm	NJ	12.5	122.5	87.5	Fixed	14%	Complete	Third party
Upper Pittsgrove	NJ	14.4	105.7		1 axis		Proposed	Third party
Tinton Falls	NJ	18.9	111.6		Unknown		Construction	Third party
Pinegrove Project	NJ	20.0	148.9	85.3	Fixed	14%	Complete	Third party
Santa Fe Waste Water Plant	NM	1.1	10.4	7.9	1 axis	14%	Complete	Developer
City of Madera Waste Water	NM	1.2	11.2	10.6	2 axis flat	14%	Complete	Third party
Questa	NM	1.2*	20.0	12.6	2 axis CPV	25%	Complete	Third party
Albuquerque Solar Center	NM	2.0	21.7	12.8	Fixed	11%	Complete	Third party
Deming Solar Energy Center	NM	5.0	58.7	40.0	Fixed	11%	Complete	Third party
Alamogordo Solar Center	NM	5.0	58.7		Fixed	11%	Complete	Third party
Hatch Solar Center	NM	8.5	80.1	38.8	2 axis CPV	28%	Complete	Developer
SunEdison Jal	NM	10.7	117.5	84.4	1 axis		Complete	Third party
SunEdison Carlsbad	NM	10.8	100.7	80.3	1 axis		Complete	Third party
Elephant Butte	NM	22.0	187.8		Fixed		Construction	Third party
Roadrunner Solar Facility	NM	33.5*	248.7	198.8	1 axis	11%	Complete	Developer
Cimarron	NM	33.2*	293.6	260.7	Fixed	10%	Complete	Developer
Estancia Solar Farm	NM	50.0	187.9		Unknown		Proposed	Third party
Guadalupe Solar	NM	300.0	2,836.3		Unknown		Proposed	Third party
Las Vegas Solar Center	NV	5.0	58.7		Unknown	11%	Complete	Third party

Name	State	MW-DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
El Dorado Solar	NV	12.0	80.0	64.0	Fixed	11%	Complete	Developer
Nellis Air Force Base	NV	15.0	184.7	148.0	1 axis		Complete	Official documents
Searchlight Solar Project	NV	20.0	242.3		1 axis		Complete	Third party
Fish Springs	NV	20.6	211.4		Fixed	10%	Construction	Official documents
Apex	NV	24.8	187.1		Unknown		Proposed	Third party
Silver State Solar North	NV	63.1	775.0		Fixed	10%	Construction	Official documents
Boulder City	NV	176.3*	1,303.7		1 axis	10%	Construction	Developer
Silver State Solar South	NV	350.0	3,404.1	3444.0	1 axis	10%	Proposed	Official documents
Moapa Green Center	NV	720.0	6,384.7		Unknown		Proposed	Third party
Brookhaven La[illegible]	NY	37.0	231.3	225.5	Fixed	13%	Construction	Developer
Washington To[illegible]ship Solar Array	OH	1.1	11.5	8.4	Fixed	9%	Complete	Developer
BNB Napoleon Solar LLC	OH	9.8	70.5		1 axis	16%	Construction	Third party
Wyandot Solar	OH	12.6	97.0	78.0	Fixed	11%	Complete	Developer
Turning Point Solar	OH	38.6*	496.4		Unknown		Proposed	Official document
Yamhill Solar	OR	1.2	11.8		Fixed	10%	Complete	Developer
Bellevue Solar	OR	1.7	14.0		Fixed	10%	Complete	Developer
Pocono Raceway	PA	3.0	27.2	17.8	Fixed		Construction	Third party
Ersion Conergy	PA	3.0	18.4	12.9	Fixed		Complete	Developer
Claysville Solar Project	PA	20.0	117.5	99.5	Fixed		Proposed	Developer
Shelby Solar Project	SC	1.0	10.8	6.5	1 axis	19%	Complete	Third party
West Tennessee Solar Farm	TN	5.0	29.4	25.9	Fixed		Construction	Developer
Blue Wing Solar	TX	14.1	134.2	98.7	Fixed		Construction	Developer
Austin Energy Webberville	TX	34.2	424.3		Unknown	15%	Complete	Third party
Pflugerville Solar	TX	60.0	704.7		Unknown		Construction	Third party
South Burlington Solar Farm	VT	2.2	31.7	25.8	2 axis flat		Complete	Third party

Appendix C. CSP Projects Evaluated

Table C-1. Concentrating Solar Power Land-Use Data

Note: Additional CSP plant information, such as storage and annual generation, can be found in Appendix A.

Name	State	MW AC	Total Area (acres)	Direct Area (acres)	Technology	Status as of August 2012	Data source
Maricopa Solar Project	AZ	1.5	15	4	Stirling Engine	Complete	Third party
Quartzsite	AZ	100	1,675		Tower	Proposed	Developer
Crossroad Solar	AZ	150	2,560		Tower	Proposed	Developer
Solana	AZ	280	1,920		Parabolic trough	Construction	Third party
Sierra SunTower	CA	5	50	22	Tower	Complete	Developer
Kimberlina	CA	7.5	35	15	Linear Fresnel	Complete	Developer
Solar Two	CA	10	132	110	Tower	Decommissioned	Third party
Coalinga	CA	13	86	57	Tower	Proposed	Developer
Victorville 2 hybrid	CA	50	265	230	Parabolic trough	Proposed	Official document
Palmdale Hybrid Gas/solar Plant	CA	97	377	250	Parabolic trough	Proposed	Official document
Rice Solar	CA	150	2,560	1,410	Tower	Construction	Official document
Abengoa Mojave	CA	250	1,765		Parabolic trough	Construction	Third party
Ford Dry Lake (Genesin)	CA	250	4,640	1,800	Parabolic trough	Construction	Official document
Hidden Hills 1	CA	250	1,640	1,560	Tower	Proposed	Official document
Hidden Hills 2	CA	250	1,640	1,560	Tower	Proposed	Official document
Rio Mesa 1	CA	250	1,917		Tower	Proposed	Official document
Rio Mesa 2	CA	250	1,917		Tower	Proposed	Official document
Rio Mesa 3	CA	250	1,917		Tower	Proposed	Official document
SEGS (all)	CA	354	2,057	2,057	Parabolic trough	Complete	Third party
Ivanpah All	CA	370	3,515	3,238	Tower	Construction	Official document
Saguaro Solar	CO	200	3,000	2,680	Tower	Construction	Official document
Martin Next Generation	FL	75	500	400	Parabolic trough	Complete	Developer

Name	Axis	MW AC	Total area (acres)	Direct area (acres)	Technology	Status as of August 2012	Data source
Nevada Solar One	1W	64	400	290	Parabolic trough	Complete	Third party
Tonopah (Crescent Dunes)	1W	110	1,600	1,527	Tower	Construction	Developer

Appendix D. Impact of PV System Size and Module Efficiency on Land-Use Requirements

System size appears to have little impact on capacity-based land-use requirements. Figure D-1 and Figure D-2 show the total-area requirements for small and large PV systems, with respect to project capacity. No significant trends are observed for land use and system size for small or large PV systems.

Land use was also evaluated with respect to module efficiency. Figure D-3 shows capacity-based direct land-use requirements for all PV systems with respect to module efficiency, and Figure D-4 shows the generation-based direct land-use requirements. We expect that land use will decrease with increasing module efficiencies, but no significant trends are observed for land use and module efficiency for small or large PV systems. A linear regression analysis yields a poor correlation coefficient for both the capacity-based area data (0.04) and the generation-based data (0.08). Isolating for fixed-tilt systems reveals that projects with higher efficiency use less land on a capacity basis (with a correlation coefficient of 0.50). No trends are observed within the pool of 1-axis tracking systems. Variations in land use that remain after isolating for module efficiency and tracking type are not clearly understood.

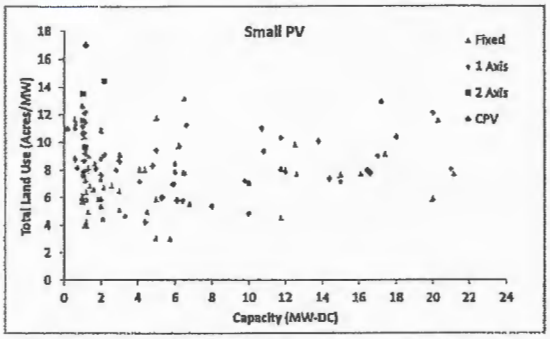


Figure D-1. Total-area requirements for small PV installations as a function of PV plant size

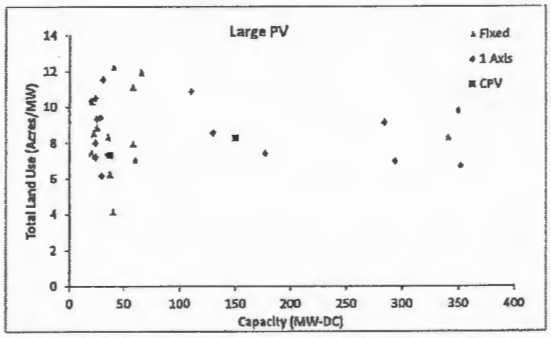


Figure D-2. Total-area requirements for large PV installations as a function of PV plant size

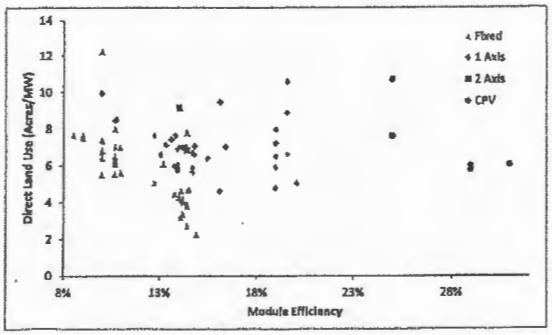


Figure D-3. Capacity-based direct-area land-use requirements for all PV systems as a function of module efficiency

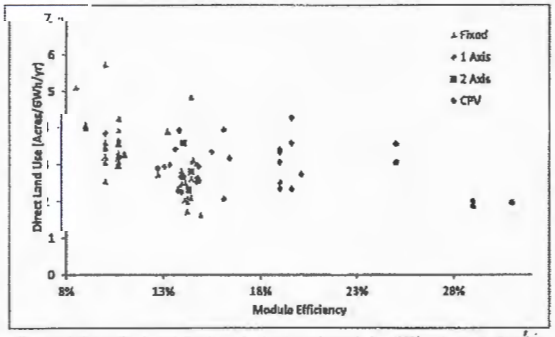


Figure D-4. Generation-based direct-area land-use requirements for all PV systems as a function of module efficiency

Appendix E. Impact of CSP System Size and Storage on Land-Use Requirements

We evaluated the impact of project capacity on land-use requirements and found that system size appears to have little impact on generation-based CSP land-use requirements. Figure E-1 and Figure E-2 show the total-area and direct-area requirements for all CSP systems evaluated, with respect to system size. No significant trends are observed for land-use and capacity for CSP systems.

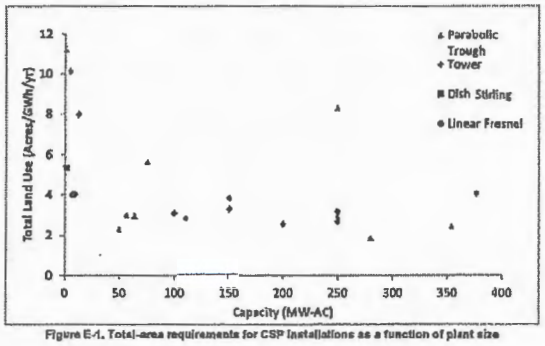


Figure E-1. Total-area requirements for CSP installations as a function of plant size

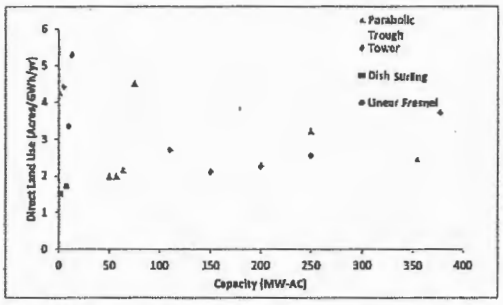


Figure E-2. Direct-area requirements for CSP installations as a function of plant size

We evaluate the impact of multi-hour energy storage on CSP land-use requirements. Eight facilities included thermal storage technology, ranging from 3 to 15 hours of storage. One of the eight CSP facilities with storage is a parabolic trough system, while the remaining seven are tower systems. Figure E-3 shows the generation-based total-area requirements for all storage-equipped CSP systems evaluated, with respect to storage capacity in hours. Figure E-4 shows the capacity-based total-area requirements.

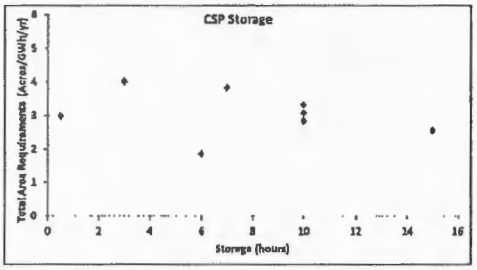


Figure E-3. Total generation-based area requirements for CSP installations as a function of storage hours

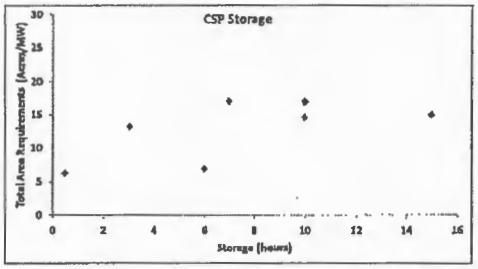


Figure E-4. Total capacity-based area requirements for CSP installations as a function of storage hours

2/12 12/21/17

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY Case No. 2018-0047-X

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

Case No. 18-047-X

8/21/18

People's Counsel
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which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of...scenic routes and scenic views" be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this **21st** day of **December, 2017,** by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017.**

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

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County to run with the land and continue in perpetuity. The easements and covenants must be shown on the concept plan and on the development plan or minor subdivision plan for the development, as applicable, and on the record plat.

A. For all subdivisions or other development, except as provided in Paragraph B, a permanent preservation easement on the conservancy area must be granted to Baltimore County or to a land trust which the county approves, and must permanently restrict further subdivision or development of the conservancy area. The easement must:

1. Allow public access to greenways and other open space areas subject to approval by the Department of Environmental Protection and Sustainability and the Department of Recreation and Parks; **[Bill No. 122-2010]**

2. Indicate uses and activities approved in the conservancy area subject to Section 1A07.7.C with any applicable conditions or limitations; and

3. Provide that any modification of a preservation easement held by Baltimore County be subject to a public hearing.

B. In the case of a development where additional permitted density remains, a conservancy area shall be shown on the approval plan and, if the plan involves subdivision, recorded in the land records of Baltimore County. A permanent preservation easement as described in Paragraph A must be granted if further subdivision subjects the tract to the development plan review process under Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

C. Other covenants or easements may be required as to ensure that the standards of this section are met, including:

1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and

2. An easement to provide for the maintenance of open views.

SECTION 1A08
R.C.7 (Resource Preservation) Zone
[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

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2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.

3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.

4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.

7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;

9. To implement state and federal mandates for the protection of natural resources and rural legacy;

10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;

11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;

12. To incorporate traditional features of the local built environment into development; and

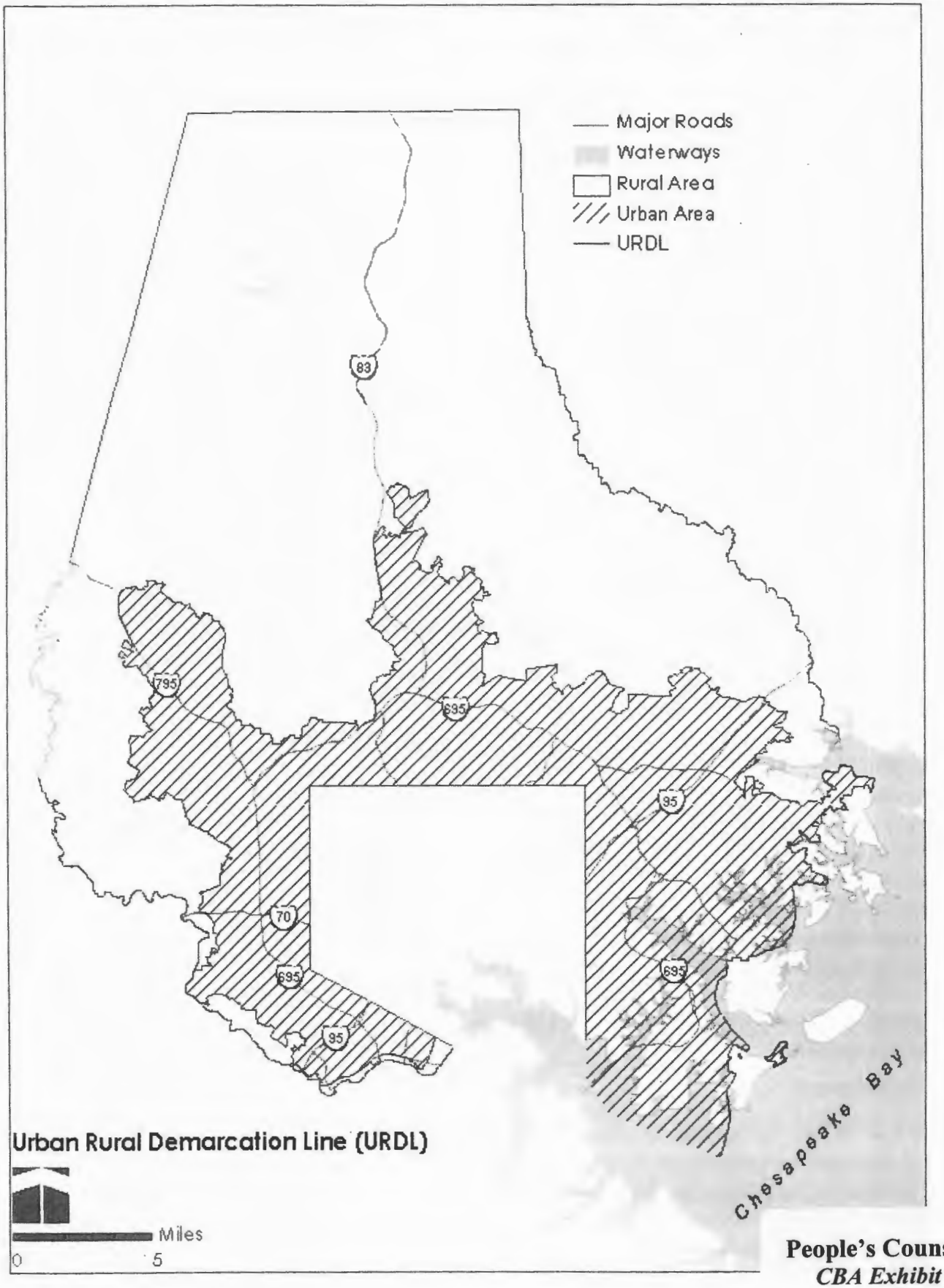
13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

15. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal. **[Bill No. 64-2015]**

Map 1: Urban Rural Demarcation Line



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Case No: 18-047-X 8/22/18

SIGN IN SHEET FOR Case # 2018-0047-X Gerner Property, 15637 York Rd Aug 21, 2018 Aug. 22, 2018

Clearly Print Name	Address & Zip Code	Email	Phone #	Group?
KATHLEEN PIEPER	4310 BECKLEYSVILLE RD 21074	KATHIE@STONEPONTRESTORATION		NO
LYNNE JONES	815 STABLERS CHURCH RD, PARKTON 21120	dryad101@hotmail.com		S-GCPC
William MAYO	921 Upper Glencoe Rd Sparks Md 21152	BILLGMAYO@GMail.Com		
EDDIE MATCZUK	932 UPPER GLENCOE RD	21152		
JOHN ALTMEYER	21722 ORWIG RD.	21053	Jaltmeyer@aol.com	
TERESA MOORE	118 W. PENNSYLVANIA AVE ~~21228~~ TOWSON	21204	teresa@thevpc.org	
Ginny Terhune	526 Allegheny Ave.	21204	terhunevirginia@gmail.com	
Jackie Brooks	411 Buedel Ct, Sparks MD 21152		jaccortibrooks@aol.com	

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2000, Legislative Day No. 15

Bill No. 74-00

Mr. T. Bryan McIntire, Councilman

By the County Council, August 7, 2000

A BILL
ENTITLED

AN ACT concerning

Land Use and Development - Resource Conservation Zones

FOR the purpose of amending the Baltimore County Zoning Regulations in order to create a new RC 7 zoning classification; adding certain definitions; establishing certain guidelines and use limitations for development; establishing certain permitted uses by right and by special exception; establishing certain area, design, and performance standards and guidelines; establishing certain procedures for the approval of certain permits and plans; permitting certain agriculture inconveniences; prohibiting certain special exceptions in certain resource conservation zones; excluding certain special exception use property area from the area used for the calculation of residential density in all zones; and generally relating to the use and development of resource conservation zones.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

By adding

Sections 100.1.A.2, the zoning classification of "R.C. 7 Resource Preservation Zone", 101, the definitions of "Antique Shop", "Campground", "Camping Unit", "Campsite", "Day Camp", and "Golf Course", 102.7, 1A08, and 502.1.I
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report, dated June 7, 2000, from the Planning Board concerning the subject legislation, and has held a public hearing thereon on July 3, 2000, now, therefore,

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 100.1.A.2, the zoning classification of "R.C. 7 Resource Preservation Zone", 101, alphabetically, the definitions of "Antique Shop", "Campground", "Camping Unit", "Campsite", "Day Camp", and "Golf Course", 102.7, 1A08, and 502.1.I are hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

Section 100 Zones and Districts; Boundaries

100.1 Baltimore County is hereby divided into zones and districts in accordance with this section.

A. Zones.

2. Zones are classified as follows:

R.C. 7 RESOURCE PRESERVATION ZONE

Section 101 Definitions

ANTIQUE SHOP -- A RETAIL ESTABLISHMENT FOR THE SALE OF GOODS OF A TYPE THAT ARE OFTEN PURCHASED BY COLLECTORS AND THAT MAY INCLUDE FURNITURE, POTTERY, GLASSWARE, JEWELRY, LINENS, TOOLS, ARTWORKS, AND BOOKS WHICH WERE MANUFACTURED AT LEAST 50 YEARS IN THE PAST.

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ANTIQUE SHOP INCLUDES THE OUTSIDE DISPLAY OF MERCHANDISE OFFERED FOR SALE IN FRONT OF THE ESTABLISHMENT ON THE SAME LOT WITHIN FIVE FEET OF THE FRONT PORCH OF FRONT BUILDING FACADE.

CAMPGROUND -- A TRACT OF LAND UPON WHICH TWO OR MORE CAMPSITES ARE LOCATED, ESTABLISHED, OR MAINTAINED FOR OCCUPANCY BY CAMPING UNITS AS TEMPORARY LIVING QUARTERS FOR RECREATION, EDUCATION, OR VACATION PURPOSES.

CAMPING UNIT -- A TENT, CABIN, LEAN-TO, RECREATIONAL VEHICLE, OR SIMILAR STRUCTURE ESTABLISHED OR MAINTAINED AND OPERATED IN A CAMPGROUND AS TEMPORARY LIVING QUARTERS FOR RECREATION, EDUCATION, OR VACATION PURPOSES.

CAMPSITE -- ANY PLOT OF LAND WITHIN A CAMPGROUND INTENDED FOR EXCLUSIVE OCCUPANCY BY A CAMPING UNIT OR UNITS, OCCUPIED BY A CAMPER.

DAY CAMP -- A PLOT OF GROUND UPON WHICH CHILDREN MAY ENGAGE IN SUPERVISED RECREATIONAL, EDUCATIONAL, CULTURAL, OR ARTISTIC ACTIVITIES OUTDOORS DURING DAYLIGHT HOURS, BUT DAY CAMP DOES NOT INCLUDE SCHOOLS OR CHILD CARE CENTERS.

GOLF COURSE -- A TRACT OF LAND LAID OUT FOR AT LEAST NINE HOLES FOR PLAYING GOLF, AND IMPROVED WITH TEES, GREENS, FAIRWAYS, AND HAZARDS, FACILITIES FOR COLLECTING FEES, STORING GOLF EQUIPMENT FOR RENTAL OR LIMITED SALE, AND STORING EQUIPMENT FOR MAINTENANCE OF THE GOLF

COURSE. GOLF COURSE INCLUDES SNACK STANDS AND A RESTAURANT WITH SEATING FOR NO MORE THAN 50 PERSONS. GOLF COURSE DOES NOT INCLUDE CATERING FACILITIES, NOR ANY OTHER FACILITIES FOR ENTERTAINMENT OR RECREATION.

SECTION 1A08 R.C. 7 (RESOURCE PRESERVATION) ZONE

1A08.1 FINDINGS AND LEGISLATIVE GOALS.

A. FINDINGS.

1. MASTER PLAN 2010, ADOPTED BY THE COUNTY COUNCIL IN FEBRUARY 2000, IDENTIFIES SPECIFIC RESOURCE PRESERVATION AREAS WHERE VALUABLE CULTURAL, HISTORIC, RECREATIONAL, AND ENVIRONMENTAL RESOURCES ARE LOCATED AND SHOULD BE PROTECTED FOR THE HEALTH OF THE LOCAL COMMUNITY AND THE COMMUNITY AT LARGE.

2. AMONG THE ACTIONS RECOMMENDED IN MASTER PLAN 2010 TO PROTECT RESOURCES IN RESOURCE PRESERVATION AREAS IS THE REDUCTION OF PERMITTED RESIDENTIAL DENSITIES IN THESE AREAS TO ONE DWELLING PER 25-50 ACRES OF LAND.

3. AN R.C. 7 ZONE WOULD ALLOW LIMITED DEVELOPMENT, COMPATIBLE WITH THE RURAL COMMUNITY, AND AT THE SAME TIME, PROTECT RURAL RESOURCES.

4. THE COUNTY RECOGNIZES THE IMPORTANCE OF RETAINING LARGE-ACREAGE PARCELS TO PROTECT AND PROMOTE THE AGRICULTURAL INDUSTRY; R.C. 7 SHALL BE APPLIED ONLY TO LANDS CURRENTLY ZONED R.C. 4 AS OF

AUGUST 7, 2000.

B. LEGISLATIVE GOALS. THE BALTIMORE COUNTY COUNCIL SEEKS TO ACHIEVE THE FOLLOWING GOALS IN THE R.C. 7 ZONE:

1. TO PRESERVE AND PROTECT TOTAL ECOSYSTEM FUNCTION, INCLUDING RIPARIAN AND AQUATIC ECOSYSTEMS;

2. TO PROTECT FORESTS, STREAMS, WETLANDS, AND FLOODPLAINS;

3. TO PROTECT THE WATER QUALITY OF WATERCOURSES, THE CHESAPEAKE BAY, AND REGIONAL BIODIVERSITY;

4. TO RESPECT HISTORIC SITES IN THEIR SETTINGS;

5. TO PROVIDE A QUALITY RECREATIONAL EXPERIENCE TO VISITORS;

6. TO PROTECT REMAINING PRIME AND PRODUCTIVE SOILS IN AREAS NOT CURRENTLY PROTECTED BY THE R.C. 2 ZONE.

7. TO MAINTAIN THE UNIQUE CHARACTER OF A RURAL AREA BY PRESERVING ITS NATURAL, HISTORIC, CULTURAL, RECREATIONAL, SCENIC, ARCHITECTURAL, AND ARCHAEOLOGICAL RESOURCES.

8. TO PROVIDE FOR THE ENVIRONMENTALLY SOUND USE OF LAND AND FOREST RESOURCES, AND TO PREVENT FOREST FRAGMENTATION, ESPECIALLY IN AREAS OF EXTENSIVE INTERIOR FOREST;

9. TO IMPLEMENT STATE AND FEDERAL MANDATES FOR THE PROTECTION OF NATURAL RESOURCES AND RURAL LEGACY;

10. TO ENHANCE RURAL CHARACTER AND ENVIRONMENTAL PROTECTION BY LOCATING BUILDINGS IN HARMONY WITH SITE CONDITIONS;

11. TO PRESERVE THE TRADITIONAL CHARACTER OF RURAL COMMUNITIES BY LIMITING THE SCALE AND INTENSITY OF DEVELOPMENT;

12. TO INCORPORATE TRADITIONAL FEATURES OF THE LOCAL BUILT ENVIRONMENT INTO DEVELOPMENT; AND

13. TO MAINTAIN THE RURAL SCALE AND CHARACTER OF AREA ROADS BY LIMITING GROWTH IN THE VOLUME OF TRAFFIC GENERATED BY LOCAL DEVELOPMENT.

1A08.2 IN THIS SECTION, THE FOLLOWING TERM HAS THE MEANING INDICATED:

BUILDING ENVELOPE -- THE AREA ON A LOT WITHIN WHICH ALL STRUCTURES EXCEPT WELLS, SEPTIC SYSTEMS, STORMWATER MANAGEMENT SYSTEMS, DRIVEWAYS, OR FENCES ARE PERMITTED TO BE BUILT.

1A08.3 PERMITTED USES.

A. USES PERMITTED BY RIGHT. THE FOLLOWING USES ARE PERMITTED BY RIGHT IN AN R.C. 7 ZONE:

1. DWELLINGS, ONE-FAMILY DETACHED.

2. FARMS AND LIMITED ACRE WHOLESALE FLOWER FARMS, SUBJECT TO SECTION 404.

3. OPEN SPACE, COMMON.

4. SCHOOLS.

5. STREETS AND WAYS.

6. TELEPHONE, TELEGRAPH, ELECTRICAL POWER OR OTHER LINES OR

CABLES, PROVIDED THAT ANY SUCH LINE OR CABLE IS UNDERGROUND; UNDERGROUND GAS MAINS; SHARED WELL AND SEPTIC SYSTEMS WHEN APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT; OR OTHER UNDERGROUND CONDUITS, EXCEPT INTERSTATE PIPELINES.

7. ACCESSORY USES OR STRUCTURES, SUBJECT TO SECTION 429, INCLUDING:

A. FARMER'S ROADSIDE STAND AND PRODUCE STAND, SUBJECT TO SECTION 404.4;

B. HOME OCCUPATIONS;

C. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONALS, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING THE PROFESSIONAL PERSON'S PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25% OF THE TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NONRESIDENT EMPLOYEE;

D. PARKING AND RESIDENTIAL GARAGE SPACE, SUBJECT TO SECTION 409;

E. SIGNS, SUBJECT TO SECTIONS 450 AND 1A08.8.C.5; AND

F. SWIMMING POOLS, TENNIS COURTS, AND OTHER RECREATIONAL AMENITIES, IF ACCESSORY TO A DWELLING OR RESIDENTIAL SUBDIVISION

ONLY.

8. COMMERCIAL FILM PRODUCTION, SUBJECT TO SECTION 435.

B. USES PERMITTED BY SPECIAL EXCEPTION. THE FOLLOWING USES ONLY MAY BE PERMITTED BY SPECIAL EXCEPTION IN AN R.C. 7 ZONE.

1. THE FOLLOWING USES PROVIDED THAT THEY ARE LOCATED IN A PRINCIPAL BUILDING THAT WAS ORIGINALLY CONSTRUCTED BEFORE THE EFFECTIVE DATE OF BILL 74-00; AND THE BUILDING IS CONVERTED TO THE NEW USE WITHOUT ANY EXTERNAL ENLARGEMENT AFTER THE EFFECTIVE DATE OF BILL 74-00:

A. ANTIQUE SHOP;

B. BED AND BREAKFAST;

C. TEA ROOM; AND

D. RESIDENTIAL ART SALON.

2. CHURCHES AND OTHER BUILDINGS FOR RELIGIOUS WORSHIP.

3. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONALS AS AN ACCESSORY USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING THE PROFESSIONAL PERSON'S PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25% OF THE TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NONRESIDENT PROFESSIONAL ASSOCIATE NOR TWO OTHER NONRESIDENT EMPLOYEES;

4. PUBLIC UTILITY USES NOT PERMITTED BY RIGHT.

5. BOTTLED WATER PLANT AS AN AGRICULTURAL SUPPORT USE, IF THE SOURCE OF WATER IS LOCATED ON THE SAME SITE AS THE PLANT, AND PROVIDED THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT MAKES A FINDING THAT THE PROPOSED FACILITY IS NOT EXPECTED TO ADVERSELY AFFECT THE QUALITY OF CAPACITY OF SURFACE WATER OR GROUND WATER.

6. CAMPGROUNDS, INCLUDING DAY CAMPS.

7. FARM MARKET, SUBJECT TO SECTION 404.4.

8. GOLF COURSES.

9. HORTICULTURAL NURSERY, SUBJECT TO SECTIONS 404.1 AND 404.2.

10. RIDING STABLES.

11. TARGET ARCHERY AND FIELD ARCHERY RANGES.

12. VOLUNTEER FIRE COMPANY OR AMBULANCE-RESCUE FACILITIES.

13. WINERY AS AN AGRICULTURAL SUPPORT USE, INCLUDING ACCESSORY RETAIL AND WHOLESALE DISTRIBUTION OF WINE PRODUCED ON PREMISES. TEMPORARY PROMOTIONAL EVENTS SUCH AS WINE TASTING OR PUBLIC GATHERINGS ASSOCIATED WITH THE WINERY ARE PERMITTED WITHIN ANY LIMITS SET THROUGH THE SPECIAL EXCEPTION PROCESS.

14. WIRELESS TELECOMMUNICATION TOWERS, SUBJECT TO SECTION 426.

C. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER

COUNTY LAW OR REGULATION TO THE CONTRARY, IF A PROPERTY TO WHICH THE ZONING CLASSIFICATION R.C. 7 IS APPLIED HAD A DEVELOPMENT PLAN PENDING FOR APPROVAL ON OR BEFORE AUGUST 7, 2000, THE DEVELOPMENT PROPOSED SHALL BE REVIEWED AND APPROVED BASED ON THE ZONING CLASSIFICATION APPLICABLE TO THE PROPERTY AT THE TIME THE DEVELOPMENT PLAN WAS FILED.

1A08.4 PLANS AND PERMITS. ALL DEVELOPMENT MUST BE IN ACCORDANCE WITH THIS SECTION AND THE STANDARDS AND GUIDELINES FOR "RURAL PRESERVATION" AND "SCENIC VIEWS" ADOPTED PURSUANT TO THIS SECTION, AND PUBLISHED AS PART OF THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES.

A. BEFORE THE APPROVAL OF ANY CONCEPT PLAN, DEVELOPMENT PLAN, LIMITED EXEMPTION, SPECIAL EXCEPTION PLAN, OR VARIANCE, THE DIRECTOR OF PLANNING OR THE DIRECTOR'S DESIGNEE MUST CERTIFY IN A WRITTEN FINDING THAT THE PLAN, EXEMPTION, OR VARIANCE IS CONSISTENT WITH THE SPIRIT AND INTENT OF THESE REGULATIONS. TO SUPPORT THE FINDING, THE DIRECTOR MAY REQUIRE INFORMATION SUCH AS BUILDING ELEVATIONS, BUILDING CROSS-SECTIONS, OR VIEWSHED ANALYSES PURSUANT TO SECTION 26-203(D)(22) OF THE BALTIMORE COUNTY CODE. THE DIRECTOR MUST CERTIFY THAT ANY DEVIATION FROM THIS SECTION OR THE STANDARDS AND GUIDELINES CITED ABOVE WAS NECESSARY TO:

1. MEET ANOTHER STANDARD OR GUIDELINE;

2. COMPLY WITH ENVIRONMENTAL REGULATIONS OR OTHERWISE PROTECT RESOURCES; OR

3. ACHIEVE THE BEST POSSIBLE SITE DESIGN BASED ON THE GOALS IN SECTION 1A08.1.B

B. BEFORE THE ISSUANCE OF ANY BUILDING PERMIT, THE DIRECTOR OF PLANNING OR THE DIRECTOR'S DESIGNEE MUST CERTIFY THAT THE PROPOSED DEVELOPMENT IS IN CONFORMANCE WITH A PLAN APPROVED PURSUANT TO THESE REGULATIONS.

C. A FINDING PURSUANT TO THIS SECTION MAY BE APPEALED TO THE BALTIMORE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF THE DATE OF THE FINDING BY ANY PERSON AGGRIEVED BY THE FINDING.

1A08.5 SCENIC VIEWS. TO PROTECT THE SCENIC VIEWS OR, WHEN NECESSARY PURSUANT TO 1A08.4, TO MITIGATE THE DISTURBANCE OF SCENIC VIEWS, THE DIRECTOR OF PLANNING MAY REQUIRE THAT ONE OR BOTH OF THE FOLLOWING BE CLEARLY DESIGNATED ON THE FINAL RECORD PLAT WITH APPROPRIATE NOTATIONS:

A. AREAS WHERE DISTURBANCE OF NATURAL VEGETATION IS PROHIBITED; OR

B. AREAS WHERE RE-VEGETATION OF LANDSCAPING IS REQUIRED.

1A08.6 DEVELOPMENT AREA AND STANDARDS.

A. MAXIMUM HEIGHT. NO STRUCTURE WITH A HEIGHT GREATER THAN 35 FEET IS PERMITTED, EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 300.

B. AREA REGULATIONS.

1. MAXIMUM LOT DENSITY. A TRACT MAY BE DEVELOPED IN AN R.C. 7 ZONE AT A MAXIMUM DENSITY OF 0.04 LOT PER ACRE OF GROSS TRACT AREA (AN AVERAGE OF 1 LOT PER 25 ACRES). NO LOT LYING WITHIN AN R.C. 7 ZONE AND HAVING A GROSS AREA OF LESS THAN 50 ACRES MAY BE SUBDIVIDED. ANY LOT HAVING A GROSS AREA OF 50 ACRES OR MORE MAY BE SUBDIVIDED AT THE RATE OF ONE LOT FOR EACH 25 ACRES OF GROSS AREA. IN CASES WHERE SINGLE OWNERSHIP IS CROSSED BY EXISTING OR PROPOSED ROADS, RIGHTS OF WAY, OR EASEMENTS, THE PORTIONS OF LAND ON EITHER SIDE OF THE ROAD, RIGHT OF WAY, OR EASEMENT MAY NOT BE CONSIDERED SEPARATE PARCELS FOR THE PURPOSE OF CALCULATING THE NUMBER OF LOTS OF RECORD.

2. LOT AREA. THE AREA OF ANY RESIDENTIAL LOT IN A MAJOR OR MINOR SUBDIVISION MUST NOT BE LESS THAN ONE ACRE.

3. BUILDING ENVELOPE. FOR RESIDENTIAL DEVELOPMENT, THE MAXIMUM AREA OF THE BUILDING ENVELOPE ON ANY RESIDENTIAL LOT OTHER THAN A FARM IS 20,000 SQUARE FEET, AND NO SINGLE DWELLING, INCLUSIVE OF A GARAGE OR ACCESSORY BUILDING, SHALL HAVE A BUILDING FOOTPRINT THAT EXCEEDS 5,000 SQUARE FEET. THE PLACEMENT OF THE BUILDING ENVELOPE IS DETERMINED ON THE BASIS OF:

A. THE GOALS FOR THE ZONE; AND

B. THE MINIMUM SETBACKS FOR THE ZONE.

4. MINIMUM DEVELOPMENT ALLOWANCE. ANY LOT OR PARCEL OF LAND

LAWFULLY EXISTING ON THE EFFECTIVE DATE OF BILL 66-00 MAY BE DEVELOPED WITH A SINGLE DWELLING.

5. SETBACKS.

A. ANY PRINCIPAL BUILDING CONSTRUCTED IN AN R.C. 7 ZONE MUST BE SITUATED AT LEAST:

I. 35 FEET FROM THE RIGHT OF WAY OF PUBLIC OR PRIVATE INTERIOR STREETS;

II. 80 FEET FROM ANY PRINCIPAL BUILDING; AND

III. 50 FEET FROM THE REAR LOT LINE.

B. ANY PRINCIPAL BUILDING OR WELL CONSTRUCTED, OR ANY USE THAT MAY BE IN CONFLICT WITH ANY PERMITTED AGRICULTURAL OPERATION, IN AN R.C. 7 ZONE MUST BE AT LEAST 300 FEET FROM ANY ADJACENT PROPERTY THAT WAS CULTIVATED OR USED FOR PASTURE DURING THE PREVIOUS THREE YEARS, AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, OR THAT IS SUBJECT TO A PERPETUAL AGRICULTURAL OR CONSERVATION EASEMENT.

6. IMPERVIOUS SURFACE COVERAGE -- NON-RESIDENTIAL DEVELOPMENT. EXCEPT FOR RESIDENTIAL LOTS WHICH ARE SUBJECT TO A BUILDING ENVELOPE RESTRICTION, NO MORE THAN 10% OF ANY LOT MAY BE COVERED BY IMPERVIOUS SURFACES SUCH AS STRUCTURES OR PAVEMENT.

7. HISTORIC PROPERTIES. NO BUILDING OR STRUCTURE ON A DEVELOPMENT TRACT WHICH IS OFFICIALLY INCLUDED ON THE PRELIMINARY

OR FINAL LIST OF THE LANDMARKS PRESERVATION COMMISSION OR THE NATIONAL REGISTER OF HISTORIC PLACES, OR WHICH IS SUBJECT TO AN EASEMENT HELD BY THE MARYLAND HISTORIC TRUST WILL BE COUNTED AS A LOT OR DWELLING FOR PURPOSES OF CALCULATING DENSITY, PROVIDED THAT:

A. THERE IS AN AREA OF SUFFICIENT SIZE, AS DETERMINED BY THE DIRECTOR OF PLANNING IN CONSULTATION WITH THE LANDMARKS PRESERVATION COMMISSION OR MARYLAND HISTORIC TRUST, SURROUNDING THE BUILDING, STRUCTURE, OR LANDMARK TO PRESERVE THE INTEGRITY OF ITS HISTORIC SETTING;

B. AN OVERALL PHOTOGRAPHIC AND WRITTEN DESCRIPTION OF THE BUILDING, STRUCTURE, OR LANDMARK IDENTIFIED HAS BEEN SUBMITTED AND IS DETERMINED TO BE IN COMPLIANCE WITH THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES;

C. DOCUMENTATION OF THE PRESERVATION, RESTORATION, AND PROTECTION FOR THE BUILDING, STRUCTURE, OR LANDMARK HAS BEEN APPROVED BY THE DIRECTOR OF PLANNING IN CONSULTATION WITH THE MARYLAND HISTORICAL TRUST PRIOR TO ISSUANCE OF ANY BUILDING PERMIT; AND

D. WHEN PROVISIONS OF THIS PARAGRAPH APPLY TO ANY DEVELOPMENT, THE CONDITIONS FOR APPROVAL MUST BE NOTED ON THE CONCEPT PLAN AND DEVELOPMENT PLAN, OR THE MINOR SUBDIVISION PLAN.

C. PERFORMANCE STANDARDS. CONDITIONS FOR APPROVAL PURSUANT TO

THIS SECTION MUST BE NOTED ON THE CONCEPT PLAN AND DEVELOPMENT PLAN, OR MINOR SUBDIVISION PLAN. THE FOLLOWING STANDARDS ARE INTENDED TO FOSTER CREATIVE DEVELOPMENT THAT PROMOTES THE GOALS STATED IN 1A08.1.B.

1. STORMWATER MANAGEMENT. STORMWATER MANAGEMENT FACILITIES MUST BE INTEGRATED WITH THE TOPOGRAPHY OF THE SITE AND CONSISTENT WITH THE VISUAL APPEARANCE OF THE SURROUNDING NATURAL FEATURES.

2. BUILDINGS.

A. BUILDINGS MUST BE LOCATED ON THE LEAST VISUALLY PROMINENT PORTION OF THE SITE FROM THE PUBLIC ROAD, CONSISTENT WITH EFFECTIVE RESOURCE PROTECTION, EXCEPT WHERE APPROPRIATE TO CONTINUE AN ESTABLISHED PATTERN OF DEVELOPMENT ALONG THE EDGE OF THE ROAD.

B. BUILDINGS SHOULD REFLECT THE TRADITIONAL RURAL CHARACTER OF THE AREA IN ARCHITECTURAL FORM, SCALE, MATERIALS, AND DETAILING, AND IN LANDSCAPING CONTEXT.

C. DWELLINGS AND OTHER PRINCIPAL USE BUILDING SHOULD BE FRONT-ORIENTED TO PUBLIC RIGHTS OF WAY; REVERSE-FRONTED LOTS GENERALLY WILL NOT BE PERMITTED.

D. INSTITUTIONAL USES, WHEN PERMITTED, SHOULD BE REGARDED AS COMMUNITY LANDMARKS, AND TREATED AS PERMANENT, SPECIAL USES.

THIS STATUS SHOULD BE REFLECTED IN BUILDING ORIENTATION AND LOCATION ON THE SITE, ENTRYWAYS, LANDSCAPING, ARCHITECTURE, AND EXTERIOR BUILDING MATERIALS.

E. ALL OF THE EXTERIOR WALLS OF A BUILDING MUST BE TREATED SIMILARLY WITH RESPECT TO COLOR AND ARCHITECTURAL DETAILS.

F. ACCESSORY STRUCTURES, INCLUDING SOLAR PANELS, ANTENNAS, AND STORAGE SHEDS ARE NOT PERMITTED IN THE FRONT YARD OF ANY PRINCIPAL USE. SECTION 400.1 IS NOT APPLICABLE IN AN R.C. 7 ZONE, HOWEVER, THE HEIGHT OF ACCESSORY STRUCTURES IS SUBJECT TO THE PROVISIONS OF SECTION 400.

G. WHEN BUILDINGS ARE LOCATED IN OPEN FIELDS BECAUSE OF SITE CONSTRAINTS, ADDITIONAL LANDSCAPING OR BERMS MAY BE REQUIRED TO SOFTEN VIEWS.

3. ROADS, PARKING AREAS, AND STORAGE AREAS.

A. INTERIOR ROADS MUST CONFORM TO BALTIMORE COUNTY'S STANDARDS FOR RURAL ROADS. AND NO PAVED SECTION OF ROAD MAY EXCEED A WIDTH OF 18 FEET.

B. CURBING MUST NOT BE USED UNLESS REQUIRED FOR STORMWATER MANAGEMENT, AS DETERMINED BY THE DEPARTMENT OF PUBLIC WORKS. WHEN CURBING IS REQUIRED, IT MUST CONSIST OF MOUNTABLE CURBS OF A COLOR THAT SIMULATES THE APPEARANCE OF AGED CONCRETE, IN ACCORDANCE WITH SPECIFICATIONS ESTABLISHED BY THE

DEPARTMENT OF PUBLIC WORKS.

C. FENCING OF RESIDENTIAL PROPERTIES MUST BE IN KEEPING WITH RURAL CHARACTER. FENCES MUST BE EITHER SPLIT RAIL OR BOARD ON POST, AND THE TYPE OF FENCE MUST BE CONSISTENT THROUGHOUT THE DEVELOPMENT.

D. OFF-STREET PARKING AND VEHICLE OR EQUIPMENT STORAGE AREAS, WHEN NECESSARY FOR NONRESIDENTIAL OR NON-FARM USES, MUST BE VISUALLY SCREENED BY FENCING, BUILDINGS, OR VEGETATION, OR A COMBINATION THEREOF, FROM THE PUBLIC ROADS AND DWELLINGS.

E. AREAS FOR THE OUTSIDE STORAGE OF MATERIALS OR SUPPLIES FOR NON-AGRICULTURAL COMMERCIAL USES, EXCEPT MERCHANDISE OFFERED FOR SALE BY ANTIQUE SHOPS, MUST BE VISUALLY SCREENED BY FENCING, BUILDINGS, OR VEGETATION, OR A COMBINATION THEREOF, FROM ALL PUBLIC ROADS AND DWELLINGS.

F. STREET LIGHTS, IF PERMITTED ON INTERIOR STREETS, MUST BE NO HIGHER THAN 14 FEET AND ILLUMINATED BY NO MORE THAN ONE 100-WATT SODIUM VAPOR LAMP. FLUORESCENT AND INCANDESCENT LIGHTS ARE NOT PERMITTED. THE LIGHT FIXTURES SHOULD BE OF A STYLE THAT DIFFUSES LIGHT.

4. SCREENING. VISUAL SCREENING FOR PRIVACY OR TO BLOCK DISTRACTING VIEWS SHOULD BE NATURAL IN APPEARANCE AND SENSITIVE TO GRADE RELATIONSHIPS. SCREENS SHOULD NOT DISRUPT THE HARMONY OF THE

NATURAL LANDSCAPE OR OBSTRUCT SCENIC VIEWS.

5. SIGNS.

A. COMMUNITY SIGNS ARE PROHIBITED. SUBDIVISIONS MAY BE IDENTIFIED BY STREET SIGNS.

B. A NON-RESIDENTIAL PRINCIPAL USE MAY BE IDENTIFIED BY:

I. AN ENTERPRISE SIGN, SUBJECT TO SECTION 450; OR

II. AN IDENTIFICATION SIGN, SUBJECT TO SECTION 450.

1A08.7 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS. ANY DWELLING IN AN R.C. 7 ZONE MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING NOISE, ODORS, FUMES, DUST, THE OPERATION OF MACHINERY OR AIRCRAFT OF ANY KIND DURING ANY 24-HOUR PERIOD, THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES, AND PESTICIDES.

Section 102 General Requirements

102.7 WHERE DEVELOPMENT OF A PROPERTY INCLUDES BOTH A SPECIAL EXCEPTION AND A RESIDENTIAL SUBDIVISION, THE AREA ALLOCATED FOR USE AS A SPECIAL EXCEPTION SHALL NOT BE INCLUDED IN THE CALCULATION OF RESIDENTIAL DENSITY.

Section 502 Special Exceptions

502.1 Before any special exception may be granted, it must appear that the use for which the

special exception is requested will not:

I. BE DETRIMENTAL TO THE ENVIRONMENTAL AND NATURAL RESOURCES OF THE SITE AND VICINITY INCLUDING FORESTS, STREAMS, WETLANDS, AQUIFERS. AND FLOODPLAINS IN AN R.C. 2, R.C. 4, R.C. 5, OR R.C. 7 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council, shall take effect September 15, 2000.

B07-00.ord

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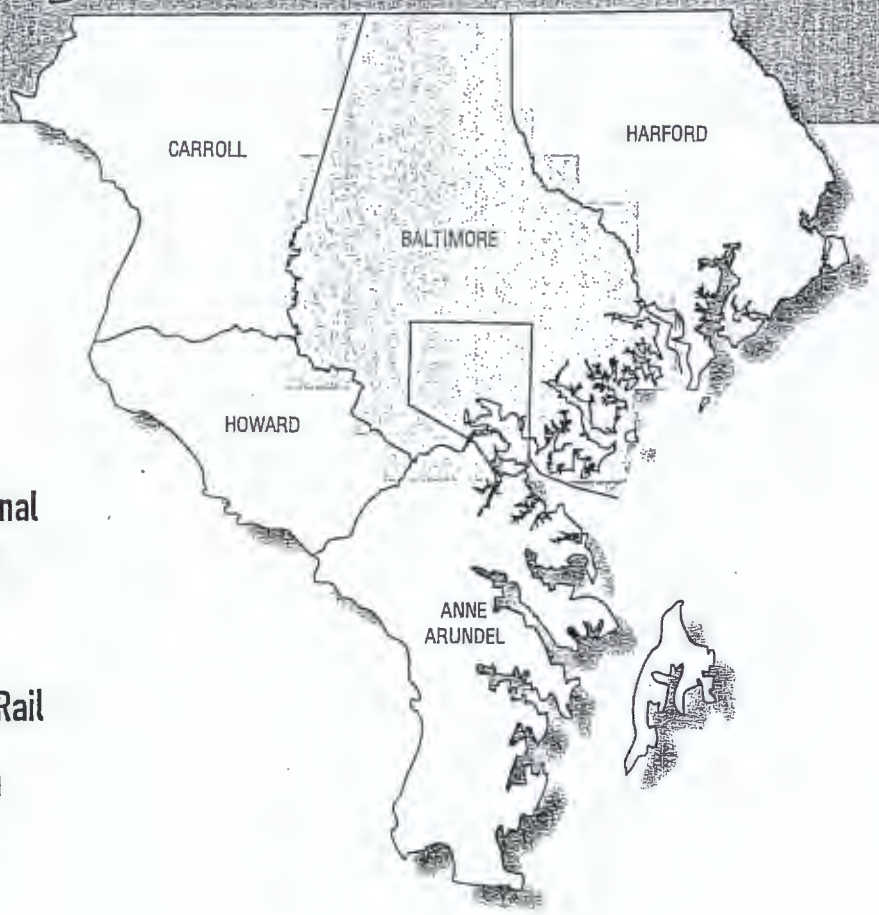
by Kappa Map Group

STREET ATLAS

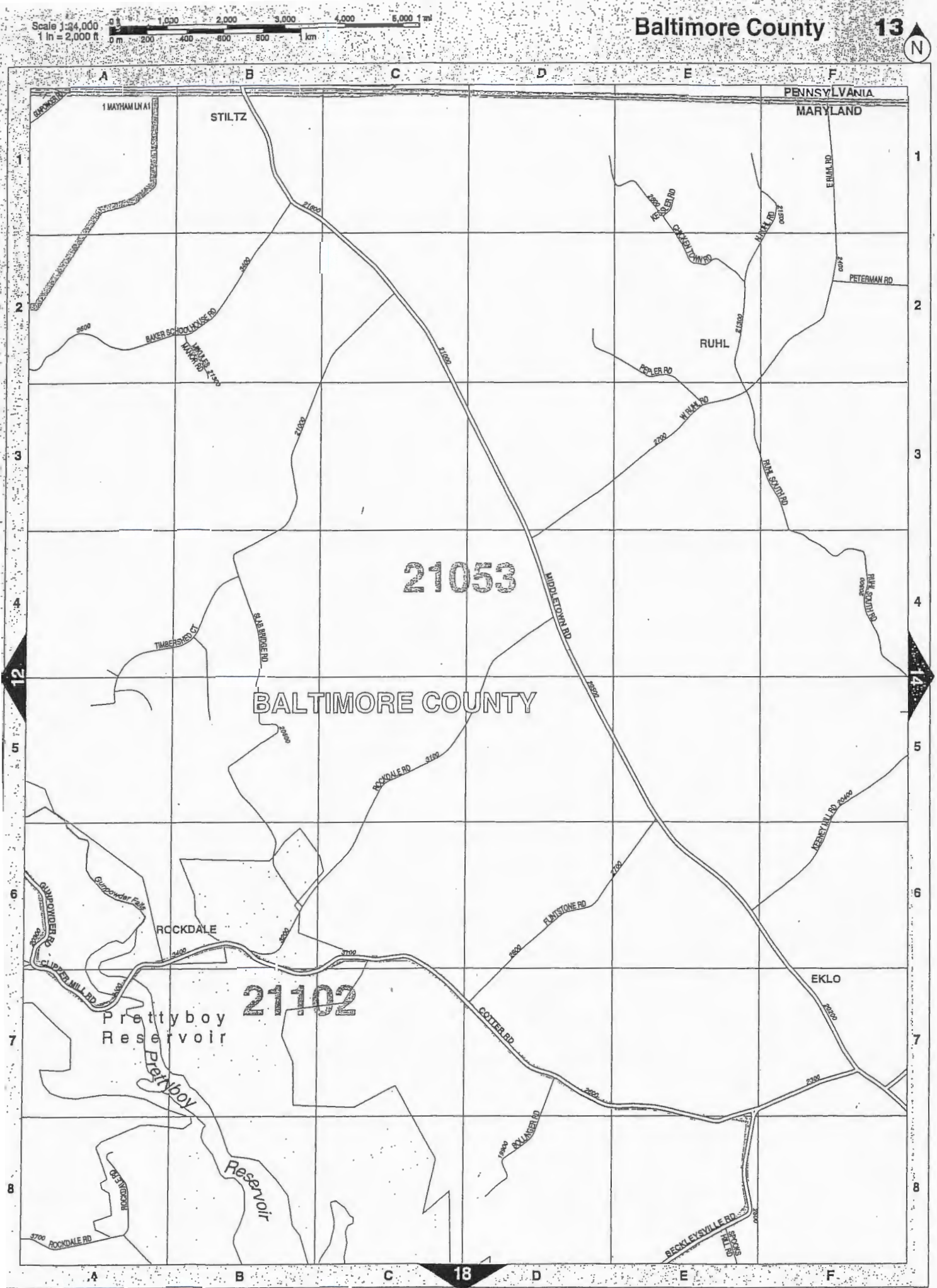
Baltimore City & County

Maryland



NAVTEQ ON BOARD

2 Key Map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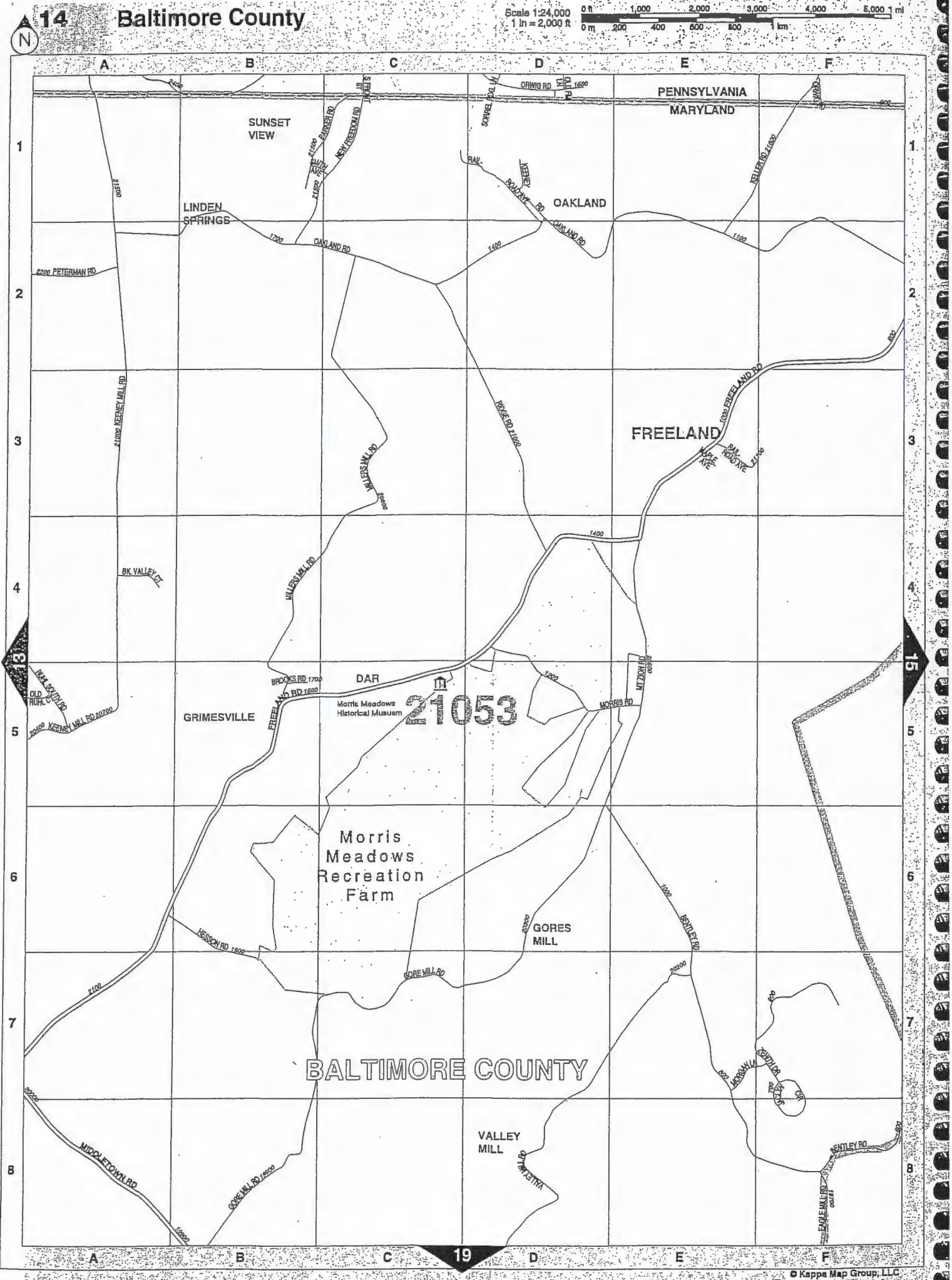

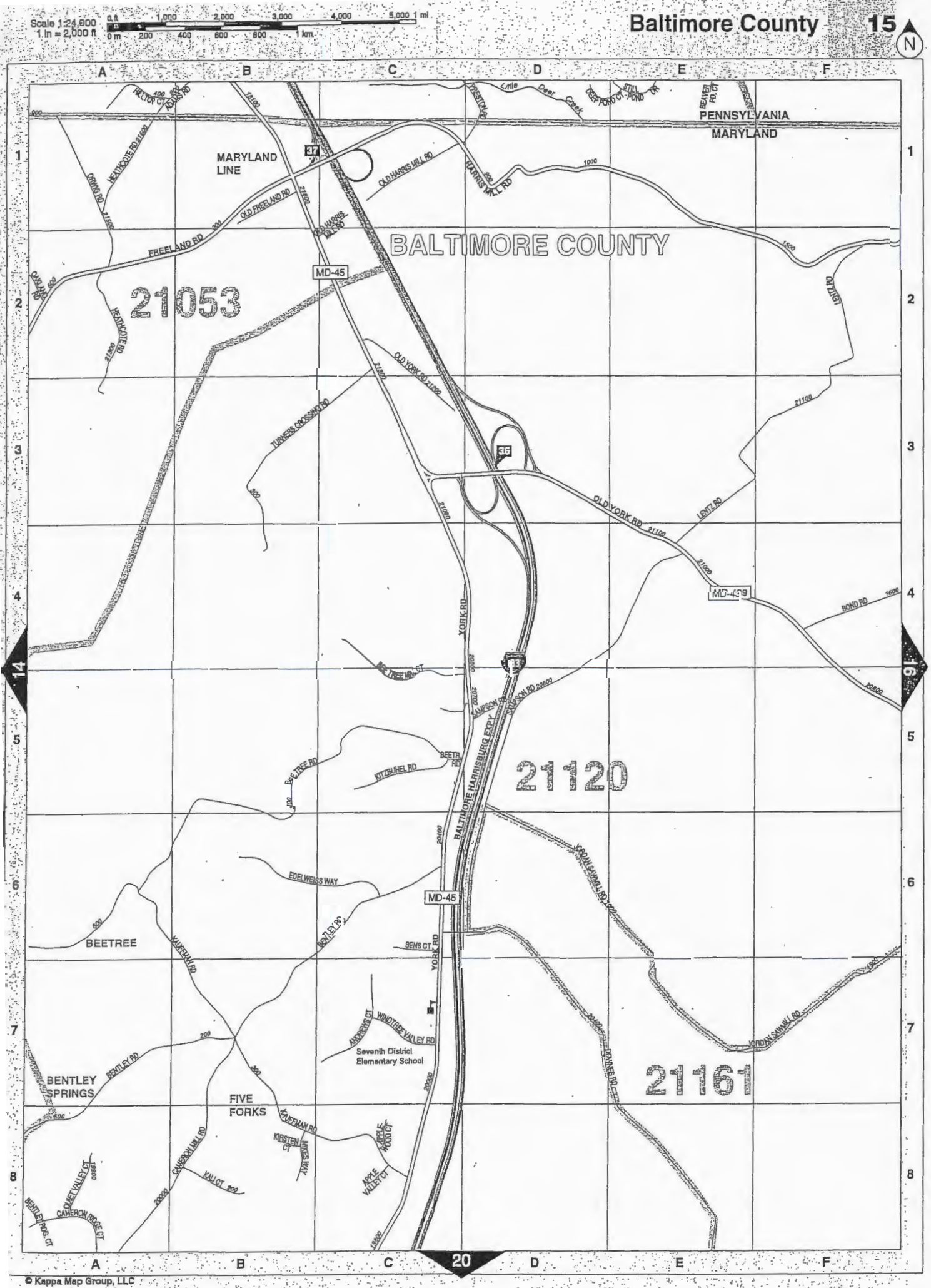
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Seventh District Elementary School
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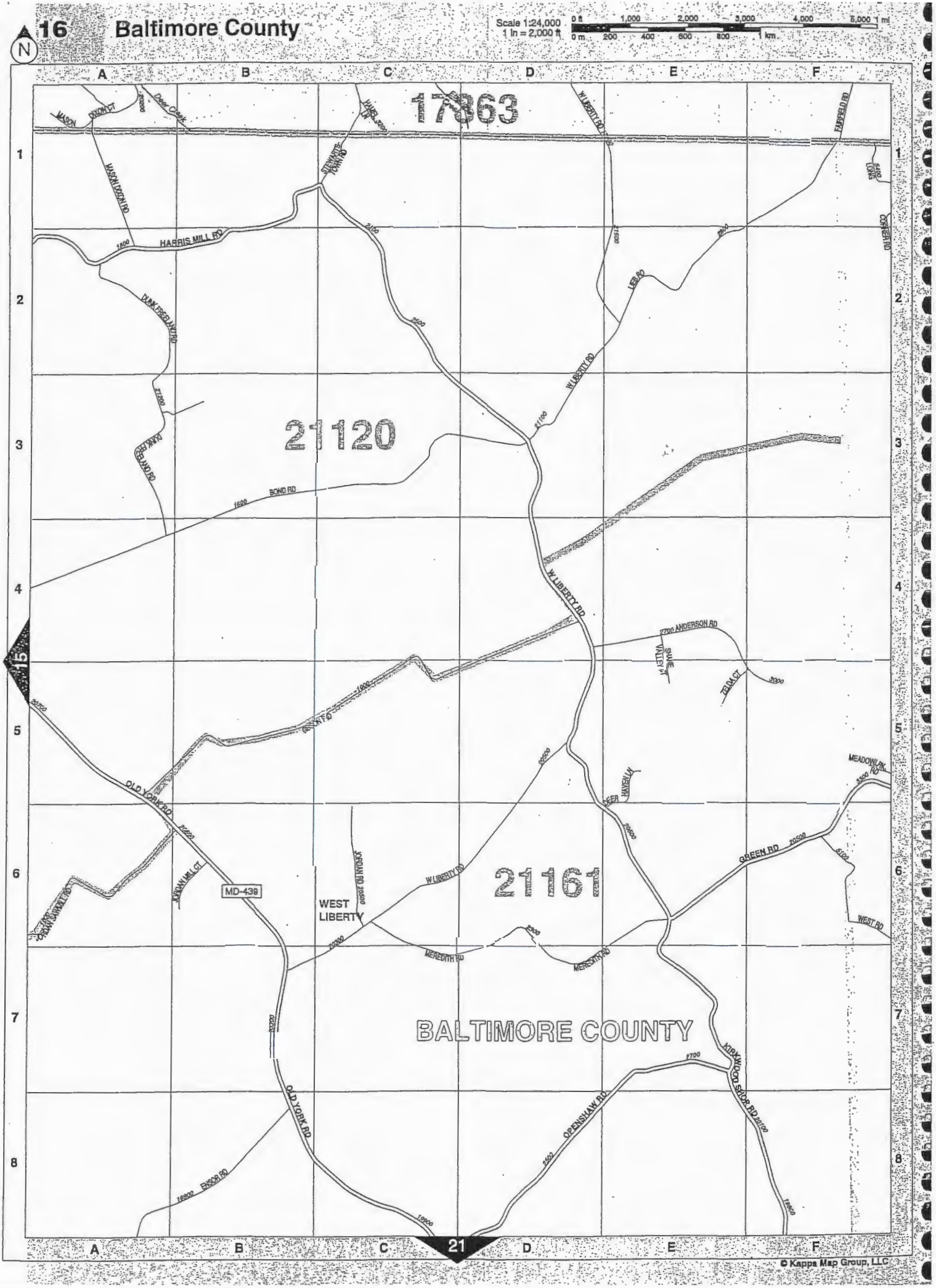
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LONG CORNER RD
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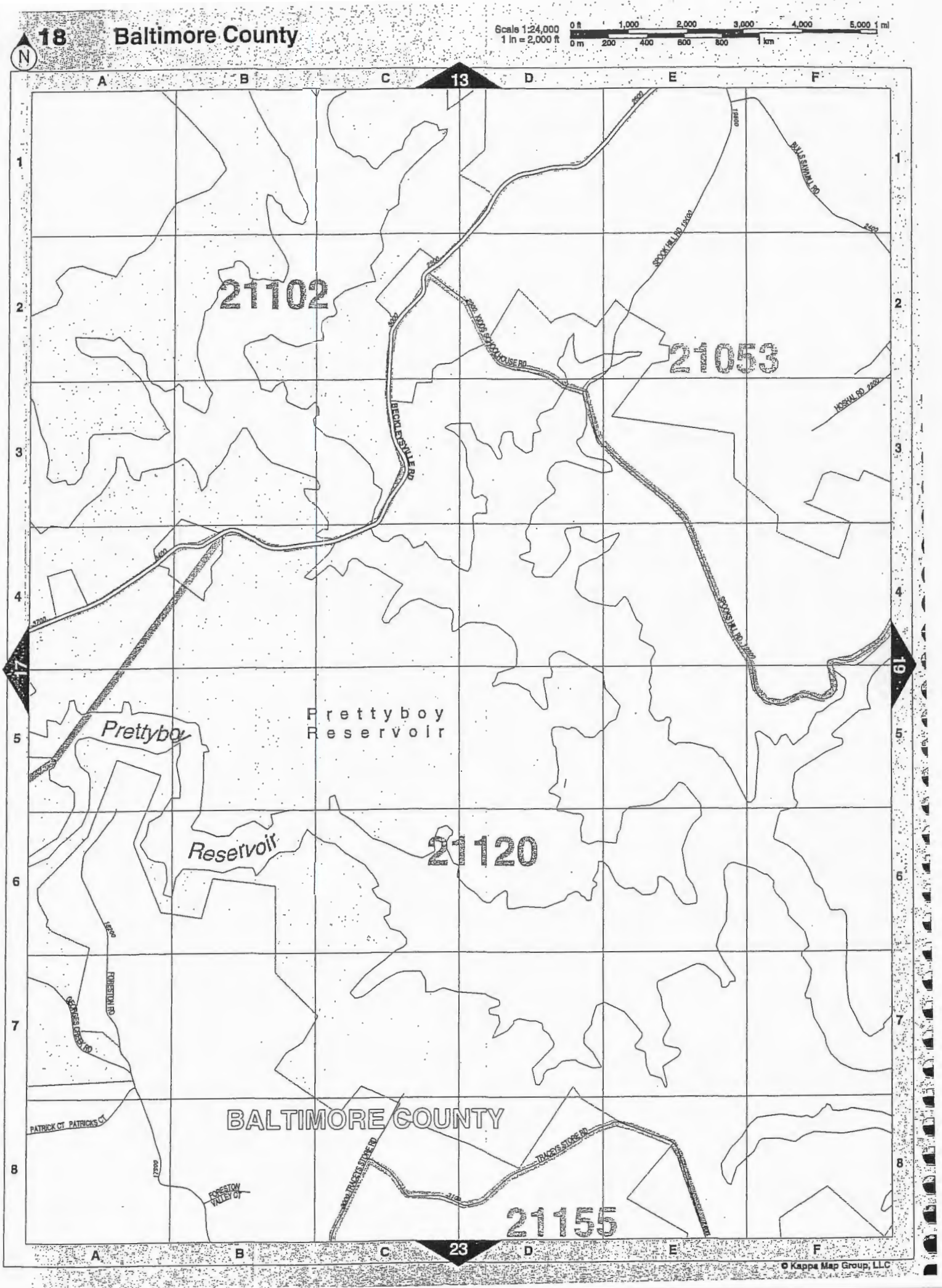
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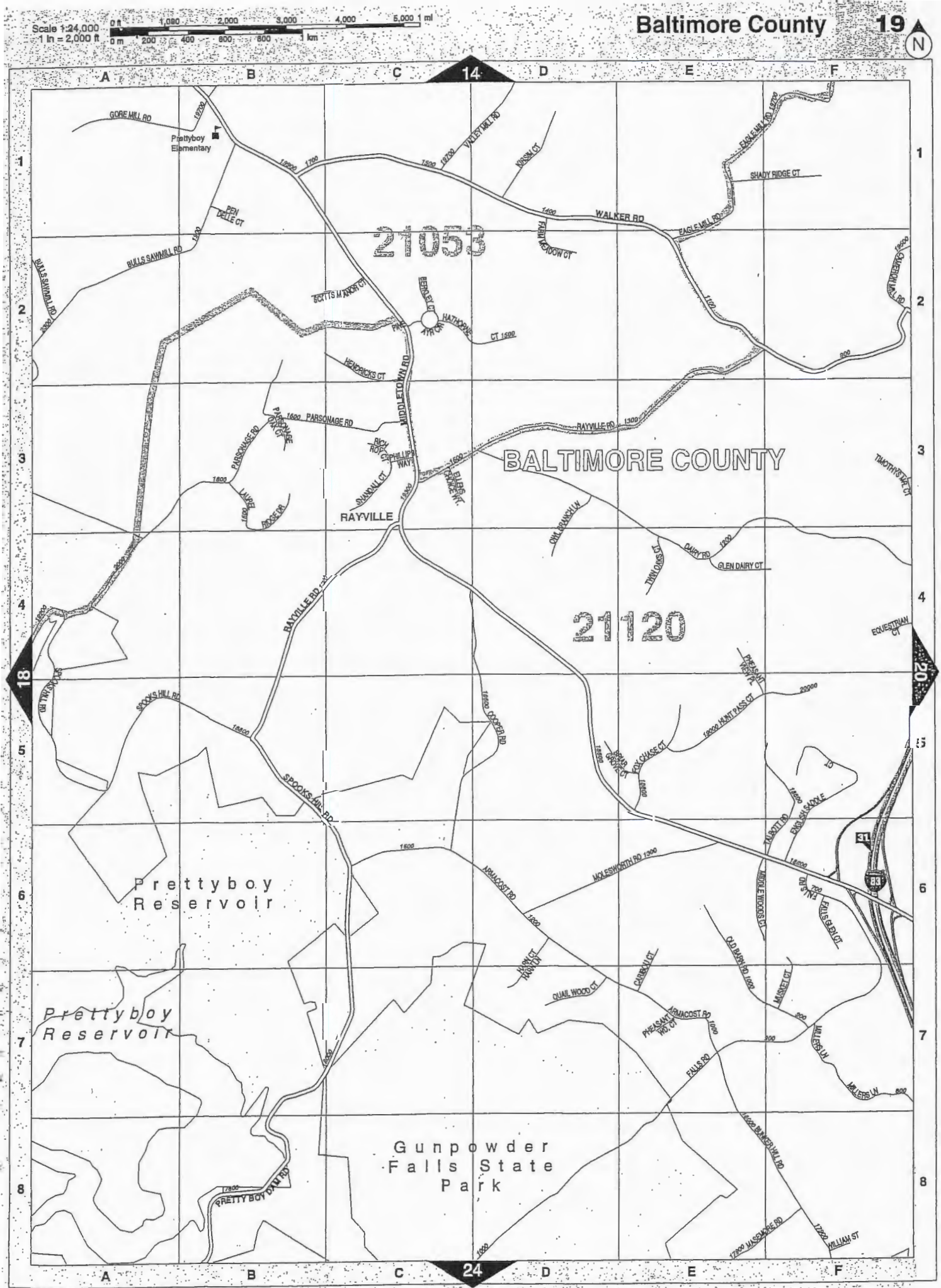

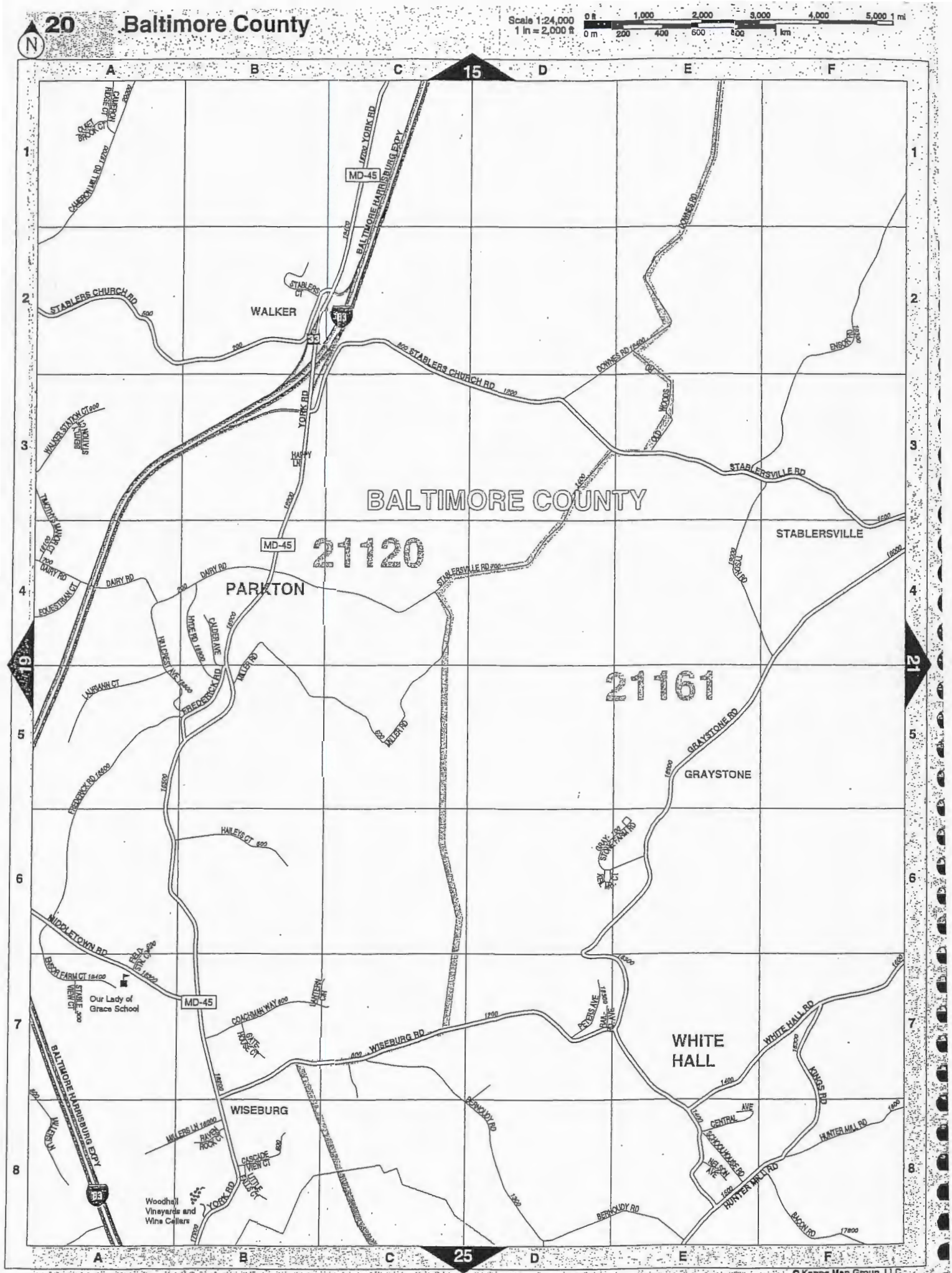

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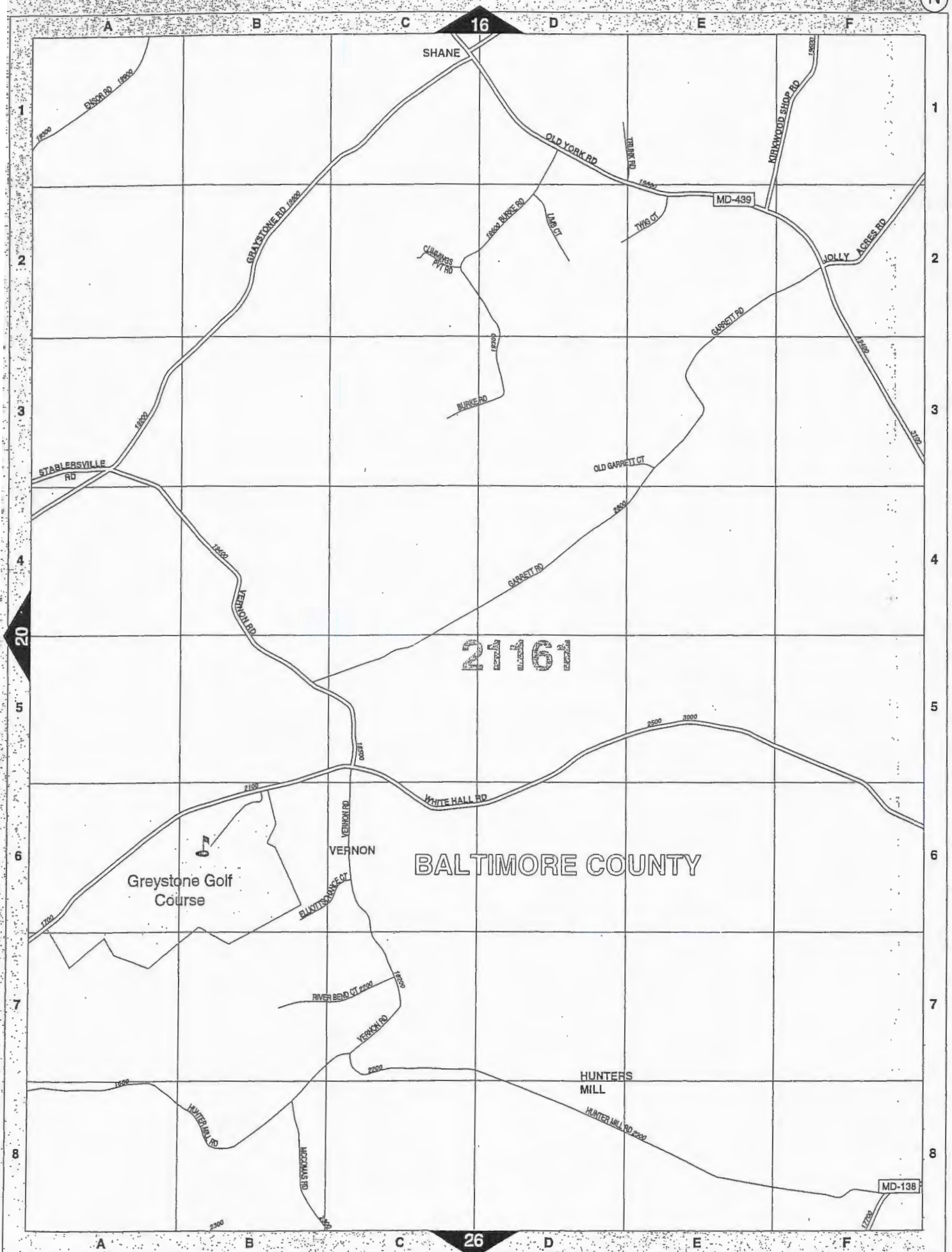

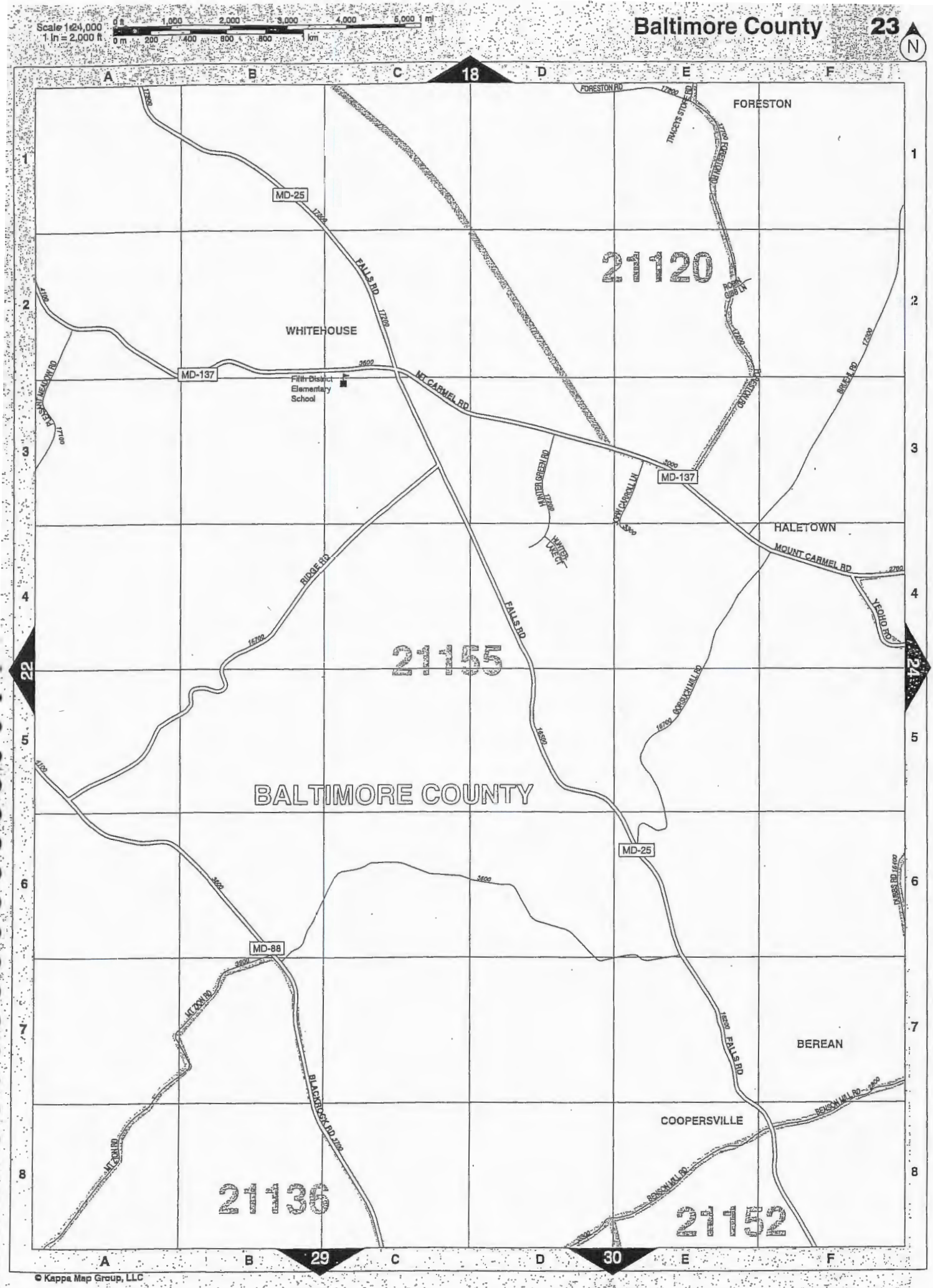

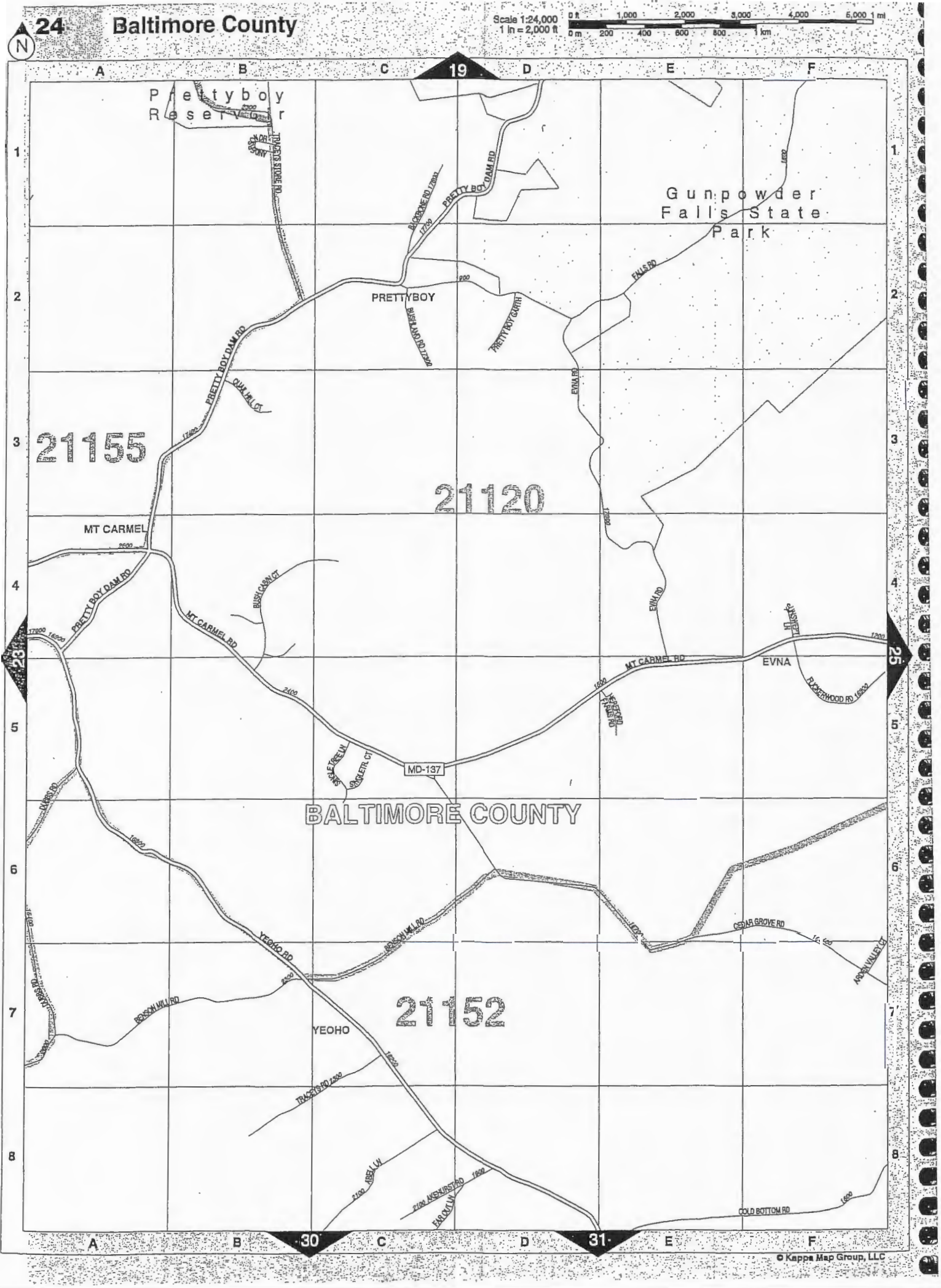
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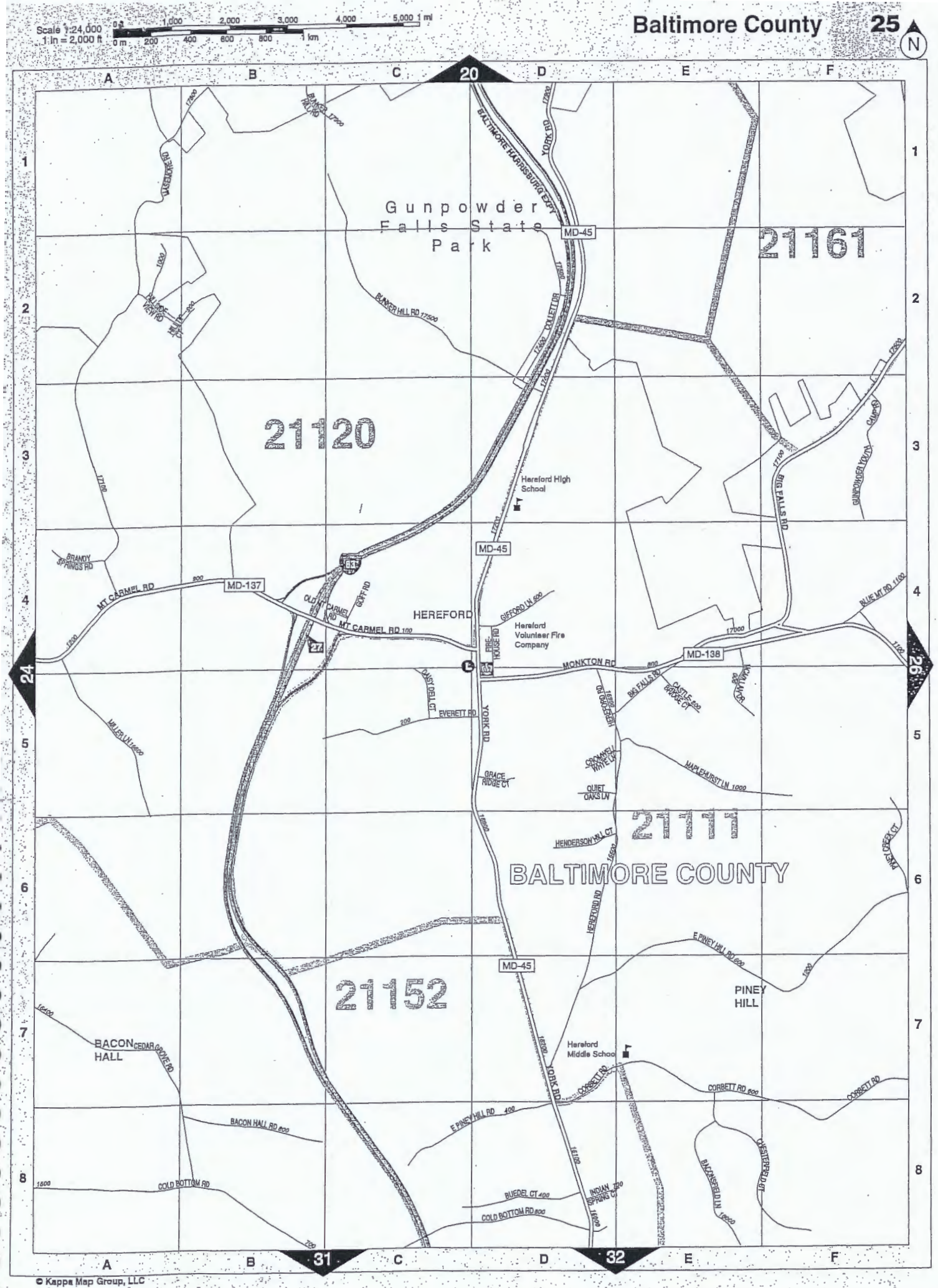

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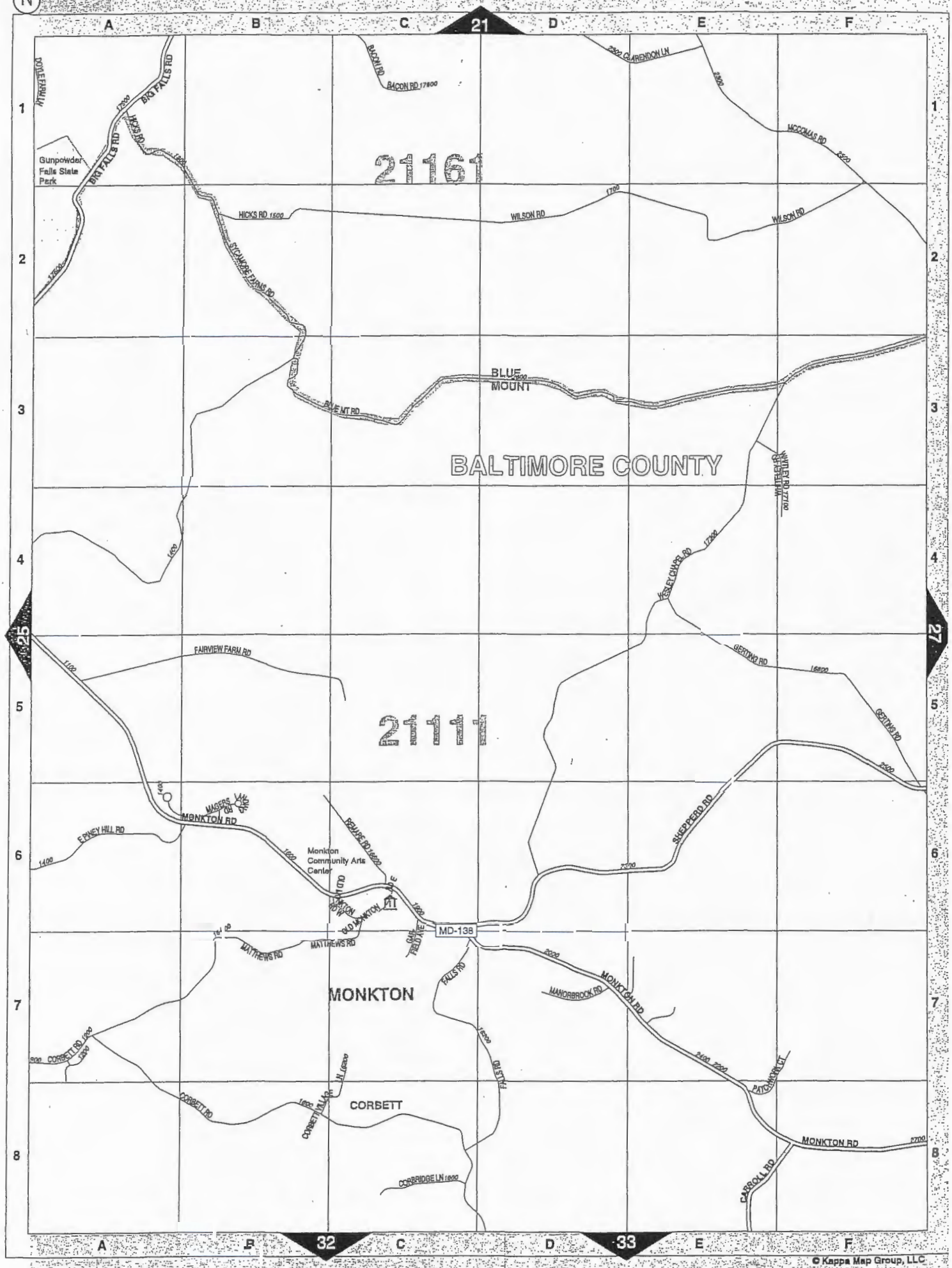

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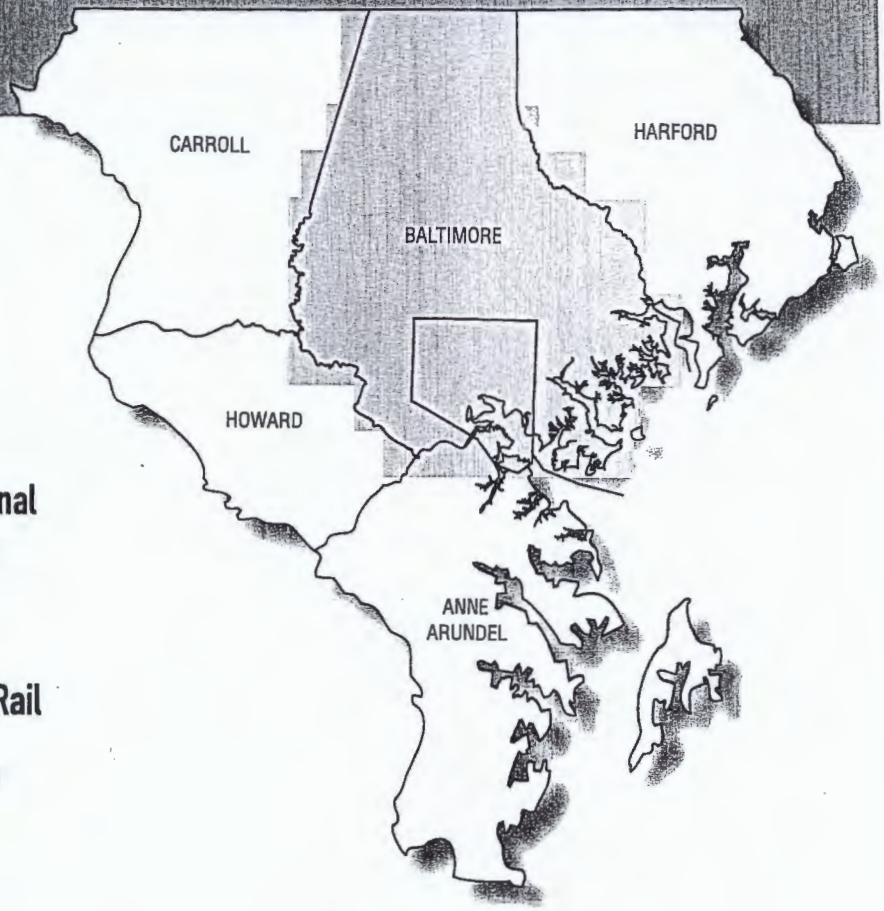
STREET ATLAS

Baltimore City & County

Maryland



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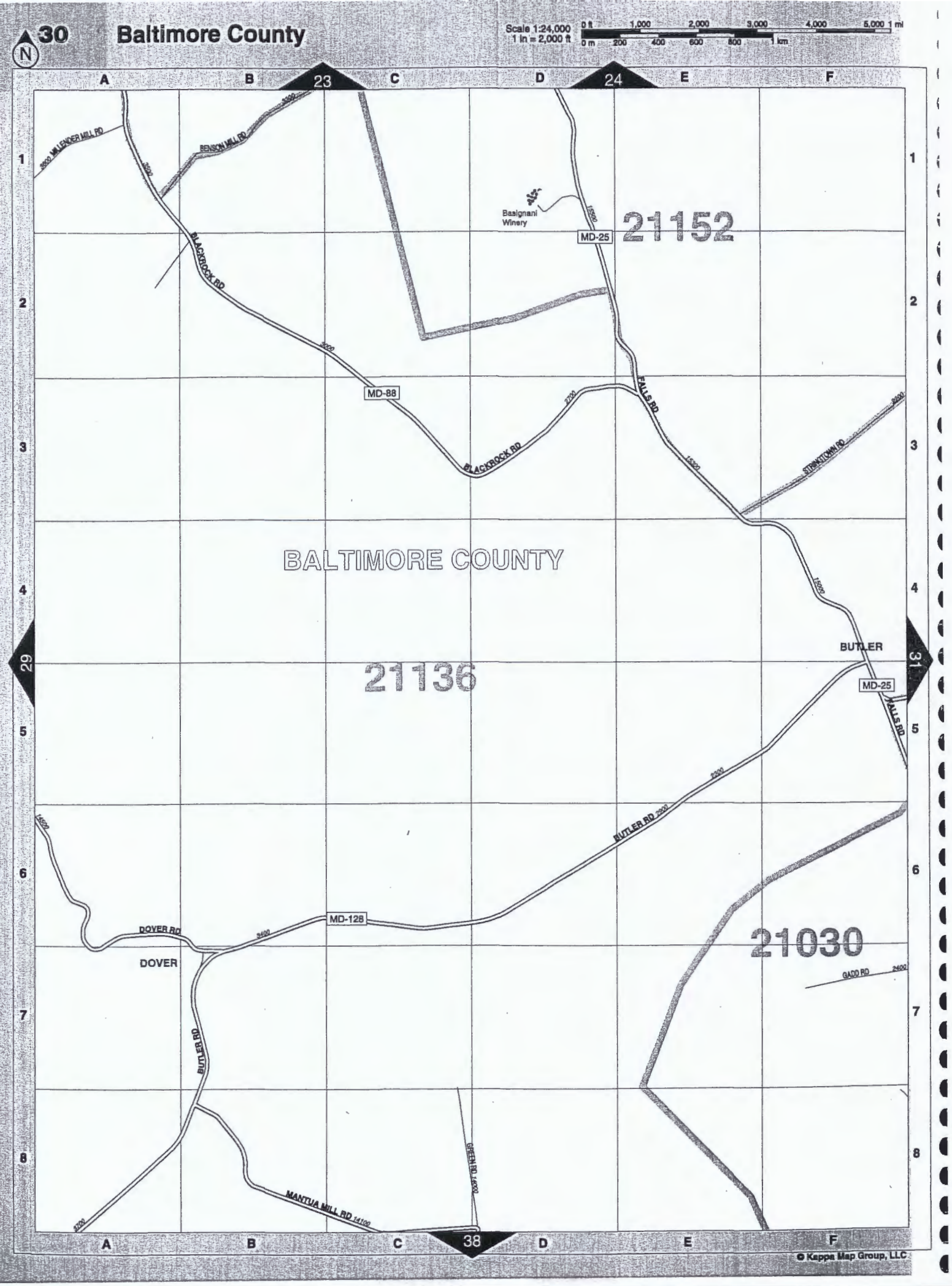
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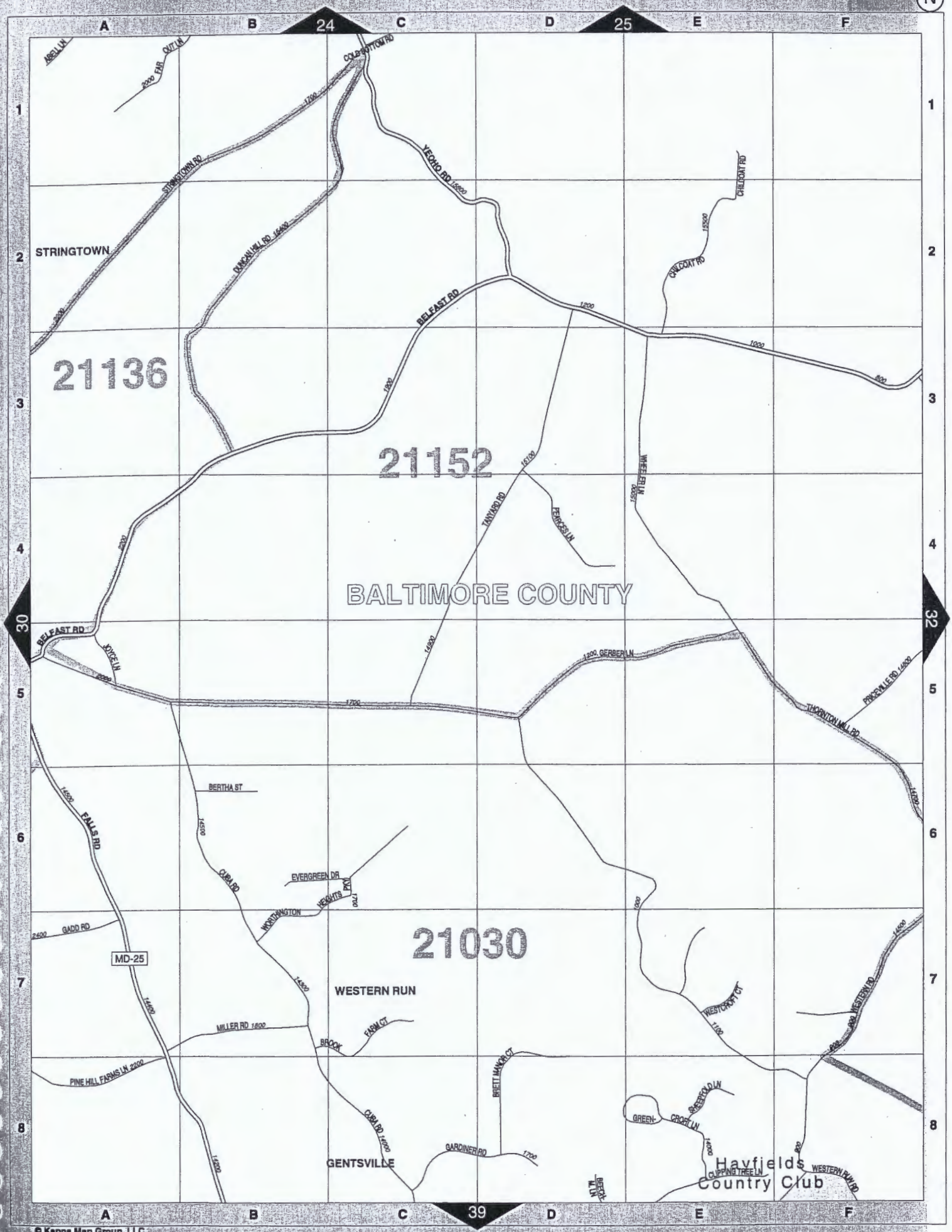

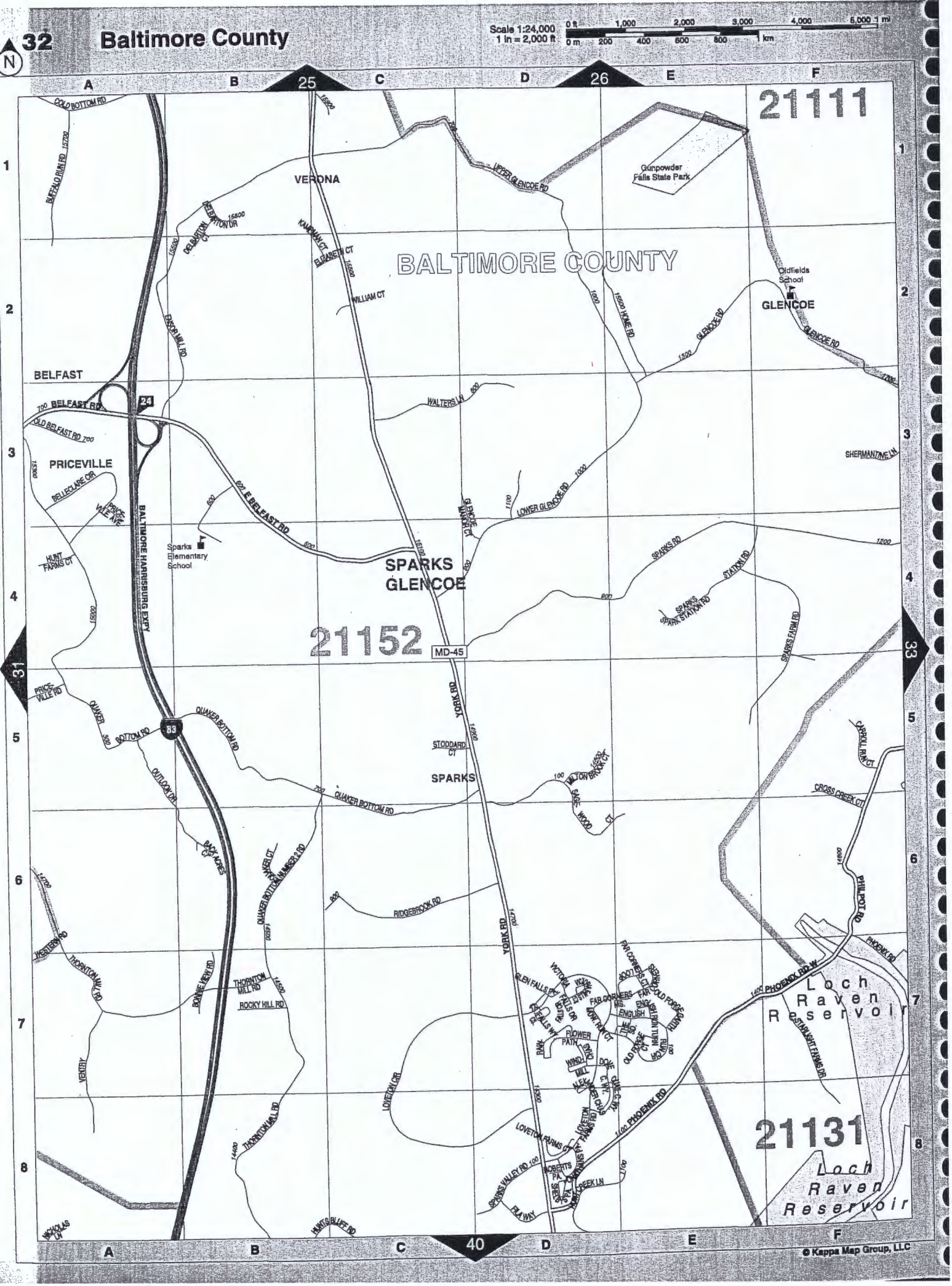
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BALTIMORE COUNTY
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PRICEVILLE
SPARKS
GLENCOE
Gunpowder Falls State Park
Oldfields School
Sparks Elementary School
BALTIMORE HARRISBURG EXPY
MD-45
BELFAST RD
E BELFAST RD
OLD BELFAST RD
WALTERS LN
LOWER GLENCOE RD
GLENCOE RD
HOME RD
SHERMAN NECK LN
SPARKS RD
SPARKS STATION RD
SPARKS FARM RD
YORK RD
QUAKER BOTTOM RD
RIDGEBROOK RD
PHOENIX RD
PHOENIX RD W
THORNTON MILL RD
ROCKY HILL RD
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LOVETON FARMS CT
SPARKS VALLEY RD
Loch Raven Reservoir
Loch Raven Reservoir
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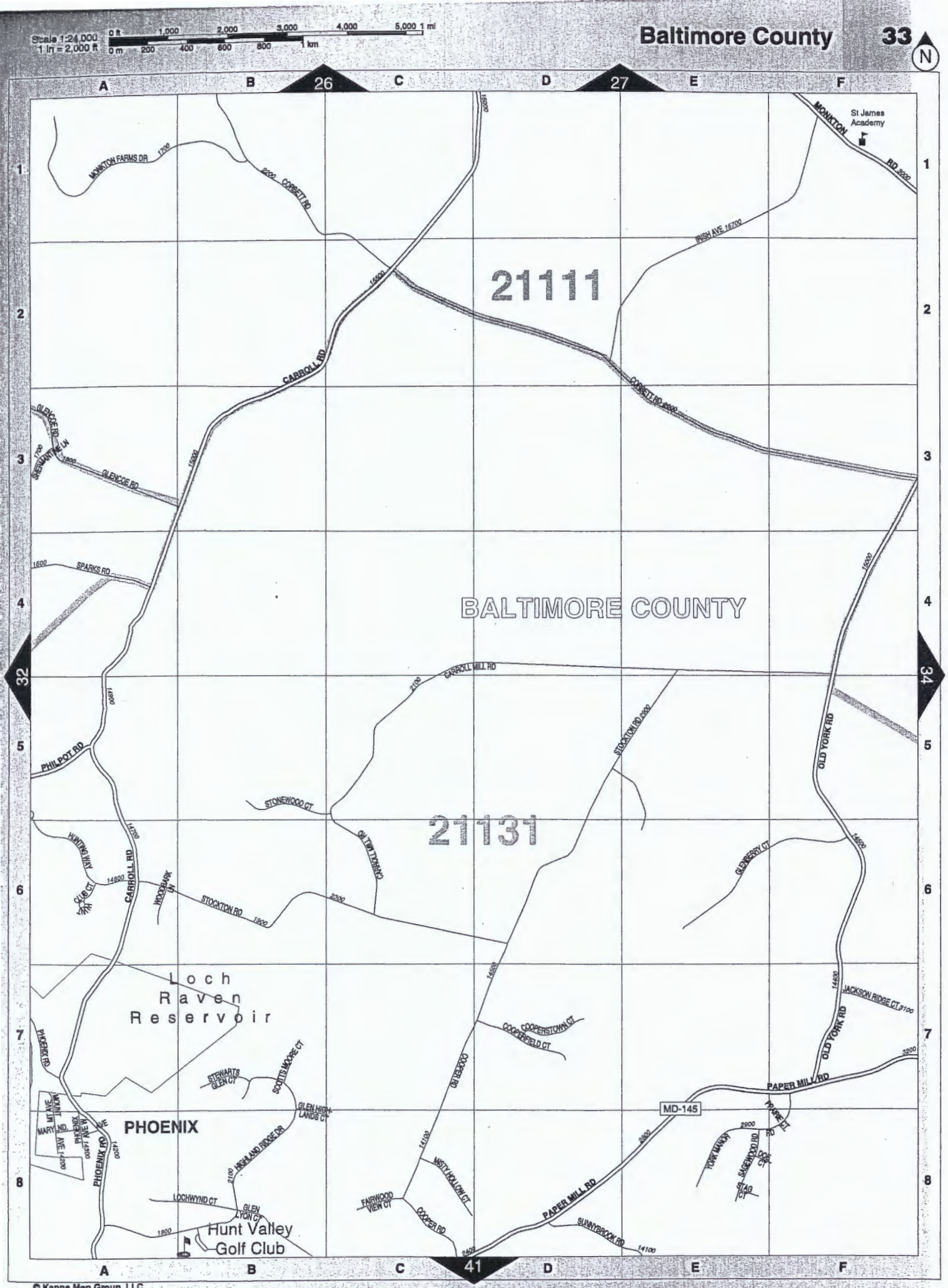

005-018-1813 Domestic Firearm Violence Reduction and Enforcement Grant $5,000.00

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council shall take effect January 28, 2002.

BILL NO. 121-01
A BILL
ENTITLED

AN ACT concerning

Wireless Telecommunications Towers - Historic and Scenic Resources.

FOR the purpose of revising the procedures for the review of wireless communication towers; requiring the ~~Tower Review Committee~~ Zoning Commissioner to consider scenic viewshed elements and historic ~~areas; requiring a tower applicant to petition for a special hearing under certain circumstances; prohibiting towers from interfering with scenic viewshed elements; requiring towers to be in harmony with certain historic areas; requiring the Zoning Commissioner to~~ areas; requiring the Zoning Commissioner to make certain determinations concerning towers based on substantial evidence; authorizing the Commissioner to consider certain factors when considering a tower ~~providing for~~ in certain zones; ~~procedures before the Commissioner; prohibiting appeals from a decision of the Tower Review Committee; authorizing certain persons to petition for a special hearing; requiring~~ requiring the Planning Board to catalogue and identify scenic viewshed elements and areas; defining certain terms; and generally relating to wireless communication towers.

BY repealing and re-enacting, with amendments

Section 426.1, 426.2.B, 426.3 and 426.4
Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Section 502.7
Baltimore County Zoning Regulations, as amended

By adding

Section 26-168(xx) and (yy) and 26-284
Title 26, Planning, Zoning and Subdivision Control

Baltimore County Code, 1988, as amended

WHEREAS the historic and scenic elements of Baltimore County are assets to the people of the County which should be protected from intrusion and disruption by development which would mar their quality and value; and

WHEREAS an infrastructure of wireless communications facilities is necessary for the fulfillment of the goals of the Telecommunications Act of 1996; and

WHEREAS there is increasing pressure on the wireless telecommunications service providers to erect wireless telecommunications towers in outlying parts of the County, which often are the sites of historic and scenic elements; and

WHEREAS the Baltimore County Zoning Regulations presently provide a number of controls and restrictions on development which would interfere with landmarks, historic districts and scenic views and vistas; and

WHEREAS the Baltimore County Master Plan 2010 suggests that even greater protection for historic and scenic elements is necessary; and

WHEREAS additional protections are required for the historic and scenic assets of the County; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the following provisions of Section 426.1, 426.2.B, 426.3 and 426.4 of the Baltimore County Zoning Regulations, as amended, are hereby repealed and re-enacted with amendments to read as follows:

Section 426, Wireless Telecommunications Facilities

426.1 Definitions.

In this section, the following words have the meanings indicated:

ANTENNA - A wireless telecommunications antenna.

~~APPLICATION - AN APPLICATION TO THE COMMITTEE PURSUANT TO SUBSECTION 426.4.C.~~

~~CODE OFFICIAL - The Director of the Department of Permits and Development Management or the Director's designee.~~

~~COMMITTEE - The Tower Review Committee established under Section 426.4.~~

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~~HISTORIC AREAS - AN AREA WITHIN AN EXISTING DISTRICT ON THE BALTIMORE COUNTY FINAL HISTORIC LANDMARKS LIST OR ANY OF THE FOLLOWING HISTORICAL DISTRICTS ON THE NATIONAL REGISTER OF HISTORIC PLACES:~~

~~1. OELLA;~~

~~2. MY LADY'S MANOR;~~

~~3. BELFAST;~~

~~4. WESTERN RUN;~~

~~5. WORTHINGTON VALLEY;~~

~~6. GREENSPRING VALLEY; AND~~

~~7. LONG GREEN VALLEY;~~

OWNER - The owner, agent, lessee or person in control of a wireless telecommunications tower.

PROVIDER - A wireless telecommunications service provider.

TOWER - A wireless telecommunications tower.

SCENIC VIEWSHED - A SCENIC ROUTE, ~~VIEW OR GATEWAY~~ OR VIEW AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN.

SCENIC VIEWSHED ELEMENTS -:

1. THOSE VISUAL ELEMENTS OF A SCENIC VIEWSHED WHICH ARE OF A QUALITY, CHARACTER, RARITY AND NATURE TO CAUSE A VIEWSHED TO BE DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN BY THE BALTIMORE COUNTY PLANNING BOARD; AND

2. WHICH ARE CATALOGUED BY THE ~~DIRECTOR OF~~ PLANNING BOARD IN ACCORDANCE WITH SECTION 26-284 OF THE BALTIMORE COUNTY CODE.

TOWER APPLICANT - A PERSON WHO APPLIES TO THE COMMITTEE PURSUANT TO SECTION 426.4.

426.2 Legislative policy for siting of wireless telecommunications antennas and towers.

It is the intent of Baltimore County that:

A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible; and

B. If a new tower must be built, the tower should be:

1. Constructed to accommodate at least 3 providers[.];

2. Erected in a medium or high intensity commercial zone when available;

3. Located and designed to ~~BE IN HARMONY WITH THE AREA IN WHICH IT IS TO BE LOCATED AND IN GENERAL CONFORMITY WITH THE BALTIMORE COUNTY MASTER PLAN; AND~~

~~4. LOCATED AND DESIGNED TO~~ minimize its visibility from residential and transitional zones.

426.3 Exceptions.

The provisions of this section do not apply to:

A. Antennas or towers serving gas and electric or land-based local telephone public utility [locations needs at existing facilities, provided that a public utility that owns any antennas or towers shall establish that the antennas or towers and service meet critical communications needs for public safety; or] NEEDS; OR

B. Antennas used by cable systems operating in accordance with Title 8 of the Baltimore County Code, 1988, as amended, if located on property owned by the county, state or federal government.

426.4 Tower Review Committee.

A. There is a Tower Review Committee in Baltimore County.

B. The Committee shall consist of:

1. A Tower Coordinator, who shall have technical expertise regarding the siting of wireless telecommunications towers and shall serve as committee chairperson[.];

2. The Director of the Office of Planning or the Director's designee[.];

3. The Director of the Office of Information Technology or the Director's designee.

4. An at-large citizen representative appointed by the County Council[.]; AND

5. Depending on the particular site for a tower, representatives of other governmental agencies as determined by the Tower Coordinator.

C. [An applicant for a building permit for an antenna shall submit a duplicate copy of the permit application to the Tower Coordinator.] APPLICATION TO COMMITTEE.

~~1. PRIOR TO SUBMITTING ANY OTHER REQUEST FOR COUNTY APPROVAL TO BUILD A TOWER WITHIN BALTIMORE COUNTY, A PERSON DESIRING TO CONSTRUCT~~

~~A TOWER SHALL FIRST SUBMIT AN APPLICATION TO THE COMMITTEE ON A FORM AND MANNER PRESCRIBED BY THE COMMITTEE.~~

~~2. THE TOWER APPLICANT SHALL SUBMIT TO THE COMMITTEE ALL RELEVANT INFORMATION REQUESTED BY THE COMMITTEE TO ENABLE THE COMMITTEE TO EVALUATE THE PROPOSAL IN ACCORDANCE WITH THIS SECTION.~~

D. IN ADDITION TO ANY OTHER FEES REQUIRED, AN APPLICANT FOR A BUILDING PERMIT OR A SPECIAL EXCEPTION SHALL PAY A SEPARATE PROCESSING FEE TO THE COUNTY. THE COUNTY ADMINISTRATIVE OFFICER SHALL ESTABLISH THE AMOUNT OF THE FEE.

~~D~~ E. ~~[~~Committee review.

1. Prior to submitting a petition for a special exception or an application for a building permit for a tower, a petitioner or an applicant shall meet with the Committee. The Committee shall meet with the petitioner or the applicant within ~~three weeks~~ 45 DAYS after a written request for a meeting is submitted.

2. The petitioner or the applicant shall submit to the Committee:

   a. Information detailing the maximum number of providers and antennas the proposed tower can support.

   b. Any other relevant technical information requested by the Committee.

3. The Committee shall review the information submitted by the petitioner or the applicant and evaluate the proposed tower with regard to the legislative policy under Section 426.2.

4. The Committee may provide advisory comments to the Zoning Commissioner or the County Official concerning the proposed tower.~~]~~ ~~COMMITTEE ACTION.~~

~~1. THE COMMITTEE SHALL MEET AT TIMES DETERMINED BY THE TOWER COORDINATOR.~~

~~2. PUBLIC NOTICE AND THE AGENDA FOR EACH SUCH MEETING SHALL BE POSTED IN ROOM 123, 111 W. CHESAPEAKE AVENUE, TOWSON, MARYLAND, AND SENT TO THE OFFICE OF EACH MEMBER OF THE COUNTY COUNCIL AT LEAST ONE WEEK PRIOR TO THE MEETING.~~

~~3. THE MEETING IS A FORUM FOR THE MEMBERS OF THE COMMITTEE TO REVIEW THE APPLICATIONS AND DETERMINE THE APPROPRIATE COURSE OF ACTION FOR EACH APPLICATION, IN ACCORDANCE WITH THIS SECTION.~~

~~4. THE MEETING MAY OCCUR IN AN INFORMAL MANNER.~~

~~5. THE TOWER COORDINATOR MAY RECOGNIZE ANY MEMBER OF THE PUBLIC, INCLUDING THE TOWER APPLICANT, TO OFFER REMARKS DURING ANY SUCH MEETING. 6. THE COMMITTEE SHALL DIRECT THE TOWER APPLICANT TO PROCEED IN ACCORDANCE WITH ITS FINDINGS AND THIS SECTION.~~

~~7. THE COMMITTEE SHALL:~~

~~A. ACT ON EACH SUCH APPLICATION WITHIN A REASONABLE TIME, NOT TO EXCEED 30 DAYS, AND~~

~~B. PROVIDE THE TOWER APPLICANT WITH A WRITTEN DECISION, SUPPORTED BY SUBSTANTIAL EVIDENCE CONTAINED IN A WRITTEN RECORD.~~

~~E. EVALUATION OF IMPACT ON SCENIC VIEWS.~~

~~1. A. THE COMMITTEE SHALL DETERMINE WHETHER THE APPLICATION, SUPPORTING MATERIALS, AND REMARKS OF THE PUBLIC, IF ANY, CONSTITUTE SUBSTANTIAL EVIDENCE THAT THE TOWER INTERFERES OR MAY INTERFERE WITH SCENIC VIEWSHED ELEMENTS.~~

~~B. IF THE COMMITTEE DETERMINES THAT SUBSTANTIAL EVIDENCE EXISTS THAT THE TOWER INTERFERES OR MAY INTERFERE WITH THE SCENIC VIEWSHED ELEMENTS, THEN THE COMMITTEE SHALL REQUIRE THE TOWER APPLICANT TO PETITION FOR A SPECIAL HEARING TO DETERMINE WHETHER THE PROPOSED TOWER INTERFERES WITH SCENIC VIEWSHED ELEMENTS.~~

~~C. A TOWER MAY NOT BE PERMITTED TO INTERFERE WITH THE SCENIC VIEWSHED ELEMENTS.~~

~~2. A. THE ZONING COMMISSIONER SHALL DETERMINE INTERFERENCE BASED UPON SUBSTANTIAL EVIDENCE COMPARING THE SCENIC VIEWSHED ELEMENTS TO THE PROPOSED TOWER LOCATION.~~

B. 1. A SPECIAL EXCEPTION MAY NOT BE GRANTED FOR A WIRELESS TELECOMMUNICATIONS TOWER LOCATED IN AN RC-2, RC-3, RC-4, RC-5, RC-6 OR RC-7 ZONE WITHIN A SCENIC VIEWSHED UNLESS THE ZONING COMMISSIONER FINDS THAT THE PROPOSED TOWER WILL NOT INTERFERE WITH OR BE DETRIMENTAL TO THE SCENIC VIEWSHED ELEMENTS.

2. A. THE ZONING COMMISSIONER SHALL DETERMINE INTERFERENCE OR DETRIMENT BASED UPON SUBSTANTIAL EVIDENCE, COMPARING THE SCENIC VIEWSHED ELEMENTS TO THE PROPOSED TOWER LOCATION, IN ORDER TO DETERMINE WHETHER THE PROPOSED TOWER BLOCKS ANY SCENIC VIEWSHED ELEMENTS OR IS NOT VISUALLY IN HARMONY WITH ANY SCENIC VIEWSHED ELEMENTS WHEN THE ELEMENTS AND THE TOWER CAN BE SEEN SIMULTANEOUSLY.

3. (I) THE ZONING COMMISSIONER MAY ALSO CONSIDER WHETHER PUBLIC FUNDS HAVE BEEN SPENT ACQUIRING EASEMENTS OR ENTERING INTO OTHER AGREEMENTS TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER AND WHETHER OTHER PUBLIC OR PRIVATE AGREEMENTS EXIST TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER.

(II) EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE PRESENCE OF THE EASEMENTS AND AGREEMENTS MAY BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.

(III) THE ABSENCE OF THE EASEMENTS AND AGREEMENTS MAY NOT BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.

SECTION 3. AND BE IT FURTHER ENACTED THAT, Sections 26-168 (xx) and (yy) and 26-284 of Title 26- Planning, Zoning and Subdivision Control of the Baltimore County Code, 1988, as amended, are hereby added to read as follows:

Section 26-168 Definitions

(XX) "SCENIC VIEWSHED" MEANS A SCENIC ROUTE; OR SCENIC VIEW ~~OR SCENIC GATEWAY~~ AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN;

(YY) "SCENIC VIEWSHED ELEMENTS" MEANS THOSE VISUAL ELEMENTS, AS IDENTIFIED BY THE PLANNING BOARD, OF A SCENIC VIEWSHED WHICH ARE OF A QUALITY, CHARACTER AND NATURE TO CAUSE THE BOARD TO DESIGNATE THAT SCENIC VIEWSHED IN THE BALTIMORE COUNTY MASTER PLAN.

SECTION 26-284. SCENIC VIEWSHEDS ELEMENTS.

THE PLANNING BOARD SHALL:

(A) PROVIDE TO THE ~~HEARING OFFICER~~ ZONING COMMISSIONER A CATALOGUE OF THE ELEMENTS FOR EACH SCENIC VIEWSHED IN THE MASTER PLAN;

(B) IDENTIFY THE SCENIC ROUTE; OR VIEW, ~~OR GATEWAY~~ AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN AS EITHER ENCLOSED, EXPANSIVE, FOCUSED OR A COMBINATION; AND

(C) IDENTIFY THE ASPECTS OF THE VISUAL QUALITY, UNITY OF THE ELEMENTS, AND INTEGRITY OF THE ELEMENTS.

SECTION 4. AND BE IT FURTHER ENACTED, that this act, having been passed by the affirmative vote of five members of the County Council, shall take effect on January 29, 2002.

BILL NO. 127-01
A BILL
ENTITLED

AN ACT concerning

The Comprehensive Zoning Map - Middle River - Bird River Area

FOR the purpose of repealing a portion of the existing zoning map for the Fifth Councilmanic District and to adopt an official zoning map for the portion of the Fifth Councilmanic District of Baltimore County known as the Middle River - Bird River Area, such map to be known as the Official Comprehensive Zoning Map for the Middle River - Bird River Area of Baltimore County and to supersede any previous zoning maps approved by the County Council of Baltimore County for that particular area, all pursuant to the provisions of the Middle River - Bird River Area Plan.

WHEREAS, the County Council approved Resolution 3-02 adopting and incorporating the Middle River - Bird River Area Plan into the Baltimore County Master Plan 2010 to be a guide for the development of the Middle River - Bird River area of the County; and

ments of Agriculture, Health and Mental Hygiene, and Natural Resources regarding enforcement procedures in cases of water pollution caused by agriculture (December 29, 1986) or subsequent memoranda.
(1988 Code, § 14-337) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-108. PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.
(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-109. APPROVAL OF PERMITS.

(a) *Compliance determination.* Before the Department of Permits, Approvals and Inspections may issue any grading permit or building permit or before the approval of any erosion and sediment control plan, the Director of Environmental Protection and Sustainability or the Director's designee shall determine that the proposed development is in compliance with the provisions of this title.

(b) *No permit.* A permit may not be issued without compliance with this title.
(1988 Code, § 14-339) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011; Bill No. 72-12, § 1, 1-9-2013)

§ 33-3-110. PLATS AND PROTECTIVE COVENANTS.

(a) *In general.*

(1) (i) Any plat submitted to the county in accordance with Article 32, Title 4 of the Code shall be accompanied by irrevocable offers of dedication to the county of all forest buffer areas in fee or easements, in a form approved by the Bureau of Land Acquisition and the County Attorney.

(ii) The plat shall be marked with a notation indicating the offers of dedication.

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(ii) 25 feet from the outer wetland boundary; or

(iii) 25 feet from the riverine floodplain reservation or easement boundary.

(4) For a surface water designated use III, III-P, IV or IV-P stream (natural and recreational trout waters), the forest buffer shall be the greater of the following:

(i) 100 feet;

(ii) 25 feet from the outer wetland boundary; or

(iii) 25 feet from the riverine floodplain reservation or easement boundary.

(c) *Adjusted forest buffer standards and requirements for streams and wetlands with adjacent steep slopes and erodible soils.*

(1) A steep slope and erodible soils evaluation shall be conducted in accordance with the evaluation procedures and criteria specified in this subsection or a comparable method approved by the Director for sites containing or adjacent to streams, wetlands, or other bodies of water where:

(i) Slopes exceed 10% within 500 feet of the streams, wetlands, or bodies of water;

(ii) Soil erodibility K values exceed .24 within 500 feet of the streams, wetlands, or bodies of water; or

(iii) The vegetative cover type within 100 feet of the streams, wetlands, or bodies of water is: bare soil; fallow land; crops; active pasture in poor or fair condition; orchard-tree farm in poor or fair condition; brush-weeds in poor condition; or woods in poor condition.

(2) An evaluation report shall be submitted for review to the Department, which shall include, at a minimum, the following:

(i) A plan, at a scale not smaller than 1" = 100', that shows:

1. Existing topography with contour intervals no greater than 5 feet (county photogrammetric maps are an acceptable source for preparing existing topography);

2. Mapped soils as shown in the county soil survey;

3. Field delineated, marked, and surveyed streams and wetlands;

4. Existing vegetation;

5. Existing subdrainage areas of the site; and

6. Slopes in each subdrainage area segmented into sections of slopes less than or equal to 10%, 11% to 19%, and equal to or greater than 20%;

(ii) All slope analysis data forms;

(iii) A summary of findings including information pertinent to the evaluation of the site; and

(iv) A mitigation plan that describes the proposed additional protective measures for those areas where development is allowed with restrictions.

(3) (i) The site shall be evaluated by assessing each segment of each subdrainage area using the evaluation criteria in Table 1.

(ii) Each segment shall be given a score for slope, slope length, soil erodibility, vegetative cover type, and sediment delivery.

(iii) A total score shall be assigned for each segment.

(iv) A segment of a subdrainage area with a total score of 35 or greater shall be designated as part of the forest buffer and no development shall be approved in that segment.

(v) 1. A segment with a total score of 25 or 30 shall require the application of additional protective measures.

2. Development may not be prohibited and that area is not required to be part of the forest buffer.

(vi) A segment with a score of 20 or less shall be developed with standard protective measures and that area is not required to be part of the forest buffer.

Table 1
Evaluation Criteria for Steep Slopes and Erodible Soils

Factors	*Scores*		
	High (10)	*Medium (5)*	*Low (0)*
Slope (S)	S ≥ 20%	10% < S <20%	S ≥ 10%
Slope length (SL)	SL ≥ 200'	50' < SL < 200'	SL ≥ 50'
Soil erodibility (K)	K ≥ 0.32	0.24 < K< 0.32	K < 0.24
Vegetative cover type	Bare soil, fallow land, crops, active pasture in poor condition, orchard-tree farm in poor condition	Active pasture in fair condition, brush-weeds in poor condition, orchard-tree farm in fair condition, woods in poor condition	Active pasture in good condition, undisturbed meadow, brush-weeds in fair condition, orchard-tree farm in good condition, woods in fair condition

(d) *Forest buffers.*

(1) The basic purposes of the forest buffer standards and requirements outlined in this title apply to all agricultural operations.

(2) The County Soil Conservation District shall administer forest buffer standards and requirements through the implementation of an approved soil conservation and water quality plan which includes the application of best management practices, such as the establishment of vegetative buffers and other water quality and stream protection measures.

(e) *Pollution, erosion, and degradation.* Except as provided in subsection (d) f this section and § 33-3-107(d) f this title, this title applies to all parcels of land, structures, and activities that are causing or contributing to:

(1) Pollution, including nonpoint source pollution, of the waters of this state within the county;

(2) Erosion and sedimentation of stream channels; or

(3) Degradation of aquatic and riparian habitat.
(1988 Code, § 14-333) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-3-105. AUTHORITY OF THE DEPARTMENT — IN GENERAL.

(1) The Department is responsible for enforcing the provisions of this title.

(2) The Director may adopt policies and regulations as necessary to implement the provisions of this title.
(1988 Code, § 14-335) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-106. SAME — VARIANCES.

(a) *Authority to grant.* The Director of the Department may grant a variance:

(1) For those projects or activities where strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship;

(2) For those public improvement projects or activities where no feasible alternative is available;

(3) For the repair and maintenance of public improvements where avoidance and minimization of adverse impacts to nontidal wetlands and associated aquatic ecosystems have been addressed; or

(4) For developments that have had stream buffers/forest buffers applied in conformance with the requirements outlined in the county water quality management policy (February 1, 1986) or the County Executive order for the protection of water quality, streams, wetlands, and floodplains (June 4, 1989) and for which the potential for water quality and aquatic resource degradation is minimal.

(b) *Application.*

(1) The applicant shall submit a written request for a variance to the Director of the Department.

(2) The application shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request.

(3) The Department may require an alternatives analysis that clearly demonstrates that no other feasible alternative exists and that minimal impacts will occur as a result of the proposed project, activity, or development.

(c) *Conditions.* In granting a request for a variance, the Director of the Department may require site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, wetlands, and riverine floodplains.
(1988 Code, § 14-334) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-107. PROHIBITION, CORRECTION, AND ABATEMENT OF WATER POLLUTION.

(a) *In general.* The Department shall manage and regulate the waters of this state within the county according to the surface water quality standards and stream segment designations set forth in COMAR 26.08.02.

(b) *Pollution prohibited.* The waters of this state within the county may not be polluted by:

(1) Substances attributable to sewage, industrial waste, or other waste that will settle to form sludge deposits that:

(i) Are unsightly, putrescent, or odorous, and create a nuisance; or

(ii) Interfere directly or indirectly with surface water designated uses;

(2) Any material, including floating debris, oil, grease, scum, sludge, and other floating materials attributable to sewage, industrial waste, or other waste in amounts sufficient to:

(i) Be unsightly;

People's Counsel
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18-047-X 11/28/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gernet

Exhibit List

Party: People's Counsel Date: 8/21/18

Exhibit No:	Description:
✓ 1	G.I.S Aerial Photo
✓ 2	Roadway - p32 of ADC book
✓ 3	Aerial Photo
✓ 4	SDAT
✓ 5	Web Soil Survey
✓ 6	~~I.D only~~ Mult. Name Emp Labor / Articles
✓ 7	12/21/17 Opinion of ALJ, grading Special Exception
✓ 8	3C2R 1.A08 R.C.7 Zone
✓ 9	Map 1: Urban Rural Demarcation Cing
✓ 10	Sign / In Sheet
✓ 11	Bill No 74-00 RC7 leg.
✓ 12	Zoning Map 2018 (G.I.S)
✓ 13a	ADC Street Atlas
✓ 13b	- ADC - with Subject Property
	VERIFIED BY KC DATE: 10/25/18

KC 8/21/18

KC 8/23/18

10/24

Board of Appeals

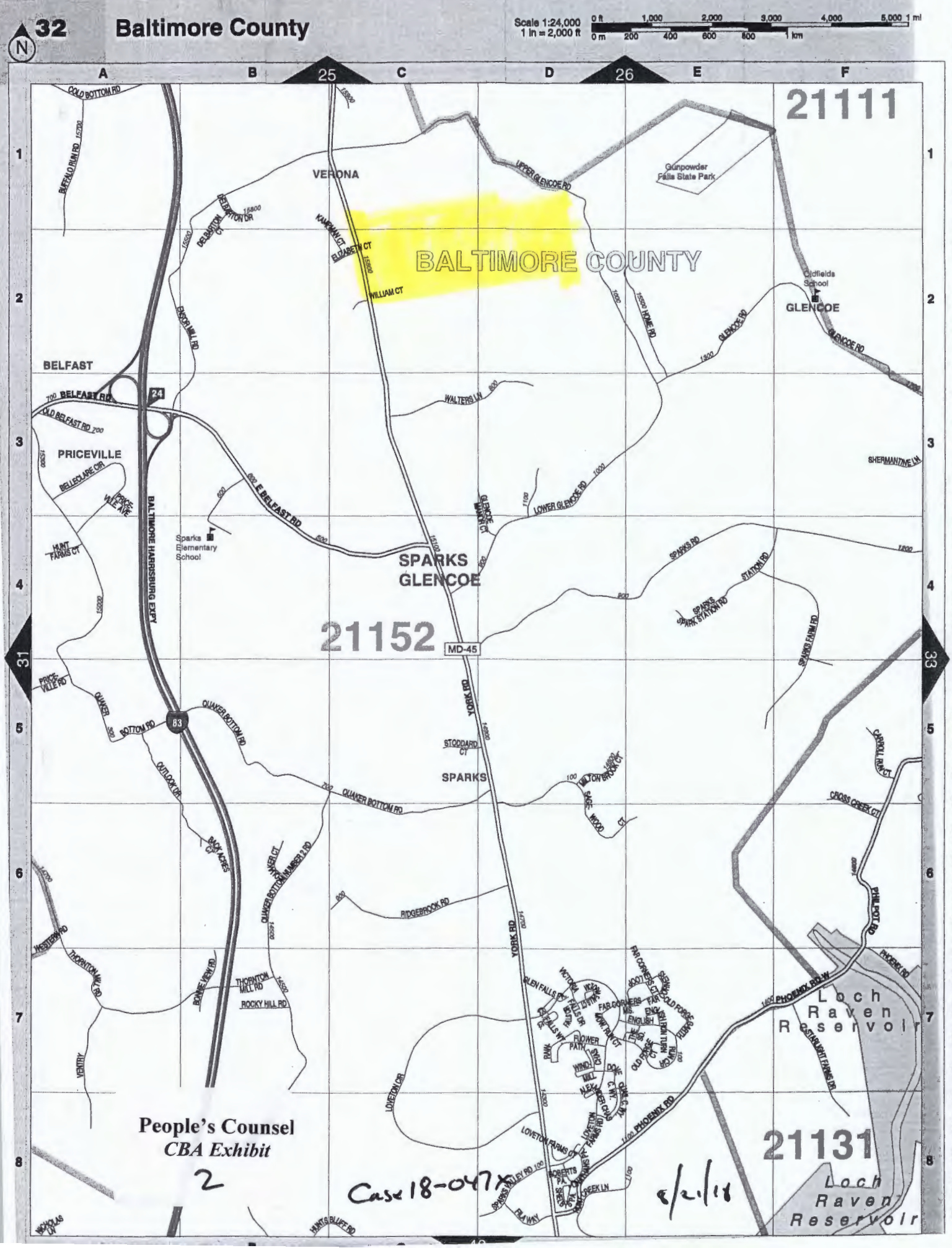
Case No: 18-047-X Case Name: Robert Gerney

Exhibit List

Party: People's Counsel Date: ~~10/24~~ 10/25/18

Exhibit No:	Description:
✓ 14	Bill No. 121-01
✓ 15	Section 33-3-108
✓ 16	Section 33-3-104
	VERIFIED BY KC DATE: 12/10/18

KC 10/25/18


32
Baltimore County
Scale 1:24,000
1 in = 2,000 ft
21111
21152
21131
BALTIMORE COUNTY
VERONA
BELFAST
PRICEVILLE
SPARKS
GLENCOE
Gunpowder Falls State Park
Oldfields School
Sparks Elementary School
MD-45
BALTIMORE HARRISBURG EXPY
YORK RD
PHOENIX RD
Loch Raven Reservoir
People's Counsel
CBA Exhibit
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Case 18-047X
6/21/18

James E. Deriu

KCI TECHNOLOGIES, INC.

James has 18 years of progressive experience in delineation and functional assessment of wetlands, streams, forests, and riparian habitats. He has completed hundreds of wetland and forest stand delineations, as well as geomorphic assessments, wetland and stream restoration design projects from concept to PS&E. He prepares Chesapeake Bay Critical Area Studies and is proficient in ArcGIS. He has completed hundreds of joint permits, several Individual Department of the Army Permits and frequently serves as the Principal Contact for KCI's most complex local, state, and federal permitting efforts.

James has been involved in development of environmental compliance and permitting documents for a variety of projects including, large-scale utility installation/infrastructure projects, solid waste management facilities, waterfront construction, bridge and railroad rehabilitation and construction, combined sewer/stormwater management facilities, dredging and various activities within tidal and freshwater wetlands and adjacent riparian areas. He is experienced in the development of NEPA environmental analyses as well as Phase I Environmental Site Assessments, coastal zone management documentation, shoreline and land use characterization and waterfront revitalization studies.

Education
M.S. / 2009 / Environmental Science / Towson University
B.A. / 2000 / Environmental Science / Gettysburg College

Relevant Training & Certifications
2013 / PennDOT / Section 4(f) Training
2013 / CSX / Railroad Worker Safety Training
2013 / XL Group / Managing Construction Risks Training
2010 / Ohio DOT / Ecological Surveys Training
2010 / Ohio DOT / Waterway Permitting Training
2007 / Rutgers University / Wetland Construction & Hydrology
2007 / Environmental Compliance & Awareness Training (ECAT)
2006 / USACE / Wetland Delineation Management Training
2006 / MBSS / Spring Index Period Sampling
2005 / MDE / E& SC Certification "Green Card" / #28855
2000 / OSHA / HAZWOPER Training and Refreshers

Years of Experience: 18 Total
KCI Technologies, Inc. / Sparks, MD / 2004-Present
HydroQual, Inc. / Mahwah, NJ / 2000-2004

James has worked in the acquisition of approvals and permits from a range of regulatory agencies, including but not limited to:

- U.S. Army Corps of Engineers: Section 10 / 404, Individual & Nationwide Permits
- U.S. Coast Guard: Bridge Permits, Letters of Advanced Approval
- National Marine Fisheries Service: Essential Fish Habitat (EFH) Analysis
- United States Fish and Wildlife Service: Federal Endangered and Threatened Species (Section 7) Review
- National Pollutant Discharge Elimination System (NPDES) Permits for Stormwater Discharge during Construction
- National Historic Preservation Act Project (Section 106) Compliance
- Section 4(f) (USDOT Transportation Act of 1966) Analysis for Parklands and other Public Lands
- Section 6(f) Federal Land & Water Conservation Fund Analysis and Approvals
- State Level Water Quality Certifications (CWA Section 401)- MD, VA, DC, PA, NY, NJ
- State Level Rare, Threatened and Endangered Species Studies and Review
- State and County Forest Conservation Act Approvals
- State and Municipal Level Soil Erosion and Sediment Control (ESC) Permits
- Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CBCA) Approvals
- Coastal Zone Consistency Approval / Waterfront Revitalization.

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As Regional Practice Leader, James leads a staff of more than 40 environmental professionals in the assessment, design, and implementation of ecological restoration and permitting projects throughout the Mid-Atlantic Region. James manages and participates in on-call services contracts related to ecosystem restoration as part of NPDES and TMDL compliance programs. In this role, he directs the assessment, survey, design, construction, inspection, and monitoring of stream and wetland restoration efforts and biological assessments throughout the region, including MD, PA, VA, DE and WV. He actively participates in the construction phase of projects to ensure both environmental commitments and design requirements are implemented.

James recently served as an advisor to the Natural Resources Working Group of the Baltimore County Sustainability Network (BCSN), served as an appointed member of the Baltimore County Commission on Environmental Quality (CEQ) from 2015-2018 and led the American Council of Engineering Company's Maryland (ACEC/MD) Environmental Committee from 2014-2017. He currently serves on the Board of Directors for NeighborSpace of Baltimore County (NSBC), a non-profit land trust dedicated to acquiring, developing and managing green space inside the County's Urban Rural Demarcation Line (URDL).

On-Call Stream Restoration Design, Management & Monitoring Services (RFP 2002-02, 2004-04, 2005-04, 2010-08) Baltimore County DEPS. *Senior Environmental Scientist and Program Manager.* KCI has provided consulting [illegible]dor restoration projects throughout Baltimore County under multiple agreements. These projects have incl[illegible] of assessment, design, permitting and construction/post-construction monitoring, as well as NPDES[illegible] / Impervious Reduction Computations. From 2004-2010, James completed and/or managed wetland d[illegible]nd delineations, as well as Joint Permit Applications, Individual Permits and Forest conservation Plans. He [illegible]cy

Petitioner
CBA Exhibit
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meetings to reach a consensus on permitting issues, ensuring the timely approval of the projects. He coordinated with MHT, MDNR, and USFWS to determine existence of historic or archaeological resources and RTE species within project limits. From 2010 to the present, James has served as the Program Manager for the agreement and directs KCI's stream restoration services on these contracts. In that capacity, he attends progress meetings, develops scope, schedule and budgets for task assignments, handles client communication, manages subconsultant participation towards Minority Business Enterprise (MBE) goals and ensures appropriate technical and administrative resources are available to complete projects in accordance with County timelines.

Environmental Consultant Services for the Little Patuxent Parallel Sewer, Howard County DPW. *Environmental Program Manager.* Since 2005, James has managed all aspects of the environmental clearance process for the rehabilitation of 10.4 miles of large diameter sewer serving 125,000 residents of Howard County. James conducted natural resource evaluations including wetland delineations (including Significant Nexus Determinations for 90+ systems), function & value assessments (New England Methodology) and forest stand delineations / large tree surveys for the project corridor. He managed the habitat investigations for rare, threatened, and endangered species throughout the corridor and coordinated with DNR staff to ensure the protection of a Great Blue Heron rookery within the project limits. James organized KCI's cultural resources staff conducting archaeological surveys and later participated in the development of an MOA with the State Historic Preservation Officer. James was responsible for preparing MDE Nontidal Wetlands and Waterway and Department of the Army Individual Permit (IP) applications, including an extensive avoidance / minimization process where he conducted plan review for four engineering firms working on the sewer design. He secured Program Open Space (POS) and Land & Water Conservation Fund (L&WCF) approvals for the project and prepared a Forest Conservation Plan. James developed the mitigation program for the project, including three stream restoration projects and one wetland creation / invasive species eradication project, totaling over 2,000 feet of channel and six acres of wetlands. He participated in geomorphic assessments for the stream sites, including the selection of reference reaches and developed the water budget, grading plan and landscaping for the wetland site. James developed a public outreach and community involvement program, including a web-based GIS map repository for project information and presentations at several public meetings. James's staff provides on-site environmental compliance services as-needed for the sewer and mitigation sites construction. Post-construction monitoring was completed in 2017.

FY 14-15 Reforestation Projects, Howard County DPW. *Project Manager.* James managed and directed KCI's work related to reforestation planting design, approvals and construction management services for approximately 20 acres of reforestation throughout Howard County. This involved coordination with DPW personnel and members of the County's Office of Sustainability, as well as facility managers from the Howard County Public School System (HCPSS). As part of this task, James led the development of planting plans which included determining suitable native tree species and appropriate planting locations for each site. Along with subcontractor HTI, KCI assisted in tree planting operations at a density of approximately 200 trees per acre, satisfying the requirements for TMDL reforestation credit. These reforestation projects will provide water quality benefits such as load reduction for nitrogen, phosphorus, and suspended solids. Additionally, KCI provided assistance during tree planting events and has completed post-construction warranty inspections for sites planted in FY 14.

Stormwater & Watershed Management Evaluation / Design / Build Services (CA 05-22, CA 08-29, and CA 23-2013). Howard County DPW. *Senior Environmental Scientist and Deputy Program Manager.* Since 2004, KCI has performed planning, surveying, design, environmental permitting, and construction and post-construction monitoring services for various countywide NPDES projects focusing on all aspects of environmental enhancement, urban stream channel restoration and SWM retrofit projects. Due to the design/build nature of the projects under this contract, KCI's expertise in all facets of restoration, from initial problem identification and assessment through design and ultimately construction have been invaluable to the County in the successful delivery on almost 200 task assignments. From 2004-2010, James completed and/or managed wetland delineations and forest stand delineations, as well as Joint Permit Applications, Individual Permits and Forest conservation Plans. He conducted regulatory agency meetings to reach a consensus on permitting issues and coordinated with MHT, MDNR, and USFWS to determine existence of historic or archaeological resources and RTE species within project limits.

From 2010 to the present, James has served as the Deputy Program Manager for these agreements and directs KCI's ecosystem restoration services on these contracts. In that capacity, he attends all monthly progress meetings, develops scope, schedule and budgets for task assignments, handles stakeholder and client communication, manages subconsultant participation towards MBE goals and ensures appropriate technical and administrative resources are available to complete projects in accordance with the County's expectations. James serves as the liaison between the contractor and County for all stream and reforestation projects.

Stream Restoration Design Services Open-End Contract, BCS 2002-22B, Statewide, MD State Highway Administration. *Task Manager / Senior Environmental Scientist.* KCI provided stream restoration design services and associated environmental design services under this $500,000 open-end contract. James was responsible for conducting and managing wetland delineations in accordance with USACE (1987) methodologies and for the preparation of permit application materials for submittal to MDE and USACE for several tasks under this contract. *BIRED Wetland Delineation (80 Sites).* KCI provided wetland delineation services at 80 Bridge Inspection and Remedial Engineering Division (BIRED) culvert structures along Maryland highways, statewide. KCI also provided SHA with information concerning potential fish blockages at the 80 subject sites by calculating the difference in elevation from

the culvert invert to the adjacent streambed along the downstream side of the structure. James' staff completed background information and data gathering, field investigations and report preparation for all 80 project sites within 45 days of task initiation.

Wetland Creation, Remediation, and Restoration at Former American Legion Site 238, MD State Highway Administration. *Senior Environmental Scientist and Project Manager.* SHA proposed creation, hazardous material remediation, and restoration of non-tidal wetland areas associated with the former ALP Post 238 along MD Route 5, including coordination with MDE's Voluntary Cleanup Program. James conducted a wetland delineation verification, forest stand delineation, and large tree survey. He assisted in the collection of geomorphic data for the stream stabilization design, identified the reference reach and developed a water budget for the wetland site. With that data, James developed the Preliminary Investigation (PI) plans, final (90%) plans, and a full PS&E (100%) design package for the remediation and restoration of the contaminated wetland area. James developed the JPA package and Forest Conservation Plan. He also developed addenda as necessary during the bid process and has assisted SHA personnel during construction to ensure grades and elevations were properly established. Under James' direction, KCI completed the Final Review submittal in 3 weeks and PS&E package in 2 weeks in order to meet SHA's funding requirements.

Water, Sewer & Meter Vault Rehabilitation/Relocation Basic Ordering Agreements, WSSC, Prince George's and Montgomery Counties, MD. Senior Environmental Scientist. Since 2001 under multiple Basic Ordering Agreement (BOA) contracts, two currently in progress, KCI has provided water and sewer design services for more than 85 projects totaling more than $11 million. James has been responsible for several tasks under these contracts related to wetland delineations, forest stand delineations, and the preparation of permit application materials for submittal to various local, state and federal regulatory agencies, including MDE and USACE, in order to secure the authorization of work within wetlands, Waters of the U.S., and the 100-year floodplain. These tasks typically involved coordinating with regulatory agencies for temporary impacts related to stream crossings and the design and construction oversight of fish passage structures near exposed utilities.

Bundled Compensatory Mitigation Project Site Search and Design Services, Prince George's County DPW&T. *Project Manager.* KCI is supporting Prince George's County in the identification and design of 20 acres of wetland mitigation and 5,000 LF of stream mitigation throughout the Anacostia and Patuxent watersheds within Prince George's County. As part of this task, James has led the site search process to identify suitable sites, supported the County in negotiations with the Interagency Review Team (IRT) and is currently managing the design of one wetland and two stream projects on County-owned lands. As a bundled mitigation package, these projects will allow the County to advertise a total of six CIP projects in the near future. In addition to his technical responsibilities, James has managed several subconsultants, handled coordination with MDE and USACE personnel and has conducted periodic briefings with the Director of DPW&T and other County personnel on several occasions.

Environmental Consultant Services for the Deep Run / Shallow Run Interceptor Improvements, Howard County, DPW. *Environmental Program Manager.* KCI was recently selected to lead all aspects of the environmental clearance process for the rehabilitation of nine miles of large diameter sewer. Similar to the Little Patuxent Project, James will lead KCI's efforts and guide the County through all local, state and federal permit processes and stakeholder coordination necessary to gain approval for this work. To date, James has been involved in the development of scope, schedule and budget for the initial field investigations and preliminary site searches for wetland and stream compensatory mitigation opportunities. It is anticipated that over five acres of wetlands and 2,500 LF of stream mitigation, along with several environmental stewardship projects, will be necessary to satisfy all regulatory requirements.

Prairie Creek Ecosystem Delta Restoration, Littoral Wetland Design and Permitting, USACE Louisville District. *Project Manager.* James led the assessment, design and permitting of an 85-acre littoral wetland that restored historic wetland extents within Grand Lake St. Mary's. James completed and/or directed the feasibility study and design alternatives analysis, and steered the team to a final design submission that incorporated several habitat elements that also maximized water quality benefit, provide substantial ecological lift for target wildlife species and provide for the replacement of wetland functionality as compared to historic reference conditions. James also provided overall project coordination and scheduling, and served as the principal point-of-contact with the Louisville District USACE. He performed a final QC check of all documents prior to submittal to the client or reviewing agencies. KCI completed the work on this task, from assessment through design and permitting, in less than 12 months.

George Washington Memorial Parkway Columbia Island Bridge Project, Federal Highway Administration, *Senior Environmental Scientist.* KCI prepared design and construction documents for a new 375-foot long, 5-span, pre-stressed concrete beam bridge over Boundary Channel in Arlington County, Virginia and the District of Columbia. James was responsible for the development of permitting materials to secure authorization from U.S. Army Corps of Engineers (Baltimore District) and D.C. Department of the Environment (DCDOE) related to the preliminary geotechnical investigation for the bridge. Work included extensive coordination with regulatory personnel and the Design Team to ensure proper precautions were instituted at the site during drilling operations. James led agency coordination regarding rare, threatened, and endangered species for submittal to USFWS, and the DC Department of the Environment, as well as coordination for historic resources for submittal to the DC Historic Preservation Office. In addition, James coordinated with National Marine Fisheries Service personnel to secure a waiver for work within the in-stream construction closure period. The fast-tracked geotechnical investigation was ultimately approved under a Nationwide Permit 15 for US Coast Guard approved bridges.

Petitioner
CBA Exhibit 15

MITCHELL J. KELLMAN

VICE PRESIDENT - DIRECTOR OF ZONING SERVICES

Education

Towson University, BA, Geography and Environmental Planning, Urban Planning

Towson University, Masters, Geography and Environmental Planning, Urban Planning

Professional Summary

Mr. Kellman has over 30 years of experience working in zoning, subdivision, and development regulations for the public and private sector; 15 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and the public on development project matters, and made determinations regarding developments and their compliance with county regulations. In working for DMW, he has extensive experience in testifying before the Baltimore County Zoning Commissioner, Hearing Officer, Administrative Law Judges, and Board of Appeals. He also regularly represents the company at the Baltimore County Development Review Committee meetings. He is also a member of Baltimore County's Design Review Panel, which formulates design recommendations to the Planning staff and Administrative Law Judges, and the Landmarks Preservation Commission.

Partial List of Projects

Saint Michael's Roman Catholic Church, Howard County, MD

Hunt Valley Towne Centre, Baltimore County, MD

Charlestown Retirement Community, Baltimore County, MD

Goucher College, Baltimore County, MD

Greenspring Quarry, Baltimore County, MD

Norris Acura West, Howard County, MD

Sheppard Pratt Health Systems (Elkridge Campus), Howard County, MD

Towson Town Center, Baltimore County, MD

Corridor 95 Business Park, Howard County, MD

Memberships and Associations

Baltimore County Landmarks Preservation Commission, 2014, 2015, 2016, 2017, 2018

Baltimore County Design Review Panel, 2012, 2013, 2014, 2015, 2016, 2017, 2018

Greater Towson Committee, Planning & Development Sub-Committee, 2012, 2013, 2014, 2015, 2016, 2017, 2018

Greater Towson Committee, Government Relations Sub-Committee Chair, 2013, 2014, 2015

Greater Towson Committee Board of Directors – 2014 (Secretary), 2015, 2016, 2017, 2018

Leadership Baltimore County, 2013

Leadership Baltimore County, Class Interviewer, Member, 2015

Professional Experience

Daft-McCune-Walker, Inc., Towson, MD: 2000-Present

Baltimore County Zoning Review Office, Towson, MD: 1985-2000

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Rural Zones

Resource Conservation Zones Comparison Chart

	RC-2 Agricultural Protection	RC-3 Deferral of Planning and Development	RC-4 Watershed Protection	RC-5 Rural Residential	RC-6 Rural Conservation and Residential	RC-7 Resource Preservation	RC-8 Environmental Enhancement	RC-20 Critical Area	RC-50 Critical Area Agricultural	RCC Resource Conservation, Commercial
Purpose	To foster and protect agriculture	To defer substantial development pending future planning and utilities	To protect the watersheds of the three regional reservoirs	To provide for residential development in appropriate rural areas	Greater protection for resource areas	To protect cultural, historical, recreational and environmental resources	To protect reservoir watersheds and extensive natural areas	To protect the natural resources of the Chesapeake Bay Critical Area	To protect water quality consistent with the Chesapeake Bay Critical Area	To provide small areas of commercial development for rural needs
Permitted Uses	Preferred use agriculture; limited residential development	Agriculture; low density residential	Agriculture; low density residential	Low density residential; agriculture uses	Agriculture; low density residential	Agriculture; low density residential	Agriculture; low density residential	Agriculture Aquaculture; low density residential; fish & wildlife preservation	Agriculture Aquaculture; low density residential; fish & wildlife preservation	Agricultural - related retail, general retail, office, and service use.
Special Exceptions	Antique shop, animal boarding, church, farm market	Animal boarding, camp, farm market, golf course	Antique shop, church, golf course	Antique shop, golf course	Antique shop, bed and breakfast, camp, golf course	Antique shop, bed and breakfast, winery	Antique shop, bed and breakfast, winery	Agricultural support services, specific recreational uses	Agricultural support services, specific recreational uses	Agricultural machine repair, landscape service operations
Lot Area	1 acre (min.)	1 acre (min.)	3 acres (min.), or 1 acre for clustered subdivisions	1.5 acres (min.)	1 acre (min.) 1.5 acres (max.)	1 acre (min.)	3 acres (min.)	Clustering encouraged[4]	Clustering encouraged[4]	2 acres (max.)
Maximum Number of Lots and/or Maximum Density	For a lot of record between 2 and 100 acres: 2 lots; lot of record over 100 acres: one lot for each 50 acres of gross area	Maximum tract density: 0.3 units per acre Minimum diametral dimension[1]: 150 feet	Maximum tract density: 0.2 dwelling units per acre; a tract between 6 and 10 acres may be subdivided into 2 lots total[2]	Maximum tract density 0.5 dwellings per acre	Maximum tract density: 0.2 lot per acre Primary and secondary conservancy areas are required	Maximum density: 0.04 lot per acre for tracts ≥50 acres Tracts <50 acres cannot be subdivided	Maximum density: 0.02 lot per acre for tracts ≥51 acres[3]	A lot of record with a gross area of 20 or more acres may be subdivided at a rate of 1 lot for each 20 acres	A lot of record with gross area between 20 and 100 acres may be subdivided once if the average density is at least 1 unit per 20 acres[5]	Gross floor area of all proposed buildings on the lot shall not exceed 3000 square feet

[1] Diametral dimension is the diameter of the largest circle that may be inscribed within a lot

[2] Rural clustering standards apply to development of tracts more than 10 acres, unless an alternative, non-clustering development alternative is followed at a density of 0.1 dwelling units per acre.

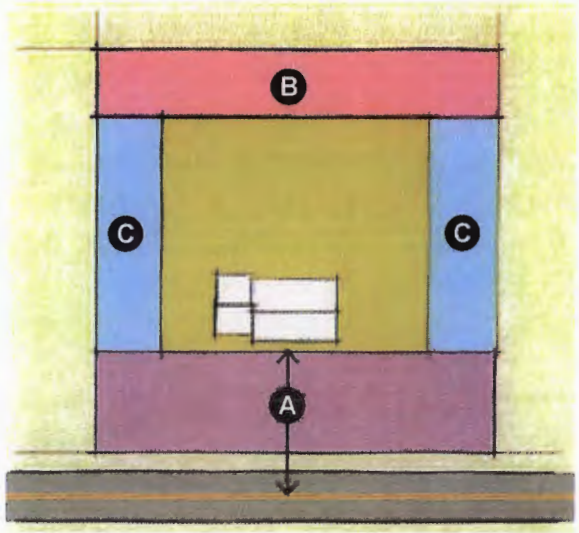
[3] Maximum number of lots for tracts ≤10 acres is one; 10 to 30 acres is two; 30 to 50 acres is three

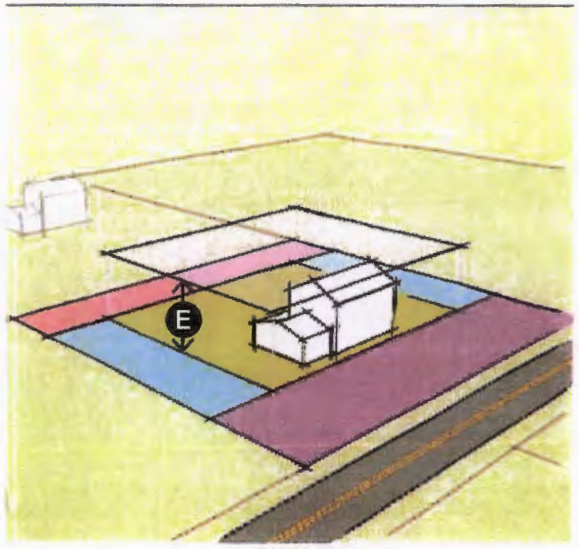
[4] Will be determined in accordance with the county health and Department of Environmental Protection and Sustainability regulations.

[5] A lot of record over 100 acres may be subdivided at a rate of 1 lot per 50 acres

RC-2
Agriculture

Height and Area Requirements		
A	Minimum front setback from centerline of road	75 feet
B	Minimum rear setback	35 feet
C	Minimum side setback	35 feet
E	Maximum building height	35 feet





Intent: To foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

Typical Uses Permitted by Right: Farm, farmette, single-family detached dwelling, farmer's roadside stand, tenant house.

Typical Uses Permitted by Special Exception: Antique shop, animal boarding place, church, farm market, landscape operation, agricultural support uses.

Note: The minimum lot size is one acre.

RC-7
Resource Preservation

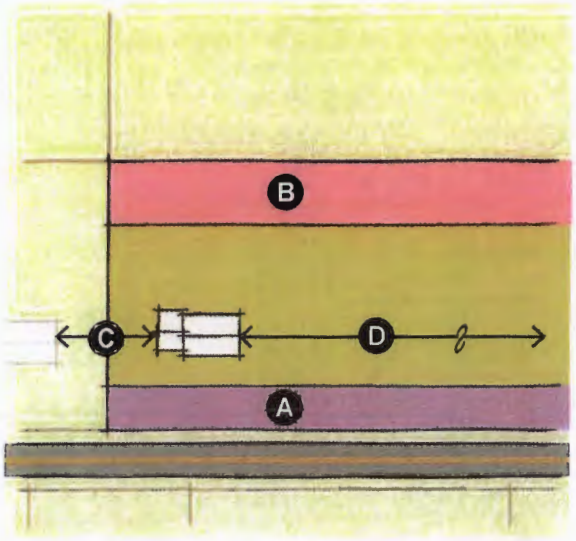
Intent: To protect and preserve valuable cultural, historical, recreational and environmental resources through a low density rural zone.

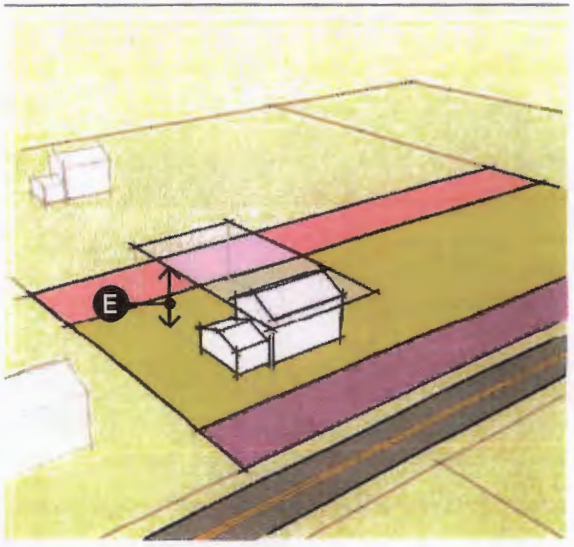
Typical Uses Permitted by Right: Single-family detached dwelling, farm, farm roadside stand.

Typical Uses Permitted by Special Exception: Antique shop, bed and breakfast, winery, church (see note below).

Notes:

- Churches are permitted on property that was appropriately zoned before being zoned RC-7.
- This zone may not be applied to current RC-2 zoned land.
- Maximum tract density is 0.04 lots per acre (one lot/25 acres). Tracts less than 50 acres cannot be subdivided. The minimum lot size is one acre.
- Subject to performance standards that include site plan and architectural review to ensure preservation of natural resources and rural character.





Height and Area Requirements		
A	Minimum front setback	35 feet*
B	Minimum rear setback	50 feet
C	Minimum side setback from a principal building	80 feet
D	Minimum side setback from a cultivated field or pasture	300 feet
E	Maximum building height	35 feet

* 35 feet minimum from edge of private road

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CBA Exhibit
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BALTIMORE COUNTY

DEPARTMENT OF PERMITS APPROVALS AND INSPECTIONS

SOLAR FACILITY DECOMMISSIONING AND SECURITY AGREEMENT

Project Name/ Site Address:_____

_____

Property Owner:_____

Applicant:_____

Applicant Address:_____

_____

Permit Number:_____ Date:_____

Total Estimated Cost Of Decommissioning:_____

Security Required (120% of cost estimate):_____

Whereas, the Applicant desires to construct, install and maintain solar facilities, as defined in Article 4F of the Baltimore County Code of Zoning Regulations, all of the said improvements contained in the referenced project, and being more fully described in Exhibit A, plans attached hereto and incorporated hereby.

Whereas, in accordance with the applicable provisions of the Baltimore County Code, 2015, as amended, (the "Code") and the Code of Zoning Regulations (the "BCCZR"), the Department of Permits, Approvals and Inspections ("PAI") has reviewed plans, and received and approved the cost estimates and plans for decommissioning of the solar facilities to which this Agreement pertains, and all applicable fees have been paid.

Whereas, the Applicant/ Property Owner is requesting authorization to proceed with construction and installation of the solar facilities.

Now THEREFORE, in consideration of the foregoing and in order to obtain a building permit for the solar facilities hereunder, the Applicant/ Property Owner confirms its understandings and obligations as follows:

1. With respect to the solar facilities covered under this Agreement, the Applicant shall construct all facilities as shown in the reviewed and approved final plans signed by all relevant County agencies.

2. All the construction and maintenance work for the solar facilities shall be performed by qualified licensed contractors, in accordance with all applicable laws and regulations.

3. Prior to issuance of a building permit for the solar facilities, the Applicant/ Property Owner shall deliver:

a. If the Property Owner is not the Applicant, a copy of the Lease to the Site for the Project, which may be appropriately redacted to protect confidential or proprietary information; and,

b. An estimate for the cost of removal of the solar facilities from the Site from a qualified independent third party civil engineer, to include physical removal of all the solar energy systems, structures, equipment, security barriers and transmissions lines; disposal of all solid and hazardous waste in accordance with local state and federal waste disposal regulations; and stabilization or revegetation of the site as necessary to minimize erosion; and,

c. A letter of credit in a form and amount approved by the County (the "Letter of Credit"), which may be used by the County for the repair of any unsafe or hazardous condition or the removal of an abandoned solar facility; and,

d. A maintenance and operation plan; and,

e. A certificate of liability insurance in a form acceptable to the County.

4. Access and security must be maintained at all times in a manner that is acceptable to the Fire Department.

5. The failure of the Applicant/ Property Owner or its contractor to fully comply with the terms of this Agreement may result in the issuance of a Stop Work Order by the County, authorized by relevant provisions of the Code, including, but not limited to, Article 3, Title 6. Upon receipt of Stop Work Order from the County, the Applicant shall cause all work to stop until the County expressly authorizes work to resume in writing.

6. The solar facilities shall be removed by the Applicant/ Property Owner when they have reached the end of their useful life or their operations cease. If more than 150 days have passed after the date that operations discontinued, the solar facilities may be deemed abandoned, and Baltimore County can take any and all actions authorized by the Code, the BCCZR, this Agreement and the Letter of Credit to remove the solar facilities from the Site.

7. The Applicant and Property Owner shall protect, defend, hold harmless and indemnify Baltimore County (including its officers, agents and employees) from all liability, losses, damage, expenses, causes of action, claims or judgments resulting from injury to, or death of any person, or any damage to property to any kind, which injury, death or damage arises out of, or is in any way connected with the construction, installation or maintenance of the solar facilities or any agreements pertaining to the construction,

operation or maintenance of the solar facilities, verbal or written, to which the County is not a party.

8. The Property Owner acknowledges, on behalf of the Property Owner and Applicant (if they are not the same person) that County shall not be responsible for posting or providing any notice to a successor in interest to title of the Property Owner regarding any laws, regulations, restrictions, responsibilities or obligations pertaining to the solar facilities.

APPLICANT:

_____ _____

Witness *Authorized Signature*

_____

Printed Name

Title: _____

Email: _____ *Phone Number:* _____

PROPERTY OWNER:

_____ _____

Witness *Signature*

_____

Printed Name

Title: _____

Phone number: _____

Director, Permits, Approvals and Inspections:

_____

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Account Identifier: District - 07 Account Number - 0710045500

Owner Information

Owner Name:	JONES IAN CALDER JONES ROBERT W JONES MARY M ET AL	**Use:** **Principal Residence:**	AGRICULTURAL YES
Mailing Address:	815 STABLERS CHURCH RD PARKTON MD 21120	**Deed Reference:**	/07806/ 00849

Location & Structure Information

Premises Address:	815 STABLERS CHURCH RD 0-0000	**Legal Description:**	143.031 AC ES YORK RD SE COR STABLERS CH

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0012	0016	0086		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1750	1,680 SF		143.0300 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2	YES	STANDARD UNIT	FRAME	1 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	127,200	127,200		
Improvements	31,600	121,800		
Total:	158,800	249,000	188,867	218,933
Preferential Land:	37,200			37,200

Transfer Information

Seller: JONES ROBERT WALLACE	**Date:** 03/04/1988	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /07806/ 00849	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 10/07/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

1. This screen allows you to search the Real Property database and display property records.
2. Click **here** for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

Petitioner
CBA Exhibit
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12-18-11

TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

January 12, 2018

The Honorable John E. Beverungen
Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X, ESA Sparks Glenco, LLC
Letter of Clarification of Restriction #4

Dear Judge Beverungen:

I write to you regarding your recent order issued the 21st day of December, 2017, in Case No. 2018-0047-X. (Copy attached) Your Order approved our Special Exception request to locate a solar farm on our property located at 15637 York Road in Sparks, Maryland.

Restriction number 4 of your decision states that my client is prohibited from removing any trees associated with the installation and/or operation of our solar facility. The testimony at the hearing was very clear. My client stated that it would not be necessary to remove any trees in the field where the panels would be installed. In that we respect, we understand your restriction.

However, it may very well be necessary for my client to have to remove trees or bushes in order to install the driveway to our solar panels from York Road. You will recall that we are located more than 1,200 feet off of York Road and it may be necessary to remove some trees in order to install or our access road and/or for the installation of the telephone poles that will carry our newly generated electricity out to the York Road grid.

Therefore, I am requesting a simple clarification of your decision and specifically restriction number 4, that my client shall be permitted to remove any trees necessary in order to install the access road and telephone poles leading from York Road to our solar panel field. If you agree with this interpretation, I respectfully request that you sign the statement at the bottom of this letter affirming same. Thank you for your time and consideration of this matter.

This letter is intended to be for the purpose of clarifying your recent decision and is not intended to be a request for a modification of your decision. Therefore, by signing below it is acknowledged that the appeal period associated with this case shall not be extended beyond the

Petitioner
CBA Exhibit
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30 days as stated within your original decision and yourRules of Procedure. I will leave it to your further discretion as to whether this request should be considered a modification which might require an additional haring and an amended Order.

Very Truly Yours,

Timothy Kotroco

Timothy M. Kotroco

The applicant, ESA Sparks Glencoe LLC shall be permitted to remove any and all trees and shrubs necessary to install their access driveway and telephone poles from York Road to their solar panel facility. This request shall be treated as a clarification and accordingly, the original 30 day appeal period shall apply.

1-16-2018

Date

John E. Beverungen, ALJ

Baltimore County - My Neighborhood

Petitioner
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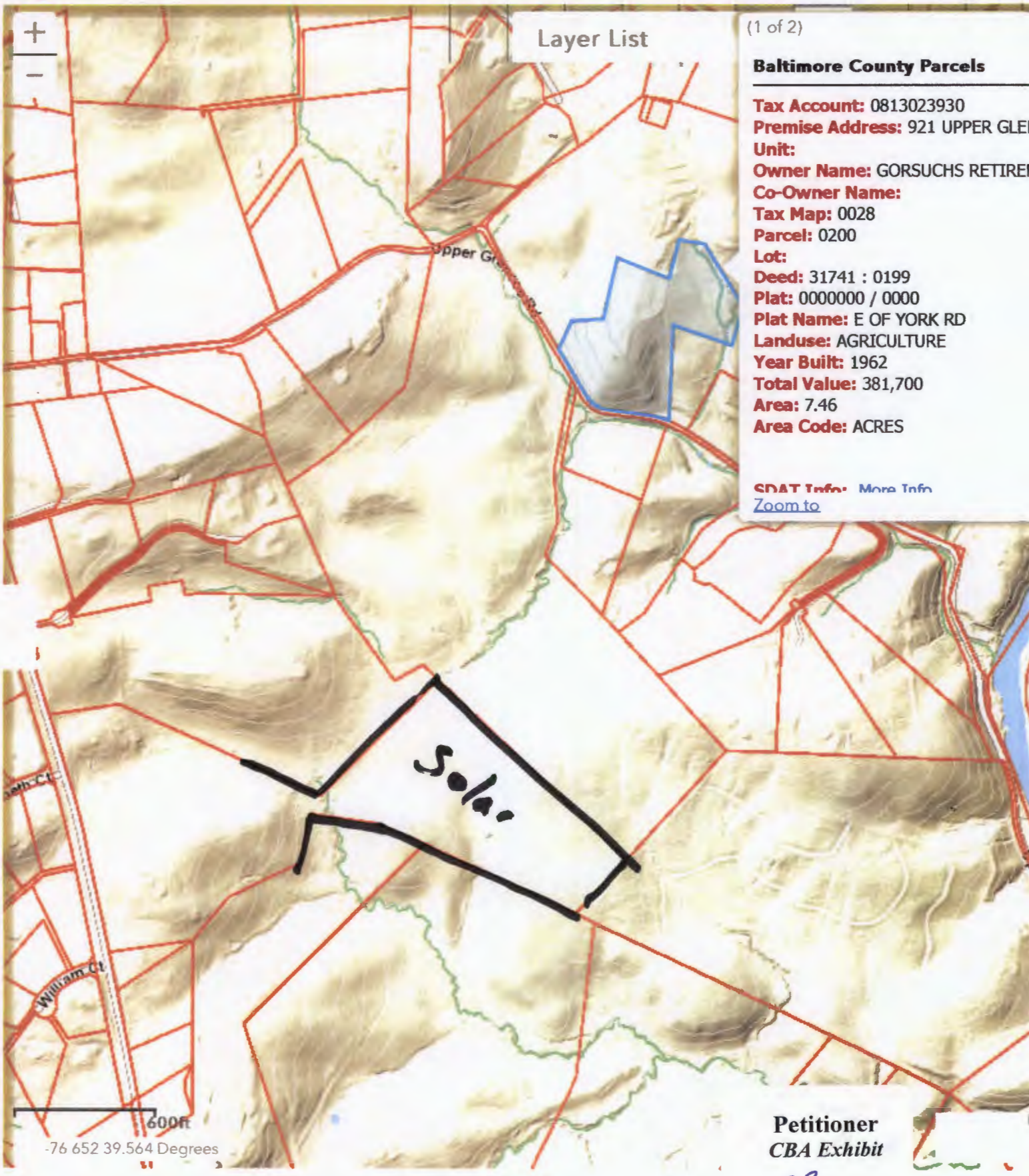
11/20/18

18-047X

Baltimore County - My Neighborhood



Petitioner
CBA Exhibit
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11/28/18 18-047X

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Account Identifier: District - 08 Account Number - 0813023930

Owner Information

Owner Name:	GORSUCHS RETIREMENT INC	**Use:**	AGRICULTURAL
		Principal Residence:	NO
Mailing Address:	1311 GLENCOE RD GLENCOE MD 21152-	**Deed Reference:**	/31741/ 00199

Location & Structure Information

Premises Address:	921 UPPER GLENCOE RD 0-0000	**Legal Description:**	7.46 AC NS UPPER GLENCOE RD E OF YORK RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0016	0200		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1962	1,863 SF	812 SF	7.4600 AC	33

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	142,400	142,400		
Improvements	193,700	222,600		
Total:	336,100	365,000	345,733	355,367
Preferential Land:	2,400			2,400

Transfer Information

Seller:	**Date:** 02/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31741/ 00199	**Deed2:**
Seller:	**Date:**	**Price:** $0
Type:	**Deed1:** /06943/ 00564	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 07/29/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

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IN THE BOARD OF APPEALS FOR

BALTIMORE COUNTY, MARYLAND

In the Matter of	:	CASE NO.
ESA SPARKS GLENCOE	:	18-047-X
15637 YORK ROAD	:	

TRANSCRIPTION OF EXCERPT OF PROCEEDINGS FROM AUDIO FILES CONTAINING THE TESTIMONY OF JOHN M. ALTMEYER

BE IT REMEMBERED that the above-entitled action came on for hearing before the Baltimore County Board of Appeals, on Wednesday, August 22, 2018, at 1:14 p.m.

Transcribed by:

Paul A. Gasparotti II

Petitioner
CBA Exhibit
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EXCERPTS OF PROCEEDINGS

(Excerpt begins at 2:48 p.m.)

Whereupon,

JOHN M. ALTMEYER,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

MR. BELT: Please state your name, your business address for the record, and spell your last name.

THE WITNESS: My name is John Michael Altmeyer, A-L-T-M-E-Y-E-R. Currently I'm a construction consultant. I was employed by Baltimore County for 32-and-a-half years as a building inspector, and the last 14 years I was chief inspector for building, electric and plumbing inspection.

DIRECT EXAMINATION

BY MR. MOWELL:

Q. All right, Mr. Altmeyer, tell me a little bit about your current work, what you say,

you are a construction consultant?

A. I do construction consulting work on the east end of the county dealing with flood plain issues. I do construction consulting work in the northern part of the county for new home and office construction. I work with several engineers, and give construction consulting information to residents as well.

MR. BELT: If I could stop you there, is he being called as a fact or expert witness, or both?

MR. MOWELL: Fact witness, yes.

MR. BELT: Okay, so is he a neighbor that lives close to the property?

MR. MOWELL: No.

MR. BELT: Okay.

MR. MOWELL: He was simply asked to, based on his work with the county, to do a slope percentage.

MR. BELT: That's fine. I just wanted to know for purposes, since you were asking about

addresses, if he lives close, that would be a necessary fact for the record.

MR. MOWELL: Right.

MR. BELT: Sorry, sir.

THE WITNESS: Okay, that's not a problem. I also give information to community groups seeking information about different classifications of construction. I've done inspections for the county on environmental issues with council people at job sites. Most of that was dealing with water runoffs and issues like impervious surface issues and so on, most of that was done in the 15th and 12th districts.

BY MR. MOWELL:

Q. You'll have to explain where those are.

A. It's down in the Essex, Middle River, Dundalk, and even up on the Route 7 area where we have river and flood plain areas.

Q. In your current work or in your work with Baltimore County, what if any experience have you had with sediment control and stormwater

management?

A. Sediment control issues, especially with these solar farms, I've had contact with environmental impact review people, Glen Shaffer and Mike Coles and a couple of the other inspectors over there. Stormwater management people, I did deal with Wally Lippincott over at the planning board and so on in relationship to farm preservation areas and so on that I've done some work with. And basically, it's just a whole myriad of information giving people based on my expertise what I saw for over 32-and-a-half years. I've been basically doing construction probably 50-plus years of my life.

Q. And in that experience, have you had occasion to compute slope percentages on properties?

A. Yes, sir.

Q. Tell us a little bit about that.

A. Basically a lot of times too, we would have issues where we would get inquiries from

Page 6

council people to go out on a job site and evaluate the conditions on a job site versus the grading plans and so on, and a lot of that did require we calculated slopes and so on. And at one time, permits and development management was the enforcement arm for the county, as I'm sure Mr. Kotroco can avow for that. Environmental didn't have the teeth basically to bring violations before a hearing officer, they would come down to our facility and we would coordinate with them, and we would take the leadership and the forefront of taking those cases before a hearing officer for disposition.

Q. Have you become familiar with the MDE guidelines for solar panel installations?

A. Yes, sir.

MR. MOWELL: I believe this was put into evidence by the petitioner, I'm not sure of the number, the MDE stormwater design for solar panel installations.

MR. KOTROCO: Exhibit E, Petitioner's

Page 7

Exhibit E.

MR. MOWELL: All right.

BY MR. MOWELL:

Q. Let me show you what has been marked as Petitioner's Exhibit E and ask if you can identify this document.

A. Yes, sir, I've seen this documentation.

Q. All right. What is it?

A. Basically it's design criteria for solar facilities that were set forth by MDE. Basically, what it basically says is that they're calculating impervious surfaces and so on by only the poles that go into the ground and the roadways that go into the solar facility, the disturbed area where they're going to be putting the fences in and so on. But the solar panels, due to regulations by the state, are not classified as an impervious surface.

It also gives us information on how they would like to see slopes addressed as far as the slopes that are more than five percent, and more

Page 8

than ten percent. Basically what they're talking about, when you have slopes more than five percent but less than ten percent, the design professional can use something, what's called the leveled spreader.

Q. Mr. Altmeyer, let me hold you up there, and I'll ask you to identify another document and then we'll get into that part of it. This will be marked as the next, Protestant's Exhibit Number 4. Let me show you what has been marked as Protestant's Exhibit Number 4 and ask you if you can identify that.

A. Yes, sir. This is some information that I put together about some slopes on the Garner property.

Q. Did we ask you to do that, to go out there, or to compute the slope percentage?

A. Yes, sir. I basically used My Neighborhood to calculate these slopes. I couldn't go out on the property to basically do any kind of research so to speak because I didn't

Page 9

have the ability to go on the property, and I didn't want to get into any trespass issues.

Q. Explain to us what this document shows.

A. Basically this document shows four areas on that property where we have slopes, and if you look at the second page, number one, we have a slope of 13.38 percent.

MR. KOTROCO: I'm going to object. Do you think he could give a foundation as to how he came up with that calculation?

THE WITNESS: Sure.

MR. BELT: Well, I think first it would be helpful if on page one we could identify -- you know, I understand this to be on the Garner property, but where on the Garner property would be helpful as well.

THE WITNESS: Obey.

MR. BELT: And then we can get into how it was calculated.

MR. MOWELL: Okay.

THE WITNESS: Okay. We're talking this

area right in here.
MR. BELT: I'm sorry, you have to back up. How about either, is there a way you can show on the aerial map, the colored one?
THE WITNESS: On this one, the colored map you want?
MR. BELT: Yeah.
THE WITNESS: It would be right in this area right in here.
MR. BELT: So the entire page one of your exhibit here --
THE WITNESS: Is basically this swatch right here.
MR. BELT: It would be the cleared out swatch with the woods to the southwest and east, right?
MR. KOTROCO: The record's not going to reflect when he says here.
MR. BELT: I'm trying to do that. So it would be the proposed solar field with the woods to the southwest through east, is that section,

the right side of the bowtie as we've been calling it, is what's depicted on page one of Protestant's Exhibit 4.
THE WITNESS: Yes, sir, that was basically taken from -- let me see which one -- from My Neighborhood is where I got this from, and I did compare it with what we have from Mr. Doak's work, and it was basically in coordination with that. Like I said, we have this area right in here where the contours on My Neighborhood definitely show that we have a 13.8 percent slope, and if you turn it over to the first page, you can see where I have a printout of My Neighborhood.
MR. BELT: Okay, but sir, I need to jump in here. The page you just pointed to is actually the third page of the exhibit, right?
THE WITNESS: Yes, sir.
MR. BELT: Okay, and that is for what has been marked on page one as number one.
THE WITNESS: Yes, sir.

MR. BELT: And do I understand, then, that each successive page then follows, number two, number three, number four?
THE WITNESS: Yes, sir.
MR. BELT: And it corresponds to the numbers that are on the first page.
THE WITNESS: Right. And if you look at the top of like page one where the exhibits are, to verify the footage that I was calculating, it has the footage of 149 feet for a run, and the rise for the difference in elevation was 20 feet. And then basically to calculate that, you divide the run into the rise, and that gave me a .1338, and you multiply that times 100 and that gives you the 13.38 percent. And that's basically the same situation that I used for number two, three and four. I always made sure that I had the footage off of My Neighborhood that was by them, rather than a calculation by myself.
MR. BELT: Okay. So do I understand numbers one, two three and four, if you look at

page one of that exhibit --
THE WITNESS: Yes, sir.
MR. BELT: -- and you flip to this page, page one?
THE WITNESS: Yes, sir.
MR. BELT: Numbers one, two, three and four, if you were to look on the aerial map, it would be roughly within where the woods are of the proposed solar field, just to the south?
THE WITNESS: It would be over in the solar field itself and then come into the woods area.
MR. BELT: Okay. Sorry to interrupt.
MR. MOWELL: That's all right.
BY MR. MOWELL:
Q. Tell us again -- you have a run here for each number. How did you compute the run?
A. I computed the run by using myneighborhood.com where you can compute length. You basically use the program, get a start and a finish, and then it basically comes up with a

Page 14

number right underneath this black line right here, which is 189 feet. If I may approach?

MR. BELT: Okay.

THE WITNESS: This will give you where I got my distances for my run.

MR. BELT: I think you have to show Mr. Kotroco.

MR. KOTROCO: I think I'm following him. Go ahead, John, you can go up there.

THE WITNESS: Okay. And then also, basically the contour lines is what I got for my rise.

MR. BELT: Right.

THE WITNESS: So that's how I calculated it.

MR. BELT: Right. So for example, even if you go to page one, there's a mark of 410 here, and then you would go to whatever the run is to a particular point.

THE WITNESS: Yes, sir.

MR. BELT: And use ten feet per

Page 15

gradation here, and that's how you'd come up with your run.

THE WITNESS: Yes, sir.

MR. BELT: Okay.

MR. MOWELL: Okay.

BY MR. MOWELL:

Q. So you took four spots, came up with four slope percentages, and what are those slope percentages?

MR. BELT: You can have a seat, sir.

THE WITNESS: Okay. The slope percentages for number one, like I said before, was 13.38 percent. Number two is 15.83 percent, number three is 16.54 four percent, and number four was 7.6 percent. The reason that I showed those marks as slopes on there like that was because the way MDE regulations are, anything that shows slopes over ten percent in areas, they're requiring a grading study. I've talked to some length with EIR about --

BY MR. MOWELL:

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Q. Sorry, you have to explain what that is, EIR.

A. Environmental impact review, in regard to, you know, these situations, and they said that they were mandated by state regulations that they adopted with these, to use these as a guideline for their review.

Q. Actually, let's look at the guidelines then. Do the guidelines talk about what stormwater controls should be used for slopes less than five percent? And we don't have any less than five percent, but what do the guidelines say should be done for less than five percent?

A. Less than five percent, and I know a lot of times they'll use areas like warm season grass plantings and different types of other, you know, floral type plantings, a lot of them which are conducive to like butterflies and bees and so on, that basically have a good root system that won't basically wash out or die over a period of time.

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Q. So, what does the term disconnection mean?

A. A disconnector is an area in between the solar panels where they would have plantings in there that basically would catch the runoff from the solar panels onto the ground and basically slow the amount of exacerbation of the runoff into the area.

Q. What do, and what do the guidelines say for slopes less than five percent, is disconnection all that is required?

A. Disconnectors are something that is required, but there's other methods.

Q. I'm talking about slopes less than five percent.

A. Yes.

Q. Is that all that's required for a slope less than five percent?

A. Yes.

Q. And were you here when Mr. Quinlan testified that that's what he has in mind for his

Page 18

site, which is to let the water run off the panels onto the grass? I don't know if you were here; were you here when he testified?

A. Yes, sir, part of the time.

Q. Okay.

A. You know, the thing that I'm concerned about here is the situation, I think that everybody realizes we got to have some form of alternative energy source, period. Nobody's going to disagree with that. The only thing I think that community organizations and so on are concerned about, that if these facilities are put in, we want to see them put in so that they're not going to do any harm to the environment and so that we don't have any exacerbated runoffs into streams and other areas that could basically impact the environment.

Q. All right. Let me ask you about the stormwater guidelines. So less than five percent, the water can run on, just run off the panels onto the grass?

Page 19

A. Yes, sir.

Q. What do the guidelines say about for slopes between five percent and ten percent?

A. Basically what they're doing is they're talking about using what's called a level spreader. A level spreader is basically a trench that's cut in the ground and has stone in there, and what that stone does is actually captures the rainwater and impedes the runoff of the water on the grass area down a hill so that it doesn't, you know, pick up momentum and create more of an exacerbated runoff.

MR. BELT: Would it kind of be like if you have a sump pump and you have a pit with drainage rock in it so it doesn't erode away?

THE WITNESS: Sure. The water would drain into it and then it would slow it up, and then it would, you know, exactly.

MR. BELT: And so it would drain into a trench where the rock is --

THE WITNESS: And be absorbed into the

Page 20

ground, and then if there was any that was over that, it would basically spill over onto the ground and hopefully be taken care of.

BY MR. MOWELL:

Q. Do the guidelines talk about any other control other than the box spreader that you just talked about?

A. That basically is depending upon what would be submitted to environment impact review and stormwater management, to Baltimore County by the engineer that would provide a plan. He would suggest whether they're going to be using, like I said before, some form of warm season grass, if they were going to be using another particular type of flora, and then it would be reviewed by the county EIR and stormwater management for the effectiveness and for the controls, and then they would possibly make comments back to the engineer of record to basically insure that what they were going to put in wasn't going to be creating a problem.

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Q. Do the guidelines talk about terraces, do you know what a terrace is?

A. Yes, sir. When they get into terraces and doing terraces, it seems like it would get into some grading issues and so on. And what I've gathered from going to some of these, you know, hearings on these solar panels, they don't want to really get into too much terracing and so on, because that's a disturbed area.

MR. BELT: Could we go back a second? I have a general idea of what you mean by terracing, but could you explain that for the record?

THE WITNESS: A terrace would be like if you had an area that was coming down, they would grade it out a little bit, and drop down, and drop down.

MR. BELT: Almost like steps.

THE WITNESS: Yes, sir, exactly.

BY MR. MOWELL:

Q. Do the guidelines suggest terraces as a

way to handle slopes greater than five percent?

A. Yes, sir, that's an alternative measure. Again, it's like I said, that's something that the engineer of record doing the plan would have to come up with, devise a plan, but then a lot of times too, this would trigger over 5,000 square feet of disturbed area, which would require a full-blown grading study, which can be expensive.

Q. Are you saying they don't like to do terraces?

A. Right. And I mean, you know, face it. I mean, anybody that's doing a project doesn't want to throw money away, they want to try to do it as cheap as possible.

Q. How about berms, do you know what a berm is?

A. Yes, sir.

Q. What is a berm?

A. A berm is an area where they have would have, you know, like some slopes up that would slow the water run down, and then it would come

down again.

Q. Does that involve dirt work as well?

A. Yes, sir.

Q. Is berm another method of control for slopes greater than five percent?

A. It would be -- it could possibly be effective. It would be depending, again, on how it was installed and you know, the height of the berm and the length of it and so on. That may require, if we're using berms, to get hydraulic calculations.

Q. And you in your study, you only found one slope that is under ten percent, that's between five and ten percent, you found one at 7.6 percent?

A. Yes, sir.

Q. And the other three are over ten percent. What do the guidelines say about a slope over ten percent where solar panels are going to be installed?

A. Over ten percent, it would require that

we have a full-blown grading study that would be submitted to stormwater management.

Q. Do you know what kind of controls could be used to control runoff when panels are installed on slopes greater than ten percent?

A. They could basically put situations in like a stormwater management pond, there's different measures they could go with, but like I said, it depends on the engineer of record when he would be working with his clients to figure out what he would consider the most cheapest and effective way of handling it, because what they would have to do, I would think at first, would be to calculate the amount of water runoff of each solar panel, and then basically use those calculations along with the topographics of the property to come up with an adequate means of enforcement, or not enforcement, but, let me try to think of a good word here.

MR. BELT: Design?

THE WITNESS: Yes, sir, it would be a

good thing, a good way to minimally take care of the water runoff without a large expense to them. I mean, that's basically part of an engineer's job, is to try to do something for his clients that's cost effective and that is also code compliant.

MR. MOWELL: Mr. Altmeyer, that's all I have. We would like to offer his exhibit into evidence.

MR. BELT: Mr. Kotroco?

MR. KOTROCO: I'm going to object to the --

MR. BELT: We're doing the document.

MR. KOTROCO: Yeah, I'm going to object to the exhibit.

MR. BELT: On what basis?

MR. KOTROCO: I would have preferred it would show the area where the solar panels are going to go, it doesn't. This appears, from what I understand from Mr. Altmeyer, to be the outline of the perimeters of the property.

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Is that correct, Mr. Altmeyer, it's the outline of the perimeter of the property?

THE WITNESS: Yes, sir.

MR. KOTROCO: Not where the solar panels are going to go.

THE WITNESS: See, what you can do is look basically on this particular plan right here, you can see right in here where like Exhibit Number 1 is, where it comes down and it runs down.

MR. BELT: Mr. Altmeyer, let's do this. I'm going to give you a pen. Could you put on the marked up one --

MR. MOWELL: Can I give him a red pen?

MR. BELT: That's fine, that's much better. I didn't have a red pen available here, so thank you. Could you mark the area, one, two, three and four?

THE WITNESS: Here is one.

MR. MOWELL: Is that writing okay?

THE WITNESS: Two would be this area

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right in here, three would be this area, and four is here.

MR. BELT: Recognizing this is an estimate based on your comparing your exhibit to 1-A, you drew it as best as you could.

MR. MOWELL: Is that a fair assessment?

THE WITNESS: Yeah, I think that looks pretty close.

MR. BELT: That's a fair assessment?

THE WITNESS: Yes, sir.

MR. BELT: Okay. So with respect to your objection, Mr. Kotroco?

MR. KOTROCO: I'm still -- I mean, it's -- I guess my objection is the lack of detail or exactness of his calculations, that's the point of the objection. It was difficult do follow, I think I followed him, I'm going to ask him a couple questions about it.

THE WITNESS: Sure.

MR. BELT: I think that's going to go to the weight of the testimony.

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MR. KOTROCO: Okay, that's fine.

MR. BELT: Or the weight to be given to this document as opposed to whether or not it should be admissible, so we'll admit it.

MR. KOTROCO: All right, thank you.

MR. BELT: All right, go ahead.

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Altmeyer, what were the years in which you worked for Baltimore County?

A. What years?

Q. What years, yeah, when did you start and when did you retire?

A. I started working for Baltimore County in 1977 and I worked there until 2008, 2009 rather, excuse me.

Q. Did you work for Mr. Kotroco when he was the department head?

A. I certainly did.

MR. KOTROCO: Don't get into too much of that.

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THE WITNESS: I worked for him especially during the Hurricane Isabel incident.

BY MR. ZIMMERMAN:

Q. You and I haven't talked about your exhibit or the details of anything that you testified about, have we?

A. No.

Q. So I want to ask you some questions and if you don't know the answer, just let me know.

A. Certainly.

Q. I'm looking at Protestant's Exhibit 4. Now we've heard that the solar panels are going to kind of face south, right?

A. That's what I understand.

Q. Do you know enough to tell us based on your review of the slopes, that any water coming off these panels for the most part is going to be heading south, southwest, or what direction, what direction, can you tell us that?

A. I haven't really thought about that because a lot of the runoff on the panels, for

Page 30

one, is going to be determined by the amount of rain that's coming down and the wind factors involved with the rain, because we have got some real crazy storms up in the northern part of the county this year where I've seen water running in places that I've never seen it run before.

Q. And that's the same for the central part of the county?

A. Yes, sir.

Q. Let's, as a baseline, let's suppose it's not a windy day, but it rains.

A. Okay.

Q. Can you give us a ballpark estimate based on what you see on your exhibit as to the general direction of the water runoff?

A. Again, like I said, that would be hard for me to do it, because I don't know the hydrology of how much water comes off of each panel from the rain.

Q. Okay. Forgive me, but I'm not asking you about the amount of runoff, I'm just asking

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you which way does the land slope down. The land does slope downwards, does it not?

A. Yes, sir.

Q. And correct me if I'm wrong, but does your exhibit more or less show a stream area offsite?

A. It doesn't show the stream area.

Q. It doesn't?

A. No.

Q. Okay. Well, at this point, are you trying to tell us that there's, you're uncertain as to any proof that the stormwater will be handled in the right way?

A. What I'm trying to say is I think it would be a worth a second look by the environmental department when they would be reviewing this site to take a look at these grades on, and slopes on this property as they will do in a field visit, and incorporate their data in with their final decisions on what they're expecting to see on that property.

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Q. Is there any reason why some preliminary evaluations could not have been done as to --

A. Preliminary evaluations --

MR. BELT: Let him finish his question before you answer.

THE WITNESS: Okay.

BY MR. ZIMMERMAN:

Q. Is there any reason why preliminary evaluations could not be done as to generally what we're looking at here?

A. Well, they haven't applied for permits yet and they won't do any preliminary evaluations of the site until, you know, the site plans are submitted with the application for a permit.

Q. You're not an expert on what's required for a special exception, are you?

MR. MOWELL: You asked him.

MR. KOTROCO: It sounds like he is. It sounds like it to me.

BY MR. ZIMMERMAN:

Q. I mean, look, Mr. Altmeyer, it sounds

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like as far as you're concerned, no big deal here?

A. I'm not saying it's no big deal. I'm saying I think, I think it is something that needs to be well considered, and the thing that I haven't heard from any of these solar companies is the fact that yeah, we do have these steep slopes and we may address it in this particular fashion or this fashion. I haven't heard any of that from any of them and it's kind of, I'm not going to say it's disturbing, but it kind of raises a flag up to me.

Q. Okay.

A. I mean, I think that, you know, the constituents and I think the council should realize that it's nice to have, you know, alternative forms of energy and so on, but a lot of times, I think it would be an advantage if they took a second look at it rather than jump on a bandwagon and just want to approve it.

Q. I don't want to misunderstand what

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you're saying, but from your perspective, would it be feasible to get a ballpark expert understanding and evaluation of the situation, rather than coming in and saying we'll take care of everything later?

MR. MOWELL: I'm going to object. It's, I don't know if that's a question or if it's just testimony that Mr. Zimmerman is giving. I'm not sure what the question is.

MR. ZIMMERMAN: Well, it is a question.

MR. BELT: Why don't you ask it again please.

BY MR. ZIMMERMAN:

Q. For you to get a sense of what's going on on this site given the topography and what you've shown, would it be reasonable at this juncture in your view for the petitioner to have provided us with a ballpark idea or concept at least, of where they think they can handle the stormwater?

A. That would sure be definitely an

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advantage. I think it would answer a lot of questions from people and I think it would put a lot of community organizations at rest with what we have out there on these sites, because you know, I think in talking to some of the community organizations along with knowing how the county system works and so on, I think they're just looking for some assurance that if these are put in, they're going to be put in in accordance with the regulations that, you know, MDE wants, but they also have to realize too that Baltimore County has the ability to modify regulations, as I'm sure you all well know. They can modify regulations to suit basically the situation we have.

Most of these regulations by MDE were basically, came from the Eastern Shore. The Eastern Shore is nothing but flat, flat and more flat. Up here we don't have that up in the northern part of the county, we have rolling sloped terrains. None of these regulations here

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outside of the over ten percent, addresses that.

Q. Are you ready for another question?

A. Yes, sir.

Q. On this property here today based on what you've heard so far in this case, do you have any clue as to how the petitioner is going to handle it, other than they say they're going to comply with the regulations?

A. No, sir, I can't make a speculation on nothing without evidence.

MR. ZIMMERMAN: Thank you, that's all I have.

CROSS-EXAMINATION

BY MR. KOTROCO:

Q. So Mr. Altmeyer, as you mentioned, if an engineer of record does all these calculations like you've done, puts them on a plan and seals it, turns it in to Baltimore County and the county approves it, you would be okay with that?

A. If he shows how they're going to contain the runoff.

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Q. Correct, if all that's shown on a plan and the county likes it, approves it and says we like it, would you be okay with that?

A. If they made the field visit along with it?

Q. Right.

A. Sure. I think people would be more, more satisfied with it.

Q. Right. And that's all got to be done before you go get a permit to put them in?

A. When you apply for a permit, that's got to be in the package of drawings with the solar array, and also with the site plans.

Q. And that's the way we did it when we worked together at the county?

A. Yes, sir.

Q. Okay, and I was your boss for eight years?

A. Right.

Q. You were there longer than I, 30-some, how many years?

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A. 32-and-a-half.

Q. Okay. Have you testified in other solar cases yet, is this your first one testifying?

A. I basically am involved with the one on Freeland Road and so and on, and I have to testify yet on that. I haven't gotten up to testify yet.

Q. Okay. You live close either to the one on Freeland Road?

A. It's right next to my house.

Q. Okay. But there are some other parts of this site that are pretty flat, you just looked at the ones that were the steepest; is that right?

A. I looked at the ones where I thought there was going to be a runoff, and then from what I understand was a stream area down there. I didn't have any drawings to verify the fact of the stream, and I didn't, couldn't make a site visit because I didn't want to trespass.

Q. No, okay, I understand that you did the

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best you could with My Neighborhood, clicking on it with the distances.

A. That's for sure.

Q. I've done the same thing, okay.

And I just would like to ask you a couple other questions. Well, you didn't work in the stormwater management department at the county, did you?

A. I enforced stormwater management regulations.

Q. Yeah, you enforced them, but you always were in the buildings and permits?

A. I was always in the building end where we basically had the enforcement arm.

Q. Right. And I'm not trying to be tricky here, but I know we were friends and we worked together?

A. Sure.

Q. Were you always in the building inspections department?

A. Yes, sir.

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Q. You were, okay.

A. And I also was on the emergency response team for 14 years with the fire and police department.

Q. Yes, I remember that. I guess the last question, when we worked together, were you sitting down in the basement calculating stuff, doing these kinds of plans down there? You did?

MR. BELT: Is that a yes?

THE WITNESS: Yes.

BY MR. KOTROCO:

Q. Okay. I didn't know you were doing that down there, that's fine.

A. When environmental came down to us and they wanted to get prosecution or get cases presented between either you or Lawrence Smith, a lot of times I had to do things like that, to offer them as exhibits.

Q. Well, I miss those days, Mr. Altmeyer, I enjoyed working with you.

A. I enjoyed working with you too.

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MR. KOTROCO: Okay. No further questions.

MR. BELT: Mr. Mowell, any redirect/TKPREBGT.

MR. MOWELL: Yes, I'm a little confused.

REDIRECT EXAMINATION

BY MR. MOWELL:

Q. Is it your testimony that you think that the, at this stage the petitioner should explain how he intends to handle stormwater and have an engineer approve a plan when the permit is pulled, or do you think it's good enough just to let, wait until the permit gets pulled?

A. When the permits are applied for, he has to submit an engineered drawing with it as to what they're going to be doing for the runoff with this. At that particular time stormwater management and environmental impact review would go out on the site and take a look at the site. I talked to Jim Markle about this over at stormwater management, I talked to Glen Shaffer

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and a couple other people over at environmental impact review, and when that would get submitted with the drawing, with the package for permits, they would go out on the site and look at it. They would then basically make recommendations back to the engineer of record as to whether they approved what they were suggesting or whether it needed further remediation for the water runoff or containment of water runoff.

Q. That's after we get through this process. Are you content with that process to control stormwater or would you like to hear here how the petitioner intends to handle stormwater?

A. I think it would be good --

MR. KOTROCO: Can I object? I think he's already answered that, he's already given his opinion on that.

MR. BELT: Yeah, I think he has given his opinion, but I also don't know how relevant that is to this proceeding as to where he believes it should fit in with within the system.

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The question in my mind is, there's a process in place that will yield the same protections that he has concerns about, and that's what I think the ultimate question is.

MR. KOTROCO: Right.

MR. MOWELL: Can he answer that question?

MR. BELT: Sure.

MR. KOTROCO: It's his question. I won't object to that.

THE WITNESS: I would think that it would be in the interest of a better rapport with the community, so to speak, to have that information, or at least a preliminary submitted for a perusal of the constituents in the area. I think it would give people more of a relaxed view of what's going to happen, because a lot of people, to be blunt, think that we're getting this shoved down our throat without any recourse. I'm not going to pull any punches, that's basically, I've heard that a lot.

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I've heard one person in one county agency say well, zoning is decimated where I live at, now it's your turn. I'm going to tell you, that's -- I'm not -- I would swear on a stack of bibles to that, and what can I say?

Q. Do you think it would help the Board too, to know how the petitioner intends to handle stormwater in making their decision about whether to approve or disapprove the plan?

MR. KOTROCO: I object to the leading nature of the question.

THE WITNESS: Well, my own thoughts --

MR. BELT: Just a second. Mr. Mowell, can you rephrase the question?

BY MR. MOWELL:

Q. What if any benefit do you think it would be to the Board in rendering its decision to know how the petitioner intends to handle stormwater on the property?

A. I think it would give everybody on the Board a lot better of an idea rather than not

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seeing anything at all, because it would make you understand when you look at this particular form from the MDE regulations --

MR. BELT: You're referring to Petitioner's Exhibit 8. Go ahead.

THE WITNESS: That would give you a better idea of what they're going to try to accomplish by putting these control measures in because you know, face it, I mean, everybody's not an architect, everybody's not an engineer, but the thing I have it is you present it in a way that, you bring it down on a level to where people can understand what's going to take place and how it's going to help to contain the issues to be compliant, because I think nobody wants a situation where we're calling up, not MDE, but environmental impact review and saying we got a tremendous runoff from that rain last night, what are you going to do about it? And then, you know, typically, maybe one of the answers you might get was well, last night it was a kind of

unusual rain, what do you expect?

I'm just saying, I think we need a little bit more of a full disclosure all around as to what's happened here, and to realize that these MDE regulations were basically tailored not for this area of the state, but for more down on the Eastern Shore where it's flat. They don't have the runoff issues that we have up here, and the one thing that we have up here too is, we have an area up here, like for instance Prettyboy Reservoir that supplies over 60 percent of the drinking water for Baltimore City and Baltimore County, and it is a concern for people.

We have other areas where we have native trout species in some streams. We're wondering about the exacerbated effects of the water runoff and is it going to raise the water temperature to kill these trout which need roughly at a maximum of 68 degrees to live in.

MR. BELT: Mr. Mowell?

MR. MOWELL: Thank you, Mr. Altmeyer.

No further questions.

MR. ZIMMERMAN: Just quickly.

RECROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Do you know, Mr. Altmeyer, this is the last time there will be any public hearing on this project?

A. Yes.

MR. BELT: Thank you. That's all I have.

MR. KOTROCO: No questions.

MR. BELT: Okay. You can step down, sir. Thank you.

THE WITNESS: Thank you for your time.

(Witness excused and the excerpt concluded at 3:25 p.m.)

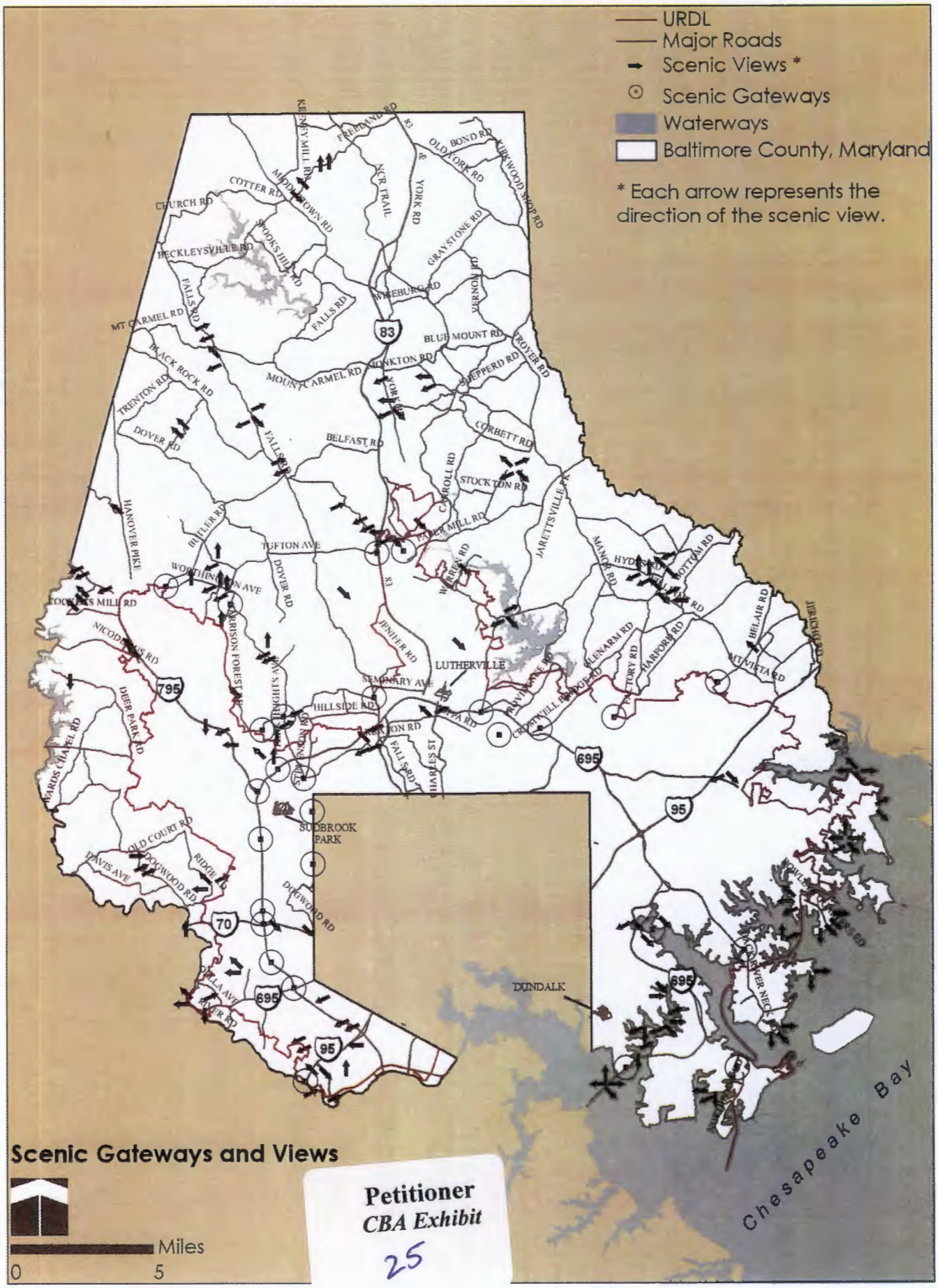
TRANSCRIBER'S CERTIFICATE

I, PAUL A. GASPAROTTI, II, Notary Public, hereby certify that I transcribed from audio file the proceedings to the best of my ability in the foregoing-entitled matter; and I further certify that the foregoing is a full, true and correct statement of such proceedings and a full, true and correct transcript of the audio file produced.

IN WITNESS WHEREOF, I have subscribed my name on October 23, 2018.

PAUL A. GASPAROTTI, II
Notary Public - Maryland
My Commission Expires
September 3, 2019

11/28/18 18-047-X

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TROYER RD
MONKTON RD
SHEPPERD RD
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Corbett Rd
FALLS RD
BELFAST RD
CORBETT RD
STOCKTON RD


Maplehurst Ln
Piney Creek Ct
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Remare Rd
Shepperd Rd
Monkton
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Hereford Rd
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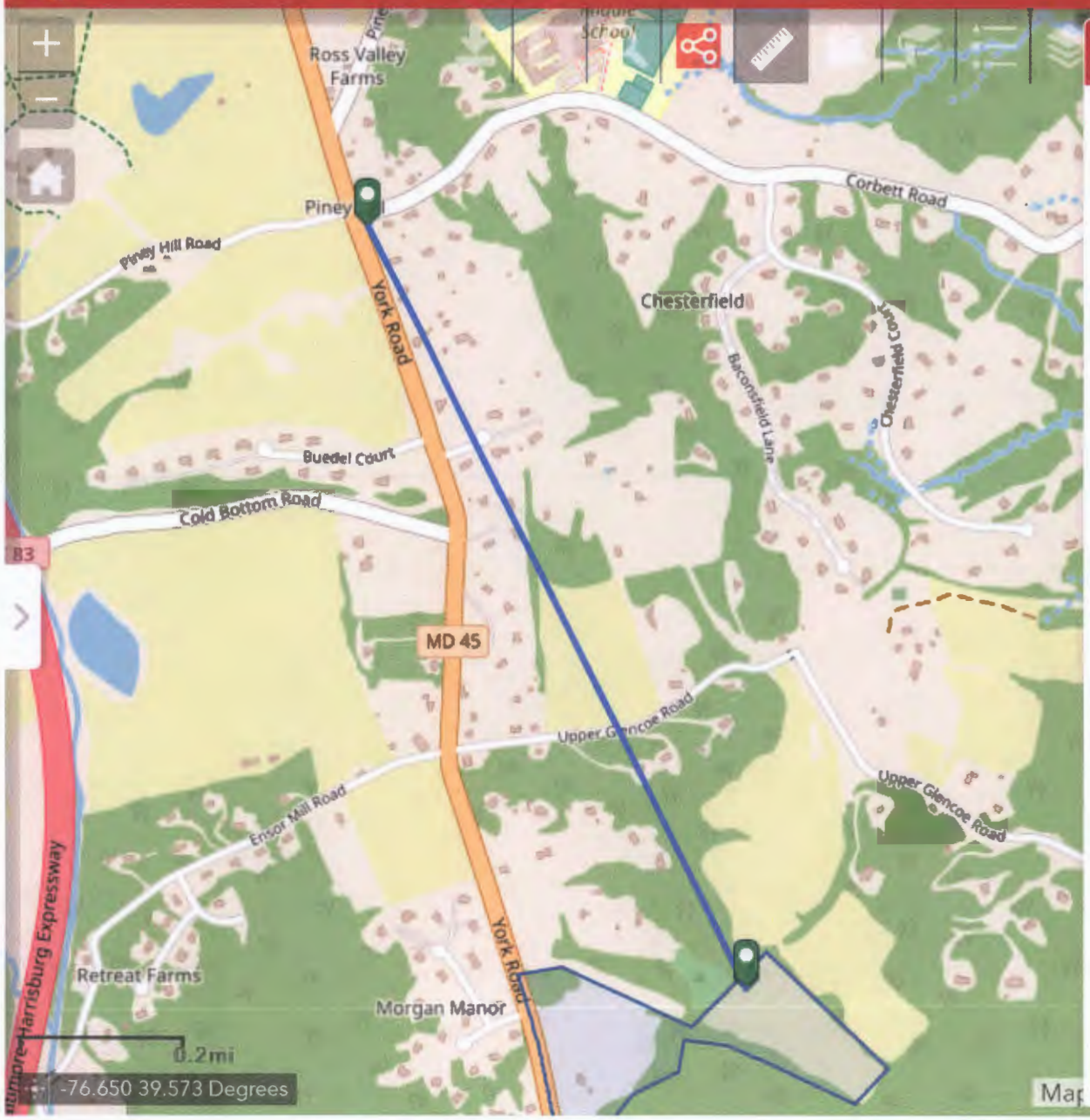
Baltimore County - My Neighborhood



Measurement

Miles

Measurement Result

1.05 Miles

View from corner of York Road and Corbett Road looking southeast. It is 5,450 feet (1.05 miles) from the intersection to the site.

Subject: FW: Freshwater Fisheries Data request form
Date: Wednesday, November 28, 2018 at 7:37:32 AM Eastern Standard Time
From: Timothy M. Kotroco <tkotroco@gmail.com>
To: Timothy Kotroco <tkotroco@gmail.com>

From: Mark Staley -DNR- <mark.staley@maryland.gov>
Sent: Tuesday, November 27, 2018 3:21 PM
To: brian@calvertenergy.com
Subject: Re: Freshwater Fisheries Data request form

Brian,

We (Freshwater Fisheries) have no data on the un-named tributary to the Gunpowder Falls that flows through the property at 15637 York Rd, Sparks, MD.

Wild trout (brook and brown) are found in tributaries surrounding your project site watershed, therefore we would ask that you proceed in your site planning as if trout occur on your property.

The Gunpowder Falls downstream of your project site is managed as a put and take trout stocking area, We stock 5000 adult size trout into the river each spring. This is a very popular and heavily used recreational fishery.

Any measures you can take to reduce or eliminate warm water discharges or heating to the tributary will benefit trout. Controlling sediment inputs is equally important.

Mark

On Tue, Nov 27, 2018 at 2:52 PM Brian Quinlan <brian@calvertenergy.com> wrote:

> Mark – I hope that you had a nice Thanksgiving. I wanted to see if you had any feedback on our fisheries request or other feedback on our request for DNR feedback at the site. We have a hearing tomorrow so any information that you could provide would be greatly appreciated. Thanks.
>
> Brian Quinlan
> President/CEO
> Calvert Energy LLC
> brian@calvertenergy.com
> (301) 208-0153
> (301) 367-9131 (cell)
> www.calvertenergy.com

Petitioner
CBA Exhibit
26

11/28/18 18-047X

From: Brian Quinlan <brian@calvertenergy.com>
Sent: Thursday, November 15, 2018 8:23 AM
To: 'Mark Staley -DNR-' <mark.staley@maryland.gov>
Subject: RE: Freshwater Fisheries Data request form

Mark – I filled out the google docs form, but it doesn't get to a specific location. I have attached a copy of the letter that I sent in to DNR that provides more detailed information. I would appreciate any feedback that you could provide on streams surrounding the site and fishery information that we should be aware of in our development process. Thanks.

Brian Quinlan
President/CEO
Calvert Energy LLC
brian@calvertenergy.com
(301) 208-0153
(301) 367-9131 (cell)
www.calvertenergy.com

From: Mark Staley -DNR- <mark.staley@maryland.gov>
Sent: Wednesday, November 14, 2018 9:32 AM
To: brian@calvertenergy.com
Subject: Freshwater Fisheries Data request form

https://docs.google.com/forms/d/e/1FAIpQLSewsll3QWBHsoHZtynwL9gZJlK2GsFYctxGwrr6TCyWrbDH8g/viewform

The google doc form will result in a query of our Freshwater Fisheries data which is focused on gamefish like trout and bass.

Maryland Biological Stream Survey also compiles data on stream ecology more focused on the entire biological community. They also have a data request system and a public GIS based map of some of their data See link below:

https://geodata.md.gov/streamhealth/

--

Mark Staley
Central Region Manager
Freshwater Fisheries Program
Fishing and Boating Services
Department of Natural Resources
17400 Annapolis Rock Rd
Woodbine, Maryland 21797
410-442-2080 (office)
mark.staley@maryland.gov

dnr.maryland.gov

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KCI

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

936 Ridgebrook Road • Sparks, MD 21152 • Phone 410-316-7800 • Fax 410-316-7885

November 19, 2018

SENT VIA EMAIL: brian@calvertenergy.com

Mr. Brian Quinlan
President and CEO
Calvert Energy, Inc.
12921 Buckeye Drive
Gaithersburg, MD 20878

RE: KCI Technologies, Inc. Scope of Work and Cost Proposal
Engineering and Environmental Studies - Sparks-Glencoe Solar Site

Dear Mr. Quinlan:

KCI Technologies, Inc., (KCI) is pleased to submit this scope of work and cost proposal for the above-referenced project. We understand that various engineering and environmental permitting support services are required for the development of a solar array on a 30.7-acre parcel in Baltimore County, Maryland.

SCOPE OF SERVICES

KCI understands that the following tasks are required for final approval of the proposed solar facility:

- Detailed topographic survey of the project site and surrounding area, including property boundaries;
- Concept-level Development Plan (includes stormwater management concept plan and public hearing)
- Forest Stand Delineation, Forest Conservation Plan and Associated Worksheets;
- Wetland and Stream Delineation;
- Forest Conservation Plan and Associated Worksheets;
- Steep Slopes and Erodible Soils Evaluation;
- Forest Buffer Easement (FBE) Limits Evaluation (in accordance with Section 330-3-111 of the FB Law);
- Final Engineering Drawings, including:
  - Stormwater Management;
  - Erosion and Sediment Control;
  - Landscaping;
  - Standard notes regarding non disturbance and protective covenants;
- A right of way plat to record any Forest Buffer Easements and/or Forest Conservation Easements;
- An Alternatives Analysis for any impact to the forest buffer (solar panels do not count as utilities, only transmission lines to and from);
- Applications for any requested variance to the Forest Buffer Law, and/or Forest Conservation Law, if required;
- Pre-Application meeting with Maryland Department of the Environment and US Army Corps of Engineers to review wetland and waterway boundaries and discuss potential impacts;
- Joint Permit Application for wetland and waterway impacts (will include a public hearing);
- Mitigation design for onsite wetland creation (if permanent impacts cannot be avoided);
- Hydrology and Hydraulics studies for any necessary culvert improvements.

Petitioner
CBA Exhibit
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18-047X 11/15/18

COST PROPOSAL

KCI will provide the services outlined in this Scope of Work for a total Lump Sum Fee of $ 365,000.00. This fee includes all labor and materials necessary to complete the above-referenced scope of work. The following task breakdown is provided for your consideration:

	TASK NAME	ESTIMATED COST
1	Detailed Land Survey, Including Property Boundary	$ 32,000.00
2	Phase I Plans (Concept Level Development Plan)	$ 95,000.00
3	Review Agency Correspondence (RTE Letters)	$ 500.00
4	Natural Resources Inventory (Wetlands, Forests)	$ 7,500.00
5	Steep Slopes, Erodible Soils, & Forest Buffer Analysis	$ 6,000.00
6	Pre-Application Meeting with MDE and USACE	$ 1,500.00
7	Joint Permit Application to MDE & USACE	$ 14,000.00
8	Forest Conservation Plan	$ 8,500.00
9	Phase II Plans (Construction Documents)	$ 125,000.00
10	Wetland Mitigation - Preliminary & Final Design (If Required)	$ 75,000.00
	ESTIMATED TOTAL	**$ 365,000.00**

CONCLUSION

KCI welcomes the opportunity to support Calvert Energy on this project. Please do not hesitate to contact me if you have any questions or require additional information before issuing a Notice to Proceed.

Very truly yours,
KCI TECHNOLOGIES, INC.

James E. Deriu
Vice President
Natural Resources Management

Direct Dial: 410.316.7865
Email: james.deriu@kci.com

ACCEPTANCE

Calvert Energy, in consideration of the terms and conditions of the Proposal and General Provisions which are fully set forth herein, does hereby accept this Proposal and General Provisions as the complete and final Agreement with KCI Technologies, Inc. for the performance of the Work described herein, and does hereby further agree to comply with all the covenants in this Agreement.

ACCEPTED BY:

_____
Signature

_____
Printed Name

_____
Date

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: [redacted] Protestant Date: 8/21/18

Exhibit No:	Description:
✓ 1	Maryland Business Express - ESA Sparks Glenco, LLC
✓ 2	-Small Site Plan / Aerial - 6840 pack
✓ 3	Balto. Co. 33-3-108
✓ 4	Slope Info from Altmeyer
✓ 5	Rule 8 - Sparks Glencoe
✓ 6	8/20 Letter from Sparks Glencoe
✓ 7	502.1
✓ 8	Section 1408. R.C7
✓ 9	32-4-413 - 32-4-414 Floodplain & Wetland P
✓ 10	8/1/18 Letter to Julie Town from Planning Board
✓ 11	2020 / Master Plan / Scenic Resources
✓ 12	Scenic Roads Byways Map / ADC
✓ 13	USDA Definition of Prime Farmland
✓ 14	Farmland Conservation Map of Site
	VERIFIED BY KC DATE: 10/25/18

KC 8/21/18

KC 8/23/18

10/24

Board of Appeals

Case No: 18-047X Case Name: Gernir

Exhibit List

Party: Protestant Date: 10/24/18

Exhibit No:	Description:
✓ 15	Class III Trout Stream Map / ID only
✓ 16	Tops - Map of Projects in My Neighborhood
✓ 17	- Map - of Area / Key
✓ 17a	Photo - of Green Grassy - Spray Heads + Slope Runoff
✓ b	Woods / Pond - covered with leaves / Photo
✓ c	Photo - - "Open area would be solar array" - Hydro-C
✓ d	Photo - Stream / Gorsuch + Rudy property
✓ 18	WBAC - Flood Photos / ID only
✓ 19	Maps of Watersheds / Key
✓ 19a	- Photo / Road, Tank / Trees / - Green Grass
✓ 19b	Green Field to Right - area of proposed Array Foreground Rudy Property
✓ c	Photo taken from Upper Glen Co Road / Gorsuch Property side Behind Treeline
✓ d	- My Neighborhood Map of Surrounding Homes + Properties
✓ e	Photo - WBAT - from Area 4 on Key
✓ f	Photo Green Trees from Rudy Property

VERIFIED BY KC DATE: 10/25/18

Board of Appeals

Case No: 18-047X Case Name: Gerner

Exhibit List

Party: Protestant Date: 10/24/18

Exhibit No:	Description:
✓19 g	Fall Picture of 19 f- site in Background
✓20a-h	Key 1-8 for Photos showing slope from Rude Property & Subject Property
✓20 I	Rainfall Charts
✓21	My Neighborhood Map / Bowtie - measurment
✓22a-g	Key to Photos
✓23	Map of Historic Landmarks
✓24a	Photos of Animals + Fence ID only
✓24b	Fence ID only
✓25	Metal Fence at Organ Ridge ID only
✓26	Solar Array / North this side / ID only
✓27	Roemer - CV
✓28	Map - Excerpt from GIS - showing wetlands
✓28 a	" Marked Copy
~~29~~	
	VERIFIED BY _____ DATE: _____

KC 10/25/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: Protestant Date: 11/28/18

Exhibit No:	Description:
✓29	Photo of Hereford Truck, Fire
✓30	Manufac. Tag on Door Jam of Fire Truck
✓ 31	Photograph
	VERIFIED BY KC DATE: 12/10/18

Maryland Business Express

ESA SPARKS GLENCO, LLC: W17591975

General Information | Filing History | Annual Report/Personal Property

General Information

Department ID Number:	W17591975
Business Name:	ESA SPARKS GLENCO, LLC
Principal Office:	12505 PARK POTOMAC AVENUE 6TH FLOOR POTOMAC MD 20854
Resident Agent:	MARC B. BERGOFFEN 12505 PARK POTOMAC AVENUE 6TH FLOOR POTOMAC MD 20854
Status:	ACTIVE
Good Standing:	THIS BUSINESS IS IN GOOD STANDING » Order Certificate of Status
Business Type:	DOMESTIC LLC
Business Code:	20 ENTITIES OTHER THAN CORPORATIONS
Date of Formation/ Registration:	11/03/2016
State of Formation:	MD
Stock Status:	N/A
Close Status:	N/A

New Search | Order Documents

Protestant
CBA Exhibit
1

Case No. 18-047-X 8/21/18

Maryland Business Express

ESA SPARKS GLENCO, LLC: W17591975

General Information | Filing History | Annual Report/Personal Property

Annual Report/Personal Property

Mailing Address: ESA SPARKS GLENCO, LLC
4155 ST. JOHNS PKWY STE 1100
STE. 1100
SANFORD FL 32771

Annual Report/Personal Property Filings

Asmt. Year	Date Filed	Extension	Penalty Amount	Date Penalty Paid
2018	04/13/2018	No		
2017	10/27/2017	No		
2016		No		
2015		No		
2014		No		

Personal Property Assessments Summary (Select year to view details)

Asmt. Year	County Base	Town Base	Date Certified
2018	0	0	04/23/2018
2017	0	0	10/30/2017
2016	0	0	
2015	0	0	
2014	0	0	

New Search Order Documents

5000000000970441

ARTICLES OF ORGANIZATION

The undersigned, with the intention of creating a Maryland Limited Liability Company files the following Articles of Organization:

(1) The name of the Limited Liability Company is:
ESA Sparks Glenco, LLC

(2) The purpose for which the Limited Liability Company is filed is as follows:
Solar Farm

(3) The address of the Limited Liability Company in Maryland is:
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD, 20854

(4) The Resident Agent of the Limited Liability Company in Maryland is:
Marc B. Bergoffen

whose address is:
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD, 20854

(5) Signature(s) of Authorized Person(s):
Lindsay Herold

(6) Signature(s) of Resident Agent(s):
Marc B. Bergoffen

(7) Filing party's name and return address:
Lindsay Herold, 4155 St. Johns. Pkwy, Ste. 1100, Sanford, FL, 32771

I hereby consent to my designation in this document.

2.0 Mwac PV SYSTEM

PV Array:
Number of PV Modules: 6,840
Peak Power: 2,701,800 Wp DC
DC/AC Ratio: 1.3
Module Type: LG 395Wp (LG395N2W-A5)
Module Tilt: 25°
Module Orientation: South (Az. 180°)
Proposed Leased Area: 9 Acres

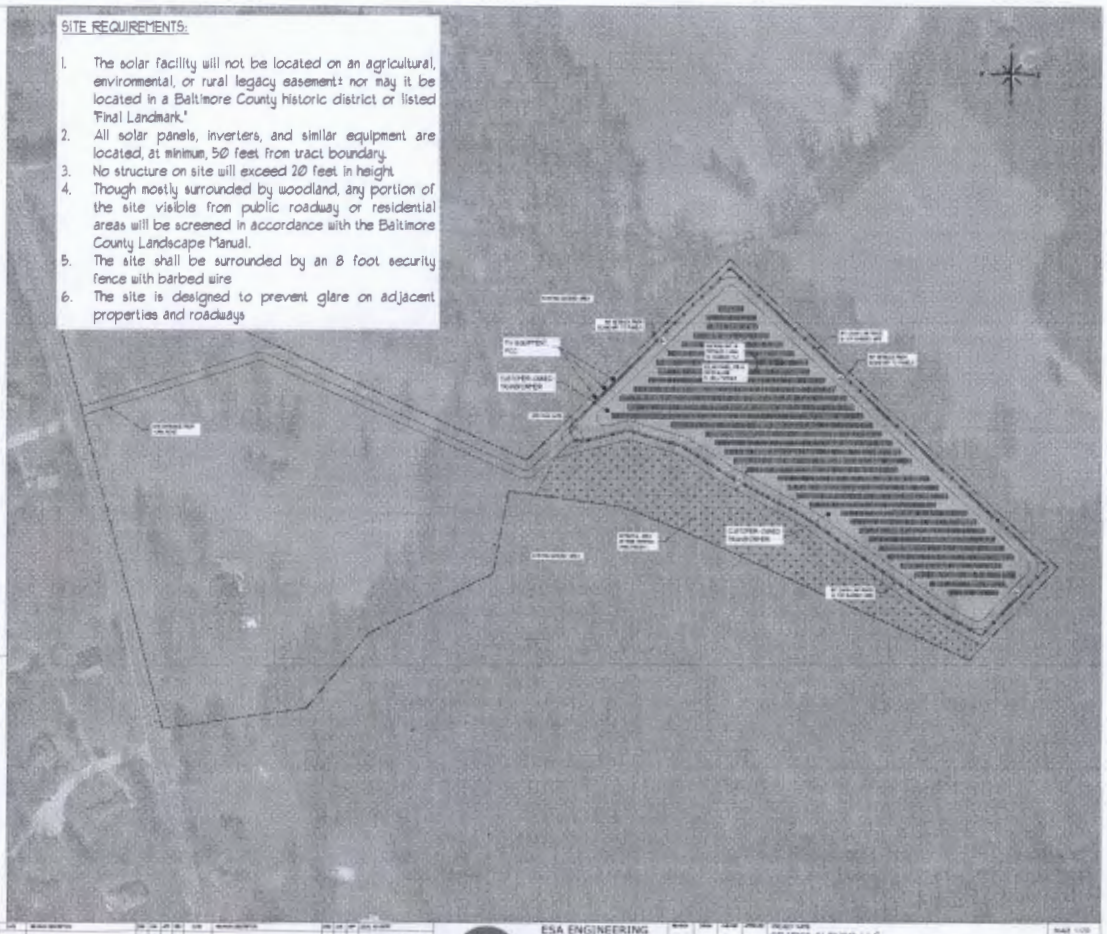
Project Owner:
Sparks Glenco, LLC
4155 St Johns Pkwy, Ste 1100
Sanford, FL 32771

Site Location:
39°33'19.51"N 76°38'53.95"W

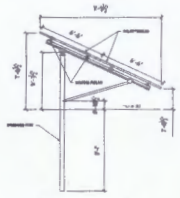
Layout is preliminary, awaiting surveys as well as zoning and permitting approvals. Layout is based on GIS information, not a survey.

SITE REQUIREMENTS:

1. The solar facility will not be located on an agricultural, environmental, or rural legacy easement nor may it be located in a Baltimore County historic district or listed "Final Landmark."
2. All solar panels, inverters, and similar equipment are located, at minimum, 50 feet from tract boundary.
3. No structure on site will exceed 20 feet in height.
4. Though mostly surrounded by woodland, any portion of the site visible from public roadway or residential areas will be screened in accordance with the Baltimore County Landscape Manual.
5. The site shall be surrounded by an 8 foot security fence with barbed wire
6. The site is designed to prevent glare on adjacent properties and roadways



25 DEGREES



Typical Array (25°) NTS

SITE DEVELOPMENT DRAWING
FOR INTERCONNECTION REVIEW ONLY
SHEET SIZE AT FULL SCALE: 24" x 36"

ESA ENGINEERING SERVICES MD, LLC
4155 St. Johns Parkway, Suite 1100
Sanford, FL 32771 USA
407.366.6455 tel | 800.755.0855 fax
Firm Lic: 858-51775

SPARKS GLENCO, LLC

SITE PLAN

G202

Case No: 18-047-X

8/21/18

Protestant
CBA Exhibit
2

§ 33-3-108. - PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

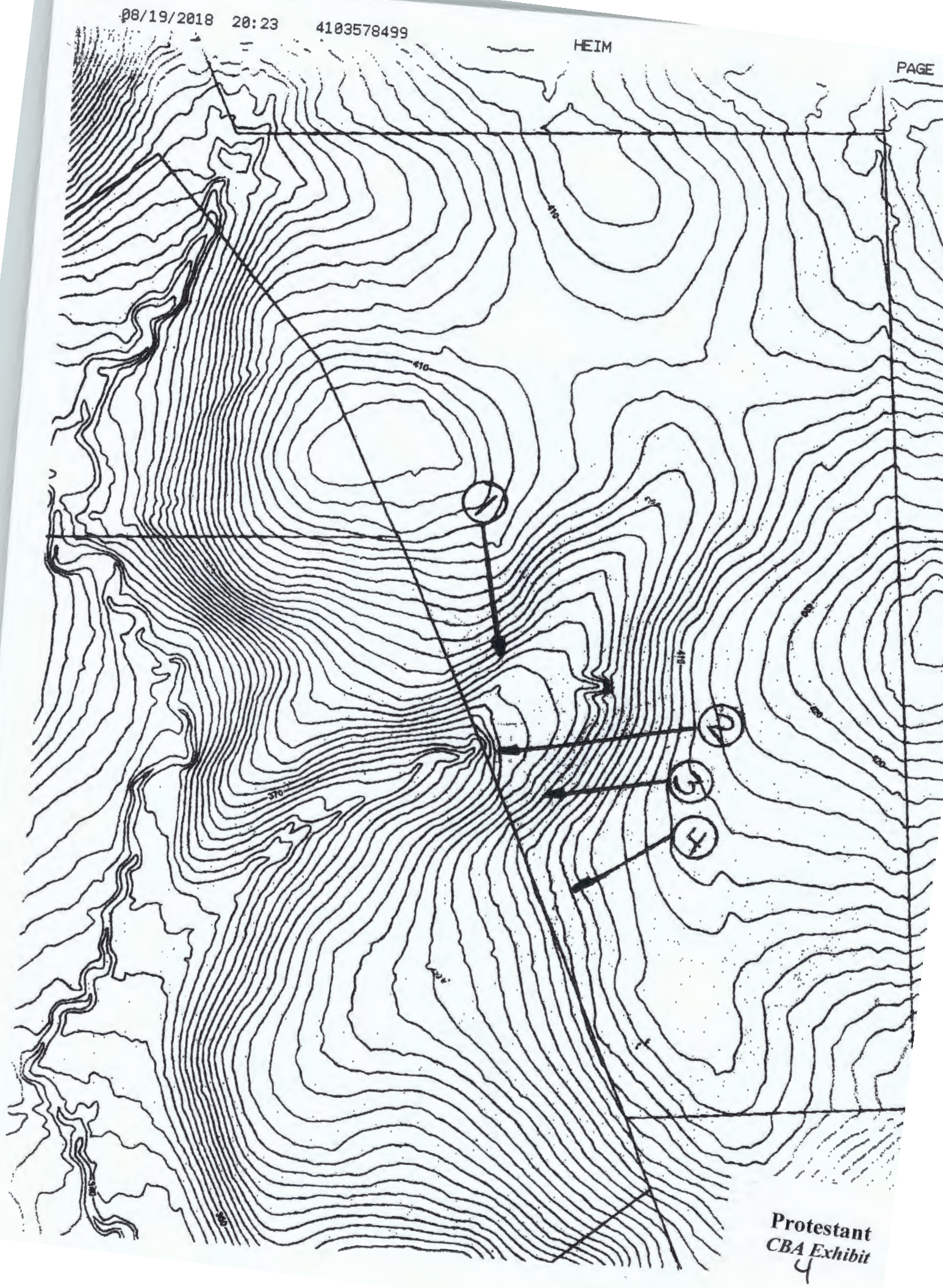
(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.

(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10 [illegible]

Case No: 18-047-X 8/21/18

Protestant
CBA Exhibit
3



Protestant
CBA Exhibit
4

LEGAND

(1) 149.4' RUN
20' RISE

.1338
149.4 | 20.00

.1338
X 100
13.38 % SLOPE

(2) 189.5' RUN
30.0' RISE

.1583
189.5 | 30.00

.1583
X 100
15.83 % SLOPE

(3) 120.9' RUN
20.0' RISE

.1654
120.9 | 20.00

.1654
X 100
16.54 % SLOPE

(4) 131.5' RUN
10.0' RISE

.076
131.5 | 10.00

.076
X 100
7.6 % SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

15637 york rd

Search

Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

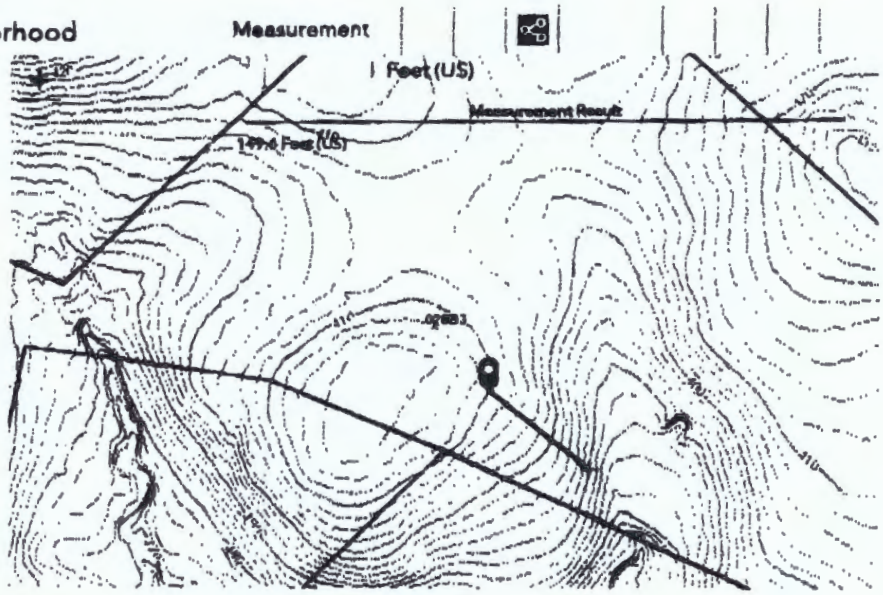
Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Piney Creek
Subshed Name	Gunpowder Falls
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor loam, 3 to 8 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#1

149.4' RUN
20.0' RISE

.1338
x 100
13.38% SLOPE

149.4 ⟌ 20.00 .13

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
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Subshed Name	Gunpowder Falls
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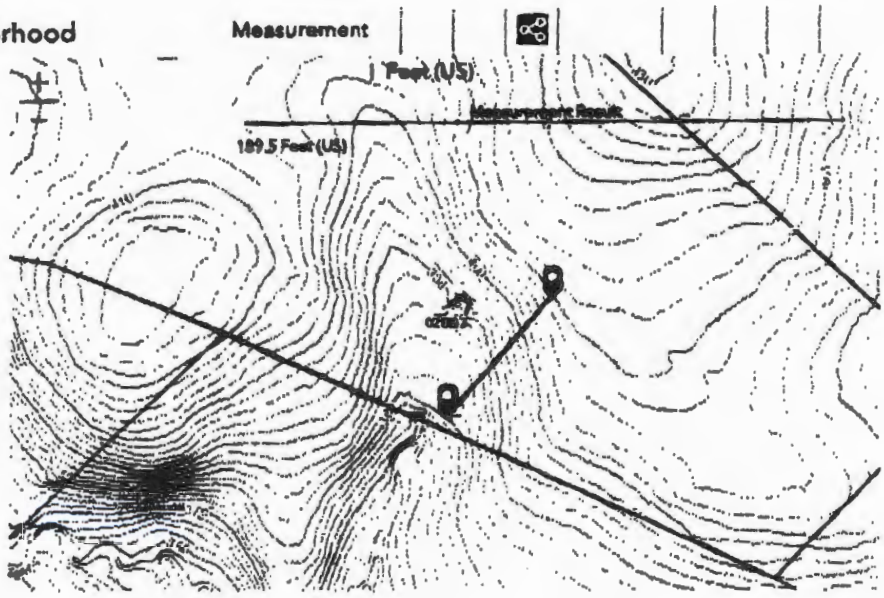
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#2

189.5' RUN
30.0' RISE

.1583
X 100
15.83% SLOPE

189.5) 30.00 .15

Baltimore County - My Neighborhood

My Neighborhood Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

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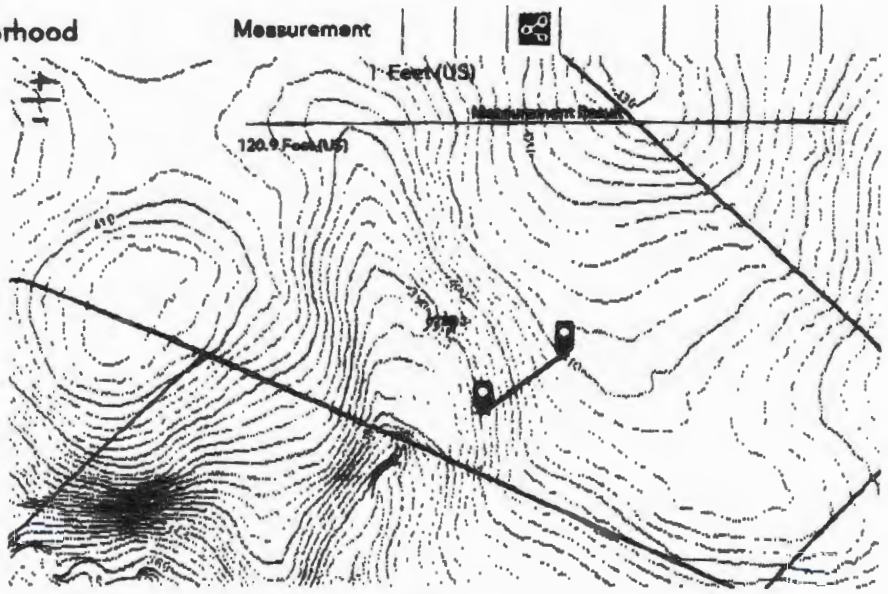
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#3

120.9' RUN
20.0' RISE

120.9) 20.000 .165

.1654
× 100
16.54% SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Property Report - 15637 YORK RD

15637 YORK RD

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Real Property Report	More info
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Zoning	RC 7

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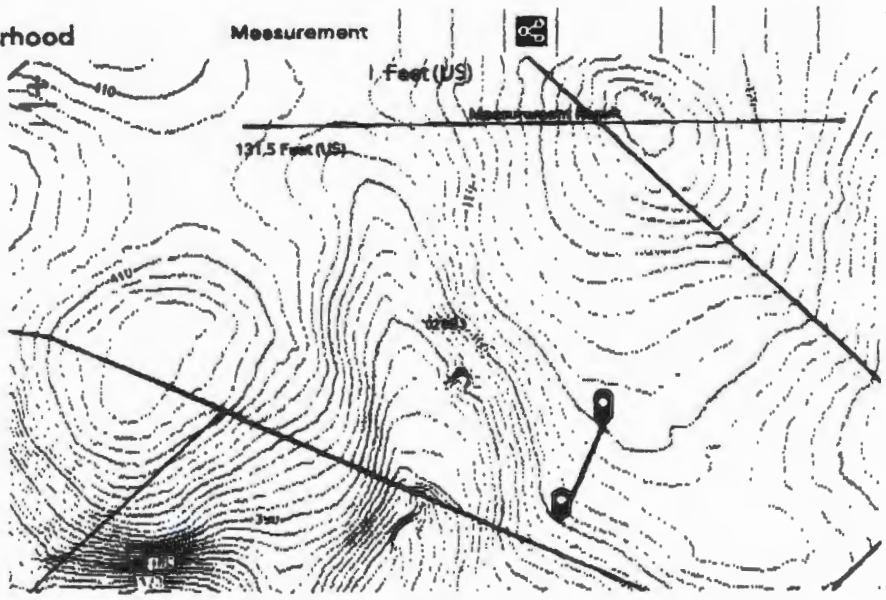
National Register	No Feature Found



#4

131.5' RUN
10.0' RISE

.076
131.5) 10.000

.076
x 100
7.6 % SLOPE

THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL, INC.

BE IT RESOLVED: That at the ANNUAL MEETING of The Sparks Glencoe Community Planning Council, Inc. held on April 18, 2018, it was decided that responsibility for review and action on all zoning and development matters for the period 2018-2019 be placed on the Board of Directors and/or members of the duly elected Zoning Committee.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Lynne Jones
President
Lynne Jones

Wendy McIver
Reporting Secretary
Wendy McIver

Protestar
CBA Exhil
5

18-047 X

10/24

THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL INC.

RESOLVED: That the position of the Sparks Glencoe Community Planning Council: Inc. as adopted by the Board of Directors on the zoning matter known as:

15637 York Road Solar Special Exception CBA-18-047-X

The Sparks-Glencoe Community Planning Council ("Sparks-Glencoe" or "SGCPC") is an organization dedicated to preserving the rural character and natural resources of northern Baltimore County.

Sparks-Glencoe is opposed to the special exception in this matter for the following reasons:

1. The development removes prime and productive land from agricultural production and preservation easements; drives up the cost of leased agricultural land; and diminishes the property values of contiguous landowners.
2. There is no adequate program for remediation of the site at the end of the useful life of the facility.
3. Constructing large commercial energy facilities of any sort in resource conservation areas is inconsistent with the Baltimore County Master Plan goal of maintaining the rural character of the area and is a prime example of "incremental development" which the Master Plan identifies as a threat to the agriculture industry.

Therefore, we ask the Board of Appeals to uphold the spirit and intent of the Zoning Regulations and the Master Plan, which are to protect natural resources and maintain the character of the rural area, by denying this special exception.

AS WITNESS OUR HANDS AND SEAL THIS 10th DAY OF September, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Wendy McIver, Reporting Secretary

Lynne Jones, President

AFFIDAVIT

STATE OF MARYLAND

BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I, Lynne Jones, am currently a duly elected member of the Board of Directors of The Sparks Glencoe Community Planning Council, Inc.

AS WITNESS OUR HANDS AND SEAL THIS 10th DAY OF September, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Wendy McIver, Reporting Secretary

Lynne Jones, President

Sparks-Glencoe Community Planning Council
P.O. Box 937, Sparks, MD 21152

Protestant
CBA Exhibit
6

August 20, 2018

The Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 2018-0047-X
15637 York Road
8th Election District-3rd Councilmanic District
Legal Owner: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glencoe, LLC

Dear Board of Appeals:

The Sparks-Glencoe Community Planning Council (SGCPC) is submitting this letter regarding the above referenced case. The purpose of this letter is twofold. First, we want to state the reasons why we oppose the special exception request. Secondly, without intending to minimize our opposition, we want to request two very important limitations in the event that the special exception is granted.

This, and all such facilities, are euphemistically referred to as "solar farms", but they are not farms and they are not agricultural. SGCPC as an organization, and its many members and supporters, strongly endorse solar power as a wonderful alternative to fossil fuel-based power. The issue here is not solar power *per se*; it is solar power on prime and productive agricultural land which could be used for farming or which could be placed in conservation easement. It also must be understood that our opposition is not directed at solar power systems which are intended to primarily serve a home or an ongoing agricultural enterprise.

Bill 37-17 was passed in the face of strong opposition by the SGCPC, the North County Community Association, the Manor Conservancy, the Valleys Planning Council, as well as other relevant agricultural organizations, Third District residents and their Councilman. There were a number of reasons for this opposition. Primarily, it was viewed as an effort at commercial development in RC zones which citizen groups have been fighting for decades. Constructing large commercial energy facilities of any sort in resource conservation areas is inconsistent with the Baltimore County Master Plan goal of maintaining the rural character of the area and is a prime example of "incremental development" which the Master Plan identifies as a threat to the agriculture industry.

Secondly, the bill was passed with no effort to study and understand the long term effects of this development. Instead, the Bill provides for a study to be made one year **AFTER** implementation of the special exception provision. Of course, one year later, the developers have been pursuing the seven solar facilities already in "the pipeline", and probably more, in the

18-0-

10/24

Third District, and any study will be too late. This is why the study provision in the Bill was viewed as a deeply cynical and artificial claim of due diligence to occur only after installation has already been approved and the special exceptions have been granted. Our cynicism has been reinforced by the recent actions of the Baltimore County Planning Board. While the Board appears to be leaning toward a recommendation to halt future applications, it also appears to be leaning toward not addressing pending applications because the developers have already spent money to pursue those applications. This was a bootstrapping use of pending applications to justify those very same pending applications which were filed with full recognition that a study may threaten those very same applications.

Putting aside the background of these applications, there are very real concerns which justify the denial of the special exception in this case. The development removes prime and productive land from agricultural production and the possibility of a preservation easement. It also drives up the cost of leased agricultural land which is central to the Baltimore County agricultural industry. It also removes land from potential preservation.

While our opposition is very real, we do believe it is extremely important that two limitations should be imposed in the event the special exception is granted. Bill 37-17 requires an applicant for a building permit hall provide a surety bond or equivalent financial security. The Code official MAY use the bond for removal of a solar facility. The SGCPC requests that the Board direct that the applicant be required to provide a bond sufficient to cover the costs of removal of a solar facility and stipulate in its order that the bond shall be used for the that purpose should the solar company no longer be able or willing to fulfill its contractual obligations to the landowner.

A representative of the Gerner project attended one of our open meetings to explain the contours of that project. A number of issues were explained and clarified. What became clear, however, was that the only plan for remediation was the LLC's contractual obligation to do so. A facility's useful life is generally understood to be 20 to 30 years. The only guarantee for clean-up is the continued existence and/or financial solvency of these LLCs.

There is no guarantee that the corporation set up to develop the solar facility will still be in existence when the clean-up and remediation phase must begin. Like many local development projects, once development is completed the corporation disappears either by way of bankruptcy or dissolution. The future costs of dismantling and removing the solar panels and remediating the soil so that it is once again ready for farm use is difficult to determine at the present time. The farmer/landowner may not be in a position to bear the burden of such an expense. What happens then? Will the costs be paid for by the taxpayers after the corporation is long gone? Accordingly, any special exception should include an irrevocable bond guaranteed to cover the costs of not only removal but also remediation.

Secondly, the SGCPC is concerned about the impact on neighboring landowners. The prospect of diminished land values for the surrounding area is real. It is certainly foreseeable that the viewshed of the larger resource conservation area will also be significantly impaired. One of the concerns raised in our meeting with the representative of the lessee of the Gerner property was that the proposed buffers were inadequate. It appeared that the trees that were to be

planted would not large enough to screen the facility until the facility had reached its expiration. It is for that reason any special exception must include significant natural buffers which not only protect the view from the adjoining roadways, the adjacent property owners, but also the wider vista and viewshed. Any such buffer needs to meet its objectives from the outset.

We have many concerns about the rapid and precipitous adventure into commercial solar facilities in conservation areas and on prime and productive farmland. No one has presently done the kind of work necessary to know where and how to proceed with the production of commercial solar energy on agricultural land. It is primarily for that reason that SGCPC opposes the special exception in this case. If, however, the special exception is granted, there must obviously be many limitations designed to protect the agricultural industry and the public. We sincerely request that the two limitations outlined in this letter be among those incorporated into any such grant.

Thank you for your patience and consideration in this matter.

Sincerely,

Lynne Jones

Lynne Jones, President

§ 502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

[Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

[Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

[Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

[Bill Nos. 74-2000; 37-2017]

§ 502.2. Protection of surrounding properties; agreement governing special exception.

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, *Editor's Note: Under Section 1107 of the Baltimore County Charter, the County Council and County Executive have succeeded "to all powers heretofore vested in the county commissioners by the constitution and laws of this state."* **stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.**

§ 502.3. Time limit for utilization of special exception; extensions.

[Bill Nos. 42-1962; 85-1967; 68-1968; 172-1993]

A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any special exception, shall fix within the aforegoing limits the period of time for its utilization. Any party to the proceedings may, by so

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1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and
2. An easement to provide for the maintenance of open views.

SECTION 1A08. R.C.7 (Resource Preservation) Zone

[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.
2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.
3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.
4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;
2. To protect forests, streams, wetlands and floodplains;
3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;
4. To respect historic sites in their settings;
5. To provide a quality recreational experience to visitors;
6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.
7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.
8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;
9. To implement state and federal mandates for the protection of natural resources and rural legacy;
10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;
11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;
12. To incorporate traditional features of the local built environment into development; and
13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE

The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

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§ 32-4-416. - PRESERVATION OF NATURAL FEATURES.

(a) *Preservation of features.* Each Development Plan shall preserve natural features, including watercourses, waterfalls, beaches, and significant vegetation.

(b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species.

(1988 Code, § 26-278) (Bill No. 29-95, § 1, 5-21-1995; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004; Bill No. 26-07, § 1, 4-29-2007)

§ 32-4-417. - SCENIC VIEWSHEDS.

The Planning Board shall:

(1) Provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan;

(2) Identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and

(3) Identify the aspects of the visual quality, unity of the elements, and integrity of the elements.

(1988 Code, § 26-284) (Bill No. 121-01, § 3, 1-29-2002; Bill No. 75-03, § 28, 7-1-2004)

413. - GRADING AND EROSION AND SEDIMENT CONTROL.

A plat may not be approved unless provision is made for grading or for erosion and sediment control that will minimize soil erosion, loss of topsoil, sedimentation of streams, and degradation of water quality in the area.

(1988 Code, § 26-275) (Bill No. 79-01, § 2, 7-1-2004; Bill No. 72-12, § 1, 1-9-2013)

§ 32-4-414. - FLOODPLAIN AND WETLAND PROTECTION.

(a) *Definitions.* In this section, "base flood", "development", "flood insurance rate map", "flooding", "floodway" and "riverine floodplain" have the meanings stated in Title 8 of this article.

(b) *Purpose.* The purpose of this section to:

(1) Reduce loss of life and property from flooding;

(2) Avoid the need for public expenditures for flood protection; and

(3) Protect or enhance the environmental quality of watersheds.

(c) *Development in floodplain prohibited; exceptions.* The county may not permit development in a riverine floodplain except for:

(1) The establishment of property subdivision lines; and

(2) The installation of a pond, culvert, bridge, street, utility, or drainage facility that the county finds is not detrimental to floodplain management programs.

(d) *Base flood elevation.*

(1) Except as provided in paragraph (2) of this subsection, if the floodplain is shown on the flood insurance rate map, the county shall limit any increase in the existing base flood elevation to a maximum of 1 foot.

(2) The county may not allow encroachment in the floodway causing an increase in the existing base flood elevation.

(3) In areas where the base flood elevation has not been established, the county shall determine the riverine floodplain and flood elevation by means of a flood study prepared in accordance with the requirements of the Department of Public Works Design Manual and sealed by a registered professional engineer before the issuance of a permit or the recording of a subdivision plat.

(e) *Wetlands.*

(1) The county may not permit dredging, filling, or construction in any nontidal wetland or tidal wetland.

(2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

(1988 Code, § 26-276) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

§ 32-4-415. - SLOPE PROTECTION AND SOILS.

(a) *Development Plan or plat approval; slope protection required.* The county may not approve a Development Plan or plat unless the county finds that the proposed development:

(1) Includes protective measures adequate to prevent erosion or sloughing of any steep slope or unstable slope; and

(2) Promotes the preservation of the natural topographic features of the steep slope or unstable slope.

(b) *Same; soil limitation.* The county may not approve a Development Plan or plat on soils that present a severe or moderate limitation to development unless the county finds that adequate measures have been taken to mitigate the effects of the limitation.

(c) *Same; prime and productive soils.* On prime and productive soils within the RC-2 zone, the county may not approve a Development Plan or plat unless the county finds that construction, excavations, buildings, structures, pavements, grading, clearing, or other disturbances of the soils will be limited or restricted in accordance with policies established by the Department of Environmental Protection and Sustainability to promote agricultural uses and protect the county's soil resources.

(1988 Code, § 26-277) (Bill No. 18, 1990, § 2, 3-30-1990; Bill No. 113, 1992, § 5, 7-1-1992; Bill No. 79-01, § 2, 7-1-2004; Bill No. 122-10, § 12, 1-16-2011)

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DONALD I. MOHLER III
County Executive

ANDREA VAN ARSDALE, *Director*
Department of Planning

August 1, 2018

The Honorable Julian E. Jones, Jr.
Chairman, Baltimore County Council
Historic Courthouse
400 Washington Avenue
Towson, MD 21204

RE: County Council Bill 37-17: Solar Facilities

Dear Chairman Jones:

At the May 17, 2018 meeting of the Baltimore County Planning Board, an evaluation of the impacts of solar facilities in Baltimore County pursuant to County Council Bill 37-17 was presented by Department of Planning staff. A Public Hearing followed on June 7, 2018 and was well attended by the community. At its July 19, 2018 meeting, the Planning Board voted to forward these recommendations on solar facilities to the Baltimore County Council and to the County Executive.

The following recommendations are now offered by the Planning Board:

The Planning Board recognizes that the development of solar power and other renewable sources of energy is critical for our future, however;

- Solar facilities should not be permitted on prime and productive soils;
- Solar facilities should be directed into business and manufacturing zones, brownfields, rooftops and parking lots where financially feasible;
- Further in-depth study of how other similar jurisdictions have responded to the use should be considered in a review of the current law;
- The feasibility of establishing locational criteria to determine appropriate siting of solar facilities should be investigated;
- Solar facilities should not be detrimental to scenic views or routes; and
- Participation in future studies should be broadened to include stakeholders from each Councilmanic District.

105 West Chesapeake Avenue, Suite 101 | Towson, Maryland 21204 | Phone: 410-887-3211 | Fax: 410
planning@baltimorecountymd.gov | www.baltimorecountymd.gov/planning

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Garmon

are important to the agricultural history of Baltimore County and which are located along scenic routes.

(2) Continue to protect designated "view sheds" of historic resources , either by limiting new development within view of the historic resource, or by buffering new development from the view of such resources.

SCENIC RESOURCES

The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents. Scenic resources consist of scenic corridors, scenic views, and gateways. In 1991, the County adopted a set of development guidelines that have raised awareness and recommended development alternatives for protecting scenic resources.

Scenic Corridors and Views

Most of the scenic corridors and views are located in rural areas. The scenic view map provides the beginning of a list of the views for establishing a comprehensive inventory in the near future. Following the adoption of the 1989 Master Plan, the County produced a series of scenic route maps for each council district, which combined the significant visual and historical elements into self-guided scenic tours. The protection of the Interstate 83 (I-83) corridor in northern Baltimore County is a showcase of the inter-governmental efforts on scenic views preservation.

The endeavor for preserving scenic corridors and views ought to emphasize lands zoned for resource protection including RC 2, RC 4, and RC 7. The County will continue to maintain coordination with the State Highway Administration (SHA) and seek available state and federal funds for protection of scenic corridors and views.

Policy: Preserve scenic corridors and views through proper zoning and coordination with federal and state governments.

Actions:

(1) Coordinate scenic resource management practices with the national and state Scenic Byways Programs.

(2) Continue to preserve properties within the I-83 scenic view shed through easement purchases, as funds are available and through RC4 clustering.

(3) Evaluate proposed improvements to state and county roads and bridges regarding their impact on scenic resources in compliance with the adopted *Rural Roads Standards*. Where public safety allows, the narrow and/or winding character of roads is part of the scenic experience and ought to be preserved.

(4) Assess proposed development impacts on scenic resources.

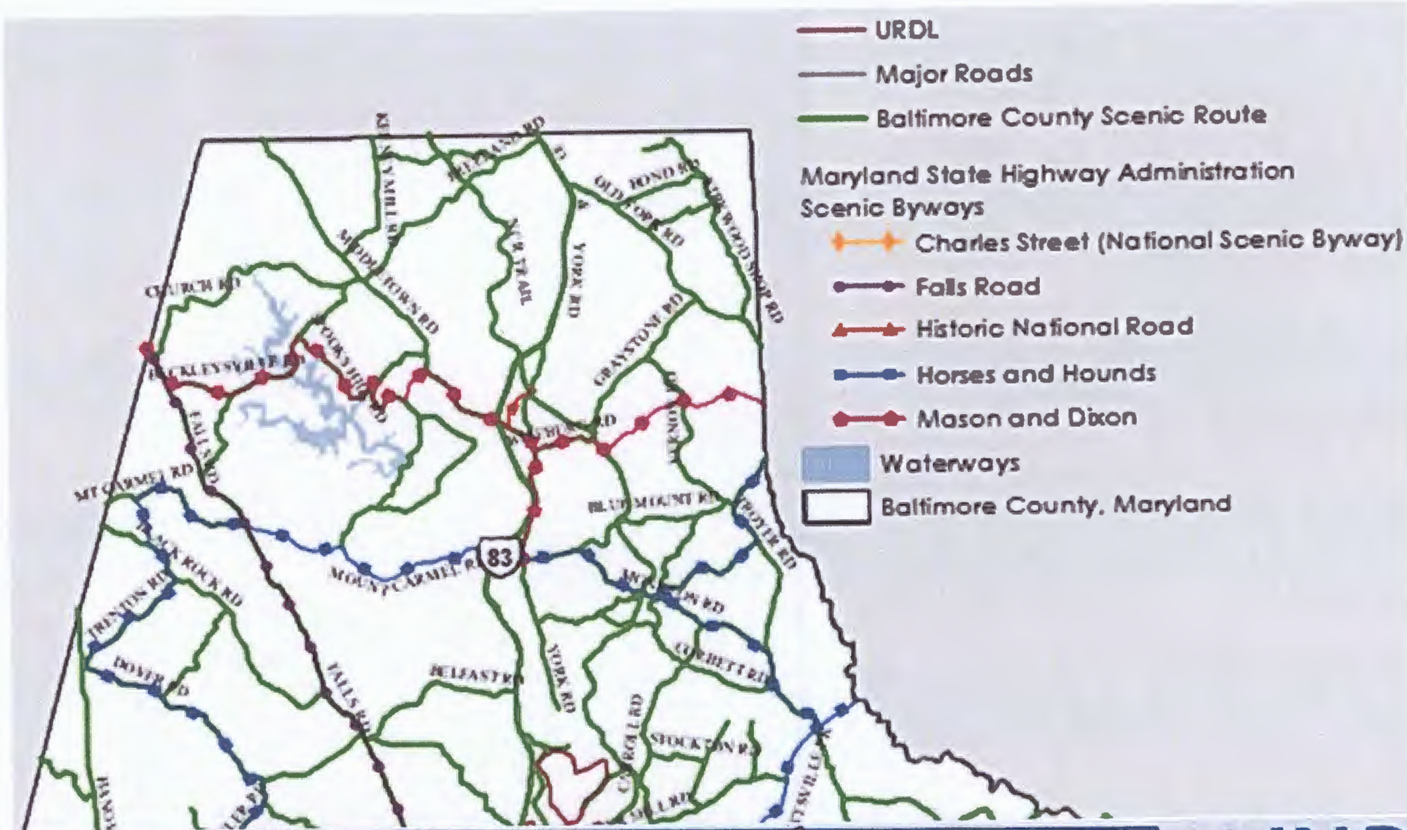
(5) Clarify language regarding scenic corridors and views protection and make it consistent amongst the Master Plan, Comprehensive Manual of Development Policies, Baltimore County Zoning Regulations, Baltimore County Code, and SHA Context Sensitive Solutions for work on scenic byways.

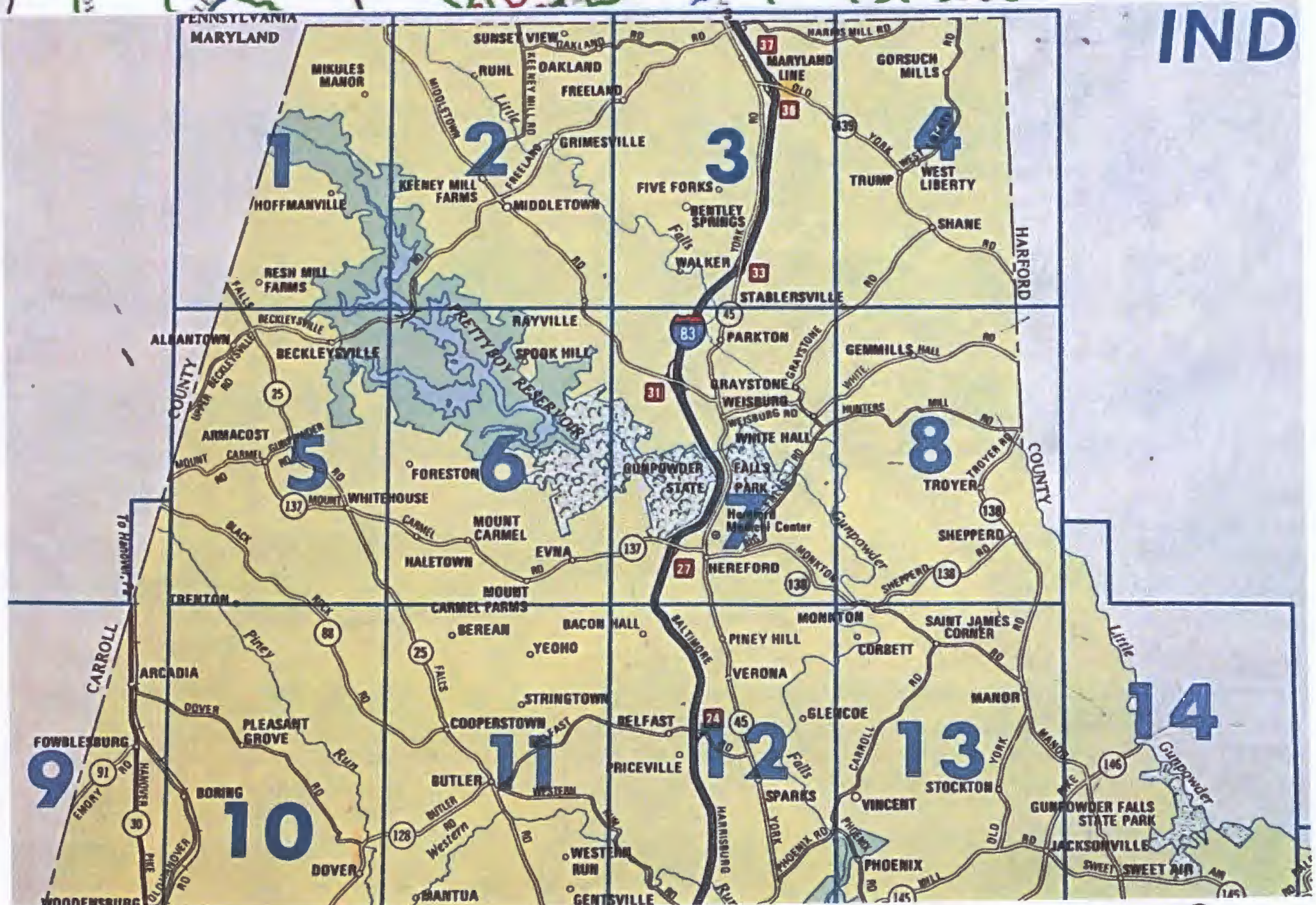
(6) Establish criteria for identifying significant views and geocode them on maps.

(7) Apply a systematic methodology for evaluation of scenic routes and preservation techniques.

(8) Update scenic resources map in accordance

The County has emphasized its efforts on preserving the scenic view shed of I-83 between the Thornton Mill overpass and the Pennsylvania line, which runs through one of the most scenic piedmont areas in the County. Farms, forests, streams and rural homesteads feature both sides of I-83 in northern county. Many properties adjacent to I-83 have been preserved either as parkland or through various easement programs, including donations and purchase of development rights. There has bee significant progress in this effort: between Belfast Road and the Gunpowder River, more than half of the scenic corridor h been protected.





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Scenic Roads and Byways in this section of Baltimore County: 53
All roads (not including Lanes or Courts) in this section: 301
Percentage of Scenic Roads and Byways to Regular roads: 17.6%

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ADC MAP 1988 10/24
Gerner

www.nrcs.usda.gov/wps/portal/nrcs/detail/pr/soils/?cid=nrcs141p2_037285

Prime & Other Important Farmlands Definitions

This table lists the map units in the survey area that are considered important farmlands. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. This list does not constitute a recommendation for a particular land use.

In an effort to identify the extent and location of important farmlands, the Natural Resources Conservation Service, in cooperation with other interested Federal, State, and local government organizations, has inventoried land that can be used for the production of the Nation's food supply.

"Prime farmland" is of major importance in meeting the Nation's short- and long-range needs for food and fiber. Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland.

Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

For some of the soils identified in the table as prime farmland, measures that overcome a hazard or limitation, such as flooding, wetness, and droughtiness, are needed. Onsite evaluation is needed to determine whether or not the hazard or limitation has been overcome by corrective measures.

A recent trend in land use in some areas has been the loss of some prime farmland to industrial and urban uses. The loss of prime farmland to other uses puts pressure on marginal lands, which generally are more erodible, droughty, and less productive and cannot be easily cultivated.

"Unique farmland" is land other than prime farmland that is used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables. It has the special combination of soil quality, growing season, moisture supply, temperature, humidity, air drainage, elevation, and aspect needed for the soil to economically produce sustainable high yields of these crops when properly managed. The water supply is dependable and of adequate quality. Nearness to markets is an additional consideration. Unique farmland is not based on national criteria. It commonly is in areas where there is a special microclimate, such as the wine country in California.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be "farmland of statewide importance" for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate State agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

In some areas that are not identified as having national or statewide importance, land is considered to be "farmland of local importance" for the production of food, feed, fiber, forage, and oilseed crops. identified by the appropriate local agencies. Farmland of local importance may include tracts of been designated for agriculture by local ordinance.

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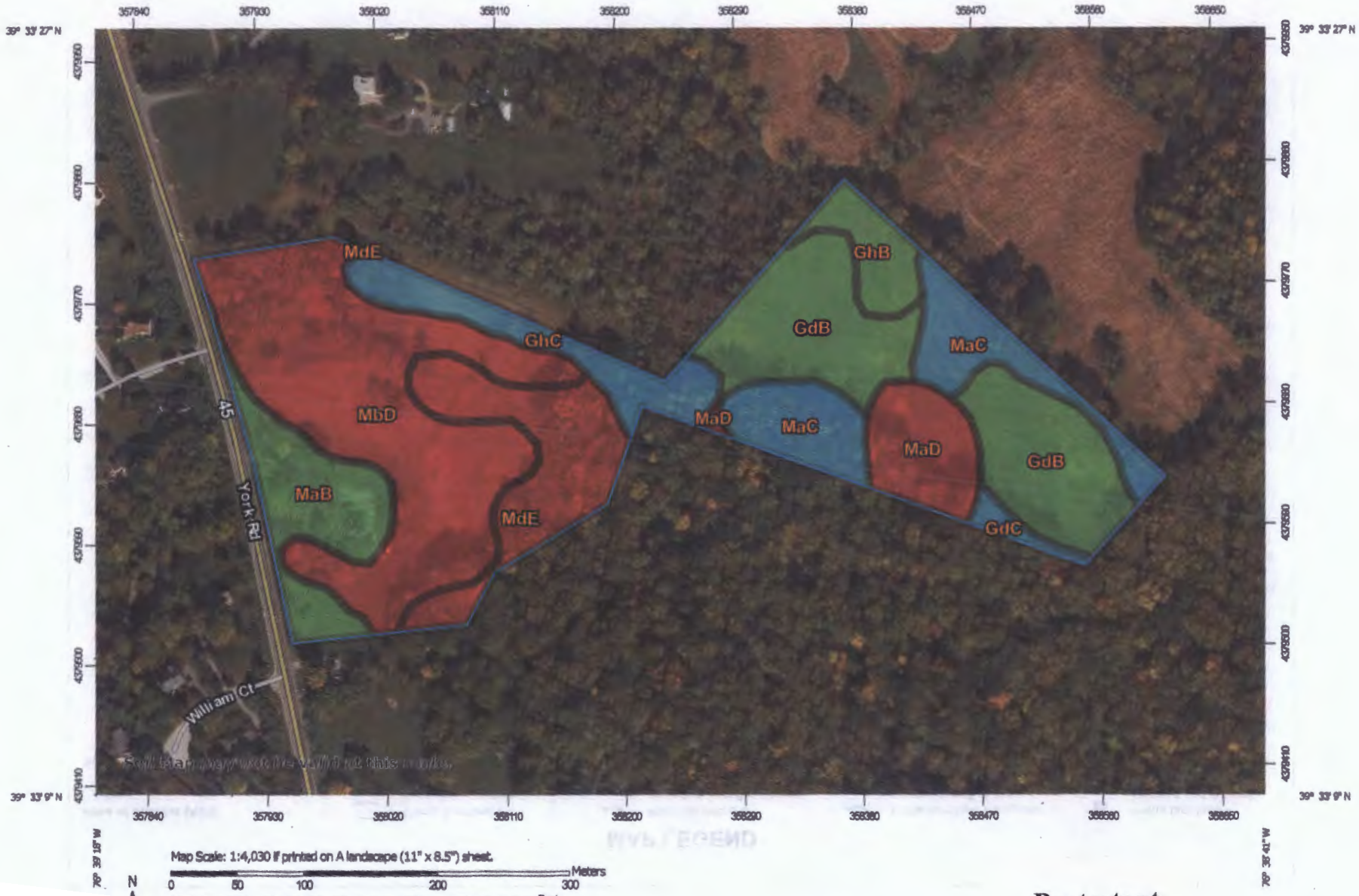
Gerwin

Farmland Classification—Baltimore County, Maryland
(15637 York Road Sparks, MD)



Map Scale: 1:4,030 if printed on A landscape (11" x 8.5") sheet.

Meters 0 50 100 200 300

Feet 300 600 900

...erinates: WGS84 Edge tics: UTM Zone 18N WGS84

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MAP INFORMATION

Streams and Canals

Transportation

Rails

Interstate Highways

US Routes

Major Roads

Local Roads

Background

Aerial Photography

The soil surveys that comprise your AOI were mapped at 1:12,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 13, Sep 10, 2018

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Aug 23, 2013—Feb 22, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

.aspx

03.zip (this link will take you to the NRCS site for the field in ıap)

Name	Acres In Area of Interest	Percent of AOI
slopes	7.2	44.2%
t slopes	0.5	2.9%
cent slopes	2.5	15,3%
rcent slopes	0.2	1.3%
slopes	4.2	25.6%
slopes	1.7	10.7%
l)	**16.4**	**100%**

reas of Glenelg soils are in crops including corn, soybeans, small grains, hay, oak, white oak, hickory, and tulip poplar.
crops but mostly grain, hay and pasture. Native vegetation consists of mixed elopment and urban expansion.
es: Cropland, woodland, and urban development; Dominant ll grain, pasture and hay. Where wooded--black oak, chestnut oak, red shortleaf pine and Virginia pine.

gov/OSD_Docs/M/Manor.html

County

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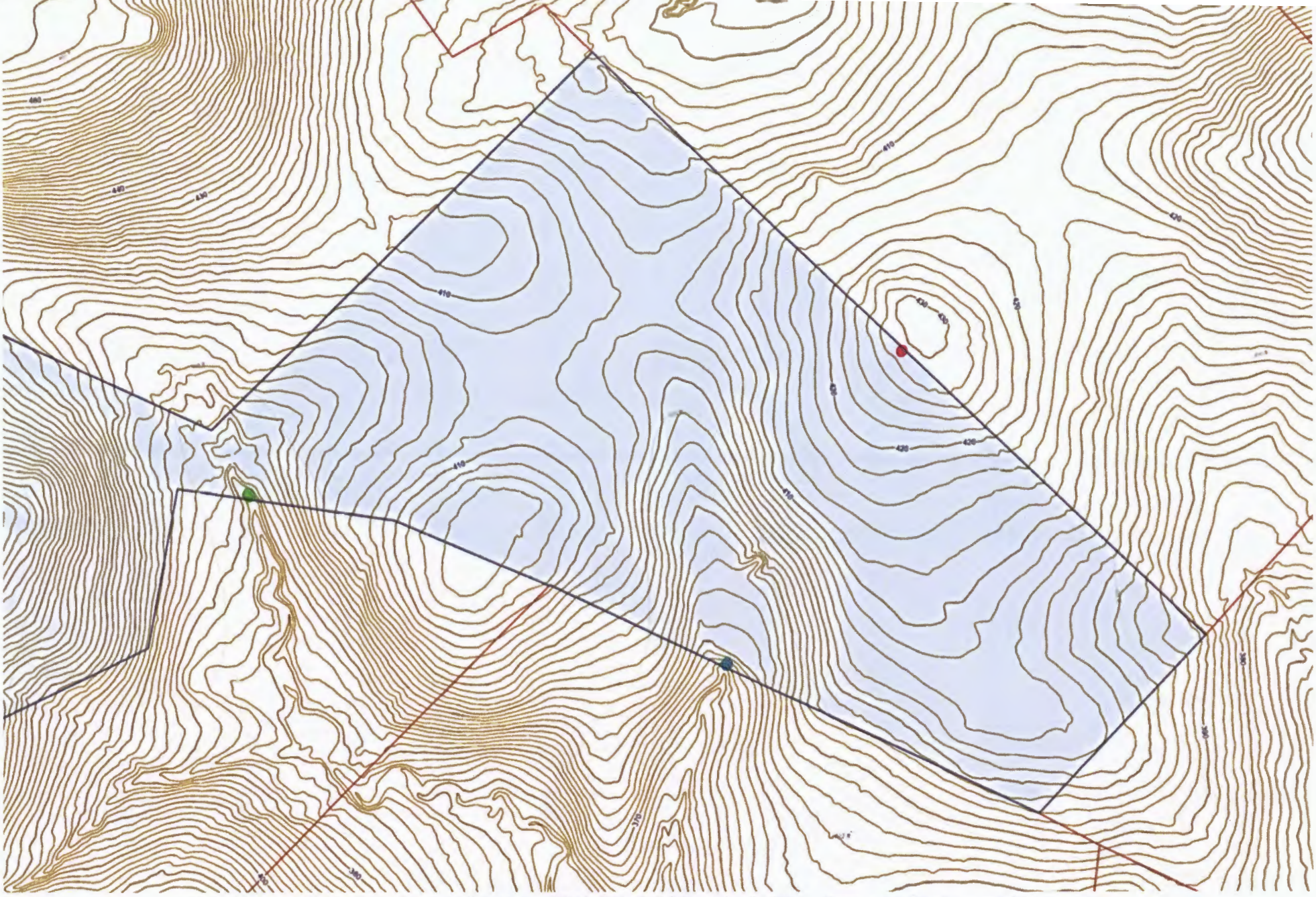

Light blue outlined area = proposed section of 15637 York Rd for solar facility Topo map from myneighbor[illegible].com

● Elevation at highest point of proposed property: 428'

● ● Elevation at lowest points on this portion of property: 378' and 372'

56' total difference in elevation in this area.

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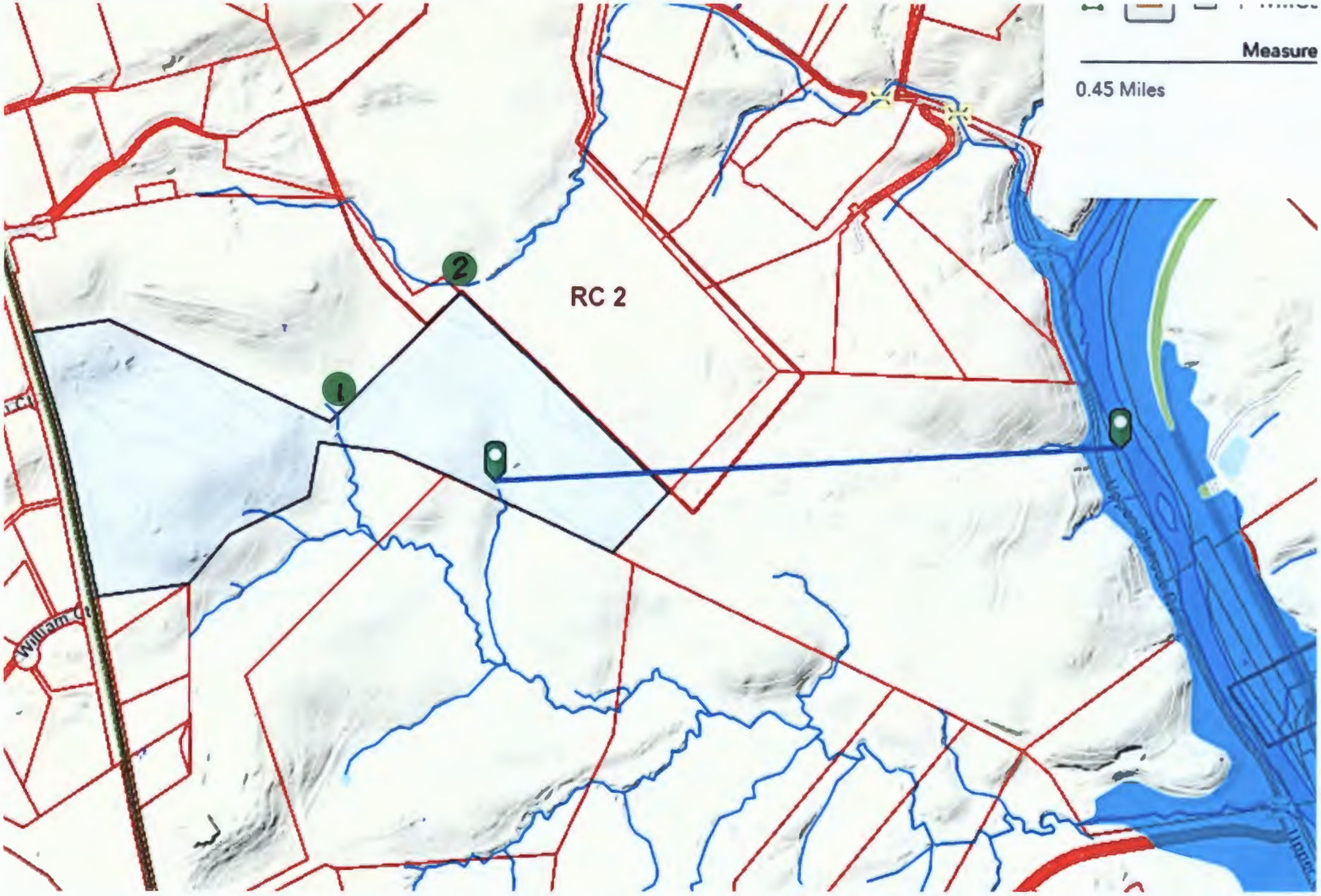
Gerner
10/24



[redacted]

[redacted]

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Springhead (green grassy area) and 2nd hydro channel for runoff from slopes (on right). 'Bridge' is to left in image. The width of this section of property is less than 80' wide. Photo taken 1-11-2018.

Pond created by 'bridge' of stones (covered with soil) that were dumped years ago for roadway. Spring water and storm runoff backs up into this area since there is no visible pipe under road for outlet, water must seep through stones into channel on other side. This has changed the natural flow of water in this area. Photo taken 3-4-2018.

[redacted]

[redacted]

Crews rescue 3 people from school bus stuck in floodwaters in Sparks

WBALTV

Updated: 12:22 PM EDT Jul 24, 2018

Saliqa A. Khan

Digital Editor

SPARKS [redacted] German

[redacted]

18-047X
10/24

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Top photo: Before. Normal Gunpowder River flow.

Bottom photo: During flooding 7/30/2018, Upper-, Lower- and Glencoe Roads (images Google Maps and WBAL-News)

Both streams that are either on or surround the proposed solar facility run into the Gunpowder River north of this intersect

Upper Glencoe Rd.

Runoff from impervious solar panels that is not absorbed into the ground would increase volume of water flowing over these

These roads are used regularly by personal vehicles, farm equipment, school buses, horse trailers, bicyclists (right to right in bottom photo).

A [illegible] school, [illegible] located 4 hour from the intersection of Upper Glencoe Rd and Glencoe Rd

~~15697 York Rd Watersheds~~
~~Watershed: Loch Raven Reservoir~~
~~River Basin: Gunpowder River~~
~~Subshed: Gunpowder Falls~~
~~Map: My Neighborhood~~

PHOTOS: 3/4/2018
4/21
8/20
10/22

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View of proposed solar facility field from Upper Glencoe Rd (center, green field in rear).
Stream in foreground continues downstream from north point of Gerner property. This is an extension of a Class III Trout stream.
Shallow stream beds such as this are usually preferred brown trout, especially for laying their eggs.

[redacted] proposed solar site. Homes on [redacted] will be visually impacted by [redacted] at this location.

View from inside of 10004 Upper Glenside Rd, looking [redacted] proposed solar facility field.


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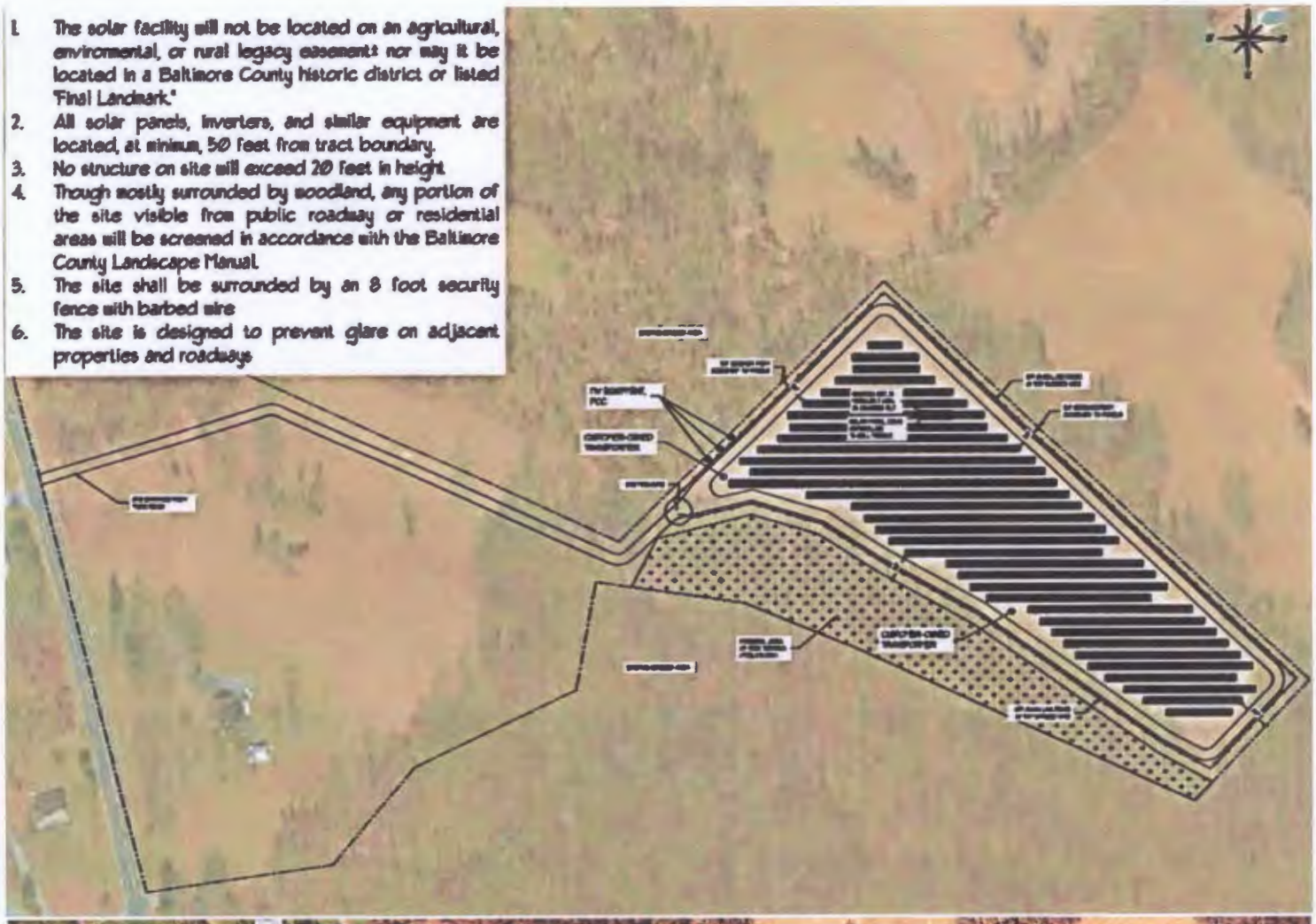
/18

Protestant
CBA Exhibit
G

[redacted]

PHOTO: 10/22/18

1. The solar facility will not be located on an agricultural, environmental, or rural legacy easement nor may it be located in a Baltimore County historic district or listed "Final Landmark."
2. All solar panels, inverters, and similar equipment are located, at minimum, 50 feet from tract boundary.
3. No structure on site will exceed 20 feet in height.
4. Though mostly surrounded by woodland, any portion of the site visible from public roadway or residential areas will be screened in accordance with the Baltimore County Landscape Manual.
5. The site shall be surrounded by an 8 foot security fence with barbed wire.
6. The site is designed to prevent glare on adjacent properties and roadways.



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10/24

Gerner Property: Top, Site Plan 2017
Bottom: My Neighborhood.com

18-047-X

Gerner

Photo taken on S side of neighboring Rude property, facing SE. Line of trees on left: Rude; Trees on right: Gerner; Grassy area in

All photos taken 9/30/2018.

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1.

Photo taken from Rude property, north of Gerner property, facing West towards York Rd (see electric lines whi
Grassy area is Rude's. Straight downhill line of trees, behind mown grass in center of photo, are Gerner's. Trees in foregrot

Protestant Rude's
CBA Exhibit

B

Photo taken on Rude property facing SE towards Gerner property. Grassy area in foreground up to trees is Rude's. Trees in Gerner home is on top of hill to right in photo.

According to site plan, proposed roadway to solar site would be between the 2 small copses of trees.

Protestant
CBA Exhibit
C

Wet channels of runoff from storm, 2 days prior. Photo facing SW towards Gerner home. Trees and part of grassy ar
are on Gerner property. Proposed roadway to solar site would be in this area.

Protestant
CBA Exhibit
D

Photo taken on Rude property facing SE; proposed solar site is visible through trees near top of photo in center, lighter green area. The e[illegible]e, from left to the right side, including area around single tree, is wet during rains from runoff.

Protestant
CBA Exhibit
E

Deep, muddy truck tracks on Rude's property, facing SE towards Gerner property where gravel road would be installed, behi
The soil in this area, including up to this tree, absorbed several days of rain and became unstable for drive

Protestant
CBA Exhibit
F

View from Rude's property facing S towards Gerner property. The proposed gravel roadway, which would be located behind single [redacted] removed. Clay in the soil in this area is prone to absorb and hold runoff from storms. [redacted]

Protestant
CBA Exhibit
6

7

Gerner property 'bridge' crossing over dammed-up spring-fed stream (which originates on Rude's property). Deep, muddy tr
narrow structure seen in photo.

Protestant
CBA Exhibit
H

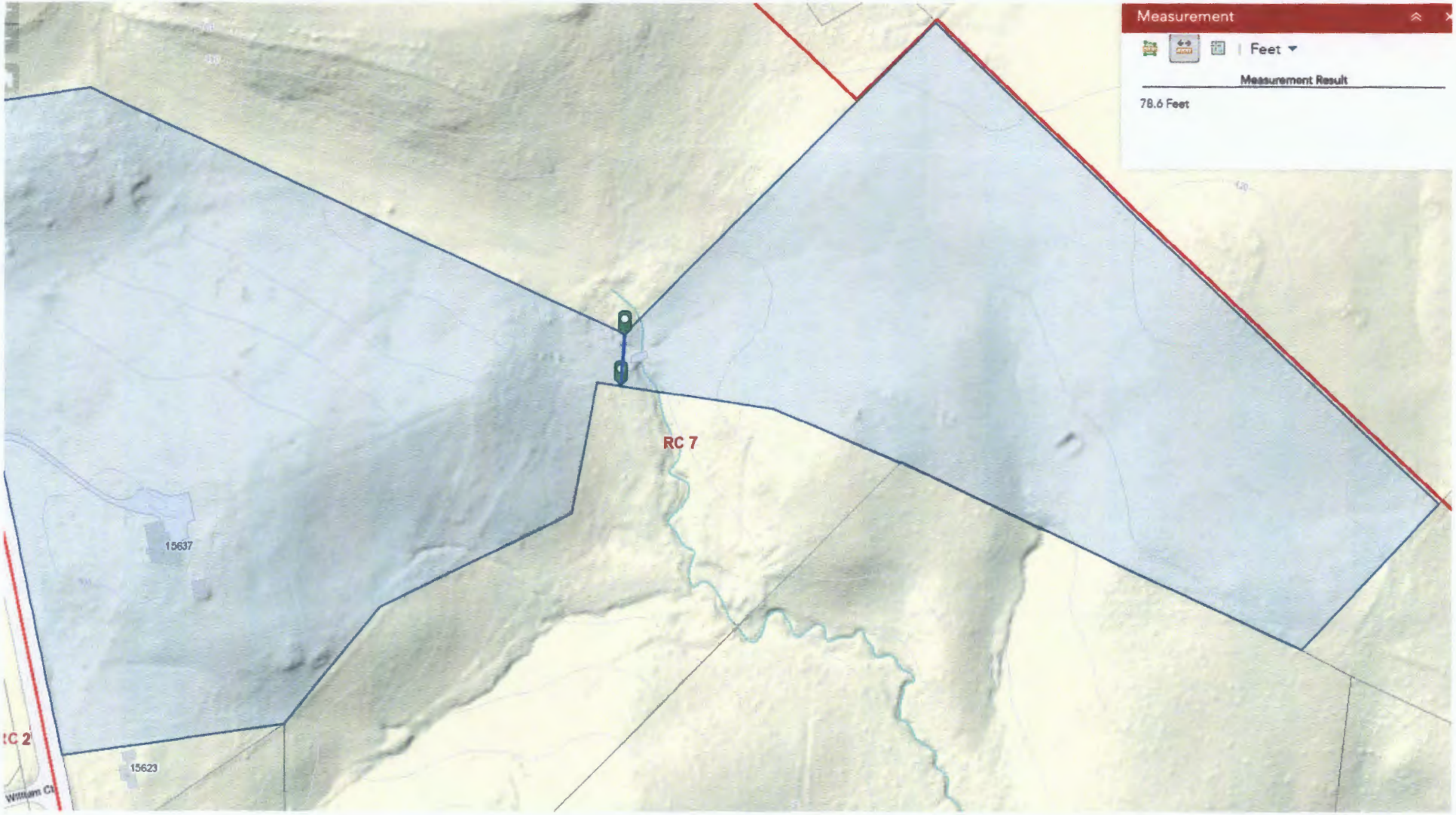
Date	Hi/Lo	Precip	Snow	Forecast	Avg. Hi / LO
Sat 9/1	84°/73°	0.03 in	0 in		85°/69°
Sun 9/2	89°/75°	0 in	0 in		85°/68°
Mon 9/3	94°/78°	0 in	0 in		85°/68°
Tue 9/4	96°/80°	0 in	0 in		84°/68°
Wed 9/5	96°/81°	0 in	0 in		84°/68°
Thu 9/6	97°/79°	0 in	0 in		84°/68°
Fri 9/7	88°/74°	0.51 in	0 in		84°/67°
Sat 9/8	76°/62°	0.57 in	0 in		83°/67°
Sun 9/9	64°/60°	1.90 in	0 in		83°/66°
Mon 9/10	72°/63°	0.04 in	0 in		83°/66°
Tue 9/11	75°/68°	0.09 in	0 in		82°/66°
Wed 9/12	86°/70°	0.01 in	0 in		82°/66°
Thu 9/13	79°/74°	0.04 in	0 in		82°/65°
Fri 9/14	77°/71°	0.07 in	0 in		81°/65°
Sat 9/15	85°/69°	0 in	0 in		81°/64°
Sun 9/16	82°/69°	0 in	0 in		80°/64°
Mon 9/17	80°/72°	1.37 in	0 in		80°/64°
Tue 9/18	82°/73°	2.99 in	0 in		80°/63°
Wed 9/19	86°/72°	0 in	0 in		79°/63°
Thu 9/20	82°/70°	0 in	0 in		79°/62°
Fri 9/21	77°/71°	0 in	0 in		78°/62°
Sat 9/22	78°/64°	0.03 in	0 in		78°/61°
Sun 9/23	64°/61°	0.98 in	0 in		77°/61°
Mon 9/24	69°/62°	0.12 in	0 in		77°/60°
Tue 9/25	80°/65°	0.28 in	0 in		77°/60°
Wed 9/26	89°/72°	0.55 in	0 in		76°/60°
Thu 9/27	73°/59°	0.64 in	0 in		76°/59°
Fri 9/28	76°/60°	0.25 in	0 in		75°/59°
Sat 9/29	80°/64°	0 in	0 in		75°/58°
Sun 9/30	76°/62°	0 in	0 in		74°/58°

September 2018 Weather and Rainfall in Sparks, MD

www.accuweather.com/en/us/verona-md/21152/september-weather/2120611?monyr=9/1/2018&view=table

Protestant
CBA Exhibit
1

9.



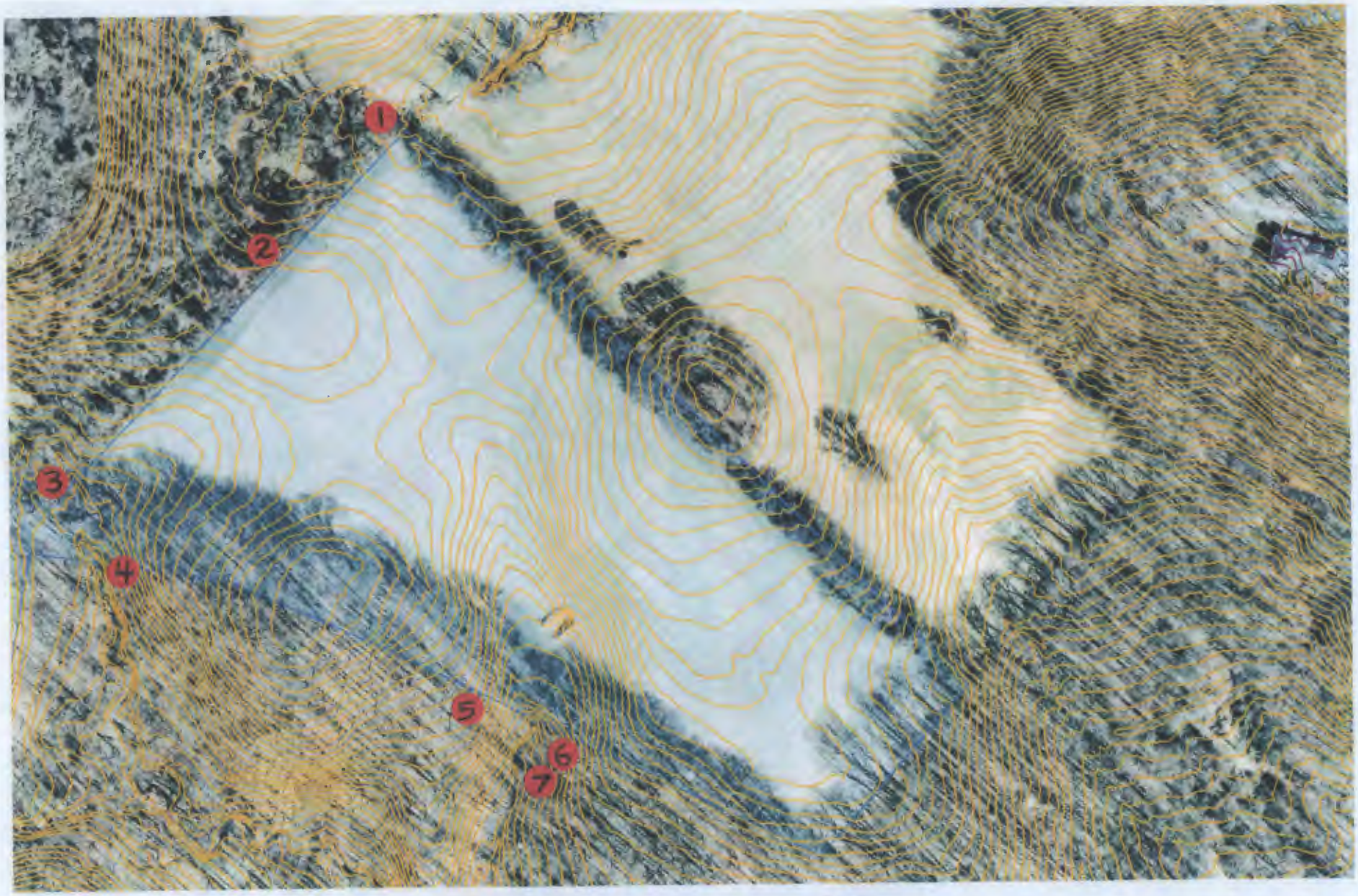
[redacted]

Map: Baltimore County.gov/myneighborhood/

18-047X

[redacted]

Protestant
CBA Exhibit
24



[redacted]

[redacted]

[redacted]

19-047X

10/24

Protestant
CBA Exhibit
22

Protestant
CBA Exhibit
A


Protestant
CBA Exhibit
B

Protestant
CBA Exhibit

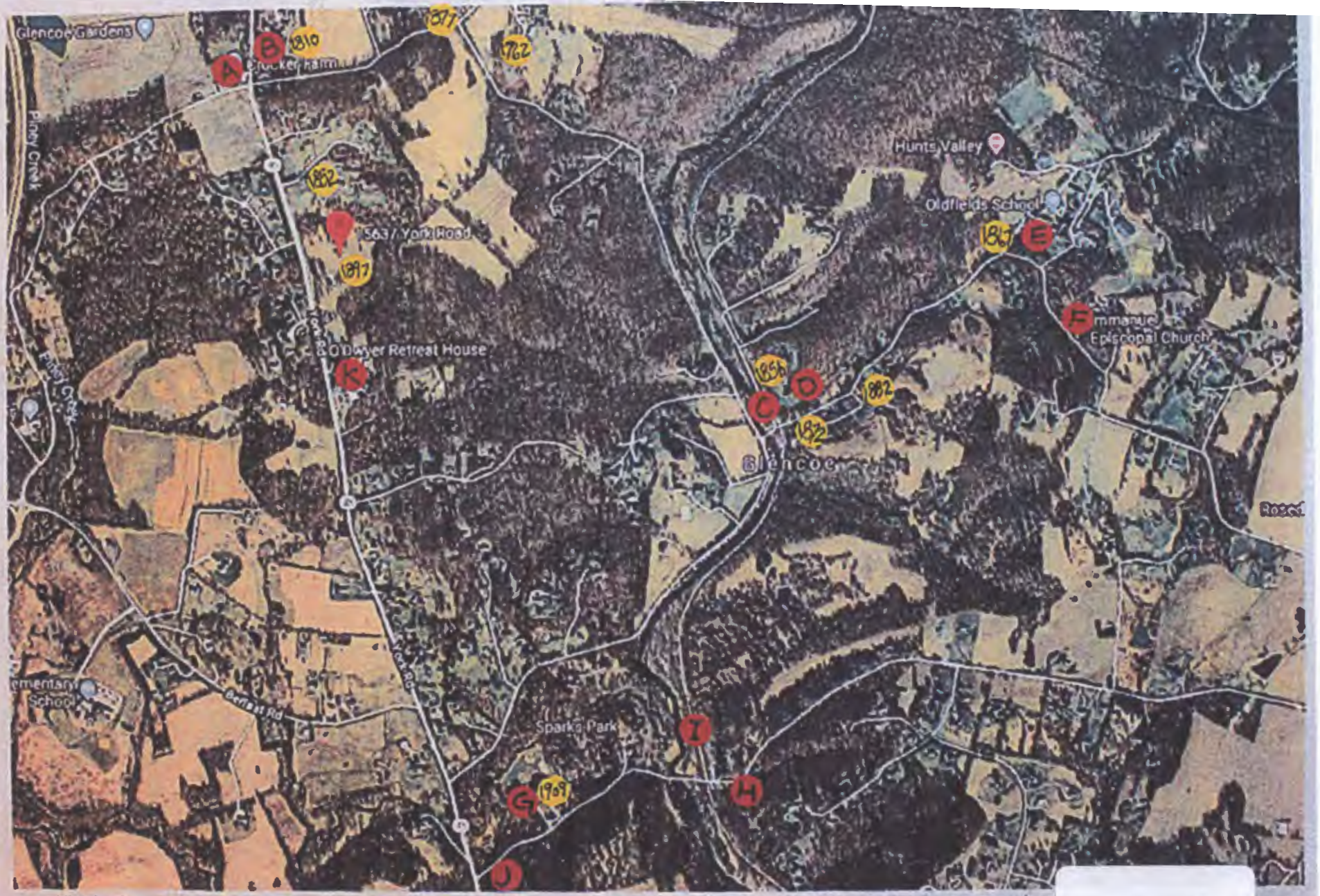
C

Protestant
CBA Exhibit
d

Protestant
CBA Exhibit

Protestant
CBA Exhibit

9



Vicinity Surrounding Gerner Solar Site: Scenic views of rural farmlands, forests, the Gunpowder River and streams are prevalent
Baltimore County Landmarked (BA#) and historic buildings are (red dots):
Within this area is A. the historic Gorsuch Stone barn BA# 129, B. Gorsuch Tavern BA# 130, C. Glencoe RailRoad Station BA# 546, D.
Oldfields private girls' boarding school BA# 126, F. Immanuel Church, G. former Sparks Elementary School (now a county park), H. Spar
J. Rogney House BA# 431 and K. the O'Dwyer Catholic Retreat Center.

Protestant
CBA Exhibit
23

Dates of structures in yellow dots

[redacted]

Protestant
CBA Exhibit
24

[redacted]

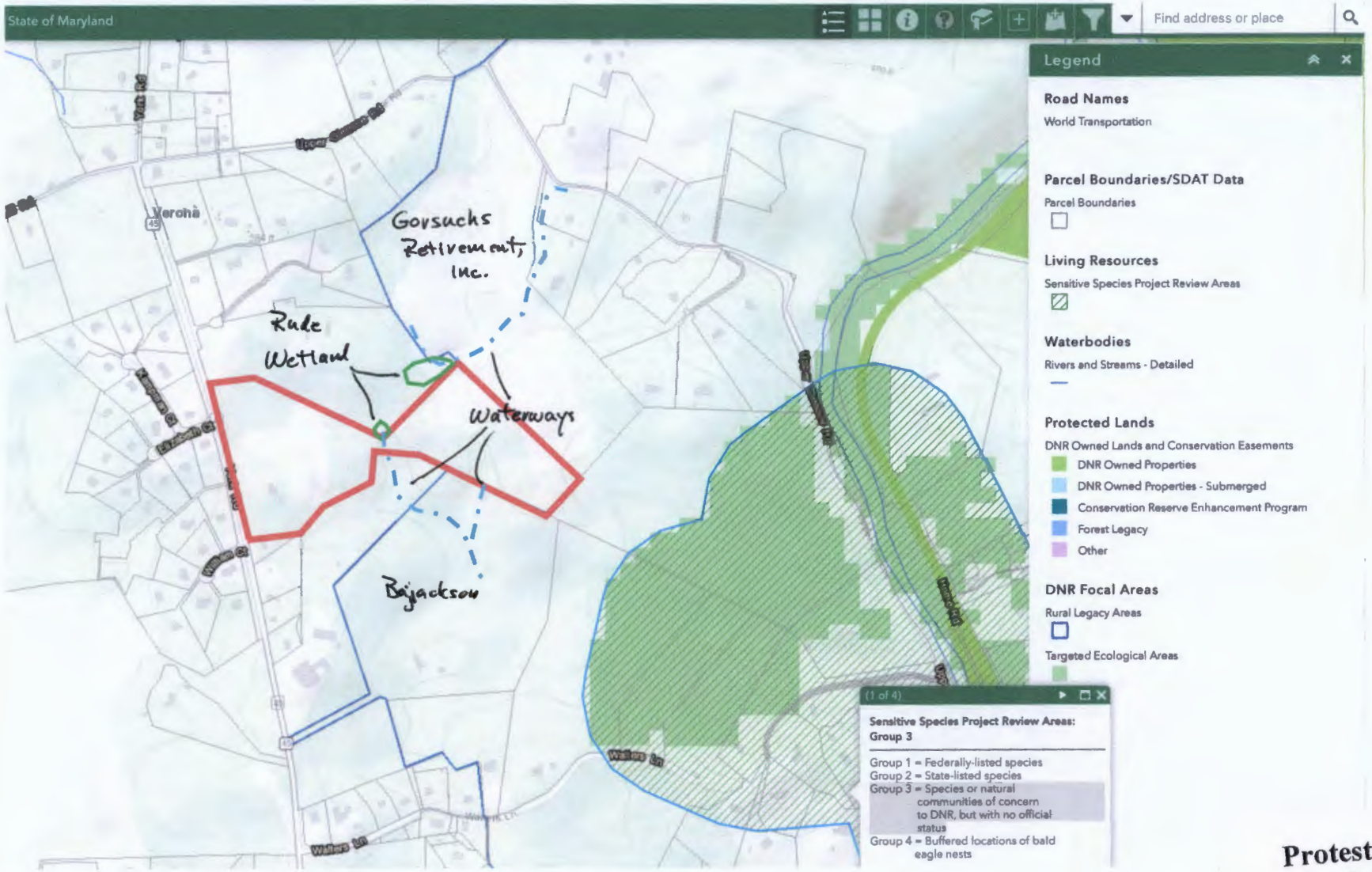
Protestant
CBA Exhibit
25

[redacted]

18-047X

10/24/18

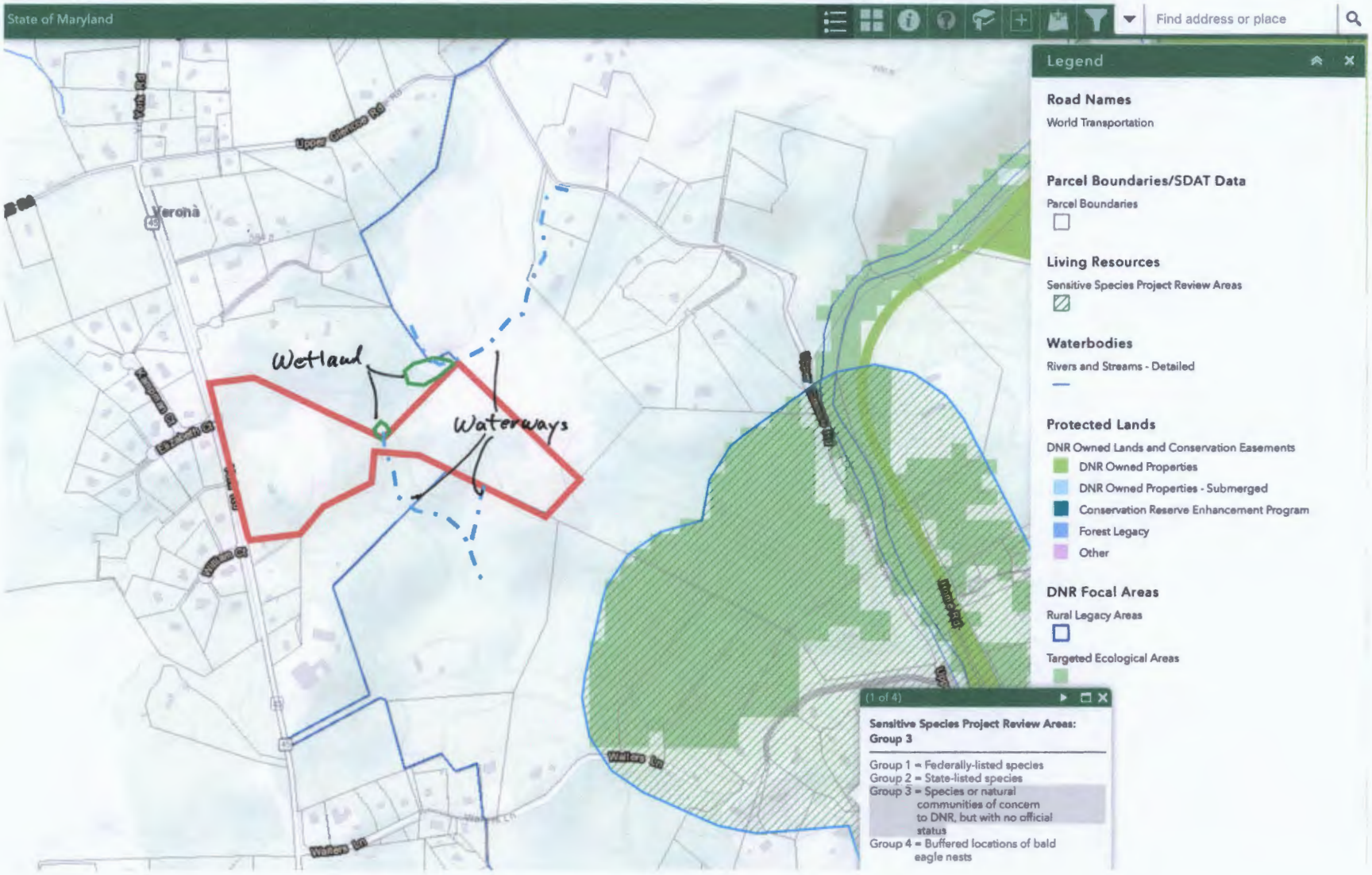
Protestant
CBA Exhibit
26



Protestant
CBA Exhibit

28a

Prot. Ex. 28A



18-047X

11/23

Protestant
CBA Exhibit
28

John C. Roemer IV

President, Roemer Ecological Services, Inc.

Education

B.A. Earth and Planetary Sciences, Johns Hopkins University, Baltimore, Maryland, 1983.

Certifications

US Army Corps of Engineers: Wetland Delineator (Certificate WDCP93MD0410020A)
Maryland Department of Natural Resources: Forestry Conservation Act Professional

Summary of Experience

John Roemer IV specializes professionally in environmental consulting, with emphasis on delineation, assessment, and creation of wetlands. Major projects involving tidal and nontidal wetlands focus on obtaining agency authorization for development that achieves his client's objectives and compensates for environmental impacts. He conducts rare plant surveys and crafts compromises that satisfy the agencies and landowners when such species are present.

Mr. Roemer field-delineates and accurately maps wetland boundaries, assesses the impacts of proposed development and conducts alternatives analyses, guides original plans through the regulatory process, and designs and implements wetland creation projects. His reports are crafted both to be accessible to the layperson and to satisfy precise technical requirements.

Mr. Roemer has established a reputation for credibility with developers, conservation groups, Federal, State, and local agencies, attorneys, and fellow professionals. His experience primarily is in Maryland, New Jersey, and Pennsylvania, where he has studied thousands of acres and carefully documented hundreds of miles of wetland boundary.

1991 - present President, Roemer Ecological Services, Inc., Parkton, Maryland.

Mr. Roemer consults as president of Roemer Ecological Services, Inc. He studies project site conditions, routinely identifying soils, vegetation, and wildlife habitat. He coordinates with allied professionals on major projects, ensuring that environmental regulations are anticipated and considered during all planning stages. Negotiating with regulatory agencies for permits for unavoidable impacts, Mr. Roemer thoroughly evaluates alternatives and proposed mitigation and wetland creation concepts, which are adopted as permit conditions and implemented under his oversight. He has authored or has been primary contributor to numerous contract reports and has responded as an expert to legal interrogatories and in depositions. He teaches professionals and high school students wetland delineation and plant identification. Mr. Roemer also investigates land for the presence of threatened and endangered plants.

1986 - 1991 Staff Ecologist, Schmid & Company, Inc., Media, Pennsylvania.

Mr. Roemer managed projects and participated in report preparation and review, including data acquisition, data analysis, and map drafting. He investigated project site conditions as field supervisor, and routinely identified soils, vegetation, and wildlife habitat. He conferred with clients, Federal and state agencies, coordinated laboratory analyses, and testified as an expert witness before municipal boards.

Protestant
CBA Exhibit
27

18-017X 11/28

1985 - 1986 Program Supervisor, Martel Laboratory Services, Inc., Baltimore, Maryland.

Mr. Roemer coordinated an oil analysis program for jet and propeller aircraft engines. He reviewed all analytical results and evaluation procedures and marketed the laboratory services nationally. He evaluated samples for chemical parameters using a variety of analytical instruments.

1983 - 1985 Laboratory Supervisor, Goucher College, Towson, Maryland.

Mr. Roemer prepared over one dozen labs each semester for the Chemistry/Physics Department. He maintained a safe laboratory environment and was the liaison between the Department and area businesses and chemical companies.

Representative project experience

The US Army Corps of Engineers, requiring a Corps-certified Wetland Delineator, asked Mr. Roemer to expeditiously identify and document jurisdictional wetlands on 400 acres of a US Army proving ground in Frederick, Maryland. Carefully evaluating wetland characteristics in the field after studying aerial photography spanning four decades, he delineated a complicated wetland boundary altered by nearly 60 years of aggressive landscape manipulation. An independent Corps reviewer verified the accuracy of the wetland boundary.

The New York office of the Trust for Public Land, with the Ocean County [NJ] Chapter of the Izaak Walton League, bought private land in the Reedy Creek area of New Jersey's Barnegat Bay for conveyance of ownership to the US Fish & Wildlife Service. Mr. Roemer provided tidal and nontidal wetland regulatory guidance as well as a wetland delineation and report to assist these groups in negotiation for several tracts. As informed buyers, they acquired the land at a fair price and have transferred it to the government.

Advocates for a proposed assisted care facility in Maryland's Chesapeake Bay Critical Area sought Growth Allocation to alter the existing land use classification on a 22-acre site. Mr. Roemer delineated tidal and nontidal wetlands on the tract and investigated how decades-old disturbance has influenced current vegetation and soils. His documentation enabled this project to begin Baltimore County's lengthy and competitive development review process.

Subcontracted to perform wetland consulting services for the US Department of Defense through a large telecommunications firm, Mr. Roemer walked most of the 80-mile fiber optic cable route from a Naval Research facility near Harrisburg, Pennsylvania to Frederick, Maryland. The route included rural country roads, railroads, and densely-populated urban areas. Mr. Roemer obtained permits from the US Army Corps of Engineers, the Pennsylvania Department of Environmental Protection, and the Maryland Department of the Environment for cable installation.

11/20/18 18-047-x

Protestant
CBA Exhibit
29

11/28/18 18-047-Y

MANUFACTURED BY NEW LEXIN
FIRE EQUIPMENT CO. INC.

DATE: March 28,1998
INCOMPLETE VEHICLE
MANUFACTURED BY Internation

DATE: 26-Jan-98
G.V.W.R. 35,000 lbs
GROSS AXLE WEIGHT RATING
FRONT AXLE 12,000 lbs
WITH 11R22.5
ON 22.5x8.25
AT 105 PSI COLD SIN
1ST INT. AXLE N/A
WITH N/A
ON N/A
AT N/A
2ND INT. AXLE COL

Protestant
CBA Exhibit
30

18-047x 11/20/18

Case No.: 2018-0047-X

Exhibit Sheet

SEN 12-21-17

	Petitioner/Developer	Protestants
No. 1	Site plan	Map showing distance b/w two closest points of prop.
No. 2	site plan - highlighted + redlined	Topo map w/ 3 photos
No. 3	Aerial image w/ site outlines	Photos - wildlife
No. 4	"Locality" exhibit	
No. 5	Aerial image showing tree buffer	
No. 6	Powerpoint presentation	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

Surrounding Residences

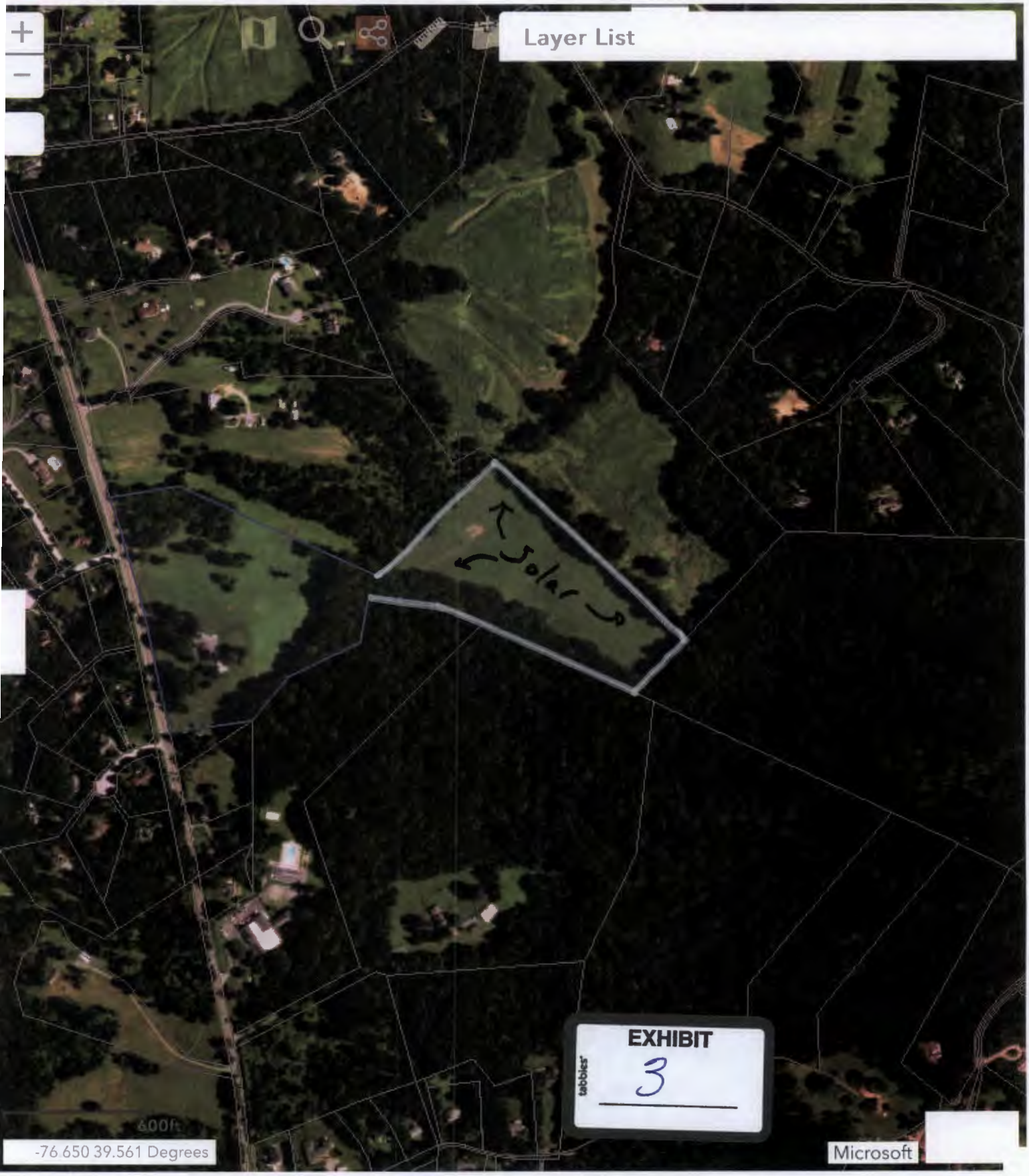
Baltimore County - My Neighborhood

#3

Surrounding Residences

3

Baltimore County - My Neighborhood



Locality

4

Baltimore County - My Neighborhood

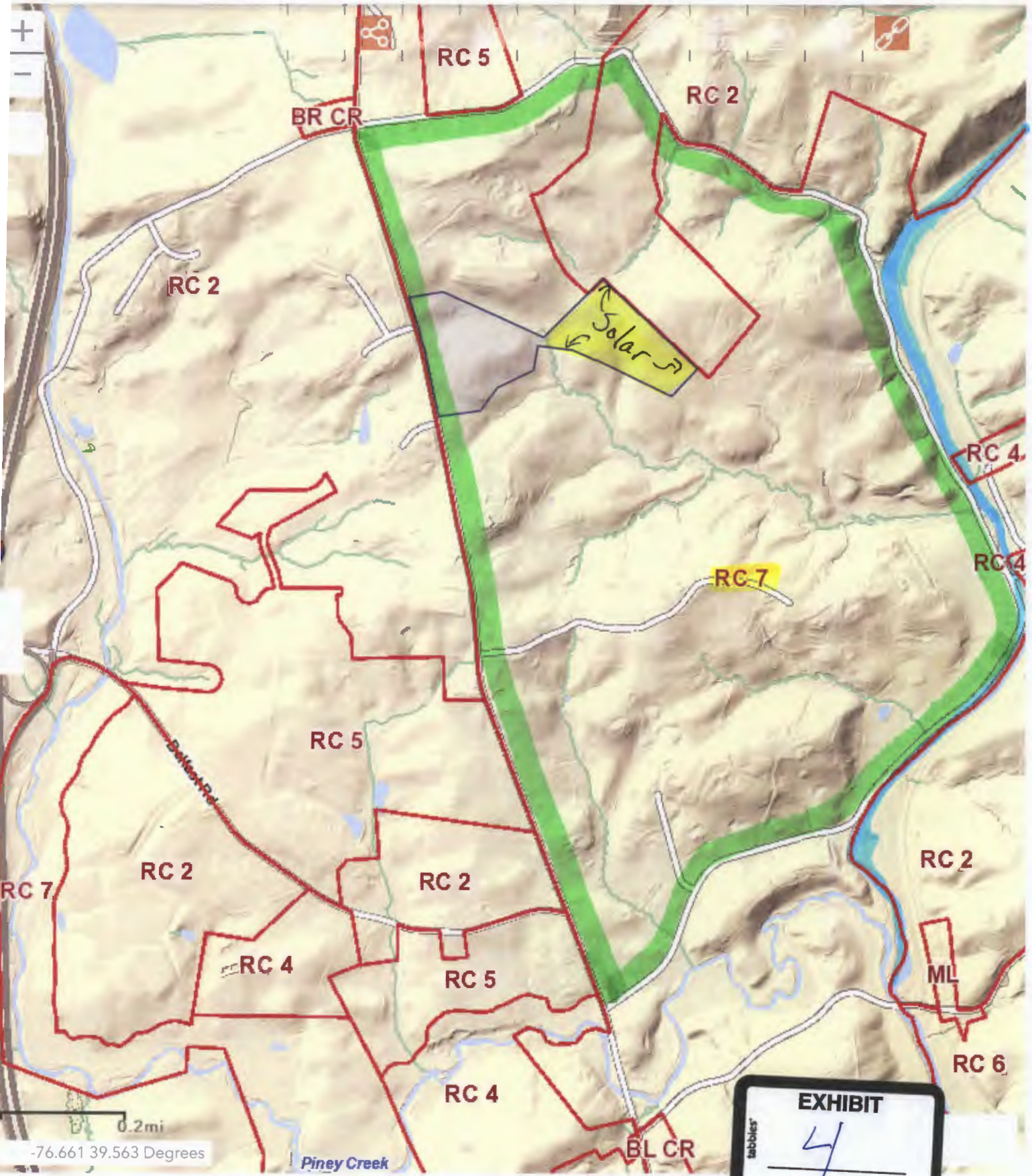
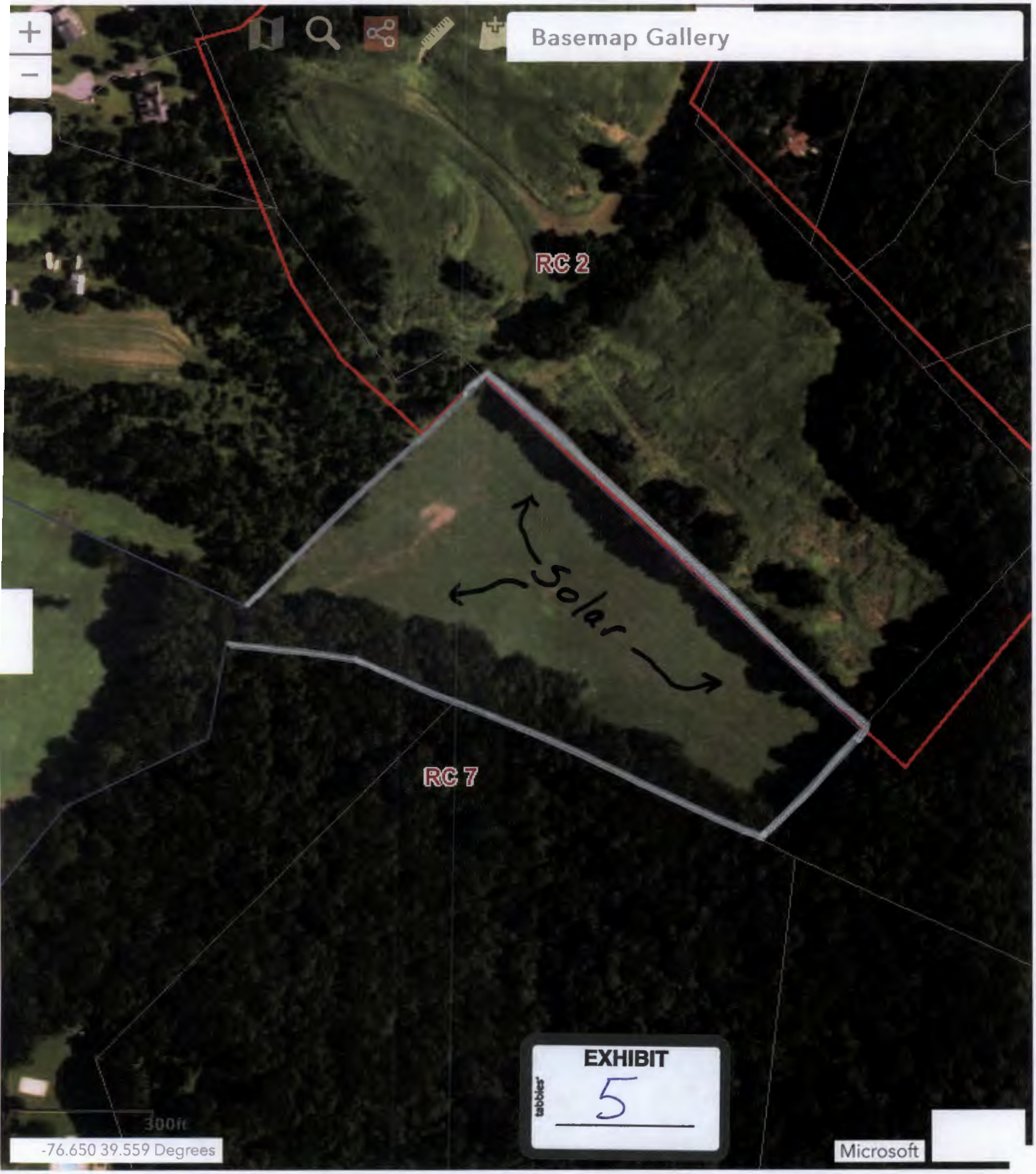


EXHIBIT 4

Tree Buffer

5

Baltimore County - My Neighborhood



CALVERT ENERGY LLC

ESA Sparks Glenco, LLC Solar Project

November 8, 2017

#6

CALVERT ENERGY LLC

- Requested special exception permit for the construction of a solar project per County regulations for the property
  - Baltimore County zoning ordinance allows for solar projects in R.C. 7 zoning with special exception permit (Bill No. 37-17)
- 1.85 MWac solar project
  - Low, Moderate income category in MD community solar program
    - 30% subscribers low and moderate income
      - 10% low income
  - Enough power for approximately 270 homes

CALVERT ENERGY LLC

CALVERT ENERGY LLC

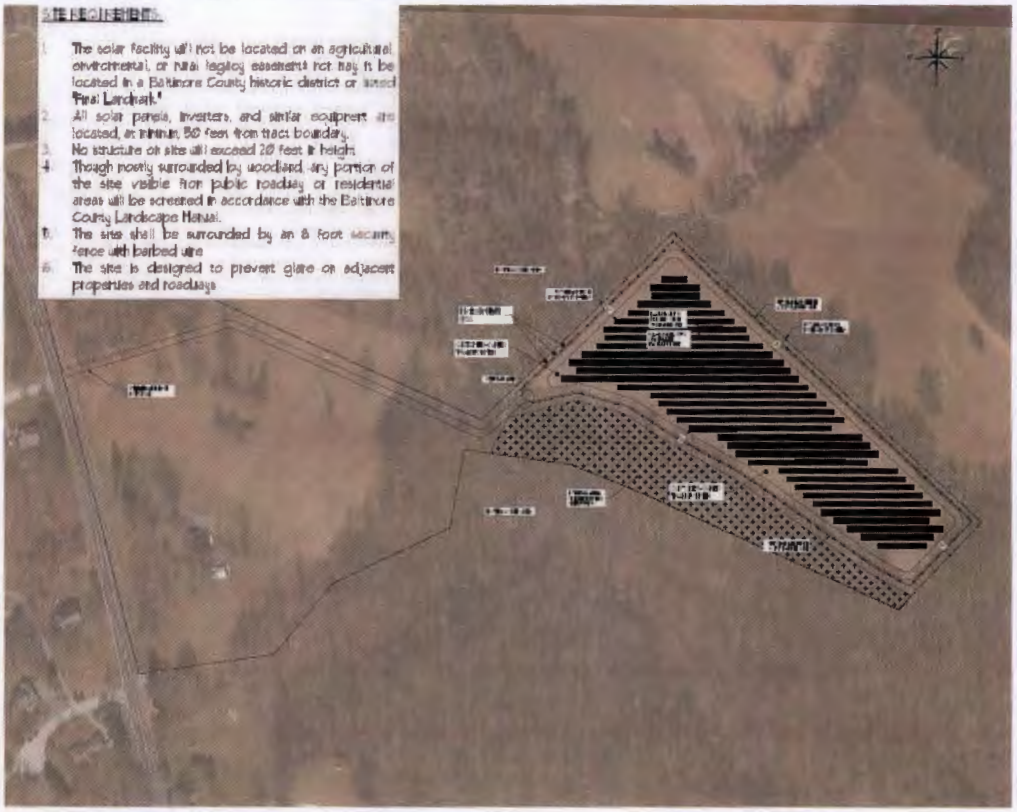
- Over 30 years of project development, power plant operations and finance experience
- Extensive solar power experience
  - Developed/managed development of over 45 MW of solar PV projects
  - Developing 75 MW of solar projects in MD, NC, SC and IL
- Broad energy/electricity background
  - Power plant operations – U.S. Navy nuclear power
  - Solar, gas turbine, coal, hydro and nuclear plant development
  - Electricity wholesale markets
  - Transmission & distribution construction
- Veteran owned business

esa
ESA Renewables, LLC

- Over 30 years of experience in solar project development, construction, management and long term operation of solar systems
- Global development and construction of over 500 solar and thermal installations; ranging from large scale solar farms to commercial rooftop installations
- Development, construction, and operation of 140MW, and approximately 30 independent projects, in MD, FL, SC and North Carolina

Site plan

CALVERT ENERGY LLC

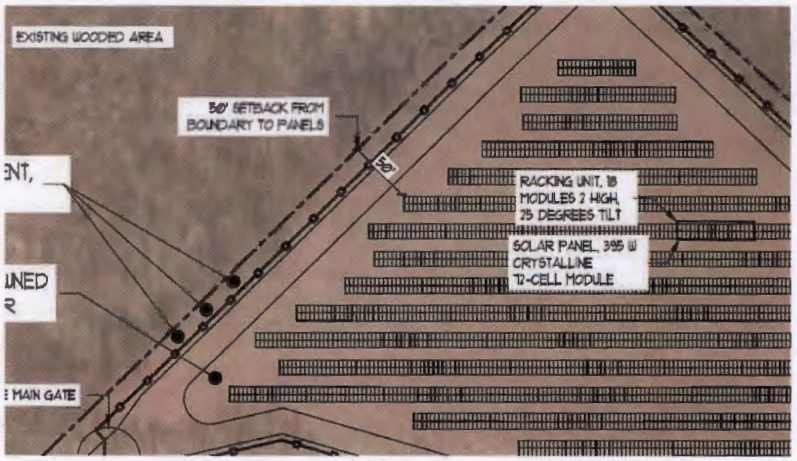


Site aerial

CALVERT ENERGY LLC

4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

- The site plan includes a 50' setback



1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

- The property does not have any agricultural easements or forest conservation easements and is not located in Baltimore Historic district or designated landmark

6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

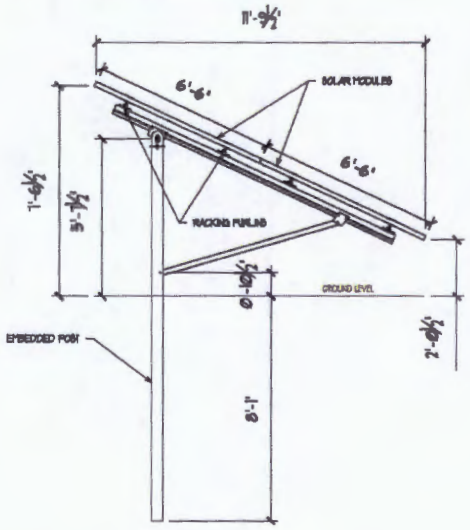
- Existing trees provide buffer to adjacent residences and roads so landscaping buffer is not required/provided

Bill 37-17 Solar Project Requirements (cont'd)
CALVERT ENERGY LLC

5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING BUFFER AND THE SOLAR FACILITY.

- The panel height is 7'6.5" and the security fence is 8' tall – these are the tallest structures



§ 502.1. Conditions determining granting of special exception.

CALVERT ENERGY LLC

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. **[Bill No. 74-2000]**

Bill 37-17 Solar Project Requirements (cont'd)

CALVERT ENERGY LLC

8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

- Existing trees provide buffer to minimize/eliminate glare to adjacent properties and roads
- Solar panels face away from the nearest homes and parallel to York Road
- Distance minimizes glare
  - 1,400' to York Road
  - 1,150' to nearest adjacent residence
- Glare analysis performed to York Road and nearest residences using Solar Glare Hazard Analysis Tool (used by FAA)
  - Glare levels are not significant (without any tree buffer)

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

- Solar facilities have no affect on the valuation of surrounding property
  - Property appraisal report has been performed indicating no impact to adjacent home values
    - Matched pair analysis for projects in MD, NC and TX
  - Existing tree buffer minimizes visual impact
  - No discernible sound off property
  - No lights on facility
  - No odor generated from facility
  - No increase in traffic during operation

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

A. Be detrimental to the health, safety or general welfare of the locality involved;

- Solar projects are safe for the community
  - Low voltage
    - Array at much lower voltages than substations and power lines
    - System output voltage same as existing distribution line
  - All wiring and electrical equipment are covered/sealed
    - Oils used in electrical equipment are mineral based
  - Design and construction meets all local and state electrical requirements, as well as national electric codes
  - All equipment certified to appropriate UL Standards
  - Facility fenced with locked gate to prevent unauthorized entry
  - Solar panels active components are stable and not soluble in water
    - EPA has determined that solar panels are non-hazardous and may be disposed in municipal waste landfills
  - Within 6 months of end of operation – components of the solar facility removed, site fertilized and reseeded with native grass

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

- Solar facility is unmanned and does not require any water or sewer on site
- Facility does not increase traffic during operation

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

- Solar facility does not cause any shading on adjacent properties or prevent air flow

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

B. Tend to create congestion in roads, streets or alleys therein;

- Solar facility is unmanned during operation with 2-3 scheduled maintenance periods lasting 2-3 days each involving 1-2 pickup trucks
- Construction period lasts 2-3 months – peak personnel for 30-45 days up to 20 people

C. Create a potential hazard from fire, panic or other danger;

- Electrical equipment is UL certified
- Transformers/inverters contain mineral based oils

D. Tend to overcrowd land and cause undue concentration of population;

- Solar facility is not manned – there is no office space or buildings on site

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

- Piles are direct driven into ground to minimize impact on soil permeability
- Grasses permitted to grow naturally during operation of the facility
- No trees removed on site
- Access road will be gravel
- <10% impact on permeability of existing land
- Project will meet state and local stormwater regulations
- Upon decommissioning land is returned to original condition for future use

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

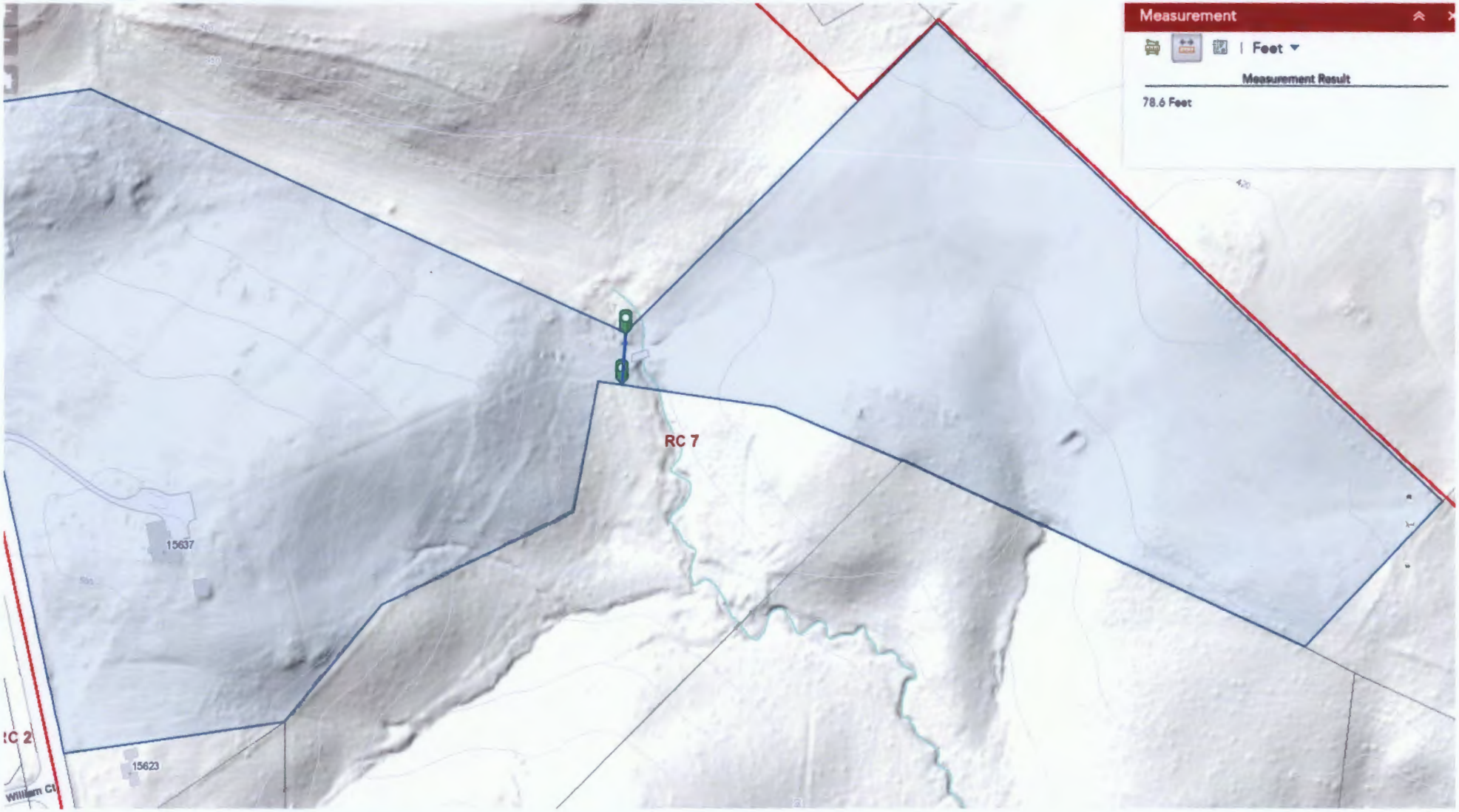
- Solar facility is consistent with the rural nature of property
- No lights on facility
- No discernible noise off the property from facility
- Facility is buffered by existing trees which minimizes/eliminates ability to see the facility
- Solar facility generates renewable energy with no emissions and without using any water
- Solar facility is not manned and therefore does not increase local population or place any burden on existing infrastructure
- Installation and construction of facility meets all County and State requirements to mitigate any impact on existing natural resources
- No major civil work conducted – piles are direct driven into ground – minimize impact on soil

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. **[Bill No. 74-2000]**

- No trees removed from site for installation
- No wetlands on site
- Possible intermittent stream – will be determined by wetlands delineation
  - Proper buffer maintained from stream
- No floodplain on site
- Driven piles 8'1" into ground – no impact on aquifer
- Facility does not consume water or discharge any water
- Review of publicly available information and consultation with county agencies indicate no impact on archaeological, cultural or historical resources or threatened and endangered species or habitat



15637 York Rd, Gerner property
Map: Baltimore County.gov/myneighborhood/

Distance between the two closest points of property (next to stream): 78.6'

PROTESTANT'S
EXHIBIT NO. 1

Gerner Property Stream empties into the Gunpowder Falls.

The direction of the hillside slopes surrounding the proposed site would create increased runoff into this Class III Trout stream.

Topo map of proposed Gerner solar facility (blue outline of property).

Direction of slopes (map by myneighborhood); note stream bed at narrowest point of property.

Points where accompanying photos were taken, 12/7/2017 by Bill Mayo and Lynne Jones.

PROTESTANT'S EXHIBIT NO. 6

wrought iron fencing. Deer can jump 10-12' over a fence if necessary. Images from google.com search

Part 3

which originally enacted § 522.1, used the word "office". The annual cumulative supplements to the 1978 Code used the word "office" from 1979 to 1985. The change was made inadvertently in the 1986 cumulative supplement.

Sec. 523. The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act.
(Bill No. 83, 1978, § 3) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

Sec. 524. Reorganization of office of planning and zoning.

Notwithstanding any other provisions of this Charter, the county council shall have the power by legislative act to reorganize the office of planning and zoning, to define the duties of the director of said office, to establish the powers, duties and compensation of the planning board, and to establish the duties and responsibilities of the zoning commissioner and deputy zoning commissioners, so that planning and zoning functions shall be conducted in the best interests of the county and its future development and growth.
(Bill No. 83, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 128, 1990, § 1; approved by voters Nov. 6, 1990; effective Dec. 7, 1990)

Sec. 524.1. People's counsel.

(a) The county executive shall appoint a people's counsel who shall represent the interests of the public in general in zoning matters as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

(1) *Qualifications:* The people's counsel shall be a resident of Baltimore County, a member in good standing of the Maryland Bar, and actively engaged in the general practice of law for at least five (5) years prior to his appointment.

(2) *Removal:* The people's counsel may be removed at any time on the recommendation of the county executive and with the affirmative vote of not less than a majority plus one of the total number of county council members established by this Charter.
(Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

(3) *Powers and duties:* The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.
(Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

B. He shall make such investigations as he may deem necessary to the intelligent performance of his duties imposed by subparagraph A. of this Section.

C. He shall have full access to the records of all county agencies, shall be entitled to call upon the assistance of county employees, and shall have the benefit of all other facilities or information of the county in carrying out his duties.

(4) *Employment of experts:* The people's counsel may hire from time to time, as needed, in connection with specific proceedings before the above named bodies, experts in the fields of planning, zoning, traffic, engineering, ecology and architecture, to the extent that county personnel cannot be utilized, and to expend such sums for compensation and/or expenses of these experts as shall be provided in the annual budget.

(5) *Salary and expenses:* He shall receive an annual salary and such sums as may be needed to carry out the powers and duties set forth herein as provided in the annual budget.
(Bill No. 104, 1960; Bill No. 61, 1974, § 1; Bill No. 90, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 131, 1990, § 1; approved by voters Nov. 6, 1990, effective Dec. 7, 1990)

***Annotation**—The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).*

Editor's note:

The publisher corrected a former reference to "matter" to read "matters" in subsection (a). Bill

61-74, which originally enacted this language, used the word "matters". The 1976 annual cumulative supplement to the 1968 Code used the word "matters" but it appears to have been changed to "matter" inadvertently on publication of the 1978 Code.

Subdivision 7. [Reserved.]*

** Editor's note: Subdivision 7, consisting of sections 524.2 and 524.3, was repealed by Bill No. 131, 1990, § 2, which was approved by the voters on Nov. 6, 1990, effective Dec. 6, 1990.*

DIVISION 3. DEPARTMENTS IN THE ADMINISTRATIVE SERVICES

Subdivision 1. Department of Public Works

Sec. 525. Director of public works.

The department of public works shall be administered by the director of public works who shall be a professional engineer registered under the laws of this state, and shall have had responsible charge of engineering works over a period of at least ten years prior to his appointment. He shall have such other qualifications as may be provided by law. He shall be appointed solely with regard to his qualifications for the duties of his office and shall be responsible directly to the county administrative officer.

Sec. 526. Functions of department of public works.

The department of public works shall have and perform such functions and duties as may be provided from time to time in the public local laws of Baltimore County, with the exception, however, of all functions of the zoning commissioner and those relating to building permits and building and zoning laws and regulations. The department shall have such other functions as may be provided by directive of the county administrative officer or by legislative act of the county council not inconsistent with this Charter or the provisions of applicable law.

In addition thereto, the department of public works shall be responsible for traffic safety and engineering and is hereby granted full power and authority and directed to promulgate and adopt such rules and regulations relating to the standing or parking of motor vehicles and movement of vehicular and pedestrian traffic as may be necessary or desirable to create and maintain the safe and expeditious movement of traffic throughout Baltimore County: provided, however, that no rule or regulation promulgated by the director under such power and authority shall be deemed valid or effective until the expiration of forty-five days written notice of the promulgation of the same to the county council. The county council shall at all times have the power to repeal, amend, or modify any rules and

County to run with the land and continue in perpetuity. The easements and covenants must be shown on the concept plan and on the development plan or minor subdivision plan for the development, as applicable, and on the record plat.

A. For all subdivisions or other development, except as provided in Paragraph B, a permanent preservation easement on the conservancy area must be granted to Baltimore County or to a land trust which the county approves, and must permanently restrict further subdivision or development of the conservancy area. The easement must:

1. Allow public access to greenways and other open space areas subject to approval by the Department of Environmental Protection and Sustainability and the Department of Recreation and Parks; **[Bill No. 122-2010]**

2. Indicate uses and activities approved in the conservancy area subject to Section 1A07.7.C with any applicable conditions or limitations; and

3. Provide that any modification of a preservation easement held by Baltimore County be subject to a public hearing.

B. In the case of a development where additional permitted density remains, a conservancy area shall be shown on the approval plan and, if the plan involves subdivision, recorded in the land records of Baltimore County. A permanent preservation easement as described in Paragraph A must be granted if further subdivision subjects the tract to the development plan review process under Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

C. Other covenants or easements may be required as to ensure that the standards of this section are met, including:

1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and

2. An easement to provide for the maintenance of open views.

APP. 3

SECTION 1A08
R.C.7 (Resource Preservation) Zone
[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.

3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.

4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.

7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;

9. To implement state and federal mandates for the protection of natural resources and rural legacy;

10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;

11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;

12. To incorporate traditional features of the local built environment into development; and

13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE — The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

A. Uses permitted by right. In addition to the uses in Paragraph E of this subsection, the following uses are permitted by right in an R.C.7 Zone:

1. Dwellings, one-family detached.
2. Farms and limited acre wholesale flower farms, subject to Section 404.
3. Open space, common.
4. Schools.
5. Streets and ways.
6. Telephone, telegraph, electrical power or other lines or cables, provided that any such line or cable is underground; underground gas mains; shared well and septic systems when approved by the Department of Environmental Protection and Sustainability; or other underground conduits, except interstate pipelines. **[Bill No. 122-2010]**
7. Accessory uses or structures, subject to Section 429, including:
   a. Farmer's roadside stand and produce stand, subject to Section 404.4;
   b. Home occupations;
   c. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee;
   d. Parking and residential garage space, subject to Section 409;
   e. Signs, subject to Sections 450 and 1A08.8.C.5; and
   f. Swimming pools, tennis courts and other recreational amenities, if accessory to a dwelling or residential subdivision only.
8. Commercial film production, subject to Section 435.
9. Farmstead creamery, subject to the provisions of Section 404.13. **[Bill No. 34-2009]**

B. Uses permitted by special exception. The following uses only may be permitted by special exception in an R.C.7 Zone.

1. The following uses provided that they are located in a principal building that was originally constructed before the effective date of Bill 74-2000; and the building is converted to the new use without any external enlargement after the effective date of Bill 74-2000:
   a. Antique shop;
   b. Bed and breakfast;
   c. Tea room; and
   d. Residential art salon.
2. Subject to Paragraph E of this subsection, churches and other buildings for religious worship.
3. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals as an accessory use, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees;
4. Public utility uses not permitted by right.
5. Bottled water plant as an agricultural support use, if the source of water is located on the same site as the plant, and provided that the Director of Environmental Protection and Sustainability makes a finding that the proposed facility is not expected to adversely affect the quality of capacity of surface water or ground water. **[Bill No. 122-2010]**
6. Campgrounds, including day camps.
7. Farm market, subject to Section 404.4.
8. Golf courses.
9. Horticultural nursery, subject to Sections 404.1 and 404.2.
10. Riding stables.
11. Target archery and field archery ranges.
12. Volunteer fire company or ambulance-rescue facilities.
13. Winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on premises. Temporary promotional events such as wine tasting or public gatherings associated with the winery are permitted within any limits set through the special exception process.
14. Wireless telecommunication towers, subject to Section 426.

15. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal. **[Bill No. 64-2015]**

APP. 5

C. Notwithstanding any provision of this section or any other county law or regulation to the contrary, if a property to which the zoning classification R.C.7 is applied had a development plan filed, accepted and pending for approval as of January 19, 2000, the development plan shall be reviewed based on the zoning classification applicable to the property at the time the development plan was filed.

D. Application of zone. The R.C.7 may not be applied to lands currently zoned R.C.2.

E. Prior zoning. If a property was zoned so that churches and other buildings for religious worship were permitted by right prior to being zoned as R.C.7, churches and other buildings for religious worship are permitted by right on that property.

§ 1A08.4. Plans and permits.

All development must be in accordance with this section and the standards and guidelines for "rural preservation" and "scenic views" adopted pursuant to this section, and published as part of the Comprehensive Manual of Development Policies.

A. Before the approval of any concept plan, development plan, limited exemption, special exception plan or variance, the Director of Planning or the Director's designee must certify in a written finding that the plan, exemption or variance is consistent with the spirit and intent of these regulations. To support the finding, the Director may require information such as building elevations, building cross-sections or viewshed analyses pursuant to § 32-4-224(d) of the Baltimore County Code. The Director must certify that any deviation from this section or the standards and guidelines cited above was necessary to: **[Bill No. 137-2004]**

   1. Meet another standard or guideline;

   2. Comply with environmental regulations or otherwise protect resources; or

   3. Achieve the best possible site design based on the goals in Section 1A08.1.B.

B. Before the issuance of any building permit, the Director of Planning or the Director's designee must certify that the proposed development is in conformance with a plan approved pursuant to these regulations.

C. A finding pursuant to this section may be appealed to the Baltimore County Board of Appeals within 30 days of the date of the finding by any person aggrieved by the finding.

§ 1A08.5. Scenic views.

To protect the scenic views or, when necessary pursuant to 1A08.4, to mitigate the disturbance of scenic views, the Director of Planning may require that one or both of the following be clearly designated on the final record plat with appropriate notations:

A. Areas where disturbance of natural vegetation is prohibited; or

B. Areas where revegetation of landscaping is required.

§ 1A08.6. Development area and standards.

A. Maximum height. No structure with a height greater than 35 feet is permitted, except as otherwise provided under Section 300.

B. Area regulations.

1. Maximum lot density. A tract may be developed in an R.C.7 Zone at a maximum density of 0.04 lot per acre of gross tract area (an average of one lot per 25 acres). No lot lying within an R.C.7 Zone and having a gross area of less than 50 acres may be subdivided. Any lot having a gross area of 50 acres or more may be subdivided at the rate of one lot for each 25 acres of gross area. In cases where single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement may not be considered separate parcels for the purpose of calculating the number of lots of record.

2. Lot area. The area of any residential lot in a major or minor subdivision must not be less than one acre.

3. Building envelope. For residential development, the maximum area of the building envelope on any residential lot other than a farm is 20,000 square feet, and no single dwelling, inclusive of a garage or accessory building, shall have a building footprint that exceeds 5,000 square feet. The placement of the building envelope is determined on the basis of:

   a. The goals for the zone; and

   b. The minimum setbacks for the zone.

4. Minimum development allowance. Any lot or parcel of land lawfully existing on the effective date of Bill 74-2000 may be developed with a single dwelling.

5. Setbacks.

   a. Any principal building constructed in an R.C.7 Zone must be situated at least:

      (1) Thirty-five feet from the right-of-way of public or private interior streets;

      (2) Eighty feet from any principal building; and

      (3) Fifty feet from the rear lot line.

   b. Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an R.C.7 Zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the previous three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement. **[Bill No. 122-2010]**

6. Impervious surface coverage — nonresidential development. Except for residential lots which are subject to a building envelope restriction, no more than 10% of any lot may be covered by impervious surfaces such as structures or pavement.

7. Historic properties. No building or structure on a development tract which is officially included on the preliminary or final list of the Landmarks Preservation Commission or the National Register of Historic Places, or which is subject to an

easement held by the Maryland Historical Trust will be counted as a lot or dwelling for purposes of calculating density, provided that: **[Bill No. 137-2004]**

a. There is an area of sufficient size, as determined by the Director of Planning in consultation with the Landmarks Preservation Commission or Maryland Historical Trust, surrounding the building, structure or landmark to preserve the integrity of its historic setting;

b. An overall photographic and written description of the building, structure or landmark identified has been submitted and is determined to be in compliance with the Secretary of the Interior's standards for the treatment of historic properties;

c. Documentation of the preservation, restoration and protection for the building, structure or landmark has been approved by the Director of Planning in consultation with the Maryland Historical Trust prior to issuance of any building permit; and

d. When provisions of this paragraph apply to any development, the conditions for approval must be noted on the concept plan and development plan, or the minor subdivision plan.

C. Performance standards. Conditions for approval pursuant to this section must be noted on the concept plan and development plan, or minor subdivision plan. The following standards are intended to foster creative development that promotes the goals stated in 1A08.1.B.

1. Stormwater management. Stormwater management facilities must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features.

2. Buildings.

a. Buildings must be located on the least visually prominent portion of the site from the public road, consistent with effective resource protection, except where appropriate to continue an established pattern of development along the edge of the road.

b. Buildings should reflect the traditional rural character of the area in architectural form, scale, materials and detailing and in landscaping context.

c. Dwellings and other principal use building should be front-oriented to public rights-of-way; reverse-fronted lots generally will not be permitted.

d. Institutional uses, when permitted, should be regarded as community landmarks, and treated as permanent, special uses. This status should be reflected in building orientation and location on the site, entryways, landscaping, architecture and exterior building materials.

e. All of the exterior walls of a building must be treated similarly with respect to color and architectural details.

f. Accessory structures, including solar panels, antennas and storage sheds, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.7 Zone; however, the height of accessory structures is subject to the provisions of Section 400.

g. When buildings are located in open fields because of site constraints, additional landscaping or berms may be required to soften views.

3. Roads, parking areas and storage areas.

a. Interior roads must conform to Baltimore County's standards for rural roads, and no paved section of road may exceed a width of 18 feet.

b. Curbing must not be used unless required for stormwater management, as determined by the Department of Public Works. When curbing is required, it must consist of mountable curbs of a color that simulates the appearance of aged concrete, in accordance with specifications established by the Department of Public Works.

c. Fencing of residential properties must be in keeping with rural character. Fences must be either split rail or board on post, and the type of fence must be consistent throughout the development.

d. Off-street parking and vehicle or equipment storage areas, when necessary for nonresidential or non-farm uses, must be visually screened by fencing, buildings or vegetation; or a combination thereof, from the public roads and dwellings.

e. Areas for the outside storage of materials or supplies for non-agricultural commercial uses, except merchandise offered for sale by antique shops, must be visually screened by fencing, buildings or vegetation, or a combination thereof, from all public roads and dwellings.

f. Street lights, if permitted on interior streets, must be no higher than 14 feet and illuminated by no more than one one-hundred-watt sodium vapor lamp. Fluorescent and incandescent lights are not permitted. The light fixtures should be of a style that diffuses light.

4. Screening. Visual screening for privacy or to block distracting views should be natural in appearance and sensitive to grade relationships. Screens should not disrupt the harmony of the natural landscape or obstruct scenic views.

5. Signs.

a. Community signs are prohibited. Subdivisions may be identified by street signs.

b. A nonresidential principal use may be identified by:

(1) An enterprise sign, subject to Section 450; or

(2) An identification sign, subject to Section 450.

§ 1A08.7. Inconveniences arising from agricultural operations.

Any dwelling in an R.C.7 Zone may be subject to inconveniences or discomforts arising from agricultural operations, including noise, odors, fumes, dust, the operation of machinery or aircraft of any kind during any twenty-four-hour period, the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

SECTION 1A09
R.C.8 (Environmental Enhancement) Zone
[Bill No. 76-2004]

§ 1A09.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

2. While the resource preservation areas identified in the Master Plan are predominantly in the rural part of Baltimore County, there are certain areas of environmental significance that are located throughout Baltimore County that require protection.

3. An R.C. 8 Zone allows limited development, compatible with the rural and urban community, and at the same time protects environmental resources.

4. The County recognizes the importance of retaining certain areas for environmental protection.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C. 8 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of reservoirs, watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils, environmental resources in areas not currently protected by the R.C. 2 or the R.C. 7 Zone;

APP. 8

ARTICLE 4F

SOLAR FACILITIES

[Bill No. 37-2017[1]]

§ 4F-101. Purpose and definitions.

A. Purpose. Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources.

B. Definitions. As used in this article, the following terms have the meanings indicated:

COMMERCIAL USE — The transfer to the electrical power grid of energy produced by a solar facility for sale by energy suppliers to consumers.

SOLAR FACILITY — A facility that includes a series of one or more solar collector panels or solar energy systems that are placed in an area on a tract of land for the purpose of generating photovoltaic power for commercial use. The term includes a solar power plant or solar photovoltaic farm.

§ 4F-102. Location of solar facilities.

A. Subject to Paragraph B, a solar facility is permitted only by special exception in the R.C. 2, R.C. 3, R.C. 4, R.C. 5, R.C. 6, R.C. 7, R.C. 8, B.L., B.M., M.R., M.L.R., and M.H. Zones of the County.

B. The allocation of land for solar facilities in the County is limited to the following:

1. The maximum area permitted for a single solar facility is the amount of acreage that produces no more than two megawatts alternating current (AC) of electricity.

1. Editor's Note: This article was enacted as Article 4E. Because provisions regarding breweries were also enacted as Article 4E, this article was renumbered to avoid duplicate numbering and to maintain the organization of the Zoning Regulations.

2. No more than 10 solar facilities may be located in a councilmanic district.

3. The Director of Permits, Approvals and Inspections shall maintain a record of all permits issued for a solar facility in the County, including the location and councilmanic district for each such facility, and shall keep a current accounting of the number of facilities in each councilmanic district under this paragraph.

4. Upon reaching the threshold of 10 solar facilities in a councilmanic district, no additional permits shall be issued for a solar facility in that district unless an existing facility previously approved under this article has been removed pursuant to Section 4F-107.

§ 4F-103. Exception.

This article does not apply to the following solar facility installations:

A. A ground-mounted solar facility that is accessory to a principal residential or agricultural use (subject to Sections 400.1 and 400.2 of these regulations applicable to accessory buildings), or accessory to a principal commercial, industrial, or institutional use;

B. A rooftop solar facility;

C. A solar facility on federal, state or local government-owned or leased land that produces energy for government use; or

D. A solar facility located on the same property or tract as a farm that uses at least 66% of the energy generated by the facility for agricultural uses on the farm.

§ 4F-104. Requirements.

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.

2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.

3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visable from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

B. The requirements of Subparagraphs A.6, A.7, A.8 and A.10 shall apply to a solar facility located in a Business or Manufacturing Zone.

§ 4F-105. Required security.

A. An applicant for a building permit for a solar facility shall provide a security bond or equivalent financial security in the form and amount determined by the County Administrative Officer.

B. The Code Official may use the bond to procure the repair of any unsafe or hazardous conditions under Section 4F-106 or removal of a solar facility under Section 4F-107, in accordance with Section 3-6-402 of the County Code.

§ 4F-106. Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels, and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

§ 4F-107. Abandonment; removal.

A. A solar facility that has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the County by certified mail of the proposed date of discontinued operations and plans for removal.

B. Removal shall consist of the:

1. Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site;

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and

3. Stabilization or revegetation of the site as necessary to minimize erosion.

C. If the owner or operator fails to remove the facility within 150 days of abandonment, the County retains the right to enter and remove the facility. As a condition of special exception approval, the petitioner and landowner agree to allow entry to remove an abandoned facility.

D. The Code Official may issue a citation to the owner or operator for removal of a solar facility if:

1. The Code Official determines that the solar facility has not been in actual and continuous use for 12 consecutive months;

2. The owner or operator failed to correct an unsafe or hazardous condition or failed to maintain the solar facility under Section 4F-106 within the time prescribed in a correction notice issued by the Code Official; or

3. The owner or operator has failed to remove the solar facility in accordance with Paragraph C.

APP. 10

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

(4) Any other appeal from an order by the Zoning Commissioner 30.00

The above charges include cost of advertising and posting of property. However, if more than one sign is required, $3.00 additional for each additional sign will be required; and if the advertisement is excessively long, there will be an additional charge.

Section 502—SPECIAL EXCEPTIONS

(See Section 270—Schedule of Special Exceptions)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junk yards, are inherently so objectionable as to make extra regulations and controls advisable even in the M. H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the Board of Zoning Appeals.

In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1—Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alleys therein;
c. Create a potential hazard from fire, panic or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
f. Interfere with adequate light and air.

502.2—In granting any Special Exception, the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall impose such conditions, restrictions,

or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a Special Exception is granted, if required by the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, stipulating the conditions, restrictions, or regulations governing such Special Exception, the same to be recorded among the Land Records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such Special Exception. When so recorded, said agreement shall govern the exercise of the Special Exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

502.3—Any Special Exception which has not been utilized within a period of one year from date of issue, or any "Special Permit" which was granted before the date of adoption of these Regulations and which has not been utilized within a period of one year after such date, shall be void unless on written request from the petitioner, the Zoning Commissioner grants an extension, provided, however, that not more than one such extension, for a period of one year, may be granted.

Section 503—VIOLATIONS

Any violation of regulations and restrictions adopted pursuant to this Ordinance shall be a misdemeanor, punishable by a fine not to exceed One Hundred Dollars ($100.00) or by imprisonment not to exceed thirty (30) days, or both fine and imprisonment. Any person who shall violate such regulations and restrictions shall be deemed guilty of a separate offense for every day that such violation shall continue.

ARTICLE 6—INTERPRETATION AND VALIDITY

Section 600—INTERPRETATION

In their interpretation and application, these Regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, and general welfare. Where these Regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts, or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these Regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation, or private agreement than are required by these Regulations, such greater restrictions shall not be affected by these Regulations.

Section 601—VALIDITY

If any section, paragraph, subdivision, clause or provision of these Regulations shall be adjudged invalid, such adjudications shall apply only to the section, paragraph, subdivision, clause, or provisions so adjudged, and the remainder of the Regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these Regulations and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

COUNTY COMMISSIONERS OF BALTIMORE COUNTY

Michael J. Birmingham, President

Augustine J. Muller

Robert B. Hamill

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

§ 502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones. **[Bill Nos. 74-2000; 37-2017]**

§ 502.2. Protection of surrounding properties; agreement governing special exception.

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning

ARTICLE 6

INTERPRETATION AND VALIDITY

SECTION 600
Interpretation
[BCZR 1955]

§ 600.1. Interpretation of provisions.

In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations.

SECTION 601
Validity
[BCZR 1955]

§ 601.1. Validity of provisions.

If any section, paragraph, subdivision, clause or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provisions so adjudged, and the remainder of the regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these regulations and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

ments of Agriculture, Health and Mental Hygiene, and Natural Resources regarding enforcement procedures in cases of water pollution caused by agriculture (December 29, 1986) or subsequent memoranda.
(1988 Code, § 14-337) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-108. PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.
(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-109. APPROVAL OF PERMITS.

(a) *Compliance determination.* Before the Department of Permits, Approvals and Inspections may issue any grading permit or building permit or before the approval of any erosion and sediment control plan, the Director of Environmental Protection and Sustainability or the Director's designee shall determine that the proposed development is in compliance with the provisions of this title.

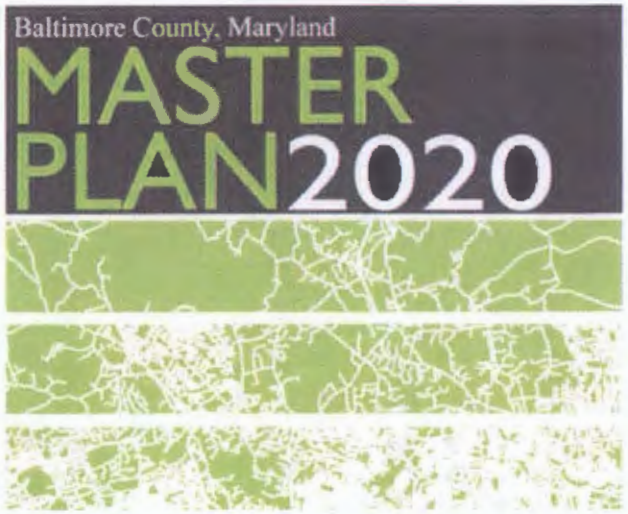
(b) *No permit.* A permit may not be issued without compliance with this title.
(1988 Code, § 14-339) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011; Bill No. 72-12, § 1, 1-9-2013)

§ 33-3-110. PLATS AND PROTECTIVE COVENANTS.

(a) *In general.*

(1) (i) Any plat submitted to the county in accordance with Article 32, Title 4 of the Code shall be accompanied by irrevocable offers of dedication to the county of all forest buffer areas in fee or easements, in a form approved by the Bureau of Land Acquisition and the County Attorney.

(ii) The plat shall be marked with a notation indicating the offers of dedication.



(3) Participate in multi-jurisdictional efforts to create uniform zoning regulations within the port area.

(4) Continue to participate in the Port Land Use Development Advisory council to help compile a multi- jurisdictional maritime master plan and to promote regional development of the port resource.

Emergency Preparedness/Sea Level Rise

Tropical storm Isabel had a huge effect on the shoreline of Baltimore County, raising the level of the Chesapeake Bay to eight feet above mean high tide, which caused flooding of properties and roadways in much of the eastern Baltimore County waterfront. Resilience to natural hazards, such as storms and storm surges, sea-level rise and shoreline erosion is inextricably linked to the siting and design of development, and to the built and green infrastructure that supports it.

Policy: Public awareness and planning are crucial for safety and minimizing stress during weather events that affect the waterfront.

Actions:

(1) Develop an educational plan for updates on emergency preparedness, including communications, evacuation, traffic, area closures, visitor controls, damage assessment, clean up etc.

(2) Educate the public on the value of shoreline preservation in providing protection against storm damage.

RURAL COMMUNITIES

The rural portion of the County provides high quality drinking water, agricultural products, timber, scenic open space, wildlife habitat, fisheries, recreation, water sports and cultural and historic resources. New development changes the character of the countryside and may have detrimental impacts on these resources. Baltimore County's *Rural Land Management Areas* protect resources and rural economies while permitting limited development. Since 1989, rural resources have been managed by growth policies for each Land Management Area. These areas include: resource preservation, agricultural priority preservation, rural residential areas, and rural commercial centers (Map 9).

Resource Preservation Areas

The Resource Preservation Areas are designated to preserve and protect the historic, cultural, recreational and environmental resources in the rural areas, while allowing a limited amount of residential development. Designated resource preservation areas include Patapsco/Granite, Soldiers Delight, Loch Raven and Prettyboy and Liberty Reservoirs, Gunpowder, and the Chesapeake Bay.

Policy: Preserve valuable cultural, historic, recreational, and environmental resources by limiting development and acquiring available land for public benefit.

Actions:

(1) Recommend that the County Council use the following guidelines in evaluating rezoning requests:

- Carefully evaluate any proposed zoning changes that would permit additional residential density or increased commercial development in the R.C.6, 7, and 8 zones.
- All zoning in the Chesapeake Bay Critical Area (CBCA) should ensure the most appropriate land use to minimize development impacts and preserve quality of life in surrounding communities, and meet existing CBCA designations.
- Comply with the County's commitments in the regional Reservoir Watershed Management Agreement and Action Strategy to

not increase development densities in the reservoir watersheds.

(2) Complete detailed studies to determine the existing and potential residential densities in resource preservation areas.

(3) Consider limiting residential densities to one dwelling unit per 25-50 acres. Consider limiting density calculation to net density for resource zones.

(4) Delineate and coordinate the public use of resource preservation areas for recreational benefits.

(5) Protect and foster forests and stream systems through conservation easements that prevent the continued fragmentation of these critical resources.

(6) Continue to support State and County programs that encourage sustainable forest management and initiatives to retain forestlands for multiple ecological and economic benefits.

Agricultural Priority Preservation Areas

(Note: Policies and Actions to foster a sustainable agricultural industry may be found in the Economic Vitality section. Preservation of the agricultural land is discussed in the Land Resources section.)

While the County is a national leader for the use of restrictive agricultural zoning and planning for agriculture, there are threats to its continued success. Despite the diligent efforts to maintain and expand the agricultural zoning, incremental development continues to threaten the protection of resources and the viability of the agricultural industry. Zoning and development controls need to be reviewed and strengthened to assure that the goals of the Master Plan and the Baltimore County Zoning Regulations are being achieved.

Policy: Manage land development to limit conflicts with the agricultural industry to safeguard lands preserved through easements.

Actions:

(1) Continue to enforce local policies, ordinances, regulations and procedures that stabilize the agricultural and forest land base.

(2) Review and, if necessary, revise zoning and development standards to promote conditions suitable for production, processing and sale of agricultural products.

(3) Include prime and productive soil standards and a maximum lot size to ensure that large parcels are not split to create large residential lots.

(4) Evaluate increasing the minimum acreage for subdivisions in the RC 2 zone to reduce environmental impacts and development pressure on agricultural resources.

(5) Evaluate regulations to eliminate resubdivision of lots created between 1975 and 1979 in the RC 2 zone.

(6) Require that placement of State agricultural or conservation easements shall not result in an increase in density over that permitted without the easements.

(7) Monitor development within the APPA's to ensure that residential and non-agricultural uses protect the resources and do not overwhelm the operation of agricultural businesses.

(8) In general, zoning changes made in the agricultural priority preservation areas should protect the County's agricultural industry.

(9) Consider adding criteria to the Baltimore County Zoning Regulations (BCZR) to require the evaluation of proposed development impacts on agricultural uses located on prime and productive soils.

(10) Assure that development will have limited impact on active agricultural operations by reviewing, and, if necessary, revising setback requirements.

(11) Review uses permitted by right and special exception in the RC 2 zone to determine whether any uses that are inconsistent with the purpose of the zone should be removed and consider additional performance standards, which will mitigate the impact of the proposed uses on the adjacent farm or easement property.

(12) Enact "Right to Farm" legislation and institute a nuisance mediation board for farm operations.

(13) Consider whether certain institutional uses now permitted in the RC 2, RC 7 and RC 8 zones should be eliminated. Establish performance standards for institutions that are found to not have significant negative impacts if limited by the standards.

Rural Residential Areas

The rural residential areas are a mix of single-family residential development and woodlands, farm fields, stream valleys and areas of significant historic and cultural value. They have accommodated the bulk of new residential development in the rural areas. Associated with rural residential development, there may be institutional uses, such as religious establishments, which are preferred to be located in proximity to residences, rather than in Resource Preservation or Agricultural Priority Preservation Areas. Included in the rural residential land management areas are Parkton, Chestnut Ridge, Hereford, Jacksonville, Kingsville, and Patapsco/ Granite.

The 1979 growth management program designated rural residential areas as suitable for development. The 1989 Master Plan recognized some of the issues created by this choice. The 2000 Master Plan recommended limiting rural residential development. The majority of the land within these areas is zoned RC 5.

The intensity of this development is a suburban residential pattern with densities equal to one dwelling unit per 1-1/2 to 2 acres. Because this rural-suburban residential development is dependent upon well and septic services, the development pattern takes on a haphazard appearance and consumes large quantities of land. This type of development comes at a tremendous cost in terms of traffic, increased infrastructure demands, disruption of the rural character, and adverse impacts on functional values of rural land and water resources.

Policy: Limit suburban development in rural areas.

Actions:

(1) Conduct detailed land use studies to

determine: 1) buildable areas, 2) agricultural areas, and 3) environmentally sensitive areas.

(2) Recommend that the County Council consider rezoning requests for additional office, business or industrial zoning in rural residential areas, in conjunction with the recommendations of any approved plan for the area.

(3) Adopt County standards appropriate for rural residential areas that include open space, architecture, site layout, lighting, bicycles, and pedestrians.

(4) Adapt cluster principles to maintain adjacent forests and open space, which help retain rural character.

(5) Provide effective buffers between development projects to maintain rural character.

(6) Preserve and connect open spaces through cluster development and open space acquisition.

Rural Commercial Centers

Only two designated rural commercial centers will continue to provide local services and facilities for the surrounding rural area. These centers are Hereford and Jacksonville.

The two rural commercial centers contain a certain mass of retail and office service uses that should not be spread or repeated throughout the rural areas. These areas will continue to be the only locations within the rural area where such services will be concentrated. The size, scale, and quality of development have been a continuing issue in these centers. In addition, the ultimate build out limits of these areas needs to be considered.

Policy: Manage growth in rural commercial centers

Actions:

(1) Manage development through specific rural commercial center master plans that are regularly updated. The master planning process should determine the ultimate boundaries and build out of these areas

(2) Develop overlay districts or specific zoning classifications with design performance criteria unique to each of the centers so issues of use, size, scale and design are addressed. Each center has unique characteristics that should be enhanced by new development.

(3) Adopt development performance guidelines and standards to ensure design quality, scale of uses, natural resource protection, buffers to agricultural uses, adequate open space close to homes, and pedestrian accessibility.

(4) Provide infrastructure support such as stormwater management.

(5) Provide adequate buffers and transitions between commercial projects and differing adjacent land uses to maintain rural character.

HISTORIC AND CULTURAL RESOURCES

Baltimore County has a wealth of cultural and historic resources. Historic communities are generally well planned with diverse architectural styles that are visually interesting. They are built at a human scale and are almost always walkable. Historic resources link us to our past – they provide tangible evidence

of the County's cultural, social and architectural past, and are a testimony to the women and men who came before us to shape our destiny.

Baltimore County has two historic designations that protect its resources to the highest degree possible: the Landmarks List and the County Historic District. Structures with either designation are protected from demolition and all exterior alterations are subject to Landmarks Preservation Commission (LPC) approval.

The Landmarks List is comprised of structures that contribute significantly to Baltimore County's history because they are associated with a person, group, event of historic importance; they are a distinctive example of a particular architectural style and/or they are a good example of the work of a master builder or noted architect. Other criteria spotlight the resource's artistic merit, or whether it contains and may be likely to yield information or materials important to prehistory or history.

A Baltimore County Historic District is more difficult to establish because proprietors owning at least 75 percent of the land within the designated area must agree to form an historic district. New developments are subject to LPC approval, which ensures compatible infill development.

Two other historic designations afford limited protection. The 1966 Historic Preservation Act created the National Register of Historic Places (NRHP). The NRHP is a record that includes National Register districts as well as individually listed properties. Both categories require a thorough review during the planning phase of federally funded projects. A National Register designation provides no protection against demolition or inappropriate exterior alterations, nor do they provide any control over the compatibility of infill development. On the other hand, contributing structures within a National Register districts, as well as individual properties listed on the NRHP, are eligible for the County Historic Property Tax Credit, which at least assures the retention of the integrity of properties participating in the tax credit program.

Policy: Promote historic preservation through improved education.

Awareness is growing about sustainability and the importance of living in a manner that is environmentally responsible. Redevelopment of an existing building is the ultimate form of "green" development, as opposed to demolition.

Actions:

(1) Provide information about preservation issues so the public can make informed decisions about historic resources.

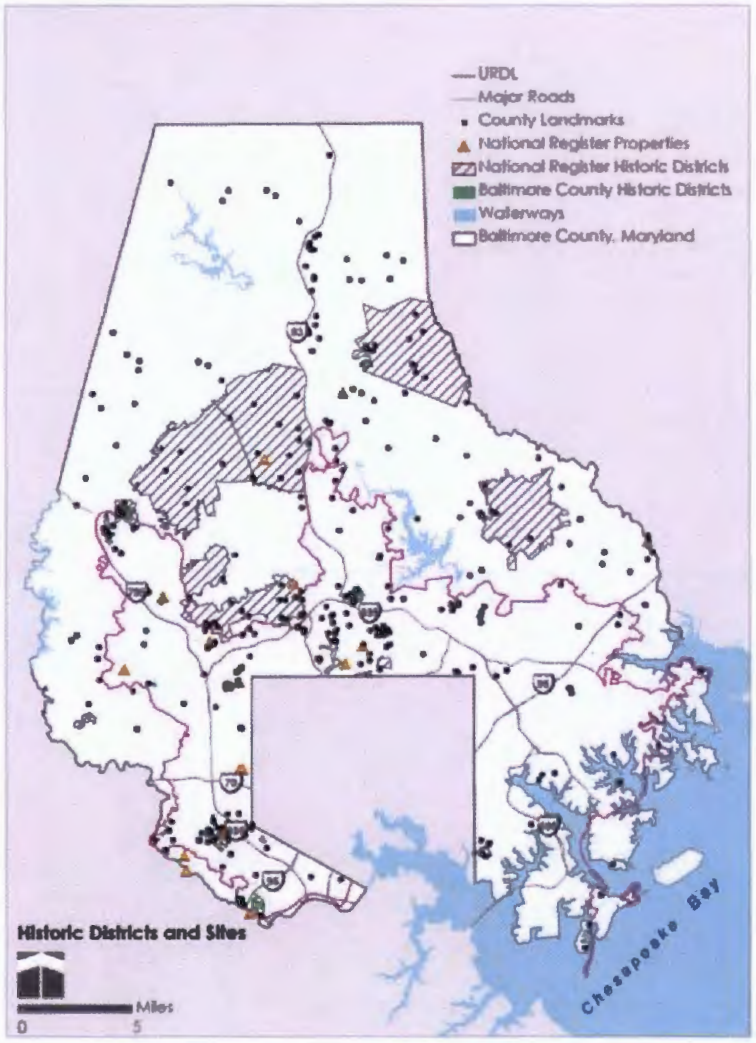
(2) Develop programs to educate the public about the economic, environmental, and cultural benefits of historic preservation.

(3) Make pertinent information available on the Baltimore County web site along with links to additional sources and studies.

Policy: Preserve historic structures and their settings.

The preservation of historic resources was an issue raised in the 1979, 1989 and 2010 Master Plans. Considerable progress has been made in response to the actions recommended in these documents. Amendments to the County's Preservation Law clarified vague regulations. The County enacted a very generous and popular historic property rehabilitation tax credit program to make the rehabilitation of historic buildings more feasible. Numerous properties were added to the Final

Map 25: Historic Districts and Sites



Landmarks List, and several new National Register Districts were created. Yet, while Baltimore County takes pride in these accomplishments, the need for preservation has lost none of its relevance today.

The property tax credit program for the rehabilitation of historic properties has been a great success for residential properties and for comprehensive commercial rehabilitation work. But the smaller, more routine maintenance projects for income-producing properties have not benefited. As a consequence, there is little incentive for commercial property owners to maintain their properties. Under the current law, residential property owners receive a 20 percent property tax credit on eligible rehabilitation costs. Income-producing properties receive a 10 year freeze on the property tax increase generated by the rehabilitation, i.e. the work has to be substantial to result in the reassessment of the property's value. Small jobs, such as painting the historic façade of a small shop, putting on a new roof, or installing a new air-conditioning unit does not result in a reassessment and therefore, is not eligible to receive a tax credit. Yet it is precisely these types of routine maintenance projects that are needed to keep historic commercial buildings in good repair. The National Register District of Reisterstown is probably the best example of a designated historic area that would benefit greatly if the historic rehabilitation tax credit program for income-producing properties would be widened to provide a tax credit for improvements under $ 50,000. Additionally, there are numerous income-producing structures on the Landmarks List that would benefit from the program. The optimal way to encourage historic preservation is when property owners agree to preserve and maintain their historic resources out of their own volition.

Actions:

(1) Continue to utilize nomination to the landmarks list as a means to safeguard historic buildings.

(2) Encourage and facilitate use of the County's historic property rehabilitation tax credit program.

Policy: Preserve and protect cultural resources.

Many older communities have structures that are valued by local communities, but do not meet the criteria for landmarks listing for one reason or another. Such cultural resources are frequently found in the County's former village centers, in older African-American communities and on commercial routes along old toll roads. A cultural resource may be an old school house, a former movie theater, a lodge, a church, or a store where people used to gather. It also may be an entire community that is in danger of having its roots forgotten.

Churches and schools in the County's older communities are other cultural resources that are frequently endangered. Churches are often too small to meet contemporary needs and/or may have dwindling congregations that are no longer able to support the church. Likewise, one or two room country schools, or schools that were a product of segregation have ceased operations. They often have little architectural interest but are of importance to their respective communities. Alternative uses and grant opportunities should be explored to keep these resources viable.

The 1979 Master plan recognized 39 Historic African-American Communities as valuable cultural resources. The 1989 Master Plan began to address the need for improving basic services and infrastructure, rehabilitation of historic buildings, and the importance of improving the quality of some housing in these communities. While much has been done over the

last 20 years to enhance the quality of life in these communities, some are still in need of assistance. This Master Plan builds upon previous efforts to acknowledge that Baltimore County's diversity is greatly enriched by its historically African-American communities, and recognizes the important of continuing to protect and enhance these valuable cultural resources.

Actions:

(1) Incorporate a list of cultural resources in community plans and explore the best methods to preserve them.

(2) Continue to work cooperatively with the Department of Public Works, the Office of Community Conservation and the communities to support improvements to preserve and enhance Historic African-American Communities.

Policy: Increase awareness about the importance of archeological resources.

Baltimore County needs to strengthen the preservation of archeological resources, as much of the County's history is buried in the ground. Greater attention should be paid to archeological resources in cases where there has been little previous disturbance associated with redevelopment or road projects.

Action:

(1) Educate the public and other agencies about the importance of archeological resources.

Policy: Coordinate historic preservation with the County's rural strategy.

In rural agricultural areas, the preservation of historic resources presents a unique opportunity. Historic structures in the countryside tend to derive part of their historic significance from their bucolic setting, which is frequently tied to its economic function. Typically, the historic resource is composed of the primary structure along with a cluster of functionally and visually related outbuildings, such as barns, springhouses, and stables, set in a pastoral landscape of fields, streams and woodlands.

Rural areas that have retained their historic character, continue to be among the County's most desirable places of residence. Historic structures tend to be more compatible in design, scale and massing with the rural landscape than modern housing. However, sustaining the bucolic beauty of the rural landscape is challenging because maintaining a historic home can be expensive, and many property owners prefer newer and larger homes. Generally, rural subdivisions change the character by flatly grading the landscape with larger homes that are visible for miles. Even a single inappropriately designed or poorly sited new dwelling can dramatically alter the rural character.

Historic preservation goals coincide with agricultural preservation goals, environmental protection objectives and scenic preservation aims of the Master Plan in several ways. Historic properties tend to be smaller and thus create less impervious surface. Historic preservationists support the retention of a property's traditional agricultural use, thereby preserving scenic resources. Finally, saving and restoring structures, instead of replacing them with new structures, is in itself an act of sustainability that preserves historic resources.

Actions:

(1) Encourage owners of rural historic resources to place their property on the Landmarks List – particularly properties that are important to the agricultural history of Baltimore County and which are located along scenic routes.

(2) Continue to protect designated "view sheds" of historic resources , either by limiting new development within view of the historic resource, or by buffering new development from the view of such resources.

SCENIC RESOURCES

The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents. Scenic resources consist of scenic corridors, scenic views, and gateways. In 1991, the County adopted a set of development guidelines that have raised awareness and recommended development alternatives for protecting scenic resources.

Scenic Corridors and Views

Most of the scenic corridors and views are located in rural areas. The scenic view map provides the beginning of a list of the views for establishing a comprehensive inventory in the near future. Following the adoption of the 1989 Master Plan, the County produced a series of scenic route maps for each council district, which combined the significant visual and historical elements into self-guided scenic tours. The protection of the Interstate 83 (I-83) corridor in northern Baltimore County is a showcase of the inter-governmental efforts on scenic views preservation.

The endeavor for preserving scenic corridors and views ought to emphasize lands zoned for resource protection including RC 2, RC 4, and RC 7. The County will continue to maintain coordination with the State Highway Administration (SHA) and seek available state and federal funds for protection of scenic corridors and views.

Policy: Preserve scenic corridors and views through proper zoning and coordination with federal and state governments.

Actions:

(1) Coordinate scenic resource management practices with the national and state Scenic Byways Programs.

(2) Continue to preserve properties within the I-83 scenic view shed through easement purchases, as funds are available and through RC4 clustering.

(3) Evaluate proposed improvements to state and county roads and bridges regarding their impact on scenic resources in compliance with the adopted *Rural Roads Standards*. Where public safety allows, the narrow and/or winding character of roads is part of the scenic experience and ought to be preserved.

(4) Assess proposed development impacts on scenic resources.

(5) Clarify language regarding scenic corridors and views protection and make it consistent amongst the Master Plan, Comprehensive Manual of Development Policies, Baltimore County Zoning Regulations, Baltimore County Code, and SHA Context Sensitive Solutions for work on scenic byways.

(6) Establish criteria for identifying significant views and geocode them on maps.

(7) Apply a systematic methodology for evaluation of scenic routes and preservation techniques.

(8) Update scenic resources map in accordance

The County has emphasized its efforts on preserving the scenic view shed of I-83 between the Thornton Mill overpass and the Pennsylvania line, which runs through one of the most scenic piedmont areas in the County. Farms, forests, streams and rural homesteads feature both sides of I-83 in northern county. Many properties adjacent to I-83 have been preserved either as parkland or through various easement programs, including donations and purchase of development rights. There has been significant progress in this effort: between Belfast Road and the Gunpowder River, more than half of the scenic corridor has been protected.

Map 26: Scenic Routes

with the most recently adopted state scenic byways.

(9) For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly.

Charles Street National Scenic Byway

Charles Street is a main thoroughfare stretching from downtown in the City of Baltimore to Towson in Baltimore County. The County and the City of Baltimore collaborated with interested citizens, civic groups, and state agencies, developing a byway management plan for Charles Street. The purpose of this plan was to prepare for the nomination of Charles Street as a National Scenic Byway. In autumn 2009, the U.S. Secretary of Transportation Ray LaHood designated Charles Street a National Scenic Byway, together with 41 other designations in the nation to the America's Byways® collection. This designation allows the City of Baltimore and Baltimore County to apply for grants for preserving and enhancing scenic characteristics of Charles Street.

Policy: Preserve and enhance the Charles Street National Scenic Byway characteristics.

Actions:

(1) Apply for grants to implement actions outlined in the Baltimore County portion of the Charles Street Byway Management Plan.

(2) Collaborate with the Baltimore County Office of Tourism to prioritize activities in compliance with the Byway Management Plan

County Gateway Designations

Gateways are important elements of the County's visual fabric contributing to the community identity and the sense of transition between urban and rural development. Gateways can be located within either urban or rural areas, and mostly at the boundary between urban and rural areas. The specific design treatment of development for these gateways may vary, depending upon the location and structural type of gateways. In addition, the County worked with

The National Scenic Byways Program is part of the U.S. Department of Transportation, Federal Highway Administration. The program is a grass-roots collaborative effort established to help recognize, preserve and enhance selected roads throughout the United States. Since 1992, the National Scenic Byways Program has funded 2,832 projects for state and nationally designated byway routes in 50 states, Puerto Rico and the District of Columbia. The U.S. Secretary of Transportation recognizes certain roads as All-American Roads or National Scenic Byways based on one or more archeological, cultural, historic, natural, recreational and scenic qualities.

the State Highways Administration (SHA) to develop bridge designs along the 695 Beltway that strengthen the sense of arrival into the adjacent communities and promote the community uniqueness.

Policy: Enhance gateway designations through evaluation, design, and construction.

Actions:

(1) Evaluate existing gateways and identify additional gateways.

(2) Formulate appropriate design guidelines as part of community plans and streetscape projects.

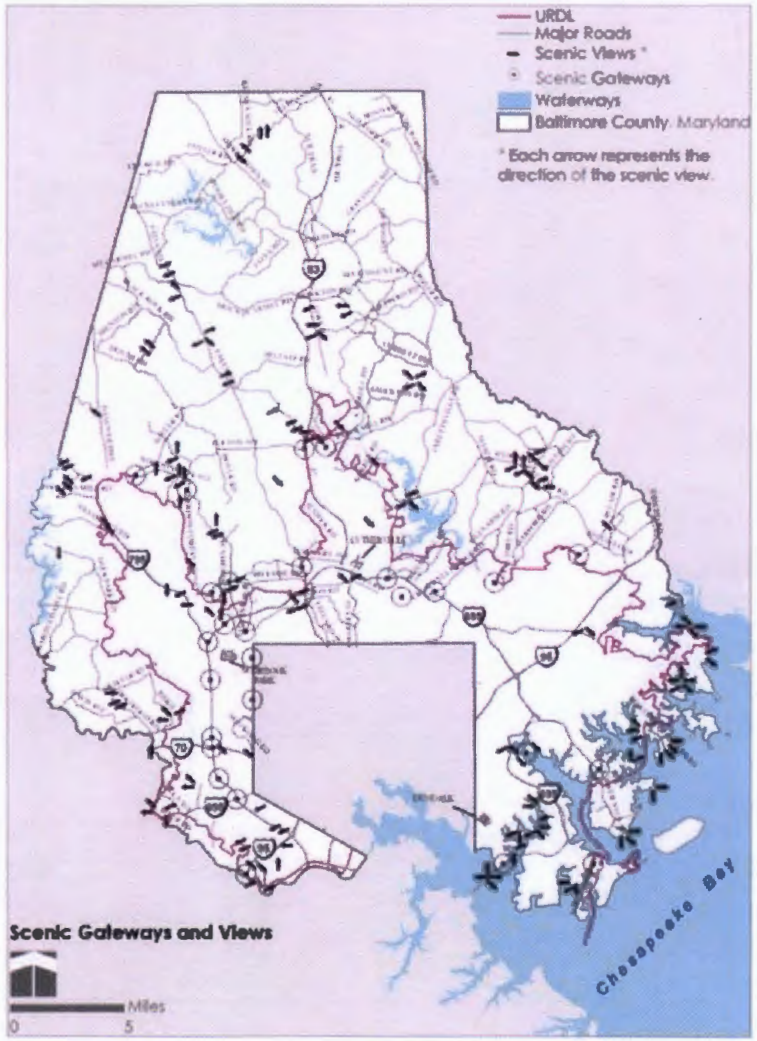
(3) Examine the design aspects of proposed development as part of the development review process.

(4) Develop general guidelines for gateways in the Comprehensive Manual of Development Policies.

(5) Continue to work with SHA to develop bridge designs at gateway locations.

There are numerous gateways in Baltimore County. Prime examples include:
(1) The entry to the Cromwell Valley from Towson north of the I-695 Beltway; (2) Crossing the bridge northbound on I-83 passing Shawan Road; (3) The bridge designs over the I-695 Beltway entering Towson at York and Dulaney Valley Roads, Reisterstown at Reisterstown Road, Catonsville at Frederick Road, and on Charles Street; (4) The community logo, landscaping, and old railroad bridge abutment in Towson; and (5) The continuous streetscape along Eastern Avenue, from Route 702 to the bridge at Middle River Road leading to the waterfront communities.

Map 27: Scenic Gateways and Views



SUSTAINABLE ENVIRONMENT

Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future.

The goal of a sustainable environment supports Baltimore County's vision for community vibrancy and economic vitality. Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future. Natural resources and air quality are essential to economic growth, environmental protection, energy conservation, and quality of life. Natural resources, especially forests and wetlands that comprise the green infrastructure, provide valuable ecosystem services including cleaning air and water. Sustainability also assures habitat protection for terrestrial and aquatic wildlife and genetic diversity.

Baltimore County's environmental mission is to protect and perpetuate the natural resources of the County and to protect environmental health. Over the past 20 years, the County's Department of Environmental Protection and Resource Management (DEPRM) has established and implemented programs to protect critical natural resources, restore ecosystem functions, and educate citizens about good stewardship. While the County's environmental programs are nationally recognized, the pollution from sprawl development and unmanaged agricultural activities, as well as the continued loss of forests, requires significant changes to land use practices under new federal and State programs to restore the health of the Chesapeake Bay. *Master Plan 2020* builds upon past successes and recommends new policies to address emerging environmental challenges such as climate change.

Overall, both the biggest challenge and the most important reason for the County to serve as a catalyst for good resource management is the fact that 85% of the land area and resources in Baltimore County, depended upon and enjoyed by all, are privately owned. DEPRM uses an integrated watershed management framework to accomplish its mission, including land preservation, resource protection/ regulation, restoration, facility maintenance, monitoring, planning and research, and citizen education and participation.

Nature-Friendly Community

"Baltimore County, Maryland, has one of the most ambitious and successful land management and environmental protection programs in the country. An impressive combination of tools and strategies -- land use regulations, land acquisition, and urban growth boundary, education, partnerships with private land trusts, and infill development initiatives -- has been employed to preserve thousands of acres throughout the county and protect critical wildlife habitat....Baltimore County is in many ways a model for local governments everywhere when it comes to protecting nature and biodiversity." (Source: Duerksen and Snyder, 2003. Nature-Friendly Communities: Habitat Protection and Land Use Planning, p.152).

Climate Change

Citizens in Baltimore County and elsewhere are debating the implications of a changing climate as it relates to human activities. Of particular interest is whether human-produced greenhouse gases are causing long-term global warming. Baltimore County, as part of the global community, should reduce and mitigate negative impacts of human activities on the environment.

County government operations, private businesses, and the daily routines of citizens have great potential to increase atmospheric pollution through release of harmful gases and thermal pollution. One concern about a changing climate is the relative increase in sea level. While the rate and extent of sea level rise are under continuing study, it is estimated that the mean high tide in the coastal areas of the County may increase from three to five feet in the next century. Overall, the retention and planting of forests and trees is considered the single most effective measure for mitigating the negative impact of climate change.

Citizens can make adaptations to actions that might contribute to climate change, and mitigate impacts that are unavoidable or more difficult to prevent. This represents also good stewardship of limited energy and financial resources. Human activities that potentially affect the degree of climate change are mostly attributed to the production, use, and conservation of energy. Most of current energy in Maryland derives from coal and other fossil fuels that increase harmful atmospheric gases. Walking or riding a bike instead of driving, turning off lights and other electrical appliances when not in use, changing light bulbs from fluorescents to LED's, and similar actions are beneficial to the environmental health and natural resources. Energy conservation and other climate change adaptation and mitigation actions will lead to significant changes in current economic structure and community function. Over the long term, they will enhance sustainability.

Policy: Continue to adapt to, and mitigate impacts of climate change on the environment.

Actions:

(1) Implement the recommendations of the County's Sustainability Network for County operations, energy conservation, protection of natural resources, and communities in order to reduce emissions of greenhouse gases and energy consumption.

(2) Develop appropriate indicators for sustainability actions and commitments in order to summarize sustainability conditions and trends and to provide a basis for evaluation of progress.

Environmental Justice

The development of environmental justice in the United States dates to almost three decades ago when communities began to form organized protests against traditional planning efforts to site polluting factories and toxic waste dumps in less affluent and often minority neighborhoods. Local victories empowered local protesters to coalesce into a national movement. In 1994, President Clinton signed an Executive Order focusing the federal government effort on protecting or improving the quality of the environment and human health conditions for all communities.

The federal government definition of environmental justice is applicable to all levels of state and local government planning. Environmental justice calls for the fair treatment of all minority, indigenous, and low-income populations to ensure that no individual racial, ethnic, or socioeconomic group will bear an unequal burden due to the negative effects of pollution or other environmental hazards. Environmental justice also promotes equal access to public information and equal rights to participate in the development, implementation, and enforcement of environmental laws.

The Phase I Action Plan of the Baltimore Watershed Agreement between Baltimore County and Baltimore City specifically calls for consideration of environmental justice issues in the course of watershed management planning.

Policy: Incorporate environmental justice considerations when developing Small Watershed Action Plans to address water quality protection and restoration.

Actions:

(1) Review environmental justice indicators developed nationwide and develop a set of indicators for the watershed management planning process.

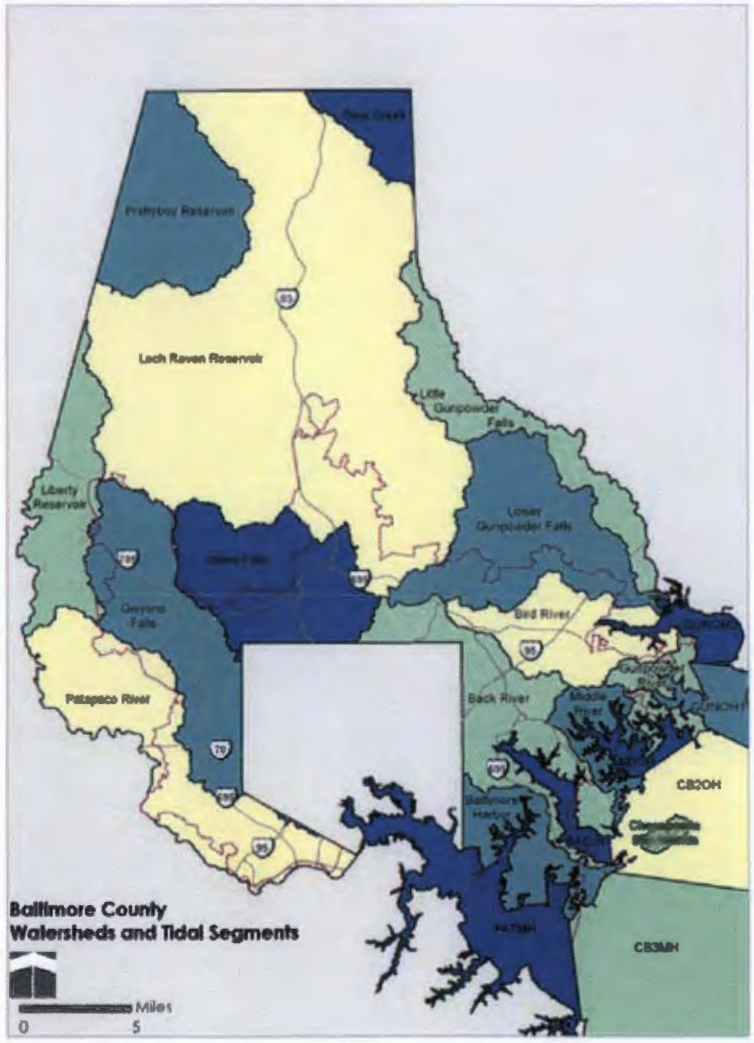
(2) Include the environmental justice indicators in the Small Watershed Action Plans for prioritizing water quality improvement projects.

WATER RESOURCES

The water resources of Baltimore County include over 2,100 miles of streams, groundwater resources, three drinking water reservoirs, non-tidal and tidal wetlands, and tidal waters. All of these water resources are interconnected through the hydrologic cycle driven by precipitation in the form of rain and snow. These water resources are also interconnected with surrounding jurisdictions and through tidal exchange with the Chesapeake Bay.

Precipitation falling on the land drains to streams, either as surface flow or through groundwater flow. The land surface that drains to a particular stream is called a watershed or a basin. The Chesapeake Bay is a large basin with a total drainage area in excess of 64,000 square miles.

Map 36: Watersheds and Tidal Segments



Water Use Classification of County Waterways

In order to protect multiple water uses, the State of Maryland has designated four Use Classes and associated water quality standards. If the water is a source for a public drinking water supply, a "P" follows the Use Class.

The four Use Classes (and subcategories for Use II) are:
Use I
Water contact recreation and protection of non-tidal warm water aquatic life.
Use II
Support of estuarine and marine aquatic life and shell fish harvesting (not all subcategories apply to each tidal water segment); Shellfish harvesting; Seasonal migratory fish spawning and nursery (Chesapeake Bay only); Seasonal shallow-water submerged aquatic vegetation (Chesapeake Bay only); Open-water fish and shellfish (Chesapeake Bay only); Seasonal deep-water fish and shellfish (Chesapeake Bay only); Seasonal deep-channel refuge use (Chesapeake Bay only)
Use III
Non-tidal cold water – usually considered natural trout waters
Use IV
Recreational trout waters – waters that are stocked with trout

These waters support aquatic communities and provide for human uses such as agricultural irrigation and livestock watering, drinking water, industrial uses, fishing and boating, and receiving areas for treated wastewater. Having adequate clean water to support all of these uses is crucial to continued ecological and human health now and for the future, and for providing for the continued quality of life for citizens and the economic vitality of Baltimore County.

Waters in Baltimore County are of high quality in general. Some water resources are degraded by improper human activities. The waters that do not meet or exceed water quality standards are placed on an impaired waters list (Sec. 303(d) of the federal Clean Water Act) by the State of Maryland. These listings are based on 8-digit watersheds and tidal water segments, with each impairing substance listed separately. Regulations and policies require protection of high quality water resources and improvement of degraded water resources. High quality waters are protected through the permitting requirements associated with Tier II, defined as waters with a better than the average aquatic biological community. Tier II waters meet the anti-degradation requirements of the federal Clean Water Act. For each impairing

substance in any watershed or tidal segment, the State must determine how much of the substance must be reduced through modeling. This is referred to as a Total Maximum Daily Load (TMDL), or the maximum amount of a particular pollutant in a waterway that can be naturally assimilated while maintaining water quality standards

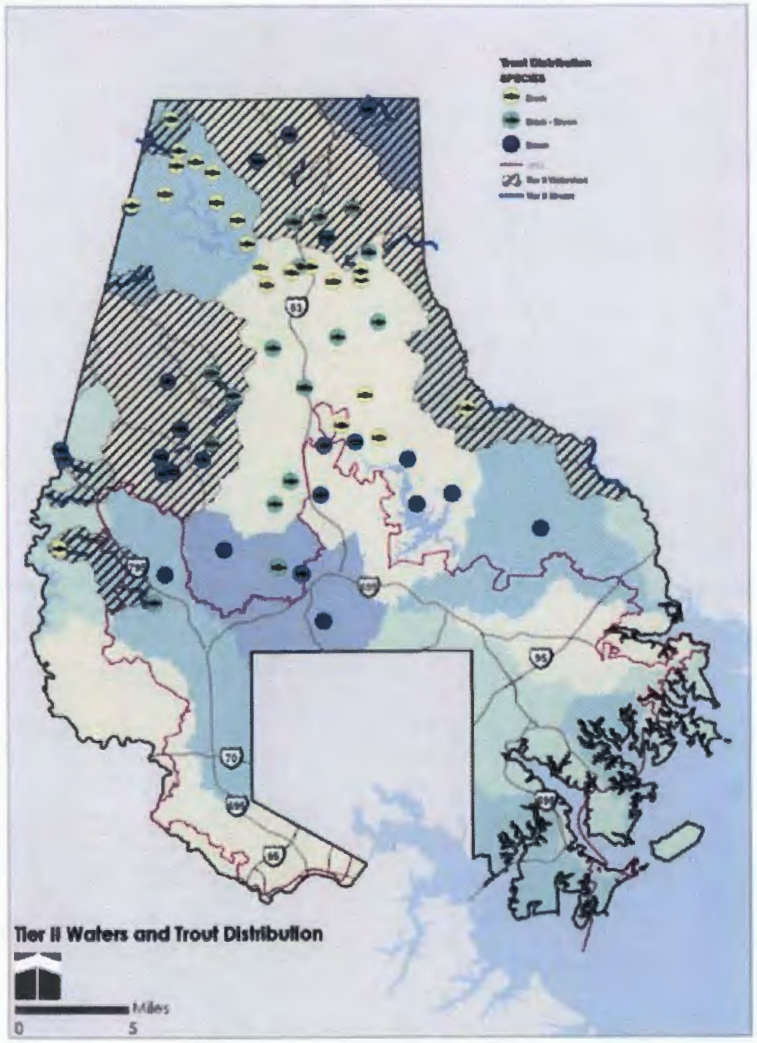
The principal regulatory requirement to address pollution impacts in urban areas is to implement the National Pollutant Discharge Elimination System - Municipal Separate Storm Sewer System (NPDES-MS4) permit. This permit requires the County to control the water quality that is discharged from its storm drain system, by implementing stormwater management, sediment control, education, monitoring, watershed management planning, and restoration programs. These programs are intended to control pollution from new development and restore

Tier II Waters and Trout

Tier II waters are identified and rated on the basis of aquatic community sampling by Maryland Department of Natural Resources. When both the fish and the bottom-dwelling invertebrate community have a rating of "good" the reach of stream represented by the sampling is identified as Tier II waters. Baltimore County has 33 miles of Tier II stream segments at 20 different sites, mainly in rural areas. The drainage area to these sites represents 23% of the County. These stream segments must be protected from degradation.

Trout are also indicative of higher quality water. Baltimore County's streams support a fairly good population of both brook and brown trout. Over 61 sites located on various streams have trout present. The trout are more wide spread than the Tier II waters, indicating that additional Baltimore County streams are still supporting aquatic natural resources.

Map 37: Tier II Waters and Trout Distribution



Total Maximum Daily Load (TMDL)

Baltimore County watersheds and tidal segments are impaired by a variety of substances, including nutrients, sediment, bacteria, trash, and various toxic substances, as well as biological impairments. The amount of each pollutant that needs to be reduced from each source in order to meet water quality standards is then determined. The model also indicates a cap for each pollutant based on the assimilative capacity of the water body. Any increase in a load from a new source must be offset to maintain the water quality standards. For each TMDL, the County is required to prepare an Implementation Plan with measurable implementation milestones and a projected timeline for meeting water quality standards.

The Chesapeake Bay is impaired by nitrogen, phosphorus, and sediment. The U.S. Environmental Protection Agency is developing TMDLs for nitrogen, phosphorus, and sediment to improve Bay water quality.

degradation caused by development that occurred prior to the current environmental protection requirements. Approximately 80% of the urban land was developed prior to environmental controls. Future permits will require preparing Implementation Plans for approved TMDLs and meeting water quality improvement and restoration milestones.

The Water Resources Element is an analysis of the adequacy of drinking water and wastewater treatment to support future population growth, and the ability to maintain and improve water quality within the County's receiving waters. The WRE analysis indicates that redevelopment will result in the greatest protection of high quality aquatic resources and reduction of pollution. The WRE is adopted as part of *Master Plan 2020.*

Watersheds

Baltimore County contains 14 major watersheds, which are identified on the basis of local stream systems and drinking water reservoirs. Seven of them are part of the Gunpowder River basin, six are in the Patapsco River basin, and one flows to the Susquehanna River basin. Watersheds are a useful framework for resource management. Individual resource elements including streams and forests are linked through ecosystem processes that operate to maintain the stability of the system.

Land use activities within watersheds affect the water quality of streams and downstream water bodies. Clearing forests increases stormwater runoff to streams, causing an increase in the amount of sediments, nutrients, and toxins and the erosion of stream channels. Changes in sediment and nutrient levels may degrade stream habitat quality. Land preservation programs that place environmentally sensitive land in permanent easements help protect watersheds and their interrelated systems.

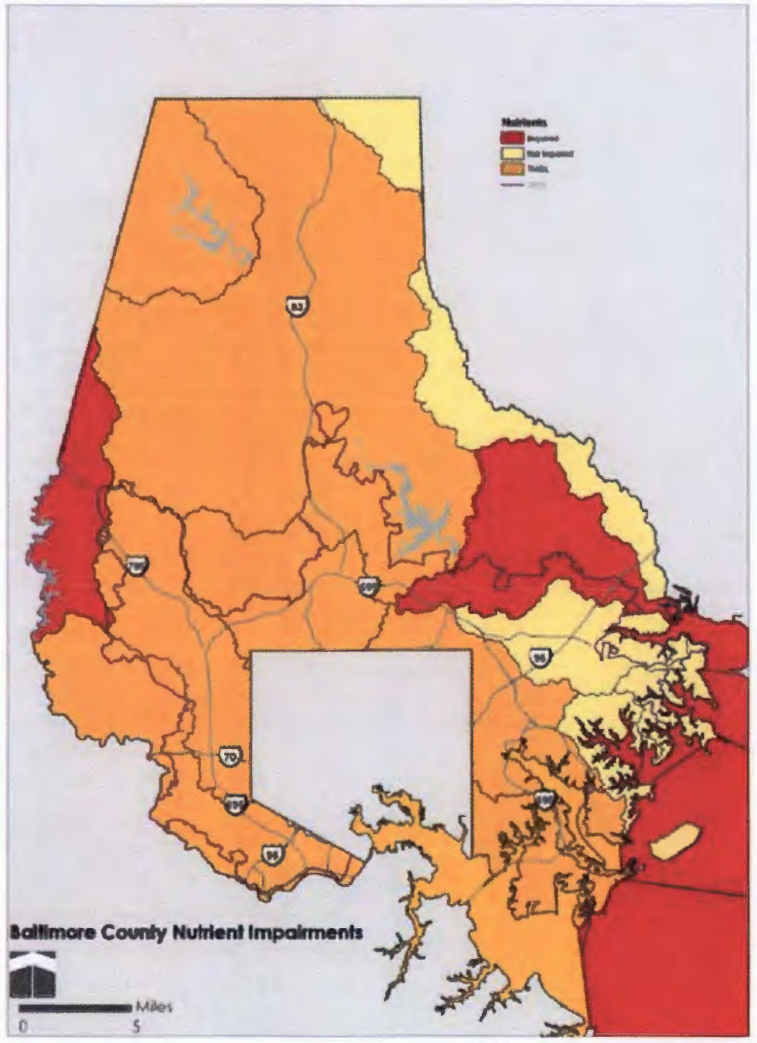
The County's watershed program consists of characterizing and prioritizing watersheds, preparing management plans, including Small Watershed Action Plans (SWAPs), and evaluating resource systems and functions at varying scales. Assessments of pollutant loads, stream stability, and forest community structure provide the framework for the implementation of capital projects, facility maintenance, education programs, and cooperative citizen actions.

Policy: Promote redevelopment and revitalization inside the URDL to reduce pollutant loads and protect natural resources.

Actions:

(1) Assure that the countywide redevelopment strategy accommodates population growth, provides maximum pollutant reduction, protects high quality waters, promotes economic vitality, and maintains a high quality of life for Baltimore County residents.

Map 38: Nutrient Impairments



(2) Include environmental policies and goals in community plans for the preservation and enhancement of functional open spaces such as greenways and wildlife habitat; the reduction of water, air, and toxic pollution and solid wastes; and the promotion of neighborhood environmental stewardship.
(3) Facilitate the redevelopment of underutilized industrial properties.

(4) Direct redevelopment efforts along the waterfront into historically disturbed, uncontrolled buffer areas in order to maximize water quality protection.

Policy: Assure protection of Tier II waters and those with known trout resources.

Actions:

(1) Investigate the development of overlay zones for Tier II waters and those with known trout resources and evaluate the need for additional protection through development regulations.

(2) Examine the feasibility of an offset program to achieve a no net increase in pollutant loads from new development.

(3) Continue to protect water quality, streams, wetlands, floodplains, and forests from impacts of new development and redevelopment.

(4) Implement projects to restore wetlands, reestablish forests, plant stream and shoreline buffers, and stabilize stream channels in impacted watersheds.

(5) Continue to implement the 2006 Baltimore Watershed Agreement with the City of Baltimore for improved and coordinated efforts for public health, trash, stormwater management, community greening, and redevelopment.

Streams and Non-Tidal Wetlands

Baltimore County contains more than 2,100 miles of non-tidal streams and rivers, including some of the highest quality recreational fishery resources in the eastern United States and more than 1,000 miles of streams that drain to the three drinking water reservoirs. A stream system consists of a stream and its associated floodplain, wetlands, and springs. Wetland and riparian vegetation play an essential role in the natural functioning of a stream system, including maintaining base flow, regulating water temperature, controlling pollution, and providing habitat. Pollutants discharged from point and non-point sources degrade stream water quality. These sources include urban runoff (non-point sources, particularly from impervious surfaces), pollutants discharged directly to streams (point sources), and agricultural operations (non-point source). Urban non-point source types of pollution vary and include nutrients, sediments, metals, pesticides, oil and grease, salts, and other particulate and dissolved matter.

Point-source pollution, generated from wastewater treatment plants, industries, and other sources with a direct, piped discharge, is regulated by the State. Over the past several decades, channelization, encroachment of development on floodplains, draining and filling of wetlands, removal of riparian vegetation, and development or clearing of steep slopes and erodible soils has been detrimental to streams.

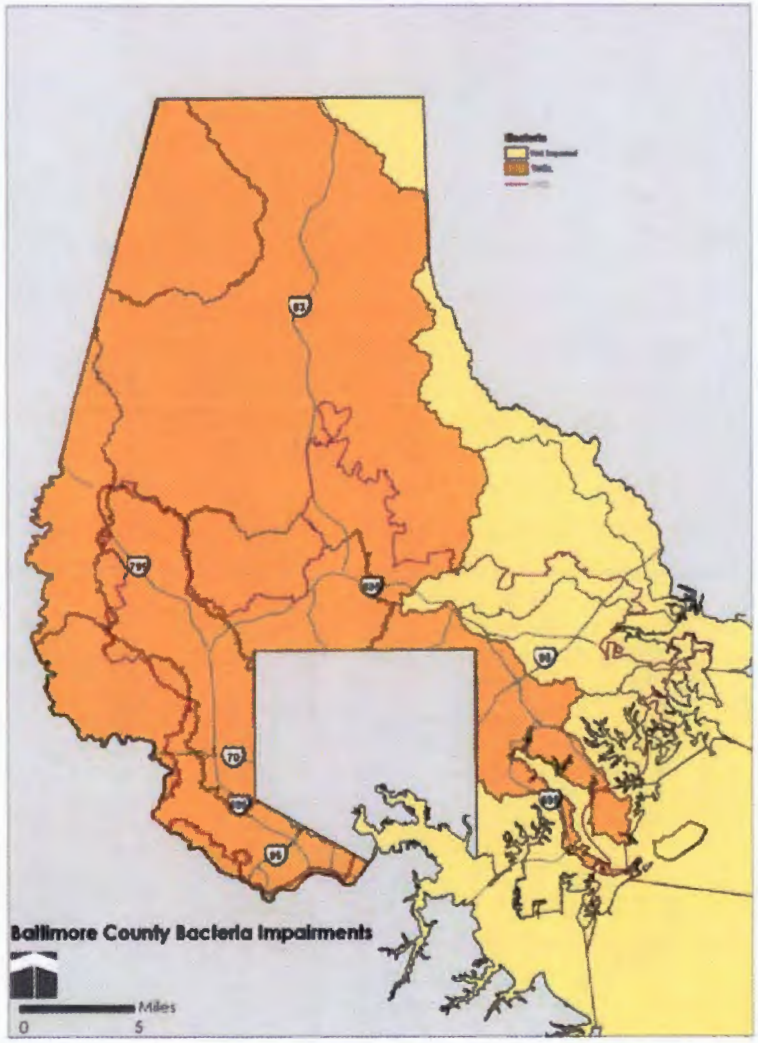
In 1987, DEPRM initiated a capital environmental restoration program to assess and identify water quality problems and implement design and construction of watershed restoration projects. The program is based on the County's 14 major watersheds, providing a comprehensive framework for protection and restoration of water resources. DEPRM has been recognized nationally for its stream restoration program and, with the completion of numerous projects, has made significant progress toward its objectives for watershed restoration. In the early 1990's Baltimore County developed regulations to protect water quality, streams, wetlands, floodplains, forests, and steep or highly erodible slopes from land development impacts. The County faces a challenge common to most areas experiencing urban growth: how to restore, protect, and enhance its waterways.

Stream Restoration

The U.S. EPA Mid-Atlantic Integrated Assessment program (MAIA) produced a document to share knowledge among state and local governments, regional offices, and non-governmental organizations. The document highlights DEPRM's stream restoration accomplishments. DEPRM's program incorporates project planning and design, communication and coordination with property owners, construction, and post-restoration follow-up. The program integrates state-of-the art techniques with an environmentally sensitive approach to stabilizing streams and reducing sediment loads, in turn enhancing stream morphology, ecological function, water quality, and aquatic habitat. Baltimore County responds to degraded urban streams with an adaptive natural channel design (NCD) approach that relies on the principles of fluvial geomorphology to evaluate stream flow, channel dimension, and bed and bank materials to optimize water and sediment movement and minimize erosive forces.

Physical changes to stream systems can be worse than pollutant runoff, point source discharges, or storm water management impacts. Since 1990, DEPRM has developed expertise in the restoration of destabilized stream channels. Reconstruction of channels applies the concepts of natural channel design (NCD) using natural materials (boulders and vegetation) in conjunction with the reshaping of the stream channels. When properly constructed, these restored streams are a cost-effective and attractive means to sustain physical stability, function, and habitat. Since the early 1990's, DEPRM has also maintained a physical, chemical, and biological stream monitoring program to determine ambient water quality and trends over time, assist in targeting restoration efforts, assess the effectiveness of restoration, and track progress in meeting TMDL pollutant load reduction requirements. The monitoring measures the abundance and diversity of aquatic life as indicators of stream quality and chemical constituents. Summary data from the biological monitoring indicate that there is fairly widespread impairment of aquatic organisms, even if only moderate, for most of the County's streams.

Map 39: Bacteria Impairments



Improvements to stream quality, in both water quality and habitat, will require a range of controls that best address specific types of pollution sources.

Policy: Continue to protect, enhance, and restore degraded waterways to meet water quality standards and permit requirements.

Actions:

(1) Continue to enforce development regulations for the protection of water quality, streams, wetlands, and floodplains.

(2) Continue to prepare and implement Small Watershed Action Plans (SWAPs) and participate in studies to identify needs and opportunities for stream restoration, wetland creation and restoration, and stormwater management.

(3) Continue to design and construct stream restoration projects using an adaptive natural channel design (NCD) approach.

(4) Incorporate stream protection policies in community plans.

(5) Continue to implement biological, chemical, and geomorphological stream monitoring programs in order to measure the long-term trends in stream quality.

(6) Identify opportunities for the creation of wetlands as mitigation for County capital projects and other land development impacts.

(7) Continue environmental education programs for schools, businesses, and homeowners for the reduction of water pollution and toxic and solid wastes.

(8) Continue to implement environmental inspection and maintenance programs such as storm drain inlet cleaning and maintenance of stormwater management facilities.

(9) Continue to identify and convert appropriate publicly owned stormwater management facilities to provide for increased water quality function.

(10) Continue to retrofit older communities to provide for stormwater treatment for improved water quality to the receiving waters.

(11) Continue to support watershed associations and citizens in stream clean-ups, stream and watershed surveys, and other restoration projects.

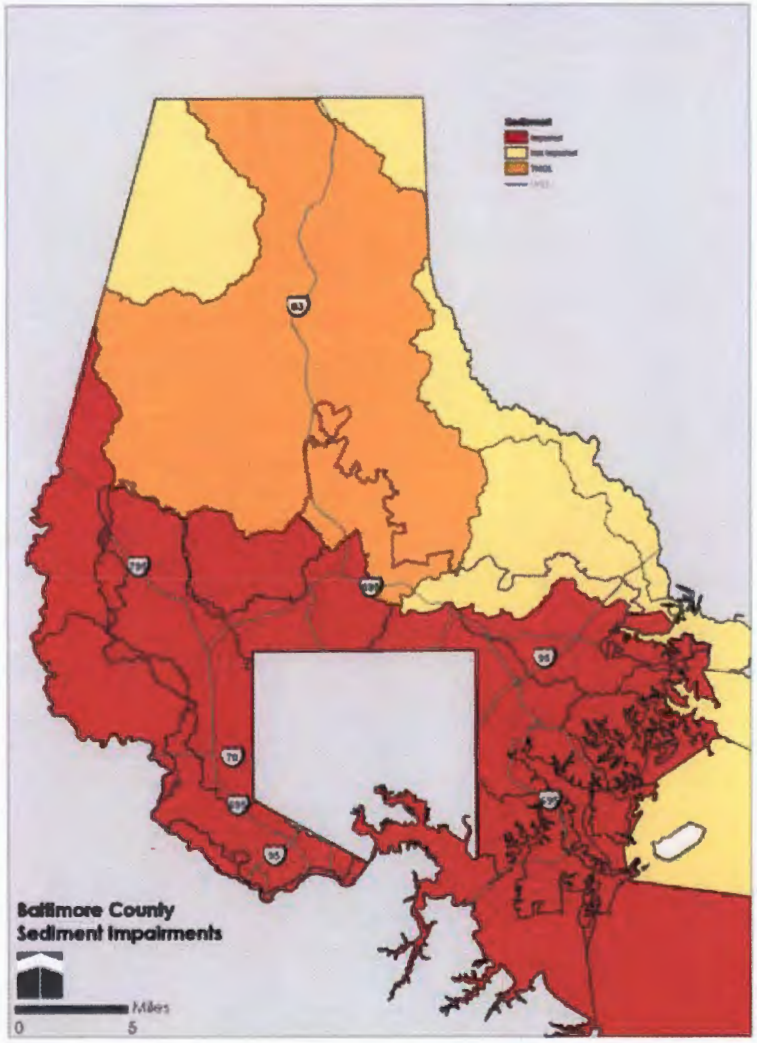
(12) Identify impediments to, and opportunities for tree plantings along streams on private properties, and work to plant more trees on private lands.

Stormwater Management and Sediment Control

The hydrologic cycle is a descriptive model for the movement of precipitation from the atmosphere to the earth's surface and then to receiving waters and back to the atmosphere. In natural areas, precipitation that reaches the ground infiltrates into the soil, replenishing groundwater aquifers and discharging to streams. In urban areas, precipitation that falls onto impervious surfaces runs off the surface much more rapidly. Unless properly controlled, stormwater runoff can result in stream channel erosion and the degradation of in-stream habitat and the aquatic biological community. Stormwater runoff also results in an increase of pollutants washed downstream. During the land development process, the soil at construction sites is the most vulnerable to erosion in streams and other surface waters. Soil erosion from construction activity may exceed 100 to 400 times that obtained from an adjacent undeveloped land or woodland in an equivalent period of time.

About 80% of Baltimore County was developed prior to the advent of stormwater management regulations, which damaged many waterways. In 1968, Baltimore County enacted Maryland's first local sediment control ordinance. Since the mid 1970's, Baltimore County has been a statewide leader in recognizing the impact of stormwater runoff generated as a result of land development. Stormwater management requirements have evolved over time. Initial

Map 40: Sediment Impairments



stormwater management focused on volume and peak discharge control to reduce physical impacts on streams. Beginning in the late 1980's through the early 1990's, water quality treatment was added as a means to address the increased pollutant loads associated with urban development. As stream science and understanding of stream dynamics evolved, it was recognized that further peak discharge control was necessary to protect stream channels from erosion during storm flow.

In the early 2000's, control of small storms was required, along with methods to disperse the flow from a development site instead of concentrating the flow. The Maryland Stormwater Act of 2007 further refined stormwater management by requiring Environmental Site Design (ESD) where practicable. ESD attempts to reduce stormwater runoff from a site by reducing impervious cover, retaining natural vegetation, and dispersing the runoff throughout the site to allow greater infiltration of precipitation. As Baltimore County's older urban and suburban areas are redeveloped, state-of-the-art stormwater practices will be constructed and water quality will improve.

Policy: Protect and improve water quality through the application of stormwater control measures for new development and redevelopment projects.

Actions:

(1) Continue to implement state-of-the-art stormwater management techniques, including ESD as feasible, for new and redevelopment projects.

(2) Provide flexibility for redevelopment to implement innovative solutions to stormwater management.

(3) Ensure the sustainability of stormwater practices including long-term function and maintenance.

Policy: Inspect and enforce compliance with the Baltimore County Code, permits, plans and State specifications as related to erosion and sediment control and grading.

Actions:

(1) Continue to inspect and enforce erosion and sediment control implementation on all active projects for compliance with approved plans.

(2) Continue to investigate complaints pertaining to erosion, sediment control, grading, and surface drainage problems associated with new construction.

(3) Continue to provide responsible personnel training and certification of individuals that oversee installation and maintenance of project controls.

(4) Continue to work in cooperation with the Baltimore County Soil Conservation District to require minimum standards for Soil Conservation and Water Quality Management Plans for conservation easements.

Best Management Practices (BMPs) for Agriculture

Best Management Practices (BMPs) that prevent soil erosion and protect water quality provide long-term benefits for maintaining the productive quality of farmland. Farmers are assisted in their efforts to apply BMPs by the Baltimore County Soil Conservation District, University of Maryland Extension (UME), the Maryland Department of Agriculture, the U.S. Department of Agriculture's Natural Resources Conservation Service, and the U.S. Farm Services Agency. Farmers and landowners participate in

Soil is a non-renewable resource. Its preservation is essential for food security and our sustainable future

Soil is a finite resource, meaning its loss and degradation is not recoverable within a human lifespan. As a core component of land resources, agricultural development and ecological sustainability, it is the basis for food, feed, fuel and fibre production and for many critical ecosystem services. It is therefore a highly valuable natural resource, yet it is often overlooked. The natural area of productive soils is limited – it is under increasing pressure of intensification and competing uses for cropping, forestry, pasture / rangeland and urbanization, and to satisfy demands of the growing population for food and energy production and raw materials extraction. Soils need to be recognized and valued for their productive capacities as well as their contribution to food security and the maintenance of key ecosystem services.

Related links: http://www.fao.org/soils-2015/en/;
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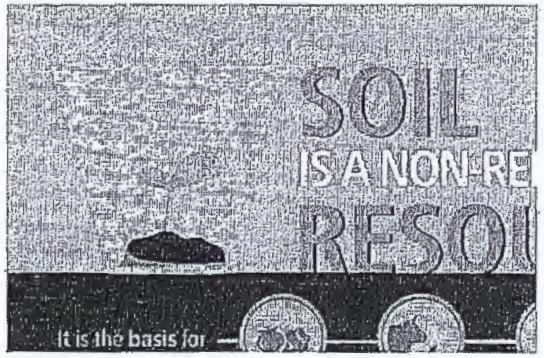
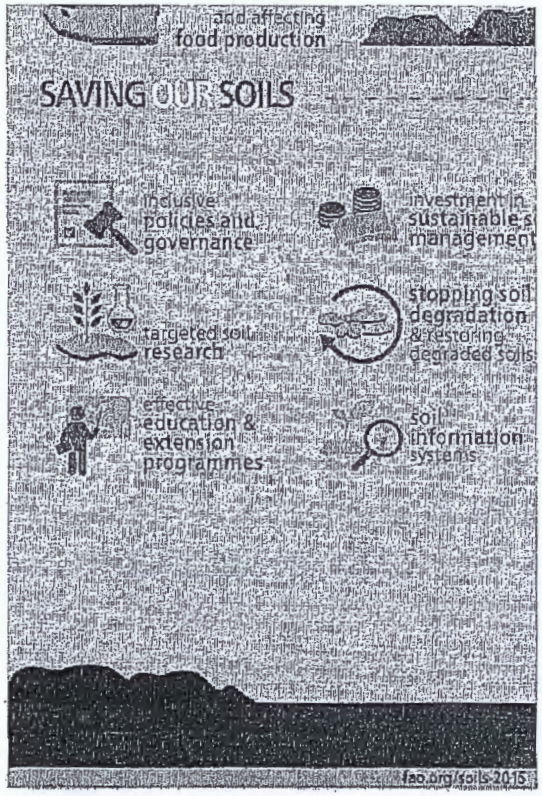


APX. 30



Food and Agriculture Organization of the United Nations

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APX. 31

Secondary: What is soil?

Themes: Introduction | The uses of soil | What people think of soil | Quiz

Soil is one of the world's most important natural resources. Together with air and water it is the basis for life on planet earth. It has many important functions which are essential for life. Not only does it play the major part in allowing us to feed the world's population, but it also plays a major role in the recycling of air, water, nutrients, and maintaining a number of natural cycles, thereby ensuring that there will be a basis for life in generations to come. Without soil, the world's population neither would nor could survive.

Soil forms the surface skin over the landscape of the earth at the junction between the atmosphere and the lithosphere. Think of soil as a thin carpet covering the land portions of the earth. The distance from the surface of the earth, at which the soil is situated, to the very centre of the earth deep below, is over 6,000 kilometres. Of this, the soil layer is a mere one to two metres thickness of this 6,000 kilometres. It is thus a very, very thin skin indeed - both fragile and extremely precious.

Soil consists of a mixture of mineral grains that come from the rock deposits and sediments beneath them. This mixture gives the overall texture of the soil, namely whether the soil is mainly sandy, loamy or clayey. Importantly, soil also contains organic matter, mainly in the top 20 cm. Organic matter comes from rotted and decomposed vegetation, broken down by soil organisms. Soil also contains varying amounts of water depending on the climate and the water holding capacity of the soil. The remaining important ingredient is air. The amounts of each of these components varies in time and across the landscape. This is a magical mixture of ingredients that allows the soil to perform many vital needs of living beings.

Themes: Introduction | The uses of soil | What people think of soil | Quiz

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/ Soil knowledge (http://www.eniscuola.net/en/argomento/soil/soil-knowledge/)
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Soil knowledge

Soil knowledge

A natural resource

The soil is an important part of the landscape and contributes to determine the way in which natural vegetation, crops and human settlements are distributed on the territory. But the importance of the soil is mainly related to its double role as a reserve of nutritional elements and water and mechanical support (how would plants be able to stand upright if they did not have the soil to put their roots in?) for vegetation, leading to the creation of forests and protected areas. A direct observation allows us to see the fundamental importance of the soil: if we go to the mountains or to the countryside, we will see some bare rocks without plants, but next to them there will be wider areas covered by a thick soil. On this land spontaneous vegetation or crops grow. The soil is also very important for man and other living organisms as it affects water composition. In fact, the quality of underground water reserves depends on use of organic and inorganic polluting products, deriving from agricultural and industrial activities or from cities. Various chemical and physical properties of the soil affect the concentration and permanence of polluting compounds in the soil, and the probability that they get in contact with superficial aquifers by polluting them.

The soil can be extremely important for men even if it is not changed and left in its natural conditions. This is the case of protected areas (parks and oasis): the survival of the delicate ecosystems of these areas mainly depends on the fact that the soil keeps in good conditions and does not experience changes. For example, in the past men considered wet areas as unhealthy areas to be reclaimed and used for agriculture. Today wet areas are considered as very important and fragile ecosystems, whose survival can be guaranteed only by preserving the particular conditions of their soil.

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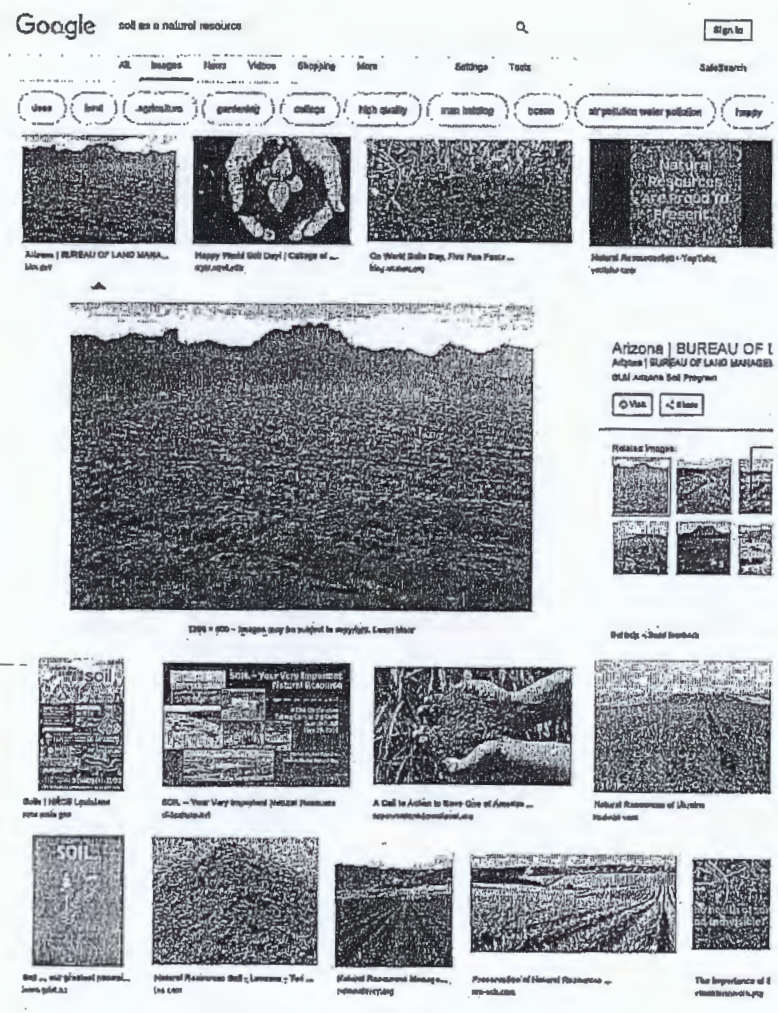
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PRINCIPLES AND PRACTICE OF SOIL SCIENCE
The Value of Soil
Conservation of Soil

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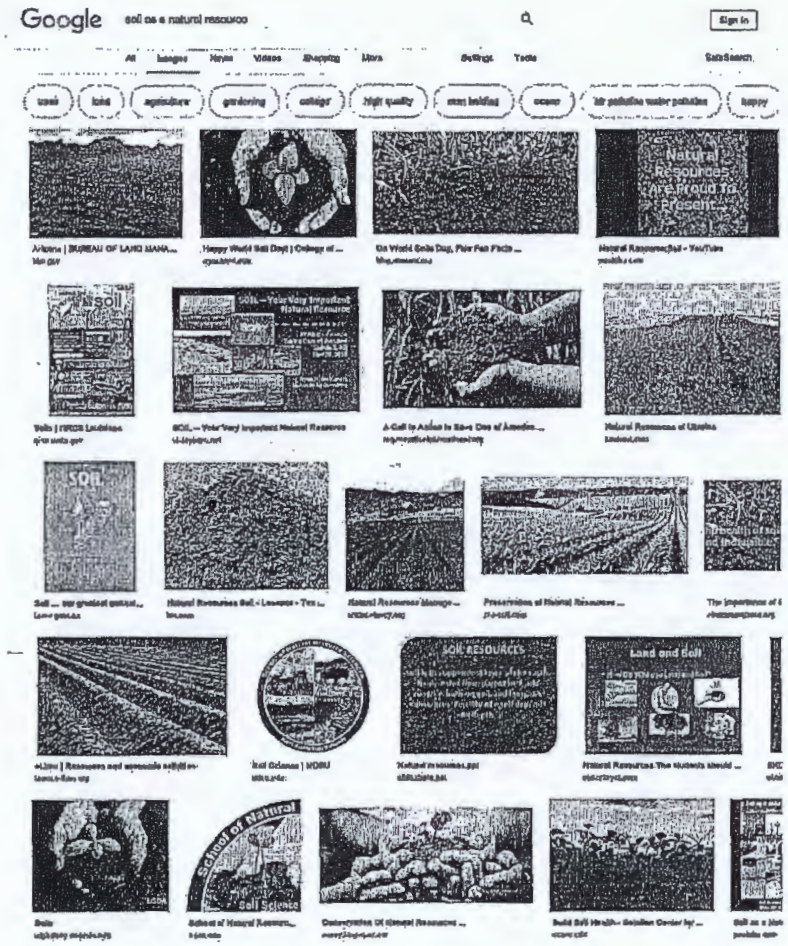
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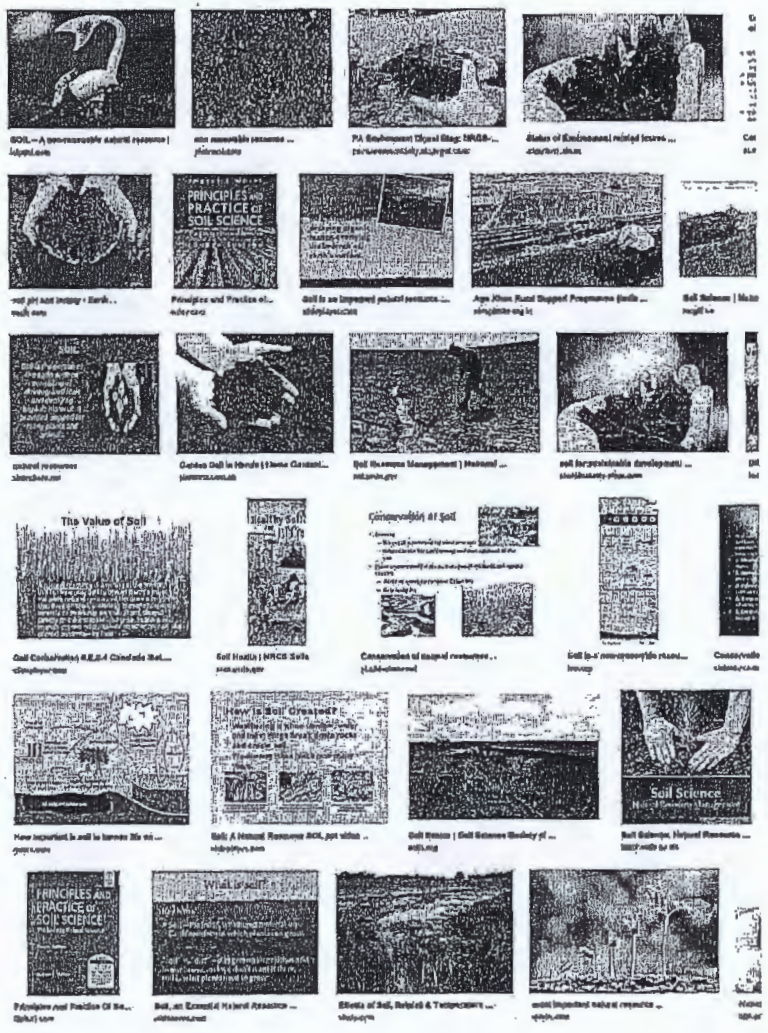
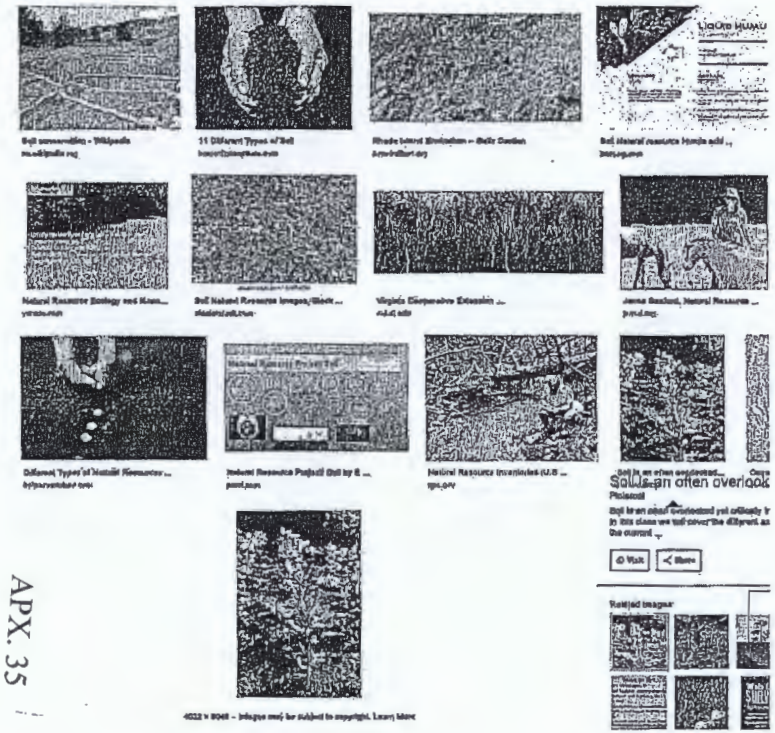

PRINCIPLES AND PRACTICE OF SOIL SCIENCE
The Value of Soil
Soil Science
PRINCIPLES AND PRACTICE OF SOIL SCIENCE
WHAT IS SOIL?



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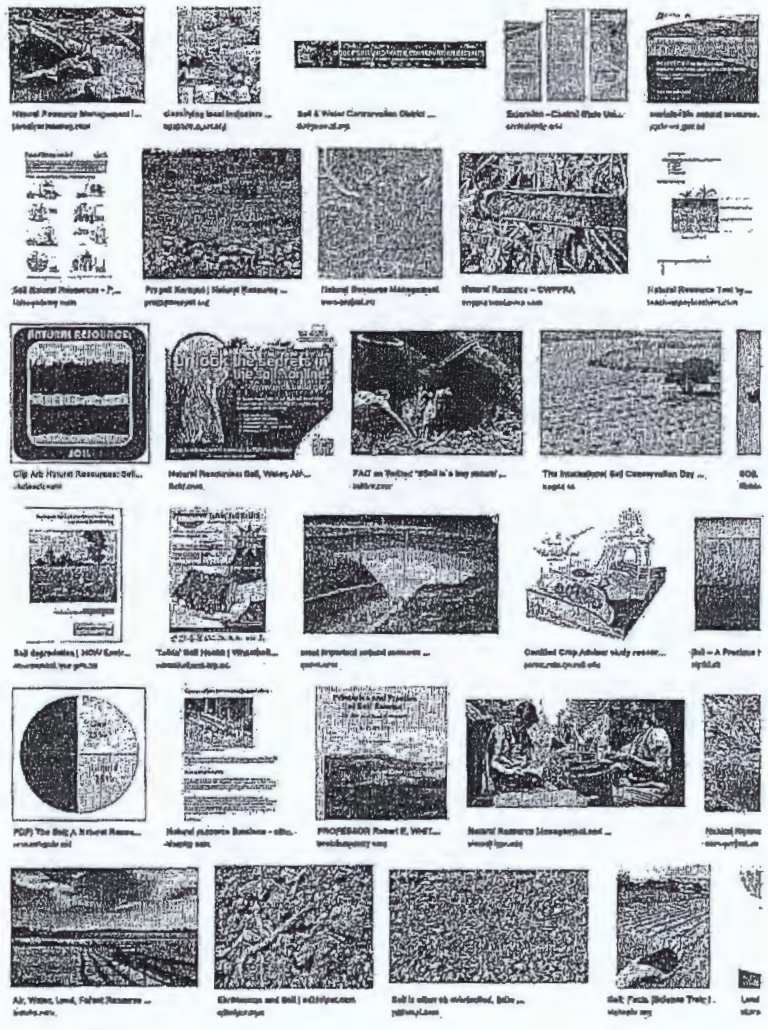

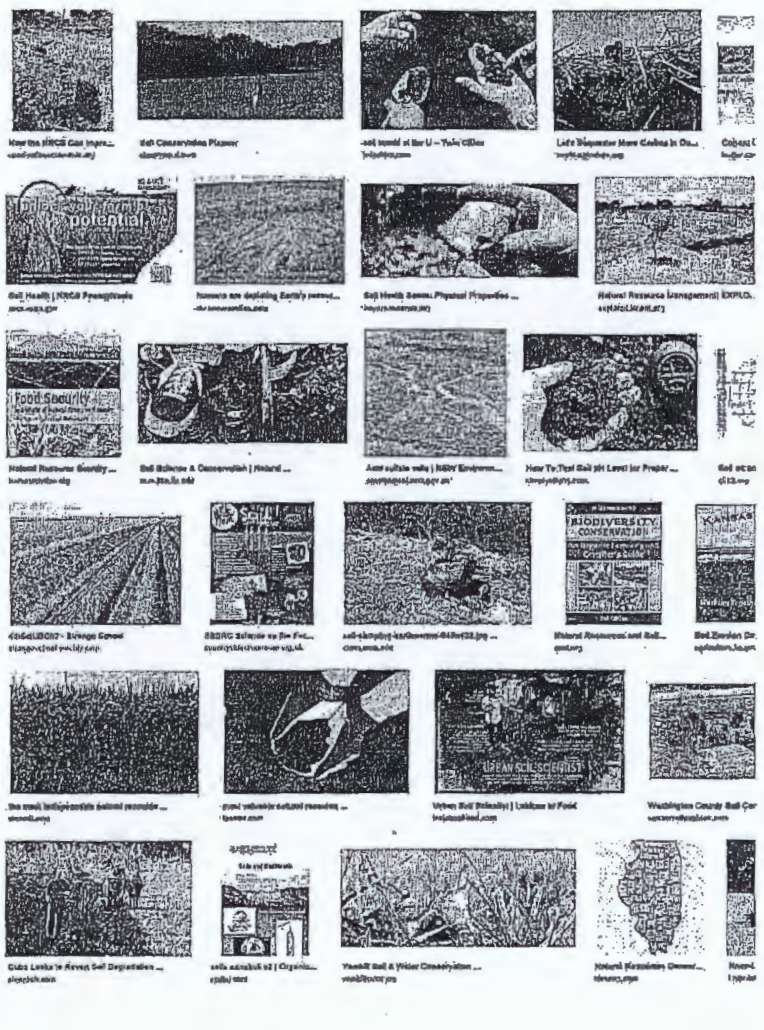

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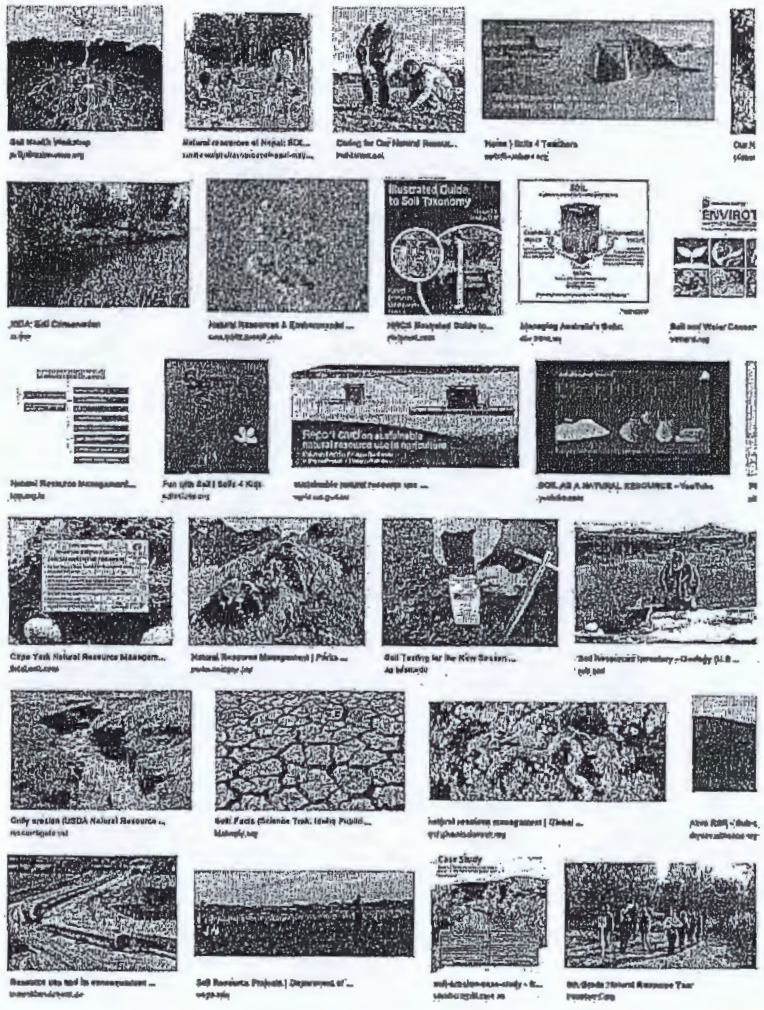
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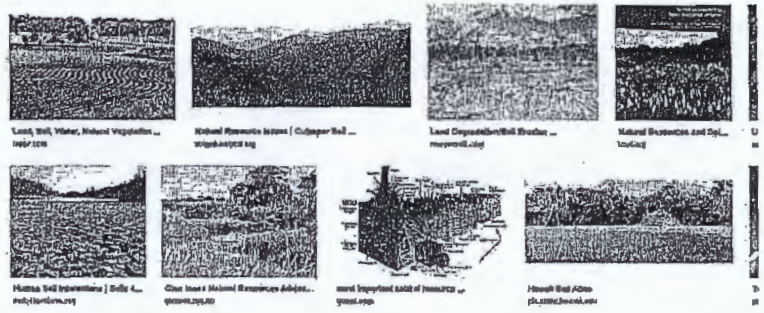
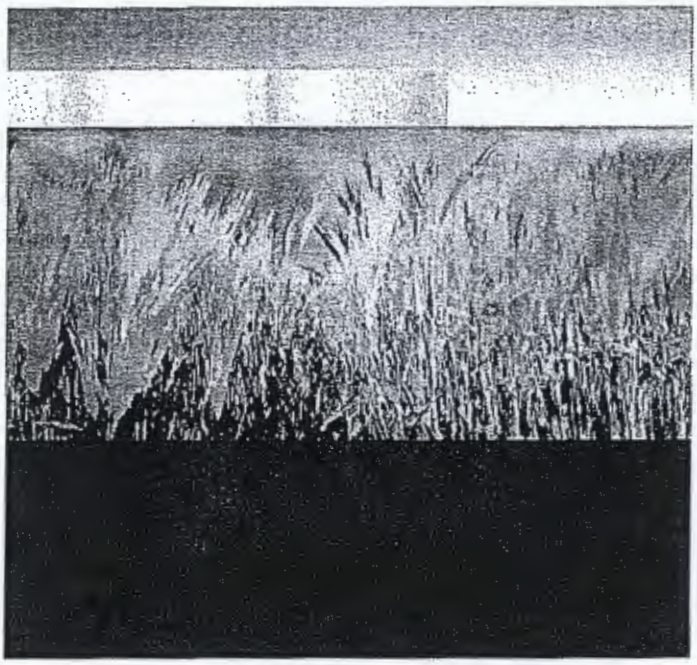


Soil – A Precious Natural Resource



Soil as a Resource
National Research Programme NRP 68

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Foreword

Soil is more than construction land 'in a prime location' or pasture- and farm land. The soil is a habitat. Our view of the soil, however, is often just a surface view – quite literally. But a look beneath the surface is well worth it. The importance of the soil for life on Earth is greatly underestimated. Without intact soils, we would be lacking the most important essential basis of life.

The cosmos of soil between the plant cover and bedrock is the indispensable connecting element between atmosphere and groundwater. This central hub for all important material and energy flows on Earth performs numerous economic and ecological functions: Soil is the basis of food production, a habitat for immeasurable organisms, a water filter and a natural store for carbon and water. Billions of living organisms in each handful of soil decompose old plant material into their basic building blocks and make these nutrients available to new plants.

Soil therefore deserves our attention. Particularly in Switzerland, where soil is scarce, a better understanding is needed. For this reason we welcome that with this brochure, researchers and the Federal Administration (Federal Office for the Environment, Federal Office for Agriculture, and Federal Office for Spatial Development) bring home the importance of soil and its essential functions. How many of us are aware that each shovelful of earth has a formation history reaching back hundreds of years? Or are conscious of the fact that the soil secures the living and economic environment of Switzerland?

So let us be concerned about the soil, this basis of all life. Let us take care of our soil. Let us preserve our cultivated land. For our quality of life is directly dependent upon the quality and quantity of the soil. Let's keep our feet on the ground!

Federal Councillor Doris Leuthard

Federal Councillor Johann N. Schneider-Ammann

The fascination of soil

We seldom have a clear view of the fascinating world beneath our feet. It comes to light primarily when excavators tear open the ground in the creation of construction pits, thus offering a visible perception of the three-dimensional cosmos of soil. It is worth climbing down into one of these pits and taking the time to study the intricate walls. On offer in these hidden worlds can be a colourful layered story sequencing years and years of mankind. The hollow cavities of burrowing fauna transverse the earth like veins, each with a story of their own. Only when you are surrounded by and are witnessing this world first hand, can the complete impression that you are standing within not just a self-contained ecosystem, but an ancient ecosystem, come to life.

Soils are formed from rock

Approximately 10,000 years ago, towards the end of the last ice age, there was no intact soil in the larger areas of Switzerland. Glaciers had ground it down and left behind nothing but bare rocks or moraine materials as they retreated. Sun, rain, frost and soil organisms then worked symbiotically together in weathering the rock material, chemically and mechanically, ultimately breaking it down into smaller particles. As a result, soil was continuously taking form and plants could begin to thrive.

Minerals were transformed and, through the method of leaching, were washed further into deeper layers as the rock broke up progressively into loose soil. Over thousands of years the typical sequence of successive layering of soil developed: typically a layer of topsoil rich in humus over a layer of subsoil consisting of strongly weathered parent rock and washed out material from above. Below that lies the only slightly weathered parent material and finally the bedrock.

Many types of soil

Depending on the parent rock material, local topography, climate and water availability, differing soil types developed after the final stages of the last ice age. There are shallow or deep, acidic or alkaline, nutrient-poor or nutrient-rich, wet or dry, sandy or clayey soils – as well as every conceivable variation between these extremes. The astonishing number of variations is represented within a large range of the colour spectrum, from red to yellow to blue and all the shades in between.

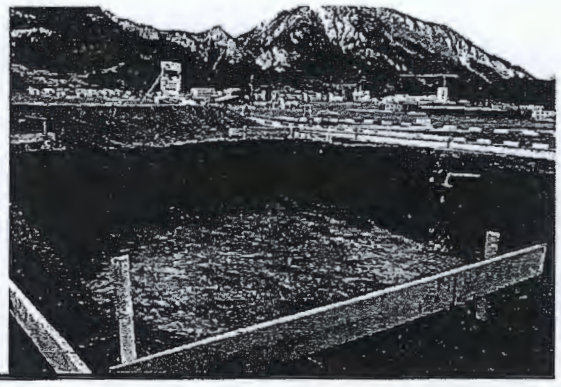
Moist and warm conditions are optimal for soil formation as it is under these conditions that soil organisms who are responsible for the rock-weathering processes are most active. For this reason, the soils in the Central Plateau of Switzerland, which are 1 to 2 metres deep, are clearly much thicker than the soils in the Alps, which are often only a few centimetres deep.

As long as weather and water are continuously interacting with soil populated by organisms, the development of the soil is never completely at an end. In a seemingly motionless earth there is always something in a state of flux: humus constantly forms and decomposes, seepage water dissolves soluble materials and washes them into lower layers of soil, clay and soil particles shift into deeper layers and iron oxidizes, giving many soils a typical brownish red colour.

The long lasting life of soil

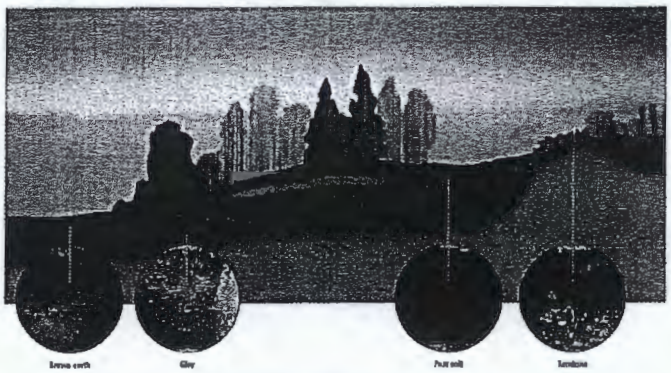
The habitat "soil" has been formed over thousands of years from mountain rock. Sun radiation, rain, frost and soil organisms weather the rock or moraine material of the glaciers. As a rule of thumb, it takes 100 years for one centimetre of soil to form.

On the surfaces that result from the rapid retreat of the glaciers in the Alps, the various stages of soil formation can still be seen today



Land pits offer a great insight into the colourful sequential layering of the soil.

Versatile ground



Regardless of the location of a hole in the ground, we will always come across different soils. Depending on the type of rock, the slope, the local climate and water availability, a specific combination of processes of soil formation acts at a particular location and leaves behind soil profiles with different characteristics.

Tardigrades (bottom) are a common inhabitant between the layers of leaves, soil and moss (top).

There is special trade relationship between the roots (yellow) and mycorrhizal (green). The roots supply the fungus with sugar and the fungus supplies nutrients, protects the roots from pathogens and pollutants, improves water absorption and helps with drought resistance.

Amoebas are voracious predators. Characterized as predators, they use their pseudopodia to claim their prey and help develop the microfauna to contribute to the ecological balance.

The world beneath our feet

When we hike through the woods, we enjoy the calm serenity. What we fail to notice is that beneath our feet the ground is teeming with diverse life forms – the engine behind our own existence. It is accredited to these most tiny organisms in the soil that life on Earth's surface exists at all.

Soil as a habitat

Without seeming so, soil is a lively habitat filled with many living organisms. Even though the ground appears to be simply a compact layer, between its components are countless minute margins where an army of organisms are maintaining the underground "factory of life". In fact, approximately half of the space that soil consists of consists of microscopically small hollow spaces. The solid part of the soil forms a filigree structure composed primarily of clay particles, humus particles and sand. The spaces in between – known as soil pores – are filled with water or air and house countless animals, plants and fungi. This is a habitat of gigantic dimensions: the entire habitable area of a handful of clay soil is greater than a square kilometre. It is home to billions of microorganisms and to these organisms, every clump of soil is practically an infinite landscape.

Overwhelming diversity

Only a small fraction of the organisms living within the soil are known to science. "We know more about the movement of celestial bodies than about the soil underfoot", lamented Leonardo Da Vinci more than 500 years ago. Unfortunately, little has changed since. We do, however, know that one handful of soil contains more organisms than there are humans on the planet. In only one gram of soil, close to 50,000 types of bacteria and up to 100 metres of fungus threads can be found. The weight of all living organisms in the soil layers of one hectare of land can be as much as 15 tons, equivalent to the weight of 20 cows. In comparison, the grass on one hectare of land in the lowlands feeds only about two cows.

For researchers, with all of its organisms, soil can be viewed as a gigantic yet minimally studied "pharmacy". In 1928, Alexander Fleming discovered the first antibiotic, penicillin, and its antibacterial characteristics. Penicillin is a natural substance released by Penicillium soil fungi. In light of this knowledge, researchers worldwide have continued to collect a myriad of soil organisms and tested whether the unicellular organisms, bacteria, fungi, algae, lichens and plants can also produce antibiotics. In doing so, the researchers have discovered numerous new substances which have almost all since become important medications. The potential for furthering medication knowledge and production is vast but has not yet even begun to be utilised.

Teeming with life

Pictures of soil organisms, once zoomed in, show an impressive diversity of how fascinating and beautiful they can be. The soil thrives with life and not in a motley jumble similar to the many species living above ground, but in a complex network of relationships including carnivores, herbivores, scavengers and omnivores.

In soil, teamwork is essential and omnipresent. One particular plant group, the leguminous plants, which clover and beans belong to, has a symbiotic relationship with the bacteria that live in the soil. These minute little industrious workers are able to take the nitrogen from the air and convert it so that the plants in turn can use it to thrive, and as a response the plants provide the bacteria with sugars.

Much more widespread is the close interrelationship between plant roots and soil fungi. Over 80 per cent of plant species form a mutually beneficial symbiotic relationship with a particular fungi called "mycorrhiza" (fungus roots). The fungi colonize amongst the fine roots of host plants and increase the root growth system and enhance the plants' contact with the soil. The fungi provide the plants with the water and soil nutrients they need to survive and the plants provide the fungi with sugars. Porcini and amanitas are prominent examples of root fungi, as they are recognized as assisting in the growth of important tree species such as spruce. The dense fungal structures on or within roots also work to protect the plants against pollutants and pathogens.

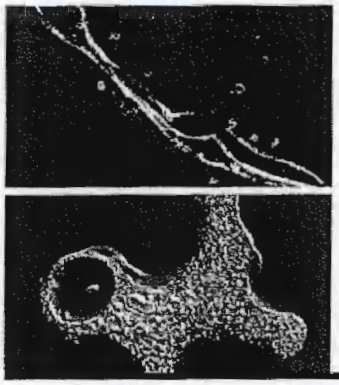
The fuel for the underground ecosystem is provided by above-ground plants via their root excretions and the dead leaves, stems and branches. This material is utilized especially by earthworms, insect larvae, snails, springtails, mites, woodlice, nematodes, pro-woramns, bacteria and fungi, which themselves are the primary food source for many other organisms. The "shark" amongst the underground creatures is the mole. Moles predominately hunt and feed on earthworms as they move and eat through layers of the soil, filling their intestines with decomposing organic material and earth. Their channels and burrows loosen and aerate the soil, which improves drainage, especially after a heavy rainfall.

Plants on the surface of the earth are largely dependent on soil organisms and vice versa. In an area the size of a standard football field, soil organisms can break down up to 25 tons of dead plant materials and animal remains every year. Without them, gigantic compost heaps would tower skywards within our forests and woods.

Valuable humus

Soil organisms endure hard labour around the clock. They decompose dead organic material and turn it into a stable substance called humus. Without enriching humus, the ground would be no more than a giant sandbox. The organic matter within soil is a reliable source of nutrients for plants and also a storage medium for water, pollutants and carbon; therefore humus plays a central role in the maintenance of the nutrient, water and carbon cycles.

Soil organisms continuously mix humus into the lower soil layers. Within a single cubic metre, earthworms alone assist by moving up to 12 kilograms of earth per year. This loosens the soil and forms stable soil crumbs that are less susceptible to erosion and are considered the most important structural elements of the soil. Earthworms' tunnelling activity also improves soil aeration and its ability to retain water.



Pseudomonas bacteria protects wheat roots from harmful mycoviruses. They produce a cocktail of toxic substances which can uproot harmful fungi and insects. The tiny helpers are rewarded with approximately 10 per cent of energy obtained through photosynthesis.

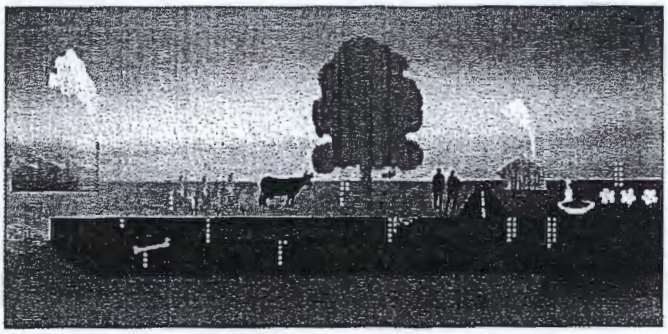
The functions of soil

Healthy soil performs numerous functions and ensures that planet Earth remains habitable for humans. Soil is first and foremost the ground on which we walk. It gives the landscape its round and soft forms as well as a stable foundation for buildings, streets and tracks.

The most evident link between the soil and us is the production of food, animal feed and wood. Less apparent are other functions, which will be discussed in the sections below. These functions are the result of the soil's ability to control and maintain the materials and energy cycles between the atmosphere, groundwater and plant cover. Soil is known for storing nutrients and providing them to plants, regulating climate, filtering water, assisting in the control of floods and conserving the natural and cultural history. The living organisms throughout the soil are the engines that render the soils diverse, keep irreplaceable functions running and are beneficial for the ecosystem.

When winter takes its leave, soil starts showing what it is capable of. For example, each year farmers within Switzerland harvest 500,000 tons of potatoes from the earth, deliver approximately 50,000 tons of rapeseed to oil factories, grow more than 16,000 hectares of bread and feed grain and harvest several hundred thousand tons of fresh vegetables. In this case, fertile and intact soil is the central resource for sustainable agricultural production.

Soil – a multitalented matter



Soil …

- … combines raw materials: basis for drinking water, gravel (p. 18)
- … stores carbon (p. 16)
- … archives natural and cultural history (p. 22)
- … supplies food (p. 12)
- … stores nutrients (p. 14)
- … filters water (p. 18)
- … makes plant growth possible (p. 15)
- … is a habitat for soil organisms (p. 7)
- … is the foundation for buildings and roads (p. 20)
- … offers ingredients for medicines (p. 17)
- … stores water (flood protection, water reservoir for plants), (p. 20)

The functions of soil

No harvest without fertile soil

The Central Plateau of Switzerland is home to some of the most fertile and productive soil worldwide. This is courtesy of the balanced climate, sufficient rainfall and advantageous underlying economic conditions for production and sales. Therefore, Switzerland has a special responsibility to conserve this important base of life.

Thirty-five per cent of soils within Switzerland can be utilized in cultivated fields, meadows and pastures. Another ten per cent are alpine farmland, hence also serve the production of food. The remainder is too steep, wet, dry, shallow or nutrient lacking for agricultural use.

Limited resource

It takes 1,400 square metres of farmland to feed one person. Therefore, one hectare of land could essentially feed up to seven people. At this point in time, on an average day worldwide, one hectare feeds about 4 to 5 persons. The limit value of seven people will most likely be reached by the year 2050. This projection shows how important it is to maintain and protect the soil. Not one square metre should be wasted!

When land is used for construction it is then forever unfit for agricultural use. As a result of the rapidly increasing yields of industrialized and highly intensive agricultural production, certain types of soil have forever disappeared in the highly developed countries. This in turn makes utilisation of site-adapted sustainability difficult. With this we have lost our awareness and appreciation of soil as a functioning habitat. For instance, when we eat ice cream we tend to disregard the "soil–grass–cow–milk–ice cream" chain or the "soil–grass–cow–cow manure–soil" cycle.

Sustainable use

To preserve soil's natural fertility in the long term, agricultural use that suits the location and fosters the rich soil life is needed. Heavy machinery and overuse of mineral fertilizers, liquid manure and plant protection products damage the soil organisms and the loose structure of the soil habitat. Put simply, habitat. This means that the soil must be used with consideration and sustainably.

In the forest, too, healthy soil is the basic requirement for a sustainable timber harvest. Furthermore, healthy soil ensures that it will perform all of its essential functions, such as flood protection and carbon storage. Grave problems can result from the use of heavy forestry machinery on naturally bedded forest soils as well as the planting of non-native tree species. For the formation of the indispensable humus layer it is essential that branches and wood waste remain in the forest and not succumb to gentrification.

Farmers harvest four kilograms of potatoes per square metre and year from this fertile farmland in Switzerland's Central Plateau. The Niesen mountain and the Stockhorn mountain chain can be seen in the background. The development history of this soil near Zimmerwald in the Canton of Bern began about 10,000 years ago. The Aare glacier left behind a hefty deposit of calcium-rich moraine material. In the upper 120 centimetres, fertile, sandy loam soil developed. Particularly striking is the thick and humus-rich topsoil in which the potatoes grow.

Plants require a large number of nutrients for survival, including nitrogen, phosphorus, potassium, magnesium and calcium as well as trace elements such as molybdenum and boron. These are found as in dissolved form in the water within soil pores, where plants ultimately can absorb them. Thankfully an on-going supply is available. The most significant source of the nutrients is from the decomposition and transformation of dead plant material such as leaves and stems that fall to the ground and are decomposed by soil organisms. Soil organisms therefore provide plants with a continuous supply of nutrients, free of charge.

The fungus Dreschslera Flia Anastomosis (white thin thread) captures a worm with the help of the fungal ring. The drama was captured with an electronic microscope.

The functions of soil

Efficient recycling in the soil

Without soil organisms soil would not be able to make the nutrients made from decomposed plant material available to living plants as food. These industrious workers in the bioreactor that is the soil provide a continuous nutrient supply to plants, leading to our ancestors speaking of "the old soil strength".

The weathering of minerals in the soil also ensures an ongoing provision of nutrients. The natural content of supplement nutrients is especially high in the deep and bountiful soils of the Central Plateau of Switzerland, which has some of the best farmland in the world.

Soil stores nutrients

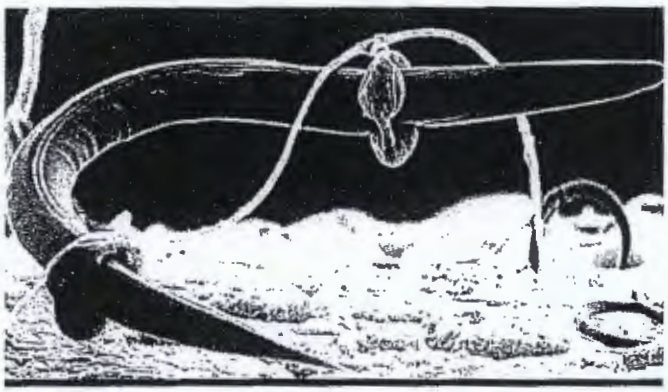
Primarily in springtime, as soil organisms awake from their hibernation, many nutrients become mobile. This poses the risk that through leaching, water seepage will carry the nutrients already released down through the soil and therefore out of the reach of plant roots.

Fortunately in this case, soil also holds nutrients in interim storage as they are bound in and around humus and released when needed. The microorganisms also consume a large amount of nutrients; however, they are released when the organisms die. All in all, there is a continual binding and dissolving of substances in the soil through biological and chemical processes.

Leaks in the system

However, the soil loses many important nutrients with every potato that a farmer harvests. The cycle of nutrients between plants and the soil should remain closed so that soil fertility can be maintained. In earlier times, the threat of nutrient loss and cycle leakage was managed by temporarily ceasing to use the soil (leaving fields to fallow) by alternating between growing crops and applying nitrogen-rich cow manure. Today, large amounts of artificial fertilizers and liquid manure are used which can have a taxing effect on the soil. If a redundant amount of fertilizer is applied, the cycle inflates like a bubble and then begins to leak. Artificial fertilizers and liquid manure is a form of nitrogen and when applied too liberally can result in nitrate, which when leached into the groundwater with rain, impairs the quality of our drinking water. Over 50,000 tons of nitrogen are leached from agricultural land in Switzerland every year. The consequences are significant in many places as the nitrate content of underground water reservoirs considerably exceeds the limit. There is an excessive amount of nitrate in the groundwater at every sixth measuring site, and in crop farming areas it is too high at every second measuring site.

Another problem with the overburdened nitrogen cycle is nitrous oxide (laughing gas), as it is produced in the soil when nitrogen fertilizers are processed and leak to the atmosphere. This nitrogen compound damages the ozone layer and is a highly potent greenhouse gas as nitrous oxide has 298 times more of a negative impact than carbon dioxide. This shows that a balance within soil nutrients is imperative. Excessive nutrients that are not taken up by crops should simply not be applied to the soil.



Nutrients are in continuous circulation from plants to the soil and back

1. Dead leaves, branches, grass stalks, husks and shrunk end up on the ground. In agriculture, the remains and urine of farm animals are spread on the soil.

2. Soil organisms go to work on this land and decompose the organic material.

3. Nutrients are made available to plants or stored in humus and in (or attached to) soil particles.

4. Plants above ground can grow. Livestock and wild animals eat the plants.

Soil and climate are closely related. However, soil rarely plays a role in public awareness and in the discussion of climate change. Nevertheless there are enormous quantities of carbon stored within soil, which when in the form of carbon dioxide (CO_2) is one of the main causes of climate change. Soil is the third-largest repository for carbon, after the ocean and fossil fuels like coal, oil and natural gas. All types of soil together contain about twice as much of this element as the atmosphere and three times as much as land plants.

The functions of soil

Soil protection is climate protection

Carbon continuously moves between plants, soils and the atmosphere. Plants absorb atmospheric CO_2 and, using energy from sunlight, create leaves, stems and roots. Carbon from dead plant materials is transferred to the soil. A part of this is released back into the atmosphere after being broken down by soil organisms and the rest is transferred into a more stable form – humus.

Soil carbon storage

The amount of carbon stored in the soil depends on temperature, soil moisture and the amount and type of dead plant material. Changes in climate or utilization of the land obviously also have an impact on the exchange of carbon between plants, soils and the atmosphere.

If marshland is drained and used for agriculture, if meadows are changed to cropland or if fields are utilized too intensively, the humus content of the soil decreases. When the humus content is reduced, large amounts of CO_2 are released into the atmosphere. The conversion of natural ecosystems into cropland and grazing pastures as well as overutilization of the soil – sometimes this even leads to deserts – are the main causes of the release of CO_2 from the soil. Over long periods of time, more carbon is released into the atmosphere via this method than through the burning of fossil fuels.

Efficient and inexpensive

There is no simple or quick *repair* solution to the damage to the soil caused by non-sustainable use. This is particularly true regarding humus loss.

Amongst other options, organic farming and forms of land management with reduced soil tillage have a positive effect on the humus content of the soil. Rewetting and restoring former marshland is also an efficient and chiefly inexpensive form of climate protection. As soon as a regenerated marsh returns to a natural state after several years, carbon will once again be stored in the soil.

A farmer harvests four kilograms of carrots per square meter from this field in the Grosses Moos area near Witzwil, Bern. But for how much longer? The humus layer was originally two metres deep. But drainage of the marshland resulted in oxygen entering the soil pores and subsequently, decomposition of the peat body took place and when a vast amount of CO_2 was released into the atmosphere. Today, the humus-rich layer is only 30 centimetres deep. The fertility of this soil is highly endangered. When the humus is used up and the old lake sediment (gray layer) is reached, it will no longer be possible to use this land for agriculture.

When you turn on the tap and get fresh, clean water, you have soil to thank. Over 80 per cent of Switzerland's drinking water is sourced from groundwater. It is the soil that makes it the pure elixir of life. During seepage flow, soil filters suspended solids, pollutants and pathogens out of the water. It essentially is the filter between surface water and groundwater.

For protection of the drinking water supply, Basel has actively utilized the cleansing effect of the soil and the forest for a long time. To artificially recharge the groundwater, mechanically filtered Rhine river water is pumped to forested flooding sites, where it seeps through the woodland soil.

The functions of soil

The soil provides clean drinking water

The filtering efficiency of soil is nowhere better visible within Switzerland than in Basel. Half of the water that the city pumps up from the depths has been added to the groundwater artificially and the forest soil is the central component of the drinking water production system.

Efficient water filter

Each day, 60,000 cubic metres of pre-treated water drawn from the Rhine river is pumped into wooded flooding areas at the Lange Erlen waterworks for drainage. The 14 flooding sites are subdivided by small embankments and cover a total area of approximately 20 hectares. Each flooding site is taken out of use after 10 days of operation and the forest soil is allowed to regenerate for 20 days. During the 20-day drying period, soil organisms again produce new pores that stretch from the surface to the gravel, which is what is responsible for the productive seepage.

As water flows through the soil, almost all organic substances are retained, detoxified or built into the soil structure. Pesticides, viruses and bacteria that can be harmful to human health are eliminated.

The drainage water that is cleaned by the soil in the Lange Erlen waterworks area augments the amount of existing groundwater. The groundwater is then pumped from several wells and treated chemically and physically at a pumping station and fed into the Basel drinking water supply network.

Irreplaceable

All over Switzerland the soil system is a low-maintenance filter. However, only with intact soils can groundwater be used as drinking water without expensive water treatment. The soil guarantees excellent cleaning of water over the long term. In Basel it even ensures that non-consumable Rhine river water becomes safe drinking water, and all that is required is an absolute uncomplicated control of the system as a whole.

Soils that are disturbed, sealed over or contain high levels of heavy metals and other pollutants cannot perform their cleaning function well or even not at all. The natural soil filter that developed over thousands of years cannot be simply replaced (like buying a new vacuum cleaner), its functional capability depends on regeneration through natural processes

The forrest floor as waterfilter

Thanks to the cleaning power of the soil and the ecosystems, sufficient drinking water of perfect quality is available in Switzerland. Thirty-eight per cent of the drinking water requires no treatment and another 33 per cent requires only one-stage treatment.

The summer of 2014 "fell into the water": it was too cold and exceptionally wet. Besides the heavy storms, there were also long periods of rain that made conditions ideal for flooding. The fact damage was limited is all thanks to the soil, which is by far the most important catchment area for rainwater. Like a large sponge, soil absorbs water, and after a certain amount of time, delivers it to the groundwater or streams and rivers. Forest soils are particularly capable in absorbing water: in a deciduous forest the soil can absorb some two million litres of water per hectare.

The burrow networks created by earthworms significantly increase the water-holding capacity of soils and are therefore very important for flood protection. Any 50 cm block of soil under a square metre of fertile meadow will contain from 300 to 500 earthworms, with a total weight of 200 to 300 grams, living up to a depth of 1.5 metres. They create up to 500 metres of burrows on this area.

Soil sealing leads to flooding.

The functions of soil

The soil protects against flooding

Water storage in the soil should not be pictured as an underground cavernous lake. Water on the surface of the ground is stored in a network of hollow spaces known as pores. It does not simply seep down towards the groundwater; instead, thanks to the surface tension of the water, it is held in the soil pores until needed.

The capacity of soil to store water depends on the proportion of the pores. Usually 30 to 60 per cent of the soil is made up of pores of differing sizes. In organic soils formed in raised bogs, this amount can be as high as 90 per cent. If the pores are too large, as in sandy soils, water travels rapidly deep into the soil, whereas soils with a high clay content store more water. The depth of the soil also determines its capacity to retain rainwater.

Soil = a sponge

The amount of soil pores also depends on the surrounding plant roots and the soil organisms. With their extensive networks of burrows, earthworms enhance porosity and are especially important helpers in protection against floods.

When it rains, the small pores fill with water first. Pores with a diameter greater than one-tenth of a millimetre are particularly important for the flow of rainwater. If it continues to rain, earthworm burrows then begin to fill with water. When the water stores are full, surface run-off will occur and then the rain ends up in the nearest bodies of water such as swelling streams and rivers.

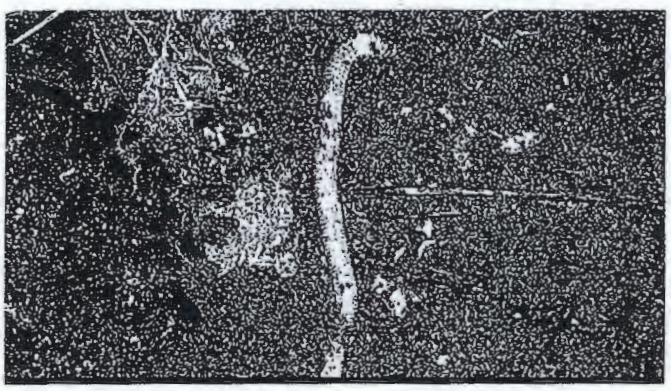
The water masses can be known to flood towns, fill cellars with water and mud, wash away cars and flood streets. This occurred during the summer of 2014 in the sloping region between Bern and Lucerne and in the Canton of St. Gallen, where the flooding caused damage running into the millions.

Intact soil is indispensable not only for flood protection. A part of the water in the soil is also available to plants, which would otherwise dry up. For example, wheat crops require a hundred litres of soil water to produce one kilogram of grain. Without the water storage in the soil there would be no green and flourishing landscapes and of course, no production of food.

Soil compaction

If the soil's water infiltration capacity is disturbed or even destroyed, heavy rainfall runs off to the nearest bodies of water much more rapidly, which happens when driving heavy machinery on soil or improperly handling excavated soil as this eliminates the pores and compacts the soil.

Water filtration ceases completely when the soil disappears under roads or buildings. This is increasingly the case as the surface area of housing and infrastructure has grown in Switzerland by 384 square kilometres from 1985 to 2009 – which is equivalent to the size of Lake Geneva. In sixty per cent of this newly developed area the soil is sealed, meaning that water storage in the soils in Switzerland is continuously shrinking. Intact soil in developments can greatly reduce the burden on sewer networks and also retain pollutants. Consequently, for good flood protection, more sustainable treatment of the soil is needed not only in cultivated land and forests but also in developed areas.



Soil takes form over an extremely long time period; therefore it can be considered to have a "good memory". Soil scientists have the ability and knowledge to read the different soil layers like a book gaining boundless information reflecting the environmental conditions that prevailed when the soil was first formed.

In 2012, the Celtic treasure of Fällanden in the canton of Basel was discovered in the soil – 293 silver coins – the largest Celtic precious metal coins in Switzerland.

Also discovered in the Basel underground was a stone wall which was part of the paving of a courtyard.

The functions of soil

The archival record in the soil

Old soil preserves information regarding climate, vegetation and the impact of natural catastrophes in past epochs. Bog or moor soil, which inhibits the decomposition of organic material, provides an especially important archival record as each individual peat layers contain pollen, leaves or seeds of plant species that were common in their landscape in earlier times. They can be identified even after thousands of years and allow us to trace the exact expansion of certain tree species in different regions of Switzerland since the last ice age.

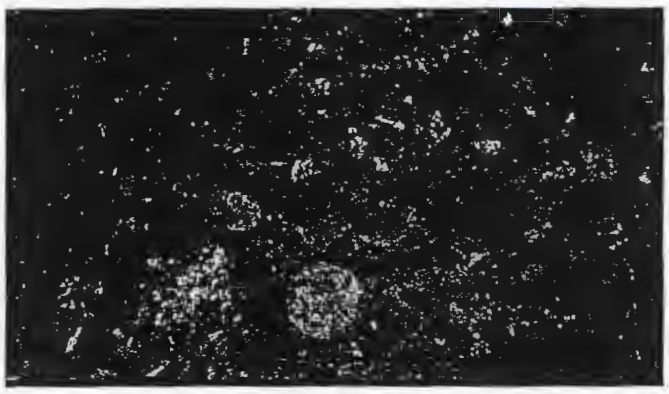
Valuable archives

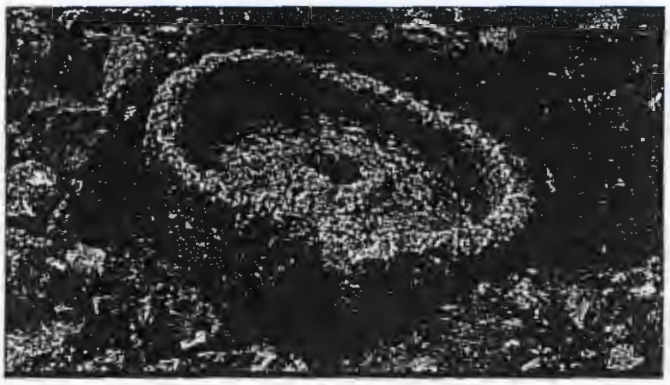
Core samples from raised bogs provide an archival record of atmospheric pollution. In the peat body of the upland moor at Etang de la Gruère in the Canton of Jura, there are two layers with increased levels of lead. Responsibility and blame for contaminating these deeper layers of the soil lies with the Romans. The Romans exploited the soft metal on an industrial scale for making water pipes, containers and other objects. Another example lays two thousand years later when humans in the automobile era used leaded petrol. The lead released into the environment fell to earth, covering it as a veil, and it is still detectable in the soil to this day.

Mirror of human civilization

Since the Stone Age humans have left manifold vestiges of cultural development in the soil. From inconspicuous remnants such as bones, coins and tools, archaeologists can gain critical insight into the everyday life of humans in earlier times.

Soil also reveals how the landscape once appeared, how it developed and what impact humans had on it. It helps to provide information on the history of the landscape, the development of agriculture and settlements and a mirror of human civilization. Providing such valuable information regarding the natural and cultural history further implores the relevance of soil's survival





Conserving the basis of life

The soil beneath our feet is the perfect mixture of minerals, humus, water, air, animals, plants and fungi that interact in a variety of ways. The well-being of our society is closely connected with this underground society as it fulfils numerous economic and ecological functions.

The individual functions of soil are closely interconnected. For example, while healthy soil has a high water-retaining capacity, there are other roles that soil can play more effectively in certain locations than in others. For instance, the expansive fertile soils in the Central Plateau are particularly well suited in supplying food to the population. In contrast, carbon and water storage are the primary focus within marshlands. While the primary function is important, for effective sustainable use of the land it is important to manage the land and not to lose sight of the other functions.

The world is losing soil

In this country only a few of us, mainly farmers, still have direct contact with the soil. As the distance between the soil and ourselves in our daily lives grows, the soil becomes distant in our minds. We have become neglectful in the the way we treat our soil.

Throughout the world, 24 million tons of soil is washed into the sea or blown away by the wind each year. Soil erosion and the formation of deserts are problems in 168 countries. At the same time, developments and roads are claiming ever more valuable land. Altogether, this means that soil loss is a growing threat to global food security.

The issue of increasing soil scarcity worldwide will lead to disputes and conflicts in the coming decades. More and more industrial and emerging countries are acquiring large areas of land in developing countries to ensure their own food security – often at the cost of the local farmers. Today, sixty per cent of the foods or raw ingredients consumed in Switzerland have been produced in other countries.

While this is occurring, the soil in Switzerland is degrading and several threats can be identified, as when soil is damaged, it affects all of its functions.

Complete breakdown

Developed areas, with their high proportion of concrete or asphalt surfaces, are claiming more and more land. In the Central Plateau of Switzerland, from 1985 to 2009 nearly one square metre of land was used for construction per second, which is equivalent to:

- Fifteen metres of residential road per minute,
- Six single-family houses per hour,
- An area the size of the Canton of Basel per year.

Sixteen per cent of the Central Plateau already consists of built-up, industrial and commercial areas. With construction, all natural soil functions come to a standstill, primarily food production. If the sealing over of the land in the Central Plateau continues at its current rate, there will be dramatic economic, social and ecological consequences.

In Switzerland more and more soil is disappearing under asphalt and concrete. The photos show the area around the 63 motorway near Effingen, Canton of Aargau, in 1982 and today (2015).

Failing quality

Many different factors are impacting and degrading the soil permanently, making it increasingly difficult for the soil to properly perform its functions:

- Soil compaction: Driving heavy construction machines, tractors, seed sowers and harvesters on the soil compacts the soil pores. This disrupts soil aeration and drainage and therefore the soil organisms, meaning soil fertility decreases. Compacted soils have limited infiltration capacity and permeability. Water cannot enter the soil, therefore runs off the surface, promoting soil erosion and increasing the risk of flooding.

- Soil erosion: Surface run-off essentially washes away the fine soil, which is rich in nutrients. This erosion impairs many soil functions, among others its water-storing capacity and fertility. Approximately forty per cent of Switzerland's farmland is considered to be endangered by erosion, meaning that more than two tons of soil material per hectare can be lost each year. In all, farmlands in Switzerland lose more than 800,000 tons of soil material each year. That is approximately equivalent to soil 100 metres high covering an area the size of a soccer field. On top of this, the soil washed away causes considerable ecological damage to bodies of water.

- Pollutant inputs: Approximately one-tenth of the soil in Switzerland is heavily polluted which is a part of the past environmental pollution and damage legacy. In addition, soils in intensively occupied meadows are showing a continuing rise in zinc and copper concentrates, which are then fed into agricultural soils through liquid manure or additives in animal feed.

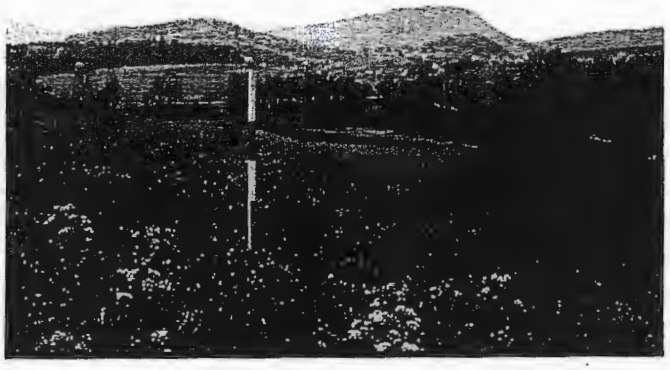
- Soil acidification: Transport, industry, households and agriculture all emit large amounts of nitrogen and sulphur compounds that, when combined with rain, eventually end up in the soil. The ensuing acidification of the soil results in nutrients being washed out and pollutants being released which can then in turn contaminate drinking water.

Soil protection is a task for the whole of society

Conclusively, it is abundantly clear that the long-term maintenance of the functional capability of our soil resources is becoming increasingly precarious in Switzerland and also around the world. Once the soil is degraded or damaged, it can only be returned to its original bountiful state with great technical difficulty and expense – if at all. The success achieved with the air and water pollution control issues cannot be easily repeated with soil protection, as we know it has a long memory and cannot be quickly restored.

It is imperative that the protection of soil has a central role in the discussion of the sustainable use of natural resources. As all areas of life essentially utilize and/or damage the soil while at the same time profiting and benefiting from its functions, the topic of soil protection is a task for the whole of society: politicians, government, industry, spatial planners, researchers, everyone of us. We all have to take responsibility.

The goal is to protect and ensure the functions of the soil and thus its ability to perform them. To ensure this, soil use and functions have to be reconciled. It is important to minimize erosion and pollution, prevent unnecessary sealing of soil and correct handling of excavated soil during construction.



Fertile soil does not develop overnight but rather over thousands of years. A single excavator scoop destroys in seconds something that from the human perspective took an eternity to develop. When soil is lost, this impairs not only our own quality of life but also the quality of life of future generations.

Homo and humus

It is not surprising that the Latin words homo, meaning human, and humus, the soil, derive from the same Latin root. Our ancestors correctly assessed the importance of the soil for human beings.

Through our high-tech civilisation we have distanced ourselves from direct experience with soil. However, our well-being today depends on intact soil just as much as it did in the past. We need to appreciate and value soil once again as it is a precious treasure that must be protected.

Links

National Research Programme "Sustainable Use of Soil as a Resource" (NRP 68)

The National Research Programme "Sustainable Use of Soil as a Resource" (NRP 68) establishes a basis for political decision-making which takes into account both the ecological *and* the economic functions of soil and paves the way for soil resources to be used sustainably in Switzerland.

www.nfp68.ch

Federal Office for the Environment (FOEN)

The FOEN is committed to ensuring that all functions of the soil are conserved so that in the long term sufficient soil is available for all necessary uses in Switzerland.

www.bafu.admin.ch → Themen → Boden

Federal Office for Agriculture (FOAG)

The FOAG is committed to ensuring that farmers produce high-quality food sustainably and according to market demand. The goal is multifunctional agriculture.

www.blw.admin.ch → Themen → Nachhaltigkeit → Ökologie → Boden

Federal Office for Spatial Development (ARE)

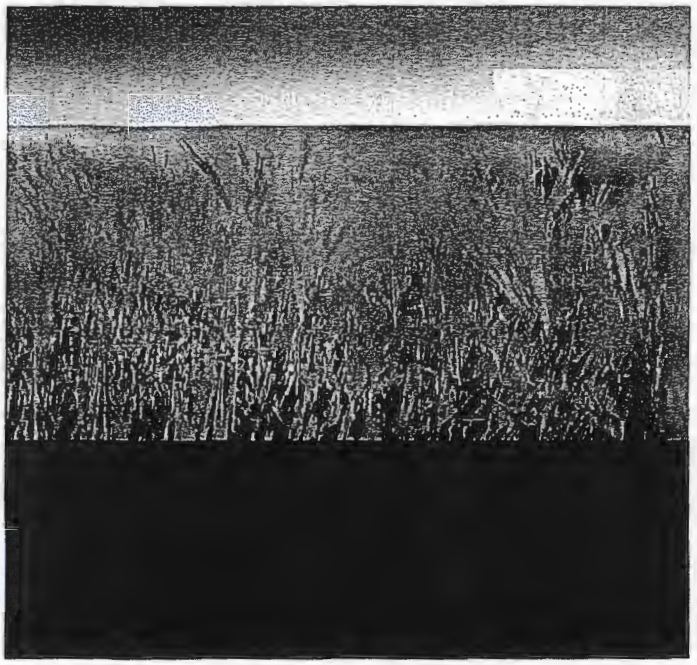
The ARE is the federal government's centre of excellence for issues concerning sustainable spatial development.

www.are.admin.ch/org/index.html?lang=en

Swiss Soil Science Society (SSSS)

On many different levels, the SSSS is actively engaged on the behalf of sound science and qualitative soil protection. It disseminates and deepens soil science knowledge. It is also an exchange platform for dialogue between specialists in administration, research and the private sector and promotes cooperation between research and practice.

www.soil.ch



ETH-SNF

People's Counsel Survey of Designated Scenic and Non-Scenic Roads, Sparks Area and Areas to the East and West

ADC Map 30: Butler, Dover, and Black Rock Road

Scenic on MP 2020, Map 26: Black Rock, Butler, Dover, Falls
Not listed on MP 2020, Map 26: Benson Mill, Mantua Mill, Stringtown

ADC Map 31: Belfast Road Area

S: Belfast, Falls, Thornton Mill
NS: Chilcoat, Cuba, Duncan Hill, Gerber Lane, Stringtown, Tanyard, Wheeler, Yeoho

ADC Map 32: Sparks-Glencoe Area

S: Belfast, Phoenix, Quaker Bottom, Thornton Mill, York
NS: Ensor Mill, Glencoe, Home, Lower Glencoe, Philpot, Sparks, Upper Glencoe

ADC Map 33: Caroll and Old York Road Area

S: Carroll, Cooper, Corbett, Old York, Paper Mill, Phoenix, Stockton
NS: Carroll Manor, Glencoe, Irish, Philpot

Quantitative Summary

Designated Scenic Roads: ADC Maps 30-33

Belfast (31, 32), Black Rock (30), Butler (30), Carroll (33), Cooper (33), Corbett (33), Dover (30), Falls (30, 31), Old York (33), Paper Mill (33), Phoenix (32, 33), Quaker Bottom (32), Stockton (33), Thornton Mill (31, 32), York (32)

Summary: 15 Designated Scenic Roads

Not Designated Scenic Roads

Benson Mill (30), Carroll Manor (33), Chilcoat (31), Cuba (31), Duncan Hill (31), Ensor Mill (32), Gerber Lane (31), Glencoe (32, 33), Home (32), Irish (33), Lower Glencoe (32), Mantua Mill (30), Philpot (32, 33), Sparks (32), Stringtown (30, 31), Tanyard (31), Upper Glencoe (32), Wheeler (31), Yeoho (31)

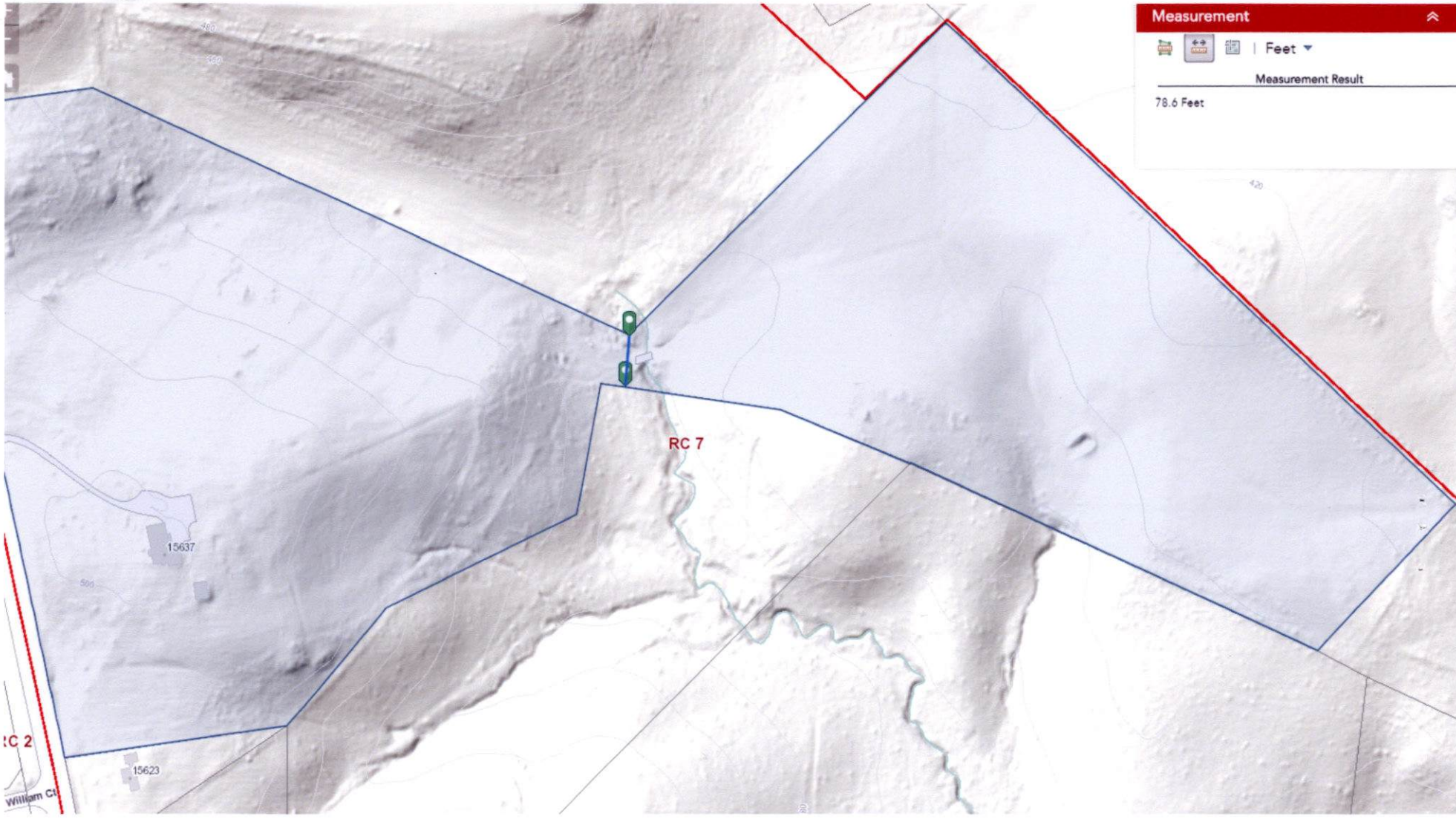
Summary: 19 Not Designated Scenic Roads

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. **[Bill No. 74-2000]**

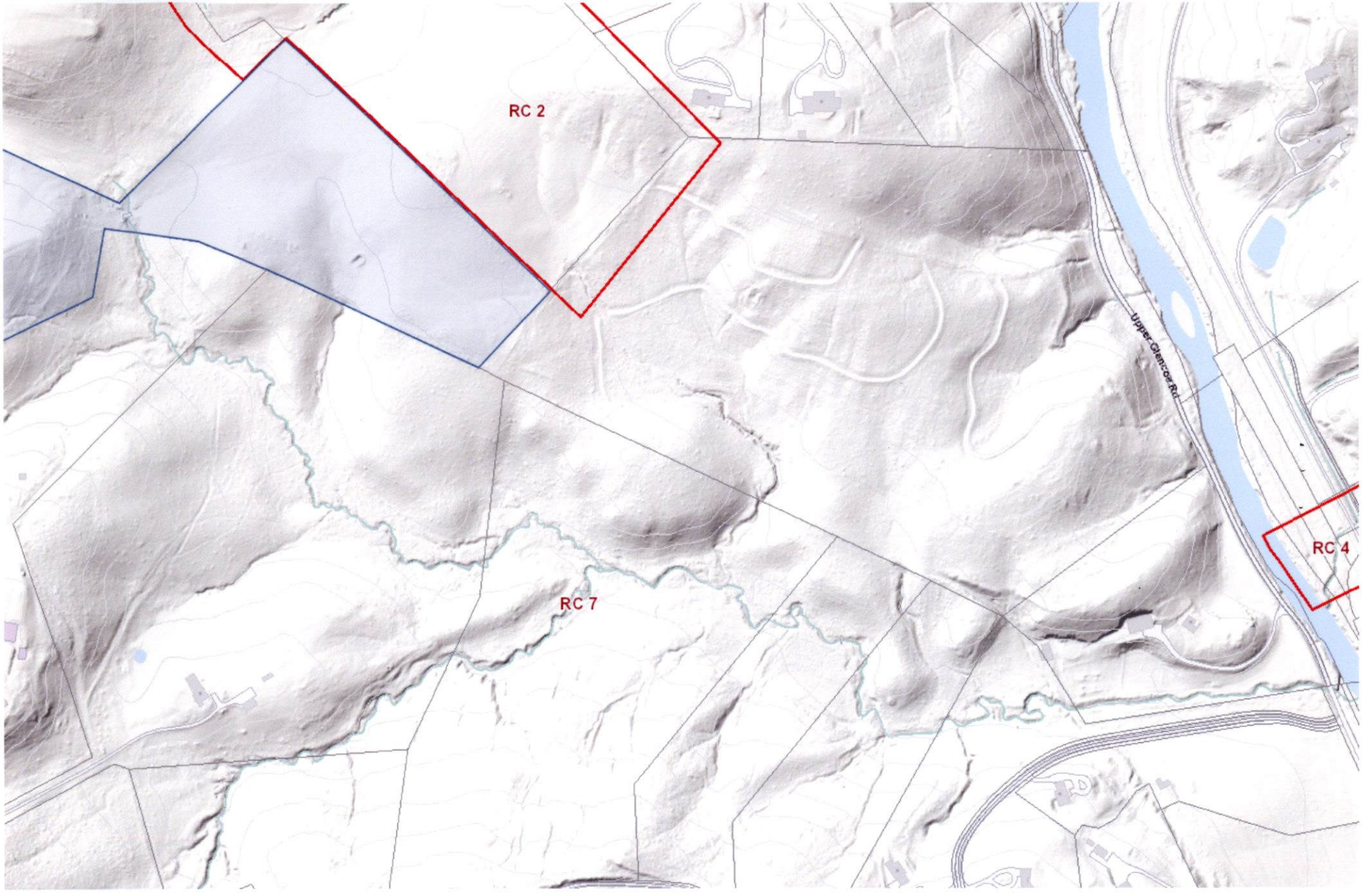
- No trees removed from site for installation
- No wetlands on site
- Possible intermittent stream – will be determined by wetlands delineation
  - Proper buffer maintained from stream
- No floodplain on site
- Driven piles 8'1" into ground – no impact on aquifer
- Facility does not consume water or discharge any water
- Review of publicly available information and consultation with county agencies indicate no impact on archaeological, cultural or historical resources or threatened and endangered species or habitat



15637 York Rd, Gerner property
Map: Baltimore County.gov/myneighborhood/

Distance between the two closest points of property (next to stream): 78.6'

PROTESTANT'S
EXHIBIT NO. 1



Gerner Property Stream empties into the Gunpowder Falls.

The direction of the hillside slopes surrounding the proposed site would create increased runoff into this Class III Trout stream.
(Map: My Neighborhood, Balto. Co)

Topo map of proposed Gerner solar facility (blue outline of property).

Direction of slopes (map by myneighborhood); note stream bed at narrowest point of property.

Points where accompanying photos were taken, 12/7/2017 by Bill Mayo and Lynne Jones.

PROTESTANT'S EXHIBIT NO. 2

3

Wildlife caught on barbed wire/wrought iron fencing. Deer can jump 10-12' over a fence if necessary. Images from google.com search.

Prot. 3

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 29, 2019

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

H. Barnes Mowell, Esquire
H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Robert K. Gerner – Legal Owner*
ESA Sparks Glenco, LLC – Lessee
Case No.: 18-047-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

Robert K. Gerner
Brian Quinlan/ESA Sparks Glenco, LLC
William Mayo
Gorsuch's Retirement, Inc.
Sparks Glencoe Community Planning Council
Lynne Jones
Edd J. Matczuk
Al Rude
Nedda Pray
Rob Webster
Lawrence M. Stahl, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF ROBERT GERNER, LEGAL OWNER AND ESA SPARKS GLENCO, LLC - LESSEE AND PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 15637 YORK ROAD 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 18-047-X

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

OPINION

This case comes to the Board of Appeals from a final Opinion and Order dated December 21, 2017, issued by Administrative Law Judge John E. Beverungen (the "ALJ") in which the ALJ granted the Petition for Special Exception to allow a nine-acre ± solar facility on a portion of land in an RC-7 zone. The ALJ also imposed several conditions to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties.

On January 12, 2018, Petitioner's counsel sent a letter to the ALJ requesting what Petitioner considered a "clarification" of condition No. 4 ("No trees shall be removed from the site in connection with the construction and/or operation of the solar facility") requesting that Petitioner be permitted to remove trees necessary for the access road to the proposed solar field. Four days later, the ALJ signed off on the January 12, 2018 letter with the proposed language. There is nothing in the record demonstrating that Protestants were on notice of the clarification request or that the request was granted. Protestants appealed the ALJ final Opinion and Order.

The hearing in front of the Board occurred over four days, August 21-22, October 24, 2018, and November 28, 2018. Timothy M. Kotroco, Esquire appeared on behalf of Petitioner. Petitioner elicited testimony from the following witnesses: (1) Brian Quinlan, the President and Chief Executive Officer of Calvert Energy, LLC, as an expert in solar energy and the installation

of solar panels on solar farms, but also called on behalf of the Petitioner as a fact witness; (2) James Deriu, a Vice President of KCI Technologies, as an expert on environmental science, and stream and wetlands delineations; (3) Mitchell Kellman, an expert in planning and zoning, including specifically the Baltimore County zoning process; and (4) Bruce Doak, an expert in land surveying, planning, and zoning.

Protestants Sparks Glencoe Community Planning Council, William Mayo, and Gorsuch Retirement, Inc., through their counsel, H. Barnes Mowell, Esquire, presented the following witnesses: (1) John Altmeyer, who was called to address stormwater management, impervious surface, and topographical issues; (2) Lynne Jones, President of the Sparks Glencoe Community Council; (3) Edward Matczuk, a nearby neighbor to the subject property; (4) John Roemer, IV, President of Roemer Ecological Services, Inc., who was received as an expert in wetland delineations and the identification of bog turtle habitats; and (5) William Mayo, President of Gorsuch Retirement, Inc. (a family-owned business) that owns property adjacent to the subject property. Peter M. Zimmerman, Esquire, participated on behalf of the Office of People's Counsel for Baltimore County.

Factual Background

Petitioner seeks special exception approval of a solar farm at 15637 York Road. The subject property, zoned RC-7, is 30.27 acres[1], but only nine ± acres are intended for the solar panel array. The subject property is located along a section of York Road designated as a scenic route. Throughout the hearing, the property has been described as having a "bowtie" appearance, with the one part of the bow adjacent to York Road and the other part, approximately 1,100 feet from York Road, proposed to contain the solar farm. In between, the property narrows to form the

[1] The property has also been identified as consisting of 30.723 acres in the ALJ Opinion and Order. The discrepancy is not material to the resolution of this case.

"pinch" or "knot" of the bowtie.[2] At the bowtie knot, there presently is a road of sorts connecting the eastern and western halves.

The Maryland Community Solar Energy Generating System Program ("Program"), as is relevant, permits a person owning or operating a qualifying solar generating system ("subscriber organization") to contract with a third party for the third party to finance, build, own, or operate a community solar energy generating system. Md. Public Util. §7-306.2. In this case, Robert Gerner owns the property at 15637 York Road and has contracted with ESA Sparks Glenco, LLC, to finance, build, and operate a solar generating system as part of this Program.

Following the creation of the Program, Baltimore County enacted legislation to regulate the land use aspects of these community solar generating system facilities. The Council's stated purpose for the regulation sets forth (as identified in BCZR §4F-101(a)):

> Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources.

As implied above, BCZR §4F-102(a) requires petitioner to seek approval via special exception prior to construction and operation of a solar facility under the Program within, as relevant, the RC-7 zone. Further, BCZR §4F-102(a) restricts these facilities by capping power generation capacity to two megawatts and preventing proliferation of these facilities by limiting each council district to no more than 10 facilities. BCZR §4F-102(b). Petitioner proposes a solar farm that will generate 1.87 megawatts of power. At the time of this Opinion, the Third County

[2] For ease of reference, this Opinion will use the "bowtie" description to denote the property's eastern and western halves, as well as the pinch or knot, e.g. "at the bowtie knot," "the eastern half," etc.

Council District has not reached the maximum number of solar facilities allowed by BCZR §4F-102(b).

Summary of Testimony

Brian Quinlan, accepted as an expert in solar energy and the installation of solar panels on solar farms, provided expert witness and fact witness testimony regarding the subject property and the proposed use. Mr. Quinlan testified that ESA Sparks Glenco, LLC has been accepted as a subscriber by the Public Service Commission. He described the process of how the subject property came to be selected for the proposed solar farm, including noting its location off York Road, with the back nine acres (eastern half of bowtie) of the property being located approximately 1,100 feet from York Road. Its proximity to York Road assists with access to a substation and tying in distribution lines, and the eastern half of the bowtie provided ample area for the solar array and its topography allowed for the necessary solar exposure and screening.

Mr. Quinlan identified the plan for the property (which was prepared by Mr. Doak, whose testimony is addressed below). He stated that there will be an access drive from York Road, the entrance for which requires approval by State Highway Administration. The access drive, as proposed, will be approximately 20-feet wide and will be composed of crushed stone. The access drive will more or less travel the northern property boundary on the western half, continue through the bowtie pinch, and emerge on the eastern half, which will contain the solar panel array and related equipment. Also along the access drive will be wooden poles and transmission lines to connect to the BGE lines along York Road. While there will not be the need to remove any trees for the solar array, some trees in the western half of the property will likely need to be removed to construct the access drive and install the wooden poles.

Mr. Quinlan estimated that, on average, construction of a solar facility of this type takes about three months. The facility does not require anyone to be on site for operation. At least twice a year, there will be scheduled maintenance on the facility to make sure the facility is working properly. The electrical portion of the facility will have sensors and the facility will be monitored offsite. There will be a small weather station on site, which will assist in determining the existence of a problem and prompt an investigation in the event there is an unexpected discrepancy in expectations arising from the particular weather. The maintenance and monitoring will be outsourced. The panels and related equipment (*e.g.* inverter) will be contained within a secure, fenced area. Petitioner will provide the key to the local fire department so it can access the facility in the event there is an emergency.

The panels for the proposed array are made of standard polysilicone and are recyclable, just like solar panels located on houses. The panels will be mounted to steel posts and racking. The array will have a fixed 25-degree tilt facing south to maximize exposure to the sun. That angle results in the panels having a height of 7 feet, 5 ½ inches, and being 2 ½ feet off the ground, with each row to be approximately 14 feet apart. While there is no final design for the array to determine an exact location, he expects that the edge of the array will be about 150 feet from the nearest property line.

The area underneath the panels and in between rows will remain grassy, but controlled and maintained. At the end of the lease, identified as 20 years with an option, the land upon which the array sits can be restored. The steel posts can be pulled out of the ground, as well as the other equipment, and the area can be reseeded. At the outset, Petitioner will be required to enter a decommissioning agreement in order to ensure that sufficient funds remain available to restore the

land at the lease expiration. Mr. Quinlan testified that the County will require Petitioner to post a bond for financial security and Petitioner will obtain liability insurance.

As for stormwater management issues, those will be explored in more detail if the petition for special exception is approved. Mr. Quinlan testified that they are compelled to comply with the County requirements prior to obtaining a building permit. Mr. Quinlan, on cross examination, explained that Petitioner sought special exception approval prior to engaging in a more detailed environmental analysis as the costs to have the analysis at the time of special exception hearing is substantial (identifyied in rebuttal as an estimated $365,000.00) and Petitioner prefers to see if the petition will be granted prior to committing itself to such costs. The stormwater management, wetland delineation, and related environmental matters, as well as timing of such a study and whether sufficient information has been presented to the Board on those topics, form much of the dispute in this case, and will be discussed in greater detail below.

Mr. Deriu, again, an expert in environmental science and stream and wetland delineations, works for KCI Technologies and was retained by Petitioner to start evaluating the site in the event Petitioner receives special exception approval for the solar facility. Mr. Deriu visited the site on one occasion, focusing on the eastern half of the property. He believed the area of the bowtie knot was an old farm crossing and that the pipe that runs underneath the crossing, though "pretty old," appears to have supported farm equipment in the past. He witnessed some base flow in the pipe while he was present. If this matter progresses, he will perform a forest buffer analysis, steep slope analysis, and endangered species analysis.

Mitchell Kellman, an expert in planning and zoning, testified that York Road, at this location is a state road, but also designated as a County Scenic Road. He noted that the property's topography drops, with the house on the western part of the site sitting on a ridge at its highest

point. Mr. Kellman believes that the solar facility will not be visible from York Road and as such, will not affect the scenic view. Given the topography and existing landscaping, the site will not need much by way of additional landscaping, and if so, mostly because, during winter, the property is more visible.

Mr. Kellman explained that a landscape plan will be required if a development plan is required. A landscaped right of way agreement will be required before a permit is issued. Mr. Kellman echoed the testimony of Mr. Quinlan that stormwater management plans will come after the special exception hearing, if approved, and opined one is not required for the special exception hearing.

Mr. Kellman also opined that the proposed use is consistent with the existing zoning classification and regulations as the County Council expressly provided, by way of special exception, that properties within the RC-7 zone may have solar facilities. Mr. Kellman, in light of his experience in the County, testified that the Department of Environmental Protection and Sustainability ("DEPS") will require an analysis of environmental impacts and if DEPS is not satisfied, the project will not move forward. He also testified that Baltimore County Department of Permits, Approvals and Inspections ("PAI") requires Petitioner to enter into a Solar Facility Decommissioning and Security Agreement, before any building permit may be issued.

Bruce Doak prepared the plans identified as Petitioner's Exhibit 1 and 1A. Mr. Doak agreed with Mr. Kellman that, following approval, the next step is for environmental experts to conduct wetland delineations and other such work and submit that information to DEPS, who will review, and if approved, may impose conditions. In fact, Mr. Doak testified he spoke to someone at DEPS who told him there was no issue in proceeding with the special exception case prior to submitting the environmental information to DEPS.

On cross examination, Mr. Doak acknowledged the presence of a stream on site, and agreed that it is reasonable for a party seeking a special exception to present some information concerning environmental and stormwater management issues without the need for a full report at the time of the hearing. Mr. Doak also testified that he considered the solar facility an accessory use, not a principal use. He agreed that the RC-7 zoning regulation on impervious surfaces limits such surfaces to 10% of the property, but testified that grass will be under the solar panels, which is a pervious surface. Finally, Mr. Doak noted that the edge of the array could be as close as 60-70' or up to 150' from the property border. He believes that, like Mr. Kellman, the 50-foot setback applies to solar facilities, not the 300-foot setback generally applicable to RC-7 properties.

Protestants first called John Altmeyer, who worked for the County for 32 years, rising to the level of chief inspector for building permits, but also conducted environmental inspections for the County. Mr. Altmeyer testified that the impervious surface regulation applied to poles, fences and roads, but agreed that the solar panels here are not impervious surfaces under the regulation. Mr. Altmeyer presented testimony about steep slopes and methods to treat runoff. Mr. Altmeyer clearly had substantial knowledge, but ultimately appeared to agree that, though careful consideration of these issues are required, the stormwater and runoff issues may be decided after the special exception hearing. Particularly, on cross examination, Mr. Altmeyer agreed with counsel for Petitioner that if there was a plan for those items that was subsequently approved following a site visit, he would have no problem with the plan.

Lynne Jones next testified for Protestants. Ms. Jones is the President of the Sparks Glencoe Community Planning Council, an organization of 400+ members, whose territory covers much of the Third County Council District, including the site at issue. Ms. Jones's testimony was offered individually and on behalf of the organization. She visited the surrounding area four/five times

prior to her testimony. Ms. Jones was not offered as an expert, nor was her testimony received as that of an expert witness. However, Ms. Jones has taken significant efforts to become more informed about certain subject matters in order to help educate others about protecting natural resources. She estimated she put approximately 70-80 hours of work into this case.

Her testimony focused upon the special exception factors. More specifically, it was her belief that the proposed use: (1) was detrimental to the health, safety, and general welfare of the locality, particularly as to streams, waterways and wildlife (BCZR §502.1(a)); (2) presented a potential for fire, panic or other danger as there was one way in and out of the site for fire trucks (BCZR §502.1(c)); (3) was inconsistent with the zoning regulations, as she believed that there was to be no development on farmland on a RC-7 zoned property unless absolutely necessary (BCZR §502.1(g)); (4) was inconsistent with the impermeable surface and vegetative retention regulations, identifying 146,000 square feet of impervious surface (BCZR §502.1(h)); and (5) was detrimental to the environmental and natural resources of the site and vicinity, particularly as to migratory wildlife, waterways, fencing, flooding and runoff, potential bog turtle habitats, and streams and slopes (BCZR §502.1(i)).

Ms. Jones (as well as some evidence and argument from People's Counsel) suggested that soil is a natural resource, more specifically, prime and productive soils, which she contends is located on the right side of the bowtie, i.e. the location of the proposed solar facility. She noted that this matter is the only one in Baltimore County where a solar farm was proposed in a RC-7 Zone and in her reading and understanding of the relevant regulations and Master Plan 2020, that the RC-7 Zone was created to protect sensitive areas and restrict commercial development. She believed other RC zones were more appropriate for solar facilities and generally identified areas without streams or wetlands as being better options. Ms. Jones visited some of the adjacent

properties, including the property adjacent to the bowtie. She observed that the culvert had debris and was backed up.

Edward Matczuk, who lives on a nearby property to the east of the Gorsuch Retirement property that is immediately adjacent to the subject property, also testified. Mr. Matzcuk's property is not immediately adjacent to the subject property; rather, the subject property (to the southwest) and Matzcuk property (to the northeast) essentially "sandwich" the middle part of the Gorsuch Retirement property. He identified concerns over what he may see. He testified his house sits in a valley and therefore, is lower than the proposed solar field. He also identified possible flooding and runoff from the subject property, via the Gorsuch Retirement property, as issues. Like Ms. Jones, he identified existing flooding on Upper Glencoe Road. He also testified that his property has been flooded by water coming off the Gorsuch Retirement property. He testified he has to muck his pond every five-to-seven years because of the silt from the flooding.

On the last day, Protestants called John Roemer, IV, a wetland delineation expert, but also a nearby property owner (about 1-1½ miles away). He provided substantial information on identifying wetlands and identifying potential bog turtle habitats. He visited the Gorsuch Retirement home property to the northeast of the subject property, bringing his soil augur, as well as taking photographs. For his second visit, he went to the Rude property, located north of the western portion of the bowtie, walked around wetlands on that property and examined the streams. He had a third visit, at which time, he walked around the wetland area again and probed the soil. He found indicia, which in his opinion, satisfy each factor used to identify wetlands on at least one of the adjacent properties. He believes that the proposed access drive may be located within the 100-foot buffer separating wetlands from non-wetlands. As such, he believes that, if so, Petitioner will need permits from the County and State to build the access drive.

Mr. Roemer testified that if it was subsequently determined that there was encroachment into the buffer/setback, the plan may be modified during the permit review period. He felt it was beyond his area of expertise to opine whether wetland issues should be resolved prior to or during a special exception hearing.

William Mayo was the final witness. He testified individually and as President of Gorsuch Retirement, Inc. His family has owned 185 acres in the area for centuries, finding gravestones between the 1700s and 1820. Mr. Mayo lives 3/8ths of a mile from the subject property. He testified that he believes he will be able to see half of the solar field from his house due to elevation differences. He raised additional concerns about deer and runoff from the subject property. The Gorsuch property adjacent to the subject property has been steadily farmed since 1972. Mr. Mayo also identified concerns of traffic in and out of the site trying to turn on to York Road, tree cutting needed for the access drive, and the ability of fire trucks to access the eastern half of the property if necessary.

Testimony from witnesses on both sides established that the proposed area for the solar array has not been used as a farm for quite some time. Mr. Quinlan testified that he was aware that the area had been used for hay, but not farming. Mr. Doak also testified that the existing field was used for hay, but now is just mowed, which Ms. Jones echoed. Mr. Mayo also provided testimony that the subject property was recently used for hay, though not last year. He also testified the subject property had been farmed in the past. Within the immediate area, only the Gorsuch Retirement property is currently used for farming.

Relevant Law, County Code Provisions and Zoning Regulations

A. The RC-7 Zone

The RC-7 Zone is limited in terms of uses permitted by right, with BCZR §1A08.3(A) identifying only nine such uses. Subsection (B) of BCZR §1A08.3 identifies 15 enumerated uses permitted by special exception. As expected, the RC-7 Zone also has various regulations for scenic views, density, setbacks, impervious surface coverage, and historical properties, as well as performance standards for stormwater management, visibility, landscaping and signs. BCZR §§1A08.5, 1A08.6. The regulatory scheme also accounts for inconveniences arising from agricultural operations, including noise, dust, odors, fumes, and operation of machinery, among other items. BCZR §1A08.7. As noted below, BCZR §4F-102(a) adds a sixteenth use permitted by special exception in a RC-7 Zone --- a community solar facility.

B. Solar Facilities Law

In 2017, the County Council enacted new legislation regulating solar facilities, embodied in BCZR §§4F-101, *et seq.* The County Council recognized the advantages of an "abundant, renewable and environmentally sustainable source of electricity generation," that would lead to "greater local grid resiliency and security," and result in the production of clean, renewable energy and a reduction in air and water pollution. BCZR §4F-101.

In attempting to strike a balance between the benefits from solar energy production and the potential impacts to any rural and commercial areas, the County Council ensured the placement of certain safeguards by requiring proposed solar facilities in certain zones to be permitted by special exception as opposed to by right, including, as relevant, the RC-7 Zone. Id.

In addition, the County Council created ten additional "requirements" (at BCZR §4F-104) in regulating these facilities:

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.

2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.

3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

Moreover, the County Council imposed certain maintenance, abandonment, and removal regulations upon owners, lessees, and operators of these solar facilities. BCZR §§4F-106, 4F-107. Violations of the solar facility regulations are subject to code enforcement proceedings in accordance with Article 3, Title 6 of the County Code. BCZR §4F-106(D).

C. Special Exception Law

Maryland courts historically have considered special exception uses as ones conditionally compatible with uses permitted as of right in the same zone. See, *e.g.*, Creswell v. Baltimore Aviation Serv., Inc., 257 Md. 712, 719; 264 A.2d 838, 842 (1970). The Court of Appeals revisited the law on special exception in 1979 with the seminal case of Schultz v. Pritts, 291 Md. 1; 432 A.2d 1319 (1979). In Schulz, the Court of Appeals held that a special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity. 291 Md. at 11; 432 A.2d at 1325.

In 2016, the Court of Appeals in Attar v. DMS Tollgate provided additional guidance on the presumption that accompanies a proposed special exception use. 451 Md. 272; 152 A.3d 765 (2016). First, the Court reiterated that the special exception petitioner has both, the burden of production and the burden of persuasion. Attar, 451 Md. at 287; 152 A.3d at 773, *quoting* People's Counsel for Balt. Cty. V. Loyola Coll. In Md., 406 Md. 54, 109; 956 A.2d 166, 199 (2008); *see also*, Board of Appeals Rule 7(d), "the proponent of an action to be taken by the Board has the burden of proof." Second, the Court clarified that the concurrent presumption in favor of the special exception petitioner is not a mutually exclusive evidentiary burden. Attar, 451 Md. at 286; 152 A.3d at 773.

Referencing Maryland Rule 5-301(a),[3] the presumption identified by Schultz v. Pritts satisfies the burden of going forward on a fact presumed (in this case, the special exception is in the interest of the general welfare, and therefore has a presumption of validity) and "*may* satisfy the burden of persuasion if no rebuttal evidence is introduced by the other side." Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson v. Litzenberg, 115 Md. App. 549, 564; 694 A.2d 150, 157 (1997) (emphasis in original).

The presumption is that a special exception use is valid, that is, one that *can* conform to the zoning plan depending on the location, zoning classification, and impacts on the surrounding area. The presumption that inures to a special exception petitioner's benefit requires a special exception protestant to present probative evidence of any harms or other detrimental impacts, as identified in BCZR §502.1, to the surrounding neighborhood that are above and beyond the impacts that may be experienced elsewhere in the zone from this proposed use (Schultz, 291 Md. at 22-23; 432 A.2d at 1331) and/or other noncompliance with applicable zoning regulations to warrant a denial.[4] In other words, a special exception protestant must show "non-inherent adverse effects," or "unique adverse effects" to overcome the presumption that the proposed use is in the interest of the general welfare and compatibility. See, Clarksville Residents Against Mortuary

[3] Md. Rule 5-301 sets forth:
(a) Effect. Unless otherwise provided by statute or by these rules, in all civil actions a presumption imposes on the party against whom it is directed the burden of producing evidence to rebut the presumption. If that party introduces evidence tending to disprove the presumed fact, the presumption will retain the effect of creating a question to be decided by the trier of fact unless the court concludes that such evidence is legally insufficient or is so conclusive that it rebuts the presumption as a matter of law.
(b) Inconsistent presumptions. If two presumptions arise which conflict with each other, the court shall apply the one that is founded upon weightier considerations of policy and logic. If the underlying considerations are of equal weight, the presumptions shall be disregarded.

[4] E.g., in solar facility cases, evidence that the proposed use does not meet the solar facility requirements set forth in BCZR §4F-104 may also warrant denial of a special exception petition.

Defense Fund, Inc. v. Donaldson Properties, 453 Md. 516, 543; 162 A.3d 929 (2017); Attar, 451 Md. at 287; 152 A.3d at 774.

If a special exception protestant presents sufficient evidence to create a genuine dispute of material fact as to a particular special exception factor or other zoning requirement, the evidentiary record must be sufficient to persuade the Board of Appeals that the proposed use will conform to the applicable zoning plan and satisfy the specified factors. Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson, 115 Md. App. at 564; 694 A.2d at 157.

Even still, the Board can grant the special exception petition along with certain conditions or restrictions to protect the surrounding and neighboring properties, and in solar facilities cases, "to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands." BCZR §502.2, §4F-104(10). If the burden of persuasion is not met, the Board will deny the petition.

The special exception factors to be evaluated by the Board are set forth in BCZR §502.1. As stated therein, before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

DECISION

A. BCC §33-3-108(c) Plan Requirements and Applicability To Special Exception Hearings

Before the special exception factors are discussed, the Board needs to address Protestants' argument that, pursuant to BCZR §4F-104(9), Petitioner is required to comply with the plan requirements of Baltimore County Code §33-3-108(c), which identifies an additional 18 requirements for solar facilities. Protestants further assert that Petitioner has the burden of proof and Petitioner has failed to produce evidence on various items required to be identified on the plan at issue in BCC §33-3-108(c). Therefore, the first question for the Board is what, if anything, Petitioner is required to prove with respect to BCZR §4F-104(9) during a special exception hearing.

To start, the Board looks at the language within the Code and Regulations. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted). "'Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language.'" Id. at 314–15, 987 A.2d at 52 (citations omitted). In interpreting a statute, a court first looks to the language, applying it where the statute's language "is unambiguous and clearly consistent with the statute's apparent

purpose[.]" Motor Vehicle Admin. v. Gonce, 446 Md. 100, 110, 130 A.3d 436, 442 (2016); *quoting* Lark v. Montgomery Hospice, Inc., 414 Md. 215, 227, 994 A.2d 968, 975 (2010) (citation omitted). As is well established under Maryland law, canons of statutory interpretation forbid construction of a statute so that a word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory. Oglesby v. State, 441 Md. 673; 109 A.3d 1147 (2015).

Clearly, the solar facility requirements, generally, are matters for the Board's consideration as the Board may deny a petition for special exception for a proposed solar facility for facial noncompliance. First, these requirements are set forth in the Baltimore County Zoning Regulations and, as relevant to this case, are applicable in the RC-7 Zone. Facial noncompliance with the requirements may result in a finding that the petition is inconsistent with the spirit and intent of the zoning regulations and/or run afoul of other BCZR §502.1 factors. Second, subparagraph 10 refers to the Board's authority to impose conditions if the special exception petition is approved. The implication is that the County Council intended for the Board to consider the additional solar facility requirements as part of a special exception hearing. However, the Board rejects Protestants' interpretation of BCZR §4F-104(9) that the County Council intended for the Board to review and decide the BCC §33-3-108(c) specific plan requirements as part of the special exception hearing.

Baltimore County Code §33-3-108(a) refers to a "plan" approved by "the Department" for "all development, forest harvesting operations, surface mining operations, and agricultural operations." The word "plan," as defined in BCC §33-3-101, "means a written and graphic representation of all proposed development, forest harvesting operations, surface mining operations, agricultural operations, and other land use activities not otherwise exempt from the provisions of this title that is prepared in accordance with § 33-3-108 of this title."

Baltimore County Zoning Regulation §4F-104(9) states that a "petitioner shall comply with the plan requirements of § 33-3-108 of the County Code." The word "plan," as used in BCZR §4F-104(9), neither supplements, nor alters, the definition of "plan" in BCC §33-3-101 or as applied to BCC §33-3-108(c) and therefore, the "plan" identified in BCZR §4F-104(9) is to be interpreted coextensively with the "plan" at issue in BCC §33-3-108(c).

The "Department," as used in Article 33, Title 3, is identified as "the Department of Environmental Protection and Sustainability ["DEPS"]," and the "Department" is charged with the duty to review the plan required by BCC §33-3-108. See, BCC §33-3-101(f); §33-3-108(a). In short, the "plan" at issue in the solar facility regulations is the plan required to be submitted for review and approval by DEPS. As further support, the County Code, pursuant to BCC §3-2-603, empowers DEPS to:

> (a) (1) Administer and enforce environmental laws, regulations, programs, and activities for the purpose of conserving, enhancing, and perpetuating the natural resources of the county and preserving and protecting the environmental health of its citizens; and (2) Have the duties, functions, and responsibilities provided for in the Code and assigned to it by directive of the County Administrative Officer.

In addition, DEPS has the responsibility to enforce the state laws and regulations concerning the environment upon delegation from the State. BCC §3-2-603(b). Furthermore, the County Code establishes that DEPS is the agency that enforces the provisions within Article 33, Title 3 and DEPS's Director is authorized to adopt policies and regulations, as necessary, to implement those provisions. BCC §33-3-105. It would be wholly nonsensical for both, the Board and DEPS, to independently review and assess the BCC §33-3-108(c) plan given the specific duties charged to DEPS and DEPS's expertise in the subject matter.

Furthermore, the Code provides that DEPS's Director or the Director's Designee is required to determine that the proposed development is in compliance with Article 33, Title 3

before any building or grading permit is issued by the Department of Permits, Approvals and Inspections. BCC §33-3-109. In other words, the requirements outlined by Article 33, Title 3 relate to development and do not relate to zoning.

Lastly, the County Council amended the special exception factors in connection with enacting the solar facility regulations, but the changes concerned zones other than RC-7 zones, which, to this Board, reflects an intent that the County Council intended for the Board to conduct the same review and analysis of the impacts of the environment and natural resources by the solar facility as it has for other proposed special exception uses. If the County Council wished for the Board to undertake the greater and more technical environmental analysis at issue in BCC §33-3-108(c), the County Council would have amended the BCZR §502.1 to reflect that intent or would have expressly authorized the same in Article 4F.

Taken together, the code provisions and regulations unambiguously establish that neither the ALJ, nor the Board of Appeals, reviews or approves the plan or any individual requirement identified in BCC §33-3-108 as part of a zoning special exception hearing. The only responsibility identified in BCZR §4F-104(9) is that petitioner is required to comply with the plan requirements. Notably, DEPS's comment submitted in this case stated that Petitioner will have to comply with the environmental regulations, as relevant for this discussion, found in BCC §§33-3-101 through 33-3-120, obviously inclusive of §33-3-108, and DEPS took no position on the request for special exception approval. (Petitioner's Exhibit No. 12). If Petitioner does not receive approval from DEPS, Petitioner will not receive any grading or building permit. Finally, and importantly, several witnesses testified expressly or by implication that they understood that DEPS will undertake this more comprehensive review after the Board resolves this matter, including namely Mr. Kellman, Mr. Doak, Mr. Altmeyer, and Mr. Roemer.

In light of the above, the Board concludes that Petitioner does not need to present at a special exception hearing evidence regarding each item required for a BCC §33-3-108(c) plan or, even simply, DEPS's approval of such a plan. Relatedly, the omission of such information at the time of the special exception hearing is, by itself, not fatal to a special exception petition.

B. Relevant Locality/Neighborhood

At the start, the Board must determine what the locality or neighborhood to evaluate what, if any, impact the proposed use has above and beyond effects inherently associated with a special exception use. Attar, 451 Md. at 278-284, 289; 152 A.3d at 769-772, 775. As stated by the Court of Appeals: "the Board's task is to determine if there is or likely will be a detriment to the surrounding properties" (Id., 451 Md. at 280; 152 A.3d at 769-770); the Board must assess "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 22-23; 432 A.2d 1319, 1331 (1979).

Therefore, the question is whether the expected effects from the proposed use are somehow exacerbated by the location at issue, to the detriment of those to experience such effects. For a special exception, the description of the neighborhood to be impacted by the proposed use "must be precise enough to enable a party or appellate court to comprehend the area the Board considered." Attar, 451 Md. at 282; 152 A.3d at 771.

In this case, testimony and various maps and photographs establish that Upper Glencoe and Lower Glencoe Roads form the north, east, and south sides of the locality at issue. The area contained within, using York Road as its western boundary, is overwhelmingly zoned RC-7, with some portion north and east of the subject property zoned RC-2. (Petitioner's Ex. 9). It has been

suggested York Road should be the western boundary for the Board's analysis. However, there are residences directly across the street from the subject property located on Elizabeth Court, William Court, and Kampman Court, all of which rely on access from York Road across from the subject property and therefore, should be considered as part of this analysis, though noting those residential properties are zoned RC-2 and no resident from the homes on those streets testified at the hearing or otherwise indicated opposition.

C. Special Exception Factors

At the outset of the hearing, Protestants stated that its case focused only on three of the nine special exception factors, particularly, (A) the health, safety and general welfare of the locality; (G) the inconsistency with the property's zoning classification and/or inconsistency with the spirit and intent of the zoning regulations; and (I) the detrimental impact to the environment and natural resources of the site and vicinity. In fact, much of Protestants' case and closing memorandum focused on environmental matters and inconsistency with the zoning classification and/or inconsistency with the spirit and intent. Protestants also challenged the petition for lack of evidence regarding compliance with certain solar facility requirements, which will be discussed in the section below. People's Counsel also largely confined its evidence and arguments to the environmental issues, as well as inconsistency with the classification and/or spirit and intent. Both advanced an argument regarding the visual impact.

For the special exception factors Protestants' witnesses addressed, the testimony too often amounted to speculation, which the Board cannot consider and rely upon for its findings. By way of example, Mr. Mayo testified that he had concerns that the conversion of the adjacent property will cause more deer to pass through the Gorsuch Retirement property and cause more crop damage. While the Board does not question the sincerity of Mr. Mayo's concern, there were no

facts in the record from which the Board can find, as a matter of fact, that there is a likelihood of an increase in the deer population on the Gorsuch Retirement property caused by the presence of an adjacent solar facility, which in turn will cause more crop damage to the Gorsuch Retirement property.

Protestants also raised an issue as to the impervious surface coverage as part of the RC-7 Zone regulations without reference to BCZR §502.1(H). However, Protestants' factual underpinning for this argument require the Board to conclude that the solar panels qualify as an impervious surface as contemplated by the BCZR. The Board does not so conclude.

The evidence establishes that only the vertical support posts for the array and fencing will make contact with the ground. Based on the evidentiary record, the solar panels will be fixed on an angle, leaving approximately two feet of space from the ground, with ample separation between the rows of panels. Though not specifically argued, the Board also finds that the limited removal of trees, confined to the western half of the bowtie and only in connection with the access drive construction is not inconsistent with the vegetative retention regulations.

Similarly, Protestants' witnesses testified that the crossing point at the "bowtie knot" part of the subject property may not be able to support the weight of emergency vehicles, if needed. The witnesses presented by Protestants that provided this testimony, however, were not qualified as experts. The testimony is assuredly speculative as there is no information as to the present capacity or the crossing's weight-bearing capacity following the intended improvements. It should be mentioned that, when the property was farmed, farm equipment used the crossing. Any concerns about the weight-bearing capacity at the crossing will be addressed in the permit stage.[5]

[5] The Board recognizes that Protestants do not have access to the crossing point as it is located entirely within the subject property. At the same time, the permit process related to the construction of the access road and the DEPS plan review will, by necessity, analyze the crossing point and what improvements can and will be made to move forward with this project.

In light of the above, this Board can summarily find that Protestants have not adequately rebutted the presumption on several factors, particularly, (B) congestion in roads, etc.; (C) the creation of a potential hazard from fire, panic or other danger; (D) overcrowding of land, etc.; (E) interference with schools, parks, water, sewage, transportation of other public requirements, etc.; (F) interference with adequate light and air; and (H) inconsistency with the impervious surface and vegetative retention regulations. Also, the Board finds Petitioner has satisfied its burden for those factors.

With respect to BCZR §§502.1 (A), (G), and (I), certain arguments have been raised which require some further discussion. In furtherance, Protestants presented testimony identifying visual impact, runoff, the RC-7 Zone, and the aforementioned environmental issues as concerns that touch on these special exception factors.

For example, Protestants identified the visual impact that they will experience and People's Counsel has identified the visual impact on an adjacent scenic route. Protestants argue the Baltimore County Master Plan 2020 reflects the County's policy to "preserve scenic corridors and views through proper zoning and coordination with federal and state governments," and therefore, "special exceptions should be granted sparingly." (Master Plan 2020, pp. 99, 101). Absent an express code provision mandating conformity with the Master Plan, Master Plans are understood to be guides in the zoning process. People's Counsel v. Webster, 65 Md.App. 654, 701-703; 501 A.2d 1343, 1347 (1986). In fact, Baltimore County's Master Plan is specifically designated to serve as guidance --- Baltimore County Charter §523 states: "The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county." (emphasis added).

Nevertheless, the regulations clearly establish that the County Council had awareness that any ground-based solar facility may be visible to nearby property owners and/or others passing by. The County Council accounted for and mitigated against any adverse visual impact to neighboring properties and the scenic roads by requiring a landscaping buffer for screening the facility from adjacent residential properties and public streets, as well as setting a height limit for any structure within the solar facility. See BCZR §4F-104(5) and (6). While the RC-7 Zone also has certain requirements for screening (See, e.g., BCZR §§1A08.5; 1A08.6(C)(4)), the County Council expressly allowed solar facilities within the RC-7 Zone by way of special exception. A primary rule of statutory construction that a legislature has full knowledge of existing laws and legislation pertaining to the subject matter under legislative consideration. See *e.g.*, Maryland-National Capital Park & Planning Com. v. Silkor Development Corp., 246 Md. 516, 524; 229 A.2d 135, 140 (1967). As such, the Board concludes that the visual screening required in the solar facility regulations satisfies the screening required within the RC-7 Zone and that the screening required is consistent with the Master Plan 2020's policy to preserve scenic corridors.

Leaving all of the above aside, the potential for someone on an adjacent property or on an adjacent roadway to see some part of the solar facility is obvious.[6] Protestants' evidence fails to establish an effect above and beyond those associated with the proposed use. As stated by Mr. Quinlan and seen in various photographs, the solar facility is to be located approximately 1,100 feet from York Road. Petitioner has also agreed to comply with any additional landscaping plan required by the County. The fixed angle of the panels limits their height to under eight feet when measured from the ground.

[6] These arguments are understood to contemplate different special exception factors, to wit: (A) for the neighbors, for the more immediate impact to the surrounding community, and (G) and (I) as to the impact on the scenic roadway.

Petitioner entered into evidence the Department of Planning's ("Planning") determination regarding the visual impact of the solar facility upon the scenic route. (See, Petitioner's Exhibit 10). Planning determined that, due to topography and the presence of the mature forest, the solar panels will not be visible from York Road or adjacent properties. (See Petitioner's Exhibit 10). Planning had no objection to the zoning relief. Given that the solar array will be approximately 1,100 feet from York Road, the fixed angle of the panels limits the height of the panels to under eight feet when measured from the ground, and, as testified to by Mr. Kellman, the western half of the property sits at a higher elevation than the eastern half, the Board concludes the solar facility will neither detrimentally impact the scenic route, nor the neighboring properties, to any degree greater at this location than other locations within the zone. Moreover, it is reasonable to conclude the features at this particular site help mitigate a detrimental impact where other RC-7 zoned properties, without the combination of features, will not.

Mr. Mayo and Mr. Matczuk identified concerns about runoff/flooding issues. Mr. Matzcuk's testimony revealed that he occasionally experiences flooding from Upper Glencoe Road, indicating present-day flooding independent of the Gorsuch Retirement property and/or the subject property to the west of the Gorsuch Retirement property. For this reason, Mr. Matczuk elaborated, he considered potential runoff as a possible exacerbation of the existing issues.

Protestants' Exhibit No. 16 reveals that the highest point of the proposed solar facility field straddles the boundary line with the Gorsuch Retirement property at roughly the mid-point of the subject property's northeastern edge. The topography proceeds to descend through the subject property to the southern edge of the eastern half to the property's lowest point. The topographical map suggests that water, without improvements, drains to the northwest, west, south, and

southeast. Much of that area is within the subject property's boundaries and away from the Gorsuch Retirement property, and therefore, also away from the Matzcuk property.

Mr. Roemer, via Protestants' Exhibits 28 and 28A, identified a "perennial" stream that brushes along the northern point of eastern bowtie half, then bisects the Gorsuch Retirement property, and runs more or less close to the boundary between the Gorsuch Retirement property and Mr. Matzcuk's property. Mr. Roemer explained a perennial stream is one with water flow for most of the year.

The topography and drainage plain suggest that any additional volume caused by runoff from the solar facility that flows to the northeast, which is assumed only to address this argument, would be minimal. Mr. Matzcuk's testimony reveals that the primary flooding issue he confronts comes from the north via Upper Glencoe Road. As such, the evidentiary record on this issue is insufficient from which the Board may conclude that Mr. Matzcuk's property will be adversely impacted by runoff from the solar facility. Nor can it be concluded on this record that the solar facility would exacerbate any existing flooding risk.

As alluded to above, DEPS will undertake a significant review of issues related to the runoff concerns raised. Protestants' expert, Mr. Altmeyer, testified that it would be satisfactory to him if runoff was addressed in a DEPS-approved plan, after DEPS conducted a site visit. Consistent with Mr. Altmeyer's testimony, the Board will order Petitioner to comply with DEPS's reviewed and approved plan.

Turning to factor (G), consistency with the legislative purposes and spirit and intent of the regulations, the BCZR does not identify purposes specific to the RC-7 Zone. There are findings and legislative goals, but no identified "purposes." Other Resource Conservation Zones have

defined purposes, including but not limited to, RC-2, RC-5, RC-20 and RC-50, and RCC. All Resource Conservation Zones have general purposes identified in BCZR §1A00.2:

A. Discourage present land use patterns of development and to create a framework for planned or orderly development;

B. Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;

C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development;

D. Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences; and

E. Help achieve the goals of the Chesapeake Bay Critical Area Protection Law [1] by enacting land use policies to control development within the Critical Area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat.

Section 4F-101(A) sets forth:

A. Purpose. Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources. (emphasis added).

The safeguards required by BCZR §4F-104 are reflected in the solar facility regulations and the County Council expressly permitted solar facilities in Resource Conservation Zones. As set forth above, the County Council has full knowledge of existing laws and legislation pertaining to the subject matter under legislative consideration. See *e.g.*, Maryland-National Capital Park & Planning Com., 246 Md. at 524; 229 A.2d at 140. The County Council's express inclusion of the

RC-7 Zone in the solar facility regulations means that the County Council considered the legislative findings and goals specific to the RC-7 Zone. The County Council also requires the Board to consider conditions, as stated in BCZR §4F-104(10), affording additional measures for protection as necessary. Therefore, the Board concludes the proposed use does not run afoul of BCZR §502.1(G) as to a general inconsistency with the applicable purposes or spirit and intent of the zoning regulations.

Dispensing with the arguments regarding general inconsistency, Protestants also argue a more specific inconsistency, namely, that the 300-foot setback requirement in the RC-7 Zone as established by BCZR §1A08.6(B)(5)(b) applies to this matter. Petitioner contends that the 50-foot setback requirement within BCZR §4F-104(A)(4) applies.

The Board must first determine whether there is a conflict between the two regulations. Under Maryland law, "'when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute.'" State v. Roshchin, 446 Md. 128, 142; 130 A.3d 453, 461 (2016), *quoting*, Maryland-Nat'l Capital Park & Planning Comm'n v. Anderson, 395 Md. 172, 194, 909 A.2d 694 (2006) (*quoting* State v. Ghajari, 346 Md. 101, 116; 695 A.2d 143 (1997)). Furthermore, as recently stated by the Court of Appeals, when two statutes apply to the same situation, then the court will attempt to harmonize the statutes. Blackstone v. Sharma, 461 Md. 87, 93; 191 A.3d 1188, 1191 (2018). The Blackstone Court further established:

> "Courts presume that the legislature intends its enactments to operate together as a consistent and harmonious body of law. Thus, when two statutes appear to apply to the same situation, the Court will attempt to give effect to both statutes to the extent that they are reconcilable. Nevertheless, if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute.

Id..

Protestants' reliance on BCZR §600.1 to establish which regulation controls does not aid the analysis because the regulations at issue are both contained within the BCZR. The repeated references of "these regulations" in comparison to "the provisions of any law, ordinance, regulation or private agreement," imply laws, ordinances, regulations and private agreements that are not contained within the Baltimore County Zoning Regulations. If interpreted in a manner as to apply to potential conflicts of regulations within the BCZR, the references to "these regulations" become confusing and fail to achieve the purpose of providing regulation construction guidance and hierarchy.

The Board interprets BCZR §4F-104(4) as requiring aboveground solar facility components and equipment to be a minimum of 50 feet from the tract boundary, such a minimum not applicable to any associated landscaping, security fencing, wiring, or power line. The Board interprets BCZR §1A08.6(B)(5)(b), as is relevant, as requiring for any principal building or any use that may be in conflict with any permitted agricultural operation a 300-foot setback from any adjacent property that was cultivated or used for pasture during the previous three years.

In other words, the minimum 50-foot setback is required of all solar facilities within any Resource Conservation Zone. The 300-foot setback is applicable in a RC-7 Zone, applies to more than just solar facilities, and is required if, and only if, certain conditions are met. First, there must be a principal building or a use that may be in conflict with any permitted agricultural operation on adjacent property. Also, the adjacent property must have been cultivated or used for pasture within the last three years. In short, the two regulations are not in conflict, at least, not in the context of this case.

The solar farm is not a principal building. As to the use, the only property identified as that used as a farm cultivated or used for pasture in the last three years was the Gorsuch Retirement

property. That property, however, is located within a RC-2 Zone. The 300-foot setback is to benefit adjacent RC-7-zoned properties. Once again, the County Council, when enacting the solar facility regulations, would be aware of the setback requirements for the Resource Conservation Zones. If the general 300-foot setback controlled and applied at all times, then the 50-foot setback regulation applicable to solar facilities would be rendered meaningless. If the County Council wanted to carve out exceptions to the application of the 50-foot setback or impose greater setbacks for particular Resource Conservation Zones, the County Council would have so provided. The Board concludes that the 50-foot setback in the solar facility regulations applies here, not the general 300-foot setback.

With respect to the environment and natural resources, the evidence presented by Petitioner may be fairly described as a skeleton, enough to hold the case together but primarily relying on other (and in this case, subsequent) processes to make it functional. To be clear, subsequent processes by other agencies do not excuse Petitioner from presenting sufficient evidence for the Board's consideration as part of a special exception hearing. Petitioner must still present sufficient evidence to the Board for the Board to evaluate the special exception factors and the failure to do so will result in a denial of a petition.

People's Counsel correctly argues that the special exception process involves and has some overlap with the development process. Echoing what has been stated above, even with overlap, these are two different evaluation processes and there are different purposes for those evaluation processes. The Board assesses whether the proposed use can conform to the zoning regulations without a detrimental impact to the surrounding area that is greater than what would be experienced elsewhere.

Despite the risky strategy with regard to this factor, Petitioner has met its burden. First, the site itself aids Petitioner. As referenced above, photographs and topographical information permit the Board to draw inferences and reach conclusions (*e.g.* drainage). Second, the bowtie, with confirmation as location of a water resource, appears to be the most environmentally-sensitive feature on the site and given the presence of water and proximity to other properties, effects experienced at the bowtie may also be experienced by neighboring properties via the course of water flowing from the subject property. The bowtie, however, is not the area of focus for the proposal; rather, it is the open field on the east side. The impact at the bowtie comes from the construction of the improvements related to the access road.

Mr. Roemer identified certain features on the adjacent Gorsuch Retirement property causing him to believe that the area at the properties' border qualifies as wetlands and at the subject property's northern most point along the eastern half, the border area may qualify as a potential bog turtle habitat. He considered it less likely that the bowtie area was a potential bog turtle habitat. As Mr. Roemer noted, however, the investigation he conducted was only preliminary. He relayed that a more detailed survey will be conducted as the project moves forward and that, depending on the findings, additional protective measures may be directed. He also indicated that the building permit process will require a greater study of the bowtie area as well.

As such, while Mr. Roemer identified potential issues, his testimony makes it clear that more investigation, surveying, and studying are required before any conclusions can be drawn. Moreover, his testimony, along with Mr. Altmeyer's, Mr. Doak's, and Mr. Kellman's, reveal that the additional investigations, surveying, and studying will in fact be performed and Petitioner will have to comply with the changes directed, at Petitioner's peril. Therefore, Protestants' evidence does not establish a basis for this Board to conclude a likelihood that the proposed use will result

in detrimental impacts to the environment. Nor does the record establish that the impacts are greater at this location compared to other sites in the RC-7 Zone.

Again, the Board notes that in another case, a petitioner may not obtain the relief at issue without more information. Nevertheless, in light of the testimony of Petitioner's witnesses regarding the site features (also depicted in exhibits), willingness to comply with any and all conditions and requirements, the location of the solar facility in the open field, DEPS's absence of objection or further comment, unanimity among the experts that additional investigations will take place, Petitioner has satisfied its burden on this point.

Protestants and People's Counsel raised the issue of impact to prime and productive soils, which the County Council identified in the legislative goals for the zone as a resource requiring protection. BCZR §1A08.1(B)(6). The witnesses agreed in near harmony that the subject property had not been used for farming for awhile. Nevertheless, accepting that the soils at the subject property qualify as prime and productive soils, the record establishes minimal disruption (in a relative sense) to the open field, mostly by way of the implanting the vertical poles for the racking system and surrounding fence. Much of the field will be undisturbed. No expert witness provided evidence that the presence of the solar field will cause a change in the soils to render them something other than prime and productive for future use. In addition, the evidentiary record fails to establish a basis for the Board to conclude that once the lease is up, the field will be in a condition that prevents it from being cultivated or farmed.

Therefore, the issue is more properly framed as the temporary loss of the potential to use the prime and productive soils in the eastern half of the property for farming for duration of the lease term. The Board cannot, and in any event will not, compel the property owner here to take advantage of and utilize the prime and productive soils on the owner's property. For all of these

reasons, the Board is not persuaded that a solar facility at this location, even if located on prime and productive soils, would run afoul of this factor.

Based on the evidentiary record here, the Board is persuaded that the proposed use will not detrimentally impact the environment and natural resources at the site and in the vicinity. The Board will also impose conditions to help protect the environmental and natural resources. Therefore, Petitioner has satisfied its burden on all special exception factors, though the Board will impose conditions to mitigate some of the effects and to effectuate the representations made by Petitioner upon which the Board relies in reaching this decision.

D. Solar Facility Requirements

Lastly, several requirements were expressly or impliedly addressed in the special exception factors set forth above, including (4) 50-foot setback requirement is satisfied; (5) the height of any structures will not exceed 20 feet; (6) landscape buffer and screening will be in place to mitigate visual impacts; and (7) security fencing will be in place. There is no evidence that the subject property is encumbered by an agricultural or environmental preservation easement, a rural legacy easement, or within a forest conservation easement. Similarly, there is no evidence that the property is within a historic district, nor is the property on the County Final Landmarks List.

As for the remaining solar facility regulations, Petitioner presented evidence via Mr. Quinlan that the facility will generate 1.87 megawatts of AC electricity, with the array covering only nine acres of the entire property (less than five acres per megawatt). BCZR §4F-102(B)(1). There is no evidence that granting this petition would result in exceeding the district cap for solar facilities, as identified in BCZR §4F-102(B)(2). With respect to glare, the evidentiary record establishes that the panels will be 1,100 feet from York Road and there are topographic changes in between and some trees and landscaping help screen the array from view. Mr. Kellman testified

a glare study will also be required prior to obtaining a building permit. Protestants did not present evidence that glare may present a problem. Given that, there is nothing in this record to establish that this proposal may violate the glare regulations.

In light of the above, the Board cannot conclude that this proposed solar facility fails to comply with the solar facility requirements in BCZR §§4F-101, *et seq.*

E. Conditions

The Zoning Regulations allow the Board of Appeals to "impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." In addition, if approved, BCZR §4F-104(10) empowers the Board of Appeals to:

> impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

The Board, in granting this petition, finds it necessary to impose conditions to provide some additional protections and to effectuate representations made by Petitioner that addressed concerns identified by Protestants during the course of the hearing (as well as ones identified during the ALJ hearing). The Board imposes these conditions to protect the surrounding and neighboring properties, the environment and scenic views, as well as to otherwise lessen the impacts to surrounding properties.

Therefore, the Board grants the petition, but does so with the following conditions:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Opinion & Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If, for whatever reason, this Order is reversed, Petitioner would be required to make corrections, which may include return of the subject property to its original condition.

2. Petitioner shall comply at all times with the ZAC comments submitted and requirements imposed by DEPS.

3. Petitioner shall comply with the solar facility regulations and requirements (specifically, BCZR §4F-104) at all times.

4. Petitioner shall comply at all times with the DEPS reviewed and approved plan, as identified in BCZR §4F-104(9) and BCC §33-3-108(c).

4. Petitioners shall obtain from and the State Highway Administration (SHA) and comply with the appropriate permit for entrance/access to and/from York Road.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility, the bowtie area, or the crossing point. If, following any subsequent development process, DEPS review, wetlands delineation, environmental study or survey and/or other investigation by any governmental agency, department, division, office, and/or other entity, it is determined, directed, ordered, or recommended that weed killers and/or herbicides should not be used on any other part of the subject property, Petitioner shall comply with those determinations, directives, orders, and/or recommendations.

6. Prior to the commencement of operations, Petitioner shall post on the solar facility contact information for the lessee company (including a 24-hour telephone number) and also that for a company representative so that the company and/or the company representative or agent can be notified in the event of an emergency and/or other circumstances requiring company action or response.

7. Aside from Condition No. 6, no signage or lighting shall be installed at the site in connection with the solar facility unless required by any Federal, State, or other County agency, department, division, or office, or otherwise required by law.

8. Petitioner shall submit for approval by Baltimore County a landscape plan for the site.

9. Prior to the commencement of operations, Petitioner shall provide contact information for the lessee company and also that for a company representative as well as the necessary key(s) and/or access code(s) or combination(s) with the local fire departments to ensure the local fire departments have access to the solar facility if needed.

10. Petitioner shall not use, incorporate, or attach barbed wire, razor wire, or barbed wire fencing or razor wire fencing as part of the solar facility.

11. The only trees permitted to be removed from the subject property are those on the western half of the property whose removal is necessary for the construction

of the access drive. For each tree removed, Petitioner shall replace the removed tree with per diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Should any tree become damaged as a result of the road construction or any construction activity related to the solar field so that the visual screening of the solar array is affected, Petitioner shall plant a per diameter equivalent native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Petitioner shall not remove or cause to be removed any tree in the bowtie area, crossing point or on the proposed solar field.

Conclusion

For the foregoing reasons, the Board grants the petition subject to the conditions outlined herein.

ORDER

THEREFORE, IT IS THIS 29th day of July, 2019, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan (Pet. Ex. 1), be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Opinion & Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If, for whatever reason, this Order is reversed, Petitioner would be required to make corrections, which may include return of the subject property to its original condition.

2. Petitioner shall comply at all times with the ZAC comments submitted and requirements imposed by DEPS.

3. Petitioner shall comply with the solar facility regulations and requirements (specifically, BCZR §4F-104) at all times.

4. Petitioner shall comply at all times with the DEPS reviewed and approved plan, as identified in BCZR §4F-104(9) and BCC §33-3-108(c).

4. Petitioners shall obtain from and the State Highway Administration (SHA) and comply with the appropriate permit for entrance/access to and/from York Road.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility, the bowtie area, or the crossing point. If, following any subsequent development process, DEPS review, wetlands delineation, environmental study or survey and/or other investigation by any governmental agency, department, division, office, and/or other entity, it is determined, directed, ordered, or recommended that weed killers and/or herbicides should not be used on any other part of the subject property, Petitioner shall comply with those determinations, directives, orders, and/or recommendations.

6. Prior to the commencement of operations, Petitioner shall post on the solar facility contact information for the lessee company (including a 24-hour telephone number) and also that for a company representative so that the company and/or the company representative or agent can be notified in the event of an emergency and/or other circumstances requiring company action or response.

7. Aside from Condition No. 6, no signage or lighting shall be installed at the site in connection with the solar facility unless required by any Federal, State, or other County agency, department, division, or office, or otherwise required by law.

8. Petitioner shall submit for approval by Baltimore County a landscape plan for the site.

9. Prior to the commencement of operations, Petitioner shall provide contact information for the lessee company and also that for a company representative as well as the necessary key(s) and/or access code(s) or combination(s) with the local fire departments to ensure the local fire departments have access to the solar facility if needed.

10. Petitioner shall not use, incorporate, or attach barbed wire, razor wire, or barbed wire fencing or razor wire fencing as part of the solar facility.

11. The only trees permitted to be removed from the subject property are those on the western half of the property whose removal is necessary for the construction of the access drive. For each tree removed, Petitioner shall replace the removed tree with per diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Should any tree become damaged as a result of the road construction or any construction activity related to the solar field so that the visual screening of the solar array is affected, Petitioner shall plant a per diameter equivalent native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Petitioner shall not remove or cause to be removed any tree in the bowtie area, crossing point or on the proposed solar field.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chair

Andrew M. Belt

William A. McComas

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X

DATE: February 19, 2019

BOARD/PANEL: Jason S. Garber, Panel Chairman
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception pursuant to BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the request for a solar facility and noted there were 4 days of hearings.

- The Board discussed BCZR § 4F-104 governing solar facilities. Specifically subsection (9) requires Petitioner to comply with the plan requirements of § 33-3-108 of the County Code. The Board noted that BCC § 33-3-108(a) states a plan approved by the "Department" is required for all development, etc. BCC Code § 33-3-101 identifies the "Department" as the Department of Environmental Protection and Sustainability ("DEPS"), not the Board.

- The Board discussed the County Council's intent for the solar facilities bill. The Board found that the Council did not intend for the Board of Appeals to decide if the Code § 33-3-108 plan meets the requirements. Rather, it intended that DEPS would review and make the determination. However, the Board, under BCZR § 502.1 and the solar facility regulations, can impose conditions as they deem necessary.

- The Board discussed the specific requirements of BCZR § 502.1, conditions determining granting of a Special Exception. The Board noted that many of the requirements were not contested, and addressed the ones that were, as follows:

  A) The Board noted the Protestants' concern about potential glare to be caused by the solar facility. The Board found that due the size, location, and angle of the solar panels, which will have a non-reflective coating, glare did not present a problem. One Member expressed concern about potential noise from the inverter. The Board can impose a condition regarding noise, but the Board also recognized that the County Code addressed noise issues. The Board found there would be no detriment to the health, safety or general welfare of the locality.

C) The Board noted there was no evidence of potential hazard from fire, panic or other danger. There was concern of access if there was a fire or other danger. The Board noted that building permits will govern the access road and crossing point.

G) The Board noted that solar facility regulations specifically permit solar facilities in the RC-7 zone as long as it meets the special exception criteria and additional requirements. The Board noted that the solar array will be no worse at this property than elsewhere and some of the concerns raised are ones that are found with other special exception uses. The Board found the proposal to be consistent with the purpose of the property's zoning classification and consistent with the spirit and intent of the Zoning Regulations.

I) There was limited evidence from Petitioner about a plan to protect the environment and natural resources in direct and on rebuttal. Protestants presented some testimony about concerns for the possible impacts to environmental and natural resources of the site and area. The Board noted it would have liked more evidence on those issues from both sides. However, after review of the evidence presented, the Petitioner met its burden. The Board noted that the argument regarding prime and productive soils on this site was not persuasive. The Board noted that DEPS will review and approve the project ensuring it will not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains, etc. The Board discussed the issue of potential bog turtle habitats on the property. Although they are sympathetic to the issue, they would need more evidence of the existence of habitat on site or in the area nearby.

- The Board discussed the scenic road. The Board noted that the solar array is to be located 1,100 ft. from York Road and screened with vegetative landscaping. The Board found the scenic road will not be affected.

- The Board discussed the Protestants' argument that a 300 ft. setback applies. The Board noted that a 300 ft. setback generally applies to all properties in the RC-7 zone. The solar facility regulations provide a 50 ft. setback. There was argument about whether a 50 ft. or 300 ft. setback applied. The Board disagrees with the Protestants' argument that the 300 ft. setback applied as it did not meet the criteria, but noted that DEPS will make its determinations.

- The Board discussed the requirements contained in BCZR § 4F-104, and found the Petitioner complies with the requirements the Board is supposed to review.

- The Board discussed the argument that the solar panels are an impervious surface. The Board found that the solar panels will be located 2-1/2 ft. off of the ground, and are not an impervious surface.

- The Board discussed the argument that specific conditions of the ALJ Opinion were not appealed. The Board noted that appeals to the Board from ALJ zoning decisions are heard *de novo*. If the subject matter of the ALJ decision is appealed, the Board can impose conditions as they feel fit. The Board noted that the record presented before the Board is different than the record before the ALJ.

- The Board was generally fine with the conditions in the ALJ Order, but discussed certain ones and modified them. The Board imposed additional conditions. The Board also discussed Condition #4 contained in the ALJ Order, which stated that no trees were to be removed. Several weeks after the ALJ Opinion was issued, Petitioner sent a letter to the ALJ asking for a clarification or modification to allow trees to be removed to construct the access road. Opposing counsel and parties were not provided a copy of the letter when filed, or after the ALJ signed the letter with language contained on the bottom of the letter to make the change. The Board noted that the change to the condition required public notice, a public hearing, and specific notice to the Protestants and counsel. The Petitioner could have filed a Motion for Reconsideration to request the modification. The letter as filed deprived counsel and the public the chance to participate, and therefore, the change had zero effect. The Board made it clear that sending a letter to the ALJ to change a condition, without notice, was unacceptable.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Petition for Special Exception with conditions imposed.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Tammy A. Zahner

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner 18-047-X
ESA Sparks Glenco, LLC – Lessee

DATE: February 19, 2019

BOARD/PANEL: Jason S. Garber, Panel Chairman
Andrew M. Belt
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Respectfully Submitted,

/s
Tammy A. Zahner

IN THE MATTER OF:	*	**BEFORE THE**
ROBERT GERNER, LEGAL OWNER AND ESA SPARKS GLENCO, LLC LESSEE	*	**BOARD OF APPEALS**
	*	**FOR**
15637 YORK ROAD	*	**BALTIMORE COUNTY**
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	
	*	**Case No. 2018-047-X**

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

POST-HEARING MEMORANDUM

The Petitioner/Appellee, ESA Sparks Glenco, LLC ("ESA") by and through its undersigned Counsel, hereby submits this Post-Hearing Memorandum in support of its Special Exception and in support thereof states the following:

I. INTRODUCTION

"Every two minutes, the energy reaching the earth from the sun is equivalent to the whole annual energy use of all of humanity. All the energy… the cars, lighting, and air conditioning of the world… in one year is equivalent to two minutes of the sun." [1]

The question that arises is, "What is Baltimore County going to do about it?" The State of Maryland, through the Maryland Energy Administration, in conjunction with its Public Service Commission and the Baltimore Gas & Electric Company ("BGE") have acted by creating the Community Solar Program providing opportunities for private solar companies to construct community solar projects throughout Maryland.

In furtherance of this energy policy and in order to harness the energy of the sun, the Baltimore County Council enacted, and the County Executive signed into law, Bill 37-17[2] establishing a comprehensive solar program across every Council District of Baltimore County. As the Board of Appeals ("Board") is aware, a solar facility is permitted by special exception

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Dr. Lamya N. Fawwaz, V.P. for the International Advancement of Public Affairs at Masdar Institute of Science and Technology (MIST), Abu Dhabi.

[2] Bill 37-17 is codified as Article 4-F of the Baltimore County Zoning Regulations.

and each Council District is eligible to have up to ten permitted solar facilities. For the many months prior to its passage, the provisions of Bill 37-17 were completely vetted with the stakeholders who would be impacted by its passage, which vetting included many of the individuals and community groups who have appeared before this Board. After a tremendous amount of debate and discussion, Bill 37-17 was passed and specific requirements were established before a petition for a solar facility could be approved.

As of time of the writing of this memorandum, every single special exception filed in Baltimore County for a solar facility has been approved by Judge, John E. Beverungen. Every solar facility approved by Judge Beverungen in the 3rd Council District has been appealed to this Board. No approvals from any other Council District have been appealed to the Board. Many of the Protestants in this case have taken it upon themselves, sometimes concerning projects located miles away from their homes, to challenge the very passage Bill 37-17 by appealing and delaying the approval process for these solar facilities in the 3rd Council District, somehow asserting that solar facilities may be allowed elsewhere in Baltimore County, but not be permitted in their backyards.

However, it is important to note that these community solar projects must be spread out across the power grid and located within the communities they serve. A solar facility in Dundalk could not produce clean renewable energy for Hereford, which is why the Public Service Commission and BGE determine the amount of megawatts that each facility may produce based upon the needs of that specific community under review. That decision is not left up to the solar company.

Now I ask you to consider this. The time it took the members of this Board to collectively read this introduction, enough energy from the sun reached the earth to power the energy needs of all of humanity for one year. The overwhelming majority of Baltimore County citizens living within the 3rd Council District deserve the benefits of clean renewable energy and they should not be denied this opportunity because of the actions of a few Protestants. It is time for all of Baltimore County to get into the game. For the reasons that follow, this Board is urged to approve this request for Special Exception for a solar facility on this property.

II. THE SOLAR FARM @ 15637 YORK ROAD

This applicant, ESA is proposing to install a 1.87 mega-watt AC solar facility on a 30.27 acre property located at 15637 York Road. While the entire Gerner property comprises 30.27 acres, ESA proposes to utilize only 9 acres of the overall tract for the purpose of installing their solar panels. (See Pet. Ex. 1 & 1A) The usage of only 9 acres is important as objections have been raised by neighbors and People's Counsel as to the excessive amount of acreage that is being used at other facilities to produce solar electricity. In fact, Mr. Zimmerman, People's Counsel for Baltimore County, in his questioning of various witnesses, commended ESA for limiting their use of this land to less than 5 acres per mega-watt of AC electricity.

The Gerner property is located along York Road, a designated scenic route. The 30.27 acre parcel is unusually and irregularly shaped and its configuration has been described by the witnesses who testified as resembling that of a "bow-tie". While the Gerner property borders York Road, the solar panels are proposed to be located on the east side of the bow tie, a distance of approximately 1,100 feet from York Road. (Pet Ex. #1 & #1A.) There are also topographical changes to the land and existing vegetation that prohibit a motorist travelling on this scenic route from seeing the area where the solar panels will be displayed. An independent site visit was conducted on August 23, 2017 by the Department of Planning and a determination was made by that agency that ***"due to the topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially (sic) properties"*** The Department of Planning has no objection to the granting of the requested zoning relief. (See Pet Ex. #10.)

The Department of Planning's position as to visibility was corroborated by petitioner's witnesses Bruce Doak, Mitchell Kellman and Brian Quinlan who also testified that the solar panels will not be visible from York Road. To the contrary, Protestant's witness, Ms. Lynne Jones, who resides approximately 10 miles away from the subject site, testified that the area where the panels are proposed to be located can be seen from a particular spot on York Road and offered a photograph that she alleges depicts this view. (Prot. Ex. #19A) However, when looking at that photo, it appears from its angle, that the land in the distance is the Mayo or Gorsuch's retirement property and not the Gerner property. Given her limited knowledge of this property and the many miles that she lives from this site, it appears that she may have pointed her camera in the wrong direction.

Also, Protestant's witness, William Mayo testified that the field where the panels are to be located is visible from several nearby properties, yet he failed to produce any photographs to

prove that assertion. Instead, the only photo he offered was Protestant's Ex. #31 taken at the edge of the Gerner's property, from a row of corn looking into the Gerner site. The overwhelming testimony as well as the many exhibits entered into evidence demonstrate that the area where the solar panels are to be installed is remotely located and will be well screened by existing mature vegetation and changes in the topography to the land, just as the Department of Planning stated in their comment. The low impact of the facility makes it consistent with the spirit and intent of the Baltimore County Zoning regulation for this location.

Access to the solar panel array will be provided by a narrow road commencing at York Road and traversing the Gerner property down to the east side of the bow tie. This access road will be subject to a State Highway Administration access permit. The access road will utilize an existing culvert that crosses over a drainage area and then enters into an open field where the panels are proposed to be installed.

It was made clear at the hearing before the Board that no trees will be removed in the field where the panels will be located. However, it may be necessary to remove trees in order to install this access road. No grading will occur in the field as the solar panels are mounted on a rack system supported by a series of posts, which are augered or direct-driven into the ground similar to fence posts.

These panels are fixed, do not rotate and stand less than 8 feet from the existing surface grade. The grassy vegetation that exists in the field will remain under the panel arrays and there will be an undisturbed grassy strip of land between each row of panels equal to the length of the each panel. That is, if a panel is 8 feet in length, there will be an 8 foot open strip between the panels that will remain in grassy vegetation. The surface of the ground under all of the panels will remain pervious and in its natural vegetative state. This grassy vegetated area will collect and infiltrate any rain water that may run off of the surface of the solar panel itself. Prior to the issuance of a building permit, the applicant will have to comply with the storm-water management regulations that are applicable to solar arrays which regulations were promulgated by MDE and were submitted into evidence. (See Pet. Ex. #8)

As shown on the plan, there will be a maintenance road looping around the solar panels for access. This road will consist of gravel and stone. There will be a chain link security fence around the perimeter of the solar field, which will contain no barbed-wire and will have a top

fence bar to prevent owls, deer, raccoons and foxes from impaling themselves on the top of the chain link fence.

The entire Gerner property is zoned RC7, which is a resource conservation zone and not an agricultural zone, such as the RC2 zone. (See Pet. Ex #16, RC Zone Comparison Chart). While the area where the panels are to be installed does contain some soils that are suitable for farming, the property itself is neither prime nor productive. Mr. Mayo testified that his family, in past years, did farm this area of the Gerner property. He stated that the property was not a very good crop producer and was difficult to farm. He stated that they were successful in growing some hay on this area, but even that was a challenge. The owner is not a farmer and the economic benefit to lease the land for farming is not sufficient in the owner's opinion. There is no law that forces a property owner to have to "farm" their property, particularly when that property is less than ideal for farming. The installation of solar panels and the production of solar energy is most assuredly, the highest and best use of this particular property.

III. SPECIAL EXCEPTION APPROVED BY JUDGE BEVERUNGEN

This Special Exception request for approval of a solar facility case was originally presented for consideration before the Honorable John E. Beverungen, Administrative Law Judge for Baltimore County on the 18th day of December, 2017. After a trial on the merits of the case, Judge Beverungen granted approval of this solar facility by Order dated the 21st day of December, 2017. Judge Beverungen's approval was conditioned upon seven restrictions which were recited at the end of his decision. A copy of that decision was entered into evidence. (See People's Counsel Ex. #6)

Thereafter, a letter of clarification of Restriction #4 of Judge Beverungen's decision, dated the 12th day of January, 2017 was submitted into evidence. (See Pet. Ex.#21) Restriction #4 of his decision stated that ***"No trees shall be removed from the site in connection with the construction and/or operation of the solar facility"***. This statement is true as it relates to the area of the solar field and the area of the Gerner property where the panels will be installed. However, as anyone can see from the multitude of exhibits entered into evidence in the case before Judge Beverungen as well as before this Board, it is absolutely necessary to remove some trees in order to install the access road from York road to the solar farm.

This letter of clarification, which was submitted to Judge Beverungen on January 12, 2018, was signed and approved by Judge Beverungen on January 16, 2018. This letter was made a part of the zoning file and was included within the file and was available for inspection at the time that the appeal was filed by H. Barnes Mowell, Counsel for the Protestants as well as the People's Counsel for Baltimore County. In fact, this Board pointed out at our hearing that the letter of clarification was actually in their file, which was sent up to the Board from the ALJ's office below.

Accordingly, the appeal to this Board of Appeals involves not only the decision of Judge Beverungen, but the letter of clarification as well, which modified restriction #4 as to the removal of trees. This Appeal comes to this Board *de novo*, in accordance with Baltimore County Code ("BCC") Section 32-3-401(1).

IV. THE SPECIAL EXCEPTION STANDARD AND 502.1 OF THE BCZR

BCZR Section 502.1 contains the special exception elements that must be proven in order for a Court to approve a special exception request. These 502.1 factors must be reviewed in light of the recent cases that interpret that section of the BCZR. Before any special exception may be granted, it must appear that the use for which the special exception is requested will not impact the factors in Section 502.1. The key term in the regulation is the use of the word "appear". The special exception process is the first step in a long process for a project to be approved for construction. Many details and studies are performed after the special exception has been granted. As a result, the regulations are written to reflect the fact that if an activity/development may be granted in a particular zoning district with a special exception then it is inherently acceptable for the district.

The Court of Appeals, in *People's Counsel v. Loyola College in Maryland,* 406 Md. 54 (2008) and *Schultz v. Pritts,* 291 Md. 1 (1981) directed that when analyzing each prong of Section 502.1 the Board must consider "whether there are facts and circumstances that show that a particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with a special exception use irrespective of its location within the zone."

Furthermore and more recently in the *Attar v. DMS Tollgate, LLC,* 451 Md. 272 (2017), the Court of Appeals has held that "a special exception is presumed to be within the interests of

the general welfare, and therefore the special exception enjoys a presumption of validity". The Court of Appeals also stated in *Anderson v. Litzenberg,* 115 Md. App. 549 (1997) that this presumption of validity "enhances the probative value of other evidence adduced" by an applicant for special exception. *Id* at 287 Applying this presumption of validity, the applicant need only produce a *prima facie* case in support of their special exception request and once done, the protestants must then set forth sufficient evidence to prove that the proposed use would have adverse impacts above and beyond those inherently associated with such use.

This applicant, ESA presented a *prima facie* case to support the approval of our special exception request and the Protestants failed to establish that the impacts of our solar facility at this location would have a greater impact at this location above and beyond those inherently associated with the use. We now review section 502.1 of the BCZR.

V. THE APPLICATION OF SECTION 502.1 OF THE BCZR

Section 502.1 of the BCZR states: Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

502.1.A. ***Be detrimental to the health, safety or general welfare of the locality involved;***

ESA produced witnesses who testified as to the "locality involved". Messrs Quinlan, Kellman and Doak testified that the locality was defined as that area of land located on the east side of York Road and enclosed and bounded by the Upper & Lower Glencoe Roads which circle back to and connect with York Road. The applicant submitted into evidence a map of this "locality" which was accepted into evidence at Pet. Ex. #9. This testimony was unrebutted by the protestants.

Having defined locality, the witnesses then testified that the installation of solar panels on this 9 acre open field would not be detrimental to the health, safety or general welfare of the defined locality. The panels make no noise. They are unmanned and use no water or septic. They make no noise except for an inverter which is inaudible at the property line. They are supported by a simple post and rack system where the grade of the land remains intact. Little soil is disturbed. They are screened by natural existing vegetation and the topographical changes in the land. In addition, the panels will be located about 1,100 feet from York Road. They will be enclosed by a chain link security fence. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut

this testimony.

502.1.B. ***Tend to create congestion in roads, streets or alleys therein.***

This factor is easily proven and really needs no testimony as the facts basically speak for themselves. That is, these solar facilities, once constructed are unmanned, and are only periodically visited for maintenance and inspection purposes. The maintenance workers will visit the site in a small pick up truck vehicle which will easily traverse the access road. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.C. ***Create a potential hazard from fire, panic or other danger.***

The testimony of the witnesses for the applicant, particularly Mr. Quinlan demonstrated that the materials used for the solar array are basically inflammable. The post and rack support system are made of metal, the panels are made of aluminum and glass and contain little combustible material. Once properly installed, the panels should not create a potential from fire, panic or danger. The perimeter of the solar array will be secured by a chain link fence which will deter outsiders from trespassing within the solar field. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.D. ***Tend to overcrowd land and cause undue concentration of population.***

The solar panels are unmanned and will cause absolutely no undue concentration of population. They stand no more than 8 feet tall, (about the height of a cornstalk) and therefore will not overcrowd the land. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.E. ***Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements.***

The installation of solar panels and the operation of a solar facility is an extremely passive use of any parcel of land. The panels just sit there and collect the rays of the sun and send clean electricity into the local power grid. It is hard to comprehend how any of these items could be negatively impacted by this special exception request. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.F. ***Interfere with adequate light and air.***

The testimony presented by the applicant showed that the panels will stand no taller than 8 feet from the grade of the property. It is not fathomable that the panels could interfere with adequate light and air. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.G. ***Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations.***

The Baltimore County Council has spoken on this issue. They enacted new legislation, Bill 37-17, specifically permitting solar facilities on land zoned RC7 by special exception. Bill 37-17 was greatly debated by the County Council as well as the many citizens who participated in the passage of that Bill. Some of those same citizens who participated in the Bill's passage are appearing and testifying in this and other hearings before this Board. The Council, by its passage of this Bill, has already determined that this use is generally compatible with the RC7 zone and that it is appropriate to have such a use on RC7 land. If they thought otherwise, they would have excluded RC7 land from the Bill.

Furthermore, it should be noted that the Department of Planning supports the placement of solar panels in the RC7 zone and has asserted that solar panels are consistent with this RC7 zoning. In their comment dated 9/20/2017 the Director of Planning stated that her "***Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations BCZR***" and further that ***"The Department has no objection to the granting of the zoning relief***". (See Pet. Ex. #10)

The Protestants will likely argue that the installation of solar panels on this property is a waste of prime and productive soils and otherwise takes away from the opportunity to farm this land. As was stated earlier in this memo and which is worth restating here, the entire Gerner property is zoned RC7, which is a resource conservation zone and not an agricultural zone, such as the RC2 zone. (See Pet. Ex #16, RC Zone Comparison Chart)

While the area where the panels are to be installed does contain some soils that are suitable for farming, the property itself is neither prime nor productive. Mr. Mayo testified that his family, in past years, did farm this area of the Gerner property. He stated that the property was not a very good crop producer and was difficult to farm. He stated that they were successful in growing some hay on this area, but even that was a challenge. There is no law that forces a property owner to have to "farm" their property, particularly when that property is less than ideal

for farming. The landowner is not a farmer and has determined that it is not beneficial to lease the land for farming. The installation of solar panels and the production of solar energy is most assuredly, the highest and best use of this particular property.

The Protestant's will also most likely argue that the installation of the solar panels is inconsistent with the setback provisions as stated within the RC 7 zone. They rely upon section 1.A08.6.B which states that "***Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an RC 7 zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the past three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement".***

Let's first analyze the very language of this provision, because the Protestants failed to prove any of the items required to be proven by the language of this provision. First, our solar panels are not a "***principal building or a well***" nor are they a "***use that may be in conflict with any permitted agricultural operation, in an RC7 zone".*** The agricultural operation that the protestants argue is impacted by this provision, specifically the Gorsuch Retirement property located to the west of the Gerner site, is zoned RC2 and not zoned RC7 as required by this provision. The specific language of this provision requires that the impacted agricultural land be zoned RC7. That is not the case here and accordingly, this section does not apply.

Furthermore, this provision requires that the Protestants prove that the "***adjacent property... was cultivated or used for pasture during the past three years, as determined by the Department of Environmental Protection and Sustainability***". There was absolutely no testimony presented to this Board that such a determination was made by the Department of Environmental Protection and Sustainability. For these reasons, based upon simple statutory interpretation, the 300 foot setback does not apply to this Gerner property.

Moreover, the provisions of the RC7 regulations that establish a 300 foot setback are inapplicable to solar panels because that provision was superseded by the recently enacted Bill 37-17 which establishes a 50 setback for solar panels. Bill 37-17 specifically requires that all solar panels be setback at least 50 feet from the tract boundary of the property to be developed. (See §BCZR 4F-104.4) This new solar legislation was passed in 2017 as opposed to the RC7 zoning regulations which were passed in August, 2000, some 17 years prior to this solar law. (See People's Counsel Ex.#11). When a conflict in the law exists, the more recently enacted

legislation will prevail over a regulation passed many years prior. See, e.g. *State v. Ghajari*, 345 Md. 101, 115, 695 A.2d 143, 150 (1997) ***("if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute")***; *Farmer's and Merchants Bank of Hagerstown v. Schlossberg*, 306 Md. 48, 61, 507 A.2d 172, 178-179 (1986) ("***the statute whose relevant substantive provisions were enacted most recently [must] be held to have repealed by implication any conflicting provisions of the earlier statut***e").

502.1.H. ***Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations***;

The land upon which the solar panels are to be installed will remain completely vegetated. That is, the existing grassy vegetation that currently exists will remain and only a support post will be augered or direct-driven into the ground upon which the panels will be mounted. The panels will be suspended above the surface of the ground. Accordingly, the vegetation will be retained and no clearing or grading will take place. The applicant presented a *prima facie* case on this element to be considered by the Board and the Protestants offered little or no evidence to rebut this testimony.

502.1.I. ***Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.***

Based on the testimony of the witnesses who testified on behalf of this petition for special exception, the installation of the solar facility will not be detrimental to the onsite environmental and natural resources in the vicinity. The petitioners called Mr. James Deriu to testify in their case in chief. Mr. Deriu testified that he walked the subject property but had not yet performed a detailed environmental analysis of the property. He stated that based on his preliminary review of the property he did not see any wetlands in the area where the panels are to be installed. He also stated that there was a water resource in the area of the knot of the "bow tie" which is where the current access road crosses over leading down into the east side of the "bow tie" where the panels are to be installed. He stated that a permit will need to be issued to the applicant for the continued use of this culvert and that the Petitioner will have to respect any and all environmental resources on the property, if any, once they are delineated.

The Protestants offered their own wetland delineator, Mr. John Roemer, IV who testified

that he visited the adjacent property and performed a wetland analysis of the property located to the north of the Gerner property. This is the property known at the Rude property. Mr. Roemer testified that while he observed wetlands on the Rude property, he was unable to determine if wetlands exist on the Gerner property. He submitted into evidence Prot Ex. #28 which depicts two areas of the wetlands, both of which are on the Rude property and none of which are on the Gerner property.

Mr. Roemer also testified that in his opinion, conditions exist on the adjacent property owned by Mr. Rude, which might present a possible habitat for bog turtles. He admitted that he is only qualified to identify potential habitats and in no way can determine whether bog turtles actually exist. He testified that another more qualified person would need to make that determination. His opinion as to the existence of bog turtles was mere speculation and should not be considered as evidence by this Board. If the Protestants were sincere in their concern for these bog turtles, they would have taken the next step to prove their existence. They failed to undertake any further studies to identify bog turtles on the Gerner property and more specifically on any property impacted by the solar facility.

Certainly there was no concern for bog turtles when Mr. Matczuk and Mr. Mayo "mucked" out the silt and sedimentation from the two ponds on Mr. Matczuk's property. The Board may recall the testimony of nearby resident Eddie Matczuk who resides at 932 Upper Glencoe Road, who stated that every 5 years or so, he and Billy (referring to Mr. William Mayo) "muck" out his ponds. This is the very silt layer that Mr. Roemer stated might provide a habitat for bog turtles. Mr. Matczuk stated that he never saw any turtles while mucking out his ponds and never saw any trout fish either. The Board should disregard these assertions as to the existence of bog turtles or trout fish as that testimony is based on pure speculation.

It is also worth noting that the Baltimore County Department of Environmental Protection and Sustainability ("DEPS") issued a written comment dated August 21, 2017 simply stating that the applicant will have to comply with the environmental regulations found in sections 33-3-101 through 33-3-120 and sections 33-6-101 though 33-6-122 of the Baltimore County Code. Other than this, DEPS took no position on the request for special exception at the time of this zoning hearing. (See Pet. Ex. #12)

As noted earlier, these solar panels are a benign use. They require no water so no well needs to be drilled. They produce no waste, so no septic is required. Any stormwater

management that might be required will be installed in accordance with the Maryland Department of the Environment ("MDE") guidelines. (See Pet. Ex #8) There was simply no evidence offered that the development of the Gerner property with a solar facility will have any adverse impact to the environmental or natural resources on the property above and beyond those which are inherently associated with such a special exception use. Assuming this zoning request is approved, all environmental features will be delineated and field located and will be protected in accordance with the law.

VI. BILL 37-17 REQUIREMENTS

Mr. Brian Quinlan, testified regarding these requirements. Mr. Quinlan, a graduate of the United States Naval Academy with a degree in mechanical engineering was accepted as an expert in the solar energy industry. He has an extensive background in solar energy, nuclear energy and other similar disciplines. He stated he was familiar with the newly enacted County Council Bill No. 37-17 and that he participated in the many hearings and work sessions that the County Council hosted prior to the passage of this solar law. This newly enacted solar Bill 37-17 is codified in the BCZR in Article 4F entitled "Solar Facilities". We now look at those requirements.

Regarding **§4F-102A.1**, Mr. Quinlan testified that this site will be producing less than 2 Megawatts of AC electricity as required by this section. He testified that our solar facility will be producing 1.85 MW of AC electricity.

Regarding **§4F-102A.2**, the uncontradicted testimony revealed that there are no more than 10 solar facilities located in this 3rd Council District. In fact, as of the time of the submission of this memorandum, there are no permitted solar facilities in the 3rd Council District of Baltimore County. The law specifies that this limitation applies to solar facilities that are actually permitted and not the number of special exception applications that have been filed or approved.

Regarding **§4F-104A.1**, the uncontradicted testimony offered by the applicant determined that the land upon which solar panels are to be displayed is not encumbered by any Agricultural Preservation Easements, any Environmental Preservation Easements nor any Rural Legacy easements. This provision is satisfied.

Regarding **§4F-104A.2**, the uncontradicted testimony was that the land upon which the solar panels are to be displayed is not located in a Baltimore County Historic District or is on the

Baltimore County Final Landmarks List. This provision is satisfied.

Regarding **§4F-104A.4**, the uncontradicted testimony was that all of our above ground components such as solar panels, inverters, and similar equipment are setback a minimum of 50 feet from our tract boundary. It is important to note that this is the specific provision of the newly enacted Solar Facility law that overrides the older sections of the RC7 zone.

Regarding **§4F-104A.5**, the uncontradicted testimony was that all structures will be less than 20 feet in height. The solar panels themselves will be less than 8 feet in height, which is about the same height as a field of corn.

Regarding **§4F-104A.6** existing natural and mature landscaping will remain around the perimeter of our solar facility. No trees will be removed around the perimeter our solar field. The solar panels will be properly screened as a result of this dense and extensive vegetation. This fact was observed by the Department of Planning and discussed in their comment dated 9/20/2017 after they personally visited the property.

It is also very important to note that this provision of the law only requires landscaping to be provided along our solar field where there is an ***"adjacent residentially used property"***. The property adjacent to ours, known as the Mayo or Gorsuch Retirement property is not residentially used at all. It is farmland and is agriculturally zoned RC2. Mr. Mayo testified that there is no house on that property and it is only farmland. The picture he took looking into our property, (Prot. Ex. #31) was actually taken from a corn field. He also testified that he drove his gator around to neighboring properties and said that our solar field is visible from those properties as well. He offered no photographic evidence of those alleged views. Regardless, that testimony is irrelevant as none of those properties about which he testified and which he visited are ***"adjacent residentially used properties"*** as required by the law.

Regarding **§4F-104A.7** the applicant testified that a chain link security fence will be provided around the perimeter of our solar facility. Responding to the concerns raised by Ms. Lynne Jones, Mr. Quinlan testified that our security fence will contain no barbed wire and will have a cross bar on the top of the chain link to prevent animals from becoming entangled in the fencing.

Regarding **§4F-104A.8** Mr. Quinlan testified that the arrangement of our solar panels will minimize glare or reflections onto adjacent properties and roadways and will not interfere with traffic or create a safety hazard. This is easy testimony to provide given that the nearest

roadway, York Road is located approximately 1,100 feet away from our solar panels and that there are topographic changes and vegetation existing between the location of our solar panels and the roadway itself. The same holds true regarding nearby residences. This testimony was unrebutted.

§4E-104A.9 simply states that ***"A petioner shall comply with the plan requirements of section 33-3-108 of the County Code".*** This simple one line provision produced a great deal of debate at the hearing before this Board. This particular provision is found within the environmental section of the BCC and requires the applicant to submit a plan to DEPS. The plan shall contain 18 specific items all of which are enumerated within section 33-3-108(c)(1–18). The problem with this provision is that it fails to specify at which time in the permit process the petitioner must comply with 33-3-108 of the BCC.

As stated previously, DEPS, the very department to which this plan is supposed to be submitted, commented on this special exception request. DEPS' comment was accepted into evidence as Pet. Ex #12. In that comment, DEPS required this applicant to comply with ***"Sections 33-3-101 through 33-3-120 of the Baltimore County Code".*** What is obvious from that comment is the fact that DEPS failed to require compliance with these provisions prior to the granting of the special exception herein. This was a perfect opportunity for DEPS to state that the 33-3-108 plan must be prepared and submitted prior to the consideration of the special exception request. They failed to do so simply because this plan is not required to be submitted at the "zoning" portion of the development process but rather prior to the issuance of a building permit.

The witnesses for the Petitioner, Messrs, Kellman, Deriu, Quinlan and Doak all testified that the environmental studies, delineations and the other items required to be on the 33-3-108 plan are not required to be performed until after the applicant's zoning case is approved and prior to the issuance of a **permit** for the project. They testified that it is the usual custom, practice and procedure in Baltimore County, that is, to wait until after the zoning approval is granted before committing the time, money and resources into performing the required studies and analyses required by 33-3-108. It is simply too costly to perform such detailed work at this juncture of the process. Several questions were asked by this Board as to how much it would cost to comply with the requirements of 33-3-108.

On rebuttal, Mr. Quinlan presented to the Board a detailed estimate of costs prepared by

Mr. Deriu, Vice President of KCI Technologies. Mr. Deriu testified earlier in the case that he walked the property to perform a preliminary assessment of the site. His cost estimate was accepted into evidence and indicated that the costs to perform all of the studies required by 33-33-108 would be $365,000.00. (See Pet. Ex. #26)

It is unnecessarily burdensome to require any petitioner to spend that amount of money on any project before their zoning approval is granted. That is precisely why the practice and procedure in the Baltimore County development and permitting process requires the applicant to get their zoning approval first before committing such large sums of money to get their permit.

The Board's analysis on this issue should stop here. It is entirely unreasonable to require the expenditure of such a large sum of money before an applicant knows whether he has a viable project. However, should the Board still have any doubt on this issue, it need look no further than at the testimony of the Protestant's own witnesses. Mr. John Altmeyer, the Protestant's first witness clearly stated in the course of his testimony, on three separate occasions, that this applicant in this special exception request for a solar facility is not required to perform the environmental analyses required by section 33-3-108 until such time as their zoning special exception has been granted and the applicant applies for their grading and building permit. (See pages 32, 37, 41 & 42 of Pet. Ex. #27, Transcription of Altmeyer Testimony)

In addition, Mr. John C. Roemer, IV, the Protestant's environmental expert also testified that the environmental work that is required by 33-3-108 would not be performed until the time that the permit to install the solar panels is applied for and after the special exception request is approved.

Lastly and most importantly, the Maryland Court of Appeals in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), entertained a very similar issue to the one at issue in this case. In *Attar*, a group of citizens were opposing a special exception request for a WAWA gas station on Groff's Mill Road in Reisterstown. The Protestants raised an environmental issue relating to the impact that the proposed WAWA would have on the Gwynn's Falls floodplain. Tollgate, the Developer of the WAWA argued at the hearing before this Board of Appeals that any impact on the floodplain would be determined at a later date, through a different process, after the special exception request was approved. In that case, the Board of Appeals did not render a factual conclusion on the issue, stating ***"The possibility of a negative impact upon the flood plain by [The Applicants'] plans will be determined separately by way of the investigation by State and***

Federal authorities and pursuant to the Baltimore County Code." *Attar,* 451 Md. at 288.

On Appeal, the Court of Appeals confirmed the legitimacy of the Board's approach, finding that: ***"Tollgate is not prevented by the BCZR from proceeding with the request for Special Exception before receiving approval for the floodplain relocation. Because the Board did not render, nor was it required to make, a factual conclusion on this issue, and we cannot arrive at such a conclusion, there was no error from the Board for us to review.*** *Attar*, 451 Md. at 289.

For all of the above reasons, there is absolutely no requirement for the Applicant in this case to have to prepare and submit to DEPS a plan prepared in accordance with section 33-3-108 of the BCC at this time of the zoning process. The applicant is entitled to know that they have their zoning request approved, before they undertake the expense and time of performing such environmental work.

§4E-104A.10 gives the authority to the Administrative Law Judge and the Board of Appeals, to ***"impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of the surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands."***

This particular section of the newly enacted solar facility bill gives complete authority to this Board to impose whatever conditions on the approval of this special exception request that the Board deems necessary given the testimony presented at the hearing. There are many items that are considered after this zoning hearing is rules upon by this Board.

For example, the approval or denial of a State Highway Administration access permit for York Road, storm water management plans, applications to MDE and/or the Army Corp of Engineers for wetland or stream permits, to name a few. This particular "catch-all" provision is evidence that the County Council realized that there are matters that follow the special exception zoning process that might warrant the imposition of conditions or restrictions. Should the Board have any concerns about approving this or any of the special exception requests for solar facilities, it should simply utilize this "catch-all" provision to alleviate those concerns by imposing whatever restrictions they deem appropriate.

CONCLUSION

For the reasons as stated within this memorandum, and given the strong presumption in favor of the granting of this special exception use as established by applicable Maryland case law discussed herein, coupled with the failure of the Protestants or People's Counsel to provide any substantive evidence that this special exception use at this location would have a unique and different impact above and beyond those inherently associated with this special exception use irrespective of its location within the zone and in conjunction with the evidence presented that the use is not in conflict with the requirements of Section 502.1, it is respectfully requested that this Board grant the special exception request.

Respectfully Submitted,

Timothy Kotroco

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day January, 2019 a copy of the foregoing Memorandum was mailed first class, postage prepaid to H. Barnes Mowell, Esquire 16925 York Road, Monkton, Maryland 21111 Attorney for the Protestants; and to Peter M. Zimmerman, People's Counsel for Baltimore County, The Jefferson Building, Suite 204, 105 W. Chesapeake Avenue, Towson, Maryland 21204.

Timothy Kotroco

Timothy M. Kotroco, Esquire

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January 8, 2019

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: Petition for Special Exception
15637 York Road
Legal Owner: Robert K. Gerner
Lessee: ESA Sparks Glenco LLC
Case No: 2018-047-X

HAND-DELIVERED

Ladies and Gentlemen:

I have enclosed, for filing, the Protestants' Post-Hearing Memorandum for this case. Thank you for your cooperation in this regard.

Very truly yours,

H. Barnes Mowell

Certificate of Service

I HEREBY CERTIFY that a copy of this letter and Post-Hearing Memorandum were mailed this 8th day of January 2019 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and to Peter Zimmerman, Esquire, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.

H. Barnes Mowell

RE: PETITION FOR SPECIAL EXCEPTION 15637 York Road Legal Owner: Robert K. Gerner Lessee: ESA Sparks Glenco LLC	*	BEFORE THE BOARD OF APPEALS
8th Election District 3rd Council District	*	OF BALTIMORE COUNTY
	*	CASE NO: 2018-047-X

* * * * * * *

PROTESTANTS' POST-HEARING MEMORANDUM

The Protestants, by their attorney H. Barnes Mowell, submit this Post-Hearing Motion in support of their request that the Petition for Special Exception be denied in this case, and state as follows:

Protestants' Motion for Judgment and Petitioners' Burden of Production

The Protestants moved for judgment at the end of the Petitioners' case, arguing that the Petitioners had the burden of producing the evidence needed to allow the Board to make a reasoned decision, and they had not met their burden. Requesting permission to place over 6,000 impermeable solar panels on a sloping, 16 acre field, zoned R.C. 7, with a stream, wetlands, prime and productive soil, and located adjacent to a cultivated field owned by someone else, raises many issues. It is the Petitioners' obligation to address those issues and to explain how their project can be safely completed. Judge Murphy stated as much in his concurring opinion in People's Counsel v. Loyola, 406 Md. 54 (2008), …"the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted." *Id.* at 109. The burden of production is explained in Terumo Med. Corp. v. Greenway, 171 Md. App. 617, 626 (2006):

"In analyzing whether a proponent has met the burden of production, the court lists the constituent elements of the proposition to be proved -- the crime, the tort, the contract, etc. -- and then determines whether the evidence in the case, if given the maximum credibility and maximum weight, could permit the fact finder fairly to find each of those constituent elements."

Section 502 of the Baltimore County Zoning Regulations lists the nine "elements" to be proved in a Special Exception case. The Petitioners have the burden to produce evidence that the requested use will not, *inter alia* (I). "Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains..."

Consistent with that requirement, the new solar facilities law directs that "A Petitioner *shall* comply with the plan requirements of Section 33-3-108 of the County Code. (4F-104(9), *emphasis added*). Section 33-3-108 contains a long list of environmental information that must be included with the Plan, including (6). field delineated, marked and surveyed streams, springs, seeps, bodies of water, and wetlands, (9). soils mapped and labeled in accordance with the soil survey of the county, 10). slopes greater that 10% for areas adjacent to and within 500 feet of streams, wetlands or other bodies of water; 11). rare species, threatened species, or endangered species habitat, 12). existing vegetation, 13). location and type of stormwater management devices and practices, and 16). historical and archaeological sites.

4F-104(10) of the solar facilities law advises that:

"In granting a special exception, the administrative law judge or Board of Appeals on appeal may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands."

Read together, these laws impose a burden on the Petitioners to produce the evidence needed to allow the fact finder to decide whether this solar facility should be allowed. More than a year after filing their Petition, we have no evidence from the Petitioners about the streams on the property, or the wetlands, whether there are slopes greater than 10%, how runoff from thousands of solar panels will be controlled, the quality of the soil onsite, any endangered species

habitat (such as potential bog turtle sites), or historical or archaeological sites on the property, and whether the stream can be legally crossed with the equipment needed to construct and maintain the solar array.

On the last day of this case, Brian Quinlan offered into evidence a proposal from KCI Technologies for engineering and environmental studies for this site (Petitioners' Exhibit 27). The cost; an astounding flat fee of $365,000! The work includes a stormwater management plan, forest delineation and conservation plan, wetland and stream delineation, steep slopes and erodible soils evaluation, forest buffer easements evaluation, meetings with the Maryland Department of Environment and Corps of Engineers regarding the wetlands, and studies for any necessary culvert improvements. The KCI proposal encapsulates all of the environmental issues that the Petitioners had ignored in their case in chief, but which Protestants had raised in their presentation.

Mr. Quinlan testified that he would "look into the environmental issues" after getting zoning approval for his project. That approach ignores the clear mandate in the solar facilities law to give to the fact finder the information specified in Section 33-3-108, so that a reasoned decision can be made. His approach makes it impossible for this Board to impose conditions or restrictions on the solar facility to protect the environment. Because the Petitioners have not met their burden to produce the evidence needed for the Board to decide if this use will be detrimental to the site or the vicinity, their Petition should be denied.

300 Foot Setback from Adjacent Cultivated Property

The Gerner property is entirely within the R.C.7 (Resource Conservation) Zone. According to Section 1A08.1(A)(1) of the Baltimore County Zoning Regulations, the R.C.7 Zone was created to identify "specific resource preservation areas where valuable cultural,

historical, recreational and environmental resources are located and should be protected for the health of the local community and the community at large." The R.C.7 Zone is designed to allow only "limited development, compatible with the rural community, and at the same time protect rural resources" (1A08.1(A)(3)) and to "preserve the traditional character of rural communities by limiting the scale and intensity of development" (1A08.1(B)(11)).

Consistent with those purposes, the R.C. 7 regulations contain a unique restriction, which requires a setback to protect adjacent agricultural property. Section 1A08.6(5)(b) of the BCZR provides that:

> "Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an R.C.7 Zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the previous three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement."

Bill Mayo testified that he is the President of Gorsuch's Retirement, Inc., a family corporation that owns a field adjacent to the field where the solar panels would be installed. Mr. Mayo said that his family's adjacent field is leased to Chuck Ensor, a local farmer, who has grown corn and soybeans on the field for years. Mr. Mayo had a photograph of the corn growing in his field in August 2018, and noted that the aerial photograph of the neighborhood, on display and put into evidence by the People's Counsel, showed his field shortly after its crop had been harvested.

When confronted with this setback statute, Bruce Doak, the Petitioners' witness, said that it didn't apply to this case. He did not agree that erecting 6000 solar panels was a use "that may be in conflict with any permitted agricultural operation" on the adjacent property. He also believed that the 50 foot setback specified in the solar legislation superseded the 300 foot setback in the R.C.7 regulation.

The Gorsuch's Retirement field is adjacent to the field where the solar panels would be installed, and would receive runoff from the panels. Mr. Mayo expressed his concern about the runoff from the solar field. He also testified about the deer damage to his crops. He felt that fencing in nine acres right next to his cornfield would steer more deer into his field, causing more crop damage, and will take away nine acres of vegetation, and other food, for the deer.

Mr. Mayo also worried about glass solar panels being placed near the existing row of trees on his property line. A tree that falls from Gorsuch's Retirement property into the Gerner agricultural field is of little concern to him, at this point. A tree that falls onto glass panels in that field, however, is a different story. In light of Mr. Mayo's testimony, this Board should reject Bruce Doak's offhand and unsubstantiated opinion that the installation of solar panels would not conflict with the established agricultural operation in the adjacent field.

As to the setback, the 50 feet specified in the solar facilities law is a minimum requirement:

> "Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a ***minimum*** of 50 feet from the tract boundary." 4F-104(A)(4), emphasis added.

The setback regulations can and should be read in concert, and not as requiring a choice between the two - All solar facilities must have at least a 50 foot setback, and one installed on R.C.7 property must be set back 300 feet from an adjacent cultivated or pastured field. That interpretation is supported by Section 600.1 of the Baltimore County Zoning Regulations:

> "In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations."

Section 600.1 of the BCZR directs that the greater restrictions imposed, by two applicable laws, are the ones to be applied. Therefore, a 300 foot setback, and not a 50 foot setback, is required here. Bruce Doak's belief that the 50 foot setback in the solar law trumps the 300 foot setback in the R.C. 7 regulations is incorrect, and must also be rejected.

This array was designed in violation of the 300 setback that is afforded adjacent agricultural operations in an R.C.7 zone. It is undisputed that this solar facility cannot be built as designed, as the proposed array encroaches well into the 300 foot setback area. The Petitioners made no attempt to redesign their array after the 300 foot setback issue was raised, and their Petition should be denied.

Impervious Surface Coverage in an R.C.7 Zone

Another regulation limiting development of an R.C.7 property is contained in Section 1A08.6(6) of the Baltimore County Zoning Regulations:

"6. Impervious surface coverage – nonresidential development. Except for residential lots which are subject to a building envelope restriction, no more than 10% of any lot may be covered by impervious surfaces such as structures or pavement."

Baltimore County has afforded extra protection to properties in an R.C.7 Zone. These properties have something special; cultural, historic, recreational, or environmental resources that need to be protected. One way to do that is to be especially restrictive on nonresidential development in an R.C.7 Zone. If there is to be nonresidential development, it has to be minimal, with no more than 10% of the site covered with impervious surfaces. On cross-examination, Bruce Doak admitted that the solar panels are impervious surfaces. He admitted that 9 acres of solar panels on a 30.7 acre lot equates to more than 10% impervious surface coverage. Neither he, nor any of Petitioners' other witnesses, provided any explanation, argument, or rationale for why this project should be allowed, in light of this 10% limitation on impervious surface

coverage.

It appears, quite simply, that Brian Quinlan was not familiar with this regulation when he chose this site, nor was he alerted by any of his experts that he may have a problem. In any event, a nonresidential project that would cover almost a third of sensitive R.C.7 land is in obvious violation of the above statute, and cannot be approved.

Runoff

We heard nothing from the Petitioners to explain how runoff from over 6,000 solar panels would be controlled. To the Petitioners, that is one of the environmental issues that can wait. If these panels are installed, hard rains will hit 6,840 glass panels, each six feet long. The rainwater will stream off each panel's lower edge, and onto the ground below. What does not absorb into the ground will run off. It will run into streams, wetlands, and the Gunpowder Falls, less than half a mile away. It will run into a "Sensitive Species Project Review Area - Group 3", identified by wetlands expert John Roemer, and shown on his map. (Protestants' Exhibit 28). The Group 3 Area contains "species or natural communities of concern to DNR, but with no official status". What species live in that area? What is the concern? How much runoff will reach there? What will be the effect? We have no answers.

On the last day of the case, Brian Quinlan offered into evidence a telling e-mail that he received from Mark Staley at the Maryland Department of Natural Resources. Mr. Staley began by confirming that there was an un-named tributary to the Gunpowder Falls that flows through the Gerner property. He said that there are wild trout in tributaries around this site, and Quinlan should "proceed as if trout occur on your property." Staley noted that the Gunpowder Falls, "downstream of your project" is an area where the State stocks 5,000 adult trout each spring, and is a "very popular and heavily used recreational fishery". Mr. Staley concluded by advising that

"Any measures you can take to reduce or eliminate warm water discharges or heating to the tributary will benefit trout. Controlling sediment inputs is equally important."

The Petitioners provided no information in their case on either warm water discharges or sediment control. We do not know their position on either issue. We do not know if they are aware of either issue. We do not know the quantity of runoff from their panels, the temperature of the water running off, or its effect on stream temperature. We do not know how trout would handle a temperature change. Similarly, we have no information on the quantity of sediment that will be washed into the streams, or what effect the sediment will have on the trout.

This site contains significant slopes. John Altmeyer testified that he computed slope percentages of 13.38%, 15.83%, 16.54%, and 7.6%, at four different locations where the solar array would be installed. He then explained the Stormwater Design Guidance that the Maryland Department of the Environment has provided for solar panel installations. Those guidelines describe what is needed to control stormwater runoff. For sites between 0 and 5% slopes, all that is needed is to keep a "disconnection flow path" between rows of panels, at least equal to the width of the panels. If the panels are 8 feet wide, for example, by leaving the proper vegetation in an area 8 feet wide between the rows of panels, "the runoff from 1.0 inch of rainfall is treated." (Left unsaid is whether such a method would handle the rains that we have had recently.)

For slopes between 5% and 10%, the guidelines suggest that more may be needed, such as level spreaders, terraces, or berms. Mr. Altmeyer explained that level spreaders are gravel-filled trenches or containers situated at the drip edge of each row of panels. They are designed to slow down and catch runoff from the panels. He said that berms and terraces can also be used, by grading the area, also to slow down and redirect the runoff.

Finally, the guidelines mandate a formal stormwater management plan for slopes greater than 10%. "However, installations on slopes greater than10% will require an engineered plan that ensures adequate treatment and safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice." Although Mr. Altmeyer found slopes well over 10%, the Petitioners have provided no such engineered plan.

The Petitioners produced no stormwater management plan. Without such a Plan, this Board cannot reasonably conclude that runoff from a sloping, nine acre field, with over 6,000 solar panels, will be properly handled and contained, and will not damage the environment, or downstream property owners.

Prime and Productive Soils

The County Council Planning Board took another look at Bill 37-17 last summer, and recommended that solar facilities not be permitted on prime and productive soils. Not all of northern Baltimore County contains such soils. The Gerner property is a good example. As shown on Protestants' Exhibit 14, almost all of the Gerner field closest to York Road is Manor channery loan (15-25% slopes), which is listed as "Not prime farmland." Unfortunately, the other Gerner field, away from York Road, is the proposed solar site. Around 90% of the soils in that field, over which the solar panels would be installed, are either Glenelg loam, Glenville silt loam, or Manor loam (8-15% slopes). All of those categories are described in Protestants' Exhibit 14 as Prime Farmland, or Farmland of Statewide Importance.

It is clear that if the law is changed, a solar facility will not be allowed on this site. Section 2 of Bill 37-17 required the Planning Board, in consultation with other county agencies, the Sierra Club, and the Valleys Planning Council, to "study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these regulations, and by July 1,

2018, submit recommendations to the County Council and the County Executive regarding potential changes to the current law." The Planning Council conducted such a study and concluded that solar facilities should not be allowed on prime and productive soils. Implicit in that recommendation is their belief that the impact is unacceptable at sites with good soil, and that prime farmland should be reserved for agricultural use. This Board should carefully consider the Planning Board's recommendation to prohibit solar arrays on prime and productive soil, whether or not it is implemented by the County Council.

Incompatibility with Zoning Classification

The solar panels would be placed on property zoned R.C.7. While there are 139,053 acres zoned R.C.2 in Baltimore County, there are only 36,290 acres of R.C.7. (People's Counsel Exhibit 12). Only around 9% of Baltimore County is zoned R.C.7. Protestants are not aware of any other solar array that is being proposed on R.C.7 land. As described earlier, R.C.7 is the Resource Preservation Zone, land where something special has been identified that needs to be protected. The Legislative goals to be achieved in the R.C.7 Zone are listed in Section 1A08.1(B) of the Baltimore County Zoning Regulations. The goals include the following:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;
2. To protect forests, streams, wetlands, and floodplains;
3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;
6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone; and
7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

Allowing solar panels on the Gerner property would be inconsistent with all of these goals. Runoff from over 6,000 solar panels covering nine acres will not preserve and protect streams, wetlands, or ecosystems. It will not protect water quality. It will not protect prime and

productive soils; it will take them out of production. And one would be hard-pressed to find a use less in keeping with the "unique character of this rural area", than large, black panels, row after industrial row, covering this beautiful area of northern Baltimore County.

The Stream-Crossing

Brian Quinlan chose a field to erect 6,840 solar panels which can only be accessed through an 80 feet wide pinch-point in the Gerner property. A stream runs through the length of the pinch-point. There is no bridge over the stream, or underground pipe to carry the stream. There is, according to Bill Mayo, a pile of rocks dumped into the stream, long ago, to create a crossing used for farm machinery. The consensus from all seemed to be that an improved crossing would have to be built for this project to go forward. There were no plans presented by the Petitioners for such a crossing, nor any assurance that such an improvement can legally be built.

Article 33, Title 3 of the Baltimore County Code is entitled "Protection of Water Quality, Streams, Wetlands, and Floodplains." The legislative intent in adopting the regulations is set forth in Section 33-3-103 of the County Code:

(a) In general. The purpose of the County Council in adopting this title is to:

(1) Protect the county's streams, wetlands, and riverine floodplains;

(2) Protect the water quality of the county's watercourses, reservoirs, lakes, and the Chesapeake Bay;

(3) Protect the county's riparian and aquatic ecosystems; and

(4) Provide environmentally sound use of the county's land resources.

(b) Forest buffers.

(1) Multiple environmental protection and resource management values are provided by forest buffers.

(2) Forest buffers enhance and protect the natural ecology of stream systems; water quality; wildlife habitat; the aesthetic and scenic qualities of natural features; environmentally sensitive areas, such as aquifer recharge areas; and flora and fauna preservation sites.

(3) Forest buffers adjacent to stream systems:

(i) Restore and maintain the chemical, physical, and biological integrity of the water resources;

(ii) Filter nutrients and toxins;

(iii) Reduce erosion and control sedimentation;

(iv) Stabilize stream banks;

(v) Provide infiltration of stormwater runoff;

(vi) Maintain base flow of streams;

(vii) Provide the organic matter that is the source of food and energy for the aquatic ecosystem;

(viii) Provide tree canopy to shade streams and encourage trout and other desirable aquatic species;

(ix) Provide riparian wildlife habitat;

(x) Provide scenic value and recreational opportunity; and

(xi) Minimize public investment in waterway restoration, stormwater management, and other water resource expenditures.

John Roemer testified on behalf of the Protestants, and was accepted as an expert in the field of wetlands delineation. He investigated the forest buffer that would be required at the pinch-point. Citing to Section 33-3-111(4) in the County Code, he said that a 100 foot buffer is required because the stream is a Class III-P trout stream.

While Section 33-3-112(b)(iii) of the County Code permits agricultural operations in a forest buffer area, other activities are prohibited, as provided in Section 33-3-112(b)(2):

(i) The following practices and activities are restricted within the forest buffer.

(ii) Except as provided in subsection (c) of this section, the existing vegetation within the forest buffer may not be disturbed, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying, and grazing.

(iii) Soil disturbance may not take place within the forest buffer by grading, stripping of topsoil, plowing, cultivating, or other practices.

(iv) Filling or dumping may not occur within the forest buffer.

(v) Except as authorized by the Department, the forest buffer may not be drained by ditching, underdrains, or other drainage systems.

(vi) Pesticides may not be stored, used, or applied within the forest buffer, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service.

(vii) Animals may not be housed, grazed, or otherwise maintained within the forest buffer.

(viii) Motorized vehicles may not be stored or operated within the forest buffer, except for maintenance and emergency use approved by the Department.

(ix) Materials may not be stored within the forest buffer.

The structures, practices and activities allowed in a forest buffer are set forth in Section 33-3-112(c):

(1) The following structures, practices, and activities are permitted in the forest buffer.

(2) (i) Roads, bridges, trails, storm drainage, stormwater management devices and practices, and utilities approved by the Department are authorized within the forest buffer provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place.

(ii) The alternatives analysis shall be submitted to the Department in accordance with § 33-3-106 of this title.

(iii) These structures shall be located, designed, constructed, and maintained to:

1. Provide maximum erosion protection;

2. Have the least adverse effects on wildlife, aquatic life, and their habitats; and

3. Maintain hydrologic processes and water quality.

(iv) Following any disturbance, the impacted area shall be restored.

(3) Stream restoration projects, facilities, and activities approved by the Department are authorized within the forest buffer.

(4) Scientific studies approved by the Department, including water quality monitoring and stream gauging, are authorized within the forest buffer.

(5) Horticulture practices may be used to maintain the health of individual trees in the forest buffer.

(6) Individual trees in the forest buffer that are in danger of falling, causing damage to dwellings or other structures, or causing the blockage of streams may be removed.

(7) Other timber cutting techniques approved by the Department may be undertaken within the forest buffer under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.

As demonstrated above, Baltimore County is extremely protective of buffers around trout streams. While agricultural operations may continue, improving the stream crossing at the pinch-point, for an industrial use, is another matter. The above statutes provide that existing vegetation may not be disturbed at the stream crossing, soil cannot be graded, the 100 foot buffer area cannot be drained, and no filling or dumping is permitted. While a bridge or culvert might be allowed, an alternatives analysis must "clearly demonstrate" that 1). no other feasible alternative exists and, 2). minimal disturbance will take place.

Wetlands

The Petitioners showed no wetlands on their Site Plan. John Roemer identified two areas of wetlands, both on the Rude property. He said that wetlands are important and must be protected because so many "creatures" either live in wetlands, or need to be in wetlands for some part of their life. Mr. Roemer found one wetlands area that covers approximately ½ acre, and the other, near the pinch-point, covers 1/10 of an acre. He has been delineating wetlands for thirty years, and said there was no question that these are in fact wetlands. Like trout streams, wetlands are natural assets afforded significant protection in Baltimore County. Section 32-4-414 of the County Code is entitled "Floodplain and Wetland Protection". Section 32-4-414 (e) reads as follows:

(e). Wetlands.

1) The county may not permit dredging, filling or construction in any nontidal wetland or tidal wetland.

2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

Under 33-3-111(c) of the County Code, a complicated formula is used to determine the size of the forest buffer around wetlands. The steepness of the slopes at the site, the soil erodibility, and the vegetative cover are examined, to come up with a score, which determines how wide the buffer must be around the wetlands. The buffer could range from 25 feet to over 300 feet. John Roemer believed that the buffer around the ½ acre wetland was wide enough to encroach into the roadway planned around the solar array, and perhaps some of the panels. Given the steepness of the slopes at this site, the wetlands buffer might well cut even further into the proposed panels.

The buffer around the smaller wetland, which is right at the pinch-point, will serve to restrict any disturbance by the Petitioners at the stream crossing. As with the forest buffer, the wetlands buffer will prevent construction of a bridge or culvert at the stream crossing, unless there is no feasible alternative, and disturbance will be minimal during construction.

Viability of Petitioners

Baltimore County's law directs that "all parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility." 4F-106(A). Expected maintenance includes "painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, integrity of security measures", and access roads. Under 4F-107, the owner or operator are also responsible for removing the solar facility at the end of its useful life, or when it has been abandoned.

Brian Quinlan testified that there is a 20 year lease between ESA Sparks Glenco LLC and Robert Gerner for this project. There is a renewal option, but he did not disclose the length of the option period. There is a written lease, but he did not have a copy. The lessee, ESA Sparks Glenco LLC, is a shell company. It was formed in Maryland in November 2016. It has no

assets, no bank account, and no employees. Brian Quinlan admitted that he created this separate entity just for this project. He further admitted that he did this for "financing and *legal* reasons." In other words, he wants only his shell company to be legally liable if there is a problem.

When asked on cross-examination who would maintain the site, he said that ESA Sparks Glenco LLC would be responsible. He was quick to point out that it, and not Calvert Energy, is the Applicant in this case. When asked how ESA Sparks Glenco LLC would maintain the site with no employees, he said he was discussing "outsource monitoring" with several companies. Some companies were in Maryland, some were not. He had no further information on who would maintain the site, or how it would be done.

The financial status and reliability of the property owner, Robert Gerner, is completely unknown. He is the other party responsible for maintaining and then tearing down the site. We did not hear from him. He did not tell us his plan for maintaining the site, taking down the panels 20 or more years from now, and then restoring his property to agricultural use. We heard nothing about his financial ability to take care of the site, as required of an owner under Bill 37-17. We don't know if he is even aware of his maintenance and tear-down responsibilities under the solar law. We don't know how the lease addresses such responsibilities.

The Petitioners did not deem it necessary for the Board, or the community, to hear how they intend to maintain the site, handle any problems that arise, and then tear it down when the lease has ended. The temptation for ESA Sparks Glenco LLC to simply walk away, if a problem arises, or if the project is not profitable, will be great. Having been created for "legal reasons", it will have no assets, and nothing to lose if it doesn't fulfill its obligations under the lease or the solar law. If this venture loses money, and the solar array is abandoned, does anyone believe that ESA Sparks Glenco LLC will follow through and tear down the array? Or will the panels be left

there to rust? What if the solar array sustains damage, and stops working. Will ESA Sparks Glenco LLC make the necessary repairs? Being formed for legal reasons, and having no assets, it will likely walk away.

As part of their burden of production, the Petitioners should be required to explain their plan to maintain, monitor, and tear down the site. This is a long-term project in which the owner and lessee must be financially able to fulfill their obligations. We have no evidence to suggest that they will be up to the task.

Scenic Route

York Road is designated as a Baltimore County scenic route. It is the main north-south thoroughfare in northern Baltimore County. According to the Master Plan, "The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents." Master Plan 2020, p. 99. It is the policy of Baltimore County to "preserve scenic corridors and views through proper zoning and coordination with federal and state governments." Master Plan 2020, p.99. "For properties along scenic routes or with scenic view sheds, variances, amendments and special exceptions should be granted sparingly." Master Plan 2020, p. 101.

Conclusion

Brian Quinlan chose a bad site to erect solar panels. He would not be facing $350,000 in environmental studies had he chosen a flat field, with poor soil, no trout streams, no wetlands, and away from the Gunpowder Falls. There are many sites in northern Baltimore County fitting that description. Mr. Quinlan should have abandoned this project, certainly after seeing the proposal from KCI Technologies. He has, instead, moved forward, having chosen to deal with the myriad of environmental issues at his site by simply ignoring them for as long as possible.

His expert, Bruce Doak, ignored those issues as well. He provided little of the information required by Section 33-3-108, and the solar law, on his site plan. He made two visits to the site. This was his first solar project. He either missed, or chose to ignore, the mandate in 4F-104(9) that "A Petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code."

Mitchell Kellman, the Petitioners' other expert, did little more than stop by the site. He didn't even walk down to the pinch-point. He has testified in hundreds of zoning cases, almost always for the party seeking permission for a project. In every one of those cases, his opinion has been that the project should be permitted. To no one's surprise, his opinion in this case was that this project should be permitted. He offered nothing to shed light on any of the environmental issues.

In conclusion, the Protestants believe that the decision by this Board should be guided by the stated purpose of the Solar Bill:

"The purpose and intent of this Article is to permit solar facilities in parts of the rural and commercial areas of the County by Special Exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources." (4F 101.1)

The Petitioners can point to no safeguards that they will put in place to protect the County's natural resources. They have not shown that the benefits of solar energy production, at this unique location in Baltimore County, outweigh its potential impact on that area. For that reason, and for all of the reasons cited above, their Petition for a Special Exception should be denied.

H. Barnes Mowell, P.A.
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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 8th day of January 2019 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and to Peter Zimmerman, Esquire, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.

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H. Barnes Mowell

RE:	PETITION FOR SPECIAL EXCEPTION 15637 York Road; E/S York Road, 250' N of c/line of Elizabeth Court 8th Election & 3rd Councilmanic Districts Legal Owner(s): Robert K. Gerner Contract Purchaser(s): ESA Sparks Glenco, LLC by Brian Quinlan Petitioner(s)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY
		*	2018-047-X

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PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S POST HEARING MEMORANDUM

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PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S POST HEARING MEMORANDUM

People's Counsel for Baltimore County submits this post hearing memorandum:

1. Introduction

This solar facility special exception case involves 15637 York Road in rural northern Sparks-Glencoe. Petitioners Robert Gerner, property owner, and ESA Sparks Glenco, LLC filed a petition on August 10, 2017. This *de novo* appeal follows Administrative Law Judge (ALJ) John Beverungen's December 21, 2017 conditional approval.

The County Council enacted Bill 37-17 to govern land use of community solar facilities, limited to 2 megawatts of electricity. P.C. Exh.1. The law is now codified in Baltimore County Zoning Regulation (BCZR). Article 4F. App. 9.The Bill permits solar facilities by special exception in the R.C. 2 through R.C. 8 Zones and Business and Manufacturing Zones. BCZR Sec. 4F-102.A.1. This brings into play special exception standards delineated in BCZR Sec. 502.1. App. 14. The solar facility law adds area and other standards. BCZR Secs. 4F-102.B, 4F-104.

This is the second track in the north county "magical mystery tour" ripe for decision at the County Board of Appeals (CBA). It follows the Matthews case at 20450 Middletown Road, Freeland, which awaits public deliberation.

The Sparks-Glencoe neighborhood here has its own character. The zone is the R.C. 7 Resource Preservation Zone. The York Road site occupies 30 acres in a bowtie shape. A stream system traverses the junction. The Gunpowder Falls flows nearby to the east. The 9-acre solar facility area is set away from the road but again with prime soils and at a prominent height. We address these and many other particulars as we do the analysis.

The environmental issues are especially acute here. These include impact problems at the "bowtie" junction and setback variance concerns; stormwater runoff impacts to the stream there, which traverses and flows below the site; and runoff impacts to the Gunpowder Falls. The requisite scope and timing of environmental review has emerged as a critical zoning issue. There also arise again concerns about the impact on prime and productive soils, and the visual impact on the scenic road and on residents. Petitioners do get credit for fitting within the moderate size necessary for the maximum 2 megawatts.

Despite differences, the R.C. Zone solar facility special exception cases walk a familiar path. Petitioners hire consultants who work on land use projects for developers. They are labeled as experts on all zoning issues, including legal, regardless of realistic limitations. They tell us unhesitatingly that prime and productive soils are irrelevant; environmental issues will be taken care of later; visual impacts are par for the course; and everything is copasetic. Petitioners then try to carry the so-called "presumption" in favor of special exceptions to the finish line without really proving anything. They downplay area citizens as know-nothing NIMBYs who can't match the so-called experts. We disagree that this is a winning formula. It is flawed from start to finish.

2. The Parties: Petitioners and Protestant/Appellants

Petitioner Robert Gerner did not testify. ESA Glenco is a Maryland corporation with an office listed in Potomac, Maryland. Prot. Exh. 1. Yet the petition lists a Sanford, Florida address. Brian Quinlan of Annapolis testified as owner and manager. Also, Mr. Quinlan's Calvert Energy, Inc. of Gaithersburg, Maryland dealt with KCI Technologies. Pet. Exh. 27.

Gerner and ESA Glenco did not show any lease or other contract. This all paints a blurred picture of management and responsibility for operation and compliance. This gives no confidence in the project's proper implementation even were it otherwise acceptable.

Appellant William Mayo appeared as a nearby resident and for Appellant Gorsuch Retirement, Inc., a family corporation whose ancestry has had the large adjacent farm property for centuries. Adjacent property owner Edward Maczek appeared and testified.

Appellant Sparks-Glencoe Community Planning Council (SGCPC) appeared. Lynne Jones testified as President. CBA Rule 8. Prot. Exh. 5, and individually. The property is within their area. Their concerns extend to proliferation across the north county.

Petitioners showed that Lynne Jones lives in Parkton, miles away from 15637 York Road. Pet. Exh. 19. We must restate there are "... liberal standards under Maryland law for party status at an administrative hearing." Dorsey v. Bethel A.M.E. Church 375 Md. 59, 72 (2003). Anyone expressing an interest may properly be a party, absent a specific rule to the contrary. The GIS Map shows the R.C. 7 Zone occupies 36,290 acres, along with 139,053 acres for the R.C. 2 Zone. P.C. Exh. 12. As we shall see, the two zones are complementary. Moreover, Pattey v. Board of County Comm'rs 271 Md. 352, 363 (1974), stated,

> "... the "concept of a 'neighborhood' is a flexible one and will vary according to the geographical location involved, it being axiomatic that in rural or semi-rural areas, ... the 'neighborhood' will be larger and more fluid than in a city or suburban area."

3. People's Counsel's Role

People's Counsel for Baltimore County appears in zoning cases to defend the comprehensive zoning maps and master plan in the public interest. Baltimore County Charter Sec. 524.1. App. 1. The office's function extends broadly to zoning and related cases, including special hearings and development cases with zoning issues.

In 1974, Baltimore County citizens approved the charter office to defend the comprehensive zoning maps. Bill 61-74, 11/5/74. A 1978 charter amendment added defense of the master plan. Bill 90-78, 11/7/78. Section 524.1(a)(3)A now states in pertinent part,

> **"*Powers and duties*. The People's Counsel shall have the following powers and duties:**
>
> **He shall appear as a party before the zoning commissioner of Baltimore County**, his deputy, the county board of appeals, the planning board, and the courts **on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and** in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations **as now or hereafter in force or effect, in which he may deem the public interest to be involved.**" (Emphasis supplied).

The office participates regularly in special exception cases. This includes recognition in reported opinions. See, People's Counsel v. Webster 65 Md. App. 694 (1986); People's

Counsel v. Mangione 85 Md. App. 738 (1991); Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996); Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001); People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002); Lucas v. People's Counsel 147 Md. App. 209 (2002), People's Counsel v. Loyola College 406 Md. 54 (2008); Attar v. DMS Tollgate 451 Md. 272 (2017). Other cases concluded without judicial review. The appellate courts also recognize People's Counsel's authority to appear in special hearings. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989). Later cases include Marzullo v. Kahl 366 Md. 158 (2001); Antwerpen v. Baltimore County 163 Md. App. 194 (2005) and People's Counsel v. Surina 400 Md. 662 (2007).

The Court of Appeals articulated the office's "broad charge to protect the public interest in zoning and related matters" in People's Counsel v. Crown Development Corp. 328 Md. 303 (1992). The case arose dealt with residential development involving a contested zoning issue on transfer of density. Judge McAuliffe wrote, 328 Md. at 317,

> "People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. V. MNCP & P Com'n 309 Md. 183 (1987). Although participation in the development process may often be outside the intended ambit of People's Counsel's authority, where protection against a violation of a density regulation is involved, People's Counsel has a legitimate interest."

Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996) was a landmark development case on zoning estoppel. The current leading development case involving master plan defense is HNS Development v. People's Counsel 425 Md. 436 (2012).

4. The Primary Function of the Local Zoning Process for Land Use Review of Solar Facilities in the Community Solar Pilot Program: the Only Public Hearing

"Like all detectives, must consider every possibility." Charlie Chan in Paris (1935)

Maryland has set up a Community Solar Pilot Program for facilities producing up to 2 megawatts. The county solar facility law provides land use review for such facilities.

Maryland Public Utilities law governs the application process for generating stations. As explained in Board of County Commissioners v. Perennial Solar ___ Md. App. ___, 2018 WL 59983599 (2018), the large powerful solar generating stations and transmission

lines are subject exclusively to Public Service Commission land use review for Certificates of Convenience and Necessity. But the law exempts from such PSC review certain facilities, including those which produce less than 70 megawatts and serve the local utility. Md. Code Public Utilities Article Secs. 7-207, 7-208. This explains how our local zoning process functions in the legislative scheme and BGE local program. This means the special exception process here provides the only public hearing for land use review.

At the other end of the spectrum is Baltimore County's development process. Mr. Quinlan suggested there would be further hearings, based on the scope of work outlined by James Derieu of KCI Technologies. Pet. Exh. 27. But Mr. Quinlan could provide no legal basis for this suggestion, and neither did Mr. Deriu.

The County has customarily exempted commercial facilities from development hearings, as in Matthews. County Code Sec. 32-4-106(b). These usually come about with a Development Review Committee (DRC) application. The bilateral DRC process involves only internet notice and a relatively informal meeting, no hearing, no citizen participatory rights, no explanation, and no public notice of the decision. It is a shadow process.

The present special exception process is thus the one and only time for an opportunity for a public hearing where citizens to have an opportunity to be heard. In any event, the special exception issues involve different and more in-depth standards than the relatively more perfunctory and less transparent development process. As we shall argue below, the special exception standards require a reasonable level of environmental analysis, albeit not necessarily the full development process.

5. Setting the Scene

A. The Site, the Immediate Neighborhood, and Area of Interest

The geographic facts are not genuinely in dispute. The key questions comprise application and interpretation of special exception standards and the solar facility law.

Petitioners' site plan shows the bowtie or butterfly property shape. Pet. Exh. 1, 1a. They produced aerial and site photos of the site and vicinity. Pet. Exh. 3-7. Their My Neighborhood Zoning Map shows the solar facility location and outlines an area east of York Road, with the west boundary on York Road and east boundary on Upper and Lower

Glencoe Roads. Pet. Exh. 9. They added a My Neighborhood map showing the the northerly adjacent Rude property residential subdivision lots. Pet. Exh. 20.

Protestant Lynne Jones submitted the SGCPC Rule 8 materials and then testified, with supporting Protestants' Exhibits: a prime farmlands and an aerial soils map of the property, Exh. 13-14; Class III trout stream map, Exh. 15; aerial topography maps, showing solar facility at highest point, Exh. 16, 22; site photos, Exh. 17a-D; map east .45 miles to Upper Glencoe Road and Gunpowder Falls, with photos of area flooding, Exh. 18; an aerial map of this Gunpowder Subshed and Loch Raven Watershed, more photos focusing on the environment and visibility: Exh. 19A-G, topography east to Gunpowder Falls, with the area trout stream, Exh. 19C; photos focusing on access, spring, stream/crossing, unstable soils. Exh. 20A-I; a graphic of the stream and runoff direction at the bowtie crossing, Exh. 21; photos of the stream area at or near the bowtie junction, Exh. 22Aa-g; and a scenic/historic view map, Exh. 23. These reflected a much larger area of concern than the relatively small area outlined by Petitioners.

We submitted a GIS aerial photo and ADC Street Atlas map, P.C. Exh. 1-3; a My Neighborhood soils map of the property, with the USDA web soil survey descriptions, P.C. Exh. 5; an Urban-Rural Demarcation Line (URDL), P.C. Exh. 9; the countywide R.C. 2/R.C. 7 Zone map, P.C. Exh. 12; and ADC Street Atlas excerpts, P.C. Exh. 13a, b;

John Altmeyer, retired county supervisor of building inspection, added maps and topography calculations, showing significant slopes downhill to the south/southwest to the stream running south from the property. Prot. Exh. 4. John C. Roemer IV, ecological consultant, included with his testimony a map of the streams, wetlands, and watercourses in the area, focusing on the property's "butterfly" wing junction stream system. Prot. Exh. 28.

Based on the wealth of geographic information, exhibits and other undisputed material facts, this is how we set the scene. Sparks-Glencoe is an attractive rural area north of Cockeysville and the URDL. York Road is the major north-south road, parallel to Interstate-83. The immediate neighborhood here is entirely zoned for Resource Conservation. This includes an R.C. 7 Zone area along the east side of York Road to the north and south of this property, including apparently part of the Rude property residential

subdivision to the north and the forested Reverend William Borders and Bajackson properties to the south. Across York Road, the zone is R.C. 2, but with established residential subdivisions accessed from Elizabeth Court and Williams Court. There is also R.C. 2 zoning to the northeast and east. Most prominent is the venerable remaining 167-acre Gorsuch Retirement farmland. There are also several residences in this area, featuring Protestants William Mayo and Edward Maczek.

The 30-acre R.C. 7 Zone butterfly-shaped (sideways hourglass) Gerner property extends about 1050 feet along the east side of York Road, a designated scenic road. The property extends eastward to a depth of about 2250 feet. Metaphorically, the two side-by-side butterfly wings are about equal in area, narrowing down to a junction or bottleneck about halfway in. The west wing is broader in area but with less depth than the east wing.

There is a residential use in the west wing. The east wing has been farmed. A significant feature is the stream which runs north-south through the bottleneck through a culvert and presents soil stability and access issues to the east wing. As a result, the tenant farmers of the east wing have gained access from Upper Glencoe Road to the east, with the permission of the Mayo family, instead of through the west wing and bottleneck.

This brings up the topography. The west wing slopes east mostly downward from York Road east to the spring which runs through the center of the property. The east wing rises then rises to a relatively flat area, with a high elevation about 420 feet above sea level. Prot. Exh. 4. However, as Altmeyer's topography shows, the land slopes downward off the property to the south/southwest to the stream at about 340-350'. His calculations show significant high slopes within this area, including 13% to 17%, respectively, in some areas.

A major regional stream is the Gunpowder Falls, running along Upper Glencoe Road .45 miles to the east. The land slopes down east from the butterfly east wing to the Falls. Prot. Exh. 17-19, with illustrative photos of stormwater and flooding.

Based on the USDA soil survey information, P.C. Exh. 5, Prot. Exh. 13-14, most of the west wing is not prime farmland. This includes the predominant middle area is MbD soil, Manor channery loam, 15 to 25% slopes, and the MdE area, Manor brinklow complex, 25 to 45% slopes, nearer to the stream. There is prime MaB, Manor loam, 3 to 8% slopes, in

a smaller area along York Road, with the residence, and prime GhC, Glenville silt loam, 8 to 15% slopes, in a narrow strip of toward the bottleneck.

The east wing is a different story. It is dominated by prime and productive soils and soils of statewide importance. The most prevalent soil is GdB, Glenville loam, 3 to 8% slopes, prime farmland, with the second most being MaC, Manor loam, 8 to 15% slopes, farmland of statewide importance. There is also a stretch of the GhC near the bottleneck, again prime farmland. These are open cropland areas. The remaining areas are GhB, Glenville silt loam, 3 to 8%, prime farmland, and MaD, Manor loam, 15 to 25% slopes, not prime farmland. The area which runs along the southern border is forested and is part of a large forested area to the south and east.

B. Location of the Proposed Solar Facility

The proposed solar facility would occupy 9 open areas of prime farmland and farmland of statewide importance. The site plan "Typical Array" drawing shows a height of about 20 feet, albeit suggested in testimony as maybe less. Pet. Exh. 1.

If we zoom in on the east wing, the soil survey map and chart in Protestants' Exhibit 14 show an area of 16.4 acres, a little more than half the entire property. The prime farmland --- GdB, GhB, and GhC --- comprise 9.9 acres. The farmland of statewide importance --- MaC --- occupies 4.2 acres. Together, the 14.1 acres of prime farmland and farmland of statewide importance translate as 86.4% of the 16.4 acres. Petitioners have thus chosen to place their facility on the best farmland on this property.

The facility's location also disrupts the scenic character of the road. While Petitioners say this is mitigated by the facility's location away from the road, it still will be on the highest part of the property. There also will be infrastructure, including a line of poles to the BGE connection on York Road. Moreover, by placing the facility on the east wing, the visibility issue is aggravated for the residents who live to the east of the site.

Environmentally, as noted, the east wing presents issues of stormwater runoff immediately to the south/southeast stream system. There is also the concern about runoff to Upper Glencoe Road and the Gunpowder Falls, .45 miles to the east.

6. The Structure of Zoning Law

Baltimore County tracks the traditional structure of comprehensive zoning with use, height, and area regulations. Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 380 (1926). This is known as Euclidean Zoning. Loyola College 406 Md. at 70. There are in each zone an enumerated list of uses permitted by right and by special exception. Unless a use is affirmatively listed, it is prohibited. BCZR Sec. 102.1; Kowalski v. Lamar 25 Md. App. 493, 496-99 (1975); People's Counsel v. Surina 400 Md. 662, 688 (2007).

As we shall explain, there are major differences between uses by right and special exception. A use permitted by right is permitted in the zone even if there are potential adverse impacts particular to the location, and there is disharmony or incompatibility with the area's comprehensive zoning plan. But a special exception use must go to hearing and satisfy that there are no adverse impacts or disharmony particular to the location in the zone.

Many locations may be appropriate, but others inappropriate. The task is to differentiate the appropriate and inappropriate, concordant and discordant. This involves integral evaluation of the zone, use, site, location, neighborhood, impacts. To be disapproved, it is not required that the evidence show the location be the worst in the zone, just that the impacts relate particularly to the location and not "inherent" throughout the zone, and/or that there is disharmony with the comprehensive zone. A classic "inherent" impact, i.e., not particular, would be the arguable depressing effect of a funeral home, which would occur similarly anywhere in the zone.

Bill 37-17 designates solar facilities as special exception uses rather than uses permitted by right. This means some locations are inappropriate. Otherwise, the Council would have made them by right. The Bill's legislative findings, discussed below, confirm this distinction, highlighting the necessity to safeguard the County's agricultural land.

7. Prologue to Interpretation Maryland Special Exception Law

"Sometimes, in an acute situation, such as this, often what is right can take on multiple interpretations." Jared Cohen in the film Margin Call (2011)

Maryland special exception law has evolved for 65 years. Yet the standards remain complex and polychromatic, susceptible to different points of view. Interested parties tend

to take the view which most favors the result they seek. It is our office's goal and responsibility to try to navigate the path of the law with accuracy and objectivity.

A. Linguistic Navigation: A Sunswept Zoning Odyssey: Guide for the Perplexed

""The Master replied, 'What is necessary is to rectify names ... If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success." Confucius, Analects, Book XIII Chapter 3

If we posit, as seems axiomatic, that the special exception is properly named, along with its judicially engrafted elements, let us chart a course to linguistic truth as best we can. Let us examine the core language used in Montgomery County v. Merlands 202 Md. 279, 290 (1953) and adopted in later cases, using Webster's Third New International Dictionary:

> **special: 1:** distinguished by some unusual quality: UNCOMMON, NOTEWORTHY, EXTRAORDINARY ....
>
> **exception: 1:** the act of excepting or excluding : exclusion or restriction ...by taking something out that would otherwise be included ....
>
> **limited: 1 a :** confined within limits : restricted in extent, number, or duration ... **2:** characterized by enforceable limitations prescribed ... upon the scope or exercise of powers
>
> **harmony : 3 :** combination into a consistent whole : INTEGRATION
>
> **burden:** *n* **1 a:** something that is carried : LOAD ... **c** something that is borne as a duty, obligation, or responsibility ...**3** something that oppresses, weighs down, or causes worry
>
> **burden of proof :** the duty of proving a disputed presumption, assertion, or charge .... *specif.* the duty of proving a particular position under penalty against the party upon whom the duty is imposed in a court of law
>
> **prima facie:** *adj* **1:** based on immediate impression : APPARENT **2** generally applicable but admitting of suspension in a given case ...
>
> **prima facie evidence :** evidence sufficient in law to raise a presumption of fact ...
>
> **presume: 1** to take upon oneself without leave, authority, or warrant: undertake rashly: DARE ... **2** to look confidently forward to : ANTICIPATE, EXPECT ... **3** to accept as true or credible without proof or before inquiry : ASSUME, INFER, SUPPOSE ... **4** : to raise a presumption of or that : take for granted: IMPLY
>
> **presumption ... 3** *law* **:** an inference as to the existence of the fact not certainly known from the known or proved existence of some other fact, sometimes operating as evidence, sometimes as a rule of procedure as to who must proceed with evidence on the main issue,

or as to who has the burden of proof and sometimes having no effect as evidence, once the evidence on the issue is in --- distinguished from *fiction*

presumptive : 1 a giving grounds for reasonable opinion or belief ... **b** based on probability or presumption ... **2** *archaic* presumptuous ... **3** : based on inference : APPARENT, PRESUMED ...

presume [Latin, www.archives.nd.edu] praesumo –sumere -=sumpsi –sumptum [to take beforehand; to anticipate; to take for granted]. Hence partic. preaesumptus –a -um, [taken for granted, **presume**d].

We draw two main lessons from this definitional matrix.

The first is the conflict, tension, and confusion between "special, exception, limited, burden of proof, and harmony," and "prima facie, presume, presumption, and presumptive." To meet a burden is to climb a hill, by preponderance of evidence or greater. But the "presumption" potentially sweeps the terrain into a downhill slope. Secondly, "presume," "presumption," and "presumptive" are themselves tied up in knots. The meanings range from unauthorized assumption to grounds for reasonable belief. Even in the "*law*" definition of "presumption," there is uncertainty about the nature of the inference.

Judge Charles Moylan introduced and spotlighted this perplexing subject-matter in Cooper v. Singleton 217 Md. App. 626, 627-28 (2014), footnotes omitted,

> "Harvard Law School Professor Edmund M. Morgan, one of the legendary titans of the law of presumptions, said of the subject as early as 1937:
>
> > Every writer of sufficient intelligence to appreciate the difficulties of the subject-matter has approached the topic of presumptions with a sense of hopelessness and has left it with a feeling of despair.[1]
>
> The first of the early titans was James Bradley Thayer who, even before the turn of the 20th Century, had observed:
>
> > [T]he numberless propositions figuring in our cases under the name of presumptions, are quite too heterogeneous and noncomparable in kind, and quite too loosely conceived of and expressed, to be used or reasoned about without much circumspection.[2]
>
> Dean Charles McCormick, another of the early Olympians, added to the diagnosis:
>
> > One ventures the assertion that "presumption" is the slipperiest member of the family of legal terms, except its first cousin, "burden of proof[3]"

Judge Moylan reviewed the Maryland Rule 5-301 evidentiary presumption, its history, and several approaches, including the "Thayer-Wigmore bursting bubble," "Morgan-Type" presumption, and the works of Alan Hornstein, Joseph F. Murphy, and Lynn McClain. 217 Md. App. at 646-50. In contrast, the special exception "presumption" is not and has never been an evidentiary presumption. It does not fit into any of the above categories. There has never been any shift of the burdens of production and persuasion. An applicant cannot properly just show up --- produce zero, conclusory, or propagandistic evidence --- and be entitled to approval. Judge Murphy effectively recognized this in his Loyola College rules of engagement, discussed below.

As we navigate the history and case law, we must guard against the danger that the presumption can cause unintended decision-making consequences. As in Homer's Odyssey, it may become like Circe, a seductress that bewitches serious legal analysis of the facts and special exception criteria. Like Odysseus, we must get past her charms to our own Ithaca.

"Words are for getting meaning; after one gets the meaning, one forgets the words. Where can I find people who have forgotten words, and have a word with them? Zhuangzi, Ch. 26.

B. Genesis

"You may ask yourself, Well ... how did I get here? Talking Heads, Once in a Lifetime (1980)

Montgomery County v. Merlands 202 Md. 279, 290 (1953) begins this tale. The zoning board had treated the private club special exception like a variance, requiring proof of "urgent necessity." Judge Hall Hammond explained (pages 287-88) the different legislative intent for the special exception to,

> "... delegate to the Zoning Board a ***limited authority*** to permit enumerated uses which legislative body finds in effect ***prima facie*** properly residential, absent any fact or circumstance in a particular case which changes this ***presumptive finding***. The duties given the Board are to ***judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.*** " Emphasis supplied.

Judge Hammond went on to delineate the applicant's burden of proof,

> "The applicant for such a use need not show either practical difficulty, unnecessary hardship or great urgency, but only that the project is a private club and that it would be in general harmony with the zoning plan and would not adversely affect the neighboring properties and the general neighborhood." 202 Md. at 290.

Merlands did these notable things: 1) recognize the special exception; 2) articulate the adverse effect/zoning plan disharmony standards; 3) affirm applicant's burden of proof; and 4) differentiate the variance's more onerous standards.

Merlands' allusions to *"prima facie"* and "presumptive finding" thus functioned to distinguish special exceptions from variances. They did not relieve an applicant from the burden of proof. They did not signal a *carte blanche,* green light, or perfunctory review.

C. Baltimore County Implementation; Merlands in Context and Subsequent Cases

"These shall not be forgotten years ... We will remember." Midnight Oil, Forgotten Years (1990)

In its 1955 comprehensive revision of the zoning regulations, the then Baltimore County Commissioners included BCZR Sec. 502, including Sec. 502.1. App. 12. This law survives today, supplemented by specific environmental standards, discussed below. In the ensuing decades there were a plethora of special exception opinions from Baltimore County. These illustrated the application of the adverse impact/zoning disharmony standards and showed that special exceptions are not routine, perfunctory, or semi=automatic.

Oursler v. Board of Zoning Appeals 204 Md. 397 (1954) came next, affirming restaurant grant, with conditions. The Court cited Merlands for the applicant's burden, called the use *prima facie* permitted, and sustained the conditional finding of no adverse effects. Erdman v. Board of Zoning Appeals 212 Md. 288 (1957) echoed this in affirming a gas station approval. But Dorsey Enterprises v. Shpak 219 Md. 16 (1959), affirmed denial of a junkyard – unsightliness, depreciation of property values ---, focusing on particular facts and the burden of proof. Likewise, Crowther v. Johnson 225 Md. 378 (1961) affirmed a trailer park denial, reviewing adverse impacts and the area, finding sufficient facts to support denial – departure from zoning plan, depreciation of property values.

In the 1960s, the Court continued to scrutinize adverse impacts based on the property and neighborhood geography: Montgomery County v. Mossburg 228 Md. 555 (1962), affirms restaurant grant with conditions; Bonhage v. Cruse 233 Md. 10 (1963), reverses convalescent home grant, inadequate access; Deen v. BGE 240 Md. 377 (1965), affirms transmission line grant; Bd. of Co. Comm'rs v. Luria 249 Md. 1 (1968), affirms gas station denial, failure to prove harmony with zoning plan; Brouillett v. Eudowood Shopping Plaza 249 Md. 606 (1968), affirms self-service carwash denial, failure to prove conformity with

zoning plan, absence of adverse impacts; Neumann v. Mayor & City Council 251 Md. 92 (1968), affirms grant of apartment building medical office; Eger v. Stone 253 Md. 533 (1969), affirms offstreet parking denial, traffic congestion; Tauber v. County Bd. of Appeals 257 Md. 202 (1970), affirms offstreet parking denial, traffic access; City of Takoma Park v. County Board of Appeals 259 Md. 619 (1970), affirms home occupation (slipcovers, reupholstering furniture); Gerachis v. Montgomery Co. Board of Appeals 261 Md. 153 (1971), affirms medical clinic addition denial, traffic congestion, property values, incompatibility; Cason v. Bd. Of Co. Comm'rs 261 Md. 699 (1971), affirms conditions for sand and gravel pit approval; Prince George's County v. Meininger 264 Md. 148 (1972), affirms gas station denial, traffic, lack of need; Skipjack Cove Marina v. Bd. Of Co. Comm'rs 264 Md. 381 (1972), affirms conditions for marina/motel approval; Sembly v. County Bd. Of Appeals 269 Md. 177 (1973), affirms community building grant.

These cases show 5 approvals, 4 approvals with conditions (two over applicant's objection), and 9 denials. The Court treated special exceptions as involving applicant's fair and normal burden of proof with careful, detailed scrutiny. It's not as if Petitioners come in like Novak Djokovic playing against a qualifier ranked 200 in the world.

D. The Path to Schultz v. Pritts (1981)

The Court of Appeals decisions came less frequently with the advent of the Court of Special Appeals (CSA) and certiorari jurisdiction. Such cases as Rockville Fuel & Feed Co. v. Gaithersburg 257 Md. 183 (1970) and Turner v. Hammond 270 Md. 41 (1973) restated and applied the Merlands presumption and the applicant's affirmative burden of proof.

In 1974, Judge Rita Davidson authored for the CSA Anderson v. Sawyer 23 Md. App. 612. This foreshadowed her landmark opinion in Schultz v. Pritts 291 Md. 1 (1981). Both involved funeral homes in residential areas. Anderson dissected opposition testimony as not probative of adverse traffic and other impacts. Judge Davidson explained detail that an "inherent" adverse impact, regardless of location, could not justify denial, i.e. the "depressing" effect of a funeral home. Rather, the "particular" adverse effects must be above and beyond those likely to occur generally in the zone.

In Schultz, Judge Davidson explained that by designating a use permitted by right, the legislature is deemed to understand that there would be particular adverse impacts. But such impacts would not be acceptable for a special exception, which is a conditional use.

The Court reviewed and overruled Gowl v. Atlantic Richfield 27 Md. App. 410, 417-18 (1975). The CSA had held that if an applicant could show the special exception adverse impacts to be no worse than some use permitted by right, then it would be entitled to approval. Judge Davidson rejected this purported equivalency and brought the focus back to a proper analysis of adverse impacts and zoning disharmony. This included her frequently quoted interpretation of special exception criteria, 291 Md. at 11,

> "This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.
>
> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."

The "presumption" is thus not a free pass. Judge Davidson described the zoning board's "limited authority," its duty to judge adverse impact and harmony with the comprehensive zoning plan. She reminded that the burden of proof is on the applicant to satisfy the prescribed standards relating to detriment to the neighborhood and, significantly, the public interest. She proceeded to discuss various scenarios.

Because the CSA had applied an incorrect standard, the Court vacated its decision and remanded for further consideration, especially as to the disputed traffic access issue.

Then came Board of Co. Comm'rs v. Holbrook 314 Md. 210 (1988). The Court sustained denial of a special exception for a mobile home based on the particular adverse visual impact and depreciation of value of a single-family detached dwelling. Judge Cole wrote, "The Schultz test accords with the general standard for judicial review of the ruling of an administrative agency." 314 Md. at 218. The Court reviewed the facts and deferred to the zoning board's finding of particular adverse impacts. The Court described "countless locations in the zone" where there would be no such adverse impact.

E. Court of Special Appeals Cases: Mangione, Country Ridge, Lucas

We illustrate the application of Schultz criteria in three important Baltimore County cases where the CSA sustained this CBA's denials: People's Counsel v. Mangione 85 Md. App. 738 (1991), People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002) and Lucas v. People's Counsel 147 Md. App. 209 (2002). These special exceptions involved, respectively, a convalescent home in a Lutherville residential zone; a pawnshop in an Essex business zone; and a helicopter landing area in a Greenspring Valley R.C. 2 agricultural zone. To make a long story short, this CBA focused on evidence of adverse impacts particular to the property and neighborhood. Such adverse effects were found, explicitly or by inference, above and beyond those likely to occur generally in the zone.

F. People's Counsel v. Loyola College: The Harry Potter Series "Sorting Hat" and Judge Joseph Murphy's Rules of Engagement

This brings us to People's Counsel v. Loyola College 406 Md. 54 (2008). Judge Glenn Harrell provided an encyclopedic 38-page discussion. 406 Md. at 70-107. This CBA had approved a special exception for a retreat center in the R.C. 2 Zone. We argued the CBA had failed expressly to review the evidence relative to other sites we viewed as less problematic. The Court decided that such review is not necessarily required where the evidence indicates an absence of particular adverse effects or incompatibility with the area. He also observed that a zoning board could find particular adverse effects inferentially without doing a comparative analysis based on an individualized review of the evidence.

Otherwise stated, Judge Harrell did not say a comparative analysis is irrelevant or impermissible, just that it is not required under some circumstances. Remarkably, he compared special exception analysis to a Harry Potter "Sorting Hat," 406 Md. at 106,

> "In that sense, the legislature puts on its 'Sorting Hat,' and separates permitted uses, special exceptions and all other uses."

He added footnote 33,

> "In the Harry Potter series of books, the 'Sorting Hat' is a magical artifact that is used to determine which house [names omitted] first-year students at Hogwarts School of Wizardry and Witchcraft are to be assigned.'"

Judge Joseph Murphy concurred, with these rules of engagement, 406 Md. at 109-10,

> "It may be helpful to restate the rules of engagement in special exception litigation, and review how those rules were applied in the case at bar. Although it is of no real consequence whether we say that an applicant "is entitled to a special exception, *provided that,*" or that an applicant "is *not* entitled to a special exception, *unless,*" the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. If the zoning authority is presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate the applicable legislation and/or the requirements of *Schultz,* the applicant must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.
>
> In the case at bar, the petitioners presented evidence that generated a genuine question of fact as to whether (1) an adverse "thermal" impact would result from stormwater ponds draining into a trout stream near the property, and (2) there would be an adverse "traffic impact" on the main public road used by persons traveling to and from the proposed Retreat Center. Respondent was not entitled to a special exception unless it persuaded the Board of Appeals that neither of those adverse impacts would result if the special exception was granted. The Board, applying the correct burden of persuasion, found in favor of respondent on both of these issues. Under the applicable standard of review, this Court must affirm the Board's decision."

All the parties provided substantive evidence about traffic and environmental impacts. These were not deferred to the development process. While the CBA has a degree of discretion on debatable issues, there is law to apply to the particular facts in each case.

More recently, Attar v. DMS Tollgate 451 Md. 272 (2017) affirmed, as fairly debatable, this CBA's evidentiary finding and legal conclusion that the Owings Mills fuel service station/convenience store site did not pose sufficiently adverse traffic and stormwater management impacts to warrant denial.

G. Current Baltimore County Special Exception Law

To facilitate review, we quote BCZR Sec. 502.1 and the prefatory Note, App. 14.

"NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

§ 502.1. - Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones."

The BCZR Sec. 502.1.A "health, safety, or general welfare" clause translates to the state and local police power. This is an essential function of government and is construed broadly, as confirmed in the landmark Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926). The Court of Appeals recognizes the police power extends to natural resources and

the environment. Potomac Sand and Gravel Co. v. Governor 266 Md. 358, 370-75 (1972); Mayor and City Council of Annapolis v. Annapolis Waterfront Co. 284 Md. 383 (1979).

While the locality in special exception cases ordinarily tends to focus on the surrounding area, the locality here contextually encompasses the site as well. Ruark v. Engineers Union 157 Md. 576, (1929) interpreted "locality" as follows:

> "While "locality" is a word of relative meaning, its context commonly determines its meaning ....
>
> * * *
>
> Thus it appears that the word "locality" has a place in important and enforced legislation; and, whatever may be the scope of its varying significance, its meaning in a particular statute is susceptible of being determined from the context, since the words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature had in view. Endlich on the Interpretation of Statutes, § 73. When so read, it is quite evident that, in the statute before the court, "locality" imports the area which embraces, not only the actual site where the public work is to be performed, but also such adjoining territory within which there then prevails a current rate of daily wages for the particular work to be done. In other words, "locality" defines a region, with the public undertaking as an axis or focal point, throughout which region the daily wage of the particular class to which the worker belongs is uniform."

The Council added BCZR Secs. 502.1.G and H in 1982. Subsection G focuses on the legislative intent of the zone. We discuss the R.C. 7 Zone legislative intent below. The scope is broad, including the panoply of water resources as well as agricultural lands and resources. Subsection H's complementary focus embraces stormwater management.

Serendipitously, the Council added Sec. 502.1.I in 2000 with Bill 74-2000. This Bill also created the R.C. 8 Zone, concurrent with the Bill 73-2000 enactment of the R.C. 7 Zone. The focus here is again broad, involving detriment to natural resources in R.C. Zones. This refers to forests and water resources, but spans all environmental and natural resources.

It is elementary linguistically that prime and productive soils are natural resources. To illustrate, the United Nations Food and Agriculture Organization recognizes it as a finite non-renewable resource. www.fao.org App. 30.

> "It is therefore a highly valuable natural resource, yet it is often overlooked. The natural area of productive soils is limited – it is under increasing pressure of intensification ...."

As stated at soil-net.com, "Soil is one of the world's most important natural resources." App. 32. A Google search for soil as a natural resource reveals multiple worldwide links. App. 33. We add a global article, "Soil – A Precious Natural Resource." App. 38.

Furthermore, placement of the word "including" prior to "forests, streams, wetland, aquifers and floodplains" does not express or imply the exclusivity of these listed resources. To confirm and verify this point, Judge Alan Wilner wrote in Housing Authority v. Bennett 359 Md. 356, 371 (2000):

> "Although this Court has stated that "'[o]rdinarily, the word "including" means comprising by illustration and not by way of limitation,' " *State v. Wiegmann,* 350 Md. 585, 593, 714 A.2d 841, 845 (1998), quoting *Group Health Ass'n v. Blumenthal,* 295 Md. 104, 111, 453 A.2d 1198, 1203 (1983), we have also recognized that, "[w]hile 'include' or 'including' may introduce illustrations of a general term, the words also may signal an expansion in meaning of previous language." *Pacific Indem. v. Interstate Fire & Cas.,* 302 Md. 383, 396, 488 A.2d 486, 492 (1985).

In Wiegmann, Judge Dale Cathell had prefaced the above quote, 350 Md. at 593,

> "In construing the rule here, we are mindful of the principle that the expression of one thing is generally the exclusion of another. *Long,* 343 Md. at 666, 684 A.2d 445; *Leppo,* 330 Md. at 423, 624 A.2d 539. On the other hand, the use of the word "including" suggests that the seven enumerated powers are not exclusive."

H. R.C. 7 Zone Legislative Goals and Purposes

There is no dispute that the R.C. 7 Zone focuses on the impact to forests and water resources. There should also be no doubt that the legislative purpose extends to protection of agricultural lands, with understandable emphasis on prime and productive soils.

This includes the legislative intent of the Resource Conservation Zones generally and the R.C. 7 Zone specifically. The County Council established the initial Resource Conservation Zones in 1975: R.C. 2, R.C. 3, R.C. 4, and R.C. 5, Bill 98-75. BCZR Sec. 1A00 provides "General Provisions for All R.C. Classifications." BCZR Sec. 1A00.1 sets forth the Findings. Among other things, BCZR Sec. 1A00.1.F refers to the cost of development which involves "the consumption and use of prime agricultural land, critical watershed areas, ... and other important natural resources." Sec. 1A00.2 sets forth the Purposes. This includes BCZR Sec. 1A00.2.C:

> "C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development"

The County Council added the R.C. 7 Zone in 2000. Bill 73-2000. The legislative goals confirm the primary legislative intent to preserve resources. BCZR Sec. 1A08.1. B. App. 3. There are stated expressly the goals: "To "preserve and protect ecosystem function, including riparian and aquatic ecosystems," Sec. 1A01.B.1, and "To protect forests, streams, wetlands, and floodplains." Sec. 1A01.B.2.

At the same time, the legislative findings include, BCZR Sec. 1A08.1.A.3,

> "An R.C. 7 Zone would allow limited development, compatible with the rural community and at the same time protect rural resources."

In turn, the legislative goals highlight, BCZR Sec. 1A08.1.B.6,

> "To protect remaining prime and productive soils in areas not currently protected by the R.C. 2 Zone."

One of the goals of the R.C. 7 Zone was thus to complement the R.C. 2 Zone and give added protection to prime and productive soils. To implement this goal, the County Council included a provision which prohibits application of the R.C. 7 Zone to lands currently zoned R.C. 2. BCZR Sec. 1A03.D. The R.C. 7 Zone also has complementary strong residential density restrictions, with "a maximum density of 0.04 lot per acre of gross tract area (an average of one lot per 25 acres) ...." BCZR Sec. 1A08.6.B.1.

The Citizen Guide cited by Petitioners' consultant Mitchell Kellman lists shorthand information, but does not accurately track the legislative findings and goals. There is no mention of the complementarity with the R.C. 2 Zone. Petitioners try to decontextualize and promote diversionary dead-end tracks. This does not get them anywhere.

Moreover, Bill 37-17's statement of purpose explains, BCZR Sec. 4F-101,

> "The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways, and other natural resources. Emphasis supplied

This plainly covers not only water resources, but also agricultural land.

While Bill 37-17 does not in its body add any direct explicit references to soils, such are unnecessary because the Bill incorporates the special exception standards covering the police power and legislative intent of the zone. The bottom line is that the interrelated

provisions of the solar facility law, the special exception standards, the R.C. 7 Zone legislative intent, and the County Code environmental controls come together to cover all aspects of rural environmental, natural, and/or agricultural resources.

Statutory construction involves context. Kaczorowski v. Baltimore, 309 Md. 505, 513 (1987) stated that legislation "... usually has some objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end." The Court wrote:

> "Moreover, despite Kaczorowski's pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The 'meaning of the plainest language' is controlled by the context in which it appears." 309 Md., at 514.

There was then cited Justice Holmes' concept that "the general purpose is a more important aid than any rule which grammar or formal logic may lay down." Ibid.

Board of Physicians v. Mullan 381 Md. 157, 168 (2004) reiterated,

> "...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."

Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990) also explained the importance of context,

> "Thus, we have said that a statute must be construed in context, because the meaning of the 'plainest language may be governed by the context in which it appears.'... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent."

See, e.g. Lipitz v. Hurwitz 435 Md. 273, 281-91 (2013); Blue v. Prince George's County 434 Md. 681, 689 (2013); In re Adoption of Tracy K 434 Md. 198, 206-07 (2013); and Bourgeois v. Live Nation 430 Md. 14, 26-28 (2013). These cases reinforce the focus on context, such as structure, inter-related sections, parts, clauses, words, and history.

8. The Function of Area and Other Standards

In every zone, and for every "special regulation" use, there are area and/or other specific standards. These apply to uses permitted by right and by special exception, as reflected for many targeted uses: i.e. Farm and Agricultural Operations, BCZR Sec. 404; Fuel Service Stations, Sec. 405; Junkyards, Sec. 408; Offstreet Parking, Sec. 409; Trucking Facilities, Sec. 410; Sanitary Landfills, Sec. 412; Wireless Telecommunications Facilities, Sec. 426; and Pawnshops, BCZR Sec. 436. For special exceptions, even if the area and other details may be met, this does not displace or alleviate a petitioner's independent burden to satisfy the BCZR Sec. 502.1 special exception criteria and elements.

Following this pattern, Bill 37-17 adds height, area, and other standards. BCZR Sec. 4F-104. It just means no variances are necessary. This is illustrated by People's Counsel v. Webster 65 Md. App. 694 (1986); People's Counsel v. Mangione 85 Md. App. 738 (1991), convalescent home in residential zone; People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002), pawnshop in business zone; Lucas v. People's Counsel 147 Md. App. 209 (2002), helicopter landing area in agricultural zone, People's Counsel v. Loyola College 406 Md. 54 (2008), retreat center in agricultural zone.

But where petitioners propose to deviate from these standards, they must request both special exception and variance(s). Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996), trucking facility in M.L Zone; Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001), commercial recreation in M.L. Zone.

Otherwise stated, Petitioners here must satisfy each BCZR Sec. 502.1 special exception standard independent of whether or not they satisfy the height, area, and other standards. For example, as to scenic roads and viewsheds, Bill 37-17 requires screening in accordance with the Baltimore County Landscape Manual. BCZR 4F-104.A.6. This is a minimum standard. Even if the Manual is satisfied, there still must be satisfaction of the BCZR Sec. 502.1 criteria concerning visual impact. Depending on location and situation, the landscaping may not be sufficient to prevent particular adverse impacts.

9. Land Use Breadth and Context: Master Plan, Zoning, and Development Integral to the Special Exception

The master plan, zoning, and subdivision (development) regulations are three integral parts of adequate land planning. In Board of County Comm'rs v. Gaster 285 Md. 233, 246 (1979), Judge Marvin Smith instructed, 285 Md. at 249-50,

> "Subdivision regulations perhaps have a certain analogy to special exceptions to which the floating zone concept has been likened in this Court's discussion in such cases as Bigenho v. Montgomery County, 248 Md. 386, 391, 237 A.2d 53 (1968); Board v. Turf Valley, 247 Md. 556, 561-62, 233 A.2d 753 (1967); and Chatham Corp. v. Beltram, 243 Md. 138, 149-50, 220 A.2d 589 (1966). The county here has preordained by its subdivision regulations that one who seeks to cut up a larger tract by creating a subdivision must not disrupt the master plan and that the subdivision must be compatible with that master plan."

Similarly, a special exception must be in harmony with the comprehensive zoning plan. This blends and integrates the master plan, zoning, and development law.

People's Counsel v. Surina 400 Md. 662, 688-93 (2007) revisited the integral relationship of these land use elements. Thus, zoning and development controls are "intended to complement each other in terms of the safety, health, and general welfare of the community at large." They "... serve additional common [land use] objectives ..." 400 Md. at 689. The Court quoted Wesley Chapel Bluemount Ass'n v. Baltimore County 347 Md. 125, 129 (1997) to illustrate that these complementary land use controls "... to some extent, coalesce, in that they are all designed to assure that land development occurs in a manner that is consistent with overall legislative policy and community welfare." 400 Md. at 690.

Baltimore County Zoning Regulation 600 reinforces explicitly the logical point that all laws must be satisfied. The zoning regulations set minimum standards in relation to other relevant laws. App. 14. Correlatively, other laws, ordinances, or regulations which impose higher standards must also be satisfied as minimum standards. There are no loopholes.

Bill 37-17 links zoning to development law even more directly in BCZR Sec. 4F-104.A.9. This requires the applicant to comply with County Code Sec. 33-3-108, "Plan Information," under Article 33, Title 3, "Protection of Water Quality, Streams, Wetland, and Floodplains." P.C. Exh. 15, App. 15. This includes multiple enumerated environmental elements. Other requirements of Sec. 4F-104 blend zoning/development requirements, such as for easements, historic districts, conservancy areas, landscaping, and lighting.

Master Plan 2020 also plays a role. Baltimore County Charter Sec. 523 says, App. 1:

"Sec. 523. - The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act.

The Court of Appeals recognizes the master plan as at least an advisory guide in zoning cases. The master plan does become regulatory where there is a statutory mandate, as in our development cases. See Nottingham Village v. Baltimore County 266 Md. 339, 353-55 (1972). Mayor & City Council v. Rylyns Enterprises 372 Md. 514, 530 (2002); HNS Development v. People's Counsel 425 Md. 436, 457-58 (2012).

10. Expert and Lay Opinions

"If we choose, we can live in a world of comforting illusion." Noam Chomsky

The parties in these cases have different views as to the comparative functions and weight of expert and lay testimony in zoning cases. Petitioners typically to bring in consultants who work for developers, assist them to process plans, and then render favorable mixed factual/legal opinions as the occasions arise. Protestants more often produce lay witnesses and opinions. In this case, they also produced experts. Here is our take.

For every expert opinion, there must be a valid factual and legal basis. This is a frequent problem in zoning cases, where expert opinions tend to be highly subjective. In People's Counsel v. Beachwood 107 Md. App. 627, 649-50 (1995), cert. denied 342 Md. 472 (1996), the Court rejected a series of planning opinions, Judge Charles Moylan wrote,

"A part of that *Boyce v. Sembly* opinion, ... not yet discussed in this opinion, and quoted with approval by the *Dorsey* opinion, observed,

> The Court of Appeals and this Court have stated than an opinion, even that of an expert, is not evidence strong or substantial enough to show some error in the comprehensive rezoning unless the reasons given by the witness as the basis for his

opinion, or other supporting facts relied on by him, are themselves substantial and strong enough to do so. ..." Internal citations omitted.

Petitioners presented James Derieu, Mitchell Kellman, and Bruce Doak.

Derieu is an environmental consultant. Pet. Exh. 14. He is not an engineer or expert on bridges. He had visited the site on June 22 but was not yet hired. He confirmed the presence of the stream and culvert at the junction. He referred to potential future environmental work. After the timing issue became more acute, Quinlan produced in "rebuttal" a letter from Derieu with a scope of work and cost estimate for the full development process. The letter also suggested there would be further hearings, but with no legal basis. He never came back to testify to support his letter.

We shall discuss below the legal issue as to timing, scope, and burden of proof to address environmental impacts in the zoning process. Derieu's letter does not answer the legal question. As we explain below, it is at best a diversionary red herring for financial sympathy. It is not only irrelevant to the law, but also misses the point that we are asking for reasonable land use baseline of environmental evaluation, not the full development process.

Zoning consultant Mitchell Kellman had visited the site three weeks earlier for 30 minutes. He was not even aware the site was farmed and could not describe significant environmental features. His main point was to claim the R.C. 7 Zone has nothing to do with agriculture generally and prime and productive soils particularly. As noted, his reliance on the informal Citizens' Guide does not pass legal scrutiny. His testimony was otherwise superficial, reflecting his limited knowledge of the site and of agriculture.

Surveyor Bruce Doak had visited the site just twice. He acknowledged the rural area and R.C. Zones are extensive and the 39,000 acre R.C. 7 span. His role seemed to be to call the solar facility an "accessory use." This is irrelevant, twisted, and wrong. As a commercial special exception use, a 2-megawatt freestanding facility is conceptually a principal use. This is reinforced by the provision which excepts ground-mounted facilities accessory to principal residential or agricultural uses. BCZR Sec. 4F-103.A.

We cited the BCZR Sec. 101.1 definition of "ACCESSORY USE." The freestanding 9-acre solar facility does not meet the criteria. There is nothing about it "incidental," or "appertaining, subordinate, or casual" in size, character or purpose. Dampman v. City of

Baltimore 231 Md. 280, 286 (1963). The appellate courts have rejected similar accessory use claims. Kowalski v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975); Arundel Supply Corp. v. Cason, 265 Md. 371, 377-378, 289 A.2d 585 (1972). Nevertheless, Petitioners persist in advancing spurious "accessory use" claims. See Petition of James and Karole Riffin, Case No. 14-094-SPH (2014), affirmed Geddes v. People's Counsel 232 Md. App. 726, 2017 WL 1193781 (2017), cert. denied 455 Md. 443 (2017), 138 S.Ct 2683 (2018); Petition of Russ and Brenda Kahn, Case No. 2010-173-SPH, affirmed Kahn v. Baltimore County 216 Md. App. 748 (2014), CSA No 350, Sept Term 2015.

In contrast, Protestants' experts provided helpful testimony within their specific spheres of expertise. They were John Altmeyer and John C. Reamer IV.

Altmeyer had experience as a county building inspector for building, electric, and plumbing inspection. He evaluated topography and provided calculations of area slopes, including downhill toward the stream. The slopes are as steep as 16 to 17%. Roemer's work showed the importance and necessity of stormwater management. Prot. Exh. 4.

Petitioners tried to turn Altmeyer's testimony against Protestants. They got Altmeyer to say that such work may be done at the permit stage. Pet. Exh. 24, pages 37-44. To be sure, for many situations, where uses are allowed by right, the stormwater management work may be done at the development or permit stage. But Altmeyer did not present himself an expert on zoning, the special exception process, or the solar facility law. He could not and did not provide a legal analysis or interpretation of zoning law. His testimony tells us nothing about the requisite scope and timing of environmental review here.

Roemer is an environmental consultant with impressive education and experience Prot. Exh. 27. He focused on the butterfly junction. Based on his specialized review and site visit, he described the proximate stream system and wetlands. Prot. Exh. 28. Among other things, he observed that the proposed access road crossing right over the stream at this location presented the necessity for variances from the required environmental setbacks. We confirmed this opinion by reference to the setbacks enumerated in County Code Sec. 33-3-111(b)(4), P.C. Exh. 15 and the variance provision, Code Sec. 33-3-106, P.C. Exh. 16.

This brings us to the citizens. Area citizens often have knowledge and experience to enable them best to depict the neighborhood, its character, and likely adverse impacts. Inevitably, their observations mix or coalesce with opinions concerning the relevant adverse impacts and the function or intent of the zone in the locality.

To illustrate, Eger v. Stone 253 Md. 533, 540-43 (1969) held admissible the testimony of area resident Irma Raker. She did a traffic investigation, with a detailed list of accidents for the key intersection. The Court found her lay research and opinion legitimately contributed to the special exception denial. The Court reminded that hearsay evidence is admissible. Tauber v. County Board of Appeals 257 Md. 202, 213 (1970) followed,

> "The applicants also urge that some of the evidence produced by the protestants was 'hearsay' and not entitled to weight in overcoming the opinion and testimony of their traffic expert, but as we stated in Eger v. Stone, *supra,*
>
> > 'We have recently decided, however, that not only is hearsay evidence admissible in administrative proceedings in contested cases but that such evidence, if credible and of sufficient probative force, may indeed be the sole basis for the decision of the administrative body. ...."

Edward Maczek, a 35-year county expatriate, lives downhill to the northeast. P.C. Exh. 1. He provided graphic testimony about the streams and ponds on his property, and the persistent flooding and necessity to muck out the ponds. He also reflected that he would endure the visual impact of the higher altitude solar facility.

William Mayo, both as a resident and family representative for Gorsuch, narrated a colorful history of the area. He described the current farming operations, both on his family's 167-acre farm and on the Gerner property, to which his family provided free access from the rear because of the bowtie junction obstacle. He believes preservation of the remaining farmland in the area is an important consideration.

Argument

> *"Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto. The lines ascribed to Sir Thomas More by Robert Bolt are not without relevance here:*
>
> > *"The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal. . . . I'm not God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager. But in the thickets of the law, oh there I'm*

> *a forester. . . . What would you do? Cut a great road through the law to get after the Devil? . . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? . . . This country's planted thick with laws from coast to coast—Man's laws, not God's—and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? . . . Yes, I'd give the Devil benefit of law, for my own safety's sake." R. Bolt, A Man for All Seasons, Act I, p. 147 (Three Plays, Heinemann ed. 1967)."* Tennessee Valley Authority v. Hill 437 U.S. 153, 194-95 (1978).

Chief Justice Burger quoted these iconic words given to Thomas More in A Man for All Seasons. He thus concluded his TVA v. Hill opinion to enforce the Endangered Species Act to stop the progress of a major dam project pending further review. He knew that many would question the "rightness" and significant consequential expenses of interrupting the project for the sake of a small fish called the snail darter. But the law must prevail.

The present case is easier to decide. What's legal also happens to be what's right.

I. Petitioners Failed to Meet the Burden of Proof on Environmental Issues

A. Timing

"Truth like oil --- will in time rise to surface." Charlie Chan's Murder Cruise (1940)

Petitioners assert they have the right to defer environmental review until a future development process. We disagree. There is no legal, equitable, or other excuse to avoid and defer such environmental review, to conceal themselves from essential review.

We do not suggest the entire development process merge with the special exception process. We do not interrupt a massive ongoing project. Rather, we ask for enough proof, per Judge Murphy's Rules of Engagement, to satisfy the explicit and cumulative criteria.

We have highlighted the Bill 37-17 statement of purpose and its balanced protection of forests, waterways, and other natural resources in the balance. BCZR Sec. 4F-101. There are then added the serial environmental plan elements listed in County Code Sec. 33-3-108.

The legislative judgment to classify solar facilities as special exception uses is itself enough to bring into play the BCZR Sec. 502.1 criteria. This begins with the Sec. 502.1.A police power standard long held to cover the environment. Potomac Sand and Gravel, *supra.* The CSA revisited its very broad general scope to protect public health, safety, and welfare in Baddock v. Baltimore County ___ Md. App. ____, 2018 WL 6187574 (2018).

More specifically, BCZR Sec. 502.1.G incorporates the Bill 37-17 environmental purposes. Sec. 502.1.H adds the explicit stormwater management criterion, and Sec. 502.1.I targets environmental and natural resources in the R.C. 7 and other R.C. Zones. These fit with Master Plan 2020, which has an extensive section devoted to protection of the water resources and stormwater management. Pages 145-58. App. 23-29.

The plain language of the aforesaid solar facility law, special exception criteria, and master plan thus compel at least a preliminary reasonable level of environmental proof to address environmental issues. It should be kept in mind, as explained in Gaster and Surina, that the zoning process generally, and special exception process specifically, inevitably involve and overlap with development aspects. They are not on different planets.

Otherwise stated, the existence of a development process does not substitute for a reasonable level of assessment and information for special exception review. As a practical matter, it should be kept in mind that parties on all sides in special exception and other zoning cases often present expert witnesses on environmental issues. The Loyola College and Surina cases are prime examples, but there are many more.

TVA v. Hill is not an anomaly. For example, in Citizens to Preserve Overton Park v. Volpe 401 U.S. 402 (1971), the Supreme Court applied the Department of Transportation Act's "feasible and prudent alternative" standard to require the Secretary to consider potentially feasibly engineered alternative highway project routes regardless of cost.

The timing issue resonates in all the special exception cases. We believe Petitioners' effort to sidestep this requirement is unacceptable. They have failed to satisfy their burden of proof under Judge Murphy's Rules of Engagement. To suggest that environmental review should be excused from the special exception process and deferred to the more closeted development process managed by the developer and bureaucracy is nonsensical and wrong.

B. Substantive Environmental Issues and the Setback Variance Problem

"To conceal oneself from law is like trying to hide in birdcage."
Charlie Chan's Greatest Case (1933)

The environmental concerns here go beyond Petitioners' effort to escape scrutiny in this process. The Protestants identified many impacts to the watershed. Petitioners paid no attention to these issues in their site selection process or proof.

The several streams present watershed protection and runoff issues. John Roemer mapped the stream system flowing through the bowtie junction. He identified the need for severe setback variances. These are subject to strict County Code Sec. 33-3-106 "practical difficulty or unreasonable hardship" standards. There are also is road stability issues, reflected by the current consensual rear access to the farm via the Gorsuch property, rather than directly from York Road. Lynne Jones and Edward Maczek brought up the stormwater and flooding issues to the east, including the Gunpowder Falls, running along Upper Glencoe Road. Ironically, Derieu effectively admitted the scale of the environmental issues in his proposed scope of work. This also itemized the need for variances.

As explained in Schultz, special exceptions are conditional uses. Where special exceptions involve variances, the "presumption" which factors favorably for special exceptions may well fall by the wayside. Board of Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 336 (1995); Umerley v. People's Counsel 108 Md. App. 497, 510-11, cert. denied 342 Md. 584 (1996).

To sum up, there is required a reasonable level of proof to show the location is particularly appropriate and not problematic. Whether called preliminary, conceptual, or formative, the special exception criteria demand a fair amount of environmental evidence.

II. Petitioners Failed to Meet their Burden Relating to Agricultural Land and Prime and Productive Soils Issues

"And therefore never send to know for whom the bell tolls; "It tolls for thee."
John Donne, No Man Is an Island (1624)

John Donne's poem conveys our connectedness in the world. It is a metaphor for tipping points. This resonates in our analysis here of the impacts on agricultural lands.

Petitioners assert that the impact on agricultural land is irrelevant in the R.C. 7 Zone. They presented no proof on the issue. We showed the solar facility law and special exception criteria embrace this issue. It follows that Petitioners again have failed to satisfy their burden of proof under Judge Murphy's Rule of Engagement.

Furthermore, the evidence shows that the impact on agricultural land is serious. The prime farmland occupies 9 acres, a much smaller area than in other cases, but still farmed and with 86.4% soils which are prime or of statewide importance. We have described the

mixed use setting, with this property bordering residential subdivisions in place across York Road and to the north, forested residential and church-owned properties to the south, and the Gorsuch farm area to the north/northeast.

Perhaps reminiscent of the Arnold Schwarzenegger movie of the same name, we asked Mr. Mayo whether this could be described as The Last Stand, given that his family's farm appears to be the only other farm area left with crops. To be sure, the forested areas to the south could also be cultivated. Mr. Mayo's response, in essence, was that it is still worthwhile to protect the remaining farmland in cultivation.

We provided the GIS map which shows over 36,200 acres in the R.C. 7 Zone, along with 139,033 acres in the R.C. 2 Zone, not to mention the other R.C. Zones. In this geographic context, there is much to be said for the proposition that solar facility operators should make an effort to find sites which do not have such prime soils. There is not the slightest evidence that Petitioners here made any effort at all. Given the totality of circumstances, even if it the burden of proof fell on Protestants, there is good reason to conclude that this is a particularly inappropriate site selection.

III. Piercing the Veil: The "Can't Be Forced to Farm" Charade

"Pretense unredacted"

Petitioners sometimes assert that no one can be forced to farm their property. This is another red herring. It does not tell us anything about the proposed use, its location, the particular impacts, and harmony with the comprehensive zone plan. A petitioner for any special exception could assert they will do nothing with their property if they don't get their special exception. This sort of charade is irrelevant and offensive legally and factually.

Furthermore, this prime farm property has been cultivated for many years. If this special exception is rejected, it would be irrational, counterproductive, and self-destructive economically for a property owner to forego income from continuing to lease the property.

IV. The Proposed Solar Facility Produces Particular Adverse Visual Impact

"All those [ugly solar facilities], where do they all come from? All those [ugly solar facilities], where do they all belong?" Inspired by The Beatles, Eleanor Rigby

Solar facilities are ugly. There is no getting around it. This facility will stand out because of its altitude. It may be up to 20 feet in height, regardless of the disclaimers. The topographic contours show it at the high point for this proximity.

The visual impact on neighboring properties is a relevant consideration. Board of County Comm'rs v. Holbrook 314 Md. 210 (1986), mobile home impact on single-family detached dwelling; People's Counsel v. Mangione 85 Md. App. 738 (1991), convalescent home impact on Lutherville single-family home neighborhood.. Here, we have the additional impact on the designated scenic road. This presents police power and natural resources conflicts under BCZR Secs. 502.1.A and I.

York Road is a scenic road. To contextualize, our office surveyed the ADC Street Atlas for the north county, including maps 13-16, 18-21, and 23-26, east-west from Harford to Carroll County lines, north-south from the Pennsylvania line to Sparks. P.C. Exh. 13a. We calculated 82% of the roads --- 59 of 73 --- are not designated as scenic roads. Moreover, a scan of the maps shows that many of these roads are significant and well-known roads in the north county. For the present case, we added ADC map excerpts 30-33, including 15637 York Road, map 32, and areas to the east and west. Our survey here showed 56% --- 19 of 34 --- are not designated as scenic.

County Council Bill 121-01 has provided a broad definition for "*Scenic viewshed.*" It is codified in Code Sec. 32-4-101(uu):

> "*Scenic viewshed.*" 'Scenic viewshed' means a scenic route or scenic view as designated in the mas0ter plan."

There follows a definition of "Scenic viewshed elements," which refers to visual elements of such quality, character, and nature for the Planning Board to designated viewsheds (scenic routes or views) in the master plan. Code Sec. 32-4-101(vv).

Master Plan 2020 again comes into play. Pages 97-102. App. 19-22. For Scenic Corridors and Views, there is provided Policy Action (9),

"(9) For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly."

Petitioners posit that the facility's placement away from York Road mitigates the visual impact. However, the east wing occupies the high elevation in the area and so will still likely be visible in all directions. There will also be the poles necessary to carry energy to the BGE infrastructure on York Road. Ironically, the east wing location magnifies the visual impact to the northeast, toward the downhill Gorsuch and Maczek properties.

To be sure, Bill 37-17 requires landscaping based on the Landscape Manual. But this is not conclusive as to the special exception criteria. Depending on the scenic character of the location, the landscaping may not be sufficient or may actually obstruct the scenic view.

V. Depth Perspective: What's It All About?

Conclusion

"Story are now completely extracted like aching tooth."
Earl Derr Biggers, House Without A Key 274 (1925)

We are trained to compartmentalize legal issues. But they can also be viewed together integrally and cumulatively. Metaphorically, it is as if we are in an art museum, such as the Tate on the banks of the Thames, viewing a J.M.W. Turner or a Monet painting. As we step away, we see more in depth and yet get closer to the heart of the matter.

In the special exception context, this translates to the often neglected but nevertheless essential requisite that the use harmonize with the comprehensive zone. So we take a balanced, collective, contextual look at the issues. Petitioners' site selection is based narrowly on economic and technological advantage, without attention to the environment, prime and productive soils, or scenic roads. They place business interests first, and then try to fit the law in as an afterthought. When contested, they claim these issues are irrelevant or should be deferred. They retain professionals to say whatever they can to get a result.

The present case involves a smaller site and special exception area than other cases. Yet it presents the most immediate and intense water resources issues, with the stream, culvert, and asset problems at the bowtie junction, and the Gunpowder Falls to the east.

The displaced farmland is not as extensive as in other cases. The area mixes residential subdivisions with and farm and forest areas. Yet there are still reasonable

concerns about every loss of prime and productive soils, as the bell tolls. The same be said of the visual impact. The facility fits into the rear, away from the scenic road. Yet there are still concerns about the elevated topography and the impact in all directions.

When we look at the issues either separately, collectively, or cumulatively, we are obligated to conclude that the particular adverse impacts and disharmony with the comprehensive zone are such as to warrant denial of the petition.

Peter Max Zimmerman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January 2019, a copy of the foregoing People's Counsel for Baltimore County's Post-Hearing Memorandum was mailed by first class mail to R. Barnes Mowell, Esquire, 16925 York Road, Monkton, Maryland 21111 and Timothy Kotroco, Esquire, 305 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

which originally enacted § 522.1, used the word "office". The annual cumulative supplements to the 1978 Code used the word "office" from 1979 to 1985. The change was made inadvertently in the 1986 cumulative supplement.

Sec. 523. The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act.
(Bill No. 83, 1978, § 3) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

Sec. 524. Reorganization of office of planning and zoning.

Notwithstanding any other provisions of this Charter, the county council shall have the power by legislative act to reorganize the office of planning and zoning, to define the duties of the director of said office, to establish the powers, duties and compensation of the planning board, and to establish the duties and responsibilities of the zoning commissioner and deputy zoning commissioners, so that planning and zoning functions shall be conducted in the best interests of the county and its future development and growth.
(Bill No. 83, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 128, 1990, § 1; approved by voters Nov. 6, 1990; effective Dec. 7, 1990)

Sec. 524.1. People's counsel.

(a) The county executive shall appoint a people's counsel who shall represent the interests of the public in general in zoning matters as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

(1) *Qualifications:* The people's counsel shall be a resident of Baltimore County, a member in good standing of the Maryland Bar, and actively engaged in the general practice of law for at least five (5) years prior to his appointment.

(2) *Removal:* The people's counsel may be removed at any time on the recommendation of the county executive and with the affirmative vote of not less than a majority plus one of the total number of county council members established by this Charter.
(Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

(3) *Powers and duties:* The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.
(Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

B. He shall make such investigations as he may deem necessary to the intelligent performance of his duties imposed by subparagraph A. of this Section.

C. He shall have full access to the records of all county agencies, shall be entitled to call upon the assistance of county employees, and shall have the benefit of all other facilities or information of the county in carrying out his duties.

(4) *Employment of experts:* The people's counsel may hire from time to time, as needed, in connection with specific proceedings before the above named bodies, experts in the fields of planning, zoning, traffic, engineering, ecology and architecture, to the extent that county personnel cannot be utilized, and to expend such sums for compensation and/or expenses of these experts as shall be provided in the annual budget.

(5) *Salary and expenses:* He shall receive an annual salary and such sums as may be needed to carry out the powers and duties set forth herein as provided in the annual budget.
(Bill No. 104, 1960; Bill No. 61, 1974, § 1; Bill No. 90, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 131, 1990, § 1; approved by voters Nov. 6, 1990, effective Dec. 7, 1990)

Annotation—The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).

Editor's note:

The publisher corrected a former reference to "matter" to read "matters" in subsection (a). Bill

61-74, which originally enacted this language, used the word "matters". The 1976 annual cumulative supplement to the 1968 Code used the word "matters" but it appears to have been changed to "matter" inadvertently on publication of the 1978 Code.

Subdivision 7. [Reserved.]*

** Editor's note: Subdivision 7, consisting of sections 524.2 and 524.3, was repealed by Bill No. 131, 1990, § 2, which was approved by the voters on Nov. 6, 1990, effective Dec. 6, 1990.*

DIVISION 3. DEPARTMENTS IN THE ADMINISTRATIVE SERVICES

Subdivision 1. Department of Public Works

Sec. 525. Director of public works.

The department of public works shall be administered by the director of public works who shall be a professional engineer registered under the laws of this state, and shall have had responsible charge of engineering works over a period of at least ten years prior to his appointment. He shall have such other qualifications as may be provided by law. He shall be appointed solely with regard to his qualifications for the duties of his office and shall be responsible directly to the county administrative officer.

Sec. 526. Functions of department of public works.

The department of public works shall have and perform such functions and duties as may be provided from time to time in the public local laws of Baltimore County, with the exception, however, of all functions of the zoning commissioner and those relating to building permits and building and zoning laws and regulations. The department shall have such other functions as may be provided by directive of the county administrative officer or by legislative act of the county council not inconsistent with this Charter or the provisions of applicable law.

In addition thereto, the department of public works shall be responsible for traffic safety and engineering and is hereby granted full power and authority and directed to promulgate and adopt such rules and regulations relating to the standing or parking of motor vehicles and movement of vehicular and pedestrian traffic as may be necessary or desirable to create and maintain the safe and expeditious movement of traffic throughout Baltimore County: provided, however, that no rule or regulation promulgated by the director under such power and authority shall be deemed valid or effective until the expiration of forty-five days written notice of the promulgation of the same to the county council. The county council shall at all times have the power to repeal, amend, or modify any rules and

County to run with the land and continue in perpetuity. The easements and covenants must be shown on the concept plan and on the development plan or minor subdivision plan for the development, as applicable, and on the record plat.

A. For all subdivisions or other development, except as provided in Paragraph B, a permanent preservation easement on the conservancy area must be granted to Baltimore County or to a land trust which the county approves, and must permanently restrict further subdivision or development of the conservancy area. The easement must:

1. Allow public access to greenways and other open space areas subject to approval by the Department of Environmental Protection and Sustainability and the Department of Recreation and Parks; **[Bill No. 122-2010]**

2. Indicate uses and activities approved in the conservancy area subject to Section 1A07.7.C with any applicable conditions or limitations; and

3. Provide that any modification of a preservation easement held by Baltimore County be subject to a public hearing.

B. In the case of a development where additional permitted density remains, a conservancy area shall be shown on the approval plan and, if the plan involves subdivision, recorded in the land records of Baltimore County. A permanent preservation easement as described in Paragraph A must be granted if further subdivision subjects the tract to the development plan review process under Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

C. Other covenants or easements may be required as to ensure that the standards of this section are met, including:

1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and

2. An easement to provide for the maintenance of open views.

APP. 3

SECTION 1A08
R.C.7 (Resource Preservation) Zone
[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.

3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.

4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.

7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;

9. To implement state and federal mandates for the protection of natural resources and rural legacy;

10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;

11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;

12. To incorporate traditional features of the local built environment into development; and

13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE — The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

A. Uses permitted by right. In addition to the uses in Paragraph E of this subsection, the following uses are permitted by right in an R.C.7 Zone:

1. Dwellings, one-family detached.
2. Farms and limited acre wholesale flower farms, subject to Section 404.
3. Open space, common.
4. Schools.
5. Streets and ways.
6. Telephone, telegraph, electrical power or other lines or cables, provided that any such line or cable is underground; underground gas mains; shared well and septic systems when approved by the Department of Environmental Protection and Sustainability; or other underground conduits, except interstate pipelines. **[Bill No. 122-2010]**
7. Accessory uses or structures, subject to Section 429, including:
   a. Farmer's roadside stand and produce stand, subject to Section 404.4;
   b. Home occupations;
   c. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee;
   d. Parking and residential garage space, subject to Section 409;
   e. Signs, subject to Sections 450 and 1A08.8.C.5; and
   f. Swimming pools, tennis courts and other recreational amenities, if accessory to a dwelling or residential subdivision only.
8. Commercial film production, subject to Section 435.
9. Farmstead creamery, subject to the provisions of Section 404.13. **[Bill No. 34-2009]**

B. Uses permitted by special exception. The following uses only may be permitted by special exception in an R.C.7 Zone.

1. The following uses provided that they are located in a principal building that was originally constructed before the effective date of Bill 74-2000; and the building is converted to the new use without any external enlargement after the effective date of Bill 74-2000:
   a. Antique shop;
   b. Bed and breakfast;
   c. Tea room; and
   d. Residential art salon.
2. Subject to Paragraph E of this subsection, churches and other buildings for religious worship.
3. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals as an accessory use, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees;
4. Public utility uses not permitted by right.
5. Bottled water plant as an agricultural support use, if the source of water is located on the same site as the plant, and provided that the Director of Environmental Protection and Sustainability makes a finding that the proposed facility is not expected to adversely affect the quality of capacity of surface water or ground water. **[Bill No. 122-2010]**
6. Campgrounds, including day camps.
7. Farm market, subject to Section 404.4.
8. Golf courses.
9. Horticultural nursery, subject to Sections 404.1 and 404.2.
10. Riding stables.
11. Target archery and field archery ranges.
12. Volunteer fire company or ambulance-rescue facilities.
13. Winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on premises. Temporary promotional events such as wine tasting or public gatherings associated with the winery are permitted within any limits set through the special exception process.
14. Wireless telecommunication towers, subject to Section 426.

15. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal. **[Bill No. 64-2015]**

APP. 5

C. Notwithstanding any provision of this section or any other county law or regulation to the contrary, if a property to which the zoning classification R.C.7 is applied had a development plan filed, accepted and pending for approval as of January 19, 2000, the development plan shall be reviewed based on the zoning classification applicable to the property at the time the development plan was filed.

D. Application of zone. The R.C.7 may not be applied to lands currently zoned R.C.2.

E. Prior zoning. If a property was zoned so that churches and other buildings for religious worship were permitted by right prior to being zoned as R.C.7, churches and other buildings for religious worship are permitted by right on that property.

§ 1A08.4. Plans and permits.

All development must be in accordance with this section and the standards and guidelines for "rural preservation" and "scenic views" adopted pursuant to this section, and published as part of the Comprehensive Manual of Development Policies.

A. Before the approval of any concept plan, development plan, limited exemption, special exception plan or variance, the Director of Planning or the Director's designee must certify in a written finding that the plan, exemption or variance is consistent with the spirit and intent of these regulations. To support the finding, the Director may require information such as building elevations, building cross-sections or viewshed analyses pursuant to § 32-4-224(d) of the Baltimore County Code. The Director must certify that any deviation from this section or the standards and guidelines cited above was necessary to: **[Bill No. 137-2004]**

1. Meet another standard or guideline;

2. Comply with environmental regulations or otherwise protect resources; or

3. Achieve the best possible site design based on the goals in Section 1A08.1.B.

B. Before the issuance of any building permit, the Director of Planning or the Director's designee must certify that the proposed development is in conformance with a plan approved pursuant to these regulations.

C. A finding pursuant to this section may be appealed to the Baltimore County Board of Appeals within 30 days of the date of the finding by any person aggrieved by the finding.

§ 1A08.5. Scenic views.

To protect the scenic views or, when necessary pursuant to 1A08.4, to mitigate the disturbance of scenic views, the Director of Planning may require that one or both of the following be clearly designated on the final record plat with appropriate notations:

A. Areas where disturbance of natural vegetation is prohibited; or

B. Areas where revegetation of landscaping is required.

§ 1A08.6. Development area and standards.

A. Maximum height. No structure with a height greater than 35 feet is permitted, except as otherwise provided under Section 300.

B. Area regulations.

1. Maximum lot density. A tract may be developed in an R.C.7 Zone at a maximum density of 0.04 lot per acre of gross tract area (an average of one lot per 25 acres). No lot lying within an R.C.7 Zone and having a gross area of less than 50 acres may be subdivided. Any lot having a gross area of 50 acres or more may be subdivided at the rate of one lot for each 25 acres of gross area. In cases where single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement may not be considered separate parcels for the purpose of calculating the number of lots of record.

2. Lot area. The area of any residential lot in a major or minor subdivision must not be less than one acre.

3. Building envelope. For residential development, the maximum area of the building envelope on any residential lot other than a farm is 20,000 square feet, and no single dwelling, inclusive of a garage or accessory building, shall have a building footprint that exceeds 5,000 square feet. The placement of the building envelope is determined on the basis of:

   a. The goals for the zone; and

   b. The minimum setbacks for the zone.

4. Minimum development allowance. Any lot or parcel of land lawfully existing on the effective date of Bill 74-2000 may be developed with a single dwelling.

5. Setbacks.

   a. Any principal building constructed in an R.C.7 Zone must be situated at least:

      (1) Thirty-five feet from the right-of-way of public or private interior streets;

      (2) Eighty feet from any principal building; and

      (3) Fifty feet from the rear lot line.

   b. Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an R.C.7 Zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the previous three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement. **[Bill No. 122-2010]**

6. Impervious surface coverage — nonresidential development. Except for residential lots which are subject to a building envelope restriction, no more than 10% of any lot may be covered by impervious surfaces such as structures or pavement.

7. Historic properties. No building or structure on a development tract which is officially included on the preliminary or final list of the Landmarks Preservation Commission or the National Register of Historic Places, or which is subject to an

easement held by the Maryland Historical Trust will be counted as a lot or dwelling for purposes of calculating density, provided that: **[Bill No. 137-2004]**

a. There is an area of sufficient size, as determined by the Director of Planning in consultation with the Landmarks Preservation Commission or Maryland Historical Trust, surrounding the building, structure or landmark to preserve the integrity of its historic setting;

b. An overall photographic and written description of the building, structure or landmark identified has been submitted and is determined to be in compliance with the Secretary of the Interior's standards for the treatment of historic properties;

c. Documentation of the preservation, restoration and protection for the building, structure or landmark has been approved by the Director of Planning in consultation with the Maryland Historical Trust prior to issuance of any building permit; and

d. When provisions of this paragraph apply to any development, the conditions for approval must be noted on the concept plan and development plan, or the minor subdivision plan.

C. Performance standards. Conditions for approval pursuant to this section must be noted on the concept plan and development plan, or minor subdivision plan. The following standards are intended to foster creative development that promotes the goals stated in 1A08.1.B.

1. Stormwater management. Stormwater management facilities must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features.

2. Buildings.

a. Buildings must be located on the least visually prominent portion of the site from the public road, consistent with effective resource protection, except where appropriate to continue an established pattern of development along the edge of the road.

b. Buildings should reflect the traditional rural character of the area in architectural form, scale, materials and detailing and in landscaping context.

c. Dwellings and other principal use building should be front-oriented to public rights-of-way; reverse-fronted lots generally will not be permitted.

d. Institutional uses, when permitted, should be regarded as community landmarks, and treated as permanent, special uses. This status should be reflected in building orientation and location on the site, entryways, landscaping, architecture and exterior building materials.

e. All of the exterior walls of a building must be treated similarly with respect to color and architectural details.

f. Accessory structures, including solar panels, antennas and storage sheds, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.7 Zone; however, the height of accessory structures is subject to the provisions of Section 400.

g. When buildings are located in open fields because of site constraints, additional landscaping or berms may be required to soften views.

3. Roads, parking areas and storage areas.

a. Interior roads must conform to Baltimore County's standards for rural roads, and no paved section of road may exceed a width of 18 feet.

b. Curbing must not be used unless required for stormwater management, as determined by the Department of Public Works. When curbing is required, it must consist of mountable curbs of a color that simulates the appearance of aged concrete, in accordance with specifications established by the Department of Public Works.

c. Fencing of residential properties must be in keeping with rural character. Fences must be either split rail or board on post, and the type of fence must be consistent throughout the development.

d. Off-street parking and vehicle or equipment storage areas, when necessary for nonresidential or non-farm uses, must be visually screened by fencing, buildings or vegetation; or a combination thereof, from the public roads and dwellings.

e. Areas for the outside storage of materials or supplies for non-agricultural commercial uses, except merchandise offered for sale by antique shops, must be visually screened by fencing, buildings or vegetation, or a combination thereof, from all public roads and dwellings.

f. Street lights, if permitted on interior streets, must be no higher than 14 feet and illuminated by no more than one one-hundred-watt sodium vapor lamp. Fluorescent and incandescent lights are not permitted. The light fixtures should be of a style that diffuses light.

4. Screening. Visual screening for privacy or to block distracting views should be natural in appearance and sensitive to grade relationships. Screens should not disrupt the harmony of the natural landscape or obstruct scenic views.

5. Signs.

a. Community signs are prohibited. Subdivisions may be identified by street signs.

b. A nonresidential principal use may be identified by:

(1) An enterprise sign, subject to Section 450; or

(2) An identification sign, subject to Section 450.

§ 1A08.7. Inconveniences arising from agricultural operations.

Any dwelling in an R.C.7 Zone may be subject to inconveniences or discomforts arising from agricultural operations, including noise, odors, fumes, dust, the operation of machinery or aircraft of any kind during any twenty-four-hour period, the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

SECTION 1A09
R.C.8 (Environmental Enhancement) Zone
[Bill No. 76-2004]

§ 1A09.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

2. While the resource preservation areas identified in the Master Plan are predominantly in the rural part of Baltimore County, there are certain areas of environmental significance that are located throughout Baltimore County that require protection.

3. An R.C. 8 Zone allows limited development, compatible with the rural and urban community, and at the same time protects environmental resources.

4. The County recognizes the importance of retaining certain areas for environmental protection.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C. 8 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of reservoirs, watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils, environmental resources in areas not currently protected by the R.C. 2 or the R.C. 7 Zone;

APP. 8

ARTICLE 4F

SOLAR FACILITIES

[Bill No. 37-2017[1]]

§ 4F-101. Purpose and definitions.

A. Purpose. Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources.

B. Definitions. As used in this article, the following terms have the meanings indicated:

COMMERCIAL USE — The transfer to the electrical power grid of energy produced by a solar facility for sale by energy suppliers to consumers.

SOLAR FACILITY — A facility that includes a series of one or more solar collector panels or solar energy systems that are placed in an area on a tract of land for the purpose of generating photovoltaic power for commercial use. The term includes a solar power plant or solar photovoltaic farm.

§ 4F-102. Location of solar facilities.

A. Subject to Paragraph B, a solar facility is permitted only by special exception in the R.C. 2, R.C. 3, R.C. 4, R.C. 5, R.C. 6, R.C. 7, R.C. 8, B.L., B.M., M.R., M.L.R., and M.H. Zones of the County.

B. The allocation of land for solar facilities in the County is limited to the following:

1. The maximum area permitted for a single solar facility is the amount of acreage that produces no more than two megawatts alternating current (AC) of electricity.

1. Editor's Note: This article was enacted as Article 4E. Because provisions regarding breweries were also enacted as Article 4E, this article was renumbered to avoid duplicate numbering and to maintain the organization of the Zoning Regulations.

2. No more than 10 solar facilities may be located in a councilmanic district.

3. The Director of Permits, Approvals and Inspections shall maintain a record of all permits issued for a solar facility in the County, including the location and councilmanic district for each such facility, and shall keep a current accounting of the number of facilities in each councilmanic district under this paragraph.

4. Upon reaching the threshold of 10 solar facilities in a councilmanic district, no additional permits shall be issued for a solar facility in that district unless an existing facility previously approved under this article has been removed pursuant to Section 4F-107.

§ 4F-103. Exception.

This article does not apply to the following solar facility installations:

A. A ground-mounted solar facility that is accessory to a principal residential or agricultural use (subject to Sections 400.1 and 400.2 of these regulations applicable to accessory buildings), or accessory to a principal commercial, industrial, or institutional use;

B. A rooftop solar facility;

C. A solar facility on federal, state or local government-owned or leased land that produces energy for government use; or

D. A solar facility located on the same property or tract as a farm that uses at least 66% of the energy generated by the facility for agricultural uses on the farm.

§ 4F-104. Requirements.

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.

2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.

3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

APP. 9

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visable from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

B. The requirements of Subparagraphs A.6, A.7, A.8 and A.10 shall apply to a solar facility located in a Business or Manufacturing Zone.

APP. 10

§ 4F-105. Required security.

A. An applicant for a building permit for a solar facility shall provide a security bond or equivalent financial security in the form and amount determined by the County Administrative Officer.

B. The Code Official may use the bond to procure the repair of any unsafe or hazardous conditions under Section 4F-106 or removal of a solar facility under Section 4F-107, in accordance with Section 3-6-402 of the County Code.

§ 4F-106. Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels, and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

§ 4F-107. Abandonment; removal.

A. A solar facility that has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the County by certified mail of the proposed date of discontinued operations and plans for removal.

B. Removal shall consist of the:

1. Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site;

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and

3. Stabilization or revegetation of the site as necessary to minimize erosion.

C. If the owner or operator fails to remove the facility within 150 days of abandonment, the County retains the right to enter and remove the facility. As a condition of special exception approval, the petitioner and landowner agree to allow entry to remove an abandoned facility.

D. The Code Official may issue a citation to the owner or operator for removal of a solar facility if:

1. The Code Official determines that the solar facility has not been in actual and continuous use for 12 consecutive months;

2. The owner or operator failed to correct an unsafe or hazardous condition or failed to maintain the solar facility under Section 4F-106 within the time prescribed in a correction notice issued by the Code Official; or

3. The owner or operator has failed to remove the solar facility in accordance with Paragraph C.

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

(4) Any other appeal from an order by the Zoning Commissioner 30.00

The above charges include cost of advertising and posting of property. However, if more than one sign is required, $3.00 additional for each additional sign will be required; and if the advertisement is excessively long, there will be an additional charge.

Section 502—SPECIAL EXCEPTIONS

(See Section 270—Schedule of Special Exceptions)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junk yards, are inherently so objectionable as to make extra regulations and controls advisable even in the M. H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the Board of Zoning Appeals.

In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1—Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alleys therein;
c. Create a potential hazard from fire, panic or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
f. Interfere with adequate light and air.

502.2—In granting any Special Exception, the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall impose such conditions, restrictions,

or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a Special Exception is granted, if required by the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, stipulating the conditions, restrictions, or regulations governing such Special Exception, the same to be recorded among the Land Records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such Special Exception. When so recorded, said agreement shall govern the exercise of the Special Exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

502.3—Any Special Exception which has not been utilized within a period of one year from date of issue, or any "Special Permit" which was granted before the date of adoption of these Regulations and which has not been utilized within a period of one year after such date, shall be void unless on written request from the petitioner, the Zoning Commissioner grants an extension, provided, however, that not more than one such extension, for a period of one year, may be granted.

Section 503—VIOLATIONS

Any violation of regulations and restrictions adopted pursuant to this Ordinance shall be a misdemeanor, punishable by a fine not to exceed One Hundred Dollars ($100.00) or by imprisonment not to exceed thirty (30) days, or both fine and imprisonment. Any person who shall violate such regulations and restrictions shall be deemed guilty of a separate offense for every day that such violation shall continue.

ARTICLE 6—INTERPRETATION AND VALIDITY

Section 600—INTERPRETATION

In their interpretation and application, these Regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, and general welfare. Where these Regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts, or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these Regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation, or private agreement than are required by these Regulations, such greater restrictions shall not be affected by these Regulations.

Section 601—VALIDITY

If any section, paragraph, subdivision, clause or provision of these Regulations shall be adjudged invalid, such adjudications shall apply only to the section, paragraph, subdivision, clause, or provisions so adjudged, and the remainder of the Regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these Regulations and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

COUNTY COMMISSIONERS OF BALTIMORE COUNTY

Michael J. Birmingham, President

Augustine J. Muller

Robert B. Hamill

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

§ 502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones. **[Bill Nos. 74-2000; 37-2017]**

§ 502.2. Protection of surrounding properties; agreement governing special exception.

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning

ARTICLE 6

INTERPRETATION AND VALIDITY

SECTION 600
Interpretation
[BCZR 1955]

§ 600.1. Interpretation of provisions.

In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations.

SECTION 601
Validity
[BCZR 1955]

§ 601.1. Validity of provisions.

If any section, paragraph, subdivision, clause or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provisions so adjudged, and the remainder of the regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these regulations and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

ments of Agriculture, Health and Mental Hygiene, and Natural Resources regarding enforcement procedures in cases of water pollution caused by agriculture (December 29, 1986) or subsequent memoranda.
(1988 Code, § 14-337) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-108. PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.
(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-109. APPROVAL OF PERMITS.

(a) *Compliance determination.* Before the Department of Permits, Approvals and Inspections may issue any grading permit or building permit or before the approval of any erosion and sediment control plan, the Director of Environmental Protection and Sustainability or the Director's designee shall determine that the proposed development is in compliance with the provisions of this title.

(b) *No permit.* A permit may not be issued without compliance with this title.
(1988 Code, § 14-339) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011; Bill No. 72-12, § 1, 1-9-2013)

§ 33-3-110. PLATS AND PROTECTIVE COVENANTS.

(a) *In general.*

(1) (i) Any plat submitted to the county in accordance with Article 32, Title 4 of the Code shall be accompanied by irrevocable offers of dedication to the county of all forest buffer areas in fee or easements, in a form approved by the Bureau of Land Acquisition and the County Attorney.

(ii) The plat shall be marked with a notation indicating the offers of dedication.

Baltimore County, Maryland

MASTER PLAN2020

(3) Participate in multi-jurisdictional efforts to create uniform zoning regulations within the port area.

(4) Continue to participate in the Port Land Use Development Advisory council to help compile a multi- jurisdictional maritime master plan and to promote regional development of the port resource.

Emergency Preparedness/Sea Level Rise

Tropical storm Isabel had a huge effect on the shoreline of Baltimore County, raising the level of the Chesapeake Bay to eight feet above mean high tide, which caused flooding of properties and roadways in much of the eastern Baltimore County waterfront. Resilience to natural hazards, such as storms and storm surges, sea-level rise and shoreline erosion is inextricably linked to the siting and design of development, and to the built and green infrastructure that supports it.

Policy: Public awareness and planning are crucial for safety and minimizing stress during weather events that affect the waterfront.

Actions:

(1) Develop an educational plan for updates on emergency preparedness, including communications, evacuation, traffic, area closures, visitor controls, damage assessment, clean up etc.

(2) Educate the public on the value of shoreline preservation in providing protection against storm damage.

RURAL COMMUNITIES

The rural portion of the County provides high quality drinking water, agricultural products, timber, scenic open space, wildlife habitat, fisheries, recreation, water sports and cultural and historic resources. New development changes the character of the countryside and may have detrimental impacts on these resources. Baltimore County's *Rural Land Management Areas* protect resources and rural economies while permitting limited development. Since 1989, rural resources have been managed by growth policies for each Land Management Area. These areas include: resource preservation, agricultural priority preservation, rural residential areas, and rural commercial centers (Map 9).

Resource Preservation Areas

The Resource Preservation Areas are designated to preserve and protect the historic, cultural, recreational and environmental resources in the rural areas, while allowing a limited amount of residential development. Designated resource preservation areas include Patapsco/Granite, Soldiers Delight, Loch Raven and Prettyboy and Liberty Reservoirs, Gunpowder, and the Chesapeake Bay.

Policy: Preserve valuable cultural, historic, recreational, and environmental resources by limiting development and acquiring available land for public benefit.

Actions:

(1) Recommend that the County Council use the following guidelines in evaluating rezoning requests:

- Carefully evaluate any proposed zoning changes that would permit additional residential density or increased commercial development in the R.C.6, 7, and 8 zones.
- All zoning in the Chesapeake Bay Critical Area (CBCA) should ensure the most appropriate land use to minimize development impacts and preserve quality of life in surrounding communities, and meet existing CBCA designations.
- Comply with the County's commitments in the regional Reservoir Watershed Management Agreement and Action Strategy to

not increase development densities in the reservoir watersheds.

(2) Complete detailed studies to determine the existing and potential residential densities in resource preservation areas.

(3) Consider limiting residential densities to one dwelling unit per 25-50 acres. Consider limiting density calculation to net density for resource zones.

(4) Delineate and coordinate the public use of resource preservation areas for recreational benefits.

(5) Protect and foster forests and stream systems through conservation easements that prevent the continued fragmentation of these critical resources.

(6) Continue to support State and County programs that encourage sustainable forest management and initiatives to retain forestlands for multiple ecological and economic benefits.

Agricultural Priority Preservation Areas

(Note: Policies and Actions to foster a sustainable agricultural industry may be found in the Economic Vitality section. Preservation of the agricultural land is discussed in the Land Resources section.)

While the County is a national leader for the use of restrictive agricultural zoning and planning for agriculture, there are threats to its continued success. Despite the diligent efforts to maintain and expand the agricultural zoning, incremental development continues to threaten the protection of resources and the viability of the agricultural industry. Zoning and development controls need to be reviewed and strengthened to assure that the goals of the Master Plan and the Baltimore County Zoning Regulations are being achieved.

Policy: Manage land development to limit conflicts with the agricultural industry to safeguard lands preserved through easements.

Actions:

(1) Continue to enforce local policies, ordinances, regulations and procedures that stabilize the agricultural and forest land base.

(2) Review and, if necessary, revise zoning and development standards to promote conditions suitable for production, processing and sale of agricultural products.

(3) Include prime and productive soil standards and a maximum lot size to ensure that large parcels are not split to create large residential lots.

(4) Evaluate increasing the minimum acreage for subdivisions in the RC 2 zone to reduce environmental impacts and development pressure on agricultural resources.

(5) Evaluate regulations to eliminate resubdivision of lots created between 1975 and 1979 in the RC 2 zone.

(6) Require that placement of State agricultural or conservation easements shall not result in an increase in density over that permitted without the easements.

(7) Monitor development within the APPA's to ensure that residential and non-agricultural uses protect the resources and do not overwhelm the operation of agricultural businesses.

(8) In general, zoning changes made in the agricultural priority preservation areas should protect the County's agricultural industry.

(9) Consider adding criteria to the Baltimore County Zoning Regulations (BCZR) to require the evaluation of proposed development impacts on agricultural uses located on prime and productive soils.

(10) Assure that development will have limited impact on active agricultural operations by reviewing, and, if necessary, revising setback requirements.

(11) Review uses permitted by right and special exception in the RC 2 zone to determine whether any uses that are inconsistent with the purpose of the zone should be removed and consider additional performance standards, which will mitigate the impact of the proposed uses on the adjacent farm or easement property.

(12) Enact "Right to Farm" legislation and institute a nuisance mediation board for farm operations.

(13) Consider whether certain institutional uses now permitted in the RC 2, RC 7 and RC 8 zones should be eliminated. Establish performance standards for institutions that are found to not have significant negative impacts if limited by the standards.

Rural Residential Areas

The rural residential areas are a mix of single-family residential development and woodlands, farm fields, stream valleys and areas of significant historic and cultural value. They have accommodated the bulk of new residential development in the rural areas. Associated with rural residential development, there may be institutional uses, such as religious establishments, which are preferred to be located in proximity to residences, rather than in Resource Preservation or Agricultural Priority Preservation Areas. Included in the rural residential land management areas are Parkton, Chestnut Ridge, Hereford, Jacksonville, Kingsville, and Patapsco/ Granite.

The 1979 growth management program designated rural residential areas as suitable for development. The 1989 Master Plan recognized some of the issues created by this choice. The 2000 Master Plan recommended limiting rural residential development. The majority of the land within these areas is zoned RC 5.

The intensity of this development is a suburban residential pattern with densities equal to one dwelling unit per 1-1/2 to 2 acres. Because this rural-suburban residential development is dependent upon well and septic services, the development pattern takes on a haphazard appearance and consumes large quantities of land. This type of development comes at a tremendous cost in terms of traffic, increased infrastructure demands, disruption of the rural character, and adverse impacts on functional values of rural land and water resources.

Policy: Limit suburban development in rural areas.

Actions:

(1) Conduct detailed land use studies to

determine: 1) buildable areas, 2) agricultural areas, and 3) environmentally sensitive areas.

(2) Recommend that the County Council consider rezoning requests for additional office, business or industrial zoning in rural residential areas, in conjunction with the recommendations of any approved plan for the area.

(3) Adopt County standards appropriate for rural residential areas that include open space, architecture, site layout, lighting, bicycles, and pedestrians.

(4) Adapt cluster principles to maintain adjacent forests and open space, which help retain rural character.

(5) Provide effective buffers between development projects to maintain rural character.

(6) Preserve and connect open spaces through cluster development and open space acquisition.

Rural Commercial Centers

Only two designated rural commercial centers will continue to provide local services and facilities for the surrounding rural area. These centers are Hereford and Jacksonville.

The two rural commercial centers contain a certain mass of retail and office service uses that should not be spread or repeated throughout the rural areas. These areas will continue to be the only locations within the rural area where such services will be concentrated. The size, scale, and quality of development have been a continuing issue in these centers. In addition, the ultimate build out limits of these areas needs to be considered.

Policy: Manage growth in rural commercial centers

Actions:

(1) Manage development through specific rural commercial center master plans that are regularly updated. The master planning process should determine the ultimate boundaries and build out of these areas

(2) Develop overlay districts or specific zoning classifications with design performance criteria unique to each of the centers so issues of use, size, scale and design are addressed. Each center has unique characteristics that should be enhanced by new development.

(3) Adopt development performance guidelines and standards to ensure design quality, scale of uses, natural resource protection, buffers to agricultural uses, adequate open space close to homes, and pedestrian accessibility.

(4) Provide infrastructure support such as stormwater management.

(5) Provide adequate buffers and transitions between commercial projects and differing adjacent land uses to maintain rural character.

HISTORIC AND CULTURAL RESOURCES

Baltimore County has a wealth of cultural and historic resources. Historic communities are generally well planned with diverse architectural styles that are visually interesting. They are built at a human scale and are almost always walkable. Historic resources link us to our past – they provide tangible evidence

of the County's cultural, social and architectural past, and are a testimony to the women and men who came before us to shape our destiny.

Baltimore County has two historic designations that protect its resources to the highest degree possible: the Landmarks List and the County Historic District. Structures with either designation are protected from demolition and all exterior alterations are subject to Landmarks Preservation Commission (LPC) approval.

The Landmarks List is comprised of structures that contribute significantly to Baltimore County's history because they are associated with a person, group, event of historic importance; they are a distinctive example of a particular architectural style and/or they are a good example of the work of a master builder or noted architect. Other criteria spotlight the resource's artistic merit, or whether it contains and may be likely to yield information or materials important to prehistory or history.

A Baltimore County Historic District is more difficult to establish because proprietors owning at least 75 percent of the land within the designated area must agree to form an historic district. New developments are subject to LPC approval, which ensures compatible infill development.

Two other historic designations afford limited protection. The 1966 Historic Preservation Act created the National Register of Historic Places (NRHP). The NRHP is a record that includes National Register districts as well as individually listed properties. Both categories require a thorough review during the planning phase of federally funded projects. A National Register designation provides no protection against demolition or inappropriate exterior alterations, nor do they provide any control over the compatibility of infill development. On the other hand, contributing structures within a National Register districts, as well as individual properties listed on the NRHP, are eligible for the County Historic Property Tax Credit, which at least assures the retention of the integrity of properties participating in the tax credit program.

Policy: Promote historic preservation through improved education.

Awareness is growing about sustainability and the importance of living in a manner that is environmentally responsible. Redevelopment of an existing building is the ultimate form of "green" development, as opposed to demolition.

Actions:

(1) Provide information about preservation issues so the public can make informed decisions about historic resources.

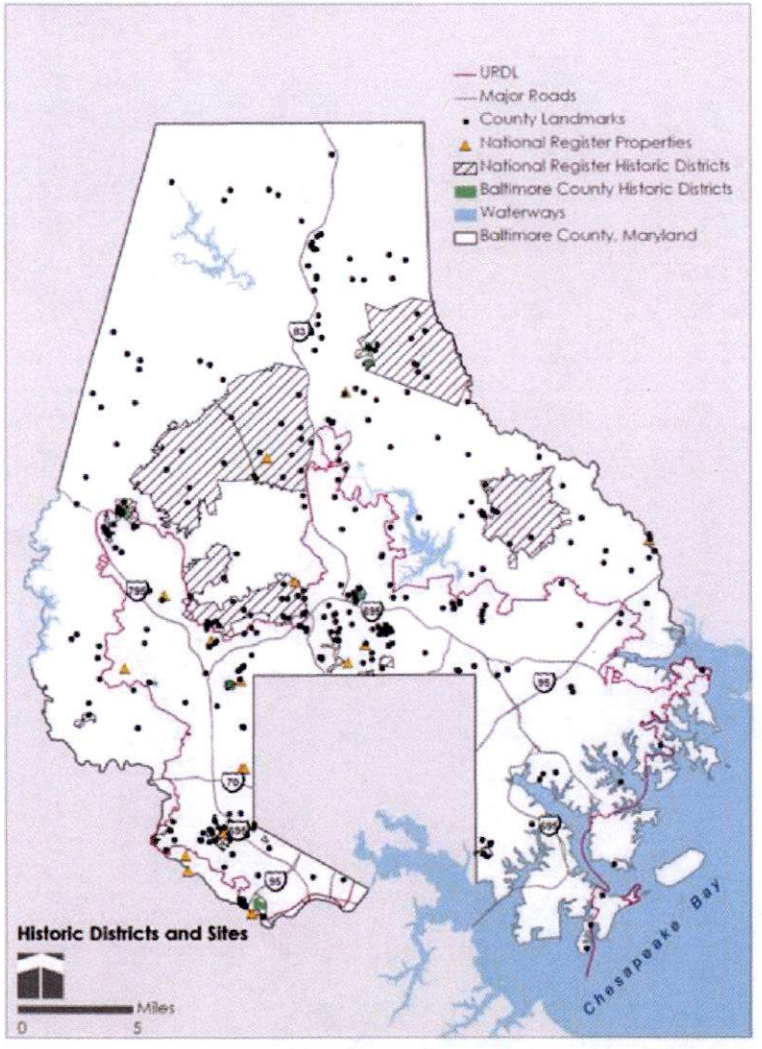
(2) Develop programs to educate the public about the economic, environmental, and cultural benefits of historic preservation.

(3) Make pertinent information available on the Baltimore County web site along with links to additional sources and studies.

Policy: Preserve historic structures and their settings.

The preservation of historic resources was an issue raised in the 1979, 1989 and 2010 Master Plans. Considerable progress has been made in response to the actions recommended in these documents. Amendments to the County's Preservation Law clarified vague regulations. The County enacted a very generous and popular historic property rehabilitation tax credit program to make the rehabilitation of historic buildings more feasible. Numerous properties were added to the Final

Map 25: Historic Districts and Sites



Landmarks List, and several new National Register Districts were created. Yet, while Baltimore County takes pride in these accomplishments, the need for preservation has lost none of its relevance today.

The property tax credit program for the rehabilitation of historic properties has been a great success for residential properties and for comprehensive commercial rehabilitation work. But the smaller, more routine maintenance projects for income-producing properties have not benefited. As a consequence, there is little incentive for commercial property owners to maintain their properties. Under the current law, residential property owners receive a 20 percent property tax credit on eligible rehabilitation costs. Income-producing properties receive a 10 year freeze on the property tax increase generated by the rehabilitation, i.e. the work has to be substantial to result in the reassessment of the property's value. Small jobs, such as painting the historic façade of a small shop, putting on a new roof, or installing a new air-conditioning unit does not result in a reassessment and therefore, is not eligible to receive a tax credit. Yet it is precisely these types of routine maintenance projects that are needed to keep historic commercial buildings in good repair. The National Register District of Reisterstown is probably the best example of a designated historic area that would benefit greatly if the historic rehabilitation tax credit program for income-producing properties would be widened to provide a tax credit for improvements under $ 50,000. Additionally, there are numerous income-producing structures on the Landmarks List that would benefit from the program. The optimal way to encourage historic preservation is when property owners agree to preserve and maintain their historic resources out of their own volition.

Actions:

(1) Continue to utilize nomination to the landmarks list as a means to safeguard historic buildings.

(2) Encourage and facilitate use of the County's historic property rehabilitation tax credit program.

Policy: Preserve and protect cultural resources.

Many older communities have structures that are valued by local communities, but do not meet the criteria for landmarks listing for one reason or another. Such cultural resources are frequently found in the County's former village centers, in older African-American communities and on commercial routes along old toll roads. A cultural resource may be an old school house, a former movie theater, a lodge, a church, or a store where people used to gather. It also may be an entire community that is in danger of having its roots forgotten.

Churches and schools in the County's older communities are other cultural resources that are frequently endangered. Churches are often too small to meet contemporary needs and/or may have dwindling congregations that are no longer able to support the church. Likewise, one or two room country schools, or schools that were a product of segregation have ceased operations. They often have little architectural interest but are of importance to their respective communities. Alternative uses and grant opportunities should be explored to keep these resources viable.

The 1979 Master plan recognized 39 Historic African-American Communities as valuable cultural resources. The 1989 Master Plan began to address the need for improving basic services and infrastructure, rehabilitation of historic buildings, and the importance of improving the quality of some housing in these communities. While much has been done over the

last 20 years to enhance the quality of life in these communities, some are still in need of assistance. This Master Plan builds upon previous efforts to acknowledge that Baltimore County's diversity is greatly enriched by its historically African-American communities, and recognizes the important of continuing to protect and enhance these valuable cultural resources.

Actions:

(1) Incorporate a list of cultural resources in community plans and explore the best methods to preserve them.

(2) Continue to work cooperatively with the Department of Public Works, the Office of Community Conservation and the communities to support improvements to preserve and enhance Historic African-American Communities.

Policy: Increase awareness about the importance of archeological resources.

Baltimore County needs to strengthen the preservation of archeological resources, as much of the County's history is buried in the ground. Greater attention should be paid to archeological resources in cases where there has been little previous disturbance associated with redevelopment or road projects.

Action:

(1) Educate the public and other agencies about the importance of archeological resources.

Policy: Coordinate historic preservation with the County's rural strategy.

In rural agricultural areas, the preservation of historic resources presents a unique opportunity. Historic structures in the countryside tend to derive part of their historic significance from their bucolic setting, which is frequently tied to its economic function. Typically, the historic resource is composed of the primary structure along with a cluster of functionally and visually related outbuildings, such as barns, springhouses, and stables, set in a pastoral landscape of fields, streams and woodlands.

Rural areas that have retained their historic character, continue to be among the County's most desirable places of residence. Historic structures tend to be more compatible in design, scale and massing with the rural landscape than modern housing. However, sustaining the bucolic beauty of the rural landscape is challenging because maintaining a historic home can be expensive, and many property owners prefer newer and larger homes. Generally, rural subdivisions change the character by flatly grading the landscape with larger homes that are visible for miles. Even a single inappropriately designed or poorly sited new dwelling can dramatically alter the rural character.

Historic preservation goals coincide with agricultural preservation goals, environmental protection objectives and scenic preservation aims of the Master Plan in several ways. Historic properties tend to be smaller and thus create less impervious surface. Historic preservationists support the retention of a property's traditional agricultural use, thereby preserving scenic resources. Finally, saving and restoring structures, instead of replacing them with new structures, is in itself an act of sustainability that preserves historic resources.

Actions:

(1) Encourage owners of rural historic resources to place their property on the Landmarks List – particularly properties that

are important to the agricultural history of Baltimore County and which are located along scenic routes.

(2) Continue to protect designated "view sheds" of historic resources , either by limiting new development within view of the historic resource, or by buffering new development from the view of such resources.

SCENIC RESOURCES

The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents. Scenic resources consist of scenic corridors, scenic views, and gateways. In 1991, the County adopted a set of development guidelines that have raised awareness and recommended development alternatives for protecting scenic resources.

Scenic Corridors and Views

Most of the scenic corridors and views are located in rural areas. The scenic view map provides the beginning of a list of the views for establishing a comprehensive inventory in the near future. Following the adoption of the 1989 Master Plan, the County produced a series of scenic route maps for each council district, which combined the significant visual and historical elements into self-guided scenic tours. The protection of the Interstate 83 (I-83) corridor in northern Baltimore County is a showcase of the inter-governmental efforts on scenic views preservation.

The endeavor for preserving scenic corridors and views ought to emphasize lands zoned for resource protection including RC 2, RC 4, and RC 7. The County will continue to maintain coordination with the State Highway Administration (SHA) and seek available state and federal funds for protection of scenic corridors and views.

Policy: Preserve scenic corridors and views through proper zoning and coordination with federal and state governments.

Actions:

(1) Coordinate scenic resource management practices with the national and state Scenic Byways Programs.

(2) Continue to preserve properties within the I-83 scenic view shed through easement purchases, as funds are available and through RC4 clustering.

(3) Evaluate proposed improvements to state and county roads and bridges regarding their impact on scenic resources in compliance with the adopted *Rural Roads Standards*. Where public safety allows, the narrow and/or winding character of roads is part of the scenic experience and ought to be preserved.

(4) Assess proposed development impacts on scenic resources.

(5) Clarify language regarding scenic corridors and views protection and make it consistent amongst the Master Plan, Comprehensive Manual of Development Policies, Baltimore County Zoning Regulations, Baltimore County Code, and SHA Context Sensitive Solutions for work on scenic byways.

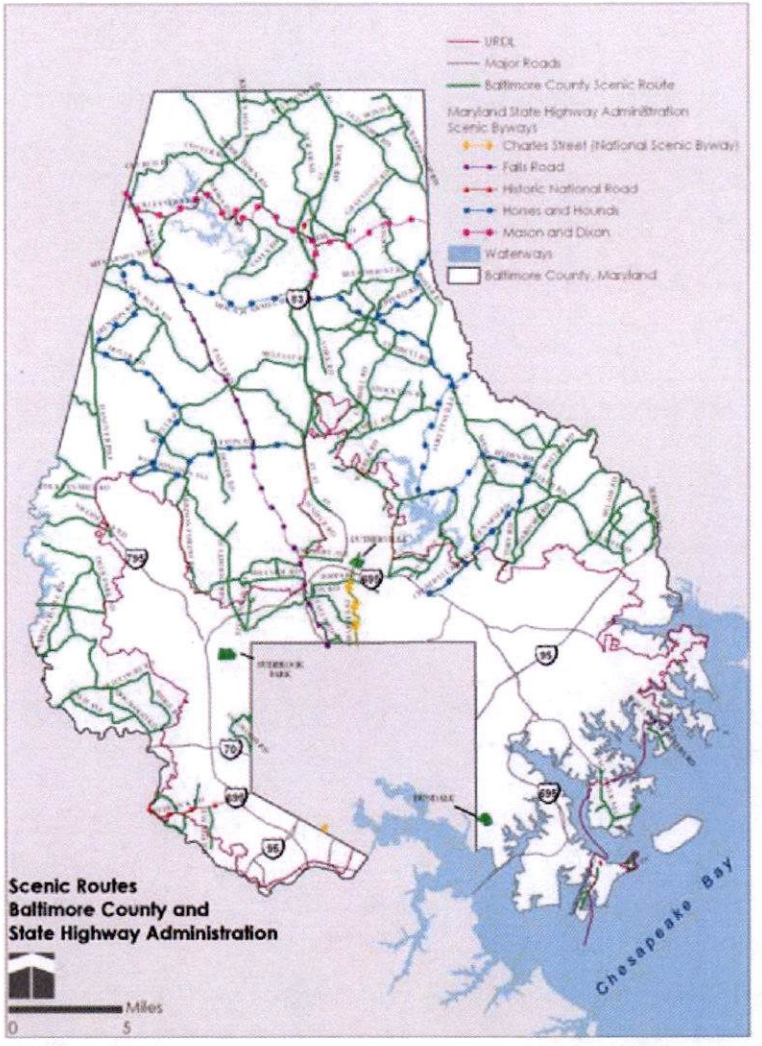
(6) Establish criteria for identifying significant views and geocode them on maps.

(7) Apply a systematic methodology for evaluation of scenic routes and preservation techniques.

(8) Update scenic resources map in accordance

The County has emphasized its efforts on preserving the scenic view shed of I-83 between the Thornton Mill overpass and the Pennsylvania line, which runs through one of the most scenic piedmont areas in the County. Farms, forests, streams and rural homesteads feature both sides of I-83 in northern county. Many properties adjacent to I-83 have been preserved either as parkland or through various easement programs, including donations and purchase of development rights. There has been significant progress in this effort: between Belfast Road and the Gunpowder River, more than half of the scenic corridor has been protected.

Map 26: Scenic Routes



with the most recently adopted state scenic byways.

(9) For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly.

Charles Street National Scenic Byway

Charles Street is a main thoroughfare stretching from downtown in the City of Baltimore to Towson in Baltimore County. The County and the City of Baltimore collaborated with interested citizens, civic groups, and state agencies, developing a byway management plan for Charles Street. The purpose of this plan was to prepare for the nomination of Charles Street as a National Scenic Byway. In autumn 2009, the U.S. Secretary of Transportation Ray LaHood designated Charles Street a National Scenic Byway, together with 41 other designations in the nation to the America's Byways® collection. This designation allows the City of Baltimore and Baltimore County to apply for grants for preserving and enhancing scenic characteristics of Charles Street.

Policy: Preserve and enhance the Charles Street National Scenic Byway characteristics.

Actions:

(1) Apply for grants to implement actions outlined in the Baltimore County portion of the Charles Street Byway Management Plan.

(2) Collaborate with the Baltimore County Office of Tourism to prioritize activities in compliance with the Byway Management Plan

County Gateway Designations

Gateways are important elements of the County's visual fabric contributing to the community identity and the sense of transition between urban and rural development. Gateways can be located within either urban or rural areas, and mostly at the boundary between urban and rural areas. The specific design treatment of development for these gateways may vary, depending upon the location and structural type of gateways. In addition, the County worked with

The National Scenic Byways Program is part of the U.S. Department of Transportation, Federal Highway Administration. The program is a grass-roots collaborative effort established to help recognize, preserve and enhance selected roads throughout the United States. Since 1992, the National Scenic Byways Program has funded 2,832 projects for state and nationally designated byway routes in 50 states, Puerto Rico and the District of Columbia. The U.S. Secretary of Transportation recognizes certain roads as All-American Roads or National Scenic Byways based on one or more archeological, cultural, historic, natural, recreational and scenic qualities.

the State Highways Administration (SHA) to develop bridge designs along the 695 Beltway that strengthen the sense of arrival into the adjacent communities and promote the community uniqueness.

Policy: Enhance gateway designations through evaluation, design, and construction.

Actions:

(1) Evaluate existing gateways and identify additional gateways.

(2) Formulate appropriate design guidelines as part of community plans and streetscape projects.

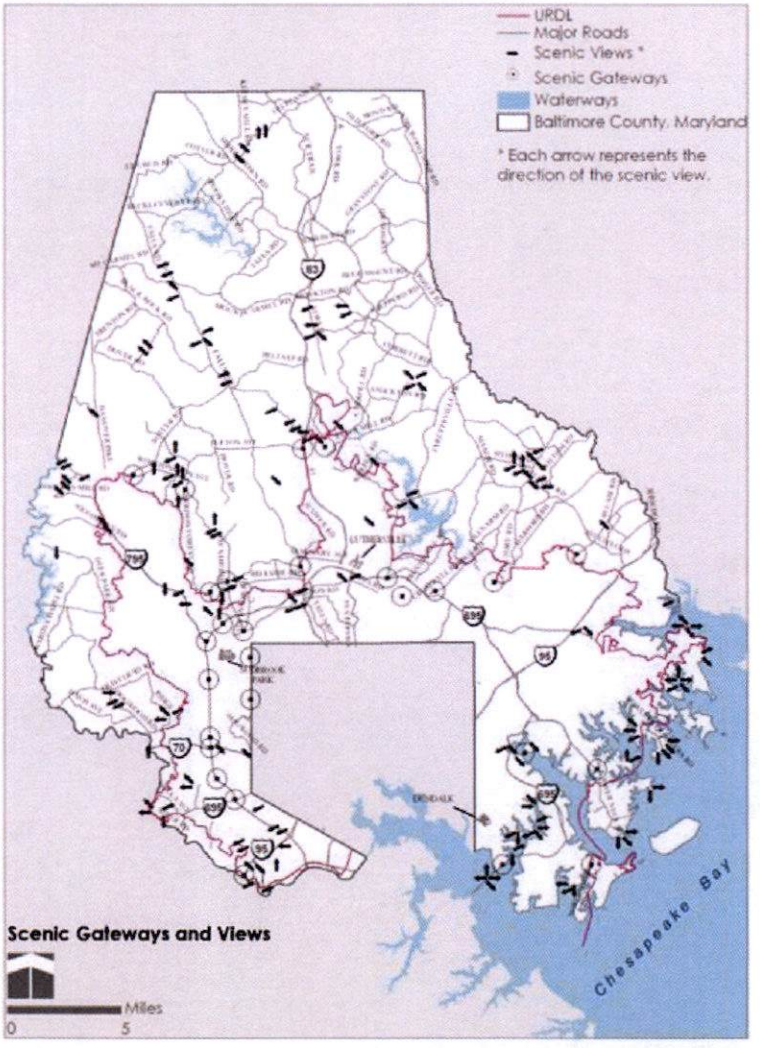
(3) Examine the design aspects of proposed development as part of the development review process.

(4) Develop general guidelines for gateways in the Comprehensive Manual of Development Policies.

(5) Continue to work with SHA to develop bridge designs at gateway locations.

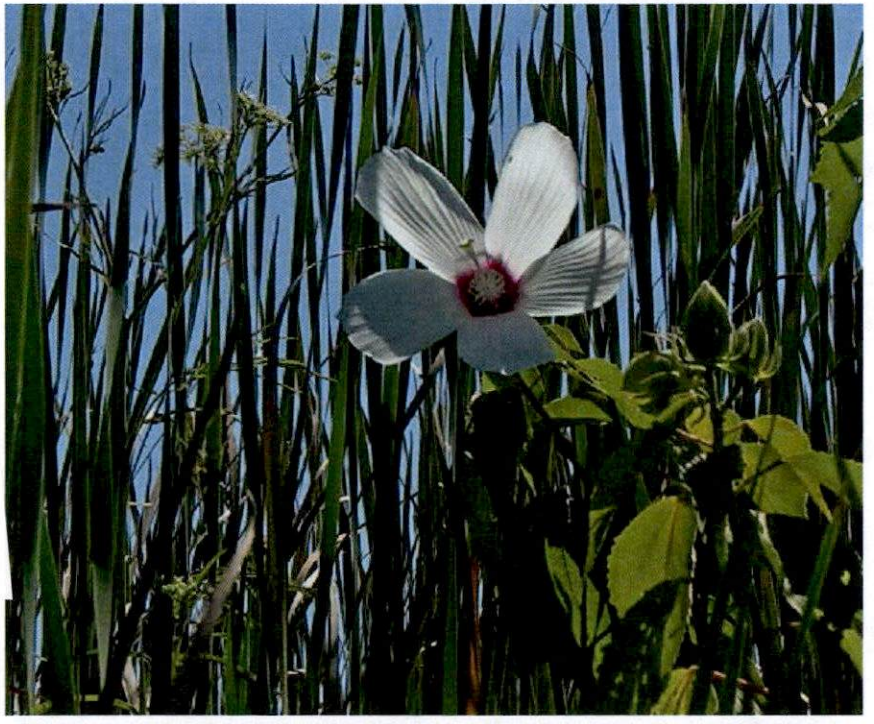
There are numerous gateways in Baltimore County. Prime examples include:
(1) The entry to the Cromwell Valley from Towson north of the I-695 Beltway; (2) Crossing the bridge northbound on I-83 passing Shawan Road; (3) The bridge designs over the I-695 Beltway entering Towson at York and Dulaney Valley Roads, Reisterstown at Reisterstown Road, Catonsville at Frederick Road, and on Charles Street; (4) The community logo, landscaping, and old railroad bridge abutment in Towson; and (5) The continuous streetscape along Eastern Avenue, from Route 702 to the bridge at Middle River Road leading to the waterfront communities.

Map 27: Scenic Gateways and Views



SUSTAINABLE ENVIRONMENT

Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future.



The goal of a sustainable environment supports Baltimore County's vision for community vibrancy and economic vitality. Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future. Natural resources and air quality are essential to economic growth, environmental protection, energy conservation, and quality of life. Natural resources, especially forests and wetlands that comprise the green infrastructure, provide valuable ecosystem services including cleaning air and water. Sustainability also assures habitat protection for terrestrial and aquatic wildlife and genetic diversity.

Baltimore County's environmental mission is to protect and perpetuate the natural resources of the County and to protect environmental health. Over the past 20 years, the County's Department of Environmental Protection and Resource Management (DEPRM) has established and implemented programs to protect critical natural resources, restore ecosystem functions, and educate citizens about good stewardship. While the County's environmental programs are nationally recognized, the pollution from sprawl development and unmanaged agricultural activities, as well as the continued loss of forests, requires significant changes to land use practices under new federal and State programs to restore the health of the Chesapeake Bay. *Master Plan 2020* builds upon past successes and recommends new policies to address emerging environmental challenges such as climate change.

Overall, both the biggest challenge and the most important reason for the County to serve as a catalyst for good resource management is the fact that 85% of the land area and resources in Baltimore County, depended upon and enjoyed by all, are privately owned. DEPRM uses an integrated watershed management framework to accomplish its mission, including land preservation, resource protection/ regulation, restoration, facility maintenance, monitoring, planning and research, and citizen education and participation.

Nature-Friendly Community

"Baltimore County, Maryland, has one of the most ambitious and successful land management and environmental protection programs in the country. An impressive combination of tools and strategies – land use regulations, land acquisition, and urban growth boundary, education, partnerships with private land trusts, and infill development initiatives – has been employed to preserve thousands of acres throughout the county and protect critical wildlife habitat....Baltimore County is in many ways a model for local governments everywhere when it comes to protecting nature and biodiversity." (Source: Duerksen and Snyder, 2005. Nature-Friendly Communities: Habitat Protection and Land Use Planning, p.152).

Climate Change

Citizens in Baltimore County and elsewhere are debating the implications of a changing climate as it relates to human activities. Of particular interest is whether human-produced greenhouse gases are causing long-term global warming. Baltimore County, as part of the global community, should reduce and mitigate negative impacts of human activities on the environment.

County government operations, private businesses, and the daily routines of citizens have great potential to increase atmospheric pollution through release of harmful gases and thermal pollution. One concern about a changing climate is the relative increase in sea level. While the rate and extent of sea level rise are under continuing study, it is estimated that the mean high tide in the coastal areas of the County may increase from three to five feet in the next century. Overall, the retention and planting of forests and trees is considered the single most effective measure for mitigating the negative impact of climate change.

Citizens can make adaptations to actions that might contribute to climate change, and mitigate impacts that are unavoidable or more difficult to prevent. This represents also good stewardship of limited energy and financial resources. Human activities that potentially affect the degree of climate change are mostly attributed to the production, use, and conservation of energy. Most of current energy in Maryland derives from coal and other fossil fuels that increase harmful atmospheric gases. Walking or riding a bike instead of driving, turning off lights and other electrical appliances when not in use, changing light bulbs from fluorescents to LED's, and similar actions are beneficial to the environmental health and natural resources. Energy conservation and other climate change adaptation and mitigation actions will lead to significant changes in current economic structure and community function. Over the long term, they will enhance sustainability.

Policy: Continue to adapt to, and mitigate impacts of climate change on the environment.

Actions:

(1) Implement the recommendations of the County's Sustainability Network for County operations, energy conservation, protection of natural resources, and communities in order to reduce emissions of greenhouse gases and energy consumption.

(2) Develop appropriate indicators for sustainability actions and commitments in order to summarize sustainability conditions and trends and to provide a basis for evaluation of progress.

Environmental Justice

The development of environmental justice in the United States dates to almost three decades ago when communities began to form organized protests against traditional planning efforts to site polluting factories and toxic waste dumps in less affluent and often minority neighborhoods. Local victories empowered local protesters to coalesce into a national movement. In 1994, President Clinton signed an Executive Order focusing the federal government effort on protecting or improving the quality of the environment and human health conditions for all communities.

The federal government definition of environmental justice is applicable to all levels of state and local government planning. Environmental justice calls for the fair treatment of all minority, indigenous, and low-income populations to ensure that no individual racial, ethnic, or socioeconomic group will bear an unequal burden due to the negative effects of pollution or other environmental hazards. Environmental justice also promotes equal access to public information and equal rights to participate in the development, implementation, and enforcement of environmental laws.

The Phase I Action Plan of the Baltimore Watershed Agreement between Baltimore County and Baltimore City specifically calls for consideration of environmental justice issues in the course of watershed management planning.

Policy: Incorporate environmental justice considerations when developing Small Watershed Action Plans to address water quality protection and restoration.

Actions:

(1) Review environmental justice indicators developed nationwide and develop a set of indicators for the watershed management planning process.

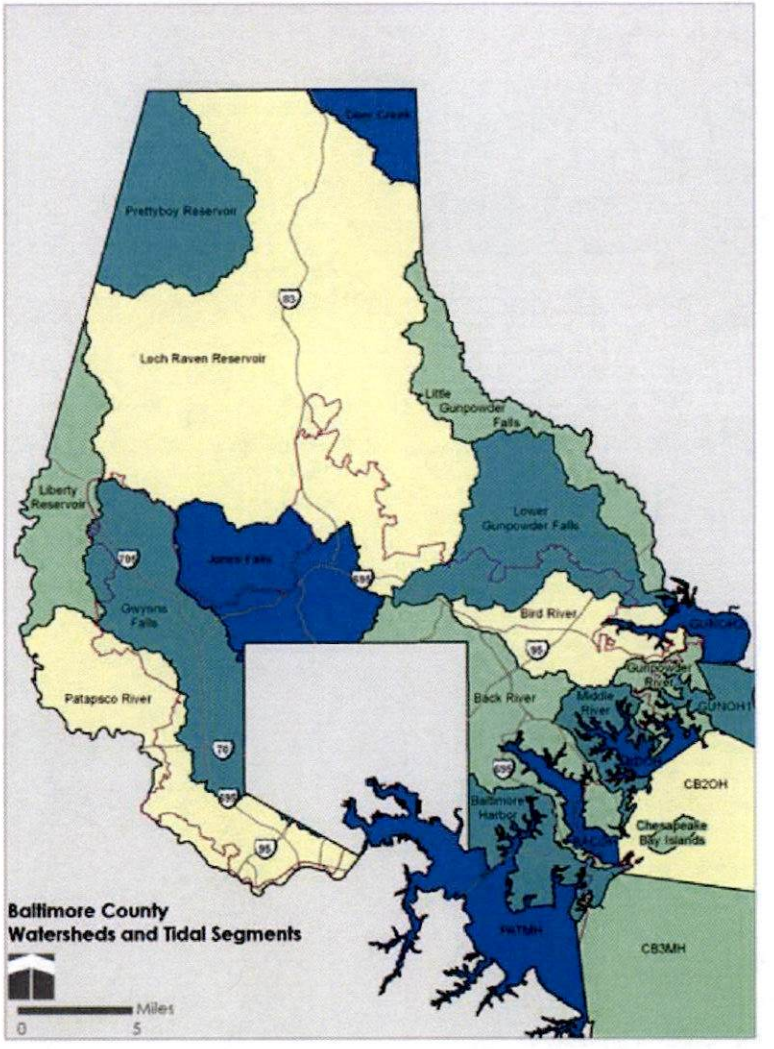
(2) Include the environmental justice indicators in the Small Watershed Action Plans for prioritizing water quality improvement projects.

WATER RESOURCES

The water resources of Baltimore County include over 2,100 miles of streams, groundwater resources, three drinking water reservoirs, non-tidal and tidal wetlands, and tidal waters. All of these water resources are interconnected through the hydrologic cycle driven by precipitation in the form of rain and snow. These water resources are also interconnected with surrounding jurisdictions and through tidal exchange with the Chesapeake Bay.

Precipitation falling on the land drains to streams, either as surface flow or through groundwater flow. The land surface that drains to a particular stream is called a watershed or a basin. The Chesapeake Bay is a large basin with a total drainage area in excess of 64,000 square miles.

Map 36: Watersheds and Tidal Segments



Water Use Classification of County Waterways

In order to protect multiple water uses, the State of Maryland has designated four Use Classes and associated water quality standards. If the water is a source for a public drinking water supply, a "P" follows the Use Class.

The four Use Classes (and subcategories for Use II) are:
Use I
Water contact recreation and protection of non-tidal warm water aquatic life.
Use II
Support of estuarine and marine aquatic life and shell fish harvesting (not all subcategories apply to each tidal water segment); Shellfish harvesting; Seasonal migratory fish spawning and nursery (Chesapeake Bay only); Seasonal shallow-water submerged aquatic vegetation (Chesapeake Bay only); Open-water fish and shellfish (Chesapeake Bay only); Seasonal deep-water fish and shellfish (Chesapeake Bay only); Seasonal deep-channel refuge use (Chesapeake Bay only)
Use III
Non-tidal cold water – usually considered natural trout waters
Use IV
Recreational trout waters – waters that are stocked with trout

These waters support aquatic communities and provide for human uses such as agricultural irrigation and livestock watering, drinking water, industrial uses, fishing and boating, and receiving areas for treated wastewater. Having adequate clean water to support all of these uses is crucial to continued ecological and human health now and for the future, and for providing for the continued quality of life for citizens and the economic vitality of Baltimore County.

Waters in Baltimore County are of high quality in general. Some water resources are degraded by improper human activities. The waters that do not meet or exceed water quality standards are placed on an impaired waters list (Sec. 303(d) of the federal Clean Water Act) by the State of Maryland. These listings are based on 8-digit watersheds and tidal water segments, with each impairing substance listed separately. Regulations and policies require protection of high quality water resources and improvement of degraded water resources. High quality waters are protected through the permitting requirements associated with Tier II, defined as waters with a better than the average aquatic biological community. Tier II waters meet the anti-degradation requirements of the federal Clean Water Act. For each impairing

substance in any watershed or tidal segment, the State must determine how much of the substance must be reduced through modeling. This is referred to as a Total Maximum Daily Load (TMDL), or the maximum amount of a particular pollutant in a waterway that can be naturally assimilated while maintaining water quality standards

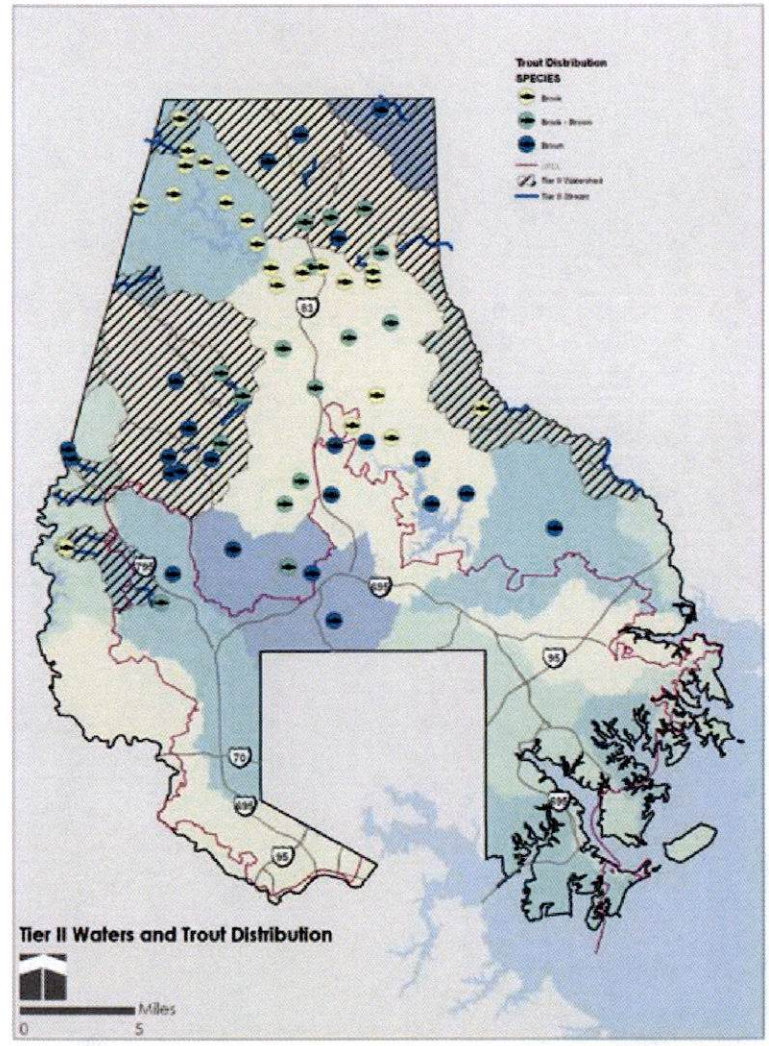
The principal regulatory requirement to address pollution impacts in urban areas is to implement the National Pollutant Discharge Elimination System - Municipal Separate Storm Sewer System (NPDES-MS4) permit. This permit requires the County to control the water quality that is discharged from its storm drain system, by implementing stormwater management, sediment control, education, monitoring, watershed management planning, and restoration programs. These programs are intended to control pollution from new development and restore

Tier II Waters and Trout

Tier II waters are identified and rated on the basis of aquatic community sampling by Maryland Department of Natural Resources. When both the fish and the bottom-dwelling invertebrate community have a rating of "good" the reach of stream represented by the sampling is identified as Tier II waters. Baltimore County has 33 miles of Tier II stream segments at 20 different sites, mainly in rural areas. The drainage area to these sites represents 23% of the County. These stream segments must be protected from degradation.

Trout are also indicative of higher quality water. Baltimore County's streams support a fairly good population of both brook and brown trout. Over 61 sites located on various streams have trout present. The trout are more wide spread than the Tier II waters, indicating that additional Baltimore County streams are still supporting aquatic natural resources.

Map 37: Tier II Waters and Trout Distribution



Total Maximum Daily Load (TMDL)

Baltimore County watersheds and tidal segments are impaired by a variety of substances, including nutrients, sediment, bacteria, trash, and various toxic substances, as well as biological impairments. The amount of each pollutant that needs to be reduced from each source in order to meet water quality standards is then determined. The model also indicates a cap for each pollutant based on the assimilative capacity of the water body. Any increase in a load from a new source must be offset to maintain the water quality standards. For each TMDL, the County is required to prepare an Implementation Plan with measurable implementation milestones and a projected timeline for meeting water quality standards.

The Chesapeake Bay is impaired by nitrogen, phosphorus, and sediment. The U.S. Environmental Protection Agency is developing TMDLs for nitrogen, phosphorus, and sediment to improve Bay water quality.

degradation caused by development that occurred prior to the current environmental protection requirements. Approximately 80% of the urban land was developed prior to environmental controls. Future permits will require preparing Implementation Plans for approved TMDLs and meeting water quality improvement and restoration milestones.

The Water Resources Element is an analysis of the adequacy of drinking water and wastewater treatment to support future population growth, and the ability to maintain and improve water quality within the County's receiving waters. The WRE analysis indicates that redevelopment will result in the greatest protection of high quality aquatic resources and reduction of pollution. The WRE is adopted as part of *Master Plan 2020.*

Watersheds

Baltimore County contains 14 major watersheds, which are identified on the basis of local stream systems and drinking water reservoirs. Seven of them are part of the Gunpowder River basin, six are in the Patapsco River basin, and one flows to the Susquehanna River basin. Watersheds are a useful framework for resource management. Individual resource elements including streams and forests are linked through ecosystem processes that operate to maintain the stability of the system.

Land use activities within watersheds affect the water quality of streams and downstream water bodies. Clearing forests increases stormwater runoff to streams, causing an increase in the amount of sediments, nutrients, and toxins and the erosion of stream channels. Changes in sediment and nutrient levels may degrade stream habitat quality. Land preservation programs that place environmentally sensitive land in permanent easements help protect watersheds and their interrelated systems.

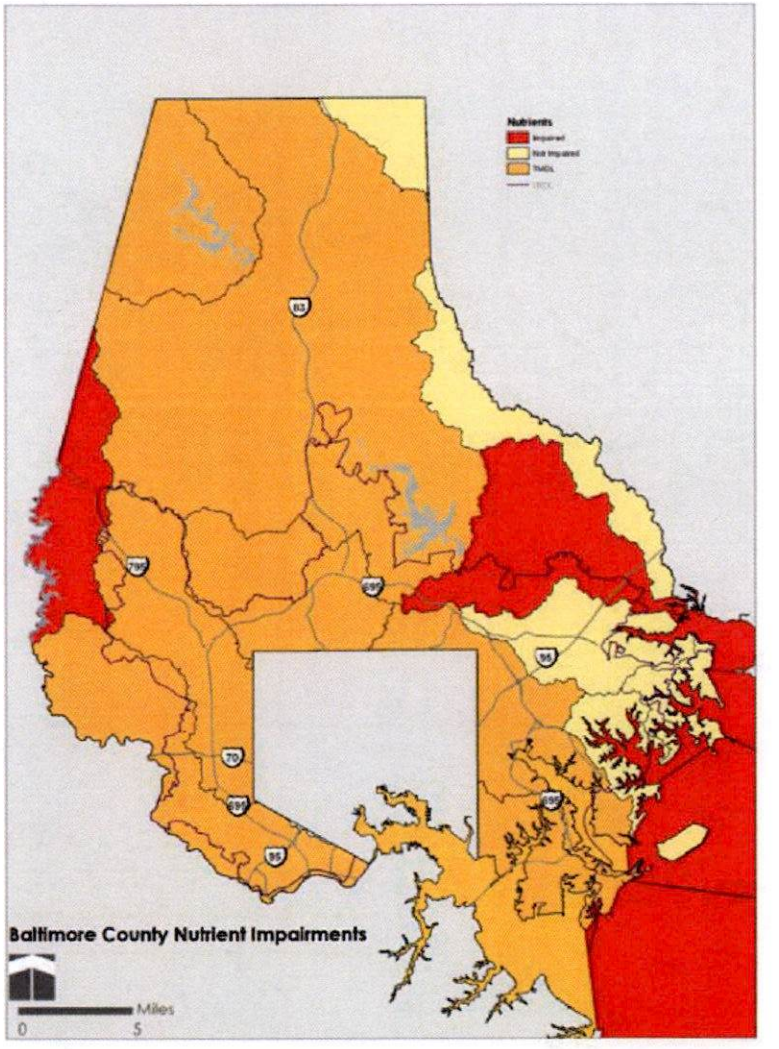
The County's watershed program consists of characterizing and prioritizing watersheds, preparing management plans, including Small Watershed Action Plans (SWAPs), and evaluating resource systems and functions at varying scales. Assessments of pollutant loads, stream stability, and forest community structure provide the framework for the implementation of capital projects, facility maintenance, education programs, and cooperative citizen actions.

Policy: Promote redevelopment and revitalization inside the URDL to reduce pollutant loads and protect natural resources.

Actions:

(1) Assure that the countywide redevelopment strategy accommodates population growth, provides maximum pollutant reduction, protects high quality waters, promotes economic vitality, and maintains a high quality of life for Baltimore County residents.

Map 38: Nutrient Impairments



(2) Include environmental policies and goals in community plans for the preservation and enhancement of functional open spaces such as greenways and wildlife habitat; the reduction of water, air, and toxic pollution and solid wastes; and the promotion of neighborhood environmental stewardship.
(3) Facilitate the redevelopment of underutilized industrial properties.

(4) Direct redevelopment efforts along the waterfront into historically disturbed, uncontrolled buffer areas in order to maximize water quality protection.

Policy: Assure protection of Tier II waters and those with known trout resources.

Actions:

(1) Investigate the development of overlay zones for Tier II waters and those with known trout resources and evaluate the need for additional protection through development regulations.

(2) Examine the feasibility of an offset program to achieve a no net increase in pollutant loads from new development.

(3) Continue to protect water quality, streams, wetlands, floodplains, and forests from impacts of new development and redevelopment.

(4) Implement projects to restore wetlands, reestablish forests, plant stream and shoreline buffers, and stabilize stream channels in impacted watersheds.

(5) Continue to implement the 2006 Baltimore Watershed Agreement with the City of Baltimore for improved and coordinated efforts for public health, trash, stormwater management, community greening, and redevelopment.

Streams and Non-Tidal Wetlands

Baltimore County contains more than 2,100 miles of non-tidal streams and rivers, including some of the highest quality recreational fishery resources in the eastern United States and more than 1,000 miles of streams that drain to the three drinking water reservoirs. A stream system consists of a stream and its associated floodplain, wetlands, and springs. Wetland and riparian vegetation play an essential role in the natural functioning of a stream system, including maintaining base flow, regulating water temperature, controlling pollution, and providing habitat. Pollutants discharged from point and non-point sources degrade stream water quality. These sources include urban runoff (non-point sources, particularly from impervious surfaces), pollutants discharged directly to streams (point sources), and agricultural operations (non-point source). Urban non-point source types of pollution vary and include nutrients, sediments, metals, pesticides, oil and grease, salts, and other particulate and dissolved matter.

Point-source pollution, generated from wastewater treatment plants, industries, and other sources with a direct, piped discharge, is regulated by the State. Over the past several decades, channelization, encroachment of development on floodplains, draining and filling of wetlands, removal of riparian vegetation, and development or clearing of steep slopes and erodible soils has been detrimental to streams.

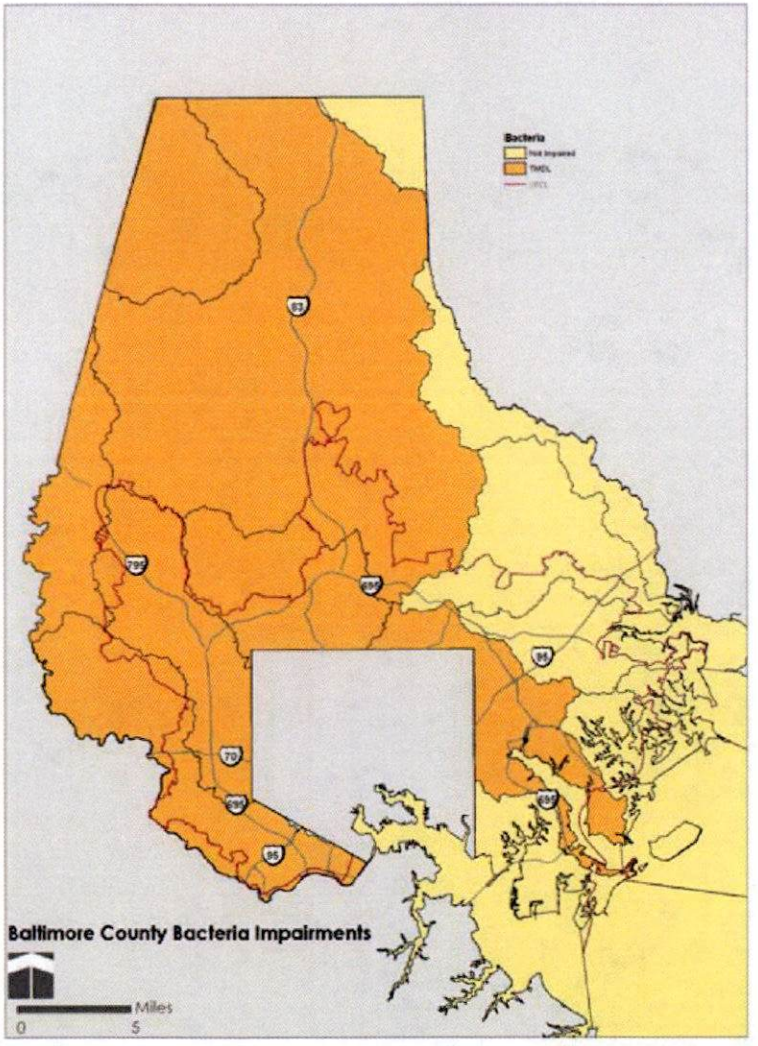
In 1987, DEPRM initiated a capital environmental restoration program to assess and identify water quality problems and implement design and construction of watershed restoration projects. The program is based on the County's 14 major watersheds, providing a comprehensive framework for protection and restoration of water resources. DEPRM has been recognized nationally for its stream restoration program and, with the completion of numerous projects, has made significant progress toward its objectives for watershed restoration. In the early 1990's Baltimore County developed regulations to protect water quality, streams, wetlands, floodplains, forests, and steep or highly erodible slopes from land development impacts. The County faces a challenge common to most areas experiencing urban growth: how to restore, protect, and enhance its waterways.

Stream Restoration

The U.S. EPA Mid-Atlantic Integrated Assessment program (MAIA) produced a document to share knowledge among state and local governments, regional offices, and non-governmental organizations. The document highlights DEPRM's stream restoration accomplishments. DEPRM's program incorporates project planning and design, communication and coordination with property owners, construction, and post-restoration follow-up. The program integrates state-of-the art techniques with an environmentally sensitive approach to stabilizing streams and reducing sediment loads, in turn enhancing stream morphology, ecological function, water quality, and aquatic habitat. Baltimore County responds to degraded urban streams with an adaptive natural channel design (NCD) approach that relies on the principles of fluvial geomorphology to evaluate stream flow, channel dimension, and bed and bank materials to optimize water and sediment movement and minimize erosive forces.

Physical changes to stream systems can be worse than pollutant runoff, point source discharges, or storm water management impacts. Since 1990, DEPRM has developed expertise in the restoration of destabilized stream channels. Reconstruction of channels applies the concepts of natural channel design (NCD) using natural materials (boulders and vegetation) in conjunction with the reshaping of the stream channels. When properly constructed, these restored streams are a cost-effective and attractive means to sustain physical stability, function, and habitat. Since the early 1990's, DEPRM has also maintained a physical, chemical, and biological stream monitoring program to determine ambient water quality and trends over time, assist in targeting restoration efforts, assess the effectiveness of restoration, and track progress in meeting TMDL pollutant load reduction requirements. The monitoring measures the abundance and diversity of aquatic life as indicators of stream quality and chemical constituents. Summary data from the biological monitoring indicate that there is fairly widespread impairment of aquatic organisms, even if only moderate, for most of the County's streams.

Map 39: Bacteria Impairments



Improvements to stream quality, in both water quality and habitat, will require a range of controls that best address specific types of pollution sources.

Policy: Continue to protect, enhance, and restore degraded waterways to meet water quality standards and permit requirements.

Actions:

(1) Continue to enforce development regulations for the protection of water quality, streams, wetlands, and floodplains.

(2) Continue to prepare and implement Small Watershed Action Plans (SWAPs) and participate in studies to identify needs and opportunities for stream restoration, wetland creation and restoration, and stormwater management.

(3) Continue to design and construct stream restoration projects using an adaptive natural channel design (NCD) approach.

(4) Incorporate stream protection policies in community plans.

(5) Continue to implement biological, chemical, and geomorphological stream monitoring programs in order to measure the long-term trends in stream quality.

(6) Identify opportunities for the creation of wetlands as mitigation for County capital projects and other land development impacts.

(7) Continue environmental education programs for schools, businesses, and homeowners for the reduction of water pollution and toxic and solid wastes.

(8) Continue to implement environmental inspection and maintenance programs such as storm drain inlet cleaning and maintenance of stormwater management facilities.

(9) Continue to identify and convert appropriate publicly owned stormwater management facilities to provide for increased water quality function.

(10) Continue to retrofit older communities to provide for stormwater treatment for improved water quality to the receiving waters.

(11) Continue to support watershed associations and citizens in stream clean-ups, stream and watershed surveys, and other restoration projects.

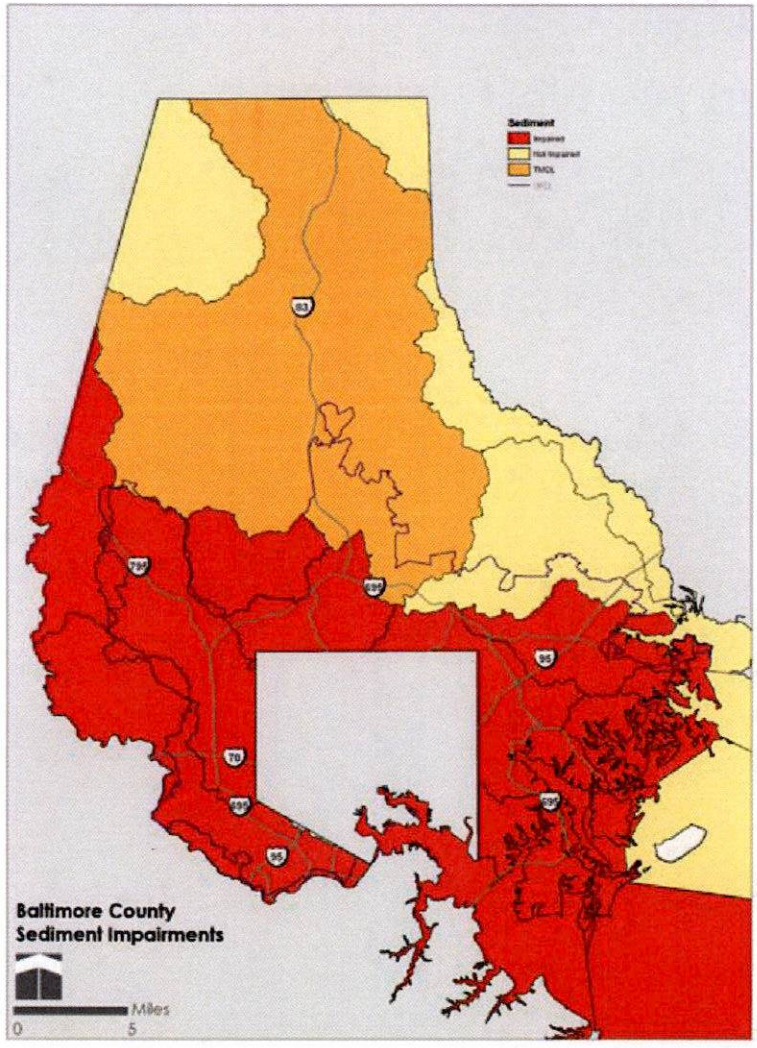
(12) Identify impediments to, and opportunities for tree plantings along streams on private properties, and work to plant more trees on private lands.

Stormwater Management and Sediment Control

The hydrologic cycle is a descriptive model for the movement of precipitation from the atmosphere to the earth's surface and then to receiving waters and back to the atmosphere. In natural areas, precipitation that reaches the ground infiltrates into the soil, replenishing groundwater aquifers and discharging to streams. In urban areas, precipitation that falls onto impervious surfaces runs off the surface much more rapidly. Unless properly controlled, stormwater runoff can result in stream channel erosion and the degradation of in-stream habitat and the aquatic biological community. Stormwater runoff also results in an increase of pollutants washed downstream. During the land development process, the soil at construction sites is the most vulnerable to erosion in streams and other surface waters. Soil erosion from construction activity may exceed 100 to 400 times that obtained from an adjacent undeveloped land or woodland in an equivalent period of time.

About 80% of Baltimore County was developed prior to the advent of stormwater management regulations, which damaged many waterways. In 1968, Baltimore County enacted Maryland's first local sediment control ordinance. Since the mid 1970's, Baltimore County has been a statewide leader in recognizing the impact of stormwater runoff generated as a result of land development. Stormwater management requirements have evolved over time. Initial

Map 40: Sediment Impairments



stormwater management focused on volume and peak discharge control to reduce physical impacts on streams. Beginning in the late 1980's through the early 1990's, water quality treatment was added as a means to address the increased pollutant loads associated with urban development. As stream science and understanding of stream dynamics evolved, it was recognized that further peak discharge control was necessary to protect stream channels from erosion during storm flow.

In the early 2000's, control of small storms was required, along with methods to disperse the flow from a development site instead of concentrating the flow. The Maryland Stormwater Act of 2007 further refined stormwater management by requiring Environmental Site Design (ESD) where practicable. ESD attempts to reduce stormwater runoff from a site by reducing impervious cover, retaining natural vegetation, and dispersing the runoff throughout the site to allow greater infiltration of precipitation. As Baltimore County's older urban and suburban areas are redeveloped, state-of-the-art stormwater practices will be constructed and water quality will improve.

Policy: Protect and improve water quality through the application of stormwater control measures for new development and redevelopment projects.

Actions:

(1) Continue to implement state-of-the-art stormwater management techniques, including ESD as feasible, for new and redevelopment projects.

(2) Provide flexibility for redevelopment to implement innovative solutions to stormwater management.

(3) Ensure the sustainability of stormwater practices including long-term function and maintenance.

Policy: Inspect and enforce compliance with the Baltimore County Code, permits, plans and State specifications as related to erosion and sediment control and grading.

Actions:

(1) Continue to inspect and enforce erosion and sediment control implementation on all active projects for compliance with approved plans.

(2) Continue to investigate complaints pertaining to erosion, sediment control, grading, and surface drainage problems associated with new construction.

(3) Continue to provide responsible personnel training and certification of individuals that oversee installation and maintenance of project controls.

(4) Continue to work in cooperation with the Baltimore County Soil Conservation District to require minimum standards for Soil Conservation and Water Quality Management Plans for conservation easements.

Best Management Practices (BMPs) for Agriculture

Best Management Practices (BMPs) that prevent soil erosion and protect water quality provide long-term benefits for maintaining the productive quality of farmland. Farmers are assisted in their efforts to apply BMPs by the Baltimore County Soil Conservation District, University of Maryland Extension (UME), the Maryland Department of Agriculture, the U.S. Department of Agriculture's Natural Resources Conservation Service, and the U.S. Farm Services Agency. Farmers and landowners participate in

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Soil is a non-renewable resource. Its preservation is essential for food security and our sustainable future

Soil is a finite resource, meaning its loss and degradation is not recoverable within a human lifespan. As a core component of land resources, agricultural development and ecological sustainability, it is the basis for food, feed, fuel and fibre production and for many critical ecosystem services. It is therefore a highly valuable natural resource, yet it is often overlooked. The natural area of productive soils is limited – it is under increasing pressure of intensification and competing uses for cropping, forestry, pasture / rangeland and urbanization, and to satisfy demands of the growing population for food and energy production and raw materials extraction. Soils need to be recognized and valued for their productive capacities as well as their contribution to food security and the maintenance of key ecosystem services.

Related links: http://www.fao.org/soils-2015/en/;
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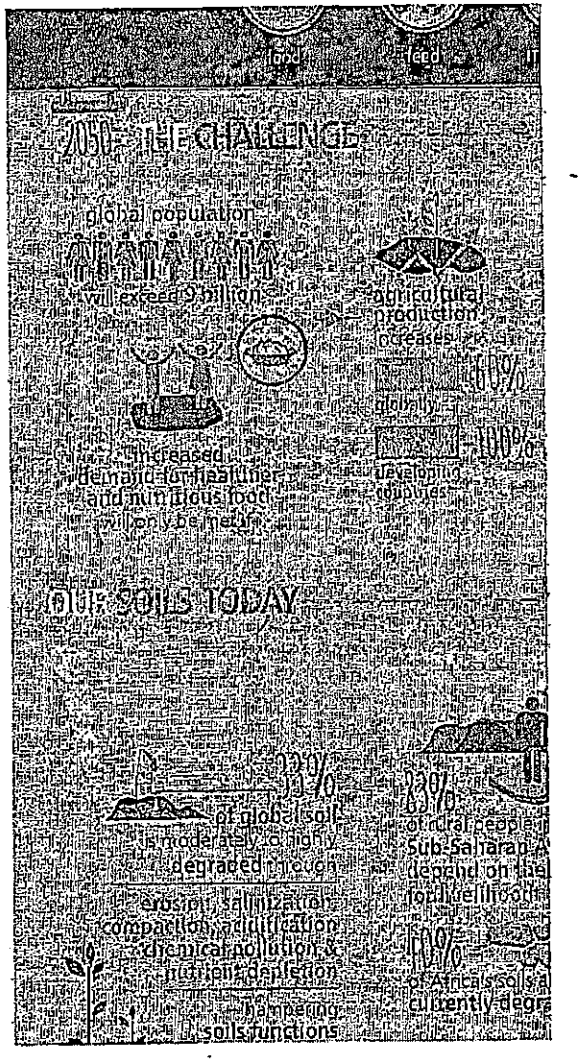

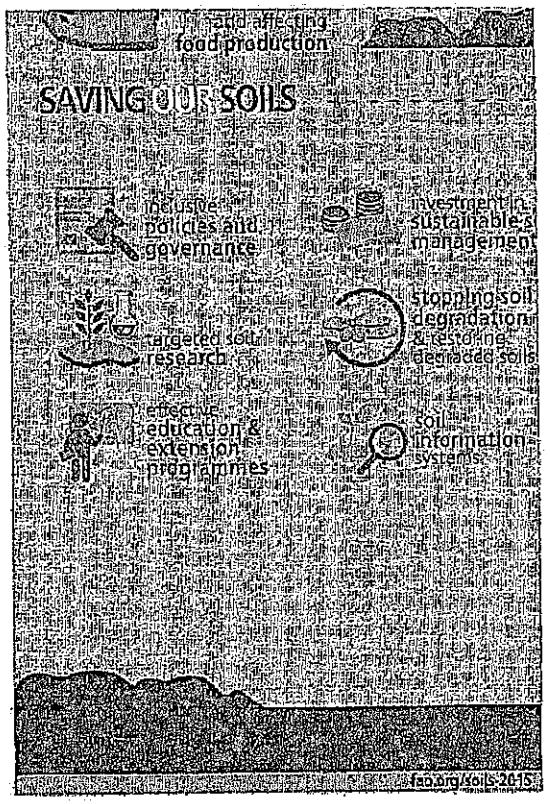

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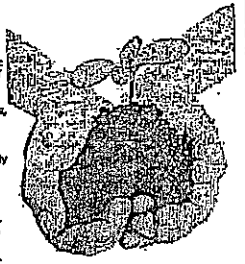
APX. 31

What is soil?

Themes: Introduction | The uses of soil | What people think of soil | Quiz

Soil is one of the world's most important natural resources. Together with air and water it is the basis for life on planet earth. It has many important functions which are essential for life. Not only does it play the major part in allowing us to feed the world's population, but it also plays a major role in the recycling of air, water, nutrients, and maintaining a number of natural cycles, thereby ensuring that there will be a basis for life in generations to come. Without soil, the world's population neither would nor could survive.



Soil forms the surface skin over the landscape of the earth at the junction between the atmosphere and the lithosphere. Think of soil as a thin carpet covering the land portions of the earth. The distance from the surface of the earth, at which the soil is situated, to the very centre of the earth, deep below, is over 6,000 kilometres. Of this, the soil layer is a mere one to two metres thickness of this 6,000 kilometres. It is thus a very, very thin skin indeed - both fragile and extremely precious.

Soil consists of a mixture of mineral grains that come from the rock deposits and sediments beneath them. This mixture gives the overall texture of the soil, namely whether the soil is mainly sandy, loamy or clayey. Importantly, soil also contains organic matter, mainly in the top 20 cm. Organic matter comes from rotted and decomposed vegetation, broken down by soil organisms. Soil also contains varying amounts of water depending on the climate and the water holding capacity of the soil. The remaining important ingredient is air. The amounts of each of these components varies in time and across the landscape. This is a magical mixture of ingredients that allows the soil to perform many vital needs of living beings.

Themes: Introduction | The uses of soil | What people think of soil | Quiz

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Soil knowledge

Soil knowledge

A natural resource

The soil is an important part of the landscape and contributes to determine the way in which natural vegetation, crops and human settlements are distributed on the territory. But the importance of the soil is mainly related to its double role as a reserve of nutritional elements and water and mechanical support (how would plants be able to stand upright if they did not have the soil to put their roots in?) for vegetation, leading to the creation of forests and protected areas. A direct observation allows us to see the fundamental importance of the soil: if we go to the mountains or to the countryside, we will see some bare rocks without plants, but next to them there will be wider areas covered by a thick soil. On this land spontaneous vegetation or crops grow. The soil is also very important for men and other living organisms as it affects water composition. In fact, the quality of underground water reserves depends on use of organic and inorganic polluting products, deriving from agricultural and industrial activities or from cities. Various chemical and physical properties of the soil affect the concentration and permanence of polluting compounds in the soil, and the probability that they get in contact with superficial aquifers by polluting them.

The soil can be extremely important for men even if it is not changed and left in its natural conditions. This is the case of protected areas (parks and oasis): the survival of the delicate ecosystems of these areas mainly depends on the fact that the soil keeps in good conditions and does not experience changes. For example, in the past men considered wet areas as unhealthy areas to be reclaimed and used for agriculture. Today wet areas are considered as very important and fragile ecosystems, whose survival can be guaranteed only by preserving the particular conditions of their soil.

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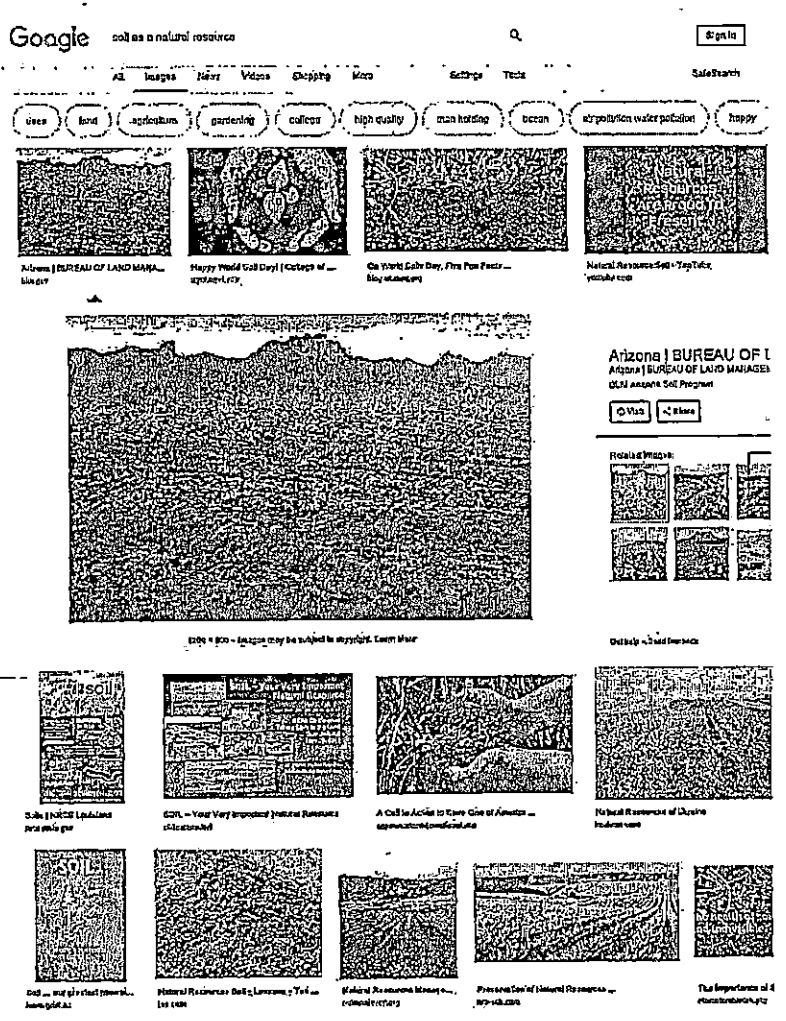
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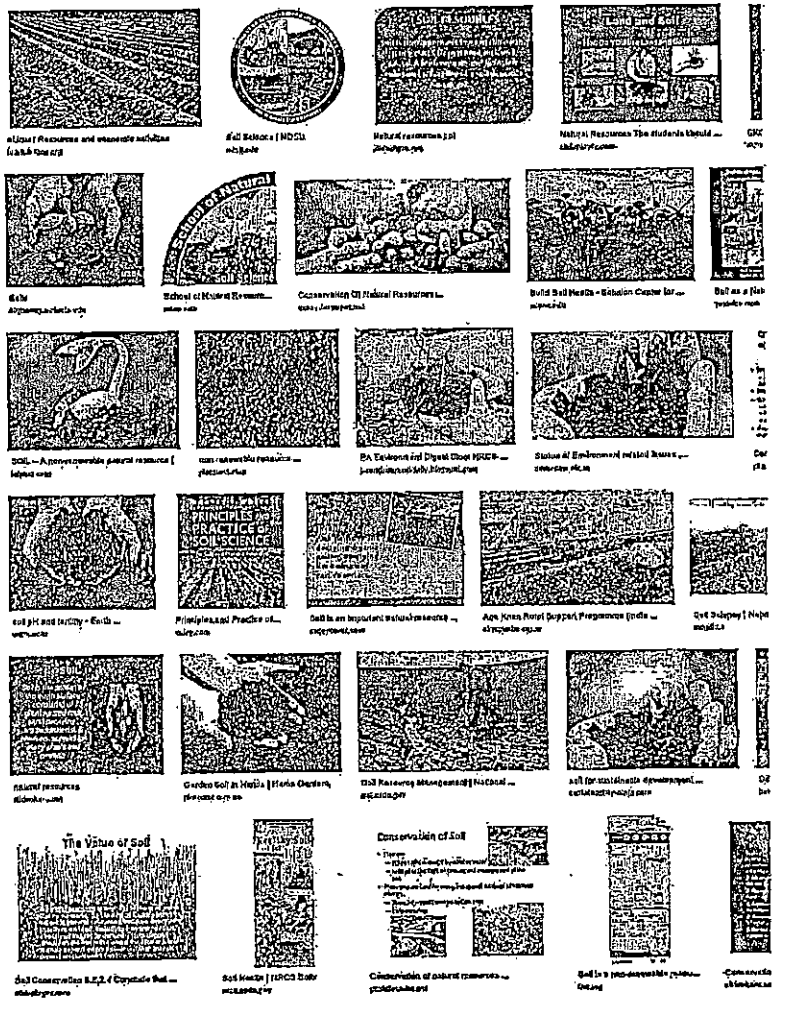
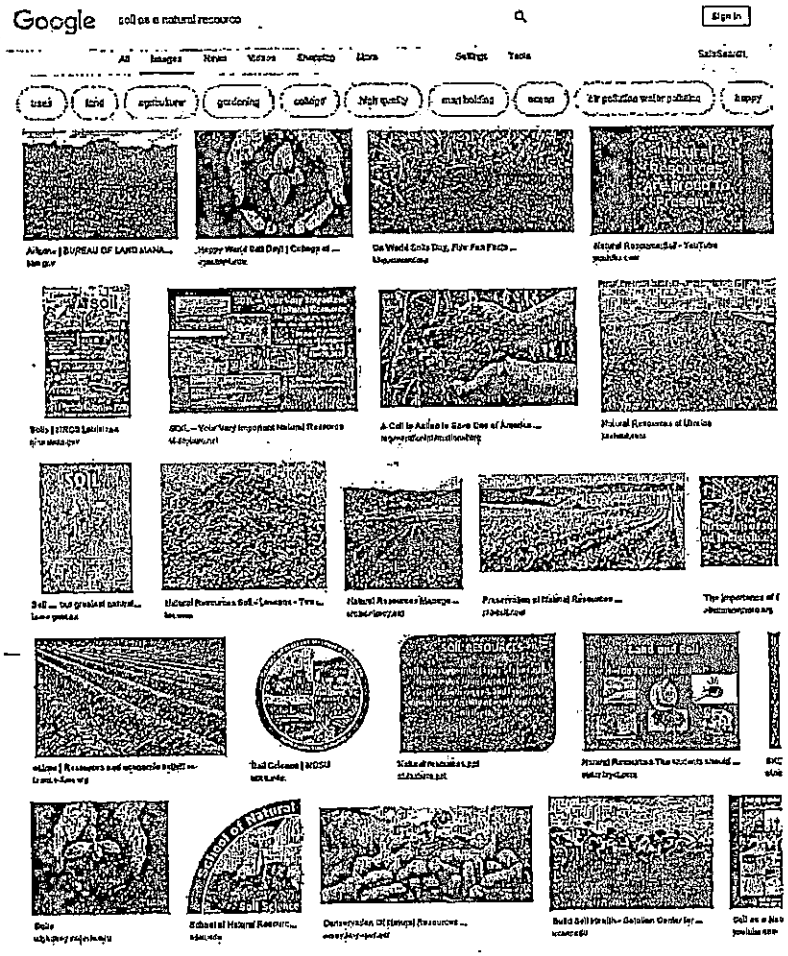

PRINCIPLES AND PRACTICE OF SOIL SCIENCE
The Value of Soil
Conservation of Soil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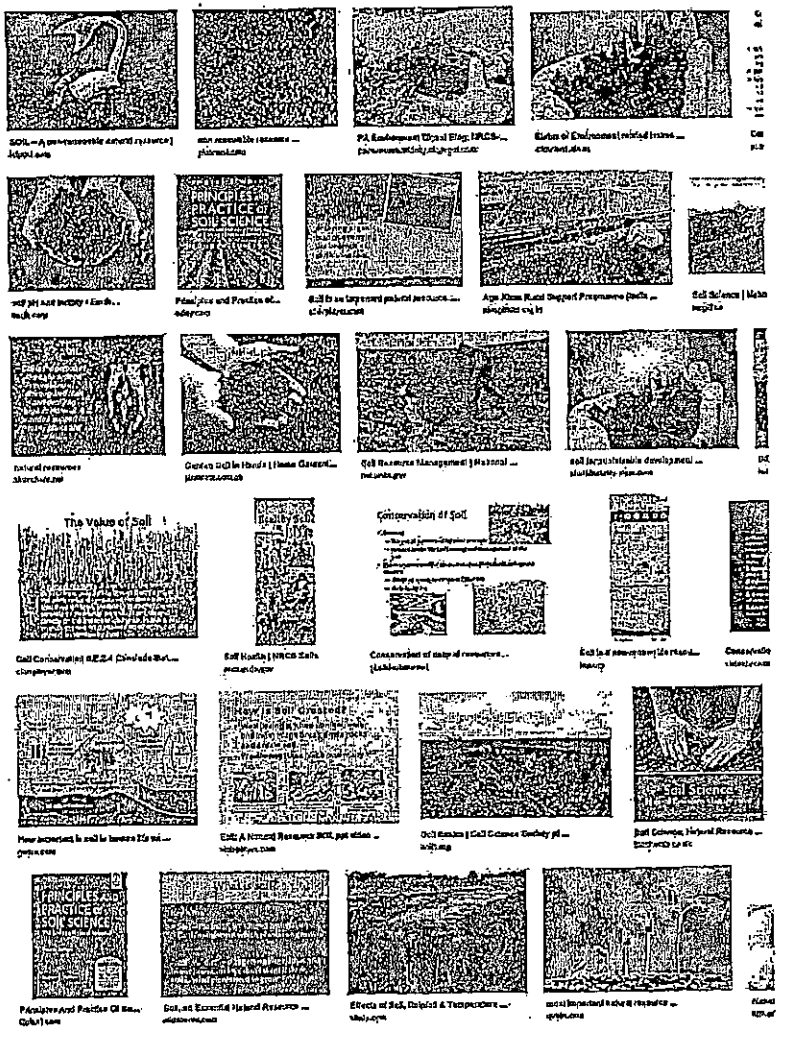
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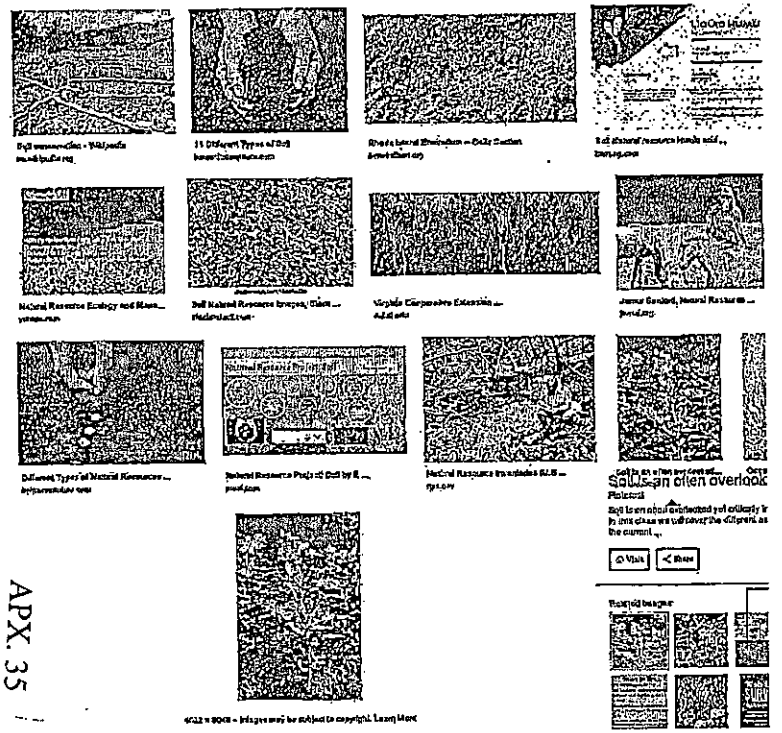
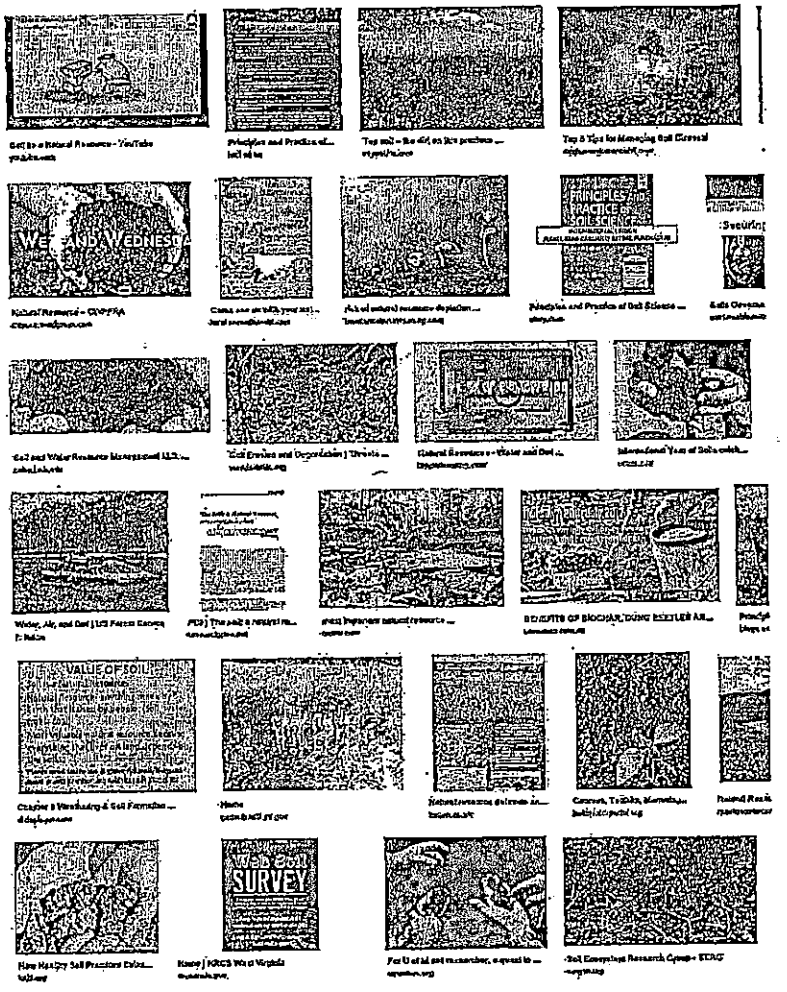
Effects of Soil, Rainfall & Temperature ...
most important natural resource ...





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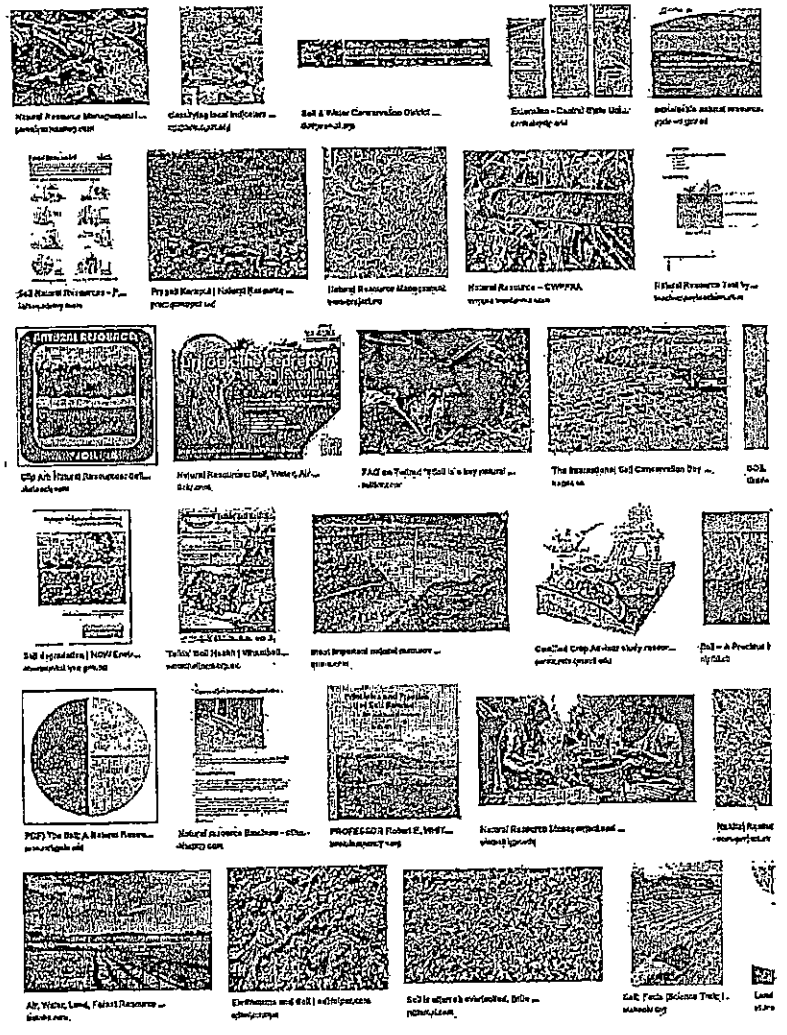

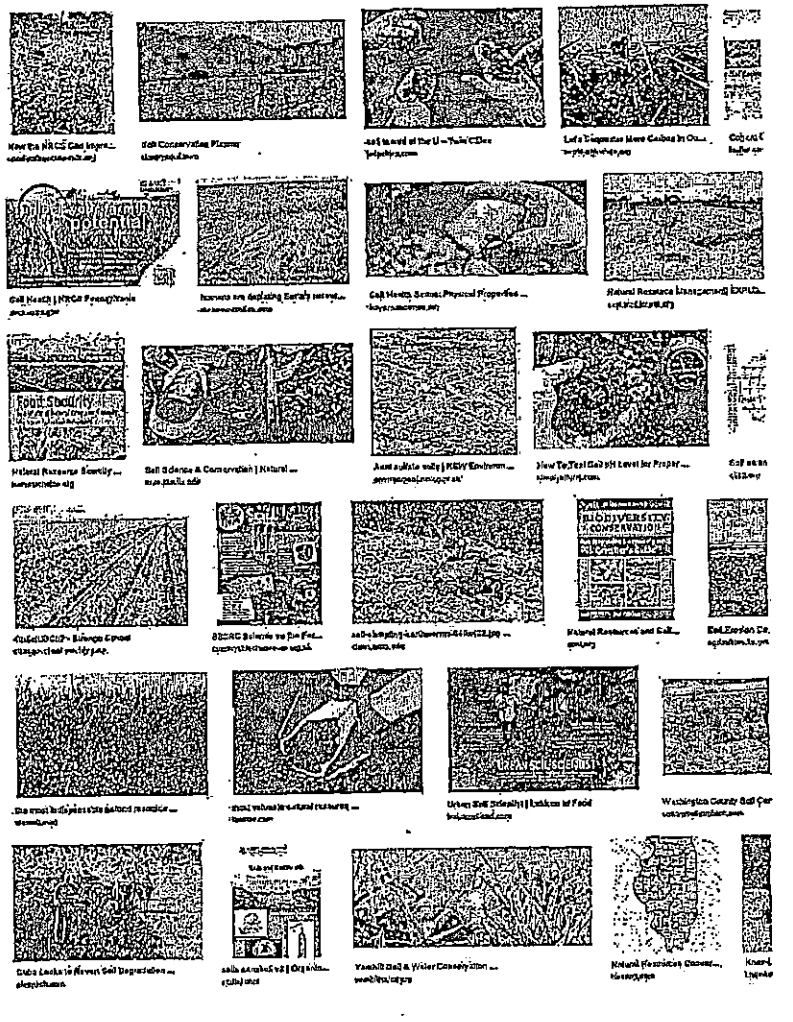

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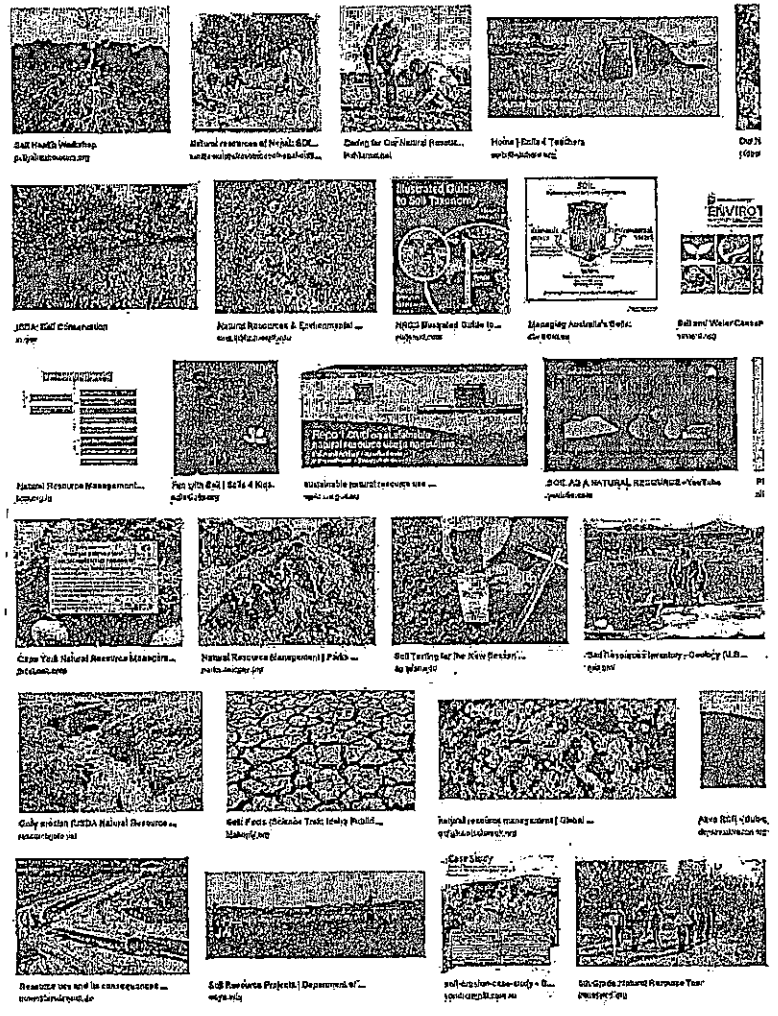
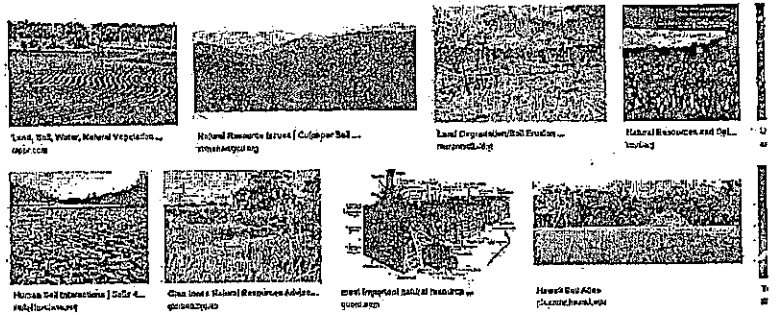
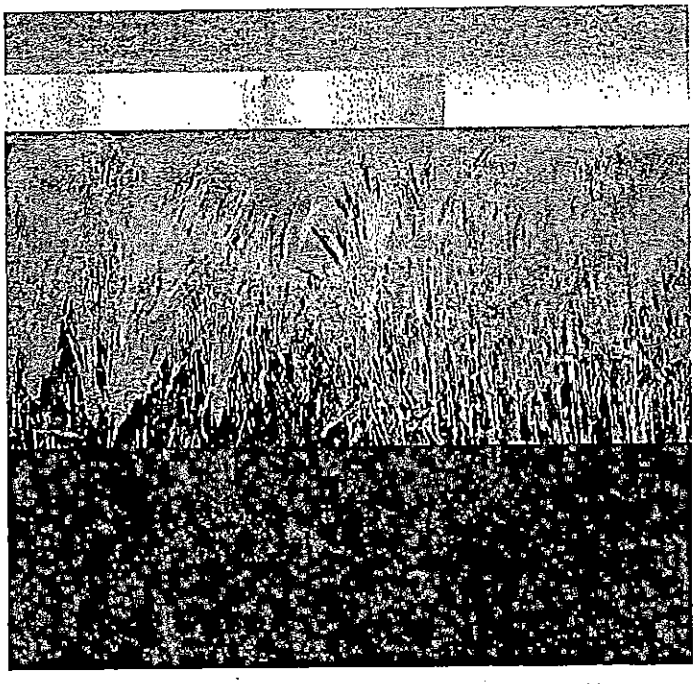




Soil – A Precious Natural Resource



Soil as a Resource
National Research Programme NRP 60

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Foreword

Soil is more than construction land 'in a prime location' or pasture- and farm land. The soil is a habitat. Our view of the soil, however, is often just a surface view – quite literally. But a look beneath the surface is well worth it. The importance of the soil for life on Earth is greatly underestimated. Without intact soils, we would be lacking the most important essential basis of life.

The cosmos of soil between the plant cover and bedrock is the indispensable connecting element between atmosphere and groundwater. This central hub for all important material and energy flows on Earth performs numerous economic and ecological functions: Soil is the basis of food production, a habitat for innumerable organisms, a water filter and a natural store for carbon and water. Billions of living organisms in each handful of soil decompose old plant material into their basic building blocks and make these nutrients available to new plants.

Soil therefore deserves our attention. Particularly in Switzerland, where soil is scarce, a better understanding is needed. For this reason we welcome that with this brochure, researchers and the Federal Administration (Federal Office for the Environment, Federal Office for Agriculture, and Federal Office for Spatial Development) bring home the importance of soil and its essential functions. How many of us are aware that each shovelful of earth has a formation history reaching back hundreds of years? Or are conscious of the fact that the soil secures the living and economic environment of Switzerland?

So let us be concerned about the soil, this basis of all life. Let us take care of our soil. Let us preserve our cultivated land. For our quality of life is directly dependent upon the quality and quantity of the soil. Let's keep our feet on the ground!

Federal Councillor Doris Leuthard

Federal Councillor Johann N. Schneider-Ammann

The fascination of soil

We seldom have a clear view of the fascinating world beneath our feet. It comes to light primarily when excavators tear open the ground in the creation of construction pits, thus offering a visible perception of the three-dimensional cosmos of soils. It is worth climbing down into one of these pits and taking the time to study the intricate walls. On offer in these hidden worlds can be a colourful layered story sequencing years and years of mankind. The hollow cavities of burrowing fauna transverse the earth like veins, each with a story of their own. Only when you are surrounded by and are witnessing this world first hand, can the complete impression that you are standing within not just a self-contained ecosystem, but an ancient ecosystem, come to life.

Soils are formed from rock

Approximately 10,000 years ago, towards the end of the last ice age, there was no intact soil in the larger areas of Switzerland. Glaciers had ground it down and left behind nothing but bare rocks or moraine materials as they retreated. Sun, rain, frost and soil organisms then worked symbiotically together in weathering the rock material, chemically and mechanically, ultimately breaking it down into smaller particles. As a result, soil was continuously taking form and plants could begin to thrive.

Minerals were transformed and, through the method of leaching, were washed further into deeper layers as the rock broke up progressively into loose soil. Over thousands of years the typical sequence of successive layering of soil developed: typically a layer of topsoil rich in humus over a layer of subsoil consisting of strongly weathered parent rock and washed out material from above. Below that lies the only slightly weathered parent material and finally the bedrock.

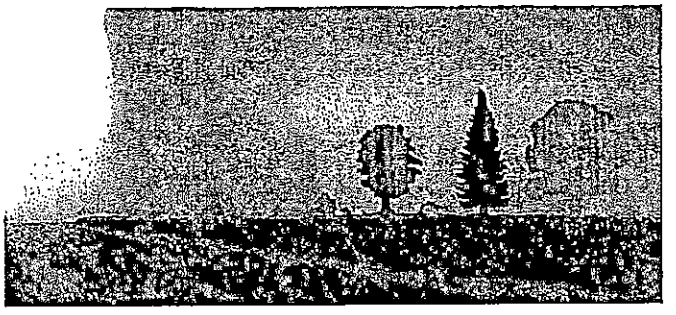
Many types of soil

Depending on the parent rock material, local topography, climate and water availability, differing soil types developed after the final stages of the last ice age. There are shallow or deep, acidic or alkaline, nutrient-poor or nutrient-rich, wet or dry, sandy or clayey soils – as well as every conceivable variation between these extremes. The astonishing number of variations is represented within a large range of the colour spectrum, from red to yellow to blue and all the shades in between.

Moist and warm conditions are optimal for soil formation as it is under these conditions that soil organisms who are responsible for the rock-weathering processes are most active. For this reason, the soils in the Central Plateau of Switzerland, which are 1 to 2 metres deep, are clearly much thicker than the soils in the Alps, which are often only a few centimetres deep.

As long as weather and water are continuously interacting with soil populated by organisms, the development of the soil is never completely at an end. In a seemingly motionless earth there is always something in a state of flux: humus constantly forms and decomposes, seepage water dissolves soluble materials and washes them into lower layers of soil, clay and soil particles shift into deeper layers and iron oxidizes, giving many soils a typical brownish red colour.

The long lasting life of soil

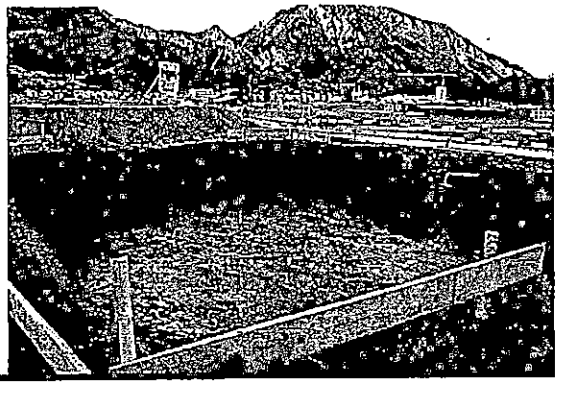


Physical and chemical weathering — Soil organisms

Rock — Time progress the development — Soil

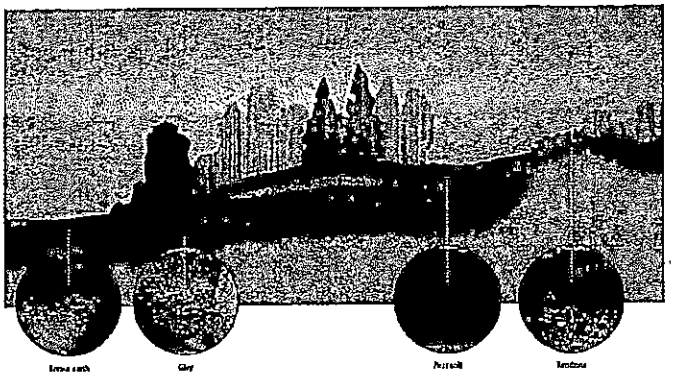
The habitat "soil" has been formed over thousands of years from harder rock. Sun radiation, rain, frost and soil organisms wreak on the rock or moraine material of the glaciers. As a rule of thumb, it takes 100 years for one centimetre of soil to form.

On the surfaces that result from the rapid retreat of the glaciers in the Alps, the various stages of soil formation can still be seen today.



Land pits offer a great insight into the coloured segmental layering of the soil.

Versatile ground



Regardless of the location of a hole in the ground, we will always come across different soils. Depending on the type of rock, the slope, the local climate and water availability, a specific combination of processes of soil formation and so on a particular location and leaves behind soil profiles with different characteristics.

Woodgrouse like the same inhabitants between the layers of leaves, soil and moss beds.

There is special trade relationship between the roots fruiting and mycorrhizal fungi. The roots supply the fungus with sugar and the fungus supplies nutrients, protects the roots from pathogens and pollutants, improves water absorption and helps with drought resistance.

Annelids are conscious protozoa. Characterized as predators, they use their pseudopodia to claim their prey and help develop the microfauna to contribute to the ecological balance.

The world beneath our feet

When we hike through the woods, we enjoy the calm serenity. What we fail to notice is that beneath our feet the ground is teeming with diverse life forms – the engine behind our own existence. It is accredited to these most tiny organisms in the soil that life on Earth's surface exists at all.

Soil as a habitat

Without seeming so, soil is a lively habitat filled with many living organisms. Even though the ground appears to be simply a compact layer, between its components are countless minute margins where an army of organisms are maintaining the underground "factory of life". In fact, approximately half of the space that soil consumes consists of microscopically small hollow spaces. The solid part of the soil forms a filigree structure composed primarily of clay particles, humus particles and sand. The spaces in between – known as soil pores – are filled with water or air and house countless animals, plants and fungi. This is a habitat of gigantic dimensions: the entire habitable area of a handful of clay soil is greater than a square kilometre. It is home to billions of microorganisms and to these organisms, every clump of soil is practically an infinite landscape.

Overwhelming diversity

Only a small fraction of the organisms living within the soil are known to science. "We know more about the movement of celestial bodies than about the soil underfoot", lamented Leonardo Da Vinci more than 500 years ago. Unfortunately, little has changed since. We do, however, know that one handful of soil contains more organisms than there are humans on the planet. In only one gram of soil, close to 50,000 types of bacteria and up to 100 metres of fungus threads can be found. The weight of all living organisms in the soil layers of one hectare of land can be as much as 25 tons, equivalent to the weight of 10 cows. In comparison, the grass on one hectare of land in the lowlands feeds only about two cows.

For researchers, with all of its organisms, soil can be viewed as a gigantic yet minimally studied "pharmacy". In 1928, Alexander Fleming discovered the first antibiotic, penicillin, and its antibacterial characteristics. Penicillin is a natural substance released by Penicillium soil fungi. In light of this knowledge, researchers worldwide have continued to collect a myriad of soil organisms and tested whether the unicellular organisms, bacteria, fungi, algae, lichens and plants can also produce antibiotics. In doing so, the researchers have discovered numerous new substances which have almost all since become important medications. The potential for furthering medication knowledge and production is vast but has not yet even begun to be utilised.

Teeming with life

Pictures of soil organisms, once zoomed in, show an impressive diversity of how fascinating and beautiful they can be. The soil thrives with life and not in a motley jumble similar to the many species living above ground, but in a complex network of relationships; including carnivores, herbivores, scavengers and omnivores.

In soil, teamwork is essential and omnipresent. One particular plant group, the leguminous plants, which clover and beans belong to, has a symbiotic relationship with the bacteria that live in the soil. These minute little industrious workers are able to take the nitrogen from the air and convert it so that the plants in turn can use it to thrive, and as a response the plants provide the bacteria with sugars.

Much more widespread is the close interrelationship between plant roots and soil fungi. Over 80 per cent of plant species form a mutually beneficial symbiotic relationship with a particular fungi called "mycorrhiza" (fungus roots). The fungi colonize amongst the fine roots of host plants and increase the root growth system and enhance the plants' contact with the soil. The fungi provide the plants with the water and soil nutrients they need to survive and the plants provide the fungi with sugars. Porcino and amanitas are prominent examples of root fungi, as they are recognized as assisting in the growth of important tree species such as spruce. The dense fungal structures on or within roots also work to protect the plants against pollutants and pathogens.

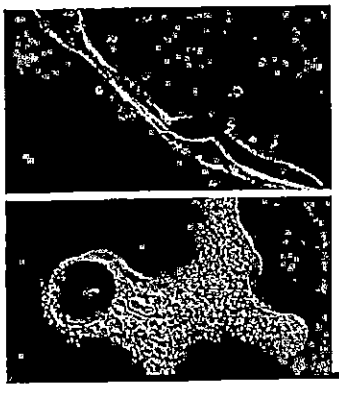
The fuel for the underground ecosystem is provided by above-ground plants via their root excretions and the dead leaves, stems and branches. This material is utilized especially by earthworms, insect larvae, snails, springtails, mites, woodlice, nematodes, pro-wormants, bacteria and fungi, which themselves are the primary food source for many other organisms. The "shark" amongst the underground creatures is the mole. Moles predominately hunt and feed on earthworms as they move and eat through layers of the soil, filling their intestines with decomposing organic material and earth. Their channels and burrows loosen and aerate the soil, which improves drainage, especially after a heavy rainfall.

Plants on the surface of the earth are largely dependent on soil organisms and vice versa. In an area the size of a standard football field, soil organisms can break down up to 25 tons of dead plant materials and animal remains every year. Without them, gigantic compost heaps would tower skywards within our forests and woods.

Valuable humus

Soil organisms endure hard labour around the clock. They decompose dead organic material and turn it into a stable substance called humus. Without enriching humus, the ground would be no more than a giant sandbox. The organic matter within soil is a edible source of nutrients for plants and also a storage medium for water, pollutants and carbon; therefore humus plays a central role in the maintenance of the nutrient, water and carbon cycles.

Soil organisms continuously mix humus into the lower soil layers. Within a single cubic metre, earthworms alone assist by moving up to 25 kilograms of earth per year. This loosens the soil and forms stable soil crumbs that are less susceptible to erosion and are considered the most important structural elements of the soil. Earthworms' tunnelling activity also improves soil aeration and its ability to retain water.



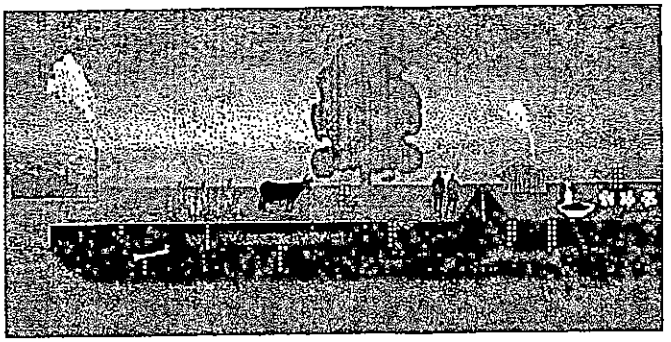
Pseudomonas bacteria protects wheat roots from harmful organisms. They produce a cocktail of toxic substances which act against harmful fungi and insects. The way helpers are rewarded with approximately 10 per cent of energy obtained through photosynthesis.

The functions of soil

Healthy soil performs numerous functions and ensures that planet Earth remains habitable for humans. Soil is first and foremost the ground on which we walk. It gives the landscape its sound and soft forms as well as a stable foundation for buildings, streets and tracks.

The most evident link between the soil and us is the production of food, animal feed and wood. Less apparent are other functions, which will be discussed in the sections below. These functions are the result of the soil's ability to control and maintain the materials and energy cycles between the atmosphere, groundwater and plant cover. Soil is known for storing nutrients and providing them to plants, regulating climate, filtering water, assisting in the control of floods and conserving the natural and cultural history. The living organisms throughout the soil are the engines that render the soils diverse, keep irreplaceable functions running and are beneficial for the ecosystem.

Soil – a multitalented matter



Soil ...

- ... contains raw materials (such as drinking water, p. 18)
- ... stores carbon (p. 15)
- ... archives natural and cultural history (p. 26)
- ... supplies food (p. 12)
- ... stores nutrients (p. 14)
- ... filters water (p. 18)
- ... makes plant growth possible (p. 10)
- ... is a habitat for soil organisms (p. 7)
- ... is the foundation for buildings and roads (whether functional, ... offers ingredients for medicines (p. 17)
- ... about water (flood protection, water reservoir) for plants, (p. 20)

When winter takes its leave, soil starts showing what it is capable of. For example, each year farmers within Switzerland harvest 500,000 tons of potatoes from the earth, deliver approximately 50,000 tons of rapeseed to oil factories, grow more than 16,000 hectares of bread and feed grain and harvest several hundred thousand tons of fresh vegetables. In this case, fertile and intact soil is the central resource for sustainable agricultural production.

The functions of soil

No harvest without fertile soil

The Central Plateau of Switzerland is home to some of the most fertile and productive soil worldwide. This is courtesy of the balanced climate, sufficient rainfall and advantageous underlying economic conditions for production and sales. Therefore, Switzerland has a special responsibility to conserve this important base of life.

Thirty-five per cent of soils within Switzerland can be utilized in cultivated fields, meadows and pastures. Another ten per cent are alpine farmland, hence also serve the production of food. The remainder is too steep, wet, dry, shallow or nutrient lacking for agricultural use.

Limited resource

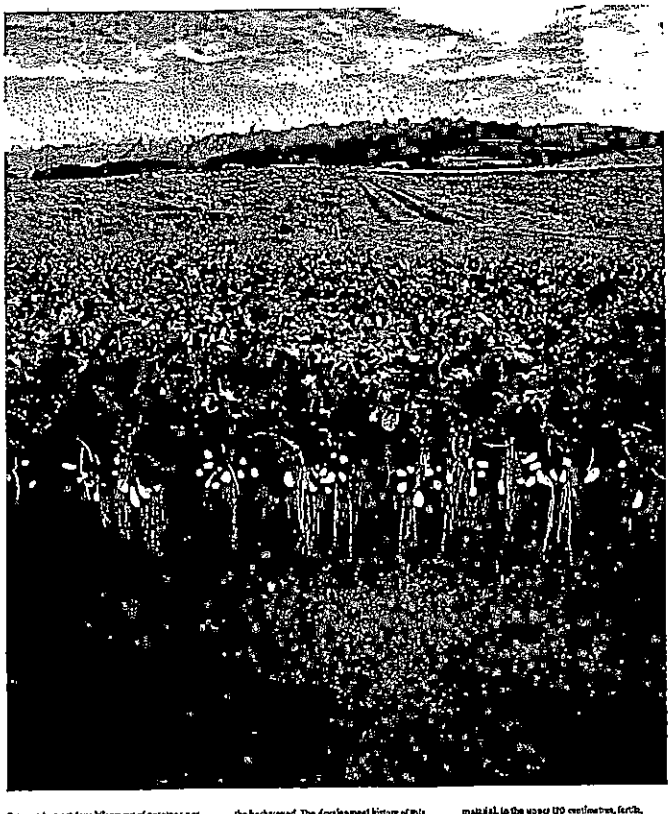
It takes 1,400 square metres of farmland to feed one person. Therefore, one hectare of land could essentially feed up to seven people. At this point in time, on an average day worldwide, one hectare feeds about 4 to 5 persons. The limit value of seven people will most likely be reached by the year 2050. This projection shows how important it is to maintain and protect the soil. Not one square metre should be wasted!

When land is used for construction it is then forever unfit for agricultural use. As a result of the rapidly increasing yields of industrialized and highly intensive agricultural production, certain types of soil have forever disappeared in the highly developed countries. This in turn makes utilisation of site-adapted sustainability difficult. With this we have lost our awareness and appreciation of soil as a functioning habitat. For instance, when we eat ice cream we tend to disregard the "soil–grass–cow–milk–ice cream" chain or the "soil–grass–cow–cow manure–soil" cycle.

Sustainable use

To preserve soil's natural fertility in the long term, agricultural use that suits the location and fosters the rich soil life is needed. Heavy machinery and overuse of mineral fertilisers, liquid manure and plant protection products damage the soil organisms and the loose structure of the soil habitat. Put simply, habitat. This means that the soil must be used with consideration and sustainably.

In the forest, too, healthy soil is the basic requirement for a sustainable timber harvest. Furthermore, healthy soil ensures that it will perform all of its essential functions, such as flood protection and carbon storage. Grave problems can result from the use of heavy forestry machinery on naturally bedded forest soils as well as the planting of non-native tree species. For the formation of the indispensable humus layer it is essential that branches and wood waste remain in the forest and not succumb to gentrification.



Farmers harvest four kilograms of potatoes per square metre and year from this fertile farmland in Switzerland's Central Plateau. The Bernese mountain and the Stockhorn mountain chain can be seen in the background. The development history of this soil near Zimmerwald in the Canton of Bern began about 10,000 years ago. The Aare glacier left behind a hefty deposit of calcium-rich moraine material, in the upper 120 centimetres, fertile, sandy-loam soil developed. Particularly aiding is the thick and humus-rich topsoil in which the potatoes grow.

Plants require a large number of nutrients for survival, including nitrogen, phosphorus, potassium, magnesium and calcium as well as trace elements such as molybdenum and boron. These are found as in dissolved form in the water within soil pores, where plants ultimately can absorb them. Thankfully an on-going supply is available. The most significant source of the nutrients is from the decomposition and transformation of dead plant material such as leaves and stems that fall to the ground and are decomposed by soil organisms. Soil organisms therefore provide plants with a continuous supply of nutrients, free of charge.

The fungus Dreclaster Ella Annonia (white thin thread) engages a worm with the help of the fungal trap. The drama was captured with an electronic microscope.

The functions of soil

Efficient recycling in the soil

Without soil organisms soil would not be able to make the nutrients made from decomposed plant material available to living plants as food. These industrious workers in the bioreactor that is the soil provide a continuous nutrient supply to plants, leading to our ancestors speaking of "the old soil strength".

The weathering of minerals in the soil also ensures an ongoing provision of nutrients. The natural content of supplement nutrients is especially high in the deep and bountiful soils of the Central Plateau of Switzerland, which has some of the best farmland in the world.

Soil stores nutrients

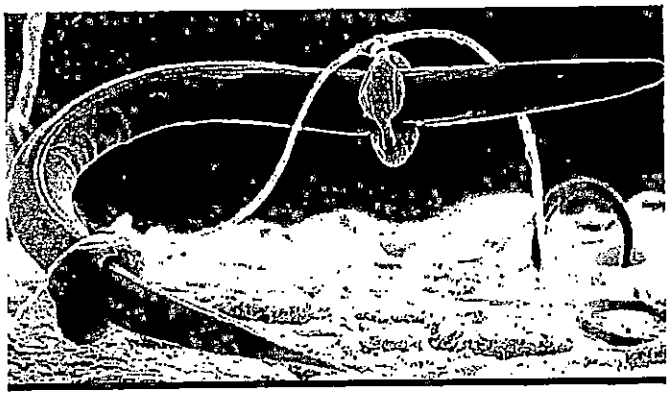
Primarily in springtime, as soil organisms awake from their hibernation, many nutrients become mobile. This poses the risk that through leaching, water seepage will carry the nutrients already released down through the soil and therefore out of the reach of plant roots.

Fortunately in this case, soil also holds nutrients in interim storage as they are bound in and around humus and released when needed. The microorganisms also consume a large amount of nutrients; however, they are released when the organisms die. All in all, there is a continual binding and dissolving of substances in the soil through biological and chemical processes.

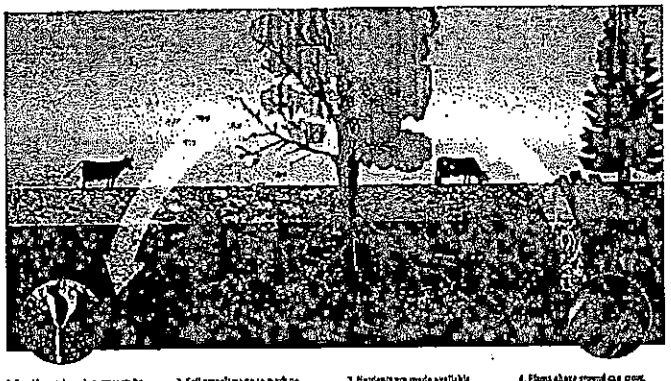
Leaks in the system

However, the soil loses many important nutrients with every potato that a farmer harvests. The cycle of nutrients between plants and the soil should remain closed so that soil fertility can be maintained. In earlier times, the threat of nutrient loss and cycle leakage was managed by temporarily ceasing to use the soil (leaving fields to fallow) by alternating between growing crops and applying nitrogen-rich cow manure. Today, large amounts of artificial fertilizers and liquid manure are used which can have a taxing effect on the soil. If a redundant amount of fertilizer is applied, the cycle inflates like a bubble and then begins to leak. Artificial fertilizers and liquid manure is a form of nitrogen and when applied too liberally can result in nitrate, which when leached into the groundwater with rain, impairs the quality of our drinking water. Over 30,000 tons of nitrogen are leached from agricultural land in Switzerland every year. The consequences are significant in many places as the nitrate content of underground water reservoirs considerably exceeds the limit. There is an excessive amount of nitrate in the groundwater at every sixth measuring site, and in crop farming areas it is too high at every second measuring site.

Another problem with the overburdened nitrogen cycle is nitrous oxide (laughing gas), as it is produced in the soil when nitrogen fertilizers are processed and leak to the atmosphere. This nitrogen compound damages the ozone layer and is a highly potent greenhouse gas as nitrous oxide has 298 times more of a negative impact than carbon dioxide. This shows that a balance within soil nutrients is imperative. Excessive nutrients that are not taken up by crops should simply not be applied to the soil.



Nutrients are in continuous circulation from plants to the soil and back



1. Dead leaves, branches, grass cuttings, herbs and animals end up on the ground. In agriculture, the manure and litter of farm animals are spread on the soil.

2. Soil organisms go to work on this food and decompose the organic material.

3. Nutrients are made available to plants or stored in humus and in (or attached to) soil particles.

4. Plants above ground can grow. Livestock and wild animals eat the plants.

Soil and climate are closely related. However, soil rarely plays a role in public awareness and in the discussion of climate change. Nevertheless there are enormous quantities of carbon stored within soil, which when in the form of carbon dioxide (CO_2) is one of the main causes of climate change. Soil is the third-largest repository for carbon, after the ocean and fossil fuels like coal, oil and natural gas. All types of soil together contain about twice as much of this element as the atmosphere and three times as much as land plants.

The functions of soil

Soil protection is climate protection

Carbon continuously moves between plants, soils and the atmosphere. Plants absorb atmospheric CO_2 and, using energy from sunlight, create leaves, stems and roots. Carbon from dead plant materials is transferred to the soil. A part of this is released back into the atmosphere after being broken down by soil organisms and the rest is transferred into a more stable form – humus.

Soil carbon storage

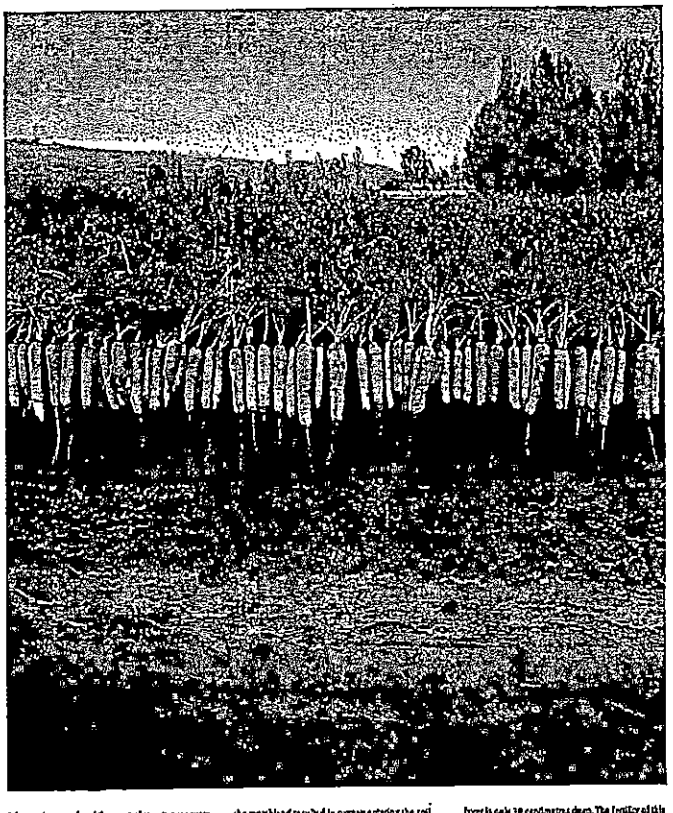
The amount of carbon stored in the soil depends on temperature, soil moisture and the amount and type of dead plant material. Changes in climate or utilization of the land obviously also have an impact on the exchange of carbon between plants, soils and the atmosphere.

If marshland is drained and used for agriculture, if meadows are changed to cropland or if fields are utilized too intensively, the humus content of the soil decreases. When the humus content is reduced, large amounts of CO_2 are released into the atmosphere. The conversion of natural ecosystems into cropland and grazing pastures as well as overutilization of the soil – sometimes this even leads to deserts – are the main causes of the release of CO_2 from the soil. Over long periods of time, more carbon is released into the atmosphere via this method than through the burning of fossil fuels.

Efficient and inexpensive

There is no simple or quick repair solution to the damage to the soil caused by non-sustainable use. This is particularly true regarding humus loss.

Amongst other options, organic farming and forms of land management with reduced soil tillage have a positive effect on the humus content of the soil. Rewetting and restoring former marshland is also an efficient and chiefly inexpensive form of climate protection. As soon as a regenerated marsh returns to a natural state after several years, carbon will once again be stored in the soil.



A farmer harvests four kilograms of carrots per square meter from this field in the Grosses Moos area near Worwil, Bern, but for how much longer? The farmer's layer was originally one metre deep, but drainage of the marshland resulted in oxygen entering the soil pores and subsequently, decomposition of the peat body took place and then a vast amount of CO_2 was released into the atmosphere. Today, the humus-rich layer is only 30 centimetres deep. The fertility of this soil is highly endangered. When the harvest is taken up and the old bits and roots (crop trash) is reached, it will no longer be possible to use this land for agriculture.

When you turn on the tap and get fresh, clean water, you have soil to thank. Over 80 per cent of Switzerland's drinking water is sourced from groundwater. It is the soil that makes it the pure elixir of life. During seepage flow, soil filters suspended solids, pollutants and pathogens out of the water. It essentially is the filter between surface water and groundwater.

For production of the drinking water supply, Basel has actively utilized the cleaning effect of the soil and the forest for a long time. To artificially recharge the groundwater, mechanically filtered Rhine river water is pumped to forested flooding sites, where it seeps through the wooded soil.

The functions of soil

The soil provides clean drinking water

The filtering efficiency of soil is nowhere better visible within Switzerland than in Basel. Half of the water that the city pumps up from the depths has been added to the groundwater artificially and the forest soil is the central component of the drinking water production system.

Efficient water filter

Each day, 60,000 cubic metres of pre-treated water drawn from the Rhine river is pumped into wooded flooding areas at the Lange Erlen waterworks for drainage. The 24 flooding sites are subdivided by small embankments and cover a total area of approximately 20 hectares. Each flooding site is taken out of use after 10 days of operation and the forest soil is allowed to regenerate for 20 days. During the 20-day drying period, soil organisms again produce new pores that stretch from the surface to the gravel, which is what is responsible for the productive seepage.

As water flows through the soil, almost all organic substances are retained, detoxified or built into the soil structure. Pesticides, viruses and bacteria that can be harmful to human health are eliminated.

The drainage water that is cleaned by the soil in the Lange Erlen waterworks area augments the amount of existing groundwater. The groundwater is then pumped from several wells and treated chemically and physically at a pumping station and fed into the Basel drinking water supply network.

Irreplaceable

All over Switzerland the soil system is a low-maintenance filter. However, only with intact soils can groundwater be used as drinking water without expensive water treatment. The soil guarantees excellent cleaning of water over the long term. In Basel it even ensures that non-consumable Rhine river water becomes safe drinking water, and all that is required is an absolute uncomplicated control of the system as a whole.

Soils that are disturbed, sealed over or contain high levels of heavy metals and other pollutants cannot perform their cleaning function well or even not at all. The natural soil filter that developed over thousands of years cannot be simply replaced (like buying a new vacuum cleaner), its functional capability depends on regeneration through natural processes

The forest floor as waterfilter

Thanks to the cleaning power of the soil and the ecosystem, collected drinking water of good quality is available in Switzerland. Thirty-eight per cent of the drinking water requires no treatment and another 33 per cent requires only one-stage treatment.

The summer of 2014 "fell into the water": It was too cold and exceptionally wet. Besides the heavy storms, there were also long periods of rain that made conditions ideal for flooding. The fact damage was limited is all thanks to the soil, which is by far the most important catchment area for rainwater. Like a large sponge, soil absorbs water, and after a certain amount of time, delivers it to the groundwater or streams and rivers. Forest soils are particularly capable in absorbing water: In a deciduous forest the soil can absorb some two million litres of water per hectare.

The burrow networks created by earthworms significantly increase the water-holding capacity of soils and are therefore very important for flood protection. Just 50 cm³ block of soil under a square metre of fertile meadow soil contain from 300 to 500 earthworms, with a total weight of 200 to 300 grams, living up to a depth of 1.5 metres. They train up to 300 metres of burrows in this area.

Sod rolling leads to flooding.

The functions of soil

The soil protects against flooding

Water storage in the soil should not be pictured as an underground cavernous lake. Water on the surface of the ground is stored in a network of hollow spaces known as pores. It does not simply seep down towards the groundwater, instead, thanks to the surface tension of the water, it is held in the soil pores until needed.

The capacity of soil to store water depends on the proportion of the pores. Usually 30 to 60 per cent of the soil is made up of pores of differing sizes. In organic soils formed in raised bogs, this amount can be as high as 90 per cent. If the pores are too large, as in sandy soils, water travels rapidly deep into the soil, whereas soils with a high clay content store more water. The depth of the soil also determines its capacity to retain rainwater.

Soil = a sponge

The amount of soil pores also depends on the surrounding plant roots and the soil organisms. With their extensive networks of burrows, earthworms enhance porosity and are especially important helpers in protection against floods.

When it rains, the small pores fill with water first. Pores with a diameter greater than one-tenth of a millimetre are particularly important for the flow of rainwater. If it continues to rain, earthworm burrows then begin to fill with water. When the water stores are full, surface run-off will occur and then the rain ends up in the nearest bodies of water such as swelling streams and rivers.

The water masses can be known to flood towns, fill cellars with water and mud, wash away cars and flood streets. This occurred during the summer of 2014 in the sloping region between Bern and Lucerne and in the Canton of St. Gallen, where the flooding caused damage running into the millions.

Intact soil is indispensable not only for flood protection. A part of the water in the soil is also available to plants, which would otherwise dry up. For example, wheat crops require a hundred litres of soil water to produce one kilogram of grain. Without the water storage in the soil there would be no green and flourishing landscapes and of course, no production of food.

Soil compaction

If the soil's water infiltration capacity is disturbed or even destroyed, heavy rainfall runs off to the nearest bodies of water much more rapidly, which happens when driving heavy machinery on soil or improperly handling excavated soil as this eliminates the pores and compacts the soil.

Water filtration ceases completely when the soil disappears under roads or buildings. This is increasingly the case as the surface area of housing and infrastructure has grown in Switzerland by 584 square kilometres from 1985 to 2009 – which is equivalent to the size of Lake Geneva. In sixty per cent of this newly developed area the soil is sealed, meaning that water storage in the soils in Switzerland is continuously shrinking. Intact soil in development can greatly reduce the burden on sewer networks and also retain pollutants. Consequently, for good flood protection, more sustainable treatment of the soil is needed not only in cultivated land and forests but also in developed areas.

Soil takes form over an extremely long time period; therefore it can be considered to have a "good memory". Soil scientists have the ability and knowledge to read the different soil layers like a book gaining boundless information reflecting the environmental conditions that prevailed when the soil was first formed.

In 2012, the Celtic treasure of Fällanden in the canton of Basel was discovered in the soil – 293 silver coins – the largest Celtic precious metal coins in Switzerland.

Also discovered in the Basel underground was a floor with a high-quality part of the paving of a courtyard.

The functions of soil

The archival record in the soil

Old soil preserves information regarding climate, vegetation and the impact of natural catastrophes in past epochs. Bog or moor soil, which inhibits the decomposition of organic material, provides an especially important archival record as each individual peat layers contain pollen, leaves or seeds of plant species that were common in their landscape in earlier times. They can be identified even after thousands of years and allow us to trace the exact expansion of certain tree species in different regions of Switzerland since the last ice age.

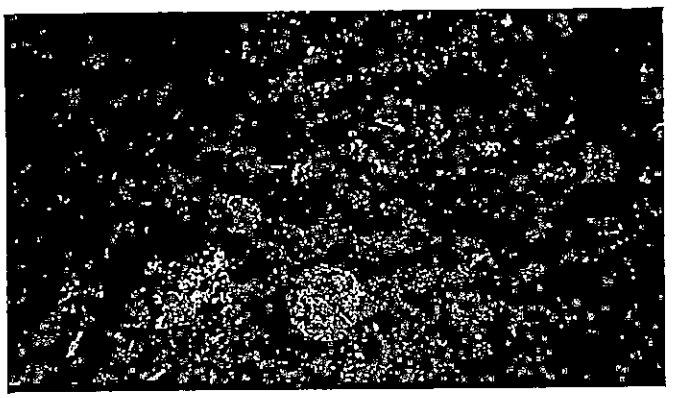
Valuable archives

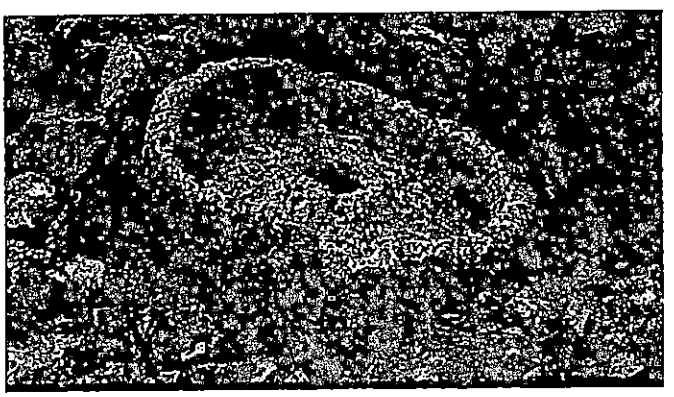
Core samples from raised bogs provide an archival record of atmospheric pollution. In the peat body of the upland moor at Etang de la Gruère in the Canton of Jura, there are two layers with increased levels of lead. Responsibility and blame for contaminating these deeper layers of the soil lies with the Romans. The Romans exploited the soft metal on an industrial scale for making water pipes, containers and other objects. Another example lays two thousand years later when humans in the automobile era used leaded petrol. The lead released into the environment fell to earth, covering it as a veil, and it is still detectable in the soil to this day.

Mirror of human civilization

Since the Stone Age humans have left manifold vestiges of cultural development in the soil. From inconspicuous remnants such as bones, coins and tools, archaeologists can gain critical insight into the everyday life of humans in earlier times.

Soil also reveals how the landscape once appeared, how it developed and what impact humans had on it. It helps to provide information on the history of the landscape, the development of agriculture and settlements and a mirror of human civilization. Providing such valuable information regarding the natural and cultural history further implores the relevance of soil's survival





Conserving the basis of life

The soil beneath our feet is the perfect mixture of minerals, humus, water, air, animals, plants and fungi that interact in a variety of ways. The well-being of our society is closely connected with this underground society as it fulfils numerous economic and ecological functions.

The individual functions of soil are closely interconnected. For example, while healthy soil has a high water-retaining capacity, there are other roles that soil can play more effectively in certain locations than in others. For instance, the expansive fertile soils in the Central Plateau are particularly well suited to supplying food to the population. In contrast, carbon and water storage are the primary focus within marshlands. While the primary function is important, for effective sustainable use of the land it is important to manage the land and not to lose sight of the other functions.

The world is losing soil

In this country only a few of us, mainly farmers, still have direct contact with the soil. As the distance between the soil and ourselves in our daily lives grows, the soil becomes distant in our minds. We have become neglectful in the the way we treat our soil.

Throughout the world, 24 million tons of soil is washed into the sea or blown away by the wind each year. Soil erosion and the formation of deserts are problems in 168 countries. At the same time, developments and roads are claiming ever more valuable land. Altogether, this means that soil loss is a growing threat to global food security.

The fear of increasing soil scarcity worldwide will lead to disputes and conflicts in the coming decades. More and more industrial and emerging countries are acquiring large areas of land in developing countries to ensure their own food security – often at the cost of the local farmers. Today, forty per cent of the foods or raw ingredients consumed in Switzerland have been produced in other countries.

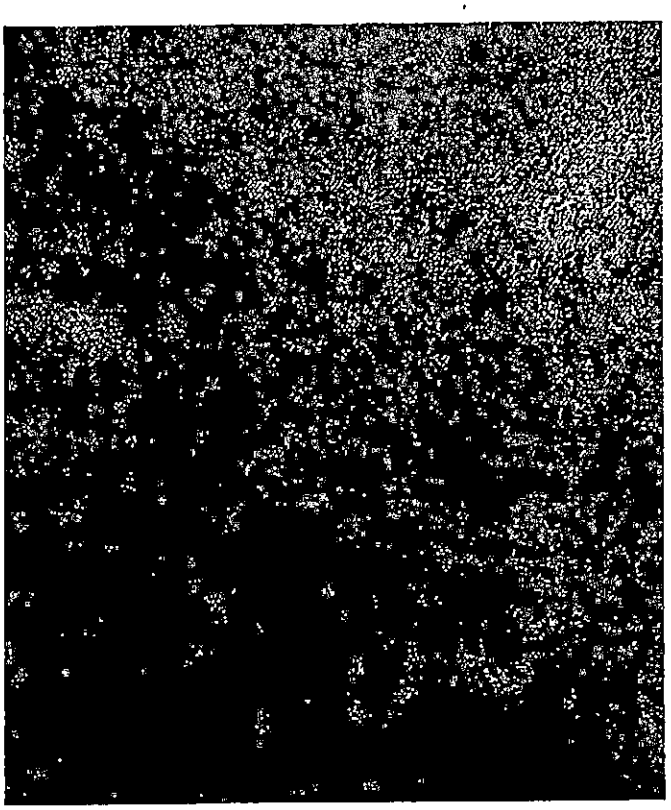
While this is occurring, the soil in Switzerland is degrading and several threats can be identified, as when soil is damaged, it affects all of its functions.

Complete breakdown

Developed areas, with their high proportion of concrete or asphalt surfaces, are claiming more and more land. In the Central Plateau of Switzerland, from 1985 to 2009 nearly one square metre of land was used for construction per second, which is equivalent to:

- Fifteen metres of residential road per minute,
- Six single-family houses per hour,
- An area the size of the Canton of Basel per year.

Sixteen per cent of the Central Plateau already consists of built-up, industrial and commercial areas. With construction, all natural soil functions come to a standstill, primarily food production. If the sealing over of the land in the Central Plateau continues at its current rate, there will be dramatic economic, social and ecological consequences.



In Switzerland more and more soil is disappearing under asphalt and concrete. The photos show the area around the A3 motorway near Effretikon, Canton of Aargau, in 1962 and today (2013).

Falling quality

Many different factors are impacting and degrading the soil permanently, making it increasingly difficult for the soil to properly perform its functions:

- Soil compaction: Driving heavy construction machines, tractors, seed sowers and harvesters on the soil compacts the soil pores. This disrupts soil aeration and drainage and therefore the soil organisms, meaning soil fertility decreases. Compacted soils have limited infiltration capacity and permeability. Water cannot enter the soil, therefore runs off the surface, promoting soil erosion and increasing the risk of flooding.

- Soil erosion: Surface run-off essentially washes away the fine soil, which is rich in nutrients. This erosion impairs many soil functions, among others its water-storing capacity and fertility. Approximately forty per cent of Switzerland's farmland is considered to be endangered by erosion, meaning that more than two tons of soil material per hectare can be lost each year. In all, farmlands in Switzerland lose more than 800,000 tons of soil material each year. That is approximately equivalent to soil 200 metres high covering an area the size of a soccer field. On top of this, the soil washed away causes considerable ecological damage to bodies of water.

- Pollutant inputs: Approximately one-tenth of the soil in Switzerland is heavily polluted which is a part of the past environmental pollution and damage legacy. In addition, soils in intensively occupied meadows are showing a continuing rise in zinc and copper concentrates, which are then fed into agricultural soils through liquid manure or additives in animal feed.

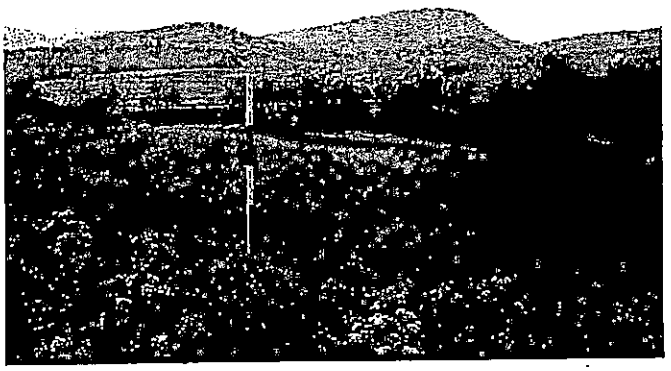
- Soil acidification: Transport, industry, households and agriculture all emit large amounts of nitrogen and sulphur compounds that, when combined with rain, eventually end up in the soil. The ensuing acidification of the soil results in nutrients being washed out and pollutants being released which can then in turn contaminate drinking water.

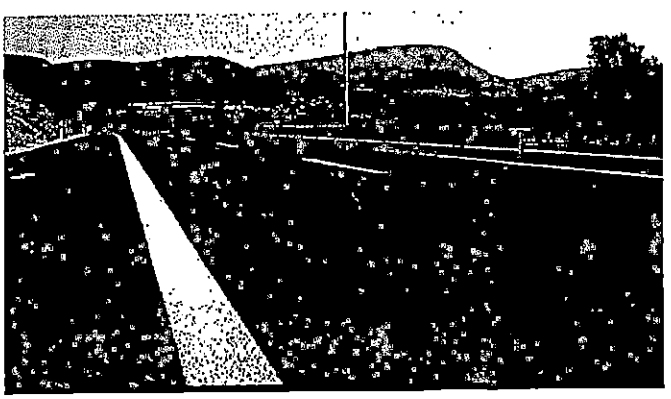
Soil protection is a task for the whole of society

Conclusively, it is abundantly clear that the long-term maintenance of the functional capability of our soil resources is becoming increasingly precarious in Switzerland and also around the world. Once the soil is degraded or damaged, it can only be restored to its original beautiful state with great technical difficulty and expense – if at all. The success achieved with the air and water pollution control laws cannot be easily repeated with soil protection, as we know it has a long memory and cannot be quickly restored.

It is imperative that the protection of soil has a central role in the discussion of the sustainable use of natural resources. As all areas of life essentially utilize and/or damage the soil while at the same time profiting and benefiting from its functions, the topic of soil protection is a task for the whole of society: politicians, government, industry, spatial planners, researchers, everyone of us. We all have to take responsibility.

The goal is to protect and ensure the functions of the soil and thus its ability to perform them. To ensure this, soil use and functions have to be reconciled. It is important to minimize erosion and pollution, prevent unnecessary sealing of soil and correct handling of excavated soil during construction.





Fertile soil does not develop overnight but rather over thousands of years. A single excavator scoop destroys in seconds something that from the human perspective took an eternity to develop. When soil is lost, this impairs not only our own quality of life but also the quality of life of future generations.

Homo and humus

It is not surprising that the Latin words homo, meaning human, and humus, the soil, derive from the same Latin root. Our ancestors correctly assessed the importance of the soil for human beings.

Through our high-tech civilisation we have distanced ourselves from direct experience with soil. However, our well-being today depends on intact soil just as much as it did in the past. We need to appreciate and value soil once again as it is a precious treasure that must be protected.

Links

National Research Programme "Sustainable Use of Soil as a Resource" (NRP 68)

The National Research Programme "Sustainable Use of Soil as a Resource" (NRP 68) establishes a basis for political decision-making which takes into account both the ecological and the economic functions of soil and paves the way for soil resources to be used sustainably in Switzerland.
www.nfp68.ch

Federal Office for the Environment (FOEN)

The FOEN is committed to ensuring that all functions of the soil are conserved so that in the long term sufficient soil is available for all necessary uses in Switzerland.
www.bafu.admin.ch → Themen → Boden

Federal Office for Agriculture (FOAG)

The FOAG is committed to ensuring that farmers produce high-quality foods sustainably and according to market demand. The goal is: multifunctional agriculture.
www.blw.admin.ch → Themen → Nachhaltigkeit → Ökologie → Boden

Federal Office for Spatial Development (ARE)

The ARE is the federal government's centre of excellence for issues concerning sustainable spatial development.
www.are.admin.ch/themen/raumentwicklung

Swiss Soil Science Society (SSSS)

On many different levels, the SSSS is actively engaged on the behalf of quantitative and qualitative soil protection. It disseminates and deepens soil sciences knowledge. It is also an exchange platform for dialogue between specialists in administration, research and the private sector and promotes cooperation between research and practice.
www.soil.ch

EN-NL

People's Counsel Survey of Designated Scenic and Non-Scenic Roads, Sparks Area and Areas to the East and West

ADC Map 30: Butler, Dover, and Black Rock Road

Scenic on MP 2020, Map 26: Black Rock, Butler, Dover, Falls
Not listed on MP 2020, Map 26: Benson Mill, Mantua Mill, Stringtown

ADC Map 31: Belfast Road Area

S: Belfast, Falls, Thornton Mill
NS: Chilcoat, Cuba, Duncan Hill, Gerber Lane, Stringtown, Tanyard, Wheeler, Yeoho

ADC Map 32: Sparks-Glencoe Area

S: Belfast, Phoenix, Quaker Bottom, Thornton Mill, York
NS: Ensor Mill, Glencoe, Home, Lower Glencoe, Philpot, Sparks, Upper Glencoe

ADC Map 33: Caroll and Old York Road Area

S: Carroll, Cooper, Corbett, Old York, Paper Mill, Phoenix, Stockton
NS: Carroll Manor, Glencoe, Irish, Philpot

Quantitative Summary

Designated Scenic Roads: ADC Maps 30-33

Belfast (31, 32), Black Rock (30), Butler (30), Carroll (33), Cooper (33), Corbett (33), Dover (30), Falls (30, 31), Old York (33), Paper Mill (33), Phoenix (32, 33), Quaker Bottom (32), Stockton (33), Thornton Mill (31, 32), York (32)

Summary: 15 Designated Scenic Roads

Not Designated Scenic Roads

Benson Mill (30), Carroll Manor (33), Chilcoat (31), Cuba (31), Duncan Hill (31), Ensor Mill (32), Gerber Lane (31), Glencoe (32, 33), Home (32), Irish (33), Lower Glencoe (32), Mantua Mill (30), Philpot (32, 33), Sparks (32), Stringtown (30, 31), Tanyard (31), Upper Glencoe (32), Wheeler (31), Yeoho (31)

Summary: 19 Not Designated Scenic Roads

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

December 13, 2018

NOTICE OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

AGENDA: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter having been heard on August 21, 22, October 24 and concluded on November 28, 2018, a public deliberation has been scheduled for the following:

DATE AND TIME: **FEBRUARY 19, 2019 at 9:00 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on **January 4, 2019 no later than 3:00 p.m.**
(One [1] Original and three [3] copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER THE CONCLUSION OF THE DELIBERATION. A COPY OF THAT OPINION AND ORDER WILL BE SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council
	People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 19, 2018 10:19 AM
To: Peter Max Zimmerman; Timothy M. Kotroco; barney Mowell
Cc: Wheatley, Rebecca
Subject: RE: Robert Gerner - 15637 York Road - Case No.: 2018-047-X

Good morning Counsel,

Please be advised the request to extend the Memo due date has been granted. The Memos are now due before 3:00 p.m. on Wednesday, January 9, 2019.

The deliberation date has not changed.

I hope you have a wonderful holiday season.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

-----Original Message-----
From: Peoples Counsel
Sent: Tuesday, December 18, 2018 9:02 AM
To: Timothy M. Kotroco <tkotroco@gmail.com>; barney Mowell <barneymowell@hotmail.com>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Robert Gerner - 15637 York Road - Case No.: 2018-047-X

Good Morning Gentlemen,

Attached you will find a copy of the letter our office filed today with the Board of Appeals requesting to change the memo due date to January 9, 2019. A hardcopy of the letter will follow by U.S. mail.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

Krysundra Cannington

From: Peoples Counsel
Sent: Tuesday, December 18, 2018 9:02 AM
To: Timothy M. Kotroco; barney Mowell
Cc: Krysundra Cannington
Subject: Robert Gerner - 15637 York Road - Case No.: 2018-047-X
Attachments: 20181218090131544.pdf

Good Morning Gentlemen,

Attached you will find a copy of the letter our office filed today with the Board of Appeals requesting to change the memo due date to January 9, 2019. A hardcopy of the letter will follow by U.S. mail.

Thank you for your consideration.

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Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 18, 2018

HAND DELIVERED
Jason S. Garber, Chairman
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Robert K. Gerner
15637 York Road
Case No.: 2018-047-X

Dear Chairman Garber:

This letter is to request an extension of the due date for the filing of memoranda in this case from Friday, January 4, 2019 until Wednesday, January 9, 2019. We have spoken with counsel for all parties and they have agreed to this extension. The deliberation is scheduled for February 19, 2019. We trust that this slight extension should not interfere with the deliberation schedule. If you have questions, please contact my office.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Timothy Kotroco, Attorney for Petitioners
H. Barnes Mowell, Attorney for Protestants

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 31, 2018

NOTICE OF ASSIGNMENT
Days 3 and 4

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter was heard on August 21 and August 22, 2018 but did not reach a conclusion. Therefore this matter has been

ASSIGNED FOR: **OCTOBER 24, 2018 AT 10:00 A.M. – Day 3 AND NOVEMBER 28, 2018 AT 10:00 A.M. – Day 4**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
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Board of Appeals of Baltimore County

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August 31, 2018

NOTICE OF ASSIGNMENT
Days 3 and 4

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

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12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

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LOCATION: Hearing Room #2, Second Floor, Suite 206
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Krysundra "Sunny" Cannington
Administrator

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Petitioner/Legal Owner : Robert Gerner
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Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, August 28, 2018 12:11 PM
To: Timothy M. Kotroco; Krysundra Cannington; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

Ms. Cannington: I am not available on the following dates, due to trials and settlement conferences on those dates: Sept. 25, October 17,18, 30, December 13, 19. The consensus from our remaining witnesses is that they would prefer the next two days to be scheduled in November or December. thanks, Barney Mowell

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Thursday, August 23, 2018 11:12 AM
To: Krysundra Cannington; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

Dear Ms. Cannington,

I am available on all of the days that you offered with the exception of three dates. Crossed out and highlighted in red are the dates that I am not available. I am available all of the rest. Thank you.

Tim K.

.....we have the following dates available on our calendar: September ~~26~~, October 3, 10, 17, 18, 24, 30, November ~~7~~, ~~13~~, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

10/10 OK For PC

From: Krysundra "Sunny" Cannington <kcannington@baltimoreco
Date: Thursday, August 23, 2018 at 8:58 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman <pzimmerman@baltimorecountymd.gov>

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Thursday, August 23, 2018 11:12 AM
To: Krysundra Cannington; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

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Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Krysundra "Sunny" Cannington <kcannington@baltimorecountymd.gov>
Date: Thursday, August 23, 2018 at 8:58 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Peter Zimmerman <peoplescounsel@baltimorecountymd.gov>
Subject: Robert Gerner Days 3 and 4

Good morning Counsel,

Without checking with the Board members, we have the following dates available on our calendar: September 26, October 3, 10, 17, 18, 24, 30, November 7, 13, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Please be advised I cannot hold these dates as we have other cases also asking for additional dates.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, August 23, 2018 10:25 AM
To: Krysundra Cannington; tkotroco@gmail.com; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: RE: Robert Gerner Days 3 and 4

Good Morning Ms. Cannington,

Mr. Zimmerman is currently available the following dates:

September 26, October 17, 18, 24, 30, November 7, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

From: Krysundra Cannington
Sent: Thursday, August 23, 2018 8:58 AM
To: tkotroco@gmail.com; barney Mowell <barneymowell@hotmail.com>; Peter Max Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert Gerner Days 3 and 4

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Please be advised I cannot hold these dates as we have other cases also asking for additional dates.

Please let me know which dates work best for you.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Krysundra Cannington
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Please let me know which dates work best for you.

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June 14, 2018

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter had been postponed from May 1 and May 2, 2018 and has been

REASSIGNED FOR: AUGUST 21, 2018 AT 10:00 A.M. AND AUGUST 22, 2018 AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

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Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
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Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, April 27, 2018 2:15 PM
To: 'Tim Kotroco'; barney Mowell; Peoples Counsel
Subject: Gerner 18-047-X

Good afternoon Counsel,

I have discussed this matter with the Board and the hearing in this matter has been postponed. I will not have time to get a notice of postponement in the mail today and I will be out of the office next week. Upon my return, this matter will be rescheduled in a timely manner.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Tim Kotroco [mailto:tkotroco@gmail.com]
Sent: Friday, April 27, 2018 1:54 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Solar case next week?

Sunny,

Mr. Mowell called me to check if the postponement has been issued. He wants to let his witnesses know as do I. Thank you much.

Tim

Timothy M. Kotroco, Esq.
305 Washington Ave. Suite 502
Towson, MD 21204
Cell: 410-299-2943

TIMOTHY M. KOTROCO

Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

April 27, 2018

Board of Appeals for Baltimore County
Jefferson Building, Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
Attention: Krysundra "Sunny" Cannington, Administrator

Re: In the Matter of: Robert K. Gerner –Legal Owner
ESA Sparks Glenco
Case No. 18-047-X
Request for Postponement

Ladies and Gentlemen,

I represent Robert K. Gerner and ESA Sparks Glenco, the owner and petitioner in the above referenced case. This matter was previously set in for a hearing on two days, May 1st and 2nd, 2018. The hearing will take two days to complete as was the original purpose for setting it in on two consecutive days. I was notified yesterday afternoon that as a result of a Board conflict, the second scheduled day of this hearing was postponed. This is certainly understandable due to the busy schedule of the Board.

However, it makes little sense to start this case on May 1st only to have to continue the matter and schedule additional days at a later time, given that two days are needed. Because of this, I respectfully request that the hearing date set for May 1st also be postponed and the case be reset to a later date when two days are available on the Board's schedule.

I spoke briefly yesterday afternoon with H. Barnes Mowell, counsel for the Appellants. He stated that he would email his client, William Mayo and discuss this request with him. I have not yet heard back from Mr. Barnes, but wanted to get this request to the Board immediately for the Board's consideration as the case is set to be heard early next week. I should mention that Mr. Mayo had requested a previous postponement which we did not object to and which was granted by this Board.

It is respectfully requested that the matter be postponed and reset before the Board of Appeals on two days at the next available dates. Thank you for your consideration of this request.

Very truly yours,

Timothy M. Kotroco

Timothy M. Kotroco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of April, 2018, a copy of the foregoing Request for Postponement was mailed to H. Barnes Mowell, Esq. 16925 York Road, Monkton, Maryland 21111 and People's Counsel for Baltimore County, 105 W. Chesapeake Ave., Suite 204, Towson, Maryland 21204.

Timothy M. Kotroco, Esquire

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Friday, April 27, 2018 10:37 AM
To: Krysundra Cannington
Subject: FW: Gerner

Sunny,

I received the below email from Barney Mowell, the attorney on the other side of that solar case. He has consented to the postponement request. Please let me know the Board's decision so that I may advise my witnesses. Thanks.

Have a great weekend.

Tm K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: barney Mowell <barneymowell@hotmail.com>
Date: Friday, April 27, 2018 at 10:25 AM
To: Timothy Kotroco <tkotroco@gmail.com>
Subject: Gerner

Tim: I just left you a phone message that we consent to postponing the hearing set for next week. Barney

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Friday, April 27, 2018 9:23 AM
To: Krysundra Cannington
Subject: Re: Gerner 18-047-X
Attachments: ESA Solar-Postponement Request.pdf

Sunny,

Thank you for your email about next week's hearing. I know the Board is busy and I understand their need to postpone the second day. You may recall that we had specifically decided to set aside two days for this hearing in order to get it done at one time and not have to come back a month or two down the road. It makes little sense to begin this case on Tuesday and not finish it, only to have to come back a month or two later.

Therefore, I will be hand delivering this morning a letter requesting that the case be postponed and reset when both days can be accommodated by the Board. I called Barney Mowell yesterday afternoon after I received your email and he said he would check with his client about my request. He has not yet gotten back to me but I wanted to get my letter in ASAP for the Board's consideration.

Thank you and I will be stopping by in a few minutes.

Kind Regards,

Tim K.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Krysundra "Sunny" Cannington <kcannington@baltimorecountymd.gov>
Date: Thursday, April 26, 2018 at 11:22 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman

<peoplescounsel@baltimorecount[redacted].gov>
Subject: Gerner 18-047-X

Good morning Counsel,

As you know, we set this matter for hearing on Tuesday and Wednesday of next week, May 1 and 2. Unfortunately, one of our Board members has a conflict with the hearing on Wednesday. Therefore, we will be cancelling the Wednesday, May 2nd hearing. We will begin as scheduled on Tuesday, May 1, at 10:00 a.m.

Should this matter not conclude on Tuesday, additional hearing dates will be scheduled as necessary.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Krysundra Cannington
Sent: Thursday, April 26, 2018 11:22 AM
To: tkotroco@gmail.com; barney Mowell; Peoples Counsel
Subject: Gerner 18-047-X

Good morning Counsel,

As you know, we set this matter for hearing on Tuesday and Wednesday of next week, May 1 and 2. Unfortunately, one of our Board members has a conflict with the hearing on Wednesday. Therefore, we will be cancelling the Wednesday, May 2nd hearing. We will begin as scheduled on Tuesday, May 1, at 10:00 a.m.

Should this matter not conclude on Tuesday, additional hearing dates will be scheduled as necessary.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 7, 2018

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter was scheduled for April 26, 2018 and has been postponed. By agreement of Counsel, this matter has been

REASSIGNED FOR: MAY 1, 2018 AT 10:00 A.M. – Day 1; and MAY 2, 2018 AT 10:00 A.M. – Day 2

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Appeals Board
Sent: Tuesday, March 06, 2018 8:48 AM
To: Peoples Counsel; Timothy M. Kotroco; barney Mowell
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Counsel,

Please be advised, for convenience, I will be scheduling this matter for hearing on both May 1st and 2nd. Should this matter complete in one day, the second day will be cancelled. If not, everyone will still have this matter fresh in their minds for Day 2. The notice will be issued as soon as possible.

Please let me know if you have any questions.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Monday, March 05, 2018 3:27 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Timothy M. Kotroco <tkotroco@gmail.com>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington,

People's Counsel can be available on either May 1 or May 2nd. We just ask that you notify us of the hearing date as soon as possible. We are awaiting scheduling of a case at the Court of Special Appeals during the first two weeks of May and need to write to the Court to exclude this hearing date.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

Krysundra Cannington

From: Peoples Counsel
Sent: Monday, March 05, 2018 3:27 PM
To: Appeals Board; Timothy M. Kotroco; barney Mowell
Cc: Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington,

People's Counsel can be available on either May 1 or May 2nd. We just ask that you notify us of the hearing date as soon as possible. We are awaiting scheduling of a case at the Court of Special Appeals during the first two weeks of May and need to write to the Court to exclude this hearing date.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

From: Appeals Board
Sent: Monday, March 05, 2018 3:19 PM
To: Timothy M. Kotroco <tkotroco@gmail.com>; Appeals Board <appealsboard@baltimorecountymd.gov>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Thank you Mr. Kotroco.

From: Timothy M. Kotroco [mailto:tkotroco@gmail.com]
Sent: Monday, March 05, 2018 3:04 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Dear Ms. Cannington,

We are also available on May 1st or May 2nd. Thank you.

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Monday, March 05, 2018 3:04 PM
To: Appeals Board; barney Mowell
Cc: Peoples Counsel
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Dear Ms. Cannington,

We are also available on May 1st or May 2nd. Thank you.

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Date: Monday, March 5, 2018 at 2:43 PM
To: barney Mowell <barneymowell@hotmail.com>
Cc: Timothy Kotroco <tkotroco@gmail.com>, Peter Zimmerman <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Thank you Mr. Mowell.

From: barney Mowell [mailto:barneymowell@hotmail.com]
Sent: Monday, March 05, 2018 2:34 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington: The appellants are available on May 1st or 2nd for this appeal. thanks, Barney Mowell

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Monday, March 05, 2018 2:34 PM
To: Appeals Board
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington: The appellants are available on May 1st or 2nd for this appeal. thanks, Barney Mowell

Krysundra Cannington

From: Appeals Board
Sent: Wednesday, February 28, 2018 1:34 PM
To: 'barney Mowell'; tkotroco@gmail.com; Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good afternoon Counsel,

Since it does not appear you are all available on the same dates, I offer the following dates: May 1, 2, 3, 15, 16 or 17, 2018.

I kindly request a response by the end of the day on Monday, March 5th.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Wednesday, February 28, 2018 1:03 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

We are available for the hearing on April 19th. thanks, Barney Mowell

---

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, February 27, 2018 2:55 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

yes, thanks. I am waiting to hear back from one person, and will e-mail you as soon as I do. Barney Mowell

---

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Tuesday, February 27, 2018 2:49:07 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Mr. Mowell,

This is a reminder that I need to hear back from you by the close of business tomorrow (Wednesday, February 28, 2018) regarding the dates offered in April. Please respond whether these dates work for you and your clients. If the proposed dates do not work, I will offer additional dates. However, if I do not hear back from you, this matter will be scheduled and no further postponements will be granted.

Thank you in advance for your prompt response.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, February 27, 2018 2:55 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com

Krysundra Cannington

From: Appeals Board
Sent: Tuesday, February 27, 2018 2:49 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

Krysundra Cannington

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

I am in receipt of a request for postponement filed by Mr. Mowell on February 9, 2018. Please be advised the Board has decided to grant the requested postponement. In an effort to reschedule this matter to a date that is agreeable to everyone, I offer the following dates that are currently available on the Board's calendar:

April 10, 12, 17, 18, 19, 2018.

Any hearing scheduled would begin at 10:00 a.m.

Please be advised I cannot hold these dates beyond the close of business Wednesday, February 28, 2018.

I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Tim Kotroco <tkotroco@gmail.com>
Sent: Friday, February 23, 2018 9:31 AM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

All dates are fine except for the 19th. Thank you.

Tim

Timothy M. Kotroco, Esq.
305 Washington Ave. Suite 502
Towson, MD 21204
Cell: 410-299-2943

On Feb 22, 2018 7:39 AM, "Appeals Board" <appealsboard@baltimorecountymd.gov> wrote:

Good morning Counsel,

I am in receipt of a request for postponement filed by Mr. Mowell on February 9, 2018. Please be advised the Board has decided to grant the requested postponement. In an effort to reschedule this matter to a date that is agreeable to everyone, I offer the following dates that are currently available on the Board's calendar:

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Thank you,

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: 'barneymowell@hotmail.com'; tkotroco@gmail.com
Cc: Peoples Counsel
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

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April 10, 12, 17, 18, 19, 2018.

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I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com
February 9, 2018

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: In the Matter of: Robert K. Gerner - Legal Owner
ESA Sparks Glenco, LLC- Lessee
15637 York Road
8th Election District, 3rd Councilmanic District
Case No: 18-047-X
Hearing Date: April 26, 2018 at 10 a.m.

Ladies and Gentlemen:

I represent the Protestants/Appellants William Mayo, Gorsuch's Retirement, Inc. and the Sparks Glencoe Community Planning Council in the captioned case. I have been advised that William Mayo is scheduled to be in Cleveland, Ohio during the week of April 23rd, for mandatory training related to his employment. As he will be out of town on the scheduled hearing date of April 26th, I respectfully request that the hearing date be postponed.

Thank you for your cooperation in this regard.

Very truly yours,

H. Barnes Mowell

Certificate of Service

I HEREBY CERTIFY that a copy of this Letter was mailed by first class mail this 9th day of February 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Peoples' Counsel for Baltimore County, 105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204, Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120, Edd J. Matczuk, 930-932 Upper Glencoe Road, Glencoe, Maryland 21152, Al Rude, 15801 York Road, Sparks, Maryland 21152, William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Nedda Pray, 2224 Traceys Road, Sparks, Maryland 21152, and Rob Webster, 811 Upper Glencoe Road, Sparks, Maryland 21152.

H. Barnes Mowell


RECEIVED
FEB 12 2018
BALTIMORE CITY
BOARD OF APPEALS

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 24, 2018

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

ASSIGNED FOR: APRIL 26, 2018 AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 22, 2018

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on January 18, 2018. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c: Baltimore County Board of Appeals
People's Counsel
H. Barnes Mowell, P.A., 16925 York Road, Monkton, MD 21111
Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152

Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com

January 18, 2018

RECEIVED
JAN 18 2018
OFFICE OF
ADMINISTRATIVE HEARINGS

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue

via

BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

№ 143363

Date: 1/18/18

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				385.00

Total: 385.00

Rec From: H. Barnes Mowell, PA.

For: 15637 York Rd
2018-0047-X

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME
1/19/2018 1/18/2018 11:57:45
SEQ WSOS WALKIN LRB
>>RECEIPT # 941148 1/18/2018
Dept 5 528 20000 VERIFICATION
CR NO. 143363
Recpt tot $385.00
$385.00 CK $.00 CA
Baltimore County, Maryland

cc: Baltimore County Board of Appeals
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR
	*	BALTIMORE COUNTY
Petitioners	*	CASE NO: 2018-0047-X
	*	

* * * * * * *

NOTICE OF APPEAL

Please enter my appearance as counsel on behalf of William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Gorsuch's Retirement, Inc., 921 Upper Glencoe Road, Sparks, Maryland 21152, and the Sparks Glencoe Community Planning Council, Box 937, Sparks, Maryland 21152. Please note the appeal by William Mayo, Gorsuch's Retirement, Inc., and the Sparks Glencoe Community Planning Council to the Baltimore County Board of Appeals of the Opinion and Order entered in the captioned case by the Office of Administrative Hearings on December 21, 2017.

H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111
410-329-6488
barneymowell@hotmail.com

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 19th day of January 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

H. Barnes Mowell

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com
January 18, 2018

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Suite 205
Towson, Maryland 21204

via Hand-Delivery

Re: Notice of Appeal of OAH Decision
Case NO: 2018-0047-X

Dear Mr. Jablon:

I have enclosed a Notice of Appeal of the Opinion and Order of the Office of Administrative Hearings in the captioned case, as well as my check for the $385 filing fee.

Should you have any questions, please contact me.

Very truly yours,

H. Barnes Mowell

cc: Baltimore County Board of Appeals
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioners	*	CASE NO: 2018-0047-X

* * * * * * *

NOTICE OF APPEAL

Please enter my appearance as counsel on behalf of William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Gorsuch's Retirement, Inc., 921 Upper Glencoe Road, Sparks, Maryland 21152, and the Sparks Glencoe Community Planning Council, Box 937, Sparks, Maryland 21152. Please note the appeal by William Mayo, Gorsuch's Retirement, Inc., and the Sparks Glencoe Community Planning Council to the Baltimore County Board of Appeals of the Opinion and Order entered in the captioned case by the Office of Administrative Hearings on December 21, 2017.

H. Barnes Mowell, P.A.
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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 19th day of January 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

H. Barnes Mowell

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 21, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petitions for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152
Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
	*	Case No. 2018-0047-X
Petitioners	*	

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility

would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of...scenic routes and scenic views" be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this **21st** day of **December, 2017,** by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

ORDER RECEIVED FOR FILING
Date 12/21/17
By

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING
Date 12/21/17
By sln

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017.**

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

ORDER RECEIVED FOR FILING
Date 12/21/17
By

C:\Users\jwisnom\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\XEGA1Q0V\ZAC 18-0047-X 15637 York Road.doc

12-18-17

TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

January 12, 2018

The Honorable John E. Beverungen
Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X, ESA Sparks Glenco, LLC
Letter of Clarification of Restriction #4

Dear Judge Beverungen:

I write to you regarding your recent order issued the 21st day of December, 2017, in Case No. 2018-0047-X. (Copy attached) Your Order approved our Special Exception request to locate a solar farm on our property located at 15637 York Road in Sparks, Maryland.

Restriction number 4 of your decision states that my client is prohibited from removing any trees associated with the installation and/or operation of our solar facility. The testimony at the hearing was very clear. My client stated that it would not be necessary to remove any trees in the field where the panels would be installed. In that we respect, we understand your restriction.

However, it may very well be necessary for my client to have to remove trees or bushes in order to install the driveway to our solar panels from York Road. You will recall that we are located more than 1,200 feet off of York Road and it may be necessary to remove some trees in order to install or our access road and/or for the installation of the telephone poles that will carry our newly generated electricity out to the York Road grid.

Therefore, I am requesting a simple clarification of your decision and specifically restriction number 4, that my client shall be permitted to remove any trees necessary in order to install the access road and telephone poles leading from York Road to our solar panel field. If you agree with this interpretation, I respectfully request that you sign the statement at the bottom of this letter affirming same. Thank you for your time and consideration of this matter.

This letter is intended to be for the purpose of clarifying your recent decision and is not intended to be a request for a modification of your decision. Therefore, by signing below it is acknowledged that the appeal period associated with this case shall not be extended beyond the

30 days as stated within your original decision and yourRules of Procedure. I will leave it to your further discretion as to whether this request should be considered a modification which might require an additional haring and an amended Order.

Very Truly Yours,

Timothy Kotroco

Timothy M. Kotroco

The applicant, ESA Sparks Glencoe LLC shall be permitted to remove any and all trees and shrubs necessary to install their access driveway and telephone poles from York Road to their solar panel facility. This request shall be treated as a clarification and accordingly, the original 30 day appeal period shall apply.

1-16-2018

Date

John E. Beverungen, ALJ

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15637 York Road **which is presently zoned** RC 7

Deed References: 32699/00228 10 Digit Tax Account # 0802004200

Property Owner(s) Printed Name(s) Robert K. Gerner

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2.__X__ **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

See Attached.

3.____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

ESA Sparks Glenco, LLC c/o Brian Quinlan, Manager
Name- Type or Print

Signature

4155 St Johns Parkway, Suite 1100, Sanford, Florida
Mailing Address City State

32771 / 407-268-6455 / brian@calvertenergy.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Robert K. Gerner /
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Signature # 2

15637 York Road Sparks MD
Mailing Address City State

21152 / 443-465-5803 / kip.gerner@gernerenrgy.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Timothy M. Kotroco
Name- Type or Print

Timothy Kotroco
Signature

305 Washington Ave. Towson MD
Mailing Address City State

21204 / 410-299-2943 / TKotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Brian Quinlan
Name – Type or Print

Signature

12921 Buckeye Drive Gaithersburg MD
Mailing Address City State

20878 / 301-208-0153 / brian@calvertenergy.com
Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING

CASE NUMBER 2018-0047-X **Filing Date** 8/10/2017 **Do Not Schedule Dates:** **Reviewer**

Date 12/24/17

By

REV. 10/4/11

Petition Requested

Special Exception to approve a 9 acre +- Solar Facility on a portion of a 30. 723 acre parcel of land in an RC 7 zone.

Item #0047

CASE #2018-0037-X

Bru E. Doak Consulting, LL
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

Zoning Description

15637 York Road- 30.723 Acres
Eighth Election District Third Councilmanic District
Baltimore County, Maryland

Beginning at a point on the east side of York Road, 250 feet northwesterly of the centerline extension of Elizabeth Court, thence leaving York Road and running with and binding on the outlines of the subject property, the fourteen following courses and distances, viz.

1) North 81 degrees 39 minutes 52 seconds East 311.00 feet
2) South 65 degrees 26 minutes 08 seconds East 924.10 feet
3) North 45 degrees 43 minutes 52 seconds East 696.50 feet
4) South 46 degrees 35 minutes 08 seconds East 1157.00 feet
5) South 33 degrees 14 minutes 38 seconds West 70.31 feet
6) South 42 degrees 04 minutes 54 seconds West 115.77 feet
7) South 33 degrees 44 minutes 57 seconds West 105.64 feet
8) North 64 degrees 46 minutes 27 seconds West 774.81 feet
9) North 64 degrees 08 minutes 22 seconds West 216.87 feet
10) North 84 degrees 19 minutes 37 seconds West 329.26 feet
11) South 01 degrees 50 minutes 28 seconds East 233.31 feet
12) South 72 degrees 58 minutes 22 seconds West 283.65 feet
13) South 42 degrees 04 minutes 19 seconds West 297.72 feet and
14) South 83 degrees 22 minutes 00 seconds West 376.54 feet to a point on the east side of York Road, thence binding on the east side of York Road and continuing to run and bind on the outlines of the subject property, the four following courses and distances, viz.
15) North 11 degrees 52 minutes 15 seconds West 547.50 feet
16) North 13 degrees 54 minutes 15 seconds West 100.09 feet
17) North 16 degrees 31 minutes 15 seconds West 181.08 feet and
18) North 17 degrees 48 minutes 15 seconds West 207.41 feet to the point of beginning

Containing 30.723 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 531
REGISTERED
PROPERTY LINE SURVEYOR

Item #0047

Land Use Expert and Surveyor

CASE#2018-0047-X

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

November 14, 2017

NEW NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District – 3rd Councilmanic District
Legal Owners: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.

Hearing: Monday, December 18, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Timothy Kotroco, 305 Washington Avenue Avenue, Towson 21204
ESA Sparks Glenco, LLC, 4155 St. Johns Parkway, Ste. 1100, Sanford FL 32771
Robert Gerner, 15637 York Road, Sparks 21152
Brian Quinlan, 12921 Buckeye Drive, Gaithersburg 20878

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUES., NOVEMBER 28, 2017**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

August 28, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District – 3rd Councilmanic District
Legal Owners: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.

Hearing: Monday, October 2, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Timothy Kotroco, 305 Washington Avenue Avenue, Towson 21204
ESA Sparks Glenco, LLC, 4155 St. Johns Parkway, Ste. 1100, Sanford FL 32771
Robert Gerner, 15637 York Road, Sparks 21152
Brian Quinlan, 12921 Buckeye Drive, Gaithersburg 20878

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUESDAY, SEPTEMBER 12, 2017**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5313752

Sold To:
ESA Sparks Glenco LLC - CU00617887
12921 Buckeye Dr
Gaithersburg,MD 20878-3578

Bill To:
ESA Sparks Glenco LLC - CU00617887
12921 Buckeye Dr
Gaithersburg,MD 20878-3578

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Nov 28, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District - 3rd Councilmanic District
Legal Owner(s) Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception: to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.
Hearing: Monday, December 18, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 11/718 November 28 5313752

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5174752

Sold To:
ESA Sparks Glenco LLC - CU00617887
12921 Buckeye Dr
Gaithersburg,MD 20878-3578

Bill To:
ESA Sparks Glenco LLC - CU00617887
12921 Buckeye Dr
Gaithersburg,MD 20878-3578

Was published in "Jeffersonian", "Bi-Weekly", a newspaper printed and published in Baltimore County on the following dates:

Sep 12, 2017

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing in Towson, Maryland on the property identified herein as follows:

Case: # 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District - 3rd Councilmanic District
Legal Owner(s) Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception: to approve a 9 acres +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.
Hearing: Monday October 2, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204.

ARNOLD JABLON, DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS FOR BALTIMORE COUNTY

NOTES: (1) Hearings are Handicapped Accessible; for special accommodations Please Contact the Administrative Hearings Office at (410) 887-3868.

(2) For information concerning the File and/or Hearing, Contact the Zoning Review Office at (410) 887-3391.

JT 9/650 September 12 5174752

The Baltimore Sun Media Group

By S. Wilkinson

Legal Advertising

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

November 27, 2017

Re:
Zoning Case No. 2018-0047-X
Legal Owner: Robert Gerner
Hearing date: December 18, 2017

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **15637 York Road.**

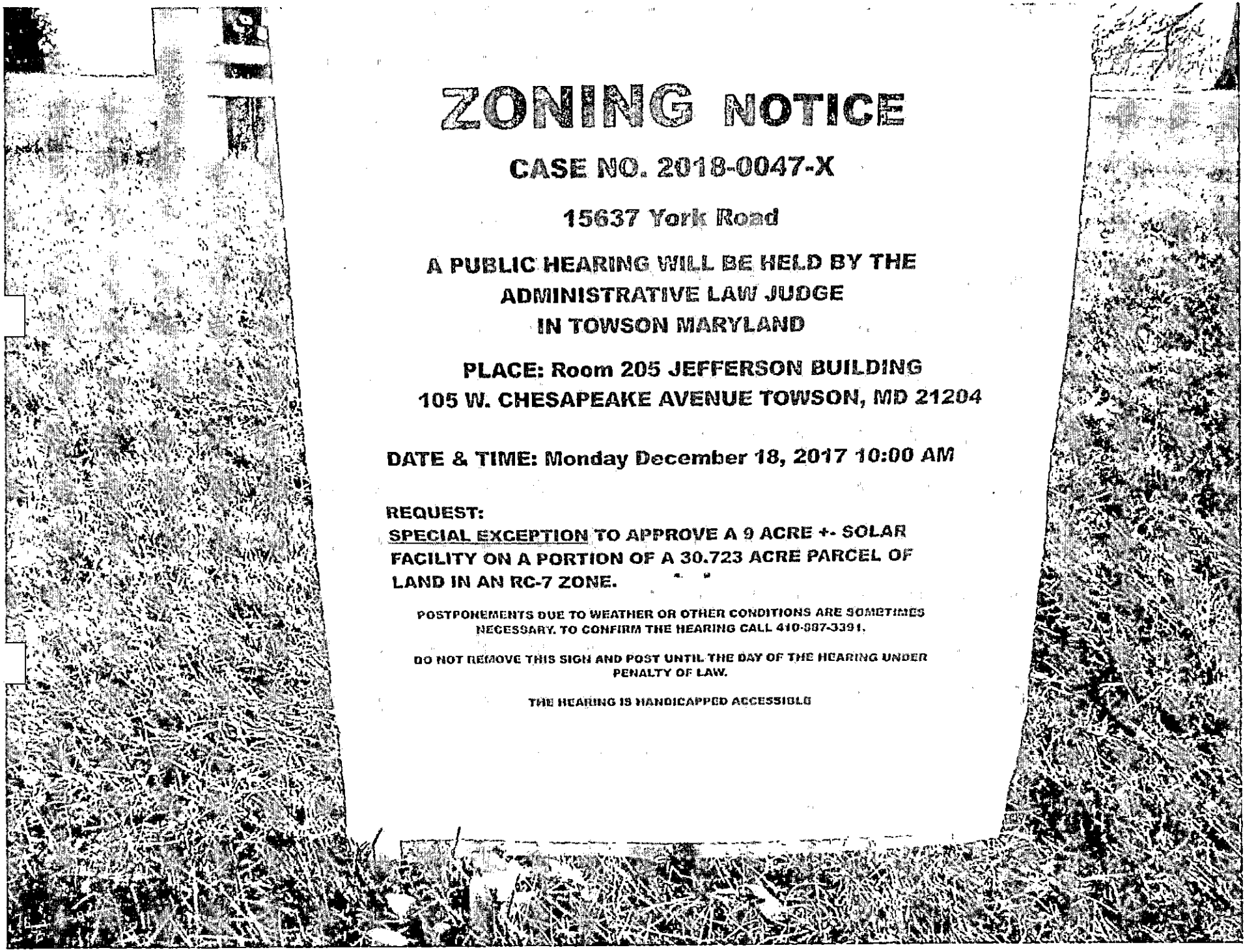
The sign was posted on **November 27, 2017.**

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor



ZONING NOTICE

CASE NO. 2018-0047-X

15637 York Road

A PUBLIC HEARING WILL BE HELD BY THE ADMINISTRATIVE LAW JUDGE IN TOWSON MARYLAND

PLACE: Room 205 JEFFERSON BUILDING 105 W. CHESAPEAKE AVENUE TOWSON, MD 21204

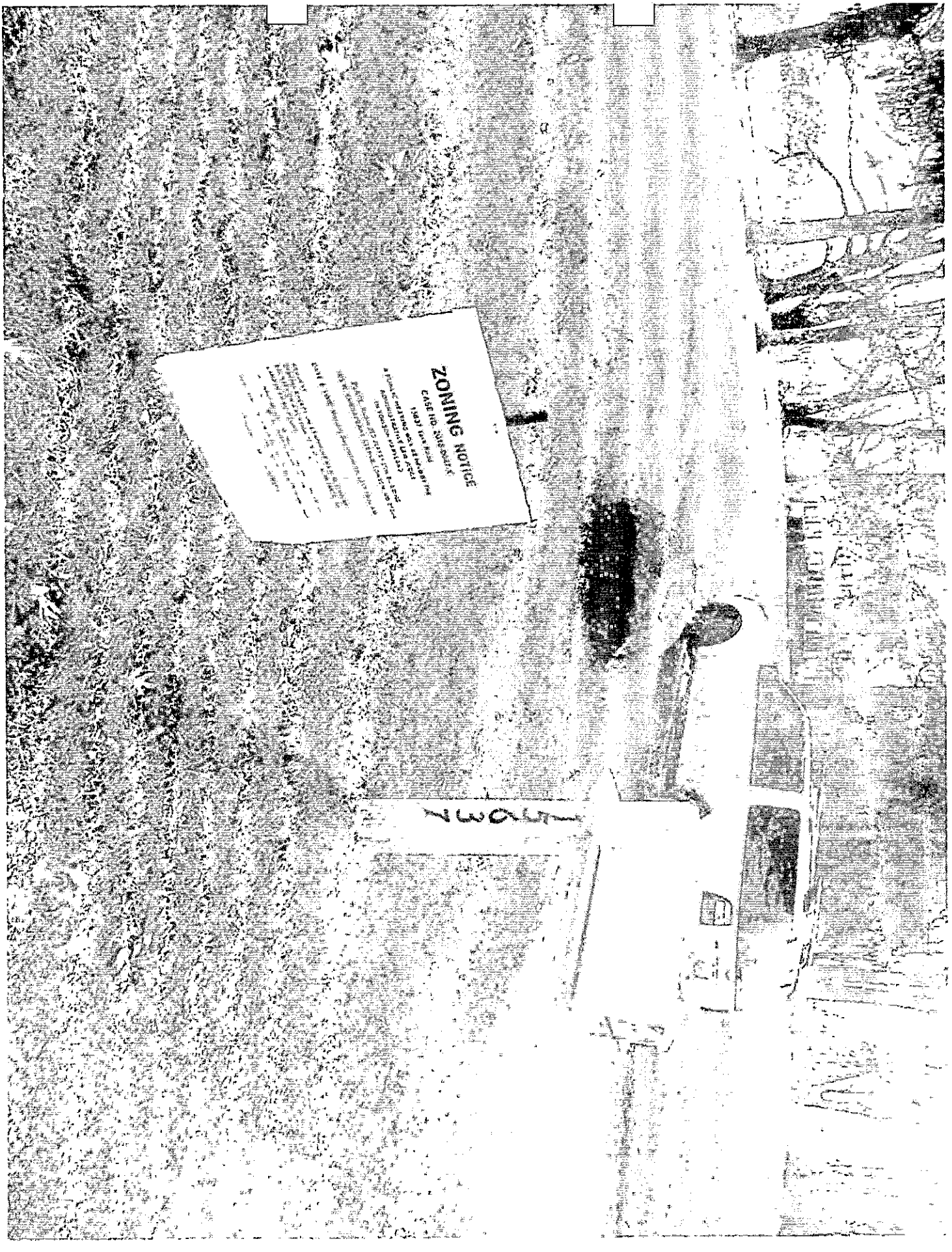
DATE & TIME: Monday December 18, 2017 10:00 AM

REQUEST:
SPECIAL EXCEPTION TO APPROVE A 9 ACRE +- SOLAR FACILITY ON A PORTION OF A 30.723 ACRE PARCEL OF LAND IN AN RC-7 ZONE.

POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.

DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER PENALTY OF LAW.

THE HEARING IS HANDICAPPED ACCESSIBLE


ZONING NOTICE

RE:	PETITION FOR SPECIAL EXCEPTION 15637 York Road; E/S York Road, 250' N of c/line of Elizabeth Court 8th Election & 3rd Councilmanic Districts Legal Owner(s): Robert K. Gerner Contract Purchaser(s): ESA Sparks Glenco, LLC by Brian Quinlan Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2018-047-X

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED
AUG 17 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2017, a copy of the foregoing Entry of Appearance was mailed to Brian Quinlan, 12921 Buckeye Drive, Gaithersburg, Maryland 20878 and Timothy Kotroco, Esquire, 305 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits,
Approvals & Inspections

December 14, 2017

Robert K Gerner
15637 York Road
Sparks MD 21152

RE: Case Number: 2018-0047-X, Address: 15637 York Road

Dear Mr. Gerner:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on August 10, 2017. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
ESA Sparks Glenco, LLC, Brian Quinlan, 4155 St Johns Parkway, Suite 1100
Sanford, Florida 32771
Timothy M Kotroco, 305 Washington Avenue, Suite 502, Towson MD 21204

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 8/14/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 8/14/17 . A field inspection and internal review reveals that an entrance onto MD45 consistent with current State Highway Administration guidelines is required. ~~As a condition of approval for~~ , Case Number 2018-0047-X

Special Exception
Robert K. Gerner
15637 York Road
MD45

The applicant must contact the State Highway Administration to obtain an entrance permit. Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A. Zeller

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

* Applicant must contact Mr. Brian Gnerting to obtain a residential or farm entrance permit. He can be reached at 410-329-6752

WW/RAZ

Mr. Robert K. Gerner / 15637 York Road, Sparks, MD 21152

cc: Mr. Michael Pasquariello, Utility Engineer, SHA

Mr. Brian Gnerting, SHA RTE - Hereford Shop

Bruce E. Doak Consulting, LLC / 3801 Baker Schoolhouse Road
Freeland, MD 21053

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: August 23, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2017
Item No. 2018-0047-X

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If Special Exception is granted a Landscape Plan is required per the requirements of the Landscape Manual, Bill No.37-17 and the CMDP.

Specific Landscape comments:
1 .York Road is a Baltimore County Scenic Route,
2. Perimeter Landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Additional Landscape buffers may be required depending on the adjacent subject properties existing topography, Scenic Views, etc.,
5. Solar panels are considered a utility and should be designed and located to harmonize with surrounds and create the least visual impact,
6. More comments may be rendered during review of the Landscape Plan.

* * * * *

VKD: CEN
cc: file

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/20/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-047

INFORMATION:
Property Address: 15637 York Road
Petitioner: Robert K. Gerner
Zoning: RC 7
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for a 9 acre solar facility.

A site visit was conducted on August 23, 2017.

York Road is a Baltimore County Scenic Route at this location. Due to topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially properties.

The Department has no objection to granting the requested zoning relief conditioned upon the following:

The Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations (BCZR), as applicable, upon successfully addressing the comments listed below.

- Pursuant to BCZR §4E-104.5 the photovoltaic arrays may not exceed 20 feet in height without variance relief. The Department recommends any additional height is inconsistent with the spirit and intent of the BCZR pursuant to §1A08.4.A and will not support such relief. Petitioners shall amend the plan to show a typical array structure detail at no more than 20' above the natural finished grade.
- Petitioners shall note on the plan that the proposed solar facility will produce not more than 2 megawatts of alternating current.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4E-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.

- At the time of building permit application the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by written confirmation that the facility will not be detrimental to the adjacent residential properties pursuant to BCZR §502.1.A.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.

For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Kaylee Justice
Brian Quinlan
Timothy M. Kotroco
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2018-0047-X
DATE 12-18-2017

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Timothy M. Kotroco	305 Washington Avenue, Suite 502	Towson, MD 21204	Tkotroco@gmail.com
Brian Quinlan	12921 Buckeye Dr	Gaithersburg, MD 20878	brian@calvertenergy.com
Wayne Martin	936 Ridgebrook Road	Sparks, MD 21152	wayne.martin@KCE.com
Tom Weigand	1244 Ritchie Highway, Suite 19	Arnold, MD 21012	TWEIGAND@TRSTEELGROUP.com
Bruce Doak	3801 Bakers Schoolhouse Road	Fredonia MD 21053	DOAKFARM@GMAIL.com
Robert Gerner	15637 York Rd	Sparks MD 21152	Kip.Gerner@gernerenergy.com

· PLEASE PRINT CLEARLY

CASE NAME _____
CASE NUMBER 2018-0047-X
DATE 12-18-2017

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
LYNNE JONES	815 STABLERS CHURCH RD	PARKTON MD 21120	dryad101@hotmail.com
EDD J. MATCZUK	930-932 UPPER GLENCOE RD	GLENCOE, MD 21152	EDDMATCZUK@GMAIL.COM
AL RUDE	15801 York RD	SPARKS MD 21152	ARUDE@GATEGROUP.com
William MAYO	921 Upper Glencoe Rd	Sparks Md 21152	BillGMayo@GMail.com
Nedda Fray	2224 Traceys Rd	Sparks MD 21152	neddacrain@Gmail.com
Rod Webster	811 Upper Glencoe Rd	Sparks MD 21152	webster4625C comcast.net

B ce E. Doak Consulting, L C
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

9/11/17
OK
S

September 7, 2017

Arnold Jablon
Baltimore County Office of Zoning
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

Subject: Zoning Hearing Case number 2018-0047-X

To Whom It May Concern:

We would like to postpone the zoning hearing for case number 2018-0047-X until December 2017. We have been pursuing community outreach with neighbors and local community associations and we would like more time to coordinate these efforts. The community outreach is critically important to the relationship with the local community and ultimately the success of the project. The additional time will allow us to appropriately interface with the community and provide them with information about the project. I appreciate your consideration.

Sincerely,

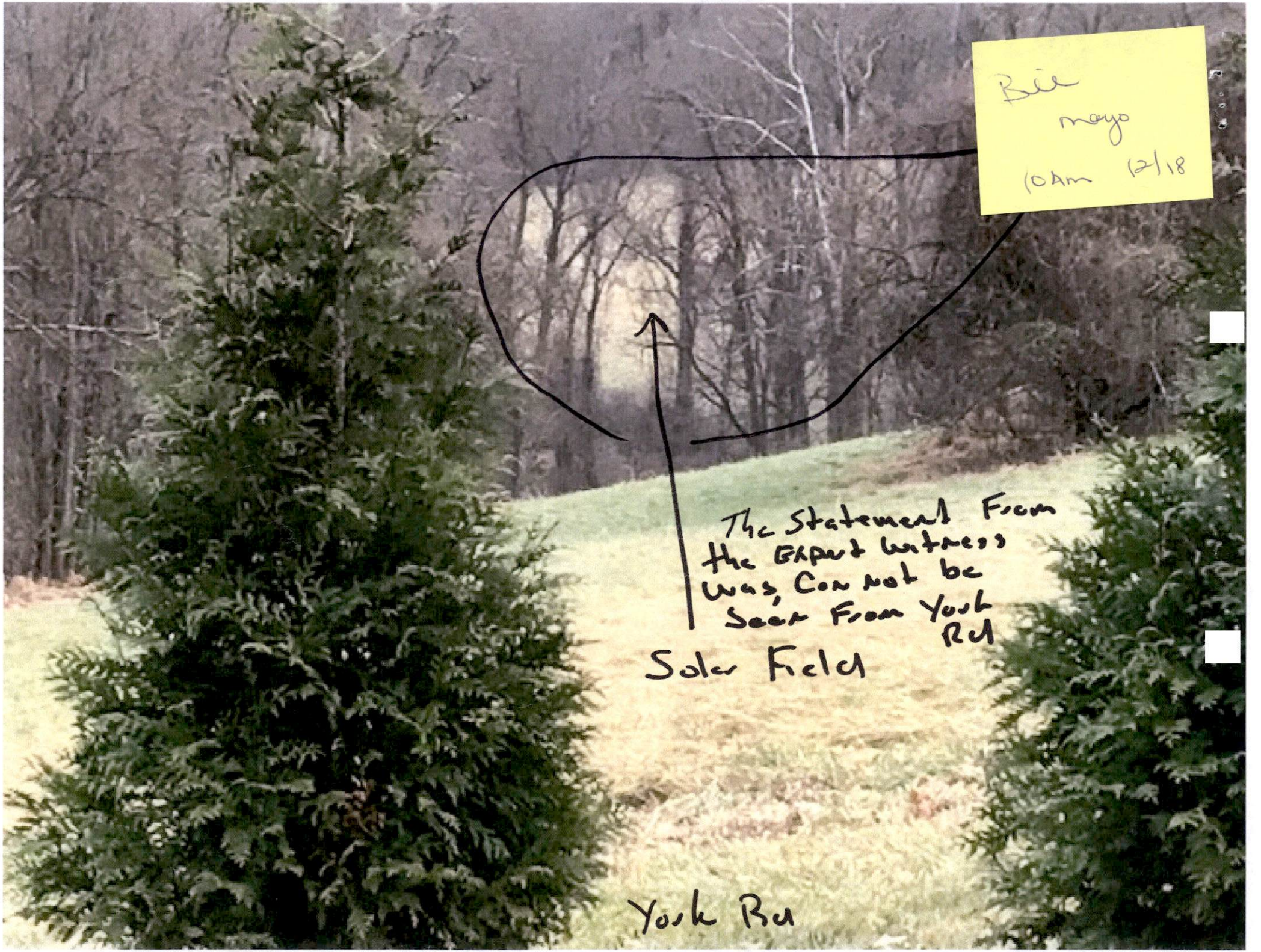
Bruce E. Doak

Land Use Expert and Surveyor

John E. Beverungen

From: Bill Mayo <billgmayo@gmail.com>
Sent: Tuesday, December 19, 2017 12:20 PM
To: John E. Beverungen
Subject: Case 2018-0047

Sent from my iPhone
Hello your honor. My name is Bill Mayo and i was in your court room yesterday concerning the solar field for the Gerner property. First let me thank you for the abundance of patience and respect you showed toward me yesterday. Without that I would have really rambled on. I have never done anything like that before and i'm sure it showed.
At the end of the hearing there was discussion as to weather the solar field could be seen from York road. My neighbor Mr Matczuk will drop off a photo at you office that i took this morning showing the solar field in the background. I hope you will have an opportunity to review it before making your decision.
Thanks again for your help and if you have any questions or just want to stop by the farm you are always welcome.


Bill
mayo
10Am 12/18
The Statement From the Expert Witness Was, Can not be Seen From York Rd
Solar Field
York Rd

Lisa Arthur
19500 Burke Rd
White Hall, MD 21161
lisaarthur19500@hotmail.com
443-695-3522

December 17, 2017

The Honorable Judge John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, MD 212204

Re: Case 2018-0047-X

Dear Honorable Judge Beverungen:

I am writing in opposition of the special exception for the Solar Facility at 15637 York Rd, Sparks MD.

I feel there needs to be more of a balance between the benefits of solar energy production with the potential impact of solar energy-producing facilities upon the County's land use policies, particularly in resource conservation and agricultural zones, as well as in commercial and industrial manufacturing zones where the impact of such facilities on surrounding residential communities must be considered.

After all, Baltimore County has spent millions of taxpayer dollars to preserve over 65,000 acres of rural land. This land should always be protected and farms already in legacy programs bought with taxpayer dollars should never be considered for this type of land use!

We should also consider the experiences of other Counties and States that have already started to charter these types of projects.

In Kent County, along a road that was once the main route to Philadelphia, Apex Clean Energy wants to install solar panels across more than 300 acres of farmland.

The facility, named Mills Branch Solar, would generate up to 60 megawatts of power — enough for every household in the county says officials for the Charlottesville-based company. They call the site ideal because it doesn't require any clearing, has no environmental concerns and is close to a transmission line.

The problem for Kent officials and residents isn't that it's a massive solar farm - it's that it's not in the right place.

The county studied how it might approach proposals for renewable energy generation back in 2010, and again more recently as farmers began receiving calls from solar companies, say Amy Moredock, who is the county planning director.

With the support of concerned residents, county officials set zoning rules encouraging such facilities to go in an area zoned for commercial and industrial use - not on agricultural land.

"It's not that you can't have solar," said Janet Christensen-Lewis, vice chairwoman of the alliance. "Our farmland is precious."

In Allegany, Dan's Mountain Wind Force wants to build 17 wind turbines along the county's highest ridge.

The group, a subsidiary of Laurel Renewable Partners LLC in Greensburg, Pa., originally planned more, but scaled back amid eight years of back-and-forth with Allegany officials concerned about impacts to scenic mountain vistas and the county's 911 communications antenna.

The county denied zoning approval for the project last December.

In Talbot County, the County Council imposed a temporary ban on new solar farms to gain time to craft zoning preferences.

In New Jersey, officials adopted incentives for developing solar farms on brownfields and limits on development of large-scale projects on farmland. That helped to stabilize the industry, said Fred Rohs, general manager for energy production for Marina Energy, which owns the solar farm in Hebron.

The Hebron project is one of the biggest in the state, but it had a smooth permitting process. And with a good fence that screens it from surrounding forest and field, Rohs said, he hasn't heard any complaints from neighbors!

The Maryland Farm Bureau is surveying its membership about solar farms on agricultural land, with some disagreement to sort out: While some farmers oppose the loss of tillable land, others want the stable income of a solar lease.

There are signs that not all of the hundreds of acres of solar panels on the table will actually materialize. The flood of solar power supply to the state has cut the income that companies can earn from renewable energy credits. Because the state is expected to exceed a goal that 0.7 percent of its electricity come from solar this year, the prices of the credits are expected to fall from $120 to $20 this year. So there is no rush for Northern Baltimore County to get in this race.

I support renewable energy projects but I think that a Solar Facility in a rural area that isn't helping to provide energy to the agricultural operation of the farm is in direct conflict with the County's preservation efforts. I'd like to see the Baltimore County take similar actions as Talbot County and imposed a temporary ban on new solar farms to gain time to craft zoning preferences

and New Jersey by imposing incentives for developing solar farms on brownfields and limits on development of large-scale projects on farmland.

For this reason and for all the other reasons presented to you today from our community, I respectfully request that the zoning variance for 15637 York Rd, Sparks MD be denied as proposed solar facility is not a good fit for the Sparks community.

Sincerely,

Lisa Arthur

Sparks-Glencoe Community Planning Council
P.O. Box 937, Sparks, MD 21152

December 11, 2017

The Honorable John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X
15637 York Road
8th Election District-3rd Councilmanic District
Legal Owner: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glencoe, LLC
Hearing Date: December 18, 2017
and
Case No. 2018-0072-X
Southeast side of Graystone Road, southwest of Old York Road
7th Election District – 3rd Councilmanic District
Legal Owner: Jerry Phillips
Contract Purchaser/Lessee: Forefront Power, LLC
Hearing Date: December 14, 2017

Dear Judge Beverungen:

The Sparks-Glencoe Community Planning Council (SGCPC) is submitting this letter regarding the two matters referenced above, the Gerner and Graystone Road cases respectively. The purpose of this letter is twofold. First, we want to state the reasons why we oppose the special exception requests in both cases. Secondly, without intending to minimize our opposition, we want to request two very important limitations in the event that the special exceptions are granted.

These are the first two cases filed under the recently passed Council Bill 37-17 which permits commercial solar power facilities in RC zones. These facilities are euphemistically referred to as "solar farms", but they are not farms and they are not agricultural. SGCPC as an organization, and its many members and supporters, strongly endorse solar power as a wonderful alternative to fossil fuel based power. The issue here is not solar power *per se*, it is solar power on prime agricultural land which could be used for farming or which could be placed in conservation easement. It also must be understood that our opposition is not directed at solar power systems which are intended to primarily serve a home or an ongoing agricultural enterprise.

Bill 37-17 was passed in the face of strong opposition by the SGCPC, the North County Community Association, the Valleys Planning Council, as well as Third District residents and their Councilman. There were a number of reasons for this opposition. First, it was viewed as an effort at commercial development in RC zones which citizen groups have been fighting for decades. The proponents of the bill were the traditional development forces.

Secondly, the bill was rushed through the Council and passed over the Fourth of July weekend with no effort to study and understand the long term effects of this development. Witnesses, including former State Senator George Della, advocated for a community solar pilot project. This project would have served as a preliminary test project so that the effects could have been studied. Instead, the Bill provides for a study to be made one year **AFTER** implementation of the special exception provision. Of course, one year later, the developers will have had the opportunity to build out the maximum number of solar facilities in the Third District, and any study will be too late. This is why the study provision in the Bill was viewed as a deeply cynical and artificial claim of due diligence to occur only after installation has already been approved and the special exceptions have been granted. I am attaching a recent article from the Baltimore Sun indicating that the Anne Arundel County Council has just voted to have an eight month moratorium on applications for commercial solar facilities in its agriculture and conservation zones in order to have time to study the issue.

Thirdly, the Third District is the area with the most available land for these projects. Though the Bill purported to authorize these facilities equally for all council districts, the most clearly affected district, as a practical matter, is the Third. Yet, the concerns of the Third District were not respected.

While our opposition is very real, we do believe it is crucial that in the event that either or both special exceptions are granted, such special exceptions should include two specific limitations that Bill 37-17 authorizes the Administrative Law Judge to make. First is a purchased irrevocable bond in an adequate amount to pay for removal of the facility and remediation of the land once the useful life of the facility has expired. This is not presently a requirement, only a condition that can be imposed as part of the special exception.

A representative of the Gerner project attended our last open meeting to explain the contours of that project. A number of issues were explained and clarified. What became clear, however, was that the only plan for remediation was the LLC's contractual obligation to do so. A facility's useful life is generally understood to be about 20 years. The only guarantee for clean-up is the continued existence and/or financial solvency of these LLCs.

There is no guarantee that the corporation set up to develop the solar facility will still be in existence when the clean-up and remediation phase must begin. Like many local development projects, once development is completed the corporation disappears either by way of bankruptcy or dissolution. The future costs of dismantling and removing the solar panels and remediating the soil so that it is once again ready for farm use is difficult to determine at the present time. The farmer/landowner may not be in a position to bear the

burden of such an expense. What happens then? Will the costs be paid for by the taxpayers after the corporation is long gone?

Finally, the SGCPC is concerned about the impact on neighboring landowners. The prospect of diminished land values for the surrounding area is real. It is certainly foreseeable that the viewshed of the larger resource conservation area will also be significantly impaired. One of the concerns raised in our meeting with the representative of the lessee of the Gerner property was that the proposed buffers were inadequate. It is for that reason any special exception must include significant natural buffers which not only protect the view from the adjoining roadways, the adjacent property owners, and also the wider vista. It is our suggestion that the landowner and his lessees be required to install buffers which are designed in accordance with the directives of the Baltimore County landscape architect. It would also be useful and appropriate to provide for input from the immediately impacted property owners whose own land values are at issue.

We have many concerns about the rapid, if not precipitous, adventure into commercial solar facilities in conservation areas. No one has presently done the kind of work necessary to know where and how to proceed with the production of commercial solar energy on agricultural land. It is primarily for that reason that SGCPC opposes the special exceptions in these cases. If, however, these special exceptions are granted, there must obviously be many limitations designed to protect the public from this shortsighted bill. We sincerely request that the two limitations outlined in this letter be among those incorporated into any such grant.

Thank you for your patience and consideration in this matter.

Sincerely,

Lynne Jones, President

enc.
cc: Timothy Kotroko, Esquire

Robert Gerner

Jerry Phillips

Peter Zimmerman, Esquire
People's Counsel

Anne Arundel

35 years ago Bobbi Burnett made her first artwork to cheer up a friend; now, she's preparing to make her last

JOSHUA MCKERROW/BALTIMORE SUN MEDIA GROUP

Bobbi Burnett cuts a piece of glass in her basement studio where a crew of volunteers make glass angels in Epping Forest.

After 45,000 angels, Caring Collection ends

By Wendi Winters
Baltimore Sun Media Group

Artist Bobbie Burnett made her first Caring Collection angel 35 years ago.

A friend was diagnosed with leukemia. The woman was 39. She had three children under age 10 and an unemployed husband. To cheer up and support her friend, Burnett gave her a blue-and-gold angel sculpture made of small, hand-cut and foiled panes of stained glass.

She's been making the angel sculptures ever since, and now has a crew of volunteers who help her. Each year, Burnett designs a new stained-glass angel sculpture. Money from the sale of the angels benefits two area hospitals. The group added sun catchers, ornaments, angel magnets and large sculptures of Burnett's designs to their repertoire.

But as she nears age 80, Burnett has decided she and her group will soon make their last angels. There will be no new angel design for 2018.

By Burnett's estimate, the cadre of volunteers, which usually meets for several hours on Tuesdays and Thursdays, has hand-crafted more than 45,000 angels over the years.

The designs are sold online on the website caringcollection.org, at the gift shop at Johns Hopkins Hospital in Baltimore and at open-house events at Burnett's home.

Approximately 70 percent of the sale price goes into a fund divided between Hopkins and Anne Arundel Medical Center; the other 30 percent covers the cost of supplies. At Anne Arundel, the money provides for patient care equipment. At Johns Hopkins, the money goes toward cancer research equipment.

As each year begins, Burnett strains to create a different new angel for the collection.

Bobbie Burnett, a native of upstate New York, received a bachelor's degree in fine art at State University of New York at New Paltz. In addition to regular exhibits of her paintings, her portfolio included teaching art courses in San Diego, Las Vegas, St. Louis and in Florida.

Burnett's husband Jerry Burnett, who died in 2014, worked for Westinghouse and was transferred every few years. The couple built a 35-foot sailboat in California and, when her husband was transferred to Maryland, they sailed here and lived aboard the vessel at a mooring in Essex. They moved to their house in Epping Forest in 1978.

Burnett learned to create artworks from stained glass at an adult education course she took at the old Annapolis Community Center.

Debbie Deschamps and Fran de Wolff have been Caring Collection volunteers for 33 years. Another, Jerry Klinker, became a volunteer after taking one of Burnett's stained glass classes in the 1980s.

"We've 'grown mature together," said Burnett.

During a recent visit to her studio, volunteers were busy working on details involved in making the angel sculptures, which sell for $250.

Ten-year volunteer veteran Ellen Kalas of Annapolis appreciates how the creative project has benefited local hospitals.

"That really attracts me. (The studio) is a great place to work," said Kalas. "It's very friendly and welcoming. Bobbie is really gracious."

Sally Small of West River has volunteered for nearly 24 years. "It's sad," she said of Burnett's decision to retire. "She's been a very good leader."

The strong feelings are mutual. "I love my volunteers," said Burnett. "They're my family."

wwinters@carrollnews.com

Solar park OKs halted

County suspends approvals over impact on rural areas

By Chase Cook
Baltimore Sun Media Group

Anne Arundel County has issued an eight-month moratorium on the approval of solar parks after concerns were raised by farming and environmental advocates about the impact of those operations on rural areas.

County officials made the formal announcement Monday. The decision targets larger-scale solar operations. People building solar panels for their homes or businesses — labeled as accessories — won't be affected.

"We need to ensure the impact of heavy industrial activity like solar energy operations has been fully vetted by officials within the Department of Planning and Zoning," County Executive Steve Schuh said in a statement.

Last month the Anne Arundel County Agriculture, Agritourism and Farming Commission advocated for a moratorium. It was also supported by the group Growth Action Network.

County Councilman Jerry Walker, a Crofton Republican, had said he planned to announce a resolution calling for a six-month moratorium. At Monday's council meeting he withdrew the resolution and thanked Schuh for the decision.

In his resolution, Walker had noted that the county has five pending applications for construction of solar parks in rural agricultural zones.

"After meeting with constituents potentially impacted by a number of these projects, I thought their requests to reassess the current regulations made sense, especially given the size and scope of some of the proposals on agricultural land," Walker said.

County officials said their assessment of the issue is similar. The generation of electricity is considered an industrial use, but solar parks are allowed in certain rural zones meant to protect farmland and low-density housing.

The growth of solar parks could lead zoning challenges that could redefine those areas, said Phil Hager, Anne Arundel

See SOLAR, page 6

County starts work on new police academy

$18.8 million facility to be built next to current one in Davidsonville

By Chase Cook
Baltimore Sun Media Group

Starting in summer 2019, upcoming Anne Arundel County police officers won't have to train in an old, re-purposed missile silo.

County Executive Steve Schuh and

The 30,000-square-foot academy, being built on the same property as the existing facility, will cost $18.8 million and will replace the re-purposed and dilapidated silo.

It will include a 17,000-square-foot fitness center. A second phase will renovate the current administration facility for further training uses. Construction money was approved in FY2017 with more funding approved in this year's budget.

"Oh Lord, am I excited," Altomare said at the ceremony.

SENIOR BRIEFS

Annapolis Center

The following activity will be offered at the Annapolis Senior Activity Center, 119 S. Villa Ave. Information: 410-222-1818.

MUSIC WITH DJ BOB JONES, featuring holiday songs and other classics, will be held 12:30 p.m. Wednesday, Dec. 13.

CANDY MAKING WITH DIANE will be held 10 a.m. to noon Friday, Dec. 15. Registration is underway; class is limited to 10.

CARD MAKING WITH DIANE will be held 1 p.m. to 2:30 p.m. Friday, Dec. 15. Come in and make a holiday card for a special loved one. $3 is due at sign up.

ANNUAL HOLIDAY PARTY will be held 11 a.m. to 2 p.m. Tuesday, Dec. 19, at the Crowne Plaza Annapolis, 173 Jennifer Road. $30. Full payment due by Dec. 15. Entertainment by Smokey and Last Chance Entertainment.

Arnold Center

The following activities are offered at the Arnold Senior Activity Center, 44 Church Road. Information: 410-222-1922.

HOLIDAY GIFT WRAPPING SERVICE will be held 9 .m. to 11:30 a.m. Monday, Dec. 18. Cost is $1 per item. Sign up by Dec. 11.

BINGO will be held 10 a.m. Monday, Dec. 18, hosted by Mindy Adams of Chesapeake Caregiving, with prizes and fun.

MINI-MASSAGES with certified therapist Bonnie Pavlek will be offered from 10 a.m. to noon Monday, Dec. 18. Free, first come, first served.

SCRABBLE Challenge your brain by playing Scrabble from 12:45 p.m. to 3 p.m. Mondays. New participants are welcome.

MAH-JONGG Open play from 1:15 p.m. to 3:45 p.m. Tuesdays; volunteers play from 12:30 p.m. to 3:30 p.m. Wednesdays.

Brooklyn Park Center

The following activities are offered at the Brooklyn Park Activity Center, 202 Hammonds Lane. Information: 410-222-6847.

SONGS OF THE HOLIDAY The Mother's Choir will perform at 11 a.m. Tuesday, Dec. 12. Enjoy hot apple cider while listening to seasonal songs.

HOLIDAY PARTY will be held 11 a.m. to 3 p.m. Thursday, Dec. 14 at Michaels 8th Avenue.

J&J DUO will perform swinging dance music 11 a.m. Friday, Dec. 15. Lite refreshments.

ENGLISH CLASS Basic skills from 9:30 a.m. to 11:30 a.m. Wednesdays.

REGULATION SHUFFLEBOARD Play at 1 p.m. Tuesdays and 2 p.m. Thursdays.

O'Malley Center

The following activities are offered at the O'Malley Senior Activity Center, 1270 Odenton Road, in Odenton. Information: 410-222-6227.

VAN BOKKELEN ELEMENTARY SCHOOL CHORUS will perform holiday favorites at 10 a.m. Thursday, Dec. 14.

MOVIE DAY "Paper Angels" will be shown at 12:30 p.m. Friday, Dec. 15.

QUILT CLUB Members help one another with projects and donated pieces at 1 p.m. Fridays in the Annex. The club is open to new and experienced quilters.

Pasadena Center

The following activities are offered at the Pasadena Senior Activity Center, 4103 Mountain Road. Information: 410-222-0030.

INTERMEDIATE BRIDGE group meets at 12:30 p.m. Fridays, Dec. 15 and 22.

MEMOIR WRITING GROUP meets at 1 p.m. Monday, Dec. 18. If interested, contact Rita at 443-883-1178 or wmfordham@msn.com or just come to a meeting.

PINOCHLE 8:50 a.m. to 9:50 a.m. Mondays.

PAINTING CLASS with Deborah Seales; 12:30 p.m. to 2:30 p.m. Thursdays.

Pascal Center

The following activities are offered at the Pascal Senior Activity Center, 125 Dorsey Road, Glen Burnie. Information: 410-222-6680.

OBI BELL RINGERS will perform a program of holiday music at 10:30 a.m. Tuesday, Dec. 12.

THOM ROLAND DANCE BAND will perform a variety of 1940s and '50s music and holiday selections at 12:30 p.m. Thursday, Dec. 14. Dancers welcome.

VAN TRIP TO TALENT MACHINE show at St. John's College will take place Friday, Dec. 15 at 11 a.m. Non-refundable $5 fee payable to PSI due at sign-up.

VOICES IN MELODY will perform a program of holiday music at 12:30 p.m. Friday, Dec. 15.

MEXICAN TRAIN The domino game is played at 12:30 p.m. Mondays.

TABLE TENNIS 12:30 p.m. Tuesdays and Fridays.

MAH-JONGG 10:30 a.m. to 12:30 p.m. Fridays. Beginners welcome.

WII OPEN BOWLING Tuesdays at 12:30 p.m. except on the third Tuesday, when games begin at 1 p.m.

DOUBLE-DECK PINOCHLE Fridays at 12:30 p.m.

BEYOND LOSS support group meets at 11:30 a.m. Wednesdays.

South County Center

The following activities will be offered at the South County Senior Activity Center, 27 Stepneys Lane in Edgewater. Information: 410-222-4927 or 410-798-4802.

VOICES IN MELODY CHORUS will perform holiday music at 12:30 p.m. Monday, Dec. 11.

TUESDAYS TREASURES flea market will be held 9:30 a.m. to 1 p.m.

CREATIVE PAPER CRAFTING will be held 1 p.m. to 3 p.m. Tuesday, Dec. 12. Create cards and gift tags for the holiday season. Cost is $7.50 and will include all supplies. Instructor is Sherahl Weadon. Sign up at the front desk.

BOXWOOD TREES WORKSHOP hosted by the Four Rivers Garden Club will be held 10 a.m. to 11 a.m. Wednesday, Dec. 13. $4. All supplies will be provided. Sign up at the front desk.

HOLIDAY MUSIC with Sylvia and Rich will be held 12:30 p.m. Wednesday, Dec. 13, featuring Christmas tunes and old favorites.

Seniors directory

The Department of Aging and Disabilities, in partnership with the Senior Services Provider Group and the Friends of Arundel Seniors, has published the 2017-18 edition of "Services for Seniors, Adults with Disabilities, and Caregivers." The free directory is available at the Heritage Office Complex, 2666 Riva Road in Annapolis, the seven senior activity centers, and public libraries. For more information, call 410-222-4464 or go to aacounty.org/aging.

County suspends approvals of solar parks

SOLAR, *From page 1*

County Planning and Zoning officer.

Typically the county would turn to the General Development Plan, which guides development, but that plan is "largely silent" on dispersed energy productions such as solar parks, Hager said.

The moratorium will give the county the time to review code.

"We essentially have no more than eight months to turn around something," Hager said. "The people who are requesting this and concerned about the proliferation of this use are concerned — and want something done quickly."

Bradley Harris, who lives near a proposed solar park site, was appreciative for Schuh's decision.

"We are pro-solar, but would also like to protect our farmland and our community's rural heritage," Harris said. "We feel there are more appropriate locations in our area for these industrial solar projects that can be developed such as: brown-fields, landfills, warehouses and other disturbed sites."

In other council action, members voted to make Councilman Michael Peroutka, a Millersville Republican, the next council chairman. The decision was made along party lines in a 4-3 vote.

Peroutka has been a controversial figure. Some residents have criticized his past association with the League of the South — he was a member until shortly before the 2014 election. The councilman has said he believes there is only one race, the human race.

Sherry Nuffer

From: John E. Beverungen
Sent: Monday, October 02, 2017 10:52 AM
To: Debra Wiley; Sherry Nuffer
Subject: FW: Case No. 2018-0047-X

This e-mail is for the file, which I believe was never sent over.

From: Brian Quinlan [mailto:brian@calvertenergy.com]
Sent: Friday, September 29, 2017 1:40 PM
To: 'Bruce Doak' <doakfarm@gmail.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: RE: Case No. 2018-0047-X

John – I have spoken to the community organization that has been our main contact and informed them of the postponement.

Brian Quinlan
President/CEO
Calvert Energy LLC
brian@calvertenergy.com
(301) 208-0153
(301) 367-9131 (cell)
www.calvertenergy.com
CALVERT ENERGY LLC

From: Bruce Doak [mailto:doakfarm@gmail.com]
Sent: Friday, September 29, 2017 1:28 PM
To: John Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Brian Quinlan <brian@calvertenergy.com>
Subject: Re: Case No. 2018-0047-X

Good afternoon,

Thank you for your email.

The sign was not posted. We did not contact any community organizations concerning the postponement.

We can do that if you wish. I did not consider it since the sign was not posted and we asked for the postponement two weeks before the hearing.

I hope that this hearing will be removed from your calendar. We are hoping to have the hearing the beginning of December.

With regards,
Bruce
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906
bdoak@bruceedoakconsulting.com

On Sep 29, 2017, at 10:42 AM, John E. Beverungen <jbeverungen@baltimorecountymd.gov> wrote:

Mr. Doak,

I was forwarded a copy of your letter dated September 7, 2017 requesting a postponement of the above matter, which was addressed to Mr. Jablon. It appears, based on his initials in the upper right corner of the correspondence, Mr. Jablon granted the postponement request on September 11. Even so, the case was put on the OAH calendar for a 10:00 a.m. hearing on Monday, October 2, 2017.

Can you please confirm that you are aware this case was postponed on September 11. I assume the property was never posted? Also, can you please confirm you have notified the "neighbors and local community associations" referenced in your letter that the October 2 hearing has been removed from the OAH calendar.

Thank you.

John Beverungen
ALJ

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 11

Bill No. 37-17

Mrs. Vicki Almond, Councilwoman

By the County Council, June 5, 2017

A BILL
ENTITLED

AN ACT concerning

Solar Facilities

FOR the purpose of permitting a Solar Facility to be located in certain zones of the County by special exception; providing for a statement of purpose and defining terms; providing exceptions; providing for the requirements for a facility; providing for a required security; providing for the maintenance, abandonment, and removal of a facility; authorizing the Code Official to enforce the provisions of this Act; providing for the application of the Act; and generally relating to Solar Facilities.

BY adding
Article 4E – Solar Facilities
Sections 4E-101 to 4E-107
Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Item #0047

BY repealing and re-enacting, with amendments
Article 5 – Administration and Enforcement
Section 502.1.I.
Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Zoning Regulations read as follows:

ARTICLE 4E

SOLAR FACILITIES

§4E-101. PURPOSE AND DEFINITIONS.

§4E-101.1. PURPOSE.

SOLAR ENERGY IS RECOGNIZED AS AN ABUNDANT, RENEWABLE, AND ENVIRONMENTALLY SUSTAINABLE SOURCE OF ELECTRICITY GENERATION THAT WILL LEAD TO GREATER LOCAL GRID RESILIENCY AND SECURITY, AND PRODUCE CLEAN, RENEWABLE ENERGY AND REDUCE AIR AND WATER POLLUTION CAUSED BY THE BURNING OF TRADITIONAL FOSSIL FUELS. THE PURPOSE AND INTENT OF THIS ARTICLE IS TO PERMIT SOLAR FACILITIES IN PARTS OF THE RURAL AND COMMERCIAL AREAS OF THE COUNTY BY SPECIAL EXCEPTION, AND TO BALANCE THE BENEFITS OF SOLAR ENERGY PRODUCTION WITH ITS POTENTIAL IMPACT UPON THE COUNTY'S LAND USE POLICIES BY ENSURING SUFFICIENT SAFEGUARDS ARE IN PLACE TO PROTECT THE COUNTY'S COMMUNITIES AND ITS AGRICULTURAL LAND, FORESTS, WATERWAYS AND OTHER NATURAL RESOURCES.

§4E-101.2. DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS TO CONSUMERS.

§4E-102. LOCATION OF SOLAR FACILITIES.

A. SUBJECT TO PARAGRAPH B, A SOLAR FACILITY IS PERMITTED ONLY BY SPECIAL EXCEPTION IN THE R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, R.C.7, R.C.8, B.L., B.M., M.R., M.L.R., AND M.H. ZONES OF THE COUNTY.

B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS LIMITED TO THE FOLLOWING:

1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS ALTERNATING CURRENT (AC) OF ELECTRICITY.

2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-107.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY INSTALLATIONS:

1. A GROUND-MOUNTED SOLAR FACILITY ~~LOCATED IN A YARD AREA, BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL, AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE~~ THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL USE;

2. A ROOFTOP SOLAR FACILITY;

~~2~~ 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

~~3~~ 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE FACILITY FOR AGRICULTURAL USES ON THE FARM.

§4E-104. REQUIREMENTS.

A. A SOLAR FACILITY LOCATED IN AN R.C. ZONE IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING BUFFER AND THE SOLAR FACILITY.

8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

9. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF SECTION 33-3-108 OF THE COUNTY CODE.

10. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT OF THE FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING RESIDENTIAL PROPERTIES AND COMMUNITIES, TAKING INTO ACCOUNT SUCH FACTORS AS THE TOPOGRAPHY OF ADJACENT LAND, THE PRESENCE OF NATURAL FOREST BUFFERS, AND PROXIMITY OF STREAMS AND WETLANDS.

B. THE REQUIREMENTS OF SUBPARAGRAPHS A.6, A.7, A.8 AND A.10 SHALL APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING ZONE.

§ 4E-105. REQUIRED SECURITY.

A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL PROVIDE A SECURITY BOND OR EQUIVALENT FINANCIAL SECURITY IN THE FORM AND AMOUNT DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402 OF THE COUNTY CODE.

§4E-106. MAINTENANCE.

A. ALL PARTIES HAVING A LEASE OR OWNERSHIP INTEREST IN A SOLAR FACILITY ARE RESPONSIBLE FOR THE MAINTENANCE OF THE FACILITY.

B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS, LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

C. APPROPRIATE VEGETATION IS PERMITTED UNDER AND AROUND THE SOLAR

COLLECTOR PANELS, AND THE TRACT MAY BE USED FOR ACCESSORY AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK, APICULTURE, AND SIMILAR USES.

D. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN ACCORDANCE WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

§4E-107. ABANDONMENT; REMOVAL.

A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR OPERATOR SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER OR OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

B. REMOVAL SHALL CONSIST OF THE:

1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES, EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;

2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND

3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO MINIMIZE EROSION.

C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,

THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN ABANDONED FACILITY.

D. THE CODE OFFICIAL MAY ISSUE A CITATION TO THE OWNER OR OPERATOR FOR REMOVAL OF A SOLAR FACILITY IF:

1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILTY HAS NOT BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE ISSUED BY THE CODE OFFICIAL; OR

3. THE OWNER OR OPERATOR HAS FAILED TO REMOVE THE SOLAR FACILITY IN ACCORDANCE WITH PARAGRAPH C.

§502.1. Conditions Determining Granting of Special Exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

I. Be detrimental to the environment and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5, or R.C.7 Zone, AND FOR CONSIDERATION OF A SOLAR FACILITY USE UNDER ARTICLE 4E, THE INCLUSION OF THE R.C.3, R.C.6, AND R.C.8 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in consultation with the Departments of Planning and Environmental Protection and Sustainability,

and with participation of the Baltimore County Commission on Environmental Quality, representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the County Council and the County Executive regarding potential changes to current law.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016.

Board of Appeals

Case No: 18-047 X Case Name: Robert Gerner

Exhibit List

Party: [redacted] Petitioner Date: 8/21/18

Exhibit No:	Description:
✓ 1.	Site Plan without Marking
✓ 1.a	Site Plan with Marker of "Boundaries"
✓ 2a-e	Photos of the Site / from Google Earth
✓ 3.	Large Photo - My Neighborhood
✓ 3a-d	Photos of Road + House on Property
✓ 4	Large Photo / - My Neighborhood / Aerial of Property
✓ 4a-b	Photos of Trees from the Property
✓ 5	Site Photos - 12/12/17 with Key
✓ 5a-e	Photos of Surrounding Properties from Site
✓ 6	Aerial Photo showing Zoning Designation / Tree Line
✓ 7	U.S Fish + Wildlife Service
✓ 7a	"
✓ 8	Maryland Dept. of Environment / Solar Panel Installation
✓ 9.	My Neighborhood / Zoning Delineations
	VERIFIED BY KC DATE: 8/21/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: Petitioner Date: 8/21/18

Exhibit No:	Description:
✓10	2.A.C. Comments 9/20/2017
✓ 11	Comment of State Highway 9/14/17
✓ 12	Dept. 9/1/17 - Letter on 2.A.C Comment
✓ 13	8/23/7 - Letter - 2nd Comment of Bur. of Dev. Plans Review
KC 8/21/18 ✓ 14	Deris CV
KC 8/23/18 ✓ 15	CV - M. Heidi Kellner
✓ 16	Citizen Guide / Rural Zones
✓ 17	Solar Facility Decommissioning + Security Agreement
10/24 ✓ 18	SDAT of Town Property
✓ 19	Town home on My Neighborhood
✓ 20	My Neighborhood / Rudi Property
KC 10/25/18 ✓ 21	Kotroco 1/12/16 Letter + Request for Reconsideration
✓ 22	My Neighborhood / Gorsuch Retirement Home
✓ 23	Mr. Major's - Plans in relation to Solar Farm
	VERIFIED BY KC DATE: 12/10/18

Board of Appeals

Case No: 18-047X Case Name: Robert Gerner

Exhibit List

Party: Petitioner Date: 11/29/18

Exhibit No:	Description:
✓24	Transcription of John Altmyer
✓25	Master Plan 2020 / Scenic Gateway Area
✓26	E-mail / - From Mark Staley
✓27	KCI Estimate
	VERIFIED BY KC DATE: 12/10/18

Site photos 12-17-17

CALVERT ENERGY LLC

Petitioner S
CBA Exhibit 5

Case No. 18-047x - 8/21/18

Picture 1

CALVERT ENERGY LLC

5A

Picture 2

CALVERT ENERGY LLC

5B

Picture 3

CALVERT ENERGY LLC

5C

Picture 4

CALVERT ENERGY LLC

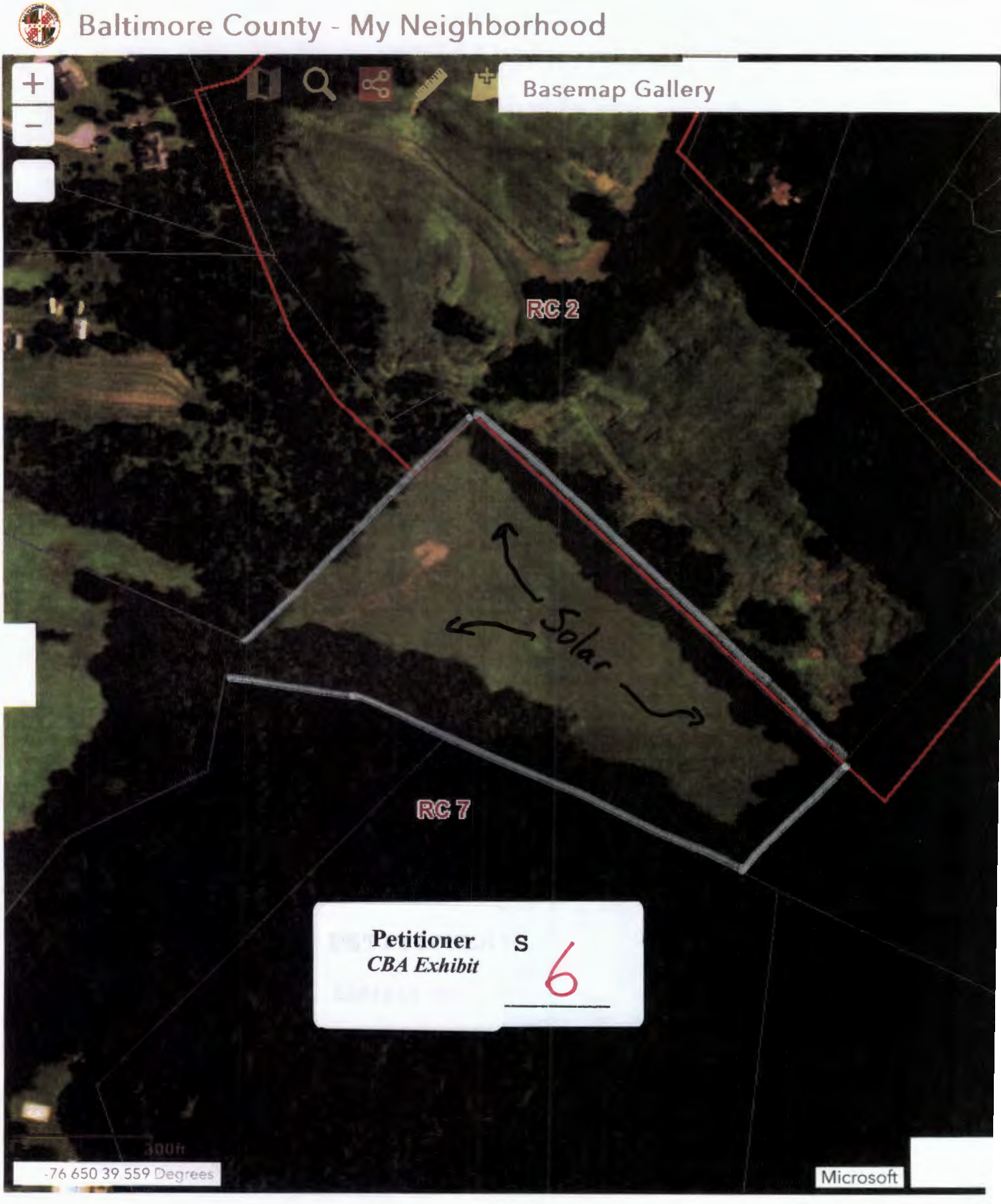
5D

Picture 5

CALVERT ENERGY LLC

5E

Tree Buffer



Case No. 18-047X 8/21/18


National Wetlands Inventory
U.S. Fish and Wildlife Service
National Wetlands Inventory
PETITIO
EXHIBIT N
ESA Sparks Glenco site wetla
Petitioner S
CBA Exhibit
7
Solar
0
0.04
0.08
0.16 mi
0
0.05
0.1
0.2 km
1:4,735
ust 16, 2018
nds
Estuarine and Marine Deepwater
tuarine and Marine Wetland
Freshwater Emergent Wetland
Freshwater Forested/St
Freshwater

Petitioner
CBA Exhibit S 8

MDE **Maryland Department of the Environment**

Stormwater Design Guidance – Solar Panel Installations

Revisions to Maryland's stormwater management regulations in 2010 require that environmental site design (ESD) be used to the maximum extent practicable (MEP) to mimic natural hydrology, reduce runoff to reflect forested wooded conditions, and minimize the impact of land development on water resources. This applies to any residential, commercial, industrial, or institutional development where more than 5,000 square feet of land area is disturbed. Consequently, stormwater management must be addressed even when permeable features like solar panel installations exceed 5,000 square feet of land disturbance.

Depending on local soil conditions and proposed imperviousness, the amount of rainfall that stormwater requirements are based on varies from 1.0 to 2.6 inches. However, addressing stormwater management does not mean that structural or micro-scale practices must be constructed to capture and treat large volumes of runoff. Using nonstructural techniques like disconnecting impervious cover reduces runoff by promoting overland filtering and infiltration. Commonly used with smaller or narrower impervious areas like driveways or open roads, the Disconnection of Non-Rooftop Runoff technique (see pp. 5.61 to 5.65 of the **2000 Maryland Stormwater Design Manual**[1]) is a low cost alternative for treating runoff in situations like rows of solar panels.

When non-rooftop disconnection is used to treat runoff, the following factors should be considered:

- The vegetated area receiving runoff must be equal to or greater in length than the disconnected surface (e.g., width of the row of solar panels)
- Runoff must sheet flow onto and across vegetated areas to maintain the disconnection
- Disconnections should be located on gradual slopes (≤ 5%) to maintain sheetflow. Level spreaders, terraces, or berms may be used to maintain sheetflow conditions if the average slope is steeper than 5%. However, installations on slopes greater than 10% will require an engineered plan that ensures adequate treatment and the safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice.
- Disconnecting impervious surfaces works best in undisturbed soils. To minimize disturbance and compaction, construction vehicles and equipment should avoid areas used for disconnection during installation of the solar panels.
- Groundcover vegetation must be maintained in good condition in those areas receiving disconnected runoff. Typically this maintenance is no different than other lawn or landscaped areas. However, areas receiving runoff should be protected (e.g., planting shrubs or trees along the perimeter) from future compaction.

Depending on the layout and number of panels installed, the disconnection of non-rooftop runoff technique may address some or all of the stormwater management requirements for an individual project. Where the imperviousness is high or there is other infrastructure (e.g., access roads, transformers), additional runoff may need to be treated. In these situations, other ESD techniques or micro-scale practices may be needed to provide stormwater management for these features.

Case No: 18-047X 8/21/18

Example 1 – Using Non-Rooftop Disconnection Where the Average Slope ≤ 5%

Several rows of solar panels will be installed in an existing meadow. The soils within the meadow are hydrologic soil group (HSG) B and the average slope does not exceed 5%. Each row of panels is 10 feet wide and the distance between rows is 20 feet. The rows of solar panels will be installed according to Figure 1 below. In this scenario, the disconnection length is the same as the distance between rows (20 feet) and is greater than the width of each row (10 feet). Therefore, each row of panels is adequately disconnected and the runoff from 1.0 inch of rainfall is treated.

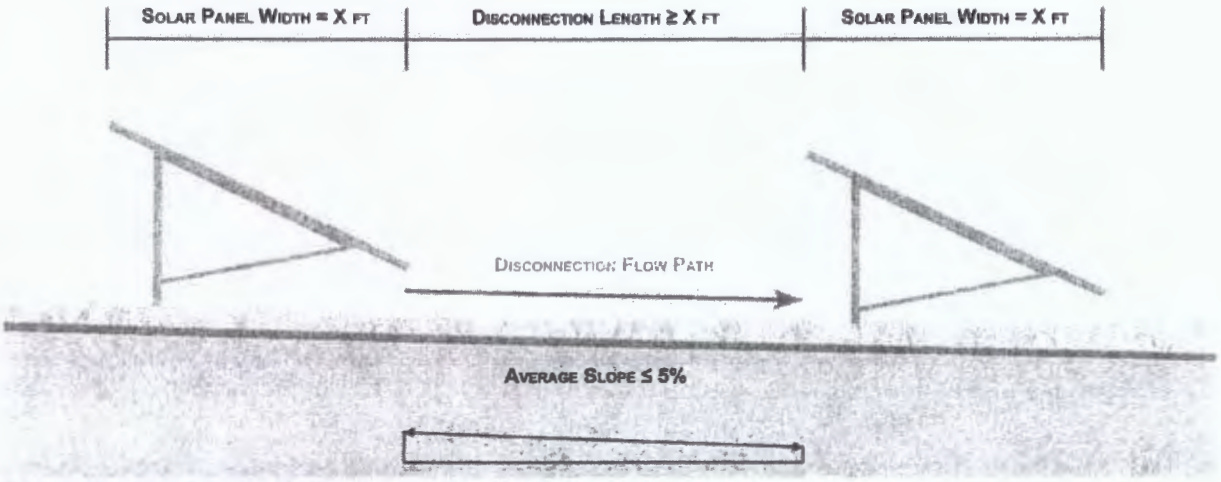


Figure 1. Typical Installation - Slope ≤ 5%

Example 2 – Using Non-Rooftop Disconnection Where the Average Slope ≥ 5% but ≤ 10%

Several rows of solar panels will be installed in an existing meadow. The soils within the meadow are hydrologic soil group (HSG) B and the average slope is greater than 5% but less than 10%. Each row of panels is 10 feet wide and the distance between rows is 20 feet. The rows of solar panels will be installed as shown in Figure 2 below. The disconnection length is the same as the distance between rows (20 feet) and is greater than the width of each row (10 feet). However, in this example, a level spreader (typically 1 to 2-foot wide and 1 foot deep) has been located at the drip edge of each row of panels to dissipate energy and maintain sheetflow.

Discussion

To meet State and local stormwater management requirements, ESD must be used to the MEP to reduce runoff to reflect forested conditions. While all reasonable options for implementing ESD must be investigated, minimally, the runoff from 1 inch of rainfall must be treated. In each of the examples above, there may be additional opportunities to implement ESD techniques or practices and reduce runoff that should be explored. However, simply disconnecting the runoff from the solar panel arrays captures and treats the runoff from 1.0 inch of rainfall. Where imperviousness is low and soil conditions less optimal (e.g., HSG C or D), this may be sufficient to completely address stormwater management requirements. In more dense applications or in sandy soils, additional stormwater management may be required.

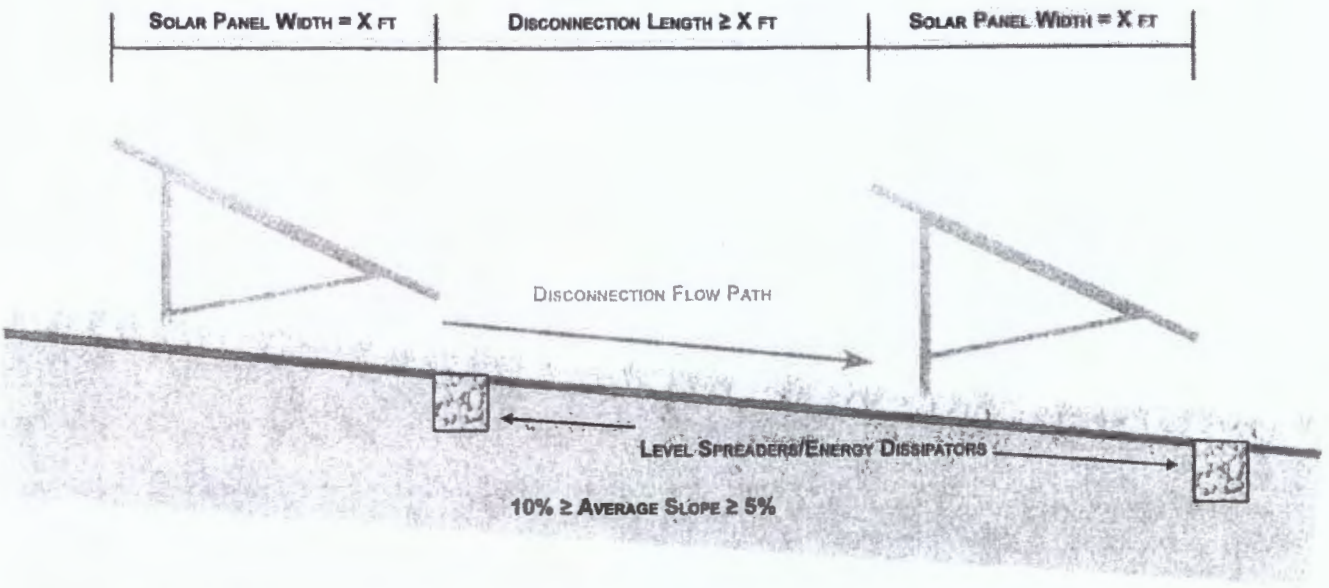


Figure 2. Typical Installation – Slope ≥ 5% but ≤ 10%

Conclusion

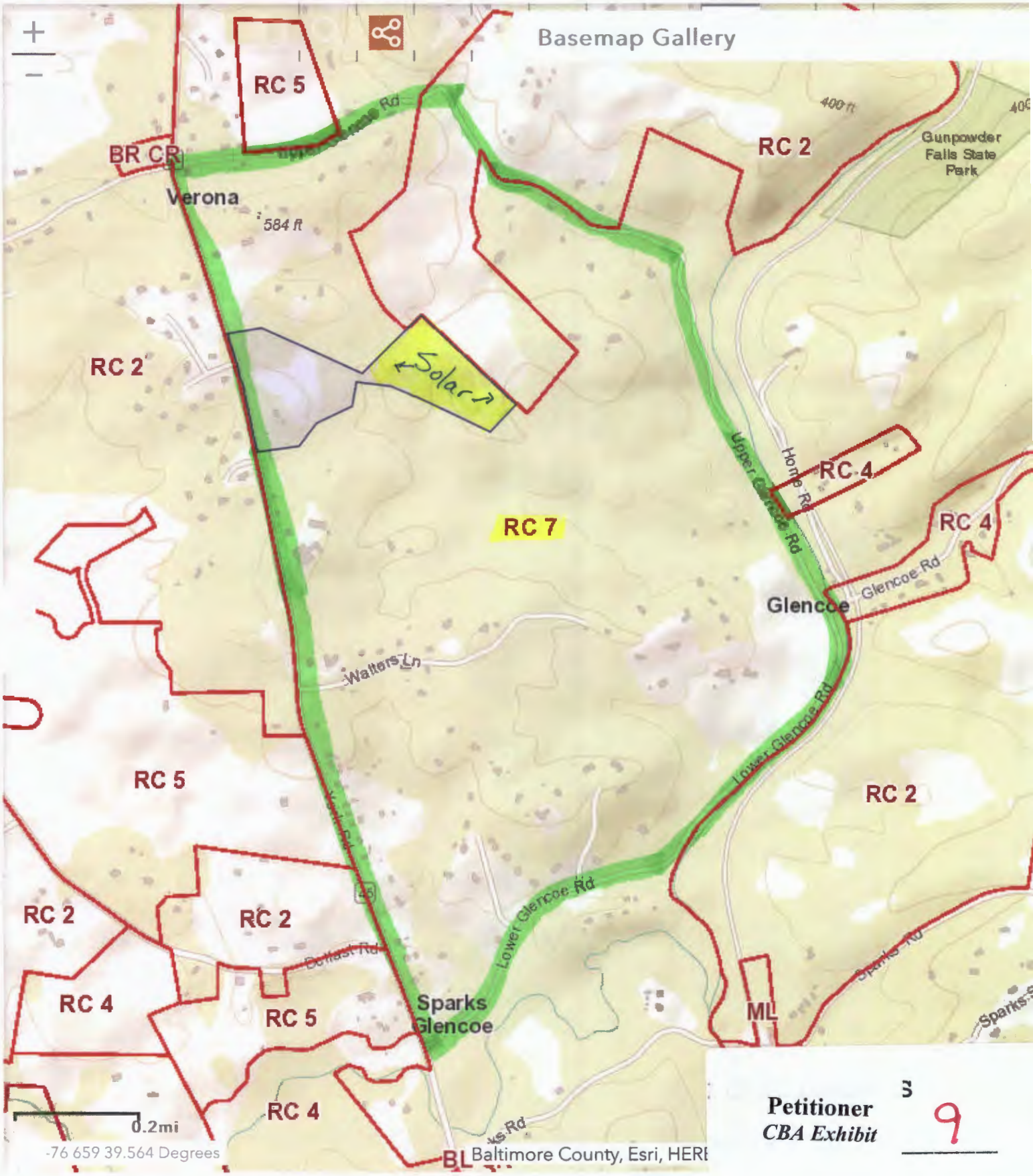
The primary purpose of Maryland's stormwater management program is to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. Any land development project that exceeds 5,000 square feet of disturbance, including solar panel projects, must address stormwater management. However, for solar panels, stormwater management may be provided in a cost-effective manner by disconnecting each row of panels and directing runoff over the vegetated areas between the individual rows.

Resources

[1] 2000 Maryland Stormwater Design Manual, Volumes I and II, MDE, October 2000 (http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/MarylandStormwaterDesignManual/Pages/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.aspx)

Locality

Baltimore County - My Neighborhood



Petitioner
CBA Exhibit
9

Case No. 18-047X

8/21/18

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/20/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-047

Petitioner
CBA Exhibit
10

INFORMATION:
Property Address: 15637 York Road
Petitioner: Robert K. Gerner
Zoning: RC 7
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for a 9 acre solar facility.

A site visit was conducted on August 23, 2017.

York Road is a Baltimore County Scenic Route at this location. Due to topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially properties.

The Department has no objection to granting the requested zoning relief conditioned upon the following:

The Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations (BCZR), as applicable, upon successfully addressing the comments listed below.

- Pursuant to BCZR §4E-104.5 the photovoltaic arrays may not exceed 20 feet in height without variance relief. The Department recommends any additional height is inconsistent with the spirit and intent of the BCZR pursuant to §1A08.4.A and will not support such relief. Petitioners shall amend the plan to show a typical array structure detail at no more than 20' above the natural finished grade.
- Petitioners shall note on the plan that the proposed solar facility will produce not more than 2 megawatts of alternating current.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4E-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.

Case. No 18-047 X

8/21/18

- At the time of building permit application the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by written confirmation that the facility will not be detrimental to the adjacent residential properties pursuant to BCZR §502.1.A.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.

For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Kaylee Justice
Brian Quinlan
Timothy M. Kotroco
Office of the Administrative Hearings
People's Counsel for Baltimore County

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 8/14/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

P Petitioner
CBA Exhibit
I 11

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 8/14/17. A field inspection and internal review reveals that an entrance onto MD45 consistent with current State Highway Administration guidelines is required. ~~As a condition of approval for~~ , Case Number 2018-0047-X

Special Exception
Robert K. Gerner
15637 York Road
MD 45

The applicant must contact the State Highway Administration to obtain an entrance permit. Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A. Zeller

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

* Applicant must contact Mr. Brian Greeting to obtain a residential or farm entrance permit. He can be reached at 410-329-6752

WW/RAZ

Mr. Robert K. Gerner / 15637 York Road, Sparks, MD 21152

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Mr. Brian Greeting, SHA Rte - Hereford Shop
Bruce E. Doak Consulting, LLC / 3801 Baker Schoolhouse Road
Freeland, MD 21053

Case No. 18-047-X 8/21/17

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

Petitioner
CBA Exhibit
12

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

PETITIONER'S
EXHIBIT NO. 12

C:\Users\jwisnom\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\XEGA1Q0V\ZAC 18-0047-X 15637 York Road.doc

Case No 18-047X 8/21/17

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: August 23, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

Petitioner
CBA Exhibit
13

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2017
Item No. 2018-0047-X

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If Special Exception is granted a Landscape Plan is required per the requirements of the Landscape Manual, Bill No.37-17 and the CMDP.

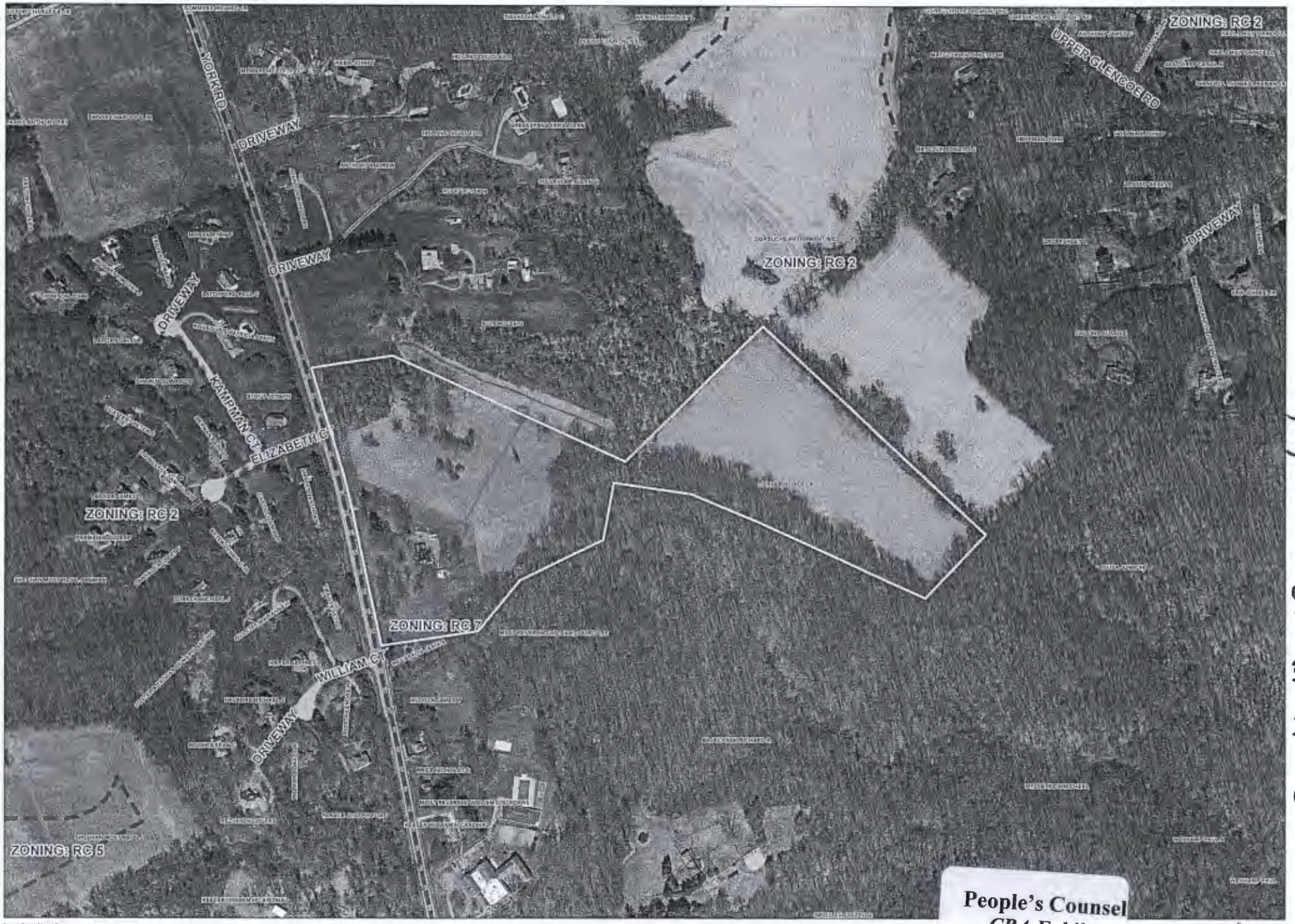
Specific Landscape comments:
1 .York Road is a Baltimore County Scenic Route,
2. Perimeter Landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Additional Landscape buffers may be required depending on the adjacent subject properties existing topography, Scenic Views, etc.,
5. Solar panels are considered a utility and should be designed and located to harmonize with surrounds and create the least visual impact,
6. More comments may be rendered during review of the Landscape Plan.

* * * * *

VKD: CEN
cc: file

Case No. 18-047-X

8/21/18



People's Counsel
CBA Exhibit
3

Case No. 18-047-X 8/21/18

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt:	**Special Tax Recapture:**		
Exempt Class:	AGRICULTURAL TRANSFER TAX		
Account Identifier:	**District** - 08 **Account Number** - 0802004200		

Owner Information

Owner Name:	GERNER ROBERT K	**Use:**	AGRICULTURAL
		Principal Residence:	YES
Mailing Address:	15637 YORK RD SPARKS MD 21152-9687	**Deed Reference:**	/32699/ 00228

Location & Structure Information

Premises Address:	15637 YORK RD SPARKS 21152-9687	**Legal Description:**	30.723 AC 15637 YORK RD ES 1500FT S UPR GLENCOE RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0015	0114		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1897	3,862 SF		30.7230 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2018	As of 07/01/2019
Land:	143,700	143,700		
Improvements	203,600	243,500		
Total:	347,300	387,200	373,900	387,200
Preferential Land:	3,700			3,700

Transfer Information

Seller: GERNER ROBERT KEITH	**Date:** 10/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32699/ 00228	**Deed2:**
Seller: GERNER ROBERT	**Date:** 04/11/2006	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /23665/ 00255	**Deed2:**
Seller: BALLARD CYNTHIA W	**Date:** 10/27/2004	**Price:** $850,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /20893/ 00079	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

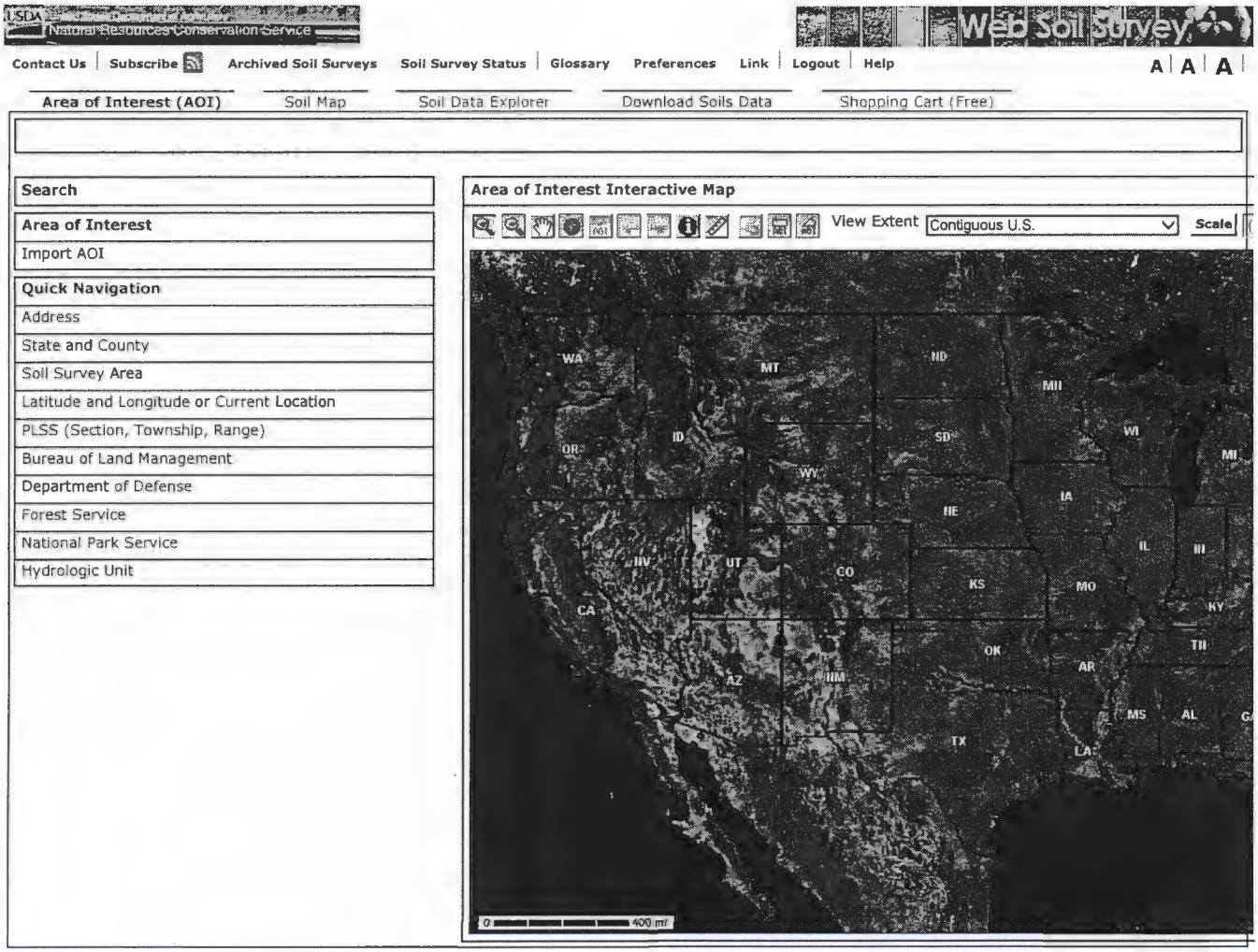
Homestead Application Status: Approved 05/15/2008

Homeowners' Tax Credit Application Information

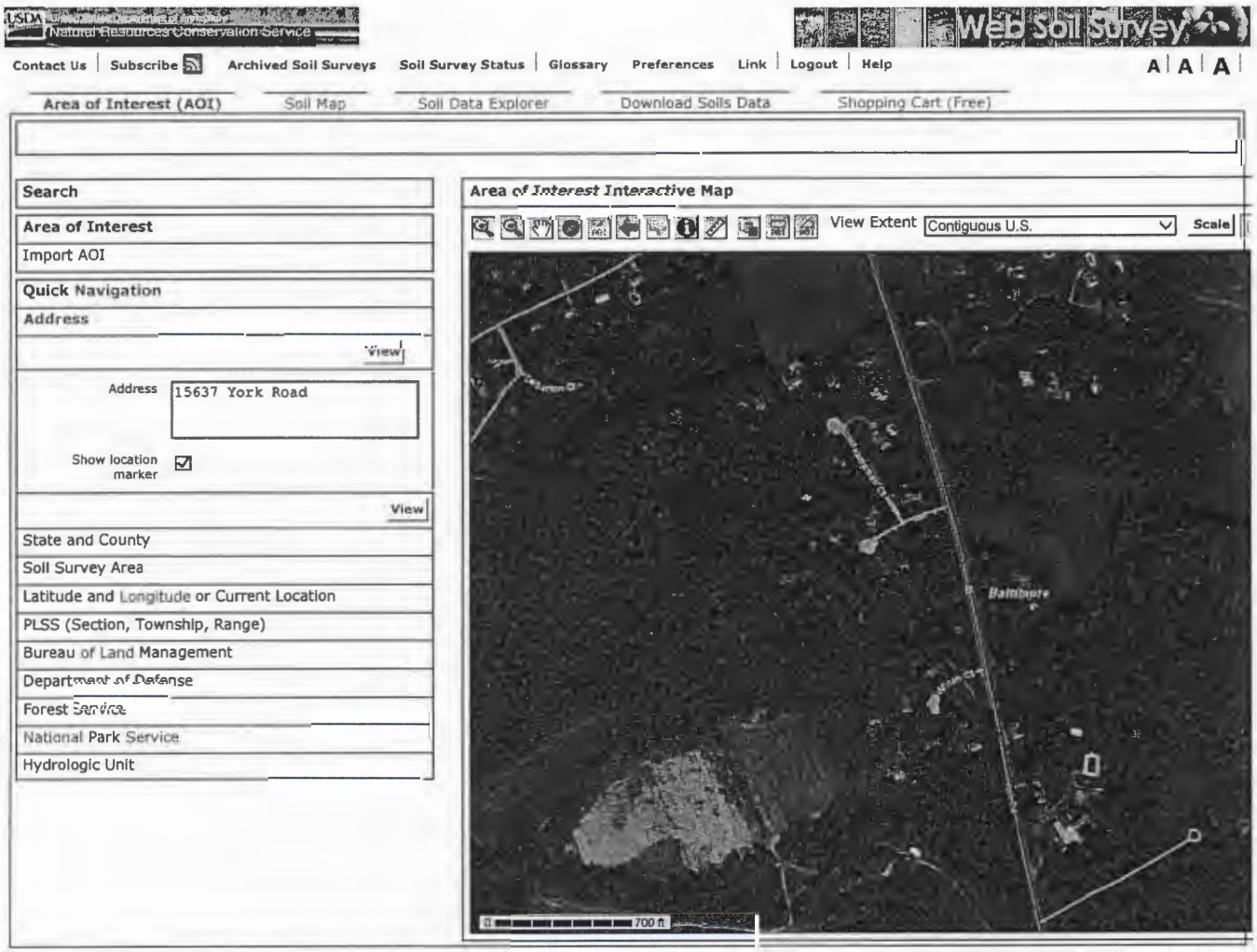
Homeowners' Tax Credit Application Status: No Application **Date:**

People's Counsel
CBA Exhibit
4

Case No. 18-047-X 8/21/18



People's Counsel
CBA Exhibit
5


USDA Natural Resources Conservation Service
Web Soil Survey
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Area of Interest (AOI) | Soil Map | Soil Data Explorer | Download Soils Data | Shopping Cart (Free)
Search
Area of Interest
Import AOI
Quick Navigation
Address
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Address
15637 York Road
Show location marker
View
State and County
Soil Survey Area
Latitude and Longitude or Current Location
PLSS (Section, Township, Range)
Bureau of Land Management
Department of Defense
Forest Service
National Park Service
Hydrologic Unit
Area of Interest Interactive Map
View Extent
Contiguous U.S.
Scale
Baltimore
700 ft
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A | A | A

Area of Interest (AOI) | Soil Map | Soil Data Explorer | Download Soils Data | Shopping Cart (Free)

Search

Area of Interest

Open All | Close All

AOI Properties

Clear AOI

AOI Information

Name

Map Unit Symbols: (•) Use Soil Survey Area Map Unit Symbols ( ) Use National Map Unit Symbols

Area (acres): 114.8

Soil Data Available from Web Soil Survey

Baltimore County, Maryland (MD005)

Data Availability: Tabular and Spatial, complete

Tabular Data: Version 12, Sep 18, 2017

Spatial Data: Version 8, Sep 19, 2016

Clear AOI

Import AOI

Export AOI

Quick Navigation

Address

View

Address: 15637 York Road

Show location marker: ☑

View

State and County

Soil Survey Area

Latitude and Longitude or Current Location

PLSS (Section, Township, Range)

Bureau of Land Management

Department of Defense

Forest Service

National Park Service

Hydrologic Unit

Area of Interest Interactive Map

View Extent: Contiguous U.S. Scale

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Search

Map Unit Legend

Baltimore County, Maryland (MD005)

Baltimore County, Maryland (MD005)

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
CfA	Codorus silt loams, 0 to 3 percent slopes	0.4	0.4%
GdB	Glenelg loam, 3 to 8 percent slopes	16.4	14.3%
GdC	Glenelg loam, 8 to 15 percent slopes	7.6	6.6%
GhB	Glenville silt loam, 3 to 8 percent slopes	10.5	9.2%
GhC	Glenville silt loam, 8 to 15 percent slopes	8.3	7.2%
MaB	Manor loam, 3 to 8 percent slopes	11.0	9.6%
MaC	Manor loam, 8 to 15 percent	13.3	11.6%

Soil Map

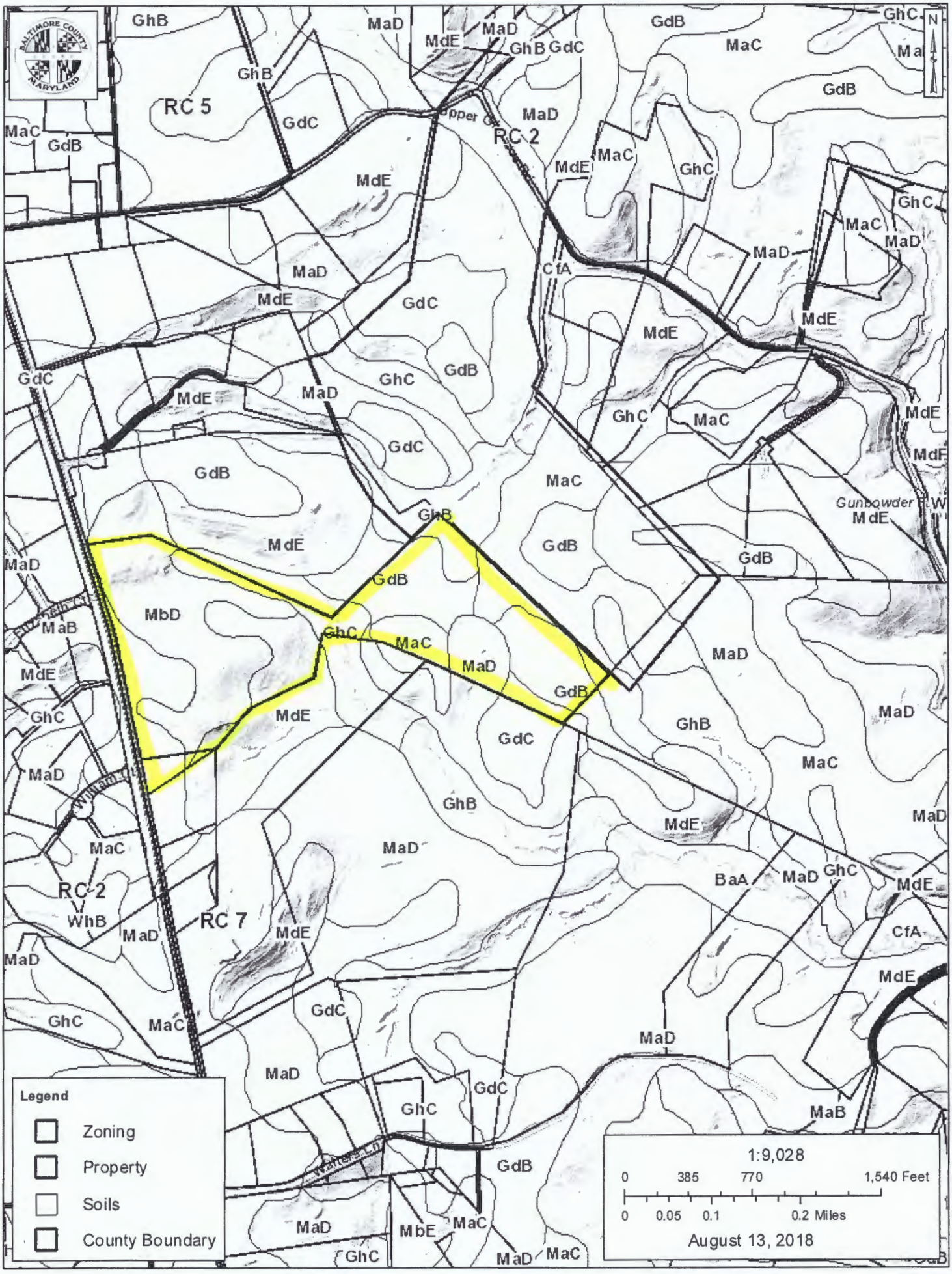
Scale (not to scale)

Warning: Soil Map may not be valid at this scale.

You have zoomed in beyond the scale at which the soil map for this area is intended to be used. Mappi
The soil surveys that comprise your AOI were mapped at 1:12,000. The design of map units and the
map are dependent on that map scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mappi
The maps do not show the small areas of contrasting soils that could have been shown at a more deta

Baltimore County - My Neighborhood



Baltimore County, Maryland

GdB—Glenelg loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2v7gp
Elevation: 30 to 1,200 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Glenelg and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenelg

Setting

Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, backslope, shoulder
Landform position (three-dimensional): Interfluve, side slope
Down-slope shape: Linear
Across-slope shape: Convex, linear, concave
Parent material: Residuum weathered from mica schist

Typical profile

Ap1 - 0 to 6 inches: loam
Ap2 - 6 to 10 inches: clay loam
Bt1 - 10 to 18 inches: clay loam
Bt2 - 18 to 25 inches: clay loam
Bt3 - 25 to 30 inches: clay loam
BCt - 30 to 42 inches: loam
CBt - 42 to 54 inches: loam
C - 54 to 76 inches: channery fine sandy loam

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.20 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: High (about 10.4 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 10 percent
Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Concave
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GdC—Glenelg loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2v7gq
Elevation: 30 to 1,050 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 180 to 220 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Glenelg and similar soils: 90 percent
Minor components: 10 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenelg

Setting

Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Interfluve, side slope
Down-slope shape: Linear
Across-slope shape: Linear, concave, convex
Parent material: Residuum weathered from mica schist

Typical profile

Ap1 - 0 to 6 inches: loam
Ap2 - 6 to 10 inches: clay loam
Bt1 - 10 to 18 inches: clay loam
Bt2 - 18 to 25 inches: clay loam
Bt3 - 25 to 30 inches: clay loam
BCt - 30 to 42 inches: loam
CBt - 42 to 54 inches: loam
C - 54 to 76 inches: channery fine sandy loam

Properties and qualities

Slope: 8 to 15 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: High (about 11.1 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Brinklow

Percent of map unit: 10 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GhB—Glenville silt loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2tmch
Elevation: 20 to 1,090 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Glenville and similar soils: 75 percent
Minor components: 25 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenville

Setting

Landform: Swales, drainageways
Landform position (two-dimensional): Footslope, backslope
Landform position (three-dimensional): Head slope, base slope, interfluve
Down-slope shape: Linear, concave
Across-slope shape: Concave, linear
Parent material: Colluvium derived from metamorphic rock over schist, gneiss or phyllite residuum

Typical profile

Ap - 0 to 11 inches: silt loam
Bt1 - 11 to 20 inches: channery silt loam
Bt2 - 20 to 30 inches: silt loam
Btx - 30 to 40 inches: silt loam
C1 - 40 to 59 inches: loam
C2 - 59 to 82 inches: loam

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: 29 to 31 inches to fragipan
Natural drainage class: Moderately well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.03 to 0.11 in/hr)
Depth to water table: About 18 to 22 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 5.1 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: C/D
Hydric soil rating: No

Minor Components

Unnamed

Percent of map unit: 15 percent
Landform: Drainageways
Landform position (two-dimensional): Footslope
Landform position (three-dimensional): Base slope
Down-slope shepe: Linear, concave
Across-slope shape: Concave, linear
Hydric soil rating: No

Baile

Percent of map unit: 10 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Footslope
Landform position (three-dimensional): Base slope
Down-slope shape: Concave, linear
Across-slope shape: Linear, concave
Hydric soil rating: Yes

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GhC—Glenville silt loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2p8wp
Elevation: 250 to 1,050 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 110 to 235 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Glenville and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenville

Setting

Landform: Swales, drainageways
Landform position (three-dimensional): Base slope, head slope
Down-slope shape: Concave
Across-slope shape: Linear
Parent material: Loamy colluvium derived from phyllite and/or loamy colluvium derived from schist

Typical profile

Ap - 0 to 8 inches: silt loam
Bt1, Bt2 - 8 to 30 inches: silt loam
Btx - 30 to 40 inches: loam
C1, C2 - 40 to 70 inches: loam

Properties and qualities

Slope: 8 to 15 percent
Depth to restrictive feature: 24 to 39 inches to fragipan
Natural drainage class: Moderately well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to moderately high (0.06 to 0.57 in/hr)
Depth to water table: About 20 to 40 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.5 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: C
Hydric soil rating: No

Minor Components

Glenelg

Percent of map unit: 15 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaB—Manor loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2lp7g
Elevation: 250 to 1,050 feet
Mean annual precipitation: 37 to 55 inches
Mean annual air temperature: 45 to 61 degrees F
Frost-free period: 110 to 255 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, interfluves, hillslopes
Landform position (two-dimensional): Backslope, shoulder, summit
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: loam
Bw1, Bw2 - 6 to 22 inches: sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 10 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Glenelg

Percent of map unit: 5 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaC—Manor loam, 8 to 15 percent slopes

Map Unit Setting

National map unit symbol: 2tkpw
Elevation: 50 to 1,080 feet
Mean annual precipitation: 35 to 50 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 220 days
Farmland classification: Farmland of statewide importance

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Hills
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Residuum weathered from mica schist

Typical profile

A1 - 0 to 2 inches: loam
A2 - 2 to 6 inches: sandy loam
Bw1 - 6 to 13 inches: fine sandy loam
Bw2 - 13 to 22 inches: fine sandy loam
C1 - 22 to 30 inches: fine sandy loam
C2 - 30 to 44 inches: channery coarse sand
C3 - 44 to 53 inches: loamy sand
C4 - 53 to 83 inches: channery loamy sand
Cr - 83 to 108 inches: bedrock
R - 108 to 138 inches: bedrock

Properties and qualities

Slope: 8 to 15 percent
Percent of area covered with surface fragments: 0.0 percent
Depth to restrictive feature: 59 to 100 inches to paralithic bedrock; 100 to 128 inches to lithic bedrock
Natural drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.01 to 0.07 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Blocktown

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope, interfluve, nose slope
Down-slope shape: Convex, linear
Across-slope shape: Convex, linear
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Footslope, toeslope
Landform position (three-dimensional): Base slope, head slope
Down-slope shape: Concave
Across-slope shape: Linear
Hydric soil rating: No

Mt. airy

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Summit, shoulder
Landform position (three-dimensional): Nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaD—Manor loam, 15 to 25 percent slopes

Map Unit Setting

National map unit symbol: 2tmcg
Elevation: 250 to 1,000 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Hillslopes
Landform position (two-dimensional): Shoulder, backslope, summit
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Residuum weathered from mica schist

Typical profile

A1 - 0 to 2 inches: loam
A2 - 2 to 6 inches: sandy loam
Bw1 - 6 to 13 inches: fine sandy loam
Bw2 - 13 to 22 inches: fine sandy loam
C1 - 22 to 30 inches: fine sandy loam
C2 - 30 to 44 inches: channery coarse sand
C3 - 44 to 53 inches: loamy sand
C4 - 53 to 83 inches: channery loamy sand
Cr - 83 to 108 inches: bedrock
R - 108 to 138 inches: bedrock

Properties and qualities

Slope: 15 to 25 percent
Percent of area covered with surface fragments: 0.0 percent
Depth to restrictive feature: 59 to 100 inches to paralithic bedrock; 100 to 128 inches to lithic bedrock
Natural drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.01 to 0.07 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.0 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Mt. airy

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope, summit, shoulder
Landform position (three-dimensional): Nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Backslope, footslope
Landform position (three-dimensional): Head slope, interfluve, base slope
Down-slope shape: Linear
Across-slope shape: Concave
Hydric soil rating: No

Blocktown

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MbD—Manor channery loam, 15 to 25 percent slopes

Map Unit Setting

National map unit symbol: 2lp79
Elevation: 250 to 1,050 feet
Mean annual precipitation: 35 to 46 inches
Mean annual air temperature: 45 to 57 degrees F
Frost-free period: 145 to 255 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Brinklow and similar soils: 10 percent
Minor components: 5 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: channery loam
Bw1, Bw2 - 6 to 22 inches: channery sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 15 to 25 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: High
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: B
Hydric soil rating: No

Description of Brinklow

Setting

Landform: Hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Parent material: Gravelly residuum weathered from schist and/or gravelly residuum weathered from phyllite

Typical profile

Ap - 0 to 10 inches: channery loam
Bt,BC - 10 to 25 inches: channery loam
Cr - 25 to 35 inches: weathered bedrock
R - 35 to 80 inches: bedrock

Properties and qualities

Slope: 15 to 25 percent
Depth to restrictive feature: 20 to 36 inches to paralithic bedrock; 28 to 40 inches to lithic bedrock
Natural drainage class: Well drained
Runoff class: High
Capacity of the most limiting layer to transmit water (Ksat): Very low (0.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: C
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MdE—Manor-Brinklow complex, 25 to 45 percent slopes, very rocky

Map Unit Setting

National map unit symbol: 2lpfp
Elevation: 250 to 4,000 feet
Mean annual precipitation: 8 to 46 inches
Mean annual air temperature: 45 to 57 degrees F
Frost-free period: 110 to 200 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 55 percent
Brinklow and similar soils: 30 percent
Rock outcrop: 5 percent
Minor components: 10 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: loam
Bw1, Bw2 - 6 to 22 inches: sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7s

Hydrologic Soil Group: B
Hydric soil rating: No

Description of Brinklow

Setting

Landform: Hillslopes, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope, free face
Parent material: Gravelly residuum weathered from schist and/or gravelly residuum weathered from phyllite

Typical profile

Ap - 0 to 10 inches: channery loam
Bt,BC - 10 to 25 inches: channery loam
Cr - 25 to 35 inches: weathered bedrock
R - 35 to 80 inches: bedrock

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: 20 to 33 inches to paralithic bedrock; 33 to 80 inches to lithic bedrock
Natural drainage class: Well drained
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Very low (0.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7s
Hydrologic Soil Group: C
Hydric soil rating: No

Description of Rock Outcrop

Typical profile

H1 - 0 to 60 inches: bedrock

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: 0 inches to lithic bedrock
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to high (0.06 to 5.95 in/hr)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 8s
Hydrologic Soil Group: D
Hydric soil rating: No

Minor Components

Blocktown

Percent of map unit: 10 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope
Landform position (three-dimensional): Side slope, interfluve, nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Land-Use Requirements for Solar Power Plants in the United States

Sean Ong, Clinton Campbell, Paul Denholm, Robert Margolis, and Garvin Heath

NREL is a national laboratory of the U.S. Department of Energy
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People's Counsel
CBA Exhibit
6

Case No. 18-047-X

8/21/18

Executive Summary

By the third quarter of 2012, the United States had deployed more than 2.1 gigawatts (GWac[1]) of utility-scale solar generation capacity, with 4.6 GWac under construction as of August 2012 (SEIA 2012). Continued growth is anticipated owing to state renewable portfolio standards and decreasing system costs (DOE 2012a). One concern regarding large-scale deployment of solar energy is its potentially significant land use. Efforts have been made to understand solar land use estimates from the literature (Horner and Clark 2013); however, we were unable to find a comprehensive evaluation of solar land use requirements from the research literature. This report provides data and analysis of the land use associated with U.S. utility-scale[2] ground-mounted photovoltaic (PV) and concentrating solar power (CSP) facilities.

After discussing solar land-use metrics and our data-collection and analysis methods, we present total and direct land-use results for various solar technologies and system configurations, on both a capacity and an electricity-generation basis. The total area corresponds to all land enclosed by the site boundary. The direct area comprises land directly occupied by solar arrays, access roads, substations, service buildings, and other infrastructure. We quantify and summarize the area impacted, recognizing that the quality and duration of the impact must be evaluated on a case-by-case basis. As of the third quarter of 2012, the solar projects we analyze represent 72% of installed and under-construction utility-scale PV and CSP capacity in the United States. Table ES-1 summarizes our land-use results.

[1] All capacity-based land-use intensity figures in this study are expressed in terms of MWac or GWac. This is to maintain consistency within the paper because CSP power plants are rated in terms of MWac. The conversion factor between dc-rating and ac-rating is discussed in Section 3.

[2] We define utility-scale as greater than 1 MWdc for PV plants and greater than 1 MWac for CSP plants.

Table ES-1. Summary of Land-Use Requirements for PV and CSP Projects in the United States

	Capacity-weighted average land use (acres/MWac)	Generation-weighted average land use (acres/GWh/yr)	Capacity-weighted average land use (acres/MWac)	Generation-weighted average land use (acres/GWh/yr)
Small PV (>1 MW, <20 MW)	6.9	3.1	8.3	4.1
Fixed	5.5	3.2	7.8	4.4
1-axis	8.3	2.9	8.7	3.8
2-axis flat panel	9.4	4.1	13	5.5
2-axis CPV	6.9	2.3	9.1	3.1
Large PV (>20 MW)	7.2	3.1	7.9	3.4
Fixed	5.8	2.6	7.5	3.7
1-axis	9.0	3.6	8.3	3.3
2-axis CPV	6.1	2.0	8.1	2.8
CSP	7.7	2.7	10	3.5
Parabolic trough	6.2	2.5	8.5	3.9
Tower	8.9	2.8	10	3.2
Dish Stirling	2.8	1.5	10	5.3
Linear Fresnel	2.0	1.7	4.7	4.0

We found total land-use requirements for solar power plants to have a wide range across technologies. Generation-weighted averages for total area requirements range from about 3 acres/GWh/yr for CSP towers and CPV installations to 5.5 acres/GWh/yr for small 2-axis flat panel PV power plants. Across all solar technologies, the total area generation-weighted average is 3.5 acres/GWh/yr with 40% of power plants within 3 and 4 acres/GWh/yr. For direct-area requirements the generation-weighted average is 2.9 acres/GWh/yr, with 49% of power plants within 2.5 and 3.5 acres/GWh/yr. On a capacity basis, the total-area capacity-weighted average is 8.9 acres/MWac, with 22% of power plants within 8 and 10 acres/MWac. For direct land-use requirements, the capacity-weighted average is 7.3 acre/MWac, with 40% of power plants within 6 and 8 acres/MWac. Other published estimates of solar direct land use generally fall within these ranges.

Both capacity- and generation-based solar land-use requirements have wide and often skewed distributions that are not well captured when reporting average or median values. Some solar categories have relatively small samples sizes, and the highest-quality data are not available for all solar projects; both of these factors must be considered when interpreting the robustness of reported results. Owing to the rapid evolution of solar technologies, as well as land-use practices and regulations, the results reported here reflect past performance and not necessarily future trends. Future analyses could include evaluating the quality and duration of solar land-use impacts and using larger sample sizes and additional data elements to enable a thorough investigation of additional land-use factors.

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1 Introduction

By the third quarter of 2012, the United States had deployed more than 2.1 gigawatts (GWac[3]) of utility-scale solar generation capacity, with 4.6 GWac under construction as of August 2012 (SEIA 2012). Continued growth is anticipated owing to state renewable portfolio standards and decreasing system costs (DOE 2012a). One concern regarding large-scale deployment of solar energy is its potentially significant land use. Estimates of land use in the existing literature are often based on simplified assumptions, including power plant configurations that do not reflect actual development practices to date. Land-use descriptions for many projects are available from various permitting agencies and other public sources, but we were unable to locate a single source that compiles or summarizes these datasets. The existing data and analyses limit the effective quantification of land-use impacts for existing and future solar energy generation, particularly compared with other electricity-generation technologies.

This report provides data and analysis of the land use associated with U.S. utility-scale ground-mounted photovoltaic (PV) and concentrating solar power (CSP) facilities, defined as installations with capacities greater than 1 MW. The next section (Section 2) discusses standard land-use metrics and their applicability to solar power plants. We identify two major classes of solar plant land use—direct impact (disturbed land due to physical infrastructure development) and total area (all land enclosed by the site boundary)—by which we categorize subsequent results. Section 3 describes our solar land-use data collection and analysis methods. We derived datasets from project applications, environmental impact statements, and other sources and used them to analyze land use based on the capacity and generation of solar plants. Section 4 presents our results. In addition to summarizing PV and CSP land use, we examine relationships among land use, plant configuration, location, and technology. Finally, in Section 5, we identify limitations to the existing solar land-use datasets and suggest additional analyses that could aid in evaluating land use and impacts associated with the deployment of solar energy. Appendices include tables of our solar project data as well as more detailed analyses of specific land-use relationships.

[3] All capacity-based land-use intensity figures in this study are expressed in terms of MWac or GWac. This is to maintain consistency within the paper because CSP power plants are rated in terms of MWac. The conversion factor between dc-rating and ac-rating is discussed in Section 3.

2 Solar Power Plant Land-Use Metrics

There are many existing and proposed metrics for evaluating land-use impacts. Recent methods for quantifying land use include evaluating the direct and indirect life-cycle use (Fthenakis and Kim 2009) and assessing temporary and permanent land-area requirements (Denholm et al. 2009). While there is no single, generally accepted methodology (Canals et al. 2007), at least three general categories are used to evaluate land-use impacts: (1) the area impacted, (2) the duration of the impact, and (3) the quality of the impact (Koellner and Scholz 2008). The quality of the impact (also called the "damage function") evaluates the initial state of the land impacted and the final state across a variety of factors, including soil quality and overall ecosystem quality (Koellner and Scholz 2008).

This report closely follows the methodology outlined in a National Renewable Energy Laboratory (NREL) U.S. wind power land-use study (Denholm et al. 2009). We quantify and summarize the area impacted, recognizing that the quality and duration of the impact must be evaluated on a case-by-case basis. We consider two land-use metrics. The first is the total area, which corresponds to all land enclosed by the site boundary. The perimeter of this area is usually specified in blueprint drawings and typically fenced or protected. The second metric is the direct-impact area, which comprises land directly occupied by solar arrays, access roads, substations, service buildings, and other infrastructure. The direct-impact area is smaller than the total area and is contained within the total-area boundaries. Figure 1 illustrates the two types of areas, with the total area shaded yellow and the direct-impact area shaded orange.

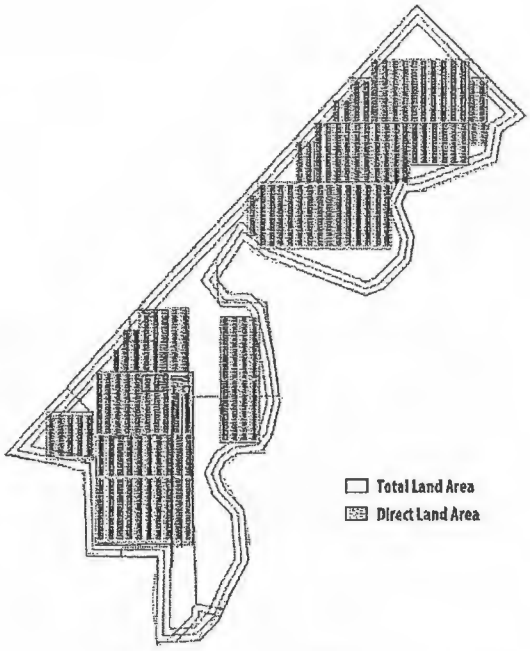


Figure 1. NREL mesa top PV system—example of direct and total land use[4]

[4] Access roads, infrastructure, and other direct impact areas are not shown in Figure 1.

3 Solar Land-Use Data and Methodology

We collected PV and CSP land-use data from four categories of sources, in the following prioritized order. First, where available, we collected official project data from federal, state, or local regulatory agencies, including environmental impact statements, environmental assessments, and project applications to regulatory bodies. These sources typically contain detailed project information, but their availability is highly dependent on federal, state, and local regulations as some states require very detailed environmental assessments, while others require little land-use analysis. Second, we collected project fact sheets, news releases, and other data provided by the project owner or developer. Data from these sources were used when additional information was needed and not found in regulatory documents. When no other source of data could be located, we used news articles, websites unaffiliated with the developer/owner or regulatory bodies, and other secondary sources. Finally, when official project drawings were unavailable or documents did not include information necessary to estimate total and direct land area, we analyzed satellite images to identify plant configuration, direct land use, and project-area boundaries. Table 1 shows the proportion of data source categories used for each technology and also indicates the percentage of sites where satellite imagery was analyzed in addition to the documents collected.

Table 1. Summary of Data Categories Used for PV and CSP Plants[5]

Technology	Official Documents (%)	Developer Documents (%)	Third-Party Sources (%)	Satellite Imagery Required (%)
PV	18%	36%	48%	40%
CSP	44%	28%	28%	40%

For PV, we used these datasets to analyze the relationship between land-use intensity (defined as land use per unit of capacity or generation) and stated PV module efficiency, array configuration, and tracking type. For CSP, we analyzed the land-use intensity of several different technologies. For PV and CSP, we limited the analysis to systems larger than 1 MW in capacity. We classified systems smaller than 20 MW as "small" and those larger than 20 MW as "large."

We quantified land-use requirements on a capacity (area/MWac) and a generation (area/GWh/yr[6]) basis. Capacity-based results are useful for estimating land area and costs for new projects because power plants are often rated in terms of capacity. The generation basis provides a more consistent comparison between technologies that differ in capacity factor and enables evaluation of land-use impacts that vary by solar resource differences, tracking configurations, and technology and storage options. Most of the data collected for this analysis included the reported capacity of power plants but not annual generation. Because capacity-based land-use requirements are based on reported data, the capacity-based results are expected to have less uncertainty than the generation-based results.

[5] Percentages add up to over 100% because power plants evaluated with satellite imagery also required additional data sources to determine solar plant characteristics.

[6] Generation results are reported in area/(GWh per year) which we display as area/GWh/yr.

We simulated PV and CSP electricity generation using the System Advisor Model (SAM; Gilman and Dobos 2012). When available, we used project-specific inputs, such as location, array configuration, derate factor, and tracking technology. When project-specific inputs were unavailable, we used SAM default assumptions (e.g., if the tilt angle for fixed-tilt PV was unknown, we used SAM's latitude-tilt default assumption). The PV derate factor[7] was determined by dividing the AC reported capacity by the DC reported capacity for each project. The weighted-average derate factor (0.85) was used for projects that did not report both AC and DC capacity. All capacity-based land-use intensity figures in this study are expressed in terms of MWac. For CSP projects, a range of solar multiple[8] values was used to simulate annual generation output (see Appendix A for CSP solar multiple assumptions). Hourly solar resource and weather data for all projects were obtained from the NREL Solar Prospector tool[9] for each project's latitude and longitude. Each power plant was assigned to a cell within the National Solar Radiation Database (Wilcox 2007) equal in area to 0.1 degrees in latitude and longitude (approximately equal to a 10 km x 10 km square) (Perez et al. 2002). PV and CSP projects were simulated with typical direct-radiation-year weather data[10] (NREL 2012).

[7] The derate factor is used to determine the AC power rating at Standard Test Conditions (STC). The overall DC to AC derate factor accounts for losses from the DC nameplate power rating. We do not calculate the derate factor from component losses, but rather estimate the derate factor from the reported AC and DC power rating at each plant. For a discussion on derate factors, see http://rredc.nrel.gov/solar/calculators/pvwatts/version1/change.html#derate (accessed April 2013).

[8] The solar multiple is the CSP field aperture area expressed as a multiple of the aperture area required to operate the power cycle at its design capacity (NREL 2012).

[9] The Solar Prospector is a mapping and analysis tool designed to provide access to geospatial data relevant to the solar industry. For more information, visit http://maps.nrel.gov/prospector (accessed May 2013).

[10] For consistency, PV and CSP data were both simulated using typical direct-radiation-year (TDY) weather data. Normally, CSP power plants are simulated using TDY data and PV power plants are simulated using typical meteorological year (TMY) data.

4 Results

We obtained land-use data for 166 projects completed or under construction (as of August 2012), representing 4.8 GWac of capacity, and 51 proposed projects, representing approximately 8 GWac of capacity (Table 2).

Table 2. Summary of Collected Solar Power Plant Data (as of August 2012)

	Small PV (<20 MW)		Large PV (>20 MW)		CSP	
	Projects	Capacity (MWac)	Projects	Capacity (MWac)	Projects	Capacity (MWac)
Completed	103	413	10	258	9	508
Under construction	17	165	20	1,846	7	1,610
Proposed	6	70	36	6,376	9	1,570
Total	126	762	66	8,961	25	3,688

We collected data on 4.8 GWac (72%) of the 6.7 GWac of completed or under-construction U.S. utility-scale solar capacity reported by SEIA (SEIA 2012). Figure 2 maps the solar projects evaluated. Appendix B and Appendix C detail all the projects and data sources. There are over 24 GWac of PV and CSP proposed (under development but not under construction) as of August 2012[11] (SEIA 2012), and the results reported in this study must be taken in light of a rapidly growing installed base. The results reported in this study reflect past performances and not necessarily future trends. For example, many of the largest PV systems currently proposed consist primarily of thin-film technology on fixed-tilt arrays, which may have different land use requirements than the results presented in this study.

[11] As of February 2013, there are 26 GWac of PV and CSP proposed (SEIA 2013)

Figure 2. Map of PV and CSP installations evaluated

4.1 Summary Results

Figure 3 summarizes capacity-based total and direct land-use results for small and large utility-scale PV and CSP projects. Direct land-use requirements for small and large PV installations range from 2.2 to 12.2 acres/MWac, with a capacity-weighted average of 6.9 acres/MWac. Direct land-use intensity for CSP installations ranges from 2.0 to 13.9 acres/MWac, with a capacity-weighted average of 7.7 acres/MWac. Figure 4 shows generation-based total and direct land-use results. Direct land-use requirements for PV installations range from 1.6 to 5.8 acres/GWh/yr, with a generation-weighted average of 3.1 acres/GWh/yr. Direct land-use intensity for CSP installations ranges from 1.5 to 5.3 acres/GWh/yr, with a generation-weighted average of 2.7 acres/GWh/yr.

Solar direct land-use estimates in the literature generally fall within these ranges but are often smaller than the PV capacity-weighted averages we report and on par or larger for CSP capacity-weighted averages we report. Hand et al. (2012) estimate 4.9 acres/MWac for PV and 8.0 acres/MWac for CSP. Denholm and Margolis (2008) estimate 3.8 acres/MWac for fixed-tilt PV systems and 5.1 acres/MWac for 1-axis tracking PV systems. Our results indicate 5.3 acres/MWac for fixed-tilt PV and 6.3 acres/MWac for 1-axis tracking PV (capacity-weighted average direct land-use requirements for systems under 20 MW; see Table 4 in Section 4.2). Horner and Clark (2013) report 3.8 acres/GWh/yr for PV and 2.5 acres/GWh/yr for CSP. Fthenakis and Kim (2009) estimate 4.1 acres/GWh/yr for CSP troughs and 2.7 acres/GWh/yr for

CSP towers. Our results indicate 2.3 acres/GWh/yr for CSP troughs and 2.8 acres/GWh/yr for CSP towers (see Table 7 in Section 4.3).[12]

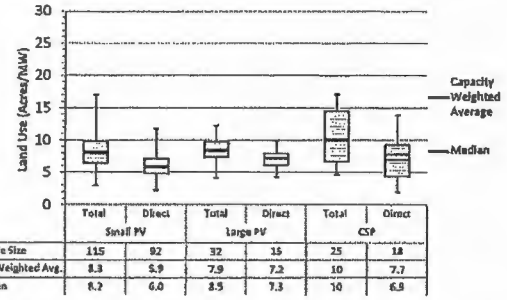
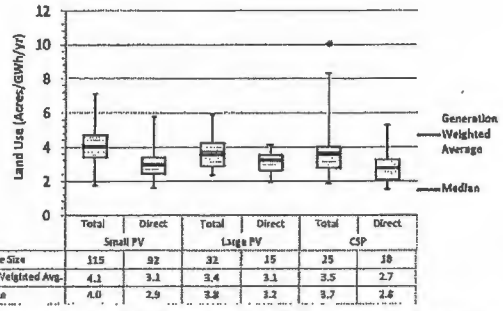


Figure 3. Distribution of solar land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

[12] Comparisons of generation-based land use results should be taken in light of the fact that annual generation (GWh) varies with solar resource (location). For example, generation-based results determined from solar power plants in a specific location may differ from results presented in this study, which includes solar plants from a variety of locations throughout the United States.



	Total	Direct	Total	Direct	Total	Direct
	Small PV		Large PV		CSP	
Sample Size	115	92	32	15	25	18
Gen. Weighted Avg.	4.1	3.1	3.4	3.1	3.5	2.7
Median	4.0	2.9	3.8	3.2	3.7	2.8

Figure 4. Distribution of generation-based solar land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates. Blue dot represents eSolar's Sierra Sun Tower (10 acres/GWh/yr), separated for clarity (but not considered an outlier)

4.2 PV Land-Use Results

Table 3 and Table 4 summarize PV land requirements by tracking type for total and direct area, respectively. Total-area data were available for all systems evaluated; however, direct-area data were only available for a subset of these systems. Fixed-tilt and 1-axis PV systems account for a majority (96%) of projects evaluated.

On average, fixed-tilt systems use 13% less land than 1-axis tracking on a capacity basis but use 15% more land on a generation basis. This difference is due to increased generation resulting from tracking technologies. One-axis tracking systems can increase PV generation 12%–25% relative to fixed-tilt systems, and 2-axis tracking systems can increase PV generation by 30%–45% (Drury et al. 2012). We evaluated ten 2-axis PV plants: four flat panel (non-concentrating) projects and six concentrating PV (CPV) projects. Two-axis, flat panel systems appear to use more land than fixed and 1-axis plants on a capacity and generation basis, but general conclusions should not be drawn until the sample size is increased.

Table 3. Total Land-Use Requirements by PV Tracking Type[13]

Tracking Type	Projects	Total Area: Capacity (MWac)	Total Area: Capacity-weighted average area requirements (acres/MWac)	Total Area: Generation-weighted average area requirements (acres/GWh/yr)
Small PV (less than 20 MW)				
Fixed	52	231	7.6	4.4
1-axis	55	306	8.7	3.8
2-axis flat panel	4	5	13	5.5
2-axis CPV	4	7	9.1	3.1
Large PV (greater than 20 MW)				
Fixed	14	1,756	7.6	3.7
1-axis	16	1,637	8.3	3.3
2-axis CPV	2	158	8.1	2.8

Table 4. Direct Land-Use Requirements by PV Tracking Type[14]

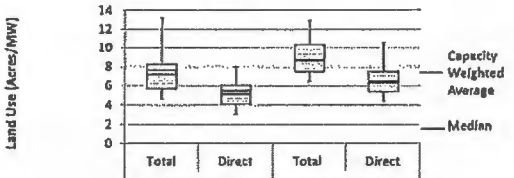
Tracking Type	Projects	Direct Area: Capacity (MWac)	Direct Area: Capacity-weighted average area requirements (acres/MWac)	Direct Area: Generation-weighted average area requirements (acres/GWh/yr)
Small PV (less than 20 MW)				
Fixed	43	184	5.5	3.2
1-axis	41	168	6.3	2.9
2-axis flat panel	4	5	9.4	4.1
2-axis CPV	4	7	6.9	2.3
Large PV (greater than 20 MW)				
Fixed	7	744	5.8	2.8
1-axis	7	630	9.0	3.5
2-axis CPV	1	31	6.1	2.0

Figure 5 shows the capacity-based total and direct land-use requirement distributions for PV plants smaller than 20 MW. Direct land-use requirements for fixed-tilt PV installations range from 2.2 to 8.0 acres/MWac, with a capacity-weighted average of 5.5 acres/MWac. Direct land-use requirements for 1-axis tracking PV installations range from 4.2 to 10.6 acres/MWac, with a capacity-weighted average of 6.3 acres/MWac. Figure 6 shows the capacity-based total and

[13] Forty-two proposed projects representing 5,842 MWac could not be categorized by tracking type owing to insufficient information. These projects are not represented in this table.
[14] Forty-two proposed projects representing 5,842 MWac could not be categorized by tracking type due to insufficient information. These projects are not represented in this table.

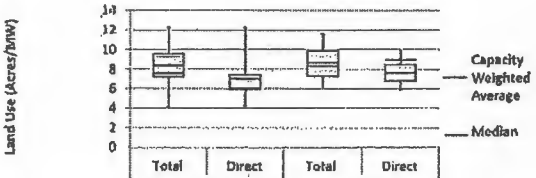
direct land-use requirement distributions for PV plants larger than 20 MW. Relatively large deviations between the median and weighted average values are due to a few very large PV installations (over 100 MW) contributing heavily to weighted average results. We found that PV system size appears to have no significant impact on land-use requirements per unit of capacity (see Appendix D).

We also evaluated the impacts of efficiency on land-use intensity. We would expect land-use intensity to decrease with increasing module efficiencies, but we observed no significant trends between land-use intensity and module efficiency for small and large PV systems (see Appendix D). Variations in land-use intensity that remain after isolating for module efficiency and tracking type are not clearly understood. One source of variability could be the large range of packing factors described in the next section.



	Total	Direct	Total	Direct
	Fixed Axis (< 20 MW)		1-Axis (< 20 MW)	
Sample Size	52	43	55	41
Cap. Weighted Avg.	7.6	5.5	8.7	6.3
Median	7.1	5.1	8.7	6.5

Figure 5. Distribution of small PV land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates



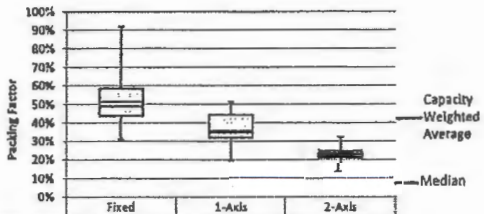
	Total	Direct	Total	Direct
	Fixed Axis (> 20 MW)		1-Axis (> 20 MW)	
Sample Size	14	7	16	7
Cap. Weighted Avg.	7.5	5.8	8.3	9.0
Median	8.4	7.0	8.7	7.7

Figure 6. Distribution of large PV land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

4.2.1 Evaluation of PV Packing Factors

We evaluated array spacing for various PV tracking technologies. The area between arrays is quantified using the packing factor metric, which is the ratio of array area to actual land area for a system[15] (DOE 2012b). Figure 7 shows the average packing factor for each tracking technology evaluated. An evaluation of system packing factors shows that there is large variability in array spacing. Packing factors range from 13% (Prescott Airport CPV, Arizona) to 92% (Canton Landfill Solar Project, Massachusetts). Fixed-tilt systems have a capacity-weighted average packing factor of 47%, followed by 1-axis systems with 34% and 2-axis systems with 25%. Packing factor estimates from the research literature range from 20% to 67% (Horner and Clark 2013). The large variability in packing factor may contribute to the variability in land-use intensity observed, given an expectation that packing factor directly impacts land-use intensity. We did not attempt to isolate the impacts of packing factor, efficiency, capacity, and other factors on land-use intensity due to limited data availability. The availability of more data elements and larger sample sizes will enable a robust evaluation of these factors on land-use intensity.

[15] We display the packing factor ratio as a percentage. A 100% packing factor would represent complete coverage of solar panels with no spacing between arrays.



	Fixed	1-Axis	2-Axis
Sample Size	39	35	9
Cap. Weighted Avg.	47%	34%	25%
Median	51%	36%	22%

Figure 7. Capacity-weighted average packing factor for PV projects evaluated—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

4.2.2 Impact of Location and Tracking Configuration on PV Land Use

Given the relatively small amount of data, it is difficult to isolate the impact of any single factor on land-use requirements. This section isolates the theoretical impact of tracking arrays by simulating the performance of PV in multiple locations holding all other factors constant.

Table 5 summarizes the relative impacts of tracking on land-use intensity, simulated for a variety of locations throughout the United States. Although tracking systems generate more energy than fixed-tilt systems, they also require more land per unit of capacity, as shown in Section 4.2. We assume the capacity-weighted average land-use requirements (as reported in Table 4) for PV systems smaller than 20 MW when evaluating the impact of tracking arrays: 5.5 acres/MWac for fixed-tilt systems, 6.3 acres/MWac for 1-axis tracking systems, and 9.4 acres/MWac for 2-axis tracking systems. These results indicate that the expected increase in energy yield from 1-axis tracking systems (12%–22%) is partially countered by increases in land-use requirements per unit of capacity. While the land use per unit of generation generally decreases for 1-axis tracking systems compared with fixed-tilt systems, this metric generally increases for 2-axis tracking systems compared with fixed-tilt systems. This is because the spacing required for 2-axis tracking increases more than the relative increase in energy yield. The land-use advantage of 1-axis tracking is more pronounced in regions with higher direct normal irradiation (DNI) levels. Similarly, the negative land-use impacts of 2-axis tracking are less pronounced in regions with higher DNI levels. Denholm and Margolis (2008) estimated that land use per unit of generation would increase moving from fixed systems to 1-axis tracking systems and moving from fixed systems to 2-axis tracking systems.

Table 5. Impacts of 1-Axis Tracking on Land-Use Intensity Compared With Fixed-Axis Mounting

Region	Direct normal radiation (kWh/m²/yr)	Estimated energy production (kWh/kW)			1-axis tracking increase in energy yield relative to fixed	2-axis tracking increase in energy yield relative to fixed	Land-use intensity (acres/kWac)			1-axis tracking change in land-use intensity relative to fixed	2-axis tracking change in land-use intensity relative to fixed
		Fixed	1-axis	2-axis			Fixed	1-axis	2-axis		
San Francisco, CA	1,843	1,681	1,826	1,953	17.9%	25.8%	4.94	4.72	5.44	-4.40%	9.30%
San Diego, CA	1,965	1,607	1,864	1,974	16.0%	22.8%	4.77	4.65	5.39	-2.70%	11.40%
Alamosa, CO	2,530	1,813	2,200	2,606	21.3%	43.7%	4.23	3.93	4.08	-7.50%	-3.60%
Phoenix, AZ	2,518	1,733	2,113	2,419	21.9%	39.6%	4.42	4.1	4.4	-8.00%	-0.60%
Jacksonville, FL	1,907	1,560	1,834	1,904	18.6%	9.0%	5.56	5.29	7.07	-4.90%	21.40%
Newark, NJ	1,263	1,268	1,422	1,321	12.1%	4.3%	8.03	8.04	8.08	0.70%	24.90%
Seattle, WA	1,112	1,100	1,249	1,136	13.5%	3.3%	6.87	6.92	8.37	-0.60%	25.50%

4.3 CSP Land-Use Results

Table 6 and Table 7 summarize total and direct land-use requirements by CSP technology, respectively. Note there are significantly fewer CSP projects in the United States than PV projects, and due to reliance on solar DNI resource, most CSP projects are in the Southwest (Figure 2). We collected data for 25 CSP projects, with only one linear Fresnel project and one dish Stirling project. It is more important to evaluate CSP in terms of land use per unit of generation because of the effect of storage and solar multiple, which can increase the amount of energy produced per unit of capacity (Turchi et al. 2010). Direct land-use requirements for CSP trough technology range from 2.0 to 4.5 acres/GWh/yr, with a generation-weighted average of 2.5 acres/GWh/yr. Direct land-use requirements for CSP tower technology range from 2.1 to 5.3 acres/GWh/yr, with a generation-weighted average of 2.8 acres/GWh/yr. We found that system size appears to have little impact on generation-based CSP land-use requirements (see Appendix E).

Table 6. Total Land-Use Requirements by CSP Technology

Technology	Total Area			
	Projects	Capacity (MWac)	Capacity-weighted average area requirements (acres/MWac)	Generation-weighted average area requirements (acres/GWh/yr)
All	25	3,747	10	3.5
Trough	8	1,380	8.5	3.9
Tower	14	2,358	10	3.2
Dish Stirling	1	2	10	5.3
Linear Fresnel	1	8	4.7	4.0

Table 7. Direct Land-Use Requirements by CSP Technology

Technology	Direct Area			
	Projects	Capacity (MWac)	Capacity-weighted average area requirements (acres/MWac)	Generation-weighted average area requirements (acres/GWh/yr)
All	18	2,216	7.7	2.7
Trough	7	851	6.2	2.5
Tower	9	1,358	8.9	2.8
Dish Stirling	1	2	2.8	1.5
Linear Fresnel	1	8	2.0	1.7

Data for CSP with multi-hour energy storage were also collected. Eight facilities included thermal storage technology, ranging from 3 to 15 hours of storage. One of the eight CSP facilities with storage is a parabolic trough system, while the remaining seven are tower systems. Little correlation is observed between storage and land-use intensity, both on a capacity and generation basis (see Appendix E). We would expect to see a trend of decreasing generation-based land use with increasing storage and increasing capacity-based land use with increasing storage based on modeled results as shown in Figure 8 (Turchi et al. 2010). Given the relatively

small amount of data, it is difficult to isolate the impact of any single factor on land-use requirements. Higher sample sizes and additional data elements will enable a more robust evaluation of CSP land use.

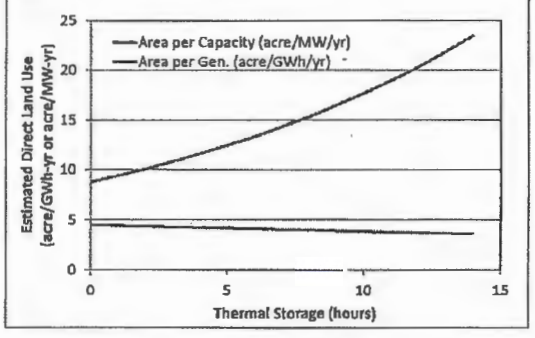


Figure 8. Modeled data showing relationship between CSP thermal storage and land-use intensity
Source: Turchi et al. 2010

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Inlands Empire Utility Solar Farm	CA	1.0	12.5	8.0	1 axis	20%	Complete	Developer
West County Waste Water PV Plant	CA	1.0	11.7	8.0	2 axis flat	14%	Complete	Developer
Nichols Farms PV Plant	CA	1.0	8.0	8.0	2 axis CPV	25%	Complete	Third party
Budweiser PV Plant	CA	1.1	8.4	7.2	1 axis	15%	Complete	Official documents
Wal-Mart Apple Valley PV Plant	CA	1.1	10.7	7.8	1 axis	15%	Complete	Official documents
Rancho California PV Plant	CA	1.1	12.5	8.9	1 axis	15%	Complete	Developer
Hayward Wastewater PV Plant	CA	1.2	13.2	8.8	1 axis	14%	Complete	Third party
Chuckawalla State Prison PV Plant	CA	1.2	8.4	4.8	fixed	14%	Complete	Official documents
Ironwood State Prison PV Plant	CA	1.2	14.4	9.0	1 axis	13%	Complete	Official documents
Sacramento Solell	CA	1.3	10.9	8.1	fixed	11%	Complete	Developer
USMC 29 Palms	CA	1.3	10.6	7.9	fixed		Complete	Developer
Ben Canyon Camp Pendleton	CA	1.4	9.6	5.8	fixed	14%	Complete	Third party
Vaca-Dixon Solar Station	CA	2.6	17.8	11.6	fixed	14%	Complete	Developer
Newberry Springs PV Plant	CA	3.0	25.6		1 axis		Proposed	Third party
Sunset Reservoir	CA	5.0	16.3	16.3	fixed		Complete	Third party
Aera Jol Solar Project	CA	6.0	47.0	32.3	1 axis		Complete	Developer
CALRENEW-1	CA	6.2	60.4	46.5	fixed	9%	Complete	Third party
Porterville Solar Plant	CA	8.8	37.8	31.4	fixed	14%	Complete	Third party
Palm Springs project 1	CA	8.6	42.9		1 axis	14%	Construction	Third party
DiLuzi Solar Farm	CA	12.0	94.3	70.4	1 axis	15%	Complete	Developer
China Lake PV Plant	CA	13.8	138.6		1 axis	20%	Construction	Third party
Brunsville Solar Farm	CA	16.4	131.1	93.9	1 axis	18%	Complete	Official documents
Kamererer Solar Farm	CA	16.8	128.1	111.1	1 axis	18%	Complete	Official documents
Antelope Solar Farm	CA	20.0	234.8		Unknown		Proposed	Developer
Mojave Solar	CA	20.8	204.4		Unknown		Proposed	Developer

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Tarzee Energy Antelope Plant	CA	20.0	211.4		Unknown		Proposed	Third party
Grandmen/Wallasen Solar Farm	CA	21.1*	183.5	117.8	Fixed	11%	Complete	Official documents
Adelte Solar	CA	23.5*	167.5		Unknown		Proposed	Developer
Orion Solar	CA	23.5*	311.2		Unknown		Proposed	Developer
Atwell Island Solar Project	CA	23.6	188.0		Unknown		Construction	Third party
PSE Blythe	CA	26.2	223.2	161.3	Fixed	16%	Complete	Developer
Imperial Valley Solar Company	CA	28.7	153.5		Unknown	15%	Proposed	Third party
McHaney Solar Farm	CA	29.4*	180.9		1 axis	16%	Construction	Developer
Del Sur Solar Project	CA	34.0	219.8		Unknown		Construction	Third party
Lucerne Valley Solar	CA	40.5	495.8	455.8	Fixed	16%	Construction	Official documents
Chocolate Mountains PV Plant	CA	48.9	378.8		Unknown		Construction	Developer
Calpeatria Solar Farm 2	CA	50.0	352.4		Unknown		Proposed	Third party
Salton Sea 1	CA	50.0	375.8		Unknown		Proposed	Developer
Avenal SunCity SandDrag Avenal Park	CA	57.7	641.3	442.6	Fixed	9%	Complete	Developer
Copper Mountain PV Plant	CA	58.9	459.2	293.9	Fixed	18%	Proposed	Third party
Midway Solar Farm 1	CA	58.7*	352.4	323.3	Unknown		Proposed	Developer
Regulus Solar	CA	75.0	672.7		Unknown		Proposed	Developer
Calpeatria Solar Farm 1	CA	82.2*	352.4	288.9	Unknown		Proposed	Developer
Salton Sea 2	CA	100.0	730.8		Unknown		Proposed	Third party
Quinto Plant	CA	110.0	1,101.0		1 axis	20%	Proposed	Official documents
Imperial Solar Energy Center South	CA	130.0	1,111.1		1 axis	11%	Proposed	Developer
Imperial Solar Energy Center West	CA	150.0	1,241.8		2 axis CPV	23%	Proposed	Developer
Midway Solar Farm 2	CA	162.1*	1,097.5		Unknown		Proposed	Third party
Calexico Solar Farm 1	CA	234.9*	1,468.2		Unknown		Proposed	Developer
Calexico Solar Farm 2	CA	234.9*	1,468.2		Unknown		Proposed	Developer

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Moons Signal PV Plant	CA	234.9*	1,644.2		Unknown		Proposed	Developer
AV Solar Ranch One	CA	254.0	2,993.0	2,414.0	1 axis	11%	Proposed	Developer
California Valley Solar Ranch	CA	293.6*	2,037.8		1 axis		Construction	Developer
Centinela Solar	CA	323.6*	2,417.7		Unknown		Proposed	Developer
Superstition Solar 1	CA	500.0	6,562.1		Unknown		Proposed	Official documents
Edwards Air Force Base	CA	500.0	3,736.4		Unknown		Proposed	Developer
Desert Sunlight	CA	568.0*	4,985.9	3,539.4	Fixed	16%	Proposed	Official documents
Topaz Solar Farm	CA	648.0*	4,110.8		Fixed	11%	Construction	Developer
Alamosa Water Treatment Facility PV Plant	CO	0.6	6.5	5.6	1 axis	16%	Complete	Official documents
Rifle Pump Station	CO	0.6	6.3	4.3	1 axis	13%	Complete	Official documents
SunEdison Alamosa PV Plant (Fixed-Tilt)	CO	0.6	7.0	3.8	Fixed	14%	Complete	Official documents
Arvada Ralston Water Treatment Plant	CO	0.6	7.1	4.5	1 axis	16%	Complete	Official documents
NREL Mesa Top PV Project	CO	0.7	5.9	3.3	1 axis	16%	Complete	Official documents
SunEdison Alamosa PV Plant (2 Axis)	CO	1.0	14.0	7.3	2 axis flat	14%	Complete	Official documents
NREL National Wind Technology Center	CO	1.1	11.5	7.1	1 axis	13%	Complete	Official documents
Buckley Air Force Base	CO	1.1	4.5	3.8	Fixed	14%	Complete	Official documents
Denver Federal Center Solar Park Phase 1	CO	1.2	7.8	6.0	Fixed	13%	Complete	Official documents
Colorado State University Pueblo Plant	CO	1.2	8.1	4.1	Fixed		Complete	Third party
Denver International Airport Phase 2 (Fuel Farm)	CO	1.6	10.8	9.3	Fixed		Complete	Developer
Rifle Waste Water Reclamation Facility	CO	1.7	14.0	9.8	1 axis	14%	Complete	Official documents
Colorado State University FL Collins Phase 1	CO	2.0	17.8	19.0	1 axis		Complete	Third party

Name	State	MW - DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Denver International Airport 1 Pena Blvd	CO	2.0	11.7	11.7	1 axis		Complete	Developer
FL Carson PV Plant	CO	2.0	14.7	12.6	Fixed	11%	Complete	Developer
Colorado State University FL Collins Phase 2	CO	2.3	15.4	14.0	Fixed		Complete	Third party
Denver International Airport Phase 3	CO	4.4	35.2	26.9	Fixed		Complete	Developer
Air Force Academy CO Springs	CO	8.0	50.5	31.4	1 axis		Complete	Third party
SunEdison Alamosa PV Plant (1 Axis)	CO	8.8	74.1	38.6	1 axis	14%	Complete	Official documents
Greater Sand Hill Solar Plant	CO	20.0	306.5	132.6	1 axis	20%	Complete	Third party
San Luis Valley Solar Ranch	CO	35.2	258.1		1 axis	20%	Complete	Developer
Cogentrix Alamosa Solar Generating Project	CO	37.0	271.0	224.0	2 axis CPV	31%	Construction	Developer
Kent County Waste Water	DE	1.2	7.0	6.6	Fixed		Construction	Third party
Dover Sun Park	DE	11.7*	121.0	59.1	1 axis	20%	Complete	Third party
NASA PV	FL	1.0	6.1	2.8	Fixed		Complete	Developer
Stanton Energy Center	FL	5.8	41.1	29.1	1 axis		Complete	Developer
Reinhart Solar Farm	FL	8.0	28.2		Unknown	16%	Construction	Third party
Space Coast	FL	11.7*	52.8	35.2	Fixed		Complete	Developer
Jacksonville Solar	FL	15.0	114.4	63.9	Fixed	11%	Construction	Third party
DeSoto Plant	FL	25.0	253.2	201.6	1 axis	19%	Complete	Developer
Sorrento Eagle Dunes phase 1	FL	40.0	184.4		Fixed	14%	Construction	Developer
Sorrento Eagle Dunes phase 2	FL	60.0	422.8		Fixed	16%	Proposed	Third party
Babcock Ranch Solar	FL	75.0	468.8		Unknown		Proposed	Developer
Liberty County Solar Farm	FL	100.0	1174.5		Unknown		Proposed	Third party
Hardee County Solar Farm	FL	200.0	2,349.1		Unknown		Proposed	Third party
Gadsden Solar Farm	FL	400.0	4,698.1		Unknown		Proposed	Third party
Skiffsville Plant	GA	1.0	8.7		Fixed		Complete	Third party

Name	State	MW-DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Kapolei Switchable Energy Park	HI	1.2	4.7	3.2	Fixed	14%	Complete	Third party
Kalaeloa Oahu	HI	5.0	47.0		1 axis	18%	Construction	Official documents
Ersion City Solar	IL	10.0	48.2	37.6	1 axis		Complete	Developer
Grand Ridge Solar Plant	IL	23.0	167.9		Unknown	12%	Construction	Third party
Indianapolis Airport Solar Farm	IN	10.0	70.8		Fixed		Construction	Third party
Bowling Greens Solar Farm	KY	2.0	15.3	10.8	1 axis		Complete	Third party
William Stanley Business Park	MA	1.9	10.9	7.3	Fixed	14%	Complete	Official documents
Berkshire School	MA	2.0	19.8	8.4	Fixed	15%	Complete	Third party
Northfield Mountain	MA	2.0	12.9	9.3	Fixed		Complete	Third party
Indian Orchard Solar	MA	2.3	14.1		Unknown		Complete	Third party
Springfield Plant	MA	4.2	72.8	47.0	Unknown		Complete	Third party
Mueller Road Holyoke Plant	MA	4.5	22.3		Fixed	15%	Complete	Third party
Canton Landfill	MA	5.7	17.2	12.8	Fixed	15%	Complete	Official documents
Mount St. Mary's University	MD	17.4	158.6	105.7	Fixed	11%	Construction	Third party
Progress Energy	NC	1.2	11.3	9.1	1 axis	14%	Complete	Official documents
Mayberry/Mt. Airy Solar Farm	NC	1.2	7.8		Fixed	14%	Complete	Third party
Neuse River Waste Water	NC	1.3	11.7		Fixed	14%	Complete	Third party
SAS Solar Farm 1 and 2	NC	2.2	20.0	14.1	1 axis	15%	Complete	Developer
Kings Mountain Solar Farm	NC	5.0	31.9		Unknown		Complete	Third party
Murfreesboro	NC	8.4	34.7	30.8	1 axis	18%	Complete	Developer
Davidson County Solar	NC	17.3	221.8	129.3	1 axis		Complete	Developer
Trenton Solar Farm	NJ	1.3	6.5	5.2	Fixed		Complete	Third party
Silver Lake Solar Farm	NJ	2.1	8.4	6.7	Fixed	14%	Complete	Third party
Mars Solar Garden	NJ	2.2	14.4	11.9	Fixed	16%	Complete	Developer
NJMC Landfill	NJ	3.0	15.3		Fixed		Complete	Third party
Linden Solar Farm	NJ	3.2	11.7		Unknown		Complete	Third party

Name	State	MW-DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
Janssen Pharmaceutical	NJ	4.1	29.4	21.9	1 axis		Complete	Third party
Woodland	NJ	4.1	32.9	17.6	Fixed		Complete	Developer
Yardville Solar Farm	NJ	4.4	18.4	16.8	Fixed	14%	Complete	Third party
Hamdel Solar Farm	NJ	4.8	39.9	18.9	1 axis		Proposed	Third party
Princeton University	NJ	5.3	31.7		1 axis	19%	Complete	Third party
Lawrenceville School	NJ	6.1	38.2		1 axis	15%	Complete	Third party
NJ Oak Solar Farm	NJ	12.5	122.5	87.5	Fixed	14%	Complete	Third party
Upper Pittsgrove	NJ	14.4	105.7		1 axis		Proposed	Third party
Tinton Falls	NJ	18.9	111.6		Unknown		Construction	Third party
Pinegrove Project	NJ	20.0	148.9	85.3	Fixed	14%	Complete	Third party
Santa Fe Waste Water Plant	NM	1.1	10.4	7.9	1 axis	14%	Complete	Developer
City of Madera Waste Water	NM	1.2	11.2	10.6	2 axis flat	14%	Complete	Third party
Questa	NM	1.2*	20.0	12.6	2 axis CPV	25%	Complete	Third party
Albuquerque Solar Center	NM	2.0	21.7	12.8	Fixed	11%	Complete	Third party
Deming Solar Energy Center	NM	5.0	58.7	40.0	Fixed	11%	Complete	Third party
Alamogordo Solar Center	NM	5.0	58.7		Fixed	11%	Complete	Third party
Hatch Solar Center	NM	8.5	80.1	38.8	2 axis CPV	28%	Complete	Developer
SunEdison Jal	NM	10.7	117.5	84.4	1 axis		Complete	Third party
SunEdison Carlsbad	NM	10.8	100.7	80.3	1 axis		Complete	Third party
Elephant Butte	NM	22.0	187.8		Fixed		Construction	Third party
Roadrunner Solar Facility	NM	33.5*	248.7	198.8	1 axis	11%	Complete	Developer
Cimarron	NM	33.2*	293.6	260.7	Fixed	10%	Complete	Developer
Estancia Solar Farm	NM	50.0	187.9		Unknown		Proposed	Third party
Guadalupe Solar	NM	300.0	2,836.3		Unknown		Proposed	Third party
Las Vegas Solar Center	NV	5.0	58.7		Unknown	11%	Complete	Third party

Name	State	MW-DC	Total area (acres)	Direct area (acres)	Tracking	Module efficiency	Status as of August 2012	Data source
El Dorado Solar	NV	12.0	80.0	64.0	Fixed	11%	Complete	Developer
Nellis Air Force Base	NV	15.0	184.7	148.0	1 axis		Complete	Official documents
Searchlight Solar Project	NV	20.0	242.3		1 axis		Complete	Third party
Fish Springs	NV	20.6	211.4		Fixed	10%	Construction	Official documents
Apex	NV	24.8	187.1		Unknown		Proposed	Third party
Silver State Solar North	NV	63.1	775.0		Fixed	10%	Construction	Official documents
Boulder City	NV	176.3*	1,303.7		1 axis	10%	Construction	Developer
Silver State Solar South	NV	350.0	3,404.1	3444.0	1 axis	10%	Proposed	Official documents
Moapa Green Center	NV	720.0	6,384.7		Unknown		Proposed	Third party
Brookhaven La[illegible]	NY	37.0	231.3	225.5	Fixed	13%	Construction	Developer
Washington To[illegible]ship Solar Array	OH	1.1	11.5	8.4	Fixed	9%	Complete	Developer
BNB Napoleon Solar LLC	OH	9.8	70.5		1 axis	16%	Construction	Third party
Wyandot Solar	OH	12.6	97.0	78.0	Fixed	11%	Complete	Developer
Turning Point Solar	OH	38.6*	496.4		Unknown		Proposed	Official document
Yamhill Solar	OR	1.2	11.8		Fixed	10%	Complete	Developer
Bellevue Solar	OR	1.7	14.0		Fixed	10%	Complete	Developer
Pocono Raceway	PA	3.0	27.2	17.8	Fixed		Construction	Third party
Ersion Conergy	PA	3.0	18.4	12.9	Fixed		Complete	Developer
Claysville Solar Project	PA	20.0	117.5	99.5	Fixed		Proposed	Developer
Shelby Solar Project	SC	1.0	10.8	6.5	1 axis	19%	Complete	Third party
West Tennessee Solar Farm	TN	5.0	29.4	25.9	Fixed		Construction	Developer
Blue Wing Solar	TX	14.1	134.2	98.7	Fixed		Construction	Developer
Austin Energy Webberville	TX	34.2	424.3		Unknown	15%	Complete	Third party
Pflugerville Solar	TX	60.0	704.7		Unknown		Construction	Third party
South Burlington Solar Farm	VT	2.2	31.7	25.8	2 axis flat		Complete	Third party

Appendix C. CSP Projects Evaluated

Table C-1. Concentrating Solar Power Land-Use Data

Note: Additional CSP plant information, such as storage and annual generation, can be found in Appendix A.

Name	State	MW AC	Total Area (acres)	Direct Area (acres)	Technology	Status as of August 2012	Data source
Maricopa Solar Project	AZ	1.5	15	4	Stirling Engine	Complete	Third party
Quartzsite	AZ	100	1,675		Tower	Proposed	Developer
Crossroad Solar	AZ	150	2,560		Tower	Proposed	Developer
Solana	AZ	280	1,920		Parabolic trough	Construction	Third party
Sierra SunTower	CA	5	50	22	Tower	Complete	Developer
Kimberlina	CA	7.5	35	15	Linear Fresnel	Complete	Developer
Solar Two	CA	10	132	110	Tower	Decommissioned	Third party
Coalinga	CA	13	86	57	Tower	Proposed	Developer
Victorville 2 hybrid	CA	50	265	230	Parabolic trough	Proposed	Official document
Palmdale Hybrid Gas/solar Plant	CA	97	377	250	Parabolic trough	Proposed	Official document
Rice Solar	CA	150	2,560	1,410	Tower	Construction	Official document
Abengoa Mojave	CA	250	1,765		Parabolic trough	Construction	Third party
Ford Dry Lake (Genesin)	CA	250	4,640	1,800	Parabolic trough	Construction	Official document
Hidden Hills 1	CA	250	1,640	1,560	Tower	Proposed	Official document
Hidden Hills 2	CA	250	1,640	1,560	Tower	Proposed	Official document
Rio Mesa 1	CA	250	1,917		Tower	Proposed	Official document
Rio Mesa 2	CA	250	1,917		Tower	Proposed	Official document
Rio Mesa 3	CA	250	1,917		Tower	Proposed	Official document
SEGS (all)	CA	354	2,057	2,057	Parabolic trough	Complete	Third party
Ivanpah All	CA	370	3,515	3,238	Tower	Construction	Official document
Saguaro Solar	CO	200	3,000	2,680	Tower	Construction	Official document
Martin Next Generation	FL	75	500	400	Parabolic trough	Complete	Developer

Name	Axis	MW AC	Total area (acres)	Direct area (acres)	Technology	Status as of August 2012	Data source
Nevada Solar One	1W	64	400	290	Parabolic trough	Complete	Third party
Tonopah (Crescent Dunes)	1W	110	1,600	1,527	Tower	Construction	Developer

Appendix D. Impact of PV System Size and Module Efficiency on Land-Use Requirements

System size appears to have little impact on capacity-based land-use requirements. Figure D-1 and Figure D-2 show the total-area requirements for small and large PV systems, with respect to project capacity. No significant trends are observed for land use and system size for small or large PV systems.

Land use was also evaluated with respect to module efficiency. Figure D-3 shows capacity-based direct land-use requirements for all PV systems with respect to module efficiency, and Figure D-4 shows the generation-based direct land-use requirements. We expect that land use will decrease with increasing module efficiencies, but no significant trends are observed for land use and module efficiency for small or large PV systems. A linear regression analysis yields a poor correlation coefficient for both the capacity-based area data (0.04) and the generation-based data (0.08). Isolating for fixed-tilt systems reveals that projects with higher efficiency use less land on a capacity basis (with a correlation coefficient of 0.50). No trends are observed within the pool of 1-axis tracking systems. Variations in land use that remain after isolating for module efficiency and tracking type are not clearly understood.

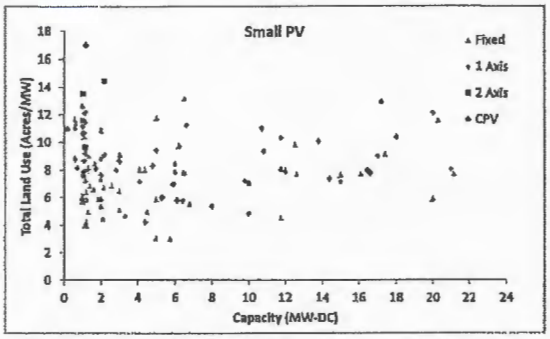


Figure D-1. Total-area requirements for small PV installations as a function of PV plant size

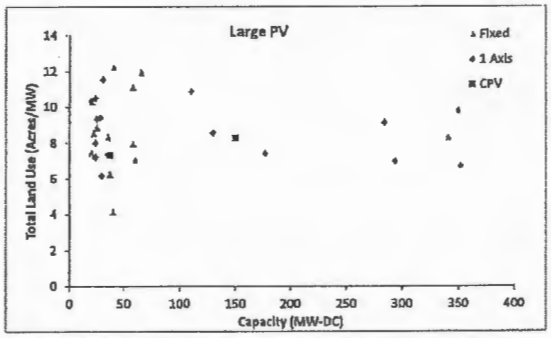


Figure D-2. Total-area requirements for large PV installations as a function of PV plant size

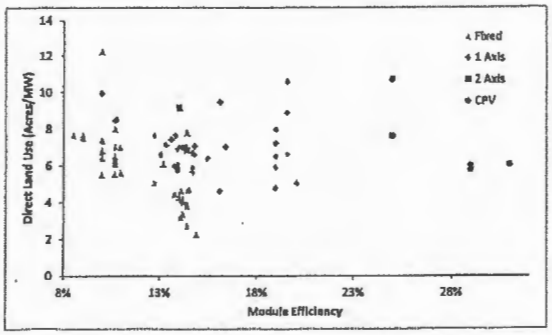


Figure D-3. Capacity-based direct-area land-use requirements for all PV systems as a function of module efficiency

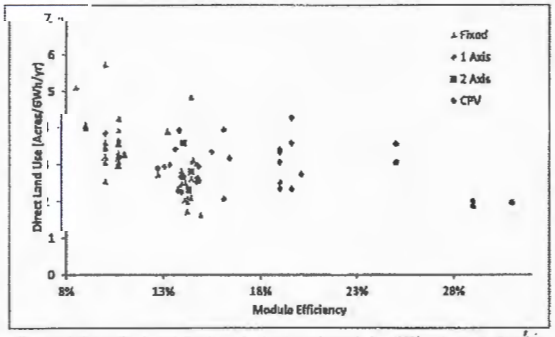


Figure D-4. Generation-based direct-area land-use requirements for all PV systems as a function of module efficiency

Appendix E. Impact of CSP System Size and Storage on Land-Use Requirements

We evaluated the impact of project capacity on land-use requirements and found that system size appears to have little impact on generation-based CSP land-use requirements. Figure E-1 and Figure E-2 show the total-area and direct-area requirements for all CSP systems evaluated, with respect to system size. No significant trends are observed for land-use and capacity for CSP systems.

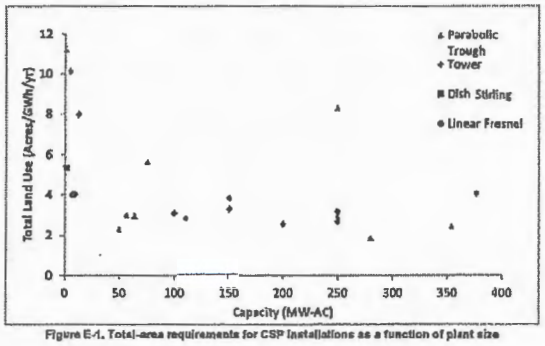


Figure E-1. Total-area requirements for CSP installations as a function of plant size

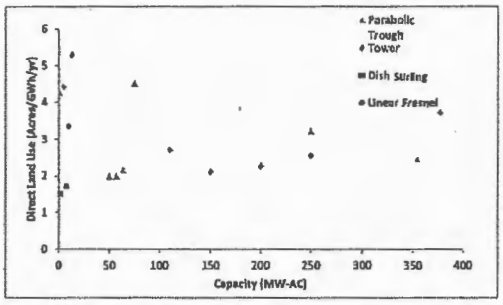


Figure E-2. Direct-area requirements for CSP installations as a function of plant size

We evaluate the impact of multi-hour energy storage on CSP land-use requirements. Eight facilities included thermal storage technology, ranging from 3 to 15 hours of storage. One of the eight CSP facilities with storage is a parabolic trough system, while the remaining seven are tower systems. Figure E-3 shows the generation-based total-area requirements for all storage-equipped CSP systems evaluated, with respect to storage capacity in hours. Figure E-4 shows the capacity-based total-area requirements.

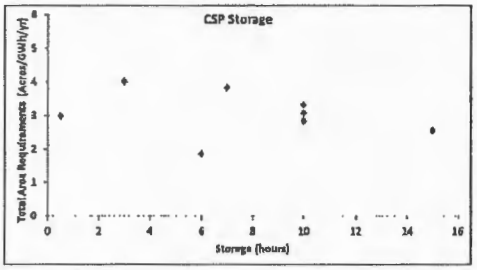


Figure E-3. Total generation-based area requirements for CSP installations as a function of storage hours

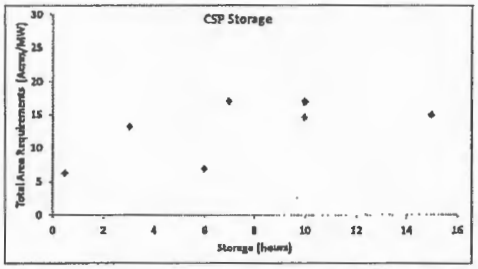


Figure E-4. Total capacity-based area requirements for CSP installations as a function of storage hours

2/12 12/21/17

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY Case No. 2018-0047-X

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

Case No. 18-047-X

8/21/18

People's Counsel
CBA Exhibit
7

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of...scenic routes and scenic views" be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this **21st** day of **December, 2017,** by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017.**

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

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County to run with the land and continue in perpetuity. The easements and covenants must be shown on the concept plan and on the development plan or minor subdivision plan for the development, as applicable, and on the record plat.

A. For all subdivisions or other development, except as provided in Paragraph B, a permanent preservation easement on the conservancy area must be granted to Baltimore County or to a land trust which the county approves, and must permanently restrict further subdivision or development of the conservancy area. The easement must:

1. Allow public access to greenways and other open space areas subject to approval by the Department of Environmental Protection and Sustainability and the Department of Recreation and Parks; **[Bill No. 122-2010]**

2. Indicate uses and activities approved in the conservancy area subject to Section 1A07.7.C with any applicable conditions or limitations; and

3. Provide that any modification of a preservation easement held by Baltimore County be subject to a public hearing.

B. In the case of a development where additional permitted density remains, a conservancy area shall be shown on the approval plan and, if the plan involves subdivision, recorded in the land records of Baltimore County. A permanent preservation easement as described in Paragraph A must be granted if further subdivision subjects the tract to the development plan review process under Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

C. Other covenants or easements may be required as to ensure that the standards of this section are met, including:

1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and

2. An easement to provide for the maintenance of open views.

SECTION 1A08
R.C.7 (Resource Preservation) Zone
[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

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2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.

3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.

4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.

7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;

9. To implement state and federal mandates for the protection of natural resources and rural legacy;

10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;

11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;

12. To incorporate traditional features of the local built environment into development; and

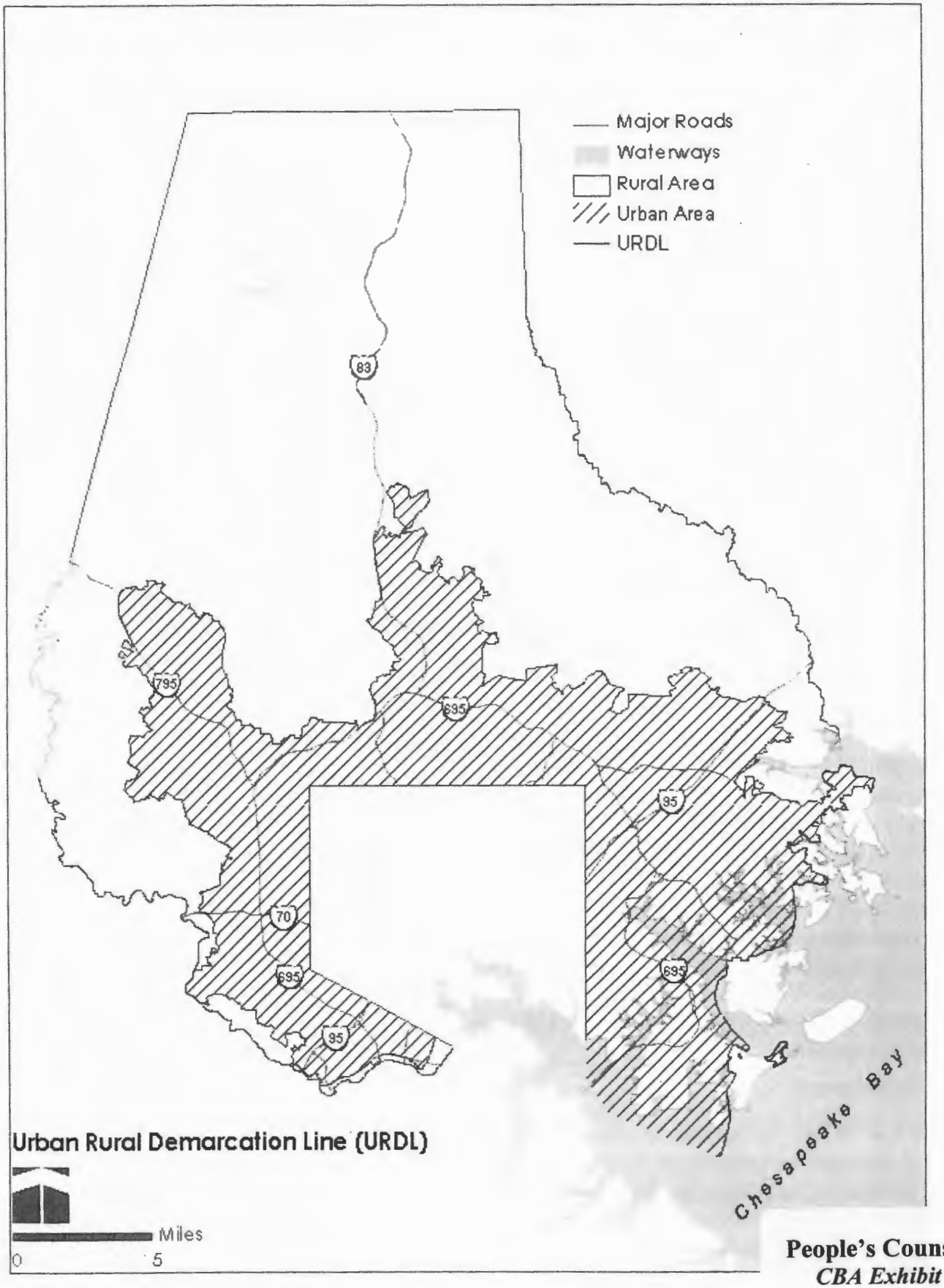
13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

15. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal. **[Bill No. 64-2015]**

Map 1: Urban Rural Demarcation Line



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Case No: 18-047-X 8/22/18

SIGN IN SHEET FOR Case # 2018-0047-X Gerner Property, 15637 York Rd Aug 21, 2018 Aug. 22, 2018

Clearly Print Name	Address & Zip Code	Email	Phone #	Group?
KATHLEEN PIEPER	4310 BECKLEYSVILLE RD 21074	KATHIE@STONEPONTRESTORATION		NO
LYNNE JONES	815 STABLERS CHURCH RD, PARKTON 21120	dryad101@hotmail.com		S-GCPC
William MAYO	921 Upper Glencoe Rd Sparks Md 21152	BILLGMAYO@GMail.Com		
EDDIE MATCZUK	932 UPPER GLENCOE RD	21152		
JOHN ALTMEYER	21722 ORWIG RD.	21053	Jaltmeyer@aol.com	
TERESA MOORE	118 W. PENNSYLVANIA AVE ~~21228~~ TOWSON	21204	teresa@thevpc.org	
Ginny Terhune	526 Allegheny Ave.	21204	terhunevirginia@gmail.com	
Jackie Brooks	411 Buedel Ct, Sparks MD 21152		jaccortibrooks@aol.com	

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2000, Legislative Day No. 15

Bill No. 74-00

Mr. T. Bryan McIntire, Councilman

By the County Council, August 7, 2000

A BILL
ENTITLED

AN ACT concerning

Land Use and Development - Resource Conservation Zones

FOR the purpose of amending the Baltimore County Zoning Regulations in order to create a new RC 7 zoning classification; adding certain definitions; establishing certain guidelines and use limitations for development; establishing certain permitted uses by right and by special exception; establishing certain area, design, and performance standards and guidelines; establishing certain procedures for the approval of certain permits and plans; permitting certain agriculture inconveniences; prohibiting certain special exceptions in certain resource conservation zones; excluding certain special exception use property area from the area used for the calculation of residential density in all zones; and generally relating to the use and development of resource conservation zones.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

By adding

Sections 100.1.A.2, the zoning classification of "R.C. 7 Resource Preservation Zone", 101, the definitions of "Antique Shop", "Campground", "Camping Unit", "Campsite", "Day Camp", and "Golf Course", 102.7, 1A08, and 502.1.I
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report, dated June 7, 2000, from the Planning Board concerning the subject legislation, and has held a public hearing thereon on July 3, 2000, now, therefore,

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 100.1.A.2, the zoning classification of "R.C. 7 Resource Preservation Zone", 101, alphabetically, the definitions of "Antique Shop", "Campground", "Camping Unit", "Campsite", "Day Camp", and "Golf Course", 102.7, 1A08, and 502.1.I are hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

Section 100 Zones and Districts; Boundaries

100.1 Baltimore County is hereby divided into zones and districts in accordance with this section.

A. Zones.

2. Zones are classified as follows:

R.C. 7 RESOURCE PRESERVATION ZONE

Section 101 Definitions

ANTIQUE SHOP -- A RETAIL ESTABLISHMENT FOR THE SALE OF GOODS OF A TYPE THAT ARE OFTEN PURCHASED BY COLLECTORS AND THAT MAY INCLUDE FURNITURE, POTTERY, GLASSWARE, JEWELRY, LINENS, TOOLS, ARTWORKS, AND BOOKS WHICH WERE MANUFACTURED AT LEAST 50 YEARS IN THE PAST.

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ANTIQUE SHOP INCLUDES THE OUTSIDE DISPLAY OF MERCHANDISE OFFERED FOR SALE IN FRONT OF THE ESTABLISHMENT ON THE SAME LOT WITHIN FIVE FEET OF THE FRONT PORCH OF FRONT BUILDING FACADE.

CAMPGROUND -- A TRACT OF LAND UPON WHICH TWO OR MORE CAMPSITES ARE LOCATED, ESTABLISHED, OR MAINTAINED FOR OCCUPANCY BY CAMPING UNITS AS TEMPORARY LIVING QUARTERS FOR RECREATION, EDUCATION, OR VACATION PURPOSES.

CAMPING UNIT -- A TENT, CABIN, LEAN-TO, RECREATIONAL VEHICLE, OR SIMILAR STRUCTURE ESTABLISHED OR MAINTAINED AND OPERATED IN A CAMPGROUND AS TEMPORARY LIVING QUARTERS FOR RECREATION, EDUCATION, OR VACATION PURPOSES.

CAMPSITE -- ANY PLOT OF LAND WITHIN A CAMPGROUND INTENDED FOR EXCLUSIVE OCCUPANCY BY A CAMPING UNIT OR UNITS, OCCUPIED BY A CAMPER.

DAY CAMP -- A PLOT OF GROUND UPON WHICH CHILDREN MAY ENGAGE IN SUPERVISED RECREATIONAL, EDUCATIONAL, CULTURAL, OR ARTISTIC ACTIVITIES OUTDOORS DURING DAYLIGHT HOURS, BUT DAY CAMP DOES NOT INCLUDE SCHOOLS OR CHILD CARE CENTERS.

GOLF COURSE -- A TRACT OF LAND LAID OUT FOR AT LEAST NINE HOLES FOR PLAYING GOLF, AND IMPROVED WITH TEES, GREENS, FAIRWAYS, AND HAZARDS, FACILITIES FOR COLLECTING FEES, STORING GOLF EQUIPMENT FOR RENTAL OR LIMITED SALE, AND STORING EQUIPMENT FOR MAINTENANCE OF THE GOLF

COURSE. GOLF COURSE INCLUDES SNACK STANDS AND A RESTAURANT WITH SEATING FOR NO MORE THAN 50 PERSONS. GOLF COURSE DOES NOT INCLUDE CATERING FACILITIES, NOR ANY OTHER FACILITIES FOR ENTERTAINMENT OR RECREATION.

SECTION 1A08 R.C. 7 (RESOURCE PRESERVATION) ZONE

1A08.1 FINDINGS AND LEGISLATIVE GOALS.

A. FINDINGS.

1. MASTER PLAN 2010, ADOPTED BY THE COUNTY COUNCIL IN FEBRUARY 2000, IDENTIFIES SPECIFIC RESOURCE PRESERVATION AREAS WHERE VALUABLE CULTURAL, HISTORIC, RECREATIONAL, AND ENVIRONMENTAL RESOURCES ARE LOCATED AND SHOULD BE PROTECTED FOR THE HEALTH OF THE LOCAL COMMUNITY AND THE COMMUNITY AT LARGE.

2. AMONG THE ACTIONS RECOMMENDED IN MASTER PLAN 2010 TO PROTECT RESOURCES IN RESOURCE PRESERVATION AREAS IS THE REDUCTION OF PERMITTED RESIDENTIAL DENSITIES IN THESE AREAS TO ONE DWELLING PER 25-50 ACRES OF LAND.

3. AN R.C. 7 ZONE WOULD ALLOW LIMITED DEVELOPMENT, COMPATIBLE WITH THE RURAL COMMUNITY, AND AT THE SAME TIME, PROTECT RURAL RESOURCES.

4. THE COUNTY RECOGNIZES THE IMPORTANCE OF RETAINING LARGE-ACREAGE PARCELS TO PROTECT AND PROMOTE THE AGRICULTURAL INDUSTRY; R.C. 7 SHALL BE APPLIED ONLY TO LANDS CURRENTLY ZONED R.C. 4 AS OF

AUGUST 7, 2000.

B. LEGISLATIVE GOALS. THE BALTIMORE COUNTY COUNCIL SEEKS TO ACHIEVE THE FOLLOWING GOALS IN THE R.C. 7 ZONE:

1. TO PRESERVE AND PROTECT TOTAL ECOSYSTEM FUNCTION, INCLUDING RIPARIAN AND AQUATIC ECOSYSTEMS;

2. TO PROTECT FORESTS, STREAMS, WETLANDS, AND FLOODPLAINS;

3. TO PROTECT THE WATER QUALITY OF WATERCOURSES, THE CHESAPEAKE BAY, AND REGIONAL BIODIVERSITY;

4. TO RESPECT HISTORIC SITES IN THEIR SETTINGS;

5. TO PROVIDE A QUALITY RECREATIONAL EXPERIENCE TO VISITORS;

6. TO PROTECT REMAINING PRIME AND PRODUCTIVE SOILS IN AREAS NOT CURRENTLY PROTECTED BY THE R.C. 2 ZONE.

7. TO MAINTAIN THE UNIQUE CHARACTER OF A RURAL AREA BY PRESERVING ITS NATURAL, HISTORIC, CULTURAL, RECREATIONAL, SCENIC, ARCHITECTURAL, AND ARCHAEOLOGICAL RESOURCES.

8. TO PROVIDE FOR THE ENVIRONMENTALLY SOUND USE OF LAND AND FOREST RESOURCES, AND TO PREVENT FOREST FRAGMENTATION, ESPECIALLY IN AREAS OF EXTENSIVE INTERIOR FOREST;

9. TO IMPLEMENT STATE AND FEDERAL MANDATES FOR THE PROTECTION OF NATURAL RESOURCES AND RURAL LEGACY;

10. TO ENHANCE RURAL CHARACTER AND ENVIRONMENTAL PROTECTION BY LOCATING BUILDINGS IN HARMONY WITH SITE CONDITIONS;

11. TO PRESERVE THE TRADITIONAL CHARACTER OF RURAL COMMUNITIES BY LIMITING THE SCALE AND INTENSITY OF DEVELOPMENT;

12. TO INCORPORATE TRADITIONAL FEATURES OF THE LOCAL BUILT ENVIRONMENT INTO DEVELOPMENT; AND

13. TO MAINTAIN THE RURAL SCALE AND CHARACTER OF AREA ROADS BY LIMITING GROWTH IN THE VOLUME OF TRAFFIC GENERATED BY LOCAL DEVELOPMENT.

1A08.2 IN THIS SECTION, THE FOLLOWING TERM HAS THE MEANING INDICATED:

BUILDING ENVELOPE -- THE AREA ON A LOT WITHIN WHICH ALL STRUCTURES EXCEPT WELLS, SEPTIC SYSTEMS, STORMWATER MANAGEMENT SYSTEMS, DRIVEWAYS, OR FENCES ARE PERMITTED TO BE BUILT.

1A08.3 PERMITTED USES.

A. USES PERMITTED BY RIGHT. THE FOLLOWING USES ARE PERMITTED BY RIGHT IN AN R.C. 7 ZONE:

1. DWELLINGS, ONE-FAMILY DETACHED.

2. FARMS AND LIMITED ACRE WHOLESALE FLOWER FARMS, SUBJECT TO SECTION 404.

3. OPEN SPACE, COMMON.

4. SCHOOLS.

5. STREETS AND WAYS.

6. TELEPHONE, TELEGRAPH, ELECTRICAL POWER OR OTHER LINES OR

CABLES, PROVIDED THAT ANY SUCH LINE OR CABLE IS UNDERGROUND; UNDERGROUND GAS MAINS; SHARED WELL AND SEPTIC SYSTEMS WHEN APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT; OR OTHER UNDERGROUND CONDUITS, EXCEPT INTERSTATE PIPELINES.

7. ACCESSORY USES OR STRUCTURES, SUBJECT TO SECTION 429, INCLUDING:

A. FARMER'S ROADSIDE STAND AND PRODUCE STAND, SUBJECT TO SECTION 404.4;

B. HOME OCCUPATIONS;

C. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONALS, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING THE PROFESSIONAL PERSON'S PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25% OF THE TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NONRESIDENT EMPLOYEE;

D. PARKING AND RESIDENTIAL GARAGE SPACE, SUBJECT TO SECTION 409;

E. SIGNS, SUBJECT TO SECTIONS 450 AND 1A08.8.C.5; AND

F. SWIMMING POOLS, TENNIS COURTS, AND OTHER RECREATIONAL AMENITIES, IF ACCESSORY TO A DWELLING OR RESIDENTIAL SUBDIVISION

ONLY.

8. COMMERCIAL FILM PRODUCTION, SUBJECT TO SECTION 435.

B. USES PERMITTED BY SPECIAL EXCEPTION. THE FOLLOWING USES ONLY MAY BE PERMITTED BY SPECIAL EXCEPTION IN AN R.C. 7 ZONE.

1. THE FOLLOWING USES PROVIDED THAT THEY ARE LOCATED IN A PRINCIPAL BUILDING THAT WAS ORIGINALLY CONSTRUCTED BEFORE THE EFFECTIVE DATE OF BILL 74-00; AND THE BUILDING IS CONVERTED TO THE NEW USE WITHOUT ANY EXTERNAL ENLARGEMENT AFTER THE EFFECTIVE DATE OF BILL 74-00:

A. ANTIQUE SHOP;

B. BED AND BREAKFAST;

C. TEA ROOM; AND

D. RESIDENTIAL ART SALON.

2. CHURCHES AND OTHER BUILDINGS FOR RELIGIOUS WORSHIP.

3. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONALS AS AN ACCESSORY USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING THE PROFESSIONAL PERSON'S PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25% OF THE TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NONRESIDENT PROFESSIONAL ASSOCIATE NOR TWO OTHER NONRESIDENT EMPLOYEES;

4. PUBLIC UTILITY USES NOT PERMITTED BY RIGHT.

5. BOTTLED WATER PLANT AS AN AGRICULTURAL SUPPORT USE, IF THE SOURCE OF WATER IS LOCATED ON THE SAME SITE AS THE PLANT, AND PROVIDED THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT MAKES A FINDING THAT THE PROPOSED FACILITY IS NOT EXPECTED TO ADVERSELY AFFECT THE QUALITY OF CAPACITY OF SURFACE WATER OR GROUND WATER.

6. CAMPGROUNDS, INCLUDING DAY CAMPS.

7. FARM MARKET, SUBJECT TO SECTION 404.4.

8. GOLF COURSES.

9. HORTICULTURAL NURSERY, SUBJECT TO SECTIONS 404.1 AND 404.2.

10. RIDING STABLES.

11. TARGET ARCHERY AND FIELD ARCHERY RANGES.

12. VOLUNTEER FIRE COMPANY OR AMBULANCE-RESCUE FACILITIES.

13. WINERY AS AN AGRICULTURAL SUPPORT USE, INCLUDING ACCESSORY RETAIL AND WHOLESALE DISTRIBUTION OF WINE PRODUCED ON PREMISES. TEMPORARY PROMOTIONAL EVENTS SUCH AS WINE TASTING OR PUBLIC GATHERINGS ASSOCIATED WITH THE WINERY ARE PERMITTED WITHIN ANY LIMITS SET THROUGH THE SPECIAL EXCEPTION PROCESS.

14. WIRELESS TELECOMMUNICATION TOWERS, SUBJECT TO SECTION 426.

C. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER

COUNTY LAW OR REGULATION TO THE CONTRARY, IF A PROPERTY TO WHICH THE ZONING CLASSIFICATION R.C. 7 IS APPLIED HAD A DEVELOPMENT PLAN PENDING FOR APPROVAL ON OR BEFORE AUGUST 7, 2000, THE DEVELOPMENT PROPOSED SHALL BE REVIEWED AND APPROVED BASED ON THE ZONING CLASSIFICATION APPLICABLE TO THE PROPERTY AT THE TIME THE DEVELOPMENT PLAN WAS FILED.

1A08.4 PLANS AND PERMITS. ALL DEVELOPMENT MUST BE IN ACCORDANCE WITH THIS SECTION AND THE STANDARDS AND GUIDELINES FOR "RURAL PRESERVATION" AND "SCENIC VIEWS" ADOPTED PURSUANT TO THIS SECTION, AND PUBLISHED AS PART OF THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES.

A. BEFORE THE APPROVAL OF ANY CONCEPT PLAN, DEVELOPMENT PLAN, LIMITED EXEMPTION, SPECIAL EXCEPTION PLAN, OR VARIANCE, THE DIRECTOR OF PLANNING OR THE DIRECTOR'S DESIGNEE MUST CERTIFY IN A WRITTEN FINDING THAT THE PLAN, EXEMPTION, OR VARIANCE IS CONSISTENT WITH THE SPIRIT AND INTENT OF THESE REGULATIONS. TO SUPPORT THE FINDING, THE DIRECTOR MAY REQUIRE INFORMATION SUCH AS BUILDING ELEVATIONS, BUILDING CROSS-SECTIONS, OR VIEWSHED ANALYSES PURSUANT TO SECTION 26-203(D)(22) OF THE BALTIMORE COUNTY CODE. THE DIRECTOR MUST CERTIFY THAT ANY DEVIATION FROM THIS SECTION OR THE STANDARDS AND GUIDELINES CITED ABOVE WAS NECESSARY TO:

1. MEET ANOTHER STANDARD OR GUIDELINE;

2. COMPLY WITH ENVIRONMENTAL REGULATIONS OR OTHERWISE PROTECT RESOURCES; OR

3. ACHIEVE THE BEST POSSIBLE SITE DESIGN BASED ON THE GOALS IN SECTION 1A08.1.B

B. BEFORE THE ISSUANCE OF ANY BUILDING PERMIT, THE DIRECTOR OF PLANNING OR THE DIRECTOR'S DESIGNEE MUST CERTIFY THAT THE PROPOSED DEVELOPMENT IS IN CONFORMANCE WITH A PLAN APPROVED PURSUANT TO THESE REGULATIONS.

C. A FINDING PURSUANT TO THIS SECTION MAY BE APPEALED TO THE BALTIMORE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF THE DATE OF THE FINDING BY ANY PERSON AGGRIEVED BY THE FINDING.

1A08.5 SCENIC VIEWS. TO PROTECT THE SCENIC VIEWS OR, WHEN NECESSARY PURSUANT TO 1A08.4, TO MITIGATE THE DISTURBANCE OF SCENIC VIEWS, THE DIRECTOR OF PLANNING MAY REQUIRE THAT ONE OR BOTH OF THE FOLLOWING BE CLEARLY DESIGNATED ON THE FINAL RECORD PLAT WITH APPROPRIATE NOTATIONS:

A. AREAS WHERE DISTURBANCE OF NATURAL VEGETATION IS PROHIBITED; OR

B. AREAS WHERE RE-VEGETATION OF LANDSCAPING IS REQUIRED.

1A08.6 DEVELOPMENT AREA AND STANDARDS.

A. MAXIMUM HEIGHT. NO STRUCTURE WITH A HEIGHT GREATER THAN 35 FEET IS PERMITTED, EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 300.

B. AREA REGULATIONS.

1. MAXIMUM LOT DENSITY. A TRACT MAY BE DEVELOPED IN AN R.C. 7 ZONE AT A MAXIMUM DENSITY OF 0.04 LOT PER ACRE OF GROSS TRACT AREA (AN AVERAGE OF 1 LOT PER 25 ACRES). NO LOT LYING WITHIN AN R.C. 7 ZONE AND HAVING A GROSS AREA OF LESS THAN 50 ACRES MAY BE SUBDIVIDED. ANY LOT HAVING A GROSS AREA OF 50 ACRES OR MORE MAY BE SUBDIVIDED AT THE RATE OF ONE LOT FOR EACH 25 ACRES OF GROSS AREA. IN CASES WHERE SINGLE OWNERSHIP IS CROSSED BY EXISTING OR PROPOSED ROADS, RIGHTS OF WAY, OR EASEMENTS, THE PORTIONS OF LAND ON EITHER SIDE OF THE ROAD, RIGHT OF WAY, OR EASEMENT MAY NOT BE CONSIDERED SEPARATE PARCELS FOR THE PURPOSE OF CALCULATING THE NUMBER OF LOTS OF RECORD.

2. LOT AREA. THE AREA OF ANY RESIDENTIAL LOT IN A MAJOR OR MINOR SUBDIVISION MUST NOT BE LESS THAN ONE ACRE.

3. BUILDING ENVELOPE. FOR RESIDENTIAL DEVELOPMENT, THE MAXIMUM AREA OF THE BUILDING ENVELOPE ON ANY RESIDENTIAL LOT OTHER THAN A FARM IS 20,000 SQUARE FEET, AND NO SINGLE DWELLING, INCLUSIVE OF A GARAGE OR ACCESSORY BUILDING, SHALL HAVE A BUILDING FOOTPRINT THAT EXCEEDS 5,000 SQUARE FEET. THE PLACEMENT OF THE BUILDING ENVELOPE IS DETERMINED ON THE BASIS OF:

A. THE GOALS FOR THE ZONE; AND

B. THE MINIMUM SETBACKS FOR THE ZONE.

4. MINIMUM DEVELOPMENT ALLOWANCE. ANY LOT OR PARCEL OF LAND

LAWFULLY EXISTING ON THE EFFECTIVE DATE OF BILL 66-00 MAY BE DEVELOPED WITH A SINGLE DWELLING.

5. SETBACKS.

A. ANY PRINCIPAL BUILDING CONSTRUCTED IN AN R.C. 7 ZONE MUST BE SITUATED AT LEAST:

I. 35 FEET FROM THE RIGHT OF WAY OF PUBLIC OR PRIVATE INTERIOR STREETS;

II. 80 FEET FROM ANY PRINCIPAL BUILDING; AND

III. 50 FEET FROM THE REAR LOT LINE.

B. ANY PRINCIPAL BUILDING OR WELL CONSTRUCTED, OR ANY USE THAT MAY BE IN CONFLICT WITH ANY PERMITTED AGRICULTURAL OPERATION, IN AN R.C. 7 ZONE MUST BE AT LEAST 300 FEET FROM ANY ADJACENT PROPERTY THAT WAS CULTIVATED OR USED FOR PASTURE DURING THE PREVIOUS THREE YEARS, AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, OR THAT IS SUBJECT TO A PERPETUAL AGRICULTURAL OR CONSERVATION EASEMENT.

6. IMPERVIOUS SURFACE COVERAGE -- NON-RESIDENTIAL DEVELOPMENT. EXCEPT FOR RESIDENTIAL LOTS WHICH ARE SUBJECT TO A BUILDING ENVELOPE RESTRICTION, NO MORE THAN 10% OF ANY LOT MAY BE COVERED BY IMPERVIOUS SURFACES SUCH AS STRUCTURES OR PAVEMENT.

7. HISTORIC PROPERTIES. NO BUILDING OR STRUCTURE ON A DEVELOPMENT TRACT WHICH IS OFFICIALLY INCLUDED ON THE PRELIMINARY

OR FINAL LIST OF THE LANDMARKS PRESERVATION COMMISSION OR THE NATIONAL REGISTER OF HISTORIC PLACES, OR WHICH IS SUBJECT TO AN EASEMENT HELD BY THE MARYLAND HISTORIC TRUST WILL BE COUNTED AS A LOT OR DWELLING FOR PURPOSES OF CALCULATING DENSITY, PROVIDED THAT:

A. THERE IS AN AREA OF SUFFICIENT SIZE, AS DETERMINED BY THE DIRECTOR OF PLANNING IN CONSULTATION WITH THE LANDMARKS PRESERVATION COMMISSION OR MARYLAND HISTORIC TRUST, SURROUNDING THE BUILDING, STRUCTURE, OR LANDMARK TO PRESERVE THE INTEGRITY OF ITS HISTORIC SETTING;

B. AN OVERALL PHOTOGRAPHIC AND WRITTEN DESCRIPTION OF THE BUILDING, STRUCTURE, OR LANDMARK IDENTIFIED HAS BEEN SUBMITTED AND IS DETERMINED TO BE IN COMPLIANCE WITH THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES;

C. DOCUMENTATION OF THE PRESERVATION, RESTORATION, AND PROTECTION FOR THE BUILDING, STRUCTURE, OR LANDMARK HAS BEEN APPROVED BY THE DIRECTOR OF PLANNING IN CONSULTATION WITH THE MARYLAND HISTORICAL TRUST PRIOR TO ISSUANCE OF ANY BUILDING PERMIT; AND

D. WHEN PROVISIONS OF THIS PARAGRAPH APPLY TO ANY DEVELOPMENT, THE CONDITIONS FOR APPROVAL MUST BE NOTED ON THE CONCEPT PLAN AND DEVELOPMENT PLAN, OR THE MINOR SUBDIVISION PLAN.

C. PERFORMANCE STANDARDS. CONDITIONS FOR APPROVAL PURSUANT TO

THIS SECTION MUST BE NOTED ON THE CONCEPT PLAN AND DEVELOPMENT PLAN, OR MINOR SUBDIVISION PLAN. THE FOLLOWING STANDARDS ARE INTENDED TO FOSTER CREATIVE DEVELOPMENT THAT PROMOTES THE GOALS STATED IN 1A08.1.B.

1. STORMWATER MANAGEMENT. STORMWATER MANAGEMENT FACILITIES MUST BE INTEGRATED WITH THE TOPOGRAPHY OF THE SITE AND CONSISTENT WITH THE VISUAL APPEARANCE OF THE SURROUNDING NATURAL FEATURES.

2. BUILDINGS.

A. BUILDINGS MUST BE LOCATED ON THE LEAST VISUALLY PROMINENT PORTION OF THE SITE FROM THE PUBLIC ROAD, CONSISTENT WITH EFFECTIVE RESOURCE PROTECTION, EXCEPT WHERE APPROPRIATE TO CONTINUE AN ESTABLISHED PATTERN OF DEVELOPMENT ALONG THE EDGE OF THE ROAD.

B. BUILDINGS SHOULD REFLECT THE TRADITIONAL RURAL CHARACTER OF THE AREA IN ARCHITECTURAL FORM, SCALE, MATERIALS, AND DETAILING, AND IN LANDSCAPING CONTEXT.

C. DWELLINGS AND OTHER PRINCIPAL USE BUILDING SHOULD BE FRONT-ORIENTED TO PUBLIC RIGHTS OF WAY; REVERSE-FRONTED LOTS GENERALLY WILL NOT BE PERMITTED.

D. INSTITUTIONAL USES, WHEN PERMITTED, SHOULD BE REGARDED AS COMMUNITY LANDMARKS, AND TREATED AS PERMANENT, SPECIAL USES.

THIS STATUS SHOULD BE REFLECTED IN BUILDING ORIENTATION AND LOCATION ON THE SITE, ENTRYWAYS, LANDSCAPING, ARCHITECTURE, AND EXTERIOR BUILDING MATERIALS.

E. ALL OF THE EXTERIOR WALLS OF A BUILDING MUST BE TREATED SIMILARLY WITH RESPECT TO COLOR AND ARCHITECTURAL DETAILS.

F. ACCESSORY STRUCTURES, INCLUDING SOLAR PANELS, ANTENNAS, AND STORAGE SHEDS ARE NOT PERMITTED IN THE FRONT YARD OF ANY PRINCIPAL USE. SECTION 400.1 IS NOT APPLICABLE IN AN R.C. 7 ZONE, HOWEVER, THE HEIGHT OF ACCESSORY STRUCTURES IS SUBJECT TO THE PROVISIONS OF SECTION 400.

G. WHEN BUILDINGS ARE LOCATED IN OPEN FIELDS BECAUSE OF SITE CONSTRAINTS, ADDITIONAL LANDSCAPING OR BERMS MAY BE REQUIRED TO SOFTEN VIEWS.

3. ROADS, PARKING AREAS, AND STORAGE AREAS.

A. INTERIOR ROADS MUST CONFORM TO BALTIMORE COUNTY'S STANDARDS FOR RURAL ROADS. AND NO PAVED SECTION OF ROAD MAY EXCEED A WIDTH OF 18 FEET.

B. CURBING MUST NOT BE USED UNLESS REQUIRED FOR STORMWATER MANAGEMENT, AS DETERMINED BY THE DEPARTMENT OF PUBLIC WORKS. WHEN CURBING IS REQUIRED, IT MUST CONSIST OF MOUNTABLE CURBS OF A COLOR THAT SIMULATES THE APPEARANCE OF AGED CONCRETE, IN ACCORDANCE WITH SPECIFICATIONS ESTABLISHED BY THE

DEPARTMENT OF PUBLIC WORKS.

C. FENCING OF RESIDENTIAL PROPERTIES MUST BE IN KEEPING WITH RURAL CHARACTER. FENCES MUST BE EITHER SPLIT RAIL OR BOARD ON POST, AND THE TYPE OF FENCE MUST BE CONSISTENT THROUGHOUT THE DEVELOPMENT.

D. OFF-STREET PARKING AND VEHICLE OR EQUIPMENT STORAGE AREAS, WHEN NECESSARY FOR NONRESIDENTIAL OR NON-FARM USES, MUST BE VISUALLY SCREENED BY FENCING, BUILDINGS, OR VEGETATION, OR A COMBINATION THEREOF, FROM THE PUBLIC ROADS AND DWELLINGS.

E. AREAS FOR THE OUTSIDE STORAGE OF MATERIALS OR SUPPLIES FOR NON-AGRICULTURAL COMMERCIAL USES, EXCEPT MERCHANDISE OFFERED FOR SALE BY ANTIQUE SHOPS, MUST BE VISUALLY SCREENED BY FENCING, BUILDINGS, OR VEGETATION, OR A COMBINATION THEREOF, FROM ALL PUBLIC ROADS AND DWELLINGS.

F. STREET LIGHTS, IF PERMITTED ON INTERIOR STREETS, MUST BE NO HIGHER THAN 14 FEET AND ILLUMINATED BY NO MORE THAN ONE 100-WATT SODIUM VAPOR LAMP. FLUORESCENT AND INCANDESCENT LIGHTS ARE NOT PERMITTED. THE LIGHT FIXTURES SHOULD BE OF A STYLE THAT DIFFUSES LIGHT.

4. SCREENING. VISUAL SCREENING FOR PRIVACY OR TO BLOCK DISTRACTING VIEWS SHOULD BE NATURAL IN APPEARANCE AND SENSITIVE TO GRADE RELATIONSHIPS. SCREENS SHOULD NOT DISRUPT THE HARMONY OF THE

NATURAL LANDSCAPE OR OBSTRUCT SCENIC VIEWS.

5. SIGNS.

A. COMMUNITY SIGNS ARE PROHIBITED. SUBDIVISIONS MAY BE IDENTIFIED BY STREET SIGNS.

B. A NON-RESIDENTIAL PRINCIPAL USE MAY BE IDENTIFIED BY:

I. AN ENTERPRISE SIGN, SUBJECT TO SECTION 450; OR

II. AN IDENTIFICATION SIGN, SUBJECT TO SECTION 450.

1A08.7 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS. ANY DWELLING IN AN R.C. 7 ZONE MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING NOISE, ODORS, FUMES, DUST, THE OPERATION OF MACHINERY OR AIRCRAFT OF ANY KIND DURING ANY 24-HOUR PERIOD, THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES, AND PESTICIDES.

Section 102 General Requirements

102.7 WHERE DEVELOPMENT OF A PROPERTY INCLUDES BOTH A SPECIAL EXCEPTION AND A RESIDENTIAL SUBDIVISION, THE AREA ALLOCATED FOR USE AS A SPECIAL EXCEPTION SHALL NOT BE INCLUDED IN THE CALCULATION OF RESIDENTIAL DENSITY.

Section 502 Special Exceptions

502.1 Before any special exception may be granted, it must appear that the use for which the

special exception is requested will not:

I. BE DETRIMENTAL TO THE ENVIRONMENTAL AND NATURAL RESOURCES OF THE SITE AND VICINITY INCLUDING FORESTS, STREAMS, WETLANDS, AQUIFERS. AND FLOODPLAINS IN AN R.C. 2, R.C. 4, R.C. 5, OR R.C. 7 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council, shall take effect September 15, 2000.

B07-00.ord

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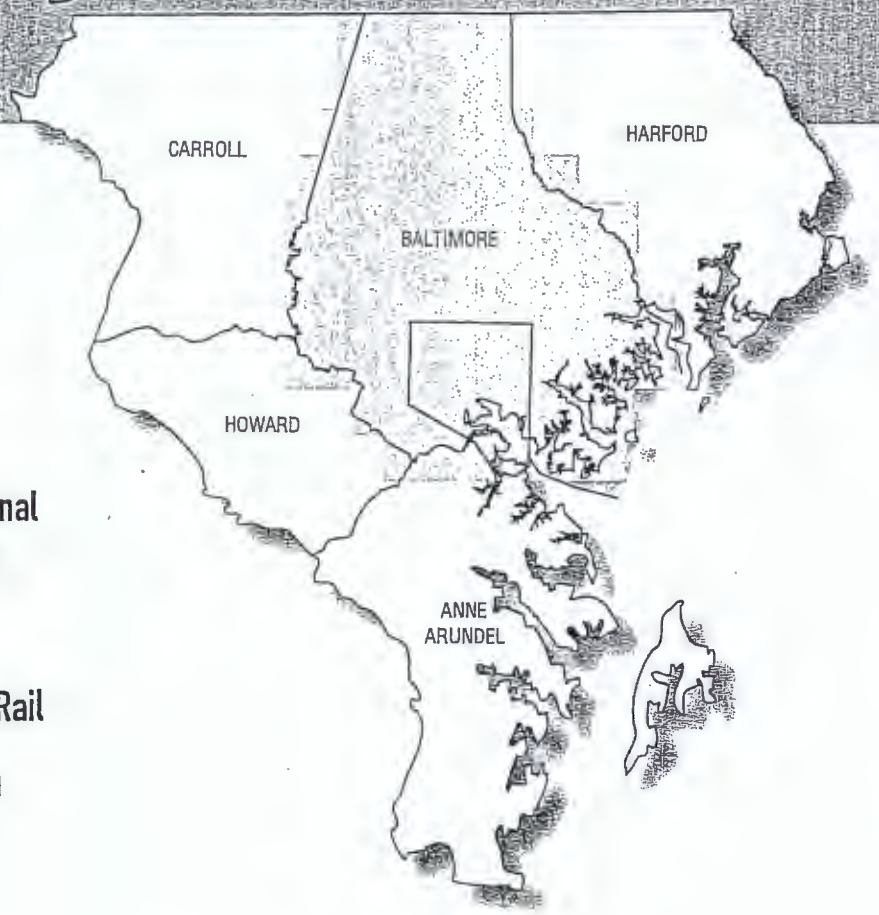
by Kappa Map Group

STREET ATLAS

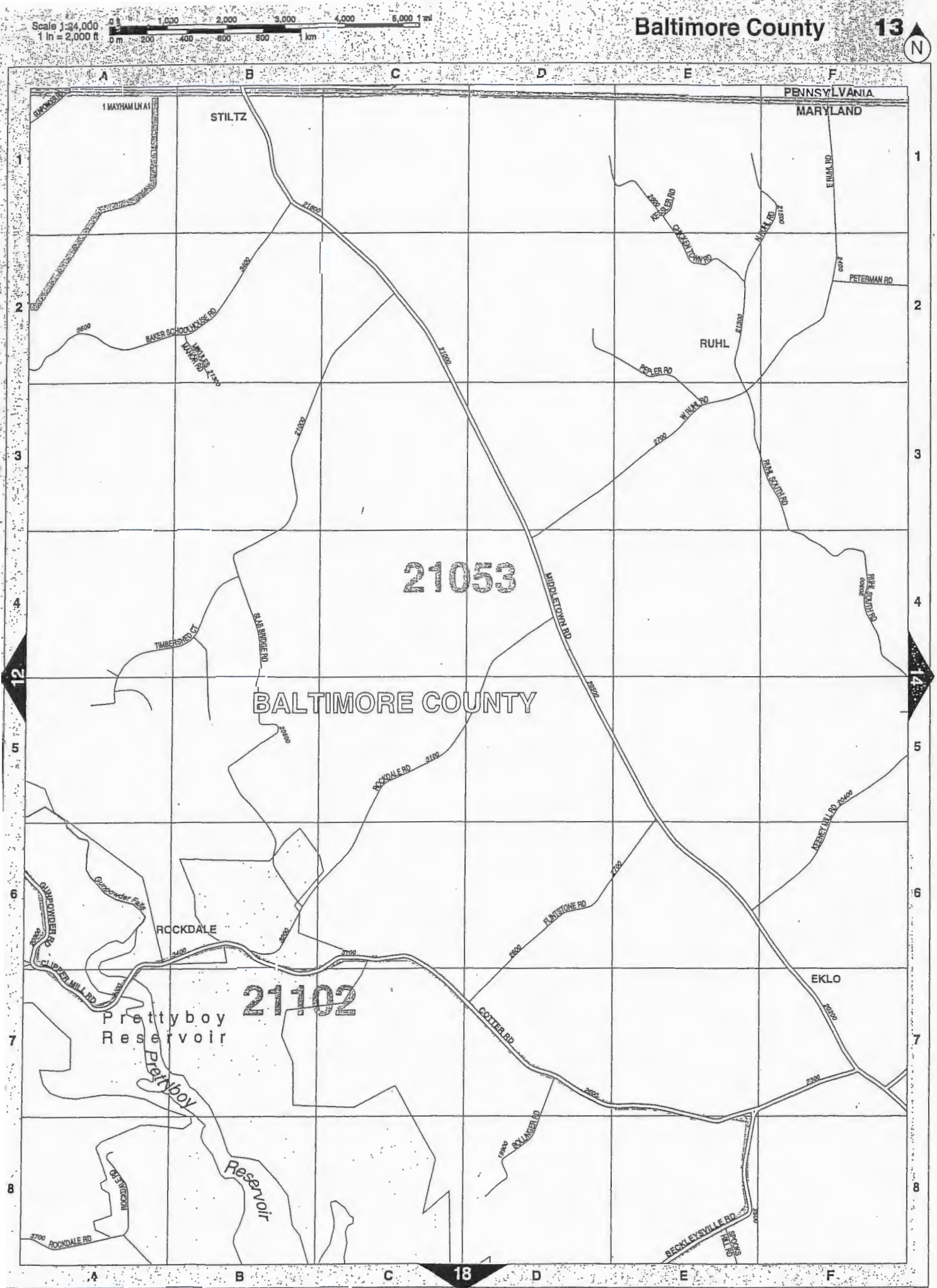
Baltimore City & County

Maryland



NAVTEQ ON BOARD

2 Key Map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FLINTSTONE RD
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Gunpowder Falls
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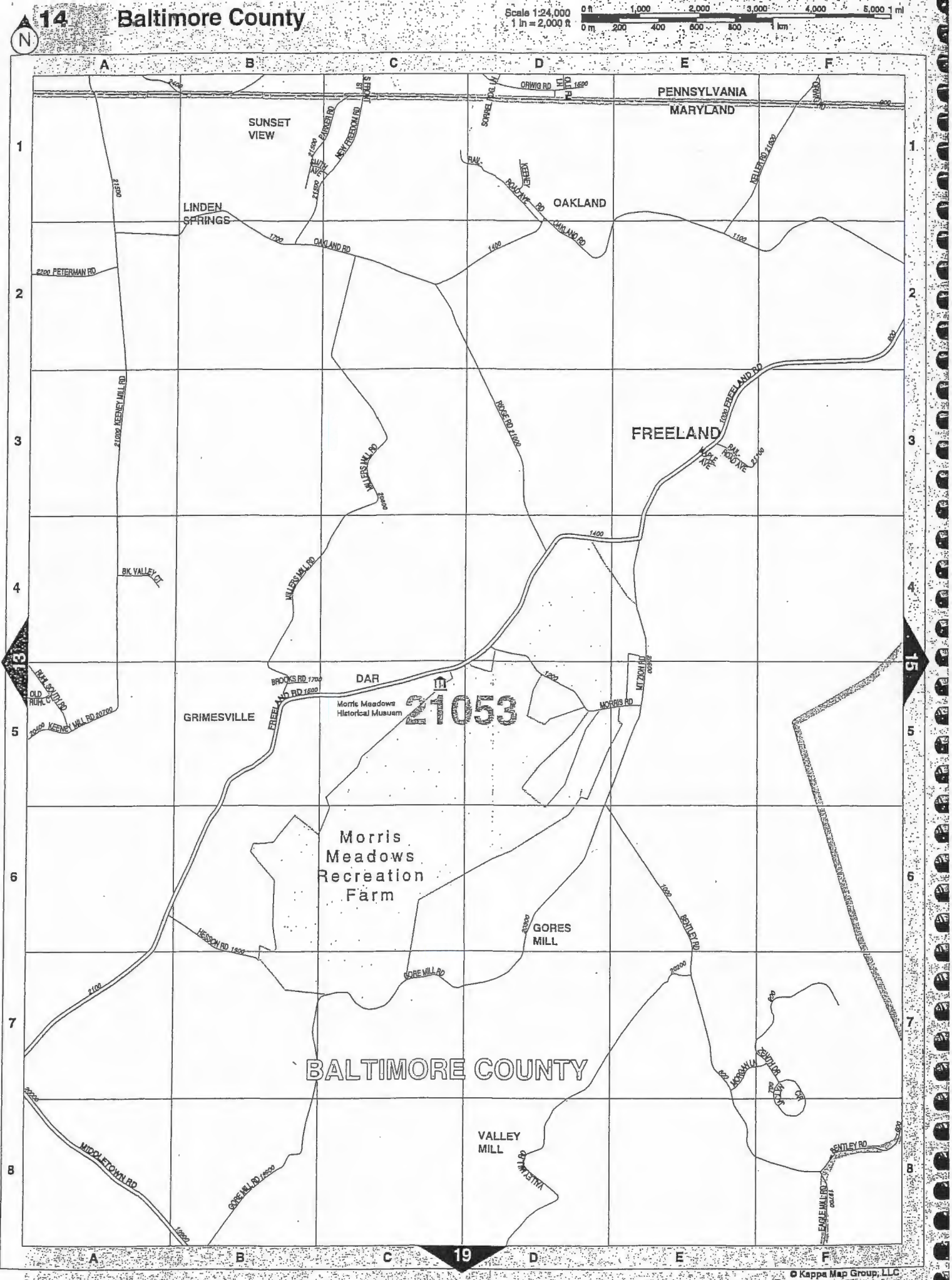

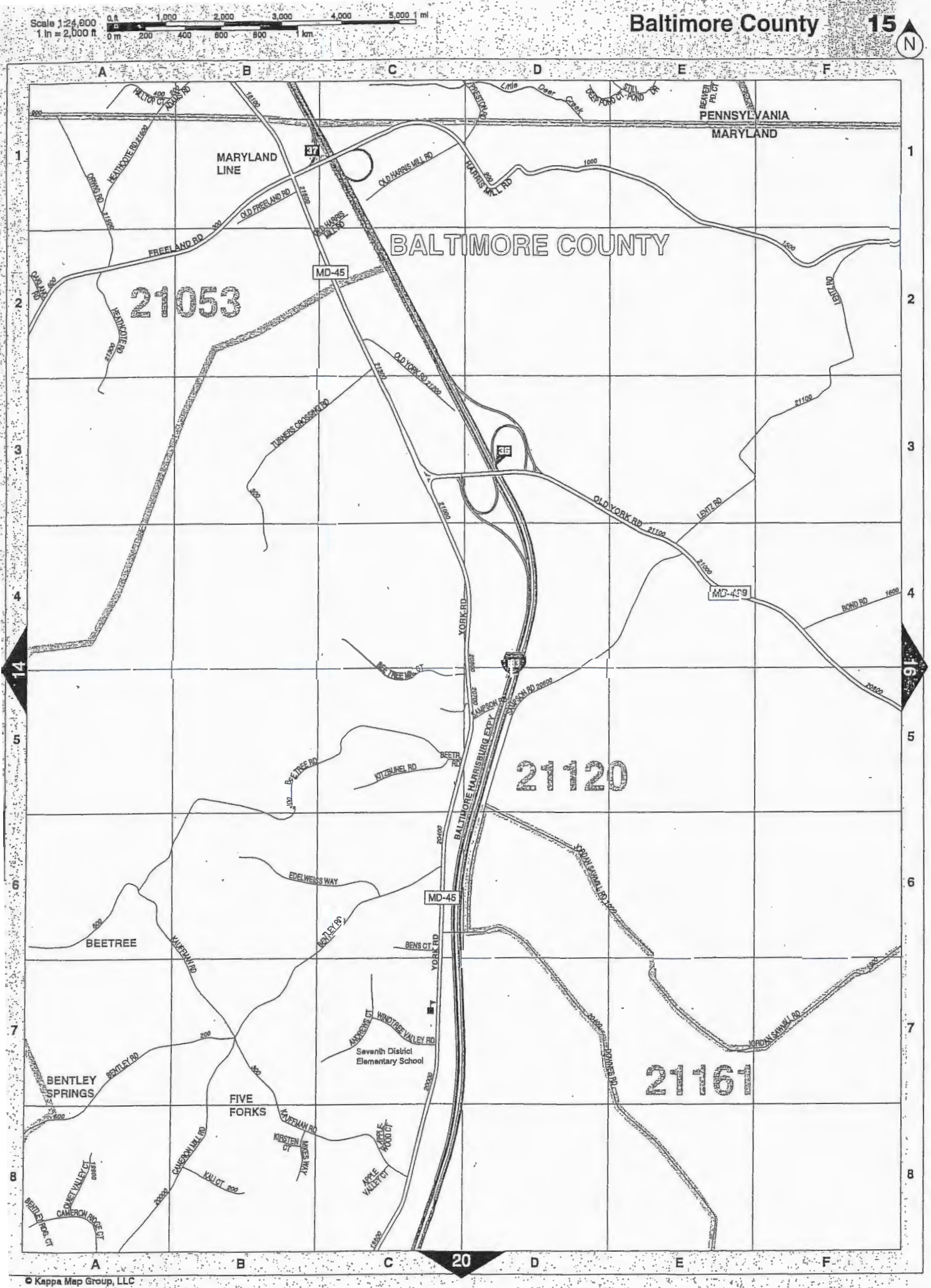
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BENTLEY RD
KAUFFMAN RD
BENS CT
WINDTREE VALLEY RD
Seventh District Elementary School
BENTLEY SPRINGS
FIVE FORKS
CAMERON MILL RD
KAUL CT
APPLE VALLEY CT
JORDAN SAWMILL RD
DONNER RD
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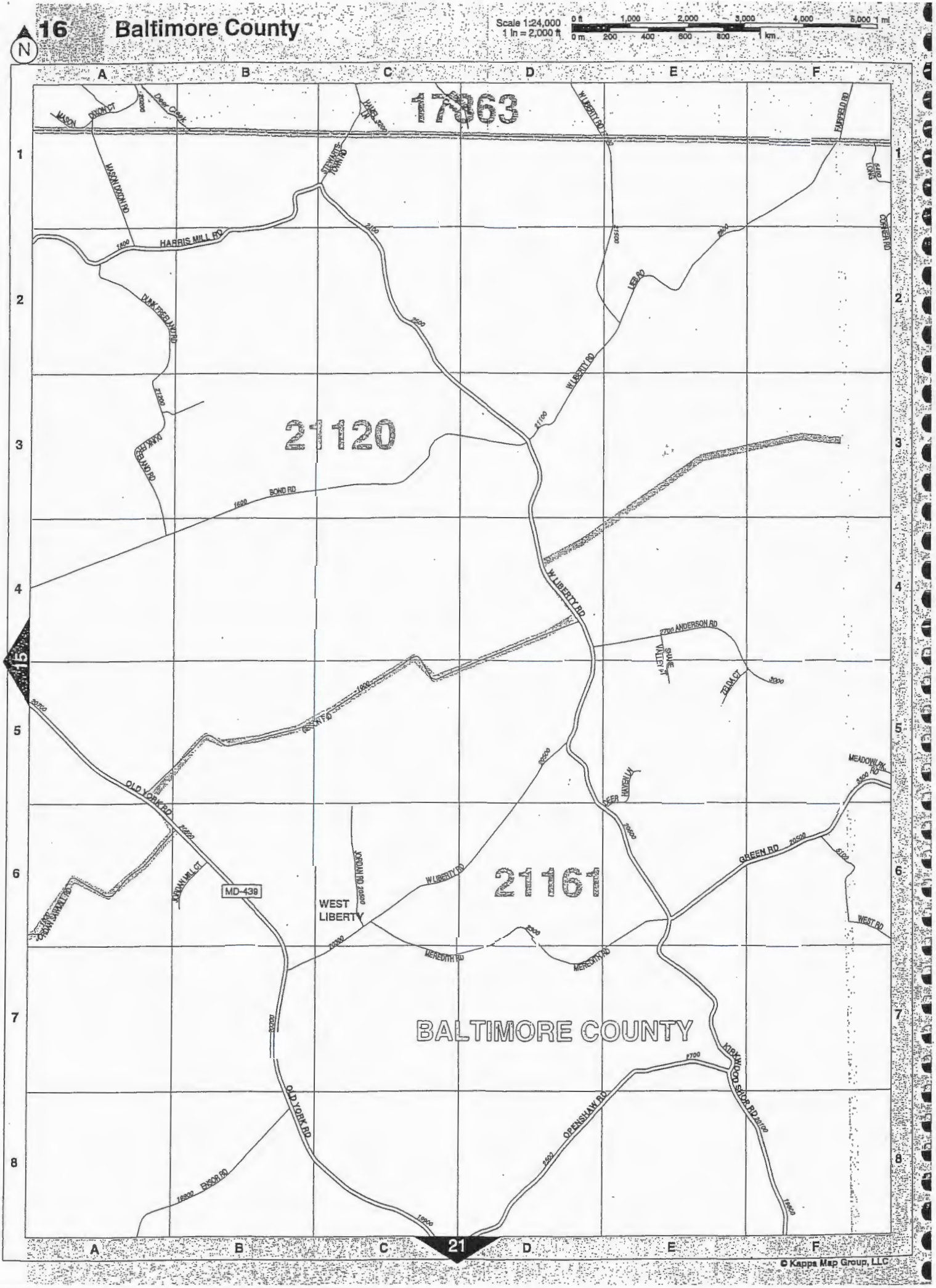
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STEWARTS TOWN RD
LONG CORNER RD
DUNKIRK LAND RD
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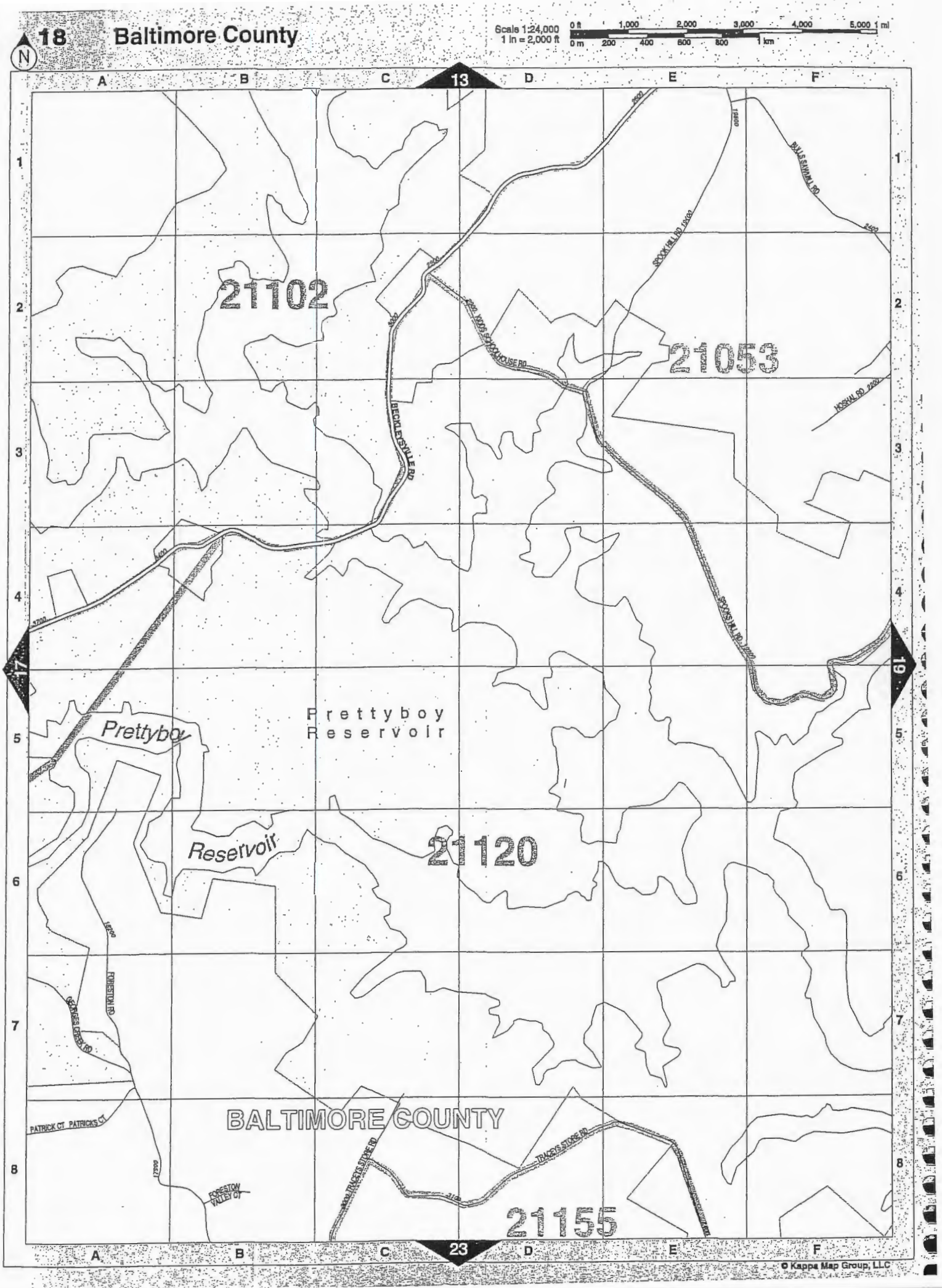
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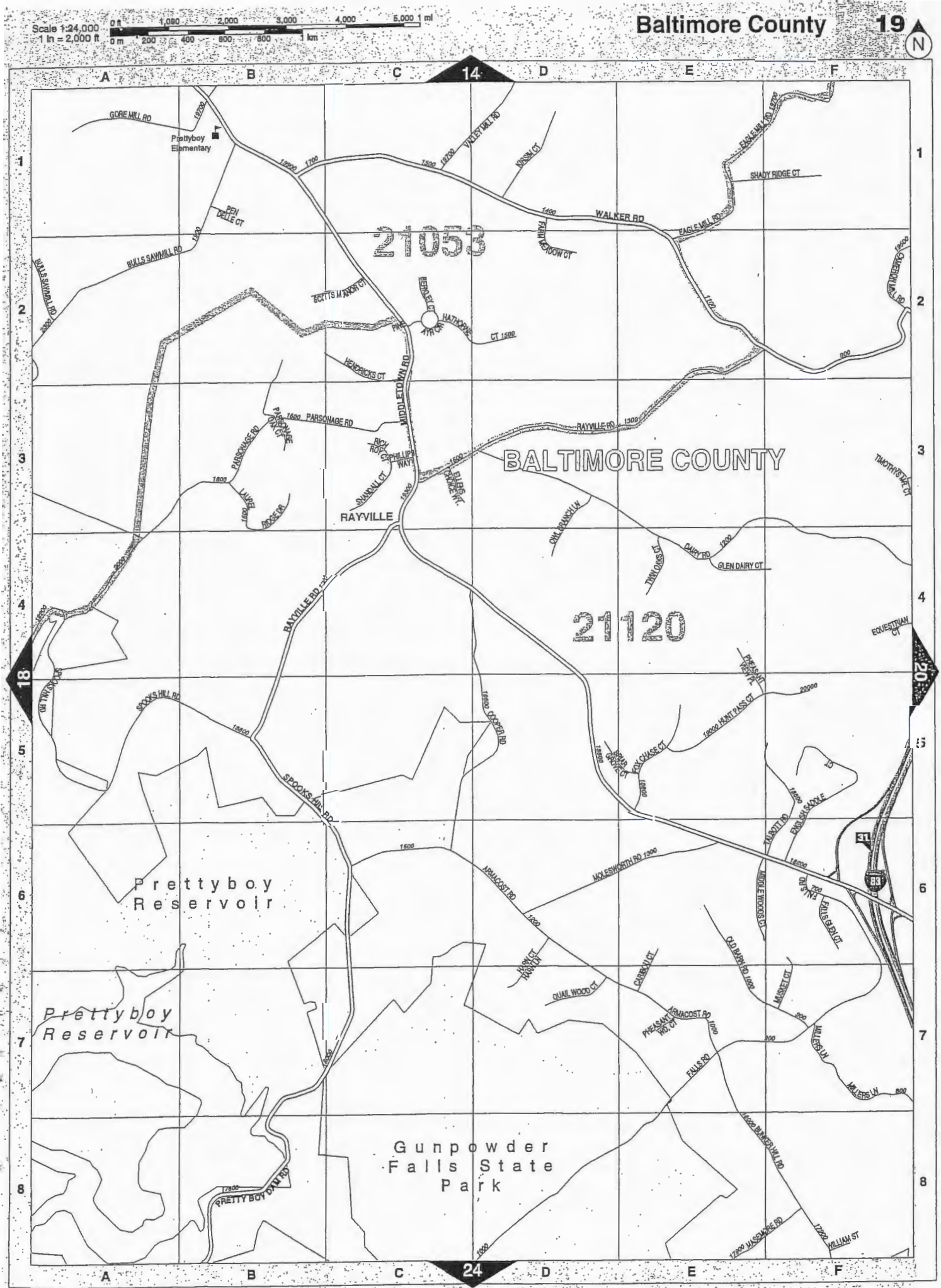

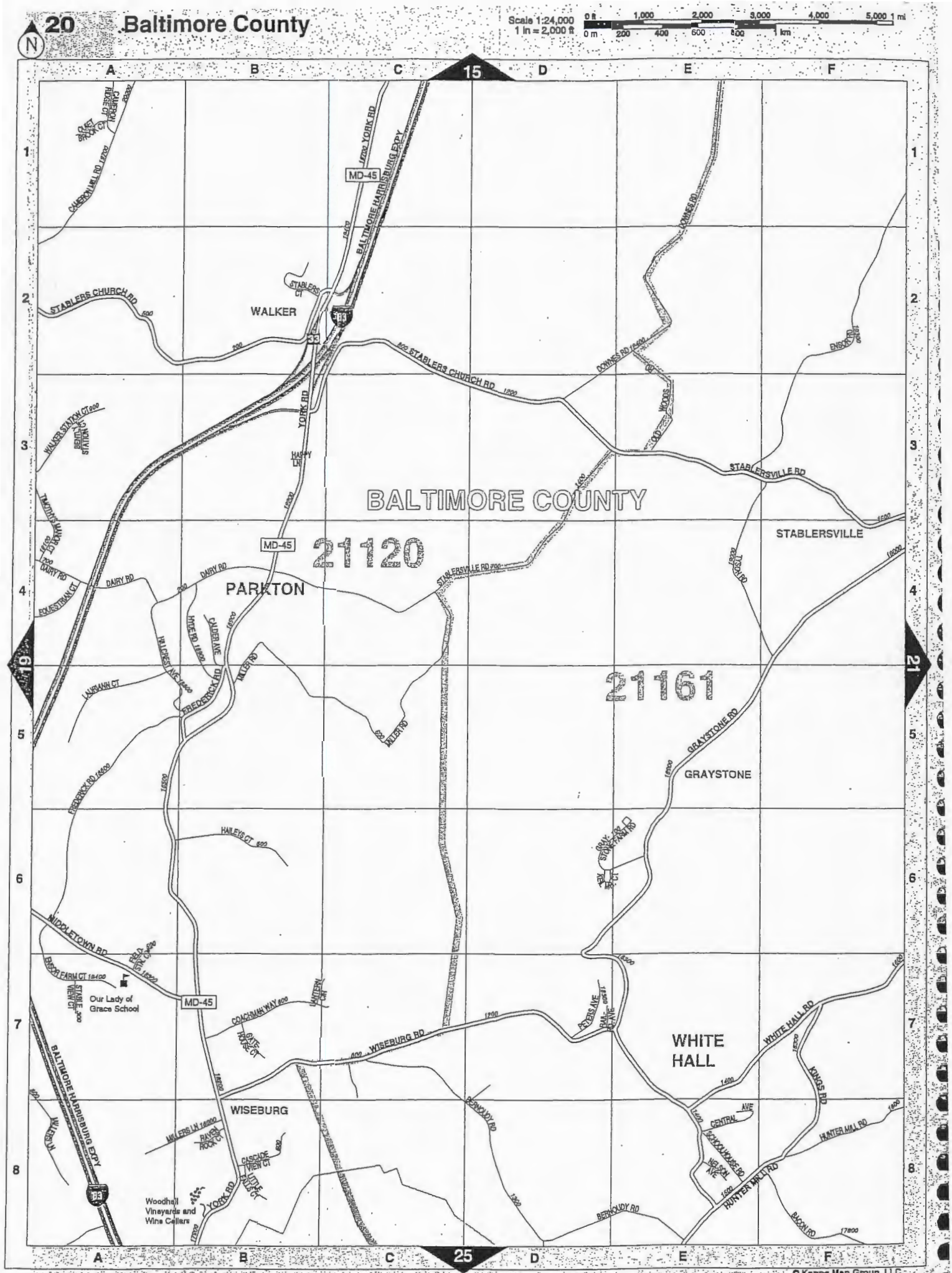

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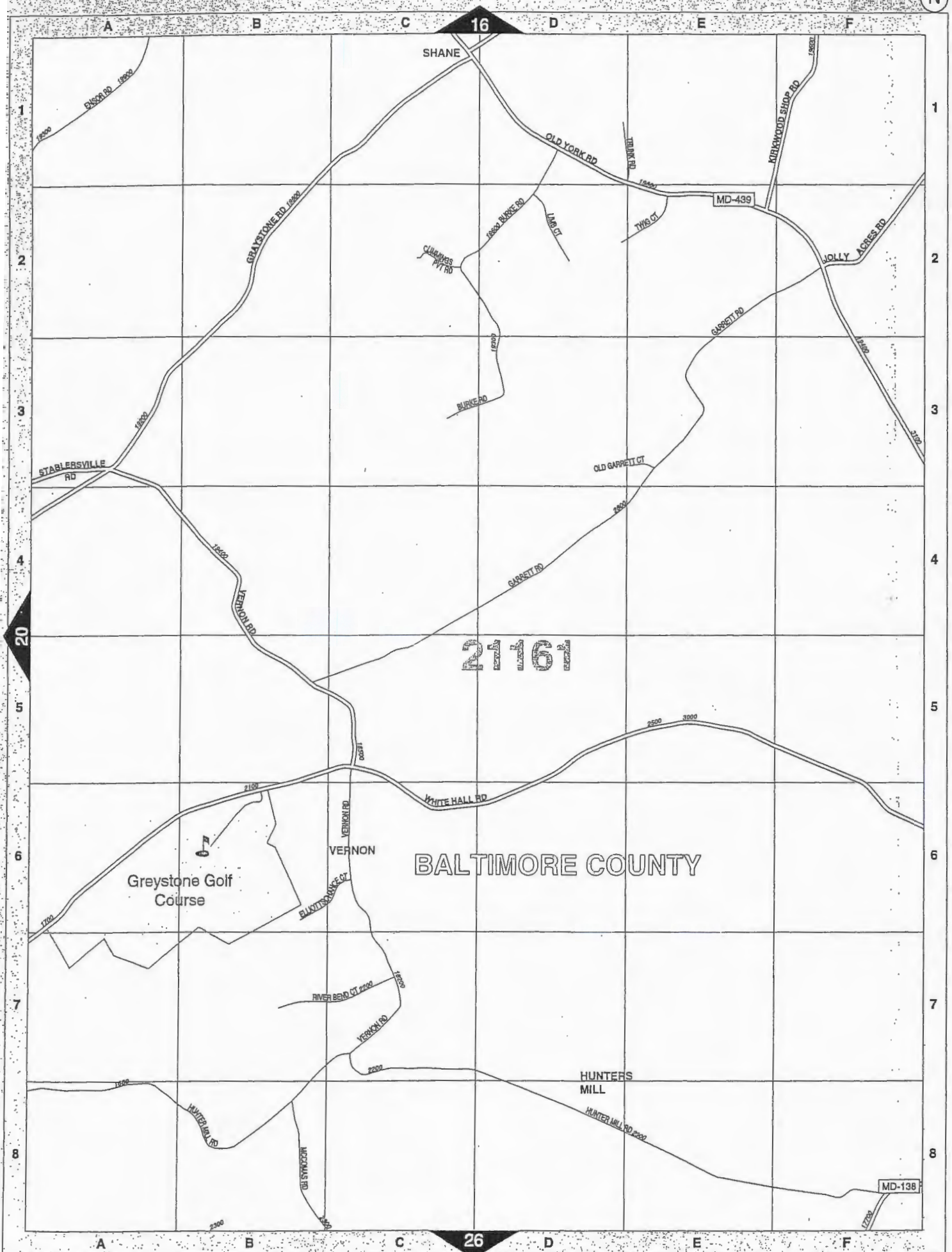

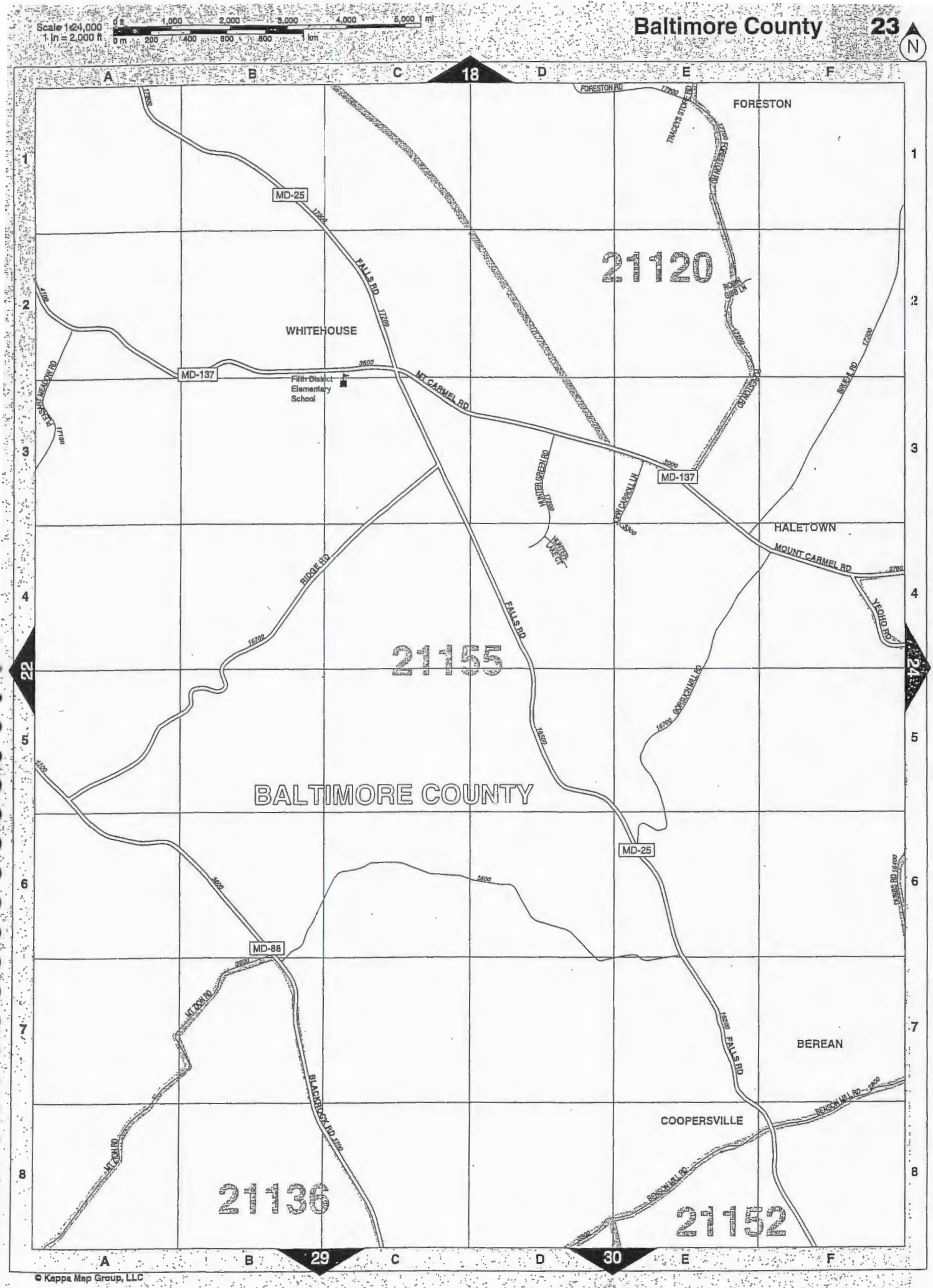

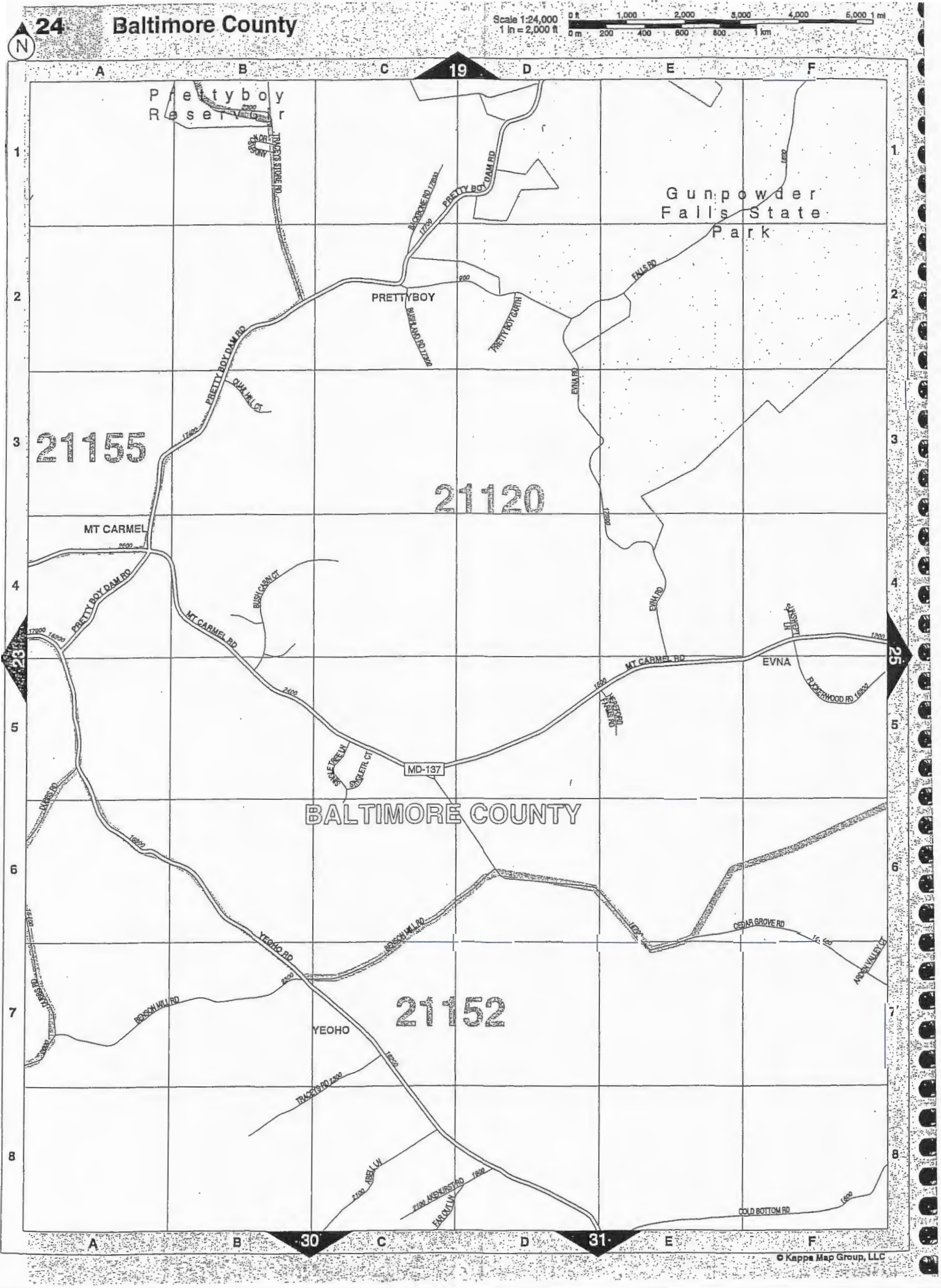
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QUIK MILL CT
BUSH CABIN CT
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BLOOMWOOD RD
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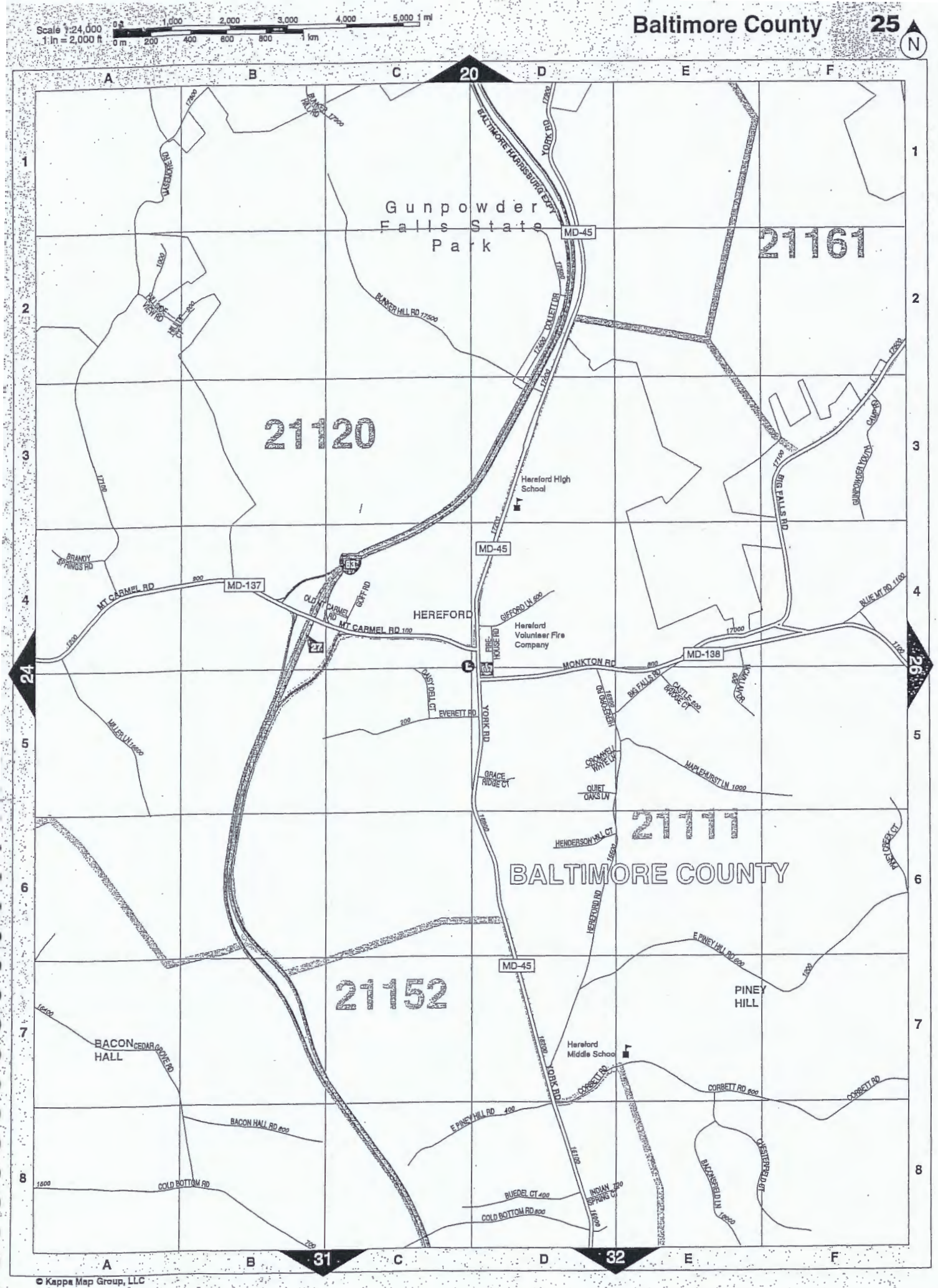

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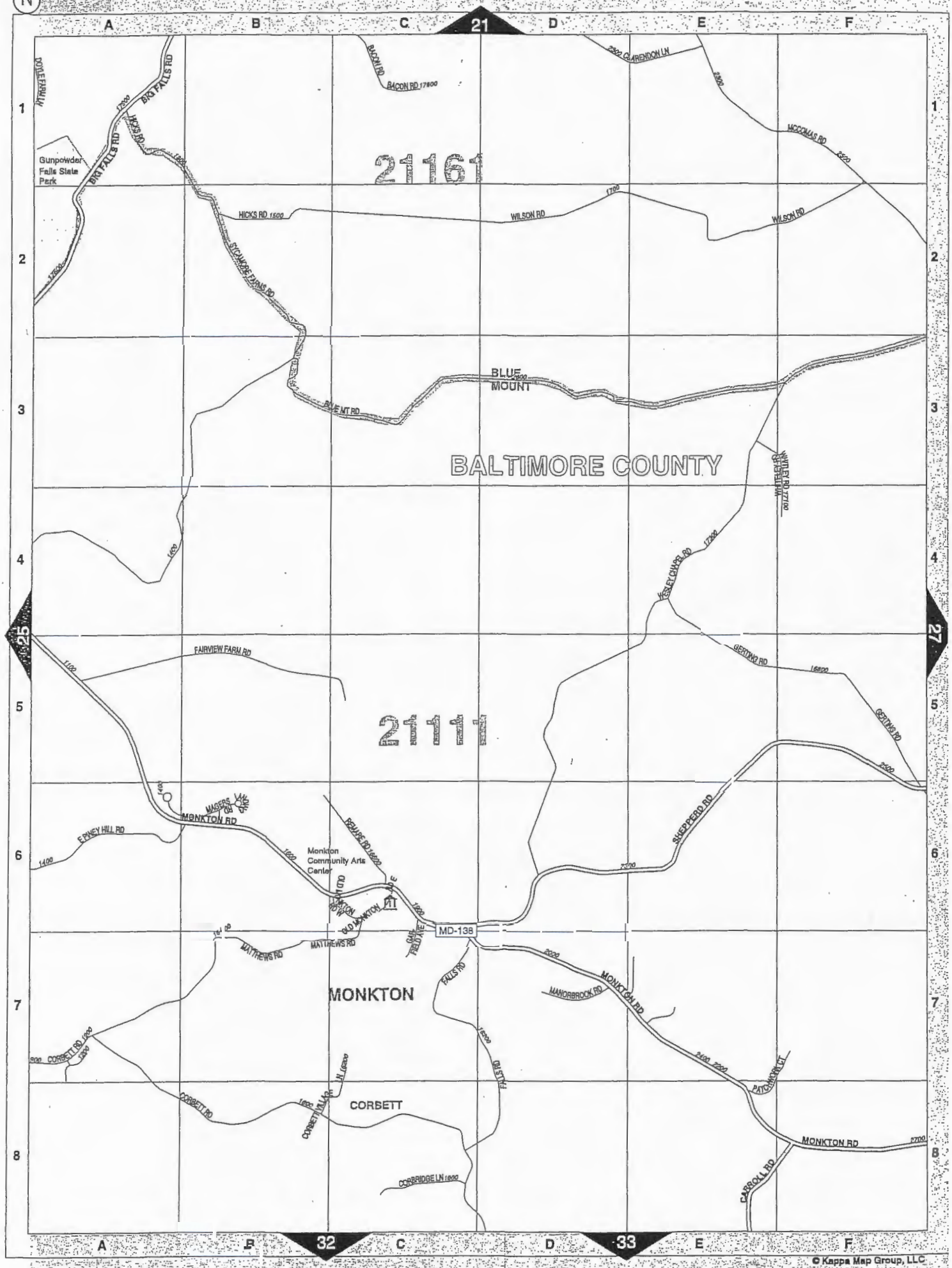

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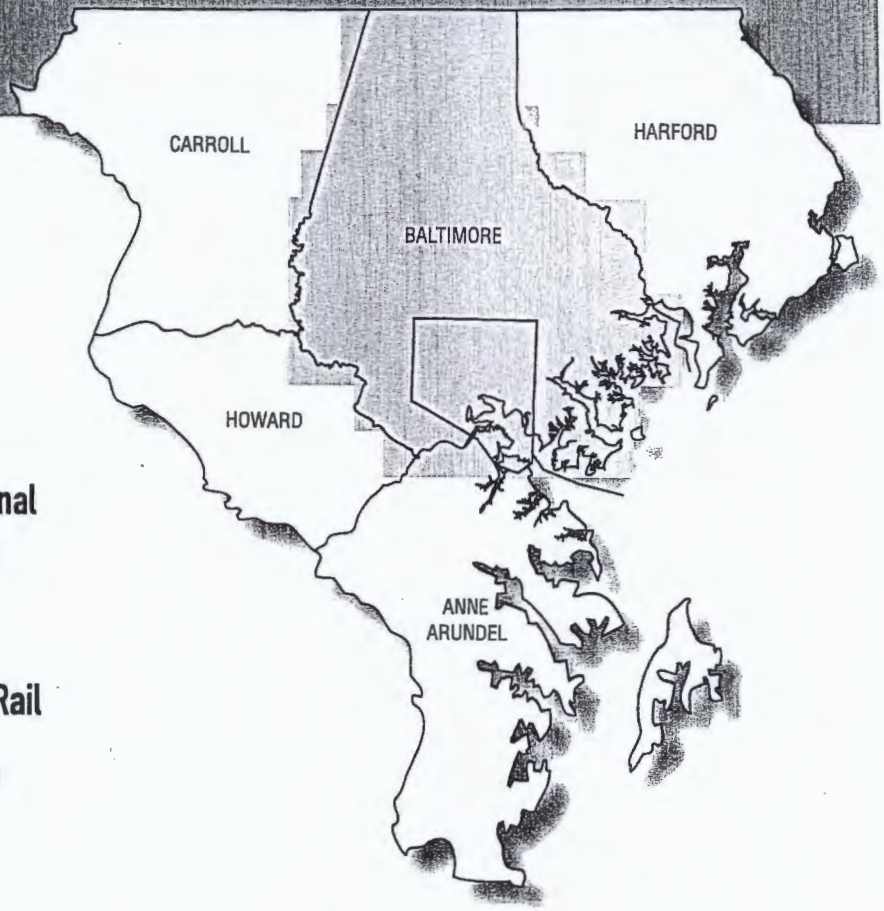
STREET ATLAS

Baltimore City & County

Maryland



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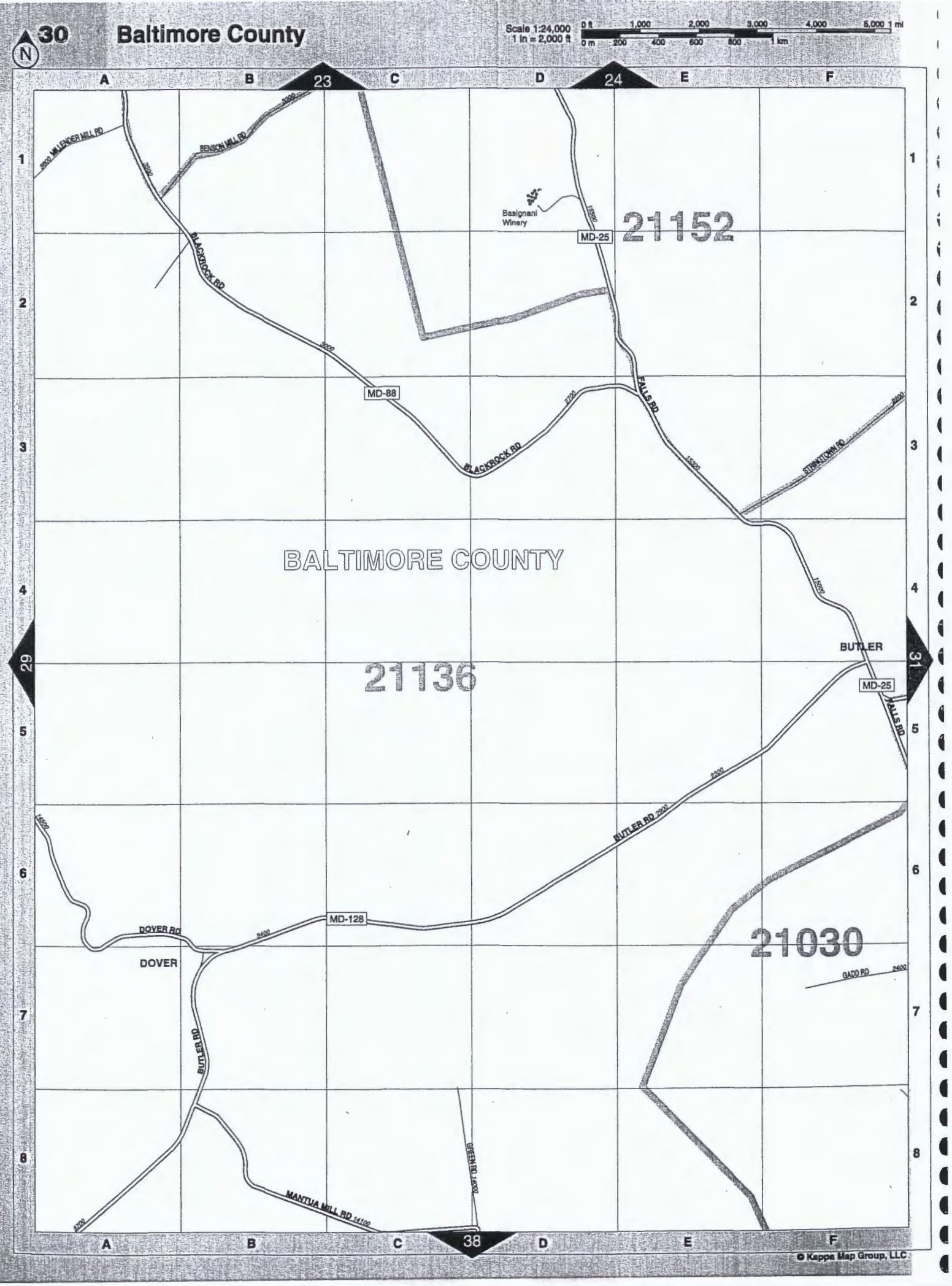
NAVTEQ ON BOARD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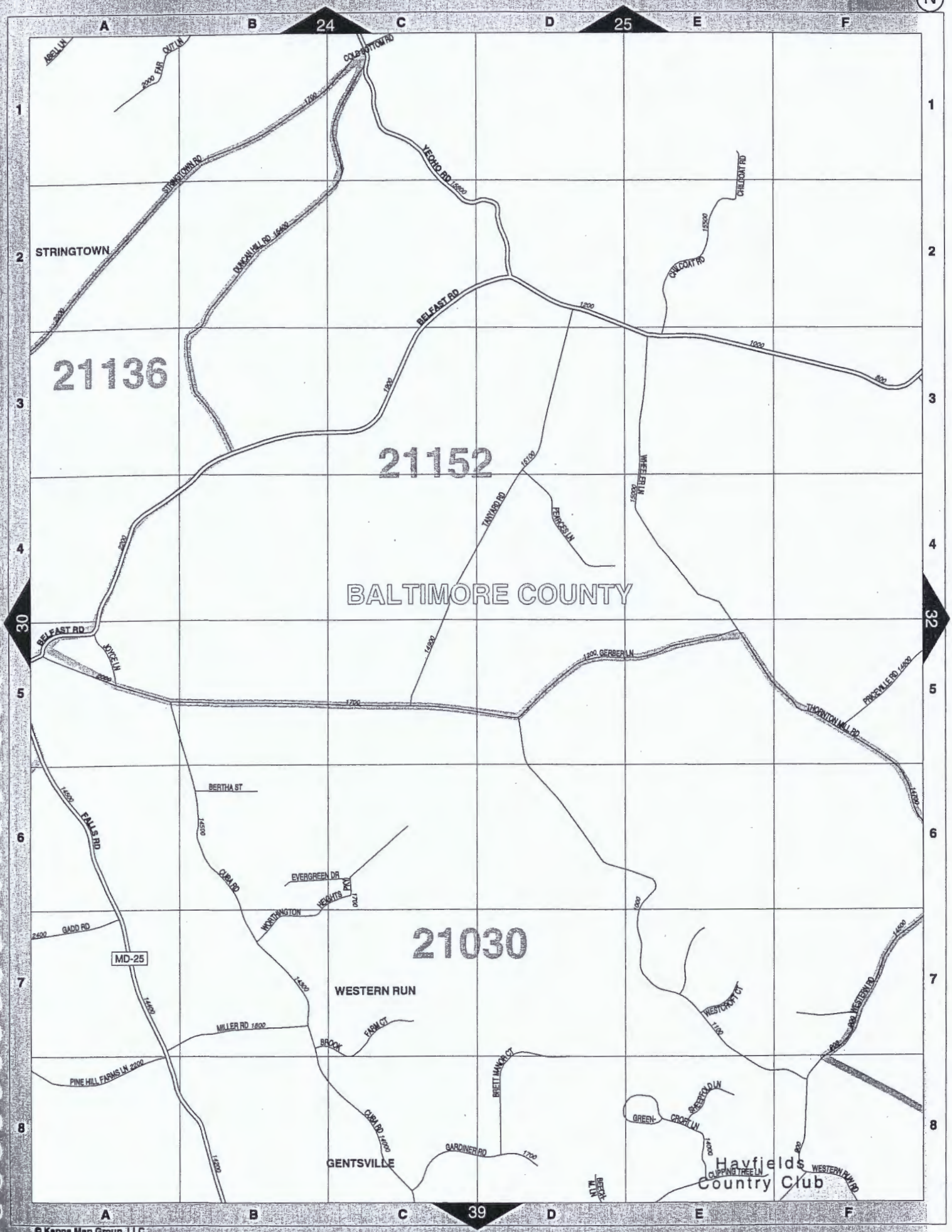

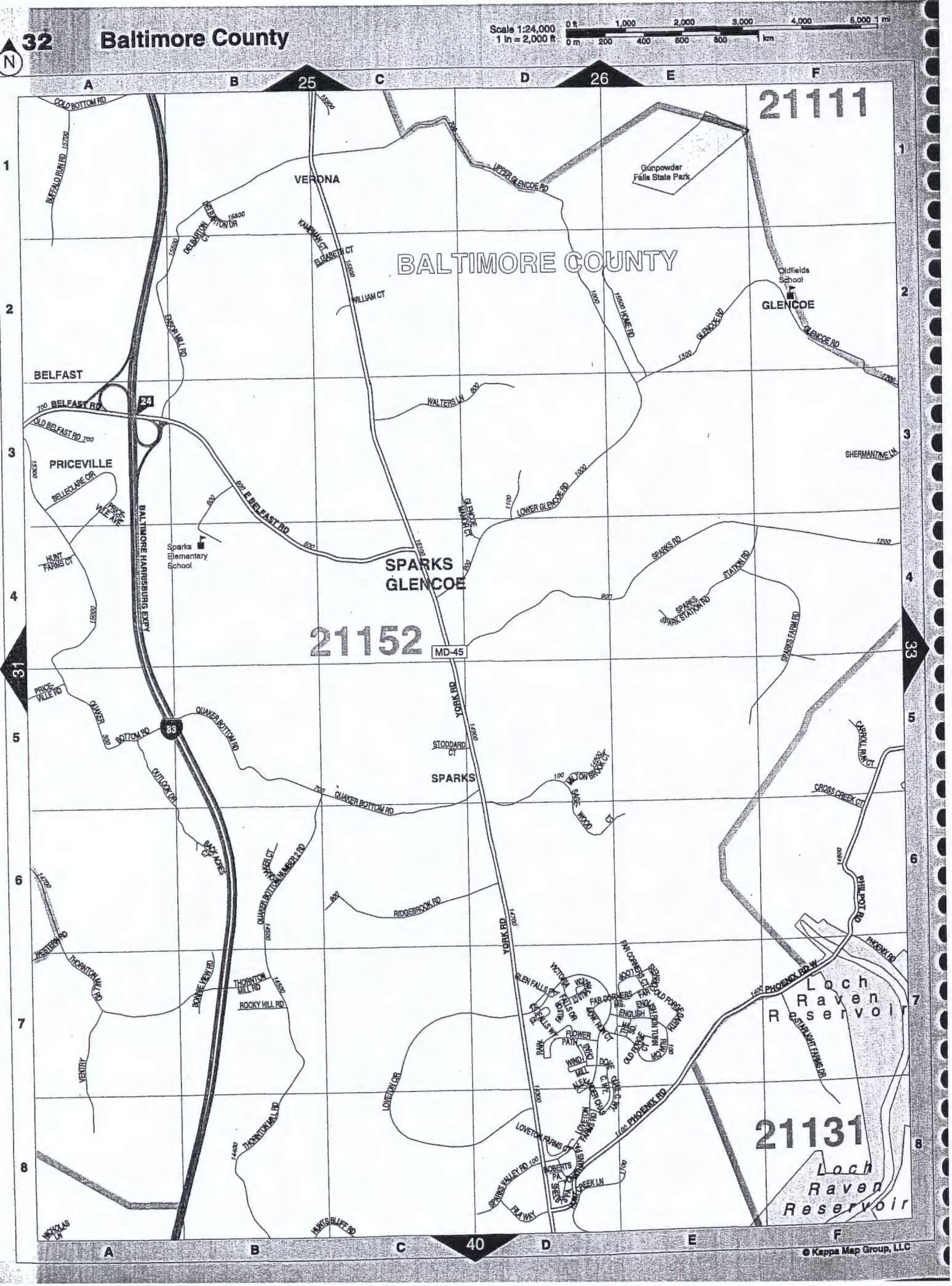
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Loch Raven Reservoir
Loch Raven Reservoir
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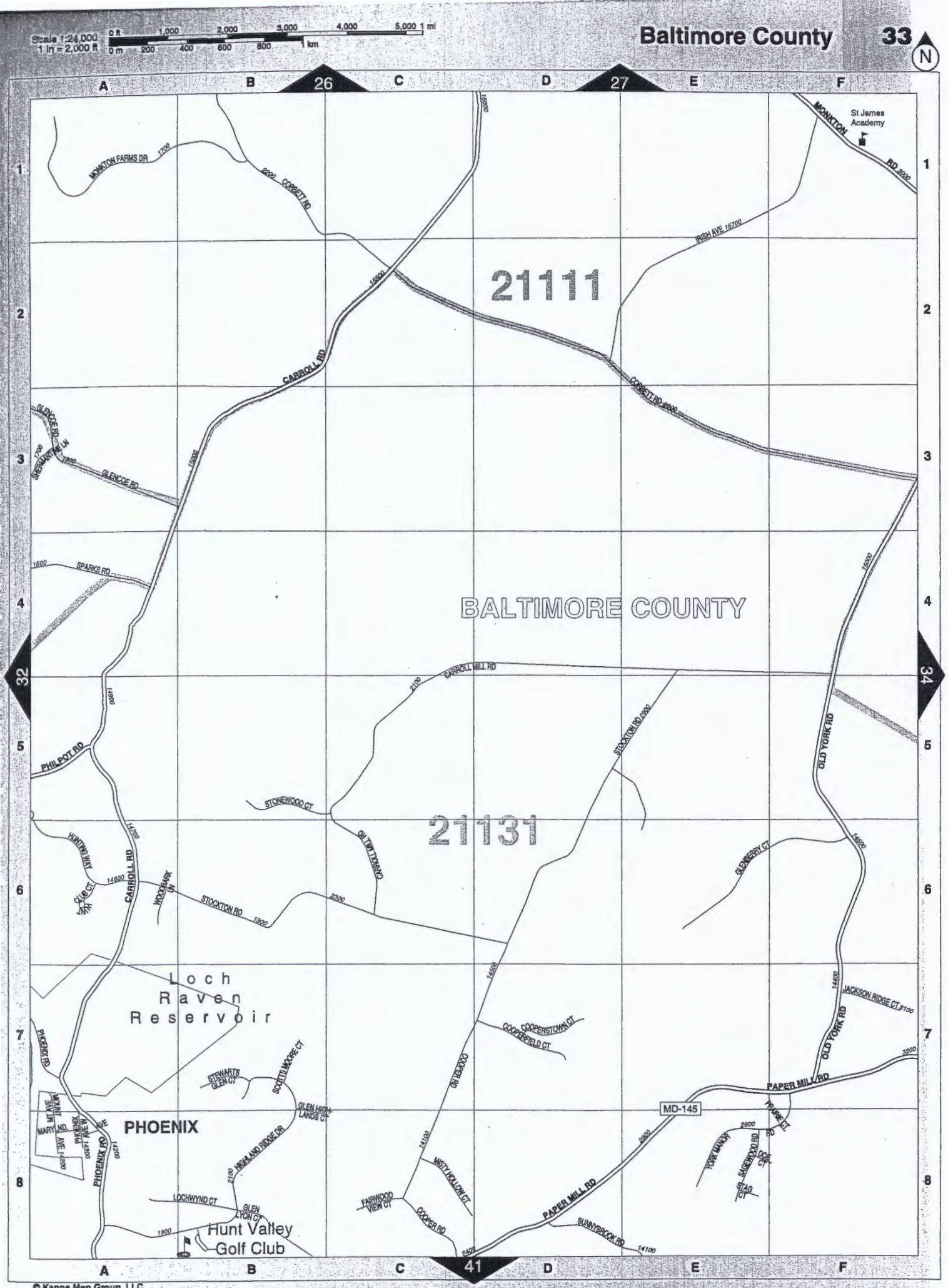

005-018-1813 Domestic Firearm Violence Reduction and Enforcement Grant $5,000.00

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council shall take effect January 28, 2002.

BILL NO. 121-01
A BILL
ENTITLED

AN ACT concerning

Wireless Telecommunications Towers - Historic and Scenic Resources.

FOR the purpose of revising the procedures for the review of wireless communication towers; requiring the ~~Tower Review Committee~~ Zoning Commissioner to consider scenic viewshed elements and historic ~~areas; requiring a tower applicant to petition for a special hearing under certain circumstances; prohibiting towers from interfering with scenic viewshed elements; requiring towers to be in harmony with certain historic areas; requiring the Zoning Commissioner to~~ areas; requiring the Zoning Commissioner to make certain determinations concerning towers based on substantial evidence; authorizing the Commissioner to consider certain factors when considering a tower ~~providing for~~ in certain zones; ~~procedures before the Commissioner; prohibiting appeals from a decision of the Tower Review Committee; authorizing certain persons to petition for a special hearing; requiring~~ requiring the Planning Board to catalogue and identify scenic viewshed elements and areas; defining certain terms; and generally relating to wireless communication towers.

BY repealing and re-enacting, with amendments

Section 426.1, 426.2.B, 426.3 and 426.4
Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Section 502.7
Baltimore County Zoning Regulations, as amended

By adding

Section 26-168(xx) and (yy) and 26-284
Title 26, Planning, Zoning and Subdivision Control

Baltimore County Code, 1988, as amended

WHEREAS the historic and scenic elements of Baltimore County are assets to the people of the County which should be protected from intrusion and disruption by development which would mar their quality and value; and

WHEREAS an infrastructure of wireless communications facilities is necessary for the fulfillment of the goals of the Telecommunications Act of 1996; and

WHEREAS there is increasing pressure on the wireless telecommunications service providers to erect wireless telecommunications towers in outlying parts of the County, which often are the sites of historic and scenic elements; and

WHEREAS the Baltimore County Zoning Regulations presently provide a number of controls and restrictions on development which would interfere with landmarks, historic districts and scenic views and vistas; and

WHEREAS the Baltimore County Master Plan 2010 suggests that even greater protection for historic and scenic elements is necessary; and

WHEREAS additional protections are required for the historic and scenic assets of the County; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the following provisions of Section 426.1, 426.2.B, 426.3 and 426.4 of the Baltimore County Zoning Regulations, as amended, are hereby repealed and re-enacted with amendments to read as follows:

Section 426, Wireless Telecommunications Facilities

426.1 Definitions.

In this section, the following words have the meanings indicated:

ANTENNA - A wireless telecommunications antenna.

~~APPLICATION - AN APPLICATION TO THE COMMITTEE PURSUANT TO SUBSECTION 426.4.C.~~

~~CODE OFFICIAL - The Director of the Department of Permits and Development Management or the Director's designee.~~

~~COMMITTEE - The Tower Review Committee established under Section 426.4.~~

People's Counsel
CBA Exhibit
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~~HISTORIC AREAS - AN AREA WITHIN AN EXISTING DISTRICT ON THE BALTIMORE COUNTY FINAL HISTORIC LANDMARKS LIST OR ANY OF THE FOLLOWING HISTORICAL DISTRICTS ON THE NATIONAL REGISTER OF HISTORIC PLACES:~~

~~1. OELLA;~~

~~2. MY LADY'S MANOR;~~

~~3. BELFAST;~~

~~4. WESTERN RUN;~~

~~5. WORTHINGTON VALLEY;~~

~~6. GREENSPRING VALLEY; AND~~

~~7. LONG GREEN VALLEY;~~

OWNER - The owner, agent, lessee or person in control of a wireless telecommunications tower.

PROVIDER - A wireless telecommunications service provider.

TOWER - A wireless telecommunications tower.

SCENIC VIEWSHED - A SCENIC ROUTE, ~~VIEW OR GATEWAY~~ OR VIEW AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN.

SCENIC VIEWSHED ELEMENTS -:

1. THOSE VISUAL ELEMENTS OF A SCENIC VIEWSHED WHICH ARE OF A QUALITY, CHARACTER, RARITY AND NATURE TO CAUSE A VIEWSHED TO BE DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN BY THE BALTIMORE COUNTY PLANNING BOARD; AND

2. WHICH ARE CATALOGUED BY THE ~~DIRECTOR OF~~ PLANNING BOARD IN ACCORDANCE WITH SECTION 26-284 OF THE BALTIMORE COUNTY CODE.

TOWER APPLICANT - A PERSON WHO APPLIES TO THE COMMITTEE PURSUANT TO SECTION 426.4.

426.2 Legislative policy for siting of wireless telecommunications antennas and towers.

It is the intent of Baltimore County that:

A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible; and

B. If a new tower must be built, the tower should be:

1. Constructed to accommodate at least 3 providers[.];

2. Erected in a medium or high intensity commercial zone when available;

3. Located and designed to ~~BE IN HARMONY WITH THE AREA IN WHICH IT IS TO BE LOCATED AND IN GENERAL CONFORMITY WITH THE BALTIMORE COUNTY MASTER PLAN; AND~~

~~4. LOCATED AND DESIGNED TO~~ minimize its visibility from residential and transitional zones.

426.3 Exceptions.

The provisions of this section do not apply to:

A. Antennas or towers serving gas and electric or land-based local telephone public utility [locations needs at existing facilities, provided that a public utility that owns any antennas or towers shall establish that the antennas or towers and service meet critical communications needs for public safety; or] NEEDS; OR

B. Antennas used by cable systems operating in accordance with Title 8 of the Baltimore County Code, 1988, as amended, if located on property owned by the county, state or federal government.

426.4 Tower Review Committee.

A. There is a Tower Review Committee in Baltimore County.

B. The Committee shall consist of:

1. A Tower Coordinator, who shall have technical expertise regarding the siting of wireless telecommunications towers and shall serve as committee chairperson[.];

2. The Director of the Office of Planning or the Director's designee[.];

3. The Director of the Office of Information Technology or the Director's designee.

4. An at-large citizen representative appointed by the County Council[.]; AND

5. Depending on the particular site for a tower, representatives of other governmental agencies as determined by the Tower Coordinator.

C. [An applicant for a building permit for an antenna shall submit a duplicate copy of the permit application to the Tower Coordinator.] APPLICATION TO COMMITTEE.

~~1. PRIOR TO SUBMITTING ANY OTHER REQUEST FOR COUNTY APPROVAL TO BUILD A TOWER WITHIN BALTIMORE COUNTY, A PERSON DESIRING TO CONSTRUCT~~

~~A TOWER SHALL FIRST SUBMIT AN APPLICATION TO THE COMMITTEE ON A FORM AND MANNER PRESCRIBED BY THE COMMITTEE.~~

~~2. THE TOWER APPLICANT SHALL SUBMIT TO THE COMMITTEE ALL RELEVANT INFORMATION REQUESTED BY THE COMMITTEE TO ENABLE THE COMMITTEE TO EVALUATE THE PROPOSAL IN ACCORDANCE WITH THIS SECTION.~~

D. IN ADDITION TO ANY OTHER FEES REQUIRED, AN APPLICANT FOR A BUILDING PERMIT OR A SPECIAL EXCEPTION SHALL PAY A SEPARATE PROCESSING FEE TO THE COUNTY. THE COUNTY ADMINISTRATIVE OFFICER SHALL ESTABLISH THE AMOUNT OF THE FEE.

~~D~~ E. ~~[~~Committee review.

1. Prior to submitting a petition for a special exception or an application for a building permit for a tower, a petitioner or an applicant shall meet with the Committee. The Committee shall meet with the petitioner or the applicant within ~~three weeks~~ 45 DAYS after a written request for a meeting is submitted.

2. The petitioner or the applicant shall submit to the Committee:

   a. Information detailing the maximum number of providers and antennas the proposed tower can support.

   b. Any other relevant technical information requested by the Committee.

3. The Committee shall review the information submitted by the petitioner or the applicant and evaluate the proposed tower with regard to the legislative policy under Section 426.2.

4. The Committee may provide advisory comments to the Zoning Commissioner or the County Official concerning the proposed tower.~~]~~ ~~COMMITTEE ACTION.~~

~~1. THE COMMITTEE SHALL MEET AT TIMES DETERMINED BY THE TOWER COORDINATOR.~~

~~2. PUBLIC NOTICE AND THE AGENDA FOR EACH SUCH MEETING SHALL BE POSTED IN ROOM 123, 111 W. CHESAPEAKE AVENUE, TOWSON, MARYLAND, AND SENT TO THE OFFICE OF EACH MEMBER OF THE COUNTY COUNCIL AT LEAST ONE WEEK PRIOR TO THE MEETING.~~

~~3. THE MEETING IS A FORUM FOR THE MEMBERS OF THE COMMITTEE TO REVIEW THE APPLICATIONS AND DETERMINE THE APPROPRIATE COURSE OF ACTION FOR EACH APPLICATION, IN ACCORDANCE WITH THIS SECTION.~~

~~4. THE MEETING MAY OCCUR IN AN INFORMAL MANNER.~~

~~5. THE TOWER COORDINATOR MAY RECOGNIZE ANY MEMBER OF THE PUBLIC, INCLUDING THE TOWER APPLICANT, TO OFFER REMARKS DURING ANY SUCH MEETING. 6. THE COMMITTEE SHALL DIRECT THE TOWER APPLICANT TO PROCEED IN ACCORDANCE WITH ITS FINDINGS AND THIS SECTION.~~

~~7. THE COMMITTEE SHALL:~~

~~A. ACT ON EACH SUCH APPLICATION WITHIN A REASONABLE TIME, NOT TO EXCEED 30 DAYS, AND~~

~~B. PROVIDE THE TOWER APPLICANT WITH A WRITTEN DECISION, SUPPORTED BY SUBSTANTIAL EVIDENCE CONTAINED IN A WRITTEN RECORD.~~

~~E. EVALUATION OF IMPACT ON SCENIC VIEWS.~~

~~1. A. THE COMMITTEE SHALL DETERMINE WHETHER THE APPLICATION, SUPPORTING MATERIALS, AND REMARKS OF THE PUBLIC, IF ANY, CONSTITUTE SUBSTANTIAL EVIDENCE THAT THE TOWER INTERFERES OR MAY INTERFERE WITH SCENIC VIEWSHED ELEMENTS.~~

~~B. IF THE COMMITTEE DETERMINES THAT SUBSTANTIAL EVIDENCE EXISTS THAT THE TOWER INTERFERES OR MAY INTERFERE WITH THE SCENIC VIEWSHED ELEMENTS, THEN THE COMMITTEE SHALL REQUIRE THE TOWER APPLICANT TO PETITION FOR A SPECIAL HEARING TO DETERMINE WHETHER THE PROPOSED TOWER INTERFERES WITH SCENIC VIEWSHED ELEMENTS.~~

~~C. A TOWER MAY NOT BE PERMITTED TO INTERFERE WITH THE SCENIC VIEWSHED ELEMENTS.~~

~~2. A. THE ZONING COMMISSIONER SHALL DETERMINE INTERFERENCE BASED UPON SUBSTANTIAL EVIDENCE COMPARING THE SCENIC VIEWSHED ELEMENTS TO THE PROPOSED TOWER LOCATION.~~

B. 1. A SPECIAL EXCEPTION MAY NOT BE GRANTED FOR A WIRELESS TELECOMMUNICATIONS TOWER LOCATED IN AN RC-2, RC-3, RC-4, RC-5, RC-6 OR RC-7 ZONE WITHIN A SCENIC VIEWSHED UNLESS THE ZONING COMMISSIONER FINDS THAT THE PROPOSED TOWER WILL NOT INTERFERE WITH OR BE DETRIMENTAL TO THE SCENIC VIEWSHED ELEMENTS.

2. A. THE ZONING COMMISSIONER SHALL DETERMINE INTERFERENCE OR DETRIMENT BASED UPON SUBSTANTIAL EVIDENCE, COMPARING THE SCENIC VIEWSHED ELEMENTS TO THE PROPOSED TOWER LOCATION, IN ORDER TO DETERMINE WHETHER THE PROPOSED TOWER BLOCKS ANY SCENIC VIEWSHED ELEMENTS OR IS NOT VISUALLY IN HARMONY WITH ANY SCENIC VIEWSHED ELEMENTS WHEN THE ELEMENTS AND THE TOWER CAN BE SEEN SIMULTANEOUSLY.

3. (I) THE ZONING COMMISSIONER MAY ALSO CONSIDER WHETHER PUBLIC FUNDS HAVE BEEN SPENT ACQUIRING EASEMENTS OR ENTERING INTO OTHER AGREEMENTS TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER AND WHETHER OTHER PUBLIC OR PRIVATE AGREEMENTS EXIST TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER.

(II) EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE PRESENCE OF THE EASEMENTS AND AGREEMENTS MAY BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.

(III) THE ABSENCE OF THE EASEMENTS AND AGREEMENTS MAY NOT BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.

SECTION 3. AND BE IT FURTHER ENACTED THAT, Sections 26-168 (xx) and (yy) and 26-284 of Title 26- Planning, Zoning and Subdivision Control of the Baltimore County Code, 1988, as amended, are hereby added to read as follows:

Section 26-168 Definitions

(XX) "SCENIC VIEWSHED" MEANS A SCENIC ROUTE; OR SCENIC VIEW ~~OR SCENIC GATEWAY~~ AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN;

(YY) "SCENIC VIEWSHED ELEMENTS" MEANS THOSE VISUAL ELEMENTS, AS IDENTIFIED BY THE PLANNING BOARD, OF A SCENIC VIEWSHED WHICH ARE OF A QUALITY, CHARACTER AND NATURE TO CAUSE THE BOARD TO DESIGNATE THAT SCENIC VIEWSHED IN THE BALTIMORE COUNTY MASTER PLAN.

SECTION 26-284. SCENIC VIEWSHEDS ELEMENTS.

THE PLANNING BOARD SHALL:

(A) PROVIDE TO THE ~~HEARING OFFICER~~ ZONING COMMISSIONER A CATALOGUE OF THE ELEMENTS FOR EACH SCENIC VIEWSHED IN THE MASTER PLAN;

(B) IDENTIFY THE SCENIC ROUTE; OR VIEW, ~~OR GATEWAY~~ AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN AS EITHER ENCLOSED, EXPANSIVE, FOCUSED OR A COMBINATION; AND

(C) IDENTIFY THE ASPECTS OF THE VISUAL QUALITY, UNITY OF THE ELEMENTS, AND INTEGRITY OF THE ELEMENTS.

SECTION 4. AND BE IT FURTHER ENACTED, that this act, having been passed by the affirmative vote of five members of the County Council, shall take effect on January 29, 2002.

BILL NO. 127-01
A BILL
ENTITLED

AN ACT concerning

The Comprehensive Zoning Map - Middle River - Bird River Area

FOR the purpose of repealing a portion of the existing zoning map for the Fifth Councilmanic District and to adopt an official zoning map for the portion of the Fifth Councilmanic District of Baltimore County known as the Middle River - Bird River Area, such map to be known as the Official Comprehensive Zoning Map for the Middle River - Bird River Area of Baltimore County and to supersede any previous zoning maps approved by the County Council of Baltimore County for that particular area, all pursuant to the provisions of the Middle River - Bird River Area Plan.

WHEREAS, the County Council approved Resolution 3-02 adopting and incorporating the Middle River - Bird River Area Plan into the Baltimore County Master Plan 2010 to be a guide for the development of the Middle River - Bird River area of the County; and

ments of Agriculture, Health and Mental Hygiene, and Natural Resources regarding enforcement procedures in cases of water pollution caused by agriculture (December 29, 1986) or subsequent memoranda.
(1988 Code, § 14-337) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-108. PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.
(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-109. APPROVAL OF PERMITS.

(a) *Compliance determination.* Before the Department of Permits, Approvals and Inspections may issue any grading permit or building permit or before the approval of any erosion and sediment control plan, the Director of Environmental Protection and Sustainability or the Director's designee shall determine that the proposed development is in compliance with the provisions of this title.

(b) *No permit.* A permit may not be issued without compliance with this title.
(1988 Code, § 14-339) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011; Bill No. 72-12, § 1, 1-9-2013)

§ 33-3-110. PLATS AND PROTECTIVE COVENANTS.

(a) *In general.*

(1) (i) Any plat submitted to the county in accordance with Article 32, Title 4 of the Code shall be accompanied by irrevocable offers of dedication to the county of all forest buffer areas in fee or easements, in a form approved by the Bureau of Land Acquisition and the County Attorney.

(ii) The plat shall be marked with a notation indicating the offers of dedication.

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(ii) 25 feet from the outer wetland boundary; or

(iii) 25 feet from the riverine floodplain reservation or easement boundary.

(4) For a surface water designated use III, III-P, IV or IV-P stream (natural and recreational trout waters), the forest buffer shall be the greater of the following:

(i) 100 feet;

(ii) 25 feet from the outer wetland boundary; or

(iii) 25 feet from the riverine floodplain reservation or easement boundary.

(c) *Adjusted forest buffer standards and requirements for streams and wetlands with adjacent steep slopes and erodible soils.*

(1) A steep slope and erodible soils evaluation shall be conducted in accordance with the evaluation procedures and criteria specified in this subsection or a comparable method approved by the Director for sites containing or adjacent to streams, wetlands, or other bodies of water where:

(i) Slopes exceed 10% within 500 feet of the streams, wetlands, or bodies of water;

(ii) Soil erodibility K values exceed .24 within 500 feet of the streams, wetlands, or bodies of water; or

(iii) The vegetative cover type within 100 feet of the streams, wetlands, or bodies of water is: bare soil; fallow land; crops; active pasture in poor or fair condition; orchard-tree farm in poor or fair condition; brush-weeds in poor condition; or woods in poor condition.

(2) An evaluation report shall be submitted for review to the Department, which shall include, at a minimum, the following:

(i) A plan, at a scale not smaller than 1" = 100', that shows:

1. Existing topography with contour intervals no greater than 5 feet (county photogrammetric maps are an acceptable source for preparing existing topography);

2. Mapped soils as shown in the county soil survey;

3. Field delineated, marked, and surveyed streams and wetlands;

4. Existing vegetation;

5. Existing subdrainage areas of the site; and

6. Slopes in each subdrainage area segmented into sections of slopes less than or equal to 10%, 11% to 19%, and equal to or greater than 20%;

(ii) All slope analysis data forms;

(iii) A summary of findings including information pertinent to the evaluation of the site; and

(iv) A mitigation plan that describes the proposed additional protective measures for those areas where development is allowed with restrictions.

(3) (i) The site shall be evaluated by assessing each segment of each subdrainage area using the evaluation criteria in Table 1.

(ii) Each segment shall be given a score for slope, slope length, soil erodibility, vegetative cover type, and sediment delivery.

(iii) A total score shall be assigned for each segment.

(iv) A segment of a subdrainage area with a total score of 35 or greater shall be designated as part of the forest buffer and no development shall be approved in that segment.

(v) 1. A segment with a total score of 25 or 30 shall require the application of additional protective measures.

2. Development may not be prohibited and that area is not required to be part of the forest buffer.

(vi) A segment with a score of 20 or less shall be developed with standard protective measures and that area is not required to be part of the forest buffer.

Table 1
Evaluation Criteria for Steep Slopes and Erodible Soils

Factors	*Scores*		
	High (10)	*Medium (5)*	*Low (0)*
Slope (S)	S ≥ 20%	10% < S <20%	S ≥ 10%
Slope length (SL)	SL ≥ 200'	50' < SL < 200'	SL ≥ 50'
Soil erodibility (K)	K ≥ 0.32	0.24 < K< 0.32	K < 0.24
Vegetative cover type	Bare soil, fallow land, crops, active pasture in poor condition, orchard-tree farm in poor condition	Active pasture in fair condition, brush-weeds in poor condition, orchard-tree farm in fair condition, woods in poor condition	Active pasture in good condition, undisturbed meadow, brush-weeds in fair condition, orchard-tree farm in good condition, woods in fair condition

(d) *Forest buffers.*

(1) The basic purposes of the forest buffer standards and requirements outlined in this title apply to all agricultural operations.

(2) The County Soil Conservation District shall administer forest buffer standards and requirements through the implementation of an approved soil conservation and water quality plan which includes the application of best management practices, such as the establishment of vegetative buffers and other water quality and stream protection measures.

(e) *Pollution, erosion, and degradation.* Except as provided in subsection (d) f this section and § 33-3-107(d) f this title, this title applies to all parcels of land, structures, and activities that are causing or contributing to:

(1) Pollution, including nonpoint source pollution, of the waters of this state within the county;

(2) Erosion and sedimentation of stream channels; or

(3) Degradation of aquatic and riparian habitat.
(1988 Code, § 14-333) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-3-105. AUTHORITY OF THE DEPARTMENT — IN GENERAL.

(1) The Department is responsible for enforcing the provisions of this title.

(2) The Director may adopt policies and regulations as necessary to implement the provisions of this title.
(1988 Code, § 14-335) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-106. SAME — VARIANCES.

(a) *Authority to grant.* The Director of the Department may grant a variance:

(1) For those projects or activities where strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship;

(2) For those public improvement projects or activities where no feasible alternative is available;

(3) For the repair and maintenance of public improvements where avoidance and minimization of adverse impacts to nontidal wetlands and associated aquatic ecosystems have been addressed; or

(4) For developments that have had stream buffers/forest buffers applied in conformance with the requirements outlined in the county water quality management policy (February 1, 1986) or the County Executive order for the protection of water quality, streams, wetlands, and floodplains (June 4, 1989) and for which the potential for water quality and aquatic resource degradation is minimal.

(b) *Application.*

(1) The applicant shall submit a written request for a variance to the Director of the Department.

(2) The application shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request.

(3) The Department may require an alternatives analysis that clearly demonstrates that no other feasible alternative exists and that minimal impacts will occur as a result of the proposed project, activity, or development.

(c) *Conditions.* In granting a request for a variance, the Director of the Department may require site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, wetlands, and riverine floodplains.
(1988 Code, § 14-334) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-107. PROHIBITION, CORRECTION, AND ABATEMENT OF WATER POLLUTION.

(a) *In general.* The Department shall manage and regulate the waters of this state within the county according to the surface water quality standards and stream segment designations set forth in COMAR 26.08.02.

(b) *Pollution prohibited.* The waters of this state within the county may not be polluted by:

(1) Substances attributable to sewage, industrial waste, or other waste that will settle to form sludge deposits that:

(i) Are unsightly, putrescent, or odorous, and create a nuisance; or

(ii) Interfere directly or indirectly with surface water designated uses;

(2) Any material, including floating debris, oil, grease, scum, sludge, and other floating materials attributable to sewage, industrial waste, or other waste in amounts sufficient to:

(i) Be unsightly;

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Board of Appeals

Case No: 18-047-X Case Name: Robert Gernet

Exhibit List

Party: People's Counsel Date: 8/21/18

Exhibit No:	Description:
✓ 1	G.I.S Aerial Photo
✓ 2	Roadway - p32 of ADC book
✓ 3	Aerial Photo
✓ 4	SDAT
✓ 5	Web Soil Survey
✓ 6	~~I.D only~~ Mult. Name Emp Labor / Articles
✓ 7	12/21/17 Opinion of ALJ, grading Special Exception
✓ 8	3C2R 1.A08 R.C.7 Zone
✓ 9	Map 1: Urban Rural Demarcation Cing
✓ 10	Sign / In Sheet
✓ 11	Bill No 74-00 RC7 leg.
✓ 12	Zoning Map 2018 (G.I.S)
✓ 13a	ADC Street Atlas
✓ 13b	- ADC - with Subject Property
	VERIFIED BY KC DATE: 10/25/18

KC 8/21/18

KC 8/23/18

10/24

Board of Appeals

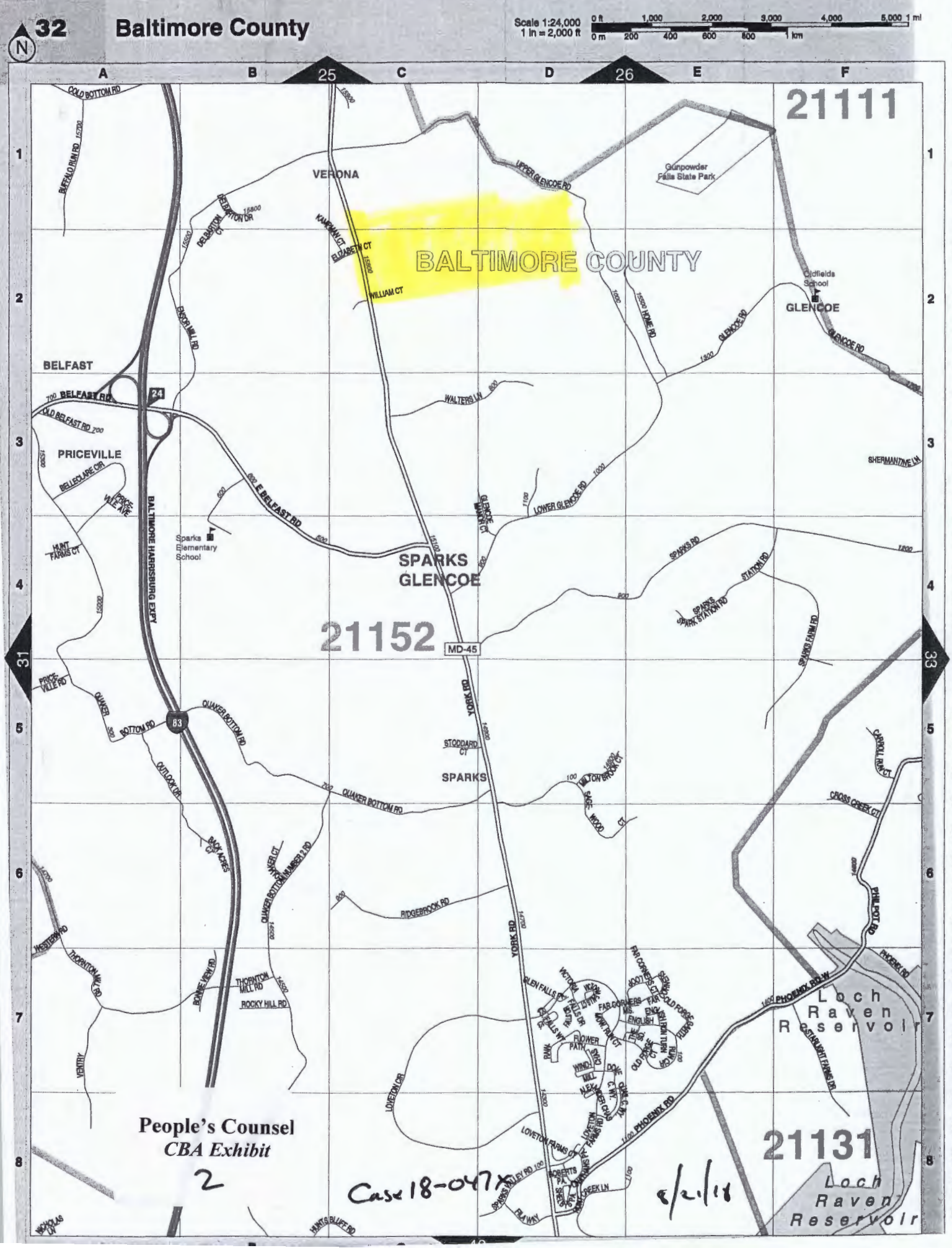
Case No: 18-047-X Case Name: Robert Gerney

Exhibit List

Party: People's Counsel Date: ~~10/24~~ 10/25/18

Exhibit No:	Description:
✓ 14	Bill No. 121-01
✓ 15	Section 33-3-108
✓ 16	Section 33-3-104
	VERIFIED BY KC DATE: 12/10/18

KC 10/25/18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Baltimore County
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BALTIMORE COUNTY
VERONA
BELFAST
PRICEVILLE
SPARKS
GLENCOE
Gunpowder Falls State Park
Oldfields School
Sparks Elementary School
MD-45
BALTIMORE HARRISBURG EXPY
YORK RD
PHOENIX RD
Loch Raven Reservoir
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James E. Deriu

KCI TECHNOLOGIES, INC.

James has 18 years of progressive experience in delineation and functional assessment of wetlands, streams, forests, and riparian habitats. He has completed hundreds of wetland and forest stand delineations, as well as geomorphic assessments, wetland and stream restoration design projects from concept to PS&E. He prepares Chesapeake Bay Critical Area Studies and is proficient in ArcGIS. He has completed hundreds of joint permits, several Individual Department of the Army Permits and frequently serves as the Principal Contact for KCI's most complex local, state, and federal permitting efforts.

James has been involved in development of environmental compliance and permitting documents for a variety of projects including, large-scale utility installation/infrastructure projects, solid waste management facilities, waterfront construction, bridge and railroad rehabilitation and construction, combined sewer/stormwater management facilities, dredging and various activities within tidal and freshwater wetlands and adjacent riparian areas. He is experienced in the development of NEPA environmental analyses as well as Phase I Environmental Site Assessments, coastal zone management documentation, shoreline and land use characterization and waterfront revitalization studies.

Education
M.S. / 2009 / Environmental Science / Towson University
B.A. / 2000 / Environmental Science / Gettysburg College

Relevant Training & Certifications
2013 / PennDOT / Section 4(f) Training
2013 / CSX / Railroad Worker Safety Training
2013 / XL Group / Managing Construction Risks Training
2010 / Ohio DOT / Ecological Surveys Training
2010 / Ohio DOT / Waterway Permitting Training
2007 / Rutgers University / Wetland Construction & Hydrology
2007 / Environmental Compliance & Awareness Training (ECAT)
2006 / USACE / Wetland Delineation Management Training
2006 / MBSS / Spring Index Period Sampling
2005 / MDE / E& SC Certification "Green Card" / #28855
2000 / OSHA / HAZWOPER Training and Refreshers

Years of Experience: 18 Total
KCI Technologies, Inc. / Sparks, MD / 2004-Present
HydroQual, Inc. / Mahwah, NJ / 2000-2004

James has worked in the acquisition of approvals and permits from a range of regulatory agencies, including but not limited to:

- U.S. Army Corps of Engineers: Section 10 / 404, Individual & Nationwide Permits
- U.S. Coast Guard: Bridge Permits, Letters of Advanced Approval
- National Marine Fisheries Service: Essential Fish Habitat (EFH) Analysis
- United States Fish and Wildlife Service: Federal Endangered and Threatened Species (Section 7) Review
- National Pollutant Discharge Elimination System (NPDES) Permits for Stormwater Discharge during Construction
- National Historic Preservation Act Project (Section 106) Compliance
- Section 4(f) (USDOT Transportation Act of 1966) Analysis for Parklands and other Public Lands
- Section 6(f) Federal Land & Water Conservation Fund Analysis and Approvals
- State Level Water Quality Certifications (CWA Section 401)- MD, VA, DC, PA, NY, NJ
- State Level Rare, Threatened and Endangered Species Studies and Review
- State and County Forest Conservation Act Approvals
- State and Municipal Level Soil Erosion and Sediment Control (ESC) Permits
- Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CBCA) Approvals
- Coastal Zone Consistency Approval / Waterfront Revitalization.

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As Regional Practice Leader, James leads a staff of more than 40 environmental professionals in the assessment, design, and implementation of ecological restoration and permitting projects throughout the Mid-Atlantic Region. James manages and participates in on-call services contracts related to ecosystem restoration as part of NPDES and TMDL compliance programs. In this role, he directs the assessment, survey, design, construction, inspection, and monitoring of stream and wetland restoration efforts and biological assessments throughout the region, including MD, PA, VA, DE and WV. He actively participates in the construction phase of projects to ensure both environmental commitments and design requirements are implemented.

James recently served as an advisor to the Natural Resources Working Group of the Baltimore County Sustainability Network (BCSN), served as an appointed member of the Baltimore County Commission on Environmental Quality (CEQ) from 2015-2018 and led the American Council of Engineering Company's Maryland (ACEC/MD) Environmental Committee from 2014-2017. He currently serves on the Board of Directors for NeighborSpace of Baltimore County (NSBC), a non-profit land trust dedicated to acquiring, developing and managing green space inside the County's Urban Rural Demarcation Line (URDL).

On-Call Stream Restoration Design, Management & Monitoring Services (RFP 2002-02, 2004-04, 2005-04, 2010-08) Baltimore County DEPS. *Senior Environmental Scientist and Program Manager.* KCI has provided consulting [illegible]dor restoration projects throughout Baltimore County under multiple agreements. These projects have incl[illegible] of assessment, design, permitting and construction/post-construction monitoring, as well as NPDES[illegible] / Impervious Reduction Computations. From 2004-2010, James completed and/or managed wetland d[illegible]nd delineations, as well as Joint Permit Applications, Individual Permits and Forest conservation Plans. He [illegible]cy

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meetings to reach a consensus on permitting issues, ensuring the timely approval of the projects. He coordinated with MHT, MDNR, and USFWS to determine existence of historic or archaeological resources and RTE species within project limits. From 2010 to the present, James has served as the Program Manager for the agreement and directs KCI's stream restoration services on these contracts. In that capacity, he attends progress meetings, develops scope, schedule and budgets for task assignments, handles client communication, manages subconsultant participation towards Minority Business Enterprise (MBE) goals and ensures appropriate technical and administrative resources are available to complete projects in accordance with County timelines.

Environmental Consultant Services for the Little Patuxent Parallel Sewer, Howard County DPW. *Environmental Program Manager.* Since 2005, James has managed all aspects of the environmental clearance process for the rehabilitation of 10.4 miles of large diameter sewer serving 125,000 residents of Howard County. James conducted natural resource evaluations including wetland delineations (including Significant Nexus Determinations for 90+ systems), function & value assessments (New England Methodology) and forest stand delineations / large tree surveys for the project corridor. He managed the habitat investigations for rare, threatened, and endangered species throughout the corridor and coordinated with DNR staff to ensure the protection of a Great Blue Heron rookery within the project limits. James organized KCI's cultural resources staff conducting archaeological surveys and later participated in the development of an MOA with the State Historic Preservation Officer. James was responsible for preparing MDE Nontidal Wetlands and Waterway and Department of the Army Individual Permit (IP) applications, including an extensive avoidance / minimization process where he conducted plan review for four engineering firms working on the sewer design. He secured Program Open Space (POS) and Land & Water Conservation Fund (L&WCF) approvals for the project and prepared a Forest Conservation Plan. James developed the mitigation program for the project, including three stream restoration projects and one wetland creation / invasive species eradication project, totaling over 2,000 feet of channel and six acres of wetlands. He participated in geomorphic assessments for the stream sites, including the selection of reference reaches and developed the water budget, grading plan and landscaping for the wetland site. James developed a public outreach and community involvement program, including a web-based GIS map repository for project information and presentations at several public meetings. James's staff provides on-site environmental compliance services as-needed for the sewer and mitigation sites construction. Post-construction monitoring was completed in 2017.

FY 14-15 Reforestation Projects, Howard County DPW. *Project Manager.* James managed and directed KCI's work related to reforestation planting design, approvals and construction management services for approximately 20 acres of reforestation throughout Howard County. This involved coordination with DPW personnel and members of the County's Office of Sustainability, as well as facility managers from the Howard County Public School System (HCPSS). As part of this task, James led the development of planting plans which included determining suitable native tree species and appropriate planting locations for each site. Along with subcontractor HTI, KCI assisted in tree planting operations at a density of approximately 200 trees per acre, satisfying the requirements for TMDL reforestation credit. These reforestation projects will provide water quality benefits such as load reduction for nitrogen, phosphorus, and suspended solids. Additionally, KCI provided assistance during tree planting events and has completed post-construction warranty inspections for sites planted in FY 14.

Stormwater & Watershed Management Evaluation / Design / Build Services (CA 05-22, CA 08-29, and CA 23-2013). Howard County DPW. *Senior Environmental Scientist and Deputy Program Manager.* Since 2004, KCI has performed planning, surveying, design, environmental permitting, and construction and post-construction monitoring services for various countywide NPDES projects focusing on all aspects of environmental enhancement, urban stream channel restoration and SWM retrofit projects. Due to the design/build nature of the projects under this contract, KCI's expertise in all facets of restoration, from initial problem identification and assessment through design and ultimately construction have been invaluable to the County in the successful delivery on almost 200 task assignments. From 2004-2010, James completed and/or managed wetland delineations and forest stand delineations, as well as Joint Permit Applications, Individual Permits and Forest conservation Plans. He conducted regulatory agency meetings to reach a consensus on permitting issues and coordinated with MHT, MDNR, and USFWS to determine existence of historic or archaeological resources and RTE species within project limits.

From 2010 to the present, James has served as the Deputy Program Manager for these agreements and directs KCI's ecosystem restoration services on these contracts. In that capacity, he attends all monthly progress meetings, develops scope, schedule and budgets for task assignments, handles stakeholder and client communication, manages subconsultant participation towards MBE goals and ensures appropriate technical and administrative resources are available to complete projects in accordance with the County's expectations. James serves as the liaison between the contractor and County for all stream and reforestation projects.

Stream Restoration Design Services Open-End Contract, BCS 2002-22B, Statewide, MD State Highway Administration. *Task Manager / Senior Environmental Scientist.* KCI provided stream restoration design services and associated environmental design services under this $500,000 open-end contract. James was responsible for conducting and managing wetland delineations in accordance with USACE (1987) methodologies and for the preparation of permit application materials for submittal to MDE and USACE for several tasks under this contract. *BIRED Wetland Delineation (80 Sites).* KCI provided wetland delineation services at 80 Bridge Inspection and Remedial Engineering Division (BIRED) culvert structures along Maryland highways, statewide. KCI also provided SHA with information concerning potential fish blockages at the 80 subject sites by calculating the difference in elevation from

the culvert invert to the adjacent streambed along the downstream side of the structure. James' staff completed background information and data gathering, field investigations and report preparation for all 80 project sites within 45 days of task initiation.

Wetland Creation, Remediation, and Restoration at Former American Legion Site 238, MD State Highway Administration. *Senior Environmental Scientist and Project Manager.* SHA proposed creation, hazardous material remediation, and restoration of non-tidal wetland areas associated with the former ALP Post 238 along MD Route 5, including coordination with MDE's Voluntary Cleanup Program. James conducted a wetland delineation verification, forest stand delineation, and large tree survey. He assisted in the collection of geomorphic data for the stream stabilization design, identified the reference reach and developed a water budget for the wetland site. With that data, James developed the Preliminary Investigation (PI) plans, final (90%) plans, and a full PS&E (100%) design package for the remediation and restoration of the contaminated wetland area. James developed the JPA package and Forest Conservation Plan. He also developed addenda as necessary during the bid process and has assisted SHA personnel during construction to ensure grades and elevations were properly established. Under James' direction, KCI completed the Final Review submittal in 3 weeks and PS&E package in 2 weeks in order to meet SHA's funding requirements.

Water, Sewer & Meter Vault Rehabilitation/Relocation Basic Ordering Agreements, WSSC, Prince George's and Montgomery Counties, MD. Senior Environmental Scientist. Since 2001 under multiple Basic Ordering Agreement (BOA) contracts, two currently in progress, KCI has provided water and sewer design services for more than 85 projects totaling more than $11 million. James has been responsible for several tasks under these contracts related to wetland delineations, forest stand delineations, and the preparation of permit application materials for submittal to various local, state and federal regulatory agencies, including MDE and USACE, in order to secure the authorization of work within wetlands, Waters of the U.S., and the 100-year floodplain. These tasks typically involved coordinating with regulatory agencies for temporary impacts related to stream crossings and the design and construction oversight of fish passage structures near exposed utilities.

Bundled Compensatory Mitigation Project Site Search and Design Services, Prince George's County DPW&T. *Project Manager.* KCI is supporting Prince George's County in the identification and design of 20 acres of wetland mitigation and 5,000 LF of stream mitigation throughout the Anacostia and Patuxent watersheds within Prince George's County. As part of this task, James has led the site search process to identify suitable sites, supported the County in negotiations with the Interagency Review Team (IRT) and is currently managing the design of one wetland and two stream projects on County-owned lands. As a bundled mitigation package, these projects will allow the County to advertise a total of six CIP projects in the near future. In addition to his technical responsibilities, James has managed several subconsultants, handled coordination with MDE and USACE personnel and has conducted periodic briefings with the Director of DPW&T and other County personnel on several occasions.

Environmental Consultant Services for the Deep Run / Shallow Run Interceptor Improvements, Howard County, DPW. *Environmental Program Manager.* KCI was recently selected to lead all aspects of the environmental clearance process for the rehabilitation of nine miles of large diameter sewer. Similar to the Little Patuxent Project, James will lead KCI's efforts and guide the County through all local, state and federal permit processes and stakeholder coordination necessary to gain approval for this work. To date, James has been involved in the development of scope, schedule and budget for the initial field investigations and preliminary site searches for wetland and stream compensatory mitigation opportunities. It is anticipated that over five acres of wetlands and 2,500 LF of stream mitigation, along with several environmental stewardship projects, will be necessary to satisfy all regulatory requirements.

Prairie Creek Ecosystem Delta Restoration, Littoral Wetland Design and Permitting, USACE Louisville District. *Project Manager.* James led the assessment, design and permitting of an 85-acre littoral wetland that restored historic wetland extents within Grand Lake St. Mary's. James completed and/or directed the feasibility study and design alternatives analysis, and steered the team to a final design submission that incorporated several habitat elements that also maximized water quality benefit, provide substantial ecological lift for target wildlife species and provide for the replacement of wetland functionality as compared to historic reference conditions. James also provided overall project coordination and scheduling, and served as the principal point-of-contact with the Louisville District USACE. He performed a final QC check of all documents prior to submittal to the client or reviewing agencies. KCI completed the work on this task, from assessment through design and permitting, in less than 12 months.

George Washington Memorial Parkway Columbia Island Bridge Project, Federal Highway Administration, *Senior Environmental Scientist.* KCI prepared design and construction documents for a new 375-foot long, 5-span, pre-stressed concrete beam bridge over Boundary Channel in Arlington County, Virginia and the District of Columbia. James was responsible for the development of permitting materials to secure authorization from U.S. Army Corps of Engineers (Baltimore District) and D.C. Department of the Environment (DCDOE) related to the preliminary geotechnical investigation for the bridge. Work included extensive coordination with regulatory personnel and the Design Team to ensure proper precautions were instituted at the site during drilling operations. James led agency coordination regarding rare, threatened, and endangered species for submittal to USFWS, and the DC Department of the Environment, as well as coordination for historic resources for submittal to the DC Historic Preservation Office. In addition, James coordinated with National Marine Fisheries Service personnel to secure a waiver for work within the in-stream construction closure period. The fast-tracked geotechnical investigation was ultimately approved under a Nationwide Permit 15 for US Coast Guard approved bridges.

Petitioner
CBA Exhibit 15

MITCHELL J. KELLMAN

VICE PRESIDENT - DIRECTOR OF ZONING SERVICES

Education

Towson University, BA, Geography and Environmental Planning, Urban Planning

Towson University, Masters, Geography and Environmental Planning, Urban Planning

Professional Summary

Mr. Kellman has over 30 years of experience working in zoning, subdivision, and development regulations for the public and private sector; 15 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and the public on development project matters, and made determinations regarding developments and their compliance with county regulations. In working for DMW, he has extensive experience in testifying before the Baltimore County Zoning Commissioner, Hearing Officer, Administrative Law Judges, and Board of Appeals. He also regularly represents the company at the Baltimore County Development Review Committee meetings. He is also a member of Baltimore County's Design Review Panel, which formulates design recommendations to the Planning staff and Administrative Law Judges, and the Landmarks Preservation Commission.

Partial List of Projects

Saint Michael's Roman Catholic Church, Howard County, MD

Hunt Valley Towne Centre, Baltimore County, MD

Charlestown Retirement Community, Baltimore County, MD

Goucher College, Baltimore County, MD

Greenspring Quarry, Baltimore County, MD

Norris Acura West, Howard County, MD

Sheppard Pratt Health Systems (Elkridge Campus), Howard County, MD

Towson Town Center, Baltimore County, MD

Corridor 95 Business Park, Howard County, MD

Memberships and Associations

Baltimore County Landmarks Preservation Commission, 2014, 2015, 2016, 2017, 2018

Baltimore County Design Review Panel, 2012, 2013, 2014, 2015, 2016, 2017, 2018

Greater Towson Committee, Planning & Development Sub-Committee, 2012, 2013, 2014, 2015, 2016, 2017, 2018

Greater Towson Committee, Government Relations Sub-Committee Chair, 2013, 2014, 2015

Greater Towson Committee Board of Directors – 2014 (Secretary), 2015, 2016, 2017, 2018

Leadership Baltimore County, 2013

Leadership Baltimore County, Class Interviewer, Member, 2015

Professional Experience

Daft-McCune-Walker, Inc., Towson, MD: 2000-Present

Baltimore County Zoning Review Office, Towson, MD: 1985-2000

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Rural Zones

Resource Conservation Zones Comparison Chart

	RC-2 Agricultural Protection	RC-3 Deferral of Planning and Development	RC-4 Watershed Protection	RC-5 Rural Residential	RC-6 Rural Conservation and Residential	RC-7 Resource Preservation	RC-8 Environmental Enhancement	RC-20 Critical Area	RC-50 Critical Area Agricultural	RCC Resource Conservation, Commercial
Purpose	To foster and protect agriculture	To defer substantial development pending future planning and utilities	To protect the watersheds of the three regional reservoirs	To provide for residential development in appropriate rural areas	Greater protection for resource areas	To protect cultural, historical, recreational and environmental resources	To protect reservoir watersheds and extensive natural areas	To protect the natural resources of the Chesapeake Bay Critical Area	To protect water quality consistent with the Chesapeake Bay Critical Area	To provide small areas of commercial development for rural needs
Permitted Uses	Preferred use agriculture; limited residential development	Agriculture; low density residential	Agriculture; low density residential	Low density residential; agriculture uses	Agriculture; low density residential	Agriculture; low density residential	Agriculture; low density residential	Agriculture Aquaculture; low density residential; fish & wildlife preservation	Agriculture Aquaculture; low density residential; fish & wildlife preservation	Agricultural - related retail, general retail, office, and service use.
Special Exceptions	Antique shop, animal boarding, church, farm market	Animal boarding, camp, farm market, golf course	Antique shop, church, golf course	Antique shop, golf course	Antique shop, bed and breakfast, camp, golf course	Antique shop, bed and breakfast, winery	Antique shop, bed and breakfast, winery	Agricultural support services, specific recreational uses	Agricultural support services, specific recreational uses	Agricultural machine repair, landscape service operations
Lot Area	1 acre (min.)	1 acre (min.)	3 acres (min.), or 1 acre for clustered subdivisions	1.5 acres (min.)	1 acre (min.) 1.5 acres (max.)	1 acre (min.)	3 acres (min.)	Clustering encouraged[4]	Clustering encouraged[4]	2 acres (max.)
Maximum Number of Lots and/or Maximum Density	For a lot of record between 2 and 100 acres: 2 lots; lot of record over 100 acres: one lot for each 50 acres of gross area	Maximum tract density: 0.3 units per acre Minimum diametral dimension[1]: 150 feet	Maximum tract density: 0.2 dwelling units per acre; a tract between 6 and 10 acres may be subdivided into 2 lots total[2]	Maximum tract density 0.5 dwellings per acre	Maximum tract density: 0.2 lot per acre Primary and secondary conservancy areas are required	Maximum density: 0.04 lot per acre for tracts ≥50 acres Tracts <50 acres cannot be subdivided	Maximum density: 0.02 lot per acre for tracts ≥51 acres[3]	A lot of record with a gross area of 20 or more acres may be subdivided at a rate of 1 lot for each 20 acres	A lot of record with gross area between 20 and 100 acres may be subdivided once if the average density is at least 1 unit per 20 acres[5]	Gross floor area of all proposed buildings on the lot shall not exceed 3000 square feet

[1] Diametral dimension is the diameter of the largest circle that may be inscribed within a lot

[2] Rural clustering standards apply to development of tracts more than 10 acres, unless an alternative, non-clustering development alternative is followed at a density of 0.1 dwelling units per acre.

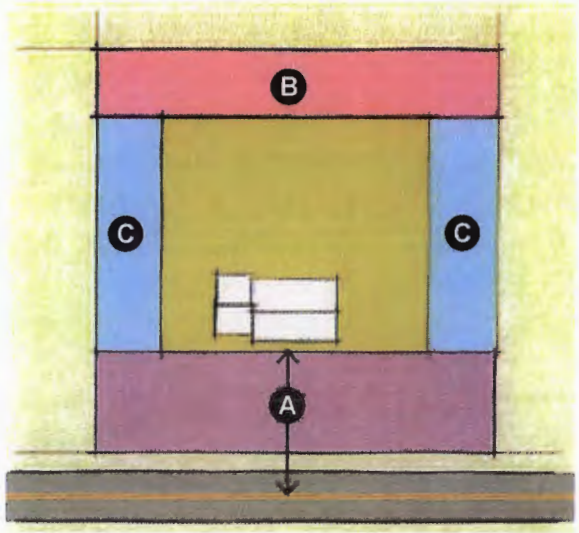
[3] Maximum number of lots for tracts ≤10 acres is one; 10 to 30 acres is two; 30 to 50 acres is three

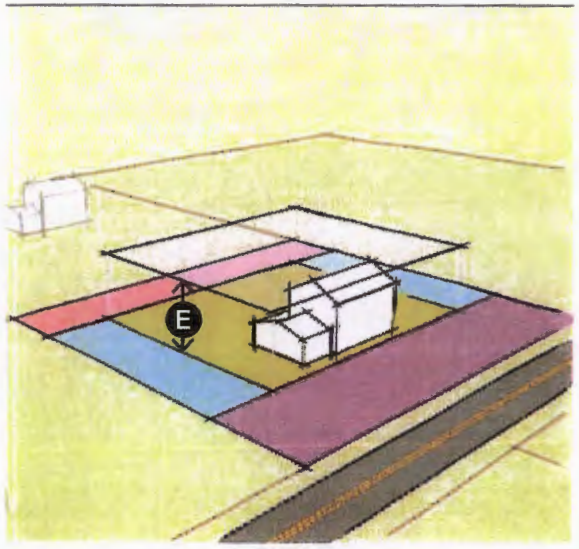
[4] Will be determined in accordance with the county health and Department of Environmental Protection and Sustainability regulations.

[5] A lot of record over 100 acres may be subdivided at a rate of 1 lot per 50 acres

RC-2
Agriculture

Height and Area Requirements		
A	Minimum front setback from centerline of road	75 feet
B	Minimum rear setback	35 feet
C	Minimum side setback	35 feet
E	Maximum building height	35 feet





Intent: To foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

Typical Uses Permitted by Right: Farm, farmette, single-family detached dwelling, farmer's roadside stand, tenant house.

Typical Uses Permitted by Special Exception: Antique shop, animal boarding place, church, farm market, landscape operation, agricultural support uses.

Note: The minimum lot size is one acre.

RC-7
Resource Preservation

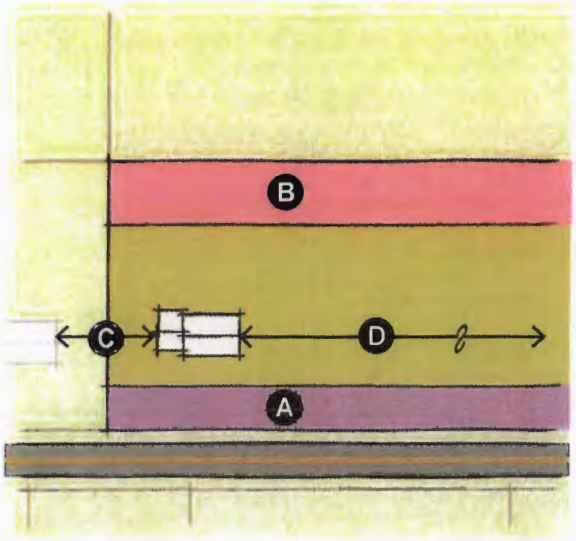
Intent: To protect and preserve valuable cultural, historical, recreational and environmental resources through a low density rural zone.

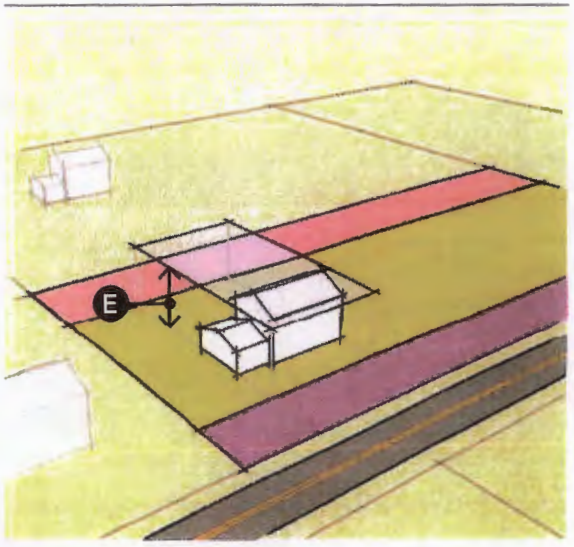
Typical Uses Permitted by Right: Single-family detached dwelling, farm, farm roadside stand.

Typical Uses Permitted by Special Exception: Antique shop, bed and breakfast, winery, church (see note below).

Notes:

- Churches are permitted on property that was appropriately zoned before being zoned RC-7.
- This zone may not be applied to current RC-2 zoned land.
- Maximum tract density is 0.04 lots per acre (one lot/25 acres). Tracts less than 50 acres cannot be subdivided. The minimum lot size is one acre.
- Subject to performance standards that include site plan and architectural review to ensure preservation of natural resources and rural character.





Height and Area Requirements		
A	Minimum front setback	35 feet*
B	Minimum rear setback	50 feet
C	Minimum side setback from a principal building	80 feet
D	Minimum side setback from a cultivated field or pasture	300 feet
E	Maximum building height	35 feet

* 35 feet minimum from edge of private road

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BALTIMORE COUNTY

DEPARTMENT OF PERMITS APPROVALS AND INSPECTIONS

SOLAR FACILITY DECOMMISSIONING AND SECURITY AGREEMENT

Project Name/ Site Address:_____

_____

Property Owner:_____

Applicant:_____

Applicant Address:_____

_____

Permit Number:_____ Date:_____

Total Estimated Cost Of Decommissioning:_____

Security Required (120% of cost estimate):_____

Whereas, the Applicant desires to construct, install and maintain solar facilities, as defined in Article 4F of the Baltimore County Code of Zoning Regulations, all of the said improvements contained in the referenced project, and being more fully described in Exhibit A, plans attached hereto and incorporated hereby.

Whereas, in accordance with the applicable provisions of the Baltimore County Code, 2015, as amended, (the "Code") and the Code of Zoning Regulations (the "BCCZR"), the Department of Permits, Approvals and Inspections ("PAI") has reviewed plans, and received and approved the cost estimates and plans for decommissioning of the solar facilities to which this Agreement pertains, and all applicable fees have been paid.

Whereas, the Applicant/ Property Owner is requesting authorization to proceed with construction and installation of the solar facilities.

Now THEREFORE, in consideration of the foregoing and in order to obtain a building permit for the solar facilities hereunder, the Applicant/ Property Owner confirms its understandings and obligations as follows:

1. With respect to the solar facilities covered under this Agreement, the Applicant shall construct all facilities as shown in the reviewed and approved final plans signed by all relevant County agencies.

2. All the construction and maintenance work for the solar facilities shall be performed by qualified licensed contractors, in accordance with all applicable laws and regulations.

3. Prior to issuance of a building permit for the solar facilities, the Applicant/ Property Owner shall deliver:

a. If the Property Owner is not the Applicant, a copy of the Lease to the Site for the Project, which may be appropriately redacted to protect confidential or proprietary information; and,

b. An estimate for the cost of removal of the solar facilities from the Site from a qualified independent third party civil engineer, to include physical removal of all the solar energy systems, structures, equipment, security barriers and transmissions lines; disposal of all solid and hazardous waste in accordance with local state and federal waste disposal regulations; and stabilization or revegetation of the site as necessary to minimize erosion; and,

c. A letter of credit in a form and amount approved by the County (the "Letter of Credit"), which may be used by the County for the repair of any unsafe or hazardous condition or the removal of an abandoned solar facility; and,

d. A maintenance and operation plan; and,

e. A certificate of liability insurance in a form acceptable to the County.

4. Access and security must be maintained at all times in a manner that is acceptable to the Fire Department.

5. The failure of the Applicant/ Property Owner or its contractor to fully comply with the terms of this Agreement may result in the issuance of a Stop Work Order by the County, authorized by relevant provisions of the Code, including, but not limited to, Article 3, Title 6. Upon receipt of Stop Work Order from the County, the Applicant shall cause all work to stop until the County expressly authorizes work to resume in writing.

6. The solar facilities shall be removed by the Applicant/ Property Owner when they have reached the end of their useful life or their operations cease. If more than 150 days have passed after the date that operations discontinued, the solar facilities may be deemed abandoned, and Baltimore County can take any and all actions authorized by the Code, the BCCZR, this Agreement and the Letter of Credit to remove the solar facilities from the Site.

7. The Applicant and Property Owner shall protect, defend, hold harmless and indemnify Baltimore County (including its officers, agents and employees) from all liability, losses, damage, expenses, causes of action, claims or judgments resulting from injury to, or death of any person, or any damage to property to any kind, which injury, death or damage arises out of, or is in any way connected with the construction, installation or maintenance of the solar facilities or any agreements pertaining to the construction,

operation or maintenance of the solar facilities, verbal or written, to which the County is not a party.

8. The Property Owner acknowledges, on behalf of the Property Owner and Applicant (if they are not the same person) that County shall not be responsible for posting or providing any notice to a successor in interest to title of the Property Owner regarding any laws, regulations, restrictions, responsibilities or obligations pertaining to the solar facilities.

APPLICANT:

_____ _____

Witness *Authorized Signature*

_____

Printed Name

Title: _____

Email: _____ *Phone Number:* _____

PROPERTY OWNER:

_____ _____

Witness *Signature*

_____

Printed Name

Title: _____

Phone number: _____

Director, Permits, Approvals and Inspections:

_____

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Account Identifier: District - 07 Account Number - 0710045500

Owner Information

Owner Name:	JONES IAN CALDER JONES ROBERT W JONES MARY M ET AL	**Use:** **Principal Residence:**	AGRICULTURAL YES
Mailing Address:	815 STABLERS CHURCH RD PARKTON MD 21120	**Deed Reference:**	/07806/ 00849

Location & Structure Information

Premises Address:	815 STABLERS CHURCH RD 0-0000	**Legal Description:**	143.031 AC ES YORK RD SE COR STABLERS CH

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0012	0016	0086		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1750	1,680 SF		143.0300 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2	YES	STANDARD UNIT	FRAME	1 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	127,200	127,200		
Improvements	31,600	121,800		
Total:	158,800	249,000	188,867	218,933
Preferential Land:	37,200			37,200

Transfer Information

Seller: JONES ROBERT WALLACE	**Date:** 03/04/1988	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /07806/ 00849	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 10/07/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

1. This screen allows you to search the Real Property database and display property records.
2. Click **here** for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

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12-18-11

TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

January 12, 2018

The Honorable John E. Beverungen
Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X, ESA Sparks Glenco, LLC
Letter of Clarification of Restriction #4

Dear Judge Beverungen:

I write to you regarding your recent order issued the 21st day of December, 2017, in Case No. 2018-0047-X. (Copy attached) Your Order approved our Special Exception request to locate a solar farm on our property located at 15637 York Road in Sparks, Maryland.

Restriction number 4 of your decision states that my client is prohibited from removing any trees associated with the installation and/or operation of our solar facility. The testimony at the hearing was very clear. My client stated that it would not be necessary to remove any trees in the field where the panels would be installed. In that we respect, we understand your restriction.

However, it may very well be necessary for my client to have to remove trees or bushes in order to install the driveway to our solar panels from York Road. You will recall that we are located more than 1,200 feet off of York Road and it may be necessary to remove some trees in order to install or our access road and/or for the installation of the telephone poles that will carry our newly generated electricity out to the York Road grid.

Therefore, I am requesting a simple clarification of your decision and specifically restriction number 4, that my client shall be permitted to remove any trees necessary in order to install the access road and telephone poles leading from York Road to our solar panel field. If you agree with this interpretation, I respectfully request that you sign the statement at the bottom of this letter affirming same. Thank you for your time and consideration of this matter.

This letter is intended to be for the purpose of clarifying your recent decision and is not intended to be a request for a modification of your decision. Therefore, by signing below it is acknowledged that the appeal period associated with this case shall not be extended beyond the

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30 days as stated within your original decision and yourRules of Procedure. I will leave it to your further discretion as to whether this request should be considered a modification which might require an additional haring and an amended Order.

Very Truly Yours,

Timothy Kotroco

Timothy M. Kotroco

The applicant, ESA Sparks Glencoe LLC shall be permitted to remove any and all trees and shrubs necessary to install their access driveway and telephone poles from York Road to their solar panel facility. This request shall be treated as a clarification and accordingly, the original 30 day appeal period shall apply.

1-16-2018

Date

John E. Beverungen, ALJ

Baltimore County - My Neighborhood

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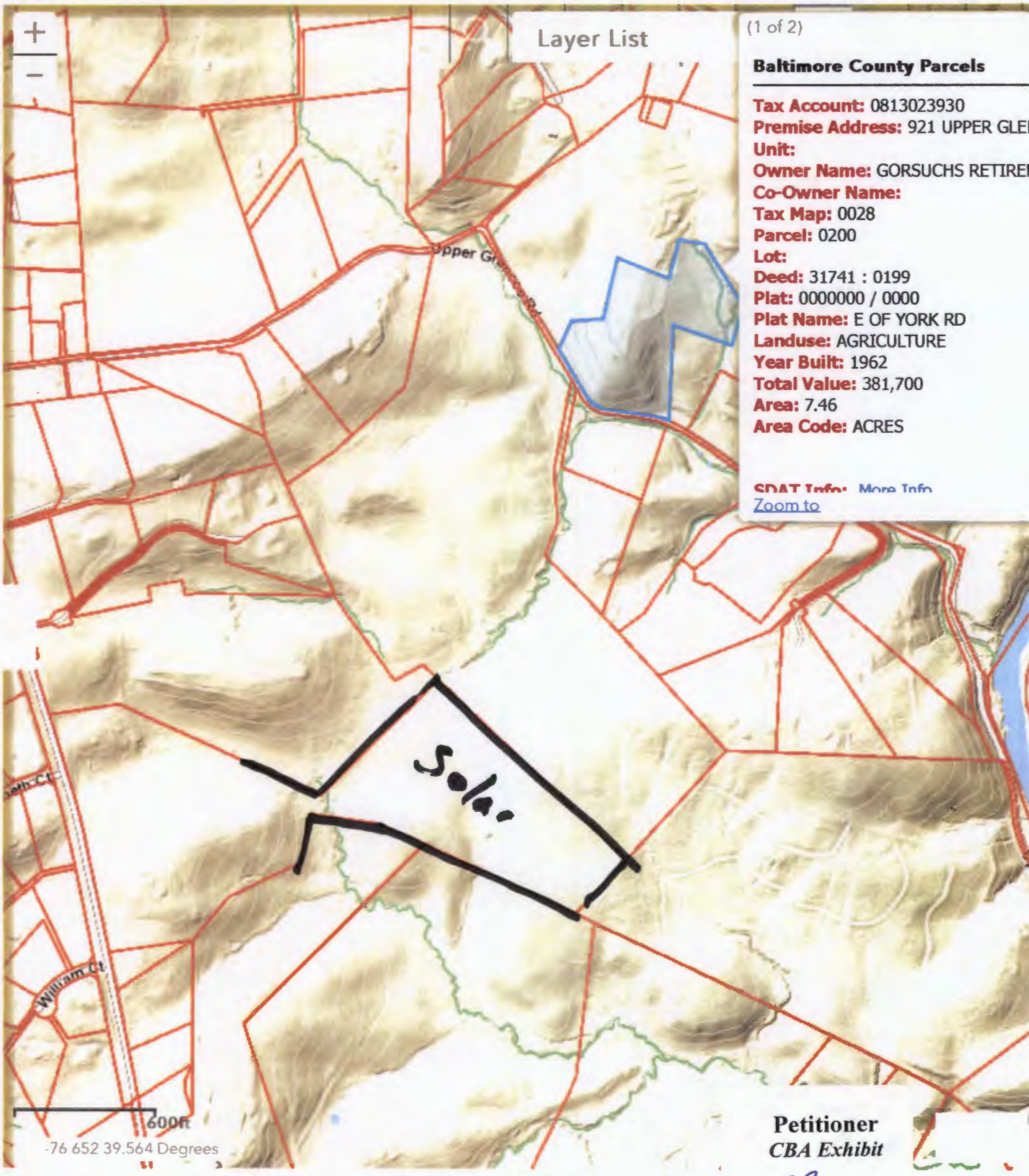
11/20/18

18-047X

Baltimore County - My Neighborhood



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11/28/18 18-047X

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Account Identifier: District - 08 Account Number - 0813023930

Owner Information

Owner Name:	GORSUCHS RETIREMENT INC	**Use:**	AGRICULTURAL
		Principal Residence:	NO
Mailing Address:	1311 GLENCOE RD GLENCOE MD 21152-	**Deed Reference:**	/31741/ 00199

Location & Structure Information

Premises Address:	921 UPPER GLENCOE RD 0-0000	**Legal Description:**	7.46 AC NS UPPER GLENCOE RD E OF YORK RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0016	0200		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1962	1,863 SF	812 SF	7.4600 AC	33

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	142,400	142,400		
Improvements	193,700	222,600		
Total:	336,100	365,000	345,733	355,367
Preferential Land:	2,400			2,400

Transfer Information

Seller:	**Date:** 02/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31741/ 00199	**Deed2:**
Seller:	**Date:**	**Price:** $0
Type:	**Deed1:** /06943/ 00564	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 07/29/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

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IN THE BOARD OF APPEALS FOR

BALTIMORE COUNTY, MARYLAND

In the Matter of	:	CASE NO.
ESA SPARKS GLENCOE	:	18-047-X
15637 YORK ROAD	:	

TRANSCRIPTION OF EXCERPT OF PROCEEDINGS FROM AUDIO FILES CONTAINING THE TESTIMONY OF JOHN M. ALTMEYER

BE IT REMEMBERED that the above-entitled action came on for hearing before the Baltimore County Board of Appeals, on Wednesday, August 22, 2018, at 1:14 p.m.

Transcribed by:

Paul A. Gasparotti II

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EXCERPTS OF PROCEEDINGS

(Excerpt begins at 2:48 p.m.)

Whereupon,

JOHN M. ALTMEYER,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

MR. BELT: Please state your name, your business address for the record, and spell your last name.

THE WITNESS: My name is John Michael Altmeyer, A-L-T-M-E-Y-E-R. Currently I'm a construction consultant. I was employed by Baltimore County for 32-and-a-half years as a building inspector, and the last 14 years I was chief inspector for building, electric and plumbing inspection.

DIRECT EXAMINATION

BY MR. MOWELL:

Q. All right, Mr. Altmeyer, tell me a little bit about your current work, what you say,

Page 3

you are a construction consultant?

A. I do construction consulting work on the east end of the county dealing with flood plain issues. I do construction consulting work in the northern part of the county for new home and office construction. I work with several engineers, and give construction consulting information to residents as well.

MR. BELT: If I could stop you there, is he being called as a fact or expert witness, or both?

MR. MOWELL: Fact witness, yes.

MR. BELT: Okay, so is he a neighbor that lives close to the property?

MR. MOWELL: No.

MR. BELT: Okay.

MR. MOWELL: He was simply asked to, based on his work with the county, to do a slope percentage.

MR. BELT: That's fine. I just wanted to know for purposes, since you were asking about

Page 4

addresses, if he lives close, that would be a necessary fact for the record.

MR. MOWELL: Right.

MR. BELT: Sorry, sir.

THE WITNESS: Okay, that's not a problem. I also give information to community groups seeking information about different classifications of construction. I've done inspections for the county on environmental issues with council people at job sites. Most of that was dealing with water runoffs and issues like impervious surface issues and so on, most of that was done in the 15th and 12th districts.

BY MR. MOWELL:

Q. You'll have to explain where those are.

A. It's down in the Essex, Middle River, Dundalk, and even up on the Route 7 area where we have river and flood plain areas.

Q. In your current work or in your work with Baltimore County, what if any experience have you had with sediment control and stormwater

Page 5

management?

A. Sediment control issues, especially with these solar farms, I've had contact with environmental impact review people, Glen Shaffer and Mike Coles and a couple of the other inspectors over there. Stormwater management people, I did deal with Wally Lippincott over at the planning board and so on in relationship to farm preservation areas and so on that I've done some work with. And basically, it's just a whole myriad of information giving people based on my expertise what I saw for over 32-and-a-half years. I've been basically doing construction probably 50-plus years of my life.

Q. And in that experience, have you had occasion to compute slope percentages on properties?

A. Yes, sir.

Q. Tell us a little bit about that.

A. Basically a lot of times too, we would have issues where we would get inquiries from

Page 6

council people to go out on a job site and evaluate the conditions on a job site versus the grading plans and so on, and a lot of that did require we calculated slopes and so on. And at one time, permits and development management was the enforcement arm for the county, as I'm sure Mr. Kotroco can avow for that. Environmental didn't have the teeth basically to bring violations before a hearing officer, they would come down to our facility and we would coordinate with them, and we would take the leadership and the forefront of taking those cases before a hearing officer for disposition.

Q. Have you become familiar with the MDE guidelines for solar panel installations?

A. Yes, sir.

MR. MOWELL: I believe this was put into evidence by the petitioner, I'm not sure of the number, the MDE stormwater design for solar panel installations.

MR. KOTROCO: Exhibit E, Petitioner's

Page 7

Exhibit E.

MR. MOWELL: All right.

BY MR. MOWELL:

Q. Let me show you what has been marked as Petitioner's Exhibit E and ask if you can identify this document.

A. Yes, sir, I've seen this documentation.

Q. All right. What is it?

A. Basically it's design criteria for solar facilities that were set forth by MDE. Basically, what it basically says is that they're calculating impervious surfaces and so on by only the poles that go into the ground and the roadways that go into the solar facility, the disturbed area where they're going to be putting the fences in and so on. But the solar panels, due to regulations by the state, are not classified as an impervious surface.

It also gives us information on how they would like to see slopes addressed as far as the slopes that are more than five percent, and more

Page 8

than ten percent. Basically what they're talking about, when you have slopes more than five percent but less than ten percent, the design professional can use something, what's called the leveled spreader.

Q. Mr. Altmeyer, let me hold you up there, and I'll ask you to identify another document and then we'll get into that part of it. This will be marked as the next, Protestant's Exhibit Number 4. Let me show you what has been marked as Protestant's Exhibit Number 4 and ask you if you can identify that.

A. Yes, sir. This is some information that I put together about some slopes on the Garner property.

Q. Did we ask you to do that, to go out there, or to compute the slope percentage?

A. Yes, sir. I basically used My Neighborhood to calculate these slopes. I couldn't go out on the property to basically do any kind of research so to speak because I didn't

Page 9

have the ability to go on the property, and I didn't want to get into any trespass issues.

Q. Explain to us what this document shows.

A. Basically this document shows four areas on that property where we have slopes, and if you look at the second page, number one, we have a slope of 13.38 percent.

MR. KOTROCO: I'm going to object. Do you think he could give a foundation as to how he came up with that calculation?

THE WITNESS: Sure.

MR. BELT: Well, I think first it would be helpful if on page one we could identify -- you know, I understand this to be on the Garner property, but where on the Garner property would be helpful as well.

THE WITNESS: Obey.

MR. BELT: And then we can get into how it was calculated.

MR. MOWELL: Okay.

THE WITNESS: Okay. We're talking this

area right in here.
MR. BELT: I'm sorry, you have to back up. How about either, is there a way you can show on the aerial map, the colored one?
THE WITNESS: On this one, the colored map you want?
MR. BELT: Yeah.
THE WITNESS: It would be right in this area right in here.
MR. BELT: So the entire page one of your exhibit here --
THE WITNESS: Is basically this swatch right here.
MR. BELT: It would be the cleared out swatch with the woods to the southwest and east, right?
MR. KOTROCO: The record's not going to reflect when he says here.
MR. BELT: I'm trying to do that. So it would be the proposed solar field with the woods to the southwest through east, is that section,

the right side of the bowtie as we've been calling it, is what's depicted on page one of Protestant's Exhibit 4.
THE WITNESS: Yes, sir, that was basically taken from -- let me see which one -- from My Neighborhood is where I got this from, and I did compare it with what we have from Mr. Doak's work, and it was basically in coordination with that. Like I said, we have this area right in here where the contours on My Neighborhood definitely show that we have a 13.8 percent slope, and if you turn it over to the first page, you can see where I have a printout of My Neighborhood.
MR. BELT: Okay, but sir, I need to jump in here. The page you just pointed to is actually the third page of the exhibit, right?
THE WITNESS: Yes, sir.
MR. BELT: Okay, and that is for what has been marked on page one as number one.
THE WITNESS: Yes, sir.

MR. BELT: And do I understand, then, that each successive page then follows, number two, number three, number four?
THE WITNESS: Yes, sir.
MR. BELT: And it corresponds to the numbers that are on the first page.
THE WITNESS: Right. And if you look at the top of like page one where the exhibits are, to verify the footage that I was calculating, it has the footage of 149 feet for a run, and the rise for the difference in elevation was 20 feet. And then basically to calculate that, you divide the run into the rise, and that gave me a .1338, and you multiply that times 100 and that gives you the 13.38 percent. And that's basically the same situation that I used for number two, three and four. I always made sure that I had the footage off of My Neighborhood that was by them, rather than a calculation by myself.
MR. BELT: Okay. So do I understand numbers one, two three and four, if you look at

page one of that exhibit --
THE WITNESS: Yes, sir.
MR. BELT: -- and you flip to this page, page one?
THE WITNESS: Yes, sir.
MR. BELT: Numbers one, two, three and four, if you were to look on the aerial map, it would be roughly within where the woods are of the proposed solar field, just to the south?
THE WITNESS: It would be over in the solar field itself and then come into the woods area.
MR. BELT: Okay. Sorry to interrupt.
MR. MOWELL: That's all right.
BY MR. MOWELL:
Q. Tell us again -- you have a run here for each number. How did you compute the run?
A. I computed the run by using myneighborhood.com where you can compute length. You basically use the program, get a start and a finish, and then it basically comes up with a

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number right underneath this black line right here, which is 189 feet. If I may approach?

MR. BELT: Okay.

THE WITNESS: This will give you where I got my distances for my run.

MR. BELT: I think you have to show Mr. Kotroco.

MR. KOTROCO: I think I'm following him. Go ahead, John, you can go up there.

THE WITNESS: Okay. And then also, basically the contour lines is what I got for my rise.

MR. BELT: Right.

THE WITNESS: So that's how I calculated it.

MR. BELT: Right. So for example, even if you go to page one, there's a mark of 410 here, and then you would go to whatever the run is to a particular point.

THE WITNESS: Yes, sir.

MR. BELT: And use ten feet per

Page 15

gradation here, and that's how you'd come up with your run.

THE WITNESS: Yes, sir.

MR. BELT: Okay.

MR. MOWELL: Okay.

BY MR. MOWELL:

Q. So you took four spots, came up with four slope percentages, and what are those slope percentages?

MR. BELT: You can have a seat, sir.

THE WITNESS: Okay. The slope percentages for number one, like I said before, was 13.38 percent. Number two is 15.83 percent, number three is 16.54 four percent, and number four was 7.6 percent. The reason that I showed those marks as slopes on there like that was because the way MDE regulations are, anything that shows slopes over ten percent in areas, they're requiring a grading study. I've talked to some length with EIR about --

BY MR. MOWELL:

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Q. Sorry, you have to explain what that is, EIR.

A. Environmental impact review, in regard to, you know, these situations, and they said that they were mandated by state regulations that they adopted with these, to use these as a guideline for their review.

Q. Actually, let's look at the guidelines then. Do the guidelines talk about what stormwater controls should be used for slopes less than five percent? And we don't have any less than five percent, but what do the guidelines say should be done for less than five percent?

A. Less than five percent, and I know a lot of times they'll use areas like warm season grass plantings and different types of other, you know, floral type plantings, a lot of them which are conducive to like butterflies and bees and so on, that basically have a good root system that won't basically wash out or die over a period of time.

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Q. So, what does the term disconnection mean?

A. A disconnector is an area in between the solar panels where they would have plantings in there that basically would catch the runoff from the solar panels onto the ground and basically slow the amount of exacerbation of the runoff into the area.

Q. What do, and what do the guidelines say for slopes less than five percent, is disconnection all that is required?

A. Disconnectors are something that is required, but there's other methods.

Q. I'm talking about slopes less than five percent.

A. Yes.

Q. Is that all that's required for a slope less than five percent?

A. Yes.

Q. And were you here when Mr. Quinlan testified that that's what he has in mind for his

Page 18

site, which is to let the water run off the panels onto the grass? I don't know if you were here; were you here when he testified?

A. Yes, sir, part of the time.

Q. Okay.

A. You know, the thing that I'm concerned about here is the situation, I think that everybody realizes we got to have some form of alternative energy source, period. Nobody's going to disagree with that. The only thing I think that community organizations and so on are concerned about, that if these facilities are put in, we want to see them put in so that they're not going to do any harm to the environment and so that we don't have any exacerbated runoffs into streams and other areas that could basically impact the environment.

Q. All right. Let me ask you about the stormwater guidelines. So less than five percent, the water can run on, just run off the panels onto the grass?

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A. Yes, sir.

Q. What do the guidelines say about for slopes between five percent and ten percent?

A. Basically what they're doing is they're talking about using what's called a level spreader. A level spreader is basically a trench that's cut in the ground and has stone in there, and what that stone does is actually captures the rainwater and impedes the runoff of the water on the grass area down a hill so that it doesn't, you know, pick up momentum and create more of an exacerbated runoff.

MR. BELT: Would it kind of be like if you have a sump pump and you have a pit with drainage rock in it so it doesn't erode away?

THE WITNESS: Sure. The water would drain into it and then it would slow it up, and then it would, you know, exactly.

MR. BELT: And so it would drain into a trench where the rock is --

THE WITNESS: And be absorbed into the

Page 20

ground, and then if there was any that was over that, it would basically spill over onto the ground and hopefully be taken care of.

BY MR. MOWELL:

Q. Do the guidelines talk about any other control other than the box spreader that you just talked about?

A. That basically is depending upon what would be submitted to environment impact review and stormwater management, to Baltimore County by the engineer that would provide a plan. He would suggest whether they're going to be using, like I said before, some form of warm season grass, if they were going to be using another particular type of flora, and then it would be reviewed by the county EIR and stormwater management for the effectiveness and for the controls, and then they would possibly make comments back to the engineer of record to basically insure that what they were going to put in wasn't going to be creating a problem.

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Q. Do the guidelines talk about terraces, do you know what a terrace is?

A. Yes, sir. When they get into terraces and doing terraces, it seems like it would get into some grading issues and so on. And what I've gathered from going to some of these, you know, hearings on these solar panels, they don't want to really get into too much terracing and so on, because that's a disturbed area.

MR. BELT: Could we go back a second? I have a general idea of what you mean by terracing, but could you explain that for the record?

THE WITNESS: A terrace would be like if you had an area that was coming down, they would grade it out a little bit, and drop down, and drop down.

MR. BELT: Almost like steps.

THE WITNESS: Yes, sir, exactly.

BY MR. MOWELL:

Q. Do the guidelines suggest terraces as a

way to handle slopes greater than five percent?

A. Yes, sir, that's an alternative measure. Again, it's like I said, that's something that the engineer of record doing the plan would have to come up with, devise a plan, but then a lot of times too, this would trigger over 5,000 square feet of disturbed area, which would require a full-blown grading study, which can be expensive.

Q. Are you saying they don't like to do terraces?

A. Right. And I mean, you know, face it. I mean, anybody that's doing a project doesn't want to throw money away, they want to try to do it as cheap as possible.

Q. How about berms, do you know what a berm is?

A. Yes, sir.

Q. What is a berm?

A. A berm is an area where they have would have, you know, like some slopes up that would slow the water run down, and then it would come

down again.

Q. Does that involve dirt work as well?

A. Yes, sir.

Q. Is berm another method of control for slopes greater than five percent?

A. It would be -- it could possibly be effective. It would be depending, again, on how it was installed and you know, the height of the berm and the length of it and so on. That may require, if we're using berms, to get hydraulic calculations.

Q. And you in your study, you only found one slope that is under ten percent, that's between five and ten percent, you found one at 7.6 percent?

A. Yes, sir.

Q. And the other three are over ten percent. What do the guidelines say about a slope over ten percent where solar panels are going to be installed?

A. Over ten percent, it would require that

we have a full-blown grading study that would be submitted to stormwater management.

Q. Do you know what kind of controls could be used to control runoff when panels are installed on slopes greater than ten percent?

A. They could basically put situations in like a stormwater management pond, there's different measures they could go with, but like I said, it depends on the engineer of record when he would be working with his clients to figure out what he would consider the most cheapest and effective way of handling it, because what they would have to do, I would think at first, would be to calculate the amount of water runoff of each solar panel, and then basically use those calculations along with the topographics of the property to come up with an adequate means of enforcement, or not enforcement, but, let me try to think of a good word here.

MR. BELT: Design?

THE WITNESS: Yes, sir, it would be a

good thing, a good way to minimally take care of the water runoff without a large expense to them. I mean, that's basically part of an engineer's job, is to try to do something for his clients that's cost effective and that is also code compliant.

MR. MOWELL: Mr. Altmeyer, that's all I have. We would like to offer his exhibit into evidence.

MR. BELT: Mr. Kotroco?

MR. KOTROCO: I'm going to object to the --

MR. BELT: We're doing the document.

MR. KOTROCO: Yeah, I'm going to object to the exhibit.

MR. BELT: On what basis?

MR. KOTROCO: I would have preferred it would show the area where the solar panels are going to go, it doesn't. This appears, from what I understand from Mr. Altmeyer, to be the outline of the perimeters of the property.

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Is that correct, Mr. Altmeyer, it's the outline of the perimeter of the property?

THE WITNESS: Yes, sir.

MR. KOTROCO: Not where the solar panels are going to go.

THE WITNESS: See, what you can do is look basically on this particular plan right here, you can see right in here where like Exhibit Number 1 is, where it comes down and it runs down.

MR. BELT: Mr. Altmeyer, let's do this. I'm going to give you a pen. Could you put on the marked up one --

MR. MOWELL: Can I give him a red pen?

MR. BELT: That's fine, that's much better. I didn't have a red pen available here, so thank you. Could you mark the area, one, two, three and four?

THE WITNESS: Here is one.

MR. MOWELL: Is that writing okay?

THE WITNESS: Two would be this area

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right in here, three would be this area, and four is here.

MR. BELT: Recognizing this is an estimate based on your comparing your exhibit to 1-A, you drew it as best as you could.

MR. MOWELL: Is that a fair assessment?

THE WITNESS: Yeah, I think that looks pretty close.

MR. BELT: That's a fair assessment?

THE WITNESS: Yes, sir.

MR. BELT: Okay. So with respect to your objection, Mr. Kotroco?

MR. KOTROCO: I'm still -- I mean, it's -- I guess my objection is the lack of detail or exactness of his calculations, that's the point of the objection. It was difficult do follow, I think I followed him, I'm going to ask him a couple questions about it.

THE WITNESS: Sure.

MR. BELT: I think that's going to go to the weight of the testimony.

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MR. KOTROCO: Okay, that's fine.

MR. BELT: Or the weight to be given to this document as opposed to whether or not it should be admissible, so we'll admit it.

MR. KOTROCO: All right, thank you.

MR. BELT: All right, go ahead.

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Altmeyer, what were the years in which you worked for Baltimore County?

A. What years?

Q. What years, yeah, when did you start and when did you retire?

A. I started working for Baltimore County in 1977 and I worked there until 2008, 2009 rather, excuse me.

Q. Did you work for Mr. Kotroco when he was the department head?

A. I certainly did.

MR. KOTROCO: Don't get into too much of that.

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THE WITNESS: I worked for him especially during the Hurricane Isabel incident.

BY MR. ZIMMERMAN:

Q. You and I haven't talked about your exhibit or the details of anything that you testified about, have we?

A. No.

Q. So I want to ask you some questions and if you don't know the answer, just let me know.

A. Certainly.

Q. I'm looking at Protestant's Exhibit 4. Now we've heard that the solar panels are going to kind of face south, right?

A. That's what I understand.

Q. Do you know enough to tell us based on your review of the slopes, that any water coming off these panels for the most part is going to be heading south, southwest, or what direction, what direction, can you tell us that?

A. I haven't really thought about that because a lot of the runoff on the panels, for

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one, is going to be determined by the amount of rain that's coming down and the wind factors involved with the rain, because we have got some real crazy storms up in the northern part of the county this year where I've seen water running in places that I've never seen it run before.

Q. And that's the same for the central part of the county?

A. Yes, sir.

Q. Let's, as a baseline, let's suppose it's not a windy day, but it rains.

A. Okay.

Q. Can you give us a ballpark estimate based on what you see on your exhibit as to the general direction of the water runoff?

A. Again, like I said, that would be hard for me to do it, because I don't know the hydrology of how much water comes off of each panel from the rain.

Q. Okay. Forgive me, but I'm not asking you about the amount of runoff, I'm just asking

Page 31

you which way does the land slope down. The land does slope downwards, does it not?

A. Yes, sir.

Q. And correct me if I'm wrong, but does your exhibit more or less show a stream area offsite?

A. It doesn't show the stream area.

Q. It doesn't?

A. No.

Q. Okay. Well, at this point, are you trying to tell us that there's, you're uncertain as to any proof that the stormwater will be handled in the right way?

A. What I'm trying to say is I think it would be a worth a second look by the environmental department when they would be reviewing this site to take a look at these grades on, and slopes on this property as they will do in a field visit, and incorporate their data in with their final decisions on what they're expecting to see on that property.

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Q. Is there any reason why some preliminary evaluations could not have been done as to --

A. Preliminary evaluations --

MR. BELT: Let him finish his question before you answer.

THE WITNESS: Okay.

BY MR. ZIMMERMAN:

Q. Is there any reason why preliminary evaluations could not be done as to generally what we're looking at here?

A. Well, they haven't applied for permits yet and they won't do any preliminary evaluations of the site until, you know, the site plans are submitted with the application for a permit.

Q. You're not an expert on what's required for a special exception, are you?

MR. MOWELL: You asked him.

MR. KOTROCO: It sounds like he is. It sounds like it to me.

BY MR. ZIMMERMAN:

Q. I mean, look, Mr. Altmeyer, it sounds

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like as far as you're concerned, no big deal here?

A. I'm not saying it's no big deal. I'm saying I think, I think it is something that needs to be well considered, and the thing that I haven't heard from any of these solar companies is the fact that yeah, we do have these steep slopes and we may address it in this particular fashion or this fashion. I haven't heard any of that from any of them and it's kind of, I'm not going to say it's disturbing, but it kind of raises a flag up to me.

Q. Okay.

A. I mean, I think that, you know, the constituents and I think the council should realize that it's nice to have, you know, alternative forms of energy and so on, but a lot of times, I think it would be an advantage if they took a second look at it rather than jump on a bandwagon and just want to approve it.

Q. I don't want to misunderstand what

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you're saying, but from your perspective, would it be feasible to get a ballpark expert understanding and evaluation of the situation, rather than coming in and saying we'll take care of everything later?

MR. MOWELL: I'm going to object. It's, I don't know if that's a question or if it's just testimony that Mr. Zimmerman is giving. I'm not sure what the question is.

MR. ZIMMERMAN: Well, it is a question.

MR. BELT: Why don't you ask it again please.

BY MR. ZIMMERMAN:

Q. For you to get a sense of what's going on on this site given the topography and what you've shown, would it be reasonable at this juncture in your view for the petitioner to have provided us with a ballpark idea or concept at least, of where they think they can handle the stormwater?

A. That would sure be definitely an

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advantage. I think it would answer a lot of questions from people and I think it would put a lot of community organizations at rest with what we have out there on these sites, because you know, I think in talking to some of the community organizations along with knowing how the county system works and so on, I think they're just looking for some assurance that if these are put in, they're going to be put in in accordance with the regulations that, you know, MDE wants, but they also have to realize too that Baltimore County has the ability to modify regulations, as I'm sure you all well know. They can modify regulations to suit basically the situation we have.

Most of these regulations by MDE were basically, came from the Eastern Shore. The Eastern Shore is nothing but flat, flat and more flat. Up here we don't have that up in the northern part of the county, we have rolling sloped terrains. None of these regulations here

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outside of the over ten percent, addresses that.

Q. Are you ready for another question?

A. Yes, sir.

Q. On this property here today based on what you've heard so far in this case, do you have any clue as to how the petitioner is going to handle it, other than they say they're going to comply with the regulations?

A. No, sir, I can't make a speculation on nothing without evidence.

MR. ZIMMERMAN: Thank you, that's all I have.

CROSS-EXAMINATION

BY MR. KOTROCO:

Q. So Mr. Altmeyer, as you mentioned, if an engineer of record does all these calculations like you've done, puts them on a plan and seals it, turns it in to Baltimore County and the county approves it, you would be okay with that?

A. If he shows how they're going to contain the runoff.

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Q. Correct, if all that's shown on a plan and the county likes it, approves it and says we like it, would you be okay with that?

A. If they made the field visit along with it?

Q. Right.

A. Sure. I think people would be more, more satisfied with it.

Q. Right. And that's all got to be done before you go get a permit to put them in?

A. When you apply for a permit, that's got to be in the package of drawings with the solar array, and also with the site plans.

Q. And that's the way we did it when we worked together at the county?

A. Yes, sir.

Q. Okay, and I was your boss for eight years?

A. Right.

Q. You were there longer than I, 30-some, how many years?

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A. 32-and-a-half.

Q. Okay. Have you testified in other solar cases yet, is this your first one testifying?

A. I basically am involved with the one on Freeland Road and so and on, and I have to testify yet on that. I haven't gotten up to testify yet.

Q. Okay. You live close either to the one on Freeland Road?

A. It's right next to my house.

Q. Okay. But there are some other parts of this site that are pretty flat, you just looked at the ones that were the steepest; is that right?

A. I looked at the ones where I thought there was going to be a runoff, and then from what I understand was a stream area down there. I didn't have any drawings to verify the fact of the stream, and I didn't, couldn't make a site visit because I didn't want to trespass.

Q. No, okay, I understand that you did the

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best you could with My Neighborhood, clicking on it with the distances.

A. That's for sure.

Q. I've done the same thing, okay.

And I just would like to ask you a couple other questions. Well, you didn't work in the stormwater management department at the county, did you?

A. I enforced stormwater management regulations.

Q. Yeah, you enforced them, but you always were in the buildings and permits?

A. I was always in the building end where we basically had the enforcement arm.

Q. Right. And I'm not trying to be tricky here, but I know we were friends and we worked together?

A. Sure.

Q. Were you always in the building inspections department?

A. Yes, sir.

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Q. You were, okay.

A. And I also was on the emergency response team for 14 years with the fire and police department.

Q. Yes, I remember that. I guess the last question, when we worked together, were you sitting down in the basement calculating stuff, doing these kinds of plans down there? You did?

MR. BELT: Is that a yes?

THE WITNESS: Yes.

BY MR. KOTROCO:

Q. Okay. I didn't know you were doing that down there, that's fine.

A. When environmental came down to us and they wanted to get prosecution or get cases presented between either you or Lawrence Smith, a lot of times I had to do things like that, to offer them as exhibits.

Q. Well, I miss those days, Mr. Altmeyer, I enjoyed working with you.

A. I enjoyed working with you too.

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MR. KOTROCO: Okay. No further questions.

MR. BELT: Mr. Mowell, any redirect/TKPREBGT.

MR. MOWELL: Yes, I'm a little confused.

REDIRECT EXAMINATION

BY MR. MOWELL:

Q. Is it your testimony that you think that the, at this stage the petitioner should explain how he intends to handle stormwater and have an engineer approve a plan when the permit is pulled, or do you think it's good enough just to let, wait until the permit gets pulled?

A. When the permits are applied for, he has to submit an engineered drawing with it as to what they're going to be doing for the runoff with this. At that particular time stormwater management and environmental impact review would go out on the site and take a look at the site. I talked to Jim Markle about this over at stormwater management, I talked to Glen Shaffer

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and a couple other people over at environmental impact review, and when that would get submitted with the drawing, with the package for permits, they would go out on the site and look at it. They would then basically make recommendations back to the engineer of record as to whether they approved what they were suggesting or whether it needed further remediation for the water runoff or containment of water runoff.

Q. That's after we get through this process. Are you content with that process to control stormwater or would you like to hear here how the petitioner intends to handle stormwater?

A. I think it would be good --

MR. KOTROCO: Can I object? I think he's already answered that, he's already given his opinion on that.

MR. BELT: Yeah, I think he has given his opinion, but I also don't know how relevant that is to this proceeding as to where he believes it should fit in with within the system.

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The question in my mind is, there's a process in place that will yield the same protections that he has concerns about, and that's what I think the ultimate question is.

MR. KOTROCO: Right.

MR. MOWELL: Can he answer that question?

MR. BELT: Sure.

MR. KOTROCO: It's his question. I won't object to that.

THE WITNESS: I would think that it would be in the interest of a better rapport with the community, so to speak, to have that information, or at least a preliminary submitted for a perusal of the constituents in the area. I think it would give people more of a relaxed view of what's going to happen, because a lot of people, to be blunt, think that we're getting this shoved down our throat without any recourse. I'm not going to pull any punches, that's basically, I've heard that a lot.

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I've heard one person in one county agency say well, zoning is decimated where I live at, now it's your turn. I'm going to tell you, that's -- I'm not -- I would swear on a stack of bibles to that, and what can I say?

Q. Do you think it would help the Board too, to know how the petitioner intends to handle stormwater in making their decision about whether to approve or disapprove the plan?

MR. KOTROCO: I object to the leading nature of the question.

THE WITNESS: Well, my own thoughts --

MR. BELT: Just a second. Mr. Mowell, can you rephrase the question?

BY MR. MOWELL:

Q. What if any benefit do you think it would be to the Board in rendering its decision to know how the petitioner intends to handle stormwater on the property?

A. I think it would give everybody on the Board a lot better of an idea rather than not

Page 45

seeing anything at all, because it would make you understand when you look at this particular form from the MDE regulations --

MR. BELT: You're referring to Petitioner's Exhibit 8. Go ahead.

THE WITNESS: That would give you a better idea of what they're going to try to accomplish by putting these control measures in because you know, face it, I mean, everybody's not an architect, everybody's not an engineer, but the thing I have it is you present it in a way that, you bring it down on a level to where people can understand what's going to take place and how it's going to help to contain the issues to be compliant, because I think nobody wants a situation where we're calling up, not MDE, but environmental impact review and saying we got a tremendous runoff from that rain last night, what are you going to do about it? And then, you know, typically, maybe one of the answers you might get was well, last night it was a kind of

unusual rain, what do you expect?

I'm just saying, I think we need a little bit more of a full disclosure all around as to what's happened here, and to realize that these MDE regulations were basically tailored not for this area of the state, but for more down on the Eastern Shore where it's flat. They don't have the runoff issues that we have up here, and the one thing that we have up here too is, we have an area up here, like for instance Prettyboy Reservoir that supplies over 60 percent of the drinking water for Baltimore City and Baltimore County, and it is a concern for people.

We have other areas where we have native trout species in some streams. We're wondering about the exacerbated effects of the water runoff and is it going to raise the water temperature to kill these trout which need roughly at a maximum of 68 degrees to live in.

MR. BELT: Mr. Mowell?

MR. MOWELL: Thank you, Mr. Altmeyer.

No further questions.

MR. ZIMMERMAN: Just quickly.

RECROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Do you know, Mr. Altmeyer, this is the last time there will be any public hearing on this project?

A. Yes.

MR. BELT: Thank you. That's all I have.

MR. KOTROCO: No questions.

MR. BELT: Okay. You can step down, sir. Thank you.

THE WITNESS: Thank you for your time.

(Witness excused and the excerpt concluded at 3:25 p.m.)

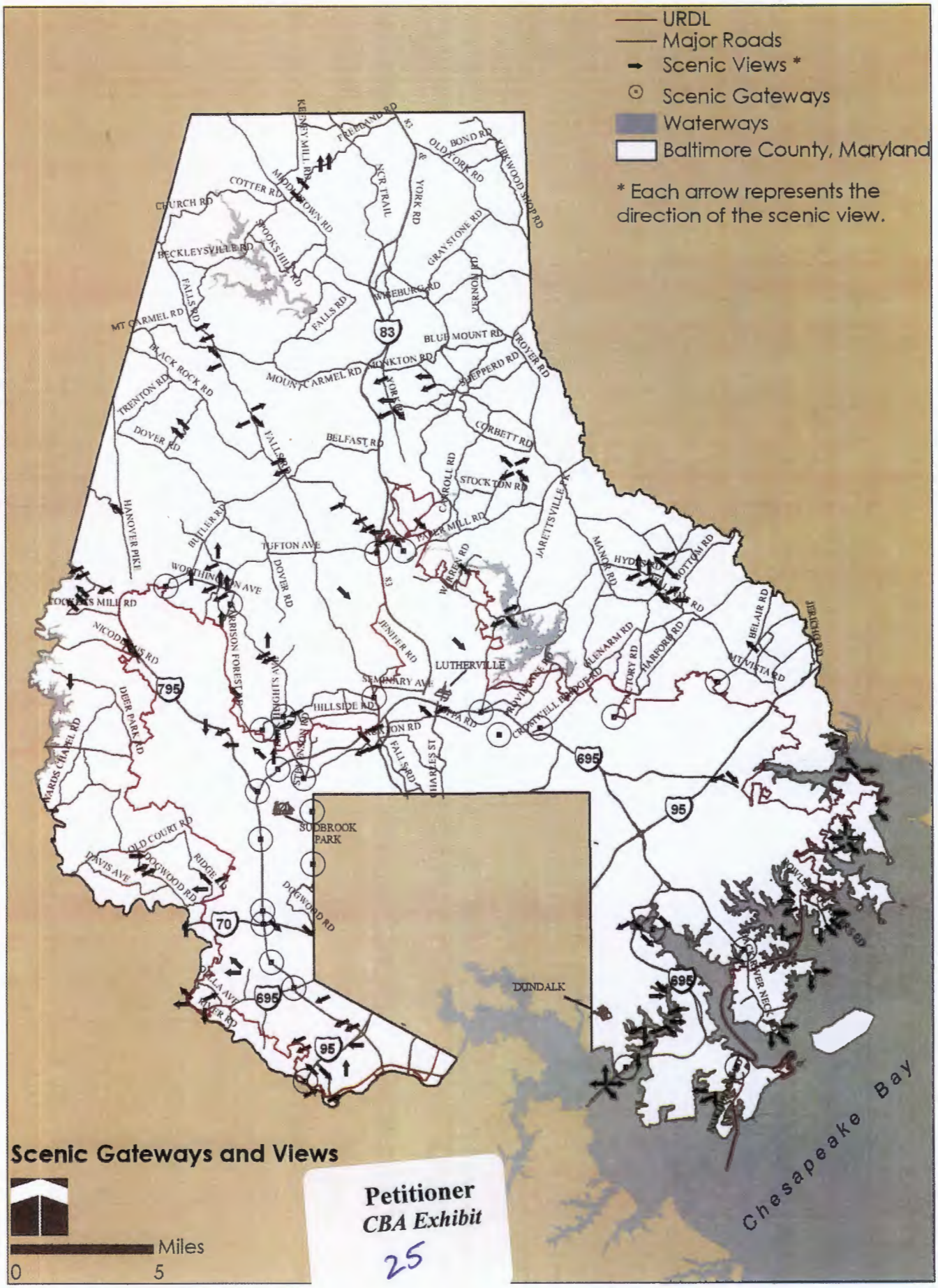
TRANSCRIBER'S CERTIFICATE

I, PAUL A. GASPAROTTI, II, Notary Public, hereby certify that I transcribed from audio file the proceedings to the best of my ability in the foregoing-entitled matter; and I further certify that the foregoing is a full, true and correct statement of such proceedings and a full, true and correct transcript of the audio file produced.

IN WITNESS WHEREOF, I have subscribed my name on October 23, 2018.

PAUL A. GASPAROTTI, II
Notary Public - Maryland
My Commission Expires
September 3, 2019

11/28/18 18-047-X

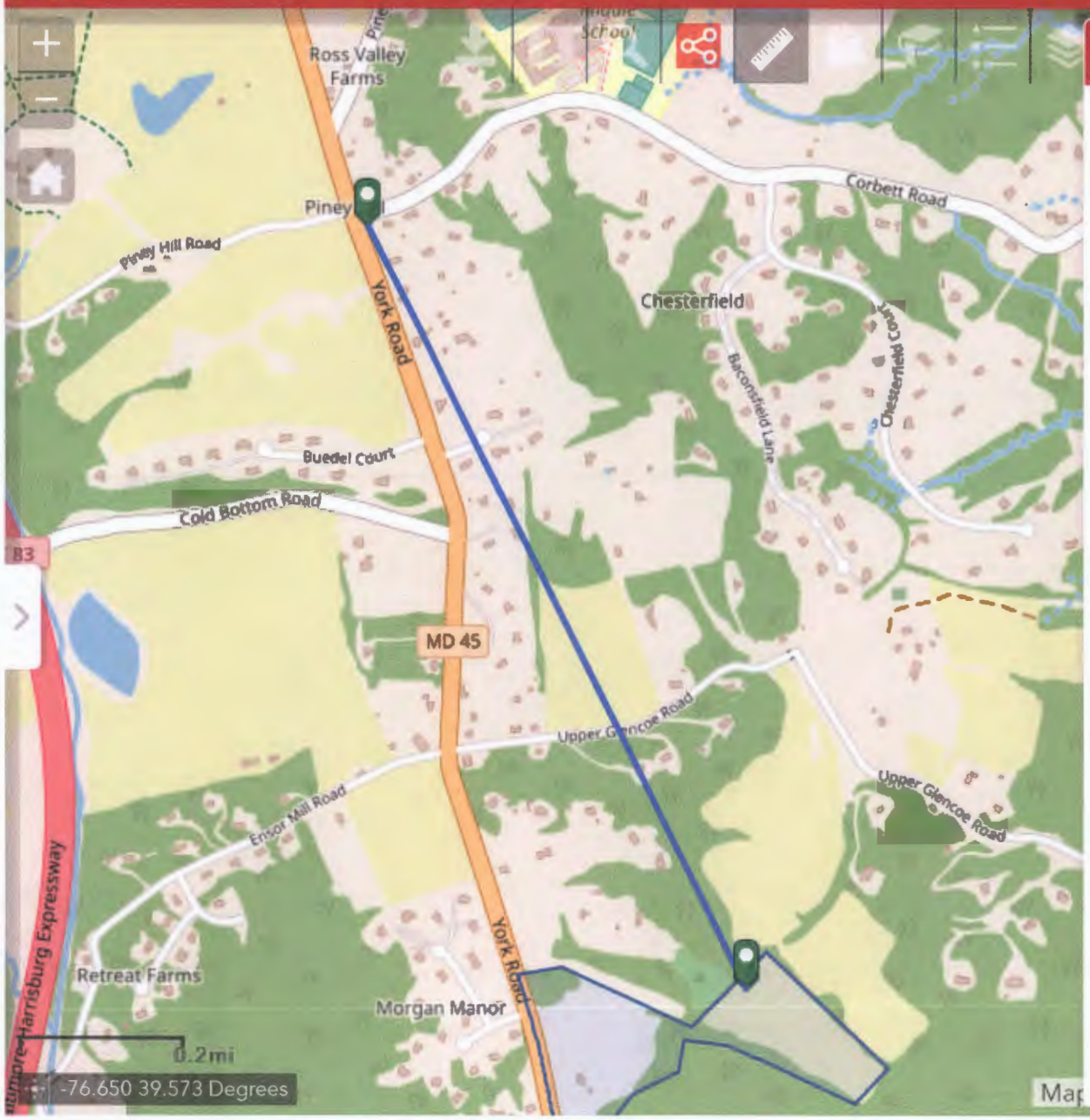



FALLS RD
83
BLUE MOUNT RD
TROYER RD
MONKTON RD
SHEPPERD RD
MOUNT CARMEL RD
YORK RD
Matthews Rd
Corbett Rd
FALLS RD
BELFAST RD
CORBETT RD
STOCKTON RD


Maplehurst Ln
Piney Creek Ct
E Piney Hill Rd
Remare Rd
Shepperd Rd
Monkton
45
Hereford Rd
Matthews Rd
Falls Rd
Corbett Rd
Piney Hill Rd
Baconsfield Ln
Chesterfield Ct
Buedel Ct
Gold Bottom Rd
83
York Rd
Ensor Mill Rd
Upper Glencoe Rd
N R R Trail
©2018 Google
ESA Sparks Glencoe
Google Earth


El. 527'
Piney Hill Rd
Corbett Rd
Buedel Ct
Gold Bottom Rd
Baconsfield Ln
Chesterfield Ct
Upper Glencoe Rd
El. 505'
El. 512'
York Rd
N C R R Trail
83
Delbart Ct
© 2018 Google
El. 407'
ESA Sparks Glencoe
Google Earth
45

Baltimore County - My Neighborhood



Measurement

Miles

Measurement Result

1.05 Miles

View from corner of York Road and Corbett Road looking southeast. It is 5,450 feet (1.05 miles) from the intersection to the site.

Subject: FW: Freshwater Fisheries Data request form
Date: Wednesday, November 28, 2018 at 7:37:32 AM Eastern Standard Time
From: Timothy M. Kotroco <tkotroco@gmail.com>
To: Timothy Kotroco <tkotroco@gmail.com>

From: Mark Staley -DNR- <mark.staley@maryland.gov>
Sent: Tuesday, November 27, 2018 3:21 PM
To: brian@calvertenergy.com
Subject: Re: Freshwater Fisheries Data request form

Brian,

We (Freshwater Fisheries) have no data on the un-named tributary to the Gunpowder Falls that flows through the property at 15637 York Rd, Sparks, MD.

Wild trout (brook and brown) are found in tributaries surrounding your project site watershed, therefore we would ask that you proceed in your site planning as if trout occur on your property.

The Gunpowder Falls downstream of your project site is managed as a put and take trout stocking area, We stock 5000 adult size trout into the river each spring. This is a very popular and heavily used recreational fishery.

Any measures you can take to reduce or eliminate warm water discharges or heating to the tributary will benefit trout. Controlling sediment inputs is equally important.

Mark

On Tue, Nov 27, 2018 at 2:52 PM Brian Quinlan <brian@calvertenergy.com> wrote:

> Mark – I hope that you had a nice Thanksgiving. I wanted to see if you had any feedback on our fisheries request or other feedback on our request for DNR feedback at the site. We have a hearing tomorrow so any information that you could provide would be greatly appreciated. Thanks.
>
> Brian Quinlan
> President/CEO
> Calvert Energy LLC
> brian@calvertenergy.com
> (301) 208-0153
> (301) 367-9131 (cell)
> www.calvertenergy.com

Petitioner
CBA Exhibit
26

11/28/18 18-047X

From: Brian Quinlan <brian@calvertenergy.com>
Sent: Thursday, November 15, 2018 8:23 AM
To: 'Mark Staley -DNR-' <mark.staley@maryland.gov>
Subject: RE: Freshwater Fisheries Data request form

Mark – I filled out the google docs form, but it doesn't get to a specific location. I have attached a copy of the letter that I sent in to DNR that provides more detailed information. I would appreciate any feedback that you could provide on streams surrounding the site and fishery information that we should be aware of in our development process. Thanks.

Brian Quinlan
President/CEO
Calvert Energy LLC
brian@calvertenergy.com
(301) 208-0153
(301) 367-9131 (cell)
www.calvertenergy.com

From: Mark Staley -DNR- <mark.staley@maryland.gov>
Sent: Wednesday, November 14, 2018 9:32 AM
To: brian@calvertenergy.com
Subject: Freshwater Fisheries Data request form

https://docs.google.com/forms/d/e/1FAIpQLSewsll3QWBHsoHZtynwL9gZJlK2GsFYctxGwrr6TCyWrbDH8g/viewform

The google doc form will result in a query of our Freshwater Fisheries data which is focused on gamefish like trout and bass.

Maryland Biological Stream Survey also compiles data on stream ecology more focused on the entire biological community. They also have a data request system and a public GIS based map of some of their data See link below:

https://geodata.md.gov/streamhealth/

--

Mark Staley
Central Region Manager
Freshwater Fisheries Program
Fishing and Boating Services
Department of Natural Resources
17400 Annapolis Rock Rd
Woodbine, Maryland 21797
410-442-2080 (office)
mark.staley@maryland.gov

dnr.maryland.gov

Click here to complete a three question customer experience survey.

ISO 9001:2008 CERTIFIED

KCI

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

936 Ridgebrook Road • Sparks, MD 21152 • Phone 410-316-7800 • Fax 410-316-7885

November 19, 2018

SENT VIA EMAIL: brian@calvertenergy.com

Mr. Brian Quinlan
President and CEO
Calvert Energy, Inc.
12921 Buckeye Drive
Gaithersburg, MD 20878

RE: KCI Technologies, Inc. Scope of Work and Cost Proposal
Engineering and Environmental Studies - Sparks-Glencoe Solar Site

Dear Mr. Quinlan:

KCI Technologies, Inc., (KCI) is pleased to submit this scope of work and cost proposal for the above-referenced project. We understand that various engineering and environmental permitting support services are required for the development of a solar array on a 30.7-acre parcel in Baltimore County, Maryland.

SCOPE OF SERVICES

KCI understands that the following tasks are required for final approval of the proposed solar facility:

- Detailed topographic survey of the project site and surrounding area, including property boundaries;
- Concept-level Development Plan (includes stormwater management concept plan and public hearing)
- Forest Stand Delineation, Forest Conservation Plan and Associated Worksheets;
- Wetland and Stream Delineation;
- Forest Conservation Plan and Associated Worksheets;
- Steep Slopes and Erodible Soils Evaluation;
- Forest Buffer Easement (FBE) Limits Evaluation (in accordance with Section 330-3-111 of the FB Law);
- Final Engineering Drawings, including:
  - Stormwater Management;
  - Erosion and Sediment Control;
  - Landscaping;
  - Standard notes regarding non disturbance and protective covenants;
- A right of way plat to record any Forest Buffer Easements and/or Forest Conservation Easements;
- An Alternatives Analysis for any impact to the forest buffer (solar panels do not count as utilities, only transmission lines to and from);
- Applications for any requested variance to the Forest Buffer Law, and/or Forest Conservation Law, if required;
- Pre-Application meeting with Maryland Department of the Environment and US Army Corps of Engineers to review wetland and waterway boundaries and discuss potential impacts;
- Joint Permit Application for wetland and waterway impacts (will include a public hearing);
- Mitigation design for onsite wetland creation (if permanent impacts cannot be avoided);
- Hydrology and Hydraulics studies for any necessary culvert improvements.

Petitioner
CBA Exhibit
27

18-047X 11/15/18

COST PROPOSAL

KCI will provide the services outlined in this Scope of Work for a total Lump Sum Fee of $ 365,000.00. This fee includes all labor and materials necessary to complete the above-referenced scope of work. The following task breakdown is provided for your consideration:

	TASK NAME	ESTIMATED COST
1	Detailed Land Survey, Including Property Boundary	$ 32,000.00
2	Phase I Plans (Concept Level Development Plan)	$ 95,000.00
3	Review Agency Correspondence (RTE Letters)	$ 500.00
4	Natural Resources Inventory (Wetlands, Forests)	$ 7,500.00
5	Steep Slopes, Erodible Soils, & Forest Buffer Analysis	$ 6,000.00
6	Pre-Application Meeting with MDE and USACE	$ 1,500.00
7	Joint Permit Application to MDE & USACE	$ 14,000.00
8	Forest Conservation Plan	$ 8,500.00
9	Phase II Plans (Construction Documents)	$ 125,000.00
10	Wetland Mitigation - Preliminary & Final Design (If Required)	$ 75,000.00
	ESTIMATED TOTAL	**$ 365,000.00**

CONCLUSION

KCI welcomes the opportunity to support Calvert Energy on this project. Please do not hesitate to contact me if you have any questions or require additional information before issuing a Notice to Proceed.

Very truly yours,
KCI TECHNOLOGIES, INC.

James E. Deriu
Vice President
Natural Resources Management

Direct Dial: 410.316.7865
Email: james.deriu@kci.com

ACCEPTANCE

Calvert Energy, in consideration of the terms and conditions of the Proposal and General Provisions which are fully set forth herein, does hereby accept this Proposal and General Provisions as the complete and final Agreement with KCI Technologies, Inc. for the performance of the Work described herein, and does hereby further agree to comply with all the covenants in this Agreement.

ACCEPTED BY:

_____
Signature

_____
Printed Name

_____
Date

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: [redacted] Protestant Date: 8/21/18

Exhibit No:	Description:
✓ 1	Maryland Business Express - ESA Sparks Glenco, LLC
✓ 2	-Small Site Plan / Aerial - 6840 pack
✓ 3	Balto. Co. 33-3-108
✓ 4	Slope Info from Altmeyer
✓ 5	Rule 8 - Sparks Glencoe
✓ 6	8/20 Letter from Sparks Glencoe
✓ 7	502.1
✓ 8	Section 1408. R.C7
✓ 9	32-4-413 - 32-4-414 Floodplain & Wetland P
✓ 10	8/1/18 Letter to Julie Town from Planning Board
✓ 11	2020 / Master Plan / Scenic Resources
✓ 12	Scenic Roads Byways Map / ADC
✓ 13	USDA Definition of Prime Farmland
✓ 14	Farmland Conservation Map of Site
	VERIFIED BY KC DATE: 10/25/18

KC 8/21/18

KC 8/23/18

10/24

Board of Appeals

Case No: 18-047X Case Name: Gernir

Exhibit List

Party: Protestant Date: 10/24/18

Exhibit No:	Description:
✓ 15	Class III Trout Stream Map / ID only
✓ 16	Tops - Map of Projects in My Neighborhood
✓ 17	- Map - of Area / Key
✓ 17a	Photo - of Green Grassy - Spray Heads + Slope Runoff
✓ b	Woods / Pond - covered with leaves / Photo
✓ c	Photo - - "Open area would be solar array" - Hydro-C
✓ d	Photo - Stream / Gorsuch + Rudy property
✓ 18	WBAC - Flood Photos / ID only
✓ 19	Maps of Watersheds / Key
✓ 19a	- Photo / Road, Tank / Trees / - Green Grass
✓ 19b	Green Field to Right - area of proposed Array Foreground Rudy Property
✓ c	Photo taken from Upper Glen Co Road / Gorsuch Property side Behind Treeline
✓ d	- My Neighborhood Map of Surrounding Homes + Properties
✓ e	Photo - WBAT - from Area 4 on Key
✓ f	Photo Green Trees from Rudy Property

VERIFIED BY KC DATE: 10/25/18

Board of Appeals

Case No: 18-047X Case Name: Gerner

Exhibit List

Party: Protestant Date: 10/24/18

Exhibit No:	Description:
✓19 g	Fall Picture of 19 f- site in Background
✓20a-h	Key 1-8 for Photos showing slope from Rude Property & Subject Property
✓20 I	Rainfall Charts
✓21	My Neighborhood Map / Bowtie - measurment
✓22a-g	Key to Photos
✓23	Map of Historic Landmarks
✓24a	Photos of Animals + Fence ID only
✓24b	Fence ID only
✓25	Metal Fence at Organ Ridge ID only
✓26	Solar Array / North this side / ID only
✓27	Roemer - CV
✓28	Map - Excerpt from GIS - showing wetlands
✓28 a	" Marked Copy
~~29~~	
	VERIFIED BY _____ DATE: _____

KC 10/25/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: Protestant Date: 11/28/18

Exhibit No:	Description:
✓29	Photo of Hereford Truck, Fire
✓30	Manufac. Tag on Door Jam of Fire Truck
✓ 31	Photograph
	VERIFIED BY KC DATE: 12/10/18

Maryland Business Express

ESA SPARKS GLENCO, LLC: W17591975

General Information | Filing History | Annual Report/Personal Property

General Information

Department ID Number:	W17591975
Business Name:	ESA SPARKS GLENCO, LLC
Principal Office:	12505 PARK POTOMAC AVENUE 6TH FLOOR POTOMAC MD 20854
Resident Agent:	MARC B. BERGOFFEN 12505 PARK POTOMAC AVENUE 6TH FLOOR POTOMAC MD 20854
Status:	ACTIVE
Good Standing:	THIS BUSINESS IS IN GOOD STANDING » Order Certificate of Status
Business Type:	DOMESTIC LLC
Business Code:	20 ENTITIES OTHER THAN CORPORATIONS
Date of Formation/ Registration:	11/03/2016
State of Formation:	MD
Stock Status:	N/A
Close Status:	N/A

New Search | Order Documents

Protestant
CBA Exhibit
1

Case No. 18-047-X 8/21/18

Maryland Business Express

ESA SPARKS GLENCO, LLC: W17591975

General Information | Filing History | Annual Report/Personal Property

Annual Report/Personal Property

Mailing Address: ESA SPARKS GLENCO, LLC
4155 ST. JOHNS PKWY STE 1100
STE. 1100
SANFORD FL 32771

Annual Report/Personal Property Filings

Asmt. Year	Date Filed	Extension	Penalty Amount	Date Penalty Paid
2018	04/13/2018	No		
2017	10/27/2017	No		
2016		No		
2015		No		
2014		No		

Personal Property Assessments Summary (Select year to view details)

Asmt. Year	County Base	Town Base	Date Certified
2018	0	0	04/23/2018
2017	0	0	10/30/2017
2016	0	0	
2015	0	0	
2014	0	0	

New Search Order Documents

5000000000970441

ARTICLES OF ORGANIZATION

The undersigned, with the intention of creating a Maryland Limited Liability Company files the following Articles of Organization:

(1) The name of the Limited Liability Company is:
ESA Sparks Glenco, LLC

(2) The purpose for which the Limited Liability Company is filed is as follows:
Solar Farm

(3) The address of the Limited Liability Company in Maryland is:
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD, 20854

(4) The Resident Agent of the Limited Liability Company in Maryland is:
Marc B. Bergoffen

whose address is:
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD, 20854

(5) Signature(s) of Authorized Person(s):
Lindsay Herold

(6) Signature(s) of Resident Agent(s):
Marc B. Bergoffen

(7) Filing party's name and return address:
Lindsay Herold, 4155 St. Johns. Pkwy, Ste. 1100, Sanford, FL, 32771

I hereby consent to my designation in this document.

2.0 Mwac PV SYSTEM

PV Array:
Number of PV Modules: 6,840
Peak Power: 2,701,800 Wp DC
DC/AC Ratio: 1.3
Module Type: LG 395Wp (LG395N2W-A5)
Module Tilt: 25°
Module Orientation: South (Az. 180°)
Proposed Leased Area: 9 Acres

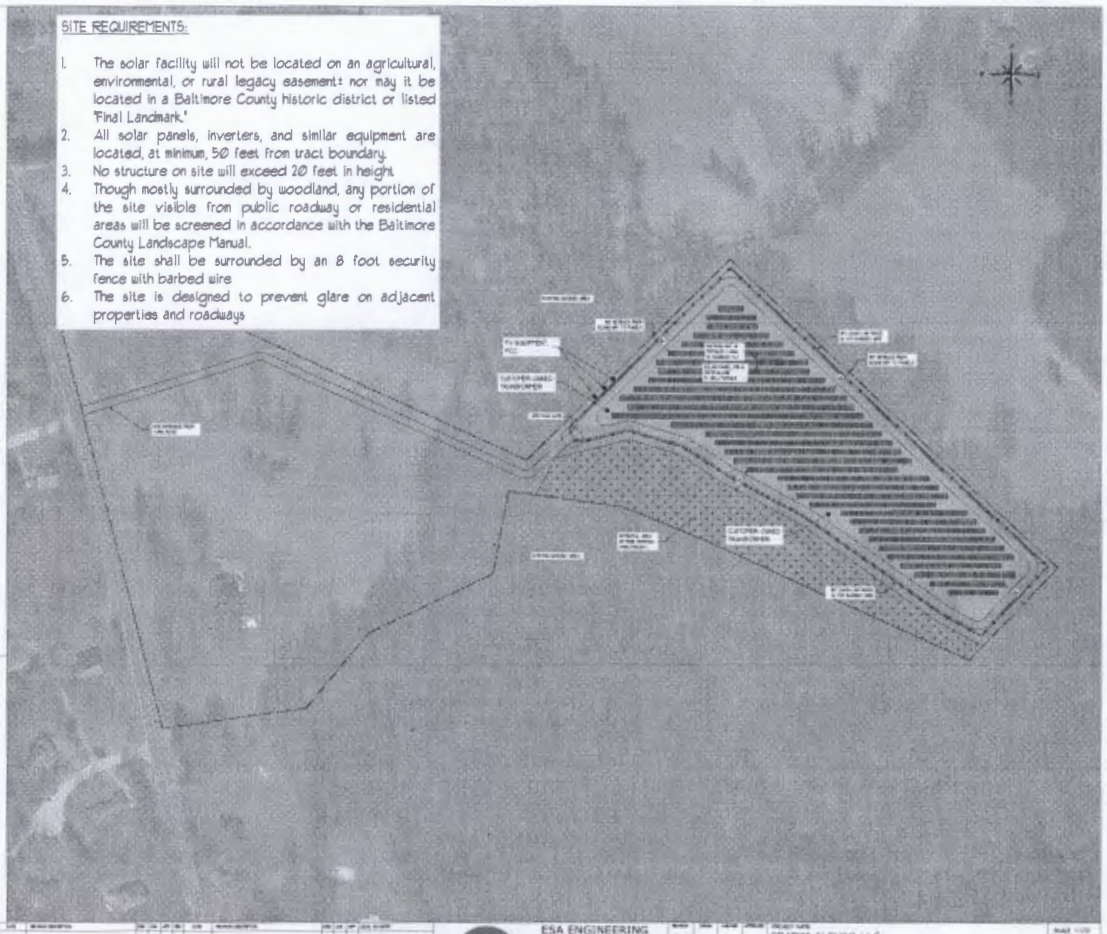
Project Owner:
Sparks Glenco, LLC
4155 St Johns Pkwy, Ste 1100
Sanford, FL 32771

Site Location:
39°33'19.51"N 76°38'53.95"W

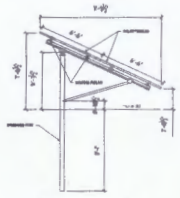
Layout is preliminary, awaiting surveys as well as zoning and permitting approvals. Layout is based on GIS information, not a survey.

SITE REQUIREMENTS:

1. The solar facility will not be located on an agricultural, environmental, or rural legacy easement nor may it be located in a Baltimore County historic district or listed "Final Landmark."
2. All solar panels, inverters, and similar equipment are located, at minimum, 50 feet from tract boundary.
3. No structure on site will exceed 20 feet in height.
4. Though mostly surrounded by woodland, any portion of the site visible from public roadway or residential areas will be screened in accordance with the Baltimore County Landscape Manual.
5. The site shall be surrounded by an 8 foot security fence with barbed wire
6. The site is designed to prevent glare on adjacent properties and roadways



25 DEGREES



Typical Array (25°) NTS

SITE DEVELOPMENT DRAWING
FOR INTERCONNECTION REVIEW ONLY
SHEET SIZE AT FULL SCALE: 24" x 36"

ESA ENGINEERING SERVICES MD, LLC
4155 St. Johns Parkway, Suite 1100
Sanford, FL 32771 USA
407.366.6455 tel | 800.755.0855 fax
Firm Lic: 858-51775

SPARKS GLENCO, LLC

SITE PLAN

G202

Case No: 18-047-X

8/21/18

Protestant
CBA Exhibit
2

§ 33-3-108. - PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

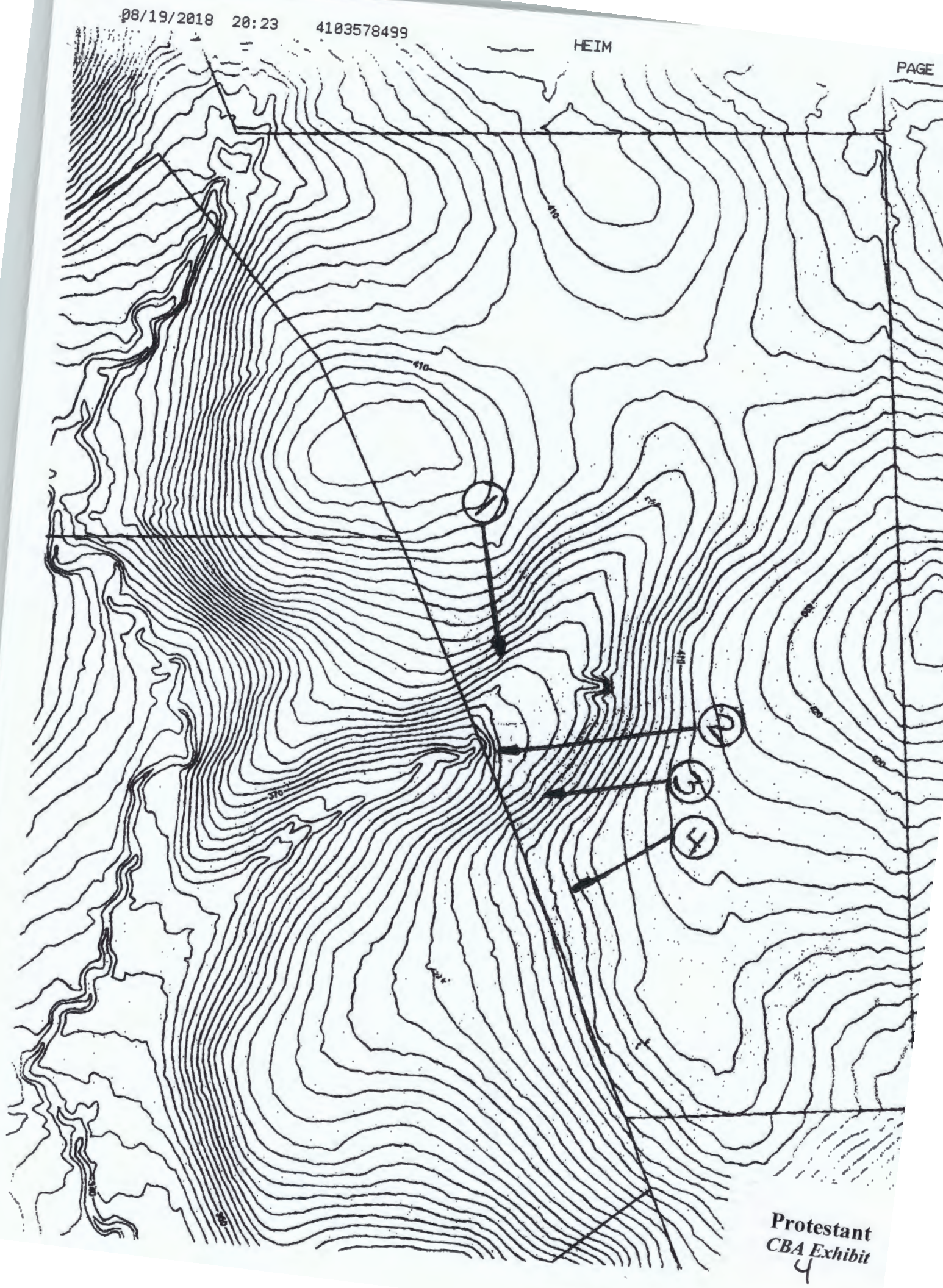
(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.

(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10 [illegible]

Case No: 18-047-X 8/21/18

Protestant
CBA Exhibit
3



Protestant
CBA Exhibit
4

LEGAND

(1) 149.4' RUN
20' RISE

.1338
149.4 | 20.00

.1338
X 100
13.38 % SLOPE

(2) 189.5' RUN
30.0' RISE

.1583
189.5 | 30.00

.1583
X 100
15.83 % SLOPE

(3) 120.9' RUN
20.0' RISE

.1654
120.9 | 20.00

.1654
X 100
16.54 % SLOPE

(4) 131.5' RUN
10.0' RISE

.076
131.5 | 10.00

.076
X 100
7.6 % SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

15637 york rd

Search

Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

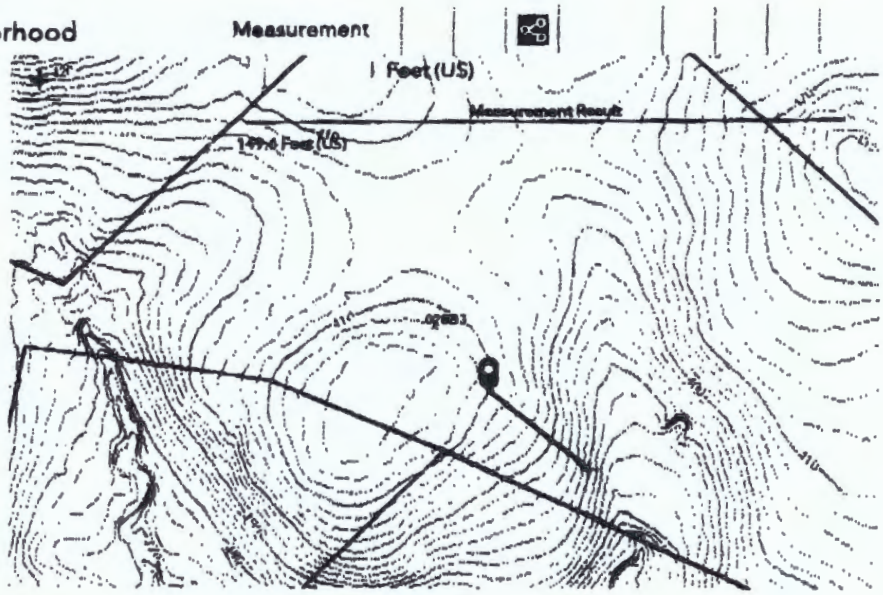
Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Piney Creek
Subshed Name	Gunpowder Falls
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor loam, 3 to 8 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#1

149.4' RUN
20.0' RISE

.1338
x 100
13.38% SLOPE

149.4 ⟌ 20.00 .13

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Piney Creek
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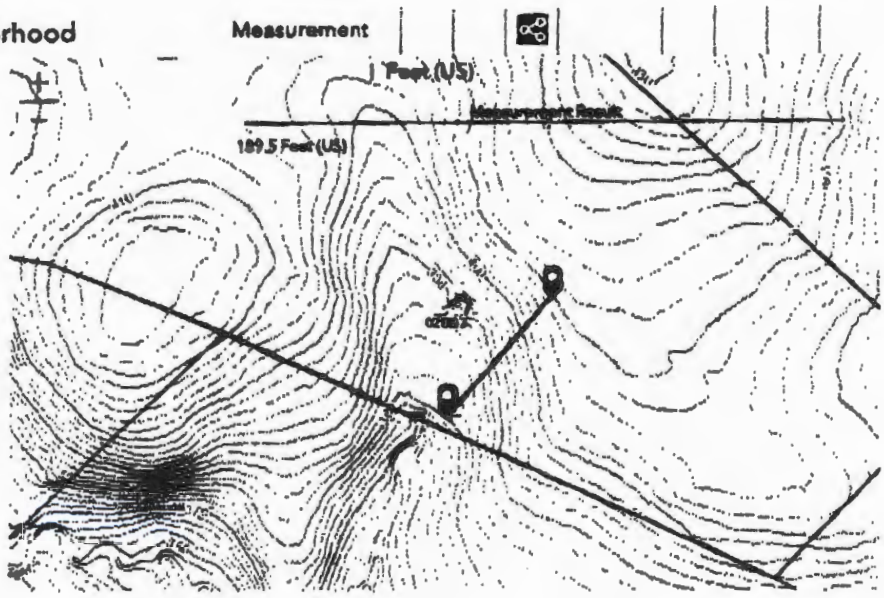
Soil Name	Manor loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#2

189.5' RUN
30.0' RISE

.1583
X 100
15.83% SLOPE

189.5) 30.00 .15

Baltimore County - My Neighborhood

My Neighborhood Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

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Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

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Councilmanic District	3
Congressional District	7
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Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

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Watershed Name	Loch Raven Reservoir
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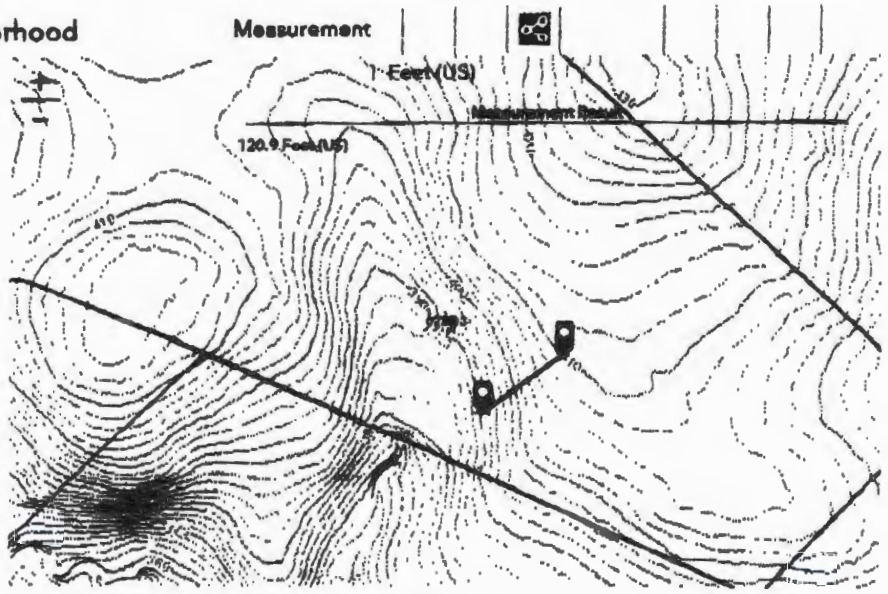
Soil Name	Manor loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#3

120.9' RUN
20.0' RISE

120.9) 20.000 .165

.1654
× 100
16.54% SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
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ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
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CIVIC - GOVERNMENT

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Councilmanic District	3
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ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

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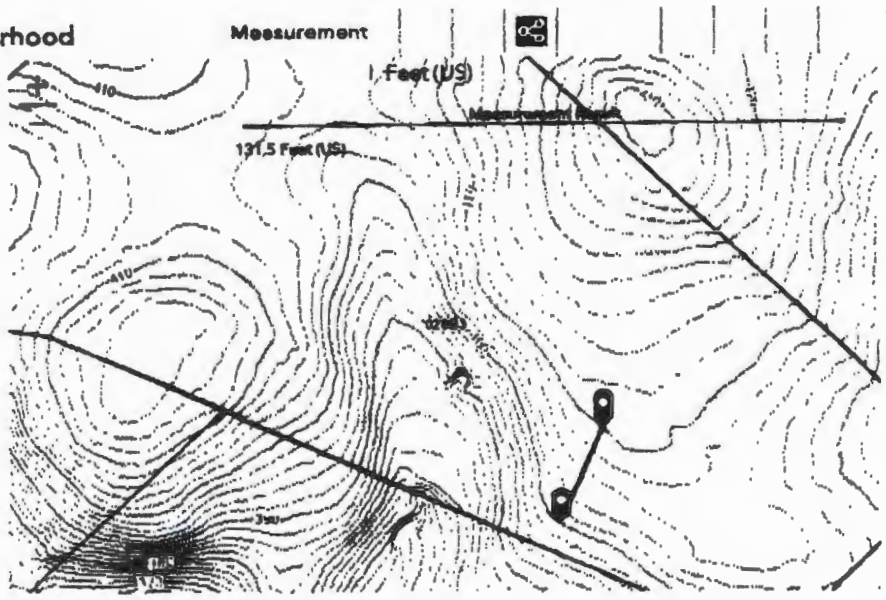
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#4

131.5' RUN
10.0' RISE

.076
131.5) 10.000

.076
x 100
7.6 % SLOPE

THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL, INC.

BE IT RESOLVED: That at the ANNUAL MEETING of The Sparks Glencoe Community Planning Council, Inc. held on April 18, 2018, it was decided that responsibility for review and action on all zoning and development matters for the period 2018-2019 be placed on the Board of Directors and/or members of the duly elected Zoning Committee.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Lynne Jones
President
Lynne Jones

Wendy McIver
Reporting Secretary
Wendy McIver

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THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL INC.

RESOLVED: That the position of the Sparks Glencoe Community Planning Council: Inc. as adopted by the Board of Directors on the zoning matter known as:

15637 York Road Solar Special Exception CBA-18-047-X

The Sparks-Glencoe Community Planning Council ("Sparks-Glencoe" or "SGCPC") is an organization dedicated to preserving the rural character and natural resources of northern Baltimore County.

Sparks-Glencoe is opposed to the special exception in this matter for the following reasons:

1. The development removes prime and productive land from agricultural production and preservation easements; drives up the cost of leased agricultural land; and diminishes the property values of contiguous landowners.
2. There is no adequate program for remediation of the site at the end of the useful life of the facility.
3. Constructing large commercial energy facilities of any sort in resource conservation areas is inconsistent with the Baltimore County Master Plan goal of maintaining the rural character of the area and is a prime example of "incremental development" which the Master Plan identifies as a threat to the agriculture industry.

Therefore, we ask the Board of Appeals to uphold the spirit and intent of the Zoning Regulations and the Master Plan, which are to protect natural resources and maintain the character of the rural area, by denying this special exception.

AS WITNESS OUR HANDS AND SEAL THIS 10th DAY OF September, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Wendy McIver, Reporting Secretary

Lynne Jones, President

AFFIDAVIT

STATE OF MARYLAND

BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I, Lynne Jones, am currently a duly elected member of the Board of Directors of The Sparks Glencoe Community Planning Council, Inc.

AS WITNESS OUR HANDS AND SEAL THIS 10th DAY OF September, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Wendy McIver, Reporting Secretary

Lynne Jones, President

Sparks-Glencoe Community Planning Council
P.O. Box 937, Sparks, MD 21152

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August 20, 2018

The Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 2018-0047-X
15637 York Road
8th Election District-3rd Councilmanic District
Legal Owner: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glencoe, LLC

Dear Board of Appeals:

The Sparks-Glencoe Community Planning Council (SGCPC) is submitting this letter regarding the above referenced case. The purpose of this letter is twofold. First, we want to state the reasons why we oppose the special exception request. Secondly, without intending to minimize our opposition, we want to request two very important limitations in the event that the special exception is granted.

This, and all such facilities, are euphemistically referred to as "solar farms", but they are not farms and they are not agricultural. SGCPC as an organization, and its many members and supporters, strongly endorse solar power as a wonderful alternative to fossil fuel-based power. The issue here is not solar power *per se*; it is solar power on prime and productive agricultural land which could be used for farming or which could be placed in conservation easement. It also must be understood that our opposition is not directed at solar power systems which are intended to primarily serve a home or an ongoing agricultural enterprise.

Bill 37-17 was passed in the face of strong opposition by the SGCPC, the North County Community Association, the Manor Conservancy, the Valleys Planning Council, as well as other relevant agricultural organizations, Third District residents and their Councilman. There were a number of reasons for this opposition. Primarily, it was viewed as an effort at commercial development in RC zones which citizen groups have been fighting for decades. Constructing large commercial energy facilities of any sort in resource conservation areas is inconsistent with the Baltimore County Master Plan goal of maintaining the rural character of the area and is a prime example of "incremental development" which the Master Plan identifies as a threat to the agriculture industry.

Secondly, the bill was passed with no effort to study and understand the long term effects of this development. Instead, the Bill provides for a study to be made one year **AFTER** implementation of the special exception provision. Of course, one year later, the developers have been pursuing the seven solar facilities already in "the pipeline", and probably more, in the

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Third District, and any study will be too late. This is why the study provision in the Bill was viewed as a deeply cynical and artificial claim of due diligence to occur only after installation has already been approved and the special exceptions have been granted. Our cynicism has been reinforced by the recent actions of the Baltimore County Planning Board. While the Board appears to be leaning toward a recommendation to halt future applications, it also appears to be leaning toward not addressing pending applications because the developers have already spent money to pursue those applications. This was a bootstrapping use of pending applications to justify those very same pending applications which were filed with full recognition that a study may threaten those very same applications.

Putting aside the background of these applications, there are very real concerns which justify the denial of the special exception in this case. The development removes prime and productive land from agricultural production and the possibility of a preservation easement. It also drives up the cost of leased agricultural land which is central to the Baltimore County agricultural industry. It also removes land from potential preservation.

While our opposition is very real, we do believe it is extremely important that two limitations should be imposed in the event the special exception is granted. Bill 37-17 requires an applicant for a building permit hall provide a surety bond or equivalent financial security. The Code official MAY use the bond for removal of a solar facility. The SGCPC requests that the Board direct that the applicant be required to provide a bond sufficient to cover the costs of removal of a solar facility and stipulate in its order that the bond shall be used for the that purpose should the solar company no longer be able or willing to fulfill its contractual obligations to the landowner.

A representative of the Gerner project attended one of our open meetings to explain the contours of that project. A number of issues were explained and clarified. What became clear, however, was that the only plan for remediation was the LLC's contractual obligation to do so. A facility's useful life is generally understood to be 20 to 30 years. The only guarantee for clean-up is the continued existence and/or financial solvency of these LLCs.

There is no guarantee that the corporation set up to develop the solar facility will still be in existence when the clean-up and remediation phase must begin. Like many local development projects, once development is completed the corporation disappears either by way of bankruptcy or dissolution. The future costs of dismantling and removing the solar panels and remediating the soil so that it is once again ready for farm use is difficult to determine at the present time. The farmer/landowner may not be in a position to bear the burden of such an expense. What happens then? Will the costs be paid for by the taxpayers after the corporation is long gone? Accordingly, any special exception should include an irrevocable bond guaranteed to cover the costs of not only removal but also remediation.

Secondly, the SGCPC is concerned about the impact on neighboring landowners. The prospect of diminished land values for the surrounding area is real. It is certainly foreseeable that the viewshed of the larger resource conservation area will also be significantly impaired. One of the concerns raised in our meeting with the representative of the lessee of the Gerner property was that the proposed buffers were inadequate. It appeared that the trees that were to be

planted would not large enough to screen the facility until the facility had reached its expiration. It is for that reason any special exception must include significant natural buffers which not only protect the view from the adjoining roadways, the adjacent property owners, but also the wider vista and viewshed. Any such buffer needs to meet its objectives from the outset.

We have many concerns about the rapid and precipitous adventure into commercial solar facilities in conservation areas and on prime and productive farmland. No one has presently done the kind of work necessary to know where and how to proceed with the production of commercial solar energy on agricultural land. It is primarily for that reason that SGCPC opposes the special exception in this case. If, however, the special exception is granted, there must obviously be many limitations designed to protect the agricultural industry and the public. We sincerely request that the two limitations outlined in this letter be among those incorporated into any such grant.

Thank you for your patience and consideration in this matter.

Sincerely,

Lynne Jones

Lynne Jones, President

§ 502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

[Bill No. 45-1982]

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

[Bill No. 45-1982]

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

[Bill No. 45-1982]

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

[Bill Nos. 74-2000; 37-2017]

§ 502.2. Protection of surrounding properties; agreement governing special exception.

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, *Editor's Note: Under Section 1107 of the Baltimore County Charter, the County Council and County Executive have succeeded "to all powers heretofore vested in the county commissioners by the constitution and laws of this state."* **stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.**

§ 502.3. Time limit for utilization of special exception; extensions.

[Bill Nos. 42-1962; 85-1967; 68-1968; 172-1993]

A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any special exception, shall fix within the aforegoing limits the period of time for its utilization. Any party to the proceedings may, by so

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1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and
2. An easement to provide for the maintenance of open views.

SECTION 1A08. R.C.7 (Resource Preservation) Zone

[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.
2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.
3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.
4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;
2. To protect forests, streams, wetlands and floodplains;
3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;
4. To respect historic sites in their settings;
5. To provide a quality recreational experience to visitors;
6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.
7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.
8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;
9. To implement state and federal mandates for the protection of natural resources and rural legacy;
10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;
11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;
12. To incorporate traditional features of the local built environment into development; and
13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE

The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

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§ 32-4-416. - PRESERVATION OF NATURAL FEATURES.

(a) *Preservation of features.* Each Development Plan shall preserve natural features, including watercourses, waterfalls, beaches, and significant vegetation.

(b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species.

(1988 Code, § 26-278) (Bill No. 29-95, § 1, 5-21-1995; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004; Bill No. 26-07, § 1, 4-29-2007)

§ 32-4-417. - SCENIC VIEWSHEDS.

The Planning Board shall:

(1) Provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan;

(2) Identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and

(3) Identify the aspects of the visual quality, unity of the elements, and integrity of the elements.

(1988 Code, § 26-284) (Bill No. 121-01, § 3, 1-29-2002; Bill No. 75-03, § 28, 7-1-2004)

413. - GRADING AND EROSION AND SEDIMENT CONTROL.

A plat may not be approved unless provision is made for grading or for erosion and sediment control that will minimize soil erosion, loss of topsoil, sedimentation of streams, and degradation of water quality in the area.

(1988 Code, § 26-275) (Bill No. 79-01, § 2, 7-1-2004; Bill No. 72-12, § 1, 1-9-2013)

§ 32-4-414. - FLOODPLAIN AND WETLAND PROTECTION.

(a) *Definitions.* In this section, "base flood", "development", "flood insurance rate map", "flooding", "floodway" and "riverine floodplain" have the meanings stated in Title 8 of this article.

(b) *Purpose.* The purpose of this section to:

(1) Reduce loss of life and property from flooding;

(2) Avoid the need for public expenditures for flood protection; and

(3) Protect or enhance the environmental quality of watersheds.

(c) *Development in floodplain prohibited; exceptions.* The county may not permit development in a riverine floodplain except for:

(1) The establishment of property subdivision lines; and

(2) The installation of a pond, culvert, bridge, street, utility, or drainage facility that the county finds is not detrimental to floodplain management programs.

(d) *Base flood elevation.*

(1) Except as provided in paragraph (2) of this subsection, if the floodplain is shown on the flood insurance rate map, the county shall limit any increase in the existing base flood elevation to a maximum of 1 foot.

(2) The county may not allow encroachment in the floodway causing an increase in the existing base flood elevation.

(3) In areas where the base flood elevation has not been established, the county shall determine the riverine floodplain and flood elevation by means of a flood study prepared in accordance with the requirements of the Department of Public Works Design Manual and sealed by a registered professional engineer before the issuance of a permit or the recording of a subdivision plat.

(e) *Wetlands.*

(1) The county may not permit dredging, filling, or construction in any nontidal wetland or tidal wetland.

(2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

(1988 Code, § 26-276) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

§ 32-4-415. - SLOPE PROTECTION AND SOILS.

(a) *Development Plan or plat approval; slope protection required.* The county may not approve a Development Plan or plat unless the county finds that the proposed development:

(1) Includes protective measures adequate to prevent erosion or sloughing of any steep slope or unstable slope; and

(2) Promotes the preservation of the natural topographic features of the steep slope or unstable slope.

(b) *Same; soil limitation.* The county may not approve a Development Plan or plat on soils that present a severe or moderate limitation to development unless the county finds that adequate measures have been taken to mitigate the effects of the limitation.

(c) *Same; prime and productive soils.* On prime and productive soils within the RC-2 zone, the county may not approve a Development Plan or plat unless the county finds that construction, excavations, buildings, structures, pavements, grading, clearing, or other disturbances of the soils will be limited or restricted in accordance with policies established by the Department of Environmental Protection and Sustainability to promote agricultural uses and protect the county's soil resources.

(1988 Code, § 26-277) (Bill No. 18, 1990, § 2, 3-30-1990; Bill No. 113, 1992, § 5, 7-1-1992; Bill No. 79-01, § 2, 7-1-2004; Bill No. 122-10, § 12, 1-16-2011)

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DONALD I. MOHLER III
County Executive

ANDREA VAN ARSDALE, *Director*
Department of Planning

August 1, 2018

The Honorable Julian E. Jones, Jr.
Chairman, Baltimore County Council
Historic Courthouse
400 Washington Avenue
Towson, MD 21204

RE: County Council Bill 37-17: Solar Facilities

Dear Chairman Jones:

At the May 17, 2018 meeting of the Baltimore County Planning Board, an evaluation of the impacts of solar facilities in Baltimore County pursuant to County Council Bill 37-17 was presented by Department of Planning staff. A Public Hearing followed on June 7, 2018 and was well attended by the community. At its July 19, 2018 meeting, the Planning Board voted to forward these recommendations on solar facilities to the Baltimore County Council and to the County Executive.

The following recommendations are now offered by the Planning Board:

The Planning Board recognizes that the development of solar power and other renewable sources of energy is critical for our future, however;

- Solar facilities should not be permitted on prime and productive soils;
- Solar facilities should be directed into business and manufacturing zones, brownfields, rooftops and parking lots where financially feasible;
- Further in-depth study of how other similar jurisdictions have responded to the use should be considered in a review of the current law;
- The feasibility of establishing locational criteria to determine appropriate siting of solar facilities should be investigated;
- Solar facilities should not be detrimental to scenic views or routes; and
- Participation in future studies should be broadened to include stakeholders from each Councilmanic District.

105 West Chesapeake Avenue, Suite 101 | Towson, Maryland 21204 | Phone: 410-887-3211 | Fax: 410
planning@baltimorecountymd.gov | www.baltimorecountymd.gov/planning

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Garmon

are important to the agricultural history of Baltimore County and which are located along scenic routes.

(2) Continue to protect designated "view sheds" of historic resources , either by limiting new development within view of the historic resource, or by buffering new development from the view of such resources.

SCENIC RESOURCES

The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents. Scenic resources consist of scenic corridors, scenic views, and gateways. In 1991, the County adopted a set of development guidelines that have raised awareness and recommended development alternatives for protecting scenic resources.

Scenic Corridors and Views

Most of the scenic corridors and views are located in rural areas. The scenic view map provides the beginning of a list of the views for establishing a comprehensive inventory in the near future. Following the adoption of the 1989 Master Plan, the County produced a series of scenic route maps for each council district, which combined the significant visual and historical elements into self-guided scenic tours. The protection of the Interstate 83 (I-83) corridor in northern Baltimore County is a showcase of the inter-governmental efforts on scenic views preservation.

The endeavor for preserving scenic corridors and views ought to emphasize lands zoned for resource protection including RC 2, RC 4, and RC 7. The County will continue to maintain coordination with the State Highway Administration (SHA) and seek available state and federal funds for protection of scenic corridors and views.

Policy: Preserve scenic corridors and views through proper zoning and coordination with federal and state governments.

Actions:

(1) Coordinate scenic resource management practices with the national and state Scenic Byways Programs.

(2) Continue to preserve properties within the I-83 scenic view shed through easement purchases, as funds are available and through RC4 clustering.

(3) Evaluate proposed improvements to state and county roads and bridges regarding their impact on scenic resources in compliance with the adopted *Rural Roads Standards*. Where public safety allows, the narrow and/or winding character of roads is part of the scenic experience and ought to be preserved.

(4) Assess proposed development impacts on scenic resources.

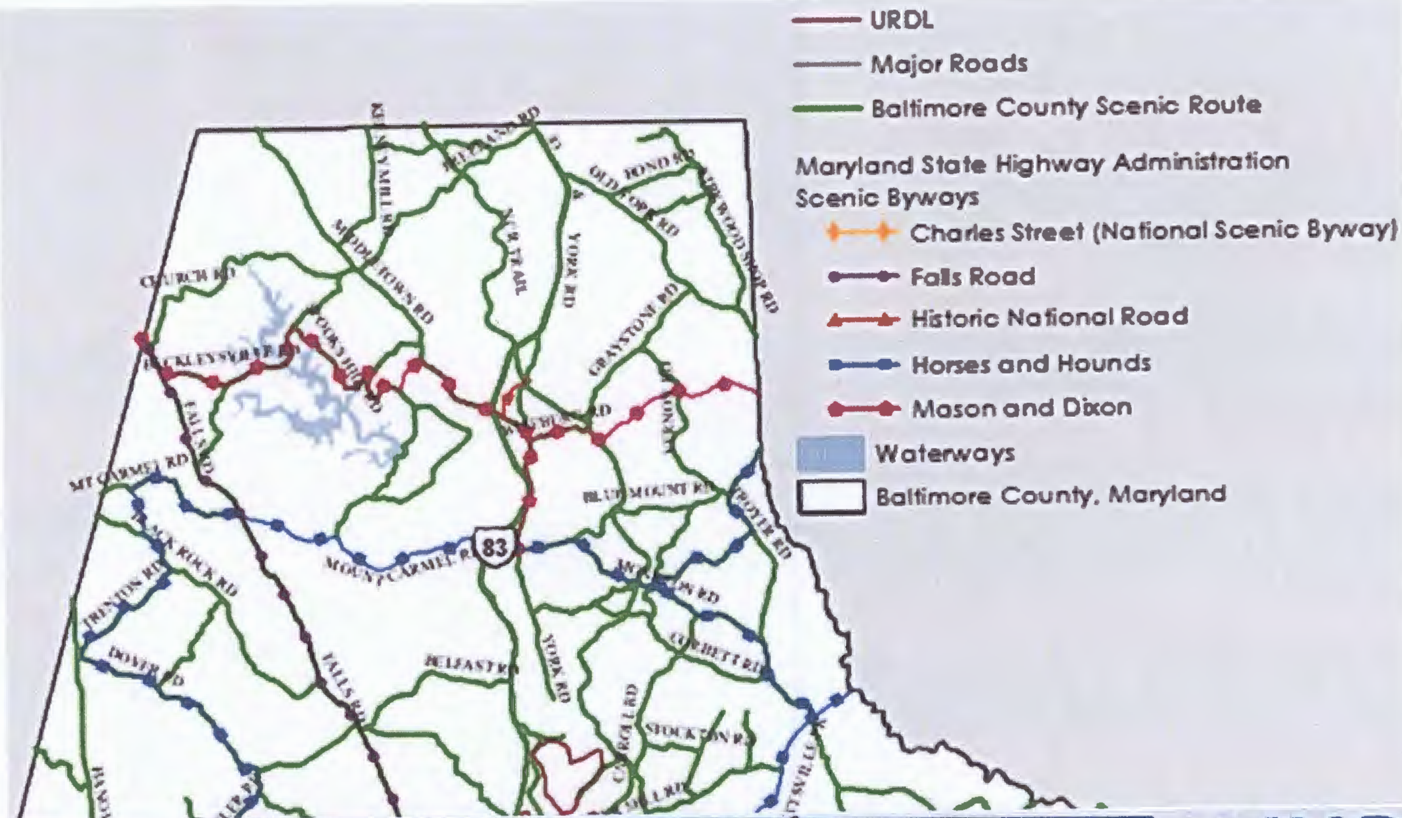
(5) Clarify language regarding scenic corridors and views protection and make it consistent amongst the Master Plan, Comprehensive Manual of Development Policies, Baltimore County Zoning Regulations, Baltimore County Code, and SHA Context Sensitive Solutions for work on scenic byways.

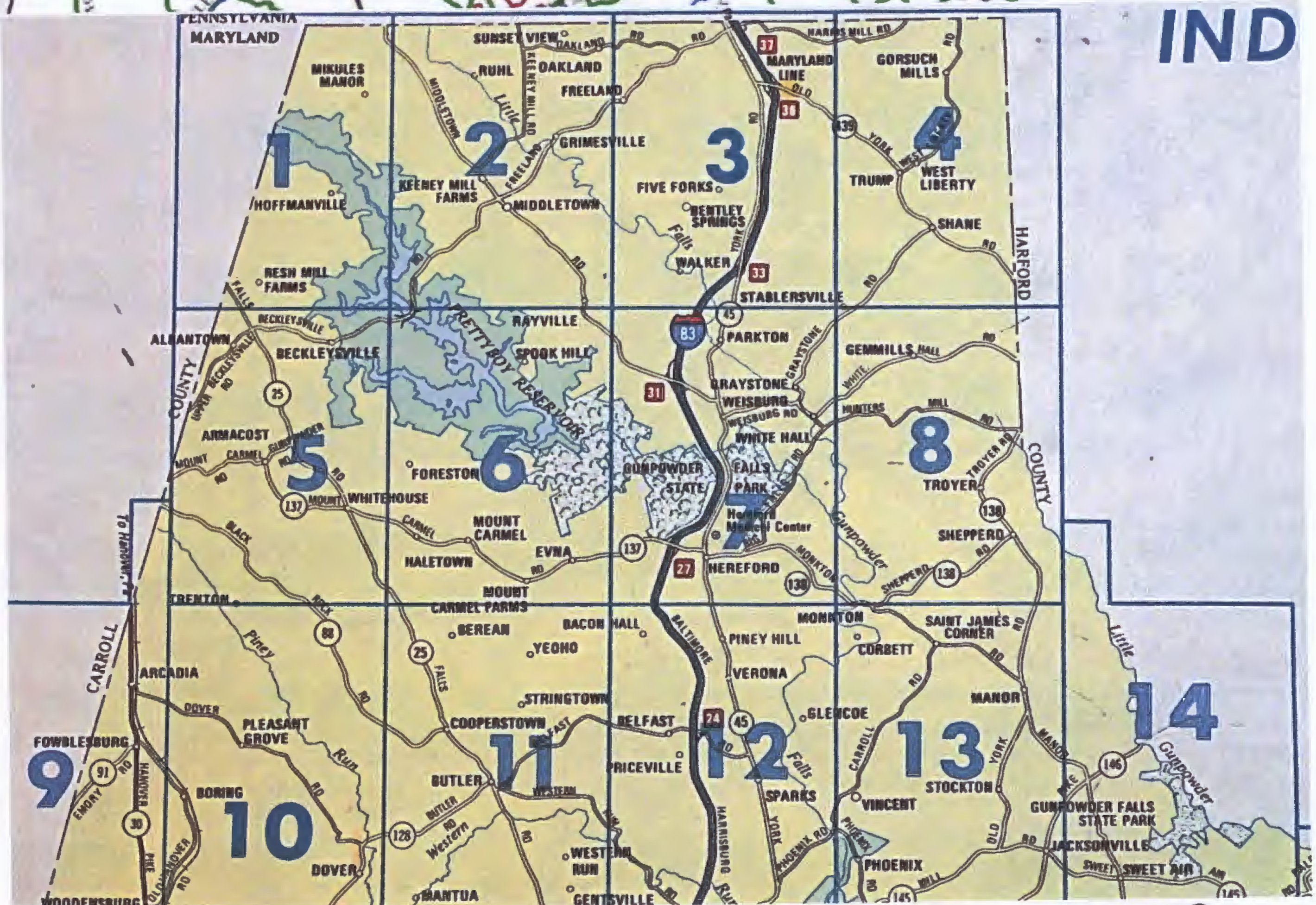
(6) Establish criteria for identifying significant views and geocode them on maps.

(7) Apply a systematic methodology for evaluation of scenic routes and preservation techniques.

(8) Update scenic resources map in accordance

The County has emphasized its efforts on preserving the scenic view shed of I-83 between the Thornton Mill overpass and the Pennsylvania line, which runs through one of the most scenic piedmont areas in the County. Farms, forests, streams and rural homesteads feature both sides of I-83 in northern county. Many properties adjacent to I-83 have been preserved either as parkland or through various easement programs, including donations and purchase of development rights. There has bee significant progress in this effort: between Belfast Road and the Gunpowder River, more than half of the scenic corridor h been protected.





18-047-X

Scenic Roads and Byways in this section of Baltimore County: 53
All roads (not including Lanes or Courts) in this section: 301
Percentage of Scenic Roads and Byways to Regular roads: 17.6%

Protestant
CBA Exhibit
12

ADC MAP 1988 10/24 Gerner

www.nrcs.usda.gov/wps/portal/nrcs/detail/pr/soils/?cid=nrcs141p2_037285

Prime & Other Important Farmlands Definitions

This table lists the map units in the survey area that are considered important farmlands. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. This list does not constitute a recommendation for a particular land use.

In an effort to identify the extent and location of important farmlands, the Natural Resources Conservation Service, in cooperation with other interested Federal, State, and local government organizations, has inventoried land that can be used for the production of the Nation's food supply.

"Prime farmland" is of major importance in meeting the Nation's short- and long-range needs for food and fiber. Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland.

Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

For some of the soils identified in the table as prime farmland, measures that overcome a hazard or limitation, such as flooding, wetness, and droughtiness, are needed. Onsite evaluation is needed to determine whether or not the hazard or limitation has been overcome by corrective measures.

A recent trend in land use in some areas has been the loss of some prime farmland to industrial and urban uses. The loss of prime farmland to other uses puts pressure on marginal lands, which generally are more erodible, droughty, and less productive and cannot be easily cultivated.

"Unique farmland" is land other than prime farmland that is used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables. It has the special combination of soil quality, growing season, moisture supply, temperature, humidity, air drainage, elevation, and aspect needed for the soil to economically produce sustainable high yields of these crops when properly managed. The water supply is dependable and of adequate quality. Nearness to markets is an additional consideration. Unique farmland is not based on national criteria. It commonly is in areas where there is a special microclimate, such as the wine country in California.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be "farmland of statewide importance" for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate State agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

In some areas that are not identified as having national or statewide importance, land is considered to be "farmland of local importance" for the production of food, feed, fiber, forage, and oilseed crops. identified by the appropriate local agencies. Farmland of local importance may include tracts of been designated for agriculture by local ordinance.

Protestant
CBA Exhibit
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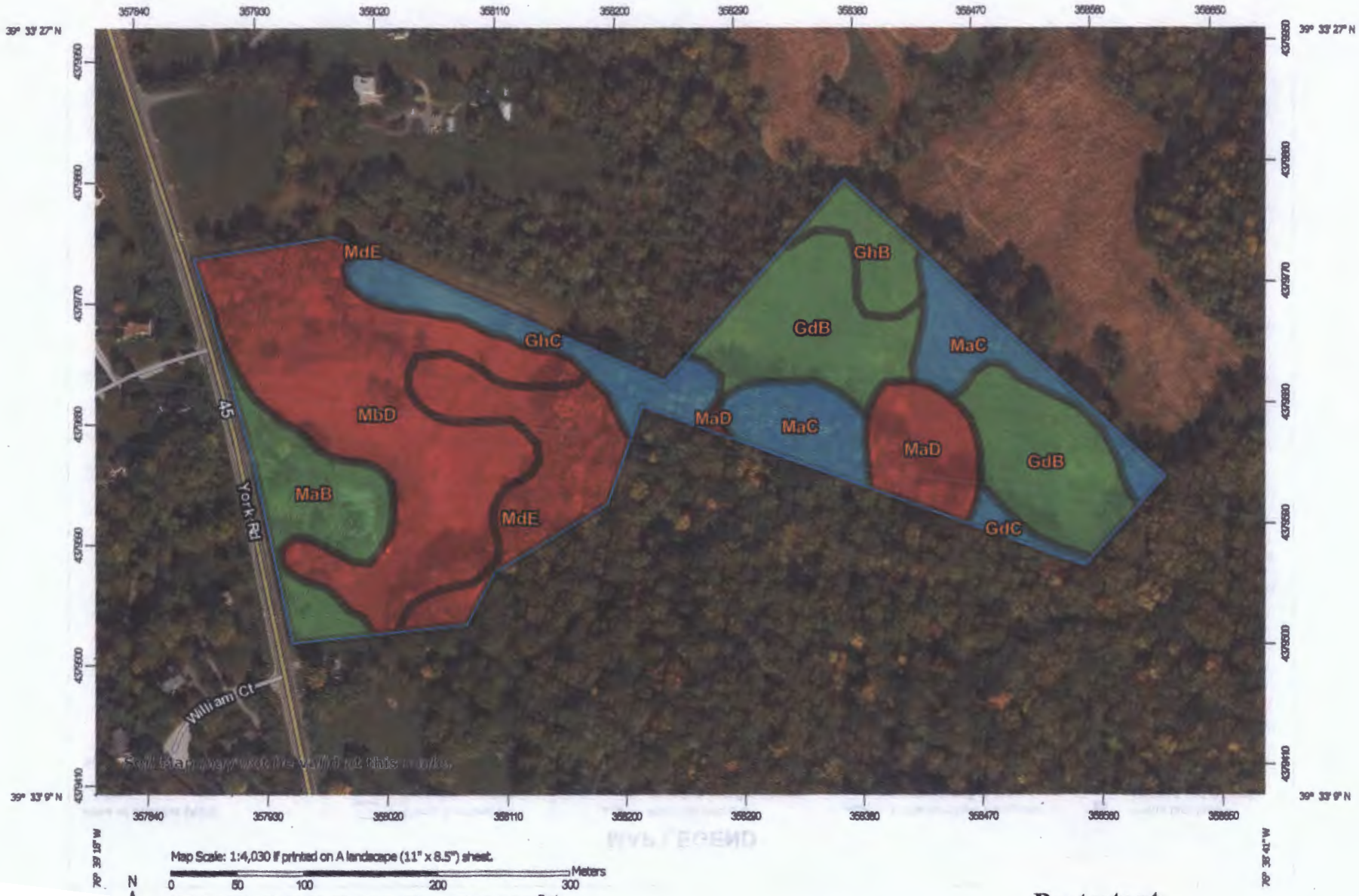
18-047X
Gerwin

Farmland Classification—Baltimore County, Maryland
(15637 York Road Sparks, MD)



Map Scale: 1:4,030 if printed on A landscape (11" x 8.5") sheet.

Meters 0 50 100 200 300

Feet 300 600 900

...erinates: WGS84 Edge tics: UTM Zone 18N WGS84

18-047-X

Protestant
CBA Exhibit

Green

MAP INFORMATION

Streams and Canals

Transportation

Rails

Interstate Highways

US Routes

Major Roads

Local Roads

Background

Aerial Photography

The soil surveys that comprise your AOI were mapped at 1:12,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 13, Sep 10, 2018

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Aug 23, 2013—Feb 22, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

.aspx

03.zip (this link will take you to the NRCS site for the field in ıap)

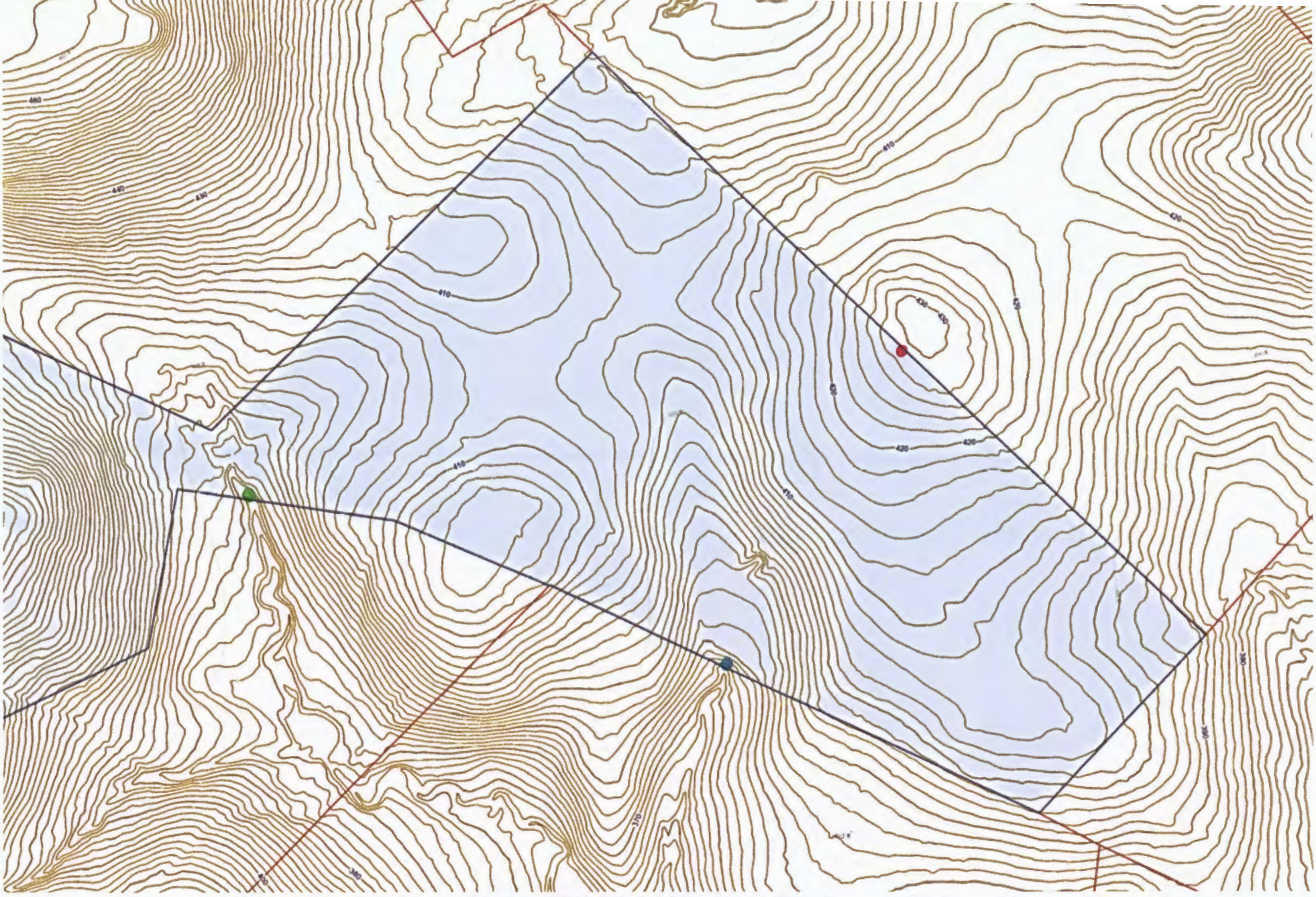
Name	Acres In Area of Interest	Percent of AOI
slopes	7.2	44.2%
t slopes	0.5	2.9%
cent slopes	2.5	15,3%
rcent slopes	0.2	1.3%
slopes	4.2	25.6%
slopes	1.7	10.7%
l)	**16.4**	**100%**

reas of Glenelg soils are in crops including corn, soybeans, small grains, hay, oak, white oak, hickory, and tulip poplar.
crops but mostly grain, hay and pasture. Native vegetation consists of mixed elopment and urban expansion.
es: Cropland, woodland, and urban development; Dominant ll grain, pasture and hay. Where wooded--black oak, chestnut oak, red shortleaf pine and Virginia pine.

gov/OSD_Docs/M/Manor.html

County

18-047-X



Light blue outlined area = proposed section of 15637 York Rd for solar facility Topo map from myneighbor[illegible].com

● Elevation at highest point of proposed property: 428'

● ● Elevation at lowest points on this portion of property: 378' and 372'

56' total difference in elevation in this area.

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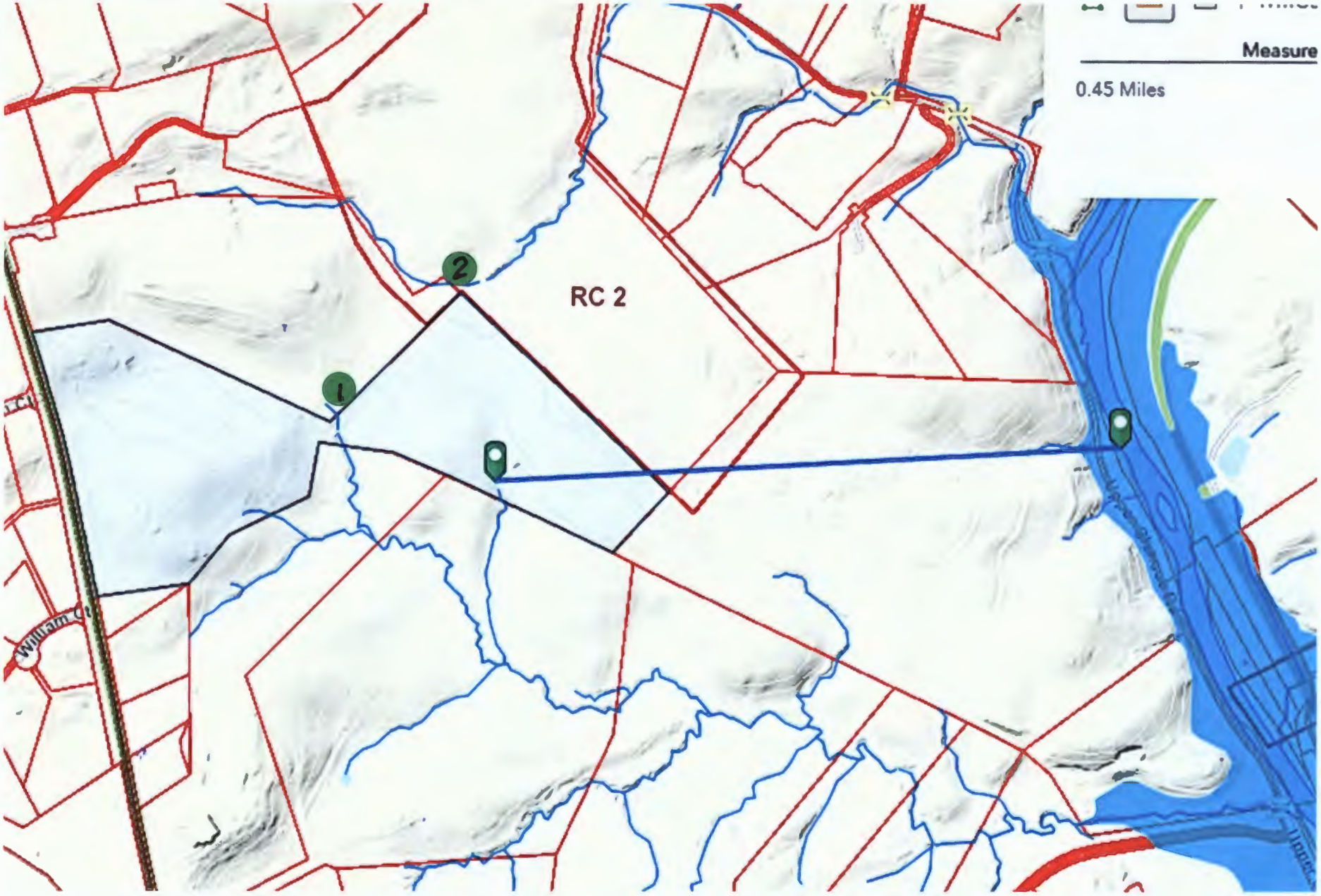
Protestant
CBA Exhibit
16

Gerner
10/24



[redacted]

[redacted]

Protestant
CBA Exhibit

Springhead (green grassy area) and 2nd hydro channel for runoff from slopes (on right). 'Bridge' is to left in image. The width of this section of property is less than 80' wide. Photo taken 1-11-2018.

Pond created by 'bridge' of stones (covered with soil) that were dumped years ago for roadway. Spring water and storm runoff backs up into this area since there is no visible pipe under road for outlet, water must seep through stones into channel on other side. This has changed the natural flow of water in this area. Photo taken 3-4-2018.

[redacted]

[redacted]

Crews rescue 3 people from school bus stuck in floodwaters in Sparks

WBALTV

Updated: 12:22 PM EDT Jul 24, 2018

Saliqa A. Khan

Digital Editor

SPARKS [redacted] German

[redacted]

18-047X
10/24

Protestant
CBA Exhibit
18

Top photo: Before. Normal Gunpowder River flow.

Bottom photo: During flooding 7/30/2018, Upper-, Lower- and Glencoe Roads (images Google Maps and WBAL-News)

Both streams that are either on or surround the proposed solar facility run into the Gunpowder River north of this intersect

Upper Glencoe Rd.

Runoff from impervious solar panels that is not absorbed into the ground would increase volume of water flowing over these

These roads are used regularly by personal vehicles, farm equipment, school buses, horse trailers, bicyclists (right to right in bottom photo).

A [illegible] school, [illegible] located 4 hour from the intersection of Upper Glencoe Rd and Glencoe Rd

~~15697 York Rd Watersheds~~
~~Watershed: Loch Raven Reservoir~~
~~River Basin: Gunpowder River~~
~~Subshed: Gunpowder Falls~~
~~Map: My Neighborhood~~

PHOTOS: 3/4/2018
4/21
8/20
10/22

Protestant
CBA Exhibit
19

Protestant
CBA Exhibit
8 C

View of proposed solar facility field from Upper Glencoe Rd (center, green field in rear).
Stream in foreground continues downstream from north point of Gerner property. This is an extension of a Class III Trout stream.
Shallow stream beds such as this are usually preferred brown trout, especially for laying their eggs.

[redacted] proposed solar site. Homes on [redacted] will be visually impacted by [redacted] at this location.

View from inside of 10004 Upper Glenside Rd, looking [redacted] proposed solar facility field.

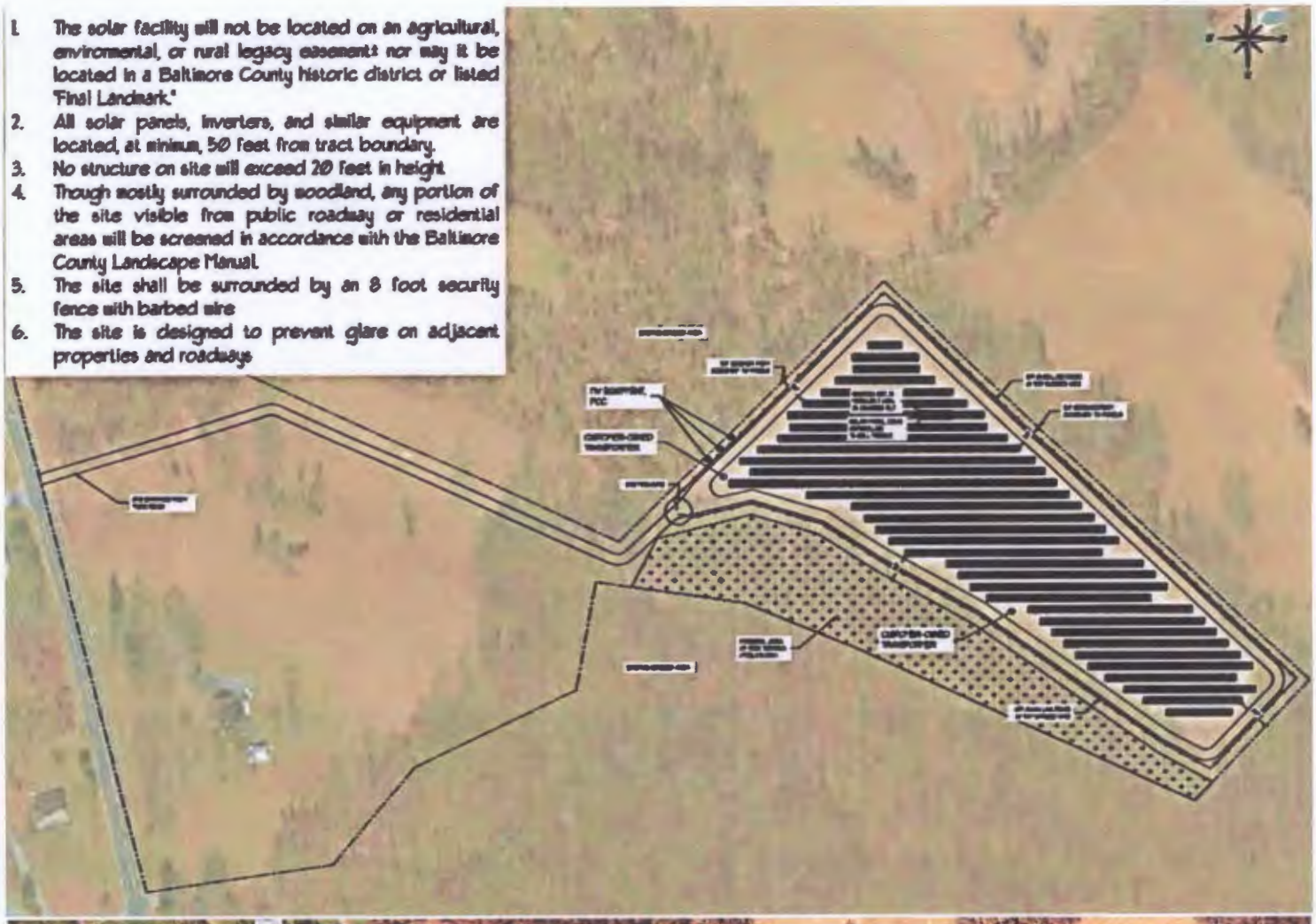

Protestant
CBA Exhibit
F
/18

Protestant
CBA Exhibit
G

[redacted]

PHOTO: 10/22/18

1. The solar facility will not be located on an agricultural, environmental, or rural legacy easement nor may it be located in a Baltimore County historic district or listed "Final Landmark."
2. All solar panels, inverters, and similar equipment are located, at minimum, 50 feet from tract boundary.
3. No structure on site will exceed 20 feet in height.
4. Though mostly surrounded by woodland, any portion of the site visible from public roadway or residential areas will be screened in accordance with the Baltimore County Landscape Manual.
5. The site shall be surrounded by an 8 foot security fence with barbed wire.
6. The site is designed to prevent glare on adjacent properties and roadways.



Protestant
CBA Exhibit
20

10/24

Gerner Property: Top, Site Plan 2017
Bottom: My Neighborhood.com

18-047-X

Gerner

Photo taken on S side of neighboring Rude property, facing SE. Line of trees on left: Rude; Trees on right: Gerner; Grassy area in

All photos taken 9/30/2018.

Protestant
CBA Exhibit
A

1.

Photo taken from Rude property, north of Gerner property, facing West towards York Rd (see electric lines whi
Grassy area is Rude's. Straight downhill line of trees, behind mown grass in center of photo, are Gerner's. Trees in foregrot

Protestant Rude's
CBA Exhibit

B

Photo taken on Rude property facing SE towards Gerner property. Grassy area in foreground up to trees is Rude's. Trees in Gerner home is on top of hill to right in photo.

According to site plan, proposed roadway to solar site would be between the 2 small copses of trees.

Protestant
CBA Exhibit
C

Wet channels of runoff from storm, 2 days prior. Photo facing SW towards Gerner home. Trees and part of grassy ar
are on Gerner property. Proposed roadway to solar site would be in this area.

Protestant
CBA Exhibit
D

Photo taken on Rude property facing SE; proposed solar site is visible through trees near top of photo in center, lighter green area. The e[illegible]e, from left to the right side, including area around single tree, is wet during rains from runoff.

Protestant
CBA Exhibit
E

Deep, muddy truck tracks on Rude's property, facing SE towards Gerner property where gravel road would be installed, behi
The soil in this area, including up to this tree, absorbed several days of rain and became unstable for drive

Protestant
CBA Exhibit
F

View from Rude's property facing S towards Gerner property. The proposed gravel roadway, which would be located behind single [redacted] removed. Clay in the soil in this area is prone to absorb and hold runoff from storms. [redacted]

Protestant
CBA Exhibit
6

7

Gerner property 'bridge' crossing over dammed-up spring-fed stream (which originates on Rude's property). Deep, muddy tr
narrow structure seen in photo.

Protestant
CBA Exhibit
H

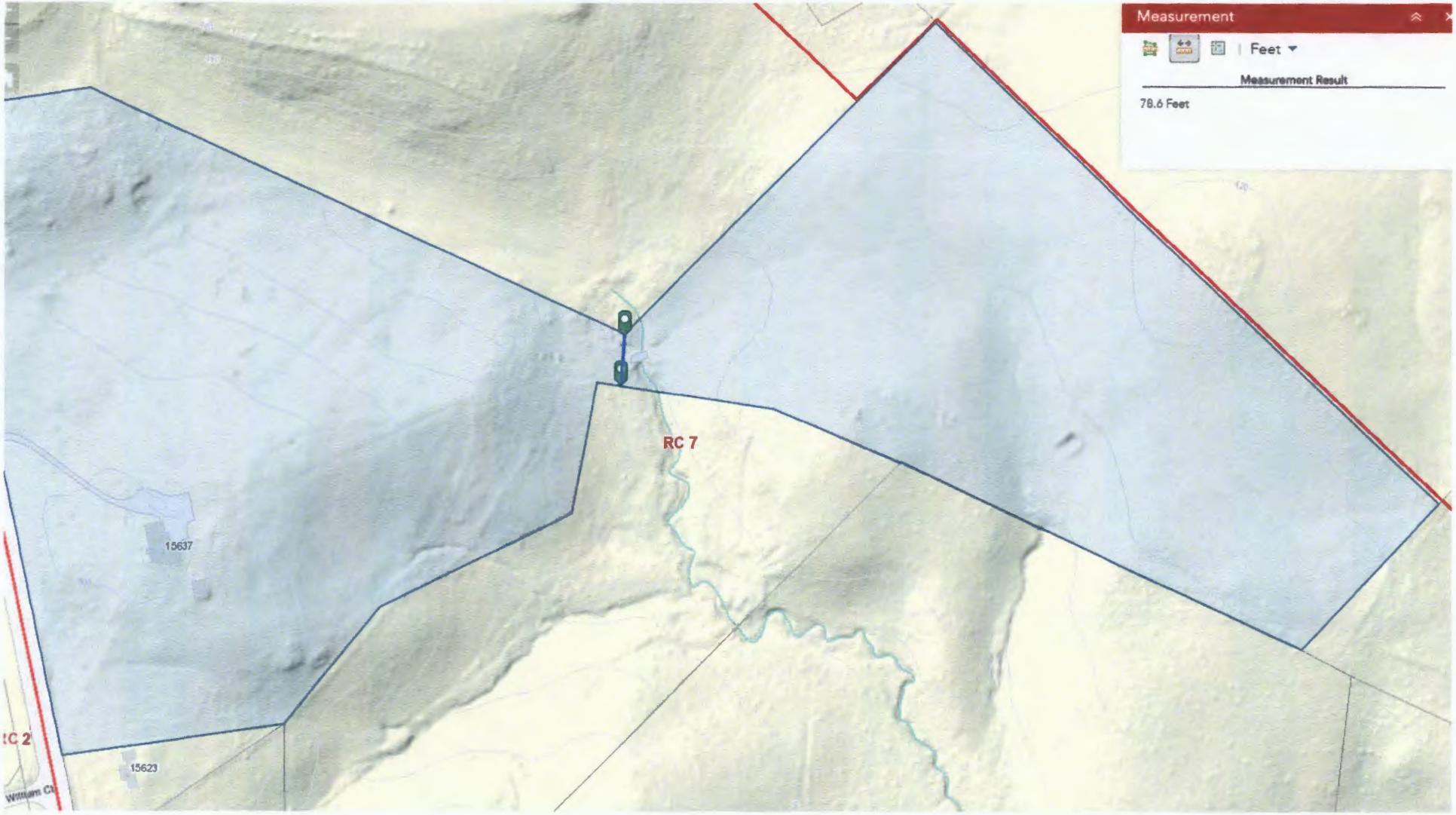
Date	Hi/Lo	Precip	Snow	Forecast	Avg. Hi / LO
Sat 9/1	84°/73°	0.03 in	0 in		85°/69°
Sun 9/2	89°/75°	0 in	0 in		85°/68°
Mon 9/3	94°/78°	0 in	0 in		85°/68°
Tue 9/4	96°/80°	0 in	0 in		84°/68°
Wed 9/5	96°/81°	0 in	0 in		84°/68°
Thu 9/6	97°/79°	0 in	0 in		84°/68°
Fri 9/7	88°/74°	0.51 in	0 in		84°/67°
Sat 9/8	76°/62°	0.57 in	0 in		83°/67°
Sun 9/9	64°/60°	1.90 in	0 in		83°/66°
Mon 9/10	72°/63°	0.04 in	0 in		83°/66°
Tue 9/11	75°/68°	0.09 in	0 in		82°/66°
Wed 9/12	86°/70°	0.01 in	0 in		82°/66°
Thu 9/13	79°/74°	0.04 in	0 in		82°/65°
Fri 9/14	77°/71°	0.07 in	0 in		81°/65°
Sat 9/15	85°/69°	0 in	0 in		81°/64°
Sun 9/16	82°/69°	0 in	0 in		80°/64°
Mon 9/17	80°/72°	1.37 in	0 in		80°/64°
Tue 9/18	82°/73°	2.99 in	0 in		80°/63°
Wed 9/19	86°/72°	0 in	0 in		79°/63°
Thu 9/20	82°/70°	0 in	0 in		79°/62°
Fri 9/21	77°/71°	0 in	0 in		78°/62°
Sat 9/22	78°/64°	0.03 in	0 in		78°/61°
Sun 9/23	64°/61°	0.98 in	0 in		77°/61°
Mon 9/24	69°/62°	0.12 in	0 in		77°/60°
Tue 9/25	80°/65°	0.28 in	0 in		77°/60°
Wed 9/26	89°/72°	0.55 in	0 in		76°/60°
Thu 9/27	73°/59°	0.64 in	0 in		76°/59°
Fri 9/28	76°/60°	0.25 in	0 in		75°/59°
Sat 9/29	80°/64°	0 in	0 in		75°/58°
Sun 9/30	76°/62°	0 in	0 in		74°/58°

September 2018 Weather and Rainfall in Sparks, MD

www.accuweather.com/en/us/verona-md/21152/september-weather/2120611?monyr=9/1/2018&view=table

Protestant
CBA Exhibit
1

9.



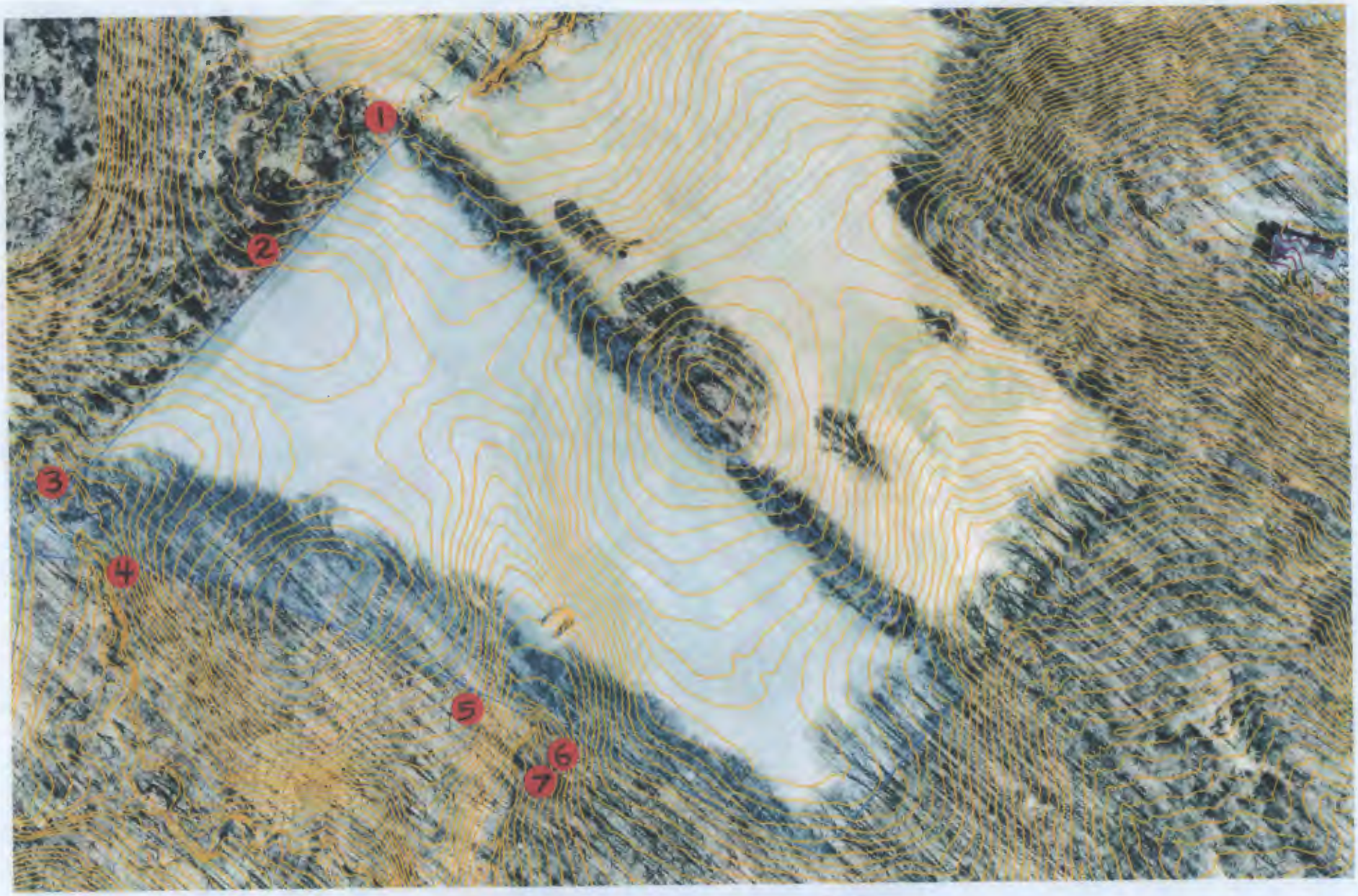
[redacted]

Map: Baltimore County.gov/myneighborhood/

18-047X

[redacted]

Protestant
CBA Exhibit
24



[redacted]

[redacted]

[redacted]

19-047X

10/24

Protestant
CBA Exhibit
22

Protestant
CBA Exhibit
A


Protestant
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B

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CBA Exhibit

C

Protestant
CBA Exhibit
d

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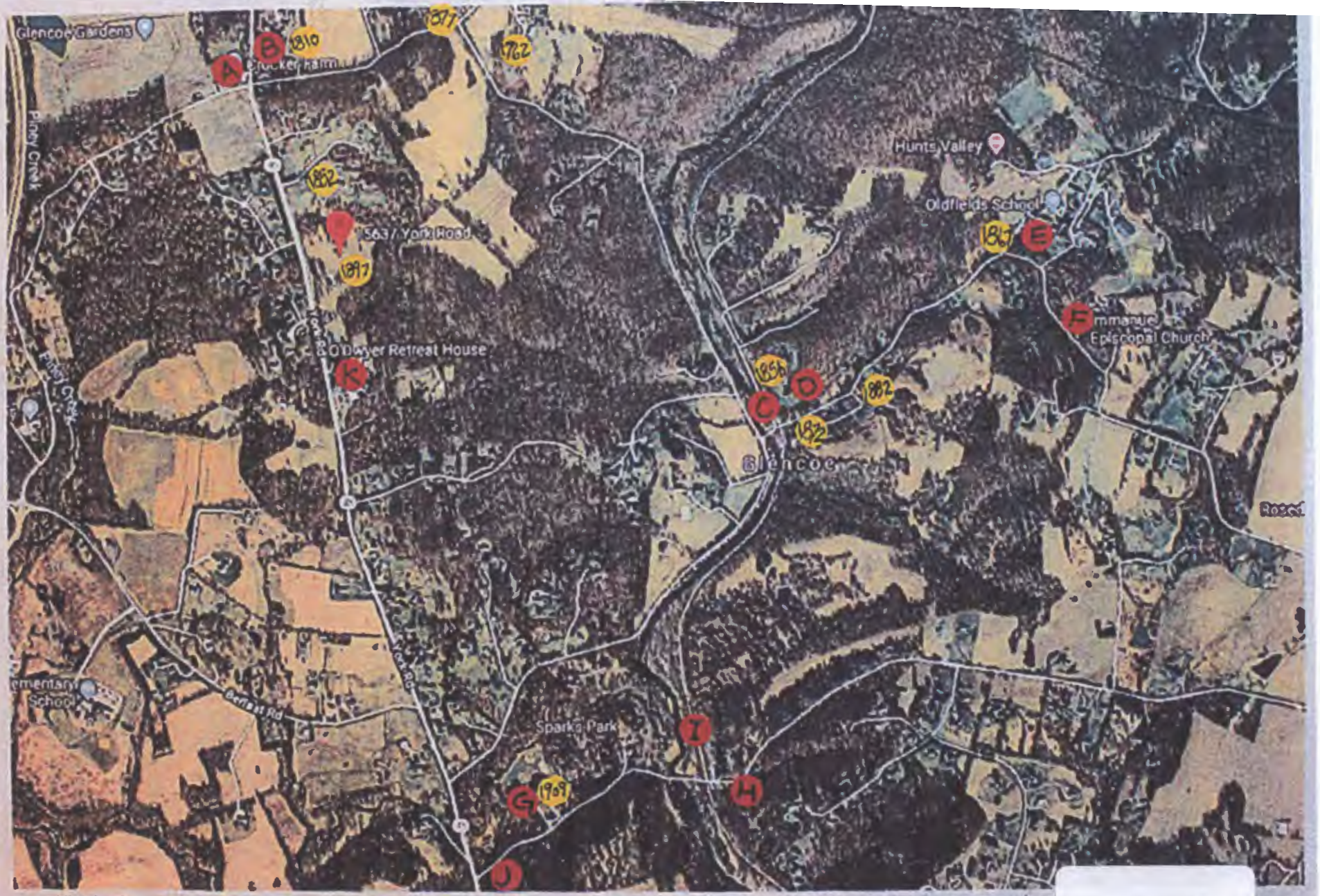
CBA Exhibit

Protestant
CBA Exhibit

9



Vicinity Surrounding Gerner Solar Site: Scenic views of rural farmlands, forests, the Gunpowder River and streams are prevalent
Baltimore County Landmarked (BA#) and historic buildings are (red dots):
Within this area is A. the historic Gorsuch Stone barn BA# 129, B. Gorsuch Tavern BA# 130, C. Glencoe RailRoad Station BA# 546, D.
Oldfields private girls' boarding school BA# 126, F. Immanuel Church, G. former Sparks Elementary School (now a county park), H. Spar
J. Rogney House BA# 431 and K. the O'Dwyer Catholic Retreat Center.

Protestant
CBA Exhibit
23

Dates of structures in yellow dots

[redacted]

Protestant
CBA Exhibit
24

[redacted]

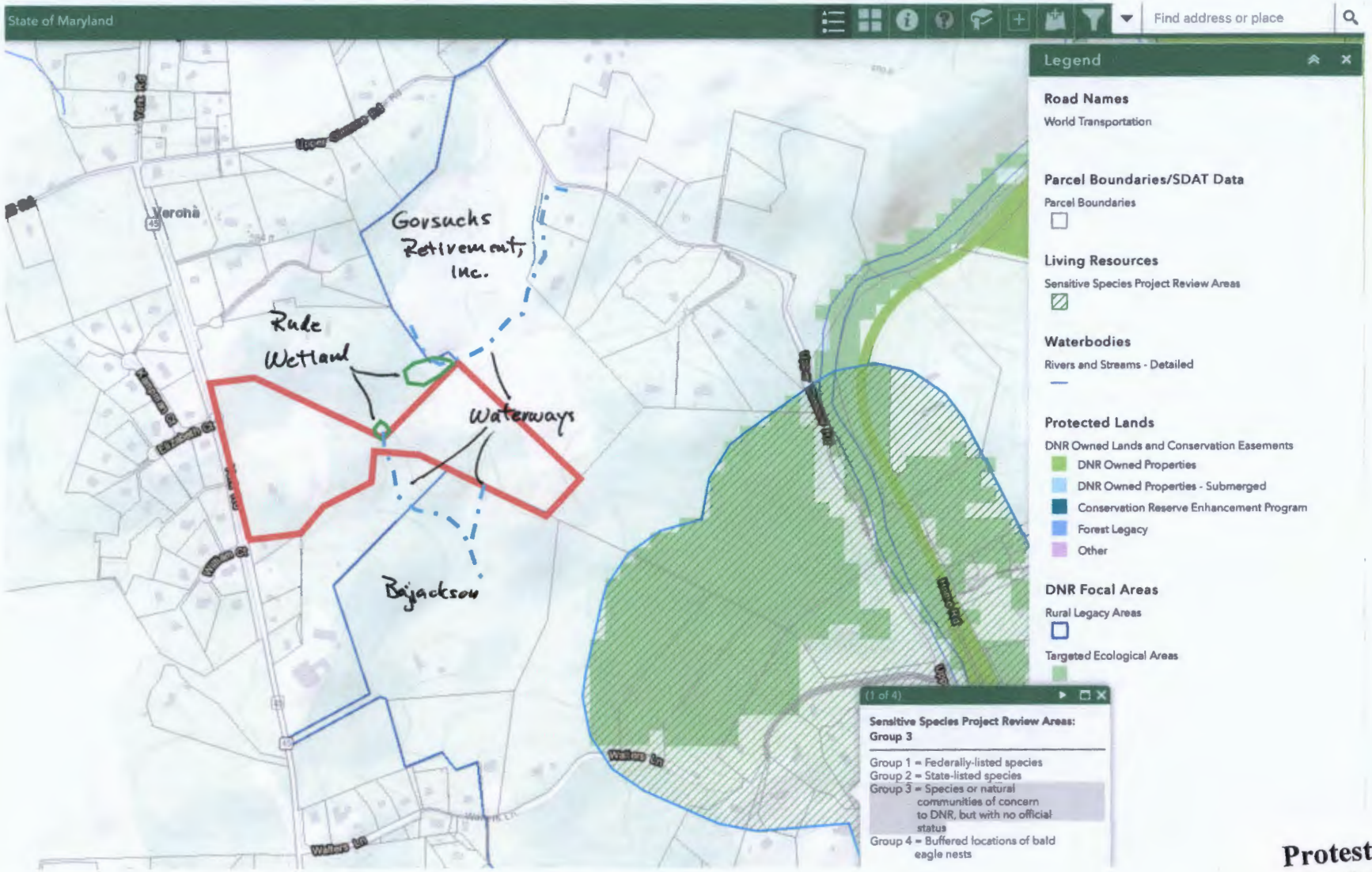
Protestant
CBA Exhibit
25

[redacted]

18-047X

10/24/18

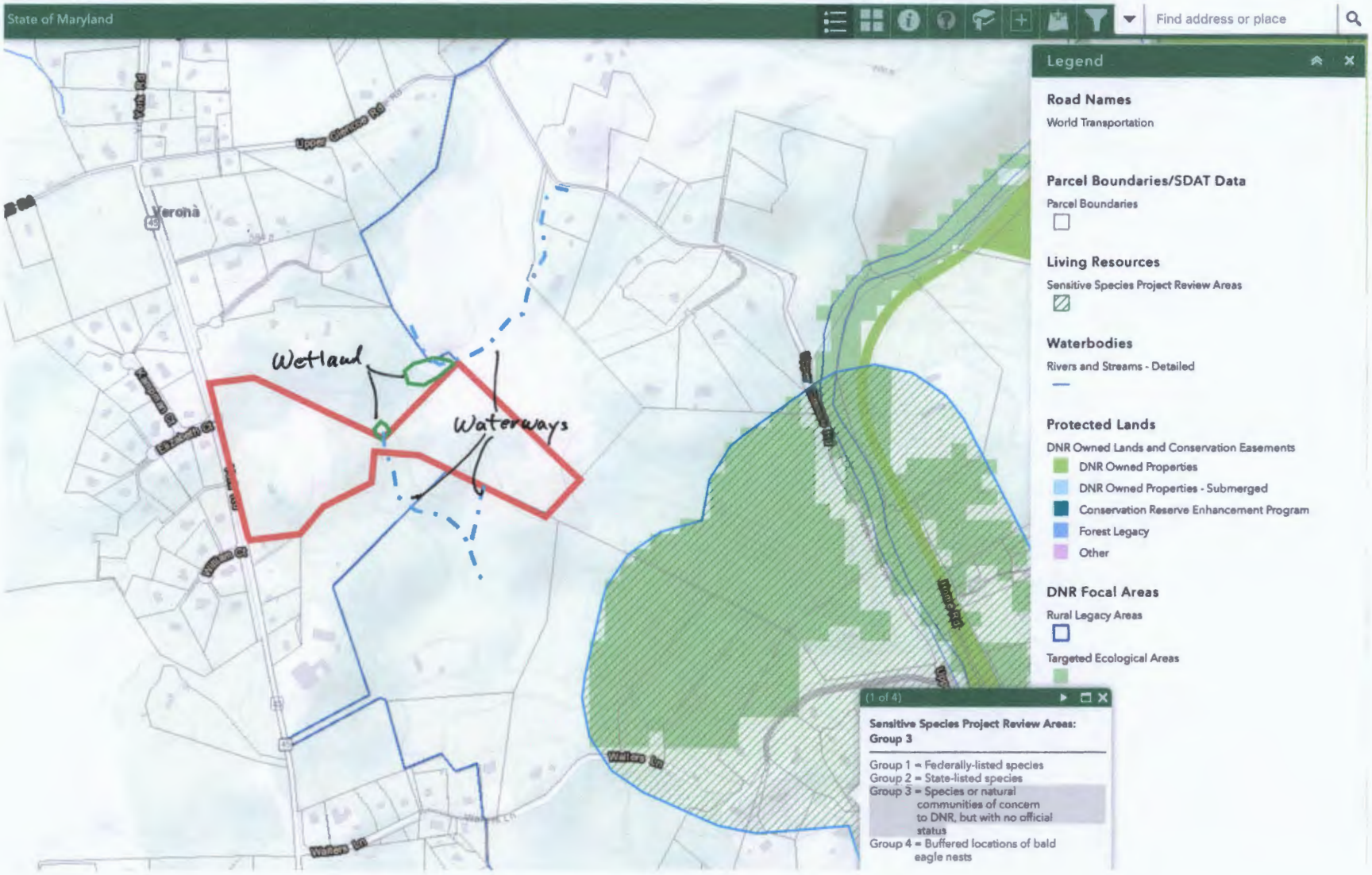
Protestant
CBA Exhibit
26



Protestant
CBA Exhibit

28a

Prot. Ex. 28A



18-047X

11/23

Protestant
CBA Exhibit
28

John C. Roemer IV

President, Roemer Ecological Services, Inc.

Education

B.A. Earth and Planetary Sciences, Johns Hopkins University, Baltimore, Maryland, 1983.

Certifications

US Army Corps of Engineers: Wetland Delineator (Certificate WDCP93MD0410020A)
Maryland Department of Natural Resources: Forestry Conservation Act Professional

Summary of Experience

John Roemer IV specializes professionally in environmental consulting, with emphasis on delineation, assessment, and creation of wetlands. Major projects involving tidal and nontidal wetlands focus on obtaining agency authorization for development that achieves his client's objectives and compensates for environmental impacts. He conducts rare plant surveys and crafts compromises that satisfy the agencies and landowners when such species are present.

Mr. Roemer field-delineates and accurately maps wetland boundaries, assesses the impacts of proposed development and conducts alternatives analyses, guides original plans through the regulatory process, and designs and implements wetland creation projects. His reports are crafted both to be accessible to the layperson and to satisfy precise technical requirements.

Mr. Roemer has established a reputation for credibility with developers, conservation groups, Federal, State, and local agencies, attorneys, and fellow professionals. His experience primarily is in Maryland, New Jersey, and Pennsylvania, where he has studied thousands of acres and carefully documented hundreds of miles of wetland boundary.

1991 - present President, Roemer Ecological Services, Inc., Parkton, Maryland.

Mr. Roemer consults as president of Roemer Ecological Services, Inc. He studies project site conditions, routinely identifying soils, vegetation, and wildlife habitat. He coordinates with allied professionals on major projects, ensuring that environmental regulations are anticipated and considered during all planning stages. Negotiating with regulatory agencies for permits for unavoidable impacts, Mr. Roemer thoroughly evaluates alternatives and proposed mitigation and wetland creation concepts, which are adopted as permit conditions and implemented under his oversight. He has authored or has been primary contributor to numerous contract reports and has responded as an expert to legal interrogatories and in depositions. He teaches professionals and high school students wetland delineation and plant identification. Mr. Roemer also investigates land for the presence of threatened and endangered plants.

1986 - 1991 Staff Ecologist, Schmid & Company, Inc., Media, Pennsylvania.

Mr. Roemer managed projects and participated in report preparation and review, including data acquisition, data analysis, and map drafting. He investigated project site conditions as field supervisor, and routinely identified soils, vegetation, and wildlife habitat. He conferred with clients, Federal and state agencies, coordinated laboratory analyses, and testified as an expert witness before municipal boards.

Protestant
CBA Exhibit
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18-017X 11/28

1985 - 1986 Program Supervisor, Martel Laboratory Services, Inc., Baltimore, Maryland.

Mr. Roemer coordinated an oil analysis program for jet and propeller aircraft engines. He reviewed all analytical results and evaluation procedures and marketed the laboratory services nationally. He evaluated samples for chemical parameters using a variety of analytical instruments.

1983 - 1985 Laboratory Supervisor, Goucher College, Towson, Maryland.

Mr. Roemer prepared over one dozen labs each semester for the Chemistry/Physics Department. He maintained a safe laboratory environment and was the liaison between the Department and area businesses and chemical companies.

Representative project experience

The US Army Corps of Engineers, requiring a Corps-certified Wetland Delineator, asked Mr. Roemer to expeditiously identify and document jurisdictional wetlands on 400 acres of a US Army proving ground in Frederick, Maryland. Carefully evaluating wetland characteristics in the field after studying aerial photography spanning four decades, he delineated a complicated wetland boundary altered by nearly 60 years of aggressive landscape manipulation. An independent Corps reviewer verified the accuracy of the wetland boundary.

The New York office of the Trust for Public Land, with the Ocean County [NJ] Chapter of the Izaak Walton League, bought private land in the Reedy Creek area of New Jersey's Barnegat Bay for conveyance of ownership to the US Fish & Wildlife Service. Mr. Roemer provided tidal and nontidal wetland regulatory guidance as well as a wetland delineation and report to assist these groups in negotiation for several tracts. As informed buyers, they acquired the land at a fair price and have transferred it to the government.

Advocates for a proposed assisted care facility in Maryland's Chesapeake Bay Critical Area sought Growth Allocation to alter the existing land use classification on a 22-acre site. Mr. Roemer delineated tidal and nontidal wetlands on the tract and investigated how decades-old disturbance has influenced current vegetation and soils. His documentation enabled this project to begin Baltimore County's lengthy and competitive development review process.

Subcontracted to perform wetland consulting services for the US Department of Defense through a large telecommunications firm, Mr. Roemer walked most of the 80-mile fiber optic cable route from a Naval Research facility near Harrisburg, Pennsylvania to Frederick, Maryland. The route included rural country roads, railroads, and densely-populated urban areas. Mr. Roemer obtained permits from the US Army Corps of Engineers, the Pennsylvania Department of Environmental Protection, and the Maryland Department of the Environment for cable installation.

11/20/18 18-047-x

Protestant
CBA Exhibit
29

11/28/18 18-047-Y

MANUFACTURED BY NEW LEXIN
FIRE EQUIPMENT CO. INC.

DATE: March 28,1998
INCOMPLETE VEHICLE
MANUFACTURED BY Internation

DATE: 26-Jan-98
G.V.W.R. 35,000 lbs
GROSS AXLE WEIGHT RATING
FRONT AXLE 12,000 lbs
WITH 11R22.5
ON 22.5x8.25
AT 105 PSI COLD SIN
1ST INT. AXLE N/A
WITH N/A
ON N/A
AT N/A
2ND INT. AXLE COL

Protestant
CBA Exhibit
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18-047x 11/20/18

Case No.: 2018-0047-X

Exhibit Sheet

SEN 12-21-17

	Petitioner/Developer	Protestants
No. 1	Site plan	Map showing distance b/w two closest points of prop.
No. 2	site plan - highlighted + redlined	Topo map w/ 3 photos
No. 3	Aerial image w/ site outlines	Photos - wildlife
No. 4	"Locality" exhibit	
No. 5	Aerial image showing tree buffer	
No. 6	Powerpoint presentation	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

Surrounding Residences

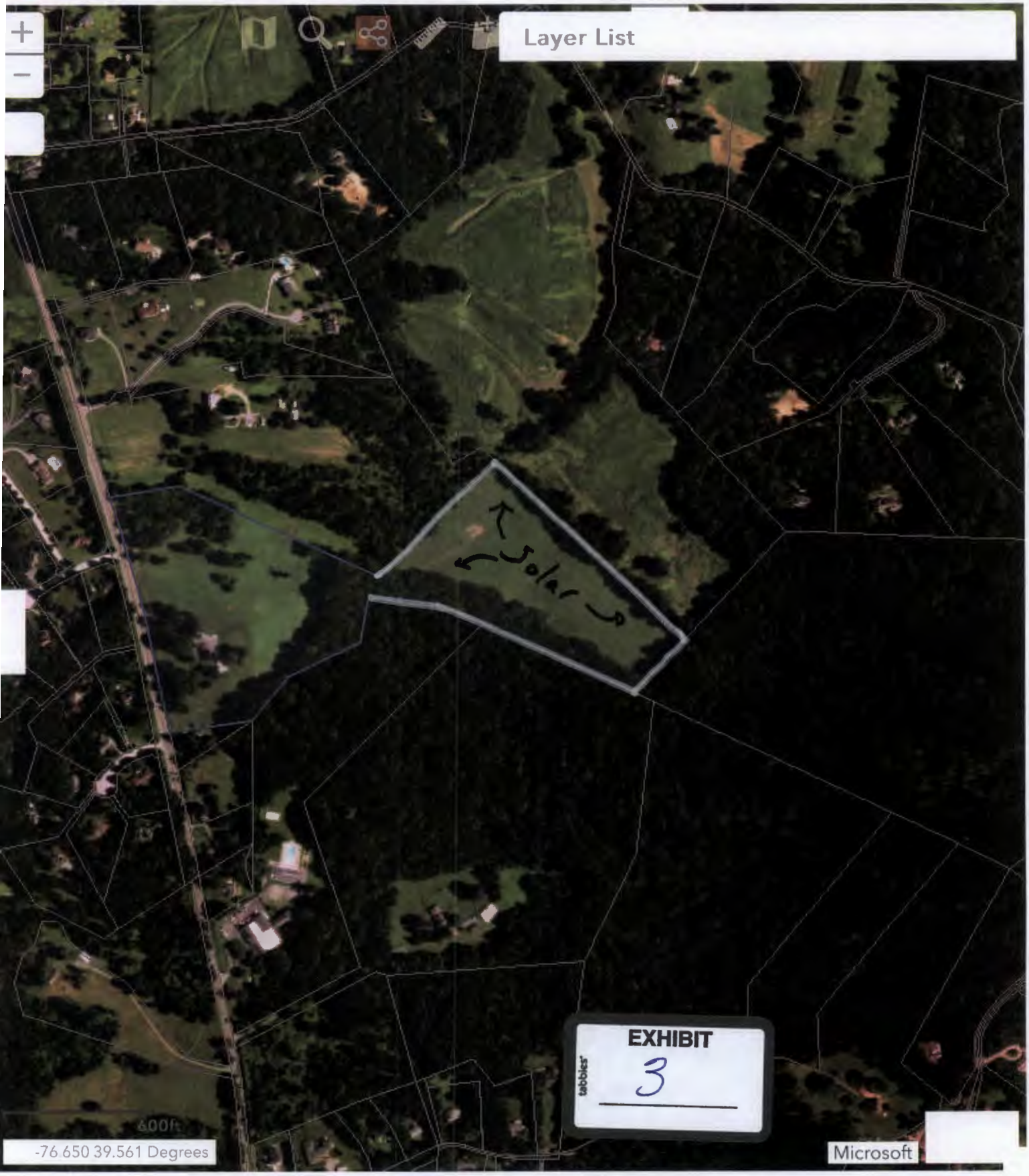
Baltimore County - My Neighborhood

#3

Surrounding Residences

3

Baltimore County - My Neighborhood



Locality

4

Baltimore County - My Neighborhood

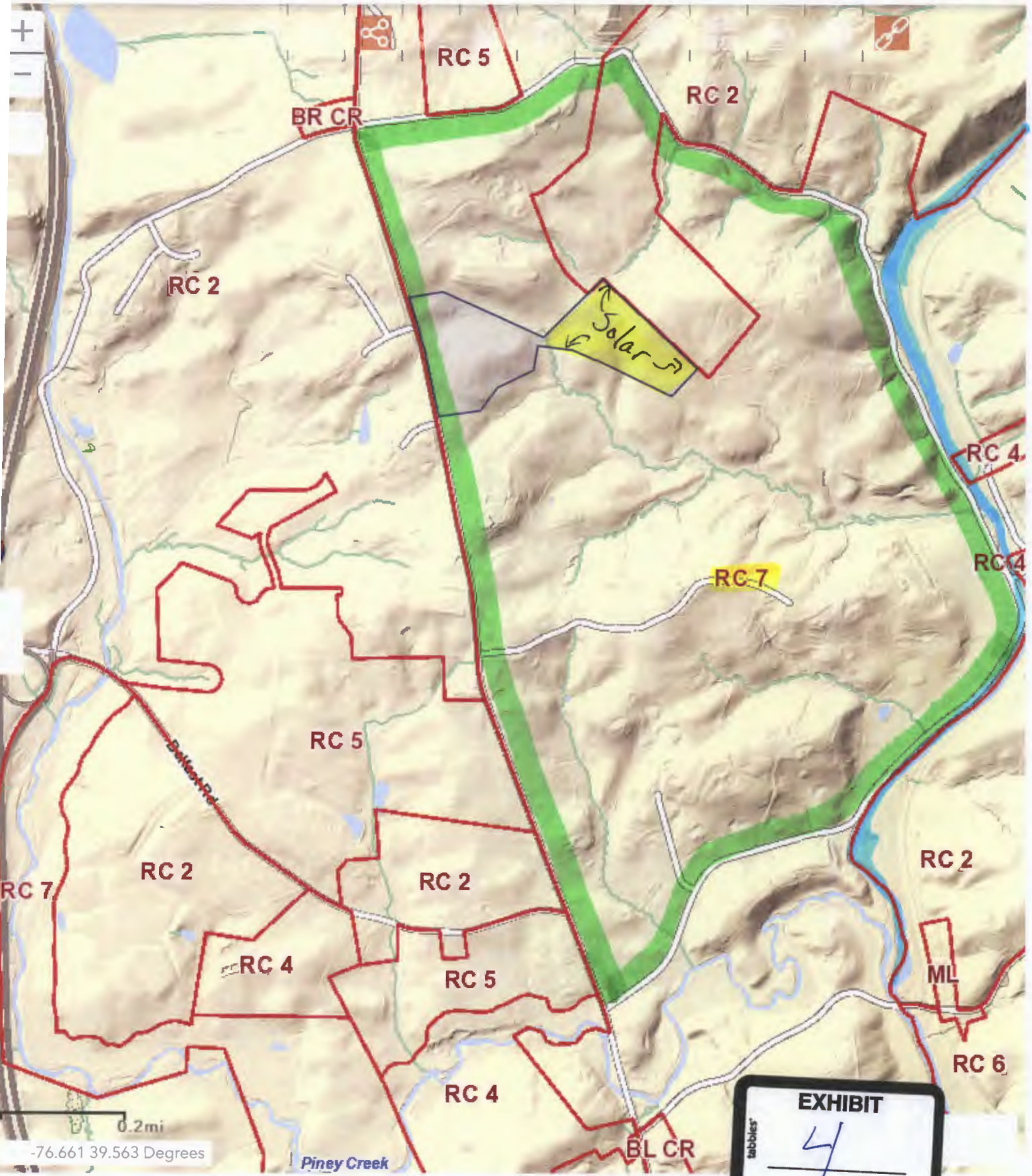
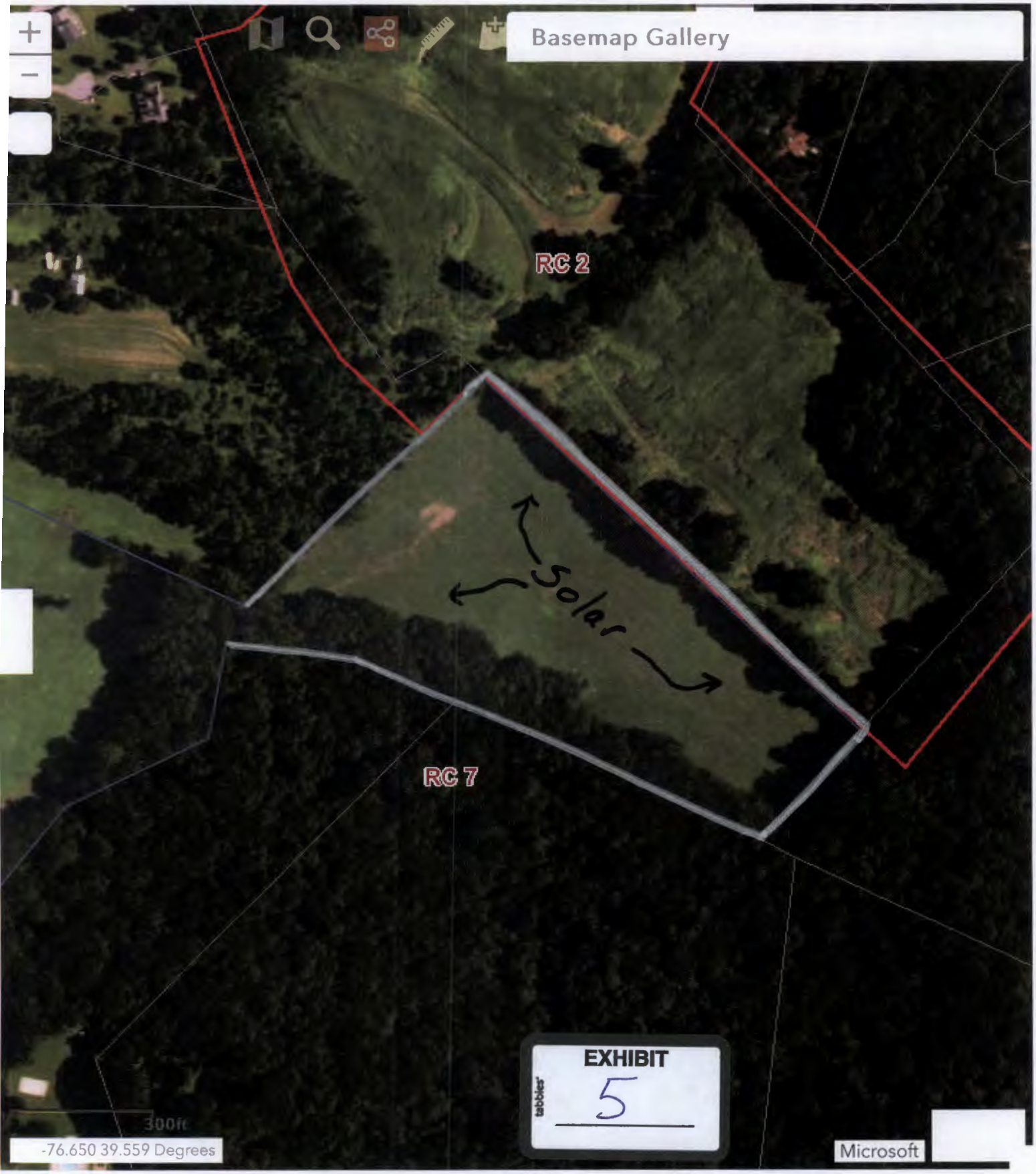


EXHIBIT 4

Tree Buffer

5

Baltimore County - My Neighborhood



CALVERT ENERGY LLC

ESA Sparks Glenco, LLC Solar Project

November 8, 2017

#6

CALVERT ENERGY LLC

- Requested special exception permit for the construction of a solar project per County regulations for the property
  - Baltimore County zoning ordinance allows for solar projects in R.C. 7 zoning with special exception permit (Bill No. 37-17)
- 1.85 MWac solar project
  - Low, Moderate income category in MD community solar program
    - 30% subscribers low and moderate income
      - 10% low income
  - Enough power for approximately 270 homes

CALVERT ENERGY LLC

CALVERT ENERGY LLC

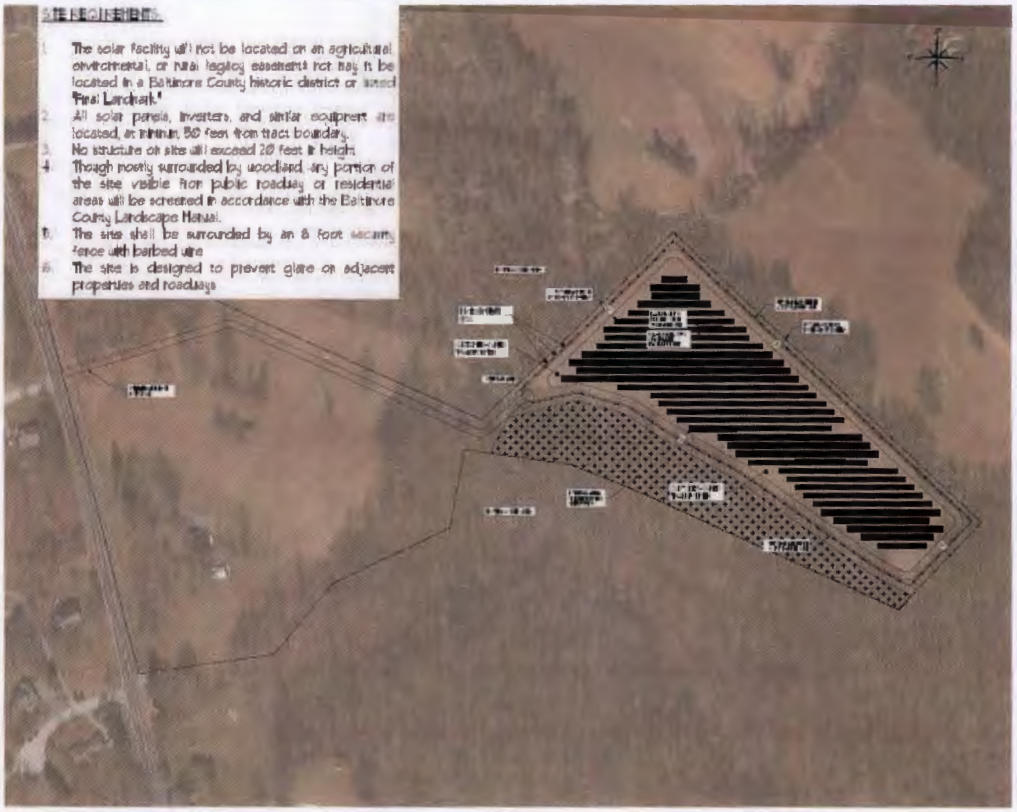
- Over 30 years of project development, power plant operations and finance experience
- Extensive solar power experience
  - Developed/managed development of over 45 MW of solar PV projects
  - Developing 75 MW of solar projects in MD, NC, SC and IL
- Broad energy/electricity background
  - Power plant operations – U.S. Navy nuclear power
  - Solar, gas turbine, coal, hydro and nuclear plant development
  - Electricity wholesale markets
  - Transmission & distribution construction
- Veteran owned business

esa
ESA Renewables, LLC

- Over 30 years of experience in solar project development, construction, management and long term operation of solar systems
- Global development and construction of over 500 solar and thermal installations; ranging from large scale solar farms to commercial rooftop installations
- Development, construction, and operation of 140MW, and approximately 30 independent projects, in MD, FL, SC and North Carolina

Site plan

CALVERT ENERGY LLC

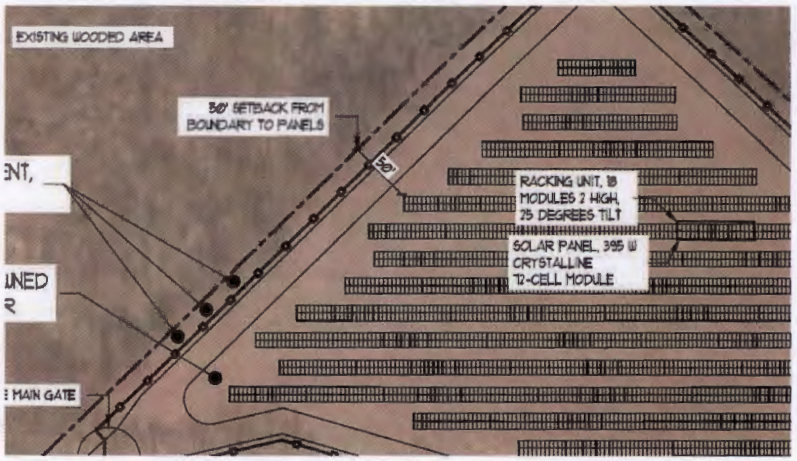


Site aerial

CALVERT ENERGY LLC

4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

- The site plan includes a 50' setback



1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

- The property does not have any agricultural easements or forest conservation easements and is not located in Baltimore Historic district or designated landmark

6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

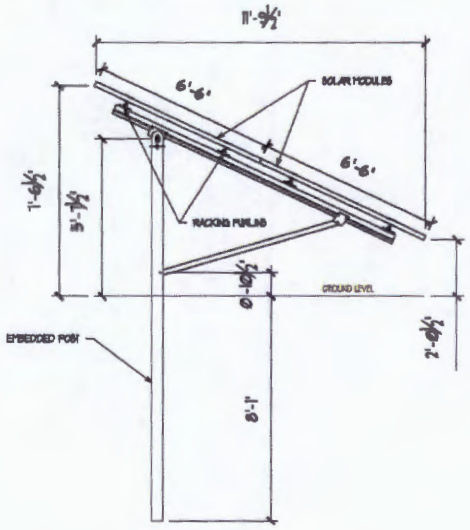
- Existing trees provide buffer to adjacent residences and roads so landscaping buffer is not required/provided

Bill 37-17 Solar Project Requirements (cont'd)
CALVERT ENERGY LLC

5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING BUFFER AND THE SOLAR FACILITY.

- The panel height is 7'6.5" and the security fence is 8' tall – these are the tallest structures



§ 502.1. Conditions determining granting of special exception.

CALVERT ENERGY LLC

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. **[Bill No. 74-2000]**

Bill 37-17 Solar Project Requirements (cont'd)

CALVERT ENERGY LLC

8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

- Existing trees provide buffer to minimize/eliminate glare to adjacent properties and roads
- Solar panels face away from the nearest homes and parallel to York Road
- Distance minimizes glare
  - 1,400' to York Road
  - 1,150' to nearest adjacent residence
- Glare analysis performed to York Road and nearest residences using Solar Glare Hazard Analysis Tool (used by FAA)
  - Glare levels are not significant (without any tree buffer)

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

- Solar facilities have no affect on the valuation of surrounding property
  - Property appraisal report has been performed indicating no impact to adjacent home values
    - Matched pair analysis for projects in MD, NC and TX
  - Existing tree buffer minimizes visual impact
  - No discernible sound off property
  - No lights on facility
  - No odor generated from facility
  - No increase in traffic during operation

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

A. Be detrimental to the health, safety or general welfare of the locality involved;

- Solar projects are safe for the community
  - Low voltage
    - Array at much lower voltages than substations and power lines
    - System output voltage same as existing distribution line
  - All wiring and electrical equipment are covered/sealed
    - Oils used in electrical equipment are mineral based
  - Design and construction meets all local and state electrical requirements, as well as national electric codes
  - All equipment certified to appropriate UL Standards
  - Facility fenced with locked gate to prevent unauthorized entry
  - Solar panels active components are stable and not soluble in water
    - EPA has determined that solar panels are non-hazardous and may be disposed in municipal waste landfills
  - Within 6 months of end of operation – components of the solar facility removed, site fertilized and reseeded with native grass

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

- Solar facility is unmanned and does not require any water or sewer on site
- Facility does not increase traffic during operation

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

- Solar facility does not cause any shading on adjacent properties or prevent air flow

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

B. Tend to create congestion in roads, streets or alleys therein;

- Solar facility is unmanned during operation with 2-3 scheduled maintenance periods lasting 2-3 days each involving 1-2 pickup trucks
- Construction period lasts 2-3 months – peak personnel for 30-45 days up to 20 people

C. Create a potential hazard from fire, panic or other danger;

- Electrical equipment is UL certified
- Transformers/inverters contain mineral based oils

D. Tend to overcrowd land and cause undue concentration of population;

- Solar facility is not manned – there is no office space or buildings on site

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

- Piles are direct driven into ground to minimize impact on soil permeability
- Grasses permitted to grow naturally during operation of the facility
- No trees removed on site
- Access road will be gravel
- <10% impact on permeability of existing land
- Project will meet state and local stormwater regulations
- Upon decommissioning land is returned to original condition for future use

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

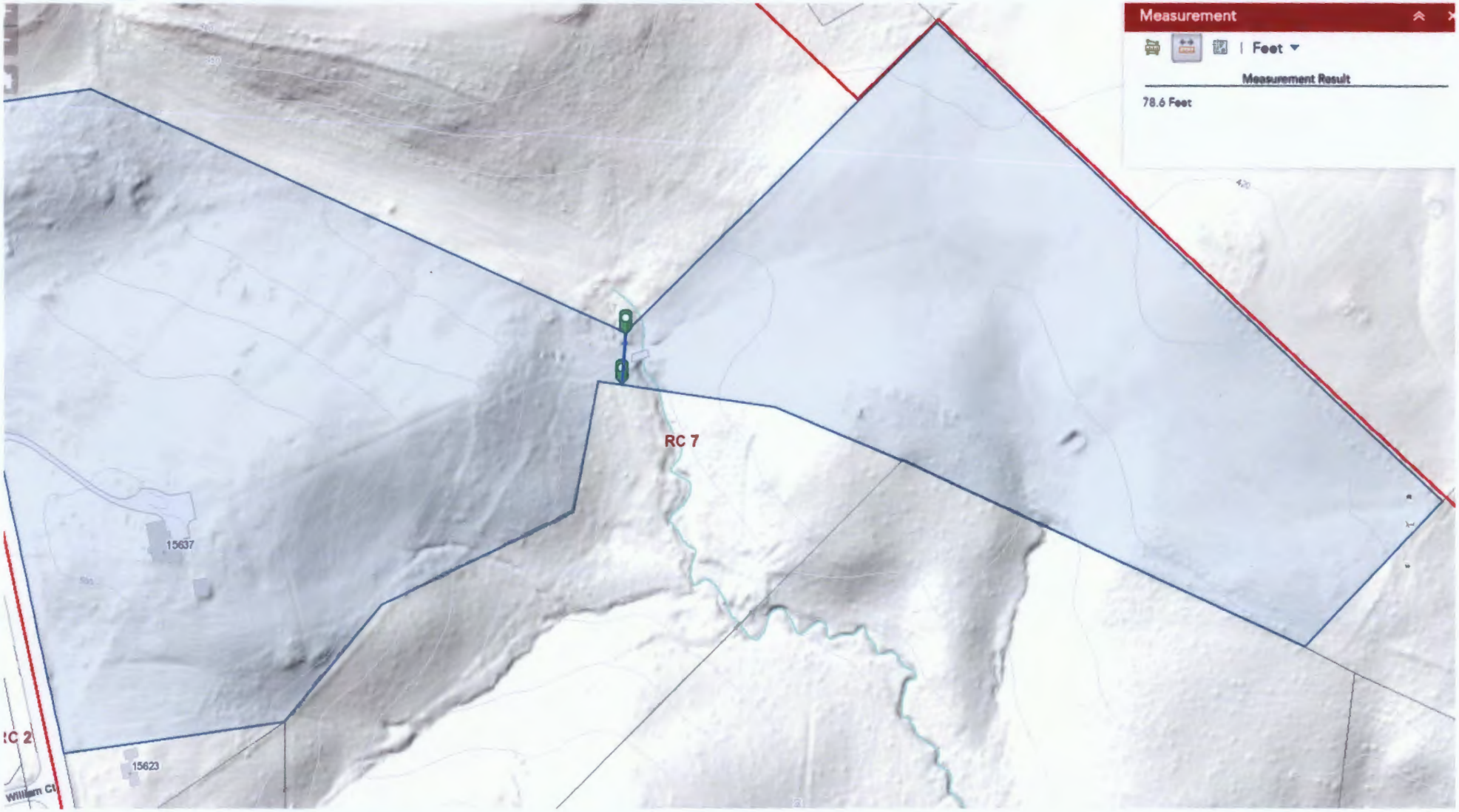
- Solar facility is consistent with the rural nature of property
- No lights on facility
- No discernible noise off the property from facility
- Facility is buffered by existing trees which minimizes/eliminates ability to see the facility
- Solar facility generates renewable energy with no emissions and without using any water
- Solar facility is not manned and therefore does not increase local population or place any burden on existing infrastructure
- Installation and construction of facility meets all County and State requirements to mitigate any impact on existing natural resources
- No major civil work conducted – piles are direct driven into ground – minimize impact on soil

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. **[Bill No. 74-2000]**

- No trees removed from site for installation
- No wetlands on site
- Possible intermittent stream – will be determined by wetlands delineation
  - Proper buffer maintained from stream
- No floodplain on site
- Driven piles 8'1" into ground – no impact on aquifer
- Facility does not consume water or discharge any water
- Review of publicly available information and consultation with county agencies indicate no impact on archaeological, cultural or historical resources or threatened and endangered species or habitat



15637 York Rd, Gerner property
Map: Baltimore County.gov/myneighborhood/

Distance between the two closest points of property (next to stream): 78.6'

PROTESTANT'S
EXHIBIT NO. 1

Gerner Property Stream empties into the Gunpowder Falls.

The direction of the hillside slopes surrounding the proposed site would create increased runoff into this Class III Trout stream.

Topo map of proposed Gerner solar facility (blue outline of property).

Direction of slopes (map by myneighborhood); note stream bed at narrowest point of property.

Points where accompanying photos were taken, 12/7/2017 by Bill Mayo and Lynne Jones.

PROTESTANT'S EXHIBIT NO. 6

wrought iron fencing. Deer can jump 10-12' over a fence if necessary. Images from google.com search

Part 3

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

July 29, 2019

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204

H. Barnes Mowell, Esquire
H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111

Peter M. Zimmerman, Esquire
Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
Towson, Maryland 21204

RE: *In the Matter of: Robert K. Gerner – Legal Owner*
ESA Sparks Glenco, LLC – Lessee
Case No.: 18-047-X

Dear Counsel:

Enclosed please find a copy of the final Opinion and Order issued this date by the Board of Appeals of Baltimore County in the above subject matter.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*, **WITH A PHOTOCOPY PROVIDED TO THIS OFFICE CONCURRENT WITH FILING IN CIRCUIT COURT. Please note that all Petitions for Judicial Review filed from this decision should be noted under the same civil action number.** If no such petition is filed within 30 days from the date of the enclosed Order, the subject file will be closed.

Very truly yours,

Sunny Cannington

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Multiple Original Cover Letters

c: See Attached Distribution List

Robert K. Gerner
Brian Quinlan/ESA Sparks Glenco, LLC
William Mayo
Gorsuch's Retirement, Inc.
Sparks Glencoe Community Planning Council
Lynne Jones
Edd J. Matczuk
Al Rude
Nedda Pray
Rob Webster
Lawrence M. Stahl, Managing Administrative Law Judge
C. Pete Gutwald, Director/Department of Planning
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
Michael E. Field, County Attorney/Office of Law

IN THE MATTER OF ROBERT GERNER, LEGAL OWNER AND ESA SPARKS GLENCO, LLC - LESSEE AND PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 15637 YORK ROAD 8TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 18-047-X

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

OPINION

This case comes to the Board of Appeals from a final Opinion and Order dated December 21, 2017, issued by Administrative Law Judge John E. Beverungen (the "ALJ") in which the ALJ granted the Petition for Special Exception to allow a nine-acre ± solar facility on a portion of land in an RC-7 zone. The ALJ also imposed several conditions to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties.

On January 12, 2018, Petitioner's counsel sent a letter to the ALJ requesting what Petitioner considered a "clarification" of condition No. 4 ("No trees shall be removed from the site in connection with the construction and/or operation of the solar facility") requesting that Petitioner be permitted to remove trees necessary for the access road to the proposed solar field. Four days later, the ALJ signed off on the January 12, 2018 letter with the proposed language. There is nothing in the record demonstrating that Protestants were on notice of the clarification request or that the request was granted. Protestants appealed the ALJ final Opinion and Order.

The hearing in front of the Board occurred over four days, August 21-22, October 24, 2018, and November 28, 2018. Timothy M. Kotroco, Esquire appeared on behalf of Petitioner. Petitioner elicited testimony from the following witnesses: (1) Brian Quinlan, the President and Chief Executive Officer of Calvert Energy, LLC, as an expert in solar energy and the installation

of solar panels on solar farms, but also called on behalf of the Petitioner as a fact witness; (2) James Deriu, a Vice President of KCI Technologies, as an expert on environmental science, and stream and wetlands delineations; (3) Mitchell Kellman, an expert in planning and zoning, including specifically the Baltimore County zoning process; and (4) Bruce Doak, an expert in land surveying, planning, and zoning.

Protestants Sparks Glencoe Community Planning Council, William Mayo, and Gorsuch Retirement, Inc., through their counsel, H. Barnes Mowell, Esquire, presented the following witnesses: (1) John Altmeyer, who was called to address stormwater management, impervious surface, and topographical issues; (2) Lynne Jones, President of the Sparks Glencoe Community Council; (3) Edward Matczuk, a nearby neighbor to the subject property; (4) John Roemer, IV, President of Roemer Ecological Services, Inc., who was received as an expert in wetland delineations and the identification of bog turtle habitats; and (5) William Mayo, President of Gorsuch Retirement, Inc. (a family-owned business) that owns property adjacent to the subject property. Peter M. Zimmerman, Esquire, participated on behalf of the Office of People's Counsel for Baltimore County.

Factual Background

Petitioner seeks special exception approval of a solar farm at 15637 York Road. The subject property, zoned RC-7, is 30.27 acres[1], but only nine ± acres are intended for the solar panel array. The subject property is located along a section of York Road designated as a scenic route. Throughout the hearing, the property has been described as having a "bowtie" appearance, with the one part of the bow adjacent to York Road and the other part, approximately 1,100 feet from York Road, proposed to contain the solar farm. In between, the property narrows to form the

[1] The property has also been identified as consisting of 30.723 acres in the ALJ Opinion and Order. The discrepancy is not material to the resolution of this case.

"pinch" or "knot" of the bowtie.[2] At the bowtie knot, there presently is a road of sorts connecting the eastern and western halves.

The Maryland Community Solar Energy Generating System Program ("Program"), as is relevant, permits a person owning or operating a qualifying solar generating system ("subscriber organization") to contract with a third party for the third party to finance, build, own, or operate a community solar energy generating system. Md. Public Util. §7-306.2. In this case, Robert Gerner owns the property at 15637 York Road and has contracted with ESA Sparks Glenco, LLC, to finance, build, and operate a solar generating system as part of this Program.

Following the creation of the Program, Baltimore County enacted legislation to regulate the land use aspects of these community solar generating system facilities. The Council's stated purpose for the regulation sets forth (as identified in BCZR §4F-101(a)):

> Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources.

As implied above, BCZR §4F-102(a) requires petitioner to seek approval via special exception prior to construction and operation of a solar facility under the Program within, as relevant, the RC-7 zone. Further, BCZR §4F-102(a) restricts these facilities by capping power generation capacity to two megawatts and preventing proliferation of these facilities by limiting each council district to no more than 10 facilities. BCZR §4F-102(b). Petitioner proposes a solar farm that will generate 1.87 megawatts of power. At the time of this Opinion, the Third County

[2] For ease of reference, this Opinion will use the "bowtie" description to denote the property's eastern and western halves, as well as the pinch or knot, e.g. "at the bowtie knot," "the eastern half," etc.

Council District has not reached the maximum number of solar facilities allowed by BCZR §4F-102(b).

Summary of Testimony

Brian Quinlan, accepted as an expert in solar energy and the installation of solar panels on solar farms, provided expert witness and fact witness testimony regarding the subject property and the proposed use. Mr. Quinlan testified that ESA Sparks Glenco, LLC has been accepted as a subscriber by the Public Service Commission. He described the process of how the subject property came to be selected for the proposed solar farm, including noting its location off York Road, with the back nine acres (eastern half of bowtie) of the property being located approximately 1,100 feet from York Road. Its proximity to York Road assists with access to a substation and tying in distribution lines, and the eastern half of the bowtie provided ample area for the solar array and its topography allowed for the necessary solar exposure and screening.

Mr. Quinlan identified the plan for the property (which was prepared by Mr. Doak, whose testimony is addressed below). He stated that there will be an access drive from York Road, the entrance for which requires approval by State Highway Administration. The access drive, as proposed, will be approximately 20-feet wide and will be composed of crushed stone. The access drive will more or less travel the northern property boundary on the western half, continue through the bowtie pinch, and emerge on the eastern half, which will contain the solar panel array and related equipment. Also along the access drive will be wooden poles and transmission lines to connect to the BGE lines along York Road. While there will not be the need to remove any trees for the solar array, some trees in the western half of the property will likely need to be removed to construct the access drive and install the wooden poles.

Mr. Quinlan estimated that, on average, construction of a solar facility of this type takes about three months. The facility does not require anyone to be on site for operation. At least twice a year, there will be scheduled maintenance on the facility to make sure the facility is working properly. The electrical portion of the facility will have sensors and the facility will be monitored offsite. There will be a small weather station on site, which will assist in determining the existence of a problem and prompt an investigation in the event there is an unexpected discrepancy in expectations arising from the particular weather. The maintenance and monitoring will be outsourced. The panels and related equipment (*e.g.* inverter) will be contained within a secure, fenced area. Petitioner will provide the key to the local fire department so it can access the facility in the event there is an emergency.

The panels for the proposed array are made of standard polysilicone and are recyclable, just like solar panels located on houses. The panels will be mounted to steel posts and racking. The array will have a fixed 25-degree tilt facing south to maximize exposure to the sun. That angle results in the panels having a height of 7 feet, 5 ½ inches, and being 2 ½ feet off the ground, with each row to be approximately 14 feet apart. While there is no final design for the array to determine an exact location, he expects that the edge of the array will be about 150 feet from the nearest property line.

The area underneath the panels and in between rows will remain grassy, but controlled and maintained. At the end of the lease, identified as 20 years with an option, the land upon which the array sits can be restored. The steel posts can be pulled out of the ground, as well as the other equipment, and the area can be reseeded. At the outset, Petitioner will be required to enter a decommissioning agreement in order to ensure that sufficient funds remain available to restore the

land at the lease expiration. Mr. Quinlan testified that the County will require Petitioner to post a bond for financial security and Petitioner will obtain liability insurance.

As for stormwater management issues, those will be explored in more detail if the petition for special exception is approved. Mr. Quinlan testified that they are compelled to comply with the County requirements prior to obtaining a building permit. Mr. Quinlan, on cross examination, explained that Petitioner sought special exception approval prior to engaging in a more detailed environmental analysis as the costs to have the analysis at the time of special exception hearing is substantial (identifyied in rebuttal as an estimated $365,000.00) and Petitioner prefers to see if the petition will be granted prior to committing itself to such costs. The stormwater management, wetland delineation, and related environmental matters, as well as timing of such a study and whether sufficient information has been presented to the Board on those topics, form much of the dispute in this case, and will be discussed in greater detail below.

Mr. Deriu, again, an expert in environmental science and stream and wetland delineations, works for KCI Technologies and was retained by Petitioner to start evaluating the site in the event Petitioner receives special exception approval for the solar facility. Mr. Deriu visited the site on one occasion, focusing on the eastern half of the property. He believed the area of the bowtie knot was an old farm crossing and that the pipe that runs underneath the crossing, though "pretty old," appears to have supported farm equipment in the past. He witnessed some base flow in the pipe while he was present. If this matter progresses, he will perform a forest buffer analysis, steep slope analysis, and endangered species analysis.

Mitchell Kellman, an expert in planning and zoning, testified that York Road, at this location is a state road, but also designated as a County Scenic Road. He noted that the property's topography drops, with the house on the western part of the site sitting on a ridge at its highest

point. Mr. Kellman believes that the solar facility will not be visible from York Road and as such, will not affect the scenic view. Given the topography and existing landscaping, the site will not need much by way of additional landscaping, and if so, mostly because, during winter, the property is more visible.

Mr. Kellman explained that a landscape plan will be required if a development plan is required. A landscaped right of way agreement will be required before a permit is issued. Mr. Kellman echoed the testimony of Mr. Quinlan that stormwater management plans will come after the special exception hearing, if approved, and opined one is not required for the special exception hearing.

Mr. Kellman also opined that the proposed use is consistent with the existing zoning classification and regulations as the County Council expressly provided, by way of special exception, that properties within the RC-7 zone may have solar facilities. Mr. Kellman, in light of his experience in the County, testified that the Department of Environmental Protection and Sustainability ("DEPS") will require an analysis of environmental impacts and if DEPS is not satisfied, the project will not move forward. He also testified that Baltimore County Department of Permits, Approvals and Inspections ("PAI") requires Petitioner to enter into a Solar Facility Decommissioning and Security Agreement, before any building permit may be issued.

Bruce Doak prepared the plans identified as Petitioner's Exhibit 1 and 1A. Mr. Doak agreed with Mr. Kellman that, following approval, the next step is for environmental experts to conduct wetland delineations and other such work and submit that information to DEPS, who will review, and if approved, may impose conditions. In fact, Mr. Doak testified he spoke to someone at DEPS who told him there was no issue in proceeding with the special exception case prior to submitting the environmental information to DEPS.

On cross examination, Mr. Doak acknowledged the presence of a stream on site, and agreed that it is reasonable for a party seeking a special exception to present some information concerning environmental and stormwater management issues without the need for a full report at the time of the hearing. Mr. Doak also testified that he considered the solar facility an accessory use, not a principal use. He agreed that the RC-7 zoning regulation on impervious surfaces limits such surfaces to 10% of the property, but testified that grass will be under the solar panels, which is a pervious surface. Finally, Mr. Doak noted that the edge of the array could be as close as 60-70' or up to 150' from the property border. He believes that, like Mr. Kellman, the 50-foot setback applies to solar facilities, not the 300-foot setback generally applicable to RC-7 properties.

Protestants first called John Altmeyer, who worked for the County for 32 years, rising to the level of chief inspector for building permits, but also conducted environmental inspections for the County. Mr. Altmeyer testified that the impervious surface regulation applied to poles, fences and roads, but agreed that the solar panels here are not impervious surfaces under the regulation. Mr. Altmeyer presented testimony about steep slopes and methods to treat runoff. Mr. Altmeyer clearly had substantial knowledge, but ultimately appeared to agree that, though careful consideration of these issues are required, the stormwater and runoff issues may be decided after the special exception hearing. Particularly, on cross examination, Mr. Altmeyer agreed with counsel for Petitioner that if there was a plan for those items that was subsequently approved following a site visit, he would have no problem with the plan.

Lynne Jones next testified for Protestants. Ms. Jones is the President of the Sparks Glencoe Community Planning Council, an organization of 400+ members, whose territory covers much of the Third County Council District, including the site at issue. Ms. Jones's testimony was offered individually and on behalf of the organization. She visited the surrounding area four/five times

prior to her testimony. Ms. Jones was not offered as an expert, nor was her testimony received as that of an expert witness. However, Ms. Jones has taken significant efforts to become more informed about certain subject matters in order to help educate others about protecting natural resources. She estimated she put approximately 70-80 hours of work into this case.

Her testimony focused upon the special exception factors. More specifically, it was her belief that the proposed use: (1) was detrimental to the health, safety, and general welfare of the locality, particularly as to streams, waterways and wildlife (BCZR §502.1(a)); (2) presented a potential for fire, panic or other danger as there was one way in and out of the site for fire trucks (BCZR §502.1(c)); (3) was inconsistent with the zoning regulations, as she believed that there was to be no development on farmland on a RC-7 zoned property unless absolutely necessary (BCZR §502.1(g)); (4) was inconsistent with the impermeable surface and vegetative retention regulations, identifying 146,000 square feet of impervious surface (BCZR §502.1(h)); and (5) was detrimental to the environmental and natural resources of the site and vicinity, particularly as to migratory wildlife, waterways, fencing, flooding and runoff, potential bog turtle habitats, and streams and slopes (BCZR §502.1(i)).

Ms. Jones (as well as some evidence and argument from People's Counsel) suggested that soil is a natural resource, more specifically, prime and productive soils, which she contends is located on the right side of the bowtie, i.e. the location of the proposed solar facility. She noted that this matter is the only one in Baltimore County where a solar farm was proposed in a RC-7 Zone and in her reading and understanding of the relevant regulations and Master Plan 2020, that the RC-7 Zone was created to protect sensitive areas and restrict commercial development. She believed other RC zones were more appropriate for solar facilities and generally identified areas without streams or wetlands as being better options. Ms. Jones visited some of the adjacent

properties, including the property adjacent to the bowtie. She observed that the culvert had debris and was backed up.

Edward Matczuk, who lives on a nearby property to the east of the Gorsuch Retirement property that is immediately adjacent to the subject property, also testified. Mr. Matzcuk's property is not immediately adjacent to the subject property; rather, the subject property (to the southwest) and Matzcuk property (to the northeast) essentially "sandwich" the middle part of the Gorsuch Retirement property. He identified concerns over what he may see. He testified his house sits in a valley and therefore, is lower than the proposed solar field. He also identified possible flooding and runoff from the subject property, via the Gorsuch Retirement property, as issues. Like Ms. Jones, he identified existing flooding on Upper Glencoe Road. He also testified that his property has been flooded by water coming off the Gorsuch Retirement property. He testified he has to muck his pond every five-to-seven years because of the silt from the flooding.

On the last day, Protestants called John Roemer, IV, a wetland delineation expert, but also a nearby property owner (about 1-1½ miles away). He provided substantial information on identifying wetlands and identifying potential bog turtle habitats. He visited the Gorsuch Retirement home property to the northeast of the subject property, bringing his soil augur, as well as taking photographs. For his second visit, he went to the Rude property, located north of the western portion of the bowtie, walked around wetlands on that property and examined the streams. He had a third visit, at which time, he walked around the wetland area again and probed the soil. He found indicia, which in his opinion, satisfy each factor used to identify wetlands on at least one of the adjacent properties. He believes that the proposed access drive may be located within the 100-foot buffer separating wetlands from non-wetlands. As such, he believes that, if so, Petitioner will need permits from the County and State to build the access drive.

Mr. Roemer testified that if it was subsequently determined that there was encroachment into the buffer/setback, the plan may be modified during the permit review period. He felt it was beyond his area of expertise to opine whether wetland issues should be resolved prior to or during a special exception hearing.

William Mayo was the final witness. He testified individually and as President of Gorsuch Retirement, Inc. His family has owned 185 acres in the area for centuries, finding gravestones between the 1700s and 1820. Mr. Mayo lives 3/8ths of a mile from the subject property. He testified that he believes he will be able to see half of the solar field from his house due to elevation differences. He raised additional concerns about deer and runoff from the subject property. The Gorsuch property adjacent to the subject property has been steadily farmed since 1972. Mr. Mayo also identified concerns of traffic in and out of the site trying to turn on to York Road, tree cutting needed for the access drive, and the ability of fire trucks to access the eastern half of the property if necessary.

Testimony from witnesses on both sides established that the proposed area for the solar array has not been used as a farm for quite some time. Mr. Quinlan testified that he was aware that the area had been used for hay, but not farming. Mr. Doak also testified that the existing field was used for hay, but now is just mowed, which Ms. Jones echoed. Mr. Mayo also provided testimony that the subject property was recently used for hay, though not last year. He also testified the subject property had been farmed in the past. Within the immediate area, only the Gorsuch Retirement property is currently used for farming.

Relevant Law, County Code Provisions and Zoning Regulations

A. The RC-7 Zone

The RC-7 Zone is limited in terms of uses permitted by right, with BCZR §1A08.3(A) identifying only nine such uses. Subsection (B) of BCZR §1A08.3 identifies 15 enumerated uses permitted by special exception. As expected, the RC-7 Zone also has various regulations for scenic views, density, setbacks, impervious surface coverage, and historical properties, as well as performance standards for stormwater management, visibility, landscaping and signs. BCZR §§1A08.5, 1A08.6. The regulatory scheme also accounts for inconveniences arising from agricultural operations, including noise, dust, odors, fumes, and operation of machinery, among other items. BCZR §1A08.7. As noted below, BCZR §4F-102(a) adds a sixteenth use permitted by special exception in a RC-7 Zone --- a community solar facility.

B. Solar Facilities Law

In 2017, the County Council enacted new legislation regulating solar facilities, embodied in BCZR §§4F-101, *et seq*. The County Council recognized the advantages of an "abundant, renewable and environmentally sustainable source of electricity generation," that would lead to "greater local grid resiliency and security," and result in the production of clean, renewable energy and a reduction in air and water pollution. BCZR §4F-101.

In attempting to strike a balance between the benefits from solar energy production and the potential impacts to any rural and commercial areas, the County Council ensured the placement of certain safeguards by requiring proposed solar facilities in certain zones to be permitted by special exception as opposed to by right, including, as relevant, the RC-7 Zone. Id.

In addition, the County Council created ten additional "requirements" (at BCZR §4F-104) in regulating these facilities:

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.

2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.

3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visible from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

Moreover, the County Council imposed certain maintenance, abandonment, and removal regulations upon owners, lessees, and operators of these solar facilities. BCZR §§4F-106, 4F-107. Violations of the solar facility regulations are subject to code enforcement proceedings in accordance with Article 3, Title 6 of the County Code. BCZR §4F-106(D).

C. Special Exception Law

Maryland courts historically have considered special exception uses as ones conditionally compatible with uses permitted as of right in the same zone. See, *e.g.*, Creswell v. Baltimore Aviation Serv., Inc., 257 Md. 712, 719; 264 A.2d 838, 842 (1970). The Court of Appeals revisited the law on special exception in 1979 with the seminal case of Schultz v. Pritts, 291 Md. 1; 432 A.2d 1319 (1979). In Schulz, the Court of Appeals held that a special exception is presumed to be in the interest of the general welfare, and therefore a special exception enjoys a presumption of validity. 291 Md. at 11; 432 A.2d at 1325.

In 2016, the Court of Appeals in Attar v. DMS Tollgate provided additional guidance on the presumption that accompanies a proposed special exception use. 451 Md. 272; 152 A.3d 765 (2016). First, the Court reiterated that the special exception petitioner has both, the burden of production and the burden of persuasion. Attar, 451 Md. at 287; 152 A.3d at 773, *quoting* People's Counsel for Balt. Cty. V. Loyola Coll. In Md., 406 Md. 54, 109; 956 A.2d 166, 199 (2008); *see also*, Board of Appeals Rule 7(d), "the proponent of an action to be taken by the Board has the burden of proof." Second, the Court clarified that the concurrent presumption in favor of the special exception petitioner is not a mutually exclusive evidentiary burden. Attar, 451 Md. at 286; 152 A.3d at 773.

Referencing Maryland Rule 5-301(a),[3] the presumption identified by Schultz v. Pritts satisfies the burden of going forward on a fact presumed (in this case, the special exception is in the interest of the general welfare, and therefore has a presumption of validity) and "*may* satisfy the burden of persuasion if no rebuttal evidence is introduced by the other side." Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson v. Litzenberg, 115 Md. App. 549, 564; 694 A.2d 150, 157 (1997) (emphasis in original).

The presumption is that a special exception use is valid, that is, one that *can* conform to the zoning plan depending on the location, zoning classification, and impacts on the surrounding area. The presumption that inures to a special exception petitioner's benefit requires a special exception protestant to present probative evidence of any harms or other detrimental impacts, as identified in BCZR §502.1, to the surrounding neighborhood that are above and beyond the impacts that may be experienced elsewhere in the zone from this proposed use (Schultz, 291 Md. at 22-23; 432 A.2d at 1331) and/or other noncompliance with applicable zoning regulations to warrant a denial.[4] In other words, a special exception protestant must show "non-inherent adverse effects," or "unique adverse effects" to overcome the presumption that the proposed use is in the interest of the general welfare and compatibility. See, Clarksville Residents Against Mortuary

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[3] Md. Rule 5-301 sets forth:
(a) Effect. Unless otherwise provided by statute or by these rules, in all civil actions a presumption imposes on the party against whom it is directed the burden of producing evidence to rebut the presumption. If that party introduces evidence tending to disprove the presumed fact, the presumption will retain the effect of creating a question to be decided by the trier of fact unless the court concludes that such evidence is legally insufficient or is so conclusive that it rebuts the presumption as a matter of law.
(b) Inconsistent presumptions. If two presumptions arise which conflict with each other, the court shall apply the one that is founded upon weightier considerations of policy and logic. If the underlying considerations are of equal weight, the presumptions shall be disregarded.

[4] E.g., in solar facility cases, evidence that the proposed use does not meet the solar facility requirements set forth in BCZR §4F-104 may also warrant denial of a special exception petition.

Defense Fund, Inc. v. Donaldson Properties, 453 Md. 516, 543; 162 A.3d 929 (2017); Attar, 451 Md. at 287; 152 A.3d at 774.

If a special exception protestant presents sufficient evidence to create a genuine dispute of material fact as to a particular special exception factor or other zoning requirement, the evidentiary record must be sufficient to persuade the Board of Appeals that the proposed use will conform to the applicable zoning plan and satisfy the specified factors. Attar, 451 Md. at 286-287; 152 A.3d at 773; *quoting* Anderson, 115 Md. App. at 564; 694 A.2d at 157.

Even still, the Board can grant the special exception petition along with certain conditions or restrictions to protect the surrounding and neighboring properties, and in solar facilities cases, "to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands." BCZR §502.2, §4F-104(10). If the burden of persuasion is not met, the Board will deny the petition.

The special exception factors to be evaluated by the Board are set forth in BCZR §502.1. As stated therein, before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air;

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.

DECISION

A. BCC §33-3-108(c) Plan Requirements and Applicability To Special Exception Hearings

Before the special exception factors are discussed, the Board needs to address Protestants' argument that, pursuant to BCZR §4F-104(9), Petitioner is required to comply with the plan requirements of Baltimore County Code §33-3-108(c), which identifies an additional 18 requirements for solar facilities. Protestants further assert that Petitioner has the burden of proof and Petitioner has failed to produce evidence on various items required to be identified on the plan at issue in BCC §33-3-108(c). Therefore, the first question for the Board is what, if anything, Petitioner is required to prove with respect to BCZR §4F-104(9) during a special exception hearing.

To start, the Board looks at the language within the Code and Regulations. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." Rosemann v. Salsbury, Clements, Bekman, Marder & Adkins, LLC, 412 Md. 308, 314; 987 A.2d 48, 52 (2010) (citation omitted). "'Statutory construction begins with the plain language of the statute, and ordinary, popular understanding of the English language.'" Id. at 314–15, 987 A.2d at 52 (citations omitted). In interpreting a statute, a court first looks to the language, applying it where the statute's language "is unambiguous and clearly consistent with the statute's apparent

purpose[.]" Motor Vehicle Admin. v. Gonce, 446 Md. 100, 110, 130 A.3d 436, 442 (2016); *quoting* Lark v. Montgomery Hospice, Inc., 414 Md. 215, 227, 994 A.2d 968, 975 (2010) (citation omitted). As is well established under Maryland law, canons of statutory interpretation forbid construction of a statute so that a word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory. Oglesby v. State, 441 Md. 673; 109 A.3d 1147 (2015).

Clearly, the solar facility requirements, generally, are matters for the Board's consideration as the Board may deny a petition for special exception for a proposed solar facility for facial noncompliance. First, these requirements are set forth in the Baltimore County Zoning Regulations and, as relevant to this case, are applicable in the RC-7 Zone. Facial noncompliance with the requirements may result in a finding that the petition is inconsistent with the spirit and intent of the zoning regulations and/or run afoul of other BCZR §502.1 factors. Second, subparagraph 10 refers to the Board's authority to impose conditions if the special exception petition is approved. The implication is that the County Council intended for the Board to consider the additional solar facility requirements as part of a special exception hearing. However, the Board rejects Protestants' interpretation of BCZR §4F-104(9) that the County Council intended for the Board to review and decide the BCC §33-3-108(c) specific plan requirements as part of the special exception hearing.

Baltimore County Code §33-3-108(a) refers to a "plan" approved by "the Department" for "all development, forest harvesting operations, surface mining operations, and agricultural operations." The word "plan," as defined in BCC §33-3-101, "means a written and graphic representation of all proposed development, forest harvesting operations, surface mining operations, agricultural operations, and other land use activities not otherwise exempt from the provisions of this title that is prepared in accordance with § 33-3-108 of this title."

Baltimore County Zoning Regulation §4F-104(9) states that a "petitioner shall comply with the plan requirements of § 33-3-108 of the County Code." The word "plan," as used in BCZR §4F-104(9), neither supplements, nor alters, the definition of "plan" in BCC §33-3-101 or as applied to BCC §33-3-108(c) and therefore, the "plan" identified in BCZR §4F-104(9) is to be interpreted coextensively with the "plan" at issue in BCC §33-3-108(c).

The "Department," as used in Article 33, Title 3, is identified as "the Department of Environmental Protection and Sustainability ["DEPS"]," and the "Department" is charged with the duty to review the plan required by BCC §33-3-108. See, BCC §33-3-101(f); §33-3-108(a). In short, the "plan" at issue in the solar facility regulations is the plan required to be submitted for review and approval by DEPS. As further support, the County Code, pursuant to BCC §3-2-603, empowers DEPS to:

> (a) (1) Administer and enforce environmental laws, regulations, programs, and activities for the purpose of conserving, enhancing, and perpetuating the natural resources of the county and preserving and protecting the environmental health of its citizens; and (2) Have the duties, functions, and responsibilities provided for in the Code and assigned to it by directive of the County Administrative Officer.

In addition, DEPS has the responsibility to enforce the state laws and regulations concerning the environment upon delegation from the State. BCC §3-2-603(b). Furthermore, the County Code establishes that DEPS is the agency that enforces the provisions within Article 33, Title 3 and DEPS's Director is authorized to adopt policies and regulations, as necessary, to implement those provisions. BCC §33-3-105. It would be wholly nonsensical for both, the Board and DEPS, to independently review and assess the BCC §33-3-108(c) plan given the specific duties charged to DEPS and DEPS's expertise in the subject matter.

Furthermore, the Code provides that DEPS's Director or the Director's Designee is required to determine that the proposed development is in compliance with Article 33, Title 3

before any building or grading permit is issued by the Department of Permits, Approvals and Inspections. BCC §33-3-109. In other words, the requirements outlined by Article 33, Title 3 relate to development and do not relate to zoning.

Lastly, the County Council amended the special exception factors in connection with enacting the solar facility regulations, but the changes concerned zones other than RC-7 zones, which, to this Board, reflects an intent that the County Council intended for the Board to conduct the same review and analysis of the impacts of the environment and natural resources by the solar facility as it has for other proposed special exception uses. If the County Council wished for the Board to undertake the greater and more technical environmental analysis at issue in BCC §33-3-108(c), the County Council would have amended the BCZR §502.1 to reflect that intent or would have expressly authorized the same in Article 4F.

Taken together, the code provisions and regulations unambiguously establish that neither the ALJ, nor the Board of Appeals, reviews or approves the plan or any individual requirement identified in BCC §33-3-108 as part of a zoning special exception hearing. The only responsibility identified in BCZR §4F-104(9) is that petitioner is required to comply with the plan requirements. Notably, DEPS's comment submitted in this case stated that Petitioner will have to comply with the environmental regulations, as relevant for this discussion, found in BCC §§33-3-101 through 33-3-120, obviously inclusive of §33-3-108, and DEPS took no position on the request for special exception approval. (Petitioner's Exhibit No. 12). If Petitioner does not receive approval from DEPS, Petitioner will not receive any grading or building permit. Finally, and importantly, several witnesses testified expressly or by implication that they understood that DEPS will undertake this more comprehensive review after the Board resolves this matter, including namely Mr. Kellman, Mr. Doak, Mr. Altmeyer, and Mr. Roemer.

In light of the above, the Board concludes that Petitioner does not need to present at a special exception hearing evidence regarding each item required for a BCC §33-3-108(c) plan or, even simply, DEPS's approval of such a plan. Relatedly, the omission of such information at the time of the special exception hearing is, by itself, not fatal to a special exception petition.

B. Relevant Locality/Neighborhood

At the start, the Board must determine what the locality or neighborhood to evaluate what, if any, impact the proposed use has above and beyond effects inherently associated with a special exception use. Attar, 451 Md. at 278-284, 289; 152 A.3d at 769-772, 775. As stated by the Court of Appeals: "the Board's task is to determine if there is or likely will be a detriment to the surrounding properties" (Id., 451 Md. at 280; 152 A.3d at 769-770); the Board must assess "whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone." Schultz v. Pritts, 291 Md. 1, 22-23; 432 A.2d 1319, 1331 (1979).

Therefore, the question is whether the expected effects from the proposed use are somehow exacerbated by the location at issue, to the detriment of those to experience such effects. For a special exception, the description of the neighborhood to be impacted by the proposed use "must be precise enough to enable a party or appellate court to comprehend the area the Board considered." Attar, 451 Md. at 282; 152 A.3d at 771.

In this case, testimony and various maps and photographs establish that Upper Glencoe and Lower Glencoe Roads form the north, east, and south sides of the locality at issue. The area contained within, using York Road as its western boundary, is overwhelmingly zoned RC-7, with some portion north and east of the subject property zoned RC-2. (Petitioner's Ex. 9). It has been

suggested York Road should be the western boundary for the Board's analysis. However, there are residences directly across the street from the subject property located on Elizabeth Court, William Court, and Kampman Court, all of which rely on access from York Road across from the subject property and therefore, should be considered as part of this analysis, though noting those residential properties are zoned RC-2 and no resident from the homes on those streets testified at the hearing or otherwise indicated opposition.

C. Special Exception Factors

At the outset of the hearing, Protestants stated that its case focused only on three of the nine special exception factors, particularly, (A) the health, safety and general welfare of the locality; (G) the inconsistency with the property's zoning classification and/or inconsistency with the spirit and intent of the zoning regulations; and (I) the detrimental impact to the environment and natural resources of the site and vicinity. In fact, much of Protestants' case and closing memorandum focused on environmental matters and inconsistency with the zoning classification and/or inconsistency with the spirit and intent. Protestants also challenged the petition for lack of evidence regarding compliance with certain solar facility requirements, which will be discussed in the section below. People's Counsel also largely confined its evidence and arguments to the environmental issues, as well as inconsistency with the classification and/or spirit and intent. Both advanced an argument regarding the visual impact.

For the special exception factors Protestants' witnesses addressed, the testimony too often amounted to speculation, which the Board cannot consider and rely upon for its findings. By way of example, Mr. Mayo testified that he had concerns that the conversion of the adjacent property will cause more deer to pass through the Gorsuch Retirement property and cause more crop damage. While the Board does not question the sincerity of Mr. Mayo's concern, there were no

facts in the record from which the Board can find, as a matter of fact, that there is a likelihood of an increase in the deer population on the Gorsuch Retirement property caused by the presence of an adjacent solar facility, which in turn will cause more crop damage to the Gorsuch Retirement property.

Protestants also raised an issue as to the impervious surface coverage as part of the RC-7 Zone regulations without reference to BCZR §502.1(H). However, Protestants' factual underpinning for this argument require the Board to conclude that the solar panels qualify as an impervious surface as contemplated by the BCZR. The Board does not so conclude.

The evidence establishes that only the vertical support posts for the array and fencing will make contact with the ground. Based on the evidentiary record, the solar panels will be fixed on an angle, leaving approximately two feet of space from the ground, with ample separation between the rows of panels. Though not specifically argued, the Board also finds that the limited removal of trees, confined to the western half of the bowtie and only in connection with the access drive construction is not inconsistent with the vegetative retention regulations.

Similarly, Protestants' witnesses testified that the crossing point at the "bowtie knot" part of the subject property may not be able to support the weight of emergency vehicles, if needed. The witnesses presented by Protestants that provided this testimony, however, were not qualified as experts. The testimony is assuredly speculative as there is no information as to the present capacity or the crossing's weight-bearing capacity following the intended improvements. It should be mentioned that, when the property was farmed, farm equipment used the crossing. Any concerns about the weight-bearing capacity at the crossing will be addressed in the permit stage. [5]

[5] The Board recognizes that Protestants do not have access to the crossing point as it is located entirely within the subject property. At the same time, the permit process related to the construction of the access road and the DEPS plan review will, by necessity, analyze the crossing point and what improvements can and will be made to move forward with this project.

In light of the above, this Board can summarily find that Protestants have not adequately rebutted the presumption on several factors, particularly, (B) congestion in roads, etc.; (C) the creation of a potential hazard from fire, panic or other danger; (D) overcrowding of land, etc.; (E) interference with schools, parks, water, sewage, transportation of other public requirements, etc.; (F) interference with adequate light and air; and (H) inconsistency with the impervious surface and vegetative retention regulations. Also, the Board finds Petitioner has satisfied its burden for those factors.

With respect to BCZR §§502.1 (A), (G), and (I), certain arguments have been raised which require some further discussion. In furtherance, Protestants presented testimony identifying visual impact, runoff, the RC-7 Zone, and the aforementioned environmental issues as concerns that touch on these special exception factors.

For example, Protestants identified the visual impact that they will experience and People's Counsel has identified the visual impact on an adjacent scenic route. Protestants argue the Baltimore County Master Plan 2020 reflects the County's policy to "preserve scenic corridors and views through proper zoning and coordination with federal and state governments," and therefore, "special exceptions should be granted sparingly." (Master Plan 2020, pp. 99, 101). Absent an express code provision mandating conformity with the Master Plan, Master Plans are understood to be guides in the zoning process. People's Counsel v. Webster, 65 Md.App. 654, 701-703; 501 A.2d 1343, 1347 (1986). In fact, Baltimore County's Master Plan is specifically designated to serve as guidance --- Baltimore County Charter §523 states: "The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county." (emphasis added).

Nevertheless, the regulations clearly establish that the County Council had awareness that any ground-based solar facility may be visible to nearby property owners and/or others passing by. The County Council accounted for and mitigated against any adverse visual impact to neighboring properties and the scenic roads by requiring a landscaping buffer for screening the facility from adjacent residential properties and public streets, as well as setting a height limit for any structure within the solar facility. See BCZR §4F-104(5) and (6). While the RC-7 Zone also has certain requirements for screening (See, e.g., BCZR §§1A08.5; 1A08.6(C)(4)), the County Council expressly allowed solar facilities within the RC-7 Zone by way of special exception. A primary rule of statutory construction that a legislature has full knowledge of existing laws and legislation pertaining to the subject matter under legislative consideration. See *e.g.*, Maryland-National Capital Park & Planning Com. v. Silkor Development Corp., 246 Md. 516, 524; 229 A.2d 135, 140 (1967). As such, the Board concludes that the visual screening required in the solar facility regulations satisfies the screening required within the RC-7 Zone and that the screening required is consistent with the Master Plan 2020's policy to preserve scenic corridors.

Leaving all of the above aside, the potential for someone on an adjacent property or on an adjacent roadway to see some part of the solar facility is obvious.[6] Protestants' evidence fails to establish an effect above and beyond those associated with the proposed use. As stated by Mr. Quinlan and seen in various photographs, the solar facility is to be located approximately 1,100 feet from York Road. Petitioner has also agreed to comply with any additional landscaping plan required by the County. The fixed angle of the panels limits their height to under eight feet when measured from the ground.

[6] These arguments are understood to contemplate different special exception factors, to wit: (A) for the neighbors, for the more immediate impact to the surrounding community, and (G) and (I) as to the impact on the scenic roadway.

Petitioner entered into evidence the Department of Planning's ("Planning") determination regarding the visual impact of the solar facility upon the scenic route. (See, Petitioner's Exhibit 10). Planning determined that, due to topography and the presence of the mature forest, the solar panels will not be visible from York Road or adjacent properties. (See Petitioner's Exhibit 10). Planning had no objection to the zoning relief. Given that the solar array will be approximately 1,100 feet from York Road, the fixed angle of the panels limits the height of the panels to under eight feet when measured from the ground, and, as testified to by Mr. Kellman, the western half of the property sits at a higher elevation than the eastern half, the Board concludes the solar facility will neither detrimentally impact the scenic route, nor the neighboring properties, to any degree greater at this location than other locations within the zone. Moreover, it is reasonable to conclude the features at this particular site help mitigate a detrimental impact where other RC-7 zoned properties, without the combination of features, will not.

Mr. Mayo and Mr. Matczuk identified concerns about runoff/flooding issues. Mr. Matzcuk's testimony revealed that he occasionally experiences flooding from Upper Glencoe Road, indicating present-day flooding independent of the Gorsuch Retirement property and/or the subject property to the west of the Gorsuch Retirement property. For this reason, Mr. Matczuk elaborated, he considered potential runoff as a possible exacerbation of the existing issues.

Protestants' Exhibit No. 16 reveals that the highest point of the proposed solar facility field straddles the boundary line with the Gorsuch Retirement property at roughly the mid-point of the subject property's northeastern edge. The topography proceeds to descend through the subject property to the southern edge of the eastern half to the property's lowest point. The topographical map suggests that water, without improvements, drains to the northwest, west, south, and

southeast. Much of that area is within the subject property's boundaries and away from the Gorsuch Retirement property, and therefore, also away from the Matzcuk property.

Mr. Roemer, via Protestants' Exhibits 28 and 28A, identified a "perennial" stream that brushes along the northern point of eastern bowtie half, then bisects the Gorsuch Retirement property, and runs more or less close to the boundary between the Gorsuch Retirement property and Mr. Matzcuk's property. Mr. Roemer explained a perennial stream is one with water flow for most of the year.

The topography and drainage plain suggest that any additional volume caused by runoff from the solar facility that flows to the northeast, which is assumed only to address this argument, would be minimal. Mr. Matzcuk's testimony reveals that the primary flooding issue he confronts comes from the north via Upper Glencoe Road. As such, the evidentiary record on this issue is insufficient from which the Board may conclude that Mr. Matzcuk's property will be adversely impacted by runoff from the solar facility. Nor can it be concluded on this record that the solar facility would exacerbate any existing flooding risk.

As alluded to above, DEPS will undertake a significant review of issues related to the runoff concerns raised. Protestants' expert, Mr. Altmeyer, testified that it would be satisfactory to him if runoff was addressed in a DEPS-approved plan, after DEPS conducted a site visit. Consistent with Mr. Altmeyer's testimony, the Board will order Petitioner to comply with DEPS's reviewed and approved plan.

Turning to factor (G), consistency with the legislative purposes and spirit and intent of the regulations, the BCZR does not identify purposes specific to the RC-7 Zone. There are findings and legislative goals, but no identified "purposes." Other Resource Conservation Zones have

defined purposes, including but not limited to, RC-2, RC-5, RC-20 and RC-50, and RCC. All Resource Conservation Zones have general purposes identified in BCZR §1A00.2:

A. Discourage present land use patterns of development and to create a framework for planned or orderly development;

B. Provide sufficient and adequate areas for rural-suburban and related development in selected and suitable areas;

C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development;

D. Protect areas desirable for more intensive future development by regulating undesirable forms of development within these areas until such time as intensive development commences; and

E. Help achieve the goals of the Chesapeake Bay Critical Area Protection Law [1] by enacting land use policies to control development within the Critical Area by conserving the land and water resource base for agriculture, forestry and other natural resource uses; minimizing adverse effects on water quality; and conserving fish, wildlife and plant habitat.

Section 4F-101(A) sets forth:

A. Purpose. Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources. (emphasis added).

The safeguards required by BCZR §4F-104 are reflected in the solar facility regulations and the County Council expressly permitted solar facilities in Resource Conservation Zones. As set forth above, the County Council has full knowledge of existing laws and legislation pertaining to the subject matter under legislative consideration. See *e.g.*, Maryland-National Capital Park & Planning Com., 246 Md. at 524; 229 A.2d at 140. The County Council's express inclusion of the

RC-7 Zone in the solar facility regulations means that the County Council considered the legislative findings and goals specific to the RC-7 Zone. The County Council also requires the Board to consider conditions, as stated in BCZR §4F-104(10), affording additional measures for protection as necessary. Therefore, the Board concludes the proposed use does not run afoul of BCZR §502.1(G) as to a general inconsistency with the applicable purposes or spirit and intent of the zoning regulations.

Dispensing with the arguments regarding general inconsistency, Protestants also argue a more specific inconsistency, namely, that the 300-foot setback requirement in the RC-7 Zone as established by BCZR §1A08.6(B)(5)(b) applies to this matter. Petitioner contends that the 50-foot setback requirement within BCZR §4F-104(A)(4) applies.

The Board must first determine whether there is a conflict between the two regulations. Under Maryland law, "'when two statutes, one general and one specific, are found to conflict, the specific statute will be regarded as an exception to the general statute.'" State v. Roshchin, 446 Md. 128, 142; 130 A.3d 453, 461 (2016), *quoting*, Maryland-Nat'l Capital Park & Planning Comm'n v. Anderson, 395 Md. 172, 194, 909 A.2d 694 (2006) (*quoting* State v. Ghajari, 346 Md. 101, 116; 695 A.2d 143 (1997)). Furthermore, as recently stated by the Court of Appeals, when two statutes apply to the same situation, then the court will attempt to harmonize the statutes. Blackstone v. Sharma, 461 Md. 87, 93; 191 A.3d 1188, 1191 (2018). The Blackstone Court further established:

> "Courts presume that the legislature intends its enactments to operate together as a consistent and harmonious body of law. Thus, when two statutes appear to apply to the same situation, the Court will attempt to give effect to both statutes to the extent that they are reconcilable. Nevertheless, if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute.

Id..

Protestants' reliance on BCZR §600.1 to establish which regulation controls does not aid the analysis because the regulations at issue are both contained within the BCZR. The repeated references of "these regulations" in comparison to "the provisions of any law, ordinance, regulation or private agreement," imply laws, ordinances, regulations and private agreements that are not contained within the Baltimore County Zoning Regulations. If interpreted in a manner as to apply to potential conflicts of regulations within the BCZR, the references to "these regulations" become confusing and fail to achieve the purpose of providing regulation construction guidance and hierarchy.

The Board interprets BCZR §4F-104(4) as requiring aboveground solar facility components and equipment to be a minimum of 50 feet from the tract boundary, such a minimum not applicable to any associated landscaping, security fencing, wiring, or power line. The Board interprets BCZR §1A08.6(B)(5)(b), as is relevant, as requiring for any principal building or any use that may be in conflict with any permitted agricultural operation a 300-foot setback from any adjacent property that was cultivated or used for pasture during the previous three years.

In other words, the minimum 50-foot setback is required of all solar facilities within any Resource Conservation Zone. The 300-foot setback is applicable in a RC-7 Zone, applies to more than just solar facilities, and is required if, and only if, certain conditions are met. First, there must be a principal building or a use that may be in conflict with any permitted agricultural operation on adjacent property. Also, the adjacent property must have been cultivated or used for pasture within the last three years. In short, the two regulations are not in conflict, at least, not in the context of this case.

The solar farm is not a principal building. As to the use, the only property identified as that used as a farm cultivated or used for pasture in the last three years was the Gorsuch Retirement

property. That property, however, is located within a RC-2 Zone. The 300-foot setback is to benefit adjacent RC-7-zoned properties. Once again, the County Council, when enacting the solar facility regulations, would be aware of the setback requirements for the Resource Conservation Zones. If the general 300-foot setback controlled and applied at all times, then the 50-foot setback regulation applicable to solar facilities would be rendered meaningless. If the County Council wanted to carve out exceptions to the application of the 50-foot setback or impose greater setbacks for particular Resource Conservation Zones, the County Council would have so provided. The Board concludes that the 50-foot setback in the solar facility regulations applies here, not the general 300-foot setback.

With respect to the environment and natural resources, the evidence presented by Petitioner may be fairly described as a skeleton, enough to hold the case together but primarily relying on other (and in this case, subsequent) processes to make it functional. To be clear, subsequent processes by other agencies do not excuse Petitioner from presenting sufficient evidence for the Board's consideration as part of a special exception hearing. Petitioner must still present sufficient evidence to the Board for the Board to evaluate the special exception factors and the failure to do so will result in a denial of a petition.

People's Counsel correctly argues that the special exception process involves and has some overlap with the development process. Echoing what has been stated above, even with overlap, these are two different evaluation processes and there are different purposes for those evaluation processes. The Board assesses whether the proposed use can conform to the zoning regulations without a detrimental impact to the surrounding area that is greater than what would be experienced elsewhere.

Despite the risky strategy with regard to this factor, Petitioner has met its burden. First, the site itself aids Petitioner. As referenced above, photographs and topographical information permit the Board to draw inferences and reach conclusions (*e.g.* drainage). Second, the bowtie, with confirmation as location of a water resource, appears to be the most environmentally-sensitive feature on the site and given the presence of water and proximity to other properties, effects experienced at the bowtie may also be experienced by neighboring properties via the course of water flowing from the subject property. The bowtie, however, is not the area of focus for the proposal; rather, it is the open field on the east side. The impact at the bowtie comes from the construction of the improvements related to the access road.

Mr. Roemer identified certain features on the adjacent Gorsuch Retirement property causing him to believe that the area at the properties' border qualifies as wetlands and at the subject property's northern most point along the eastern half, the border area may qualify as a potential bog turtle habitat. He considered it less likely that the bowtie area was a potential bog turtle habitat. As Mr. Roemer noted, however, the investigation he conducted was only preliminary. He relayed that a more detailed survey will be conducted as the project moves forward and that, depending on the findings, additional protective measures may be directed. He also indicated that the building permit process will require a greater study of the bowtie area as well.

As such, while Mr. Roemer identified potential issues, his testimony makes it clear that more investigation, surveying, and studying are required before any conclusions can be drawn. Moreover, his testimony, along with Mr. Altmeyer's, Mr. Doak's, and Mr. Kellman's, reveal that the additional investigations, surveying, and studying will in fact be performed and Petitioner will have to comply with the changes directed, at Petitioner's peril. Therefore, Protestants' evidence does not establish a basis for this Board to conclude a likelihood that the proposed use will result

in detrimental impacts to the environment. Nor does the record establish that the impacts are greater at this location compared to other sites in the RC-7 Zone.

Again, the Board notes that in another case, a petitioner may not obtain the relief at issue without more information. Nevertheless, in light of the testimony of Petitioner's witnesses regarding the site features (also depicted in exhibits), willingness to comply with any and all conditions and requirements, the location of the solar facility in the open field, DEPS's absence of objection or further comment, unanimity among the experts that additional investigations will take place, Petitioner has satisfied its burden on this point.

Protestants and People's Counsel raised the issue of impact to prime and productive soils, which the County Council identified in the legislative goals for the zone as a resource requiring protection. BCZR §1A08.1(B)(6). The witnesses agreed in near harmony that the subject property had not been used for farming for awhile. Nevertheless, accepting that the soils at the subject property qualify as prime and productive soils, the record establishes minimal disruption (in a relative sense) to the open field, mostly by way of the implanting the vertical poles for the racking system and surrounding fence. Much of the field will be undisturbed. No expert witness provided evidence that the presence of the solar field will cause a change in the soils to render them something other than prime and productive for future use. In addition, the evidentiary record fails to establish a basis for the Board to conclude that once the lease is up, the field will be in a condition that prevents it from being cultivated or farmed.

Therefore, the issue is more properly framed as the temporary loss of the potential to use the prime and productive soils in the eastern half of the property for farming for duration of the lease term. The Board cannot, and in any event will not, compel the property owner here to take advantage of and utilize the prime and productive soils on the owner's property. For all of these

reasons, the Board is not persuaded that a solar facility at this location, even if located on prime and productive soils, would run afoul of this factor.

Based on the evidentiary record here, the Board is persuaded that the proposed use will not detrimentally impact the environment and natural resources at the site and in the vicinity. The Board will also impose conditions to help protect the environmental and natural resources. Therefore, Petitioner has satisfied its burden on all special exception factors, though the Board will impose conditions to mitigate some of the effects and to effectuate the representations made by Petitioner upon which the Board relies in reaching this decision.

D. Solar Facility Requirements

Lastly, several requirements were expressly or impliedly addressed in the special exception factors set forth above, including (4) 50-foot setback requirement is satisfied; (5) the height of any structures will not exceed 20 feet; (6) landscape buffer and screening will be in place to mitigate visual impacts; and (7) security fencing will be in place. There is no evidence that the subject property is encumbered by an agricultural or environmental preservation easement, a rural legacy easement, or within a forest conservation easement. Similarly, there is no evidence that the property is within a historic district, nor is the property on the County Final Landmarks List.

As for the remaining solar facility regulations, Petitioner presented evidence via Mr. Quinlan that the facility will generate 1.87 megawatts of AC electricity, with the array covering only nine acres of the entire property (less than five acres per megawatt). BCZR §4F-102(B)(1). There is no evidence that granting this petition would result in exceeding the district cap for solar facilities, as identified in BCZR §4F-102(B)(2). With respect to glare, the evidentiary record establishes that the panels will be 1,100 feet from York Road and there are topographic changes in between and some trees and landscaping help screen the array from view. Mr. Kellman testified

a glare study will also be required prior to obtaining a building permit. Protestants did not present evidence that glare may present a problem. Given that, there is nothing in this record to establish that this proposal may violate the glare regulations.

In light of the above, the Board cannot conclude that this proposed solar facility fails to comply with the solar facility requirements in BCZR §§4F-101, *et seq*.

E. Conditions

The Zoning Regulations allow the Board of Appeals to "impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties." In addition, if approved, BCZR §4F-104(10) empowers the Board of Appeals to:

> impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

The Board, in granting this petition, finds it necessary to impose conditions to provide some additional protections and to effectuate representations made by Petitioner that addressed concerns identified by Protestants during the course of the hearing (as well as ones identified during the ALJ hearing). The Board imposes these conditions to protect the surrounding and neighboring properties, the environment and scenic views, as well as to otherwise lessen the impacts to surrounding properties.

Therefore, the Board grants the petition, but does so with the following conditions:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Opinion & Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If, for whatever reason, this Order is reversed, Petitioner would be required to make corrections, which may include return of the subject property to its original condition.

2. Petitioner shall comply at all times with the ZAC comments submitted and requirements imposed by DEPS.

3. Petitioner shall comply with the solar facility regulations and requirements (specifically, BCZR §4F-104) at all times.

4. Petitioner shall comply at all times with the DEPS reviewed and approved plan, as identified in BCZR §4F-104(9) and BCC §33-3-108(c).

4. Petitioners shall obtain from and the State Highway Administration (SHA) and comply with the appropriate permit for entrance/access to and/from York Road.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility, the bowtie area, or the crossing point. If, following any subsequent development process, DEPS review, wetlands delineation, environmental study or survey and/or other investigation by any governmental agency, department, division, office, and/or other entity, it is determined, directed, ordered, or recommended that weed killers and/or herbicides should not be used on any other part of the subject property, Petitioner shall comply with those determinations, directives, orders, and/or recommendations.

6. Prior to the commencement of operations, Petitioner shall post on the solar facility contact information for the lessee company (including a 24-hour telephone number) and also that for a company representative so that the company and/or the company representative or agent can be notified in the event of an emergency and/or other circumstances requiring company action or response.

7. Aside from Condition No. 6, no signage or lighting shall be installed at the site in connection with the solar facility unless required by any Federal, State, or other County agency, department, division, or office, or otherwise required by law.

8. Petitioner shall submit for approval by Baltimore County a landscape plan for the site.

9. Prior to the commencement of operations, Petitioner shall provide contact information for the lessee company and also that for a company representative as well as the necessary key(s) and/or access code(s) or combination(s) with the local fire departments to ensure the local fire departments have access to the solar facility if needed.

10. Petitioner shall not use, incorporate, or attach barbed wire, razor wire, or barbed wire fencing or razor wire fencing as part of the solar facility.

11. The only trees permitted to be removed from the subject property are those on the western half of the property whose removal is necessary for the construction

of the access drive. For each tree removed, Petitioner shall replace the removed tree with per diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Should any tree become damaged as a result of the road construction or any construction activity related to the solar field so that the visual screening of the solar array is affected, Petitioner shall plant a per diameter equivalent native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Petitioner shall not remove or cause to be removed any tree in the bowtie area, crossing point or on the proposed solar field.

Conclusion

For the foregoing reasons, the Board grants the petition subject to the conditions outlined herein.

ORDER

THEREFORE, IT IS THIS 29th day of July, 2019, by the Board of Appeals of Baltimore County,

ORDERED that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan (Pet. Ex. 1), be, and the same is hereby **GRANTED**, subject to the following conditions under the Board's authority in §4F-104.A.10:

1. Petitioner may apply for necessary permits and/or licenses upon receipt of this Opinion & Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If, for whatever reason, this Order is reversed, Petitioner would be required to make corrections, which may include return of the subject property to its original condition.

2. Petitioner shall comply at all times with the ZAC comments submitted and requirements imposed by DEPS.

3. Petitioner shall comply with the solar facility regulations and requirements (specifically, BCZR §4F-104) at all times.

4. Petitioner shall comply at all times with the DEPS reviewed and approved plan, as identified in BCZR §4F-104(9) and BCC §33-3-108(c).

4. Petitioners shall obtain from and the State Highway Administration (SHA) and comply with the appropriate permit for entrance/access to and/from York Road.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility, the bowtie area, or the crossing point. If, following any subsequent development process, DEPS review, wetlands delineation, environmental study or survey and/or other investigation by any governmental agency, department, division, office, and/or other entity, it is determined, directed, ordered, or recommended that weed killers and/or herbicides should not be used on any other part of the subject property, Petitioner shall comply with those determinations, directives, orders, and/or recommendations.

6. Prior to the commencement of operations, Petitioner shall post on the solar facility contact information for the lessee company (including a 24-hour telephone number) and also that for a company representative so that the company and/or the company representative or agent can be notified in the event of an emergency and/or other circumstances requiring company action or response.

7. Aside from Condition No. 6, no signage or lighting shall be installed at the site in connection with the solar facility unless required by any Federal, State, or other County agency, department, division, or office, or otherwise required by law.

8. Petitioner shall submit for approval by Baltimore County a landscape plan for the site.

9. Prior to the commencement of operations, Petitioner shall provide contact information for the lessee company and also that for a company representative as well as the necessary key(s) and/or access code(s) or combination(s) with the local fire departments to ensure the local fire departments have access to the solar facility if needed.

10. Petitioner shall not use, incorporate, or attach barbed wire, razor wire, or barbed wire fencing or razor wire fencing as part of the solar facility.

11. The only trees permitted to be removed from the subject property are those on the western half of the property whose removal is necessary for the construction of the access drive. For each tree removed, Petitioner shall replace the removed tree with per diameter equivalent replacement native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Should any tree become damaged as a result of the road construction or any construction activity related to the solar field so that the visual screening of the solar array is affected, Petitioner shall plant a per diameter equivalent native species tree and each such replacement tree shall also provide similar or better shade and screening coverage. Petitioner shall not remove or cause to be removed any tree in the bowtie area, crossing point or on the proposed solar field.

Any petition for judicial review from this decision must be made in accordance with Rule 7-201 through Rule 7-210 of the *Maryland Rules*.

BOARD OF APPEALS
OF BALTIMORE COUNTY

Jason S. Garber, Chair

Andrew M. Belt

William A. McComas

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X

DATE: February 19, 2019

BOARD/PANEL: Jason S. Garber, Panel Chairman
Andrew M. Belt
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception pursuant to BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

STANDING

- The Board discussed the request for a solar facility and noted there were 4 days of hearings.

- The Board discussed BCZR § 4F-104 governing solar facilities. Specifically subsection (9) requires Petitioner to comply with the plan requirements of § 33-3-108 of the County Code. The Board noted that BCC § 33-3-108(a) states a plan approved by the "Department" is required for all development, etc. BCC Code § 33-3-101 identifies the "Department" as the Department of Environmental Protection and Sustainability ("DEPS"), not the Board.

- The Board discussed the County Council's intent for the solar facilities bill. The Board found that the Council did not intend for the Board of Appeals to decide if the Code § 33-3-108 plan meets the requirements. Rather, it intended that DEPS would review and make the determination. However, the Board, under BCZR § 502.1 and the solar facility regulations, can impose conditions as they deem necessary.

- The Board discussed the specific requirements of BCZR § 502.1, conditions determining granting of a Special Exception. The Board noted that many of the requirements were not contested, and addressed the ones that were, as follows:

  A) The Board noted the Protestants' concern about potential glare to be caused by the solar facility. The Board found that due the size, location, and angle of the solar panels, which will have a non-reflective coating, glare did not present a problem. One Member expressed concern about potential noise from the inverter. The Board can impose a condition regarding noise, but the Board also recognized that the County Code addressed noise issues. The Board found there would be no detriment to the health, safety or general welfare of the locality.

C) The Board noted there was no evidence of potential hazard from fire, panic or other danger. There was concern of access if there was a fire or other danger. The Board noted that building permits will govern the access road and crossing point.

G) The Board noted that solar facility regulations specifically permit solar facilities in the RC-7 zone as long as it meets the special exception criteria and additional requirements. The Board noted that the solar array will be no worse at this property than elsewhere and some of the concerns raised are ones that are found with other special exception uses. The Board found the proposal to be consistent with the purpose of the property's zoning classification and consistent with the spirit and intent of the Zoning Regulations.

I) There was limited evidence from Petitioner about a plan to protect the environment and natural resources in direct and on rebuttal. Protestants presented some testimony about concerns for the possible impacts to environmental and natural resources of the site and area. The Board noted it would have liked more evidence on those issues from both sides. However, after review of the evidence presented, the Petitioner met its burden. The Board noted that the argument regarding prime and productive soils on this site was not persuasive. The Board noted that DEPS will review and approve the project ensuring it will not be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains, etc. The Board discussed the issue of potential bog turtle habitats on the property. Although they are sympathetic to the issue, they would need more evidence of the existence of habitat on site or in the area nearby.

- The Board discussed the scenic road. The Board noted that the solar array is to be located 1,100 ft. from York Road and screened with vegetative landscaping. The Board found the scenic road will not be affected.

- The Board discussed the Protestants' argument that a 300 ft. setback applies. The Board noted that a 300 ft. setback generally applies to all properties in the RC-7 zone. The solar facility regulations provide a 50 ft. setback. There was argument about whether a 50 ft. or 300 ft. setback applied. The Board disagrees with the Protestants' argument that the 300 ft. setback applied as it did not meet the criteria, but noted that DEPS will make its determinations.

- The Board discussed the requirements contained in BCZR § 4F-104, and found the Petitioner complies with the requirements the Board is supposed to review.

- The Board discussed the argument that the solar panels are an impervious surface. The Board found that the solar panels will be located 2-1/2 ft. off of the ground, and are not an impervious surface.

- The Board discussed the argument that specific conditions of the ALJ Opinion were not appealed. The Board noted that appeals to the Board from ALJ zoning decisions are heard *de novo*. If the subject matter of the ALJ decision is appealed, the Board can impose conditions as they feel fit. The Board noted that the record presented before the Board is different than the record before the ALJ.

- The Board was generally fine with the conditions in the ALJ Order, but discussed certain ones and modified them. The Board imposed additional conditions. The Board also discussed Condition #4 contained in the ALJ Order, which stated that no trees were to be removed. Several weeks after the ALJ Opinion was issued, Petitioner sent a letter to the ALJ asking for a clarification or modification to allow trees to be removed to construct the access road. Opposing counsel and parties were not provided a copy of the letter when filed, or after the ALJ signed the letter with language contained on the bottom of the letter to make the change. The Board noted that the change to the condition required public notice, a public hearing, and specific notice to the Protestants and counsel. The Petitioner could have filed a Motion for Reconsideration to request the modification. The letter as filed deprived counsel and the public the chance to participate, and therefore, the change had zero effect. The Board made it clear that sending a letter to the ALJ to change a condition, without notice, was unacceptable.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to GRANT the Petition for Special Exception with conditions imposed.

NOTE: These minutes, which will become part of the case file, are intended to indicate for the record that a public deliberation took place on the above date regarding this matter. The Board's final decision and the facts and findings thereto will be set out in the written Opinion and Order to be issued by the Board.

Respectfully Submitted,

Tammy A. Zahner

Tammy A. Zahner

IN THE MATTER OF:	*	**BEFORE THE**
ROBERT GERNER, LEGAL OWNER AND ESA SPARKS GLENCO, LLC LESSEE	*	**BOARD OF APPEALS**
	*	**FOR**
15637 YORK ROAD	*	**BALTIMORE COUNTY**
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT	*	
	*	**Case No. 2018-047-X**

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POST-HEARING MEMORANDUM

The Petitioner/Appellee, ESA Sparks Glenco, LLC ("ESA") by and through its undersigned Counsel, hereby submits this Post-Hearing Memorandum in support of its Special Exception and in support thereof states the following:

I. INTRODUCTION

"Every two minutes, the energy reaching the earth from the sun is equivalent to the whole annual energy use of all of humanity. All the energy… the cars, lighting, and air conditioning of the world… in one year is equivalent to two minutes of the sun." [1]

The question that arises is, "What is Baltimore County going to do about it?" The State of Maryland, through the Maryland Energy Administration, in conjunction with its Public Service Commission and the Baltimore Gas & Electric Company ("BGE") have acted by creating the Community Solar Program providing opportunities for private solar companies to construct community solar projects throughout Maryland.

In furtherance of this energy policy and in order to harness the energy of the sun, the Baltimore County Council enacted, and the County Executive signed into law, Bill 37-17[2] establishing a comprehensive solar program across every Council District of Baltimore County. As the Board of Appeals ("Board") is aware, a solar facility is permitted by special exception

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Dr. Lamya N. Fawwaz, V.P. for the International Advancement of Public Affairs at Masdar Institute of Science and Technology (MIST), Abu Dhabi.

[2] Bill 37-17 is codified as Article 4-F of the Baltimore County Zoning Regulations.

and each Council District is eligible to have up to ten permitted solar facilities. For the many months prior to its passage, the provisions of Bill 37-17 were completely vetted with the stakeholders who would be impacted by its passage, which vetting included many of the individuals and community groups who have appeared before this Board. After a tremendous amount of debate and discussion, Bill 37-17 was passed and specific requirements were established before a petition for a solar facility could be approved.

As of time of the writing of this memorandum, every single special exception filed in Baltimore County for a solar facility has been approved by Judge, John E. Beverungen. Every solar facility approved by Judge Beverungen in the 3rd Council District has been appealed to this Board. No approvals from any other Council District have been appealed to the Board. Many of the Protestants in this case have taken it upon themselves, sometimes concerning projects located miles away from their homes, to challenge the very passage Bill 37-17 by appealing and delaying the approval process for these solar facilities in the 3rd Council District, somehow asserting that solar facilities may be allowed elsewhere in Baltimore County, but not be permitted in their backyards.

However, it is important to note that these community solar projects must be spread out across the power grid and located within the communities they serve. A solar facility in Dundalk could not produce clean renewable energy for Hereford, which is why the Public Service Commission and BGE determine the amount of megawatts that each facility may produce based upon the needs of that specific community under review. That decision is not left up to the solar company.

Now I ask you to consider this. The time it took the members of this Board to collectively read this introduction, enough energy from the sun reached the earth to power the energy needs of all of humanity for one year. The overwhelming majority of Baltimore County citizens living within the 3rd Council District deserve the benefits of clean renewable energy and they should not be denied this opportunity because of the actions of a few Protestants. It is time for all of Baltimore County to get into the game. For the reasons that follow, this Board is urged to approve this request for Special Exception for a solar facility on this property.

II. THE SOLAR FARM @ 15637 YORK ROAD

This applicant, ESA is proposing to install a 1.87 mega-watt AC solar facility on a 30.27 acre property located at 15637 York Road. While the entire Gerner property comprises 30.27 acres, ESA proposes to utilize only 9 acres of the overall tract for the purpose of installing their solar panels. (See Pet. Ex. 1 & 1A) The usage of only 9 acres is important as objections have been raised by neighbors and People's Counsel as to the excessive amount of acreage that is being used at other facilities to produce solar electricity. In fact, Mr. Zimmerman, People's Counsel for Baltimore County, in his questioning of various witnesses, commended ESA for limiting their use of this land to less than 5 acres per mega-watt of AC electricity.

The Gerner property is located along York Road, a designated scenic route. The 30.27 acre parcel is unusually and irregularly shaped and its configuration has been described by the witnesses who testified as resembling that of a "bow-tie". While the Gerner property borders York Road, the solar panels are proposed to be located on the east side of the bow tie, a distance of approximately 1,100 feet from York Road. (Pet Ex. #1 & #1A.) There are also topographical changes to the land and existing vegetation that prohibit a motorist travelling on this scenic route from seeing the area where the solar panels will be displayed. An independent site visit was conducted on August 23, 2017 by the Department of Planning and a determination was made by that agency that ***"due to the topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially (sic) properties"*** The Department of Planning has no objection to the granting of the requested zoning relief. (See Pet Ex. #10.)

The Department of Planning's position as to visibility was corroborated by petitioner's witnesses Bruce Doak, Mitchell Kellman and Brian Quinlan who also testified that the solar panels will not be visible from York Road. To the contrary, Protestant's witness, Ms. Lynne Jones, who resides approximately 10 miles away from the subject site, testified that the area where the panels are proposed to be located can be seen from a particular spot on York Road and offered a photograph that she alleges depicts this view. (Prot. Ex. #19A) However, when looking at that photo, it appears from its angle, that the land in the distance is the Mayo or Gorsuch's retirement property and not the Gerner property. Given her limited knowledge of this property and the many miles that she lives from this site, it appears that she may have pointed her camera in the wrong direction.

Also, Protestant's witness, William Mayo testified that the field where the panels are to be located is visible from several nearby properties, yet he failed to produce any photographs to

prove that assertion. Instead, the only photo he offered was Protestant's Ex. #31 taken at the edge of the Gerner's property, from a row of corn looking into the Gerner site. The overwhelming testimony as well as the many exhibits entered into evidence demonstrate that the area where the solar panels are to be installed is remotely located and will be well screened by existing mature vegetation and changes in the topography to the land, just as the Department of Planning stated in their comment. The low impact of the facility makes it consistent with the spirit and intent of the Baltimore County Zoning regulation for this location.

Access to the solar panel array will be provided by a narrow road commencing at York Road and traversing the Gerner property down to the east side of the bow tie. This access road will be subject to a State Highway Administration access permit. The access road will utilize an existing culvert that crosses over a drainage area and then enters into an open field where the panels are proposed to be installed.

It was made clear at the hearing before the Board that no trees will be removed in the field where the panels will be located. However, it may be necessary to remove trees in order to install this access road. No grading will occur in the field as the solar panels are mounted on a rack system supported by a series of posts, which are augered or direct-driven into the ground similar to fence posts.

These panels are fixed, do not rotate and stand less than 8 feet from the existing surface grade. The grassy vegetation that exists in the field will remain under the panel arrays and there will be an undisturbed grassy strip of land between each row of panels equal to the length of the each panel. That is, if a panel is 8 feet in length, there will be an 8 foot open strip between the panels that will remain in grassy vegetation. The surface of the ground under all of the panels will remain pervious and in its natural vegetative state. This grassy vegetated area will collect and infiltrate any rain water that may run off of the surface of the solar panel itself. Prior to the issuance of a building permit, the applicant will have to comply with the storm-water management regulations that are applicable to solar arrays which regulations were promulgated by MDE and were submitted into evidence. (See Pet. Ex. #8)

As shown on the plan, there will be a maintenance road looping around the solar panels for access. This road will consist of gravel and stone. There will be a chain link security fence around the perimeter of the solar field, which will contain no barbed-wire and will have a top

fence bar to prevent owls, deer, raccoons and foxes from impaling themselves on the top of the chain link fence.

The entire Gerner property is zoned RC7, which is a resource conservation zone and not an agricultural zone, such as the RC2 zone. (See Pet. Ex #16, RC Zone Comparison Chart). While the area where the panels are to be installed does contain some soils that are suitable for farming, the property itself is neither prime nor productive. Mr. Mayo testified that his family, in past years, did farm this area of the Gerner property. He stated that the property was not a very good crop producer and was difficult to farm. He stated that they were successful in growing some hay on this area, but even that was a challenge. The owner is not a farmer and the economic benefit to lease the land for farming is not sufficient in the owner's opinion. There is no law that forces a property owner to have to "farm" their property, particularly when that property is less than ideal for farming. The installation of solar panels and the production of solar energy is most assuredly, the highest and best use of this particular property.

III. SPECIAL EXCEPTION APPROVED BY JUDGE BEVERUNGEN

This Special Exception request for approval of a solar facility case was originally presented for consideration before the Honorable John E. Beverungen, Administrative Law Judge for Baltimore County on the 18th day of December, 2017. After a trial on the merits of the case, Judge Beverungen granted approval of this solar facility by Order dated the 21st day of December, 2017. Judge Beverungen's approval was conditioned upon seven restrictions which were recited at the end of his decision. A copy of that decision was entered into evidence. (See People's Counsel Ex. #6)

Thereafter, a letter of clarification of Restriction #4 of Judge Beverungen's decision, dated the 12th day of January, 2017 was submitted into evidence. (See Pet. Ex.#21) Restriction #4 of his decision stated that ***"No trees shall be removed from the site in connection with the construction and/or operation of the solar facility"***. This statement is true as it relates to the area of the solar field and the area of the Gerner property where the panels will be installed. However, as anyone can see from the multitude of exhibits entered into evidence in the case before Judge Beverungen as well as before this Board, it is absolutely necessary to remove some trees in order to install the access road from York road to the solar farm.

This letter of clarification, which was submitted to Judge Beverungen on January 12, 2018, was signed and approved by Judge Beverungen on January 16, 2018. This letter was made a part of the zoning file and was included within the file and was available for inspection at the time that the appeal was filed by H. Barnes Mowell, Counsel for the Protestants as well as the People's Counsel for Baltimore County. In fact, this Board pointed out at our hearing that the letter of clarification was actually in their file, which was sent up to the Board from the ALJ's office below.

Accordingly, the appeal to this Board of Appeals involves not only the decision of Judge Beverungen, but the letter of clarification as well, which modified restriction #4 as to the removal of trees. This Appeal comes to this Board *de novo*, in accordance with Baltimore County Code ("BCC") Section 32-3-401(1).

IV. THE SPECIAL EXCEPTION STANDARD AND 502.1 OF THE BCZR

BCZR Section 502.1 contains the special exception elements that must be proven in order for a Court to approve a special exception request. These 502.1 factors must be reviewed in light of the recent cases that interpret that section of the BCZR. Before any special exception may be granted, it must appear that the use for which the special exception is requested will not impact the factors in Section 502.1. The key term in the regulation is the use of the word "appear". The special exception process is the first step in a long process for a project to be approved for construction. Many details and studies are performed after the special exception has been granted. As a result, the regulations are written to reflect the fact that if an activity/development may be granted in a particular zoning district with a special exception then it is inherently acceptable for the district.

The Court of Appeals, in *People's Counsel v. Loyola College in Maryland,* 406 Md. 54 (2008) and *Schultz v. Pritts,* 291 Md. 1 (1981) directed that when analyzing each prong of Section 502.1 the Board must consider "whether there are facts and circumstances that show that a particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with a special exception use irrespective of its location within the zone."

Furthermore and more recently in the *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), the Court of Appeals has held that "a special exception is presumed to be within the interests of

the general welfare, and therefore the special exception enjoys a presumption of validity". The Court of Appeals also stated in *Anderson v. Litzenberg,* 115 Md. App. 549 (1997) that this presumption of validity "enhances the probative value of other evidence adduced" by an applicant for special exception. *Id* at 287 Applying this presumption of validity, the applicant need only produce a *prima facie* case in support of their special exception request and once done, the protestants must then set forth sufficient evidence to prove that the proposed use would have adverse impacts above and beyond those inherently associated with such use.

This applicant, ESA presented a *prima facie* case to support the approval of our special exception request and the Protestants failed to establish that the impacts of our solar facility at this location would have a greater impact at this location above and beyond those inherently associated with the use. We now review section 502.1 of the BCZR.

V. THE APPLICATION OF SECTION 502.1 OF THE BCZR

Section 502.1 of the BCZR states: Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

502.1.A. ***Be detrimental to the health, safety or general welfare of the locality involved***;

ESA produced witnesses who testified as to the "locality involved". Messrs Quinlan, Kellman and Doak testified that the locality was defined as that area of land located on the east side of York Road and enclosed and bounded by the Upper & Lower Glencoe Roads which circle back to and connect with York Road. The applicant submitted into evidence a map of this "locality" which was accepted into evidence at Pet. Ex. #9. This testimony was unrebutted by the protestants.

Having defined locality, the witnesses then testified that the installation of solar panels on this 9 acre open field would not be detrimental to the health, safety or general welfare of the defined locality. The panels make no noise. They are unmanned and use no water or septic. They make no noise except for an inverter which is inaudible at the property line. They are supported by a simple post and rack system where the grade of the land remains intact. Little soil is disturbed. They are screened by natural existing vegetation and the topographical changes in the land. In addition, the panels will be located about 1,100 feet from York Road. They will be enclosed by a chain link security fence. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut

this testimony.

502.1.B. ***Tend to create congestion in roads, streets or alleys therein.***

This factor is easily proven and really needs no testimony as the facts basically speak for themselves. That is, these solar facilities, once constructed are unmanned, and are only periodically visited for maintenance and inspection purposes. The maintenance workers will visit the site in a small pick up truck vehicle which will easily traverse the access road. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.C. ***Create a potential hazard from fire, panic or other danger.***

The testimony of the witnesses for the applicant, particularly Mr. Quinlan demonstrated that the materials used for the solar array are basically inflammable. The post and rack support system are made of metal, the panels are made of aluminum and glass and contain little combustible material. Once properly installed, the panels should not create a potential from fire, panic or danger. The perimeter of the solar array will be secured by a chain link fence which will deter outsiders from trespassing within the solar field. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.D. ***Tend to overcrowd land and cause undue concentration of population.***

The solar panels are unmanned and will cause absolutely no undue concentration of population. They stand no more than 8 feet tall, (about the height of a cornstalk) and therefore will not overcrowd the land. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.E. ***Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements.***

The installation of solar panels and the operation of a solar facility is an extremely passive use of any parcel of land. The panels just sit there and collect the rays of the sun and send clean electricity into the local power grid. It is hard to comprehend how any of these items could be negatively impacted by this special exception request. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.F. ***Interfere with adequate light and air.***

The testimony presented by the applicant showed that the panels will stand no taller than 8 feet from the grade of the property. It is not fathomable that the panels could interfere with adequate light and air. The applicant presented a *prima facie* case on this element to be considered by the Board and the protestants offered little or no evidence to rebut this testimony.

502.1.G. ***Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations.***

The Baltimore County Council has spoken on this issue. They enacted new legislation, Bill 37-17, specifically permitting solar facilities on land zoned RC7 by special exception. Bill 37-17 was greatly debated by the County Council as well as the many citizens who participated in the passage of that Bill. Some of those same citizens who participated in the Bill's passage are appearing and testifying in this and other hearings before this Board. The Council, by its passage of this Bill, has already determined that this use is generally compatible with the RC7 zone and that it is appropriate to have such a use on RC7 land. If they thought otherwise, they would have excluded RC7 land from the Bill.

Furthermore, it should be noted that the Department of Planning supports the placement of solar panels in the RC7 zone and has asserted that solar panels are consistent with this RC7 zoning. In their comment dated 9/20/2017 the Director of Planning stated that her "***Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations BCZR***" and further that ***"The Department has no objection to the granting of the zoning relief***". (See Pet. Ex. #10)

The Protestants will likely argue that the installation of solar panels on this property is a waste of prime and productive soils and otherwise takes away from the opportunity to farm this land. As was stated earlier in this memo and which is worth restating here, the entire Gerner property is zoned RC7, which is a resource conservation zone and not an agricultural zone, such as the RC2 zone. (See Pet. Ex #16, RC Zone Comparison Chart)

While the area where the panels are to be installed does contain some soils that are suitable for farming, the property itself is neither prime nor productive. Mr. Mayo testified that his family, in past years, did farm this area of the Gerner property. He stated that the property was not a very good crop producer and was difficult to farm. He stated that they were successful in growing some hay on this area, but even that was a challenge. There is no law that forces a property owner to have to "farm" their property, particularly when that property is less than ideal

for farming. The landowner is not a farmer and has determined that it is not beneficial to lease the land for farming. The installation of solar panels and the production of solar energy is most assuredly, the highest and best use of this particular property.

The Protestant's will also most likely argue that the installation of the solar panels is inconsistent with the setback provisions as stated within the RC 7 zone. They rely upon section 1.A08.6.B which states that "***Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an RC 7 zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the past three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement".***

Let's first analyze the very language of this provision, because the Protestants failed to prove any of the items required to be proven by the language of this provision. First, our solar panels are not a "***principal building or a well***" nor are they a "***use that may be in conflict with any permitted agricultural operation, in an RC7 zone".*** The agricultural operation that the protestants argue is impacted by this provision, specifically the Gorsuch Retirement property located to the west of the Gerner site, is zoned RC2 and not zoned RC7 as required by this provision. The specific language of this provision requires that the impacted agricultural land be zoned RC7. That is not the case here and accordingly, this section does not apply.

Furthermore, this provision requires that the Protestants prove that the "***adjacent property… was cultivated or used for pasture during the past three years, as determined by the Department of Environmental Protection and Sustainability***". There was absolutely no testimony presented to this Board that such a determination was made by the Department of Environmental Protection and Sustainability. For these reasons, based upon simple statutory interpretation, the 300 foot setback does not apply to this Gerner property.

Moreover, the provisions of the RC7 regulations that establish a 300 foot setback are inapplicable to solar panels because that provision was superseded by the recently enacted Bill 37-17 which establishes a 50 setback for solar panels. Bill 37-17 specifically requires that all solar panels be setback at least 50 feet from the tract boundary of the property to be developed. (See §BCZR 4F-104.4) This new solar legislation was passed in 2017 as opposed to the RC7 zoning regulations which were passed in August, 2000, some 17 years prior to this solar law. (See People's Counsel Ex.#11). When a conflict in the law exists, the more recently enacted

legislation will prevail over a regulation passed many years prior. See, e.g. *State v. Ghajari*, 345 Md. 101, 115, 695 A.2d 143, 150 (1997) ***("if two statutes contain an irreconcilable conflict, the statute whose relevant substantive provisions were enacted most recently may impliedly repeal any conflicting provision of the earlier statute"***); *Farmer's and Merchants Bank of Hagerstown v. Schlossberg*, 306 Md. 48, 61, 507 A.2d 172, 178-179 (1986) ("***the statute whose relevant substantive provisions were enacted most recently [must] be held to have repealed by implication any conflicting provisions of the earlier statut***e").

502.1.H. ***Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations***;

The land upon which the solar panels are to be installed will remain completely vegetated. That is, the existing grassy vegetation that currently exists will remain and only a support post will be augered or direct-driven into the ground upon which the panels will be mounted. The panels will be suspended above the surface of the ground. Accordingly, the vegetation will be retained and no clearing or grading will take place. The applicant presented a *prima facie* case on this element to be considered by the Board and the Protestants offered little or no evidence to rebut this testimony.

502.1.I. ***Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone.***

Based on the testimony of the witnesses who testified on behalf of this petition for special exception, the installation of the solar facility will not be detrimental to the onsite environmental and natural resources in the vicinity. The petitioners called Mr. James Deriu to testify in their case in chief. Mr. Deriu testified that he walked the subject property but had not yet performed a detailed environmental analysis of the property. He stated that based on his preliminary review of the property he did not see any wetlands in the area where the panels are to be installed. He also stated that there was a water resource in the area of the knot of the "bow tie" which is where the current access road crosses over leading down into the east side of the "bow tie" where the panels are to be installed. He stated that a permit will need to be issued to the applicant for the continued use of this culvert and that the Petitioner will have to respect any and all environmental resources on the property, if any, once they are delineated.

The Protestants offered their own wetland delineator, Mr. John Roemer, IV who testified

that he visited the adjacent property and performed a wetland analysis of the property located to the north of the Gerner property. This is the property known at the Rude property. Mr. Roemer testified that while he observed wetlands on the Rude property, he was unable to determine if wetlands exist on the Gerner property. He submitted into evidence Prot Ex. #28 which depicts two areas of the wetlands, both of which are on the Rude property and none of which are on the Gerner property.

Mr. Roemer also testified that in his opinion, conditions exist on the adjacent property owned by Mr. Rude, which might present a possible habitat for bog turtles. He admitted that he is only qualified to identify potential habitats and in no way can determine whether bog turtles actually exist. He testified that another more qualified person would need to make that determination. His opinion as to the existence of bog turtles was mere speculation and should not be considered as evidence by this Board. If the Protestants were sincere in their concern for these bog turtles, they would have taken the next step to prove their existence. They failed to undertake any further studies to identify bog turtles on the Gerner property and more specifically on any property impacted by the solar facility.

Certainly there was no concern for bog turtles when Mr. Matczuk and Mr. Mayo "mucked" out the silt and sedimentation from the two ponds on Mr. Matczuk's property. The Board may recall the testimony of nearby resident Eddie Matczuk who resides at 932 Upper Glencoe Road, who stated that every 5 years or so, he and Billy (referring to Mr. William Mayo) "muck" out his ponds. This is the very silt layer that Mr. Roemer stated might provide a habitat for bog turtles. Mr. Matczuk stated that he never saw any turtles while mucking out his ponds and never saw any trout fish either. The Board should disregard these assertions as to the existence of bog turtles or trout fish as that testimony is based on pure speculation.

It is also worth noting that the Baltimore County Department of Environmental Protection and Sustainability ("DEPS") issued a written comment dated August 21, 2017 simply stating that the applicant will have to comply with the environmental regulations found in sections 33-3-101 through 33-3-120 and sections 33-6-101 though 33-6-122 of the Baltimore County Code. Other than this, DEPS took no position on the request for special exception at the time of this zoning hearing. (See Pet. Ex. #12)

As noted earlier, these solar panels are a benign use. They require no water so no well needs to be drilled. They produce no waste, so no septic is required. Any stormwater

management that might be required will be installed in accordance with the Maryland Department of the Environment ("MDE") guidelines. (See Pet. Ex #8) There was simply no evidence offered that the development of the Gerner property with a solar facility will have any adverse impact to the environmental or natural resources on the property above and beyond those which are inherently associated with such a special exception use. Assuming this zoning request is approved, all environmental features will be delineated and field located and will be protected in accordance with the law.

VI. BILL 37-17 REQUIREMENTS

Mr. Brian Quinlan, testified regarding these requirements. Mr. Quinlan, a graduate of the United States Naval Academy with a degree in mechanical engineering was accepted as an expert in the solar energy industry. He has an extensive background in solar energy, nuclear energy and other similar disciplines. He stated he was familiar with the newly enacted County Council Bill No. 37-17 and that he participated in the many hearings and work sessions that the County Council hosted prior to the passage of this solar law. This newly enacted solar Bill 37-17 is codified in the BCZR in Article 4F entitled "Solar Facilities". We now look at those requirements.

Regarding **§4F-102A.1**, Mr. Quinlan testified that this site will be producing less than 2 Megawatts of AC electricity as required by this section. He testified that our solar facility will be producing 1.85 MW of AC electricity.

Regarding **§4F-102A.2**, the uncontradicted testimony revealed that there are no more than 10 solar facilities located in this 3rd Council District. In fact, as of the time of the submission of this memorandum, there are no permitted solar facilities in the 3rd Council District of Baltimore County. The law specifies that this limitation applies to solar facilities that are actually permitted and not the number of special exception applications that have been filed or approved.

Regarding **§4F-104A.1**, the uncontradicted testimony offered by the applicant determined that the land upon which solar panels are to be displayed is not encumbered by any Agricultural Preservation Easements, any Environmental Preservation Easements nor any Rural Legacy easements. This provision is satisfied.

Regarding **§4F-104A.2**, the uncontradicted testimony was that the land upon which the solar panels are to be displayed is not located in a Baltimore County Historic District or is on the

Baltimore County Final Landmarks List. This provision is satisfied.

Regarding **§4F-104A.4**, the uncontradicted testimony was that all of our above ground components such as solar panels, inverters, and similar equipment are setback a minimum of 50 feet from our tract boundary. It is important to note that this is the specific provision of the newly enacted Solar Facility law that overrides the older sections of the RC7 zone.

Regarding **§4F-104A.5**, the uncontradicted testimony was that all structures will be less than 20 feet in height. The solar panels themselves will be less than 8 feet in height, which is about the same height as a field of corn.

Regarding **§4F-104A.6** existing natural and mature landscaping will remain around the perimeter of our solar facility. No trees will be removed around the perimeter our solar field. The solar panels will be properly screened as a result of this dense and extensive vegetation. This fact was observed by the Department of Planning and discussed in their comment dated 9/20/2017 after they personally visited the property.

It is also very important to note that this provision of the law only requires landscaping to be provided along our solar field where there is an ***"adjacent residentially used property"***. The property adjacent to ours, known as the Mayo or Gorsuch Retirement property is not residentially used at all. It is farmland and is agriculturally zoned RC2. Mr. Mayo testified that there is no house on that property and it is only farmland. The picture he took looking into our property, (Prot. Ex. #31) was actually taken from a corn field. He also testified that he drove his gator around to neighboring properties and said that our solar field is visible from those properties as well. He offered no photographic evidence of those alleged views. Regardless, that testimony is irrelevant as none of those properties about which he testified and which he visited are ***"adjacent residentially used properties"*** as required by the law.

Regarding **§4F-104A.7** the applicant testified that a chain link security fence will be provided around the perimeter of our solar facility. Responding to the concerns raised by Ms. Lynne Jones, Mr. Quinlan testified that our security fence will contain no barbed wire and will have a cross bar on the top of the chain link to prevent animals from becoming entangled in the fencing.

Regarding **§4F-104A.8** Mr. Quinlan testified that the arrangement of our solar panels will minimize glare or reflections onto adjacent properties and roadways and will not interfere with traffic or create a safety hazard. This is easy testimony to provide given that the nearest

roadway, York Road is located approximately 1,100 feet away from our solar panels and that there are topographic changes and vegetation existing between the location of our solar panels and the roadway itself. The same holds true regarding nearby residences. This testimony was unrebutted.

§4E-104A.9 simply states that ***"A petioner shall comply with the plan requirements of section 33-3-108 of the County Code".*** This simple one line provision produced a great deal of debate at the hearing before this Board. This particular provision is found within the environmental section of the BCC and requires the applicant to submit a plan to DEPS. The plan shall contain 18 specific items all of which are enumerated within section 33-3-108(c)(1–18). The problem with this provision is that it fails to specify at which time in the permit process the petitioner must comply with 33-3-108 of the BCC.

As stated previously, DEPS, the very department to which this plan is supposed to be submitted, commented on this special exception request. DEPS' comment was accepted into evidence as Pet. Ex #12. In that comment, DEPS required this applicant to comply with ***"Sections 33-3-101 through 33-3-120 of the Baltimore County Code"***. What is obvious from that comment is the fact that DEPS failed to require compliance with these provisions prior to the granting of the special exception herein. This was a perfect opportunity for DEPS to state that the 33-3-108 plan must be prepared and submitted prior to the consideration of the special exception request. They failed to do so simply because this plan is not required to be submitted at the "zoning" portion of the development process but rather prior to the issuance of a building permit.

The witnesses for the Petitioner, Messrs, Kellman, Deriu, Quinlan and Doak all testified that the environmental studies, delineations and the other items required to be on the 33-3-108 plan are not required to be performed until after the applicant's zoning case is approved and prior to the issuance of a **permit** for the project. They testified that it is the usual custom, practice and procedure in Baltimore County, that is, to wait until after the zoning approval is granted before committing the time, money and resources into performing the required studies and analyses required by 33-3-108. It is simply too costly to perform such detailed work at this juncture of the process. Several questions were asked by this Board as to how much it would cost to comply with the requirements of 33-3-108.

On rebuttal, Mr. Quinlan presented to the Board a detailed estimate of costs prepared by

Mr. Deriu, Vice President of KCI Technologies. Mr. Deriu testified earlier in the case that he walked the property to perform a preliminary assessment of the site. His cost estimate was accepted into evidence and indicated that the costs to perform all of the studies required by 33-33-108 would be $365,000.00. (See Pet. Ex. #26)

It is unnecessarily burdensome to require any petitioner to spend that amount of money on any project before their zoning approval is granted. That is precisely why the practice and procedure in the Baltimore County development and permitting process requires the applicant to get their zoning approval first before committing such large sums of money to get their permit.

The Board's analysis on this issue should stop here. It is entirely unreasonable to require the expenditure of such a large sum of money before an applicant knows whether he has a viable project. However, should the Board still have any doubt on this issue, it need look no further than at the testimony of the Protestant's own witnesses. Mr. John Altmeyer, the Protestant's first witness clearly stated in the course of his testimony, on three separate occasions, that this applicant in this special exception request for a solar facility is not required to perform the environmental analyses required by section 33-3-108 until such time as their zoning special exception has been granted and the applicant applies for their grading and building permit. (See pages 32, 37, 41 & 42 of Pet. Ex. #27, Transcription of Altmeyer Testimony)

In addition, Mr. John C. Roemer, IV, the Protestant's environmental expert also testified that the environmental work that is required by 33-3-108 would not be performed until the time that the permit to install the solar panels is applied for and after the special exception request is approved.

Lastly and most importantly, the Maryland Court of Appeals in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), entertained a very similar issue to the one at issue in this case. In *Attar*, a group of citizens were opposing a special exception request for a WAWA gas station on Groff's Mill Road in Reisterstown. The Protestants raised an environmental issue relating to the impact that the proposed WAWA would have on the Gwynn's Falls floodplain. Tollgate, the Developer of the WAWA argued at the hearing before this Board of Appeals that any impact on the floodplain would be determined at a later date, through a different process, after the special exception request was approved. In that case, the Board of Appeals did not render a factual conclusion on the issue, stating ***"The possibility of a negative impact upon the flood plain by [The Applicants'] plans will be determined separately by way of the investigation by State and***

Federal authorities and pursuant to the Baltimore County Code." *Attar,* 451 Md. at 288.

On Appeal, the Court of Appeals confirmed the legitimacy of the Board's approach, finding that: ***"Tollgate is not prevented by the BCZR from proceeding with the request for Special Exception before receiving approval for the floodplain relocation. Because the Board did not render, nor was it required to make, a factual conclusion on this issue, and we cannot arrive at such a conclusion, there was no error from the Board for us to review.*** *Attar*, 451 Md. at 289.

For all of the above reasons, there is absolutely no requirement for the Applicant in this case to have to prepare and submit to DEPS a plan prepared in accordance with section 33-3-108 of the BCC at this time of the zoning process. The applicant is entitled to know that they have their zoning request approved, before they undertake the expense and time of performing such environmental work.

§4E-104A.10 gives the authority to the Administrative Law Judge and the Board of Appeals, to ***"impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of the surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands."***

This particular section of the newly enacted solar facility bill gives complete authority to this Board to impose whatever conditions on the approval of this special exception request that the Board deems necessary given the testimony presented at the hearing. There are many items that are considered after this zoning hearing is rules upon by this Board.

For example, the approval or denial of a State Highway Administration access permit for York Road, storm water management plans, applications to MDE and/or the Army Corp of Engineers for wetland or stream permits, to name a few. This particular "catch-all" provision is evidence that the County Council realized that there are matters that follow the special exception zoning process that might warrant the imposition of conditions or restrictions. Should the Board have any concerns about approving this or any of the special exception requests for solar facilities, it should simply utilize this "catch-all" provision to alleviate those concerns by imposing whatever restrictions they deem appropriate.

CONCLUSION

For the reasons as stated within this memorandum, and given the strong presumption in favor of the granting of this special exception use as established by applicable Maryland case law discussed herein, coupled with the failure of the Protestants or People's Counsel to provide any substantive evidence that this special exception use at this location would have a unique and different impact above and beyond those inherently associated with this special exception use irrespective of its location within the zone and in conjunction with the evidence presented that the use is not in conflict with the requirements of Section 502.1, it is respectfully requested that this Board grant the special exception request.

Respectfully Submitted,

Timothy Kotroco

Timothy M. Kotroco, Esquire
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Attorney for the Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 9th day January, 2019 a copy of the foregoing Memorandum was mailed first class, postage prepaid to H. Barnes Mowell, Esquire 16925 York Road, Monkton, Maryland 21111 Attorney for the Protestants; and to Peter M. Zimmerman, People's Counsel for Baltimore County, The Jefferson Building, Suite 204, 105 W. Chesapeake Avenue, Towson, Maryland 21204.

Timothy Kotroco

Timothy M. Kotroco, Esquire

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January 8, 2019

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: Petition for Special Exception
15637 York Road
Legal Owner: Robert K. Gerner
Lessee: ESA Sparks Glenco LLC
Case No: 2018-047-X

HAND-DELIVERED

Ladies and Gentlemen:

I have enclosed, for filing, the Protestants' Post-Hearing Memorandum for this case. Thank you for your cooperation in this regard.

Very truly yours,

H. Barnes Mowell

Certificate of Service

I HEREBY CERTIFY that a copy of this letter and Post-Hearing Memorandum were mailed this 8th day of January 2019 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and to Peter Zimmerman, Esquire, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.

H. Barnes Mowell

RE: PETITION FOR SPECIAL EXCEPTION 15637 York Road Legal Owner: Robert K. Gerner Lessee: ESA Sparks Glenco LLC 8th Election District 3rd Council District	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY CASE NO: 2018-047-X

* * * * * * *

PROTESTANTS' POST-HEARING MEMORANDUM

The Protestants, by their attorney H. Barnes Mowell, submit this Post-Hearing Motion in support of their request that the Petition for Special Exception be denied in this case, and state as follows:

Protestants' Motion for Judgment and Petitioners' Burden of Production

The Protestants moved for judgment at the end of the Petitioners' case, arguing that the Petitioners had the burden of producing the evidence needed to allow the Board to make a reasoned decision, and they had not met their burden. Requesting permission to place over 6,000 impermeable solar panels on a sloping, 16 acre field, zoned R.C. 7, with a stream, wetlands, prime and productive soil, and located adjacent to a cultivated field owned by someone else, raises many issues. It is the Petitioners' obligation to address those issues and to explain how their project can be safely completed. Judge Murphy stated as much in his concurring opinion in People's Counsel v. Loyola, 406 Md. 54 (2008), …"the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted." *Id.* at 109. The burden of production is explained in Terumo Med. Corp. v. Greenway, 171 Md. App. 617, 626 (2006):

"In analyzing whether a proponent has met the burden of production, the court lists the constituent elements of the proposition to be proved -- the crime, the tort, the contract, etc. -- and then determines whether the evidence in the case, if given the maximum credibility and maximum weight, could permit the fact finder fairly to find each of those constituent elements."

Section 502 of the Baltimore County Zoning Regulations lists the nine "elements" to be proved in a Special Exception case. The Petitioners have the burden to produce evidence that the requested use will not, *inter alia* (I). "Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains…"

Consistent with that requirement, the new solar facilities law directs that "A Petitioner *shall* comply with the plan requirements of Section 33-3-108 of the County Code. (4F-104(9), *emphasis added*). Section 33-3-108 contains a long list of environmental information that must be included with the Plan, including (6). field delineated, marked and surveyed streams, springs, seeps, bodies of water, and wetlands, (9). soils mapped and labeled in accordance with the soil survey of the county, 10). slopes greater that 10% for areas adjacent to and within 500 feet of streams, wetlands or other bodies of water; 11). rare species, threatened species, or endangered species habitat, 12). existing vegetation, 13). location and type of stormwater management devices and practices, and 16). historical and archaeological sites.

4F-104(10) of the solar facilities law advises that:

"In granting a special exception, the administrative law judge or Board of Appeals on appeal may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands."

Read together, these laws impose a burden on the Petitioners to produce the evidence needed to allow the fact finder to decide whether this solar facility should be allowed. More than a year after filing their Petition, we have no evidence from the Petitioners about the streams on the property, or the wetlands, whether there are slopes greater than 10%, how runoff from thousands of solar panels will be controlled, the quality of the soil onsite, any endangered species

habitat (such as potential bog turtle sites), or historical or archaeological sites on the property, and whether the stream can be legally crossed with the equipment needed to construct and maintain the solar array.

On the last day of this case, Brian Quinlan offered into evidence a proposal from KCI Technologies for engineering and environmental studies for this site (Petitioners' Exhibit 27). The cost; an astounding flat fee of $365,000! The work includes a stormwater management plan, forest delineation and conservation plan, wetland and stream delineation, steep slopes and erodible soils evaluation, forest buffer easements evaluation, meetings with the Maryland Department of Environment and Corps of Engineers regarding the wetlands, and studies for any necessary culvert improvements. The KCI proposal encapsulates all of the environmental issues that the Petitioners had ignored in their case in chief, but which Protestants had raised in their presentation.

Mr. Quinlan testified that he would "look into the environmental issues" after getting zoning approval for his project. That approach ignores the clear mandate in the solar facilities law to give to the fact finder the information specified in Section 33-3-108, so that a reasoned decision can be made. His approach makes it impossible for this Board to impose conditions or restrictions on the solar facility to protect the environment. Because the Petitioners have not met their burden to produce the evidence needed for the Board to decide if this use will be detrimental to the site or the vicinity, their Petition should be denied.

300 Foot Setback from Adjacent Cultivated Property

The Gerner property is entirely within the R.C.7 (Resource Conservation) Zone. According to Section 1A08.1(A)(1) of the Baltimore County Zoning Regulations, the R.C.7 Zone was created to identify "specific resource preservation areas where valuable cultural,

historical, recreational and environmental resources are located and should be protected for the health of the local community and the community at large." The R.C.7 Zone is designed to allow only "limited development, compatible with the rural community, and at the same time protect rural resources" (1A08.1(A)(3)) and to "preserve the traditional character of rural communities by limiting the scale and intensity of development" (1A08.1(B)(11)).

Consistent with those purposes, the R.C. 7 regulations contain a unique restriction, which requires a setback to protect adjacent agricultural property. Section 1A08.6(5)(b) of the BCZR provides that:

> "Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an R.C.7 Zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the previous three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement."

Bill Mayo testified that he is the President of Gorsuch's Retirement, Inc., a family corporation that owns a field adjacent to the field where the solar panels would be installed. Mr. Mayo said that his family's adjacent field is leased to Chuck Ensor, a local farmer, who has grown corn and soybeans on the field for years. Mr. Mayo had a photograph of the corn growing in his field in August 2018, and noted that the aerial photograph of the neighborhood, on display and put into evidence by the People's Counsel, showed his field shortly after its crop had been harvested.

When confronted with this setback statute, Bruce Doak, the Petitioners' witness, said that it didn't apply to this case. He did not agree that erecting 6000 solar panels was a use "that may be in conflict with any permitted agricultural operation" on the adjacent property. He also believed that the 50 foot setback specified in the solar legislation superseded the 300 foot setback in the R.C.7 regulation.

The Gorsuch's Retirement field is adjacent to the field where the solar panels would be installed, and would receive runoff from the panels. Mr. Mayo expressed his concern about the runoff from the solar field. He also testified about the deer damage to his crops. He felt that fencing in nine acres right next to his cornfield would steer more deer into his field, causing more crop damage, and will take away nine acres of vegetation, and other food, for the deer.

Mr. Mayo also worried about glass solar panels being placed near the existing row of trees on his property line. A tree that falls from Gorsuch's Retirement property into the Gerner agricultural field is of little concern to him, at this point. A tree that falls onto glass panels in that field, however, is a different story. In light of Mr. Mayo's testimony, this Board should reject Bruce Doak's offhand and unsubstantiated opinion that the installation of solar panels would not conflict with the established agricultural operation in the adjacent field.

As to the setback, the 50 feet specified in the solar facilities law is a minimum requirement:

> "Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a ***minimum*** of 50 feet from the tract boundary." 4F-104(A)(4), emphasis added.

The setback regulations can and should be read in concert, and not as requiring a choice between the two - All solar facilities must have at least a 50 foot setback, and one installed on R.C.7 property must be set back 300 feet from an adjacent cultivated or pastured field. That interpretation is supported by Section 600.1 of the Baltimore County Zoning Regulations:

> "In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations."

Section 600.1 of the BCZR directs that the greater restrictions imposed, by two applicable laws, are the ones to be applied. Therefore, a 300 foot setback, and not a 50 foot setback, is required here. Bruce Doak's belief that the 50 foot setback in the solar law trumps the 300 foot setback in the R.C. 7 regulations is incorrect, and must also be rejected.

This array was designed in violation of the 300 setback that is afforded adjacent agricultural operations in an R.C.7 zone. It is undisputed that this solar facility cannot be built as designed, as the proposed array encroaches well into the 300 foot setback area. The Petitioners made no attempt to redesign their array after the 300 foot setback issue was raised, and their Petition should be denied.

Impervious Surface Coverage in an R.C.7 Zone

Another regulation limiting development of an R.C.7 property is contained in Section 1A08.6(6) of the Baltimore County Zoning Regulations:

"6. Impervious surface coverage – nonresidential development. Except for residential lots which are subject to a building envelope restriction, no more than 10% of any lot may be covered by impervious surfaces such as structures or pavement."

Baltimore County has afforded extra protection to properties in an R.C.7 Zone. These properties have something special; cultural, historic, recreational, or environmental resources that need to be protected. One way to do that is to be especially restrictive on nonresidential development in an R.C.7 Zone. If there is to be nonresidential development, it has to be minimal, with no more than 10% of the site covered with impervious surfaces. On cross-examination, Bruce Doak admitted that the solar panels are impervious surfaces. He admitted that 9 acres of solar panels on a 30.7 acre lot equates to more than 10% impervious surface coverage. Neither he, nor any of Petitioners' other witnesses, provided any explanation, argument, or rationale for why this project should be allowed, in light of this 10% limitation on impervious surface

coverage.

It appears, quite simply, that Brian Quinlan was not familiar with this regulation when he chose this site, nor was he alerted by any of his experts that he may have a problem. In any event, a nonresidential project that would cover almost a third of sensitive R.C.7 land is in obvious violation of the above statute, and cannot be approved.

Runoff

We heard nothing from the Petitioners to explain how runoff from over 6,000 solar panels would be controlled. To the Petitioners, that is one of the environmental issues that can wait. If these panels are installed, hard rains will hit 6,840 glass panels, each six feet long. The rainwater will stream off each panel's lower edge, and onto the ground below. What does not absorb into the ground will run off. It will run into streams, wetlands, and the Gunpowder Falls, less than half a mile away. It will run into a "Sensitive Species Project Review Area - Group 3", identified by wetlands expert John Roemer, and shown on his map. (Protestants' Exhibit 28). The Group 3 Area contains "species or natural communities of concern to DNR, but with no official status". What species live in that area? What is the concern? How much runoff will reach there? What will be the effect? We have no answers.

On the last day of the case, Brian Quinlan offered into evidence a telling e-mail that he received from Mark Staley at the Maryland Department of Natural Resources. Mr. Staley began by confirming that there was an un-named tributary to the Gunpowder Falls that flows through the Gerner property. He said that there are wild trout in tributaries around this site, and Quinlan should "proceed as if trout occur on your property." Staley noted that the Gunpowder Falls, "downstream of your project" is an area where the State stocks 5,000 adult trout each spring, and is a "very popular and heavily used recreational fishery". Mr. Staley concluded by advising that

"Any measures you can take to reduce or eliminate warm water discharges or heating to the tributary will benefit trout. Controlling sediment inputs is equally important."

The Petitioners provided no information in their case on either warm water discharges or sediment control. We do not know their position on either issue. We do not know if they are aware of either issue. We do not know the quantity of runoff from their panels, the temperature of the water running off, or its effect on stream temperature. We do not know how trout would handle a temperature change. Similarly, we have no information on the quantity of sediment that will be washed into the streams, or what effect the sediment will have on the trout.

This site contains significant slopes. John Altmeyer testified that he computed slope percentages of 13.38%, 15.83%, 16.54%, and 7.6%, at four different locations where the solar array would be installed. He then explained the Stormwater Design Guidance that the Maryland Department of the Environment has provided for solar panel installations. Those guidelines describe what is needed to control stormwater runoff. For sites between 0 and 5% slopes, all that is needed is to keep a "disconnection flow path" between rows of panels, at least equal to the width of the panels. If the panels are 8 feet wide, for example, by leaving the proper vegetation in an area 8 feet wide between the rows of panels, "the runoff from 1.0 inch of rainfall is treated." (Left unsaid is whether such a method would handle the rains that we have had recently.)

For slopes between 5% and 10%, the guidelines suggest that more may be needed, such as level spreaders, terraces, or berms. Mr. Altmeyer explained that level spreaders are gravel-filled trenches or containers situated at the drip edge of each row of panels. They are designed to slow down and catch runoff from the panels. He said that berms and terraces can also be used, by grading the area, also to slow down and redirect the runoff.

Finally, the guidelines mandate a formal stormwater management plan for slopes greater than 10%. "However, installations on slopes greater than10% will require an engineered plan that ensures adequate treatment and safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice." Although Mr. Altmeyer found slopes well over 10%, the Petitioners have provided no such engineered plan.

The Petitioners produced no stormwater management plan. Without such a Plan, this Board cannot reasonably conclude that runoff from a sloping, nine acre field, with over 6,000 solar panels, will be properly handled and contained, and will not damage the environment, or downstream property owners.

Prime and Productive Soils

The County Council Planning Board took another look at Bill 37-17 last summer, and recommended that solar facilities not be permitted on prime and productive soils. Not all of northern Baltimore County contains such soils. The Gerner property is a good example. As shown on Protestants' Exhibit 14, almost all of the Gerner field closest to York Road is Manor channery loan (15-25% slopes), which is listed as "Not prime farmland." Unfortunately, the other Gerner field, away from York Road, is the proposed solar site. Around 90% of the soils in that field, over which the solar panels would be installed, are either Glenelg loam, Glenville silt loam, or Manor loam (8-15% slopes). All of those categories are described in Protestants' Exhibit 14 as Prime Farmland, or Farmland of Statewide Importance.

It is clear that if the law is changed, a solar facility will not be allowed on this site. Section 2 of Bill 37-17 required the Planning Board, in consultation with other county agencies, the Sierra Club, and the Valleys Planning Council, to "study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these regulations, and by July 1,

2018, submit recommendations to the County Council and the County Executive regarding potential changes to the current law." The Planning Council conducted such a study and concluded that solar facilities should not be allowed on prime and productive soils. Implicit in that recommendation is their belief that the impact is unacceptable at sites with good soil, and that prime farmland should be reserved for agricultural use. This Board should carefully consider the Planning Board's recommendation to prohibit solar arrays on prime and productive soil, whether or not it is implemented by the County Council.

Incompatibility with Zoning Classification

The solar panels would be placed on property zoned R.C.7. While there are 139,053 acres zoned R.C.2 in Baltimore County, there are only 36,290 acres of R.C.7. (People's Counsel Exhibit 12). Only around 9% of Baltimore County is zoned R.C.7. Protestants are not aware of any other solar array that is being proposed on R.C.7 land. As described earlier, R.C.7 is the Resource Preservation Zone, land where something special has been identified that needs to be protected. The Legislative goals to be achieved in the R.C.7 Zone are listed in Section 1A08.1(B) of the Baltimore County Zoning Regulations. The goals include the following:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;
2. To protect forests, streams, wetlands, and floodplains;
3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;
6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone; and
7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

Allowing solar panels on the Gerner property would be inconsistent with all of these goals. Runoff from over 6,000 solar panels covering nine acres will not preserve and protect streams, wetlands, or ecosystems. It will not protect water quality. It will not protect prime and

productive soils; it will take them out of production. And one would be hard-pressed to find a use less in keeping with the "unique character of this rural area", than large, black panels, row after industrial row, covering this beautiful area of northern Baltimore County.

The Stream-Crossing

Brian Quinlan chose a field to erect 6,840 solar panels which can only be accessed through an 80 feet wide pinch-point in the Gerner property. A stream runs through the length of the pinch-point. There is no bridge over the stream, or underground pipe to carry the stream. There is, according to Bill Mayo, a pile of rocks dumped into the stream, long ago, to create a crossing used for farm machinery. The consensus from all seemed to be that an improved crossing would have to be built for this project to go forward. There were no plans presented by the Petitioners for such a crossing, nor any assurance that such an improvement can legally be built.

Article 33, Title 3 of the Baltimore County Code is entitled "Protection of Water Quality, Streams, Wetlands, and Floodplains." The legislative intent in adopting the regulations is set forth in Section 33-3-103 of the County Code:

(a) In general. The purpose of the County Council in adopting this title is to:

(1) Protect the county's streams, wetlands, and riverine floodplains;

(2) Protect the water quality of the county's watercourses, reservoirs, lakes, and the Chesapeake Bay;

(3) Protect the county's riparian and aquatic ecosystems; and

(4) Provide environmentally sound use of the county's land resources.

(b) Forest buffers.

(1) Multiple environmental protection and resource management values are provided by forest buffers.

(2) Forest buffers enhance and protect the natural ecology of stream systems; water quality; wildlife habitat; the aesthetic and scenic qualities of natural features; environmentally sensitive areas, such as aquifer recharge areas; and flora and fauna preservation sites.

(3) Forest buffers adjacent to stream systems:

(i) Restore and maintain the chemical, physical, and biological integrity of the water resources;

(ii) Filter nutrients and toxins;

(iii) Reduce erosion and control sedimentation;

(iv) Stabilize stream banks;

(v) Provide infiltration of stormwater runoff;

(vi) Maintain base flow of streams;

(vii) Provide the organic matter that is the source of food and energy for the aquatic ecosystem;

(viii) Provide tree canopy to shade streams and encourage trout and other desirable aquatic species;

(ix) Provide riparian wildlife habitat;

(x) Provide scenic value and recreational opportunity; and

(xi) Minimize public investment in waterway restoration, stormwater management, and other water resource expenditures.

John Roemer testified on behalf of the Protestants, and was accepted as an expert in the field of wetlands delineation. He investigated the forest buffer that would be required at the pinch-point. Citing to Section 33-3-111(4) in the County Code, he said that a 100 foot buffer is required because the stream is a Class III-P trout stream.

While Section 33-3-112(b)(iii) of the County Code permits agricultural operations in a forest buffer area, other activities are prohibited, as provided in Section 33-3-112(b)(2):

(i) The following practices and activities are restricted within the forest buffer.

(ii) Except as provided in subsection (c) of this section, the existing vegetation within the forest buffer may not be disturbed, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying, and grazing.

(iii) Soil disturbance may not take place within the forest buffer by grading, stripping of topsoil, plowing, cultivating, or other practices.

(iv) Filling or dumping may not occur within the forest buffer.

(v) Except as authorized by the Department, the forest buffer may not be drained by ditching, underdrains, or other drainage systems.

(vi) Pesticides may not be stored, used, or applied within the forest buffer, except for the spot spraying of noxious weeds consistent with the recommendations of the University of Maryland Cooperative Extension Service.

(vii) Animals may not be housed, grazed, or otherwise maintained within the forest buffer.

(viii) Motorized vehicles may not be stored or operated within the forest buffer, except for maintenance and emergency use approved by the Department.

(ix) Materials may not be stored within the forest buffer.

The structures, practices and activities allowed in a forest buffer are set forth in Section 33-3-112(c):

(1) The following structures, practices, and activities are permitted in the forest buffer.

(2) (i) Roads, bridges, trails, storm drainage, stormwater management devices and practices, and utilities approved by the Department are authorized within the forest buffer provided that an alternatives analysis has clearly demonstrated that no other feasible alternative exists and that minimal disturbance will take place.

(ii) The alternatives analysis shall be submitted to the Department in accordance with § 33-3-106 of this title.

(iii) These structures shall be located, designed, constructed, and maintained to:

1. Provide maximum erosion protection;

2. Have the least adverse effects on wildlife, aquatic life, and their habitats; and

3. Maintain hydrologic processes and water quality.

(iv) Following any disturbance, the impacted area shall be restored.

(3) Stream restoration projects, facilities, and activities approved by the Department are authorized within the forest buffer.

(4) Scientific studies approved by the Department, including water quality monitoring and stream gauging, are authorized within the forest buffer.

(5) Horticulture practices may be used to maintain the health of individual trees in the forest buffer.

(6) Individual trees in the forest buffer that are in danger of falling, causing damage to dwellings or other structures, or causing the blockage of streams may be removed.

(7) Other timber cutting techniques approved by the Department may be undertaken within the forest buffer under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest infestation, disease infestation, or threat from fire.

As demonstrated above, Baltimore County is extremely protective of buffers around trout streams. While agricultural operations may continue, improving the stream crossing at the pinch-point, for an industrial use, is another matter. The above statutes provide that existing vegetation may not be disturbed at the stream crossing, soil cannot be graded, the 100 foot buffer area cannot be drained, and no filling or dumping is permitted. While a bridge or culvert might be allowed, an alternatives analysis must "clearly demonstrate" that 1). no other feasible alternative exists and, 2). minimal disturbance will take place.

Wetlands

The Petitioners showed no wetlands on their Site Plan. John Roemer identified two areas of wetlands, both on the Rude property. He said that wetlands are important and must be protected because so many "creatures" either live in wetlands, or need to be in wetlands for some part of their life. Mr. Roemer found one wetlands area that covers approximately ½ acre, and the other, near the pinch-point, covers 1/10 of an acre. He has been delineating wetlands for thirty years, and said there was no question that these are in fact wetlands. Like trout streams, wetlands are natural assets afforded significant protection in Baltimore County. Section 32-4-414 of the County Code is entitled "Floodplain and Wetland Protection". Section 32-4-414 (e) reads as follows:

(e). Wetlands.

1) The county may not permit dredging, filling or construction in any nontidal wetland or tidal wetland.

2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

Under 33-3-111(c) of the County Code, a complicated formula is used to determine the size of the forest buffer around wetlands. The steepness of the slopes at the site, the soil erodibility, and the vegetative cover are examined, to come up with a score, which determines how wide the buffer must be around the wetlands. The buffer could range from 25 feet to over 300 feet. John Roemer believed that the buffer around the ½ acre wetland was wide enough to encroach into the roadway planned around the solar array, and perhaps some of the panels. Given the steepness of the slopes at this site, the wetlands buffer might well cut even further into the proposed panels.

The buffer around the smaller wetland, which is right at the pinch-point, will serve to restrict any disturbance by the Petitioners at the stream crossing. As with the forest buffer, the wetlands buffer will prevent construction of a bridge or culvert at the stream crossing, unless there is no feasible alternative, and disturbance will be minimal during construction.

Viability of Petitioners

Baltimore County's law directs that "all parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility." 4F-106(A). Expected maintenance includes "painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, integrity of security measures", and access roads. Under 4F-107, the owner or operator are also responsible for removing the solar facility at the end of its useful life, or when it has been abandoned.

Brian Quinlan testified that there is a 20 year lease between ESA Sparks Glenco LLC and Robert Gerner for this project. There is a renewal option, but he did not disclose the length of the option period. There is a written lease, but he did not have a copy. The lessee, ESA Sparks Glenco LLC, is a shell company. It was formed in Maryland in November 2016. It has no

assets, no bank account, and no employees. Brian Quinlan admitted that he created this separate entity just for this project. He further admitted that he did this for "financing and *legal* reasons." In other words, he wants only his shell company to be legally liable if there is a problem.

When asked on cross-examination who would maintain the site, he said that ESA Sparks Glenco LLC would be responsible. He was quick to point out that it, and not Calvert Energy, is the Applicant in this case. When asked how ESA Sparks Glenco LLC would maintain the site with no employees, he said he was discussing "outsource monitoring" with several companies. Some companies were in Maryland, some were not. He had no further information on who would maintain the site, or how it would be done.

The financial status and reliability of the property owner, Robert Gerner, is completely unknown. He is the other party responsible for maintaining and then tearing down the site. We did not hear from him. He did not tell us his plan for maintaining the site, taking down the panels 20 or more years from now, and then restoring his property to agricultural use. We heard nothing about his financial ability to take care of the site, as required of an owner under Bill 37-17. We don't know if he is even aware of his maintenance and tear-down responsibilities under the solar law. We don't know how the lease addresses such responsibilities.

The Petitioners did not deem it necessary for the Board, or the community, to hear how they intend to maintain the site, handle any problems that arise, and then tear it down when the lease has ended. The temptation for ESA Sparks Glenco LLC to simply walk away, if a problem arises, or if the project is not profitable, will be great. Having been created for "legal reasons", it will have no assets, and nothing to lose if it doesn't fulfill its obligations under the lease or the solar law. If this venture loses money, and the solar array is abandoned, does anyone believe that ESA Sparks Glenco LLC will follow through and tear down the array? Or will the panels be left

there to rust? What if the solar array sustains damage, and stops working. Will ESA Sparks Glenco LLC make the necessary repairs? Being formed for legal reasons, and having no assets, it will likely walk away.

As part of their burden of production, the Petitioners should be required to explain their plan to maintain, monitor, and tear down the site. This is a long-term project in which the owner and lessee must be financially able to fulfill their obligations. We have no evidence to suggest that they will be up to the task.

Scenic Route

York Road is designated as a Baltimore County scenic route. It is the main north-south thoroughfare in northern Baltimore County. According to the Master Plan, "The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents." Master Plan 2020, p. 99. It is the policy of Baltimore County to "preserve scenic corridors and views through proper zoning and coordination with federal and state governments." Master Plan 2020, p.99. "For properties along scenic routes or with scenic view sheds, variances, amendments and special exceptions should be granted sparingly." Master Plan 2020, p. 101.

Conclusion

Brian Quinlan chose a bad site to erect solar panels. He would not be facing $350,000 in environmental studies had he chosen a flat field, with poor soil, no trout streams, no wetlands, and away from the Gunpowder Falls. There are many sites in northern Baltimore County fitting that description. Mr. Quinlan should have abandoned this project, certainly after seeing the proposal from KCI Technologies. He has, instead, moved forward, having chosen to deal with the myriad of environmental issues at his site by simply ignoring them for as long as possible.

His expert, Bruce Doak, ignored those issues as well. He provided little of the information required by Section 33-3-108, and the solar law, on his site plan. He made two visits to the site. This was his first solar project. He either missed, or chose to ignore, the mandate in 4F-104(9) that "A Petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code."

Mitchell Kellman, the Petitioners' other expert, did little more than stop by the site. He didn't even walk down to the pinch-point. He has testified in hundreds of zoning cases, almost always for the party seeking permission for a project. In every one of those cases, his opinion has been that the project should be permitted. To no one's surprise, his opinion in this case was that this project should be permitted. He offered nothing to shed light on any of the environmental issues.

In conclusion, the Protestants believe that the decision by this Board should be guided by the stated purpose of the Solar Bill:

"The purpose and intent of this Article is to permit solar facilities in parts of the rural and commercial areas of the County by Special Exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources." (4F 101.1)

The Petitioners can point to no safeguards that they will put in place to protect the County's natural resources. They have not shown that the benefits of solar energy production, at this unique location in Baltimore County, outweigh its potential impact on that area. For that reason, and for all of the reasons cited above, their Petition for a Special Exception should be denied.

H. Barnes Mowell, P.A.
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Monkton, Maryland 21111

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Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 8th day of January 2019 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, and to Peter Zimmerman, Esquire, 105 W. Chesapeake Avenue, Room 204, Towson, Maryland 21204.

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H. Barnes Mowell

RE:	PETITION FOR SPECIAL EXCEPTION 15637 York Road; E/S York Road, 250' N of c/line of Elizabeth Court 8th Election & 3rd Councilmanic Districts Legal Owner(s): Robert K. Gerner Contract Purchaser(s): ESA Sparks Glenco, LLC by Brian Quinlan Petitioner(s)	*	BEFORE THE BOARD OF APPEALS FOR BALTIMORE COUNTY 2018-047-X

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S POST HEARING MEMORANDUM

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APPENDIX

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

PEOPLE'S COUNSEL FOR BALTIMORE COUNTY'S POST HEARING MEMORANDUM

People's Counsel for Baltimore County submits this post hearing memorandum:

1. Introduction

This solar facility special exception case involves 15637 York Road in rural northern Sparks-Glencoe. Petitioners Robert Gerner, property owner, and ESA Sparks Glenco, LLC filed a petition on August 10, 2017. This *de novo* appeal follows Administrative Law Judge (ALJ) John Beverungen's December 21, 2017 conditional approval.

The County Council enacted Bill 37-17 to govern land use of community solar facilities, limited to 2 megawatts of electricity. P.C. Exh.1. The law is now codified in Baltimore County Zoning Regulation (BCZR). Article 4F. App. 9.The Bill permits solar facilities by special exception in the R.C. 2 through R.C. 8 Zones and Business and Manufacturing Zones. BCZR Sec. 4F-102.A.1. This brings into play special exception standards delineated in BCZR Sec. 502.1. App. 14. The solar facility law adds area and other standards. BCZR Secs. 4F-102.B, 4F-104.

This is the second track in the north county "magical mystery tour" ripe for decision at the County Board of Appeals (CBA). It follows the Matthews case at 20450 Middletown Road, Freeland, which awaits public deliberation.

The Sparks-Glencoe neighborhood here has its own character. The zone is the R.C. 7 Resource Preservation Zone. The York Road site occupies 30 acres in a bowtie shape. A stream system traverses the junction. The Gunpowder Falls flows nearby to the east. The 9-acre solar facility area is set away from the road but again with prime soils and at a prominent height. We address these and many other particulars as we do the analysis.

The environmental issues are especially acute here. These include impact problems at the "bowtie" junction and setback variance concerns; stormwater runoff impacts to the stream there, which traverses and flows below the site; and runoff impacts to the Gunpowder Falls. The requisite scope and timing of environmental review has emerged as a critical zoning issue. There also arise again concerns about the impact on prime and productive soils, and the visual impact on the scenic road and on residents. Petitioners do get credit for fitting within the moderate size necessary for the maximum 2 megawatts.

Despite differences, the R.C. Zone solar facility special exception cases walk a familiar path. Petitioners hire consultants who work on land use projects for developers. They are labeled as experts on all zoning issues, including legal, regardless of realistic limitations. They tell us unhesitatingly that prime and productive soils are irrelevant; environmental issues will be taken care of later; visual impacts are par for the course; and everything is copasetic. Petitioners then try to carry the so-called "presumption" in favor of special exceptions to the finish line without really proving anything. They downplay area citizens as know-nothing NIMBYs who can't match the so-called experts. We disagree that this is a winning formula. It is flawed from start to finish.

2. The Parties: Petitioners and Protestant/Appellants

Petitioner Robert Gerner did not testify. ESA Glenco is a Maryland corporation with an office listed in Potomac, Maryland. Prot. Exh. 1. Yet the petition lists a Sanford, Florida address. Brian Quinlan of Annapolis testified as owner and manager. Also, Mr. Quinlan's Calvert Energy, Inc. of Gaithersburg, Maryland dealt with KCI Technologies. Pet. Exh. 27.

Gerner and ESA Glenco did not show any lease or other contract. This all paints a blurred picture of management and responsibility for operation and compliance. This gives no confidence in the project's proper implementation even were it otherwise acceptable.

Appellant William Mayo appeared as a nearby resident and for Appellant Gorsuch Retirement, Inc., a family corporation whose ancestry has had the large adjacent farm property for centuries. Adjacent property owner Edward Maczek appeared and testified.

Appellant Sparks-Glencoe Community Planning Council (SGCPC) appeared. Lynne Jones testified as President. CBA Rule 8. Prot. Exh. 5, and individually. The property is within their area. Their concerns extend to proliferation across the north county.

Petitioners showed that Lynne Jones lives in Parkton, miles away from 15637 York Road. Pet. Exh. 19. We must restate there are "... liberal standards under Maryland law for party status at an administrative hearing." Dorsey v. Bethel A.M.E. Church 375 Md. 59, 72 (2003). Anyone expressing an interest may properly be a party, absent a specific rule to the contrary. The GIS Map shows the R.C. 7 Zone occupies 36,290 acres, along with 139,053 acres for the R.C. 2 Zone. P.C. Exh. 12. As we shall see, the two zones are complementary. Moreover, Pattey v. Board of County Comm'rs 271 Md. 352, 363 (1974), stated,

> "... the "concept of a 'neighborhood' is a flexible one and will vary according to the geographical location involved, it being axiomatic that in rural or semi-rural areas, ... the 'neighborhood' will be larger and more fluid than in a city or suburban area."

3. People's Counsel's Role

People's Counsel for Baltimore County appears in zoning cases to defend the comprehensive zoning maps and master plan in the public interest. Baltimore County Charter Sec. 524.1. App. 1. The office's function extends broadly to zoning and related cases, including special hearings and development cases with zoning issues.

In 1974, Baltimore County citizens approved the charter office to defend the comprehensive zoning maps. Bill 61-74, 11/5/74. A 1978 charter amendment added defense of the master plan. Bill 90-78, 11/7/78. Section 524.1(a)(3)A now states in pertinent part,

> **"*Powers and duties*. The People's Counsel shall have the following powers and duties:**
>
> **He shall appear as a party before the zoning commissioner of Baltimore County**, his deputy, the county board of appeals, the planning board, and the courts **on behalf of the interests of the public in general to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and** in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations **as now or hereafter in force or effect, in which he may deem the public interest to be involved.**" (Emphasis supplied).

The office participates regularly in special exception cases. This includes recognition in reported opinions. See, People's Counsel v. Webster 65 Md. App. 694 (1986); People's

Counsel v. Mangione 85 Md. App. 738 (1991); Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996); Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001); People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002); Lucas v. People's Counsel 147 Md. App. 209 (2002), People's Counsel v. Loyola College 406 Md. 54 (2008); Attar v. DMS Tollgate 451 Md. 272 (2017). Other cases concluded without judicial review. The appellate courts also recognize People's Counsel's authority to appear in special hearings. People's Counsel v. Maryland Marine Mfg. Co. 316 Md. 491 (1989); Board of Child Care v. Harker 316 Md. 683 (1989). Later cases include Marzullo v. Kahl 366 Md. 158 (2001); Antwerpen v. Baltimore County 163 Md. App. 194 (2005) and People's Counsel v. Surina 400 Md. 662 (2007).

The Court of Appeals articulated the office's "broad charge to protect the public interest in zoning and related matters" in People's Counsel v. Crown Development Corp. 328 Md. 303 (1992). The case arose dealt with residential development involving a contested zoning issue on transfer of density. Judge McAuliffe wrote, 328 Md. at 317,

> "People's Counsel has been given a broad charge to protect the public interest in zoning and related matters. See Baltimore County Charter Sec. 524.1. Density regulation is an important part of the zoning process. West Mont. Assn. V. MNCP & P Com'n 309 Md. 183 (1987). Although participation in the development process may often be outside the intended ambit of People's Counsel's authority, where protection against a violation of a density regulation is involved, People's Counsel has a legitimate interest."

Sycamore Realty Co. v. People's Counsel 344 Md. 57 (1996) was a landmark development case on zoning estoppel. The current leading development case involving master plan defense is HNS Development v. People's Counsel 425 Md. 436 (2012).

4. The Primary Function of the Local Zoning Process for Land Use Review of Solar Facilities in the Community Solar Pilot Program: the Only Public Hearing

"Like all detectives, must consider every possibility." Charlie Chan in Paris (1935)

Maryland has set up a Community Solar Pilot Program for facilities producing up to 2 megawatts. The county solar facility law provides land use review for such facilities.

Maryland Public Utilities law governs the application process for generating stations. As explained in Board of County Commissioners v. Perennial Solar ___ Md. App. ___, 2018 WL 59983599 (2018), the large powerful solar generating stations and transmission

lines are subject exclusively to Public Service Commission land use review for Certificates of Convenience and Necessity. But the law exempts from such PSC review certain facilities, including those which produce less than 70 megawatts and serve the local utility. Md. Code Public Utilities Article Secs. 7-207, 7-208. This explains how our local zoning process functions in the legislative scheme and BGE local program. This means the special exception process here provides the only public hearing for land use review.

At the other end of the spectrum is Baltimore County's development process. Mr. Quinlan suggested there would be further hearings, based on the scope of work outlined by James Derieu of KCI Technologies. Pet. Exh. 27. But Mr. Quinlan could provide no legal basis for this suggestion, and neither did Mr. Deriu.

The County has customarily exempted commercial facilities from development hearings, as in Matthews. County Code Sec. 32-4-106(b). These usually come about with a Development Review Committee (DRC) application. The bilateral DRC process involves only internet notice and a relatively informal meeting, no hearing, no citizen participatory rights, no explanation, and no public notice of the decision. It is a shadow process.

The present special exception process is thus the one and only time for an opportunity for a public hearing where citizens to have an opportunity to be heard. In any event, the special exception issues involve different and more in-depth standards than the relatively more perfunctory and less transparent development process. As we shall argue below, the special exception standards require a reasonable level of environmental analysis, albeit not necessarily the full development process.

5. Setting the Scene

A. The Site, the Immediate Neighborhood, and Area of Interest

The geographic facts are not genuinely in dispute. The key questions comprise application and interpretation of special exception standards and the solar facility law.

Petitioners' site plan shows the bowtie or butterfly property shape. Pet. Exh. 1, 1a. They produced aerial and site photos of the site and vicinity. Pet. Exh. 3-7. Their My Neighborhood Zoning Map shows the solar facility location and outlines an area east of York Road, with the west boundary on York Road and east boundary on Upper and Lower

Glencoe Roads. Pet. Exh. 9. They added a My Neighborhood map showing the the northerly adjacent Rude property residential subdivision lots. Pet. Exh. 20.

Protestant Lynne Jones submitted the SGCPC Rule 8 materials and then testified, with supporting Protestants' Exhibits: a prime farmlands and an aerial soils map of the property, Exh. 13-14; Class III trout stream map, Exh. 15; aerial topography maps, showing solar facility at highest point, Exh. 16, 22; site photos, Exh. 17a-D; map east .45 miles to Upper Glencoe Road and Gunpowder Falls, with photos of area flooding, Exh. 18; an aerial map of this Gunpowder Subshed and Loch Raven Watershed, more photos focusing on the environment and visibility: Exh. 19A-G, topography east to Gunpowder Falls, with the area trout stream, Exh. 19C; photos focusing on access, spring, stream/crossing, unstable soils. Exh. 20A-I; a graphic of the stream and runoff direction at the bowtie crossing, Exh. 21; photos of the stream area at or near the bowtie junction, Exh. 22Aa-g; and a scenic/historic view map, Exh. 23. These reflected a much larger area of concern than the relatively small area outlined by Petitioners.

We submitted a GIS aerial photo and ADC Street Atlas map, P.C. Exh. 1-3; a My Neighborhood soils map of the property, with the USDA web soil survey descriptions, P.C. Exh. 5; an Urban-Rural Demarcation Line (URDL), P.C. Exh. 9; the countywide R.C. 2/R.C. 7 Zone map, P.C. Exh. 12; and ADC Street Atlas excerpts, P.C. Exh. 13a, b;

John Altmeyer, retired county supervisor of building inspection, added maps and topography calculations, showing significant slopes downhill to the south/southwest to the stream running south from the property. Prot. Exh. 4. John C. Roemer IV, ecological consultant, included with his testimony a map of the streams, wetlands, and watercourses in the area, focusing on the property's "butterfly" wing junction stream system. Prot. Exh. 28.

Based on the wealth of geographic information, exhibits and other undisputed material facts, this is how we set the scene. Sparks-Glencoe is an attractive rural area north of Cockeysville and the URDL. York Road is the major north-south road, parallel to Interstate-83. The immediate neighborhood here is entirely zoned for Resource Conservation. This includes an R.C. 7 Zone area along the east side of York Road to the north and south of this property, including apparently part of the Rude property residential

subdivision to the north and the forested Reverend William Borders and Bajackson properties to the south. Across York Road, the zone is R.C. 2, but with established residential subdivisions accessed from Elizabeth Court and Williams Court. There is also R.C. 2 zoning to the northeast and east. Most prominent is the venerable remaining 167-acre Gorsuch Retirement farmland. There are also several residences in this area, featuring Protestants William Mayo and Edward Maczek.

The 30-acre R.C. 7 Zone butterfly-shaped (sideways hourglass) Gerner property extends about 1050 feet along the east side of York Road, a designated scenic road. The property extends eastward to a depth of about 2250 feet. Metaphorically, the two side-by-side butterfly wings are about equal in area, narrowing down to a junction or bottleneck about halfway in. The west wing is broader in area but with less depth than the east wing.

There is a residential use in the west wing. The east wing has been farmed. A significant feature is the stream which runs north-south through the bottleneck through a culvert and presents soil stability and access issues to the east wing. As a result, the tenant farmers of the east wing have gained access from Upper Glencoe Road to the east, with the permission of the Mayo family, instead of through the west wing and bottleneck.

This brings up the topography. The west wing slopes east mostly downward from York Road east to the spring which runs through the center of the property. The east wing rises then rises to a relatively flat area, with a high elevation about 420 feet above sea level. Prot. Exh. 4. However, as Altmeyer's topography shows, the land slopes downward off the property to the south/southwest to the stream at about 340-350'. His calculations show significant high slopes within this area, including 13% to 17%, respectively, in some areas.

A major regional stream is the Gunpowder Falls, running along Upper Glencoe Road .45 miles to the east. The land slopes down east from the butterfly east wing to the Falls. Prot. Exh. 17-19, with illustrative photos of stormwater and flooding.

Based on the USDA soil survey information, P.C. Exh. 5, Prot. Exh. 13-14, most of the west wing is not prime farmland. This includes the predominant middle area is MbD soil, Manor channery loam, 15 to 25% slopes, and the MdE area, Manor brinklow complex, 25 to 45% slopes, nearer to the stream. There is prime MaB, Manor loam, 3 to 8% slopes, in

a smaller area along York Road, with the residence, and prime GhC, Glenville silt loam, 8 to 15% slopes, in a narrow strip of toward the bottleneck.

The east wing is a different story. It is dominated by prime and productive soils and soils of statewide importance. The most prevalent soil is GdB, Glenville loam, 3 to 8% slopes, prime farmland, with the second most being MaC, Manor loam, 8 to 15% slopes, farmland of statewide importance. There is also a stretch of the GhC near the bottleneck, again prime farmland. These are open cropland areas. The remaining areas are GhB, Glenville silt loam, 3 to 8%, prime farmland, and MaD, Manor loam, 15 to 25% slopes, not prime farmland. The area which runs along the southern border is forested and is part of a large forested area to the south and east.

B. Location of the Proposed Solar Facility

The proposed solar facility would occupy 9 open areas of prime farmland and farmland of statewide importance. The site plan "Typical Array" drawing shows a height of about 20 feet, albeit suggested in testimony as maybe less. Pet. Exh. 1.

If we zoom in on the east wing, the soil survey map and chart in Protestants' Exhibit 14 show an area of 16.4 acres, a little more than half the entire property. The prime farmland --- GdB, GhB, and GhC --- comprise 9.9 acres. The farmland of statewide importance --- MaC --- occupies 4.2 acres. Together, the 14.1 acres of prime farmland and farmland of statewide importance translate as 86.4% of the 16.4 acres. Petitioners have thus chosen to place their facility on the best farmland on this property.

The facility's location also disrupts the scenic character of the road. While Petitioners say this is mitigated by the facility's location away from the road, it still will be on the highest part of the property. There also will be infrastructure, including a line of poles to the BGE connection on York Road. Moreover, by placing the facility on the east wing, the visibility issue is aggravated for the residents who live to the east of the site.

Environmentally, as noted, the east wing presents issues of stormwater runoff immediately to the south/southeast stream system. There is also the concern about runoff to Upper Glencoe Road and the Gunpowder Falls, .45 miles to the east.

6. The Structure of Zoning Law

Baltimore County tracks the traditional structure of comprehensive zoning with use, height, and area regulations. Village of Euclid v. Ambler Realty Co. 272 U.S. 365, 380 (1926). This is known as Euclidean Zoning. Loyola College 406 Md. at 70. There are in each zone an enumerated list of uses permitted by right and by special exception. Unless a use is affirmatively listed, it is prohibited. BCZR Sec. 102.1; Kowalski v. Lamar 25 Md. App. 493, 496-99 (1975); People's Counsel v. Surina 400 Md. 662, 688 (2007).

As we shall explain, there are major differences between uses by right and special exception. A use permitted by right is permitted in the zone even if there are potential adverse impacts particular to the location, and there is disharmony or incompatibility with the area's comprehensive zoning plan. But a special exception use must go to hearing and satisfy that there are no adverse impacts or disharmony particular to the location in the zone.

Many locations may be appropriate, but others inappropriate. The task is to differentiate the appropriate and inappropriate, concordant and discordant. This involves integral evaluation of the zone, use, site, location, neighborhood, impacts. To be disapproved, it is not required that the evidence show the location be the worst in the zone, just that the impacts relate particularly to the location and not "inherent" throughout the zone, and/or that there is disharmony with the comprehensive zone. A classic "inherent" impact, i.e., not particular, would be the arguable depressing effect of a funeral home, which would occur similarly anywhere in the zone.

Bill 37-17 designates solar facilities as special exception uses rather than uses permitted by right. This means some locations are inappropriate. Otherwise, the Council would have made them by right. The Bill's legislative findings, discussed below, confirm this distinction, highlighting the necessity to safeguard the County's agricultural land.

7. Prologue to Interpretation Maryland Special Exception Law

"Sometimes, in an acute situation, such as this, often what is right can take on multiple interpretations." Jared Cohen in the film Margin Call (2011)

Maryland special exception law has evolved for 65 years. Yet the standards remain complex and polychromatic, susceptible to different points of view. Interested parties tend

to take the view which most favors the result they seek. It is our office's goal and responsibility to try to navigate the path of the law with accuracy and objectivity.

A. Linguistic Navigation: A Sunswept Zoning Odyssey: Guide for the Perplexed

""The Master replied, 'What is necessary is to rectify names ... If names be not correct, language is not in accordance with the truth of things. If language be not in accordance with the truth of things, affairs cannot be carried on to success." Confucius, Analects, Book XIII Chapter 3

If we posit, as seems axiomatic, that the special exception is properly named, along with its judicially engrafted elements, let us chart a course to linguistic truth as best we can. Let us examine the core language used in Montgomery County v. Merlands 202 Md. 279, 290 (1953) and adopted in later cases, using Webster's Third New International Dictionary:

> **special: 1:** distinguished by some unusual quality: UNCOMMON, NOTEWORTHY, EXTRAORDINARY ....
>
> **exception: 1:** the act of excepting or excluding : exclusion or restriction ...by taking something out that would otherwise be included ....
>
> **limited: 1 a :** confined within limits : restricted in extent, number, or duration ... **2:** characterized by enforceable limitations prescribed ... upon the scope or exercise of powers
>
> **harmony : 3 :** combination into a consistent whole : INTEGRATION
>
> **burden:** *n* **1 a:** something that is carried : LOAD ... **c** something that is borne as a duty, obligation, or responsibility ...**3** something that oppresses, weighs down, or causes worry
>
> **burden of proof :** the duty of proving a disputed presumption, assertion, or charge .... *specif.* the duty of proving a particular position under penalty against the party upon whom the duty is imposed in a court of law
>
> **prima facie:** *adj* **1:** based on immediate impression : APPARENT **2** generally applicable but admitting of suspension in a given case ...
>
> **prima facie evidence :** evidence sufficient in law to raise a presumption of fact ...
>
> **presume: 1** to take upon oneself without leave, authority, or warrant: undertake rashly: DARE ... **2** to look confidently forward to : ANTICIPATE, EXPECT ... **3** to accept as true or credible without proof or before inquiry : ASSUME, INFER, SUPPOSE ... **4** : to raise a presumption of or that : take for granted: IMPLY
>
> **presumption ... 3** *law* **:** an inference as to the existence of the fact not certainly known from the known or proved existence of some other fact, sometimes operating as evidence, sometimes as a rule of procedure as to who must proceed with evidence on the main issue,

or as to who has the burden of proof and sometimes having no effect as evidence, once the evidence on the issue is in --- distinguished from *fiction*

presumptive : 1 a giving grounds for reasonable opinion or belief ... **b** based on probability or presumption ... **2** *archaic* presumptuous ... **3** : based on inference : APPARENT, PRESUMED ...

presume [Latin, www.archives.nd.edu] praesumo –sumere -=sumpsi –sumptum [to take beforehand; to anticipate; to take for granted]. Hence partic. preaesumptus –a –um, [taken for granted, **presume**d].

We draw two main lessons from this definitional matrix.

The first is the conflict, tension, and confusion between "special, exception, limited, burden of proof, and harmony," and "prima facie, presume, presumption, and presumptive." To meet a burden is to climb a hill, by preponderance of evidence or greater. But the "presumption" potentially sweeps the terrain into a downhill slope. Secondly, "presume," "presumption," and "presumptive" are themselves tied up in knots. The meanings range from unauthorized assumption to grounds for reasonable belief. Even in the "*law*" definition of "presumption," there is uncertainty about the nature of the inference.

Judge Charles Moylan introduced and spotlighted this perplexing subject-matter in Cooper v. Singleton 217 Md. App. 626, 627-28 (2014), footnotes omitted,

> "Harvard Law School Professor Edmund M. Morgan, one of the legendary titans of the law of presumptions, said of the subject as early as 1937:
>
> > Every writer of sufficient intelligence to appreciate the difficulties of the subject-matter has approached the topic of presumptions with a sense of hopelessness and has left it with a feeling of despair.[1]
>
> The first of the early titans was James Bradley Thayer who, even before the turn of the 20th Century, had observed:
>
> > [T]he numberless propositions figuring in our cases under the name of presumptions, are quite too heterogeneous and noncomparable in kind, and quite too loosely conceived of and expressed, to be used or reasoned about without much circumspection.[2]
>
> Dean Charles McCormick, another of the early Olympians, added to the diagnosis:
>
> > One ventures the assertion that "presumption" is the slipperiest member of the family of legal terms, except its first cousin, "burden of proof[3]"

Judge Moylan reviewed the Maryland Rule 5-301 evidentiary presumption, its history, and several approaches, including the "Thayer-Wigmore bursting bubble," "Morgan-Type" presumption, and the works of Alan Hornstein, Joseph F. Murphy, and Lynn McClain. 217 Md. App. at 646-50. In contrast, the special exception "presumption" is not and has never been an evidentiary presumption. It does not fit into any of the above categories. There has never been any shift of the burdens of production and persuasion. An applicant cannot properly just show up --- produce zero, conclusory, or propagandistic evidence --- and be entitled to approval. Judge Murphy effectively recognized this in his Loyola College rules of engagement, discussed below.

As we navigate the history and case law, we must guard against the danger that the presumption can cause unintended decision-making consequences. As in Homer's Odyssey, it may become like Circe, a seductress that bewitches serious legal analysis of the facts and special exception criteria. Like Odysseus, we must get past her charms to our own Ithaca.

"Words are for getting meaning; after one gets the meaning, one forgets the words. Where can I find people who have forgotten words, and have a word with them? Zhuangzi, Ch. 26.

B. Genesis

"You may ask yourself, Well ... how did I get here? Talking Heads, Once in a Lifetime (1980)

Montgomery County v. Merlands 202 Md. 279, 290 (1953) begins this tale. The zoning board had treated the private club special exception like a variance, requiring proof of "urgent necessity." Judge Hall Hammond explained (pages 287-88) the different legislative intent for the special exception to,

> "... delegate to the Zoning Board a ***limited authority*** to permit enumerated uses which legislative body finds in effect ***prima facie*** properly residential, absent any fact or circumstance in a particular case which changes this ***presumptive finding***. The duties given the Board are to ***judge whether the neighboring properties and the general neighborhood would be adversely affected, and whether the use, in the particular case, is in harmony with the general purpose and intent of the zoning plan.*** " Emphasis supplied.

Judge Hammond went on to delineate the applicant's burden of proof,

> "The applicant for such a use need not show either practical difficulty, unnecessary hardship or great urgency, but only that the project is a private club and that it would be in general harmony with the zoning plan and would not adversely affect the neighboring properties and the general neighborhood." 202 Md. at 290.

Merlands did these notable things: 1) recognize the special exception; 2) articulate the adverse effect/zoning plan disharmony standards; 3) affirm applicant's burden of proof; and 4) differentiate the variance's more onerous standards.

Merlands' allusions to *"prima facie"* and "presumptive finding" thus functioned to distinguish special exceptions from variances. They did not relieve an applicant from the burden of proof. They did not signal a *carte blanche,* green light, or perfunctory review.

C. Baltimore County Implementation; Merlands in Context and Subsequent Cases

"These shall not be forgotten years ... We will remember." Midnight Oil, Forgotten Years (1990)

In its 1955 comprehensive revision of the zoning regulations, the then Baltimore County Commissioners included BCZR Sec. 502, including Sec. 502.1. App. 12. This law survives today, supplemented by specific environmental standards, discussed below. In the ensuing decades there were a plethora of special exception opinions from Baltimore County. These illustrated the application of the adverse impact/zoning disharmony standards and showed that special exceptions are not routine, perfunctory, or semi=automatic.

Oursler v. Board of Zoning Appeals 204 Md. 397 (1954) came next, affirming restaurant grant, with conditions. The Court cited Merlands for the applicant's burden, called the use *prima facie* permitted, and sustained the conditional finding of no adverse effects. Erdman v. Board of Zoning Appeals 212 Md. 288 (1957) echoed this in affirming a gas station approval. But Dorsey Enterprises v. Shpak 219 Md. 16 (1959), affirmed denial of a junkyard – unsightliness, depreciation of property values ---, focusing on particular facts and the burden of proof. Likewise, Crowther v. Johnson 225 Md. 378 (1961) affirmed a trailer park denial, reviewing adverse impacts and the area, finding sufficient facts to support denial – departure from zoning plan, depreciation of property values.

In the 1960s, the Court continued to scrutinize adverse impacts based on the property and neighborhood geography: Montgomery County v. Mossburg 228 Md. 555 (1962), affirms restaurant grant with conditions; Bonhage v. Cruse 233 Md. 10 (1963), reverses convalescent home grant, inadequate access; Deen v. BGE 240 Md. 377 (1965), affirms transmission line grant; Bd. of Co. Comm'rs v. Luria 249 Md. 1 (1968), affirms gas station denial, failure to prove harmony with zoning plan; Brouillett v. Eudowood Shopping Plaza 249 Md. 606 (1968), affirms self-service carwash denial, failure to prove conformity with

zoning plan, absence of adverse impacts; Neumann v. Mayor & City Council 251 Md. 92 (1968), affirms grant of apartment building medical office; Eger v. Stone 253 Md. 533 (1969), affirms offstreet parking denial, traffic congestion; Tauber v. County Bd. of Appeals 257 Md. 202 (1970), affirms offstreet parking denial, traffic access; City of Takoma Park v. County Board of Appeals 259 Md. 619 (1970), affirms home occupation (slipcovers, reupholstering furniture); Gerachis v. Montgomery Co. Board of Appeals 261 Md. 153 (1971), affirms medical clinic addition denial, traffic congestion, property values, incompatibility; Cason v. Bd. Of Co. Comm'rs 261 Md. 699 (1971), affirms conditions for sand and gravel pit approval; Prince George's County v. Meininger 264 Md. 148 (1972), affirms gas station denial, traffic, lack of need; Skipjack Cove Marina v. Bd. Of Co. Comm'rs 264 Md. 381 (1972), affirms conditions for marina/motel approval; Sembly v. County Bd. Of Appeals 269 Md. 177 (1973), affirms community building grant.

These cases show 5 approvals, 4 approvals with conditions (two over applicant's objection), and 9 denials. The Court treated special exceptions as involving applicant's fair and normal burden of proof with careful, detailed scrutiny. It's not as if Petitioners come in like Novak Djokovic playing against a qualifier ranked 200 in the world.

D. The Path to Schultz v. Pritts (1981)

The Court of Appeals decisions came less frequently with the advent of the Court of Special Appeals (CSA) and certiorari jurisdiction. Such cases as Rockville Fuel & Feed Co. v. Gaithersburg 257 Md. 183 (1970) and Turner v. Hammond 270 Md. 41 (1973) restated and applied the Merlands presumption and the applicant's affirmative burden of proof.

In 1974, Judge Rita Davidson authored for the CSA Anderson v. Sawyer 23 Md. App. 612. This foreshadowed her landmark opinion in Schultz v. Pritts 291 Md. 1 (1981). Both involved funeral homes in residential areas. Anderson dissected opposition testimony as not probative of adverse traffic and other impacts. Judge Davidson explained detail that an "inherent" adverse impact, regardless of location, could not justify denial, i.e. the "depressing" effect of a funeral home. Rather, the "particular" adverse effects must be above and beyond those likely to occur generally in the zone.

In Schultz, Judge Davidson explained that by designating a use permitted by right, the legislature is deemed to understand that there would be particular adverse impacts. But such impacts would not be acceptable for a special exception, which is a conditional use.

The Court reviewed and overruled Gowl v. Atlantic Richfield 27 Md. App. 410, 417-18 (1975). The CSA had held that if an applicant could show the special exception adverse impacts to be no worse than some use permitted by right, then it would be entitled to approval. Judge Davidson rejected this purported equivalency and brought the focus back to a proper analysis of adverse impacts and zoning disharmony. This included her frequently quoted interpretation of special exception criteria, 291 Md. at 11,

> "This Court has frequently expressed the applicable standards for judicial review of the grant or denial of a special exception use. The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption. The duties given the Board are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the plan.
>
> Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal."

The "presumption" is thus not a free pass. Judge Davidson described the zoning board's "limited authority," its duty to judge adverse impact and harmony with the comprehensive zoning plan. She reminded that the burden of proof is on the applicant to satisfy the prescribed standards relating to detriment to the neighborhood and, significantly, the public interest. She proceeded to discuss various scenarios.

Because the CSA had applied an incorrect standard, the Court vacated its decision and remanded for further consideration, especially as to the disputed traffic access issue.

Then came Board of Co. Comm'rs v. Holbrook 314 Md. 210 (1988). The Court sustained denial of a special exception for a mobile home based on the particular adverse visual impact and depreciation of value of a single-family detached dwelling. Judge Cole wrote, "The Schultz test accords with the general standard for judicial review of the ruling of an administrative agency." 314 Md. at 218. The Court reviewed the facts and deferred to the zoning board's finding of particular adverse impacts. The Court described "countless locations in the zone" where there would be no such adverse impact.

E. Court of Special Appeals Cases: Mangione, Country Ridge, Lucas

We illustrate the application of Schultz criteria in three important Baltimore County cases where the CSA sustained this CBA's denials: People's Counsel v. Mangione 85 Md. App. 738 (1991), People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002) and Lucas v. People's Counsel 147 Md. App. 209 (2002). These special exceptions involved, respectively, a convalescent home in a Lutherville residential zone; a pawnshop in an Essex business zone; and a helicopter landing area in a Greenspring Valley R.C. 2 agricultural zone. To make a long story short, this CBA focused on evidence of adverse impacts particular to the property and neighborhood. Such adverse effects were found, explicitly or by inference, above and beyond those likely to occur generally in the zone.

F. People's Counsel v. Loyola College: The Harry Potter Series "Sorting Hat" and Judge Joseph Murphy's Rules of Engagement

This brings us to People's Counsel v. Loyola College 406 Md. 54 (2008). Judge Glenn Harrell provided an encyclopedic 38-page discussion. 406 Md. at 70-107. This CBA had approved a special exception for a retreat center in the R.C. 2 Zone. We argued the CBA had failed expressly to review the evidence relative to other sites we viewed as less problematic. The Court decided that such review is not necessarily required where the evidence indicates an absence of particular adverse effects or incompatibility with the area. He also observed that a zoning board could find particular adverse effects inferentially without doing a comparative analysis based on an individualized review of the evidence.

Otherwise stated, Judge Harrell did not say a comparative analysis is irrelevant or impermissible, just that it is not required under some circumstances. Remarkably, he compared special exception analysis to a Harry Potter "Sorting Hat," 406 Md. at 106,

> "In that sense, the legislature puts on its 'Sorting Hat,' and separates permitted uses, special exceptions and all other uses."

He added footnote 33,

> "In the Harry Potter series of books, the 'Sorting Hat' is a magical artifact that is used to determine which house [names omitted] first-year students at Hogwarts School of Wizardry and Witchcraft are to be assigned.'"

Judge Joseph Murphy concurred, with these rules of engagement, 406 Md. at 109-10,

> "It may be helpful to restate the rules of engagement in special exception litigation, and review how those rules were applied in the case at bar. Although it is of no real consequence whether we say that an applicant "is entitled to a special exception, *provided that,*" or that an applicant "is *not* entitled to a special exception, *unless,*" the applicant for a special exception bears both the burden of production and the burden of persuasion on the issue of whether the special exception should be granted. If the zoning authority is presented with evidence that generates a genuine question of fact as to whether the grant of a special exception would violate the applicable legislation and/or the requirements of *Schultz,* the applicant must persuade the zoning authority by a preponderance of the evidence that the special exception will conform to all applicable requirements.
>
> In the case at bar, the petitioners presented evidence that generated a genuine question of fact as to whether (1) an adverse "thermal" impact would result from stormwater ponds draining into a trout stream near the property, and (2) there would be an adverse "traffic impact" on the main public road used by persons traveling to and from the proposed Retreat Center. Respondent was not entitled to a special exception unless it persuaded the Board of Appeals that neither of those adverse impacts would result if the special exception was granted. The Board, applying the correct burden of persuasion, found in favor of respondent on both of these issues. Under the applicable standard of review, this Court must affirm the Board's decision."

All the parties provided substantive evidence about traffic and environmental impacts. These were not deferred to the development process. While the CBA has a degree of discretion on debatable issues, there is law to apply to the particular facts in each case.

More recently, Attar v. DMS Tollgate 451 Md. 272 (2017) affirmed, as fairly debatable, this CBA's evidentiary finding and legal conclusion that the Owings Mills fuel service station/convenience store site did not pose sufficiently adverse traffic and stormwater management impacts to warrant denial.

G. Current Baltimore County Special Exception Law

To facilitate review, we quote BCZR Sec. 502.1 and the prefatory Note, App. 14.

"NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

§ 502.1. - Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air; [Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; [Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor [Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones."

The BCZR Sec. 502.1.A "health, safety, or general welfare" clause translates to the state and local police power. This is an essential function of government and is construed broadly, as confirmed in the landmark Village of Euclid v. Ambler Realty Co. 272 U.S. 365 (1926). The Court of Appeals recognizes the police power extends to natural resources and

the environment. Potomac Sand and Gravel Co. v. Governor 266 Md. 358, 370-75 (1972); Mayor and City Council of Annapolis v. Annapolis Waterfront Co. 284 Md. 383 (1979).

While the locality in special exception cases ordinarily tends to focus on the surrounding area, the locality here contextually encompasses the site as well. Ruark v. Engineers Union 157 Md. 576, (1929) interpreted "locality" as follows:

> "While "locality" is a word of relative meaning, its context commonly determines its meaning . . . .
>
> * * *
>
> Thus it appears that the word "locality" has a place in important and enforced legislation; and, whatever may be the scope of its varying significance, its meaning in a particular statute is susceptible of being determined from the context, since the words of a statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature had in view. Endlich on the Interpretation of Statutes, § 73. When so read, it is quite evident that, in the statute before the court, "locality" imports the area which embraces, not only the actual site where the public work is to be performed, but also such adjoining territory within which there then prevails a current rate of daily wages for the particular work to be done. In other words, "locality" defines a region, with the public undertaking as an axis or focal point, throughout which region the daily wage of the particular class to which the worker belongs is uniform."

The Council added BCZR Secs. 502.1.G and H in 1982. Subsection G focuses on the legislative intent of the zone. We discuss the R.C. 7 Zone legislative intent below. The scope is broad, including the panoply of water resources as well as agricultural lands and resources. Subsection H's complementary focus embraces stormwater management.

Serendipitously, the Council added Sec. 502.1.I in 2000 with Bill 74-2000. This Bill also created the R.C. 8 Zone, concurrent with the Bill 73-2000 enactment of the R.C. 7 Zone. The focus here is again broad, involving detriment to natural resources in R.C. Zones. This refers to forests and water resources, but spans all environmental and natural resources.

It is elementary linguistically that prime and productive soils are natural resources. To illustrate, the United Nations Food and Agriculture Organization recognizes it as a finite non-renewable resource. www.fao.org App. 30.

> "It is therefore a highly valuable natural resource, yet it is often overlooked. The natural area of productive soils is limited – it is under increasing pressure of intensification …."

As stated at soil-net.com, "Soil is one of the world's most important natural resources." App. 32. A Google search for soil as a natural resource reveals multiple worldwide links. App. 33. We add a global article, "Soil – A Precious Natural Resource." App. 38.

Furthermore, placement of the word "including" prior to "forests, streams, wetland, aquifers and floodplains" does not express or imply the exclusivity of these listed resources. To confirm and verify this point, Judge Alan Wilner wrote in Housing Authority v. Bennett 359 Md. 356, 371 (2000):

> "Although this Court has stated that "'[o]rdinarily, the word "including" means comprising by illustration and not by way of limitation,' " *State v. Wiegmann,* 350 Md. 585, 593, 714 A.2d 841, 845 (1998), quoting *Group Health Ass'n v. Blumenthal,* 295 Md. 104, 111, 453 A.2d 1198, 1203 (1983), we have also recognized that, "[w]hile 'include' or 'including' may introduce illustrations of a general term, the words also may signal an expansion in meaning of previous language." *Pacific Indem. v. Interstate Fire & Cas.,* 302 Md. 383, 396, 488 A.2d 486, 492 (1985).

In Wiegmann, Judge Dale Cathell had prefaced the above quote, 350 Md. at 593,

> "In construing the rule here, we are mindful of the principle that the expression of one thing is generally the exclusion of another. *Long,* 343 Md. at 666, 684 A.2d 445; *Leppo,* 330 Md. at 423, 624 A.2d 539. On the other hand, the use of the word "including" suggests that the seven enumerated powers are not exclusive."

H. R.C. 7 Zone Legislative Goals and Purposes

There is no dispute that the R.C. 7 Zone focuses on the impact to forests and water resources. There should also be no doubt that the legislative purpose extends to protection of agricultural lands, with understandable emphasis on prime and productive soils.

This includes the legislative intent of the Resource Conservation Zones generally and the R.C. 7 Zone specifically. The County Council established the initial Resource Conservation Zones in 1975: R.C. 2, R.C. 3, R.C. 4, and R.C. 5, Bill 98-75. BCZR Sec. 1A00 provides "General Provisions for All R.C. Classifications." BCZR Sec. 1A00.1 sets forth the Findings. Among other things, BCZR Sec. 1A00.1.F refers to the cost of development which involves "the consumption and use of prime agricultural land, critical watershed areas, ... and other important natural resources." Sec. 1A00.2 sets forth the Purposes. This includes BCZR Sec. 1A00.2.C:

> "C. Protect both natural and man-made resources from compromising effects of specific forms and densities of development"

The County Council added the R.C. 7 Zone in 2000. Bill 73-2000. The legislative goals confirm the primary legislative intent to preserve resources. BCZR Sec. 1A08.1. B. App. 3. There are stated expressly the goals: "To "preserve and protect ecosystem function, including riparian and aquatic ecosystems," Sec. 1A01.B.1, and "To protect forests, streams, wetlands, and floodplains." Sec. 1A01.B.2.

At the same time, the legislative findings include, BCZR Sec. 1A08.1.A.3,

> "An R.C. 7 Zone would allow limited development, compatible with the rural community and at the same time protect rural resources."

In turn, the legislative goals highlight, BCZR Sec. 1A08.1.B.6,

> "To protect remaining prime and productive soils in areas not currently protected by the R.C. 2 Zone."

One of the goals of the R.C. 7 Zone was thus to complement the R.C. 2 Zone and give added protection to prime and productive soils. To implement this goal, the County Council included a provision which prohibits application of the R.C. 7 Zone to lands currently zoned R.C. 2. BCZR Sec. 1A03.D. The R.C. 7 Zone also has complementary strong residential density restrictions, with "a maximum density of 0.04 lot per acre of gross tract area (an average of one lot per 25 acres) …." BCZR Sec. 1A08.6.B.1.

The Citizen Guide cited by Petitioners' consultant Mitchell Kellman lists shorthand information, but does not accurately track the legislative findings and goals. There is no mention of the complementarity with the R.C. 2 Zone. Petitioners try to decontextualize and promote diversionary dead-end tracks. This does not get them anywhere.

Moreover, Bill 37-17's statement of purpose explains, BCZR Sec. 4F-101,

> "The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways, and other natural resources. Emphasis supplied

This plainly covers not only water resources, but also agricultural land.

While Bill 37-17 does not in its body add any direct explicit references to soils, such are unnecessary because the Bill incorporates the special exception standards covering the police power and legislative intent of the zone. The bottom line is that the interrelated

provisions of the solar facility law, the special exception standards, the R.C. 7 Zone legislative intent, and the County Code environmental controls come together to cover all aspects of rural environmental, natural, and/or agricultural resources.

Statutory construction involves context. Kaczorowski v. Baltimore, 309 Md. 505, 513 (1987) stated that legislation "... usually has some objective, goal, or purpose. It seeks to remedy some evil, to advance some interest, to attain some end." The Court wrote:

> "Moreover, despite Kaczorowski's pleas that we examine the trees so closely that we do not see the forest, the plain-meaning rule does not force us to read legislative provisions in rote fashion and in isolation. What we are engaged in is the divination of legislative purpose or goal... The 'meaning of the plainest language' is controlled by the context in which it appears." 309 Md., at 514.

There was then cited Justice Holmes' concept that "the general purpose is a more important aid than any rule which grammar or formal logic may lay down." Ibid.

Board of Physicians v. Mullan 381 Md. 157, 168 (2004) reiterated,

> "...we 'avoid constructions that are illogical, unreasonable, or inconsistent with common sense..., and instead interpret and harmonize statutes as a whole, giving meaning and effect to all parts of the statutory language and refraining from interpretations that render any part of a law surplusage or contradictory."

Baltimore County Coalition Against Unfair Taxes v. Baltimore County, 321 Md. 184, 203-04 (1990) also explained the importance of context,

> "Thus, we have said that a statute must be construed in context, because the meaning of the 'plainest language may be governed by the context in which it appears.'... In this regard, words in a statute must be read in a way that advances the legislative policy involved. ... Courts may, therefore, consider not only the literal or usual meaning of those words, but their meaning and effect in the context in which the words were used, and in light of the setting, the objectives, and purpose of the enactment. ... Moreover, in such circumstances, courts may consider the consequences that may result from one meaning rather than another, with real intent prevailing over literal intent."

See, e.g. Lipitz v. Hurwitz 435 Md. 273, 281-91 (2013); Blue v. Prince George's County 434 Md. 681, 689 (2013); In re Adoption of Tracy K 434 Md. 198, 206-07 (2013); and Bourgeois v. Live Nation 430 Md. 14, 26-28 (2013). These cases reinforce the focus on context, such as structure, inter-related sections, parts, clauses, words, and history.

8. The Function of Area and Other Standards

In every zone, and for every "special regulation" use, there are area and/or other specific standards. These apply to uses permitted by right and by special exception, as reflected for many targeted uses: i.e. Farm and Agricultural Operations, BCZR Sec. 404; Fuel Service Stations, Sec. 405; Junkyards, Sec. 408; Offstreet Parking, Sec. 409; Trucking Facilities, Sec. 410; Sanitary Landfills, Sec. 412; Wireless Telecommunications Facilities, Sec. 426; and Pawnshops, BCZR Sec. 436. For special exceptions, even if the area and other details may be met, this does not displace or alleviate a petitioner's independent burden to satisfy the BCZR Sec. 502.1 special exception criteria and elements.

Following this pattern, Bill 37-17 adds height, area, and other standards. BCZR Sec. 4F-104. It just means no variances are necessary. This is illustrated by People's Counsel v. Webster 65 Md. App. 694 (1986); People's Counsel v. Mangione 85 Md. App. 738 (1991), convalescent home in residential zone; People's Counsel v. Country Ridge Shopping Center 144 Md. App. 580 (2002), pawnshop in business zone; Lucas v. People's Counsel 147 Md. App. 209 (2002), helicopter landing area in agricultural zone, People's Counsel v. Loyola College 406 Md. 54 (2008), retreat center in agricultural zone.

But where petitioners propose to deviate from these standards, they must request both special exception and variance(s). Umerley v. People's Counsel 108 Md. App. 497, cert. denied 342 Md. 584 (1996), trucking facility in M.L Zone; Riffin v. People's Counsel 137 Md. App. 90, cert. denied 363 Md. 660 (2001), commercial recreation in M.L. Zone.

Otherwise stated, Petitioners here must satisfy each BCZR Sec. 502.1 special exception standard independent of whether or not they satisfy the height, area, and other standards. For example, as to scenic roads and viewsheds, Bill 37-17 requires screening in accordance with the Baltimore County Landscape Manual. BCZR 4F-104.A.6. This is a minimum standard. Even if the Manual is satisfied, there still must be satisfaction of the BCZR Sec. 502.1 criteria concerning visual impact. Depending on location and situation, the landscaping may not be sufficient to prevent particular adverse impacts.

9. Land Use Breadth and Context: Master Plan, Zoning, and Development Integral to the Special Exception

The master plan, zoning, and subdivision (development) regulations are three integral parts of adequate land planning. In Board of County Comm'rs v. Gaster 285 Md. 233, 246 (1979), Judge Marvin Smith instructed, 285 Md. at 249-50,

> "Subdivision regulations perhaps have a certain analogy to special exceptions to which the floating zone concept has been likened in this Court's discussion in such cases as Bigenho v. Montgomery County, 248 Md. 386, 391, 237 A.2d 53 (1968); Board v. Turf Valley, 247 Md. 556, 561-62, 233 A.2d 753 (1967); and Chatham Corp. v. Beltram, 243 Md. 138, 149-50, 220 A.2d 589 (1966). The county here has preordained by its subdivision regulations that one who seeks to cut up a larger tract by creating a subdivision must not disrupt the master plan and that the subdivision must be compatible with that master plan."

Similarly, a special exception must be in harmony with the comprehensive zoning plan. This blends and integrates the master plan, zoning, and development law.

People's Counsel v. Surina 400 Md. 662, 688-93 (2007) revisited the integral relationship of these land use elements. Thus, zoning and development controls are "intended to complement each other in terms of the safety, health, and general welfare of the community at large." They "... serve additional common [land use] objectives ..." 400 Md. at 689. The Court quoted Wesley Chapel Bluemount Ass'n v. Baltimore County 347 Md. 125, 129 (1997) to illustrate that these complementary land use controls "... to some extent, coalesce, in that they are all designed to assure that land development occurs in a manner that is consistent with overall legislative policy and community welfare." 400 Md. at 690.

Baltimore County Zoning Regulation 600 reinforces explicitly the logical point that all laws must be satisfied. The zoning regulations set minimum standards in relation to other relevant laws. App. 14. Correlatively, other laws, ordinances, or regulations which impose higher standards must also be satisfied as minimum standards. There are no loopholes.

Bill 37-17 links zoning to development law even more directly in BCZR Sec. 4F-104.A.9. This requires the applicant to comply with County Code Sec. 33-3-108, "Plan Information," under Article 33, Title 3, "Protection of Water Quality, Streams, Wetland, and Floodplains." P.C. Exh. 15, App. 15. This includes multiple enumerated environmental elements. Other requirements of Sec. 4F-104 blend zoning/development requirements, such as for easements, historic districts, conservancy areas, landscaping, and lighting.

Master Plan 2020 also plays a role. Baltimore County Charter Sec. 523 says, App. 1:

"Sec. 523. - The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act.

The Court of Appeals recognizes the master plan as at least an advisory guide in zoning cases. The master plan does become regulatory where there is a statutory mandate, as in our development cases. See Nottingham Village v. Baltimore County 266 Md. 339, 353-55 (1972). Mayor & City Council v. Rylyns Enterprises 372 Md. 514, 530 (2002); HNS Development v. People's Counsel 425 Md. 436, 457-58 (2012).

10. Expert and Lay Opinions

"If we choose, we can live in a world of comforting illusion." Noam Chomsky

The parties in these cases have different views as to the comparative functions and weight of expert and lay testimony in zoning cases. Petitioners typically to bring in consultants who work for developers, assist them to process plans, and then render favorable mixed factual/legal opinions as the occasions arise. Protestants more often produce lay witnesses and opinions. In this case, they also produced experts. Here is our take.

For every expert opinion, there must be a valid factual and legal basis. This is a frequent problem in zoning cases, where expert opinions tend to be highly subjective. In People's Counsel v. Beachwood 107 Md. App. 627, 649-50 (1995), cert. denied 342 Md. 472 (1996), the Court rejected a series of planning opinions, Judge Charles Moylan wrote,

"A part of that *Boyce v. Sembly* opinion, … not yet discussed in this opinion, and quoted with approval by the *Dorsey* opinion, observed,

The Court of Appeals and this Court have stated than an opinion, even that of an expert, is not evidence strong or substantial enough to show some error in the comprehensive rezoning unless the reasons given by the witness as the basis for his

opinion, or other supporting facts relied on by him, are themselves substantial and strong enough to do so. ..." Internal citations omitted.

Petitioners presented James Derieu, Mitchell Kellman, and Bruce Doak.

Derieu is an environmental consultant. Pet. Exh. 14. He is not an engineer or expert on bridges. He had visited the site on June 22 but was not yet hired. He confirmed the presence of the stream and culvert at the junction. He referred to potential future environmental work. After the timing issue became more acute, Quinlan produced in "rebuttal" a letter from Derieu with a scope of work and cost estimate for the full development process. The letter also suggested there would be further hearings, but with no legal basis. He never came back to testify to support his letter.

We shall discuss below the legal issue as to timing, scope, and burden of proof to address environmental impacts in the zoning process. Derieu's letter does not answer the legal question. As we explain below, it is at best a diversionary red herring for financial sympathy. It is not only irrelevant to the law, but also misses the point that we are asking for reasonable land use baseline of environmental evaluation, not the full development process.

Zoning consultant Mitchell Kellman had visited the site three weeks earlier for 30 minutes. He was not even aware the site was farmed and could not describe significant environmental features. His main point was to claim the R.C. 7 Zone has nothing to do with agriculture generally and prime and productive soils particularly. As noted, his reliance on the informal Citizens' Guide does not pass legal scrutiny. His testimony was otherwise superficial, reflecting his limited knowledge of the site and of agriculture.

Surveyor Bruce Doak had visited the site just twice. He acknowledged the rural area and R.C. Zones are extensive and the 39,000 acre R.C. 7 span. His role seemed to be to call the solar facility an "accessory use." This is irrelevant, twisted, and wrong. As a commercial special exception use, a 2-megawatt freestanding facility is conceptually a principal use. This is reinforced by the provision which excepts ground-mounted facilities accessory to principal residential or agricultural uses. BCZR Sec. 4F-103.A.

We cited the BCZR Sec. 101.1 definition of "ACCESSORY USE." The freestanding 9-acre solar facility does not meet the criteria. There is nothing about it "incidental," or "appertaining, subordinate, or casual" in size, character or purpose. Dampman v. City of

Baltimore 231 Md. 280, 286 (1963). The appellate courts have rejected similar accessory use claims. Kowalski v. Lamar, 25 Md. App. 493, 334 A.2d 536 (1975); Arundel Supply Corp. v. Cason, 265 Md. 371, 377-378, 289 A.2d 585 (1972). Nevertheless, Petitioners persist in advancing spurious "accessory use" claims. See Petition of James and Karole Riffin, Case No. 14-094-SPH (2014), affirmed Geddes v. People's Counsel 232 Md. App. 726, 2017 WL 1193781 (2017), cert. denied 455 Md. 443 (2017), 138 S.Ct 2683 (2018); Petition of Russ and Brenda Kahn, Case No. 2010-173-SPH, affirmed Kahn v. Baltimore County 216 Md. App. 748 (2014), CSA No 350, Sept Term 2015.

In contrast, Protestants' experts provided helpful testimony within their specific spheres of expertise. They were John Altmeyer and John C. Reamer IV.

Altmeyer had experience as a county building inspector for building, electric, and plumbing inspection. He evaluated topography and provided calculations of area slopes, including downhill toward the stream. The slopes are as steep as 16 to 17%. Roemer's work showed the importance and necessity of stormwater management. Prot. Exh. 4.

Petitioners tried to turn Altmeyer's testimony against Protestants. They got Altmeyer to say that such work may be done at the permit stage. Pet. Exh. 24, pages 37-44. To be sure, for many situations, where uses are allowed by right, the stormwater management work may be done at the development or permit stage. But Altmeyer did not present himself an expert on zoning, the special exception process, or the solar facility law. He could not and did not provide a legal analysis or interpretation of zoning law. His testimony tells us nothing about the requisite scope and timing of environmental review here.

Roemer is an environmental consultant with impressive education and experience Prot. Exh. 27. He focused on the butterfly junction. Based on his specialized review and site visit, he described the proximate stream system and wetlands. Prot. Exh. 28. Among other things, he observed that the proposed access road crossing right over the stream at this location presented the necessity for variances from the required environmental setbacks. We confirmed this opinion by reference to the setbacks enumerated in County Code Sec. 33-3-111(b)(4), P.C. Exh. 15 and the variance provision, Code Sec. 33-3-106, P.C. Exh. 16.

This brings us to the citizens. Area citizens often have knowledge and experience to enable them best to depict the neighborhood, its character, and likely adverse impacts. Inevitably, their observations mix or coalesce with opinions concerning the relevant adverse impacts and the function or intent of the zone in the locality.

To illustrate, Eger v. Stone 253 Md. 533, 540-43 (1969) held admissible the testimony of area resident Irma Raker. She did a traffic investigation, with a detailed list of accidents for the key intersection. The Court found her lay research and opinion legitimately contributed to the special exception denial. The Court reminded that hearsay evidence is admissible. Tauber v. County Board of Appeals 257 Md. 202, 213 (1970) followed,

> "The applicants also urge that some of the evidence produced by the protestants was 'hearsay' and not entitled to weight in overcoming the opinion and testimony of their traffic expert, but as we stated in Eger v. Stone, *supra,*
>
> > 'We have recently decided, however, that not only is hearsay evidence admissible in administrative proceedings in contested cases but that such evidence, if credible and of sufficient probative force, may indeed be the sole basis for the decision of the administrative body. ...."

Edward Maczek, a 35-year county expatriate, lives downhill to the northeast. P.C. Exh. 1. He provided graphic testimony about the streams and ponds on his property, and the persistent flooding and necessity to muck out the ponds. He also reflected that he would endure the visual impact of the higher altitude solar facility.

William Mayo, both as a resident and family representative for Gorsuch, narrated a colorful history of the area. He described the current farming operations, both on his family's 167-acre farm and on the Gerner property, to which his family provided free access from the rear because of the bowtie junction obstacle. He believes preservation of the remaining farmland in the area is an important consideration.

Argument

> *"Once the meaning of an enactment is discerned and its constitutionality determined, the judicial process comes to an end. We do not sit as a committee of review, nor are we vested with the power of veto. The lines ascribed to Sir Thomas More by Robert Bolt are not without relevance here:*
>
> > *"The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal. . . . I'm not God. The currents and eddies of right and wrong, which you find such plain-sailing, I can't navigate, I'm no voyager. But in the thickets of the law, oh there I'm*

> *a forester. . . . What would you do? Cut a great road through the law to get after the Devil? . . . And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? . . . This country's planted thick with laws from coast to coast—Man's laws, not God's—and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? . . . Yes, I'd give the Devil benefit of law, for my own safety's sake." R. Bolt, A Man for All Seasons, Act I, p. 147 (Three Plays, Heinemann ed. 1967)."* Tennessee Valley Authority v. Hill 437 U.S. 153, 194-95 (1978).

Chief Justice Burger quoted these iconic words given to Thomas More in A Man for All Seasons. He thus concluded his TVA v. Hill opinion to enforce the Endangered Species Act to stop the progress of a major dam project pending further review. He knew that many would question the "rightness" and significant consequential expenses of interrupting the project for the sake of a small fish called the snail darter. But the law must prevail.

The present case is easier to decide. What's legal also happens to be what's right.

I. Petitioners Failed to Meet the Burden of Proof on Environmental Issues

A. Timing

"Truth like oil --- will in time rise to surface." Charlie Chan's Murder Cruise (1940)

Petitioners assert they have the right to defer environmental review until a future development process. We disagree. There is no legal, equitable, or other excuse to avoid and defer such environmental review, to conceal themselves from essential review.

We do not suggest the entire development process merge with the special exception process. We do not interrupt a massive ongoing project. Rather, we ask for enough proof, per Judge Murphy's Rules of Engagement, to satisfy the explicit and cumulative criteria.

We have highlighted the Bill 37-17 statement of purpose and its balanced protection of forests, waterways, and other natural resources in the balance. BCZR Sec. 4F-101. There are then added the serial environmental plan elements listed in County Code Sec. 33-3-108.

The legislative judgment to classify solar facilities as special exception uses is itself enough to bring into play the BCZR Sec. 502.1 criteria. This begins with the Sec. 502.1.A police power standard long held to cover the environment. Potomac Sand and Gravel, *supra.* The CSA revisited its very broad general scope to protect public health, safety, and welfare in Baddock v. Baltimore County ___ Md. App. ____, 2018 WL 6187574 (2018).

More specifically, BCZR Sec. 502.1.G incorporates the Bill 37-17 environmental purposes. Sec. 502.1.H adds the explicit stormwater management criterion, and Sec. 502.1.I targets environmental and natural resources in the R.C. 7 and other R.C. Zones. These fit with Master Plan 2020, which has an extensive section devoted to protection of the water resources and stormwater management. Pages 145-58. App. 23-29.

The plain language of the aforesaid solar facility law, special exception criteria, and master plan thus compel at least a preliminary reasonable level of environmental proof to address environmental issues. It should be kept in mind, as explained in Gaster and Surina, that the zoning process generally, and special exception process specifically, inevitably involve and overlap with development aspects. They are not on different planets.

Otherwise stated, the existence of a development process does not substitute for a reasonable level of assessment and information for special exception review. As a practical matter, it should be kept in mind that parties on all sides in special exception and other zoning cases often present expert witnesses on environmental issues. The Loyola College and Surina cases are prime examples, but there are many more.

TVA v. Hill is not an anomaly. For example, in Citizens to Preserve Overton Park v. Volpe 401 U.S. 402 (1971), the Supreme Court applied the Department of Transportation Act's "feasible and prudent alternative" standard to require the Secretary to consider potentially feasibly engineered alternative highway project routes regardless of cost.

The timing issue resonates in all the special exception cases. We believe Petitioners' effort to sidestep this requirement is unacceptable. They have failed to satisfy their burden of proof under Judge Murphy's Rules of Engagement. To suggest that environmental review should be excused from the special exception process and deferred to the more closeted development process managed by the developer and bureaucracy is nonsensical and wrong.

B. Substantive Environmental Issues and the Setback Variance Problem

"To conceal oneself from law is like trying to hide in birdcage."
Charlie Chan's Greatest Case (1933)

The environmental concerns here go beyond Petitioners' effort to escape scrutiny in this process. The Protestants identified many impacts to the watershed. Petitioners paid no attention to these issues in their site selection process or proof.

The several streams present watershed protection and runoff issues. John Roemer mapped the stream system flowing through the bowtie junction. He identified the need for severe setback variances. These are subject to strict County Code Sec. 33-3-106 "practical difficulty or unreasonable hardship" standards. There are also is road stability issues, reflected by the current consensual rear access to the farm via the Gorsuch property, rather than directly from York Road. Lynne Jones and Edward Maczek brought up the stormwater and flooding issues to the east, including the Gunpowder Falls, running along Upper Glencoe Road. Ironically, Derieu effectively admitted the scale of the environmental issues in his proposed scope of work. This also itemized the need for variances.

As explained in Schultz, special exceptions are conditional uses. Where special exceptions involve variances, the "presumption" which factors favorably for special exceptions may well fall by the wayside. Board of Chester Haven Beach Partnership v. Board of Appeals 103 Md. App. 324, 336 (1995); Umerley v. People's Counsel 108 Md. App. 497, 510-11, cert. denied 342 Md. 584 (1996).

To sum up, there is required a reasonable level of proof to show the location is particularly appropriate and not problematic. Whether called preliminary, conceptual, or formative, the special exception criteria demand a fair amount of environmental evidence.

II. Petitioners Failed to Meet their Burden Relating to Agricultural Land and Prime and Productive Soils Issues

"And therefore never send to know for whom the bell tolls; "It tolls for thee."
John Donne, No Man Is an Island (1624)

John Donne's poem conveys our connectedness in the world. It is a metaphor for tipping points. This resonates in our analysis here of the impacts on agricultural lands.

Petitioners assert that the impact on agricultural land is irrelevant in the R.C. 7 Zone. They presented no proof on the issue. We showed the solar facility law and special exception criteria embrace this issue. It follows that Petitioners again have failed to satisfy their burden of proof under Judge Murphy's Rule of Engagement.

Furthermore, the evidence shows that the impact on agricultural land is serious. The prime farmland occupies 9 acres, a much smaller area than in other cases, but still farmed and with 86.4% soils which are prime or of statewide importance. We have described the

mixed use setting, with this property bordering residential subdivisions in place across York Road and to the north, forested residential and church-owned properties to the south, and the Gorsuch farm area to the north/northeast.

Perhaps reminiscent of the Arnold Schwarzenegger movie of the same name, we asked Mr. Mayo whether this could be described as The Last Stand, given that his family's farm appears to be the only other farm area left with crops. To be sure, the forested areas to the south could also be cultivated. Mr. Mayo's response, in essence, was that it is still worthwhile to protect the remaining farmland in cultivation.

We provided the GIS map which shows over 36,200 acres in the R.C. 7 Zone, along with 139,033 acres in the R.C. 2 Zone, not to mention the other R.C. Zones. In this geographic context, there is much to be said for the proposition that solar facility operators should make an effort to find sites which do not have such prime soils. There is not the slightest evidence that Petitioners here made any effort at all. Given the totality of circumstances, even if it the burden of proof fell on Protestants, there is good reason to conclude that this is a particularly inappropriate site selection.

III. Piercing the Veil: The "Can't Be Forced to Farm" Charade

"Pretense unredacted"

Petitioners sometimes assert that no one can be forced to farm their property. This is another red herring. It does not tell us anything about the proposed use, its location, the particular impacts, and harmony with the comprehensive zone plan. A petitioner for any special exception could assert they will do nothing with their property if they don't get their special exception. This sort of charade is irrelevant and offensive legally and factually.

Furthermore, this prime farm property has been cultivated for many years. If this special exception is rejected, it would be irrational, counterproductive, and self-destructive economically for a property owner to forego income from continuing to lease the property.

IV. The Proposed Solar Facility Produces Particular Adverse Visual Impact

"All those [ugly solar facilities], where do they all come from? All those [ugly solar facilities], where do they all belong?" Inspired by The Beatles, Eleanor Rigby

Solar facilities are ugly. There is no getting around it. This facility will stand out because of its altitude. It may be up to 20 feet in height, regardless of the disclaimers. The topographic contours show it at the high point for this proximity.

The visual impact on neighboring properties is a relevant consideration. Board of County Comm'rs v. Holbrook 314 Md. 210 (1986), mobile home impact on single-family detached dwelling; People's Counsel v. Mangione 85 Md. App. 738 (1991), convalescent home impact on Lutherville single-family home neighborhood.. Here, we have the additional impact on the designated scenic road. This presents police power and natural resources conflicts under BCZR Secs. 502.1.A and I.

York Road is a scenic road. To contextualize, our office surveyed the ADC Street Atlas for the north county, including maps 13-16, 18-21, and 23-26, east-west from Harford to Carroll County lines, north-south from the Pennsylvania line to Sparks. P.C. Exh. 13a. We calculated 82% of the roads --- 59 of 73 --- are not designated as scenic roads. Moreover, a scan of the maps shows that many of these roads are significant and well-known roads in the north county. For the present case, we added ADC map excerpts 30-33, including 15637 York Road, map 32, and areas to the east and west. Our survey here showed 56% --- 19 of 34 --- are not designated as scenic.

County Council Bill 121-01 has provided a broad definition for "*Scenic viewshed.*" It is codified in Code Sec. 32-4-101(uu):

> "*Scenic viewshed.*" 'Scenic viewshed' means a scenic route or scenic view as designated in the mas0ter plan."

There follows a definition of "Scenic viewshed elements," which refers to visual elements of such quality, character, and nature for the Planning Board to designated viewsheds (scenic routes or views) in the master plan. Code Sec. 32-4-101(vv).

Master Plan 2020 again comes into play. Pages 97-102. App. 19-22. For Scenic Corridors and Views, there is provided Policy Action (9),

"(9) For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly."

Petitioners posit that the facility's placement away from York Road mitigates the visual impact. However, the east wing occupies the high elevation in the area and so will still likely be visible in all directions. There will also be the poles necessary to carry energy to the BGE infrastructure on York Road. Ironically, the east wing location magnifies the visual impact to the northeast, toward the downhill Gorsuch and Maczek properties.

To be sure, Bill 37-17 requires landscaping based on the Landscape Manual. But this is not conclusive as to the special exception criteria. Depending on the scenic character of the location, the landscaping may not be sufficient or may actually obstruct the scenic view.

V. Depth Perspective: What's It All About?

Conclusion

"Story are now completely extracted like aching tooth."
Earl Derr Biggers, House Without A Key 274 (1925)

We are trained to compartmentalize legal issues. But they can also be viewed together integrally and cumulatively. Metaphorically, it is as if we are in an art museum, such as the Tate on the banks of the Thames, viewing a J.M.W. Turner or a Monet painting. As we step away, we see more in depth and yet get closer to the heart of the matter.

In the special exception context, this translates to the often neglected but nevertheless essential requisite that the use harmonize with the comprehensive zone. So we take a balanced, collective, contextual look at the issues. Petitioners' site selection is based narrowly on economic and technological advantage, without attention to the environment, prime and productive soils, or scenic roads. They place business interests first, and then try to fit the law in as an afterthought. When contested, they claim these issues are irrelevant or should be deferred. They retain professionals to say whatever they can to get a result.

The present case involves a smaller site and special exception area than other cases. Yet it presents the most immediate and intense water resources issues, with the stream, culvert, and asset problems at the bowtie junction, and the Gunpowder Falls to the east.

The displaced farmland is not as extensive as in other cases. The area mixes residential subdivisions with and farm and forest areas. Yet there are still reasonable

concerns about every loss of prime and productive soils, as the bell tolls. The same be said of the visual impact. The facility fits into the rear, away from the scenic road. Yet there are still concerns about the elevated topography and the impact in all directions.

When we look at the issues either separately, collectively, or cumulatively, we are obligated to conclude that the particular adverse impacts and disharmony with the comprehensive zone are such as to warrant denial of the petition.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of January 2019, a copy of the foregoing People's Counsel for Baltimore County's Post-Hearing Memorandum was mailed by first class mail to R. Barnes Mowell, Esquire, 16925 York Road, Monkton, Maryland 21111 and Timothy Kotroco, Esquire, 305 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

which originally enacted § 522.1, used the word "office". The annual cumulative supplements to the 1978 Code used the word "office" from 1979 to 1985. The change was made inadvertently in the 1986 cumulative supplement.

Sec. 523. The master plan and the zoning maps.

(a) *Definition and implementation of the master plan.* The master plan shall be a composite of mapped and written proposals setting forth comprehensive objectives, policies and standards to serve as a guide for the development of the county. Upon receipt of the master plan from the office of planning and zoning, the county council shall accept or modify and then adopt it by resolution.

(b) *Definition and implementation of the zoning maps.* The zoning maps shall show the boundaries of the proposed districts, divisions and zones into which the county is to be divided consistent with the master plan. Upon receipt of the zoning map from the office of planning and zoning, the county council shall accept or modify and then adopt it by legislative act.
(Bill No. 83, 1978, § 3) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

Sec. 524. Reorganization of office of planning and zoning.

Notwithstanding any other provisions of this Charter, the county council shall have the power by legislative act to reorganize the office of planning and zoning, to define the duties of the director of said office, to establish the powers, duties and compensation of the planning board, and to establish the duties and responsibilities of the zoning commissioner and deputy zoning commissioners, so that planning and zoning functions shall be conducted in the best interests of the county and its future development and growth.
(Bill No. 83, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 128, 1990, § 1; approved by voters Nov. 6, 1990; effective Dec. 7, 1990)

Sec. 524.1. People's counsel.

(a) The county executive shall appoint a people's counsel who shall represent the interests of the public in general in zoning matters as hereinafter set forth, subject, however, to confirmation by the county council, and such person so appointed shall continue to serve as people's counsel until such time as he or she resigns or has been removed pursuant to the provisions herein contained:

(1) *Qualifications:* The people's counsel shall be a resident of Baltimore County, a member in good standing of the Maryland Bar, and actively engaged in the general practice of law for at least five (5) years prior to his appointment.

(2) *Removal:* The people's counsel may be removed at any time on the recommendation of the county executive and with the affirmative vote of not less than a majority plus one of the total number of county council members established by this Charter.
(Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

(3) *Powers and duties:* The people's counsel shall have the following powers and duties:

A. He shall appear as a party before the zoning commissioner of Baltimore County, his deputy, the county board of appeals, the planning board, and the courts on behalf of the interests of the public in general, to defend any duly enacted master plan and/or comprehensive zoning maps as adopted by the county council, and in any matter or proceeding now pending or hereafter brought involving zoning reclassification and/or variance from or special exception under the Baltimore County Zoning Regulations, as now or hereafter in force and effect, in which he may deem the public interest to be involved. In defense of the zoning maps or master plan, he may appear as a party in interest before all state and federal agencies, boards, and courts on matters involving the preservation of the quality of the air, land, and water resources of Baltimore County, and/or may initiate such proceedings in the public interest. He shall have in such appearance, all the rights of counsel for a party in interest, including but not limited to the right to present his case, to cross examine, to object, to be heard, and to file and prosecute an appeal in his capacity as people's counsel from any order or act of the zoning commissioner of Baltimore County or his deputy, or of the county board of appeals to the courts as an aggrieved party pursuant to the provisions of Section 604 of this Charter to promote and protect the health, safety and general welfare of the community. The people's counsel may also prosecute an application before any state or federal court for injunctive and other relief incidental thereto, to enjoin violation of any Baltimore County zoning maps or master plan or as authorized by resolution by the county council.
(Bill No. 90, 1978, § 1) (Approved by voters Nov. 7, 1978; effective Dec. 8, 1978)

B. He shall make such investigations as he may deem necessary to the intelligent performance of his duties imposed by subparagraph A. of this Section.

C. He shall have full access to the records of all county agencies, shall be entitled to call upon the assistance of county employees, and shall have the benefit of all other facilities or information of the county in carrying out his duties.

(4) *Employment of experts:* The people's counsel may hire from time to time, as needed, in connection with specific proceedings before the above named bodies, experts in the fields of planning, zoning, traffic, engineering, ecology and architecture, to the extent that county personnel cannot be utilized, and to expend such sums for compensation and/or expenses of these experts as shall be provided in the annual budget.

(5) *Salary and expenses:* He shall receive an annual salary and such sums as may be needed to carry out the powers and duties set forth herein as provided in the annual budget.
(Bill No. 104, 1960; Bill No. 61, 1974, § 1; Bill No. 90, 1978, § 1; approved by voters Nov. 7, 1978; effective Dec. 8, 1978; Bill No. 131, 1990, § 1; approved by voters Nov. 6, 1990, effective Dec. 7, 1990)

***Annotation**—The people's counsel has the right to appeal zoning decisions. People's Counsel for Baltimore County v. Williams, 45 Md. App. 617, 415 A.2d 585 (1974).*

Editor's note:

The publisher corrected a former reference to "matter" to read "matters" in subsection (a). Bill

61-74, which originally enacted this language, used the word "matters". The 1976 annual cumulative supplement to the 1968 Code used the word "matters" but it appears to have been changed to "matter" inadvertently on publication of the 1978 Code.

Subdivision 7. [Reserved.]*

** Editor's note: Subdivision 7, consisting of sections 524.2 and 524.3, was repealed by Bill No. 131, 1990, § 2, which was approved by the voters on Nov. 6, 1990, effective Dec. 6, 1990.*

DIVISION 3. DEPARTMENTS IN THE ADMINISTRATIVE SERVICES

Subdivision 1. Department of Public Works

Sec. 525. Director of public works.

The department of public works shall be administered by the director of public works who shall be a professional engineer registered under the laws of this state, and shall have had responsible charge of engineering works over a period of at least ten years prior to his appointment. He shall have such other qualifications as may be provided by law. He shall be appointed solely with regard to his qualifications for the duties of his office and shall be responsible directly to the county administrative officer.

Sec. 526. Functions of department of public works.

The department of public works shall have and perform such functions and duties as may be provided from time to time in the public local laws of Baltimore County, with the exception, however, of all functions of the zoning commissioner and those relating to building permits and building and zoning laws and regulations. The department shall have such other functions as may be provided by directive of the county administrative officer or by legislative act of the county council not inconsistent with this Charter or the provisions of applicable law.

In addition thereto, the department of public works shall be responsible for traffic safety and engineering and is hereby granted full power and authority and directed to promulgate and adopt such rules and regulations relating to the standing or parking of motor vehicles and movement of vehicular and pedestrian traffic as may be necessary or desirable to create and maintain the safe and expeditious movement of traffic throughout Baltimore County: provided, however, that no rule or regulation promulgated by the director under such power and authority shall be deemed valid or effective until the expiration of forty-five days written notice of the promulgation of the same to the county council. The county council shall at all times have the power to repeal, amend, or modify any rules and

County to run with the land and continue in perpetuity. The easements and covenants must be shown on the concept plan and on the development plan or minor subdivision plan for the development, as applicable, and on the record plat.

A. For all subdivisions or other development, except as provided in Paragraph B, a permanent preservation easement on the conservancy area must be granted to Baltimore County or to a land trust which the county approves, and must permanently restrict further subdivision or development of the conservancy area. The easement must:

1. Allow public access to greenways and other open space areas subject to approval by the Department of Environmental Protection and Sustainability and the Department of Recreation and Parks; **[Bill No. 122-2010]**

2. Indicate uses and activities approved in the conservancy area subject to Section 1A07.7.C with any applicable conditions or limitations; and

3. Provide that any modification of a preservation easement held by Baltimore County be subject to a public hearing.

B. In the case of a development where additional permitted density remains, a conservancy area shall be shown on the approval plan and, if the plan involves subdivision, recorded in the land records of Baltimore County. A permanent preservation easement as described in Paragraph A must be granted if further subdivision subjects the tract to the development plan review process under Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

C. Other covenants or easements may be required as to ensure that the standards of this section are met, including:

1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and

2. An easement to provide for the maintenance of open views.

APP. 3

SECTION 1A08
R.C.7 (Resource Preservation) Zone
[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.

3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.

4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.

7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;

9. To implement state and federal mandates for the protection of natural resources and rural legacy;

10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;

11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;

12. To incorporate traditional features of the local built environment into development; and

13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE — The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

A. Uses permitted by right. In addition to the uses in Paragraph E of this subsection, the following uses are permitted by right in an R.C.7 Zone:

1. Dwellings, one-family detached.
2. Farms and limited acre wholesale flower farms, subject to Section 404.
3. Open space, common.
4. Schools.
5. Streets and ways.
6. Telephone, telegraph, electrical power or other lines or cables, provided that any such line or cable is underground; underground gas mains; shared well and septic systems when approved by the Department of Environmental Protection and Sustainability; or other underground conduits, except interstate pipelines. **[Bill No. 122-2010]**
7. Accessory uses or structures, subject to Section 429, including:
   a. Farmer's roadside stand and produce stand, subject to Section 404.4;
   b. Home occupations;
   c. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee;
   d. Parking and residential garage space, subject to Section 409;
   e. Signs, subject to Sections 450 and 1A08.8.C.5; and
   f. Swimming pools, tennis courts and other recreational amenities, if accessory to a dwelling or residential subdivision only.
8. Commercial film production, subject to Section 435.
9. Farmstead creamery, subject to the provisions of Section 404.13. **[Bill No. 34-2009]**

B. Uses permitted by special exception. The following uses only may be permitted by special exception in an R.C.7 Zone.

1. The following uses provided that they are located in a principal building that was originally constructed before the effective date of Bill 74-2000; and the building is converted to the new use without any external enlargement after the effective date of Bill 74-2000:
   a. Antique shop;
   b. Bed and breakfast;
   c. Tea room; and
   d. Residential art salon.
2. Subject to Paragraph E of this subsection, churches and other buildings for religious worship.
3. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals as an accessory use, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees;
4. Public utility uses not permitted by right.
5. Bottled water plant as an agricultural support use, if the source of water is located on the same site as the plant, and provided that the Director of Environmental Protection and Sustainability makes a finding that the proposed facility is not expected to adversely affect the quality of capacity of surface water or ground water. **[Bill No. 122-2010]**
6. Campgrounds, including day camps.
7. Farm market, subject to Section 404.4.
8. Golf courses.
9. Horticultural nursery, subject to Sections 404.1 and 404.2.
10. Riding stables.
11. Target archery and field archery ranges.
12. Volunteer fire company or ambulance-rescue facilities.
13. Winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on premises. Temporary promotional events such as wine tasting or public gatherings associated with the winery are permitted within any limits set through the special exception process.
14. Wireless telecommunication towers, subject to Section 426.

15. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal. **[Bill No. 64-2015]**

APP. 5

C. Notwithstanding any provision of this section or any other county law or regulation to the contrary, if a property to which the zoning classification R.C.7 is applied had a development plan filed, accepted and pending for approval as of January 19, 2000, the development plan shall be reviewed based on the zoning classification applicable to the property at the time the development plan was filed.

D. Application of zone. The R.C.7 may not be applied to lands currently zoned R.C.2.

E. Prior zoning. If a property was zoned so that churches and other buildings for religious worship were permitted by right prior to being zoned as R.C.7, churches and other buildings for religious worship are permitted by right on that property.

§ 1A08.4. Plans and permits.

All development must be in accordance with this section and the standards and guidelines for "rural preservation" and "scenic views" adopted pursuant to this section, and published as part of the Comprehensive Manual of Development Policies.

A. Before the approval of any concept plan, development plan, limited exemption, special exception plan or variance, the Director of Planning or the Director's designee must certify in a written finding that the plan, exemption or variance is consistent with the spirit and intent of these regulations. To support the finding, the Director may require information such as building elevations, building cross-sections or viewshed analyses pursuant to § 32-4-224(d) of the Baltimore County Code. The Director must certify that any deviation from this section or the standards and guidelines cited above was necessary to: **[Bill No. 137-2004]**

   1. Meet another standard or guideline;

   2. Comply with environmental regulations or otherwise protect resources; or

   3. Achieve the best possible site design based on the goals in Section 1A08.1.B.

B. Before the issuance of any building permit, the Director of Planning or the Director's designee must certify that the proposed development is in conformance with a plan approved pursuant to these regulations.

C. A finding pursuant to this section may be appealed to the Baltimore County Board of Appeals within 30 days of the date of the finding by any person aggrieved by the finding.

§ 1A08.5. Scenic views.

To protect the scenic views or, when necessary pursuant to 1A08.4, to mitigate the disturbance of scenic views, the Director of Planning may require that one or both of the following be clearly designated on the final record plat with appropriate notations:

A. Areas where disturbance of natural vegetation is prohibited; or

B. Areas where revegetation of landscaping is required.

§ 1A08.6. Development area and standards.

A. Maximum height. No structure with a height greater than 35 feet is permitted, except as otherwise provided under Section 300.

B. Area regulations.

1. Maximum lot density. A tract may be developed in an R.C.7 Zone at a maximum density of 0.04 lot per acre of gross tract area (an average of one lot per 25 acres). No lot lying within an R.C.7 Zone and having a gross area of less than 50 acres may be subdivided. Any lot having a gross area of 50 acres or more may be subdivided at the rate of one lot for each 25 acres of gross area. In cases where single ownership is crossed by existing or proposed roads, rights-of-way or easements, the portions of land on either side of the road, right-of-way or easement may not be considered separate parcels for the purpose of calculating the number of lots of record.

2. Lot area. The area of any residential lot in a major or minor subdivision must not be less than one acre.

3. Building envelope. For residential development, the maximum area of the building envelope on any residential lot other than a farm is 20,000 square feet, and no single dwelling, inclusive of a garage or accessory building, shall have a building footprint that exceeds 5,000 square feet. The placement of the building envelope is determined on the basis of:

   a. The goals for the zone; and

   b. The minimum setbacks for the zone.

4. Minimum development allowance. Any lot or parcel of land lawfully existing on the effective date of Bill 74-2000 may be developed with a single dwelling.

5. Setbacks.

   a. Any principal building constructed in an R.C.7 Zone must be situated at least:

      (1) Thirty-five feet from the right-of-way of public or private interior streets;

      (2) Eighty feet from any principal building; and

      (3) Fifty feet from the rear lot line.

   b. Any principal building or well constructed, or any use that may be in conflict with any permitted agricultural operation, in an R.C.7 Zone must be at least 300 feet from any adjacent property that was cultivated or used for pasture during the previous three years, as determined by the Department of Environmental Protection and Sustainability, or that is subject to a perpetual agricultural or conservation easement. **[Bill No. 122-2010]**

6. Impervious surface coverage — nonresidential development. Except for residential lots which are subject to a building envelope restriction, no more than 10% of any lot may be covered by impervious surfaces such as structures or pavement.

7. Historic properties. No building or structure on a development tract which is officially included on the preliminary or final list of the Landmarks Preservation Commission or the National Register of Historic Places, or which is subject to an

easement held by the Maryland Historical Trust will be counted as a lot or dwelling for purposes of calculating density, provided that: **[Bill No. 137-2004]**

a. There is an area of sufficient size, as determined by the Director of Planning in consultation with the Landmarks Preservation Commission or Maryland Historical Trust, surrounding the building, structure or landmark to preserve the integrity of its historic setting;

b. An overall photographic and written description of the building, structure or landmark identified has been submitted and is determined to be in compliance with the Secretary of the Interior's standards for the treatment of historic properties;

c. Documentation of the preservation, restoration and protection for the building, structure or landmark has been approved by the Director of Planning in consultation with the Maryland Historical Trust prior to issuance of any building permit; and

d. When provisions of this paragraph apply to any development, the conditions for approval must be noted on the concept plan and development plan, or the minor subdivision plan.

C. Performance standards. Conditions for approval pursuant to this section must be noted on the concept plan and development plan, or minor subdivision plan. The following standards are intended to foster creative development that promotes the goals stated in 1A08.1.B.

1. Stormwater management. Stormwater management facilities must be integrated with the topography of the site and consistent with the visual appearance of the surrounding natural features.

2. Buildings.

a. Buildings must be located on the least visually prominent portion of the site from the public road, consistent with effective resource protection, except where appropriate to continue an established pattern of development along the edge of the road.

b. Buildings should reflect the traditional rural character of the area in architectural form, scale, materials and detailing and in landscaping context.

c. Dwellings and other principal use building should be front-oriented to public rights-of-way; reverse-fronted lots generally will not be permitted.

d. Institutional uses, when permitted, should be regarded as community landmarks, and treated as permanent, special uses. This status should be reflected in building orientation and location on the site, entryways, landscaping, architecture and exterior building materials.

e. All of the exterior walls of a building must be treated similarly with respect to color and architectural details.

f. Accessory structures, including solar panels, antennas and storage sheds, are not permitted in the front yard of any principal use. Section 400.1 is not applicable in an R.C.7 Zone; however, the height of accessory structures is subject to the provisions of Section 400.

g. When buildings are located in open fields because of site constraints, additional landscaping or berms may be required to soften views.

3. Roads, parking areas and storage areas.

a. Interior roads must conform to Baltimore County's standards for rural roads, and no paved section of road may exceed a width of 18 feet.

b. Curbing must not be used unless required for stormwater management, as determined by the Department of Public Works. When curbing is required, it must consist of mountable curbs of a color that simulates the appearance of aged concrete, in accordance with specifications established by the Department of Public Works.

c. Fencing of residential properties must be in keeping with rural character. Fences must be either split rail or board on post, and the type of fence must be consistent throughout the development.

d. Off-street parking and vehicle or equipment storage areas, when necessary for nonresidential or non-farm uses, must be visually screened by fencing, buildings or vegetation; or a combination thereof, from the public roads and dwellings.

e. Areas for the outside storage of materials or supplies for non-agricultural commercial uses, except merchandise offered for sale by antique shops, must be visually screened by fencing, buildings or vegetation, or a combination thereof, from all public roads and dwellings.

f. Street lights, if permitted on interior streets, must be no higher than 14 feet and illuminated by no more than one one-hundred-watt sodium vapor lamp. Fluorescent and incandescent lights are not permitted. The light fixtures should be of a style that diffuses light.

4. Screening. Visual screening for privacy or to block distracting views should be natural in appearance and sensitive to grade relationships. Screens should not disrupt the harmony of the natural landscape or obstruct scenic views.

5. Signs.

a. Community signs are prohibited. Subdivisions may be identified by street signs.

b. A nonresidential principal use may be identified by:

(1) An enterprise sign, subject to Section 450; or

(2) An identification sign, subject to Section 450.

§ 1A08.7. Inconveniences arising from agricultural operations.

Any dwelling in an R.C.7 Zone may be subject to inconveniences or discomforts arising from agricultural operations, including noise, odors, fumes, dust, the operation of machinery or aircraft of any kind during any twenty-four-hour period, the storage and disposal of manure and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides.

SECTION 1A09
R.C.8 (Environmental Enhancement) Zone
[Bill No. 76-2004]

§ 1A09.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

2. While the resource preservation areas identified in the Master Plan are predominantly in the rural part of Baltimore County, there are certain areas of environmental significance that are located throughout Baltimore County that require protection.

3. An R.C. 8 Zone allows limited development, compatible with the rural and urban community, and at the same time protects environmental resources.

4. The County recognizes the importance of retaining certain areas for environmental protection.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C. 8 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of reservoirs, watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils, environmental resources in areas not currently protected by the R.C. 2 or the R.C. 7 Zone;

APP. 8

ARTICLE 4F

SOLAR FACILITIES

[Bill No. 37-2017[1]]

§ 4F-101. Purpose and definitions.

A. Purpose. Solar energy is recognized as an abundant, renewable, and environmentally sustainable source of electricity generation that will lead to greater local grid resiliency and security, and produce clean, renewable energy and reduce air and water pollution caused by the burning of traditional fossil fuels. The purpose and intent of this article is to permit solar facilities in parts of the rural and commercial areas of the County by special exception, and to balance the benefits of solar energy production with its potential impact upon the County's land use policies by ensuring sufficient safeguards are in place to protect the County's communities and its agricultural land, forests, waterways and other natural resources.

B. Definitions. As used in this article, the following terms have the meanings indicated:

COMMERCIAL USE — The transfer to the electrical power grid of energy produced by a solar facility for sale by energy suppliers to consumers.

SOLAR FACILITY — A facility that includes a series of one or more solar collector panels or solar energy systems that are placed in an area on a tract of land for the purpose of generating photovoltaic power for commercial use. The term includes a solar power plant or solar photovoltaic farm.

§ 4F-102. Location of solar facilities.

A. Subject to Paragraph B, a solar facility is permitted only by special exception in the R.C. 2, R.C. 3, R.C. 4, R.C. 5, R.C. 6, R.C. 7, R.C. 8, B.L., B.M., M.R., M.L.R., and M.H. Zones of the County.

B. The allocation of land for solar facilities in the County is limited to the following:

1. The maximum area permitted for a single solar facility is the amount of acreage that produces no more than two megawatts alternating current (AC) of electricity.

1. Editor's Note: This article was enacted as Article 4E. Because provisions regarding breweries were also enacted as Article 4E, this article was renumbered to avoid duplicate numbering and to maintain the organization of the Zoning Regulations.

2. No more than 10 solar facilities may be located in a councilmanic district.

3. The Director of Permits, Approvals and Inspections shall maintain a record of all permits issued for a solar facility in the County, including the location and councilmanic district for each such facility, and shall keep a current accounting of the number of facilities in each councilmanic district under this paragraph.

4. Upon reaching the threshold of 10 solar facilities in a councilmanic district, no additional permits shall be issued for a solar facility in that district unless an existing facility previously approved under this article has been removed pursuant to Section 4F-107.

§ 4F-103. Exception.

This article does not apply to the following solar facility installations:

A. A ground-mounted solar facility that is accessory to a principal residential or agricultural use (subject to Sections 400.1 and 400.2 of these regulations applicable to accessory buildings), or accessory to a principal commercial, industrial, or institutional use;

B. A rooftop solar facility;

C. A solar facility on federal, state or local government-owned or leased land that produces energy for government use; or

D. A solar facility located on the same property or tract as a farm that uses at least 66% of the energy generated by the facility for agricultural uses on the farm.

§ 4F-104. Requirements.

A. A solar facility located in an R.C. Zone is subject to the following requirements:

1. The land on which a solar facility is proposed may not be encumbered by an agricultural preservation easement, an environmental preservation easement, or a rural legacy easement.

2. The land on which a solar facility is proposed may not be located in a Baltimore County historic district or on a property that is listed on the Baltimore County Final Landmarks List.

3. The portion of land on which a solar facility is proposed may not be in a forest conservation easement, or be in a designated conservancy area in an R.C. 4 or R.C. 6 Zone.

4. Aboveground components of the solar facility, including solar collector panels, inverters, and similar equipment, must be set back a minimum of 50 feet from the tract boundary. This setback does not apply to the installation of the associated landscaping, security fencing, wiring, or power lines.

5. A structure may not exceed 20 feet in height.

6. A landscaping buffer shall be provided around the perimeter of any portion of a solar facility that is visable from an adjacent residentially used property or a public street. Screening of state and local scenic routes and scenic views is required in accordance with the Baltimore County Landscape Manual.

7. Security fencing shall be provided between the landscaping buffer and the solar facility.

8. A solar collector panel or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and does not interfere with traffic or create a safety hazard.

9. A petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code.

10. In granting a special exception, the Administrative Law Judge, or Board of Appeals on appeal, may impose conditions or restrictions on the solar facility use as necessary to protect the environment and scenic views, and to lessen the impact of the facility on the health, safety, and general welfare of surrounding residential properties and communities, taking into account such factors as the topography of adjacent land, the presence of natural forest buffers, and proximity of streams and wetlands.

B. The requirements of Subparagraphs A.6, A.7, A.8 and A.10 shall apply to a solar facility located in a Business or Manufacturing Zone.

§ 4F-105. Required security.

A. An applicant for a building permit for a solar facility shall provide a security bond or equivalent financial security in the form and amount determined by the County Administrative Officer.

B. The Code Official may use the bond to procure the repair of any unsafe or hazardous conditions under Section 4F-106 or removal of a solar facility under Section 4F-107, in accordance with Section 3-6-402 of the County Code.

§ 4F-106. Maintenance.

A. All parties having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility.

B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under and around solar panel structures, and integrity of security measures. Access to the facility shall be maintained in a manner acceptable to the Fire Department. The owner, operator, or lessee are responsible for the cost of maintaining the facility and any access roads.

C. Appropriate vegetation is permitted under and around the solar collector panels, and the tract may be used for accessory agricultural purposes, including grazing of livestock, apiculture, and similar uses.

D. The provisions on this section shall be enforced in accordance with Article 3, Title 6 of the County Code.

§ 4F-107. Abandonment; removal.

A. A solar facility that has reached the end of its useful life or has been abandoned shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the County by certified mail of the proposed date of discontinued operations and plans for removal.

B. Removal shall consist of the:

1. Physical removal of all solar energy systems, structures, equipment, security barriers and transmission lines from the site;

2. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations; and

3. Stabilization or revegetation of the site as necessary to minimize erosion.

C. If the owner or operator fails to remove the facility within 150 days of abandonment, the County retains the right to enter and remove the facility. As a condition of special exception approval, the petitioner and landowner agree to allow entry to remove an abandoned facility.

D. The Code Official may issue a citation to the owner or operator for removal of a solar facility if:

1. The Code Official determines that the solar facility has not been in actual and continuous use for 12 consecutive months;

2. The owner or operator failed to correct an unsafe or hazardous condition or failed to maintain the solar facility under Section 4F-106 within the time prescribed in a correction notice issued by the Code Official; or

3. The owner or operator has failed to remove the solar facility in accordance with Paragraph C.

APP. 10

BALTIMORE COUNTY

ZONING REGULATIONS

ADOPTED BY

COUNTY COMMISSIONERS

OF

BALTIMORE COUNTY

March 30, 1955, in accordance with Title 30, Section 532 (c) of the Code of Public Local Laws of Baltimore County (1955 Edition).

1955

Michael J. Birmingham
President

Robert B. Hamill
Augustine J. Muller
County Commissioners of Baltimore County

Francis T. Peach
County Solicitor

George M. Berry
Deputy Solicitor

Wilsie H. Adams
Zoning Commissioner

(4) Any other appeal from an order by the Zoning Commissioner 30.00

The above charges include cost of advertising and posting of property. However, if more than one sign is required, $3.00 additional for each additional sign will be required; and if the advertisement is excessively long, there will be an additional charge.

Section 502—SPECIAL EXCEPTIONS

(See Section 270—Schedule of Special Exceptions)

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junk yards, are inherently so objectionable as to make extra regulations and controls advisable even in the M. H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business, and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety, or general welfare of the public, the uses listed as Special Exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the Board of Zoning Appeals.

In granting any Special Exception, the Zoning Commissioner and the Board of Zoning Appeals, upon appeal, shall be governed by the following principles and conditions.

502.1—Before any Special Exception shall be granted, it must appear that the use for which the Special Exception is requested will not:

a. Be detrimental to the health, safety, or general welfare of the locality involved;
b. Tend to create congestion in roads, streets or alleys therein;
c. Create a potential hazard from fire, panic or other dangers;
d. Tend to overcrowd land and cause undue concentration of population;
e. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences, or improvements;
f. Interfere with adequate light and air.

502.2—In granting any Special Exception, the Zoning Commissioner or the Board of Zoning Appeals, upon appeal, shall impose such conditions, restrictions,

or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a Special Exception is granted, if required by the Zoning Commissioner, or Board of Zoning Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, stipulating the conditions, restrictions, or regulations governing such Special Exception, the same to be recorded among the Land Records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such Special Exception. When so recorded, said agreement shall govern the exercise of the Special Exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

502.3—Any Special Exception which has not been utilized within a period of one year from date of issue, or any "Special Permit" which was granted before the date of adoption of these Regulations and which has not been utilized within a period of one year after such date, shall be void unless on written request from the petitioner, the Zoning Commissioner grants an extension, provided, however, that not more than one such extension, for a period of one year, may be granted.

Section 503—VIOLATIONS

Any violation of regulations and restrictions adopted pursuant to this Ordinance shall be a misdemeanor, punishable by a fine not to exceed One Hundred Dollars ($100.00) or by imprisonment not to exceed thirty (30) days, or both fine and imprisonment. Any person who shall violate such regulations and restrictions shall be deemed guilty of a separate offense for every day that such violation shall continue.

ARTICLE 6—INTERPRETATION AND VALIDITY

Section 600—INTERPRETATION

In their interpretation and application, these Regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience, and general welfare. Where these Regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts, or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these Regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation, or private agreement than are required by these Regulations, such greater restrictions shall not be affected by these Regulations.

Section 601—VALIDITY

If any section, paragraph, subdivision, clause or provision of these Regulations shall be adjudged invalid, such adjudications shall apply only to the section, paragraph, subdivision, clause, or provisions so adjudged, and the remainder of the Regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these Regulations and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

COUNTY COMMISSIONERS OF BALTIMORE COUNTY

Michael J. Birmingham, President

Augustine J. Muller

Robert B. Hamill

NOTE: Certain types of uses are required to secure a permit to allow them to be placed in one or more zones in which their uncontrolled occurrence might cause unsatisfactory results of one kind or another. A few uses, such as dumps and junkyards, are inherently so objectionable as to make extra regulations and controls advisable even in the M.H. Zone, to which they are restricted. Others, like a cemetery, do not fit into any of the zone categories, that is, residential, business and industrial, and therefore must be located with discrimination in relation to their surroundings. All the items listed are proper uses of land, but have certain aspects which call for special consideration of each proposal. Because under certain conditions they could be detrimental to the health, safety or general welfare of the public, the uses listed as special exceptions are permitted only if granted by the Zoning Commissioner, and subject to an appeal to the County Board of Appeals.

In granting any special exception, the Zoning Commissioner and the County Board of Appeals, upon appeal, shall be governed by the following principles and conditions.

§ 502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones. **[Bill Nos. 74-2000; 37-2017]**

§ 502.2. Protection of surrounding properties; agreement governing special exception.

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning

ARTICLE 6

INTERPRETATION AND VALIDITY

SECTION 600
Interpretation
[BCZR 1955]

§ 600.1. Interpretation of provisions.

In their interpretation and application, these regulations shall be held to be the minimum requirements for the promotion of the public health, safety, convenience and general welfare. Where these regulations impose a greater restriction on the use of buildings or land or on the height of buildings, or require larger yards, courts or other open spaces, or impose other higher standards than are imposed by the provisions of any law, ordinance, regulation or private agreement, these regulations shall control. When greater restrictions are imposed by any law, ordinance, regulation or private agreement than are required by these regulations, such greater restrictions shall not be affected by these regulations.

SECTION 601
Validity
[BCZR 1955]

§ 601.1. Validity of provisions.

If any section, paragraph, subdivision, clause or provision of these regulations shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provisions so adjudged, and the remainder of the regulations shall be deemed valid and effective.

The Board of County Commissioners of Baltimore County hereby declares that it would have adopted these regulations and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

ments of Agriculture, Health and Mental Hygiene, and Natural Resources regarding enforcement procedures in cases of water pollution caused by agriculture (December 29, 1986) or subsequent memoranda.
(1988 Code, § 14-337) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-108. PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.
(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-109. APPROVAL OF PERMITS.

(a) *Compliance determination.* Before the Department of Permits, Approvals and Inspections may issue any grading permit or building permit or before the approval of any erosion and sediment control plan, the Director of Environmental Protection and Sustainability or the Director's designee shall determine that the proposed development is in compliance with the provisions of this title.

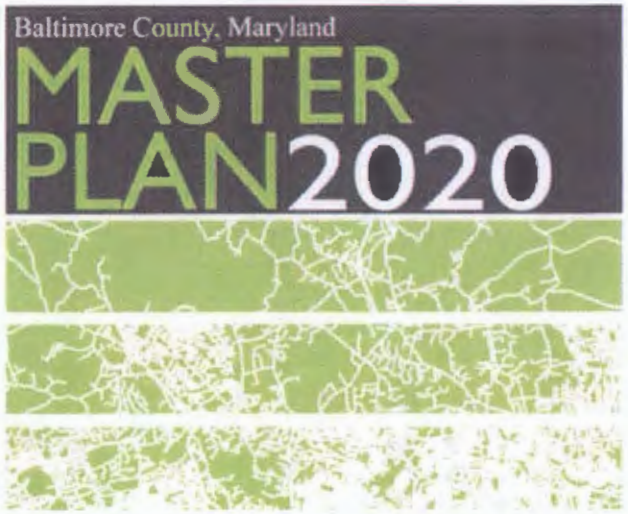
(b) *No permit.* A permit may not be issued without compliance with this title.
(1988 Code, § 14-339) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011; Bill No. 72-12, § 1, 1-9-2013)

§ 33-3-110. PLATS AND PROTECTIVE COVENANTS.

(a) *In general.*

(1) (i) Any plat submitted to the county in accordance with Article 32, Title 4 of the Code shall be accompanied by irrevocable offers of dedication to the county of all forest buffer areas in fee or easements, in a form approved by the Bureau of Land Acquisition and the County Attorney.

(ii) The plat shall be marked with a notation indicating the offers of dedication.



(3) Participate in multi-jurisdictional efforts to create uniform zoning regulations within the port area.

(4) Continue to participate in the Port Land Use Development Advisory council to help compile a multi- jurisdictional maritime master plan and to promote regional development of the port resource.

Emergency Preparedness/Sea Level Rise

Tropical storm Isabel had a huge effect on the shoreline of Baltimore County, raising the level of the Chesapeake Bay to eight feet above mean high tide, which caused flooding of properties and roadways in much of the eastern Baltimore County waterfront. Resilience to natural hazards, such as storms and storm surges, sea-level rise and shoreline erosion is inextricably linked to the siting and design of development, and to the built and green infrastructure that supports it.

Policy: Public awareness and planning are crucial for safety and minimizing stress during weather events that affect the waterfront.

Actions:

(1) Develop an educational plan for updates on emergency preparedness, including communications, evacuation, traffic, area closures, visitor controls, damage assessment, clean up etc.

(2) Educate the public on the value of shoreline preservation in providing protection against storm damage.

RURAL COMMUNITIES

The rural portion of the County provides high quality drinking water, agricultural products, timber, scenic open space, wildlife habitat, fisheries, recreation, water sports and cultural and historic resources. New development changes the character of the countryside and may have detrimental impacts on these resources. Baltimore County's *Rural Land Management Areas* protect resources and rural economies while permitting limited development. Since 1989, rural resources have been managed by growth policies for each Land Management Area. These areas include: resource preservation, agricultural priority preservation, rural residential areas, and rural commercial centers (Map 9).

Resource Preservation Areas

The Resource Preservation Areas are designated to preserve and protect the historic, cultural, recreational and environmental resources in the rural areas, while allowing a limited amount of residential development. Designated resource preservation areas include Patapsco/Granite, Soldiers Delight, Loch Raven and Prettyboy and Liberty Reservoirs, Gunpowder, and the Chesapeake Bay.

Policy: Preserve valuable cultural, historic, recreational, and environmental resources by limiting development and acquiring available land for public benefit.

Actions:

(1) Recommend that the County Council use the following guidelines in evaluating rezoning requests:

- Carefully evaluate any proposed zoning changes that would permit additional residential density or increased commercial development in the R.C.6, 7, and 8 zones.
- All zoning in the Chesapeake Bay Critical Area (CBCA) should ensure the most appropriate land use to minimize development impacts and preserve quality of life in surrounding communities, and meet existing CBCA designations.
- Comply with the County's commitments in the regional Reservoir Watershed Management Agreement and Action Strategy to

not increase development densities in the reservoir watersheds.

(2) Complete detailed studies to determine the existing and potential residential densities in resource preservation areas.

(3) Consider limiting residential densities to one dwelling unit per 25-50 acres. Consider limiting density calculation to net density for resource zones.

(4) Delineate and coordinate the public use of resource preservation areas for recreational benefits.

(5) Protect and foster forests and stream systems through conservation easements that prevent the continued fragmentation of these critical resources.

(6) Continue to support State and County programs that encourage sustainable forest management and initiatives to retain forestlands for multiple ecological and economic benefits.

Agricultural Priority Preservation Areas

(Note: Policies and Actions to foster a sustainable agricultural industry may be found in the Economic Vitality section. Preservation of the agricultural land is discussed in the Land Resources section.)

While the County is a national leader for the use of restrictive agricultural zoning and planning for agriculture, there are threats to its continued success. Despite the diligent efforts to maintain and expand the agricultural zoning, incremental development continues to threaten the protection of resources and the viability of the agricultural industry. Zoning and development controls need to be reviewed and strengthened to assure that the goals of the Master Plan and the Baltimore County Zoning Regulations are being achieved.

Policy: Manage land development to limit conflicts with the agricultural industry to safeguard lands preserved through easements.

Actions:

(1) Continue to enforce local policies, ordinances, regulations and procedures that stabilize the agricultural and forest land base.

(2) Review and, if necessary, revise zoning and development standards to promote conditions suitable for production, processing and sale of agricultural products.

(3) Include prime and productive soil standards and a maximum lot size to ensure that large parcels are not split to create large residential lots.

(4) Evaluate increasing the minimum acreage for subdivisions in the RC 2 zone to reduce environmental impacts and development pressure on agricultural resources.

(5) Evaluate regulations to eliminate resubdivision of lots created between 1975 and 1979 in the RC 2 zone.

(6) Require that placement of State agricultural or conservation easements shall not result in an increase in density over that permitted without the easements.

(7) Monitor development within the APPA's to ensure that residential and non-agricultural uses protect the resources and do not overwhelm the operation of agricultural businesses.

(8) In general, zoning changes made in the agricultural priority preservation areas should protect the County's agricultural industry.

(9) Consider adding criteria to the Baltimore County Zoning Regulations (BCZR) to require the evaluation of proposed development impacts on agricultural uses located on prime and productive soils.

(10) Assure that development will have limited impact on active agricultural operations by reviewing, and, if necessary, revising setback requirements.

(11) Review uses permitted by right and special exception in the RC 2 zone to determine whether any uses that are inconsistent with the purpose of the zone should be removed and consider additional performance standards, which will mitigate the impact of the proposed uses on the adjacent farm or easement property.

(12) Enact "Right to Farm" legislation and institute a nuisance mediation board for farm operations.

(13) Consider whether certain institutional uses now permitted in the RC 2, RC 7 and RC 8 zones should be eliminated. Establish performance standards for institutions that are found to not have significant negative impacts if limited by the standards.

Rural Residential Areas

The rural residential areas are a mix of single-family residential development and woodlands, farm fields, stream valleys and areas of significant historic and cultural value. They have accommodated the bulk of new residential development in the rural areas. Associated with rural residential development, there may be institutional uses, such as religious establishments, which are preferred to be located in proximity to residences, rather than in Resource Preservation or Agricultural Priority Preservation Areas. Included in the rural residential land management areas are Parkton, Chestnut Ridge, Hereford, Jacksonville, Kingsville, and Patapsco/ Granite.

The 1979 growth management program designated rural residential areas as suitable for development. The 1989 Master Plan recognized some of the issues created by this choice. The 2000 Master Plan recommended limiting rural residential development. The majority of the land within these areas is zoned RC 5.

The intensity of this development is a suburban residential pattern with densities equal to one dwelling unit per 1-1/2 to 2 acres. Because this rural-suburban residential development is dependent upon well and septic services, the development pattern takes on a haphazard appearance and consumes large quantities of land. This type of development comes at a tremendous cost in terms of traffic, increased infrastructure demands, disruption of the rural character, and adverse impacts on functional values of rural land and water resources.

Policy: Limit suburban development in rural areas.

Actions:

(1) Conduct detailed land use studies to

determine: 1) buildable areas, 2) agricultural areas, and 3) environmentally sensitive areas.

(2) Recommend that the County Council consider rezoning requests for additional office, business or industrial zoning in rural residential areas, in conjunction with the recommendations of any approved plan for the area.

(3) Adopt County standards appropriate for rural residential areas that include open space, architecture, site layout, lighting, bicycles, and pedestrians.

(4) Adapt cluster principles to maintain adjacent forests and open space, which help retain rural character.

(5) Provide effective buffers between development projects to maintain rural character.

(6) Preserve and connect open spaces through cluster development and open space acquisition.

Rural Commercial Centers

Only two designated rural commercial centers will continue to provide local services and facilities for the surrounding rural area. These centers are Hereford and Jacksonville.

The two rural commercial centers contain a certain mass of retail and office service uses that should not be spread or repeated throughout the rural areas. These areas will continue to be the only locations within the rural area where such services will be concentrated. The size, scale, and quality of development have been a continuing issue in these centers. In addition, the ultimate build out limits of these areas needs to be considered.

Policy: Manage growth in rural commercial centers

Actions:

(1) Manage development through specific rural commercial center master plans that are regularly updated. The master planning process should determine the ultimate boundaries and build out of these areas

(2) Develop overlay districts or specific zoning classifications with design performance criteria unique to each of the centers so issues of use, size, scale and design are addressed. Each center has unique characteristics that should be enhanced by new development.

(3) Adopt development performance guidelines and standards to ensure design quality, scale of uses, natural resource protection, buffers to agricultural uses, adequate open space close to homes, and pedestrian accessibility.

(4) Provide infrastructure support such as stormwater management.

(5) Provide adequate buffers and transitions between commercial projects and differing adjacent land uses to maintain rural character.

HISTORIC AND CULTURAL RESOURCES

Baltimore County has a wealth of cultural and historic resources. Historic communities are generally well planned with diverse architectural styles that are visually interesting. They are built at a human scale and are almost always walkable. Historic resources link us to our past – they provide tangible evidence

of the County's cultural, social and architectural past, and are a testimony to the women and men who came before us to shape our destiny.

Baltimore County has two historic designations that protect its resources to the highest degree possible: the Landmarks List and the County Historic District. Structures with either designation are protected from demolition and all exterior alterations are subject to Landmarks Preservation Commission (LPC) approval.

The Landmarks List is comprised of structures that contribute significantly to Baltimore County's history because they are associated with a person, group, event of historic importance; they are a distinctive example of a particular architectural style and/or they are a good example of the work of a master builder or noted architect. Other criteria spotlight the resource's artistic merit, or whether it contains and may be likely to yield information or materials important to prehistory or history.

A Baltimore County Historic District is more difficult to establish because proprietors owning at least 75 percent of the land within the designated area must agree to form an historic district. New developments are subject to LPC approval, which ensures compatible infill development.

Two other historic designations afford limited protection. The 1966 Historic Preservation Act created the National Register of Historic Places (NRHP). The NRHP is a record that includes National Register districts as well as individually listed properties. Both categories require a thorough review during the planning phase of federally funded projects. A National Register designation provides no protection against demolition or inappropriate exterior alterations, nor do they provide any control over the compatibility of infill development. On the other hand, contributing structures within a National Register districts, as well as individual properties listed on the NRHP, are eligible for the County Historic Property Tax Credit, which at least assures the retention of the integrity of properties participating in the tax credit program.

Policy: Promote historic preservation through improved education.

Awareness is growing about sustainability and the importance of living in a manner that is environmentally responsible. Redevelopment of an existing building is the ultimate form of "green" development, as opposed to demolition.

Actions:

(1) Provide information about preservation issues so the public can make informed decisions about historic resources.

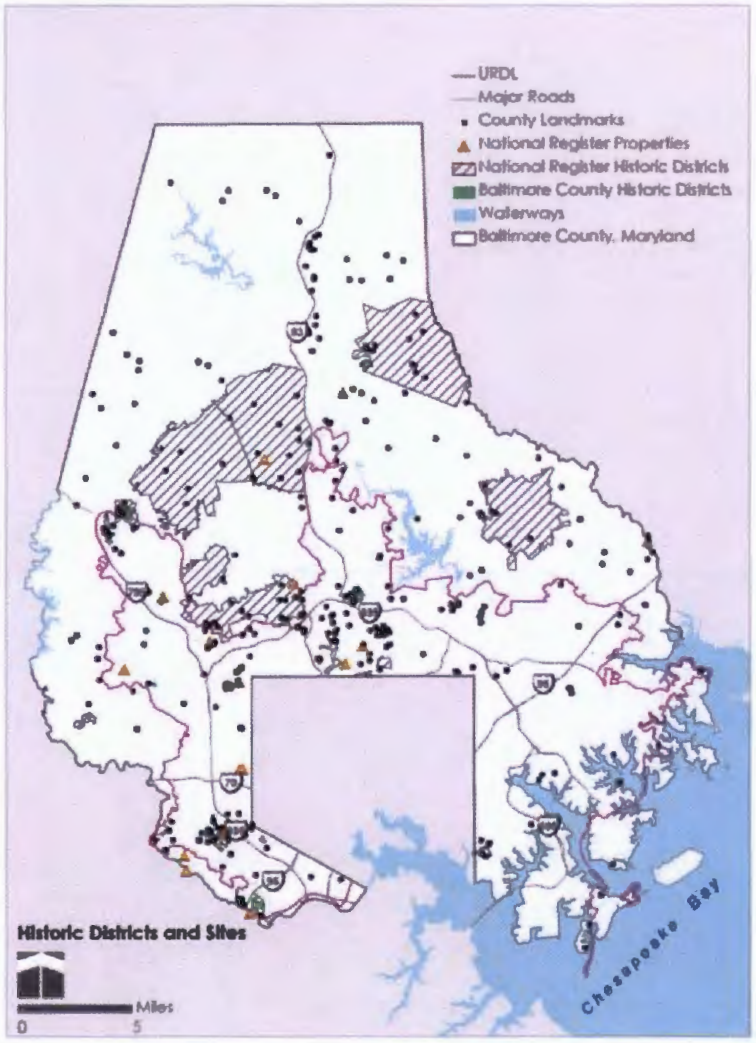
(2) Develop programs to educate the public about the economic, environmental, and cultural benefits of historic preservation.

(3) Make pertinent information available on the Baltimore County web site along with links to additional sources and studies.

Policy: Preserve historic structures and their settings.

The preservation of historic resources was an issue raised in the 1979, 1989 and 2010 Master Plans. Considerable progress has been made in response to the actions recommended in these documents. Amendments to the County's Preservation Law clarified vague regulations. The County enacted a very generous and popular historic property rehabilitation tax credit program to make the rehabilitation of historic buildings more feasible. Numerous properties were added to the Final

Map 25: Historic Districts and Sites



Landmarks List, and several new National Register Districts were created. Yet, while Baltimore County takes pride in these accomplishments, the need for preservation has lost none of its relevance today.

The property tax credit program for the rehabilitation of historic properties has been a great success for residential properties and for comprehensive commercial rehabilitation work. But the smaller, more routine maintenance projects for income-producing properties have not benefited. As a consequence, there is little incentive for commercial property owners to maintain their properties. Under the current law, residential property owners receive a 20 percent property tax credit on eligible rehabilitation costs. Income-producing properties receive a 10 year freeze on the property tax increase generated by the rehabilitation, i.e. the work has to be substantial to result in the reassessment of the property's value. Small jobs, such as painting the historic façade of a small shop, putting on a new roof, or installing a new air-conditioning unit does not result in a reassessment and therefore, is not eligible to receive a tax credit. Yet it is precisely these types of routine maintenance projects that are needed to keep historic commercial buildings in good repair. The National Register District of Reisterstown is probably the best example of a designated historic area that would benefit greatly if the historic rehabilitation tax credit program for income-producing properties would be widened to provide a tax credit for improvements under $ 50,000. Additionally, there are numerous income-producing structures on the Landmarks List that would benefit from the program. The optimal way to encourage historic preservation is when property owners agree to preserve and maintain their historic resources out of their own volition.

Actions:

(1) Continue to utilize nomination to the landmarks list as a means to safeguard historic buildings.

(2) Encourage and facilitate use of the County's historic property rehabilitation tax credit program.

Policy: Preserve and protect cultural resources.

Many older communities have structures that are valued by local communities, but do not meet the criteria for landmarks listing for one reason or another. Such cultural resources are frequently found in the County's former village centers, in older African-American communities and on commercial routes along old toll roads. A cultural resource may be an old school house, a former movie theater, a lodge, a church, or a store where people used to gather. It also may be an entire community that is in danger of having its roots forgotten.

Churches and schools in the County's older communities are other cultural resources that are frequently endangered. Churches are often too small to meet contemporary needs and/or may have dwindling congregations that are no longer able to support the church. Likewise, one or two room country schools, or schools that were a product of segregation have ceased operations. They often have little architectural interest but are of importance to their respective communities. Alternative uses and grant opportunities should be explored to keep these resources viable.

The 1979 Master plan recognized 39 Historic African-American Communities as valuable cultural resources. The 1989 Master Plan began to address the need for improving basic services and infrastructure, rehabilitation of historic buildings, and the importance of improving the quality of some housing in these communities. While much has been done over the

last 20 years to enhance the quality of life in these communities, some are still in need of assistance. This Master Plan builds upon previous efforts to acknowledge that Baltimore County's diversity is greatly enriched by its historically African-American communities, and recognizes the important of continuing to protect and enhance these valuable cultural resources.

Actions:

(1) Incorporate a list of cultural resources in community plans and explore the best methods to preserve them.

(2) Continue to work cooperatively with the Department of Public Works, the Office of Community Conservation and the communities to support improvements to preserve and enhance Historic African-American Communities.

Policy: Increase awareness about the importance of archeological resources.

Baltimore County needs to strengthen the preservation of archeological resources, as much of the County's history is buried in the ground. Greater attention should be paid to archeological resources in cases where there has been little previous disturbance associated with redevelopment or road projects.

Action:

(1) Educate the public and other agencies about the importance of archeological resources.

Policy: Coordinate historic preservation with the County's rural strategy.

In rural agricultural areas, the preservation of historic resources presents a unique opportunity. Historic structures in the countryside tend to derive part of their historic significance from their bucolic setting, which is frequently tied to its economic function. Typically, the historic resource is composed of the primary structure along with a cluster of functionally and visually related outbuildings, such as barns, springhouses, and stables, set in a pastoral landscape of fields, streams and woodlands.

Rural areas that have retained their historic character, continue to be among the County's most desirable places of residence. Historic structures tend to be more compatible in design, scale and massing with the rural landscape than modern housing. However, sustaining the bucolic beauty of the rural landscape is challenging because maintaining a historic home can be expensive, and many property owners prefer newer and larger homes. Generally, rural subdivisions change the character by flatly grading the landscape with larger homes that are visible for miles. Even a single inappropriately designed or poorly sited new dwelling can dramatically alter the rural character.

Historic preservation goals coincide with agricultural preservation goals, environmental protection objectives and scenic preservation aims of the Master Plan in several ways. Historic properties tend to be smaller and thus create less impervious surface. Historic preservationists support the retention of a property's traditional agricultural use, thereby preserving scenic resources. Finally, saving and restoring structures, instead of replacing them with new structures, is in itself an act of sustainability that preserves historic resources.

Actions:

(1) Encourage owners of rural historic resources to place their property on the Landmarks List – particularly properties that are important to the agricultural history of Baltimore County and which are located along scenic routes.

(2) Continue to protect designated "view sheds" of historic resources , either by limiting new development within view of the historic resource, or by buffering new development from the view of such resources.

SCENIC RESOURCES

The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents. Scenic resources consist of scenic corridors, scenic views, and gateways. In 1991, the County adopted a set of development guidelines that have raised awareness and recommended development alternatives for protecting scenic resources.

Scenic Corridors and Views

Most of the scenic corridors and views are located in rural areas. The scenic view map provides the beginning of a list of the views for establishing a comprehensive inventory in the near future. Following the adoption of the 1989 Master Plan, the County produced a series of scenic route maps for each council district, which combined the significant visual and historical elements into self-guided scenic tours. The protection of the Interstate 83 (I-83) corridor in northern Baltimore County is a showcase of the inter-governmental efforts on scenic views preservation.

The endeavor for preserving scenic corridors and views ought to emphasize lands zoned for resource protection including RC 2, RC 4, and RC 7. The County will continue to maintain coordination with the State Highway Administration (SHA) and seek available state and federal funds for protection of scenic corridors and views.

Policy: Preserve scenic corridors and views through proper zoning and coordination with federal and state governments.

Actions:

(1) Coordinate scenic resource management practices with the national and state Scenic Byways Programs.

(2) Continue to preserve properties within the I-83 scenic view shed through easement purchases, as funds are available and through RC4 clustering.

(3) Evaluate proposed improvements to state and county roads and bridges regarding their impact on scenic resources in compliance with the adopted *Rural Roads Standards*. Where public safety allows, the narrow and/or winding character of roads is part of the scenic experience and ought to be preserved.

(4) Assess proposed development impacts on scenic resources.

(5) Clarify language regarding scenic corridors and views protection and make it consistent amongst the Master Plan, Comprehensive Manual of Development Policies, Baltimore County Zoning Regulations, Baltimore County Code, and SHA Context Sensitive Solutions for work on scenic byways.

(6) Establish criteria for identifying significant views and geocode them on maps.

(7) Apply a systematic methodology for evaluation of scenic routes and preservation techniques.

(8) Update scenic resources map in accordance

The County has emphasized its efforts on preserving the scenic view shed of I-83 between the Thornton Mill overpass and the Pennsylvania line, which runs through one of the most scenic piedmont areas in the County. Farms, forests, streams and rural homesteads feature both sides of I-83 in northern county. Many properties adjacent to I-83 have been preserved either as parkland or through various easement programs, including donations and purchase of development rights. There has been significant progress in this effort: between Belfast Road and the Gunpowder River, more than half of the scenic corridor has been protected.

Map 26: Scenic Routes

with the most recently adopted state scenic byways.

(9) For properties along scenic routes or within scenic viewsheds, variances, amendments, and special exceptions should be granted sparingly.

Charles Street National Scenic Byway

Charles Street is a main thoroughfare stretching from downtown in the City of Baltimore to Towson in Baltimore County. The County and the City of Baltimore collaborated with interested citizens, civic groups, and state agencies, developing a byway management plan for Charles Street. The purpose of this plan was to prepare for the nomination of Charles Street as a National Scenic Byway. In autumn 2009, the U.S. Secretary of Transportation Ray LaHood designated Charles Street a National Scenic Byway, together with 41 other designations in the nation to the America's Byways® collection. This designation allows the City of Baltimore and Baltimore County to apply for grants for preserving and enhancing scenic characteristics of Charles Street.

Policy: Preserve and enhance the Charles Street National Scenic Byway characteristics.

Actions:

(1) Apply for grants to implement actions outlined in the Baltimore County portion of the Charles Street Byway Management Plan.

(2) Collaborate with the Baltimore County Office of Tourism to prioritize activities in compliance with the Byway Management Plan

County Gateway Designations

Gateways are important elements of the County's visual fabric contributing to the community identity and the sense of transition between urban and rural development. Gateways can be located within either urban or rural areas, and mostly at the boundary between urban and rural areas. The specific design treatment of development for these gateways may vary, depending upon the location and structural type of gateways. In addition, the County worked with

The National Scenic Byways Program is part of the U.S. Department of Transportation, Federal Highway Administration. The program is a grass-roots collaborative effort established to help recognize, preserve and enhance selected roads throughout the United States. Since 1992, the National Scenic Byways Program has funded 2,832 projects for state and nationally designated byway routes in 50 states, Puerto Rico and the District of Columbia. The U.S. Secretary of Transportation recognizes certain roads as All-American Roads or National Scenic Byways based on one or more archeological, cultural, historic, natural, recreational and scenic qualities.

the State Highways Administration (SHA) to develop bridge designs along the 695 Beltway that strengthen the sense of arrival into the adjacent communities and promote the community uniqueness.

Policy: Enhance gateway designations through evaluation, design, and construction.

Actions:

(1) Evaluate existing gateways and identify additional gateways.

(2) Formulate appropriate design guidelines as part of community plans and streetscape projects.

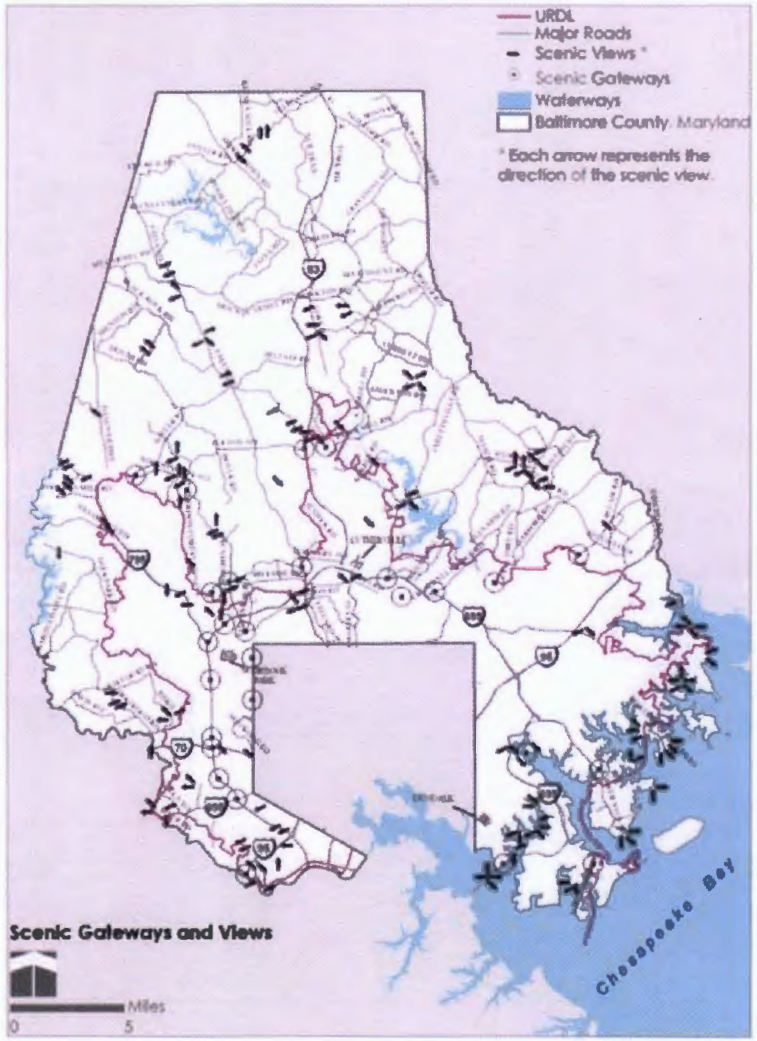
(3) Examine the design aspects of proposed development as part of the development review process.

(4) Develop general guidelines for gateways in the Comprehensive Manual of Development Policies.

(5) Continue to work with SHA to develop bridge designs at gateway locations.

There are numerous gateways in Baltimore County. Prime examples include:
(1) The entry to the Cromwell Valley from Towson north of the I-695 Beltway; (2) Crossing the bridge northbound on I-83 passing Shawan Road; (3) The bridge designs over the I-695 Beltway entering Towson at York and Dulaney Valley Roads, Reisterstown at Reisterstown Road, Catonsville at Frederick Road, and on Charles Street; (4) The community logo, landscaping, and old railroad bridge abutment in Towson; and (5) The continuous streetscape along Eastern Avenue, from Route 702 to the bridge at Middle River Road leading to the waterfront communities.

Map 27: Scenic Gateways and Views



SUSTAINABLE ENVIRONMENT

Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future.

The goal of a sustainable environment supports Baltimore County's vision for community vibrancy and economic vitality. Environmental sustainability means using natural resources wisely to meet current needs without degrading the supply and quality of those resources for the future. Natural resources and air quality are essential to economic growth, environmental protection, energy conservation, and quality of life. Natural resources, especially forests and wetlands that comprise the green infrastructure, provide valuable ecosystem services including cleaning air and water. Sustainability also assures habitat protection for terrestrial and aquatic wildlife and genetic diversity.

Baltimore County's environmental mission is to protect and perpetuate the natural resources of the County and to protect environmental health. Over the past 20 years, the County's Department of Environmental Protection and Resource Management (DEPRM) has established and implemented programs to protect critical natural resources, restore ecosystem functions, and educate citizens about good stewardship. While the County's environmental programs are nationally recognized, the pollution from sprawl development and unmanaged agricultural activities, as well as the continued loss of forests, requires significant changes to land use practices under new federal and State programs to restore the health of the Chesapeake Bay. *Master Plan 2020* builds upon past successes and recommends new policies to address emerging environmental challenges such as climate change.

Overall, both the biggest challenge and the most important reason for the County to serve as a catalyst for good resource management is the fact that 85% of the land area and resources in Baltimore County, depended upon and enjoyed by all, are privately owned. DEPRM uses an integrated watershed management framework to accomplish its mission, including land preservation, resource protection/ regulation, restoration, facility maintenance, monitoring, planning and research, and citizen education and participation.

Nature-Friendly Community

"Baltimore County, Maryland, has one of the most ambitious and successful land management and environmental protection programs in the country. An impressive combination of tools and strategies -- land use regulations, land acquisition, and urban growth boundary, education, partnerships with private land trusts, and infill development initiatives -- has been employed to preserve thousands of acres throughout the county and protect critical wildlife habitat....Baltimore County is in many ways a model for local governments everywhere when it comes to protecting nature and biodiversity." (Source: Duerksen and Snyder, 2003. Nature-Friendly Communities: Habitat Protection and Land Use Planning, p.152).

Climate Change

Citizens in Baltimore County and elsewhere are debating the implications of a changing climate as it relates to human activities. Of particular interest is whether human-produced greenhouse gases are causing long-term global warming. Baltimore County, as part of the global community, should reduce and mitigate negative impacts of human activities on the environment.

County government operations, private businesses, and the daily routines of citizens have great potential to increase atmospheric pollution through release of harmful gases and thermal pollution. One concern about a changing climate is the relative increase in sea level. While the rate and extent of sea level rise are under continuing study, it is estimated that the mean high tide in the coastal areas of the County may increase from three to five feet in the next century. Overall, the retention and planting of forests and trees is considered the single most effective measure for mitigating the negative impact of climate change.

Citizens can make adaptations to actions that might contribute to climate change, and mitigate impacts that are unavoidable or more difficult to prevent. This represents also good stewardship of limited energy and financial resources. Human activities that potentially affect the degree of climate change are mostly attributed to the production, use, and conservation of energy. Most of current energy in Maryland derives from coal and other fossil fuels that increase harmful atmospheric gases. Walking or riding a bike instead of driving, turning off lights and other electrical appliances when not in use, changing light bulbs from fluorescents to LED's, and similar actions are beneficial to the environmental health and natural resources. Energy conservation and other climate change adaptation and mitigation actions will lead to significant changes in current economic structure and community function. Over the long term, they will enhance sustainability.

Policy: Continue to adapt to, and mitigate impacts of climate change on the environment.

Actions:

(1) Implement the recommendations of the County's Sustainability Network for County operations, energy conservation, protection of natural resources, and communities in order to reduce emissions of greenhouse gases and energy consumption.

(2) Develop appropriate indicators for sustainability actions and commitments in order to summarize sustainability conditions and trends and to provide a basis for evaluation of progress.

Environmental Justice

The development of environmental justice in the United States dates to almost three decades ago when communities began to form organized protests against traditional planning efforts to site polluting factories and toxic waste dumps in less affluent and often minority neighborhoods. Local victories empowered local protesters to coalesce into a national movement. In 1994, President Clinton signed an Executive Order focusing the federal government effort on protecting or improving the quality of the environment and human health conditions for all communities.

The federal government definition of environmental justice is applicable to all levels of state and local government planning. Environmental justice calls for the fair treatment of all minority, indigenous, and low-income populations to ensure that no individual racial, ethnic, or socioeconomic group will bear an unequal burden due to the negative effects of pollution or other environmental hazards. Environmental justice also promotes equal access to public information and equal rights to participate in the development, implementation, and enforcement of environmental laws.

The Phase I Action Plan of the Baltimore Watershed Agreement between Baltimore County and Baltimore City specifically calls for consideration of environmental justice issues in the course of watershed management planning.

Policy: Incorporate environmental justice considerations when developing Small Watershed Action Plans to address water quality protection and restoration.

Actions:

(1) Review environmental justice indicators developed nationwide and develop a set of indicators for the watershed management planning process.

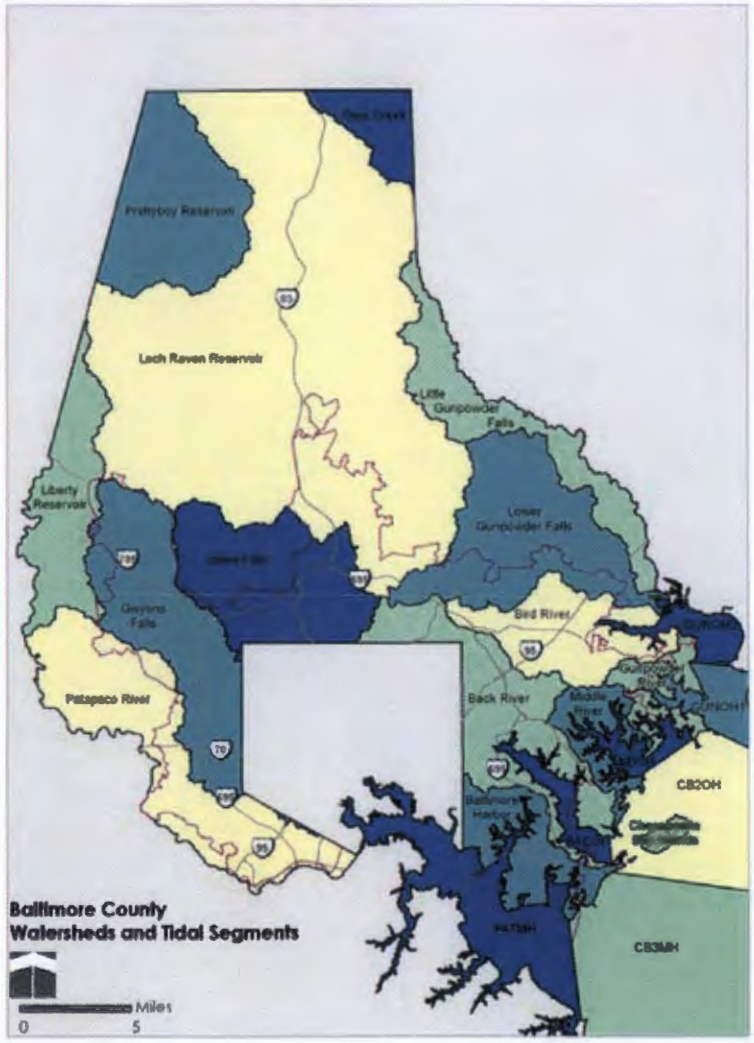
(2) Include the environmental justice indicators in the Small Watershed Action Plans for prioritizing water quality improvement projects.

WATER RESOURCES

The water resources of Baltimore County include over 2,100 miles of streams, groundwater resources, three drinking water reservoirs, non-tidal and tidal wetlands, and tidal waters. All of these water resources are interconnected through the hydrologic cycle driven by precipitation in the form of rain and snow. These water resources are also interconnected with surrounding jurisdictions and through tidal exchange with the Chesapeake Bay.

Precipitation falling on the land drains to streams, either as surface flow or through groundwater flow. The land surface that drains to a particular stream is called a watershed or a basin. The Chesapeake Bay is a large basin with a total drainage area in excess of 64,000 square miles.

Map 36: Watersheds and Tidal Segments



Water Use Classification of County Waterways

In order to protect multiple water uses, the State of Maryland has designated four Use Classes and associated water quality standards. If the water is a source for a public drinking water supply, a "P" follows the Use Class.

The four Use Classes (and subcategories for Use II) are:
Use I
Water contact recreation and protection of non-tidal warm water aquatic life.
Use II
Support of estuarine and marine aquatic life and shell fish harvesting (not all subcategories apply to each tidal water segment); Shellfish harvesting; Seasonal migratory fish spawning and nursery (Chesapeake Bay only); Seasonal shallow-water submerged aquatic vegetation (Chesapeake Bay only); Open-water fish and shellfish (Chesapeake Bay only); Seasonal deep-water fish and shellfish (Chesapeake Bay only); Seasonal deep-channel refuge use (Chesapeake Bay only)
Use III
Non-tidal cold water – usually considered natural trout waters
Use IV
Recreational trout waters – waters that are stocked with trout

These waters support aquatic communities and provide for human uses such as agricultural irrigation and livestock watering, drinking water, industrial uses, fishing and boating, and receiving areas for treated wastewater. Having adequate clean water to support all of these uses is crucial to continued ecological and human health now and for the future, and for providing for the continued quality of life for citizens and the economic vitality of Baltimore County.

Waters in Baltimore County are of high quality in general. Some water resources are degraded by improper human activities. The waters that do not meet or exceed water quality standards are placed on an impaired waters list (Sec. 303(d) of the federal Clean Water Act) by the State of Maryland. These listings are based on 8-digit watersheds and tidal water segments, with each impairing substance listed separately. Regulations and policies require protection of high quality water resources and improvement of degraded water resources. High quality waters are protected through the permitting requirements associated with Tier II, defined as waters with a better than the average aquatic biological community. Tier II waters meet the anti-degradation requirements of the federal Clean Water Act. For each impairing

substance in any watershed or tidal segment, the State must determine how much of the substance must be reduced through modeling. This is referred to as a Total Maximum Daily Load (TMDL), or the maximum amount of a particular pollutant in a waterway that can be naturally assimilated while maintaining water quality standards

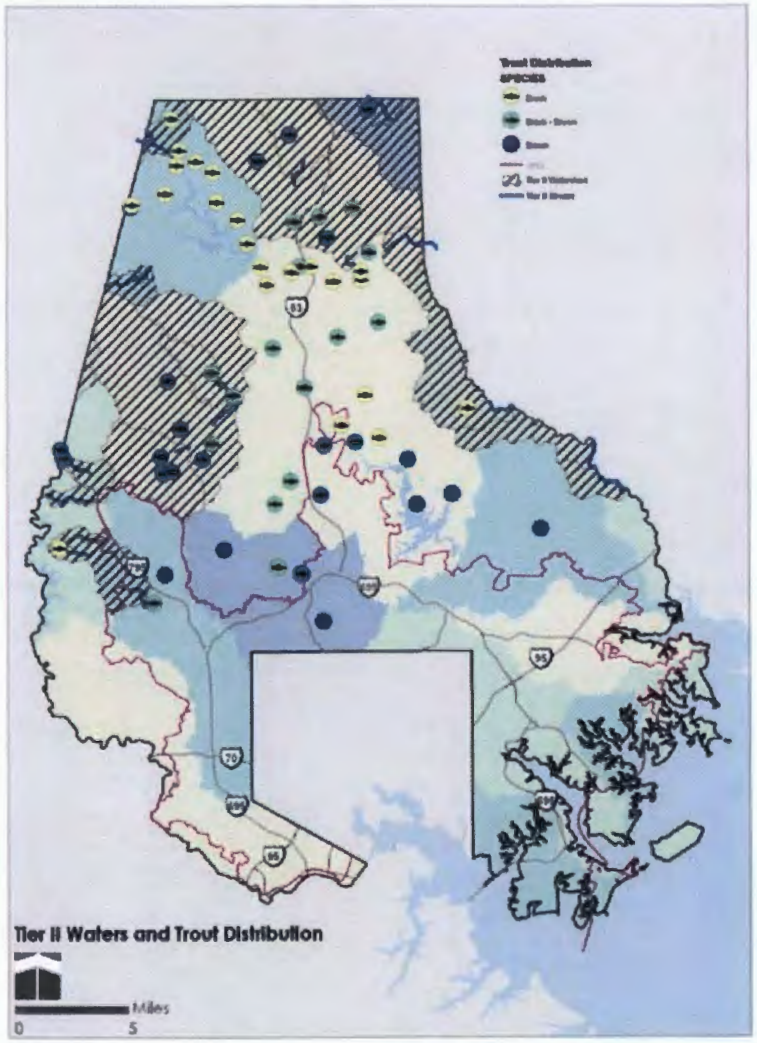
The principal regulatory requirement to address pollution impacts in urban areas is to implement the National Pollutant Discharge Elimination System - Municipal Separate Storm Sewer System (NPDES-MS4) permit. This permit requires the County to control the water quality that is discharged from its storm drain system, by implementing stormwater management, sediment control, education, monitoring, watershed management planning, and restoration programs. These programs are intended to control pollution from new development and restore

Tier II Waters and Trout

Tier II waters are identified and rated on the basis of aquatic community sampling by Maryland Department of Natural Resources. When both the fish and the bottom-dwelling invertebrate community have a rating of "good" the reach of stream represented by the sampling is identified as Tier II waters. Baltimore County has 33 miles of Tier II stream segments at 20 different sites, mainly in rural areas. The drainage area to these sites represents 23% of the County. These stream segments must be protected from degradation.

Trout are also indicative of higher quality water. Baltimore County's streams support a fairly good population of both brook and brown trout. Over 61 sites located on various streams have trout present. The trout are more wide spread than the Tier II waters, indicating that additional Baltimore County streams are still supporting aquatic natural resources.

Map 37: Tier II Waters and Trout Distribution



Total Maximum Daily Load (TMDL)

Baltimore County watersheds and tidal segments are impaired by a variety of substances, including nutrients, sediment, bacteria, trash, and various toxic substances, as well as biological impairments. The amount of each pollutant that needs to be reduced from each source in order to meet water quality standards is then determined. The model also indicates a cap for each pollutant based on the assimilative capacity of the water body. Any increase in a load from a new source must be offset to maintain the water quality standards. For each TMDL, the County is required to prepare an Implementation Plan with measurable implementation milestones and a projected timeline for meeting water quality standards.

The Chesapeake Bay is impaired by nitrogen, phosphorus, and sediment. The U.S. Environmental Protection Agency is developing TMDLs for nitrogen, phosphorus, and sediment to improve Bay water quality.

degradation caused by development that occurred prior to the current environmental protection requirements. Approximately 80% of the urban land was developed prior to environmental controls. Future permits will require preparing Implementation Plans for approved TMDLs and meeting water quality improvement and restoration milestones.

The Water Resources Element is an analysis of the adequacy of drinking water and wastewater treatment to support future population growth, and the ability to maintain and improve water quality within the County's receiving waters. The WRE analysis indicates that redevelopment will result in the greatest protection of high quality aquatic resources and reduction of pollution. The WRE is adopted as part of *Master Plan 2020.*

Watersheds

Baltimore County contains 14 major watersheds, which are identified on the basis of local stream systems and drinking water reservoirs. Seven of them are part of the Gunpowder River basin, six are in the Patapsco River basin, and one flows to the Susquehanna River basin. Watersheds are a useful framework for resource management. Individual resource elements including streams and forests are linked through ecosystem processes that operate to maintain the stability of the system.

Land use activities within watersheds affect the water quality of streams and downstream water bodies. Clearing forests increases stormwater runoff to streams, causing an increase in the amount of sediments, nutrients, and toxins and the erosion of stream channels. Changes in sediment and nutrient levels may degrade stream habitat quality. Land preservation programs that place environmentally sensitive land in permanent easements help protect watersheds and their interrelated systems.

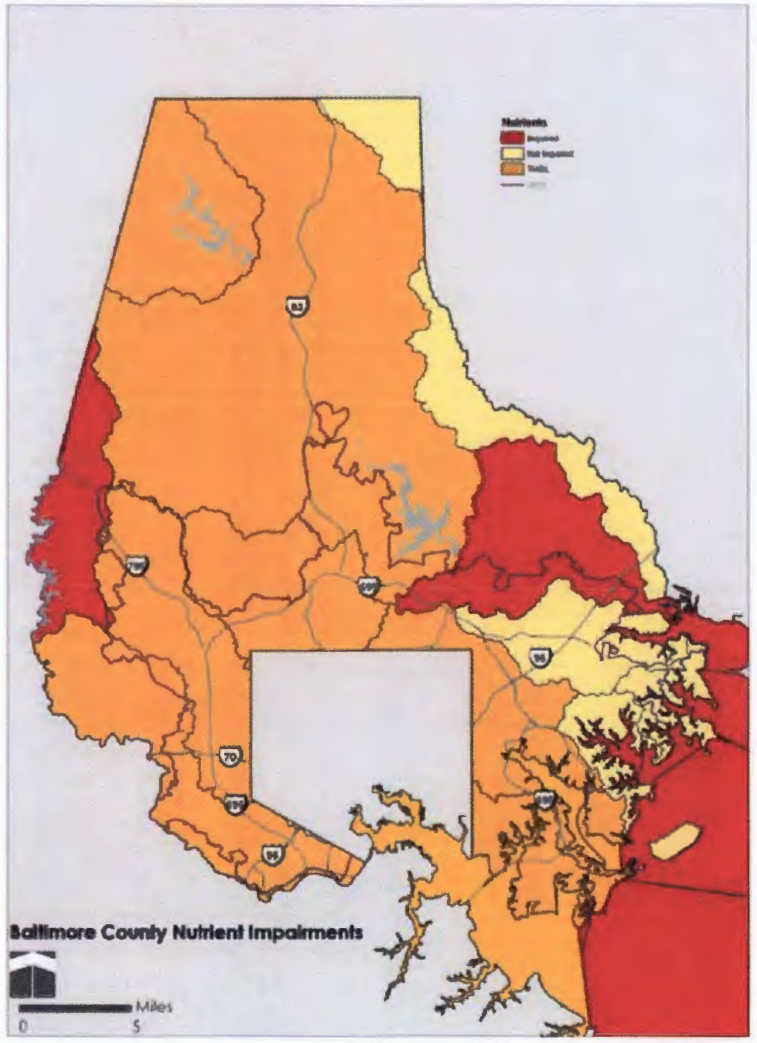
The County's watershed program consists of characterizing and prioritizing watersheds, preparing management plans, including Small Watershed Action Plans (SWAPs), and evaluating resource systems and functions at varying scales. Assessments of pollutant loads, stream stability, and forest community structure provide the framework for the implementation of capital projects, facility maintenance, education programs, and cooperative citizen actions.

Policy: Promote redevelopment and revitalization inside the URDL to reduce pollutant loads and protect natural resources.

Actions:

(1) Assure that the countywide redevelopment strategy accommodates population growth, provides maximum pollutant reduction, protects high quality waters, promotes economic vitality, and maintains a high quality of life for Baltimore County residents.

Map 38: Nutrient Impairments



(2) Include environmental policies and goals in community plans for the preservation and enhancement of functional open spaces such as greenways and wildlife habitat; the reduction of water, air, and toxic pollution and solid wastes; and the promotion of neighborhood environmental stewardship.
(3) Facilitate the redevelopment of underutilized industrial properties.

(4) Direct redevelopment efforts along the waterfront into historically disturbed, uncontrolled buffer areas in order to maximize water quality protection.

Policy: Assure protection of Tier II waters and those with known trout resources.

Actions:

(1) Investigate the development of overlay zones for Tier II waters and those with known trout resources and evaluate the need for additional protection through development regulations.

(2) Examine the feasibility of an offset program to achieve a no net increase in pollutant loads from new development.

(3) Continue to protect water quality, streams, wetlands, floodplains, and forests from impacts of new development and redevelopment.

(4) Implement projects to restore wetlands, reestablish forests, plant stream and shoreline buffers, and stabilize stream channels in impacted watersheds.

(5) Continue to implement the 2006 Baltimore Watershed Agreement with the City of Baltimore for improved and coordinated efforts for public health, trash, stormwater management, community greening, and redevelopment.

Streams and Non-Tidal Wetlands

Baltimore County contains more than 2,100 miles of non-tidal streams and rivers, including some of the highest quality recreational fishery resources in the eastern United States and more than 1,000 miles of streams that drain to the three drinking water reservoirs. A stream system consists of a stream and its associated floodplain, wetlands, and springs. Wetland and riparian vegetation play an essential role in the natural functioning of a stream system, including maintaining base flow, regulating water temperature, controlling pollution, and providing habitat. Pollutants discharged from point and non-point sources degrade stream water quality. These sources include urban runoff (non-point sources, particularly from impervious surfaces), pollutants discharged directly to streams (point sources), and agricultural operations (non-point source). Urban non-point source types of pollution vary and include nutrients, sediments, metals, pesticides, oil and grease, salts, and other particulate and dissolved matter.

Point-source pollution, generated from wastewater treatment plants, industries, and other sources with a direct, piped discharge, is regulated by the State. Over the past several decades, channelization, encroachment of development on floodplains, draining and filling of wetlands, removal of riparian vegetation, and development or clearing of steep slopes and erodible soils has been detrimental to streams.

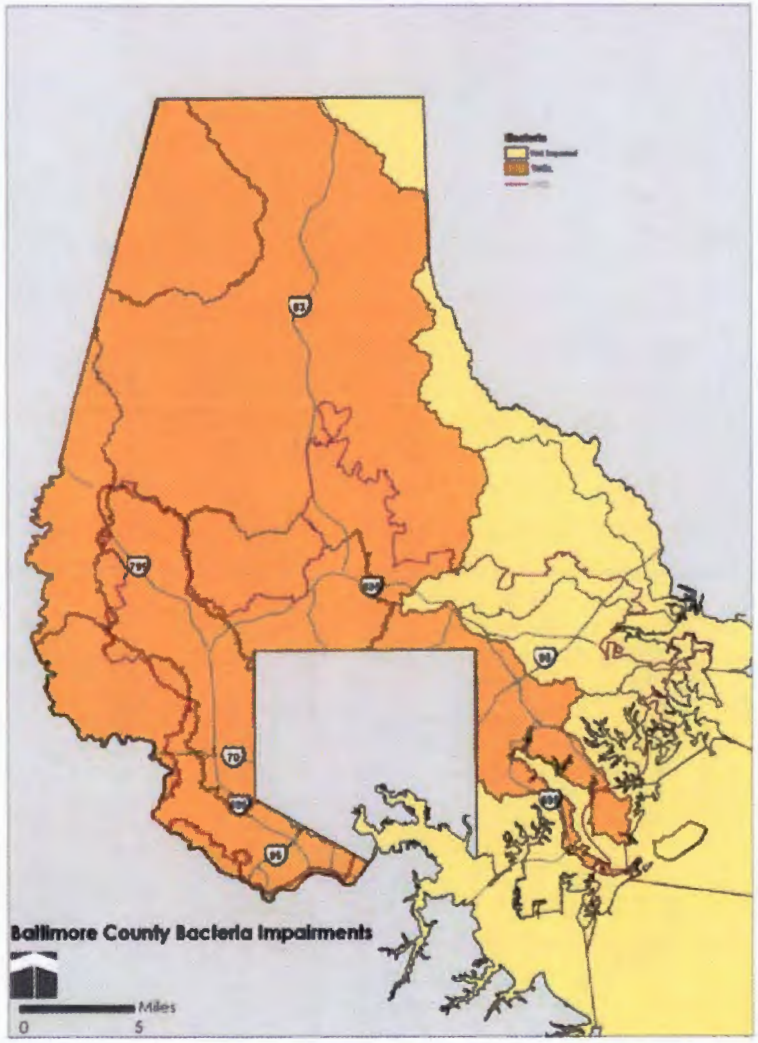
In 1987, DEPRM initiated a capital environmental restoration program to assess and identify water quality problems and implement design and construction of watershed restoration projects. The program is based on the County's 14 major watersheds, providing a comprehensive framework for protection and restoration of water resources. DEPRM has been recognized nationally for its stream restoration program and, with the completion of numerous projects, has made significant progress toward its objectives for watershed restoration. In the early 1990's Baltimore County developed regulations to protect water quality, streams, wetlands, floodplains, forests, and steep or highly erodible slopes from land development impacts. The County faces a challenge common to most areas experiencing urban growth: how to restore, protect, and enhance its waterways.

Stream Restoration

The U.S. EPA Mid-Atlantic Integrated Assessment program (MAIA) produced a document to share knowledge among state and local governments, regional offices, and non-governmental organizations. The document highlights DEPRM's stream restoration accomplishments. DEPRM's program incorporates project planning and design, communication and coordination with property owners, construction, and post-restoration follow-up. The program integrates state-of-the art techniques with an environmentally sensitive approach to stabilizing streams and reducing sediment loads, in turn enhancing stream morphology, ecological function, water quality, and aquatic habitat. Baltimore County responds to degraded urban streams with an adaptive natural channel design (NCD) approach that relies on the principles of fluvial geomorphology to evaluate stream flow, channel dimension, and bed and bank materials to optimize water and sediment movement and minimize erosive forces.

Physical changes to stream systems can be worse than pollutant runoff, point source discharges, or storm water management impacts. Since 1990, DEPRM has developed expertise in the restoration of destabilized stream channels. Reconstruction of channels applies the concepts of natural channel design (NCD) using natural materials (boulders and vegetation) in conjunction with the reshaping of the stream channels. When properly constructed, these restored streams are a cost-effective and attractive means to sustain physical stability, function, and habitat. Since the early 1990's, DEPRM has also maintained a physical, chemical, and biological stream monitoring program to determine ambient water quality and trends over time, assist in targeting restoration efforts, assess the effectiveness of restoration, and track progress in meeting TMDL pollutant load reduction requirements. The monitoring measures the abundance and diversity of aquatic life as indicators of stream quality and chemical constituents. Summary data from the biological monitoring indicate that there is fairly widespread impairment of aquatic organisms, even if only moderate, for most of the County's streams.

Map 39: Bacteria Impairments



Improvements to stream quality, in both water quality and habitat, will require a range of controls that best address specific types of pollution sources.

Policy: Continue to protect, enhance, and restore degraded waterways to meet water quality standards and permit requirements.

Actions:

(1) Continue to enforce development regulations for the protection of water quality, streams, wetlands, and floodplains.

(2) Continue to prepare and implement Small Watershed Action Plans (SWAPs) and participate in studies to identify needs and opportunities for stream restoration, wetland creation and restoration, and stormwater management.

(3) Continue to design and construct stream restoration projects using an adaptive natural channel design (NCD) approach.

(4) Incorporate stream protection policies in community plans.

(5) Continue to implement biological, chemical, and geomorphological stream monitoring programs in order to measure the long-term trends in stream quality.

(6) Identify opportunities for the creation of wetlands as mitigation for County capital projects and other land development impacts.

(7) Continue environmental education programs for schools, businesses, and homeowners for the reduction of water pollution and toxic and solid wastes.

(8) Continue to implement environmental inspection and maintenance programs such as storm drain inlet cleaning and maintenance of stormwater management facilities.

(9) Continue to identify and convert appropriate publicly owned stormwater management facilities to provide for increased water quality function.

(10) Continue to retrofit older communities to provide for stormwater treatment for improved water quality to the receiving waters.

(11) Continue to support watershed associations and citizens in stream clean-ups, stream and watershed surveys, and other restoration projects.

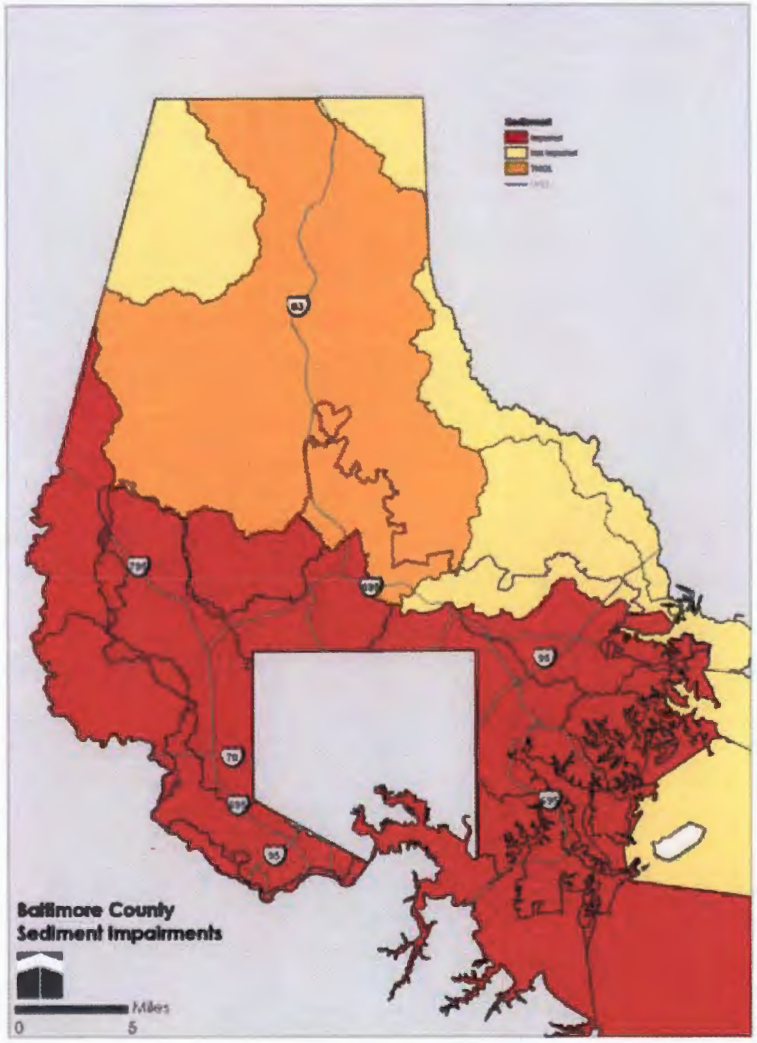
(12) Identify impediments to, and opportunities for tree plantings along streams on private properties, and work to plant more trees on private lands.

Stormwater Management and Sediment Control

The hydrologic cycle is a descriptive model for the movement of precipitation from the atmosphere to the earth's surface and then to receiving waters and back to the atmosphere. In natural areas, precipitation that reaches the ground infiltrates into the soil, replenishing groundwater aquifers and discharging to streams. In urban areas, precipitation that falls onto impervious surfaces runs off the surface much more rapidly. Unless properly controlled, stormwater runoff can result in stream channel erosion and the degradation of in-stream habitat and the aquatic biological community. Stormwater runoff also results in an increase of pollutants washed downstream. During the land development process, the soil at construction sites is the most vulnerable to erosion in streams and other surface waters. Soil erosion from construction activity may exceed 100 to 400 times that obtained from an adjacent undeveloped land or woodland in an equivalent period of time.

About 80% of Baltimore County was developed prior to the advent of stormwater management regulations, which damaged many waterways. In 1968, Baltimore County enacted Maryland's first local sediment control ordinance. Since the mid 1970's, Baltimore County has been a statewide leader in recognizing the impact of stormwater runoff generated as a result of land development. Stormwater management requirements have evolved over time. Initial

Map 40: Sediment Impairments



stormwater management focused on volume and peak discharge control to reduce physical impacts on streams. Beginning in the late 1980's through the early 1990's, water quality treatment was added as a means to address the increased pollutant loads associated with urban development. As stream science and understanding of stream dynamics evolved, it was recognized that further peak discharge control was necessary to protect stream channels from erosion during storm flow.

In the early 2000's, control of small storms was required, along with methods to disperse the flow from a development site instead of concentrating the flow. The Maryland Stormwater Act of 2007 further refined stormwater management by requiring Environmental Site Design (ESD) where practicable. ESD attempts to reduce stormwater runoff from a site by reducing impervious cover, retaining natural vegetation, and dispersing the runoff throughout the site to allow greater infiltration of precipitation. As Baltimore County's older urban and suburban areas are redeveloped, state-of-the-art stormwater practices will be constructed and water quality will improve.

Policy: Protect and improve water quality through the application of stormwater control measures for new development and redevelopment projects.

Actions:

(1) Continue to implement state-of-the-art stormwater management techniques, including ESD as feasible, for new and redevelopment projects.

(2) Provide flexibility for redevelopment to implement innovative solutions to stormwater management.

(3) Ensure the sustainability of stormwater practices including long-term function and maintenance.

Policy: Inspect and enforce compliance with the Baltimore County Code, permits, plans and State specifications as related to erosion and sediment control and grading.

Actions:

(1) Continue to inspect and enforce erosion and sediment control implementation on all active projects for compliance with approved plans.

(2) Continue to investigate complaints pertaining to erosion, sediment control, grading, and surface drainage problems associated with new construction.

(3) Continue to provide responsible personnel training and certification of individuals that oversee installation and maintenance of project controls.

(4) Continue to work in cooperation with the Baltimore County Soil Conservation District to require minimum standards for Soil Conservation and Water Quality Management Plans for conservation easements.

Best Management Practices (BMPs) for Agriculture

Best Management Practices (BMPs) that prevent soil erosion and protect water quality provide long-term benefits for maintaining the productive quality of farmland. Farmers are assisted in their efforts to apply BMPs by the Baltimore County Soil Conservation District, University of Maryland Extension (UME), the Maryland Department of Agriculture, the U.S. Department of Agriculture's Natural Resources Conservation Service, and the U.S. Farm Services Agency. Farmers and landowners participate in

Soil is a non-renewable resource. Its preservation is essential for food security and our sustainable future

Soil is a finite resource, meaning its loss and degradation is not recoverable within a human lifespan. As a core component of land resources, agricultural development and ecological sustainability, it is the basis for food, feed, fuel and fibre production and for many critical ecosystem services. It is therefore a highly valuable natural resource, yet it is often overlooked. The natural area of productive soils is limited – it is under increasing pressure of intensification and competing uses for cropping, forestry, pasture / rangeland and urbanization, and to satisfy demands of the growing population for food and energy production and raw materials extraction. Soils need to be recognized and valued for their productive capacities as well as their contribution to food security and the maintenance of key ecosystem services.

Related links: http://www.fao.org/soils-2015/en/;
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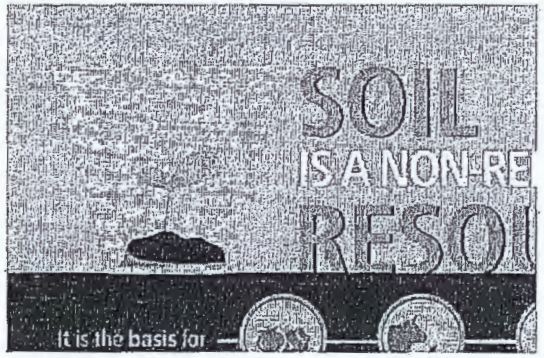

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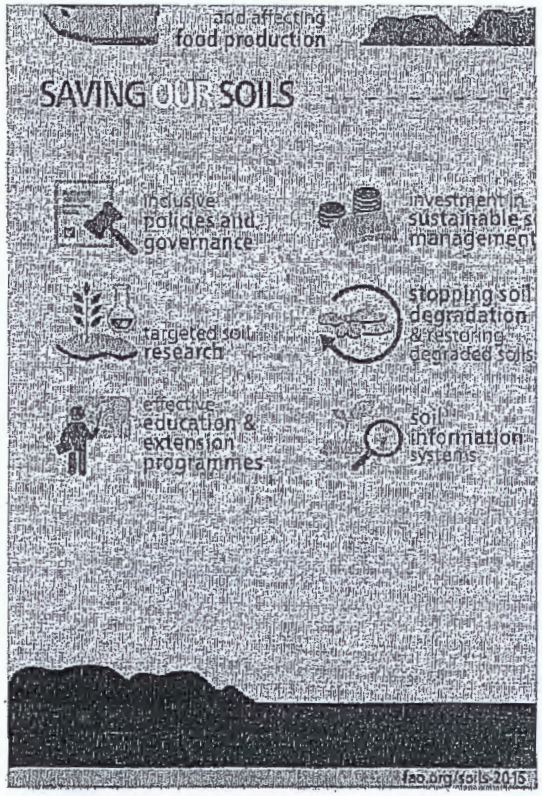

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APX. 31

Secondary: What is soil?

Themes: Introduction | The uses of soil | What people think of soil | Quiz

Soil is one of the world's most important natural resources. Together with air and water it is the basis for life on planet earth. It has many important functions which are essential for life. Not only does it play the major part in allowing us to feed the world's population, but it also plays a major role in the recycling of air, water, nutrients, and maintaining a number of natural cycles, thereby ensuring that there will be a basis for life in generations to come. Without soil, the world's population neither would nor could survive.

Soil forms the surface skin over the landscape of the earth at the junction between the atmosphere and the lithosphere. Think of soil as a thin carpet covering the land portions of the earth. The distance from the surface of the earth, at which the soil is situated, to the very centre of the earth deep below, is over 6,000 kilometres. Of this, the soil layer is a mere one to two metres thickness of this 6,000 kilometres. It is thus a very, very thin skin indeed - both fragile and extremely precious.

Soil consists of a mixture of mineral grains that come from the rock deposits and sediments beneath them. This mixture gives the overall texture of the soil, namely whether the soil is mainly sandy, loamy or clayey. Importantly, soil also contains organic matter, mainly in the top 20 cm. Organic matter comes from rotted and decomposed vegetation, broken down by soil organisms. Soil also contains varying amounts of water depending on the climate and the water holding capacity of the soil. The remaining important ingredient is air. The amounts of each of these components varies in time and across the landscape. This is a magical mixture of ingredients that allows the soil to perform many vital needs of living beings.

Themes: Introduction | The uses of soil | What people think of soil | Quiz

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Soil knowledge

Soil knowledge

A natural resource

The soil is an important part of the landscape and contributes to determine the way in which natural vegetation, crops and human settlements are distributed on the territory. But the importance of the soil is mainly related to its double role as a reserve of nutritional elements and water and mechanical support (how would plants be able to stand upright if they did not have the soil to put their roots in?) for vegetation, leading to the creation of forests and protected areas. A direct observation allows us to see the fundamental importance of the soil: if we go to the mountains or to the countryside, we will see some bare rocks without plants, but next to them there will be wider areas covered by a thick soil. On this land spontaneous vegetation or crops grow. The soil is also very important for man and other living organisms as it affects water composition. In fact, the quality of underground water reserves depends on use of organic and inorganic polluting products, deriving from agricultural and industrial activities or from cities. Various chemical and physical properties of the soil affect the concentration and permanence of polluting compounds in the soil, and the probability that they get in contact with superficial aquifers by polluting them.

The soil can be extremely important for men even if it is not changed and left in its natural conditions. This is the case of protected areas (parks and oasis): the survival of the delicate ecosystems of these areas mainly depends on the fact that the soil keeps in good conditions and does not experience changes. For example, in the past men considered wet areas as unhealthy areas to be reclaimed and used for agriculture. Today wet areas are considered as very important and fragile ecosystems, whose survival can be guaranteed only by preserving the particular conditions of their soil.

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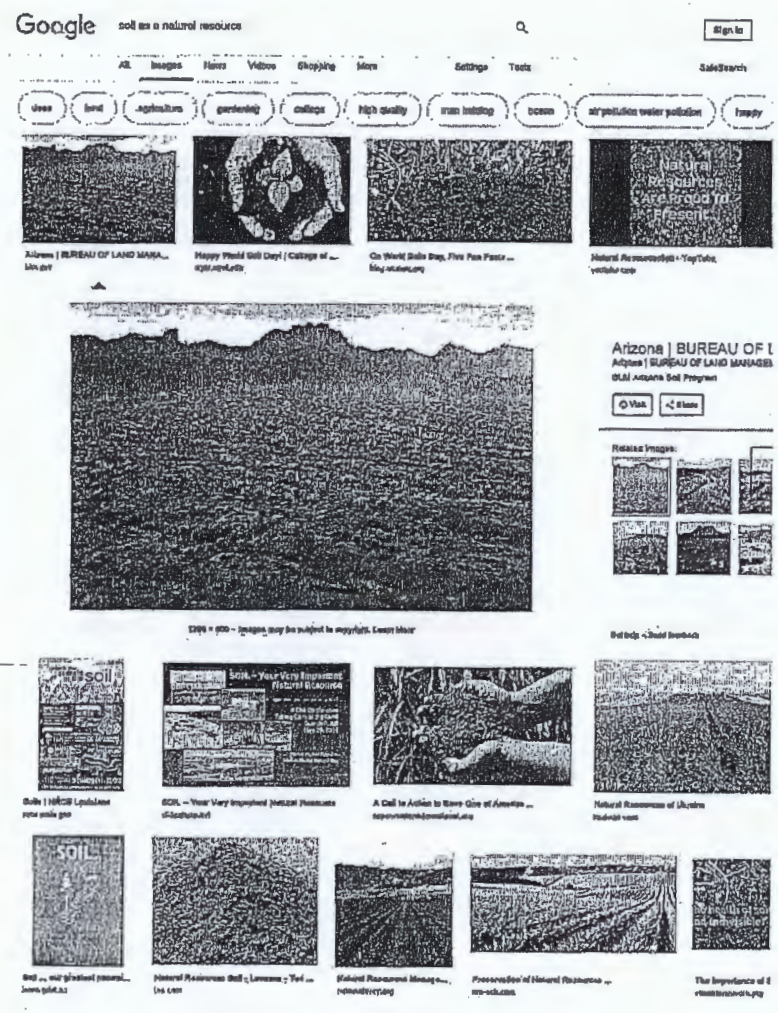
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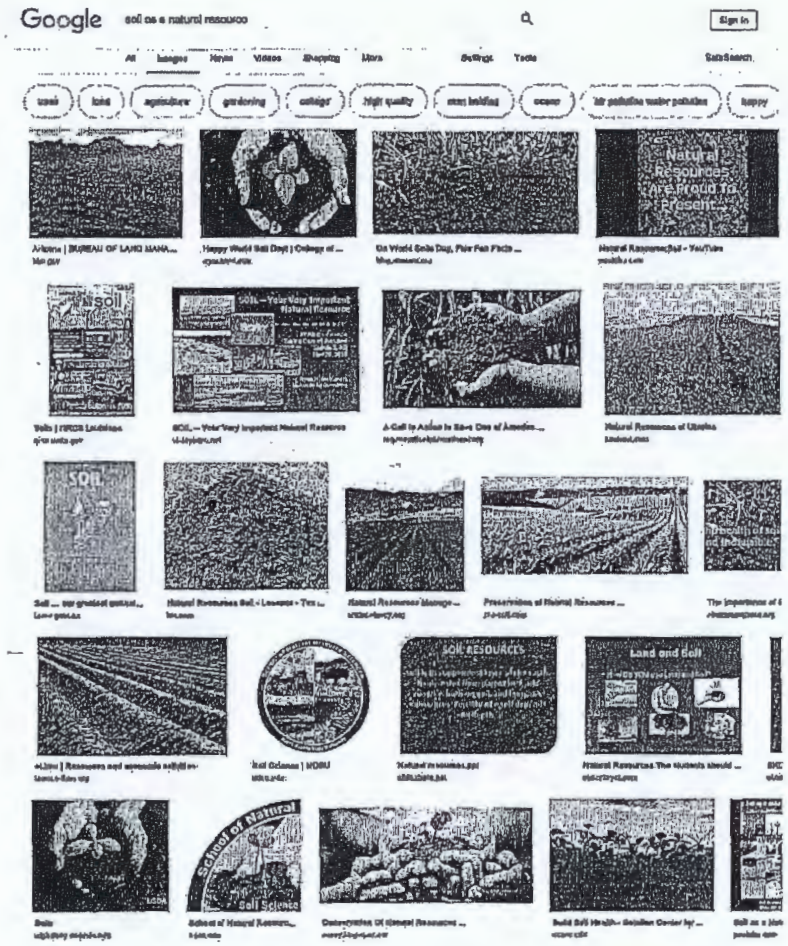
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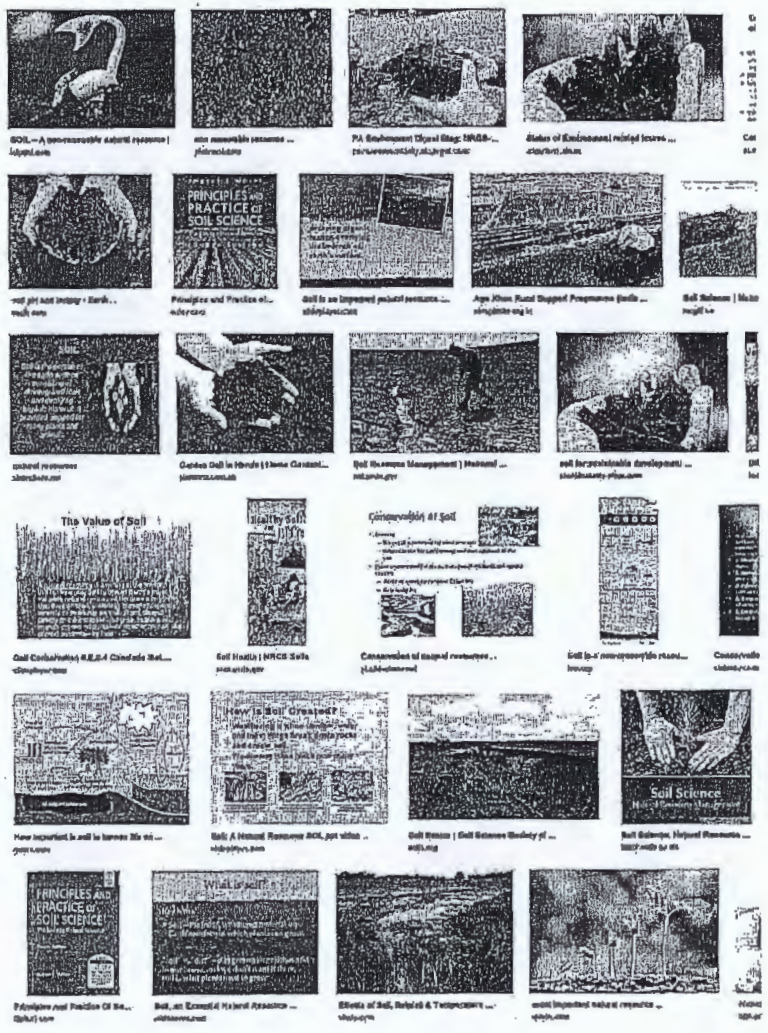
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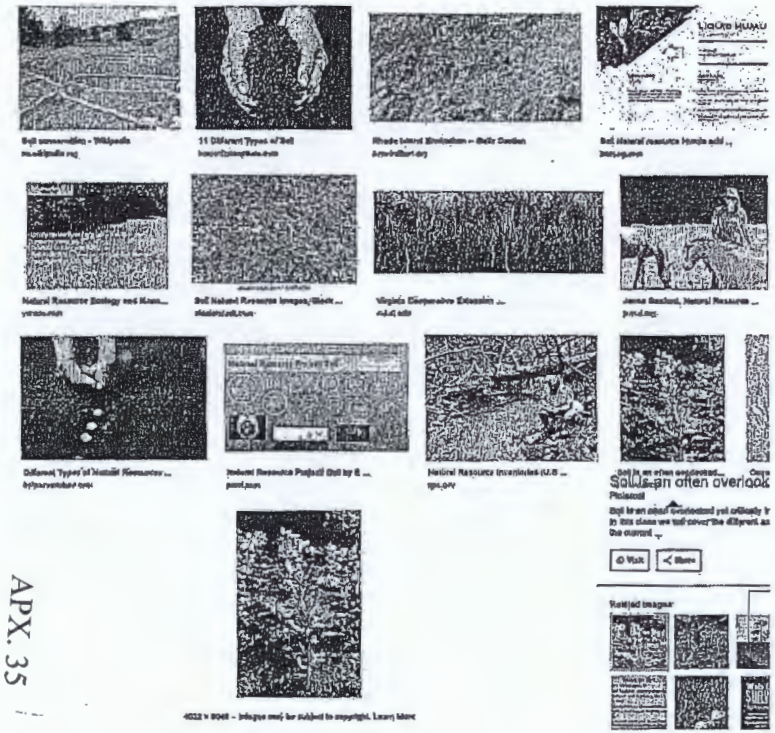
WHAT IS SOIL?



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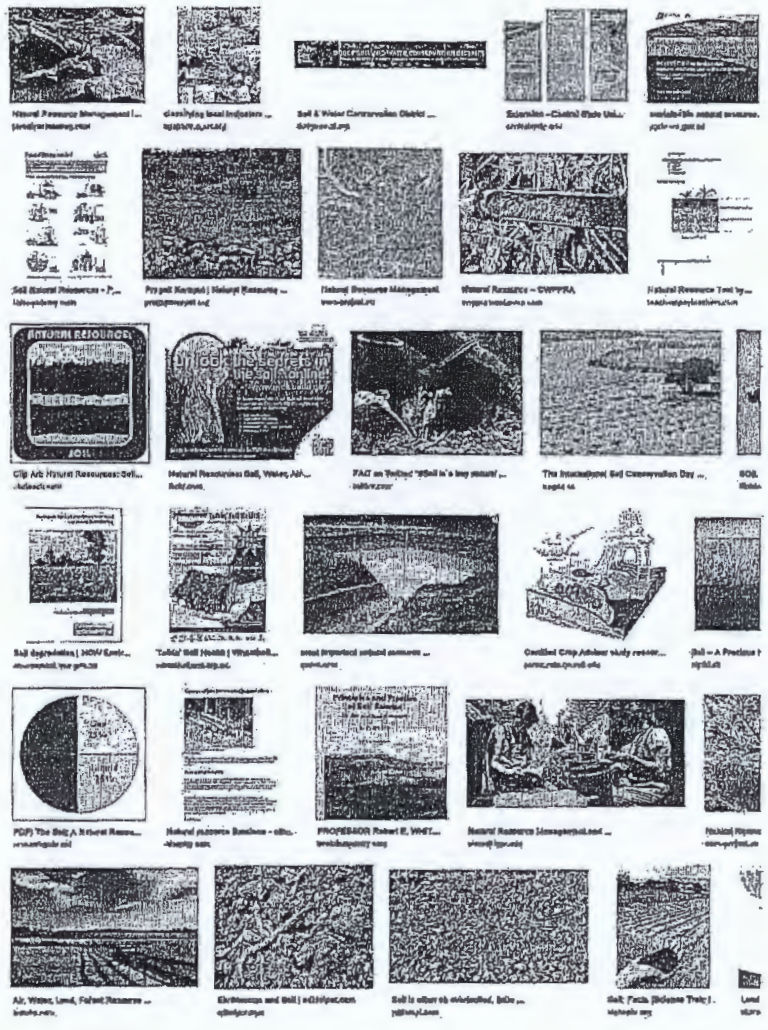

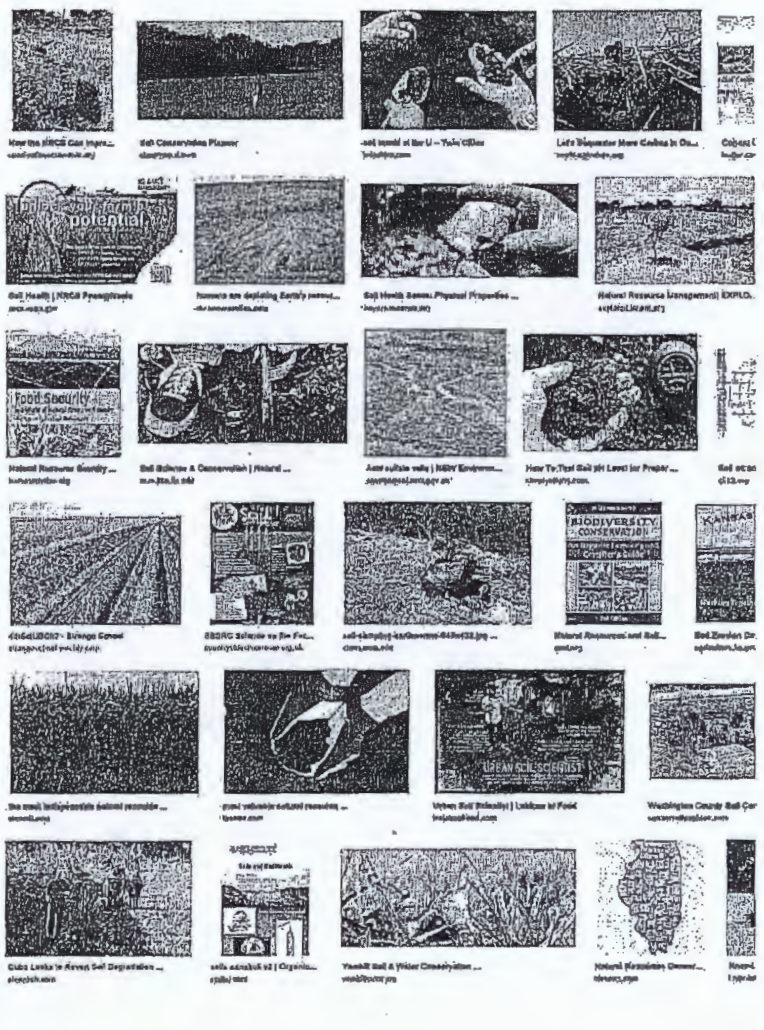

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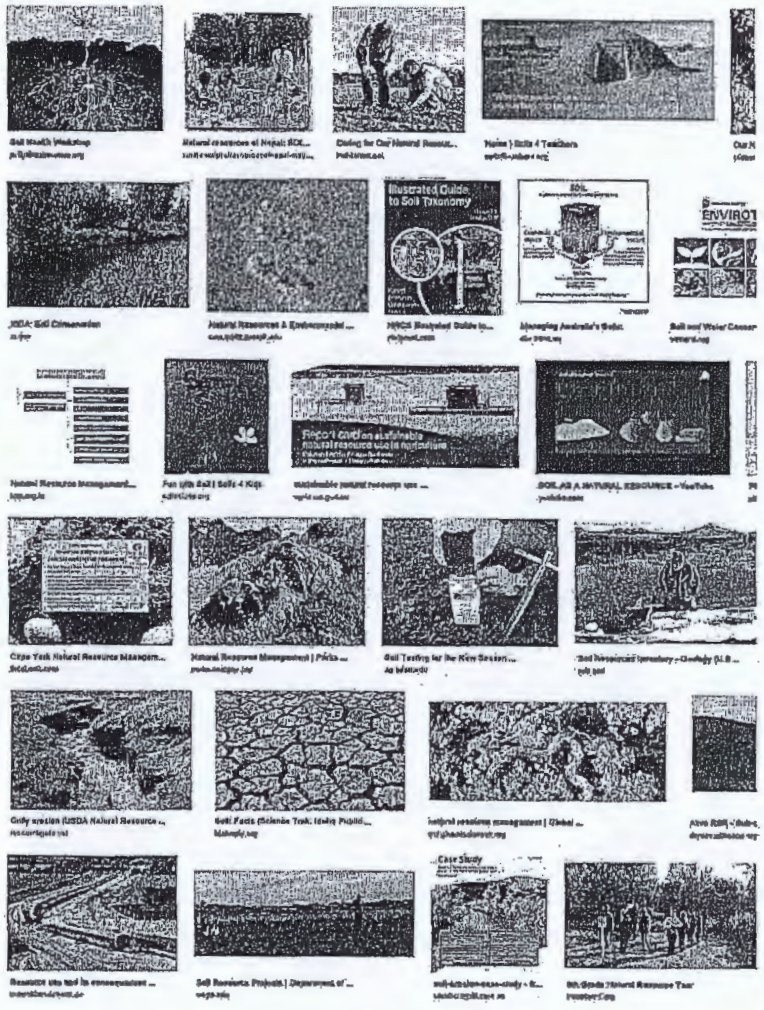
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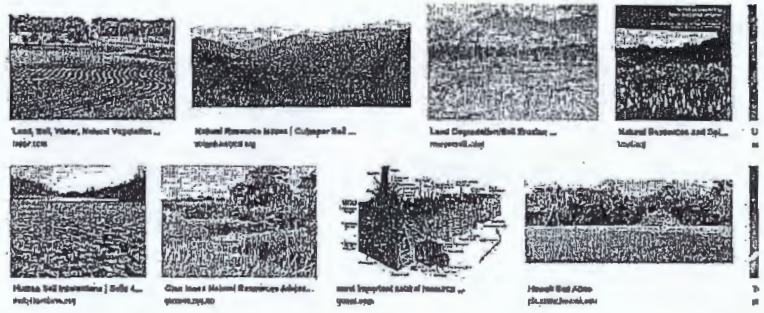

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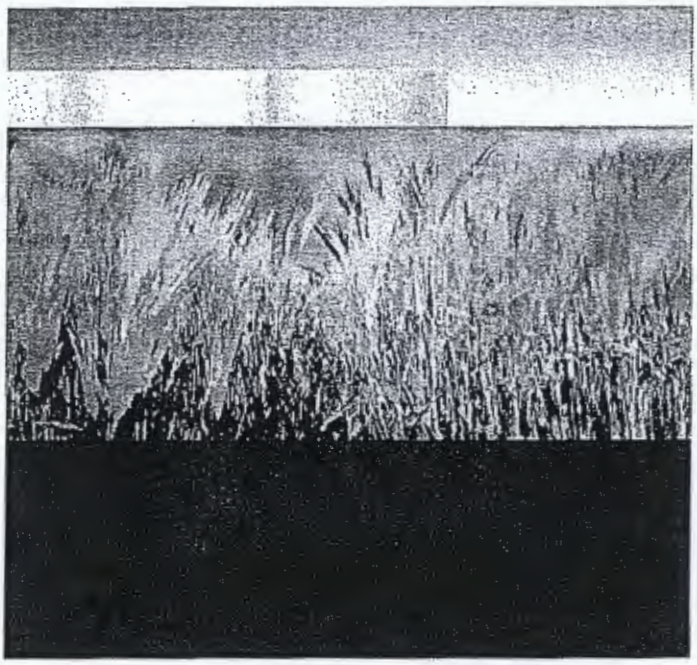

Soil as a Resource
National Research Programme NRP 68

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Foreword

Soil is more than construction land 'in a prime location' or pasture- and farm land. The soil is a habitat. Our view of the soil, however, is often just a surface view – quite literally. But a look beneath the surface is well worth it. The importance of the soil for life on Earth is greatly underestimated. Without intact soils, we would be lacking the most important essential basis of life.

The cosmos of soil between the plant cover and bedrock is the indispensable connecting element between atmosphere and groundwater. This central hub for all important material and energy flows on Earth performs numerous economic and ecological functions: Soil is the basis of food production, a habitat for immeasurable organisms, a water filter and a natural store for carbon and water. Billions of living organisms in each handful of soil decompose old plant material into their basic building blocks and make these nutrients available to new plants.

Soil therefore deserves our attention. Particularly in Switzerland, where soil is scarce, a better understanding is needed. For this reason we welcome that with this brochure, researchers and the Federal Administration (Federal Office for the Environment, Federal Office for Agriculture, and Federal Office for Spatial Development) bring home the importance of soil and its essential functions. How many of us are aware that each shovelful of earth has a formation history reaching back hundreds of years? Or are conscious of the fact that the soil secures the living and economic environment of Switzerland?

So let us be concerned about the soil, this basis of all life. Let us take care of our soil. Let us preserve our cultivated land. For our quality of life is directly dependent upon the quality and quantity of the soil. Let's keep our feet on the ground!

Federal Councillor Doris Leuthard

Federal Councillor Johann N. Schneider-Ammann

The fascination of soil

We seldom have a clear view of the fascinating world beneath our feet. It comes to light primarily when excavators tear open the ground in the creation of construction pits, thus offering a visible perception of the three-dimensional cosmos of soil. It is worth climbing down into one of these pits and taking the time to study the intricate walls. On offer in these hidden worlds can be a colourful layered story sequencing years and years of mankind. The hollow cavities of burrowing fauna transverse the earth like veins, each with a story of their own. Only when you are surrounded by and are witnessing this world first hand, can the complete impression that you are standing within not just a self-contained ecosystem, but an ancient ecosystem, come to life.

Soils are formed from rock

Approximately 10,000 years ago, towards the end of the last ice age, there was no intact soil in the larger areas of Switzerland. Glaciers had ground it down and left behind nothing but bare rocks or moraine materials as they retreated. Sun, rain, frost and soil organisms then worked symbiotically together in weathering the rock material, chemically and mechanically, ultimately breaking it down into smaller particles. As a result, soil was continuously taking form and plants could begin to thrive.

Minerals were transformed and, through the method of leaching, were washed further into deeper layers as the rock broke up progressively into loose soil. Over thousands of years the typical sequence of successive layering of soil developed: typically a layer of topsoil rich in humus over a layer of subsoil consisting of strongly weathered parent rock and washed out material from above. Below that lies the only slightly weathered parent material and finally the bedrock.

Many types of soil

Depending on the parent rock material, local topography, climate and water availability, differing soil types developed after the final stages of the last ice age. There are shallow or deep, acidic or alkaline, nutrient-poor or nutrient-rich, wet or dry, sandy or clayey soils – as well as every conceivable variation between these extremes. The astonishing number of variations is represented within a large range of the colour spectrum, from red to yellow to blue and all the shades in between.

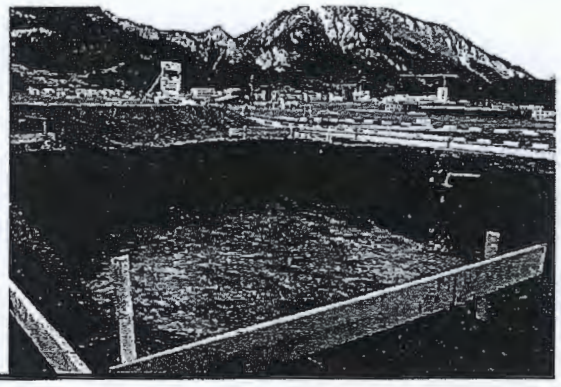
Moist and warm conditions are optimal for soil formation as it is under these conditions that soil organisms who are responsible for the rock-weathering processes are most active. For this reason, the soils in the Central Plateau of Switzerland, which are 1 to 2 metres deep, are clearly much thicker than the soils in the Alps, which are often only a few centimetres deep.

As long as weather and water are continuously interacting with soil populated by organisms, the development of the soil is never completely at an end. In a seemingly motionless earth there is always something in a state of flux: humus constantly forms and decomposes, seepage water dissolves soluble materials and washes them into lower layers of soil, clay and soil particles shift into deeper layers and iron oxidizes, giving many soils a typical brownish red colour.

The long lasting life of soil

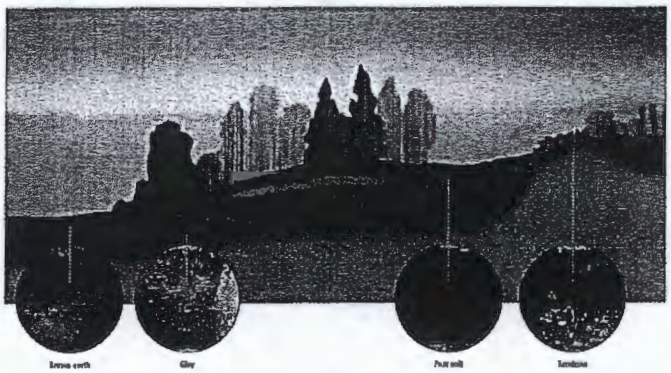
The habitat "soil" has been formed over thousands of years from mountain rock. Sun radiation, rain, frost and soil organisms weather the rock or moraine material of the glaciers. As a rule of thumb, it takes 100 years for one centimetre of soil to form.

On the surfaces that result from the rapid retreat of the glaciers in the Alps, the various stages of soil formation can still be seen today



Land pits offer a great insight into the colourful sequential layering of the soil.

Versatile ground



Regardless of the location of a hole in the ground, we will always come across different soils. Depending on the type of rock, the slope, the local climate and water availability, a specific combination of processes of soil formation acts at a particular location and leaves behind soil profiles with different characteristics.

Tardigrades (bottom) are a common inhabitant between the layers of leaves, soil and moss (top).

There is special trade relationship between the roots (yellow) and mycorrhizal (green). The roots supply the fungus with sugar and the fungus supplies nutrients, protects the roots from pathogens and pollutants, improves water absorption and helps with drought resistance.

Amoebas are voracious predators. Characterized as predators, they use their pseudopodia to claim their prey and help develop the microfauna to contribute to the ecological balance.

The world beneath our feet

When we hike through the woods, we enjoy the calm serenity. What we fail to notice is that beneath our feet the ground is teeming with diverse life forms – the engine behind our own existence. It is accredited to these most tiny organisms in the soil that life on Earth's surface exists at all.

Soil as a habitat

Without seeming so, soil is a lively habitat filled with many living organisms. Even though the ground appears to be simply a compact layer, between its components are countless minute margins where an army of organisms are maintaining the underground "factory of life". In fact, approximately half of the space that soil consists of consists of microscopically small hollow spaces. The solid part of the soil forms a filigree structure composed primarily of clay particles, humus particles and sand. The spaces in between – known as soil pores – are filled with water or air and house countless animals, plants and fungi. This is a habitat of gigantic dimensions: the entire habitable area of a handful of clay soil is greater than a square kilometre. It is home to billions of microorganisms and to these organisms, every clump of soil is practically an infinite landscape.

Overwhelming diversity

Only a small fraction of the organisms living within the soil are known to science. "We know more about the movement of celestial bodies than about the soil underfoot", lamented Leonardo Da Vinci more than 500 years ago. Unfortunately, little has changed since. We do, however, know that one handful of soil contains more organisms than there are humans on the planet. In only one gram of soil, close to 50,000 types of bacteria and up to 100 metres of fungus threads can be found. The weight of all living organisms in the soil layers of one hectare of land can be as much as 15 tons, equivalent to the weight of 20 cows. In comparison, the grass on one hectare of land in the lowlands feeds only about two cows.

For researchers, with all of its organisms, soil can be viewed as a gigantic yet minimally studied "pharmacy". In 1928, Alexander Fleming discovered the first antibiotic, penicillin, and its antibacterial characteristics. Penicillin is a natural substance released by Penicillium soil fungi. In light of this knowledge, researchers worldwide have continued to collect a myriad of soil organisms and tested whether the unicellular organisms, bacteria, fungi, algae, lichens and plants can also produce antibiotics. In doing so, the researchers have discovered numerous new substances which have almost all since become important medications. The potential for furthering medication knowledge and production is vast but has not yet even begun to be utilised.

Teeming with life

Pictures of soil organisms, once zoomed in, show an impressive diversity of how fascinating and beautiful they can be. The soil thrives with life and not in a motley jumble similar to the many species living above ground, but in a complex network of relationships including carnivores, herbivores, scavengers and omnivores.

In soil, teamwork is essential and omnipresent. One particular plant group, the leguminous plants, which clover and beans belong to, has a symbiotic relationship with the bacteria that live in the soil. These minute little industrious workers are able to take the nitrogen from the air and convert it so that the plants in turn can use it to thrive, and as a response the plants provide the bacteria with sugars.

Much more widespread is the close interrelationship between plant roots and soil fungi. Over 80 per cent of plant species form a mutually beneficial symbiotic relationship with a particular fungi called "mycorrhiza" (fungus roots). The fungi colonize amongst the fine roots of host plants and increase the root growth system and enhance the plants' contact with the soil. The fungi provide the plants with the water and soil nutrients they need to survive and the plants provide the fungi with sugars. Porcini and amanitas are prominent examples of root fungi, as they are recognized as assisting in the growth of important tree species such as spruce. The dense fungal structures on or within roots also work to protect the plants against pollutants and pathogens.

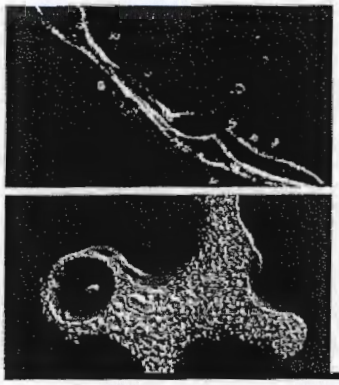
The fuel for the underground ecosystem is provided by above-ground plants via their root excretions and the dead leaves, stems and branches. This material is utilized especially by earthworms, insect larvae, snails, springtails, mites, woodlice, nematodes, pro-woramns, bacteria and fungi, which themselves are the primary food source for many other organisms. The "shark" amongst the underground creatures is the mole. Moles predominately hunt and feed on earthworms as they move and eat through layers of the soil, filling their intestines with decomposing organic material and earth. Their channels and burrows loosen and aerate the soil, which improves drainage, especially after a heavy rainfall.

Plants on the surface of the earth are largely dependent on soil organisms and vice versa. In an area the size of a standard football field, soil organisms can break down up to 25 tons of dead plant materials and animal remains every year. Without them, gigantic compost heaps would tower skywards within our forests and woods.

Valuable humus

Soil organisms endure hard labour around the clock. They decompose dead organic material and turn it into a stable substance called humus. Without enriching humus, the ground would be no more than a giant sandbox. The organic matter within soil is a reliable source of nutrients for plants and also a storage medium for water, pollutants and carbon; therefore humus plays a central role in the maintenance of the nutrient, water and carbon cycles.

Soil organisms continuously mix humus into the lower soil layers. Within a single cubic metre, earthworms alone assist by moving up to 12 kilograms of earth per year. This loosens the soil and forms stable soil crumbs that are less susceptible to erosion and are considered the most important structural elements of the soil. Earthworms' tunnelling activity also improves soil aeration and its ability to retain water.



Pseudomonas bacteria protects wheat roots from harmful mycoviruses. They produce a cocktail of toxic substances which can uproot harmful fungi and insects. The tiny helpers are rewarded with approximately 10 per cent of energy obtained through photosynthesis.

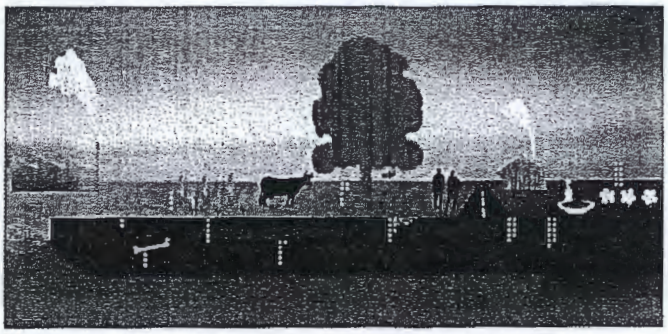
The functions of soil

Healthy soil performs numerous functions and ensures that planet Earth remains habitable for humans. Soil is first and foremost the ground on which we walk. It gives the landscape its round and soft forms as well as a stable foundation for buildings, streets and tracks.

The most evident link between the soil and us is the production of food, animal feed and wood. Less apparent are other functions, which will be discussed in the sections below. These functions are the result of the soil's ability to control and maintain the materials and energy cycles between the atmosphere, groundwater and plant cover. Soil is known for storing nutrients and providing them to plants, regulating climate, filtering water, assisting in the control of floods and conserving the natural and cultural history. The living organisms throughout the soil are the engines that render the soils diverse, keep irreplaceable functions running and are beneficial for the ecosystem.

When winter takes its leave, soil starts showing what it is capable of. For example, each year farmers within Switzerland harvest 500,000 tons of potatoes from the earth, deliver approximately 50,000 tons of rapeseed to oil factories, grow more than 16,000 hectares of bread and feed grain and harvest several hundred thousand tons of fresh vegetables. In this case, fertile and intact soil is the central resource for sustainable agricultural production.

Soil – a multitalented matter



Soil …

- … combines raw materials: basis for drinking water, gravel (p. 18)
- … stores carbon (p. 16)
- … archives natural and cultural history (p. 22)
- … supplies food (p. 12)
- … stores nutrients (p. 14)
- … filters water (p. 18)
- … makes plant growth possible (p. 15)
- … is a habitat for soil organisms (p. 7)
- … is the foundation for buildings and roads (p. 20)
- … offers ingredients for medicines (p. 17)
- … stores water (flood protection, water reservoir for plants), (p. 20)

The functions of soil

No harvest without fertile soil

The Central Plateau of Switzerland is home to some of the most fertile and productive soil worldwide. This is courtesy of the balanced climate, sufficient rainfall and advantageous underlying economic conditions for production and sales. Therefore, Switzerland has a special responsibility to conserve this important base of life.

Thirty-five per cent of soils within Switzerland can be utilized in cultivated fields, meadows and pastures. Another ten per cent are alpine farmland, hence also serve the production of food. The remainder is too steep, wet, dry, shallow or nutrient lacking for agricultural use.

Limited resource

It takes 1,400 square metres of farmland to feed one person. Therefore, one hectare of land could essentially feed up to seven people. At this point in time, on an average day worldwide, one hectare feeds about 4 to 5 persons. The limit value of seven people will most likely be reached by the year 2050. This projection shows how important it is to maintain and protect the soil. Not one square metre should be wasted!

When land is used for construction it is then forever unfit for agricultural use. As a result of the rapidly increasing yields of industrialized and highly intensive agricultural production, certain types of soil have forever disappeared in the highly developed countries. This in turn makes utilisation of site-adapted sustainability difficult. With this we have lost our awareness and appreciation of soil as a functioning habitat. For instance, when we eat ice cream we tend to disregard the "soil–grass–cow–milk–ice cream" chain or the "soil–grass–cow–cow manure–soil" cycle.

Sustainable use

To preserve soil's natural fertility in the long term, agricultural use that suits the location and fosters the rich soil life is needed. Heavy machinery and overuse of mineral fertilizers, liquid manure and plant protection products damage the soil organisms and the loose structure of the soil habitat. Put simply, habitat. This means that the soil must be used with consideration and sustainably.

In the forest, too, healthy soil is the basic requirement for a sustainable timber harvest. Furthermore, healthy soil ensures that it will perform all of its essential functions, such as flood protection and carbon storage. Grave problems can result from the use of heavy forestry machinery on naturally bedded forest soils as well as the planting of non-native tree species. For the formation of the indispensable humus layer it is essential that branches and wood waste remain in the forest and not succumb to gentrification.

Farmers harvest four kilograms of potatoes per square metre and year from this fertile farmland in Switzerland's Central Plateau. The Niesen mountain and the Stockhorn mountain chain can be seen in the background. The development history of this soil near Zimmerwald in the Canton of Bern began about 10,000 years ago. The Aare glacier left behind a hefty deposit of calcium-rich moraine material. In the upper 120 centimetres, fertile, sandy loam soil developed. Particularly striking is the thick and humus-rich topsoil in which the potatoes grow.

Plants require a large number of nutrients for survival, including nitrogen, phosphorus, potassium, magnesium and calcium as well as trace elements such as molybdenum and boron. These are found as in dissolved form in the water within soil pores, where plants ultimately can absorb them. Thankfully an on-going supply is available. The most significant source of the nutrients is from the decomposition and transformation of dead plant material such as leaves and stems that fall to the ground and are decomposed by soil organisms. Soil organisms therefore provide plants with a continuous supply of nutrients, free of charge.

The fungus Dreschslera Flia Anastomosis (white thin thread) captures a worm with the help of the fungal ring. The drama was captured with an electronic microscope.

The functions of soil

Efficient recycling in the soil

Without soil organisms soil would not be able to make the nutrients made from decomposed plant material available to living plants as food. These industrious workers in the bioreactor that is the soil provide a continuous nutrient supply to plants, leading to our ancestors speaking of "the old soil strength".

The weathering of minerals in the soil also ensures an ongoing provision of nutrients. The natural content of supplement nutrients is especially high in the deep and bountiful soils of the Central Plateau of Switzerland, which has some of the best farmland in the world.

Soil stores nutrients

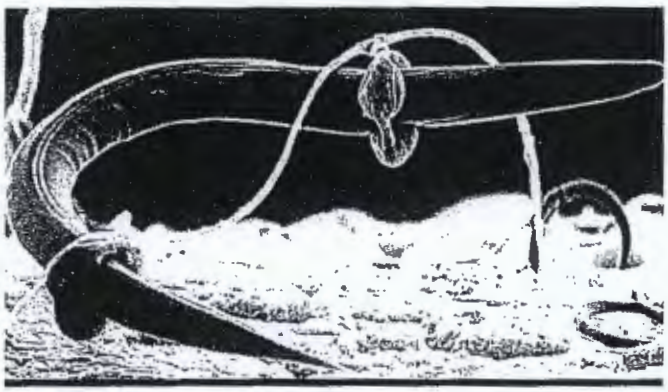
Primarily in springtime, as soil organisms awake from their hibernation, many nutrients become mobile. This poses the risk that through leaching, water seepage will carry the nutrients already released down through the soil and therefore out of the reach of plant roots.

Fortunately in this case, soil also holds nutrients in interim storage as they are bound in and around humus and released when needed. The microorganisms also consume a large amount of nutrients; however, they are released when the organisms die. All in all, there is a continual binding and dissolving of substances in the soil through biological and chemical processes.

Leaks in the system

However, the soil loses many important nutrients with every potato that a farmer harvests. The cycle of nutrients between plants and the soil should remain closed so that soil fertility can be maintained. In earlier times, the threat of nutrient loss and cycle leakage was managed by temporarily ceasing to use the soil (leaving fields to fallow) by alternating between growing crops and applying nitrogen-rich cow manure. Today, large amounts of artificial fertilizers and liquid manure are used which can have a taxing effect on the soil. If a redundant amount of fertilizer is applied, the cycle inflates like a bubble and then begins to leak. Artificial fertilizers and liquid manure is a form of nitrogen and when applied too liberally can result in nitrate, which when leached into the groundwater with rain, impairs the quality of our drinking water. Over 50,000 tons of nitrogen are leached from agricultural land in Switzerland every year. The consequences are significant in many places as the nitrate content of underground water reservoirs considerably exceeds the limit. There is an excessive amount of nitrate in the groundwater at every sixth measuring site, and in crop farming areas it is too high at every second measuring site.

Another problem with the overburdened nitrogen cycle is nitrous oxide (laughing gas), as it is produced in the soil when nitrogen fertilizers are processed and leak to the atmosphere. This nitrogen compound damages the ozone layer and is a highly potent greenhouse gas as nitrous oxide has 298 times more of a negative impact than carbon dioxide. This shows that a balance within soil nutrients is imperative. Excessive nutrients that are not taken up by crops should simply not be applied to the soil.



Nutrients are in continuous circulation from plants to the soil and back

1. Dead leaves, branches, grass stalks, husks and shrunk end up on the ground. In agriculture, the remains and urine of farm animals are spread on the soil.

2. Soil organisms go to work on this land and decompose the organic material.

3. Nutrients are made available to plants or stored in humus and in (or attached to) soil particles.

4. Plants above ground can grow. Livestock and wild animals eat the plants.

Soil and climate are closely related. However, soil rarely plays a role in public awareness and in the discussion of climate change. Nevertheless there are enormous quantities of carbon stored within soil, which when in the form of carbon dioxide (CO_2) is one of the main causes of climate change. Soil is the third-largest repository for carbon, after the ocean and fossil fuels like coal, oil and natural gas. All types of soil together contain about twice as much of this element as the atmosphere and three times as much as land plants.

The functions of soil

Soil protection is climate protection

Carbon continuously moves between plants, soils and the atmosphere. Plants absorb atmospheric CO_2 and, using energy from sunlight, create leaves, stems and roots. Carbon from dead plant materials is transferred to the soil. A part of this is released back into the atmosphere after being broken down by soil organisms and the rest is transferred into a more stable form – humus.

Soil carbon storage

The amount of carbon stored in the soil depends on temperature, soil moisture and the amount and type of dead plant material. Changes in climate or utilization of the land obviously also have an impact on the exchange of carbon between plants, soils and the atmosphere.

If marshland is drained and used for agriculture, if meadows are changed to cropland or if fields are utilized too intensively, the humus content of the soil decreases. When the humus content is reduced, large amounts of CO_2 are released into the atmosphere. The conversion of natural ecosystems into cropland and grazing pastures as well as overutilization of the soil – sometimes this even leads to deserts – are the main causes of the release of CO_2 from the soil. Over long periods of time, more carbon is released into the atmosphere via this method than through the burning of fossil fuels.

Efficient and inexpensive

There is no simple or quick *repair* solution to the damage to the soil caused by non-sustainable use. This is particularly true regarding humus loss.

Amongst other options, organic farming and forms of land management with reduced soil tillage have a positive effect on the humus content of the soil. Rewetting and restoring former marshland is also an efficient and chiefly inexpensive form of climate protection. As soon as a regenerated marsh returns to a natural state after several years, carbon will once again be stored in the soil.

A farmer harvests four kilograms of carrots per square meter from this field in the Grosses Moos area near Witzwil, Bern. But for how much longer? The humus layer was originally two metres deep. But drainage of the marshland resulted in oxygen entering the soil pores and subsequently, decomposition of the peat body took place and when a vast amount of CO_2 was released into the atmosphere. Today, the humus-rich layer is only 30 centimetres deep. The fertility of this soil is highly endangered. When the humus is used up and the old lake sediment (gray layer) is reached, it will no longer be possible to use this land for agriculture.

When you turn on the tap and get fresh, clean water, you have soil to thank. Over 80 per cent of Switzerland's drinking water is sourced from groundwater. It is the soil that makes it the pure elixir of life. During seepage flow, soil filters suspended solids, pollutants and pathogens out of the water. It essentially is the filter between surface water and groundwater.

For protection of the drinking water supply, Basel has actively utilized the cleaning effect of the soil and the forest for a long time. To artificially recharge the groundwater, mechanically filtered Rhine river water is pumped to forested flooding sites, where it seeps through the woodland soil.

The functions of soil

The soil provides clean drinking water

The filtering efficiency of soil is nowhere better visible within Switzerland than in Basel. Half of the water that the city pumps up from the depths has been added to the groundwater artificially and the forest soil is the central component of the drinking water production system.

Efficient water filter

Each day, 60,000 cubic metres of pre-treated water drawn from the Rhine river is pumped into wooded flooding areas at the Lange Erlen waterworks for drainage. The 14 flooding sites are subdivided by small embankments and cover a total area of approximately 20 hectares. Each flooding site is taken out of use after 10 days of operation and the forest soil is allowed to regenerate for 20 days. During the 20-day drying period, soil organisms again produce new pores that stretch from the surface to the gravel, which is what is responsible for the productive seepage.

As water flows through the soil, almost all organic substances are retained, detoxified or built into the soil structure. Pesticides, viruses and bacteria that can be harmful to human health are eliminated.

The drainage water that is cleaned by the soil in the Lange Erlen waterworks area augments the amount of existing groundwater. The groundwater is then pumped from several wells and treated chemically and physically at a pumping station and fed into the Basel drinking water supply network.

Irreplaceable

All over Switzerland the soil system is a low-maintenance filter. However, only with intact soils can groundwater be used as drinking water without expensive water treatment. The soil guarantees excellent cleaning of water over the long term. In Basel it even ensures that non-consumable Rhine river water becomes safe drinking water, and all that is required is an absolute uncomplicated control of the system as a whole.

Soils that are disturbed, sealed over or contain high levels of heavy metals and other pollutants cannot perform their cleaning function well or even not at all. The natural soil filter that developed over thousands of years cannot be simply replaced (like buying a new vacuum cleaner), its functional capability depends on regeneration through natural processes

The forrest floor as waterfilter

Thanks to the cleaning power of the soil and the ecosystems, sufficient drinking water of perfect quality is available in Switzerland. Thirty-eight per cent of the drinking water requires no treatment and another 33 per cent requires only one-stage treatment.

The summer of 2014 "fell into the water": it was too cold and exceptionally wet. Besides the heavy storms, there were also long periods of rain that made conditions ideal for flooding. The fact damage was limited is all thanks to the soil, which is by far the most important catchment area for rainwater. Like a large sponge, soil absorbs water, and after a certain amount of time, delivers it to the groundwater or streams and rivers. Forest soils are particularly capable in absorbing water: in a deciduous forest the soil can absorb some two million litres of water per hectare.

The burrow networks created by earthworms significantly increase the water-holding capacity of soils and are therefore very important for flood protection. Any 50 cm block of soil under a square metre of fertile meadow will contain from 300 to 500 earthworms, with a total weight of 200 to 300 grams, living up to a depth of 1.5 metres. They create up to 500 metres of burrows on this area.

Soil sealing leads to flooding.

The functions of soil

The soil protects against flooding

Water storage in the soil should not be pictured as an underground cavernous lake. Water on the surface of the ground is stored in a network of hollow spaces known as pores. It does not simply seep down towards the groundwater; instead, thanks to the surface tension of the water, it is held in the soil pores until needed.

The capacity of soil to store water depends on the proportion of the pores. Usually 30 to 60 per cent of the soil is made up of pores of differing sizes. In organic soils formed in raised bogs, this amount can be as high as 90 per cent. If the pores are too large, as in sandy soils, water travels rapidly deep into the soil, whereas soils with a high clay content store more water. The depth of the soil also determines its capacity to retain rainwater.

Soil = a sponge

The amount of soil pores also depends on the surrounding plant roots and the soil organisms. With their extensive networks of burrows, earthworms enhance porosity and are especially important helpers in protection against floods.

When it rains, the small pores fill with water first. Pores with a diameter greater than one-tenth of a millimetre are particularly important for the flow of rainwater. If it continues to rain, earthworm burrows then begin to fill with water. When the water stores are full, surface run-off will occur and then the rain ends up in the nearest bodies of water such as swelling streams and rivers.

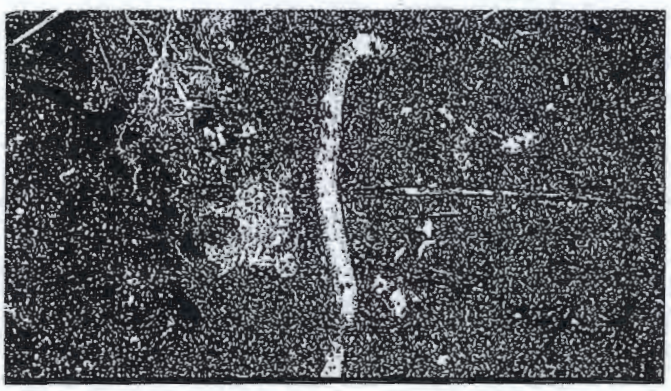
The water masses can be known to flood towns, fill cellars with water and mud, wash away cars and flood streets. This occurred during the summer of 2014 in the sloping region between Bern and Lucerne and in the Canton of St. Gallen, where the flooding caused damage running into the millions.

Intact soil is indispensable not only for flood protection. A part of the water in the soil is also available to plants, which would otherwise dry up. For example, wheat crops require a hundred litres of soil water to produce one kilogram of grain. Without the water storage in the soil there would be no green and flourishing landscapes and of course, no production of food.

Soil compaction

If the soil's water infiltration capacity is disturbed or even destroyed, heavy rainfall runs off to the nearest bodies of water much more rapidly, which happens when driving heavy machinery on soil or improperly handling excavated soil as this eliminates the pores and compacts the soil.

Water filtration ceases completely when the soil disappears under roads or buildings. This is increasingly the case as the surface area of housing and infrastructure has grown in Switzerland by 384 square kilometres from 1985 to 2009 – which is equivalent to the size of Lake Geneva. In sixty per cent of this newly developed area the soil is sealed, meaning that water storage in the soils in Switzerland is continuously shrinking. Intact soil in developments can greatly reduce the burden on sewer networks and also retain pollutants. Consequently, for good flood protection, more sustainable treatment of the soil is needed not only in cultivated land and forests but also in developed areas.



Soil takes form over an extremely long time period; therefore it can be considered to have a "good memory". Soil scientists have the ability and knowledge to read the different soil layers like a book gaining boundless information reflecting the environmental conditions that prevailed when the soil was first formed.

In 2012, the Celtic treasure of Fällanden in the canton of Basel was discovered in the soil – 293 silver coins – the largest Celtic precious metal coins in Switzerland.

Also discovered in the Basel underground was a stone wall which was part of the paving of a courtyard.

The functions of soil

The archival record in the soil

Old soil preserves information regarding climate, vegetation and the impact of natural catastrophes in past epochs. Bog or moor soil, which inhibits the decomposition of organic material, provides an especially important archival record as each individual peat layers contain pollen, leaves or seeds of plant species that were common in their landscape in earlier times. They can be identified even after thousands of years and allow us to trace the exact expansion of certain tree species in different regions of Switzerland since the last ice age.

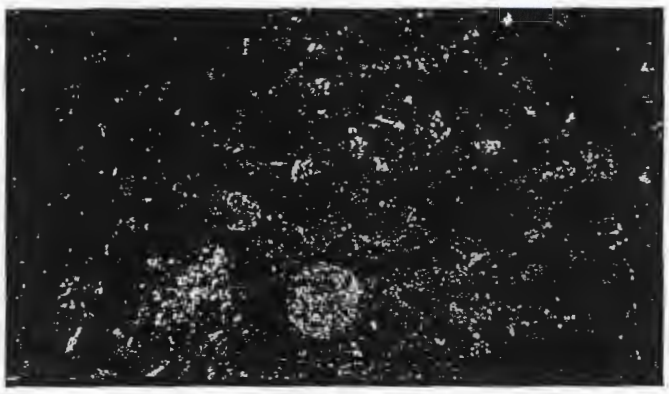
Valuable archives

Core samples from raised bogs provide an archival record of atmospheric pollution. In the peat body of the upland moor at Etang de la Gruère in the Canton of Jura, there are two layers with increased levels of lead. Responsibility and blame for contaminating these deeper layers of the soil lies with the Romans. The Romans exploited the soft metal on an industrial scale for making water pipes, containers and other objects. Another example lays two thousand years later when humans in the automobile era used leaded petrol. The lead released into the environment fell to earth, covering it as a veil, and it is still detectable in the soil to this day.

Mirror of human civilization

Since the Stone Age humans have left manifold vestiges of cultural development in the soil. From inconspicuous remnants such as bones, coins and tools, archaeologists can gain critical insight into the everyday life of humans in earlier times.

Soil also reveals how the landscape once appeared, how it developed and what impact humans had on it. It helps to provide information on the history of the landscape, the development of agriculture and settlements and a mirror of human civilization. Providing such valuable information regarding the natural and cultural history further implores the relevance of soil's survival



Conserving the basis of life

The soil beneath our feet is the perfect mixture of minerals, humus, water, air, animals, plants and fungi that interact in a variety of ways. The well-being of our society is closely connected with this underground society as it fulfils numerous economic and ecological functions.

The individual functions of soil are closely interconnected. For example, while healthy soil has a high water-retaining capacity, there are other roles that soil can play more effectively in certain locations than in others. For instance, the expansive fertile soils in the Central Plateau are particularly well suited in supplying food to the population. In contrast, carbon and water storage are the primary focus within marshlands. While the primary function is important, for effective sustainable use of the land it is important to manage the land and not to lose sight of the other functions.

The world is losing soil

In this country only a few of us, mainly farmers, still have direct contact with the soil. As the distance between the soil and ourselves in our daily lives grows, the soil becomes distant in our minds. We have become neglectful in the the way we treat our soil.

Throughout the world, 24 million tons of soil is washed into the sea or blown away by the wind each year. Soil erosion and the formation of deserts are problems in 168 countries. At the same time, developments and roads are claiming ever more valuable land. Altogether, this means that soil loss is a growing threat to global food security.

The issue of increasing soil scarcity worldwide will lead to disputes and conflicts in the coming decades. More and more industrial and emerging countries are acquiring large areas of land in developing countries to ensure their own food security – often at the cost of the local farmers. Today, sixty per cent of the foods or raw ingredients consumed in Switzerland have been produced in other countries.

While this is occurring, the soil in Switzerland is degrading and several threats can be identified, as when soil is damaged, it affects all of its functions.

Complete breakdown

Developed areas, with their high proportion of concrete or asphalt surfaces, are claiming more and more land. In the Central Plateau of Switzerland, from 1985 to 2009 nearly one square metre of land was used for construction per second, which is equivalent to:

- Fifteen metres of residential road per minute,
- Six single-family houses per hour,
- An area the size of the Canton of Basel per year.

Sixteen per cent of the Central Plateau already consists of built-up, industrial and commercial areas. With construction, all natural soil functions come to a standstill, primarily food production. If the sealing over of the land in the Central Plateau continues at its current rate, there will be dramatic economic, social and ecological consequences.

In Switzerland more and more soil is disappearing under asphalt and concrete. The photos show the area around the 63 motorway near Effingen, Canton of Aargau, in 1982 and today (2015).

Failing quality

Many different factors are impacting and degrading the soil permanently, making it increasingly difficult for the soil to properly perform its functions:

- Soil compaction: Driving heavy construction machines, tractors, seed sowers and harvesters on the soil compacts the soil pores. This disrupts soil aeration and drainage and therefore the soil organisms, meaning soil fertility decreases. Compacted soils have limited infiltration capacity and permeability. Water cannot enter the soil, therefore runs off the surface, promoting soil erosion and increasing the risk of flooding.

- Soil erosion: Surface run-off essentially washes away the fine soil, which is rich in nutrients. This erosion impairs many soil functions, among others its water-storing capacity and fertility. Approximately forty per cent of Switzerland's farmland is considered to be endangered by erosion, meaning that more than two tons of soil material per hectare can be lost each year. In all, farmlands in Switzerland lose more than 800,000 tons of soil material each year. That is approximately equivalent to soil 100 metres high covering an area the size of a soccer field. On top of this, the soil washed away causes considerable ecological damage to bodies of water.

- Pollutant inputs: Approximately one-tenth of the soil in Switzerland is heavily polluted which is a part of the past environmental pollution and damage legacy. In addition, soils in intensively occupied meadows are showing a continuing rise in zinc and copper concentrates, which are then fed into agricultural soils through liquid manure or additives in animal feed.

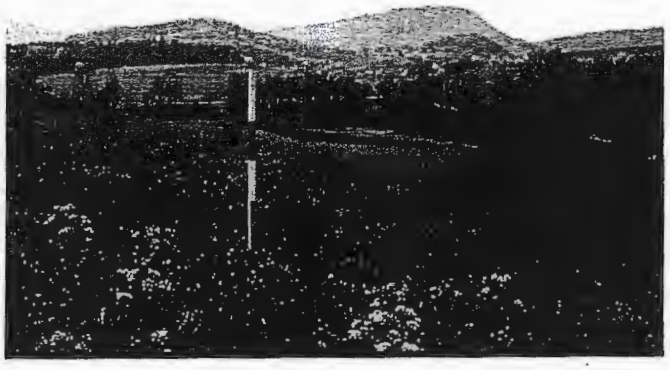
- Soil acidification: Transport, industry, households and agriculture all emit large amounts of nitrogen and sulphur compounds that, when combined with rain, eventually end up in the soil. The ensuing acidification of the soil results in nutrients being washed out and pollutants being released which can then in turn contaminate drinking water.

Soil protection is a task for the whole of society

Conclusively, it is abundantly clear that the long-term maintenance of the functional capability of our soil resources is becoming increasingly precarious in Switzerland and also around the world. Once the soil is degraded or damaged, it can only be returned to its original bountiful state with great technical difficulty and expense – if at all. The success achieved with the air and water pollution control issues cannot be easily repeated with soil protection, as we know it has a long memory and cannot be quickly restored.

It is imperative that the protection of soil has a central role in the discussion of the sustainable use of natural resources. As all areas of life essentially utilize and/or damage the soil while at the same time profiting and benefiting from its functions, the topic of soil protection is a task for the whole of society: politicians, government, industry, spatial planners, researchers, everyone of us. We all have to take responsibility.

The goal is to protect and ensure the functions of the soil and thus its ability to perform them. To ensure this, soil use and functions have to be reconciled. It is important to minimize erosion and pollution, prevent unnecessary sealing of soil and correct handling of excavated soil during construction.



Fertile soil does not develop overnight but rather over thousands of years. A single excavator scoop destroys in seconds something that from the human perspective took an eternity to develop. When soil is lost, this impairs not only our own quality of life but also the quality of life of future generations.

Homo and humus

It is not surprising that the Latin words homo, meaning human, and humus, the soil, derive from the same Latin root. Our ancestors correctly assessed the importance of the soil for human beings.

Through our high-tech civilisation we have distanced ourselves from direct experience with soil. However, our well-being today depends on intact soil just as much as it did in the past. We need to appreciate and value soil once again as it is a precious treasure that must be protected.

Links

National Research Programme "Sustainable Use of Soil as a Resource" (NRP 68)

The National Research Programme "Sustainable Use of Soil as a Resource" (NRP 68) establishes a basis for political decision-making which takes into account both the ecological *and* the economic functions of soil and paves the way for soil resources to be used sustainably in Switzerland.

www.nfp68.ch

Federal Office for the Environment (FOEN)

The FOEN is committed to ensuring that all functions of the soil are conserved so that in the long term sufficient soil is available for all necessary uses in Switzerland.

www.bafu.admin.ch → Themen → Boden

Federal Office for Agriculture (FOAG)

The FOAG is committed to ensuring that farmers produce high-quality food sustainably and according to market demand. The goal is multifunctional agriculture.

www.blw.admin.ch → Themen → Nachhaltigkeit → Ökologie → Boden

Federal Office for Spatial Development (ARE)

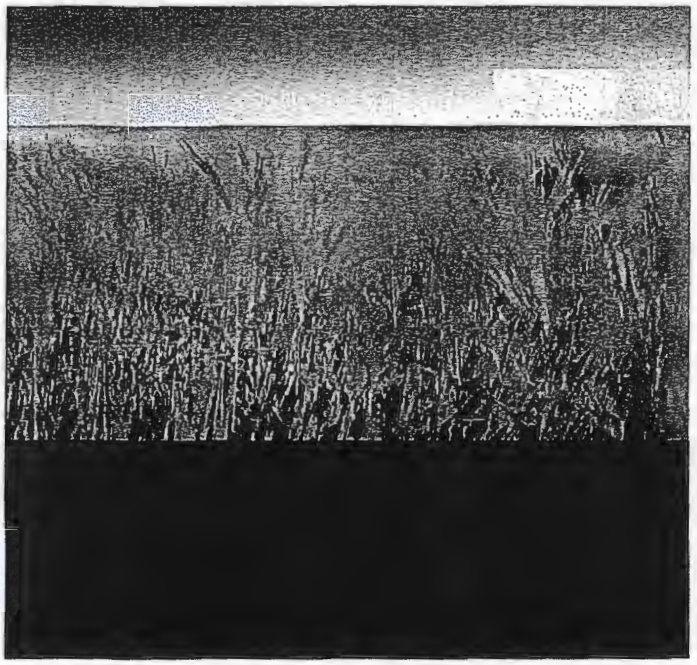
The ARE is the federal government's centre of excellence for issues concerning sustainable spatial development.

www.are.admin.ch/org/index.html?lang=en

Swiss Soil Science Society (SSSS)

On many different levels, the SSSS is actively engaged on the behalf of sound science and qualitative soil protection. It disseminates and deepens soil science knowledge. It is also an exchange platform for dialogue between specialists in administration, research and the private sector and promotes cooperation between research and practice.

www.soil.ch



ETH-SNF

People's Counsel Survey of Designated Scenic and Non-Scenic Roads, Sparks Area and Areas to the East and West

ADC Map 30: Butler, Dover, and Black Rock Road

Scenic on MP 2020, Map 26: Black Rock, Butler, Dover, Falls
Not listed on MP 2020, Map 26: Benson Mill, Mantua Mill, Stringtown

ADC Map 31: Belfast Road Area

S: Belfast, Falls, Thornton Mill
NS: Chilcoat, Cuba, Duncan Hill, Gerber Lane, Stringtown, Tanyard, Wheeler, Yeoho

ADC Map 32: Sparks-Glencoe Area

S: Belfast, Phoenix, Quaker Bottom, Thornton Mill, York
NS: Ensor Mill, Glencoe, Home, Lower Glencoe, Philpot, Sparks, Upper Glencoe

ADC Map 33: Caroll and Old York Road Area

S: Carroll, Cooper, Corbett, Old York, Paper Mill, Phoenix, Stockton
NS: Carroll Manor, Glencoe, Irish, Philpot

Quantitative Summary

Designated Scenic Roads: ADC Maps 30-33

Belfast (31, 32), Black Rock (30), Butler (30), Carroll (33), Cooper (33), Corbett (33), Dover (30), Falls (30, 31), Old York (33), Paper Mill (33), Phoenix (32, 33), Quaker Bottom (32), Stockton (33), Thornton Mill (31, 32), York (32)

Summary: 15 Designated Scenic Roads

Not Designated Scenic Roads

Benson Mill (30), Carroll Manor (33), Chilcoat (31), Cuba (31), Duncan Hill (31), Ensor Mill (32), Gerber Lane (31), Glencoe (32, 33), Home (32), Irish (33), Lower Glencoe (32), Mantua Mill (30), Philpot (32, 33), Sparks (32), Stringtown (30, 31), Tanyard (31), Upper Glencoe (32), Wheeler (31), Yeoho (31)

Summary: 19 Not Designated Scenic Roads

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

December 13, 2018

NOTICE OF DELIBERATION

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

AGENDA: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter having been heard on August 21, 22, October 24 and concluded on November 28, 2018, a public deliberation has been scheduled for the following:

DATE AND TIME: **FEBRUARY 19, 2019 at 9:00 a.m.**

LOCATION: Jefferson Building - Second Floor
Hearing Room #2 - Suite 206
105 W. Chesapeake Avenue

NOTE: Closing briefs are due on **January 4, 2019 no later than 3:00 p.m.**
(One [1] Original and three [3] copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. ATTENDANCE IS NOT REQUIRED AND PARTICIPATION IS NOT ALLOWED. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER THE CONCLUSION OF THE DELIBERATION. A COPY OF THAT OPINION AND ORDER WILL BE SENT TO ALL PARTIES.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:

Counsel for Petitioners	: Timothy Kotroco, Esquire
Petitioner/Legal Owner	: Robert Gerner
Petitioner/Lessee	: ESA Sparks Glenco, LLC
Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council
People's Counsel for Baltimore County	: Peter M. Zimmerman, Esquire

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, December 19, 2018 10:19 AM
To: Peter Max Zimmerman; Timothy M. Kotroco; barney Mowell
Cc: Wheatley, Rebecca
Subject: RE: Robert Gerner - 15637 York Road - Case No.: 2018-047-X

Good morning Counsel,

Please be advised the request to extend the Memo due date has been granted. The Memos are now due before 3:00 p.m. on Wednesday, January 9, 2019.

The deliberation date has not changed.

I hope you have a wonderful holiday season.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

-----Original Message-----
From: Peoples Counsel
Sent: Tuesday, December 18, 2018 9:02 AM
To: Timothy M. Kotroco <tkotroco@gmail.com>; barney Mowell <barneymowell@hotmail.com>
Cc: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Robert Gerner - 15637 York Road - Case No.: 2018-047-X

Good Morning Gentlemen,

Attached you will find a copy of the letter our office filed today with the Board of Appeals requesting to change the memo due date to January 9, 2019. A hardcopy of the letter will follow by U.S. mail.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

Krysundra Cannington

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Sent: Tuesday, December 18, 2018 9:02 AM
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Cc: Krysundra Cannington
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Attachments: 20181218090131544.pdf

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Baltimore County, Maryland
OFFICE OF PEOPLE'S COUNSEL
Jefferson Building
105 West Chesapeake Avenue, Room 204
Towson, Maryland 21204

410-887-2188
Fax: 410-823-4236

PETER MAX ZIMMERMAN
People's Counsel

CAROLE S. DEMILIO
Deputy People's Counsel

December 18, 2018

HAND DELIVERED
Jason S. Garber, Chairman
Board of Appeals of Baltimore County
105 West Chesapeake Avenue, Suite 203
Towson, Maryland 21204

Re: Robert K. Gerner
15637 York Road
Case No.: 2018-047-X

Dear Chairman Garber:

This letter is to request an extension of the due date for the filing of memoranda in this case from Friday, January 4, 2019 until Wednesday, January 9, 2019. We have spoken with counsel for all parties and they have agreed to this extension. The deliberation is scheduled for February 19, 2019. We trust that this slight extension should not interfere with the deliberation schedule. If you have questions, please contact my office.

Thank you for your consideration.

Sincerely,

Peter Max Zimmerman

Peter Max Zimmerman
People's Counsel for Baltimore County

cc: Timothy Kotroco, Attorney for Petitioners
H. Barnes Mowell, Attorney for Protestants

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

August 31, 2018

NOTICE OF ASSIGNMENT
Days 3 and 4

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter was heard on August 21 and August 22, 2018 but did not reach a conclusion. Therefore this matter has been

ASSIGNED FOR: **OCTOBER 24, 2018 AT 10:00 A.M. – Day 3 AND NOVEMBER 28, 2018 AT 10:00 A.M. – Day 4**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

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Office of People's Counsel

Board of Appeals of Baltimore County

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BALTIMORE COUNTY
BOARD OF APPEALS

ESA Sparks Glenco, LLC
c/o Brian Quinlan, Manager
4155 St. Johns Parkway Suite 1100
Sanford, FL 32771

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TOWSON, MARYLAND, 21204
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August 31, 2018

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Days 3 and 4

IN THE MATTER OF: Robert K. Gerner – Legal Owner
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18-047-X 15637 York Road
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Krysundra "Sunny" Cannington
Administrator

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, August 28, 2018 12:11 PM
To: Timothy M. Kotroco; Krysundra Cannington; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

Ms. Cannington: I am not available on the following dates, due to trials and settlement conferences on those dates: Sept. 25, October 17,18, 30, December 13, 19. The consensus from our remaining witnesses is that they would prefer the next two days to be scheduled in November or December. thanks, Barney Mowell

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Thursday, August 23, 2018 11:12 AM
To: Krysundra Cannington; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: Re: Robert Gerner Days 3 and 4

Dear Ms. Cannington,

I am available on all of the days that you offered with the exception of three dates. Crossed out and highlighted in red are the dates that I am not available. I am available all of the rest. Thank you.

Tim K.

.....we have the following dates available on our calendar: September ~~26~~, October 3, 10, 17, 18, 24, 30, November ~~7~~, ~~13~~, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

10/10 OK for PC

From: Krysundra "Sunny" Cannington <kcannington@baltimoreco
Date: Thursday, August 23, 2018 at 8:58 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman <pzimmerman@baltimorecountymd.gov>

Krysundra Cannington

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305 Washington Ave., Suite 502
Towson, Maryland 21204
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To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman <pzimmerman@baltimorecountymd.gov>
Cc: Peter Zimmerman <peoplescounsel@baltimorecountymd.gov>
Subject: Robert Gerner Days 3 and 4

Good morning Counsel,

Without checking with the Board members, we have the following dates available on our calendar: September 26, October 3, 10, 17, 18, 24, 30, November 7, 13, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Please be advised I cannot hold these dates as we have other cases also asking for additional dates.

Krysundra Cannington

From: Peter Max Zimmerman
Sent: Thursday, August 23, 2018 10:25 AM
To: Krysundra Cannington; tkotroco@gmail.com; barney Mowell; Peter Max Zimmerman
Cc: Peoples Counsel
Subject: RE: Robert Gerner Days 3 and 4

Good Morning Ms. Cannington,

Mr. Zimmerman is currently available the following dates:

September 26, October 17, 18, 24, 30, November 7, 14, 20, 21, 28, December 5, 11, 12, 13, 18, 19, and 20.

Thank you for your consideration.

Rebecca M. Wheatley, Legal Secretary
Office of People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2188 – Office
(410) 823-4236 - Fax

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Please let me know which dates work best for you.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

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June 14, 2018

NOTICE OF REASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter had been postponed from May 1 and May 2, 2018 and has been

REASSIGNED FOR: AUGUST 21, 2018 AT 10:00 A.M. AND AUGUST 22, 2018 AT 10:00 A.M.

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior to hearing date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (including video and PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) hours-notice is required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit our website www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

c: Counsel for Petitioners : Timothy Kotroco, Esquire
Petitioner/Legal Owner : Robert Gerner
Petitioner/Lessee : ESA Sparks Glenco, LLC

Counsel for Protestants/Appellants : H. Barnes Mowell, Esquire
Protestants/Appellants : William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Krysundra Cannington
Sent: Friday, April 27, 2018 2:15 PM
To: 'Tim Kotroco'; barney Mowell; Peoples Counsel
Subject: Gerner 18-047-X

Good afternoon Counsel,

I have discussed this matter with the Board and the hearing in this matter has been postponed. I will not have time to get a notice of postponement in the mail today and I will be out of the office next week. Upon my return, this matter will be rescheduled in a timely manner.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

From: Tim Kotroco [mailto:tkotroco@gmail.com]
Sent: Friday, April 27, 2018 1:54 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Subject: Solar case next week?

Sunny,

Mr. Mowell called me to check if the postponement has been issued. He wants to let his witnesses know as do I. Thank you much.

Tim

Timothy M. Kotroco, Esq.
305 Washington Ave. Suite 502
Towson, MD 21204
Cell: 410-299-2943

TIMOTHY M. KOTROCO

Attorney at Law
305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

April 27, 2018

Board of Appeals for Baltimore County
Jefferson Building, Second Floor, Suite 203
105 West Chesapeake Avenue
Towson, Maryland 21204
Attention: Krysundra "Sunny" Cannington, Administrator

Re: In the Matter of: Robert K. Gerner –Legal Owner
ESA Sparks Glenco
Case No. 18-047-X
Request for Postponement

Ladies and Gentlemen,

I represent Robert K. Gerner and ESA Sparks Glenco, the owner and petitioner in the above referenced case. This matter was previously set in for a hearing on two days, May 1st and 2nd, 2018. The hearing will take two days to complete as was the original purpose for setting it in on two consecutive days. I was notified yesterday afternoon that as a result of a Board conflict, the second scheduled day of this hearing was postponed. This is certainly understandable due to the busy schedule of the Board.

However, it makes little sense to start this case on May 1st only to have to continue the matter and schedule additional days at a later time, given that two days are needed. Because of this, I respectfully request that the hearing date set for May 1st also be postponed and the case be reset to a later date when two days are available on the Board's schedule.

I spoke briefly yesterday afternoon with H. Barnes Mowell, counsel for the Appellants. He stated that he would email his client, William Mayo and discuss this request with him. I have not yet heard back from Mr. Barnes, but wanted to get this request to the Board immediately for the Board's consideration as the case is set to be heard early next week. I should mention that Mr. Mayo had requested a previous postponement which we did not object to and which was granted by this Board.

It is respectfully requested that the matter be postponed and reset before the Board of Appeals on two days at the next available dates. Thank you for your consideration of this request.

Very truly yours,

Timothy M. Kotroco

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of April, 2018, a copy of the foregoing Request for Postponement was mailed to H. Barnes Mowell, Esq. 16925 York Road, Monkton, Maryland 21111 and People's Counsel for Baltimore County, 105 W. Chesapeake Ave., Suite 204, Towson, Maryland 21204.

Timothy M. Kotroco, Esquire

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Friday, April 27, 2018 10:37 AM
To: Krysundra Cannington
Subject: FW: Gerner

Sunny,

I received the below email from Barney Mowell, the attorney on the other side of that solar case. He has consented to the postponement request. Please let me know the Board's decision so that I may advise my witnesses. Thanks.

Have a great weekend.

Tm K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: barney Mowell <barneymowell@hotmail.com>
Date: Friday, April 27, 2018 at 10:25 AM
To: Timothy Kotroco <tkotroco@gmail.com>
Subject: Gerner

Tim: I just left you a phone message that we consent to postponing the hearing set for next week. Barney

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Friday, April 27, 2018 9:23 AM
To: Krysundra Cannington
Subject: Re: Gerner 18-047-X
Attachments: ESA Solar-Postponement Request.pdf

Sunny,

Thank you for your email about next week's hearing. I know the Board is busy and I understand their need to postpone the second day. You may recall that we had specifically decided to set aside two days for this hearing in order to get it done at one time and not have to come back a month or two down the road. It makes little sense to begin this case on Tuesday and not finish it, only to have to come back a month or two later.

Therefore, I will be hand delivering this morning a letter requesting that the case be postponed and reset when both days can be accommodated by the Board. I called Barney Mowell yesterday afternoon after I received your email and he said he would check with his client about my request. He has not yet gotten back to me but I wanted to get my letter in ASAP for the Board's consideration.

Thank you and I will be stopping by in a few minutes.

Kind Regards,

Tim K.

Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Krysundra "Sunny" Cannington <kcannington@baltimorecountymd.gov>
Date: Thursday, April 26, 2018 at 11:22 AM
To: Timothy Kotroco <tkotroco@gmail.com>, barney Mowell <barneymowell@hotmail.com>, Peter Zimmerman

<peoplescounsel@baltimorecountymd.gov>
Subject: Gerner 18-047-X

Good morning Counsel,

As you know, we set this matter for hearing on Tuesday and Wednesday of next week, May 1 and 2. Unfortunately, one of our Board members has a conflict with the hearing on Wednesday. Therefore, we will be cancelling the Wednesday, May 2nd hearing. We will begin as scheduled on Tuesday, May 1, at 10:00 a.m.

Should this matter not conclude on Tuesday, additional hearing dates will be scheduled as necessary.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

Krysundra Cannington

From: Krysundra Cannington
Sent: Thursday, April 26, 2018 11:22 AM
To: tkotroco@gmail.com; barney Mowell; Peoples Counsel
Subject: Gerner 18-047-X

Good morning Counsel,

As you know, we set this matter for hearing on Tuesday and Wednesday of next week, May 1 and 2. Unfortunately, one of our Board members has a conflict with the hearing on Wednesday. Therefore, we will be cancelling the Wednesday, May 2nd hearing. We will begin as scheduled on Tuesday, May 1, at 10:00 a.m.

Should this matter not conclude on Tuesday, additional hearing dates will be scheduled as necessary.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

March 7, 2018

NOTICE OF POSTPONEMENT AND REASSIGNMENT

IN THE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
18-047-X 15637 York Road
8th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

This matter was scheduled for April 26, 2018 and has been postponed. By agreement of Counsel, this matter has been

REASSIGNED FOR: **MAY 1, 2018 AT 10:00 A.M. – Day 1; and MAY 2, 2018 AT 10:00 A.M. – Day 2**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

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- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in compliance with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hearing date unless in full compliance with Rule 2(c).
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Krysundra "Sunny" Cannington
Administrator

c:	Counsel for Petitioners	: Timothy Kotroco, Esquire
	Petitioner/Legal Owner	: Robert Gerner
	Petitioner/Lessee	: ESA Sparks Glenco, LLC
	Counsel for Protestants/Appellants	: H. Barnes Mowell, Esquire
	Protestants/Appellants	: William Mayo; Gorsuch's Retirement, Inc.; Sparks Glencoe Community Planning Council

Bruce Doak, Bruce E. Doak Consulting
Lynne Jones
Edd Matczuk
Al Rude
Nedda Pray
Rob Webster

Andrea Van Arsdale, Director/Department of Planning
Arnold Jablon, Director/PAI
Lawrence M. Stahl, Managing Administrative Law Judge
Michael Field, County Attorney, Office of Law
Nancy West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Appeals Board
Sent: Tuesday, March 06, 2018 8:48 AM
To: Peoples Counsel; Timothy M. Kotroco; barney Mowell
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Counsel,

Please be advised, for convenience, I will be scheduling this matter for hearing on both May 1st and 2nd. Should this matter complete in one day, the second day will be cancelled. If not, everyone will still have this matter fresh in their minds for Day 2. The notice will be issued as soon as possible.

Please let me know if you have any questions.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Monday, March 05, 2018 3:27 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; Timothy M. Kotroco <tkotroco@gmail.com>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington,

People's Counsel can be available on either May 1 or May 2nd. We just ask that you notify us of the hearing date as soon as possible. We are awaiting scheduling of a case at the Court of Special Appeals during the first two weeks of May and need to write to the Court to exclude this hearing date.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

Krysundra Cannington

From: Peoples Counsel
Sent: Monday, March 05, 2018 3:27 PM
To: Appeals Board; Timothy M. Kotroco; barney Mowell
Cc: Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington,

People's Counsel can be available on either May 1 or May 2nd. We just ask that you notify us of the hearing date as soon as possible. We are awaiting scheduling of a case at the Court of Special Appeals during the first two weeks of May and need to write to the Court to exclude this hearing date.

Rebecca M. Wheatley, Legal Secretary
People's Counsel for Baltimore County
105 West Chesapeake Avenue, Suite 204
Towson, Maryland 21204
(410) 887-2189 Direct Dial
(410) 887-2188 Office
(410) 823-4236 Fax

From: Appeals Board
Sent: Monday, March 05, 2018 3:19 PM
To: Timothy M. Kotroco <tkotroco@gmail.com>; Appeals Board <appealsboard@baltimorecountymd.gov>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Thank you Mr. Kotroco.

From: Timothy M. Kotroco [mailto:tkotroco@gmail.com]
Sent: Monday, March 05, 2018 3:04 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barney Mowell <barneymowell@hotmail.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Dear Ms. Cannington,

We are also available on May 1st or May 2nd. Thank you.

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

Krysundra Cannington

From: Timothy M. Kotroco <tkotroco@gmail.com>
Sent: Monday, March 05, 2018 3:04 PM
To: Appeals Board; barney Mowell
Cc: Peoples Counsel
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Dear Ms. Cannington,

We are also available on May 1st or May 2nd. Thank you.

Tim K.
Timothy M. Kotroco, Esquire
305 Washington Ave., Suite 502
Towson, Maryland 21204
410-299-2943

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Date: Monday, March 5, 2018 at 2:43 PM
To: barney Mowell <barneymowell@hotmail.com>
Cc: Timothy Kotroco <tkotroco@gmail.com>, Peter Zimmerman <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Thank you Mr. Mowell.

From: barney Mowell [mailto:barneymowell@hotmail.com]
Sent: Monday, March 05, 2018 2:34 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington: The appellants are available on May 1st or 2nd for this appeal. thanks, Barney Mowell

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Monday, March 05, 2018 2:34 PM
To: Appeals Board
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Ms. Cannington: The appellants are available on May 1st or 2nd for this appeal. thanks, Barney Mowell

1.

Krysundra Cannington

From: Appeals Board
Sent: Wednesday, February 28, 2018 1:34 PM
To: 'barney Mowell'; tkotroco@gmail.com; Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good afternoon Counsel,

Since it does not appear you are all available on the same dates, I offer the following dates: May 1, 2, 3, 15, 16 or 17, 2018.

I kindly request a response by the end of the day on Monday, March 5th.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Wednesday, February 28, 2018 1:03 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

We are available for the hearing on April 19th. thanks, Barney Mowell

---

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, February 27, 2018 2:55 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

yes, thanks. I am waiting to hear back from one person, and will e-mail you as soon as I do. Barney Mowell

---

From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Tuesday, February 27, 2018 2:49:07 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Mr. Mowell,

This is a reminder that I need to hear back from you by the close of business tomorrow (Wednesday, February 28, 2018) regarding the dates offered in April. Please respond whether these dates work for you and your clients. If the proposed dates do not work, I will offer additional dates. However, if I do not hear back from you, this matter will be scheduled and no further postponements will be granted.

Thank you in advance for your prompt response.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Krysundra Cannington

From: barney Mowell <barneymowell@hotmail.com>
Sent: Tuesday, February 27, 2018 2:55 PM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

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From: Appeals Board <appealsboard@baltimorecountymd.gov>
Sent: Tuesday, February 27, 2018 2:49:07 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Mr. Mowell,

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Thank you in advance for your prompt response.

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com

Krysundra Cannington

From: Appeals Board
Sent: Tuesday, February 27, 2018 2:49 PM
To: barneymowell@hotmail.com
Cc: Peoples Counsel; tkotroco@gmail.com
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Mr. Mowell,

This is a reminder that I need to hear back from you by the close of business tomorrow (Wednesday, February 28, 2018) regarding the dates offered in April. Please respond whether these dates work for you and your clients. If the proposed dates do not work, I will offer additional dates. However, if I do not hear back from you, this matter will be scheduled and no further postponements will be granted.

Thank you in advance for your prompt response.

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Administrator
Board of Appeals of Baltimore County
410-887-3180

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board <appealsboard@baltimorecountymd.gov>; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

Krysundra Cannington

From: Peoples Counsel
Sent: Friday, February 23, 2018 3:00 PM
To: Appeals Board; barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel
Subject: RE: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

People's Counsel is available for all dates **EXCEPT April 18th.**

Rebecca Wheatley, Legal Secretary
Office of People's Counsel
(410) 887-2188

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: barneymowell@hotmail.com; tkotroco@gmail.com
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

I am in receipt of a request for postponement filed by Mr. Mowell on February 9, 2018. Please be advised the Board has decided to grant the requested postponement. In an effort to reschedule this matter to a date that is agreeable to everyone, I offer the following dates that are currently available on the Board's calendar:

April 10, 12, 17, 18, 19, 2018.

Any hearing scheduled would begin at 10:00 a.m.

Please be advised I cannot hold these dates beyond the close of business Wednesday, February 28, 2018.

I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

Krysundra Cannington

From: Tim Kotroco <tkotroco@gmail.com>
Sent: Friday, February 23, 2018 9:31 AM
To: Appeals Board
Subject: Re: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Sunny,

All dates are fine except for the 19th. Thank you.

Tim

Timothy M. Kotroco, Esq.
305 Washington Ave. Suite 502
Towson, MD 21204
Cell: 410-299-2943

On Feb 22, 2018 7:39 AM, "Appeals Board" <appealsboard@baltimorecountymd.gov> wrote:

Good morning Counsel,

I am in receipt of a request for postponement filed by Mr. Mowell on February 9, 2018. Please be advised the Board has decided to grant the requested postponement. In an effort to reschedule this matter to a date that is agreeable to everyone, I offer the following dates that are currently available on the Board's calendar:

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I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

Thank you,

Sunny

Krysundra "Sunny" Cannington

Administrator

Board of Appeals of Baltimore County

The Jefferson Building, Suite 203

105 W. Chesapeake Avenue

Towson, MD 21204

Phone: 410-887-3180

Fax: 410-887-3182

Confidentiality Statement

Krysundra Cannington

From: Appeals Board
Sent: Thursday, February 22, 2018 9:39 AM
To: 'barneymowell@hotmail.com'; tkotroco@gmail.com
Cc: Peoples Counsel
Subject: Robert K. Gerner aka ESA Sparks Glenco 18-047-X

Good morning Counsel,

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April 10, 12, 17, 18, 19, 2018.

Any hearing scheduled would begin at 10:00 a.m.

Please be advised I cannot hold these dates beyond the close of business Wednesday, February 28, 2018.

I look forward to your prompt response. Should I not receive a response by the close of business on Wednesday, I will schedule this matter for the date most convenient to the Board.

Thank you,

Sunny

Krysundra "Sunny" Cannington
Administrator
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, MD 21204
Phone: 410-887-3180
Fax: 410-887-3182

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com

February 9, 2018

Board of Appeals of Baltimore County
105 W. Chesapeake Avenue
Suite 203
Towson, Maryland 21204

Re: In the Matter of: Robert K. Gerner - Legal Owner
ESA Sparks Glenco, LLC- Lessee
15637 York Road
8th Election District, 3rd Councilmanic District
Case No: 18-047-X
Hearing Date: April 26, 2018 at 10 a.m.

Ladies and Gentlemen:

I represent the Protestants/Appellants William Mayo, Gorsuch's Retirement, Inc. and the Sparks Glencoe Community Planning Council in the captioned case. I have been advised that William Mayo is scheduled to be in Cleveland, Ohio during the week of April 23rd, for mandatory training related to his employment. As he will be out of town on the scheduled hearing date of April 26th, I respectfully request that the hearing date be postponed.

Thank you for your cooperation in this regard.

Very truly yours,

H. Barnes Mowell

Certificate of Service

I HEREBY CERTIFY that a copy of this Letter was mailed by first class mail this 9th day of February 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204, Peoples' Counsel for Baltimore County, 105 W. Chesapeake Avenue, Suite 204, Towson, Maryland 21204, Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120, Edd J. Matczuk, 930-932 Upper Glencoe Road, Glencoe, Maryland 21152, Al Rude, 15801 York Road, Sparks, Maryland 21152, William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Nedda Pray, 2224 Traceys Road, Sparks, Maryland 21152, and Rob Webster, 811 Upper Glencoe Road, Sparks, Maryland 21152.

H. Barnes Mowell

oard of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
FAX: 410-887-3182

January 24, 2018

NOTICE OF ASSIGNMENT

HE MATTER OF: Robert K. Gerner – Legal Owner
ESA Sparks Glenco, LLC – Lessee
15637 York Road
8th Election District; 3rd Councilmanic District

18-047-X

Re: Petition for Special Exception pursuant to the BCZR to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

12/21/17 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, subject to conditions.

ASSIGNED FOR: **APRIL 26, 2018 AT 10:00 A.M.**

LOCATION: Hearing Room #2, Second Floor, Suite 206
Jefferson Building, 105 W. Chesapeake Avenue, Towson

NOTICE:

- This appeal is an evidentiary hearing. Parties should consider the advisability of retaining an attorney.
- Please refer to the Board's Rules of Practice & Procedure, Appendix B, Baltimore County Code.
- No postponements will be granted without sufficient reasons; said requests must be in writing and in cor with Rule 2(b) of the Board's Rules. No postponements will be granted within 15 days of scheduled hea unless in full compliance with Rule 2(c).
- If you have a disability requiring special accommodations, please contact this office at least one week prior date.
- Parties must file one (1) original and three (3) copies of all Motions, Memoranda, and exhibits (includin PowerPoint) with the Board unless otherwise requested.
- Projection equipment for digital exhibits is available by request. A minimum of forty-eight (48) h required. Supply is limited and not guaranteed.

For further information, including our inclement weather policy, please visit www.baltimorecountymd.gov/Agencies/appeals/index.html

Krysundra "Sunny" Cannington
Administrator

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 22, 2018

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on January 18, 2018. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

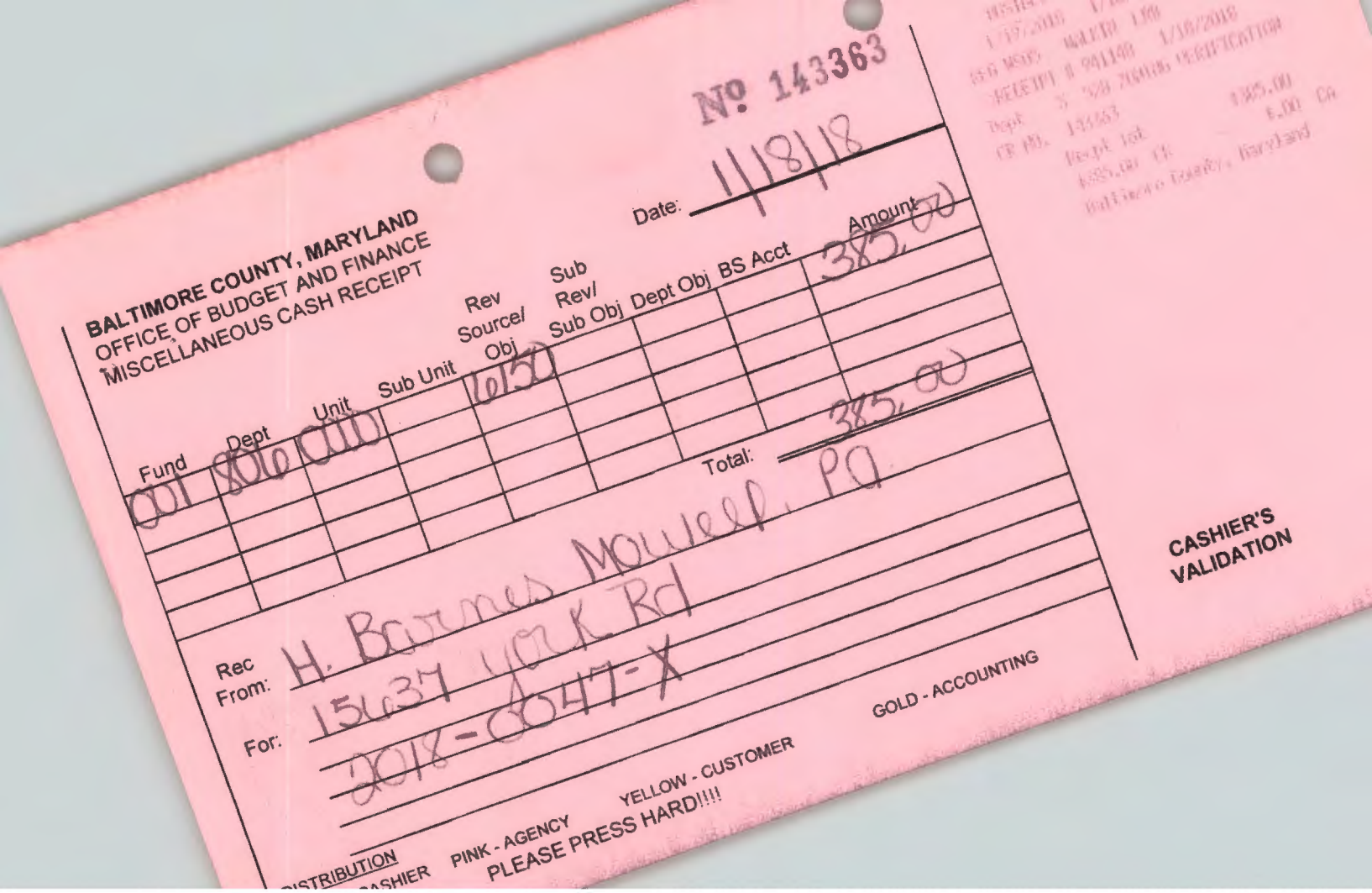
Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c: Baltimore County Board of Appeals
People's Counsel
H. Barnes Mowell, P.A., 16925 York Road, Monkton, MD 21111
Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152

Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152



BALTIMORE COUNTY, MARYLAND
OFFICE OF BUDGET AND FINANCE
MISCELLANEOUS CASH RECEIPT

No 143363

Date: 11/8/18

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	000		6150				385.00

Total: 385.00

Rec From: H. Barnes Mowell, PA

For: 15637 York Rd
2018-00477-X

DISTRIBUTION
CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING
PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com
January 18, 2018

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Suite 205
Towson, Maryland 21204

via Hand-Delivery

Re: Notice of Appeal of OAH Decision
Case NO: 2018-0047-X

Dear Mr. Jablon:

I have enclosed a Notice of Appeal of the Opinion and Order of the Office of Administrative Hearings in the captioned case, as well as my check for the $385 filing fee.

Should you have any questions, please contact me.

Very truly yours,

H. Barnes Mowell

cc: Baltimore County Board of Appeals
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioners	*	CASE NO: 2018-0047-X

* * * * * * *

NOTICE OF APPEAL

Please enter my appearance as counsel on behalf of William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Gorsuch's Retirement, Inc., 921 Upper Glencoe Road, Sparks, Maryland 21152, and the Sparks Glencoe Community Planning Council, Box 937, Sparks, Maryland 21152. Please note the appeal by William Mayo, Gorsuch's Retirement, Inc., and the Sparks Glencoe Community Planning Council to the Baltimore County Board of Appeals of the Opinion and Order entered in the captioned case by the Office of Administrative Hearings on December 21, 2017.

H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111
410-329-6488
barneymowell@hotmail.com

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 19th day of January 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

H. Barnes Mowell

H. BARNES MOWELL, P.A.
Attorney At Law
16925 York Road
Monkton, Maryland 21111
Phone: 410-329-6488 Fax: 410-357-4663
barneymowell@hotmail.com

January 18, 2018

Arnold Jablon, Director
Department of Permits, Approvals & Inspections
111 W. Chesapeake Avenue
Suite 205
Towson, Maryland 21204

via Hand-Delivery

Re: Notice of Appeal of OAH Decision
Case NO: 2018-0047-X

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Should you have any questions, please contact me.

Very truly yours,

H. Barnes Mowell

cc: Baltimore County Board of Appeals
Office of Administrative Hearings

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
Petitioners	*	CASE NO: 2018-0047-X

* * * * * * *

NOTICE OF APPEAL

Please enter my appearance as counsel on behalf of William Mayo, 921 Upper Glencoe Road, Sparks, Maryland 21152, Gorsuch's Retirement, Inc., 921 Upper Glencoe Road, Sparks, Maryland 21152, and the Sparks Glencoe Community Planning Council, Box 937, Sparks, Maryland 21152. Please note the appeal by William Mayo, Gorsuch's Retirement, Inc., and the Sparks Glencoe Community Planning Council to the Baltimore County Board of Appeals of the Opinion and Order entered in the captioned case by the Office of Administrative Hearings on December 21, 2017.

H. Barnes Mowell, P.A.
16925 York Road
Monkton, Maryland 21111
410-329-6488
barneymowell@hotmail.com

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed this 19th day of January 2018 to Timothy Kotroco, Esquire, 305 Washington Avenue, Suite 502, Towson, Maryland 21204.

H. Barnes Mowell

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

December 21, 2017

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: Petitions for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Enclosed please find a copy of the decision rendered in the above-captioned matter.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Office of Administrative Hearings at 410-887-3868.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB:sln
Enclosure

Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152
Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY Case No. 2018-0047-X
Petitioners	*	

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility

would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of…scenic routes and scenic views" be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this **21st** day of **December, 2017,** by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

ORDER RECEIVED FOR FILING

Date 12/21/17

By SLN

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

ORDER RECEIVED FOR FILING
Date 12/21/17
By sln

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

ORDER RECEIVED FOR FILING
Date 12/21/17
By

C:\Users\jwisnom\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\XEGA1Q0V\ZAC 18-0047-X 15637 York Road.doc

12-18-17

TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

January 12, 2018

The Honorable John E. Beverungen
Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X, ESA Sparks Glenco, LLC
Letter of Clarification of Restriction #4

Dear Judge Beverungen:

I write to you regarding your recent order issued the 21st day of December, 2017, in Case No. 2018-0047-X. (Copy attached) Your Order approved our Special Exception request to locate a solar farm on our property located at 15637 York Road in Sparks, Maryland.

Restriction number 4 of your decision states that my client is prohibited from removing any trees associated with the installation and/or operation of our solar facility. The testimony at the hearing was very clear. My client stated that it would not be necessary to remove any trees in the field where the panels would be installed. In that we respect, we understand your restriction.

However, it may very well be necessary for my client to have to remove trees or bushes in order to install the driveway to our solar panels from York Road. You will recall that we are located more than 1,200 feet off of York Road and it may be necessary to remove some trees in order to install or our access road and/or for the installation of the telephone poles that will carry our newly generated electricity out to the York Road grid.

Therefore, I am requesting a simple clarification of your decision and specifically restriction number 4, that my client shall be permitted to remove any trees necessary in order to install the access road and telephone poles leading from York Road to our solar panel field. If you agree with this interpretation, I respectfully request that you sign the statement at the bottom of this letter affirming same. Thank you for your time and consideration of this matter.

This letter is intended to be for the purpose of clarifying your recent decision and is not intended to be a request for a modification of your decision. Therefore, by signing below it is acknowledged that the appeal period associated with this case shall not be extended beyond the

30 days as stated within your original decision and yourRules of Procedure. I will leave it to your further discretion as to whether this request should be considered a modification which might require an additional haring and an amended Order.

Very Truly Yours,

Timothy M. Kotroco

Timothy M. Kotroco

The applicant, ESA Sparks Glencoe LLC shall be permitted to remove any and all trees and shrubs necessary to install their access driveway and telephone poles from York Road to their solar panel facility. This request shall be treated as a clarification and accordingly, the original 30 day appeal period shall apply.

1-16-2018

Date

John E. Beverungen, ALJ

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15637 York Road **which is presently zoned** RC 7

Deed References: 32699/00228 10 Digit Tax Account # 0802004200

Property Owner(s) Printed Name(s) Robert K. Gerner

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1.____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

See Attached.

3.____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

ESA Sparks Glenco, LLC c/o Brian Quinlan, Manager
Name- Type or Print

Signature

4155 St Johns Parkway, Suite 1100, Sanford, Florida
Mailing Address City State

32771 / 407-268-6455 / brian@calvertenergy.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Robert K. Gerner /
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Signature # 2

15637 York Road Sparks MD
Mailing Address City State

21152 / 443-465-5803 / kip.gerner@gernerenrgy.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Timothy M. Kotroco
Name- Type or Print

Signature

305 Washington Ave. Towson MD
Mailing Address City State

21204 / 410-299-2943 / TKotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Brian Quinlan
Name – Type or Print

Signature

12921 Buckeye Drive Gaithersburg MD
Mailing Address City State

20878 / 301-208-0153 / brian@calvertenergy.com
Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 12/24/17
By

CASE NUMBER 2018-0047-X **Filing Date** 8/10/2017 **Do Not Schedule Dates:** **Reviewer**

REV. 10/4/11

Petition Requested

Special Exception to approve a 9 acre +- Solar Facility on a portion of a 30. 723 acre parcel of land in an RC 7 zone.

Item #004

CASE #2018-0077-X

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

Zoning Description

15637 York Road- 30.723 Acres
Eighth Election District Third Councilmanic District
Baltimore County, Maryland

Beginning at a point on the east side of York Road, 250 feet northwesterly of the centerline extension of Elizabeth Court, thence leaving York Road and running with and binding on the outlines of the subject property, the fourteen following courses and distances, viz.

1) North 81 degrees 39 minutes 52 seconds East 311.00 feet
2) South 65 degrees 26 minutes 08 seconds East 924.10 feet
3) North 45 degrees 43 minutes 52 seconds East 696.50 feet
4) South 46 degrees 35 minutes 08 seconds East 1157.00 feet
5) South 33 degrees 14 minutes 38 seconds West 70.31 feet
6) South 42 degrees 04 minutes 54 seconds West 115.77 feet
7) South 33 degrees 44 minutes 57 seconds West 105.64 feet
8) North 64 degrees 46 minutes 27 seconds West 774.81 feet
9) North 64 degrees 08 minutes 22 seconds West 216.87 feet
10) North 84 degrees 19 minutes 37 seconds West 329.26 feet
11) South 01 degrees 50 minutes 28 seconds East 233.31 feet
12) South 72 degrees 58 minutes 22 seconds West 283.65 feet
13) South 42 degrees 04 minutes 19 seconds West 297.72 feet and
14) South 83 degrees 22 minutes 00 seconds West 376.54 feet to a point on the east side of York Road, thence binding on the east side of York Road and continuing to run and bind on the outlines of the subject property, the four following courses and distances, viz.
15) North 11 degrees 52 minutes 15 seconds West 547.50 feet
16) North 13 degrees 54 minutes 15 seconds West 100.09 feet
17) North 16 degrees 31 minutes 15 seconds West 181.08 feet and
18) North 17 degrees 48 minutes 15 seconds West 207.41 feet to the point of beginning

Containing 30.723 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 531
REGISTERED
PROPERTY LINE SURVEYOR

Land Use Expert and Surveyor

Item #0047

CASE#2018-0047-X

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

November 14, 2017

NEW NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District – 3rd Councilmanic District
Legal Owners: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.

Hearing: Monday, December 18, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director

AJ:kl

C: Timothy Kotroco, 305 Washington Avenue Avenue, Towson 21204
ESA Sparks Glenco, LLC, 4155 St. Johns Parkway, Ste. 1100, Sanford FL 32771
Robert Gerner, 15637 York Road, Sparks 21152
Brian Quinlan, 12921 Buckeye Drive, Gaithersburg 20878

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY TUES., NOVEMBER 28, 2017**
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

CERTIFICATE OF POSTING

November 27, 2017

Re:
Zoning Case No. 2018-0047-X
Legal Owner: Robert Gerner
Hearing date: December 18, 2017

Baltimore County Department of Permits, Approvals & Inspections
County Office Building
111 West Chesapeake Avenue, Room 111
111 West Chesapeake Avenue Towson, MD 21204

Attention: Kristen Lewis

Ladies and Gentlemen,

This letter is to certify under the penalties of perjury that the two necessary signs required by law were posted conspicuously on the property located at **15637 York Road.**

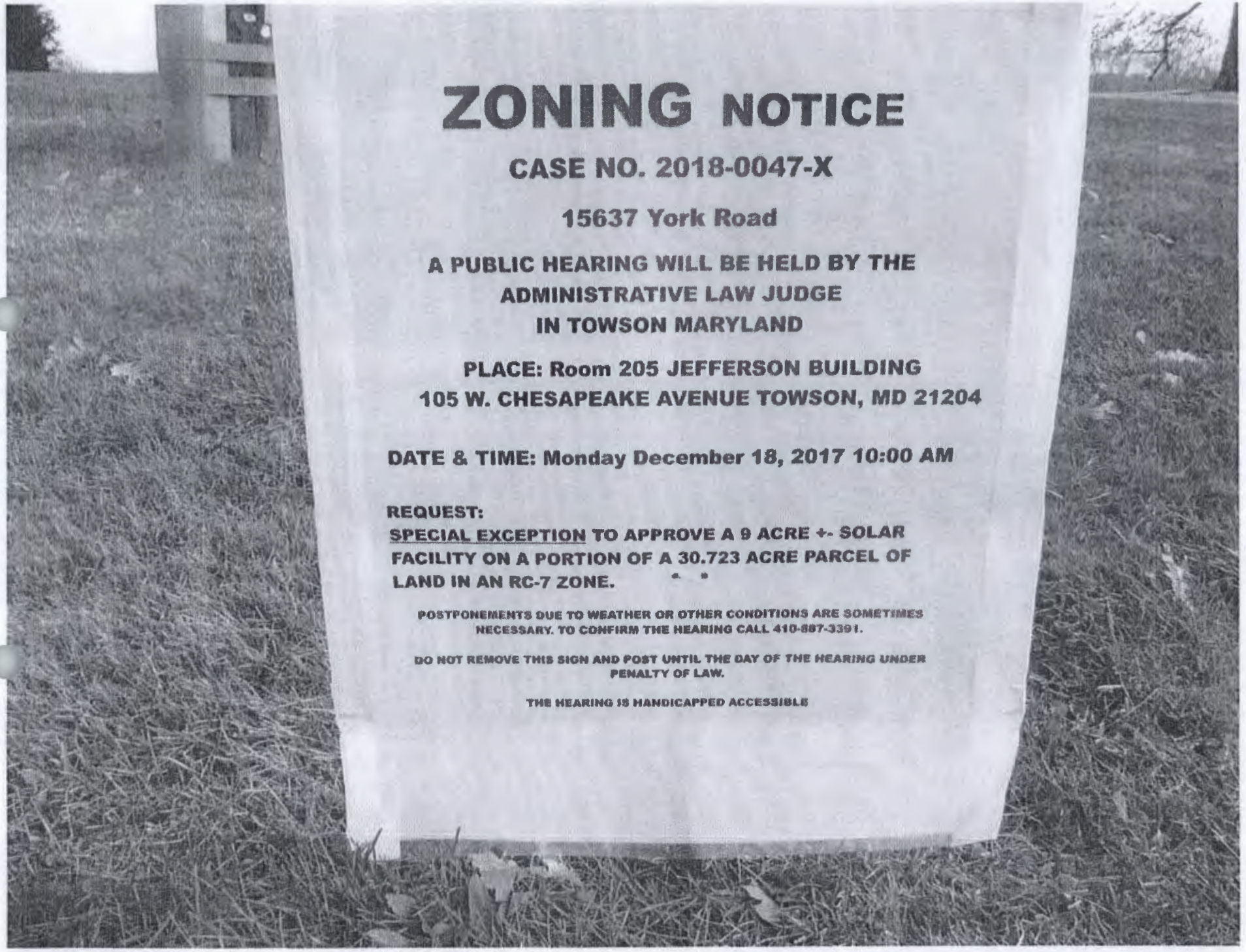
The sign was posted on **November 27, 2017.**

Sincerely,

Bruce E. Doak
MD Property Line Surveyor #531

See the attached sheet(s) for the photos of the posted sign(s)

Land Use Expert and Surveyor


ZONING NOTICE
CASE NO. 2018-0047-X
15637 York Road
A PUBLIC HEARING WILL BE HELD BY THE
ADMINISTRATIVE LAW JUDGE
IN TOWSON MARYLAND
PLACE: Room 205 JEFFERSON BUILDING
105 W. CHESAPEAKE AVENUE TOWSON, MD 21204
DATE & TIME: Monday December 18, 2017 10:00 AM
REQUEST:
SPECIAL EXCEPTION TO APPROVE A 9 ACRE +- SOLAR FACILITY ON A PORTION OF A 30.723 ACRE PARCEL OF LAND IN AN RC-7 ZONE.
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOMETIMES NECESSARY. TO CONFIRM THE HEARING CALL 410-887-3391.
DO NOT REMOVE THIS SIGN AND POST UNTIL THE DAY OF THE HEARING UNDER PENALTY OF LAW.
THE HEARING IS HANDICAPPED ACCESSIBLE

ZONING NOTICE
7365

RE:	PETITION FOR SPECIAL EXCEPTION 15637 York Road; E/S York Road, 250' N of c/line of Elizabeth Court 8th Election & 3rd Councilmanic Districts Legal Owner(s): Robert K. Gerner Contract Purchaser(s): ESA Sparks Glenco, LLC by Brian Quinlan Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2018-047-X

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

ENTRY OF APPEARANCE

Pursuant to Baltimore County Charter § 524.1, please enter the appearance of People's Counsel for Baltimore County as an interested party in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and the passage of any preliminary or final Order. All parties should copy People's Counsel on all correspondence sent and all documentation filed in the case.

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Carole S Demilio

CAROLE S. DEMILIO
Deputy People's Counsel
Jefferson Building, Room 204
105 West Chesapeake Avenue
Towson, MD 21204
(410) 887-2188

RECEIVED
AUG 17 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August, 2017, a copy of the foregoing Entry of Appearance was mailed to Brian Quinlan, 12921 Buckeye Drive, Gaithersburg, Maryland 20878 and Timothy Kotroco, Esquire, 305 Washington Avenue, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

KEVIN KAMENETZ
County Executive

ARNOLD JABLON
Deputy Administrative Officer
Director, Department of Permits, Approvals & Inspections

December 14, 2017

Robert K Gerner
15637 York Road
Sparks MD 21152

RE: Case Number: 2018-0047-X, Address: 15637 York Road

Dear Mr. Gerner:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on August 10, 2017. This letter is not an approval, but only a **NOTIFICATION.**

The Zoning Advisory Committee (ZAC), which consists of representatives from several approval agencies, has reviewed the plans that were submitted with your petition. All comments submitted thus far from the members of the ZAC are attached. These comments are not intended to indicate the appropriateness of the zoning action requested, but to ensure that all parties (zoning commissioner, attorney, petitioner, etc.) are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case. All comments will be placed in the permanent case file.

If you need further information or have any questions, please do not hesitate to contact the commenting agency.

Very truly yours,

W. Carl Richards, Jr.
Supervisor, Zoning Review

WCR: jaw

Enclosures

c: People's Counsel
ESA Sparks Glenco, LLC, Brian Quinlan, 4155 St Johns Parkway, Suite 1100
Sanford, Florida 32771
Timothy M Kotroco, 305 Washington Avenue, Suite 502, Towson MD 21204

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 8/14/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 8/14/17. A field inspection and internal review reveals that an entrance onto MD45 consistent with current State Highway Administration guidelines is required. ~~As a condition of approval for~~ , Case Number 2018-0047-X

Special Exception
Robert K. Gerner
15637 York Road
MD45

The applicant must contact the State Highway Administration to obtain an entrance permit. Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

* Applicant must contact Mr. Brian Cneiting to obtain a residential or farm entrance permit. He can be reached at 410-329-6752

WW/RAZ

Mr. Robert K. Gerner / 15637 York Road, Sparks, MD 21152

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Mr. Brian Cneiting, SHA RTE - Hereford Shop
Bruce E. Doak Consulting, LLC / 3801 Baker Schoolhouse Road
Freeland, MD 21053

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: August 23, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2017
Item No. 2018-0047-X

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If Special Exception is granted a Landscape Plan is required per the requirements of the Landscape Manual, Bill No.37-17 and the CMDP.

Specific Landscape comments:
1 .York Road is a Baltimore County Scenic Route,
2. Perimeter Landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Additional Landscape buffers may be required depending on the adjacent subject properties existing topography, Scenic Views, etc.,
5. Solar panels are considered a utility and should be designed and located to harmonize with surrounds and create the least visual impact,
6. More comments may be rendered during review of the Landscape Plan.

* * * * *

VKD: CEN
cc: file

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/20/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-047

INFORMATION:
Property Address: 15637 York Road
Petitioner: Robert K. Gerner
Zoning: RC 7
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for a 9 acre solar facility.

A site visit was conducted on August 23, 2017.

York Road is a Baltimore County Scenic Route at this location. Due to topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially properties.

The Department has no objection to granting the requested zoning relief conditioned upon the following:

The Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations (BCZR), as applicable, upon successfully addressing the comments listed below.

- Pursuant to BCZR §4E-104.5 the photovoltaic arrays may not exceed 20 feet in height without variance relief. The Department recommends any additional height is inconsistent with the spirit and intent of the BCZR pursuant to §1A08.4.A and will not support such relief. Petitioners shall amend the plan to show a typical array structure detail at no more than 20' above the natural finished grade.
- Petitioners shall note on the plan that the proposed solar facility will produce not more than 2 megawatts of alternating current.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4E-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.

- At the time of building permit application the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by written confirmation that the facility will not be detrimental to the adjacent residential properties pursuant to BCZR §502.1.A.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.

For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Kaylee Justice
Brian Quinlan
Timothy M. Kotroco
Office of the Administrative Hearings
People's Counsel for Baltimore County

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2018-0047-X
DATE 12-18-2017

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E- MAIL
Timothy M. Kotroco	305 Washington Avenue, Suite 502	Towson, MD 21204	Tkotroco@gmail.com
Brian Quinlan	12921 Buckeye Dr	Gaithersburg, MD 20878	brian@calvertenergy.com
Wayne Martin	936 Ridgebrook Road	Sparks, MD 21152	wayne.martin@KCE.com
Tom Weigand	1244 Ritchie Highway, Suite 19	Arnold, MD 21012	TWEIGAND@TREFFERGROUP.COM
Bruce Doak	3801 Bakers Schoolhouse Road	Freeland MD 21053	DOAKFARM@GMAIL.COM
Robert Gerwer	15637 York Rd	Sparks MD 21152	Kip.Gerwer@gerwerenergy.com

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2018-0047-X
DATE 12-18-2017

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
LYNNE JONES	815 STABLERS CHURCH RD	PARKTON MD 21120	dryad101@hotmail.com
EDD J. MATCZUK	930-932 UPPER GLENCOE RD	GLENCOE, MD 21152	EDDMATCZUK@GMAIL.COM
AL RUDE	15801 York RD	SPARKS MD 21152	ARUDE@GATEGROUP.com
William MAYO	921 Upper Glencoe Rd	Sparks Md 21152	BillGMayo@GMail.com
Nedda Pray	2224 Traceys Rd	Sparks MD 21152	neddacreus@Gmail.com
Ed Webster	811 Upper Glencoe Rd	Sparks MD 21152	webster4625@comcast.net

Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

9/11/17
OK
S

September 7, 2017

Arnold Jablon
Baltimore County Office of Zoning
111 West Chesapeake Avenue, Room 111
Towson, Maryland 21204

Subject: Zoning Hearing Case number 2018-0047-X

To Whom It May Concern:

We would like to postpone the zoning hearing for case number 2018-0047-X until December 2017. We have been pursuing community outreach with neighbors and local community associations and we would like more time to coordinate these efforts. The community outreach is critically important to the relationship with the local community and ultimately the success of the project. The additional time will allow us to appropriately interface with the community and provide them with information about the project. I appreciate your consideration.

Sincerely,

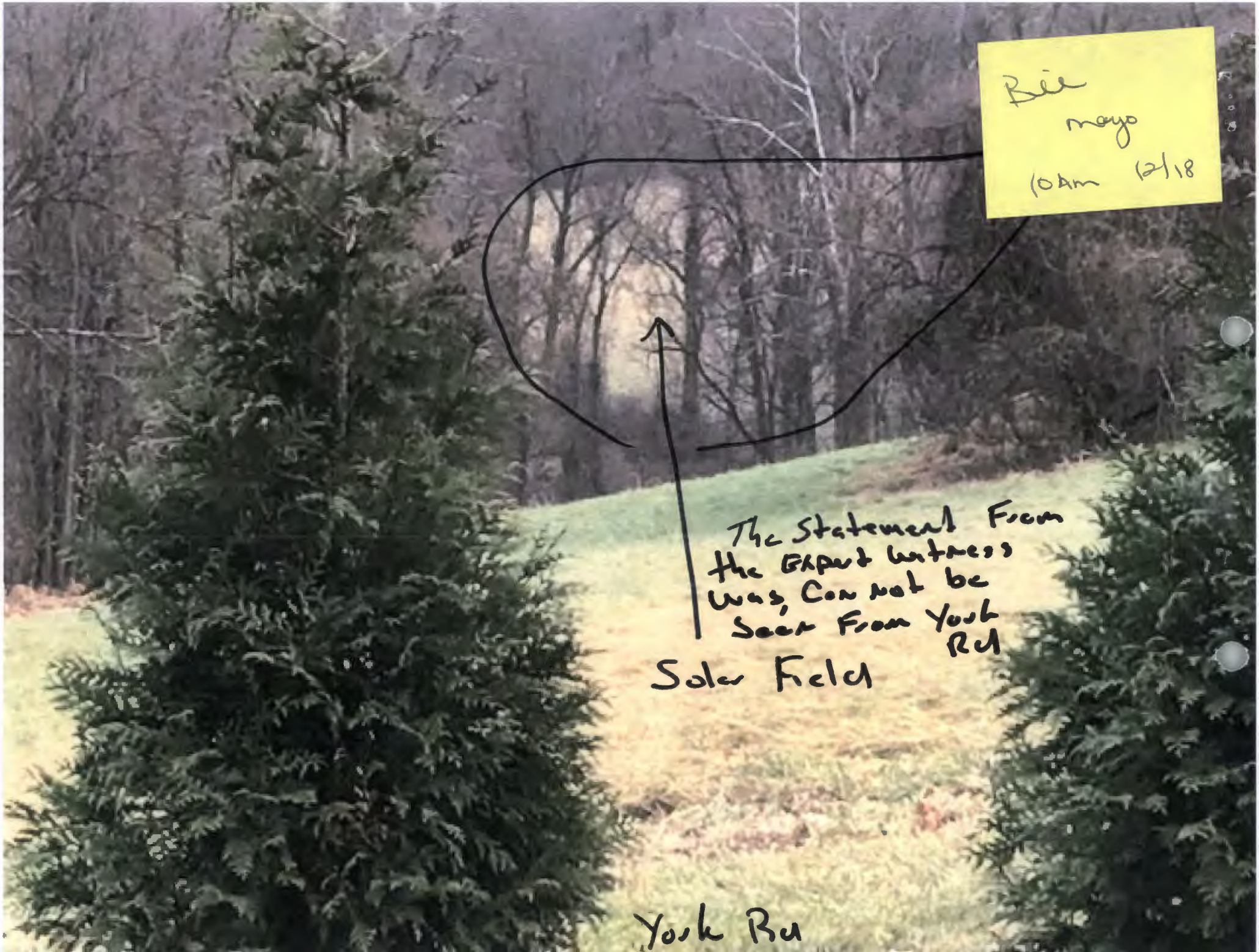
Bruce E. Doak

Land Use Expert and Surveyor

John E. Beverungen

From: Bill Mayo <billgmayo@gmail.com>
Sent: Tuesday, December 19, 2017 12:20 PM
To: John E. Beverungen
Subject: Case 2018-0047

Sent from my iPhone
Hello your honor. My name is Bill Mayo and i was in your court room yesterday concerning the solar field for the Gerner property. First let me thank you for the abundance of patience and respect you showed toward me yesterday. Without that I would have really rambled on. I have never done anything like that before and i'm sure it showed.
At the end of the hearing there was discussion as to weather the solar field could be seen from York road. My neighbor Mr Matczuk will drop off a photo at you office that i took this morning showing the solar field in the background. I hope you will have an opportunity to review it before making your decision.
Thanks again for your help and if you have any questions or just want to stop by the farm you are always welcome.


Bill
mayo
10AM 12/18
The Statement From
the Expert Witness
Was, Can not be
Seen From York
Rd
Solar Field
York Rd

Lisa Arthur
19500 Burke Rd
White Hall, MD 21161
lisaarthur19500@hotmail.com
443-695-3522

December 17, 2017

The Honorable Judge John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, MD 212204

Re: Case 2018-0047-X

Dear Honorable Judge Beverungen:

I am writing in opposition of the special exception for the Solar Facility at 15637 York Rd, Sparks MD.

I feel there needs to be more of a balance between the benefits of solar energy production with the potential impact of solar energy-producing facilities upon the County's land use policies, particularly in resource conservation and agricultural zones, as well as in commercial and industrial manufacturing zones where the impact of such facilities on surrounding residential communities must be considered.

After all, Baltimore County has spent millions of taxpayer dollars to preserve over 65,000 acres of rural land. This land should always be protected and farms already in legacy programs bought with taxpayer dollars should never be considered for this type of land use!

We should also consider the experiences of other Counties and States that have already started to charter these types of projects.

In Kent County, along a road that was once the main route to Philadelphia, Apex Clean Energy wants to install solar panels across more than 300 acres of farmland.

The facility, named Mills Branch Solar, would generate up to 60 megawatts of power — enough for every household in the county says officials for the Charlottesville-based company. They call the site ideal because it doesn't require any clearing, has no environmental concerns and is close to a transmission line.

The problem for Kent officials and residents isn't that it's a massive solar farm - it's that it's not in the right place.

The county studied how it might approach proposals for renewable energy generation back in 2010, and again more recently as farmers began receiving calls from solar companies, say Amy Moredock, who is the county planning director.

With the support of concerned residents, county officials set zoning rules encouraging such facilities to go in an area zoned for commercial and industrial use - not on agricultural land.

"It's not that you can't have solar," said Janet Christensen-Lewis, vice chairwoman of the alliance. "Our farmland is precious."

In Allegany, Dan's Mountain Wind Force wants to build 17 wind turbines along the county's highest ridge.

The group, a subsidiary of Laurel Renewable Partners LLC in Greensburg, Pa., originally planned more, but scaled back amid eight years of back-and-forth with Allegany officials concerned about impacts to scenic mountain vistas and the county's 911 communications antenna.

The county denied zoning approval for the project last December.

In Talbot County, the County Council imposed a temporary ban on new solar farms to gain time to craft zoning preferences.

In New Jersey, officials adopted incentives for developing solar farms on brownfields and limits on development of large-scale projects on farmland. That helped to stabilize the industry, said Fred Rohs, general manager for energy production for Marina Energy, which owns the solar farm in Hebron.

The Hebron project is one of the biggest in the state, but it had a smooth permitting process. And with a good fence that screens it from surrounding forest and field, Rohs said, he hasn't heard any complaints from neighbors!

The Maryland Farm Bureau is surveying its membership about solar farms on agricultural land, with some disagreement to sort out: While some farmers oppose the loss of tillable land, others want the stable income of a solar lease.

There are signs that not all of the hundreds of acres of solar panels on the table will actually materialize. The flood of solar power supply to the state has cut the income that companies can earn from renewable energy credits. Because the state is expected to exceed a goal that 0.7 percent of its electricity come from solar this year, the prices of the credits are expected to fall from $120 to $20 this year. So there is no rush for Northern Baltimore County to get in this race.

I support renewable energy projects but I think that a Solar Facility in a rural area that isn't helping to provide energy to the agricultural operation of the farm is in direct conflict with the County's preservation efforts. I'd like to see the Baltimore County take similar actions as Talbot County and imposed a temporary ban on new solar farms to gain time to craft zoning preferences

and New Jersey by imposing incentives for developing solar farms on brownfields and limits on development of large-scale projects on farmland.

For this reason and for all the other reasons presented to you today from our community, I respectfully request that the zoning variance for 15637 York Rd, Sparks MD be denied as proposed solar facility is not a good fit for the Sparks community.

Sincerely,

Lisa Arthur

Sparks-Glencoe Community Planning Council
P.O. Box 937, Sparks, MD 21152

December 11, 2017

The Honorable John E. Beverungen
Administrative Law Judge
The Jefferson Building
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X
15637 York Road
8th Election District-3rd Councilmanic District
Legal Owner: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glencoe, LLC
Hearing Date: December 18, 2017
and
Case No. 2018-0072-X
Southeast side of Graystone Road, southwest of Old York Road
7th Election District – 3rd Councilmanic District
Legal Owner: Jerry Phillips
Contract Purchaser/Lessee: Forefront Power, LLC
Hearing Date: December 14, 2017

Dear Judge Beverungen:

The Sparks-Glencoe Community Planning Council (SGCPC) is submitting this letter regarding the two matters referenced above, the Gerner and Graystone Road cases respectively. The purpose of this letter is twofold. First, we want to state the reasons why we oppose the special exception requests in both cases. Secondly, without intending to minimize our opposition, we want to request two very important limitations in the event that the special exceptions are granted.

These are the first two cases filed under the recently passed Council Bill 37-17 which permits commercial solar power facilities in RC zones. These facilities are euphemistically referred to as "solar farms", but they are not farms and they are not agricultural. SGCPC as an organization, and its many members and supporters, strongly endorse solar power as a wonderful alternative to fossil fuel based power. The issue here is not solar power *per se*, it is solar power on prime agricultural land which could be used for farming or which could be placed in conservation easement. It also must be understood that our opposition is not directed at solar power systems which are intended to primarily serve a home or an ongoing agricultural enterprise.

Bill 37-17 was passed in the face of strong opposition by the SGCPC, the North County Community Association, the Valleys Planning Council, as well as Third District residents and their Councilman. There were a number of reasons for this opposition. First, it was viewed as an effort at commercial development in RC zones which citizen groups have been fighting for decades. The proponents of the bill were the traditional development forces.

Secondly, the bill was rushed through the Council and passed over the Fourth of July weekend with no effort to study and understand the long term effects of this development. Witnesses, including former State Senator George Della, advocated for a community solar pilot project. This project would have served as a preliminary test project so that the effects could have been studied. Instead, the Bill provides for a study to be made one year **AFTER** implementation of the special exception provision. Of course, one year later, the developers will have had the opportunity to build out the maximum number of solar facilities in the Third District, and any study will be too late. This is why the study provision in the Bill was viewed as a deeply cynical and artificial claim of due diligence to occur only after installation has already been approved and the special exceptions have been granted. I am attaching a recent article from the Baltimore Sun indicating that the Anne Arundel County Council has just voted to have an eight month moratorium on applications for commercial solar facilities in its agriculture and conservation zones in order to have time to study the issue.

Thirdly, the Third District is the area with the most available land for these projects. Though the Bill purported to authorize these facilities equally for all council districts, the most clearly affected district, as a practical matter, is the Third. Yet, the concerns of the Third District were not respected.

While our opposition is very real, we do believe it is crucial that in the event that either or both special exceptions are granted, such special exceptions should include two specific limitations that Bill 37-17 authorizes the Administrative Law Judge to make. First is a purchased irrevocable bond in an adequate amount to pay for removal of the facility and remediation of the land once the useful life of the facility has expired. This is not presently a requirement, only a condition that can be imposed as part of the special exception.

A representative of the Gerner project attended our last open meeting to explain the contours of that project. A number of issues were explained and clarified. What became clear, however, was that the only plan for remediation was the LLC's contractual obligation to do so. A facility's useful life is generally understood to be about 20 years. The only guarantee for clean-up is the continued existence and/or financial solvency of these LLCs.

There is no guarantee that the corporation set up to develop the solar facility will still be in existence when the clean-up and remediation phase must begin. Like many local development projects, once development is completed the corporation disappears either by way of bankruptcy or dissolution. The future costs of dismantling and removing the solar panels and remediating the soil so that it is once again ready for farm use is difficult to determine at the present time. The farmer/landowner may not be in a position to bear the

SENIOR BRIEFS

Annapolis Center

The following activity will be offered at the Annapolis Senior Activity Center, 119 S. Villa Ave. Information: 410-222-1818.

MUSIC WITH DJ BOB JONES, featuring holiday songs and other classics, will be held 12:30 p.m. Wednesday, Dec. 13.

CANDY MAKING WITH DIANE will be held 10 a.m. to noon Friday, Dec. 15. Registration is underway; class is limited to 10.

CARD MAKING WITH DIANE will be held 1 p.m. to 2:30 p.m. Friday, Dec. 15. Come in and make a holiday card for a special loved one. $3 is due at sign up.

ANNUAL HOLIDAY PARTY will be held 11 a.m. to 2 p.m. Tuesday, Dec. 19, at the Crowne Plaza Annapolis, 173 Jennifer Road. $30. Full payment due by Dec. 15. Entertainment by Smokey and Last Chance Entertainment.

Arnold Center

The following activities are offered at the Arnold Senior Activity Center, 44 Church Road. Information: 410-222-3922.

HOLIDAY GIFT WRAPPING SERVICE will be held 9 .m. to 11:30 a.m. Monday, Dec. 18. Cost is $1 per item. Sign up by Dec. 11.

BINGO will be held 10 a.m. Monday, Dec. 18, hosted by Mindy Adams of Chesapeake Caregiving, with prizes and fun.

MINI-MASSAGES with certified therapist Bonnie Pavlek will be offered from 10 a.m. to noon Monday, Dec. 18. Free, first come, first served.

SCRABBLE Challenge your brain by playing Scrabble from 12:45 p.m. to 3 p.m. Mondays. New participants are welcome.

MAH-JONGG Open play from 1:15 p.m. to 3:45 p.m. Tuesdays; volunteers play from 12:30 p.m. to 3:30 p.m. Wednesdays.

Brooklyn Park Center

The following activities are offered at the Brooklyn Park Activity Center, 202 Hammonds Lane. Information: 410-222-6847.

SONGS OF THE HOLIDAY The Mother's Choir will perform at 11 a.m. Tuesday, Dec. 12. Enjoy hot apple cider while listening to seasonal songs.

HOLIDAY PARTY will be held 11 a.m. to 3 p.m. Thursday, Dec. 14 at Michaels 8th Avenue.

J&J DUO will perform swinging dance music 11 a.m. Friday, Dec. 15. Lite refreshments.

ENGLISH CLASS Basic skills from 9:30 a.m. to 11:30 a.m. Wednesdays.

REGULATION SHUFFLEBOARD Play at 1 p.m. Tuesdays and 2 p.m. Thursdays.

O'Malley Center

The following activities are offered at the O'Malley Senior Activity Center, 1270 Odenton Road, in Odenton. Information: 410-222-6227.

VAN BOKKELEN ELEMENTARY SCHOOL CHORUS will perform holiday favorites at 10 a.m. Thursday, Dec. 14.

MOVIE DAY "Paper Angels" will be shown at 12:30 p.m. Friday, Dec. 15.

QUILT CLUB Members help one another with projects and donated pieces at 1 p.m. Fridays in the Annex. The club is open to new and experienced quilters.

Pasadena Center

The following activities are offered at the Pasadena Senior Activity Center, 4103 Mountain Road. Information: 410-222-0030.

INTERMEDIATE BRIDGE group meets at 12:30 p.m. Fridays, Dec. 15 and 22.

MEMOIR WRITING GROUP meets at 1 p.m. Monday, Dec. 18. If interested, contact Rita at 443-883-1178 or wmfordham@msn.com or just come to a meeting.

PINOCHLE 8:50 a.m. to 9:50 a.m. Mondays.

PAINTING CLASS with Deborah Scales, 12:30 p.m. to 2:30 p.m. Thursdays.

Pascal Center

The following activities are offered at the Pascal Senior Activity Center, 125 Dorsey Road, Glen Burnie. Information: 410-222-6680.

OBI BELL RINGERS will perform a program of holiday music at 10:30 a.m. Tuesday, Dec. 12.

THOM ROLAND DANCE BAND will perform a variety of 1940s and '50s music and holiday selections at 12:30 p.m. Thursday, Dec. 14. Dancers welcome.

VAN TRIP TO TALENT MACHINE show at St. John's College will take place Friday, Dec. 15 at 11 a.m. Non-refundable $5 fee payable to PSI due at sign-up.

VOICES IN MELODY will perform a program of holiday music at 12:30 p.m. Friday, Dec. 15.

MEXICAN TRAIN The domino game is played at 12:30 p.m. Mondays.

TABLE TENNIS 12:30 p.m. Tuesdays and Fridays.

MAH-JONGG 10:30 a.m. to 12:30 p.m. Fridays. Beginners welcome.

WII OPEN BOWLING Tuesdays at 12:30 p.m. except on the third Tuesday, when games begin at 1 p.m.

DOUBLE-DECK PINOCHLE Fridays at 12:30 p.m.

BEYOND LOSS support group meets a 11:30 a.m. Wednesdays.

South County Center

The following activities will be offered a the South County Senior Activity Center, 2 Stepneys Lane in Edgewater. Information 410-222-4927 or 410-798-4802.

VOICES IN MELODY CHORUS will per form holiday music at 12:30 p.m. Monda Dec. 11.

TUESDAYS TREASURES flea market wi be held 9:30 a.m. to 1 p.m.

CREATIVE PAPER CRAFTING will be hel 1 p.m. to 3 p.m. Tuesday, Dec. 12. Create card and gift tags for the holiday season. Cost i $7.50 and will include all supplies. Instructo is Sherahl Weadon. Sign up at the front desk

BOXWOOD TREES WORKSHOP hoste by the Four Rivers Garden Club will be held 10 a.m. to 11 a.m. Wednesday, Dec. 13. $4. A supplies will be provided. Sign up at the fron desk.

HOLIDAY MUSIC with Sylvia and Ric will be held 12:30 p.m. Wednesday, Dec. 1 featuring Christmas tunes and old favorites.

Seniors directory

The Department of Aging and Disabilities in partnership with the Senior Service Provider Group and the Friends of Arunde Seniors, has published the 2017-18 edition o "Services for Seniors, Adults with Disabili ties, and Caregivers." The free directory i available at the Heritage Office Comple 2666 Riva Road in Annapolis, the seve senior activity centers, and public libraries For more information, call 410-222-4464 o go to aacounty.org/aging.

County suspends approvals of solar parks

SOLAR, *From page 1*

County Planning and Zoning officer.

Typically the county would turn to the General Development Plan, which guides development, but that plan is "largely silent" on dispersed energy productions such as solar parks, Hager said.

The moratorium will give the county the time to review code.

"We essentially have no more than eight months to turn around something," Hager said. "The people who are requesting this and concerned about the proliferation of this use are concerned — and want something done quickly."

Bradley Harris, who lives near a proposed solar park site, was appreciative for Schuh's decision.

"We are pro-solar, but would also like to protect our farmland and our community's rural heritage," Harris said. "We feel there are more appropriate locations in our area for these industrial solar projects that can be developed such as: brown-fields, landfills, warehouses and other disturbed sites."

In other council action, members voted to make Councilman Michael Peroutka, a Millersville Republican, the next council chairman. The decision was made along party lines in a 4-3 vote.

Peroutka has been a controversial figure. Some residents have criticized his past association with the League of the South — he was a member until shortly before the 201 election. The councilman has said he believes there is only one race, the human race.

Sherry Nuffer

From: John E. Beverungen
Sent: Monday, October 02, 2017 10:52 AM
To: Debra Wiley; Sherry Nuffer
Subject: FW: Case No. 2018-0047-X

This e-mail is for the file, which I believe was never sent over.

From: Brian Quinlan [mailto:brian@calvertenergy.com]
Sent: Friday, September 29, 2017 1:40 PM
To: 'Bruce Doak' <doakfarm@gmail.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Subject: RE: Case No. 2018-0047-X

John – I have spoken to the community organization that has been our main contact and informed them of the postponement.

Brian Quinlan
President/CEO
Calvert Energy LLC
brian@calvertenergy.com
(301) 208-0153
(301) 367-9131 (cell)
www.calvertenergy.com
CALVERT ENERGY LLC

From: Bruce Doak [mailto:doakfarm@gmail.com]
Sent: Friday, September 29, 2017 1:28 PM
To: John Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Brian Quinlan <brian@calvertenergy.com>
Subject: Re: Case No. 2018-0047-X

Good afternoon,

Thank you for your email.

The sign was not posted. We did not contact any community organizations concerning the postponement.

We can do that if you wish. I did not consider it since the sign was not posted and we asked for the postponement two weeks before the hearing.

I hope that this hearing will be removed from your calendar. We are hoping to have the hearing the beginning of December.

With regards,
Bruce
Bruce E. Doak Consulting, LLC
3801 Baker Schoolhouse Road
Freeland, MD 21053
410-419-4906
bdoak@bruceedoakconsulting.com

On Sep 29, 2017, at 10:42 AM, John E. Beverungen <jbeverungen@baltimorecountymd.gov> wrote:

Mr. Doak,

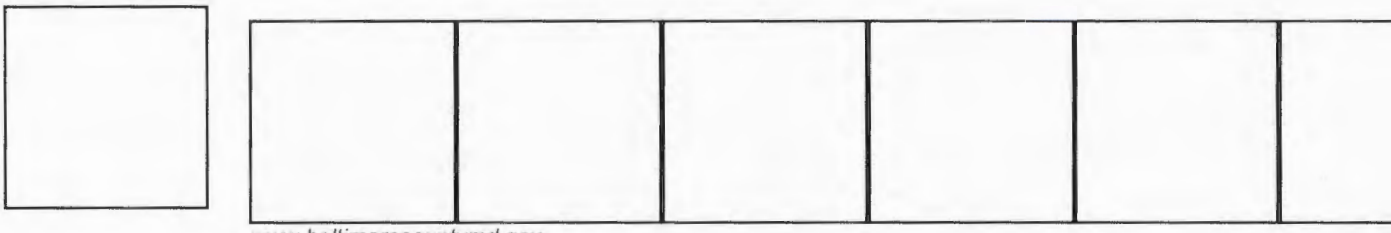
I was forwarded a copy of your letter dated September 7, 2017 requesting a postponement of the above matter, which was addressed to Mr. Jablon. It appears, based on his initials in the upper right corner of the correspondence, Mr. Jablon granted the postponement request on September 11. Even so, the case was put on the OAH calendar for a 10:00 a.m. hearing on Monday, October 2, 2017.

Can you please confirm that you are aware this case was postponed on September 11. I assume the property was never posted? Also, can you please confirm you have notified the "neighbors and local community associations" referenced in your letter that the October 2 hearing has been removed from the OAH calendar.

Thank you.

John Beverungen
ALJ

CONNECT WITH BALTIMORE COUNTY



www.baltimorecountymd.gov

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2017, Legislative Day No. 11

Bill No. 37-17

Mrs. Vicki Almond, Councilwoman

By the County Council, June 5, 2017

A BILL
ENTITLED

AN ACT concerning

Solar Facilities

FOR the purpose of permitting a Solar Facility to be located in certain zones of the County by special exception; providing for a statement of purpose and defining terms; providing exceptions; providing for the requirements for a facility; providing for a required security; providing for the maintenance, abandonment, and removal of a facility; authorizing the Code Official to enforce the provisions of this Act; providing for the application of the Act; and generally relating to Solar Facilities.

BY adding
Article 4E – Solar Facilities
Sections 4E-101 to 4E-107
Baltimore County Zoning Regulations, as amended

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Item #0047

BY repealing and re-enacting, with amendments
Article 5 – Administration and Enforcement
Section 502.1.I.
Baltimore County Zoning Regulations, as amended

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the Baltimore County Zoning Regulations read as follows:

ARTICLE 4E

SOLAR FACILITIES

§4E-101. PURPOSE AND DEFINITIONS.

§4E-101.1. PURPOSE.

SOLAR ENERGY IS RECOGNIZED AS AN ABUNDANT, RENEWABLE, AND ENVIRONMENTALLY SUSTAINABLE SOURCE OF ELECTRICITY GENERATION THAT WILL LEAD TO GREATER LOCAL GRID RESILIENCY AND SECURITY, AND PRODUCE CLEAN, RENEWABLE ENERGY AND REDUCE AIR AND WATER POLLUTION CAUSED BY THE BURNING OF TRADITIONAL FOSSIL FUELS. THE PURPOSE AND INTENT OF THIS ARTICLE IS TO PERMIT SOLAR FACILITIES IN PARTS OF THE RURAL AND COMMERCIAL AREAS OF THE COUNTY BY SPECIAL EXCEPTION, AND TO BALANCE THE BENEFITS OF SOLAR ENERGY PRODUCTION WITH ITS POTENTIAL IMPACT UPON THE COUNTY'S LAND USE POLICIES BY ENSURING SUFFICIENT SAFEGUARDS ARE IN PLACE TO PROTECT THE COUNTY'S COMMUNITIES AND ITS AGRICULTURAL LAND, FORESTS, WATERWAYS AND OTHER NATURAL RESOURCES.

§4E-101.2. DEFINITIONS.

AS USED IN THIS ARTICLE, THE FOLLOWING TERMS HAVE THE MEANINGS INDICATED:

A. "SOLAR FACILITY" MEANS A FACILITY THAT INCLUDES A SERIES OF ONE OR MORE SOLAR COLLECTOR PANELS OR SOLAR ENERGY SYSTEMS THAT ARE PLACED IN AN AREA ON A TRACT OF LAND FOR THE PURPOSE OF GENERATING PHOTOVOLTAIC POWER FOR COMMERCIAL USE. THE TERM INCLUDES A SOLAR POWER PLANT OR SOLAR PHOTOVOLTAIC FARM.

B. "COMMERCIAL USE" MEANS THE TRANSFER TO THE ELECTRICAL POWER GRID OF ENERGY PRODUCED BY A SOLAR FACILITY FOR SALE BY ENERGY SUPPLIERS TO CONSUMERS.

§4E-102. LOCATION OF SOLAR FACILITIES.

A. SUBJECT TO PARAGRAPH B, A SOLAR FACILITY IS PERMITTED ONLY BY SPECIAL EXCEPTION IN THE R.C.2, R.C.3, R.C.4, R.C.5, R.C.6, R.C.7, R.C.8, B.L., B.M., M.R., M.L.R., AND M.H. ZONES OF THE COUNTY.

B. THE ALLOCATION OF LAND FOR SOLAR FACILITIES IN THE COUNTY IS LIMITED TO THE FOLLOWING:

1. THE MAXIMUM AREA PERMITTED FOR A SINGLE SOLAR FACILITY IS THE AMOUNT OF ACREAGE THAT PRODUCES NO MORE THAN TWO MEGAWATTS ALTERNATING CURRENT (AC) OF ELECTRICITY.

2. NO MORE THAN TEN (10) SOLAR FACILITIES MAY BE LOCATED IN A COUNCILMANIC DISTRICT.

3. THE DIRECTOR OF PERMITS, APPROVALS AND INSPECTIONS SHALL MAINTAIN A RECORD OF ALL PERMITS ISSUED FOR A SOLAR FACILITY IN THE COUNTY, INCLUDING THE LOCATION AND COUNCILMANIC DISTRICT FOR EACH SUCH FACILITY, AND SHALL KEEP A CURRENT ACCOUNTING OF THE NUMBER OF FACILITIES IN EACH COUNCILMANIC DISTRICT UNDER THIS PARAGRAPH.

4. UPON REACHING THE THRESHOLD OF TEN (10) SOLAR FACILITIES IN A COUNCILMANIC DISTRICT, NO ADDITIONAL PERMITS SHALL BE ISSUED FOR A SOLAR FACILITY IN THAT DISTRICT UNLESS AN EXISTING FACILITY PREVIOUSLY APPROVED UNDER THIS ARTICLE HAS BEEN REMOVED PURSUANT TO SECTION 4E-107.

§4E-103. EXCEPTION.

THIS ARTICLE DOES NOT APPLY TO THE FOLLOWING SOLAR FACILITY INSTALLATIONS:

1. A GROUND-MOUNTED SOLAR FACILITY ~~LOCATED IN A YARD AREA, BUILDING, OR STRUCTURE THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL, AGRICULTURAL, COMMERCIAL OR INSTITUTIONAL USE~~ THAT IS ACCESSORY TO A PRINCIPAL RESIDENTIAL OR AGRICULTURAL USE (SUBJECT TO SECTIONS 400.1 AND 400.2 OF THESE REGULATIONS APPLICABLE TO ACCESSORY BUILDINGS), OR ACCESSORY TO A PRINCIPAL COMMERCIAL, INDUSTRIAL, OR INSTITUTIONAL USE;

2. A ROOFTOP SOLAR FACILITY;

~~2~~ 3. A SOLAR FACILITY ON FEDERAL, STATE OR LOCAL GOVERNMENT-OWNED OR LEASED LAND THAT PRODUCES ENERGY FOR GOVERNMENT USE; OR

~~3~~ 4. A SOLAR FACILITY LOCATED ON THE SAME PROPERTY OR TRACT AS A FARM THAT USES AT LEAST 66% OF THE ENERGY GENERATED BY THE FACILITY FOR AGRICULTURAL USES ON THE FARM.

§4E-104. REQUIREMENTS.

A. A SOLAR FACILITY LOCATED IN AN R.C. ZONE IS SUBJECT TO THE FOLLOWING REQUIREMENTS:

1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.

6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING BUFFER AND THE SOLAR FACILITY.

8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

9. A PETITIONER SHALL COMPLY WITH THE PLAN REQUIREMENTS OF SECTION 33-3-108 OF THE COUNTY CODE.

10. IN GRANTING A SPECIAL EXCEPTION, THE ADMINISTRATIVE LAW JUDGE, OR BOARD OF APPEALS ON APPEAL, MAY IMPOSE CONDITIONS OR RESTRICTIONS ON THE SOLAR FACILITY USE AS NECESSARY TO PROTECT THE ENVIRONMENT AND SCENIC VIEWS, AND TO LESSEN THE IMPACT OF THE FACILITY ON THE HEALTH, SAFETY, AND GENERAL WELFARE OF SURROUNDING RESIDENTIAL PROPERTIES AND COMMUNITIES, TAKING INTO ACCOUNT SUCH FACTORS AS THE TOPOGRAPHY OF ADJACENT LAND, THE PRESENCE OF NATURAL FOREST BUFFERS, AND PROXIMITY OF STREAMS AND WETLANDS.

B. THE REQUIREMENTS OF SUBPARAGRAPHS A.6, A.7, A.8 AND A.10 SHALL APPLY TO A SOLAR FACILITY LOCATED IN A BUSINESS OR MANUFACTURING ZONE.

§ 4E-105. REQUIRED SECURITY.

A. AN APPLICANT FOR A BUILDING PERMIT FOR A SOLAR FACILITY SHALL PROVIDE A SECURITY BOND OR EQUIVALENT FINANCIAL SECURITY IN THE FORM AND AMOUNT DETERMINED BY THE COUNTY ADMINISTRATIVE OFFICER.

B. THE CODE OFFICIAL MAY USE THE BOND TO PROCURE THE REPAIR OF ANY UNSAFE OR HAZARDOUS CONDITIONS UNDER SECTION 4E-106 OR REMOVAL OF A SOLAR FACILITY UNDER SECTION 4E-107, IN ACCORDANCE WITH SECTION 3-6-402 OF THE COUNTY CODE.

§4E-106. MAINTENANCE.

A. ALL PARTIES HAVING A LEASE OR OWNERSHIP INTEREST IN A SOLAR FACILITY ARE RESPONSIBLE FOR THE MAINTENANCE OF THE FACILITY.

B. MAINTENANCE SHALL INCLUDE PAINTING, STRUCTURAL REPAIRS, LANDSCAPE BUFFERS AND VEGETATION UNDER AND AROUND SOLAR PANEL STRUCTURES, AND INTEGRITY OF SECURITY MEASURES. ACCESS TO THE FACILITY SHALL BE MAINTAINED IN A MANNER ACCEPTABLE TO THE FIRE DEPARTMENT. THE OWNER, OPERATOR, OR LESSEE ARE RESPONSIBLE FOR THE COST OF MAINTAINING THE FACILITY AND ANY ACCESS ROADS.

C. APPROPRIATE VEGETATION IS PERMITTED UNDER AND AROUND THE SOLAR

COLLECTOR PANELS, AND THE TRACT MAY BE USED FOR ACCESSORY AGRICULTURAL PURPOSES, INCLUDING GRAZING OF LIVESTOCK, APICULTURE, AND SIMILAR USES.

D. THE PROVISIONS ON THIS SECTION SHALL BE ENFORCED IN ACCORDANCE WITH ARTICLE 3, TITLE 6 OF THE COUNTY CODE.

§4E-107. ABANDONMENT; REMOVAL.

A. A SOLAR FACILITY THAT HAS REACHED THE END OF ITS USEFUL LIFE OR HAS BEEN ABANDONED SHALL BE REMOVED. THE OWNER OR OPERATOR SHALL PHYSICALLY REMOVE THE INSTALLATION NO MORE THAN 150 DAYS AFTER THE DATE OF DISCONTINUED OPERATIONS. THE OWNER OR OPERATOR SHALL NOTIFY THE COUNTY BY CERTIFIED MAIL OF THE PROPOSED DATE OF DISCONTINUED OPERATIONS AND PLANS FOR REMOVAL.

B. REMOVAL SHALL CONSIST OF THE:

1. PHYSICAL REMOVAL OF ALL SOLAR ENERGY SYSTEMS, STRUCTURES, EQUIPMENT, SECURITY BARRIERS AND TRANSMISSION LINES FROM THE SITE;

2. DISPOSAL OF ALL SOLID AND HAZARDOUS WASTE IN ACCORDANCE WITH LOCAL, STATE, AND FEDERAL WASTE DISPOSAL REGULATIONS; AND

3. STABILIZATION OR RE-VEGETATION OF THE SITE AS NECESSARY TO MINIMIZE EROSION.

C. IF THE OWNER OR OPERATOR FAIL TO REMOVE THE FACILITY WITHIN 150 DAYS OF ABANDONMENT, THE COUNTY RETAINS THE RIGHT TO ENTER AND REMOVE THE FACILITY. AS A CONDITION OF SPECIAL EXCEPTION APPROVAL,

THE PETITIONER AND LANDOWNER AGREE TO ALLOW ENTRY TO REMOVE AN ABANDONED FACILITY.

D. THE CODE OFFICIAL MAY ISSUE A CITATION TO THE OWNER OR OPERATOR FOR REMOVAL OF A SOLAR FACILITY IF:

1. THE CODE OFFICIAL DETERMINES THAT THE SOLAR FACILTY HAS NOT BEEN IN ACTUAL AND CONTINUOUS USE FOR 12 CONSECUTIVE MONTHS;

2. THE OWNER OR OPERATOR FAILED TO CORRECT AN UNSAFE OR HAZARDOUS CONDITION OR FAILED TO MAINTAIN THE SOLAR FACILITY UNDER SECTION 4E-106 WITHIN THE TIME PRESCRIBED IN A CORRECTION NOTICE ISSUED BY THE CODE OFFICIAL; OR

3. THE OWNER OR OPERATOR HAS FAILED TO REMOVE THE SOLAR FACILITY IN ACCORDANCE WITH PARAGRAPH C.

§502.1. Conditions Determining Granting of Special Exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

I. Be detrimental to the environment and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5, or R.C.7 Zone, AND FOR CONSIDERATION OF A SOLAR FACILITY USE UNDER ARTICLE 4E, THE INCLUSION OF THE R.C.3, R.C.6, AND R.C.8 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in consultation with the Departments of Planning and Environmental Protection and Sustainability,

and with participation of the Baltimore County Commission on Environmental Quality, representatives of the Solar Industry, the Sierra Club's Greater Baltimore Group, and the Valleys Planning Council, study and evaluate the impact of Solar Facilities in Baltimore County and the effect of Article 4E of these Regulations, and by July 1, 2018 submit recommendations to the County Council and the County Executive regarding potential changes to current law.

SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect on July 17, 2017 and shall apply retroactively to any zoning petition filed after October 18, 2016.

KEVIN KAMENETZ
County Executive

LAWRENCE M. STAHL
Managing Administrative Law Judge
JOHN E. BEVERUNGEN
Administrative Law Judge

January 22, 2018

Timothy M. Kotroco, Esq.
305 Washington Avenue, Suite 502
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS**
Petition for Special Exception
Case No. 2018-0047-X
Property: 15637 York Road

Dear Mr. Kotroco:

Please be advised that an appeal of the above-referenced case was filed in this Office on January 18, 2018. All materials relative to the case have been forwarded to the Baltimore County Board of Appeals ("Board").

If you are the person or party taking the appeal, you should notify other similarly interested parties or persons known to you of the appeal. If you are an attorney of record, it is your responsibility to notify your client.

If you have any questions concerning this matter, please do not hesitate to contact the Board at 410-887-3180.

Sincerely,

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

c: Baltimore County Board of Appeals
People's Counsel
H. Barnes Mowell, P.A., 16925 York Road, Monkton, MD 21111
Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
Edd J. Matczuk, 930-932 Uppper Glencoe Road, Glencoe, MD 21152

Al Rude, 15801 York Road, Sparks, MD 21152
William Mayo, 921 Upper Glenco Road, Sparks, MD 21152
Nedda Pray, 2224 Traceys Road, Sparks, MD 21152
Rob Webster, 811 Upper Glencoe Road, Sparks, MD 21152

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY
	*	Case No. 2018-0047-X
Petitioners	*	

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility

would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of...scenic routes and scenic views" be provided in accordance with the

Baltimore County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this **21st** day of **December, 2017,** by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

PETITION FOR ZONING HEARING(S)

To be filed with the Department of Permits, Approvals and Inspections

To the Office of Administrative Law of Baltimore County for the property located at:

Address 15637 York Road **which is presently zoned** RC 7

Deed References: 32699/00228 10 Digit Tax Account # 0802004200

Property Owner(s) Printed Name(s) Robert K. Gerner

(SELECT THE HEARING(S) BY MARKING X AT THE APPROPRIATE SELECTION AND PRINT OR TYPE THE PETITION REQUEST)

The undersigned legal owner(s) of the property situate in Baltimore County and which is described in the description and plan attached hereto and made a part hereof, hereby petition for:

1. ____ **a Special Hearing** under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

2. X **a Special Exception** under the Zoning Regulations of Baltimore County to use the herein described property for

See Attached.

3. ____ **a Variance** from Section(s)

of the zoning regulations of Baltimore County, to the zoning law of Baltimore County, for the following reasons: **(Indicate below your hardship or practical difficulty or indicate below "TO BE PRESENTED AT HEARING". If you need additional space, you may add an attachment to this petition)**

Property is to be posted and advertised as prescribed by the zoning regulations.
I, or we, agree to pay expenses of above petition(s), advertising, posting, etc. and further agree to and are to be bounded by the zoning regulations and restrictions of Baltimore County adopted pursuant to the zoning law for Baltimore County.
Legal Owner(s) Affirmation: I / we do so solemnly declare and affirm, under the penalties of perjury, that I / We are the legal owner(s) of the property which is the subject of this / these Petition(s).

Contract Purchaser/Lessee:

ESA Sparks Glenco, LLC c/o Brian Quinlan, Manager
Name- Type or Print

Signature

4155 St Johns Parkway, Suite 1100, Sanford, Florida
Mailing Address City State

32771 / 407-268-6455 / brian@calvertenergy.com
Zip Code Telephone # Email Address

Legal Owners (Petitioners):

Robert K. Gerner /
Name #1 – Type or Print Name #2 – Type or Print

Signature #1 / Signature # 2

15637 York Road Sparks MD
Mailing Address City State

21152 / 443-465-5803 / kip.gerner@gernerenrgy.com
Zip Code Telephone # Email Address

Attorney for Petitioner:

Timothy M. Kotroco
Name- Type or Print

Timothy Kotroco
Signature

305 Washington Ave. Towson MD
Mailing Address City State

21204 / 410-299-2943 / TKotroco@gmail.com
Zip Code Telephone # Email Address

Representative to be contacted:

Brian Quinlan
Name – Type or Print

Signature

12921 Buckeye Drive Gaithersburg MD
Mailing Address City State

20878 / 301-208-0153 / brian@calvertenergy.com
Zip Code Telephone # Email Address

ORDER RECEIVED FOR FILING
Date 12/21/17
By DLN

CASE NUMBER 2018-0047-X **Filing Date** 8/10/17 **Do Not Schedule Dates:** **Reviewer** RT

REV. 10/4/11

Petition Requested

Special Exception to approve a 9 acre +- Solar Facility on a portion of a 30. 723 acre parcel of land in an RC 7 zone.

Item #0047

CASE #2018-0093-X

Bruce E. Doak Consulting, LL
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@bruceedoakconsulting.com

Zoning Description

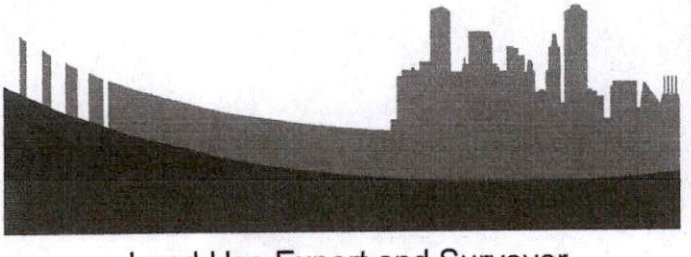
15637 York Road- 30.723 Acres
Eighth Election District Third Councilmanic District
Baltimore County, Maryland

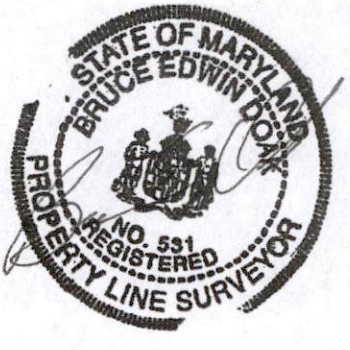
Beginning at a point on the east side of York Road, 250 feet northwesterly of the centerline extension of Elizabeth Court, thence leaving York Road and running with and binding on the outlines of the subject property, the fourteen following courses and distances, viz.

1) North 81 degrees 39 minutes 52 seconds East 311.00 feet
2) South 65 degrees 26 minutes 08 seconds East 924.10 feet
3) North 45 degrees 43 minutes 52 seconds East 696.50 feet
4) South 46 degrees 35 minutes 08 seconds East 1157.00 feet
5) South 33 degrees 14 minutes 38 seconds West 70.31 feet
6) South 42 degrees 04 minutes 54 seconds West 115.77 feet
7) South 33 degrees 44 minutes 57 seconds West 105.64 feet
8) North 64 degrees 46 minutes 27 seconds West 774.81 feet
9) North 64 degrees 08 minutes 22 seconds West 216.87 feet
10) North 84 degrees 19 minutes 37 seconds West 329.26 feet
11) South 01 degrees 50 minutes 28 seconds East 233.31 feet
12) South 72 degrees 58 minutes 22 seconds West 283.65 feet
13) South 42 degrees 04 minutes 19 seconds West 297.72 feet and
14) South 83 degrees 22 minutes 00 seconds West 376.54 feet to a point on the east side of York Road, thence binding on the east side of York Road and continuing to run and bind on the outlines of the subject property, the four following courses and distances, viz.
15) North 11 degrees 52 minutes 15 seconds West 547.50 feet
16) North 13 degrees 54 minutes 15 seconds West 100.09 feet
17) North 16 degrees 31 minutes 15 seconds West 181.08 feet and
18) North 17 degrees 48 minutes 15 seconds West 207.41 feet to the point of beginning

Containing 30.723 acres of land, more or less.

This description is part of a zoning hearing petition and is not intended for any conveyance purposes.





Land Use Expert and Surveyor

Item #0047

CASE # 2018-0047-X

DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS
ZONING REVIEW OFFICE

ADVERTISING REQUIREMENTS AND PROCEDURES FOR ZONING HEARINGS

The Baltimore County Zoning Regulations (BCZR) require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property (responsibility of the legal owner/petitioner) and placement of a notice in a newspaper of general circulation in the County, both at least fifteen (15) days before the hearing.

Zoning Review will ensure that the legal requirements for advertising are satisfied. However, the legal owner/petitioner is responsible for the costs associated with these requirements. The newspaper will bill the person listed below for the advertising. This advertising is due upon receipt and should be remitted directly to the newspaper.

OPINIONS MAY NOT BE ISSUED UNTIL ALL ADVERTISING COSTS ARE PAID.

For Newspaper Advertising:

Case Number: CASE# 2018-0047-X

Property Address: 15637 YORK ROAD

Property Description: 30.723 Ac. PARCEL OF LAND ON EAST SIDE OF YORK ROAD OPPOSITE OF ELIZABETH COURT

Legal Owners (Petitioners): ROBERT K. GERNER

Contract Purchaser/Lessee: ESA SPARKS GLENCO LLC

PLEASE FORWARD ADVERTISING BILL TO:

Name: BRIAN QUINLAN

Company/Firm (if applicable): ESA SPARKS GLENCO LLC

Address: 12921 BUCKEYE DRIVE
GAITHERSBURG MD 20878

Telephone Number: 301-208-0153

Revised 5/20/2014

April 30, 2018

RE: **Case Number 2018-0047X/15637 York Road**

My name is Theaux M. Le Gardeur , As the director of Gunpowder RIVERKEEPER® ("Riverkeeper") which is a member based 501 (c)(3) nonprofit that represents environmental, property, recreational, and aesthetic interests within the Gunpowder watershed and its tributaries I respectfully submit the following comments on the application for a Solar Farm Case No. 2018-0047X ("Site").

Riverkeeper opposes the special exception granting the site and activity described as a "Solar Farm" on RC-7 zoned land because of concerns that the cumulative impacts of the Site may pose the potential for irreversible environmental impacts to sensitive waterways and cold water species as described below.

Environmental attributes at proposed location are significant:

Upon review of the Baltimore County "My Neighborhood" website and my discussions with residents regarding the subject property, I am aware of springs and seeps present on the Site.

A majority of Baltimore County streams, including the above mentioned are categorized by the Maryland Department of the Environment as Use IIIP (defined as coldwater-drinking water supply streams and regulated and recognized by the Federal Water Pollution Control Act, "Clean Water Act" [1] to protect their designated[2] and existing uses[3].

State studies have shown that Brook Trout, a Maryland state species of special concerns and may be extirpated when watersheds holding these sensitive species reach greater than 4% impervious surface. Adopted in 2006, the Maryland Brook Trout Management Plan[4] recommended habitat strategies recognizing that urbanization and its effects on aquatic habitat was currently the most serious threat to Brook Trout. Namely;

Impervious surfaces: Urbanization promotes a chain of events that are strongly

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[1] **33 U.S.C. §1251 et seq. (1972)**
[2] **Code of Maryland Regulations (COMAR) Sections 26.08.02.02 and 26.08.02.02-1.**
[3] **40 CFR § 131.12(a)**

[4] **http://dnr.maryland.gov/fisheries/Documents/MD_Brook_Trout_management_plan.pdf**

correlated with increasing imperviousness. Impervious surfaces associated with urban areas include roads, rooftops and parking lots. Imperviousness promotes rapid runoff to aquatic habitats and disrupts the natural hydrology of flowing waters. Frequent, short duration runoff events with higher magnitude peak discharges result in large-scale physical alterations to streams...High watershed imperviousness is responsible for decreasing stream discharge during low flow periods; reducing in-stream physical habitat; and, increasing stream temperature, embeddedness, erosion and sediment transport. High imperviousness can significantly reduce ground water recharge that can impact ground water influx to headwater streams. The response to high impervious cover and high magnitude, frequent discharge is for the stream channel to increase in cross-sectional area by down cutting, channel widening, or both. Urban areas typically have higher pollutant and nutrient loads. All such impairments degrade and threaten existing brook trout habitats and their biological community structure. Maryland DNR's MBSS program (Southerland 2005) found that brook trout populations were eliminated in watersheds with impervious surface exceeding 4%, and substantial reductions in populations are apparent with as little as 0.5% imperviousness. (Emphasis applied).

On May 12, 2009, President Barack Obama signed Chesapeake Bay Restoration and Protection Executive Order 13508. [5] As part of developing a new strategy for restoration and protection of the Chesapeake Bay, President Obama's Executive Order directs the federal agencies in outcomes for stream restoration, brook trout populations, and riparian buffer habitats, which are all resources critical to maintaining watershed health.

An environmental study is warranted prior to a decision on this issue:

The potential for environmental impacts prior should be studied. The siting of these facilities near or adjacent to streams known to support sensitive coldwater species should consider the increase in impervious surfaces (solar panels) and any best management practices used to maintain vegetation such as the use of Roundup® or other Glyphosates and any chloride containing solutions used to de-ice panels.

This watershed has large tracts of agricultural land, forested land and a low density of development as compared to most of the other watersheds in Baltimore County.

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[5] **https://www.federalregister.gov/documents/2010/05/11/2010-11143/executive-order-13508-chesapeake-bay-protection-and-restoration-section-203-final-coordinated**

Groundwater Management should also provide a study based on potential impacts to groundwater recharge and additive cumulative impacts of increasing impervious area to coldwater resources.

Even seeps, springs and wetlands as well as intermittent, ephemeral and perennial streams are hydrologically connected and represent significant environmental attributes for sensitive coldwater species. As witness to concerns about unknown environmental impacts Arundel County has recently issued an eight-month moratorium on the approval of solar parks after concerns were raised by farming and environmental advocates about the impact of those parks on rural areas.[6]

Additionally a recent study[7] published in the journal Nature by researchers at the University of Maryland College Park have discovered that these facilities can create "heat islands" that should be under consideration by the Baltimore County Department of Environmental Protection and Sustainability.

Without a hydrologic study, Baltimore County zoning may not properly ascertain that the requested zoning relief via special exception will not be detrimental to the health, safety, or general welfare of the area.

Respectfully submitted,
/s/ Theaux M. Le Gardeur
Gunpowder RIVERKEEPER®
P.O. Box 156, Monkton, MD 21111
Keeper@gunpowderriverkeeper.org and 410-967-3526

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[6] **http://www.capitalgazette.com/news/government/ac-cn-county-council-1205-story.html**
[7] **https://www.nature.com/articles/srep35070**

CASE NO. 2018-0047-X

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
8/23	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	Comment
9/1	DEPS (if not received, date e-mail sent _____)	Comments
_____	FIRE DEPARTMENT	_____
9/20	PLANNING (if not received, date e-mail sent _____)	no obj w/ conditions
8/14	STATE HIGHWAY ADMINISTRATION	comment
_____	TRAFFIC ENGINEERING	_____
12/11	COMMUNITY ASSOCIATION Sparks - Glencoe Community Planning	
_____	ADJACENT PROPERTY OWNERS	

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 11/28/17

SIGN POSTING Date: 11/27/17 by Adak

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map	View GroundRent Redemption	View GroundRent Registration

Account Identifier: District - 08 Account Number - 0802004200

Owner Information

Owner Name:	GERNER ROBERT K	**Use:**	AGRICULTURAL
		Principal Residence:	YES
Mailing Address:	15637 YORK RD SPARKS MD 21152-9687	**Deed Reference:**	/32699/ 00228

Location & Structure Information

Premises Address:	15637 YORK RD SPARKS 21152-9687	**Legal Description:**	30.723 AC 15637 YORK RD ES 1500FT S UPR GLENCOE RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0015	0114		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1897	3,862 SF		30.7230 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	143,700	143,700		
Improvements	203,600	243,500		
Total:	347,300	387,200	360,600	373,900
Preferential Land:	3,700			3,700

Transfer Information

Seller: GERNER ROBERT KEITH	**Date:** 10/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32699/ 00228	**Deed2:**
Seller: GERNER ROBERT	**Date:** 04/11/2006	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /23665/ 00255	**Deed2:**
Seller: BALLARD CYNTHIA W	**Date:** 10/27/2004	**Price:** $850,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /20893/ 00079	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:	**Special Tax Recapture:**
Exempt Class:	AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 05/15/2008

TO: PATUXENT PUBLISHING COMPANY
Tuesday, November 28, 2017 Issue - Jeffersonian

Please forward billing to:
Brian Quinlan 301-208-0153
ESA Sparks Glenco, LLC
12921 Buckeye.Drive
Gaithersburg, MD 20878

NOTICE OF ZONING HEARING

The Administrative Law Judge of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing in Towson, Maryland on the property identified herein as follows:

CASE NUMBER: 2018-0047-X
15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District – 3rd Councilmanic District
Legal Owners: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.

Hearing: Monday, December 18, 2017 at 10:00 a.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THE ZONING REVIEW OFFICE AT 410-887-3391.

TO: PATUXENT PUBLISHING COMPANY
Tuesday, September 12, 2017 Issue - Jeffersonian

Please forward billing to:
Brian Quinlan 301-208-0153
ESA Sparks Glenco, LLC
12921 Buckeye Drive
Gaithersburg, MD 20878

NOTICE OF ZONING HEARING

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15637 York Road
East side of York Road, 250 ft. North of centerline of Elizabeth Court
8th Election District – 3rd Councilmanic District
Legal Owners: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glenco, LLC

Special Exception to approve a 9 acre +/- Solar Facility on a portion of a 30.723 acre parcel of land in an RC-7 zone.

Hearing: Monday, October 2, 2017 at 10:00 a.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Arnold Jablon
Director of Permits, Approvals and Inspections for Baltimore County

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMODATIONS, PLEASE CONTACT THE ADMINISTRATIVE HEARINGS OFFICE AT 410-887-3868.
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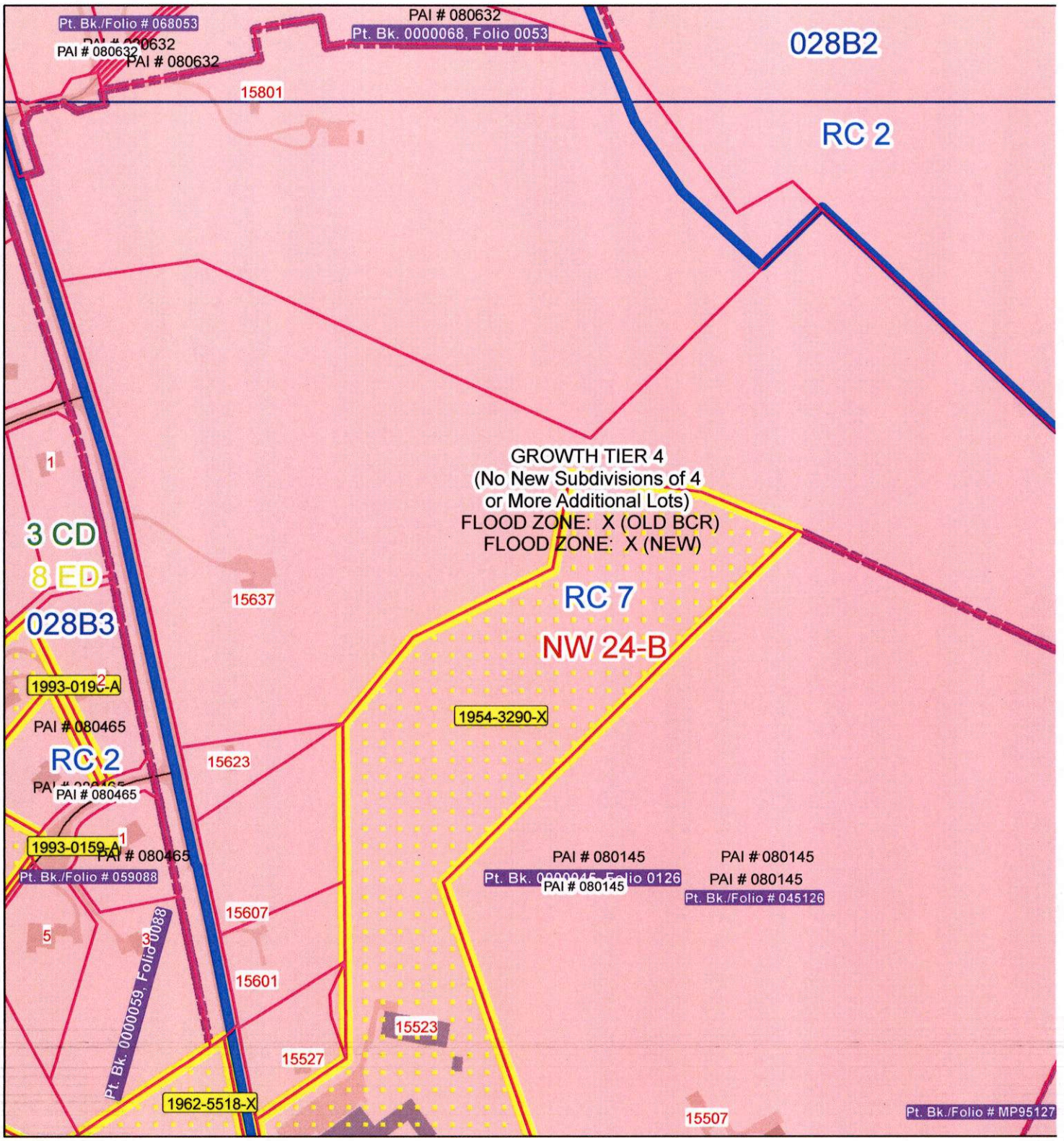
15637 York Road



Publication Date: 8/10/2017

Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot

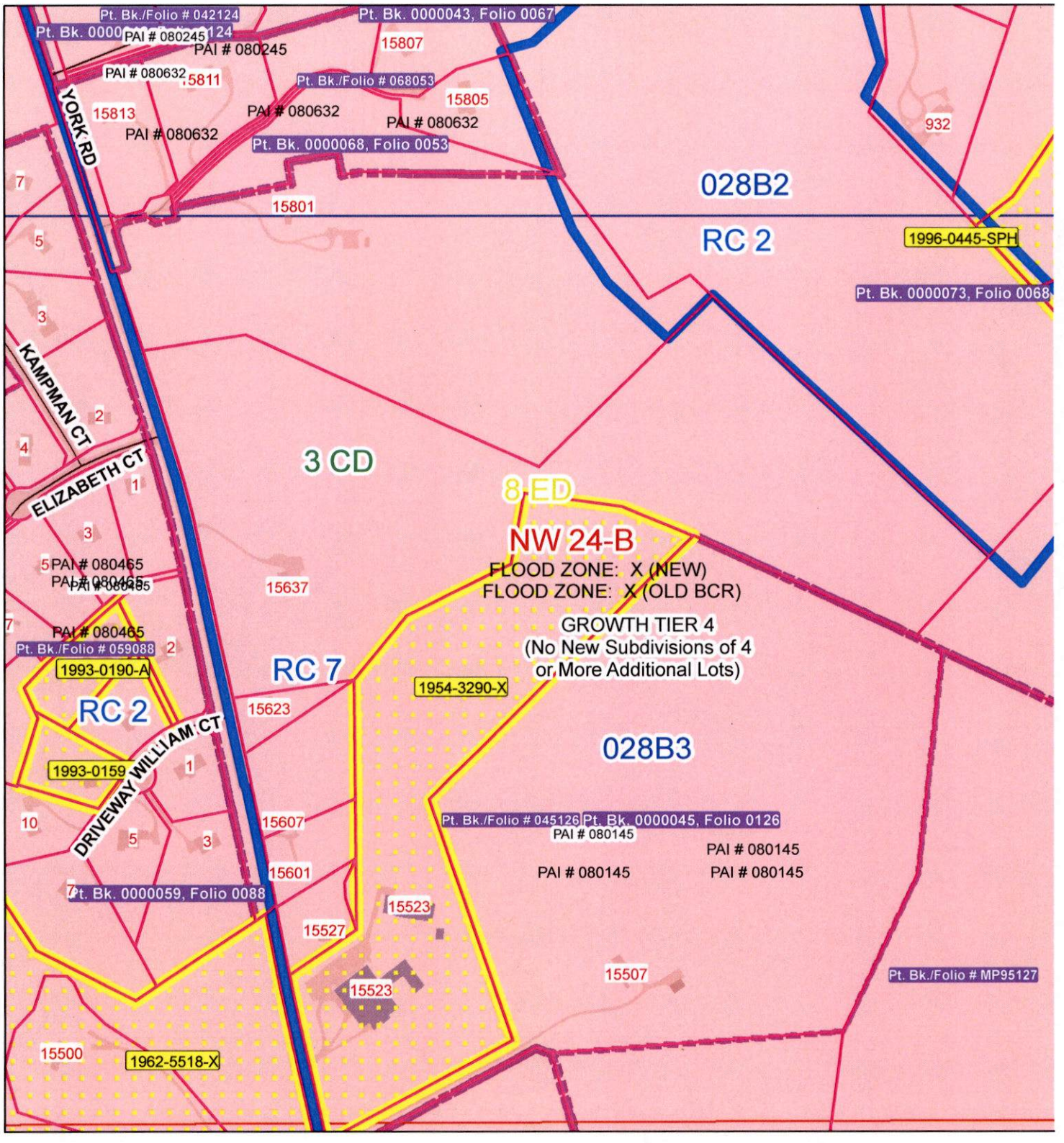
N
W E
S

0 80 160 320 480 640 Feet

1 inch = 300 feet

Item #0047

15637 York Road



Publication Date: 8/10/2017

Publication Agency: Permits, Approvals & Inspections
Projection/Datum: Maryland State Plane,
FIPS 1900, NAD 1983/91 HARN, US Foot

N
W E
S

0 112.5 225 450 675 900 Fe

1 inch = 400 feet

Item #0047

Board of Appeals

Case No: 18-047 X Case Name: Robert Gerner

Exhibit List

Party: [redacted] Petitioner Date: 8/21/18

Exhibit No:	Description:
✓ 1.	Site Plan without Marking
✓ 1.a	Site Plan with Marker of "Boundaries"
✓ 2a-e	Photos of the Site from Google Earth
✓ 3.	Large Photo - My Neighborhood
✓ 3a-d	Photos of Road + House on Property
✓ 4	Large Photo - My Neighborhood / Aerial of Property
✓ 4a-b	Photos of Trees from the Property
✓ 5	Site Photos - 12/12/17 with Key
✓ 5a-e	Photos of Surrounding Properties from Site
✓ 6	Aerial Photo showing Zoning Designation / Tree Line
✓ 7	U.S Fish + Wildlife Service
✓ 7a	"
✓ 8	Maryland Dept. of Environment / Solar Panel Installation
✓ 9.	My Neighborhood / Zoning Definitions
	VERIFIED BY KC DATE: 8/21/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: Petitioner Date: 8/21/18

Exhibit No:	Description:
✓10	2.A.C. Comments 9/20/2017
✓ 11	Comment of State Highway 8/14/17
✓ 12	Deeds. 9/1/17 - Letter on 2.A.C Court
✓ 13	8/23/7 - Letter - 2nd Court of Bur. of Dev. Plans Review
KC 8/21/18 ✓ 14	Deriu CV
KC 8/23/18 ✓ 15	CV - Mitchell Kellman
✓ 16	Citizen Guide / Rural Zone
✓ 17	Solar Facility Decommissioning + Security Agreement
10/24 ✓ 18	SDAT of Town Property
✓ 19	Town home on My Neighborhood
✓ 20	My Neighborhood / Rudi Property
KC 10/25/18 ✓ 21	Kotroco 1/12/16 Letter + Request for Beverages
✓ 22	My Neighborhood / Gorsuch Retirement Home
✓ 23	Mr. Mayo's - Plans in relation to Solar Farm
	VERIFIED BY KC DATE: 12/10/18

Board of Appeals

Case No: 18-047X Case Name: Robert Gerner

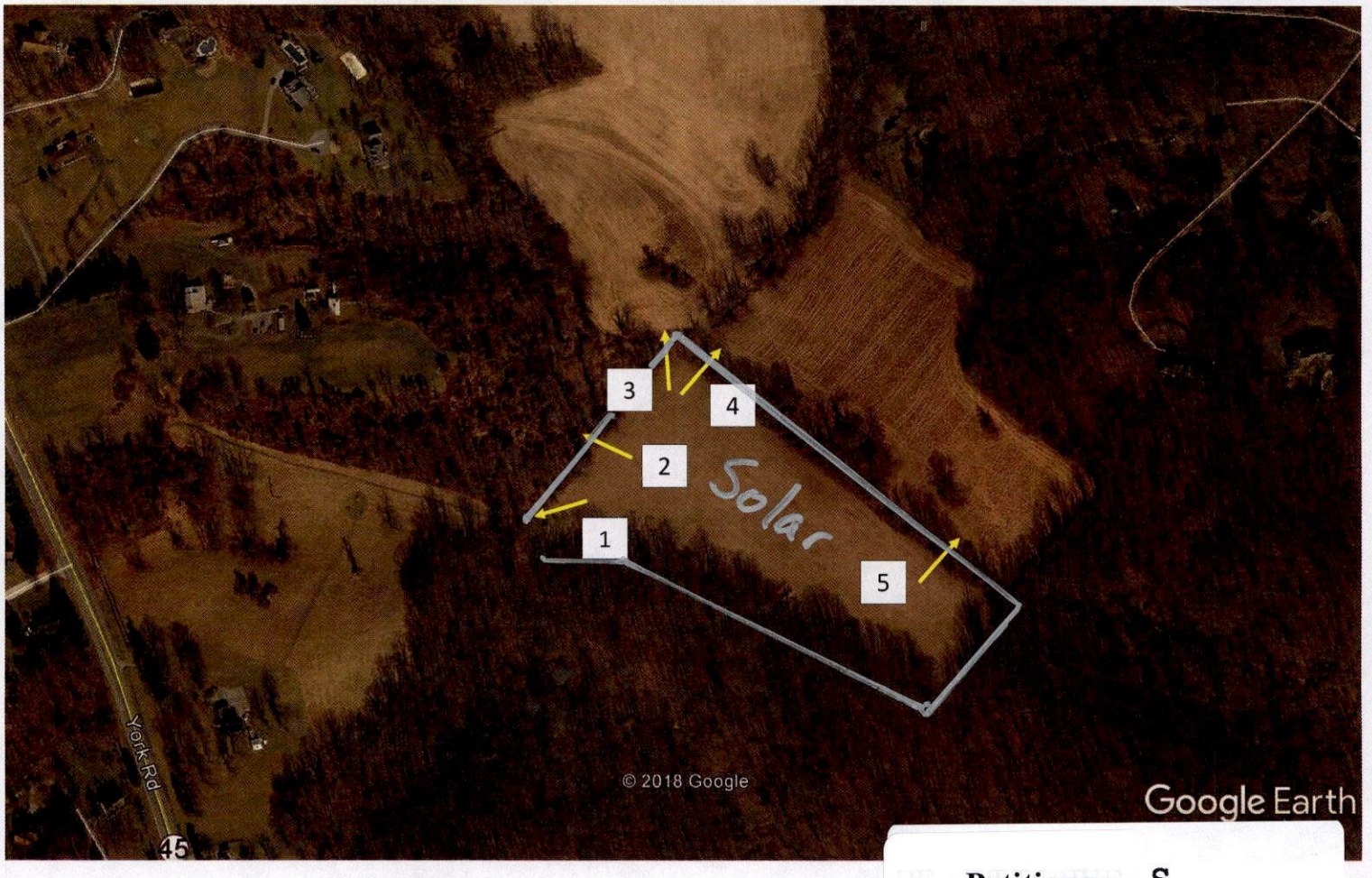
Exhibit List

Party: Petitioner Date: 11/28/18

Exhibit No:	Description:
✓24	Transcription of John Altmyer
✓25	Master Plan 2020 / Scenic Gateway Area
✓26	E-mail / - From Mark Staley
✓27	KCI Estimate
	VERIFIED BY KC DATE: 12/10/18

Site photos 12-17-17

CALVERT ENERGY LLC



Petitioner S
CBA Exhibit 5

Case No. 18-047x - 8/21/18

Picture 1

CALVERT ENERGY LLC

5A

Picture 2

CALVERT ENERGY LLC

5B

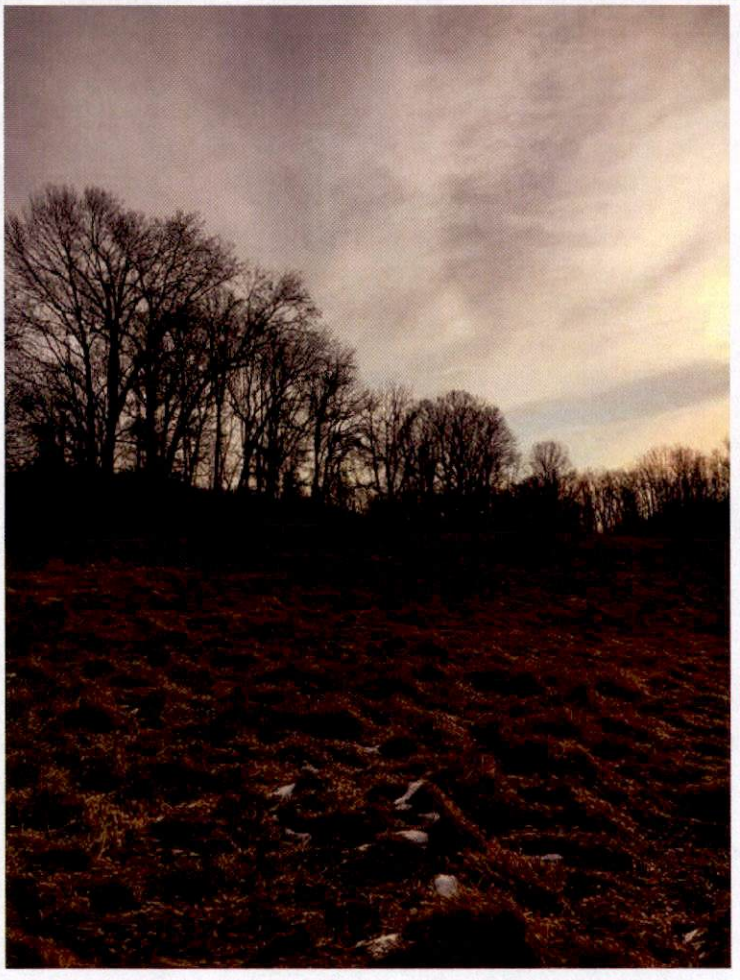
Picture 3

CALVERT ENERGY LLC

5C

Picture 4

CALVERT ENERGY LLC



5D

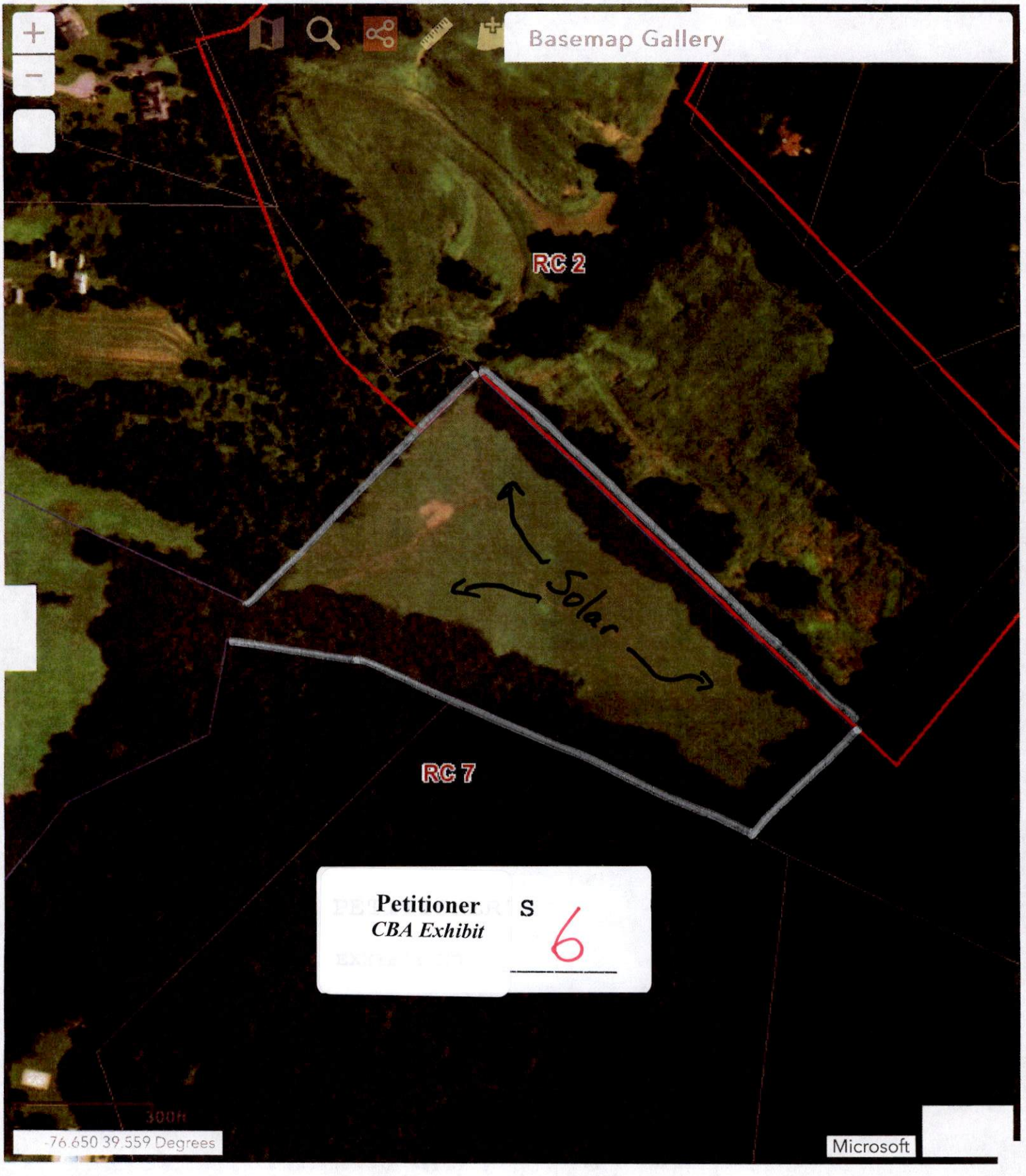
Picture 5

CALVERT ENERGY LLC

5E

Tree Buffer

Baltimore County - My Neighborhood



Petitioner
CBA Exhibit
S 6

Case No. 18-047X 8/21/18

ESA Sparks Glenco site wetlands

U.S. Fish and Wildlife Service
National Wetlands

Petitioner
CBA Exhibit 7

August 16, 2018

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake

Riverine

Other

Wetlands Mapper web site.

Wetlands Inventory (NWI) data. All wetlands related data found on the

be used in accordance with the layer metadata found on the

base data shown on this map. All wetlands related data should

Service is not responsible for the accuracy or currentness of the

map is for general reference only. The US Fish and Wildlife

Case No: 18-0472x 8/21/18

National Wetlands Inventory (NWI)

This page was produced by the NWI mapper

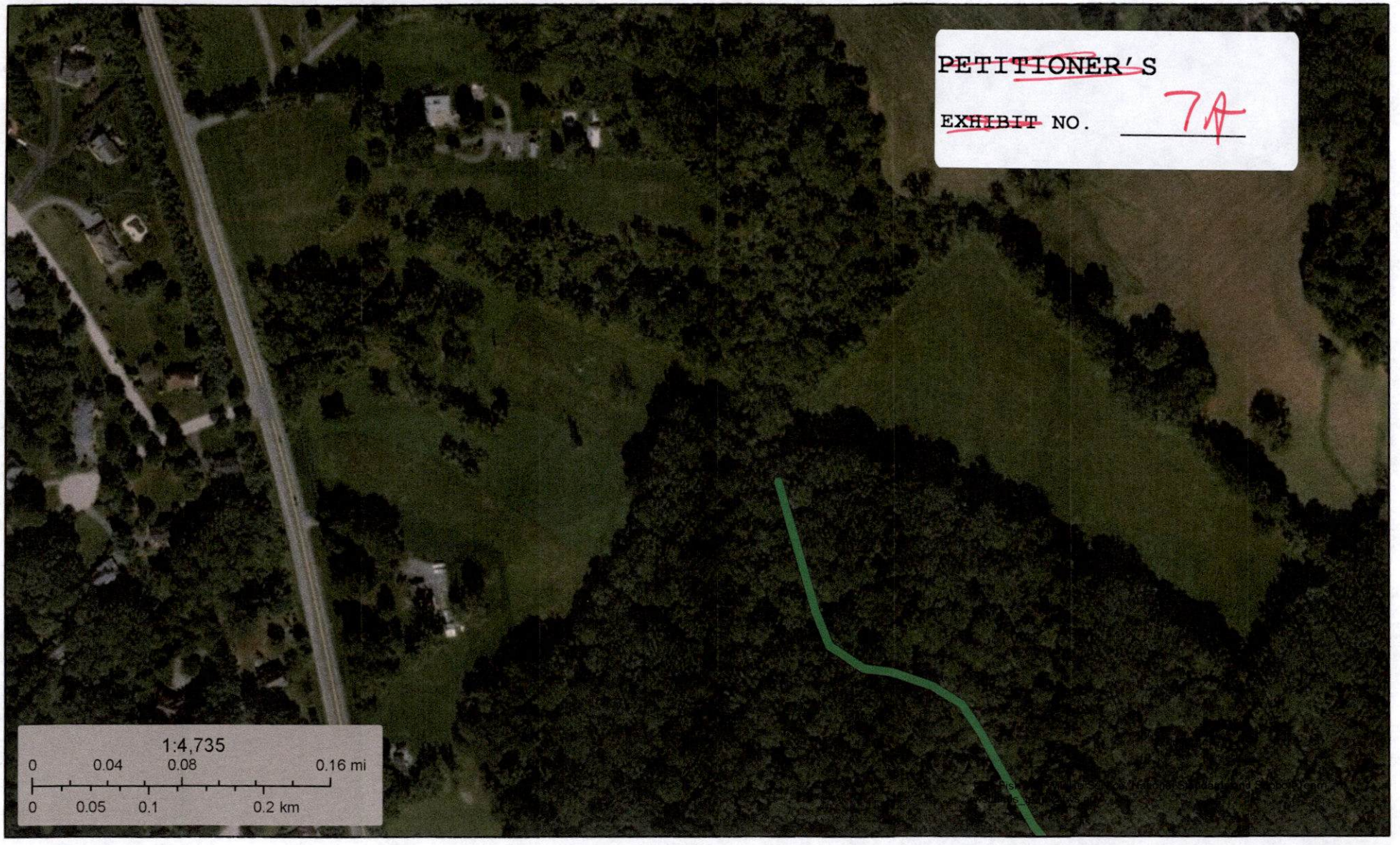
U.S. Fish and Wildlife Service

National Wetlands Inventory

ESA Sparks Glenco site wetlands

PETITIONER'S

EXHIBIT NO. 7A



August 16, 2018

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond
- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

National Wetlands Inventory (NWI)
This page was produced by the NWI mapper

Petitioner
CBA Exhibit S 8

MDE **Maryland Department of the Environment**

Stormwater Design Guidance – Solar Panel Installations

Revisions to Maryland's stormwater management regulations in 2010 require that environmental site design (ESD) be used to the maximum extent practicable (MEP) to mimic natural hydrology, reduce runoff to reflect forested wooded conditions, and minimize the impact of land development on water resources. This applies to any residential, commercial, industrial, or institutional development where more than 5,000 square feet of land area is disturbed. Consequently, stormwater management must be addressed even when permeable features like solar panel installations exceed 5,000 square feet of land disturbance.

Depending on local soil conditions and proposed imperviousness, the amount of rainfall that stormwater requirements are based on varies from 1.0 to 2.6 inches. However, addressing stormwater management does not mean that structural or micro-scale practices must be constructed to capture and treat large volumes of runoff. Using nonstructural techniques like disconnecting impervious cover reduces runoff by promoting overland filtering and infiltration. Commonly used with smaller or narrower impervious areas like driveways or open roads, the Disconnection of Non-Rooftop Runoff technique (see pp. 5.61 to 5.65 of the **2000 Maryland Stormwater Design Manual**[1]) is a low cost alternative for treating runoff in situations like rows of solar panels.

When non-rooftop disconnection is used to treat runoff, the following factors should be considered:

- The vegetated area receiving runoff must be equal to or greater in length than the disconnected surface (e.g., width of the row of solar panels)
- Runoff must sheet flow onto and across vegetated areas to maintain the disconnection
- Disconnections should be located on gradual slopes (≤ 5%) to maintain sheetflow. Level spreaders, terraces, or berms may be used to maintain sheetflow conditions if the average slope is steeper than 5%. However, installations on slopes greater than 10% will require an engineered plan that ensures adequate treatment and the safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice.
- Disconnecting impervious surfaces works best in undisturbed soils. To minimize disturbance and compaction, construction vehicles and equipment should avoid areas used for disconnection during installation of the solar panels.
- Groundcover vegetation must be maintained in good condition in those areas receiving disconnected runoff. Typically this maintenance is no different than other lawn or landscaped areas. However, areas receiving runoff should be protected (e.g., planting shrubs or trees along the perimeter) from future compaction.

Depending on the layout and number of panels installed, the disconnection of non-rooftop runoff technique may address some or all of the stormwater management requirements for an individual project. Where the imperviousness is high or there is other infrastructure (e.g., access roads, transformers), additional runoff may need to be treated. In these situations, other ESD techniques or micro-scale practices may be needed to provide stormwater management for these features.

Case No: 18-047X 8/21/18

Example 1 – Using Non-Rooftop Disconnection Where the Average Slope ≤ 5%

Several rows of solar panels will be installed in an existing meadow. The soils within the meadow are hydrologic soil group (HSG) B and the average slope does not exceed 5%. Each row of panels is 10 feet wide and the distance between rows is 20 feet. The rows of solar panels will be installed according to Figure 1 below. In this scenario, the disconnection length is the same as the distance between rows (20 feet) and is greater than the width of each row (10 feet). Therefore, each row of panels is adequately disconnected and the runoff from 1.0 inch of rainfall is treated.

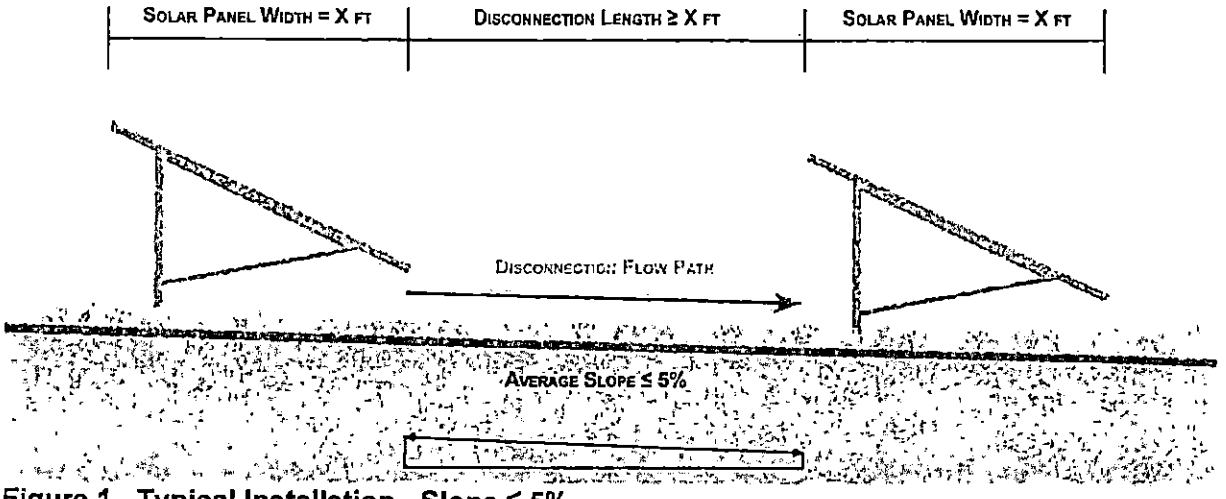


Figure 1. Typical Installation - Slope ≤ 5%

Example 2 – Using Non-Rooftop Disconnection Where the Average Slope ≥ 5% but ≤ 10%

Several rows of solar panels will be installed in an existing meadow. The soils within the meadow are hydrologic soil group (HSG) B and the average slope is greater than 5% but less than 10%. Each row of panels is 10 feet wide and the distance between rows is 20 feet. The rows of solar panels will be installed as shown in Figure 2 below. The disconnection length is the same as the distance between rows (20 feet) and is greater than the width of each row (10 feet). However, in this example, a level spreader (typically 1 to 2-foot wide and 1 foot deep) has been located at the drip edge of each row of panels to dissipate energy and maintain sheetflow.

Discussion

To meet State and local stormwater management requirements, ESD must be used to the MEP to reduce runoff to reflect forested conditions. While all reasonable options for implementing ESD must be investigated, minimally, the runoff from 1 inch of rainfall must be treated. In each of the examples above, there may be additional opportunities to implement ESD techniques or practices and reduce runoff that should be explored. However, simply disconnecting the runoff from the solar panel arrays captures and treats the runoff from 1.0 inch of rainfall. Where imperviousness is low and soil conditions less optimal (e.g., HSG C or D), this may be sufficient to completely address stormwater management requirements. In more dense applications or in sandy soils, additional stormwater management may be required.

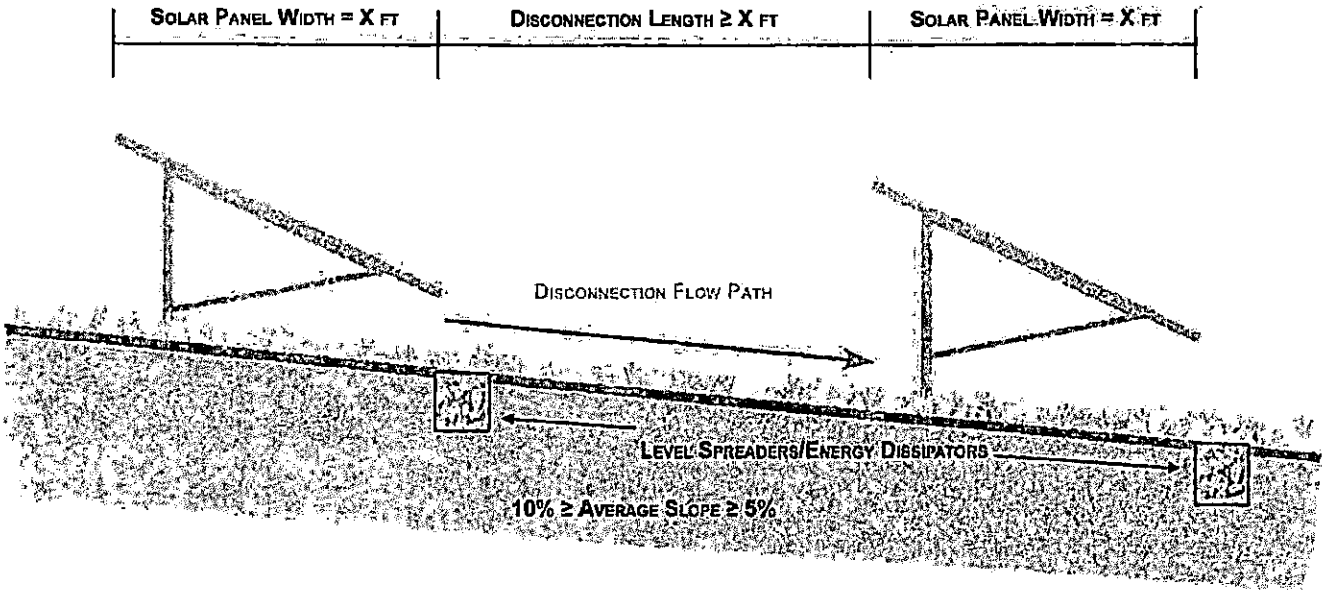


Figure 2. Typical Installation – Slope ≥ 5% but ≤ 10%

Conclusion

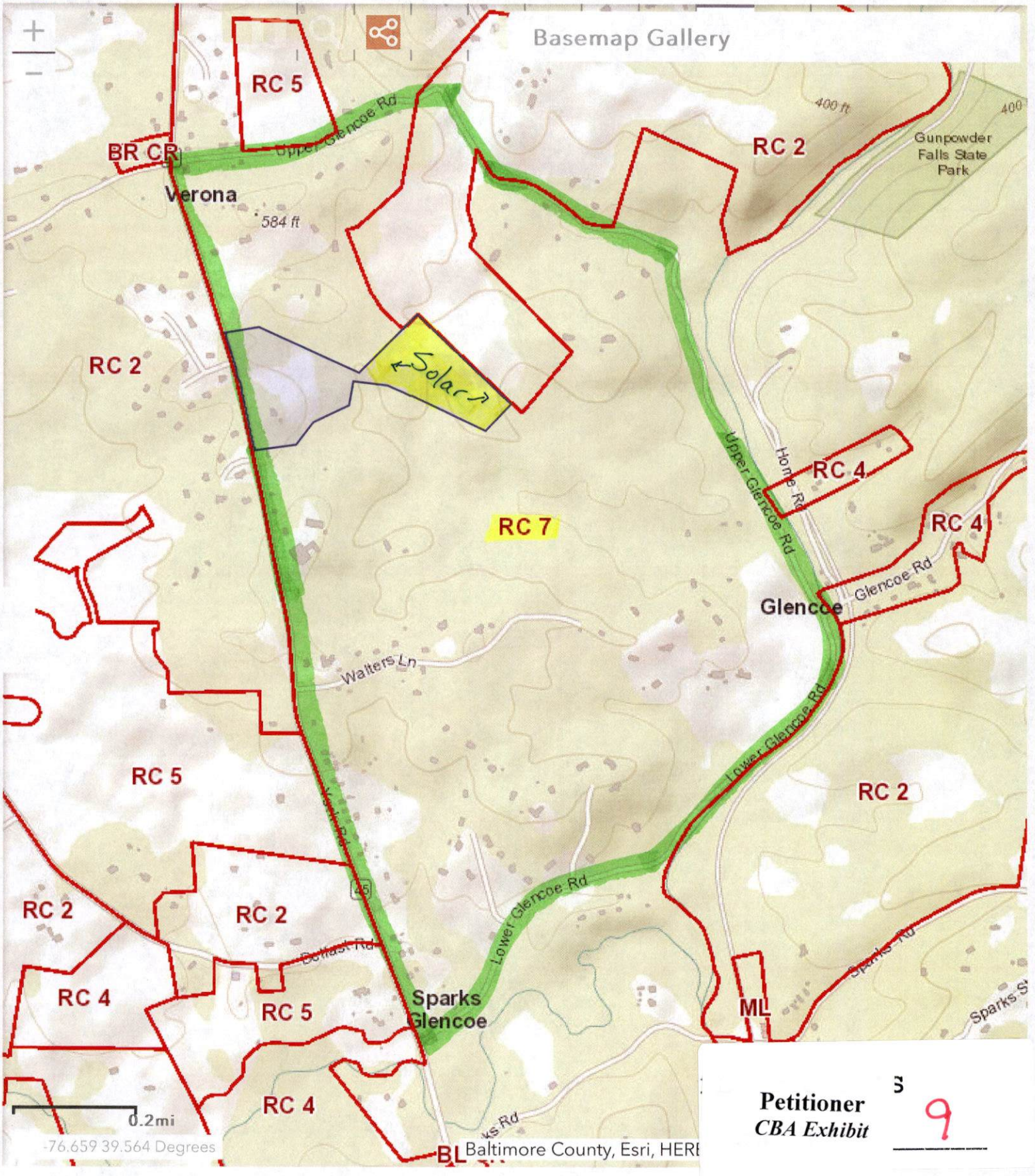
The primary purpose of Maryland's stormwater management program is to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources. Any land development project that exceeds 5,000 square feet of disturbance, including solar panel projects, must address stormwater management. However, for solar panels, stormwater management may be provided in a cost-effective manner by disconnecting each row of panels and directing runoff over the vegetated areas between the individual rows.

Resources

[1] 2000 Maryland Stormwater Design Manual, Volumes I and II, MDE, October 2000 (http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/MarylandStormwaterDesignManual/Pages/Programs/WaterPrograms/SedimentandStormwater/stormwater_design/index.aspx)

Locality

Baltimore County - My Neighborhood



Petitioner
CBA Exhibit 9

Case No. 18-047X 8/21/18

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Arnold Jablon
Deputy Administrative Officer and
Director of Permits, Approvals and Inspections

DATE: 9/20/2017

FROM: Andrea Van Arsdale
Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 18-047

Petitioner
CBA Exhibit
10

INFORMATION:
Property Address: 15637 York Road
Petitioner: Robert K. Gerner
Zoning: RC 7
Requested Action: Special Exception

The Department of Planning has reviewed the petition for special exception to use the property for a 9 acre solar facility.

A site visit was conducted on August 23, 2017.

York Road is a Baltimore County Scenic Route at this location. Due to topography and existing mature forest, the photovoltaic arrays will not be visible from York Road or adjacent residentially properties.

The Department has no objection to granting the requested zoning relief conditioned upon the following:

The Department finds that the proposal is consistent with the spirit and intent of the Baltimore County Zoning Regulations (BCZR), as applicable, upon successfully addressing the comments listed below.

- Pursuant to BCZR §4E-104.5 the photovoltaic arrays may not exceed 20 feet in height without variance relief. The Department recommends any additional height is inconsistent with the spirit and intent of the BCZR pursuant to §1A08.4.A and will not support such relief. Petitioners shall amend the plan to show a typical array structure detail at no more than 20' above the natural finished grade.
- Petitioners shall note on the plan that the proposed solar facility will produce not more than 2 megawatts of alternating current.
- Petitioners shall note on the plan that the proposed solar facility will be subject to BCZR §4E-107.
- Petitioners shall certify by note on the plan that the proposed solar facility will not exceed the maximum permitted number of facilities allowed in its respective councilmanic district. If approved, Petitioners shall submit to this Department at the time of building permit application the final fixed location and area of the facility by coordinate data so that an inventory may be kept.
- Lighting shall be limited to what is required for security purposes only and will be sited in such a way as to have minimal spillage onto neighboring properties.
- Signage shall be limited to that which is necessary for safety and security purposes.

Case. No 18-047 X

8/21/18

- At the time of building permit application the petitioners shall submit a solar glare analysis to the Department, to the attention of the contact person listed below, accompanied by written confirmation that the facility will not be detrimental to the adjacent residential properties pursuant to BCZR §502.1.A.
- No deliveries or outdoor maintenance which may generate excessive noise may occur on-site between the hours of 6 P.M. through 6 A.M.

For further information concerning the matters stated herein, please contact Kaylee Justice at 410-887-3480.

Prepared by:

Lloyd T. Moxley

Deputy Director:

Jeff Mayhew

AVA/KS/LTM/ka

c: Kaylee Justice
Brian Quinlan
Timothy M. Kotroco
Office of the Administrative Hearings
People's Counsel for Baltimore County

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

Larry Hogan
Governor
Boyd K. Rutherford
Lt. Governor
Pete K. Rahn
Secretary
Gregory Slater
Administrator

Date: 8/14/17

Ms. Kristen Lewis
Baltimore County Department of
Permits, Approvals and Inspections
County Office Building, Room 109
Towson, Maryland 21204

P **Petitioner**
CBA Exhibit
1 11

Dear Ms. Lewis:

We have reviewed the site plan to accompany petition for variance on the subject of the Case number referenced below, which was received on 8/14/17. A field inspection and internal review reveals that an entrance onto MD45 consistent with current State Highway Administration guidelines is required. ~~As a condition of approval for~~ , Case Number 2018-0047-X

Special Exception
Robert K. Gerner
15637 York Road
MD 45

The applicant must contact the State Highway Administration to obtain an entrance permit. Should you have any questions regarding this matter feel free to contact Richard Zeller at 410-229-2332 or 1-866-998-0367 (in Maryland only) extension 2332, or by email at (rzeller@sha.state.md.us).

Sincerely,

Richard A. Zeller

Wendy Wolcott, P.L.A.
Metropolitan District Engineer
Maryland Department of Transportation
State Highway Administration
District 4 - Baltimore and Harford Counties

* Applicant must contact Mr. Brian Greiting to obtain a residential or farm entrance permit. He can be reached at 410-329-6752

WW/RAZ
Mr. Robert K. Gerner / 15637 York Road, Sparks, MD 21152
cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Mr. Brian Greiting, SHA R&TC - Hereford Shop
Bruce E. Doak Consulting, LLC / 3801 Baker Schoolhouse Road
Freeland, MD 21053

Case No. 18-047-X 8/21/17

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

Petitioner
CBA Exhibit
12

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017**.

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

PETITIONER'S
EXHIBIT NO. 12

C:\Users\jwisnom\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\XEGA1Q0V\ZAC 18-0047-X 15637 York Road.doc

Case No 18-047X 8/21/18

BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Department of Permits, Approvals
And Inspections

DATE: August 23, 2017

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

Petitioner
CBA Exhibit
13

SUBJECT: Zoning Advisory Committee Meeting
For August 21, 2017
Item No. 2018-0047-X

The Bureau of Development Plans Review has reviewed the subject zoning Items and we have the following comments.

If Special Exception is granted a Landscape Plan is required per the requirements of the Landscape Manual, Bill No.37-17 and the CMDP.

Specific Landscape comments:
1 .York Road is a Baltimore County Scenic Route,
2. Perimeter Landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Additional Landscape buffers may be required depending on the adjacent subject properties existing topography, Scenic Views, etc.,
5. Solar panels are considered a utility and should be designed and located to harmonize with surrounds and create the least visual impact,
6. More comments may be rendered during review of the Landscape Plan.

* * * * *

VKD: CEN
cc: file

Case No. 18-047-X

8/21/18

People's Counsel
CBA Exhibit
3

Case No. 18-047-X 8/21/18

Real Property Data Search

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Tax Exempt:		**Special Tax Recapture:**	
Exempt Class:		AGRICULTURAL TRANSFER TAX	
Account Identifier:		**District** - 08 **Account Number** - 0802004200	

Owner Information

Owner Name:	GERNER ROBERT K	**Use:** **Principal Residence:**	AGRICULTURAL YES
Mailing Address:	15637 YORK RD SPARKS MD 21152-9687	**Deed Reference:**	/32699/ 00228

Location & Structure Information

Premises Address:	15637 YORK RD SPARKS 21152-9687	**Legal Description:**	30.723 AC 15637 YORK RD ES 1500FT S UPR GLENCOE RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0015	0114		0000				2017	Plat Ref:

Special Tax Areas:		**Town:**	NONE
		Ad Valorem:	
		Tax Class:	

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1897	3,862 SF		30.7230 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-In Assessments As of 07/01/2018	As of 07/01/2019
Land:	143,700	143,700		
Improvements	203,600	243,500		
Total:	347,300	387,200	373,900	387,200
Preferential Land:	3,700			3,700

Transfer Information

Seller: GERNER ROBERT KEITH	**Date:** 10/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /32699/ 00228	**Deed2:**
Seller: GERNER ROBERT	**Date:** 04/11/2006	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /23665/ 00255	**Deed2:**
Seller: BALLARD CYNTHIA W	**Date:** 10/27/2004	**Price:** $850,000
Type: ARMS LENGTH IMPROVED	**Deed1:** /20893/ 00079	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2018	07/01/2019
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt:		**Special Tax Recapture:**	
Exempt Class:		AGRICULTURAL TRANSFER TAX	

Homestead Application Information

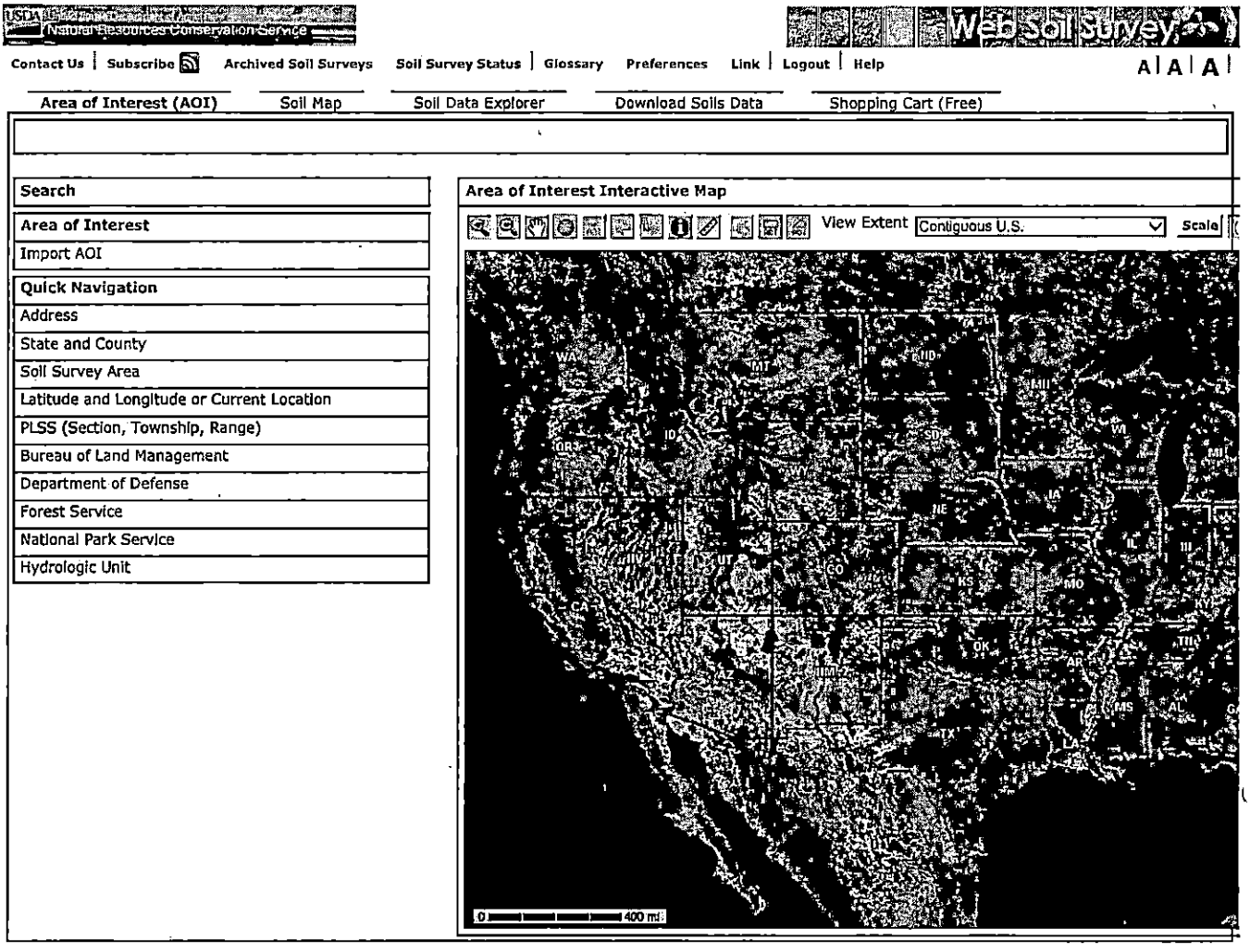
Homestead Application Status: Approved 05/15/2008

Homeowners' Tax Credit Application Information

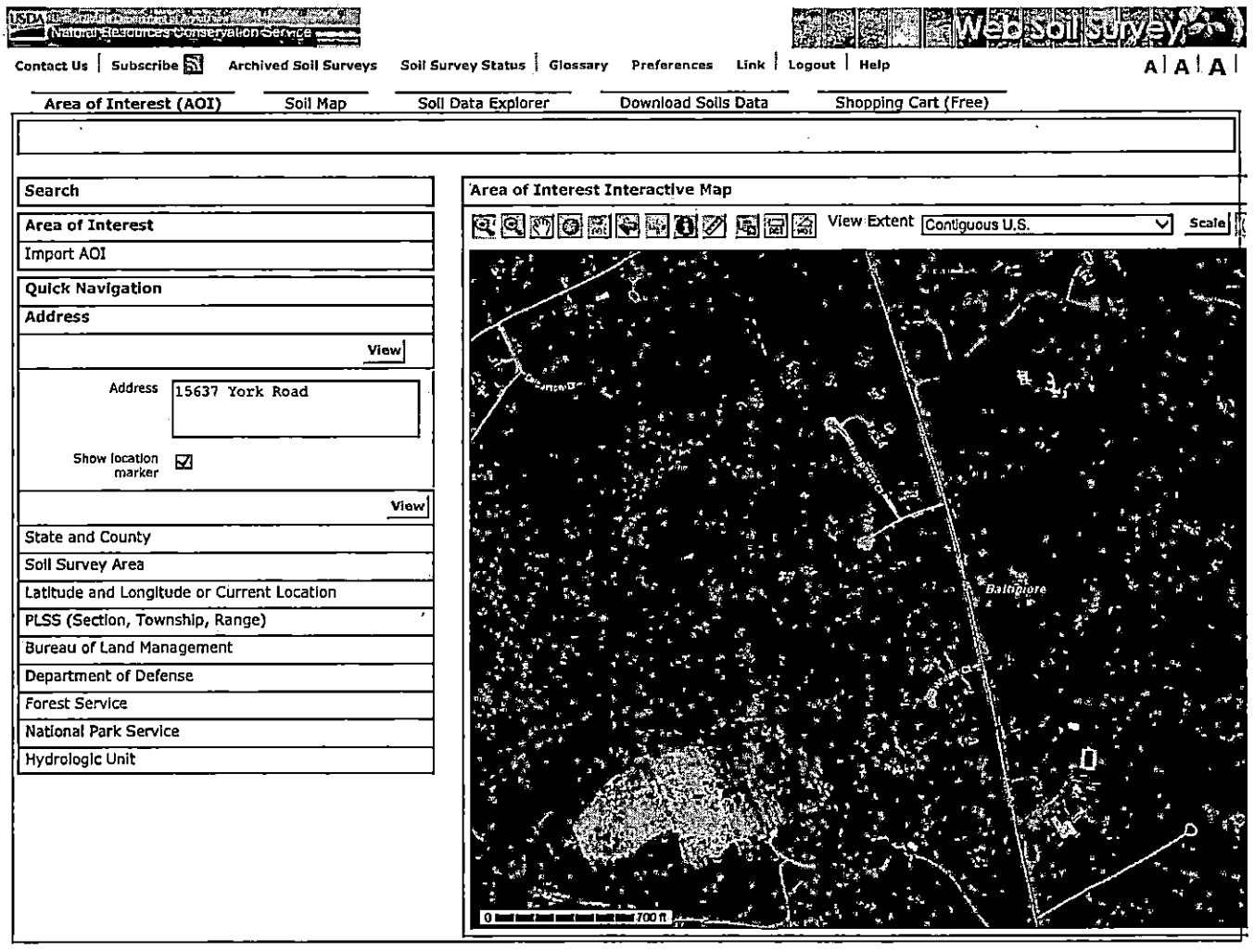
Homeowners' Tax Credit Application Status: No Application **Date:**

People's Counsel
CBA Exhibit
4

Case No. 18-047-X 8/21/18



People's Counsel
CBA Exhibit
5


USDA
National Resources Conservation Service
Web Soil Survey
Contact Us | Subscribe | Archived Soil Surveys | Soil Survey Status | Glossary | Preferences | Link | Logout | Help
A | A | A
Area of Interest (AOI)
Soil Map
Soil Data Explorer
Download Soils Data
Shopping Cart (Free)
Search
Area of Interest
Import AOI
Quick Navigation
Address
View
Address
15637 York Road
Show location marker
View
State and County
Soil Survey Area
Latitude and Longitude or Current Location
PLSS (Section, Township, Range)
Bureau of Land Management
Department of Defense
Forest Service
National Park Service
Hydrologic Unit
Area of Interest Interactive Map
View Extent
Contiguous U.S.
Scale
Baltimore
0
700 ft
FOIA | Accessibility Statement | Privacy Policy | Non-Discrimination Statement | Information Quality | USA.gov | White House

Search

Area of Interest

Open All | Close All

AOI Properties

Clear AOI

AOI Information

Name

Map Unit Symbols: Use Soil Survey Area Map Unit Symbols / Use National Map Unit Symbols

Area (acres): 114.8

Soil Data Available from Web Soil Survey

Baltimore County, Maryland (MD005)

Data Availability: Tabular and Spatial, complete

Tabular Data: Version 12, Sep 18, 2017

Spatial Data: Version 8, Sep 19, 2016

Clear AOI

Import AOI

Export AOI

Quick Navigation

Address

View

Address: 15637 York Road

Show location marker

View

State and County

Soil Survey Area

Latitude and Longitude or Current Location

PLSS (Section, Township, Range)

Bureau of Land Management

Department of Defense

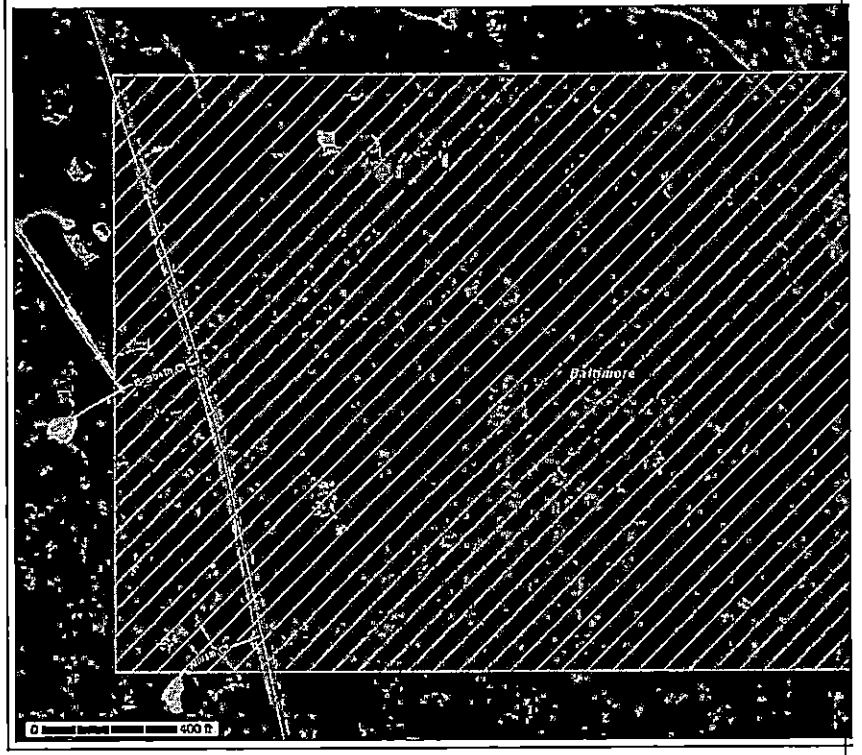
Forest Service

National Park Service

Hydrologic Unit

Area of Interest Interactive Map

View Extent: Contiguous U.S. | Scale



Search

Map Unit Legend

Baltimore County, Maryland (MD005)

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
Baltimore County, Maryland (MD005)			
CfA	Codorus silt loams, 0 to 3 percent slopes	0.4	0.4%
GdB	Glenelg loam, 3 to 8 percent slopes	16.4	14.3%
GdC	Glenelg loam, 8 to 15 percent slopes	7.6	6.6%
GhB	Glenville silt loam, 3 to 8 percent slopes	10.5	9.2%
GhC	Glenville silt loam, 8 to 15 percent slopes	8.3	7.2%
MaB	Manor loam, 3 to 8 percent slopes	11.0	9.6%
MaC	Manor loam, 8 to 15 percent	13.3	11.6%

Soil Map

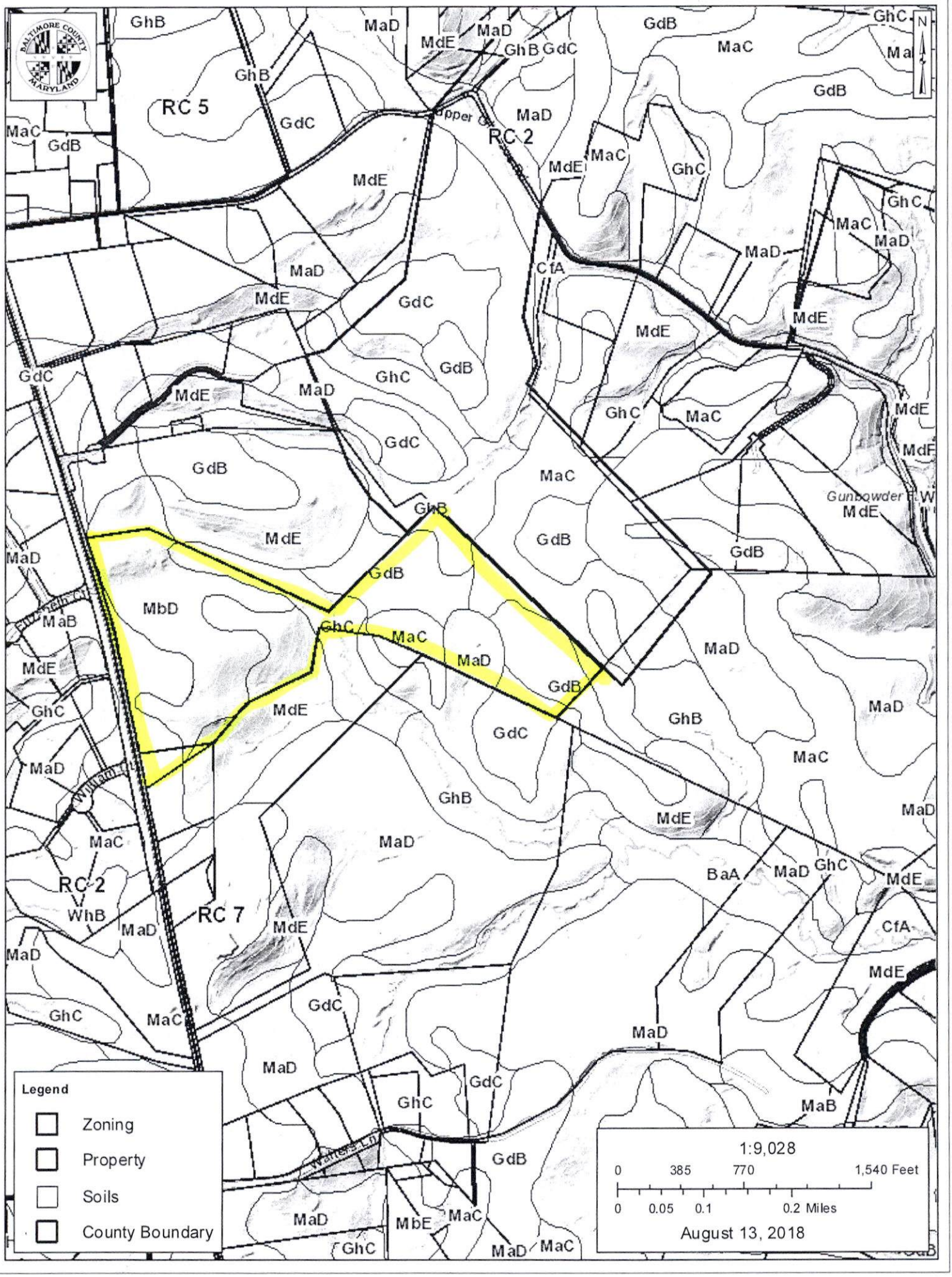
Scale (not to scale)

Warning: Soil Map may not be valid at this scale.

You have zoomed in beyond the scale at which the soil map for this area is intended to be used. Mapp
The soil surveys that comprise your AOI were mapped at 1:12,000. The design of map units and the
map are dependent on that map scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapp
The maps do not show the small areas of contrasting soils that could have been shown at a more det

Baltimore County - My Neighborhood



Baltimore County, Maryland

GdB—Glenelg loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2v7gp
Elevation: 30 to 1,200 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Glenelg and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenelg

Setting

Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, backslope, shoulder
Landform position (three-dimensional): Interfluve, side slope
Down-slope shape: Linear
Across-slope shape: Convex, linear, concave
Parent material: Residuum weathered from mica schist

Typical profile

Ap1 - 0 to 6 inches: loam
Ap2 - 6 to 10 inches: clay loam
Bt1 - 10 to 18 inches: clay loam
Bt2 - 18 to 25 inches: clay loam
Bt3 - 25 to 30 inches: clay loam
BCt - 30 to 42 inches: loam
CBt - 42 to 54 inches: loam
C - 54 to 76 inches: channery fine sandy loam

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.20 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: High (about 10.4 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Galla

Percent of map unit: 10 percent
Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Concave
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GdC—Glenelg loam, 8 to 15 percent slopes

Map Unit Setting
National map unit symbol: 2v7gq
Elevation: 30 to 1,050 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 180 to 220 days
Farmland classification: Farmland of statewide importance

Map Unit Composition
Glenelg and similar soils: 90 percent
Minor components: 10 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenelg

Setting
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Interfluve, side slope
Down-slope shape: Linear
Across-slope shape: Linear, concave, convex
Parent material: Residuum weathered from mica schist

Typical profile
Ap1 - 0 to 6 inches: loam
Ap2 - 6 to 10 inches: clay loam
Bt1 - 10 to 18 inches: clay loam
Bt2 - 18 to 25 inches: clay loam
Bt3 - 25 to 30 inches: clay loam
BCt - 30 to 42 inches: loam
CBt - 42 to 54 inches: loam
C - 54 to 76 inches: channery fine sandy loam

Properties and qualities
Slope: 8 to 15 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: High (about 11.1 inches)

Interpretive groups
Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Brinklow
Percent of map unit: 10 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GhB—Glenville silt loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2tmch
Elevation: 20 to 1,090 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Glenville and similar soils: 75 percent
Minor components: 25 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenville

Setting

Landform: Swales, drainageways
Landform position (two-dimensional): Footslope, backslope
Landform position (three-dimensional): Head slope, base slope, interfluve
Down-slope shape: Linear, concave
Across-slope shape: Concave, linear
Parent material: Colluvium derived from metamorphic rock over schist, gneiss or phyllite residuum

Typical profile

Ap - 0 to 11 inches: silt loam
Bt1 - 11 to 20 inches: channery silt loam
Bt2 - 20 to 30 inches: silt loam
Btx - 30 to 40 inches: silt loam
C1 - 40 to 59 inches: loam
C2 - 59 to 82 inches: loam

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: 29 to 31 inches to fragipan
Natural drainage class: Moderately well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.03 to 0.11 in/hr)
Depth to water table: About 18 to 22 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 5.1 inches)

Interpretive groups

Land capability classification (irrigated): None specified

Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: C/D
Hydric soil rating: No

Minor Components

Unnamed

Percent of map unit: 15 percent
Landform: Drainageways
Landform position (two-dimensional): Footslope
Landform position (three-dimensional): Base slope
Down-slope shape: Linear, concave
Across-slope shape: Concave, linear
Hydric soil rating: No

Baile

Percent of map unit: 10 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Footslope
Landform position (three-dimensional): Base slope
Down-slope shape: Concave, linear
Across-slope shape: Linear, concave
Hydric soil rating: Yes

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

GhC—Glenville silt loam, 8 to 15 percent slopes

Map Unit Setting
National map unit symbol: 2p8wp
Elevation: 250 to 1,050 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 110 to 235 days
Farmland classification: Farmland of statewide importance

Map Unit Composition
Glenville and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Glenville

Setting
Landform: Swales, drainageways
Landform position (three-dimensional): Base slope, head slope
Down-slope shape: Concave
Across-slope shape: Linear
Parent material: Loamy colluvium derived from phyllite and/or loamy colluvium derived from schist

Typical profile
Ap - 0 to 8 inches: silt loam
Bt1, Bt2 - 8 to 30 inches: silt loam
Btx - 30 to 40 inches: loam
C1, C2 - 40 to 70 inches: loam

Properties and qualities
Slope: 8 to 15 percent
Depth to restrictive feature: 24 to 39 inches to fragipan
Natural drainage class: Moderately well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to moderately high (0.06 to 0.57 in/hr)
Depth to water table: About 20 to 40 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.5 inches)

Interpretive groups
Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: C
Hydric soil rating: No

Minor Components

Glenelg
Percent of map unit: 15 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaB—Manor loam, 3 to 8 percent slopes

Map Unit Setting

National map unit symbol: 2lp7g
Elevation: 250 to 1,050 feet
Mean annual precipitation: 37 to 55 inches
Mean annual air temperature: 45 to 61 degrees F
Frost-free period: 110 to 255 days
Farmland classification: All areas are prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, interfluves, hillslopes
Landform position (two-dimensional): Backslope, shoulder, summit
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: loam
Bw1, Bw2 - 6 to 22 inches: sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 3 to 8 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Medium
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.6 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 2e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 10 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Glenelg

Percent of map unit: 5 percent
Landform: Interfluves, hillslopes
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaC—Manor loam, 8 to 15 percent slopes

Map Unit Setting
National map unit symbol: 2tkpw
Elevation: 50 to 1,080 feet
Mean annual precipitation: 35 to 50 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 220 days
Farmland classification: Farmland of statewide importance

Map Unit Composition
Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting
Landform: Hills
Landform position (two-dimensional): Summit, shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Residuum weathered from mica schist

Typical profile
A1 - 0 to 2 inches: loam
A2 - 2 to 6 inches: sandy loam
Bw1 - 6 to 13 inches: fine sandy loam
Bw2 - 13 to 22 inches: fine sandy loam
C1 - 22 to 30 inches: fine sandy loam
C2 - 30 to 44 inches: channery coarse sand
C3 - 44 to 53 inches: loamy sand
C4 - 53 to 83 inches: channery loamy sand
Cr - 83 to 108 inches: bedrock
R - 108 to 138 inches: bedrock

Properties and qualities
Slope: 8 to 15 percent
Percent of area covered with surface fragments: 0.0 percent
Depth to restrictive feature: 59 to 100 inches to paralithic bedrock; 100 to 128 inches to lithic bedrock
Natural drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.01 to 0.07 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups
Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 3e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Blocktown
Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope, interfluve, nose slope
Down-slope shape: Convex, linear
Across-slope shape: Convex, linear
Hydric soil rating: No

Glenville
Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Footslope, toeslope
Landform position (three-dimensional): Base slope, head slope
Down-slope shape: Concave
Across-slope shape: Linear
Hydric soil rating: No

Mt. airy
Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Summit, shoulder
Landform position (three-dimensional): Nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MaD—Manor loam, 15 to 25 percent slopes

Map Unit Setting

National map unit symbol: 2tmcg
Elevation: 250 to 1,000 feet
Mean annual precipitation: 40 to 55 inches
Mean annual air temperature: 48 to 57 degrees F
Frost-free period: 150 to 192 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Minor components: 15 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Hillslopes
Landform position (two-dimensional): Shoulder, backslope, summit
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Parent material: Residuum weathered from mica schist

Typical profile

A1 - 0 to 2 inches: loam
A2 - 2 to 6 inches: sandy loam
Bw1 - 6 to 13 inches: fine sandy loam
Bw2 - 13 to 22 inches: fine sandy loam
C1 - 22 to 30 inches: fine sandy loam
C2 - 30 to 44 inches: channery coarse sand
C3 - 44 to 53 inches: loamy sand
C4 - 53 to 83 inches: channery loamy sand
Cr - 83 to 108 inches: bedrock
R - 108 to 138 inches: bedrock

Properties and qualities

Slope: 15 to 25 percent
Percent of area covered with surface fragments: 0.0 percent
Depth to restrictive feature: 59 to 100 inches to paralithic bedrock; 100 to 128 inches to lithic bedrock
Natural drainage class: Well drained
Capacity of the most limiting layer to transmit water (Ksat): Moderately low (0.01 to 0.07 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.0 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: B
Hydric soil rating: No

Minor Components

Mt. airy

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope, summit, shoulder
Landform position (three-dimensional): Nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Glenville

Percent of map unit: 5 percent
Landform: Swales, drainageways
Landform position (two-dimensional): Backslope, footslope
Landform position (three-dimensional): Head slope, interfluve, base slope
Down-slope shape: Linear
Across-slope shape: Concave
Hydric soil rating: No

Blocktown

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MbD—Manor channery loam, 15 to 25 percent slopes

Map Unit Setting

National map unit symbol: 2lp79
Elevation: 250 to 1,050 feet
Mean annual precipitation: 35 to 46 inches
Mean annual air temperature: 45 to 57 degrees F
Frost-free period: 145 to 255 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 85 percent
Brinklow and similar soils: 10 percent
Minor components: 5 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: channery loam
Bw1, Bw2 - 6 to 22 inches: channery sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 15 to 25 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: High
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: B
Hydric soil rating: No

Description of Brinklow

Setting

Landform: Hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Parent material: Gravelly residuum weathered from schist and/or gravelly residuum weathered from phyllite

Typical profile

Ap - 0 to 10 inches: channery loam
Bt,BC - 10 to 25 inches: channery loam
Cr - 25 to 35 inches: weathered bedrock
R - 35 to 80 inches: bedrock

Properties and qualities

Slope: 15 to 25 percent
Depth to restrictive feature: 20 to 36 inches to paralithic bedrock; 28 to 40 inches to lithic bedrock
Natural drainage class: Well drained
Runoff class: High
Capacity of the most limiting layer to transmit water (Ksat): Very low (0.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 4e
Hydrologic Soil Group: C
Hydric soil rating: No

Minor Components

Gaila

Percent of map unit: 5 percent
Landform: Hillslopes
Landform position (two-dimensional): Shoulder, backslope
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017

Baltimore County, Maryland

MdE—Manor-Brinklow complex, 25 to 45 percent slopes, very rocky

Map Unit Setting

National map unit symbol: 2lpfp
Elevation: 250 to 4,000 feet
Mean annual precipitation: 8 to 46 inches
Mean annual air temperature: 45 to 57 degrees F
Frost-free period: 110 to 200 days
Farmland classification: Not prime farmland

Map Unit Composition

Manor and similar soils: 55 percent
Brinklow and similar soils: 30 percent
Rock outcrop: 5 percent
Minor components: 10 percent
Estimates are based on observations, descriptions, and transects of the mapunit.

Description of Manor

Setting

Landform: Ridges, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope
Down-slope shape: Convex
Across-slope shape: Linear
Parent material: Loamy residuum derived from phyllite and/or loamy residuum derived from schist

Typical profile

A1, A2 - 0 to 6 inches: loam
Bw1, Bw2 - 6 to 22 inches: sandy loam
C1,C2,C3,C4 - 22 to 72 inches: channery loamy sand

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: More than 80 inches
Natural drainage class: Well drained
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Moderately high to high (0.57 to 1.98 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Moderate (about 8.8 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7s

Hydrologic Soil Group: B
Hydric soil rating: No

Description of Brinklow

Setting

Landform: Hillslopes, hillslopes
Landform position (two-dimensional): Backslope, shoulder
Landform position (three-dimensional): Side slope, free face
Parent material: Gravelly residuum weathered from schist and/or gravelly residuum weathered from phyllite

Typical profile

Ap - 0 to 10 inches: channery loam
Bt,BC - 10 to 25 inches: channery loam
Cr - 25 to 35 inches: weathered bedrock
R - 35 to 80 inches: bedrock

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: 20 to 33 inches to paralithic bedrock; 33 to 80 inches to lithic bedrock
Natural drainage class: Well drained
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Very low (0.00 in/hr)
Depth to water table: More than 80 inches
Frequency of flooding: None
Frequency of ponding: None
Available water storage in profile: Low (about 4.7 inches)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 7s
Hydrologic Soil Group: C
Hydric soil rating: No

Description of Rock Outcrop

Typical profile

H1 - 0 to 60 inches: bedrock

Properties and qualities

Slope: 25 to 45 percent
Depth to restrictive feature: 0 inches to lithic bedrock
Runoff class: Very high
Capacity of the most limiting layer to transmit water (Ksat): Moderately low to high (0.06 to 5.95 in/hr)

Interpretive groups

Land capability classification (irrigated): None specified
Land capability classification (nonirrigated): 8s
Hydrologic Soil Group: D
Hydric soil rating: No

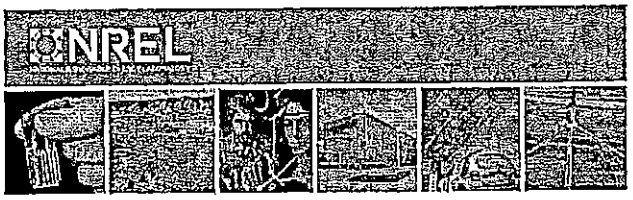
Minor Components

Blocktown

Percent of map unit: 10 percent
Landform: Hillslopes
Landform position (two-dimensional): Backslope
Landform position (three-dimensional): Side slope, interfluve, nose slope
Down-slope shape: Convex
Across-slope shape: Convex
Hydric soil rating: No

Data Source Information

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 12, Sep 18, 2017



Land-Use Requirements for Solar Power Plants in the United States

Sean Ong, Clinton Campbell, Paul Denholm, Robert Margolis, and Garvin Heath

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Office of Energy Efficiency & Renewable Energy
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People's Counsel
CBA Exhibit
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Case No. 18-047-X

8/21/18

Executive Summary

By the third quarter of 2012, the United States had deployed more than 2.1 gigawatts (GW_{ac}[1]) of utility-scale solar generation capacity, with 4.6 GW_{ac} under construction as of August 2012 (SEIA 2012). Continued growth is anticipated owing to state renewable portfolio standards and decreasing system costs (DOE 2012a). One concern regarding large-scale deployment of solar energy is its potentially significant land use. Efforts have been made to understand solar land use estimates from the literature (Horner and Clark 2013); however, we were unable to find a comprehensive evaluation of solar land use requirements from the research literature. This report provides data and analysis of the land use associated with U.S. utility-scale[2] ground-mounted photovoltaic (PV) and concentrating solar power (CSP) facilities.

After discussing solar land-use metrics and our data-collection and analysis methods, we present total and direct land-use results for various solar technologies and system configurations, on both a capacity and an electricity-generation basis. The total area corresponds to all land enclosed by the site boundary. The direct area comprises land directly occupied by solar arrays, access roads, substations, service buildings, and other infrastructure. We quantify and summarize the area impacted, recognizing that the quality and duration of the impact must be evaluated on a case-by-case basis. As of the third quarter of 2012, the solar projects we analyze represent 72% of installed and under-construction utility-scale PV and CSP capacity in the United States. Table ES-1 summarizes our land-use results.

[1] All capacity-based land-use intensity figures in this study are expressed in terms of MW_{ac} or GW_{ac}. This is to maintain consistency within the paper because CSP power plants are rated in terms of MW_{ac}. The conversion factor between de-rating and ac-rating is discussed in Section 3.

[2] We define utility-scale as greater than 1 MWdc for PV plants and greater than 1 MW_{ac} for CSP plants.

Table ES-1. Summary of Land-Use Requirements for PV and CSP Projects in the United States

Technology	Direct Area		Total Area	
	Capacity-weighted average land use (acres/MW_{ac})	Generation-weighted average land use (acres/GWh/yr)	Capacity-weighted average land use (acres/MW_{ac})	Generation-weighted average land use (acres/GWh/yr)
Small PV (>1 MW, <20 MW)	6.9	3.1	8.3	4.1
Fixed	6.5	3.2	7.8	4.4
1-axis	8.3	2.9	8.7	3.8
2-axis flat panel	9.4	4.1	13	6.6
2-axis CPV	6.9	2.3	9.1	3.1
Large PV (>20 MW)	7.2	3.1	7.9	3.4
Fixed	6.8	2.8	7.5	3.7
1-axis	9.0	3.5	8.3	3.3
2-axis CPV	6.1	2.0	8.1	2.8
CSP	7.7	2.7	10	3.5
Parabolic trough	6.2	2.5	9.5	3.9
Tower	8.9	2.8	10	3.2
Dish Stirling	2.8	1.5	10	5.3
Linear Fresnel	2.0	1.7	4.7	4.0

We found total land-use requirements for solar power plants to have a wide range across technologies. Generation-weighted averages for total area requirements range from about 3 acres/GWh/yr for CSP towers and CPV installations to 5.5 acres/GWh/yr for small 2-axis flat panel PV power plants. Across all solar technologies, the total area generation-weighted average is 3.5 acres/GWh/yr with 40% of power plants within 3 and 4 acres/GWh/yr. For direct-area requirements the generation-weighted average is 2.9 acres/GWh/yr, with 49% of power plants within 2.5 and 3.5 acres/GWh/yr. On a capacity basis, the total-area capacity-weighted average is 8.9 acres/MW_{ac}, with 22% of power plants within 8 and 10 acres/MW_{ac}. For direct land-use requirements, the capacity-weighted average is 7.3 acre/MW_{ac}, with 40% of power plants within 6 and 8 acres/MW_{ac}. Other published estimates of solar direct land use generally fall within these ranges.

Both capacity- and generation-based solar land-use requirements have wide and often skewed distributions that are not well captured when reporting average or median values. Some solar categories have relatively small samples sizes, and the highest-quality data are not available for all solar projects; both of these factors must be considered when interpreting the robustness of reported results. Owing to the rapid evolution of solar technologies, as well as land-use practices and regulations, the results reported here reflect past performance and not necessarily future trends. Future analyses could include evaluating the quality and duration of solar land-use impacts and using larger sample sizes and additional data elements to enable a thorough investigation of additional land-use factors.

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1 Introduction

By the third quarter of 2012, the United States had deployed more than 2.1 gigawatts (GWac[1]) of utility-scale solar generation capacity, with 4.6 GWac under construction as of August 2012 (SEIA 2012). Continued growth is anticipated owing to state renewable portfolio standards and decreasing system costs (DOE 2012a). One concern regarding large-scale deployment of solar energy is its potentially significant land use. Estimates of land use in the existing literature are often based on simplified assumptions, including power plant configurations that do not reflect actual development practices to date. Land-use descriptions for many projects are available from various permitting agencies and other public sources, but we were unable to locate a single source that compiles or summarizes these datasets. The existing data and analyses limit the effective quantification of land-use impacts for existing and future solar energy generation, particularly compared with other electricity-generation technologies.

This report provides data and analysis of the land use associated with U.S. utility-scale ground-mounted photovoltaic (PV) and concentrating solar power (CSP) facilities, defined as installations with capacities greater than 1 MW. The next section (Section 2) discusses standard land-use metrics and their applicability to solar power plants. We identify two major classes of solar plant land use—direct impact (disturbed land due to physical infrastructure development) and total area (all land enclosed by the site boundary)—by which we categorize subsequent results. Section 3 describes our solar land-use data collection and analysis methods. We derived datasets from project applications, environmental impact statements, and other sources and used them to analyze land use based on the capacity and generation of solar plants. Section 4 presents our results. In addition to summarizing PV and CSP land use, we examine relationships among land use, plant configuration, location, and technology. Finally, in Section 5, we identify limitations to the existing solar land-use datasets and suggest additional analyses that could aid in evaluating land use and impacts associated with the deployment of solar energy. Appendices include tables of our solar project data as well as more detailed analyses of specific land-use relationships.

[1] All capacity-based land-use intensity figures in this study are expressed in terms of MWac or GWac. This is to maintain consistency within the paper because CSP power plants are rated in terms of MWac. The conversion factor between de-rating and re-rating is discussed in Section 3.

2 Solar Power Plant Land-Use Metrics

There are many existing and proposed metrics for evaluating land-use impacts. Recent methods for quantifying land use include evaluating the direct and indirect life-cycle use (Fthenakis and Kim 2009) and assessing temporary and permanent land-area requirements (Denholm et al. 2009). While there is no single, generally accepted methodology (Canals et al. 2007), at least three general categories are used to evaluate land-use impacts: (1) the area impacted, (2) the duration of the impact, and (3) the quality of the impact (Koellner and Scholz 2008). The quality of the impact (also called the "damage function") evaluates the initial state of the land impacted and the final state across a variety of factors, including soil quality and overall ecosystem quality (Koellner and Scholz 2008).

This report closely follows the methodology outlined in a National Renewable Energy Laboratory (NREL) U.S. wind power land-use study (Denholm et al. 2009). We quantify and summarize the area impacted, recognizing that the quality and duration of the impact must be evaluated on a case-by-case basis. We consider two land-use metrics. The first is the total area, which corresponds to all land enclosed by the site boundary. The perimeter of this area is usually specified in blueprint drawings and typically fenced or protected. The second metric is the direct-impact area, which comprises land directly occupied by solar arrays, access roads, substations, service buildings, and other infrastructure. The direct-impact area is smaller than the total area and is contained within the total-area boundaries. Figure 1 illustrates the two types of areas, with the total area shaded yellow and the direct-impact area shaded orange.

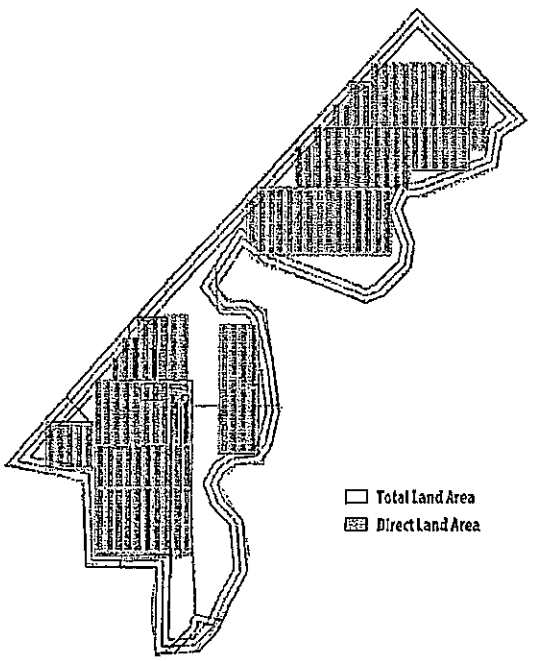


Figure 1. NREL mesa top PV system—example of direct and total land use[4]

[4] Access roads, infrastructure, and other direct impact areas are not shown in Figure 1.

3 Solar Land-Use Data and Methodology

We collected PV and CSP land-use data from four categories of sources, in the following prioritized order. First, where available, we collected official project data from federal, state, or local regulatory agencies, including environmental impact statements, environmental assessments, and project applications to regulatory bodies. These sources typically contain detailed project information, but their availability is highly dependent on federal, state, and local regulations as some states require very detailed environmental assessments, while others require little land-use analysis. Second, we collected project fact sheets, news releases, and other data provided by the project owner or developer. Data from these sources were used when additional information was needed and not found in regulatory documents. When no other source of data could be located, we used news articles, websites unaffiliated with the developer/owner or regulatory bodies, and other secondary sources. Finally, when official project drawings were unavailable or documents did not include information necessary to estimate total and direct land area, we analyzed satellite images to identify plant configuration, direct land use, and project-area boundaries. Table 1 shows the proportion of data source categories used for each technology and also indicates the percentage of sites where satellite imagery was analyzed in addition to the documents collected.

Table 1. Summary of Data Categories Used for PV and CSP Plants[5]

Technology	Official Documents (%)	Developer Documents (%)	Third-Party Sources (%)	Percent of Projects that Required Satellite Imagery
PV	19%	36%	46%	40%
CSP	44%	28%	28%	40%

For PV, we used these datasets to analyze the relationship between land-use intensity (defined as land use per unit of capacity or generation) and stated PV module efficiency, array configuration, and tracking type. For CSP, we analyzed the land-use intensity of several different technologies. For PV and CSP, we limited the analysis to systems larger than 1 MW in capacity. We classified systems smaller than 20 MW as "small" and those larger than 20 MW as "large."

We quantified land-use requirements on a capacity (area/MWac) and a generation (area/GWh/yr[6]) basis. Capacity-based results are useful for estimating land area and costs for new projects because power plants are often rated in terms of capacity. The generation basis provides a more consistent comparison between technologies that differ in capacity factor and enables evaluation of land-use impacts that vary by solar resource differences, tracking configurations, and technology and storage options. Most of the data collected for this analysis included the reported capacity of power plants but not annual generation. Because capacity-based land-use requirements are based on reported data, the capacity-based results are expected to have less uncertainty than the generation-based results.

[5] Percentages add up to over 100% because power plants estimated with satellite imagery also required additional data sources to determine solar plant characteristics.

[6] Generation results are reported in acre/(GWh per year) which we display as acre/GWh/yr.

We simulated PV and CSP electricity generation using the System Advisor Model (SAM; Gilman and Dobos 2012). When available, we used project-specific inputs, such as location, array configuration, derate factor, and tracking technology. When project-specific inputs were unavailable, we used SAM default assumptions (e.g., if the tilt angle for fixed-tilt PV was unknown, we used SAM's latitude-tilt default assumption). The PV derate factor[7] was determined by dividing the AC reported capacity by the DC reported capacity for each project. The weighted-average derate factor (0.85) was used for projects that did not report both AC and DC capacity. All capacity-based land-use intensity figures in this study are expressed in terms of MWac. For CSP projects, a range of solar multiple[8] values was used to simulate annual generation output (see Appendix A for CSP solar multiple assumptions). Hourly solar resource and weather data for all projects were obtained from the NREL Solar Prospector tool[9] for each project's latitude and longitude. Each power plant was assigned to a cell within the National Solar Radiation Database (Wilcox 2007) equal in area to 0.1 degrees in latitude and longitude (approximately equal to a 10 km x 10 km square) (Perez et al. 2002). PV and CSP projects were simulated with typical direct-radiation-year weather data[10] (NREL 2012).

[7] The derate factor is used to determine the AC power rating at Standard Test Conditions (STC). The overall DC to AC derate factor accounts for losses from the DC nameplate power rating. We do not calculate the derate factor from component losses, but rather estimate the derate factor from the reported AC and DC power rating at each plant. For a discussion on derate factors, see http://www.nrel.gov/docs/fy13osti/56487.pdf (accessed April 2013).

[8] The solar multiple is the CSP field aperture area expressed as a multiple of the aperture area required to operate the power cycle at its design capacity (NREL 2012).

[9] The Solar Prospector is a mapping and analysis tool designed to provide access to geospatial data relevant to the solar industry. For more information, visit https://maps.nrel.gov/prospector (accessed May 2013).

[10] For consistency, PV and CSP data were both simulated using typical direct-radiation-year (TDY) weather data. Normally, CSP power plants are simulated using TDY data and PV power plants are simulated using typical meteorological year (TMY) data.

Figure 2. Map of PV and CSP installations evaluated

4.1 Summary Results

Figure 3 summarizes capacity-based total and direct land-use results for small and large utility-scale PV and CSP projects. Direct land-use requirements for small and large PV installations range from 2.2 to 12.2 acres/MWac, with a capacity-weighted average of 6.9 acres/MWac. Direct land-use intensity for CSP installations ranges from 2.0 to 13.9 acres/MWac, with a capacity-weighted average of 7.7 acres/MWac. Figure 4 shows generation-based total and direct land-use results. Direct land-use requirements for PV installations range from 1.6 to 5.8 acres/GWh/yr, with a generation-weighted average of 3.1 acres/GWh/yr. Direct land-use intensity for CSP installations ranges from 1.5 to 5.3 acres/GWh/yr, with a generation-weighted average of 2.7 acres/GWh/yr.

Solar direct land-use estimates in the literature generally fall within these ranges but are often smaller than the PV capacity-weighted averages we report and on par or larger for CSP capacity-weighted averages we report. Hand et al. (2012) estimate 4.9 acres/MWac for PV and 8.0 acres/MWac for CSP. Denholm and Margolis (2008) estimate 3.8 acres/MWac for fixed-tilt PV systems and 5.1 acres/MWac for 1-axis tracking PV systems. Our results indicate 5.5 acres/MWac for fixed-tilt PV and 6.3 acres/MWac for 1-axis tracking PV (capacity-weighted average direct land-use requirements for systems under 20 MW; see Table 4 in Section 4.2). Horner and Clark (2013) report 3.8 acres/GWh/yr for PV and 2.5 acres/GWh/yr for CSP. Fthenakis and Kim (2009) estimate 4.1 acres/GWh/yr for CSP troughs and 2.7 acres/GWh/yr for

4 Results

We obtained land-use data for 166 projects completed or under construction (as of August 2012), representing 4.8 GWac of capacity, and 51 proposed projects, representing approximately 8 GWac of capacity (Table 2).

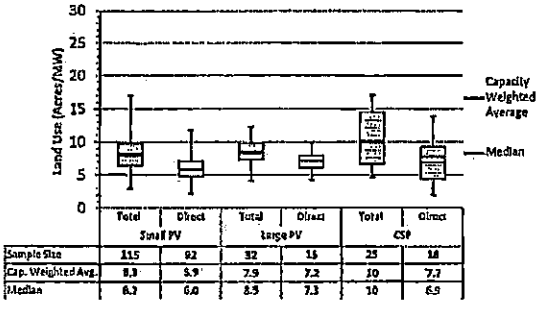
Table 2. Summary of Collected Solar Power Plant Data (as of August 2012)

	Small PV (<20 MW)		Large PV (>20 MW)		CSP	
	Projects	Capacity (MWac)	Projects	Capacity (MWac)	Projects	Capacity (MWac)
Completed	103	413	10	256	9	508
Under construction	17	165	20	1,846	7	1,610
Proposed	6	70	36	6,370	9	1,570
Total	126	762	66	8,981	25	3,688

We collected data on 4.8 GWac (72%) of the 6.7 GWac of completed or under-construction U.S. utility-scale solar capacity reported by SEIA (SEIA 2012). Figure 2 maps the solar projects evaluated, Appendix B and Appendix C detail all the projects and data sources. There are over 24 GWac of PV and CSP proposed (under development but not under construction) as of August 2012[11] (SEIA 2012), and the results reported in this study must be taken in light of a rapidly growing installed base. The results reported in this study reflect past performance and not necessarily future trends. For example, many of the largest PV systems currently proposed consist primarily of thin-film technology on fixed-tilt arrays, which may have different land use requirements than the results presented in this study.

[11] As of February 2013, there are 26 GWac of PV and CSP proposed (SEIA 2013)

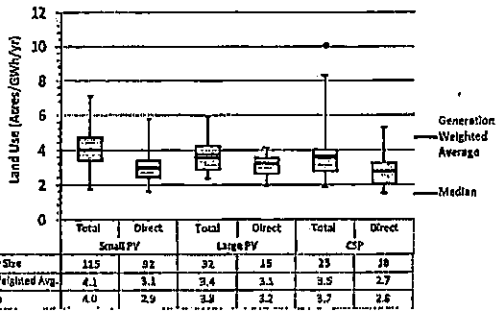
CSP towers. Our results indicate 2.3 acres/GWh/yr for CSP troughs and 2.8 acres/GWh/yr for CSP towers (see Table 7 in Section 4.3).[12]



	Small PV		Large PV		CSP	
Sample Size	115	92	32	15	25	18
Cap. Weighted Avg.	8.9	6.9	7.9	7.2	10	7.7
Median	6.2	6.0	8.5	7.3	10	6.9

Figure 3. Distribution of solar land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

[12] Comparisons of generation-based land use results should be taken in light of the fact that annual generation (GWh) varies with solar resource (location). For example, generation-based results determined from solar power plants in a specific location may differ from results presented in this study, which includes solar plants from a variety of locations throughout the United States.



	Total	Direct	Total	Direct	Total	Direct
	Small PV		Large PV		CSP	
Sample Size	115	92	32	15	23	18
Gen. Weighted Avg.	4.1	3.1	3.4	3.1	3.5	2.7
Median	4.0	2.9	3.9	3.2	3.7	2.6

Figure 4. Distribution of generation-based solar land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates. Blue dot represents eSolar's Sierra Sun Tower (10 acres/GWh/yr), separated for clarity (but not considered an outlier)

4.2 PV Land-Use Results

Table 3 and Table 4 summarize PV land requirements by tracking type for total and direct area, respectively. Total-area data were available for all systems evaluated; however, direct-area data were only available for a subset of these systems. Fixed-tilt and 1-axis PV systems account for a majority (96%) of projects evaluated.

On average, fixed-tilt systems use 13% less land than 1-axis tracking on a capacity basis but use 15% more land on a generation basis. This difference is due to increased generation resulting from tracking technologies. One-axis tracking systems can increase PV generation 12%–25% relative to fixed-tilt systems, and 2-axis tracking systems can increase PV generation by 30%–45% (Drury et al. 2012). We evaluated ten 2-axis PV plants: four flat panel (non-concentrating) projects and six concentrating PV (CPV) projects. Two-axis, flat panel systems appear to use more land than fixed and 1-axis plants on a capacity and generation basis, but general conclusions should not be drawn until the sample size is increased.

Table 3. Total Land-Use Requirements by PV Tracking Type[11]

Tracking Type	Projects	Capacity (MWac)	Total Area: Capacity-weighted average area requirements (acres/MWac)	Total Area: Generation-weighted average area requirements (acres/GWh/yr)
Small PV (less than 20 MW)				
Fixed	52	231	7.6	4.4
1-axis	55	306	8.7	3.8
2-axis flat panel	4	5	13	5.5
2-axis CPV	4	7	9.1	3.1
Large PV (greater than 20 MW)				
Fixed	14	1,755	7.5	3.7
1-axis	16	1,037	8.3	3.3
2-axis CPV	2	158	8.1	2.8

Table 4. Direct Land-Use Requirements by PV Tracking Type[12]

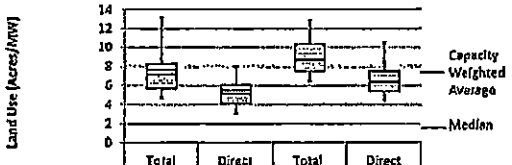
Tracking Type	Projects	Capacity (MWac)	Direct Area: Capacity-weighted average area requirements (acres/MWac)	Direct Area: Generation-weighted average area requirements (acres/GWh/yr)
Small PV (less than 20 MW)				
Fixed	43	194	5.5	3.2
1-axis	41	168	6.3	2.9
2-axis flat panel	4	5	9.4	4.1
2-axis CPV	4	7	6.9	2.3
Large PV (greater than 20 MW)				
Fixed	7	744	5.8	2.8
1-axis	7	630	9.0	3.5
2-axis CPV	1	31	6.1	2.0

Figure 5 shows the capacity-based total and direct land-use requirement distributions for PV plants smaller than 20 MW. Direct land-use requirements for fixed-tilt PV installations range from 2.2 to 8.0 acres/MWac, with a capacity-weighted average of 5.5 acres/MWac. Direct land-use requirements for 1-axis tracking PV installations range from 4.2 to 10.6 acres/MWac, with a capacity-weighted average of 6.3 acres/MWac. Figure 6 shows the capacity-based total and

[11] Forty-two proposed projects representing 5,842 MWac could not be categorized by tracking type owing to insufficient information. These projects are not represented in this table.
[12] Forty-two proposed projects representing 5,842 MWac could not be categorized by tracking type due to insufficient information. These projects are not represented in this table.

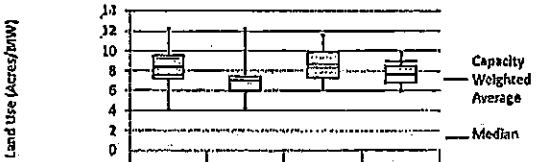
direct land-use requirement distributions for PV plants larger than 20 MW. Relatively large deviations between the median and weighted average values are due to a few very large PV installations (over 100 MW) contributing heavily to weighted average results. We found that PV system size appears to have no significant impact on land-use requirements per unit of capacity (see Appendix D).

We also evaluated the impacts of efficiency on land-use intensity. We would expect land-use intensity to decrease with increasing module efficiencies, but we observed no significant trends between land-use intensity and module efficiency for small and large PV systems (see Appendix D). Variations in land-use intensity that remain after isolating for module efficiency and tracking type are not clearly understood. One source of variability could be the large range of packing factors described in the next section.



	Total	Direct	Total	Direct
	Fixed Axis (< 20 MW)		1-Axis (< 20 MW)	
Sample Size	52	43	55	41
Cap. Weighted Avg.	7.6	5.5	8.7	6.3
Median	7.1	5.1	8.7	6.5

Figure 5. Distribution of small PV land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates



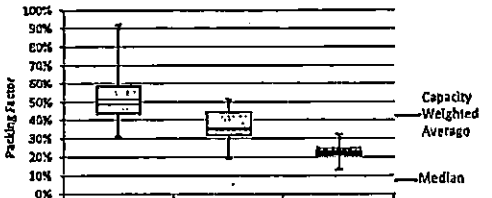
	Total	Direct	Total	Direct
	Fixed Axis (> 20 MW)		1-Axis (> 20 MW)	
Sample Size	14	7	16	7
Cap. Weighted Avg.	7.5	5.8	8.3	9.0
Median	6.4	7.0	8.7	7.7

Figure 6. Distribution of large PV land-use requirements—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

4.2.1 Evaluation of PV Packing Factors

We evaluated array spacing for various PV tracking technologies. The area between arrays is quantified using the packing factor metric, which is the ratio of array area to actual land area for a system[13] (DOE 2012b). Figure 7 shows the average packing factor for each tracking technology evaluated. An evaluation of system packing factors shows that there is large variability in array spacing. Packing factors range from 13% (Prescott Airport CPV, Arizona) to 92% (Canton Landfill Solar Project, Massachusetts). Fixed-tilt systems have a capacity-weighted average packing factor of 47%, followed by 1-axis systems with 34% and 2-axis systems with 25%. Packing factor estimates from the research literature range from 20% to 67% (Hoffner and Clark 2013). The large variability in packing factor may contribute to the variability in land-use intensity observed, given an expectation that packing factor directly impacts land-use intensity. We did not attempt to isolate the impacts of packing factor, efficiency, capacity, and other factors on land-use intensity due to limited data availability. The availability of more data elements and larger sample sizes will enable a robust evaluation of these factors on land-use intensity.

[13] We display the packing factor ratio as a percentage. A 100% packing factor would represent complete coverage of solar panels with no spacing between arrays.



	Fixed	1-Axis	2-Axis
Sample Size	30	35	9
Cap. Weighted Avg.	47%	34%	25%
Median	51%	36%	22%

Figure 7. Capacity-weighted average packing factor for PV projects evaluated—whiskers indicate maximum and minimum values, box indicates 75th (top of box) and 25th (bottom of box) percentile estimates

4.2.2 *Impact of Location and Tracking Configuration on PV Land Use*

Given the relatively small amount of data, it is difficult to isolate the impact of any single factor on land-use requirements. This section isolates the theoretical impact of tracking arrays by simulating the performance of PV in multiple locations holding all other factors constant.

Table 5 summarizes the relative impacts of tracking on land-use intensity, simulated for a variety of locations throughout the United States. Although tracking systems generate more energy than fixed-tilt systems, they also require more land per unit of capacity, as shown in Section 4.2. We assume the capacity-weighted average land-use requirements (as reported in Table 4) for PV systems smaller than 20 MW when evaluating the impact of tracking arrays: 5.5 acres/MWac for fixed-tilt systems, 6.3 acres/MWac for 1-axis tracking systems, and 9.4 acres/MWac for 2-axis tracking systems. These results indicate that the expected increase in energy yield from 1-axis tracking systems (12%–22%) is partially countered by increases in land-use requirements per unit of capacity. While the land use per unit of generation generally decreases for 1-axis tracking systems compared with fixed-tilt systems, this metric generally increases for 2-axis tracking systems compared with fixed-tilt systems. This is because the spacing required for 2-axis tracking increases more than the relative increase in energy yield. The land-use advantage of 1-axis tracking is more pronounced in regions with higher direct normal irradiation (DNI) levels. Similarly, the negative land-use impacts of 2-axis tracking are less pronounced in regions with higher DNI levels. Denholm and Margolis (2008) estimated that land use per unit of generation would increase moving from fixed systems to 1-axis tracking systems and moving from fixed systems to 2-axis tracking systems.

Table 5. Impacts of 1-Axis Tracking on Land-Use Intensity Compared With Fixed-Axis Mounting

	Total Insolation (kWh/m²/yr)	Expected energy produced (kWh/kW)		Expected increase in energy production (%)	Land-use intensity (acres/MW)			1-axis tracking change in land-use intensity (acres/MW)	Relative tracking change in land-use intensity (%)
		Fixed	1-Axis	1-Axis	Fixed	1-Axis	2-Axis		
San Francisco, CA	1,843	1,551	1,826	17.8%	5.50	6.24	9.44	+0.74	13.5%
San Diego, CA	1,945	1,627	1,864	14.6%	5.50	6.24	9.44	+0.74	13.5%
Aurora, CO	2,530	1,813	2,200	21.3%	5.50	6.24	9.44	+0.74	13.5%
Phoenix, AZ	2,518	1,733	2,113	21.9%	5.50	6.24	9.44	+0.74	13.5%
Jacksonville, FL	1,907	1,360	1,634	20.1%	5.50	6.24	9.44	+0.74	13.5%
Newark, NJ	1,583	1,244	1,423	14.4%	5.50	6.24	9.44	+0.74	13.5%
Seattle, WA	1,512	1,100	1,249	13.6%	5.50	6.24	9.44	+0.74	13.5%

4.3 CSP Land-Use Results

Table 6 and Table 7 summarize total and direct land-use requirements by CSP technology, respectively. Note there are significantly fewer CSP projects in the United States than PV projects, and due to reliance on solar DNI resource, most CSP projects are in the Southwest (Figure 2). We collected data for 23 CSP projects, with only one linear Fresnel project and one dish Stirling project. It is more important to evaluate CSP in terms of land use per unit of generation because of the effect of storage and solar multiple, which can increase the amount of energy produced per unit of capacity (Turchi et al. 2010). Direct land-use requirements for CSP trough technology range from 2.0 to 4.5 acres/GWh/yr, with a generation-weighted average of 2.5 acres/GWh/yr. Direct land-use requirements for CSP tower technology range from 2.1 to 5.3 acres/GWh/yr, with a generation-weighted average of 2.8 acres/GWh/yr. We found that system size appears to have little impact on generation-based CSP land-use requirements (see Appendix E).

Table 6. Total Land-Use Requirements by CSP Technology

Technology	Projects	Capacity (MWac)	Total Area: Capacity-weighted average area requirements (acres/MWac)	Total Area: Generation-weighted average area requirements (acres/GWh/yr)
All	23	3,747	10	3.5
Trough	8	1,350	9.5	3.9
Tower	14	2,350	10	3.2
Dish Stirling	1	2	10	6.3
Linear Fresnel	1	6	4.7	4.0

Table 7. Direct Land-Use Requirements by CSP Technology

Technology	Projects	Capacity (MWac)	Direct Area: Capacity-weighted average area requirements (acres/MWac)	Direct Area: Generation-weighted average area requirements (acres/GWh/yr)
All	16	2,218	7.7	2.7
Trough	7	651	6.2	2.5
Tower	8	1,358	8.9	2.8
Dish Stirling	1	2	2.8	1.5
Linear Fresnel	1	6	2.0	1.7

Data for CSP with multi-hour energy storage were also collected. Eight facilities included thermal storage technology, ranging from 3 to 15 hours of storage. One of the eight CSP facilities with storage is a parabolic trough system, while the remaining seven are tower systems. Little correlation is observed between storage and land-use intensity, both on a capacity and generation basis (see Appendix E). We would expect to see a trend of decreasing generation-based land use with increasing storage and increasing capacity-based land use with increasing storage based on modeled results as shown in Figure 8 (Turchi et al. 2010). Given the relatively small amount of data, it is difficult to isolate the impact of any single factor on land-use requirements. Higher sample sizes and additional data elements will enable a more robust evaluation of CSP land use.

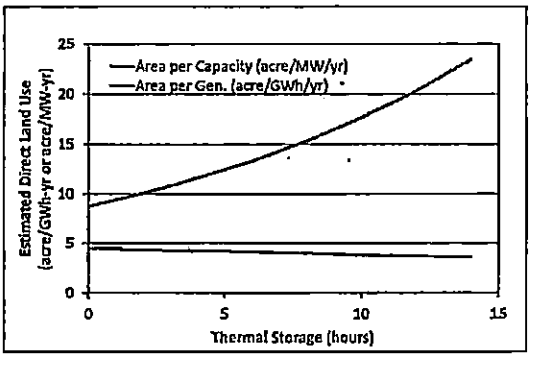


Figure 8. Modeled data showing relationship between CSP thermal storage and land-use intensity
Source: Turchi et al. 2010

5 Conclusions

Table 8 and Table 9 summarize the U.S. utility-scale PV and CSP land-use requirements evaluated in this report. Average total land-use requirements are 3.6 acres/GWh/yr for PV and 3.5 acres/GWh/yr for CSP. Average direct-area requirements are 3.1 acres/GWh/yr for PV and 2.7 acres/GWh/yr for CSP. On a capacity basis, the total-area capacity-weighted average for all solar power plants is 8.9 acres/MWac, with 22% of plants within 8 and 10 acres/MWac. For direct land-use requirements, the capacity-weighted average is 7.3 acre/MWac, with 40% of power plants within 6 and 8 acres/MWac. Solar land-use estimates from the literature generally fall within these ranges. Within the broad technology categories of PV and CSP, land-use metrics are also impacted by specific technology choices, such as cell efficiency, tracking method, and inclusion of thermal energy storage, and are a function of the solar resource available at each site.

Although our results stem from an empirically based effort to estimate solar land use, several caveats are warranted. Some solar-technology categories have relatively small samples sizes, which must be considered when interpreting the robustness of reported results. Over 26 GWac of PV and CSP are under development as of February 2013 (SEIA 2013), and the results reported in this study must be understood in light of a rapidly growing installed base. Additionally, various data sources were used when gathering information about solar projects. Although we tried to obtain the highest-quality sources (project applications and regulatory documents, referred to as "official documents" in this report), we collected official documents for only 20% of all projects evaluated. Other data sources are expected to have higher levels of uncertainty (although how much higher is unclear), which could contribute to the observed variability in results. With the exception of a few CSP projects, we collected reported capacity of power plants but not annual generation. The generation-based land-use results are expected to have higher levels of uncertainty because annual generation is simulated. Although generation-based results provide a more consistent approach when comparing land-use requirements across technologies, capacity-based results are useful for estimating land area and costs for new projects because power plants are often rated in terms of capacity. Finally, owing to the rapid evolution of solar technologies as well as land-use practices and regulations, the results reported here reflect past performance and not necessarily future trends.

We analyze elements that affect the area of solar impact, but we recognize that the duration of use and impact on land quality are also important when considering land use impacts. Future analyses could include evaluating the quality of land impacts, assessing both the initial state of the land impacted and the final states across a variety of factors, including soil quality and overall ecosystem quality. Finally, larger sample sizes and additional data elements would improve the robustness of the conclusions and enable a more thorough investigation of the impacts of additional factors, such as tilt angle, azimuth, PV module technology, CSP solar multiple, and storage technologies.

Table 8. Summary of Direct Land-Use Requirements for PV and CSP Projects in the United States

	Number of projects analyzed	Capacity for analyzed projects (MWac)	Capacity-weighted average land use (acres/MWac)	Capacity-weighted average land use (MW/acre)	Generation-weighted average land use (acres/GWh/yr)	Generation-weighted average land use (GWh/yr/km²)
Small PV (≤1 MW, <20 MW)	92	374	8.9	0.11	3.1	80
Fixed	43	194	5.8	0.17	3.3	78
1-axis	41	168	9.3	0.11	3.0	74
2-axis flat panel	4	6	9.4	0.11	4.1	60
2-axis CPV	4	6	8.9	0.11	2.1	106
Large PV (≥20 MW)	18	1,403	7.2	0.14	3.1	80
Fixed	7	344	6.8	0.15	2.6	97
1-axis	7	630	9.0	0.11	3.5	71
2-axis CPV	1	31	8.1	0.12	2.0	130
CSP	10	2,218	7.7	0.13	3.7	83
Parabolic trough	7	891	8.3	0.12	2.8	107
Tower	3	1,350	6.9	0.14	3.8	87
Dish Stirling	1	8	2.9	0.34	1.5	164
Linear Fresnel	1	8	2.0	0.51	1.7	145

Table 9. Summary of Total Land-Use Requirements for PV and CSP Projects in the United States

	Number of projects analyzed	Capacity for analyzed projects (MWac)	Capacity-weighted average land use (acres/MWac)	Capacity-weighted average land use (MW/acre)	Generation-weighted average land use (acres/GWh/yr)	Generation-weighted average land use (GWh/yr/km²)
Small PV (≤1 MW, <20 MW)	115	550	8.8	0.11	4.1	61
Fixed	53	237	7.6	0.13	4.4	58
1-axis	58	308	8.5	0.12	3.6	64
2-axis flat panel	4	6	11	0.09	5.5	45
2-axis CPV	4	7	9.1	0.11	2.1	99
Large PV (≥20 MW)	32	3,551	7.9	0.13	3.4	72
Fixed	14	1,256	7.5	0.13	3.1	81
1-axis	16	1,637	8.5	0.12	3.3	76
2-axis CPV	2	128	8.1	0.12	2.8	89
CSP	28	3,147	10	0.10	3.6	71
Parabolic trough	8	1,440	8.5	0.12	3.8	63
Tower	14	2,358	10	0.10	3.2	77
Dish Stirling	1	2	10	0.10	6.3	40
Linear Fresnel	1	8	4.7	0.21	4.0	62

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Appendix A. CSP Solar Multiple Ranges

For CSP projects, a range of solar multiple values were used to simulate annual generation output. Assumptions for CSP solar multiple ranges are shown in Table A-1.

Table A-1. CSP Solar Multiple Ranges and Corresponding Estimated Annual Generation Values

Name	State	Capacity (MWAC)	Solar multiple low	Solar multiple high	Estimated annual generation low (GWh/yr)	Estimated annual generation high (GWh/yr)
Crossroad Solar	AZ	10	2.2	2.8	485	621
Overlanta	AZ	10	2.2	2.8	489	578
Saguaro Power Plant	AZ	0	1.1	1.4	2	2
Solana	AZ	0	1.9	2.4	892	1,155
Abengoa Mojave	CA	0	1.1	1.4	510	645
Coolings	CA	0	1.1	1.4	8	28
Ford Dry Lake (Genesis)	CA	0	1.1	1.4	480	617
Hidden Hills 1	CA	0	1.1	1.4	515	655
Hidden Hills 2	CA	0	1.1	1.4	515	655
Ivanpah (all)	CA	0	1.1	1.4	643	1,024
Kimberlina	CA	0	1.1	1.4	9	11
Palmdale Hybrid Plant	CA	0	1.1	1.4	107	136
Rice Solar	CA	7	1.8	2.2	541	682
Rio Mesa 1	CA	0	1.1	1.4	529	659
Rio Mesa 2	CA	0	1.1	1.4	529	659
Rio Mesa 3	CA	0	1.1	1.4	529	659
SEGS (all)	CA	0	1.1	1.4	725	886
Solar Two	CA	3	1.3	1.7	70	90
Victorville 2 hybrid	CA	0	1.1	1.4	101	125
Saguaro Solar	OO	15	2.8	3.2	1,073	1,218
Martin Next Generation	FL	0	1.1	1.4	71	105

Name	State	Capacity (MWAC)	Solar multiple low	Solar multiple high	Estimated annual generation low (GWh/yr)	Estimated annual generation high (GWh/yr)
Nevada Solar One	NV	0.5	1.3	1.5	114	144
Ivanpah (Crescent Dunes)	NV	10	2.2	2.8	528	690
Crossroad Solar	AZ	10	2.2	2.8	483	622
Overlate	AZ	10	2.2	2.8	489	578

Appendix B. PV Projects Evaluated

Table B-1. PV Land-Use Data

Asterisks represent data calculated from power plants that reported only AC capacity, as described in Section 3.

Name	State	MW (DC)	Total area (acres)	DC/AC ratio (if known)	Tracking	Module efficiency	Status as of August 2012	Data source
Prescott Airport (CPV)	AZ	0.2	1.9	1.0	2 axis CPV	23%	Complete	Third party
Pima County Wastewater	AZ	1.1	8.4	0.6	1 axis	14%	Complete	Developer
Johnson Utilities	AZ	1.1	10.8	7.5	1 axis		Complete	Third party
Prescott Airport (1-Axis Phase 1)	AZ	2.8	22.8	22.3	1 axis		Complete	Third party
Springerville	AZ	6.5	65.2	45.1	Fixed	11%	Complete	Developer
Kingman Plant	AZ	10.0	70.5		1 axis	14%	Construction	Third party
Prescott Airport (1-Axis Phase 2)	AZ	11.8	94.0		1 axis		Construction	Third party
Luke Air Force Base	AZ	18.0	107.1		1 axis	18%	Complete	Third party
Hyder Plant	AZ	17.0	152.7		1 axis	14%	Construction	Third party
Paloma Plant	AZ	20.3*	234.9		Fixed	11%	Complete	Third party
Cotton Center Plant	AZ	21.0	168.2		1 axis		Complete	Third party
Copper Crossing Solar Ranch	AZ	23.5*	159.1	138.1	1 axis	18%	Complete	Developer
Chino Plant	AZ	23.5*	187.9	164.4	1 axis	14%	Construction	Official documents
Tucson Solar	AZ	28.0	233.7		1 axis		Construction	Developer
Avra Valley	AZ	30.5*	259.4		1 axis	11%	Construction	Developer
Mesquite Solar 1	AZ	120.0	1,020.0		Unknown	15%	Construction	Official documents
Agua Caliente	AZ	290.5*	2,618.9		Fixed	11%	Construction	Developer
Sonoran Solar Energy Project	AZ	352.4*	2,564.3		1 axis		Proposed	Official documents
Mesquite Solar Total	AZ	700.0	4,698.1		Unknown		Proposed	Third party
Western Riverside County Regional Wastewater Authority	CA	1.0	11.2	10.0	1 axis	20%	Complete	Developer
The North Pisa PV Plant	CA	1.0	5.9	9.9	1 axis		Complete	Third party

Name	State	MW DC	Total Area (acres)	Direct Area (acres)	Tracking	Module efficiency	Status as of August 2012	Data Source
Inland Empire Utility Solar Farm	CA	1.0	12.5	8.9	1 axis	20%	Complete	Developer
West County Waste Water PV Plant	CA	1.0	11.7	6.8	2 axis fixed	14%	Complete	Developer
Nichols Farms PV Plant	CA	1.0	8.0	8.0	2 axis CPV	25%	Complete	Third party
Budweiser PV Plant	CA	1.1	9.4	7.2	1 axis	15%	Complete	Official documents
UbiFort Apple Valley PV Plant	CA	1.1	10.7	7.8	1 axis	16%	Complete	Official documents
Rancho California PV Plant	CA	1.1	13.5	8.0	1 axis	18%	Complete	Developer
Hayward Wastewater PV Plant	CA	1.2	13.2	8.5	1 axis	14%	Complete	Third party
Chuckawalla State Prison PV Plant	CA	1.2	8.4	4.8	fixed	14%	Complete	Official documents
Ironwood State Prison PV Plant	CA	1.2	14.4	9.0	1 axis	13%	Complete	Official documents
Sacramento Solar	CA	1.3	10.0	8.1	fixed	15%	Complete	Developer
USMC 29 Palms	CA	1.3	10.6	7.0	fixed		Complete	Developer
Bar Canyon Camp Pendleton	CA	1.4	8.6	8.6	fixed	14%	Complete	Third party
Vaca Dixon Solar Station	CA	2.8	17.5	11.5	fixed	14%	Complete	Developer
Newberry Springs PV Plant	CA	3.0	25.5		1 axis		Proposed	Third party
Sunset Reservoir	CA	5.0	16.2	16.2	fixed		Complete	Third party
Avra Jal Solar Project	CA	6.0	47.0	27.7	1 axis		Complete	Developer
DMRENEW-1	CA	8.2	60.4	46.5	fixed	8%	Complete	Third party
Porterville Solar Plant	CA	8.8	57.9	31.4	fixed	14%	Complete	Third party
Palm Springs project 1	CA	8.0	42.9		1 axis	14%	Construction	Third party
Dillard Solar Farm	CA	12.0	94.3	70.4	1 axis	15%	Complete	Developer
Cuba Lake PV Plant	CA	13.8	108.6		1 axis	20%	Construction	Third party
Brownlie Solar Farm	CA	16.4	131.1	93.9	1 axis	18%	Complete	Official documents
Kamerer Solar Farm	CA	16.8	129.1	111.1	1 axis	13%	Complete	Official documents
Antelope Solar Farm	CA	20.0	234.9		Unknown		Proposed	Developer
Mojave Solar	CA	20.0	284.4		Unknown		Proposed	Developer

Name	State	MW VDC	Total Area (acres)	Direct Area (acres)	Tracking	Module efficiency	Status as of August 2012	Data Source
Tranese Energy Antelope Plant	CA	20.0	211.4		Unknown		Proposed	Third party
Grandma'n/Whaisen Solar Farm	CA	21.1*	193.5	117.9	Fixed	15%	Complete	Official documents
Adobe Solar	CA	23.5*	187.9		Unknown		Proposed	Developer
Orion Solar	CA	23.5*	311.2		Unknown		Proposed	Developer
Alexall Island Solar Project	CA	23.5	189.0		Unknown		Construction	Third party
PGE Elpina	CA	25.2	229.2	161.3	Fixed	15%	Complete	Developer
Imperial Valley Solar Company	CA	26.7	153.5		Unknown	15%	Proposed	Third party
McHenry Solar Farm	CA	29.4*	120.9		1 axis	19%	Construction	Developer
Del Sur Solar Project	CA	36.0	310.8		Unknown		Construction	Third party
Luserne Valley Solar	CA	49.5	455.8	455.8	Fixed	10%	Construction	Official documents
Chocolate Mountains PV Plant	CA	49.9	375.6		Unknown		Construction	Developer
Calipatria Solar Farm 2	CA	50.0	352.4		Unknown		Proposed	Third party
Salton Sea 1	CA	50.0	375.8		Unknown		Proposed	Developer
Arenal SunCity SandDrag Arenal Park	CA	57.7	641.3	412.5	Fixed	9%	Complete	Developer
Copper Mountain PV Plant	CA	58.0	459.2	293.9	Fixed	10%	Proposed	Third party
Midway Solar Farm 1	CA	58.7*	352.4	328.3	Unknown		Proposed	Developer
Regulus Solar	CA	75.0	672.7		Unknown		Proposed	Developer
Calipatria Solar Farm 1	CA	82.2*	383.4	288.9	Unknown		Proposed	Developer
Salton Sea 2	CA	100.0	790.8		Unknown		Proposed	Third party
Quinto Plant	CA	110.0	1,191.0		1 axis	20%	Proposed	Official documents
Imperial Solar Energy Center South	CA	130.0	1,111.1		1 axis	15%	Proposed	Developer
Imperial Solar Energy Center West	CA	150.0	1,241.5		2 axis CPV	25%	Proposed	Developer
Midway Solar Farm 2	CA	183.1*	1,027.5		Unknown		Proposed	Third party
Calexico Solar Farm 1	CA	234.9*	1,468.2		Unknown		Proposed	Developer
Calexico Solar Farm 2	CA	234.9*	1,468.2		Unknown		Proposed	Developer

Name	State	MW DC	Total Area (acres)	Direct Area (acres)	Tracking	Module efficiency	Status as of August 2012	Data Source
Mount Signal PV Plant	CA	234.9*	1,644.2		Unknown		Proposed	Developer
AV Solar Ranch One	CA	254.0	2,293.0	2,414.0	1 axis	15%	Proposed	Developer
California Valley Solar Ranch	CA	292.5*	2,037.8		1 axis		Construction	Developer
Centinela Solar	CA	322.5*	2,407.7		Unknown		Proposed	Developer
Superstition Solar 1	CA	500.0	6,542.1		Unknown		Proposed	Official documents
Edwards Air Force Base	CA	500.0	3,736.4		Unknown		Proposed	Developer
Desert Sunlight	CA	568.0*	4,965.9	3,519.4	Fixed	10%	Proposed	Official documents
Topaz Solar Farm	CA	648.0*	4,110.5		Fixed	11%	Construction	Developer
Alamosa Water Treatment Facility PV Plant	CO	0.8	6.5	6.6	1 axis	16%	Complete	Official documents
Rifle Pump Station	CO	0.8	5.2	4.3	1 axis	13%	Complete	Official documents
SunEdison Alamosa PV Plant (Fixed-Tilt)	CO	0.8	7.0	3.8	Fixed	14%	Complete	Official documents
Arkada Rakkan Water Treatment Plant	CO	0.8	7.1	4.5	1 axis	16%	Complete	Official documents
NREL Mesa Top PV Project	CO	0.7	5.9	3.3	1 axis	16%	Complete	Official documents
SunEdison Alamosa PV Plant (2 Axis)	CO	1.0	14.0	7.3	2 axis flat	14%	Complete	Official documents
NREL National Wind Technology Center	CO	1.1	11.5	7.1	1 axis	13%	Complete	Official documents
Buckley Air Force Base	CO	1.1	4.5	3.8	Fixed	14%	Complete	Official documents
Denver Federal Center Solar Park Phase 1	CO	1.2	7.8	8.0	Fixed	13%	Complete	Official documents
Colorado State University Pueblo Plant	CO	1.2	8.1	4.1	Fixed		Complete	Third party
Denver International Airport Phase 2 (Fuel Farm)	CO	1.8	10.8	8.3	Fixed		Complete	Developer
Rifle Waste Water Reclamation Facility	CO	1.7	14.0	9.9	1 axis	14%	Complete	Official documents
Colorado State University Ft. Collins Phase 1	CO	2.0	17.5	15.0	1 axis		Complete	Third party

Name	State	MW DC	Total Area (acres)	Direct Area (acres)	Tracking	Module efficiency	Status as of August 2012	Data Source
Denver International Airport 1 Peña Blvd	CO	2.0	11.7	11.7	1 axis		Complete	Developer
Ft. Carson PV Plant	CO	2.0	14.7	12.6	Fixed	11%	Complete	Developer
Colorado State University Ft. Collins Phase 2	CO	2.3	15.4	14.0	Fixed		Complete	Third party
Denver International Airport Phase 3	CO	4.4	35.2	20.9	Fixed		Complete	Developer
Air Force Academy CO Springs	CO	6.0	50.5	31.4	1 axis		Complete	Third party
SunEdison Alamosa PV Plant (1 Axis)	CO	6.8	74.1	38.5	1 axis	14%	Complete	Official documents
Greater Sand Hill Solar Plant	CO	20.0	200.6	132.6	1 axis	20%	Complete	Third party
San Luis Valley Solar Ranch	CO	35.2	256.1		1 axis	20%	Complete	Developer
Cogentrix Alamosa Solar Generating Project	CO	37.0	271.0	224.0	2 axis CPV	31%	Construction	Developer
Kent County Waste Water	DE	1.2	7.0	6.8	Fixed		Construction	Third party
Dover Sun Park	DE	11.2*	121.0	59.1	1 axis	20%	Complete	Third party
NASA PV	FL	1.0	6.1	2.8	Fixed		Complete	Developer
Stanton Energy Center	FL	5.8	41.1	29.1	1 axis		Complete	Developer
Reinhart Solar Farm	FL	8.0	29.2		Unknown	15%	Construction	Third party
Space Coast	FL	11.2*	52.9	35.2	Fixed		Complete	Developer
Jacksonville Solar	FL	15.0	114.4	83.9	Fixed	11%	Construction	Third party
DeSoto Plant	FL	25.0	253.2	201.6	1 axis	19%	Complete	Developer
Sorrento Eagle Dunes phase 1	FL	40.0	184.4		Fixed	14%	Construction	Developer
Sorrento Eagle Dunes phase 2	FL	60.0	422.8		Fixed	16%	Proposed	Third party
Babcock Ranch Solar	FL	75.0	469.8		Unknown		Proposed	Developer
Liberty County Solar Farm	FL	100.0	1174.5		Unknown		Proposed	Third party
Hardee County Solar Farm	FL	200.0	2,293.1		Unknown		Proposed	Third party
Gadsden Solar Farm	FL	466.0	4,696.1		Unknown		Proposed	Third party
Ellaville Plant	GA	1.0	6.7		Fixed		Complete	Third party

Name	State	MWdc	Total Area (acres)	Direct Area (acres)	Tracking	Module Efficiency	Status as of August 2012	Data Source
Kapolei Sustainable Energy Park	HI	1.2	4.7	3.2	Fixed	14%	Complete	Third party
Kalaeloa Oahu	HI	5.0	47.0		1 axis	19%	Construction	Official documents
Exelon City Solar	IL	10.0	48.2	37.6	1 axis		Complete	Developer
Grand Ridge Solar Plant	IL	23.0	167.9		Unknown	13%	Construction	Third party
Indianapolis Airport Solar Farm	IN	10.0	78.5		Fixed		Construction	Third party
Bowling Greens Solar Farm	KY	2.0	15.3	10.8	1 axis		Complete	Third party
William Stanley Business Park	MA	1.9	10.9	7.3	Fixed	14%	Complete	Official documents
Berkshire School	MA	2.0	10.8	8.4	Fixed	15%	Complete	Third party
Northfield Mountain	MA	2.0	12.8	8.3	Fixed		Complete	Third party
Indian Orchard Solar	MA	2.3	14.1		Unknown		Complete	Third party
Springfield Plant	MA	4.3	72.8	47.0	Unknown		Complete	Third party
Hadley Road Holyoke Plant	MA	4.9	22.3		Fixed	15%	Complete	Third party
Canton Landfill	MA	5.7	37.2	12.8	Fixed	15%	Complete	Official documents
Mount St. Mary's University	MD	17.4	126.6	103.7	Fixed	11%	Construction	Third party
Progress Energy	NC	1.2	11.3	9.1	1 axis	14%	Complete	Official documents
Mayberry Hl, Ally Solar Farm	NC	1.2	7.8		Fixed	14%	Complete	Third party
Nuine River Waste Water	NC	1.3	11.7		Fixed	14%	Complete	Third party
SAS Solar Farm I and 2	NC	2.2	20.0	14.1	1 axis	15%	Complete	Developer
Kings Mountain Solar Farm	NC	5.0	32.9		Unknown		Complete	Third party
Mallnesboro	NC	6.4	86.7	34.8	1 axis	19%	Complete	Developer
Davidson County Solar	NC	17.3	221.8	139.3	1 axis		Complete	Developer
Trenton Solar Farm	NJ	1.5	6.5	5.3	Fixed		Complete	Third party
Silver Lake Solar Farm	NJ	2.1	9.4	6.7	Fixed	14%	Complete	Third party
More Solar Garden	NJ	2.2	14.4	11.9	Fixed	10%	Complete	Developer
PSEG Landfill	NJ	3.0	15.3		Fixed		Complete	Third party
Linden Solar Farm	NJ	3.3	11.7		Unknown		Complete	Third party

Name	State	Unit MWdc	Total Area (acres)	Direct Area (acres)	Tracking	Module Efficiency	Status as of August 2012	Data Source
Janssen Pharmaceutical	NJ	4.1	29.4	24.9	1 axis		Complete	Third party
Vineland	NJ	4.1	37.9	17.6	Fixed		Complete	Developer
Yardville Solar Farm	NJ	4.4	18.4	10.8	Fixed	14%	Complete	Third party
Hamel Solar Farm	NJ	4.8	39.9	10.8	1 axis		Proposed	Third party
Princeton University	NJ	5.3	31.7		1 axis	15%	Complete	Third party
Lawrenceville School	NJ	6.1	36.2		1 axis	15%	Complete	Third party
NJ Oak Solar Farm	NJ	12.5	122.5	67.5	Fixed	14%	Complete	Third party
Upper Pittsgrove	NJ	14.4	105.7		1 axis		Proposed	Third party
Tinton Falls	NJ	19.9	151.6		Unknown		Construction	Third party
Pleasgrove Project	NJ	20.0	146.9	85.3	Fixed	14%	Complete	Third party
Santa Fe Waste Water Plant	NM	1.1	10.4	7.9	1 axis	14%	Complete	Developer
City of Alcalde Waste Water	NM	1.2	11.2	10.6	2 axis (tilt)	14%	Complete	Third party
Questa	NM	1.2*	20.0	12.0	2 axis CPV	25%	Complete	Third party
Albuquerque Solar Center	NM	2.0	21.7	12.8	Fixed	11%	Complete	Third party
Deming Solar Energy Center	NM	5.0	58.7	40.0	Fixed	11%	Complete	Third party
Alamogordo Solar Center	NM	5.0	58.7		Fixed	11%	Complete	Third party
Hatch Solar Center	NM	6.6	50.1	38.8	2 axis CPV	28%	Complete	Developer
SunEdison NJ	NM	10.7	117.5	66.4	1 axis		Complete	Third party
SunEdison Carlsbad	NM	10.8	100.7	90.2	1 axis		Complete	Third party
Elephant Butte	NM	22.0	157.9		Fixed		Construction	Third party
Roadrunner Solar Facility	NM	33.5*	248.7	193.8	1 axis	11%	Complete	Developer
Cimarron	NM	33.2*	297.6	240.7	Fixed	10%	Complete	Developer
Escuela Solar Farm	NM	50.0	387.9		Unknown		Proposed	Third party
Good Hope Solar	NM	300.0	2,833.3		Unknown		Proposed	Third party
Las Vegas Solar Center	NV	5.0	58.7		Unknown	11%	Complete	Third party

Name	State	MW-DC	Total Area (acres)	Direct Area (acres)	Tracking	Module Efficiency	Status as of August 2012	Data Source
El Dorado Solar	NV	12.0	90.0	84.0	Fixed	11%	Complete	Developer
Nellis Air Force Base	NV	15.0	166.7	140.0	1 axis		Complete	Official documents
Searchlight Solar Project	NV	20.0	242.3		1 axis		Complete	Third party
Fish Springs	NV	20.0	211.4		Fixed	10%	Construction	Official documents
Apex	NV	24.0	197.1		Unknown		Proposed	Third party
Silver State Solar North	NV	55.1	773.0		Fixed	10%	Construction	Official documents
Boulder City	NV	178.2*	1,333.7		1 axis	10%	Construction	Developer
Silver State Solar South	NV	350.0	3,406.1	2441.8	1 axis	10%	Proposed	Official documents
Mojave Green Center	NV	730.0	6,334.7		Unknown		Proposed	Third party
Brookhaven Lab	NY	27.0	236.3	235.5	Fixed	13%	Construction	Developer
Washington Township Solar Array	OH	1.1	11.8	8.4	Fixed	9%	Complete	Developer
SMS Napoleon Solar LLC	OH	9.8	70.5		1 axis	19%	Construction	Third party
Wyandot Solar	OH	12.5	97.0	79.0	Fixed	11%	Complete	Developer
Timmy Point Solar	OH	38.6*	496.4		Unknown		Proposed	Official document
Yamhill Solar	OR	1.2	11.8		Fixed	10%	Complete	Developer
Bellevue Solar	OR	1.7	14.0		Fixed	10%	Complete	Developer
Pocono Raceway	PA	3.0	27.2	17.8	Fixed		Construction	Third party
Exelon Coventry	PA	3.0	18.4	12.9	Fixed		Complete	Developer
Claysville Solar Project	PA	20.0	157.5	99.5	Fixed		Proposed	Developer
Shelby Solar Project	SC	1.0	10.0	6.5	1 axis	19%	Complete	Third party
Vital Tennessee Solar Farm	TN	5.0	29.4	26.9	Fixed		Construction	Developer
Blue Wing Solar	TX	16.1	124.2	85.7	Fixed		Construction	Developer
Austin Energy Webberville	TX	24.2	424.3		Unknown	15%	Complete	Third party
Pflugerville Solar	TX	60.0	704.7		Unknown		Construction	Third party
South Burlington Solar Farm	VT	2.2	31.7	23.8	2 axis flat		Complete	Third party

Appendix C. CSP Projects Evaluated

Table C-1. Concentrating Solar Power Land-Use Data

Note: Additional CSP plant information, such as storage and annual generation, can be found in Appendix A.

Name	State	MW-AC	Total Area (acres)	Direct Area (acres)	Technology	Status as of August 2012	Data Source
Maricopa Solar Project	AZ	1.5	15	4	Sliding Engine	Complete	Third party
Quartzsite	AZ	100	1,675		Tower	Proposed	Developer
Crossroad Solar	AZ	150	2,560		Tower	Proposed	Developer
Solana	AZ	280	1,900		Parabolic trough	Construction	Third party
Sierra SunTower	CA	5	50	28	Tower	Complete	Developer
Kimberlina	CA	7.5	35	15	Linear Fresnel	Complete	Developer
Solar Two	CA	10	532	110	Tower	Decommissioned	Third party
Coalinga	CA	13	84	67	Tower	Proposed	Developer
Victorville 2 hybrid	CA	50	265	230	Parabolic trough	Proposed	Official document
Palmdale Hybrid Gas/Solar Plant	CA	50	370	250	Parabolic trough	Proposed	Official document
Rice Solar	CA	150	2,500	1,410	Tower	Construction	Official document
Abengoa Mojave	CA	250	1,765		Parabolic trough	Construction	Third party
Ford Dry Lake (Genesis)	CA	250	4,640	1,800	Parabolic trough	Construction	Official document
Hidden Hills 1	CA	250	1,640	1,560	Tower	Proposed	Official document
Hidden Hills 2	CA	250	1,640	1,560	Tower	Proposed	Official document
Rio Mesa 1	CA	250	1,917		Tower	Proposed	Official document
Rio Mesa 2	CA	250	1,917		Tower	Proposed	Official document
Rio Mesa 3	CA	250	1,917		Tower	Proposed	Official document
SEGS (all)	CA	354	2,057	2,057	Parabolic trough	Complete	Third party
Ivanpah All	CA	370	3,515	3,231	Tower	Construction	Official document
Sagauche Solar	CO	200	3,500	2,500	Tower	Construction	Official document
Florida Next Generation	FL	75	500	400	Parabolic trough	Complete	Developer

Name	State	MW-AC	Total area (acres)	Direct area (acres)	Technology	Status as of August 2011	Data source
Nevada Solar One	NV	64	400	290	Parabolic trough	Complete	Third party
Tonopah (Crescent Dunes)	NV	110	1,600	1,327	Tower	Construction	Developer

Appendix D. Impact of PV System Size and Module Efficiency on Land-Use Requirements

System size appears to have little impact on capacity-based land-use requirements. Figure D-1 and Figure D-2 show the total-area requirements for small and large PV systems, with respect to project capacity. No significant trends are observed for land use and system size for small or large PV systems.

Land use was also evaluated with respect to module efficiency. Figure D-3 shows capacity-based direct land-use requirements for all PV systems with respect to module efficiency, and Figure D-4 shows the generation-based direct land-use requirements. We expect that land use will decrease with increasing module efficiencies, but no significant trends are observed for land use and module efficiency for small or large PV systems. A linear regression analysis yields a poor correlation coefficient for both the capacity-based area data (0.04) and the generation-based data (0.08). Isolating for fixed-tilt systems reveals that projects with higher efficiency use less land on a capacity basis (with a correlation coefficient of 0.50). No trends are observed within the pool of 1-axis tracking systems. Variations in land use that remain after isolating for module efficiency and tracking type are not clearly understood.

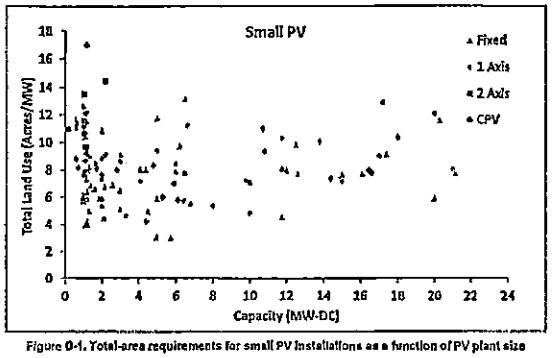

Figure D-1. Total-area requirements for small PV installations as a function of PV plant size

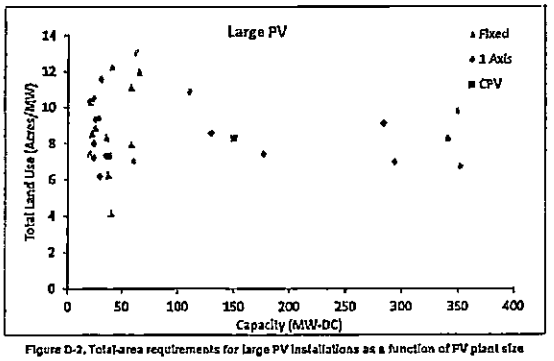

Figure D-2. Total-area requirements for large PV installations as a function of PV plant size

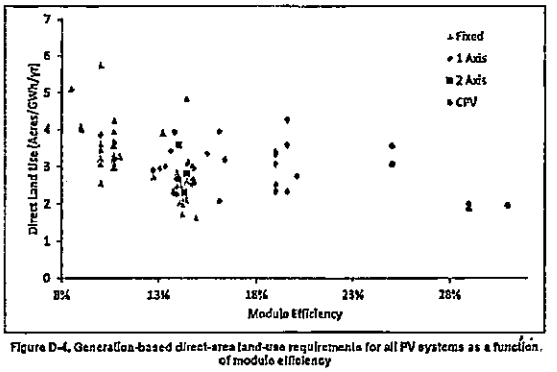

Figure D-4. Generation-based direct-area land-use requirements for all PV systems as a function of module efficiency

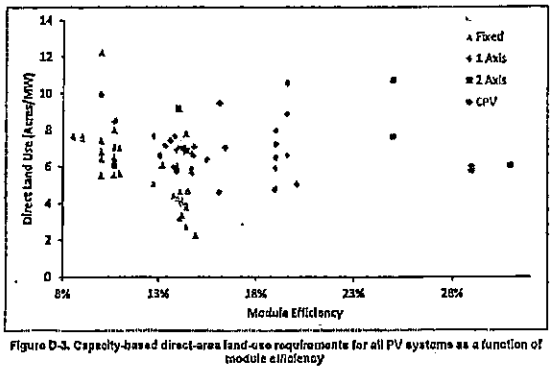

Figure D-3. Capacity-based direct-area land-use requirements for all PV systems as a function of module efficiency

Appendix E. Impact of CSP System Size and Storage on Land-Use Requirements

We evaluated the impact of project capacity on land-use requirements and found that system size appears to have little impact on generation-based CSP land-use requirements. Figure E-1 and Figure E-2 show the total-area and direct-area requirements for all CSP systems evaluated, with respect to system size. No significant trends are observed for land-use and capacity for CSP systems.

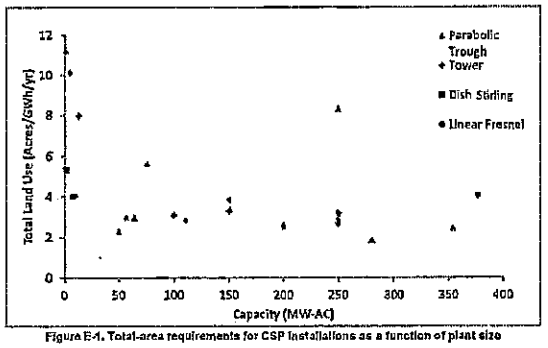

Figure E-1. Total-area requirements for CSP installations as a function of plant size

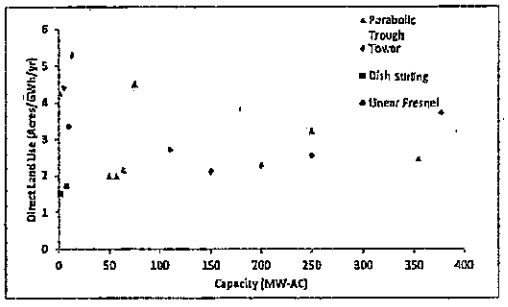

Figure E-2. Direct-area requirements for CSP installations as a function of plant size

We evaluate the impact of multi-hour energy storage on CSP land-use requirements. Eight facilities included thermal storage technology, ranging from 3 to 15 hours of storage. One of the eight CSP facilities with storage is a parabolic trough system, while the remaining seven are tower systems. Figure E-3 shows the generation-based total-area requirements for all storage-equipped CSP systems evaluated, with respect to storage capacity in hours. Figure E-4 shows the capacity-based total-area requirements.

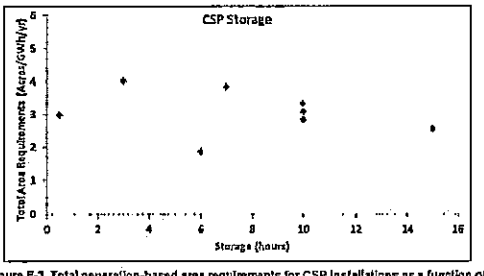

Figure E-3. Total generation-based area requirements for CSP installations as a function of storage hours

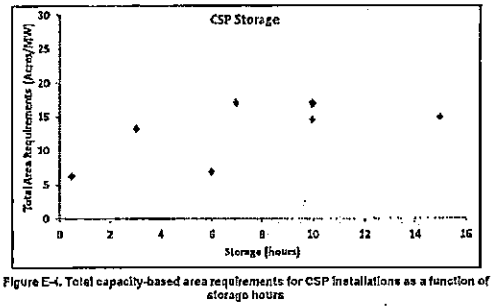

Figure E-4. Total capacity-based area requirements for CSP installations as a function of storage hours

PHZ. 12/21/17

IN RE: PETITION FOR SPECIAL EXCEPTION (15637 York Road) 8th Election District 3rd Council District Robert K. Gerner *Legal Owner* ESA Sparks Glenco, LLC *Lessee*	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY Case No. 2018-0047-X
Petitioners	*	

* * * * * * * * * * *

OPINION AND ORDER

This matter comes before the Office of Administrative Hearings (OAH) for consideration of a Petition for Special Exception filed on behalf of Robert K. Gerner, legal owner and ESA Sparks Glenco, LLC, lessee ("Petitioners"). The Special Exception was filed pursuant to the Baltimore County Zoning Regulations ("B.C.Z.R.") to approve a 9 acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone.

Brian Quinlan, owner Robert Gerner and surveyor Bruce Doak appeared in support of the petition. Timothy M. Kotroco, Esq. represented Petitioners. Several area residents opposed the request. Substantive Zoning Advisory Committee (ZAC) comments were received from the Department of Planning (DOP), the Bureau of Development Plans Review (DPR), the Department of Environmental Protection and Sustainability (DEPS) and State Highway Administration (SHA). None of the reviewing agencies opposed the requests.

The subject property is approximately 30.7230 acres and is zoned RC-7. Petitioners propose to use approximately nine (9) acres of the tract for a solar facility, and the site plan was highlighted to show this area. Exhibit 2. The property is unimproved and the proposed facility would be located approximately 1,275 ft. from York Road, which is designated as a scenic route. The nearest dwelling is approximately 750 ft. from the proposed facility.

Brian Quinlan testified he is a principal in the entity which would operate this project. He is a U.S. Naval Academy graduate with an engineering background and nearly 10 years of experience in solar energy. He testified the panels will be approximately 7 ½ ft. in height and would not emit sound or odor. Other than grass mowing between May-September and twice yearly maintenance inspections, the site will be unmanned and will not generate any traffic.

Bruce Doak, a licensed surveyor, explained he has over 30 years of experience in zoning and development matters in Baltimore County. He is a resident of northern Baltimore County and lives on a 50 acre farm, and stated he is intimately familiar with the rural portions of the north County. Mr. Doak opined the Petitioners satisfied the requirements for a special exception under B.C.Z.R. §502.1, and he believes this is an "ideal location" for the solar facility. He explained the proposed gravel access road into the site would be approximately 8 to 10 ft. wide and would be situated at least 10 ft. from any boundary line.

The neighbors at the hearing stated the solar facility was inappropriate in a rural zone. They testified the facility would be an eyesore and would be visible from their homes. There was some dispute as to whether the facility would be visible from York Road. The DOP noted in its ZAC comment the solar panels "will not be visible from York Road or adjacent residentially [sic] properties." But Al Rude and William Mayo, whose properties adjoin the subject property, disagreed and said the site will be visible from their homes and York Road as well.

Lynn Jones testified there are wetlands on the site, and she also feared that water runoff from the site and panels would flow into and increase the temperature in a nearby Class III trout stream. Several of the residents expressed dissatisfaction with the recent legislation (Bill 37-17)

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Case No. 18-047-X

8/21/18

which expressly permits by special exception solar facilities in all rural zones in the County. Residents testified their representative on the Council was "dead set against" the solar bill, but that the majority of the Council approved the bill allowing the facilities in RC zones. Such conflicts are inherent in the nature of our representative democracy.

Special Exception

Under Maryland law, a special exception use enjoys a presumption that it is in the interest of the general welfare, and therefore, valid. *Schultz v. Pritts*, 291 Md. 1 (1981). The *Schultz* standard was revisited in *Attar v. DMS Tollgate, LLC*, 451 Md. 272 (2017), where the court of appeals discussed the nature of the evidentiary presumption in special exception cases. The court again emphasized a special exception is properly denied only when there are facts and circumstances showing that the adverse impacts of the use at the particular location in question would be above and beyond those inherently associated with the special exception use.

Based on the testimony of Messrs. Quinlan and Doak, I believe Petitioners are entitled to special exception relief. Petitioners presented expert testimony regarding their compliance with the requisite standards for a special exception, and none of the County review agencies expressed misgivings about the proposal. I found this testimony to be credible and persuasive.

I also believe the subject property is an appropriate site for this use. Unlike several recent cases in which solar facilities have been proposed in rural areas, this site is situated over 1,200 feet from York Road and will also benefit from topographical changes and existing forest and tree cover which will help to screen the solar panels. I do not dispute the testimony of the neighbors that they will be able to view the site, especially in the fall and winter when the leaves are off the trees. But the law does not require the facilities to be invisible; instead, it specifies only that "screening of...scenic routes and scenic views" be provided in accordance with the Baltimore

County landscape manual. B.C.Z.R. §4E-104.A.6. A condition will be added below to ensure this requirement is satisfied.

I am sympathetic to the concerns raised by the neighbors, and as I stated at the hearing I would likely feel the same way if I was in their shoes. But I am not able to decide a case on that basis. I am required to evaluate zoning cases based on existing law and regulations, and cannot decide a matter based on subjective opinions. Solar panels are not aesthetically pleasing, and everyone would prefer a view from their home which featured a field, forest or pasture in its natural state. But that is true in every case involving a solar facility, and is an adverse effect the Council was presumed to have considered when it enacted this legislation. In other words, most special exception uses are regarded as "potentially troublesome because of noise, traffic, congestion...." *Montgomery County v. Butler*, 417 Md. 271, 297 (2010). As such, I believe the petition should be granted, subject to the conditions noted below which will help to "lessen the impact of the facility on the health, safety and general welfare of surrounding residential properties." B.C.Z.R. §4E-104.A.10.

THEREFORE, IT IS ORDERED this 21st day of December, 2017, by this Administrative Law Judge, that the Petition for Special Exception to approve a nine (9) acre ± solar facility on a portion of a 30.723 acre parcel of land in a RC-7 zone, be and is hereby GRANTED.

The relief granted herein shall be subject to the following:

1. Petitioners may apply for necessary permits and/or licenses upon receipt of this Order. However, Petitioners are hereby made aware that proceeding at this time is at their own risk until 30 days from the date hereof, during which time an appeal can be filed by any party. If for whatever reason this Order is reversed, Petitioners would be required to return the subject property to its original condition.

2. Petitioners must comply with the ZAC comment submitted by the DEPS, a copy of which is attached hereto.

3. Petitioners must obtain from the State Highway Administration (SHA) a residential or farm entrance permit.

4. No trees shall be removed from the site in connection with the construction and/or operation of the solar facility.

5. No weed killers or herbicides shall be used to control weed or grass growth at the solar facility.

6. No signage or lighting shall be installed at the site in connection with the solar facility.

7. Petitioners must submit for approval by Baltimore County a landscape plan for the site.

Any appeal of this decision must be made within thirty (30) days of the date of this Order.

JOHN E. BEVERUNGEN
Administrative Law Judge
for Baltimore County

JEB/sln

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

TO: Hon. Lawrence M. Stahl; Managing Administrative Law Judge
Office of Administrative Hearings

FROM: Jeff Livingston, Department of Environmental Protection and Sustainability (EPS) - Development Coordination

DATE: September 1, 2017

SUBJECT: DEPS Comment for Zoning Item # 2018-0047-X
Address 15637 York Road
(Gerner Property)

Zoning Advisory Committee Meeting of **August 21, 2017.**

__X__ The Department of Environmental Protection and Sustainability offers the following comments on the above-referenced zoning item:

__X__ Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains (Sections 33-3-101 through 33-3-120 of the Baltimore County Code).

__X__ Development of this property must comply with the Forest Conservation Regulations (Sections 33-6-101 through 33-6-122 of the Baltimore County Code).

Reviewer: Michael S. Kulis Date: September 1, 2017
Environmental Impact Review

County to run with the land and continue in perpetuity. The easements and covenants must be shown on the concept plan and on the development plan or minor subdivision plan for the development, as applicable, and on the record plat.

A. For all subdivisions or other development, except as provided in Paragraph B, a permanent preservation easement on the conservancy area must be granted to Baltimore County or to a land trust which the county approves, and must permanently restrict further subdivision or development of the conservancy area. The easement must:

1. Allow public access to greenways and other open space areas subject to approval by the Department of Environmental Protection and Sustainability and the Department of Recreation and Parks; **[Bill No. 122-2010]**

2. Indicate uses and activities approved in the conservancy area subject to Section 1A07.7.C with any applicable conditions or limitations; and

3. Provide that any modification of a preservation easement held by Baltimore County be subject to a public hearing.

B. In the case of a development where additional permitted density remains, a conservancy area shall be shown on the approval plan and, if the plan involves subdivision, recorded in the land records of Baltimore County. A permanent preservation easement as described in Paragraph A must be granted if further subdivision subjects the tract to the development plan review process under Article 32 of the Baltimore County Code. **[Bill No. 137-2004]**

C. Other covenants or easements may be required as to ensure that the standards of this section are met, including:

1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and

2. An easement to provide for the maintenance of open views.

SECTION 1A08
R.C.7 (Resource Preservation) Zone
[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.

1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.

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2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.

3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.

4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:

1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;

2. To protect forests, streams, wetlands and floodplains;

3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;

4. To respect historic sites in their settings;

5. To provide a quality recreational experience to visitors;

6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.

7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.

8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;

9. To implement state and federal mandates for the protection of natural resources and rural legacy;

10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;

11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;

12. To incorporate traditional features of the local built environment into development; and

13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE — The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

A. Uses permitted by right. In addition to the uses in Paragraph E of this subsection, the following uses are permitted by right in an R.C.7 Zone:

1. Dwellings, one-family detached.
2. Farms and limited acre wholesale flower farms, subject to Section 404.
3. Open space, common.
4. Schools.
5. Streets and ways.
6. Telephone, telegraph, electrical power or other lines or cables, provided that any such line or cable is underground; underground gas mains; shared well and septic systems when approved by the Department of Environmental Protection and Sustainability; or other underground conduits, except interstate pipelines. **[Bill No. 122-2010]**
7. Accessory uses or structures, subject to Section 429, including:
   a. Farmer's roadside stand and produce stand, subject to Section 404.4;
   b. Home occupations;
   c. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident employee;
   d. Parking and residential garage space, subject to Section 409;
   e. Signs, subject to Sections 450 and 1A08.8.C.5; and
   f. Swimming pools, tennis courts and other recreational amenities, if accessory to a dwelling or residential subdivision only.
8. Commercial film production, subject to Section 435.
9. Farmstead creamery, subject to the provisions of Section 404.13. **[Bill No. 34-2009]**

B. Uses permitted by special exception. The following uses only may be permitted by special exception in an R.C.7 Zone.

1. The following uses provided that they are located in a principal building that was originally constructed before the effective date of Bill 74-2000; and the building is converted to the new use without any external enlargement after the effective date of Bill 74-2000:

   a. Antique shop;

   b. Bed and breakfast;

   c. Tea room; and

   d. Residential art salon.

2. Subject to Paragraph E of this subsection, churches and other buildings for religious worship.

3. Offices or studios of physicians, dentists, lawyers, architects, engineers, artists, musicians or other professionals as an accessory use, provided that any such office or studio is established within the same building as that serving the professional person's primary residence; does not occupy more than 25% of the total floor area of that residence; and does not involve the employment of more than one nonresident professional associate nor two other nonresident employees;

4. Public utility uses not permitted by right.

5. Bottled water plant as an agricultural support use, if the source of water is located on the same site as the plant, and provided that the Director of Environmental Protection and Sustainability makes a finding that the proposed facility is not expected to adversely affect the quality of capacity of surface water or ground water. **[Bill No. 122-2010]**

6. Campgrounds, including day camps.

7. Farm market, subject to Section 404.4.

8. Golf courses.

9. Horticultural nursery, subject to Sections 404.1 and 404.2.

10. Riding stables.

11. Target archery and field archery ranges.

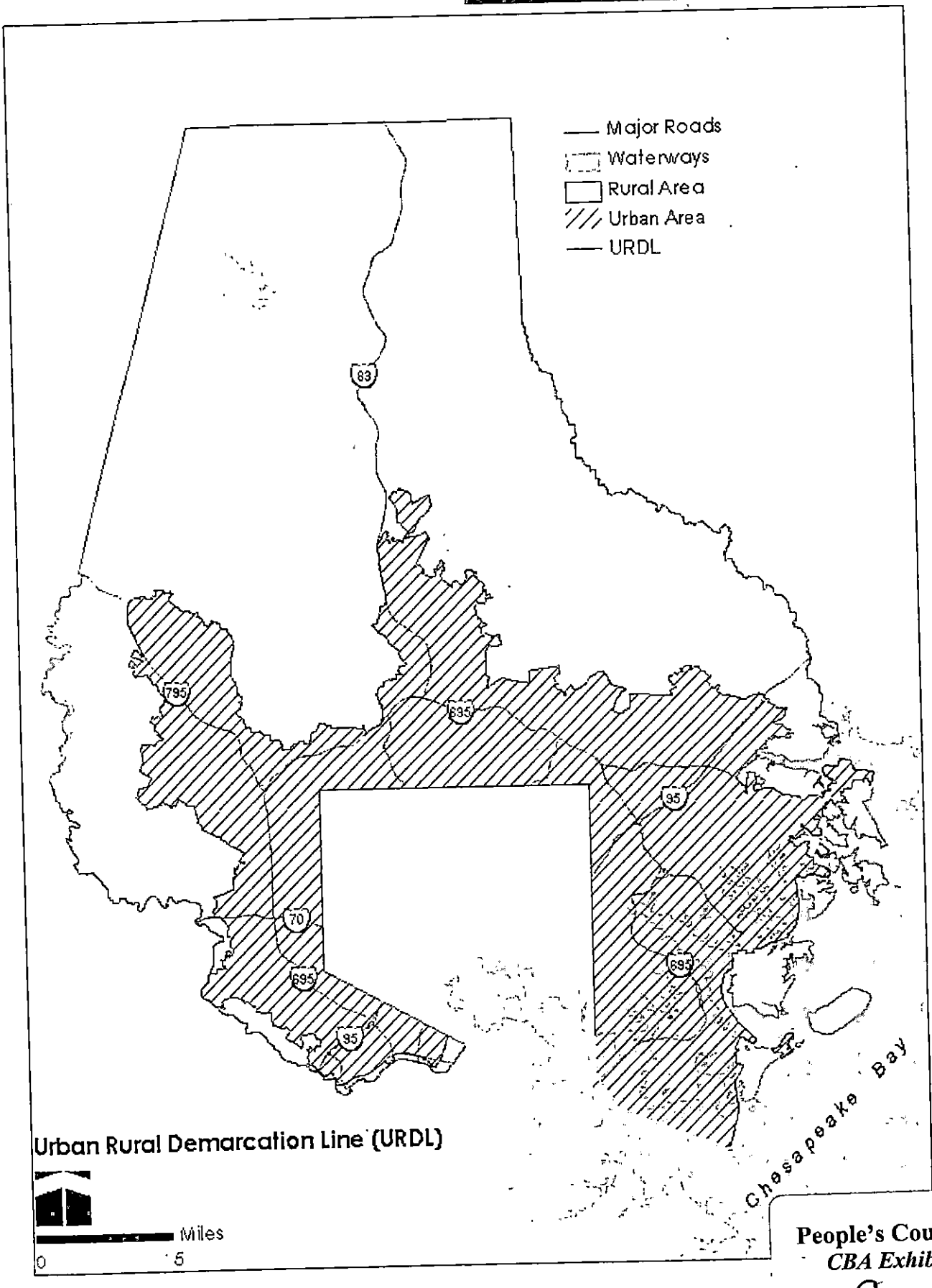
12. Volunteer fire company or ambulance-rescue facilities.

13. Winery as an agricultural support use, including accessory retail and wholesale distribution of wine produced on premises. Temporary promotional events such as wine tasting or public gatherings associated with the winery are permitted within any limits set through the special exception process.

14. Wireless telecommunication towers, subject to Section 426.

15. Brewery, Class 7 or Class 8, including accessory retail and wholesale distribution of beer produced on the premises. Temporary promotional events, such as beer tasting or public gatherings associated with the brewery, are permitted subject to approval by the Administrative Law Judge or Board of Appeals on appeal. **[Bill No. 64-2015]**

Map 1: Urban Rural Demarcation Line



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Case No: 18-047-X

8/22/18

SIGN IN SHEET FOR Case # 2018-0047-X Gerner Property, 15637 York Rd Aug 21, 2018 Aug. 22, 2018

Clearly Print Name	Address & Zip Code	Email	Phone #	Group?
KATHLEEN PIEPER	4310 BECKLEYSVILLE RD 21074	KATHIE@STONEPONTRESTORATION		NO
LYNNE JONES	815 STABLERS CHURCH RD, PARKTON 21120	dryad101@hotmail.com		SGCPC
William MAYO	921 Upper Glencoe Rd Sparks Md 21152	BILLGMAYO@GMail.Com		
EDDIE MATCZUK	932 UPPER GLENCOE RD 21152			
JOHN ALTMEYER	21722 ORWIG RD. 21053	jaltmeyer@aol.com		
TERESA MOORE	118 W. PENNSYLVANIA AVE ~~21228~~ Towson 21204	teresa@thevpc.org		
Ginny Terhune	526 Allegheny Ave. Towson 21204	terhunevirginia@gmail.com		
Jackie Brooks	411 Buedel Ct, Sparks MD 21152	jaccortibrooks@aol.com		

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COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2000, Legislative Day No. 15

Bill No. 74-00

Mr. T. Bryan McIntire, Councilman

By the County Council, August 7, 2000

A BILL
ENTITLED

AN ACT concerning

Land Use and Development - Resource Conservation Zones

FOR the purpose of amending the Baltimore County Zoning Regulations in order to create a new RC 7 zoning classification; adding certain definitions; establishing certain guidelines and use limitations for development; establishing certain permitted uses by right and by special exception; establishing certain area, design, and performance standards and guidelines; establishing certain procedures for the approval of certain permits and plans; permitting certain agriculture inconveniences; prohibiting certain special exceptions in certain resource conservation zones; excluding certain special exception use property area from the area used for the calculation of residential density in all zones; and generally relating to the use and development of resource conservation zones.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

By adding

Sections 100.1.A.2, the zoning classification of "R.C. 7 Resource Preservation Zone", 101, the definitions of "Antique Shop", "Campground", "Camping Unit", "Campsite", "Day Camp", and "Golf Course", 102.7, 1A08, and 502.1.I
Baltimore County Zoning Regulations, as amended

WHEREAS, the Baltimore County Council has received a final report, dated June 7, 2000, from the Planning Board concerning the subject legislation, and has held a public hearing thereon on July 3, 2000, now, therefore,

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that Sections 100.1.A.2, the zoning classification of "R.C. 7 Resource Preservation Zone", 101, alphabetically, the definitions of "Antique Shop", "Campground", "Camping Unit", "Campsite", "Day Camp", and "Golf Course", 102.7, 1A08, and 502.1.I are hereby added to the Baltimore County Zoning Regulations, as amended, to read as follows:

Section 100 Zones and Districts; Boundaries

100.1 Baltimore County is hereby divided into zones and districts in accordance with this section.

A. Zones.

2. Zones are classified as follows:

R.C. 7 RESOURCE PRESERVATION ZONE

Section 101 Definitions

ANTIQUE SHOP -- A RETAIL ESTABLISHMENT FOR THE SALE OF GOODS OF A TYPE THAT ARE OFTEN PURCHASED BY COLLECTORS AND THAT MAY INCLUDE FURNITURE, POTTERY, GLASSWARE, JEWELRY, LINENS, TOOLS, ARTWORKS, AND BOOKS WHICH WERE MANUFACTURED AT LEAST 50 YEARS IN THE PAST.

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ANTIQUE SHOP INCLUDES THE OUTSIDE DISPLAY OF MERCHANDISE OFFERED FOR SALE IN FRONT OF THE ESTABLISHMENT ON THE SAME LOT WITHIN FIVE FEET OF THE FRONT PORCH OF FRONT BUILDING FACADE.

CAMPGROUND -- A TRACT OF LAND UPON WHICH TWO OR MORE CAMPSITES ARE LOCATED, ESTABLISHED, OR MAINTAINED FOR OCCUPANCY BY CAMPING UNITS AS TEMPORARY LIVING QUARTERS FOR RECREATION, EDUCATION, OR VACATION PURPOSES.

CAMPING UNIT -- A TENT, CABIN, LEAN-TO, RECREATIONAL VEHICLE, OR SIMILAR STRUCTURE ESTABLISHED OR MAINTAINED AND OPERATED IN A CAMPGROUND AS TEMPORARY LIVING QUARTERS FOR RECREATION, EDUCATION, OR VACATION PURPOSES.

CAMPSITE -- ANY PLOT OF LAND WITHIN A CAMPGROUND INTENDED FOR EXCLUSIVE OCCUPANCY BY A CAMPING UNIT OR UNITS, OCCUPIED BY A CAMPER.

DAY CAMP -- A PLOT OF GROUND UPON WHICH CHILDREN MAY ENGAGE IN SUPERVISED RECREATIONAL, EDUCATIONAL, CULTURAL, OR ARTISTIC ACTIVITIES OUTDOORS DURING DAYLIGHT HOURS, BUT DAY CAMP DOES NOT INCLUDE SCHOOLS OR CHILD CARE CENTERS.

GOLF COURSE -- A TRACT OF LAND LAID OUT FOR AT LEAST NINE HOLES FOR PLAYING GOLF, AND IMPROVED WITH TEES, GREENS, FAIRWAYS, AND HAZARDS, FACILITIES FOR COLLECTING FEES, STORING GOLF EQUIPMENT FOR RENTAL OR LIMITED SALE, AND STORING EQUIPMENT FOR MAINTENANCE OF THE GOLF

COURSE. GOLF COURSE INCLUDES SNACK STANDS AND A RESTAURANT WITH SEATING FOR NO MORE THAN 50 PERSONS. GOLF COURSE DOES NOT INCLUDE CATERING FACILITIES, NOR ANY OTHER FACILITIES FOR ENTERTAINMENT OR RECREATION.

SECTION 1A08 R.C. 7 (RESOURCE PRESERVATION) ZONE

1A08.1 FINDINGS AND LEGISLATIVE GOALS.

A. FINDINGS.

1. MASTER PLAN 2010, ADOPTED BY THE COUNTY COUNCIL IN FEBRUARY 2000, IDENTIFIES SPECIFIC RESOURCE PRESERVATION AREAS WHERE VALUABLE CULTURAL, HISTORIC, RECREATIONAL, AND ENVIRONMENTAL RESOURCES ARE LOCATED AND SHOULD BE PROTECTED FOR THE HEALTH OF THE LOCAL COMMUNITY AND THE COMMUNITY AT LARGE.

2. AMONG THE ACTIONS RECOMMENDED IN MASTER PLAN 2010 TO PROTECT RESOURCES IN RESOURCE PRESERVATION AREAS IS THE REDUCTION OF PERMITTED RESIDENTIAL DENSITIES IN THESE AREAS TO ONE DWELLING PER 25-50 ACRES OF LAND.

3. AN R.C. 7 ZONE WOULD ALLOW LIMITED DEVELOPMENT, COMPATIBLE WITH THE RURAL COMMUNITY, AND AT THE SAME TIME, PROTECT RURAL RESOURCES.

4. THE COUNTY RECOGNIZES THE IMPORTANCE OF RETAINING LARGE-ACREAGE PARCELS TO PROTECT AND PROMOTE THE AGRICULTURAL INDUSTRY; R.C. 7 SHALL BE APPLIED ONLY TO LANDS CURRENTLY ZONED R.C. 4 AS OF

AUGUST 7, 2000.

B. LEGISLATIVE GOALS. THE BALTIMORE COUNTY COUNCIL SEEKS TO ACHIEVE THE FOLLOWING GOALS IN THE R.C. 7 ZONE:

1. TO PRESERVE AND PROTECT TOTAL ECOSYSTEM FUNCTION, INCLUDING RIPARIAN AND AQUATIC ECOSYSTEMS;

2. TO PROTECT FORESTS, STREAMS, WETLANDS, AND FLOODPLAINS;

3. TO PROTECT THE WATER QUALITY OF WATERCOURSES, THE CHESAPEAKE BAY, AND REGIONAL BIODIVERSITY;

4. TO RESPECT HISTORIC SITES IN THEIR SETTINGS;

5. TO PROVIDE A QUALITY RECREATIONAL EXPERIENCE TO VISITORS;

6. TO PROTECT REMAINING PRIME AND PRODUCTIVE SOILS IN AREAS NOT CURRENTLY PROTECTED BY THE R.C. 2 ZONE.

7. TO MAINTAIN THE UNIQUE CHARACTER OF A RURAL AREA BY PRESERVING ITS NATURAL, HISTORIC, CULTURAL, RECREATIONAL, SCENIC, ARCHITECTURAL, AND ARCHAEOLOGICAL RESOURCES.

8. TO PROVIDE FOR THE ENVIRONMENTALLY SOUND USE OF LAND AND FOREST RESOURCES, AND TO PREVENT FOREST FRAGMENTATION, ESPECIALLY IN AREAS OF EXTENSIVE INTERIOR FOREST;

9. TO IMPLEMENT STATE AND FEDERAL MANDATES FOR THE PROTECTION OF NATURAL RESOURCES AND RURAL LEGACY;

10. TO ENHANCE RURAL CHARACTER AND ENVIRONMENTAL PROTECTION BY LOCATING BUILDINGS IN HARMONY WITH SITE CONDITIONS;

11. TO PRESERVE THE TRADITIONAL CHARACTER OF RURAL COMMUNITIES BY LIMITING THE SCALE AND INTENSITY OF DEVELOPMENT;

12. TO INCORPORATE TRADITIONAL FEATURES OF THE LOCAL BUILT ENVIRONMENT INTO DEVELOPMENT; AND

13. TO MAINTAIN THE RURAL SCALE AND CHARACTER OF AREA ROADS BY LIMITING GROWTH IN THE VOLUME OF TRAFFIC GENERATED BY LOCAL DEVELOPMENT.

1A08.2 IN THIS SECTION, THE FOLLOWING TERM HAS THE MEANING INDICATED:

BUILDING ENVELOPE – THE AREA ON A LOT WITHIN WHICH ALL STRUCTURES EXCEPT WELLS, SEPTIC SYSTEMS, STORMWATER MANAGEMENT SYSTEMS, DRIVEWAYS, OR FENCES ARE PERMITTED TO BE BUILT.

1A08.3 PERMITTED USES.

A. USES PERMITTED BY RIGHT. THE FOLLOWING USES ARE PERMITTED BY RIGHT IN AN R.C. 7 ZONE:

1. DWELLINGS, ONE-FAMILY DETACHED.

2. FARMS AND LIMITED ACRE WHOLESALE FLOWER FARMS, SUBJECT TO SECTION 404.

3. OPEN SPACE, COMMON.

4. SCHOOLS.

5. STREETS AND WAYS.

6. TELEPHONE, TELEGRAPH, ELECTRICAL POWER OR OTHER LINES OR

CABLES, PROVIDED THAT ANY SUCH LINE OR CABLE IS UNDERGROUND; UNDERGROUND GAS MAINS; SHARED WELL AND SEPTIC SYSTEMS WHEN APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT; OR OTHER UNDERGROUND CONDUITS, EXCEPT INTERSTATE PIPELINES.

7. ACCESSORY USES OR STRUCTURES, SUBJECT TO SECTION 429, INCLUDING:

A. FARMER'S ROADSIDE STAND AND PRODUCE STAND, SUBJECT TO SECTION 404.4;

B. HOME OCCUPATIONS;

C. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONALS, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING THE PROFESSIONAL PERSON'S PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25% OF THE TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NONRESIDENT EMPLOYEE;

D. PARKING AND RESIDENTIAL GARAGE SPACE, SUBJECT TO SECTION 409;

E. SIGNS, SUBJECT TO SECTIONS 450 AND 1A08.8.C.5; AND

F. SWIMMING POOLS, TENNIS COURTS, AND OTHER RECREATIONAL AMENITIES, IF ACCESSORY TO A DWELLING OR RESIDENTIAL SUBDIVISION

ONLY.

8. COMMERCIAL FILM PRODUCTION, SUBJECT TO SECTION 435.

B. USES PERMITTED BY SPECIAL EXCEPTION. THE FOLLOWING USES ONLY MAY BE PERMITTED BY SPECIAL EXCEPTION IN AN R.C. 7 ZONE.

1. THE FOLLOWING USES PROVIDED THAT THEY ARE LOCATED IN A PRINCIPAL BUILDING THAT WAS ORIGINALLY CONSTRUCTED BEFORE THE EFFECTIVE DATE OF BILL 74-00; AND THE BUILDING IS CONVERTED TO THE NEW USE WITHOUT ANY EXTERNAL ENLARGEMENT AFTER THE EFFECTIVE DATE OF BILL 74-00:

A. ANTIQUE SHOP;

B. BED AND BREAKFAST;

C. TEA ROOM; AND

D. RESIDENTIAL ART SALON.

2. CHURCHES AND OTHER BUILDINGS FOR RELIGIOUS WORSHIP.

3. OFFICES OR STUDIOS OF PHYSICIANS, DENTISTS, LAWYERS, ARCHITECTS, ENGINEERS, ARTISTS, MUSICIANS, OR OTHER PROFESSIONALS AS AN ACCESSORY USE, PROVIDED THAT ANY SUCH OFFICE OR STUDIO IS ESTABLISHED WITHIN THE SAME BUILDING AS THAT SERVING THE PROFESSIONAL PERSON'S PRIMARY RESIDENCE; DOES NOT OCCUPY MORE THAN 25% OF THE TOTAL FLOOR AREA OF THAT RESIDENCE; AND DOES NOT INVOLVE THE EMPLOYMENT OF MORE THAN ONE NONRESIDENT PROFESSIONAL ASSOCIATE NOR TWO OTHER NONRESIDENT EMPLOYEES;

4. PUBLIC UTILITY USES NOT PERMITTED BY RIGHT.

5. BOTTLED WATER PLANT AS AN AGRICULTURAL SUPPORT USE, IF THE SOURCE OF WATER IS LOCATED ON THE SAME SITE AS THE PLANT, AND PROVIDED THAT THE DIRECTOR OF THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT MAKES A FINDING THAT THE PROPOSED FACILITY IS NOT EXPECTED TO ADVERSELY AFFECT THE QUALITY OF CAPACITY OF SURFACE WATER OR GROUND WATER.

6. CAMPGROUNDS, INCLUDING DAY CAMPS.

7. FARM MARKET, SUBJECT TO SECTION 404.4.

8. GOLF COURSES.

9. HORTICULTURAL NURSERY, SUBJECT TO SECTIONS 404.1 AND 404.2.

10. RIDING STABLES.

11. TARGET ARCHERY AND FIELD ARCHERY RANGES.

12. VOLUNTEER FIRE COMPANY OR AMBULANCE-RESCUE FACILITIES.

13. WINERY AS AN AGRICULTURAL SUPPORT USE, INCLUDING ACCESSORY RETAIL AND WHOLESALE DISTRIBUTION OF WINE PRODUCED ON PREMISES. TEMPORARY PROMOTIONAL EVENTS SUCH AS WINE TASTING OR PUBLIC GATHERINGS ASSOCIATED WITH THE WINERY ARE PERMITTED WITHIN ANY LIMITS SET THROUGH THE SPECIAL EXCEPTION PROCESS.

14. WIRELESS TELECOMMUNICATION TOWERS, SUBJECT TO SECTION 426.

C. NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER

COUNTY LAW OR REGULATION TO THE CONTRARY, IF A PROPERTY TO WHICH THE ZONING CLASSIFICATION R.C. 7 IS APPLIED HAD A DEVELOPMENT PLAN PENDING FOR APPROVAL ON OR BEFORE AUGUST 7, 2000, THE DEVELOPMENT PROPOSED SHALL BE REVIEWED AND APPROVED BASED ON THE ZONING CLASSIFICATION APPLICABLE TO THE PROPERTY AT THE TIME THE DEVELOPMENT PLAN WAS FILED.

1A08.4 PLANS AND PERMITS. ALL DEVELOPMENT MUST BE IN ACCORDANCE WITH THIS SECTION AND THE STANDARDS AND GUIDELINES FOR "RURAL PRESERVATION" AND "SCENIC VIEWS" ADOPTED PURSUANT TO THIS SECTION, AND PUBLISHED AS PART OF THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES.

A. BEFORE THE APPROVAL OF ANY CONCEPT PLAN, DEVELOPMENT PLAN, LIMITED EXEMPTION, SPECIAL EXCEPTION PLAN, OR VARIANCE, THE DIRECTOR OF PLANNING OR THE DIRECTOR'S DESIGNEE MUST CERTIFY IN A WRITTEN FINDING THAT THE PLAN, EXEMPTION, OR VARIANCE IS CONSISTENT WITH THE SPIRIT AND INTENT OF THESE REGULATIONS. TO SUPPORT THE FINDING, THE DIRECTOR MAY REQUIRE INFORMATION SUCH AS BUILDING ELEVATIONS, BUILDING CROSS-SECTIONS, OR VIEWSHED ANALYSES PURSUANT TO SECTION 26-203(D)(22) OF THE BALTIMORE COUNTY CODE. THE DIRECTOR MUST CERTIFY THAT ANY DEVIATION FROM THIS SECTION OR THE STANDARDS AND GUIDELINES CITED ABOVE WAS NECESSARY TO:

1. MEET ANOTHER STANDARD OR GUIDELINE;

2. COMPLY WITH ENVIRONMENTAL REGULATIONS OR OTHERWISE PROTECT RESOURCES; OR

3. ACHIEVE THE BEST POSSIBLE SITE DESIGN BASED ON THE GOALS IN SECTION 1A08.1.B

B. BEFORE THE ISSUANCE OF ANY BUILDING PERMIT, THE DIRECTOR OF PLANNING OR THE DIRECTOR'S DESIGNEE MUST CERTIFY THAT THE PROPOSED DEVELOPMENT IS IN CONFORMANCE WITH A PLAN APPROVED PURSUANT TO THESE REGULATIONS.

C. A FINDING PURSUANT TO THIS SECTION MAY BE APPEALED TO THE BALTIMORE COUNTY BOARD OF APPEALS WITHIN 30 DAYS OF THE DATE OF THE FINDING BY ANY PERSON AGGRIEVED BY THE FINDING.

1A08.5 SCENIC VIEWS. TO PROTECT THE SCENIC VIEWS OR, WHEN NECESSARY PURSUANT TO 1A08.4, TO MITIGATE THE DISTURBANCE OF SCENIC VIEWS, THE DIRECTOR OF PLANNING MAY REQUIRE THAT ONE OR BOTH OF THE FOLLOWING BE CLEARLY DESIGNATED ON THE FINAL RECORD PLAT WITH APPROPRIATE NOTATIONS:

A. AREAS WHERE DISTURBANCE OF NATURAL VEGETATION IS PROHIBITED; OR

B. AREAS WHERE RE-VEGETATION OF LANDSCAPING IS REQUIRED.

1A08.6 DEVELOPMENT AREA AND STANDARDS.

A. MAXIMUM HEIGHT. NO STRUCTURE WITH A HEIGHT GREATER THAN 35 FEET IS PERMITTED; EXCEPT AS OTHERWISE PROVIDED UNDER SECTION 300.

B. AREA REGULATIONS.

1. MAXIMUM LOT DENSITY. A TRACT MAY BE DEVELOPED IN AN R.C. 7 ZONE AT A MAXIMUM DENSITY OF 0.04 LOT PER ACRE OF GROSS TRACT AREA (AN AVERAGE OF 1 LOT PER 25 ACRES). NO LOT LYING WITHIN AN R.C. 7 ZONE AND HAVING A GROSS AREA OF LESS THAN 50 ACRES MAY BE SUBDIVIDED. ANY LOT HAVING A GROSS AREA OF 50 ACRES OR MORE MAY BE SUBDIVIDED AT THE RATE OF ONE LOT FOR EACH 25 ACRES OF GROSS AREA. IN CASES WHERE SINGLE OWNERSHIP IS CROSSED BY EXISTING OR PROPOSED ROADS, RIGHTS OF WAY, OR EASEMENTS, THE PORTIONS OF LAND ON EITHER SIDE OF THE ROAD, RIGHT OF WAY, OR EASEMENT MAY NOT BE CONSIDERED SEPARATE PARCELS FOR THE PURPOSE OF CALCULATING THE NUMBER OF LOTS OF RECORD.

2. LOT AREA. THE AREA OF ANY RESIDENTIAL LOT IN A MAJOR OR MINOR SUBDIVISION MUST NOT BE LESS THAN ONE ACRE.

3. BUILDING ENVELOPE. FOR RESIDENTIAL DEVELOPMENT, THE MAXIMUM AREA OF THE BUILDING ENVELOPE ON ANY RESIDENTIAL LOT OTHER THAN A FARM IS 20,000 SQUARE FEET, AND NO SINGLE DWELLING, INCLUSIVE OF A GARAGE OR ACCESSORY BUILDING, SHALL HAVE A BUILDING FOOTPRINT THAT EXCEEDS 5,000 SQUARE FEET. THE PLACEMENT OF THE BUILDING ENVELOPE IS DETERMINED ON THE BASIS OF:

A. THE GOALS FOR THE ZONE; AND

B. THE MINIMUM SETBACKS FOR THE ZONE.

4. MINIMUM DEVELOPMENT ALLOWANCE. ANY LOT OR PARCEL OF LAND.

LAWFULLY EXISTING ON THE EFFECTIVE DATE OF BILL 66-00 MAY BE DEVELOPED WITH A SINGLE DWELLING.

5. SETBACKS.

A. ANY PRINCIPAL BUILDING CONSTRUCTED IN AN R.C. 7 ZONE MUST BE SITUATED AT LEAST:

I. 35 FEET FROM THE RIGHT OF WAY OF PUBLIC OR PRIVATE INTERIOR STREETS;

II. 80 FEET FROM ANY PRINCIPAL BUILDING; AND

III. 50 FEET FROM THE REAR LOT LINE.

B. ANY PRINCIPAL BUILDING OR WELL CONSTRUCTED, OR ANY USE THAT MAY BE IN CONFLICT WITH ANY PERMITTED AGRICULTURAL OPERATION, IN AN R.C. 7 ZONE MUST BE AT LEAST 300 FEET FROM ANY ADJACENT PROPERTY THAT WAS CULTIVATED OR USED FOR PASTURE DURING THE PREVIOUS THREE YEARS, AS DETERMINED BY THE DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT, OR THAT IS SUBJECT TO A PERPETUAL AGRICULTURAL OR CONSERVATION EASEMENT.

6. IMPERVIOUS SURFACE COVERAGE – NON-RESIDENTIAL DEVELOPMENT. EXCEPT FOR RESIDENTIAL LOTS WHICH ARE SUBJECT TO A BUILDING ENVELOPE RESTRICTION, NO MORE THAN 10% OF ANY LOT MAY BE COVERED BY IMPERVIOUS SURFACES SUCH AS STRUCTURES OR PAVEMENT.

7. HISTORIC PROPERTIES. NO BUILDING OR STRUCTURE ON A DEVELOPMENT TRACT WHICH IS OFFICIALLY INCLUDED ON THE PRELIMINARY

OR FINAL LIST OF THE LANDMARKS PRESERVATION COMMISSION OR THE NATIONAL REGISTER OF HISTORIC PLACES, OR WHICH IS SUBJECT TO AN EASEMENT HELD BY THE MARYLAND HISTORIC TRUST WILL BE COUNTED AS A LOT OR DWELLING FOR PURPOSES OF CALCULATING DENSITY, PROVIDED THAT:

A. THERE IS AN AREA OF SUFFICIENT SIZE, AS DETERMINED BY THE DIRECTOR OF PLANNING IN CONSULTATION WITH THE LANDMARKS PRESERVATION COMMISSION OR MARYLAND HISTORIC TRUST, SURROUNDING THE BUILDING, STRUCTURE, OR LANDMARK TO PRESERVE THE INTEGRITY OF ITS HISTORIC SETTING;

B. AN OVERALL PHOTOGRAPHIC AND WRITTEN DESCRIPTION OF THE BUILDING, STRUCTURE, OR LANDMARK IDENTIFIED HAS BEEN SUBMITTED AND IS DETERMINED TO BE IN COMPLIANCE WITH THE SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES;

C. DOCUMENTATION OF THE PRESERVATION, RESTORATION, AND PROTECTION FOR THE BUILDING, STRUCTURE, OR LANDMARK HAS BEEN APPROVED BY THE DIRECTOR OF PLANNING IN CONSULTATION WITH THE MARYLAND HISTORICAL TRUST PRIOR TO ISSUANCE OF ANY BUILDING PERMIT; AND

D. WHEN PROVISIONS OF THIS PARAGRAPH APPLY TO ANY DEVELOPMENT, THE CONDITIONS FOR APPROVAL MUST BE NOTED ON THE CONCEPT PLAN AND DEVELOPMENT PLAN, OR THE MINOR SUBDIVISION PLAN.

C. PERFORMANCE STANDARDS. CONDITIONS FOR APPROVAL PURSUANT TO

THIS SECTION MUST BE NOTED ON THE CONCEPT PLAN AND DEVELOPMENT PLAN, OR MINOR SUBDIVISION PLAN. THE FOLLOWING STANDARDS ARE INTENDED TO FOSTER CREATIVE DEVELOPMENT THAT PROMOTES THE GOALS STATED IN 1A08.1.B.

1. STORMWATER MANAGEMENT. STORMWATER MANAGEMENT FACILITIES MUST BE INTEGRATED WITH THE TOPOGRAPHY OF THE SITE AND CONSISTENT WITH THE VISUAL APPEARANCE OF THE SURROUNDING NATURAL FEATURES.

2. BUILDINGS.

A. BUILDINGS MUST BE LOCATED ON THE LEAST VISUALLY PROMINENT PORTION OF THE SITE FROM THE PUBLIC ROAD, CONSISTENT WITH EFFECTIVE RESOURCE PROTECTION, EXCEPT WHERE APPROPRIATE TO CONTINUE AN ESTABLISHED PATTERN OF DEVELOPMENT ALONG THE EDGE OF THE ROAD.

B. BUILDINGS SHOULD REFLECT THE TRADITIONAL RURAL CHARACTER OF THE AREA IN ARCHITECTURAL FORM, SCALE, MATERIALS, AND DETAILING, AND IN LANDSCAPING CONTEXT.

C. DWELLINGS AND OTHER PRINCIPAL USE BUILDING SHOULD BE FRONT-ORIENTED TO PUBLIC RIGHTS OF WAY; REVERSE-FRONTED LOTS GENERALLY WILL NOT BE PERMITTED.

D. INSTITUTIONAL USES, WHEN PERMITTED, SHOULD BE REGARDED AS COMMUNITY LANDMARKS, AND TREATED AS PERMANENT, SPECIAL USES.

THIS STATUS SHOULD BE REFLECTED IN BUILDING ORIENTATION AND LOCATION ON THE SITE, ENTRYWAYS, LANDSCAPING, ARCHITECTURE, AND EXTERIOR BUILDING MATERIALS.

E. ALL OF THE EXTERIOR WALLS OF A BUILDING MUST BE TREATED SIMILARLY WITH RESPECT TO COLOR AND ARCHITECTURAL DETAILS.

F. ACCESSORY STRUCTURES, INCLUDING SOLAR PANELS, ANTENNAS, AND STORAGE SHEDS ARE NOT PERMITTED IN THE FRONT YARD OF ANY PRINCIPAL USE. SECTION 400.1 IS NOT APPLICABLE IN AN R.C. 7 ZONE, HOWEVER, THE HEIGHT OF ACCESSORY STRUCTURES IS SUBJECT TO THE PROVISIONS OF SECTION 400.

G. WHEN BUILDINGS ARE LOCATED IN OPEN FIELDS BECAUSE OF SITE CONSTRAINTS, ADDITIONAL LANDSCAPING OR BERMS MAY BE REQUIRED TO SOFTEN VIEWS.

3. ROADS, PARKING AREAS, AND STORAGE AREAS.

A. INTERIOR ROADS MUST CONFORM TO BALTIMORE COUNTY'S STANDARDS FOR RURAL ROADS. AND NO PAVED SECTION OF ROAD MAY EXCEED A WIDTH OF 18 FEET.

B. CURBING MUST NOT BE USED UNLESS REQUIRED FOR STORMWATER MANAGEMENT, AS DETERMINED BY THE DEPARTMENT OF PUBLIC WORKS. WHEN CURBING IS REQUIRED, IT MUST CONSIST OF MOUNTABLE CURBS OF A COLOR THAT SIMULATES THE APPEARANCE OF AGED CONCRETE, IN ACCORDANCE WITH SPECIFICATIONS ESTABLISHED BY THE

DEPARTMENT OF PUBLIC WORKS.

C. FENCING OF RESIDENTIAL PROPERTIES MUST BE IN KEEPING WITH RURAL CHARACTER. FENCES MUST BE EITHER SPLIT RAIL OR BOARD ON POST, AND THE TYPE OF FENCE MUST BE CONSISTENT THROUGHOUT THE DEVELOPMENT.

D. OFF-STREET PARKING AND VEHICLE OR EQUIPMENT STORAGE AREAS, WHEN NECESSARY FOR NONRESIDENTIAL OR NON-FARM USES, MUST BE VISUALLY SCREENED BY FENCING, BUILDINGS, OR VEGETATION, OR A COMBINATION THEREOF, FROM THE PUBLIC ROADS AND DWELLINGS.

E. AREAS FOR THE OUTSIDE STORAGE OF MATERIALS OR SUPPLIES FOR NON-AGRICULTURAL COMMERCIAL USES, EXCEPT MERCHANDISE OFFERED FOR SALE BY ANTIQUE SHOPS, MUST BE VISUALLY SCREENED BY FENCING, BUILDINGS, OR VEGETATION, OR A COMBINATION THEREOF, FROM ALL PUBLIC ROADS AND DWELLINGS.

F. STREET LIGHTS, IF PERMITTED ON INTERIOR STREETS, MUST BE NO HIGHER THAN 14 FEET AND ILLUMINATED BY NO MORE THAN ONE 100-WATT SODIUM VAPOR LAMP. FLUORESCENT AND INCANDESCENT LIGHTS ARE NOT PERMITTED. THE LIGHT FIXTURES SHOULD BE OF A STYLE THAT DIFFUSES LIGHT.

4. SCREENING. VISUAL SCREENING FOR PRIVACY OR TO BLOCK DISTRACTING VIEWS SHOULD BE NATURAL IN APPEARANCE AND SENSITIVE TO GRADE RELATIONSHIPS. SCREENS SHOULD NOT DISRUPT THE HARMONY OF THE

NATURAL LANDSCAPE OR OBSTRUCT SCENIC VIEWS.

5. SIGNS.

A. COMMUNITY SIGNS ARE PROHIBITED. SUBDIVISIONS MAY BE IDENTIFIED BY STREET SIGNS.

B. A NON-RESIDENTIAL PRINCIPAL USE MAY BE IDENTIFIED BY:

I. AN ENTERPRISE SIGN, SUBJECT TO SECTION 450; OR

II. AN IDENTIFICATION SIGN, SUBJECT TO SECTION 450.

1A08.7 INCONVENIENCES ARISING FROM AGRICULTURAL OPERATIONS. ANY DWELLING IN AN R.C. 7 ZONE MAY BE SUBJECT TO INCONVENIENCES OR DISCOMFORTS ARISING FROM AGRICULTURAL OPERATIONS, INCLUDING NOISE, ODORS, FUMES, DUST, THE OPERATION OF MACHINERY OR AIRCRAFT OF ANY KIND DURING ANY 24-HOUR PERIOD, THE STORAGE AND DISPOSAL OF MANURE, AND THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL FERTILIZERS, SOIL AMENDMENTS, HERBICIDES, AND PESTICIDES.

Section 102 General Requirements

102.7 WHERE DEVELOPMENT OF A PROPERTY INCLUDES BOTH A SPECIAL EXCEPTION AND A RESIDENTIAL SUBDIVISION, THE AREA ALLOCATED FOR USE AS A SPECIAL EXCEPTION SHALL NOT BE INCLUDED IN THE CALCULATION OF RESIDENTIAL DENSITY.

Section 502 Special Exceptions

502.1 Before any special exception may be granted, it must appear that the use for which the

special exception is requested will not:

I. BE DETRIMENTAL TO THE ENVIRONMENTAL AND NATURAL RESOURCES OF THE SITE AND VICINITY INCLUDING FORESTS, STREAMS, WETLANDS, AQUIFERS, AND FLOODPLAINS IN AN R.C. 2, R.C. 4, R.C. 5, OR R.C. 7 ZONE.

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council, shall take effect September 15, 2000.

B07-00.ord

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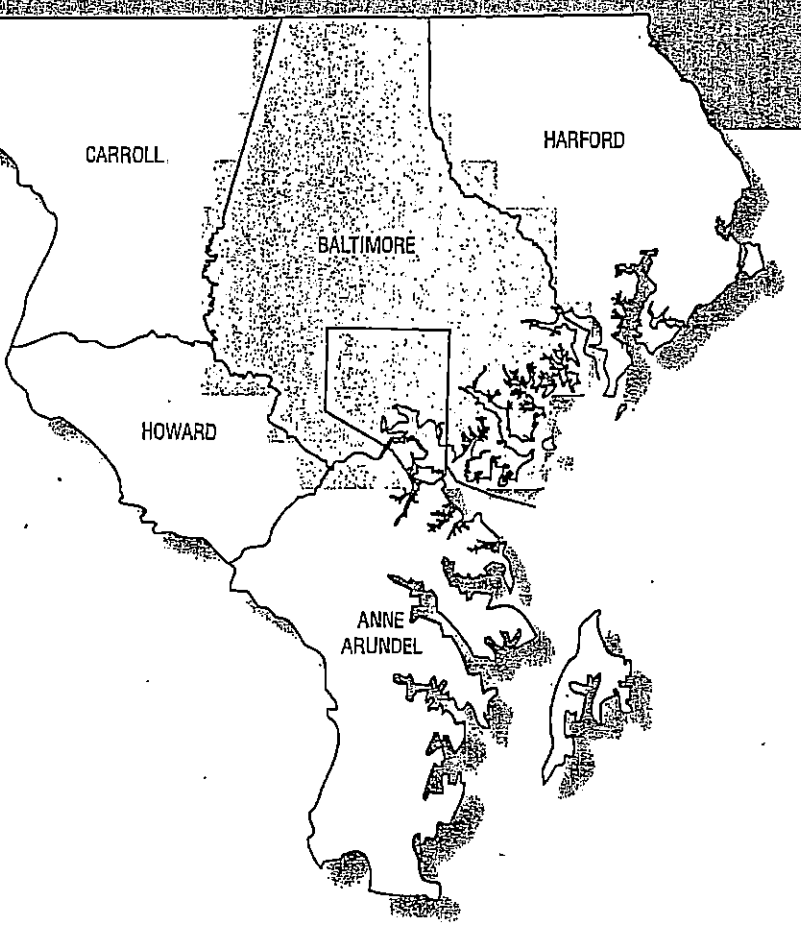
STREET ATLAS

Baltimore City & County

Maryland



People's Counsel
CBA Exhibit
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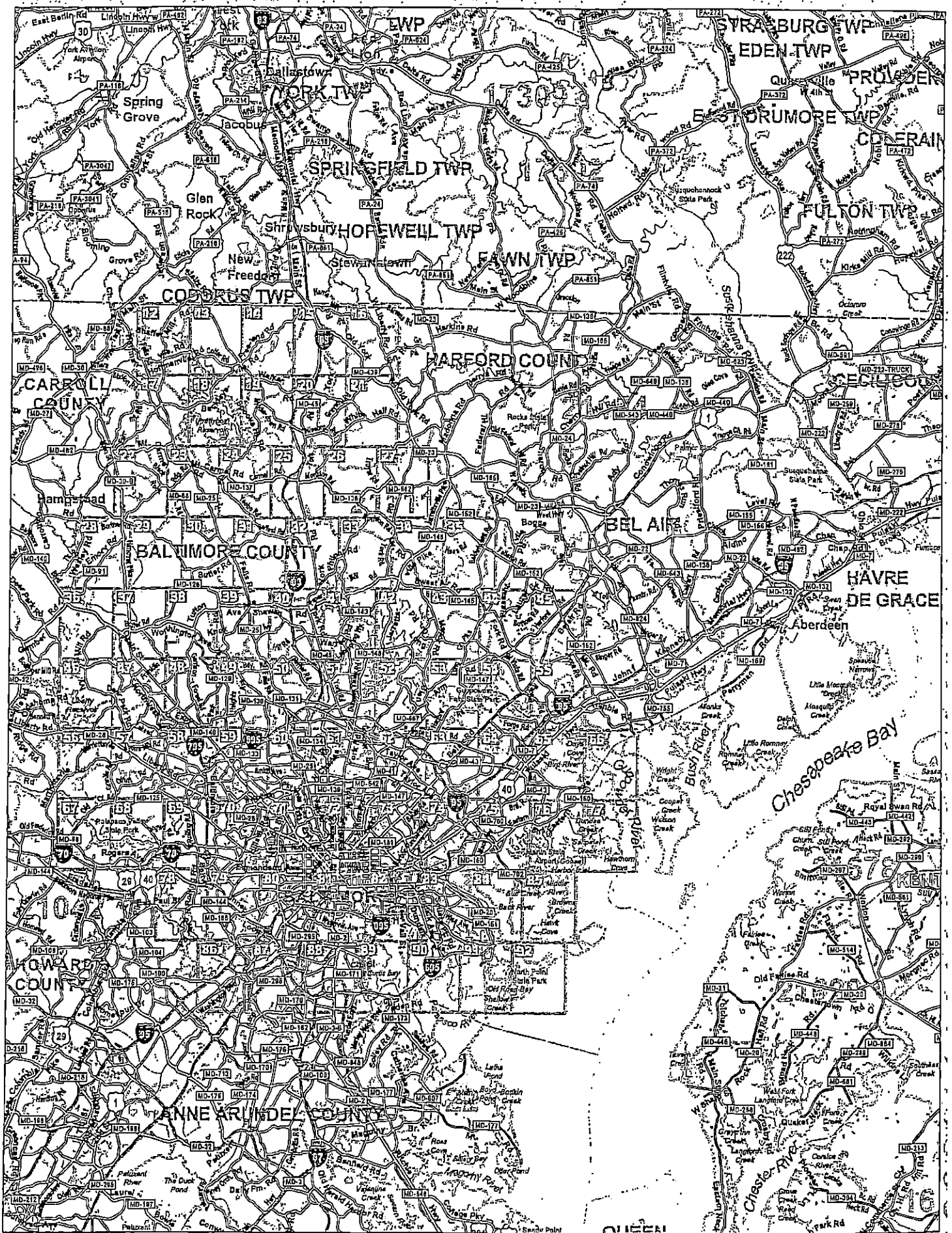
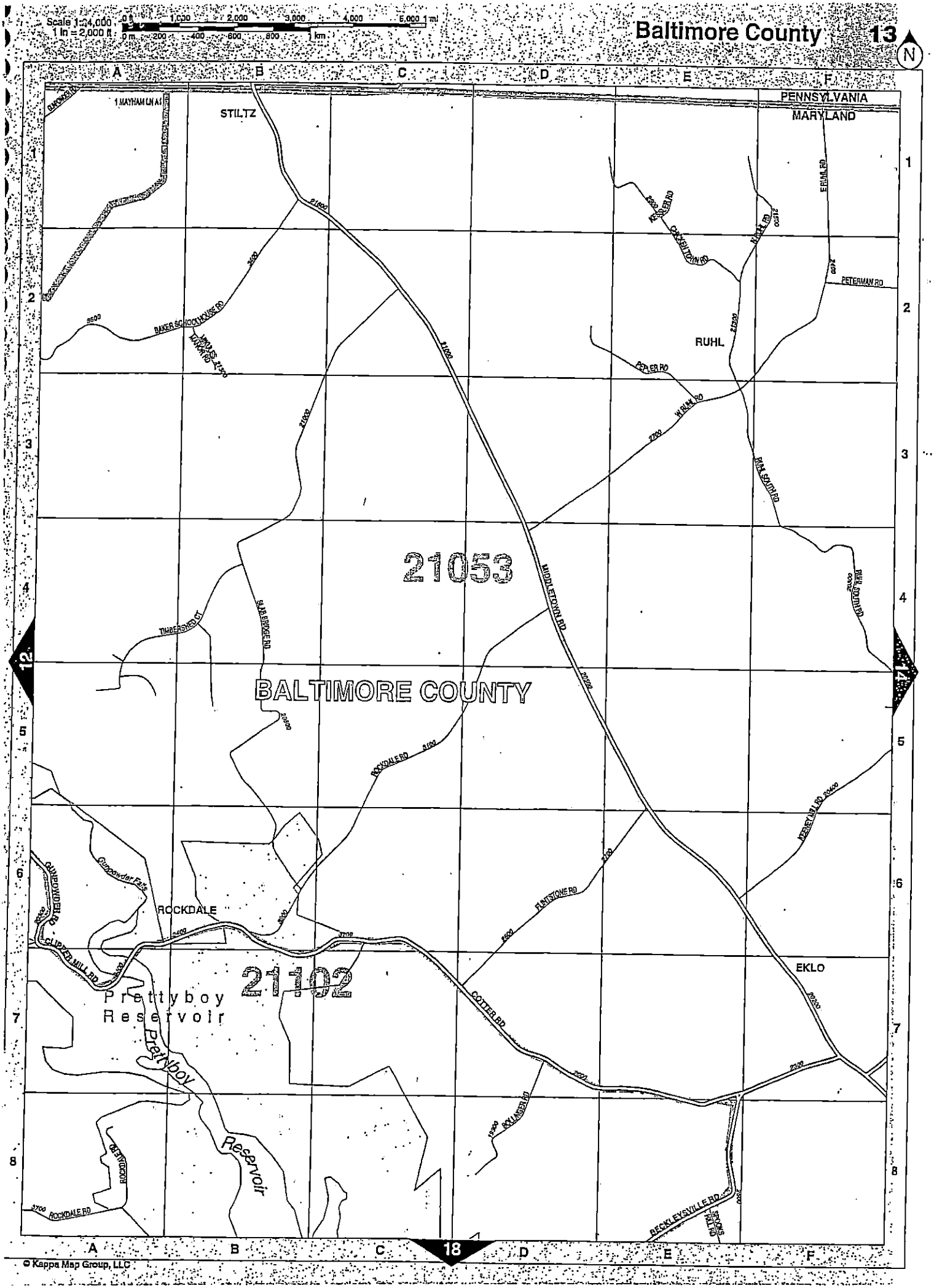
NAVTEQ ON BOARD

2 Key Map





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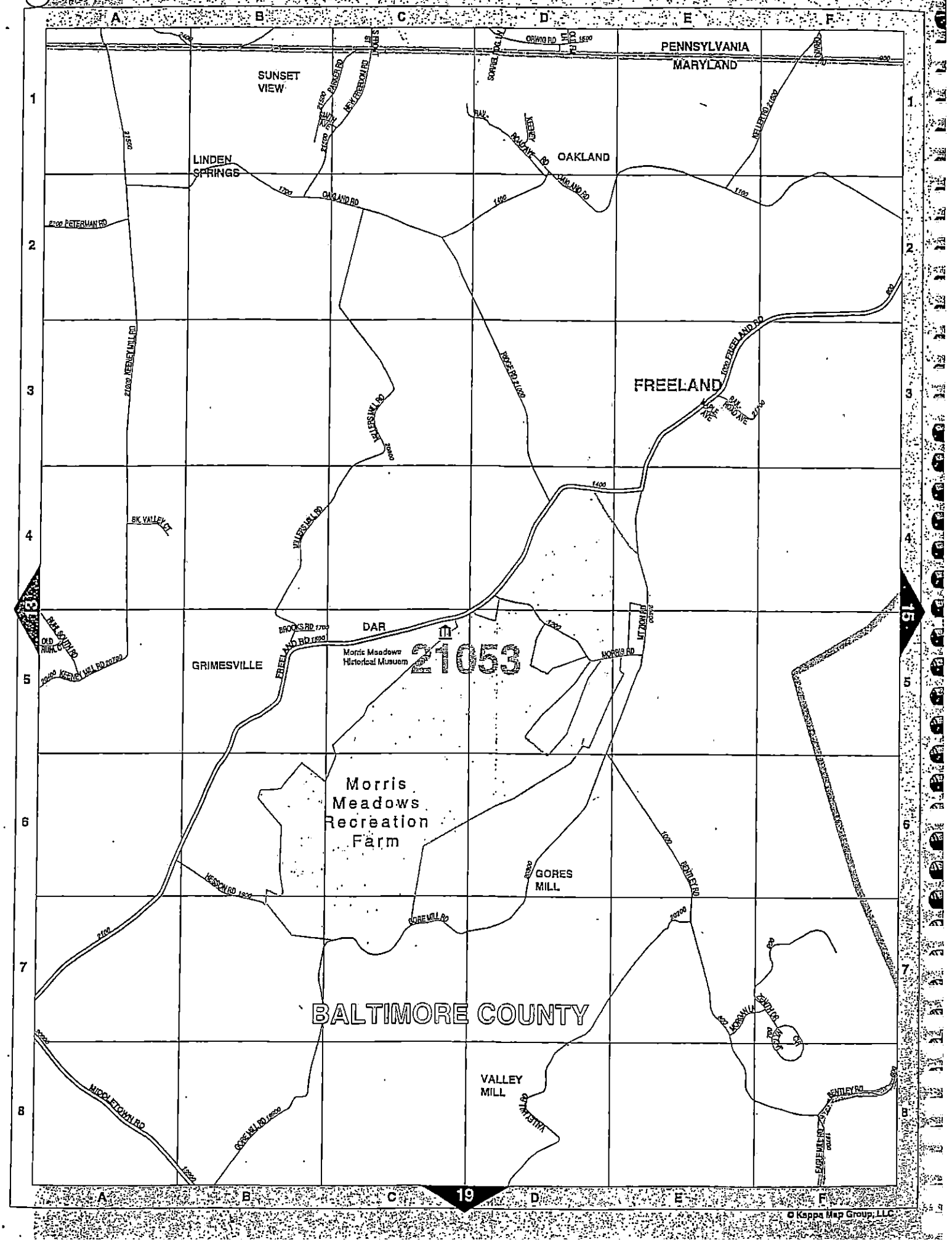

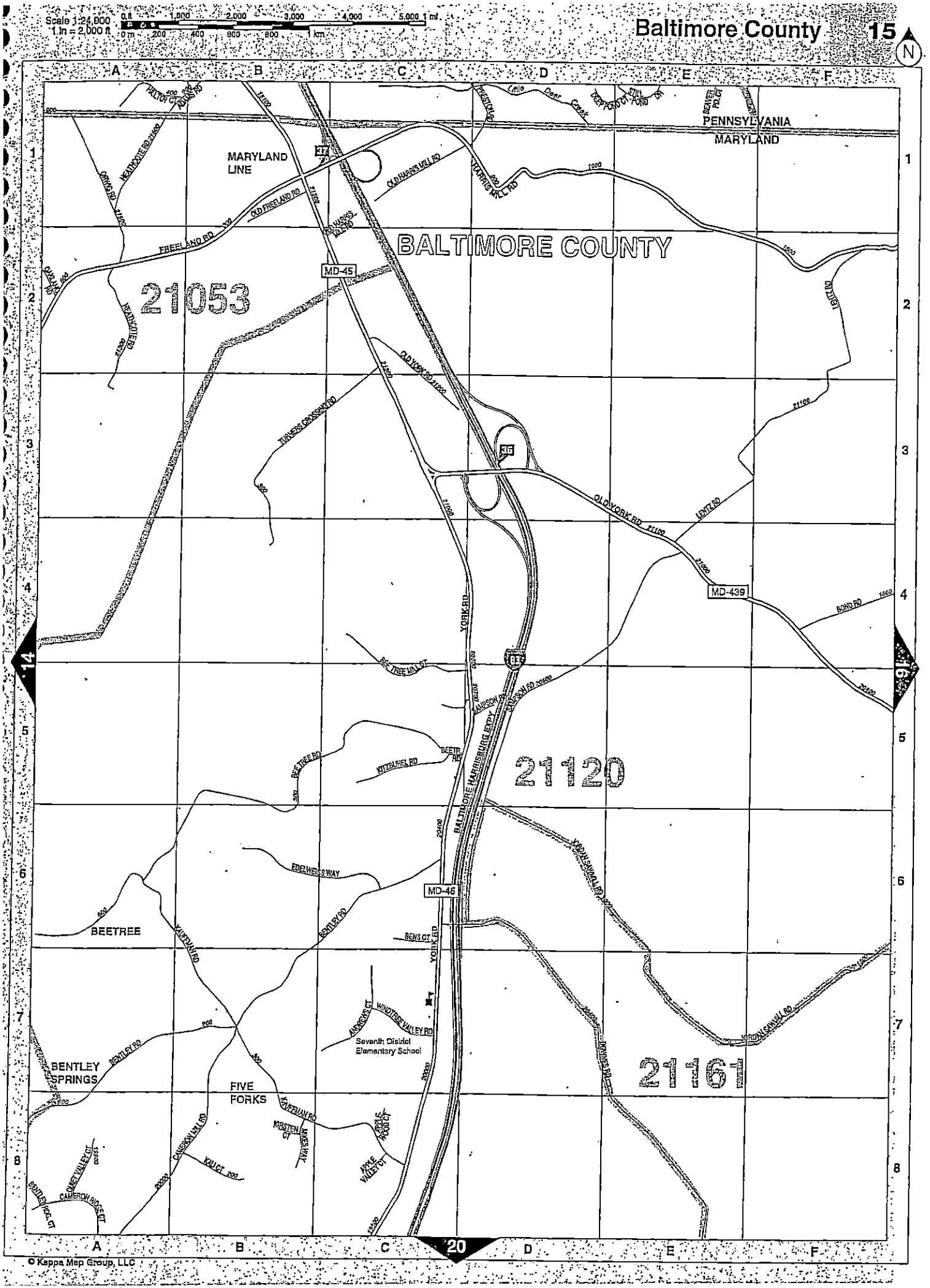
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JORDAN SAWMILL RD
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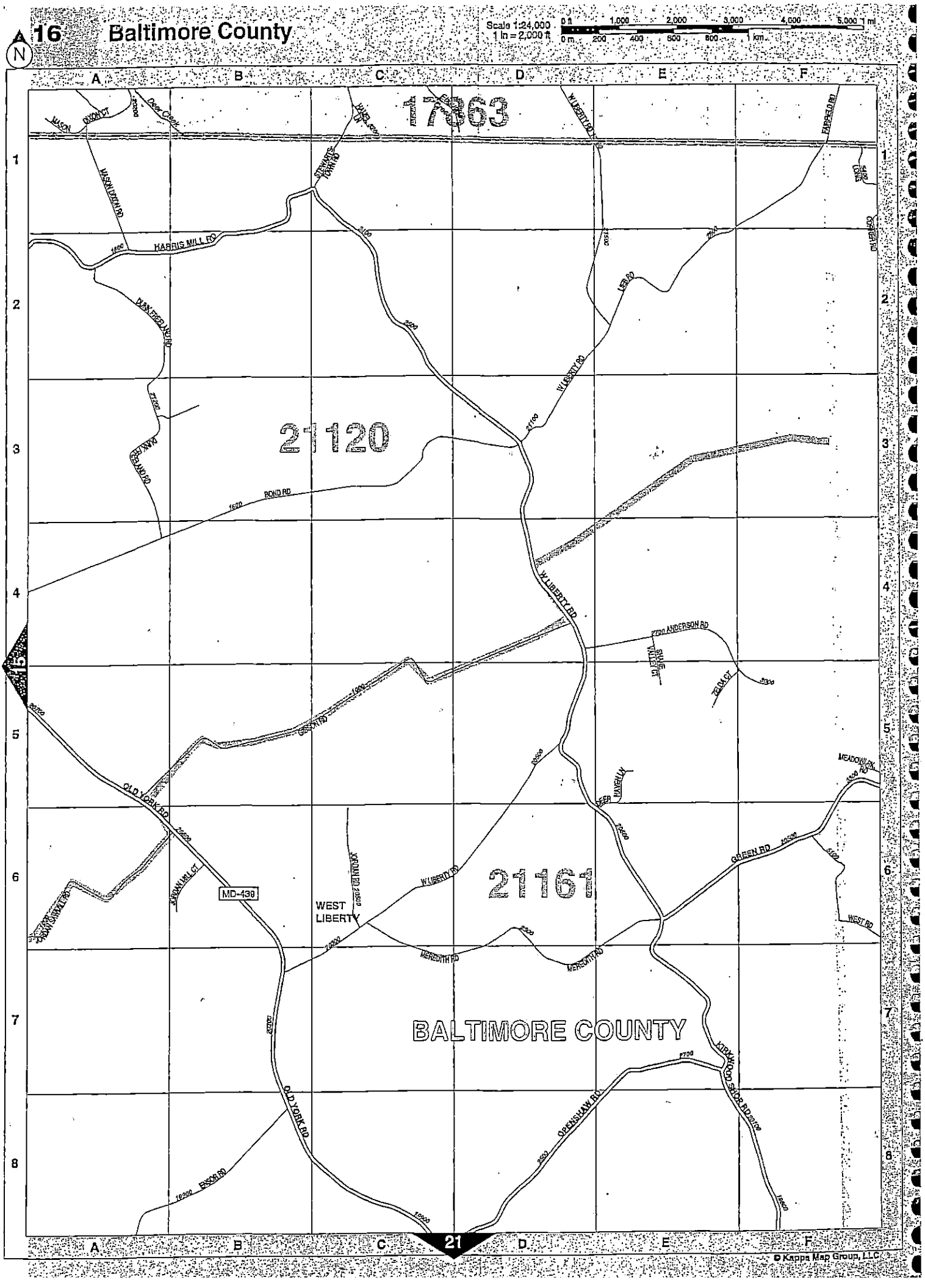

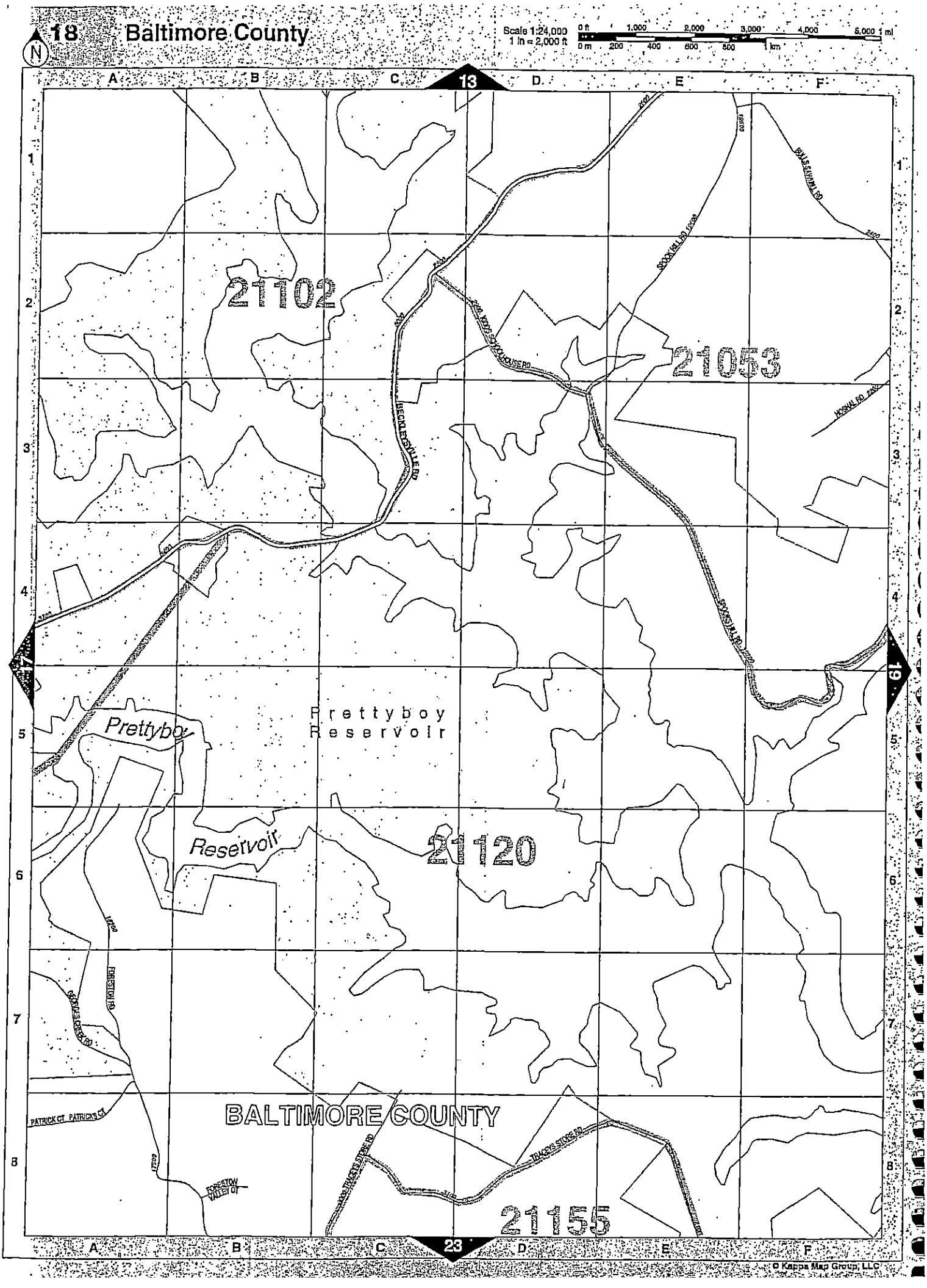
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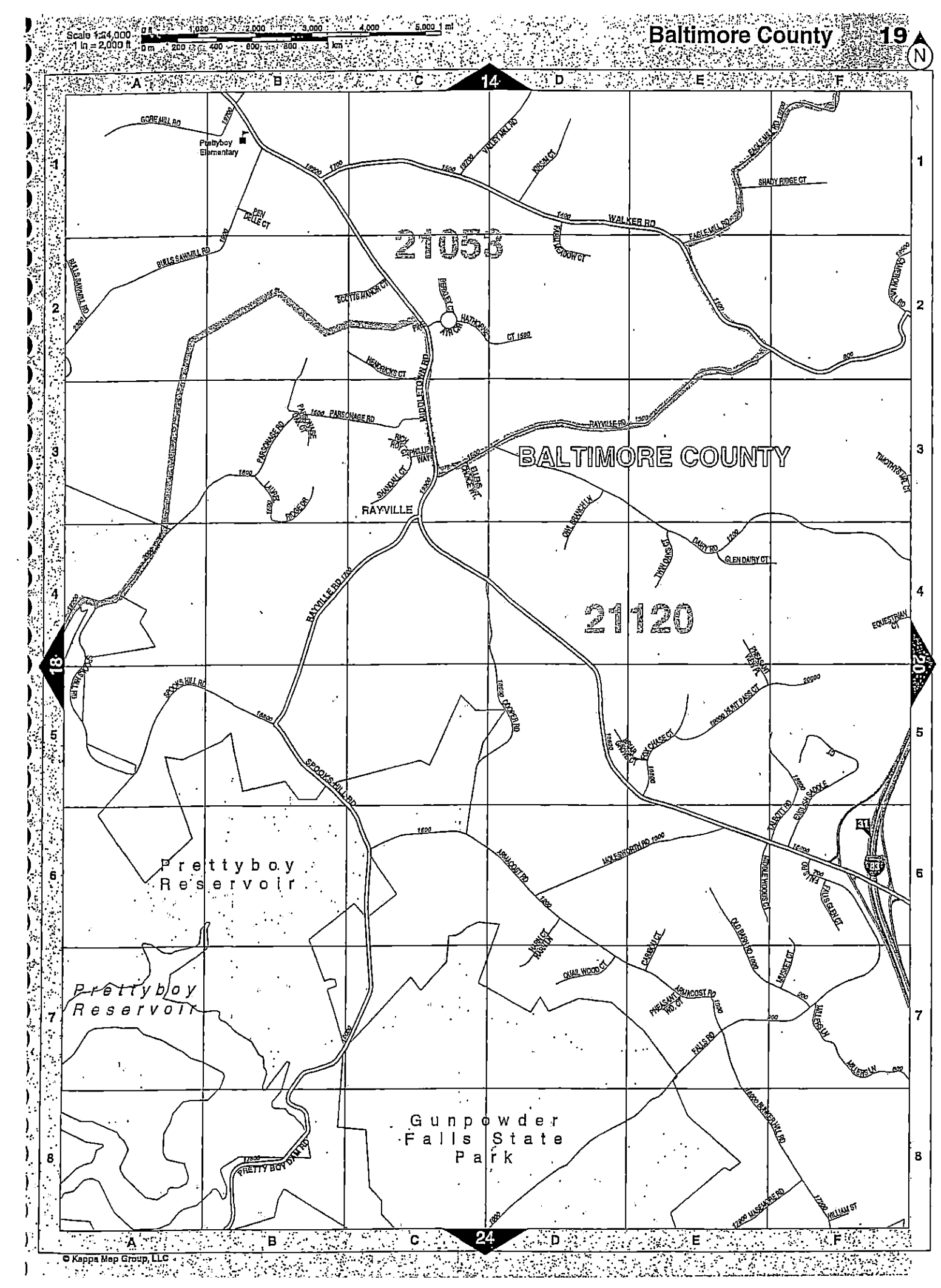

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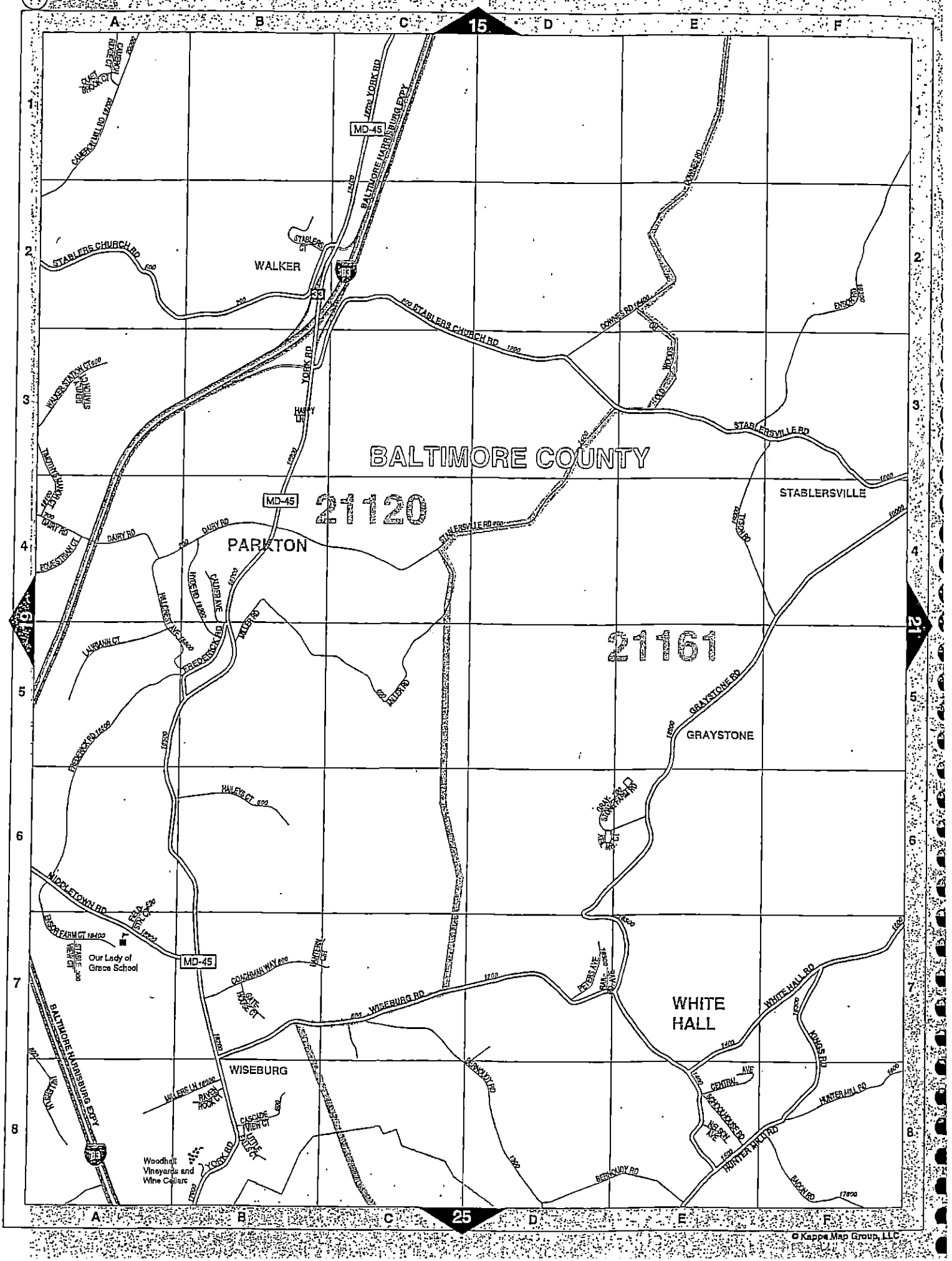

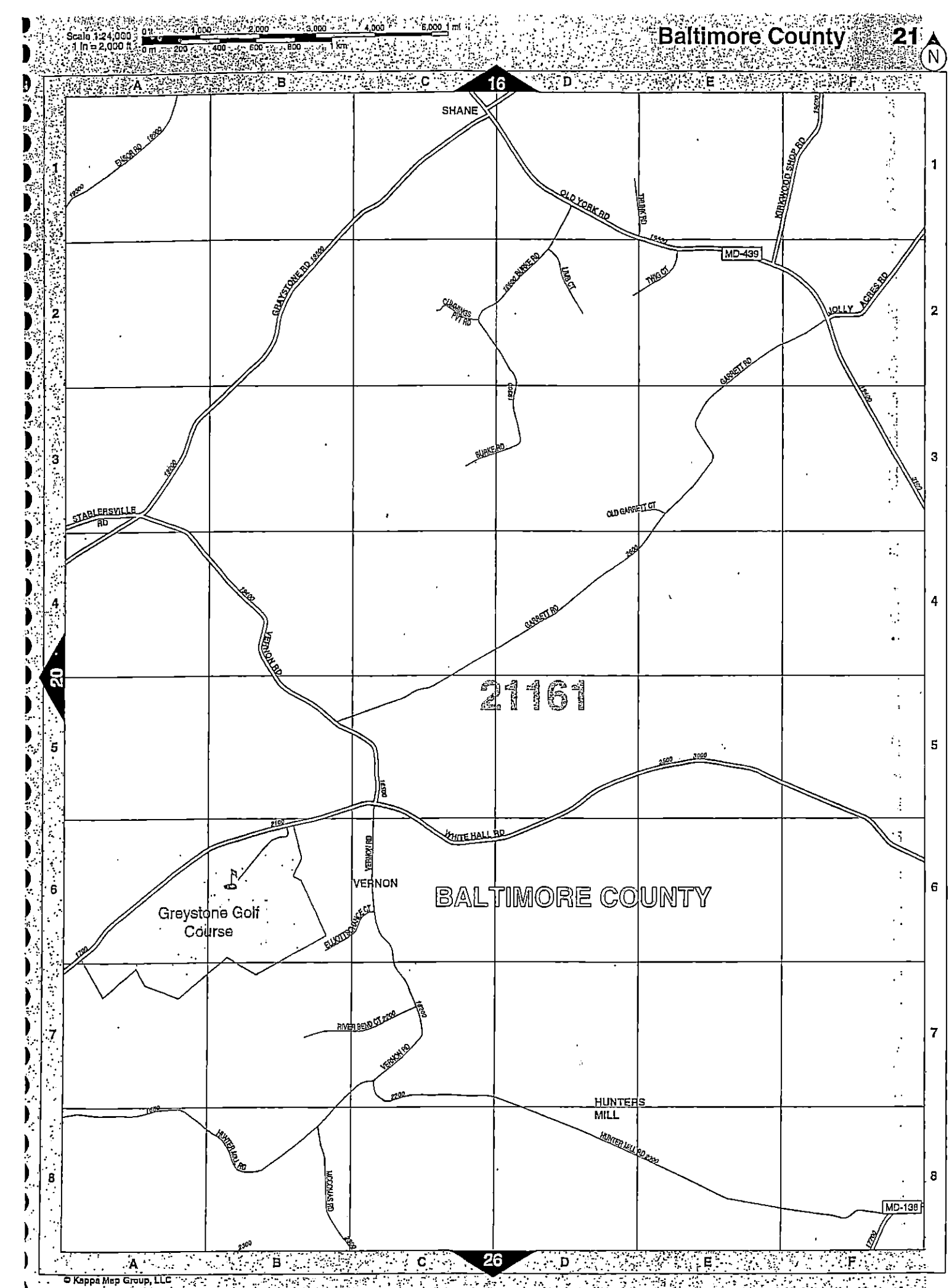

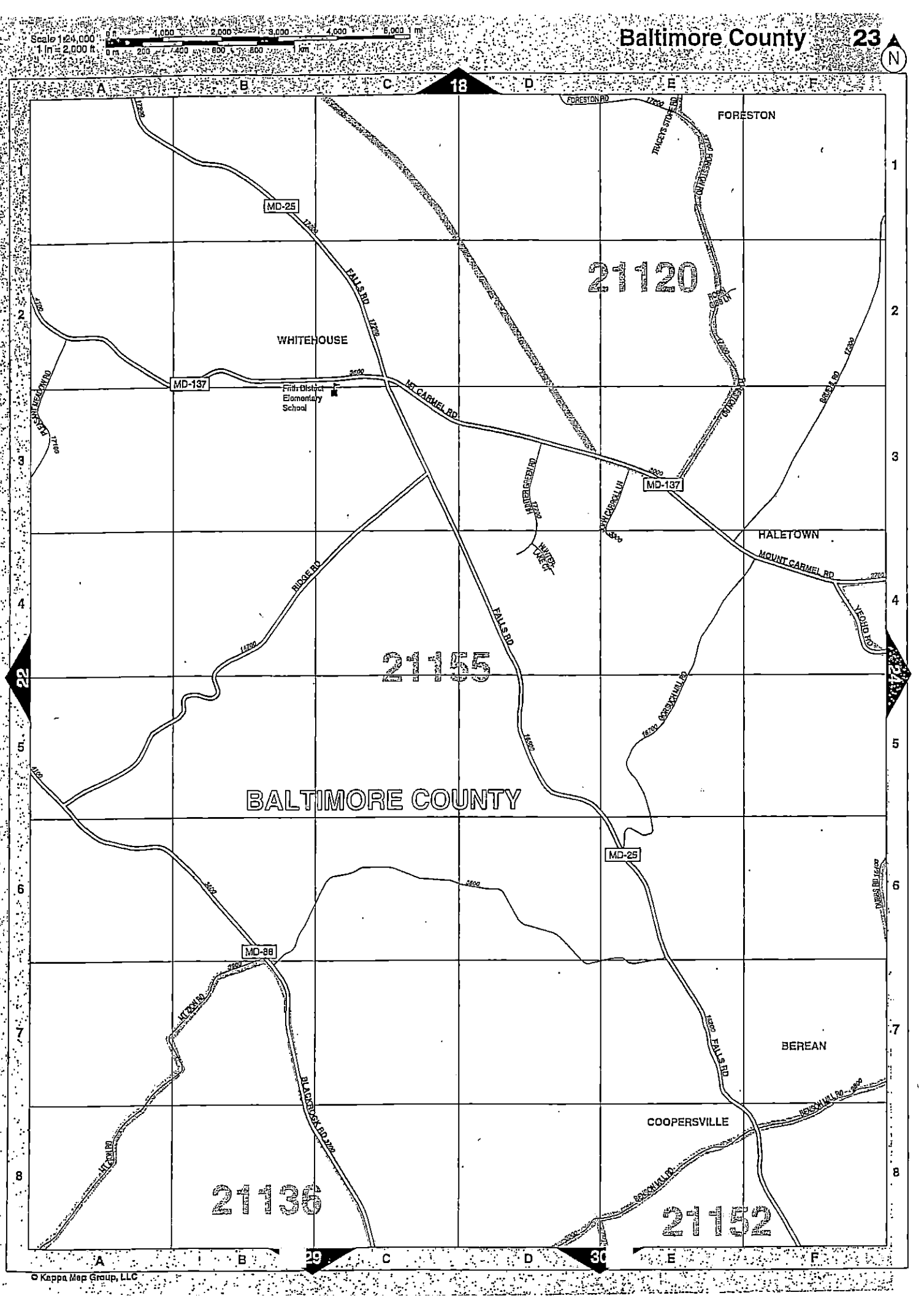
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WHITE OAK CT
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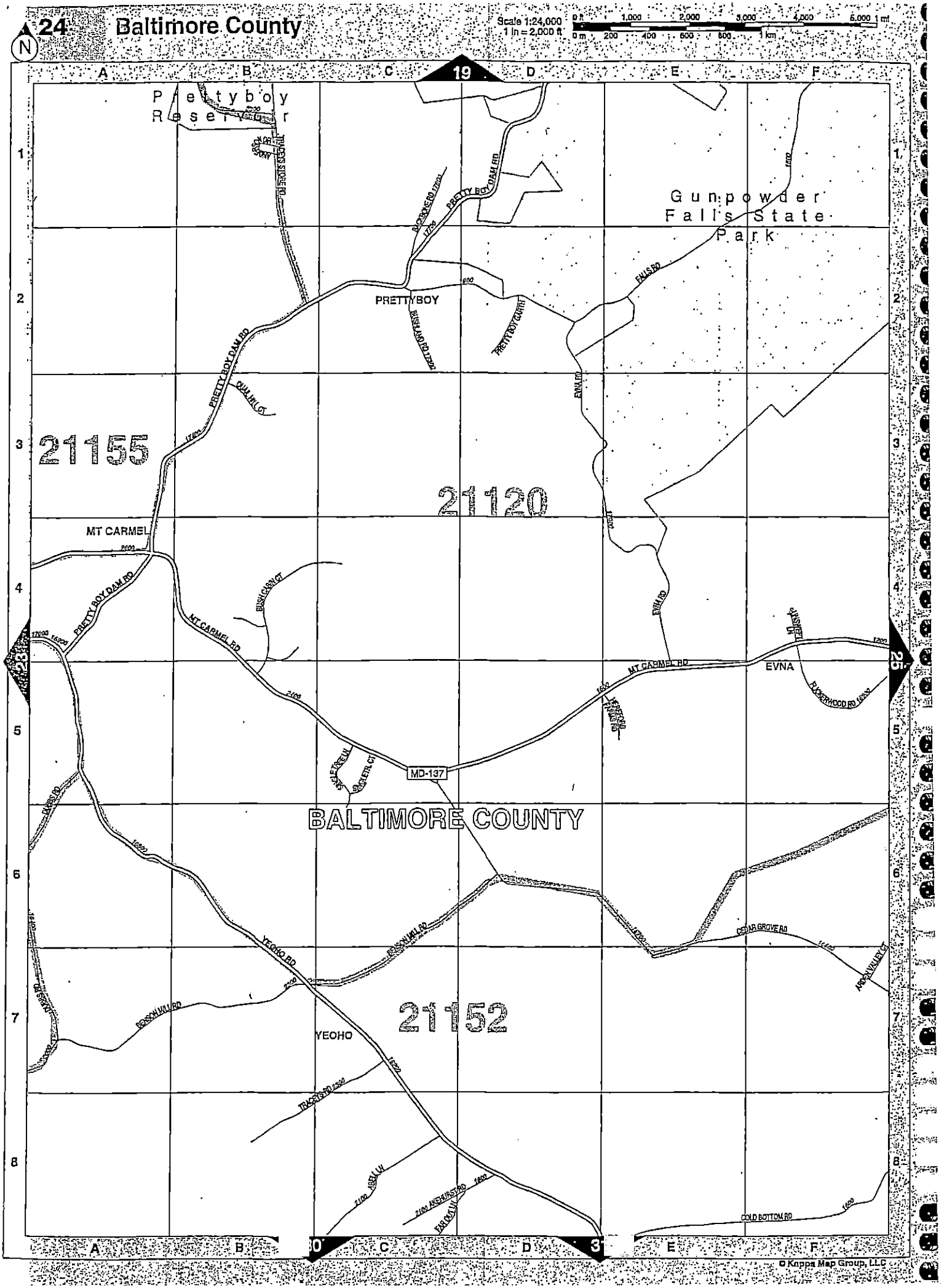

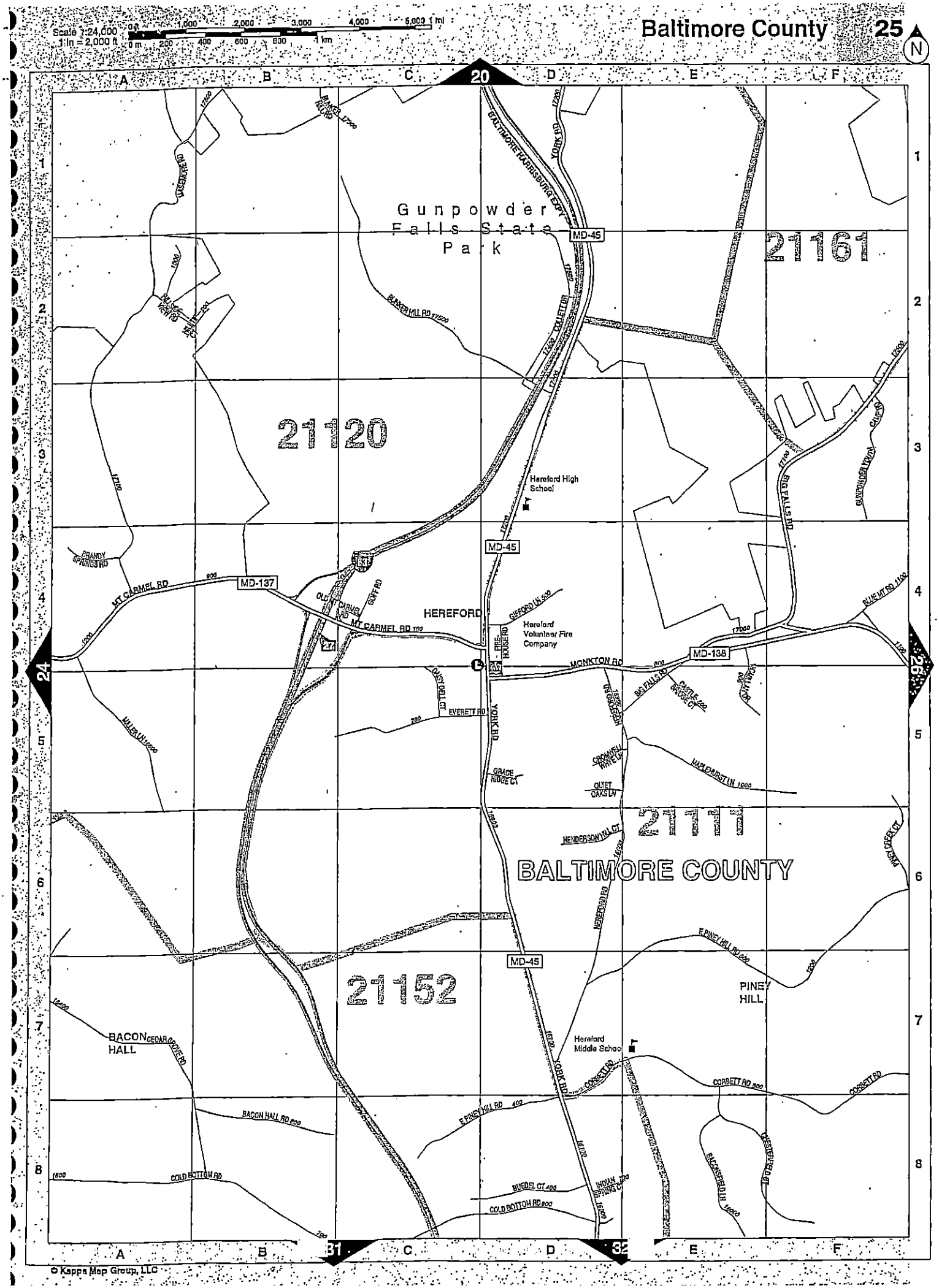

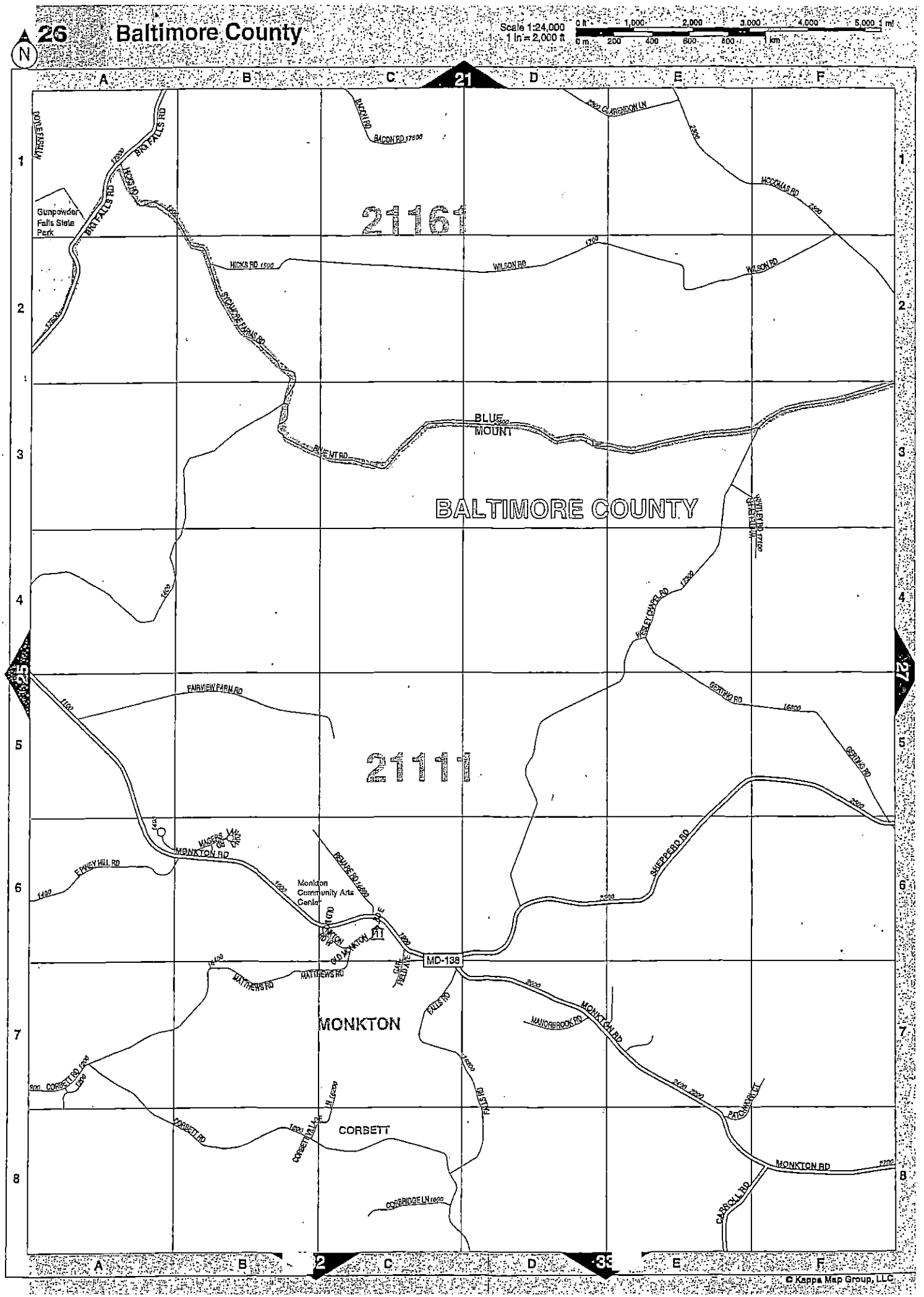

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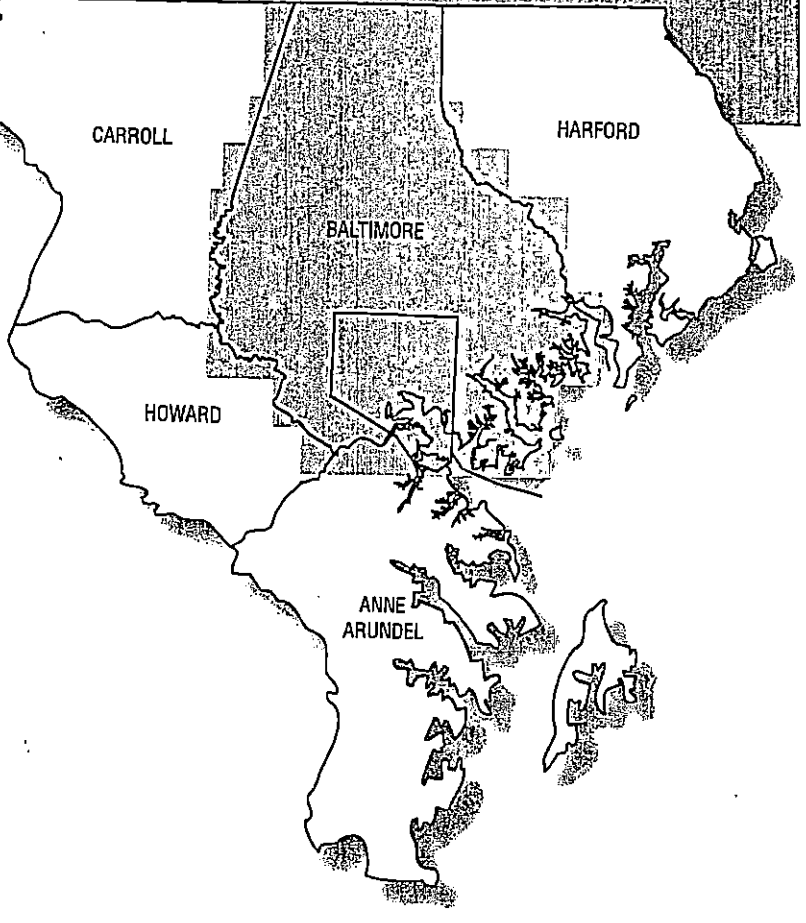
STREET ATLAS

Baltimore City & County

Maryland



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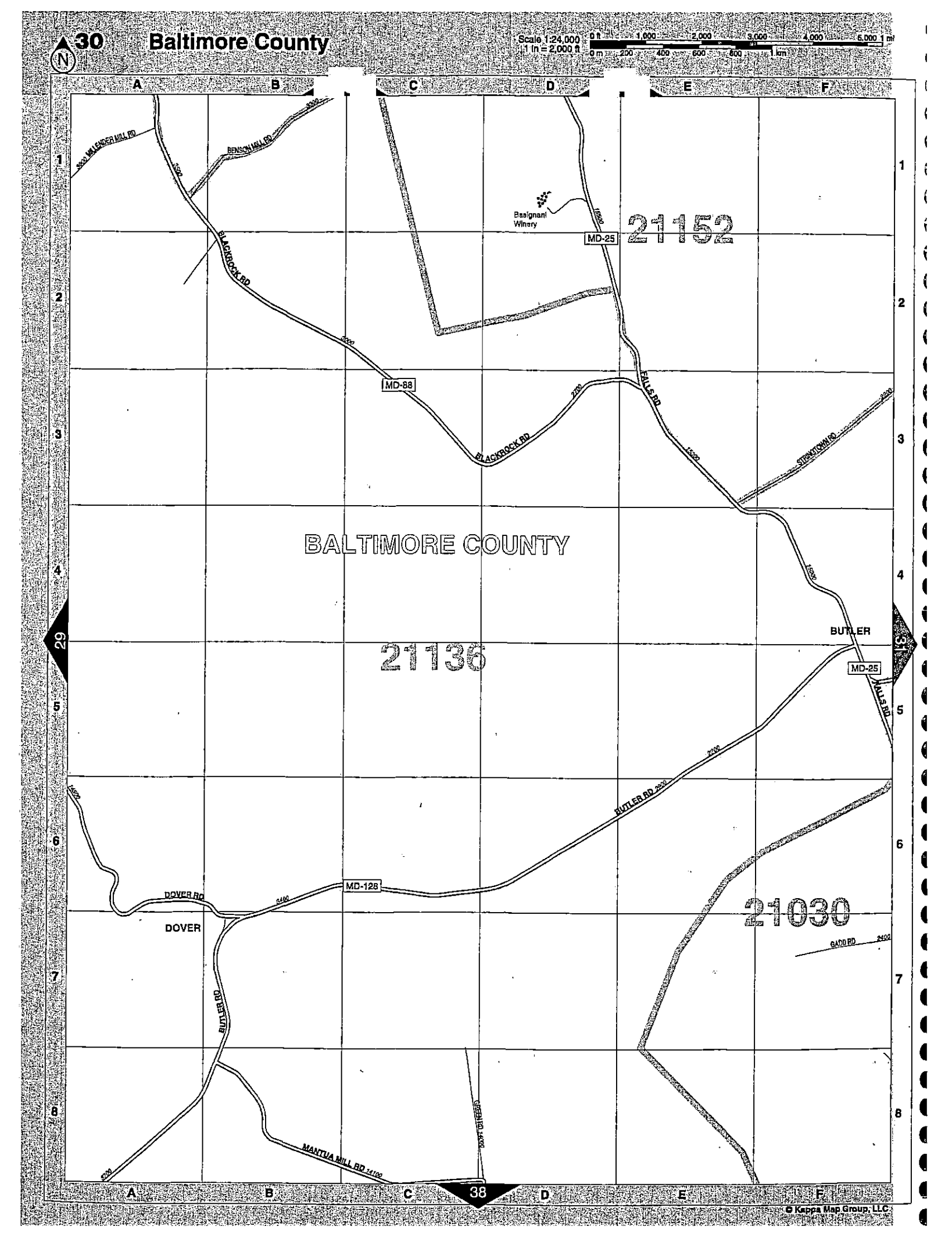
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CHESHIRE LN
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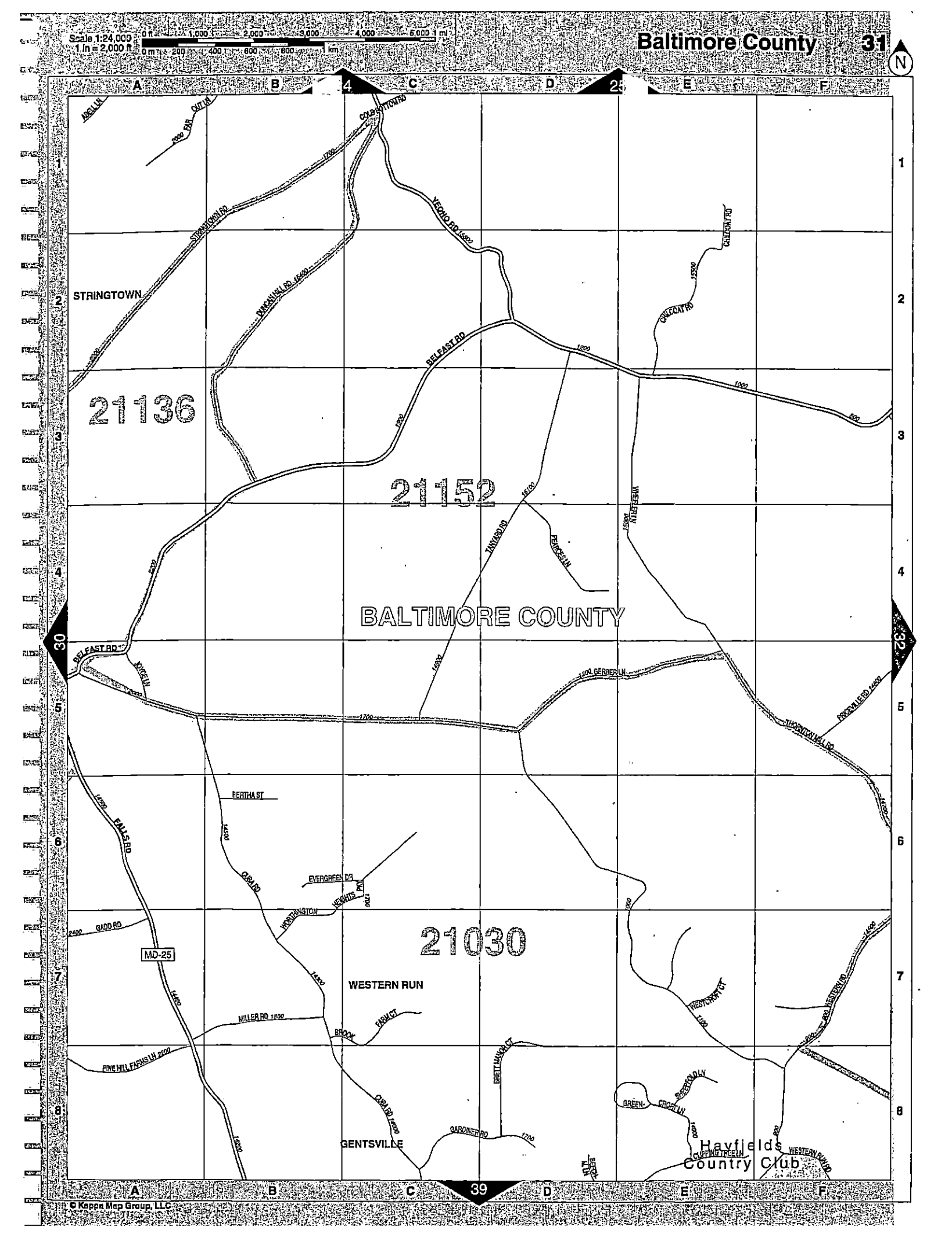
Scale 1:24,000
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Baltimore County
31
STRINGTOWN
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WESTERN RUN
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Hayfields
Country Club
BELFAST RD
YEOHO RD
CHALKOAT RD
GERBER LN
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FALLS RD
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GADD RD
MILLER RD
GARDNER RD
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BERTHA ST
EVERGREEN DR
WORTHINGTON
FINE HILL FARMS LN
GREEN CROFT LN
CUPPING TREE LN
WESTCROFT CT
BRETT MANOR CT
FISH CT
BROOK
PENROSE LN
TANYARD RD
WHEELER LN
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STRINGTOWN RD
DORSEY HILL RD
JOYCE LN
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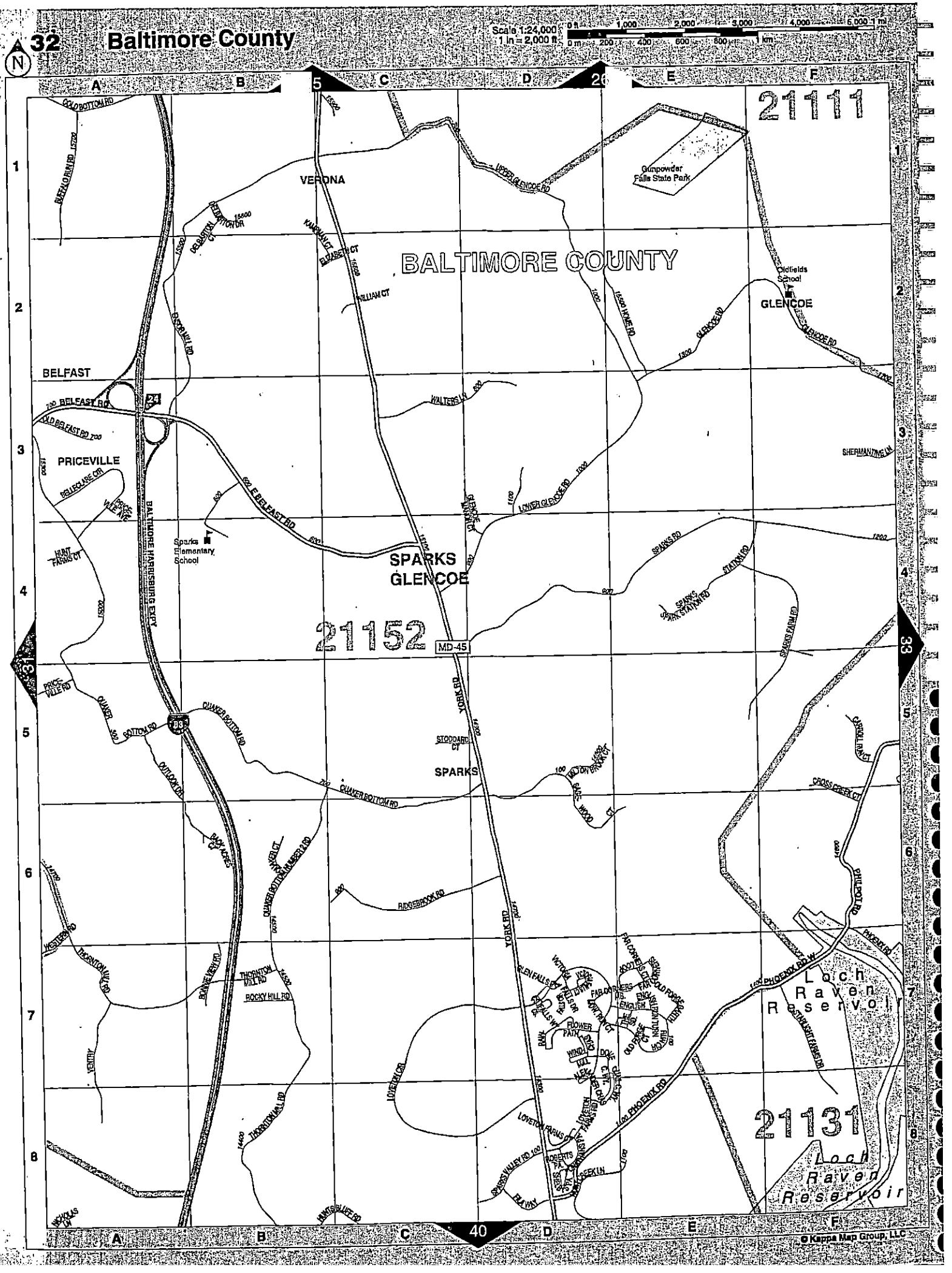
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Baltimore County
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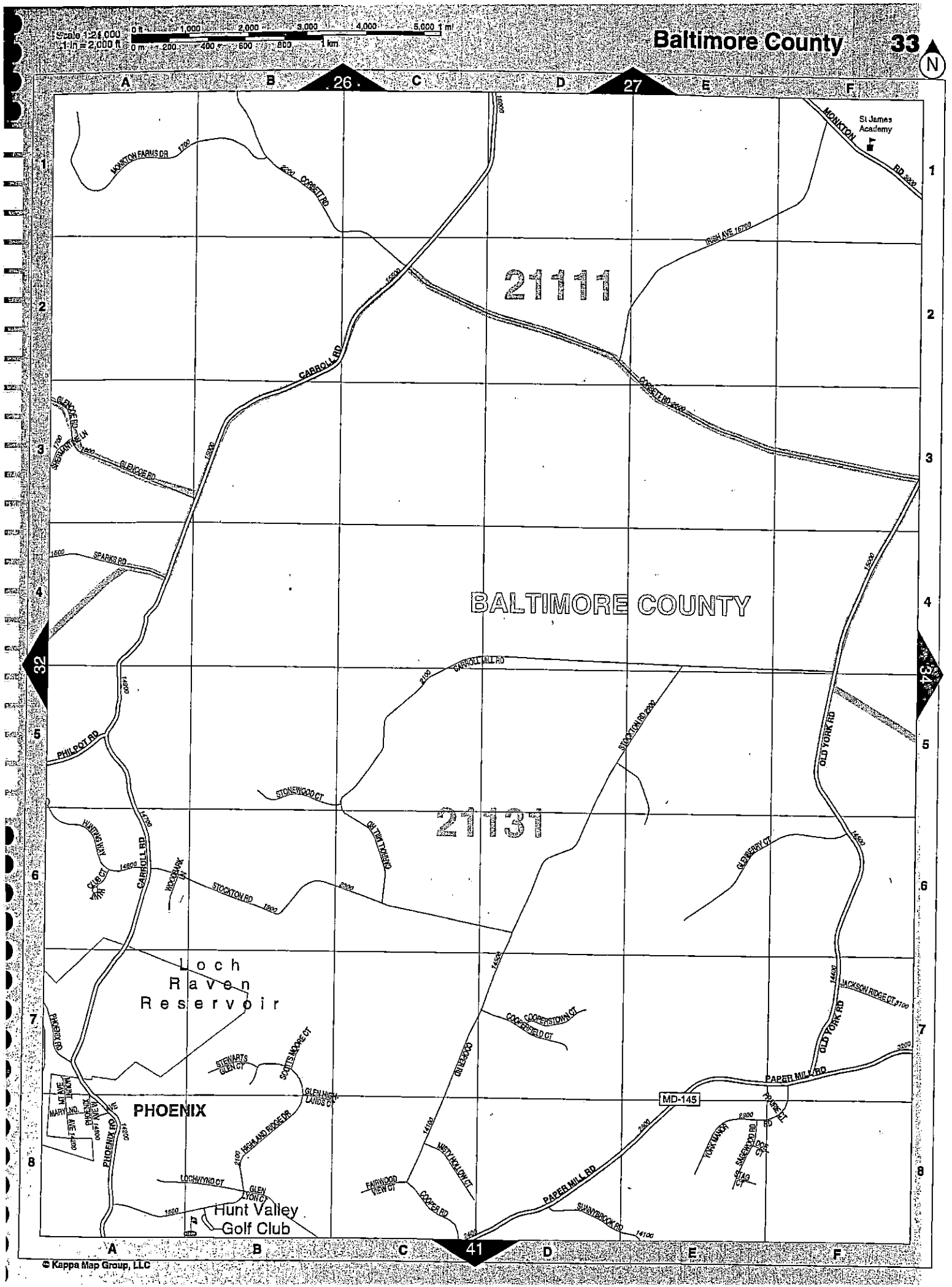
BALTIMORE COUNTY
VERONA
Gunpowder Falls State Park
Oldfields School
GLENCOE
BELFAST
PRICEVILLE
Sparks Elementary School
SPARKS GLENCOE
21152
MD-45
SPARKS
BALTIMORE HARRISBURG EXPY
YORK RD
Loch Raven Reservoir
21131
Loch Raven Reservoir
© Kappa Map Group, LLC



005-018-1813 Domestic Firearm Violence Reduction and Enforcement Grant $5,000.00

SECTION 2. AND BE IT FURTHER ENACTED, that this Act having been passed by the affirmative vote of five members of the County Council shall take effect January 28, 2002.

BILL NO. 121-01
A BILL
ENTITLED

AN ACT concerning

Wireless Telecommunications Towers - Historic and Scenic Resources.

FOR the purpose of revising the procedures for the review of wireless communication towers; requiring the ~~Tower Review Committee~~ Zoning Commissioner to consider scenic viewshed elements and historic ~~areas; requiring a tower applicant to petition for a special hearing under certain circumstances; prohibiting towers from interfering with scenic viewshed elements; requiring towers to be in harmony with certain historic areas; requiring the Zoning Commissioner to~~ areas; requiring the Zoning Commissioner to make certain determinations concerning towers based on substantial evidence; authorizing the Commissioner to consider certain factors when considering a tower ~~providing for~~ in certain zones; ~~procedures before the Commissioner; prohibiting appeals from a decision of the Tower Review Committee; authorizing certain persons to petition for a special hearing; requiring~~ requiring the Planning Board to catalogue and identify scenic viewshed elements and areas; defining certain terms; and generally relating to wireless communication towers.

BY repealing and re-enacting, with amendments

Section 426.1, 426.2.B, 426.3 and 426.4
Baltimore County Zoning Regulations, as amended

BY repealing and re-enacting, with amendments

Section 502.7
Baltimore County Zoning Regulations, as amended

By adding

Section 26-168(xx) and (yy) and 26-284
Title 26, Planning, Zoning and Subdivision Control

Baltimore County Code, 1988, as amended

WHEREAS the historic and scenic elements of Baltimore County are assets to the people of the County which should be protected from intrusion and disruption by development which would mar their quality and value; and

WHEREAS an infrastructure of wireless communications facilities is necessary for the fulfillment of the goals of the Telecommunications Act of 1996; and

WHEREAS there is increasing pressure on the wireless telecommunications service providers to erect wireless telecommunications towers in outlying parts of the County, which often are the sites of historic and scenic elements; and

WHEREAS the Baltimore County Zoning Regulations presently provide a number of controls and restrictions on development which would interfere with landmarks, historic districts and scenic views and vistas; and

WHEREAS the Baltimore County Master Plan 2010 suggests that even greater protection for historic and scenic elements is necessary; and

WHEREAS additional protections are required for the historic and scenic assets of the County; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND, that the following provisions of Section 426.1, 426.2.B, 426.3 and 426.4 of the Baltimore County Zoning Regulations, as amended, are hereby repealed and re-enacted with amendments to read as follows:

Section 426: Wireless Telecommunications Facilities

426.1 Definitions.

In this section, the following words have the meanings indicated:

ANTENNA - A wireless telecommunications antenna.

~~APPLICATION - AN APPLICATION TO THE COMMITTEE PURSUANT TO SUBSECTION 426.4.C.~~

~~CODE OFFICIAL - The Director of the Department of Permits and Development Management or the Director's designee.~~

~~COMMITTEE - The Tower Review Committee established under Section 426.4.~~

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~~HISTORIC AREAS - AN AREA WITHIN AN EXISTING DISTRICT ON THE BALTIMORE COUNTY FINAL HISTORIC LANDMARKS LIST OR ANY OF THE FOLLOWING HISTORICAL DISTRICTS ON THE NATIONAL REGISTER OF HISTORIC PLACES:~~

~~1. OELLA;~~

~~2. MY LADY'S MANOR;~~

~~3. BELFAST;~~

~~4. WESTERN RUN;~~

~~5. WORTHINGTON VALLEY;~~

~~6. GREENSPRING VALLEY; AND~~

~~7. LONG GREEN VALLEY.~~

OWNER - The owner, agent, lessee or person in control of a wireless telecommunications tower.

PROVIDER - A wireless telecommunications service provider.

TOWER - A wireless telecommunications tower.

SCENIC VIEWSHED - A SCENIC ROUTE~~, VIEW OR GATEWAY~~ OR VIEW AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN.

SCENIC VIEWSHED ELEMENTS -

1. THOSE VISUAL ELEMENTS OF A SCENIC VIEWSHED WHICH ARE OF A QUALITY, CHARACTER, RARITY AND NATURE TO CAUSE A VIEWSHED TO BE DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN BY THE BALTIMORE COUNTY PLANNING BOARD; AND

2. WHICH ARE CATALOGUED BY THE ~~DIRECTOR OF~~ PLANNING BOARD IN ACCORDANCE WITH SECTION 26-284 OF THE BALTIMORE COUNTY CODE.

TOWER APPLICANT - A PERSON WHO APPLIES TO THE COMMITTEE PURSUANT TO SECTION 426.4.

426.2 Legislative policy for siting of wireless telecommunications antennas and towers.

It is the intent of Baltimore County that:

A. Antennas should be placed on existing towers, buildings and structures, including those of public utilities, where feasible; and

B. If a new tower must be built, the tower should be:

1. Constructed to accommodate at least 3 providers[.];

2. Erected in a medium or high intensity commercial zone when available;

3. Located and designed to ~~BE IN HARMONY WITH THE AREA IN WHICH IT IS TO BE LOCATED AND IN GENERAL CONFORMITY WITH THE BALTIMORE COUNTY MASTER PLAN, AND~~

~~4.~~ LOCATED AND DESIGNED TO minimize its visibility from residential and transitional zones.

426.3 Exceptions.

The provisions of this section do not apply to:

A. Antennas or towers serving gas and electric or land-based local telephone public utility [locations needs at existing facilities, provided that a public utility that owns any antennas or towers shall establish that the antennas or towers and service meet critical communications needs for public safety; or] NEEDS; OR

B. Antennas used by cable systems operating in accordance with Title 8 of the Baltimore County Code, 1988, as amended, if located on property owned by the county, state or federal government.

426.4 Tower Review Committee.

A. There is a Tower Review Committee in Baltimore County.

B. The Committee shall consist of:

1. A Tower Coordinator, who shall have technical expertise regarding the siting of wireless telecommunications towers and shall serve as committee chairperson[.];

2. The Director of the Office of Planning or the Director's designee[.];

3. The Director of the Office of Information Technology or the Director's designee;

4. An at-large citizen representative appointed by the County Council[.]; AND

5. Depending on the particular site for a tower, representatives of other governmental agencies as determined by the Tower Coordinator.

C. [An applicant for a building permit for an antenna shall submit a duplicate copy of the permit application to the Tower Coordinator.] ~~APPLICATION TO COMMITTEE.~~

~~1. PRIOR TO SUBMITTING ANY OTHER REQUEST FOR COUNTY APPROVAL TO BUILD A TOWER WITHIN BALTIMORE COUNTY, A PERSON DESIRING TO CONSTRUCT~~

~~A. TOWER SHALL FIRST SUBMIT AN APPLICATION TO THE COMMITTEE ON A FORM AND MANNER PRESCRIBED BY THE COMMITTEE.~~

~~2. THE TOWER APPLICANT SHALL SUBMIT TO THE COMMITTEE ALL RELEVANT INFORMATION REQUESTED BY THE COMMITTEE TO ENABLE THE COMMITTEE TO EVALUATE THE PROPOSAL IN ACCORDANCE WITH THIS SECTION.~~

D. IN ADDITION TO ANY OTHER FEES REQUIRED, AN APPLICANT FOR A BUILDING PERMIT OR A SPECIAL EXCEPTION SHALL PAY A SEPARATE PROCESSING FEE TO THE COUNTY. THE COUNTY ADMINISTRATIVE OFFICER SHALL ESTABLISH THE AMOUNT OF THE FEE.

~~B.~~ E. ~~[~~Committee review.

1. Prior to submitting a petition for a special exception or an application for a building permit for a tower, a petitioner or an applicant shall meet with the Committee. The Committee shall meet with the petitioner or the applicant within ~~three weeks~~ 45 DAYS after a written request for a meeting is submitted.

2. The petitioner or the applicant shall submit to the Committee:

   a. Information detailing the maximum number of providers and antennas the proposed tower can support.

   b. Any other relevant technical information requested by the Committee.

3. The Committee shall review the information submitted by the petitioner or the applicant and evaluate the proposed tower with regard to the legislative policy under Section 426.2.

4. The Committee may provide advisory comments to the Zoning Commissioner or the Code Official concerning the proposed tower.~~]~~ ~~COMMITTEE ACTION.~~

~~1. THE COMMITTEE SHALL MEET AT TIMES DETERMINED BY THE TOWER COORDINATOR.~~

~~2. PUBLIC NOTICE AND THE AGENDA FOR EACH SUCH MEETING SHALL BE POSTED IN ROOM 123, 111 W. CHESAPEAKE AVENUE, TOWSON, MARYLAND, AND SENT TO THE OFFICE OF EACH MEMBER OF THE COUNTY COUNCIL AT LEAST ONE WEEK PRIOR TO THE MEETING.~~

~~3. THE MEETING IS A FORUM FOR THE MEMBERS OF THE COMMITTEE TO REVIEW THE APPLICATIONS AND DETERMINE THE APPROPRIATE COURSE OF ACTION FOR EACH APPLICATION, IN ACCORDANCE WITH THIS SECTION.~~

~~4. THE MEETING MAY OCCUR IN AN INFORMAL MANNER.~~

~~5. THE TOWER COORDINATOR MAY RECOGNIZE ANY MEMBER OF THE PUBLIC, INCLUDING THE TOWER APPLICANT, TO OFFER REMARKS DURING ANY SUCH MEETING. 6. THE COMMITTEE SHALL DIRECT THE TOWER APPLICANT TO PROCEED IN ACCORDANCE WITH ITS FINDINGS AND THIS SECTION.~~

~~7. THE COMMITTEE SHALL:~~

~~A. ACT ON EACH SUCH APPLICATION WITHIN A REASONABLE TIME, NOT TO EXCEED 30 DAYS; AND~~

~~B. PROVIDE THE TOWER APPLICANT WITH A WRITTEN DECISION, SUPPORTED BY SUBSTANTIAL EVIDENCE CONTAINED IN A WRITTEN RECORD.~~

~~F. EVALUATION OF IMPACT ON SCENIC VIEWS.~~

~~1. A. THE COMMITTEE SHALL DETERMINE WHETHER THE APPLICATION, SUPPORTING MATERIALS, AND REMARKS OF THE PUBLIC, IF ANY, CONSTITUTE SUBSTANTIAL EVIDENCE THAT THE TOWER INTERFERES OR MAY INTERFERE WITH SCENIC VIEWSHED ELEMENTS.~~

~~B. IF THE COMMITTEE DETERMINES THAT SUBSTANTIAL EVIDENCE EXISTS THAT THE TOWER INTERFERES OR MAY INTERFERE WITH THE SCENIC VIEWSHED ELEMENTS, THEN THE COMMITTEE SHALL REQUIRE THE TOWER APPLICANT TO PETITION FOR A SPECIAL HEARING TO DETERMINE WHETHER THE PROPOSED TOWER INTERFERES WITH SCENIC VIEWSHED ELEMENTS.~~

~~C. A TOWER MAY NOT BE PERMITTED TO INTERFERE WITH THE SCENIC VIEWSHED ELEMENTS.~~

~~2. A. THE ZONING COMMISSIONER SHALL DETERMINE INTERFERENCE BASED UPON SUBSTANTIAL EVIDENCE COMPARING THE SCENIC VIEWSHED ELEMENTS TO THE PROPOSED TOWER LOCATION.~~

~~D. THE ZONING COMMISSIONER SHALL ACT PURSUANT TO THIS SECTION AND HIS AUTHORITY UNDER SECTION 500.7 OF THESE REGULATIONS. IN DETERMINING WHETHER THE PROPOSED TOWER BLOCKS ANY SCENIC VIEWSHED ELEMENTS OR IS NOT VISUALLY IN HARMONY WITH ANY SCENIC VIEWSHED ELEMENTS WHEN THE ELEMENTS AND THE TOWER CAN BE SEEN SIMULTANEOUSLY,~~

~~3. A. THE ZONING COMMISSIONER MAY ALSO CONSIDER WHETHER PUBLIC FUNDS HAVE BEEN SPENT ACQUIRING EASEMENTS OR ENTERING INTO OTHER AGREEMENTS TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER AND WHETHER OTHER PUBLIC OR PRIVATE AGREEMENTS EXIST TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER.~~

~~B. EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE PRESENCE OF THE EASEMENTS AND AGREEMENTS MAY BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.~~

~~C. THE ABSENCE OF THE EASEMENTS AND AGREEMENTS MAY NOT BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.~~

~~E. EVALUATION OF IMPACT ON VIEWS OF HISTORIC DISTRICTS AND STRUCTURES.~~

~~1. A. THE COMMITTEE SHALL DETERMINE WHETHER THE APPLICATION, SUPPORTING MATERIALS, AND REMARKS OF THE PUBLIC, IF ANY, CONSTITUTE SUBSTANTIAL EVIDENCE THAT THE TOWER IS OR MAY BE NOT IN HARMONY WITH NEARBY HISTORIC AREAS.~~

~~B. IF THE COMMITTEE DETERMINES THAT SUBSTANTIAL EVIDENCE EXISTS THAT THE TOWER IS NOT OR MAY NOT BE IN HARMONY WITH NEARBY HISTORIC AREAS, THEN THE COMMITTEE SHALL REQUIRE THAT THE APPLICANT PETITION FOR A SPECIAL HEARING TO DETERMINE WHETHER THE TOWER IS ALLOWED IN ACCORDANCE WITH THE REQUIREMENTS OF THIS SECTION.~~

~~2. IF THE ZONING COMMISSIONER DETERMINES THAT THE PROPOSED TOWER IS NOT IN HARMONY WITH NEARBY HISTORIC AREAS, THE TOWER MAY NOT BE PERMITTED.~~

~~3. IN DETERMINING WHETHER A PROPOSED TOWER IS IN HARMONY WITH A NEARBY HISTORIC AREA, THE ZONING COMMISSIONER SHALL CONSIDER:~~

~~A. GENERAL CONFORMITY WITH THE BALTIMORE COUNTY MASTER PLAN.~~

~~B. THE LOCATION AND EXTENT OF SIGNIFICANT AND DISTINCTIVE HISTORIC ELEMENTS. AND~~

~~C. THE DEGREE TO WHICH HISTORICAL ELEMENTS SUCH AS STRUCTURES, LANDSCAPES AND MONUMENTS ARE VISUALLY INTEGRATED, SO THAT THE PROPOSED TOWER WOULD NOT CHANGE THE APPRECIATION BY THE VIEWER OF THE HISTORIC SIGNIFICANCE OF THE AREA.~~

~~4. A. THE ZONING COMMISSIONER MAY ALSO CONSIDER WHETHER PUBLIC FUNDS HAVE BEEN SPENT ACQUIRING EASEMENTS OR ENTERING INTO OTHER AGREEMENTS TO MINIMIZE DEVELOPMENT OR PROTECT HISTORICALLY SIGNIFICANT LANDS OR STRUCTURES IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER AND WHETHER OTHER PUBLIC OR PRIVATE AGREEMENTS EXIST TO MINIMIZE DEVELOPMENT OR PROTECT HISTORICALLY SIGNIFICANT LANDS OR STRUCTURES IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER.~~

~~B. EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE PRESENCE OF THE EASEMENTS AND AGREEMENTS SHALL BE PROBATIVE OF POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.~~

~~C. THE ABSENCE OF THE EASEMENTS AND AGREEMENTS MAY NOT BE PROBATIVE OF WHETHER THE PROPOSED TOWER IS IN HARMONY WITH A NEARBY HISTORIC AREA.~~

~~G. PRACTICE AND PROCEDURE BEFORE THE ZONING COMMISSIONER.~~

~~1. A. THERE IS NO PRESUMPTION THAT TOWER USE WITHIN A SCENIC VIEWSHED OR AN HISTORIC AREA IS VALID, ACCEPTABLE OR IN ACCORDANCE WITH THE GENERAL WELFARE OF PEOPLE OF THE COUNTY.~~

~~B. SECTIONS 426.4.E.2 AND 426.4.2 PROHIBIT SUCH USE REGARDLESS OF THE COMPARATIVE EFFECT OF THE PROPOSED TOWER ELSEWHERE IN THE ZONE.~~

~~2. A. EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION BEFORE THE ZONING COMMISSIONER RESTS WITH THE TOWER APPLICANT.~~

~~B. IN A SPECIAL HEARING INITIATED UNDER SECTION 426.4.H.3, THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION RESTS WITH THE PETITIONER.~~

~~3. SUBJECT TO THE ZONING COMMISSIONER'S RULES FOR ADMISSION THE TOWER APPLICANT MAY PRESENT ANY EVIDENCE WHICH MIGHT ALLOW THE TOWER APPLICANT TO RECEIVE PERMISSION TO CONSTRUCT THE TOWER.~~

~~4. THE TOWER APPLICANT MAY COMBINE A REQUEST FOR A SPECIAL HEARING WITH A REQUEST FOR A SPECIAL EXCEPTION IN ACCORDANCE WITH THIS SECTION.~~

~~5. THE COMMITTEE MAY PROVIDE ADVISORY COMMENTS TO THE ZONING COMMISSIONER CONCERNING THE PROPOSED TOWER.~~

~~6. THE ZONING COMMISSIONER SHALL CONDUCT A DE NOVO HEARING AS TO ALL ELEMENTS OF PROOF AND IS NOT BOUND BY ANY FACTUAL DETERMINATION OF THE COMMITTEE.~~

~~7. THE ZONING COMMISSIONER SHALL ISSUE A WRITTEN DECISION BASED ON SUBSTANTIAL EVIDENCE CONTAINED IN A WRITTEN RECORD.~~

~~8. THE TOWER COMMITTEE AND THE ZONING COMMISSIONER SHALL INTERPRET THIS SECTION CONSISTENT WITH THE TELECOMMUNICATIONS ACT OF 1996.~~

~~9. APPEALS FROM THE DECISION OF THE ZONING COMMISSIONER MAY BE TAKEN IN THE MANNER OTHERWISE PROVIDED BY THESE REGULATIONS.~~

~~II. ADVERSE DECISION OF TOWER REVIEW COMMITTEE.~~

~~1. THERE IS NO RIGHT OF APPEAL TO THE BOARD OF APPEALS FROM AN ADVERSE DECISION OF THE COMMITTEE.~~

~~2. A TOWER APPLICANT AGGRIEVED OR FEELING AGGRIEVED BY THE DECISION OF THE COMMITTEE MAY PRESENT ANY ISSUE TO THE ZONING COMMISSIONER WHICH WOULD ENTITLE THE TOWER APPLICANT TO PERMISSION TO CONSTRUCT THE TOWER, INCLUDING THAT THE COMMITTEE ERRED IN REQUIRING THE TOWER APPLICANT TO PETITION FOR SPECIAL HEARING.~~

~~3. A. EXCEPT AS PROVIDED IN THIS PARAGRAPH, ANY PERSON, OTHER THAN A TOWER APPLICANT, AGGRIEVED OR FEELING AGGRIEVED BY THE DECISION OF THE COMMITTEE, MAY PETITION FOR A SPECIAL HEARING TO DETERMINE WHETHER THE PROVISIONS OF SECTIONS 426.4.D OR 426.4.E PROHIBIT THE CONSTRUCTION OF A TOWER IN ACCORDANCE WITH THE APPLICATION.~~

~~B. DURING THE PENDENCY OF THE SPECIAL HEARING, THE TOWER APPLICANT MAY CONTINUE TO PROCESS ITS APPLICATION FOR PERMISSION TO CONSTRUCT THE TOWER, AND MAY CONSTRUCT THE TOWER, AT THE RISK THAT THE ZONING COMMISSIONER WILL PROHIBIT THE TOWER IN ACCORDANCE WITH SECTION 426.4.D OR 426.4.E.~~

SECTION 2. AND BE IT FURTHER ENACTED, that Section 502.7 of the Baltimore County Zoning Regulations, as amended, ~~is hereby repealed in toto~~ but it is hereby revised and re-enacted, with amendments, to read as follows:

502.7 Wireless telecommunications towers.

A special exception may not be granted for any wireless telecommunications tower over 200 feet in height which is within 1-1/2 miles (1) of an existing district on the Baltimore County Final Historic Landmarks list; or (2) any of the following historical districts on the National Register of Historic Places, namely, Oella, My Lady's Manor, Western Run, Worthington Valley, Greenspring Valley, CORBETT and Long Green Valley, unless the Zoning Commissioner or the Board of Appeals, upon appeal, finds that the proposed use will not be detrimental to or MATERIALLY detract from the documented values of any such district due to the height of the proposed tower and its placement and visibility relative to such district.

B. 1. A SPECIAL EXCEPTION MAY NOT BE GRANTED FOR A WIRELESS TELECOMMUNICATIONS TOWER LOCATED IN AN RC-2, RC-3, RC-4, RC-5, RC-6 OR RC-7 ZONE WITHIN A SCENIC VIEWSHED UNLESS THE ZONING COMMISSIONER FINDS THAT THE PROPOSED TOWER WILL NOT INTERFERE WITH OR BE DETRIMENTAL TO THE SCENIC VIEWSHED ELEMENTS.

2. A. THE ZONING COMMISSIONER SHALL DETERMINE INTERFERENCE OR DETRIMENT BASED UPON SUBSTANTIAL EVIDENCE COMPARING THE SCENIC VIEWSHED ELEMENTS TO THE PROPOSED TOWER LOCATION, IN ORDER TO DETERMINE WHETHER THE PROPOSED TOWER BLOCKS ANY SCENIC VIEWSHED ELEMENTS OR IS NOT VISUALLY IN HARMONY WITH ANY SCENIC VIEWSHED ELEMENTS WHEN THE ELEMENTS AND THE TOWER CAN BE SEEN SIMULTANEOUSLY.

3. (I) THE ZONING COMMISSIONER MAY ALSO CONSIDER WHETHER PUBLIC FUNDS HAVE BEEN SPENT ACQUIRING EASEMENTS OR ENTERING INTO OTHER AGREEMENTS TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER AND WHETHER OTHER PUBLIC OR PRIVATE AGREEMENTS EXIST TO MINIMIZE DEVELOPMENT OR PROTECT AESTHETICS IN AREAS IMMEDIATELY ADJACENT TO THE PROPOSED TOWER.

(II) EXCEPT AS PROVIDED IN THIS PARAGRAPH, THE PRESENCE OF THE EASEMENTS AND AGREEMENTS MAY BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.

(III) THE ABSENCE OF THE EASEMENTS AND AGREEMENTS MAY NOT BE PROBATIVE OF THE POSSIBLE INTERFERENCE OF THE PROPOSED TOWER WITH SCENIC VIEWSHED ELEMENTS.

SECTION 3. AND BE IT FURTHER ENACTED THAT, Sections 26-168 (xx) and (yy) and 26-284 of Title 26- Planning, Zoning and Subdivision Control of the Baltimore County Code, 1988, as amended, are hereby added to read as follows:

Section 26-168 Definitions

(XX) "SCENIC VIEWSHED" MEANS A SCENIC ROUTE; OR SCENIC VIEW ~~OR SCENIC GATEWAY~~ AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN.

(YY) "SCENIC VIEWSHED ELEMENTS" MEANS THOSE VISUAL ELEMENTS, AS IDENTIFIED BY THE PLANNING BOARD, OF A SCENIC VIEWSHED WHICH ARE OF A QUALITY, CHARACTER AND NATURE TO CAUSE THE BOARD TO DESIGNATE THAT SCENIC VIEWSHED IN THE BALTIMORE COUNTY MASTER PLAN.

SECTION 26-284. SCENIC VIEWSHEDS ELEMENTS.

THE PLANNING BOARD SHALL:

(A) PROVIDE TO THE ~~HEARING OFFICER~~ ZONING COMMISSIONER A CATALOGUE OF THE ELEMENTS FOR EACH SCENIC VIEWSHED IN THE MASTER PLAN;

(B) IDENTIFY THE SCENIC ROUTE; OR VIEW, ~~OR GATEWAY~~ AS DESIGNATED IN THE BALTIMORE COUNTY MASTER PLAN AS EITHER ENCLOSED, EXPANSIVE, FOCUSED OR A COMBINATION; AND

(C) IDENTIFY THE ASPECTS OF THE VISUAL QUALITY, UNITY OF THE ELEMENTS, AND INTEGRITY OF THE ELEMENTS.

SECTION 4. AND BE IT FURTHER ENACTED, that this act, having been passed by the affirmative vote of five members of the County Council, shall take effect on January 29, 2002.

BILL NO. 122-01

A BILL

ENTITLED

AN ACT concerning

The Comprehensive Zoning Map - Middle River - Bird River Area

FOR the purpose of repealing a portion of the existing zoning map for the Fifth Councilmanic District and to adopt an official zoning map for the portion of the Fifth Councilmanic District of Baltimore County known as the Middle River - Bird River Area, such map to be known as the Official Comprehensive Zoning Map for the Middle River - Bird River Area of Baltimore County and to supersede any previous zoning maps approved by the County Council of Baltimore County for that particular area, all pursuant to the provisions of the Middle River - Bird River Area Plan.

WHEREAS, the County Council approved Resolution 3-02 adopting and incorporating the Middle River - Bird River Area Plan into the Baltimore County Master Plan 2010 to be a guide for the development of the Middle River - Bird River area of the County; and

ments of Agriculture, Health and Mental Hygiene, and Natural Resources regarding enforcement procedures in cases of water pollution caused by agriculture (December 29, 1986) or subsequent memoranda.
(1988 Code, § 14-337) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-108. PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.
(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-109. APPROVAL OF PERMITS.

(a) *Compliance determination.* Before the Department of Permits, Approvals and Inspections may issue any grading permit or building permit or before the approval of any erosion and sediment control plan, the Director of Environmental Protection and Sustainability or the Director's designee shall determine that the proposed development is in compliance with the provisions of this title.

(b) *No permit.* A permit may not be issued without compliance with this title.
(1988 Code, § 14-339) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, §§ 13, 30, 1-16-2011; Bill No. 72-12, § 1, 1-9-2013)

§ 33-3-110. PLATS AND PROTECTIVE COVENANTS.

(a) *In general.*

(1) (i) Any plat submitted to the county in accordance with Article 32, Title 4 of the Code shall be accompanied by irrevocable offers of dedication to the county of all forest buffer areas in fee or easements, in a form approved by the Bureau of Land Acquisition and the County Attorney.

(ii) The plat shall be marked with a notation indicating the offers of dedication.

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People's Counsel
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(2) (i) The applicant may determine the scope of the dedication.

(ii) The dedication shall include at a minimum a right of access by the county for the purpose of inspecting and maintaining the forest buffer and providing for the abatement and correction of water pollution, erosion, and sedimentation of stream channels, wetlands, and riverine floodplains.

(b) *Protective covenants.*

(1) If an applicant retains any forest buffer, the applicant shall be required to submit for approval by the Office of Law a declaration of protective covenants.

(2) (i) The County Bureau of Land Acquisition may draft the declaration.

(ii) The declaration shall include at minimum the management requirements for forest buffers listed in § 33-3-112 of this title.

(3) The protective covenants shall be recorded in the land records of the county, and shall run with the land and continue in perpetuity.

(c) *Requirements for recorded plats.* In addition to the provisions of the development regulations concerning plats, all plats prepared for recording and all right-of-way plats shall clearly:

(1) Show the extent of any forest buffer on the subject property by metes and bounds;

(2) Label the forest buffer;

(3) Provide a note to reference any forest buffer stating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(4) Provide a note to reference protective covenants governing any forest buffer stating: "Any forest buffer shown hereon is subject to protective covenants which may be found in the land records of Baltimore County and which restrict disturbance and use of these areas."

(d) *No public access implied.* An offer of dedication of a forest buffer area to the county may not be construed to convey automatically to the general public the right-of-access to the area.
(1988 Code, § 14-340) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, § 13, 1-16-2011)

§ 33-3-111. DESIGN STANDARDS FOR FOREST BUFFERS AND BUILDING SETBACKS.

(a) *In general.*

(1) (i) A forest buffer for a stream system shall consist of a forested strip of land extending along both sides of a stream and its adjacent wetlands, riverine floodplain, and slopes.

(ii) The forest buffer width shall be adjusted to include contiguous, sensitive areas, such as steep slopes or erodible soils, where development or disturbance may adversely affect water quality, streams, wetlands, or other bodies of water.

(iii) The adjustment required under subparagraph (ii) of this paragraph shall be accomplished by evaluating the potential of a site for impacts that result from runoff, soil erosion, and sediment transport.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, for those sites where forest vegetation does not exist, it is acceptable to allow the forest buffer to succeed naturally to a wooded state.

(ii) If channel erosion, stream pollution, or habitat degradation exists at that site or has been caused downstream from that site, the Director may require planting of the forest buffer and any additional water quality protection measures.

(3) The Department may post the forest buffer.

(b) *Forest buffer standards for streams, wetlands, and floodplains.*

(1) In this subsection, "stream order" is a classification system of streams based on stream hierarchy. The smaller the stream, the lower its numerical classification. A first order stream does not have tributaries and normally originates from springs, seeps, or both. At the confluence of two first order streams, a second order stream begins. A third order stream begins at the confluence of two second order streams and so on.

(2) (i) For a first or second order stream, the forest buffer shall be measured from the centerline.

(ii) For all higher order streams, the forest buffer shall be measured from the stream bank of the active channel (bank-full flow).

(3) For a surface water designated use I or I-P stream, the forest buffer shall be the greater of the following:

(i) 75 feet;

(ii) 25 feet from the outer wetland boundary; or

(iii) 25 feet from the riverine floodplain reservation or easement boundary.

(4) For a surface water designated use III, III-P, IV or IV-P stream (natural and recreational trout waters), the forest buffer shall be the greater of the following:

(i) 100 feet;

(ii) 25 feet from the outer wetland boundary; or

(iii) 25 feet from the riverine floodplain reservation or easement boundary.

(c) *Adjusted forest buffer standards and requirements for streams and wetlands with adjacent steep slopes and erodible soils.*

(1) A steep slope and erodible soils evaluation shall be conducted in accordance with the evaluation procedures and criteria specified in this subsection or a comparable method approved by the Director for sites containing or adjacent to streams, wetlands, or other bodies of water where:

(i) Slopes exceed 10% within 500 feet of the streams, wetlands, or bodies of water;

(ii) Soil erodibility K values exceed .24 within 500 feet of the streams, wetlands, or bodies of water; or

(iii) The vegetative cover type within 100 feet of the streams, wetlands, or bodies of water is: bare soil; fallow land; crops; active pasture in poor or fair condition; orchard-tree farm in poor or fair condition; brush-weeds in poor condition; or woods in poor condition.

(2) An evaluation report shall be submitted for review to the Department, which shall include, at a minimum, the following:

(i) A plan, at a scale not smaller than 1" = 100', that shows:

1. Existing topography with contour intervals no greater than 5 feet (county photogrammetric maps are an acceptable source for preparing existing topography);

2. Mapped soils as shown in the county soil survey;

3. Field delineated, marked, and surveyed streams and wetlands;

4. Existing vegetation;

5. Existing subdrainage areas of the site; and

6. Slopes in each subdrainage area segmented into sections of slopes less than or equal to 10%, 11% to 19%, and equal to or greater than 20%;

(ii) All slope analysis data forms;

(iii) A summary of findings including information pertinent to the evaluation of the site; and

(iv) A mitigation plan that describes the proposed additional protective measures for those areas where development is allowed with restrictions.

(3) (i) The site shall be evaluated by assessing each segment of each subdrainage area using the evaluation criteria in Table 1.

(ii) Each segment shall be given a score for slope, slope length, soil erodibility, vegetative cover type, and sediment delivery.

(iii) A total score shall be assigned for each segment.

(iv) A segment of a subdrainage area with a total score of 35 or greater shall be designated as part of the forest buffer and no development shall be approved in that segment.

(v) 1. A segment with a total score of 25 or 30 shall require the application of additional protective measures.

2. Development may not be prohibited and that area is not required to be part of the forest buffer.

(vi) A segment with a score of 20 or less shall be developed with standard protective measures and that area is not required to be part of the forest buffer.

Table 1
Evaluation Criteria for Steep Slopes and Erodible Soils

Factors	*Scores*		
	High (10)	*Medium (5)*	*Low (0)*
Slope (S)	S ≥ 20%	10% < S <20%	S ≥ 10%
Slope length (SL)	SL ≥ 200'	50' < SL < 200'	SL ≥ 50'
Soil erodibility (K)	K ≥ 0.32	0.24 < K< 0.32	K < 0.24
Vegetative cover type	Bare soil, fallow land, crops, active pasture in poor condition, orchard-tree farm in poor condition	Active pasture in fair condition, brush-weeds in poor condition, orchard-tree farm in fair condition, woods in poor condition	Active pasture in good condition, undisturbed meadow, brush-weeds in fair condition, orchard-tree farm in good condition, woods in fair condition

Table 1

Evaluation Criteria for Steep Slopes and Erodible Soils

Factors	*Scores*		
	High (10)	*Medium (5)*	*Low (0)*
Sediment delivery (distance from downslope limit of disturbance to outer edge of wetlands or top of streambank)	Adjacent to watercourses or wetlands (<100' buffer)	Adjacent to watercourses or wetlands (100'—300' buffer)	Not adjacent to watercourses or wetlands (>300' buffer)

(d) *Standards for building setbacks.*

(1) At a minimum, the primary or principal structure on a parcel or lot shall be set back from the outer edge of the forest buffer as follows:

(i) Residential dwellings, 35 feet; and

(ii) Commercial structures and industrial structures, 25 feet.

(2) The setback may include private land, public land, or both.

(3) Appurtenant or accessory structures, including roads and driveways, utilities, recreational facilities, and patios, are allowed within the setback area.
(1988 Code, §§ 14-336, 14-341) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 10-96, § 3, 3-23-1996; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-112. MANAGEMENT REQUIREMENTS FOR FOREST BUFFERS.

(a) *In general.*

(1) The forest buffer, including wetlands and riverine floodplains, shall be managed to enhance and maximize the unique value of these resources.

(2) Management includes specific limitations on alteration of the natural conditions of these resources.

(b) *Prohibited practices.*

(1) The practices and activities that are restricted within the forest buffer under paragraph (2) of this subsection, are restricted except as provided for:

(i) Forest harvesting operations that are implementing a forest management plan approved by the Department, the State Department of Natural Resources, the County Forest Conservancy District Board, or the County Soil Conservation District;

(d) *Forest buffers.*

(1) The basic purposes of the forest buffer standards and requirements outlined in this title apply to all agricultural operations.

(2) The County Soil Conservation District shall administer forest buffer standards and requirements through the implementation of an approved soil conservation and water quality plan which includes the application of best management practices, such as the establishment of vegetative buffers and other water quality and stream protection measures.

(e) *Pollution, erosion, and degradation.* Except as provided in subsection (d) f this section and § 33-3-107(d) f this title, this title applies to all parcels of land, structures, and activities that are causing or contributing to:

(1) Pollution, including nonpoint source pollution, of the waters of this state within the county;

(2) Erosion and sedimentation of stream channels; or

(3) Degradation of aquatic and riparian habitat.

(1988 Code, § 14-333) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 75-03, § 45, 7-1-2004)

§ 33-3-105. AUTHORITY OF THE DEPARTMENT — IN GENERAL.

(1) The Department is responsible for enforcing the provisions of this title.

(2) The Director may adopt policies and regulations as necessary to implement the provisions of this title.

(1988 Code, § 14-335) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-106. SAME — VARIANCES.

(a) *Authority to grant.* The Director of the Department may grant a variance:

(1) For those projects or activities where strict compliance with the requirements of this title would result in practical difficulty or unreasonable hardship;

(2) For those public improvement projects or activities where no feasible alternative is available;

(3) For the repair and maintenance of public improvements where avoidance and minimization of adverse impacts to nontidal wetlands and associated aquatic ecosystems have been addressed; or

(4) For developments that have had stream buffers/forest buffers applied in conformance with the requirements outlined in the county water quality management policy (February 1, 1986) or the County Executive order for the protection of water quality, streams, wetlands, and floodplains (June 4, 1989) and for which the potential for water quality and aquatic resource degradation is minimal.

(b) *Application.*

(1) The applicant shall submit a written request for a variance to the Director of the Department.

(2) The application shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request.

(3) The Department may require an alternatives analysis that clearly demonstrates that no other feasible alternative exists and that minimal impacts will occur as a result of the proposed project, activity, or development.

(c) *Conditions.* In granting a request for a variance, the Director of the Department may require site design, landscape planting, fencing, the placement of signs, and the establishment of water quality best management practices in order to reduce adverse impacts on water quality, streams, wetlands, and riverine floodplains.

(1988 Code, § 14-334) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

§ 33-3-107. PROHIBITION, CORRECTION, AND ABATEMENT OF WATER POLLUTION.

(a) *In general.* The Department shall manage and regulate the waters of this state within the county according to the surface water quality standards and stream segment designations set forth in COMAR 26.08.02.

(b) *Pollution prohibited.* The waters of this state within the county may not be polluted by:

(1) Substances attributable to sewage, industrial waste, or other waste that will settle to form sludge deposits that:

(i) Are unsightly, putrescent, or odorous, and create a nuisance; or

(ii) Interfere directly or indirectly with surface water designated uses;

(2) Any material, including floating debris, oil, grease, scum, sludge, and other floating materials attributable to sewage, industrial waste, or other waste in amounts sufficient to:

(i) Be unsightly;

18-047-X

11/28/16

People's Counsel
CBA Exhibit
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Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: People's Counsel Date: 8/21/18

Exhibit No:	Description:
✓ 1	G.I.S Aerial Photo
✓ 2	Roadway - p32 of ADC book
✓ 3	Aerial Photo
✓ 4	SDAT
✓ 5	Web Soil Survey
✓ 6	~~I.D only~~ Nat. Trans Emp Labor / Article
KC 8/21/18 ✓ 7	12/21/17 Opinion of ACS, grady Spirit Enterprises
KC 8/23/18 ✓ 8	3C2R 1.A08 R.C.7 Zone
✓ 9	Map 1: Urban Rural Demarcation Line
✓ 10	Sign-In Sheet
✓ 11	Bill No 74-00 RC7 leg.
10/24 ✓ 12	Zoning Map 2018 (G.I.S)
✓ 13a	ADC Street Atlas
✓ 13b	- ADC - with Subject Property
	VERIFIED BY KC DATE: 10/25/18

Board of Appeals

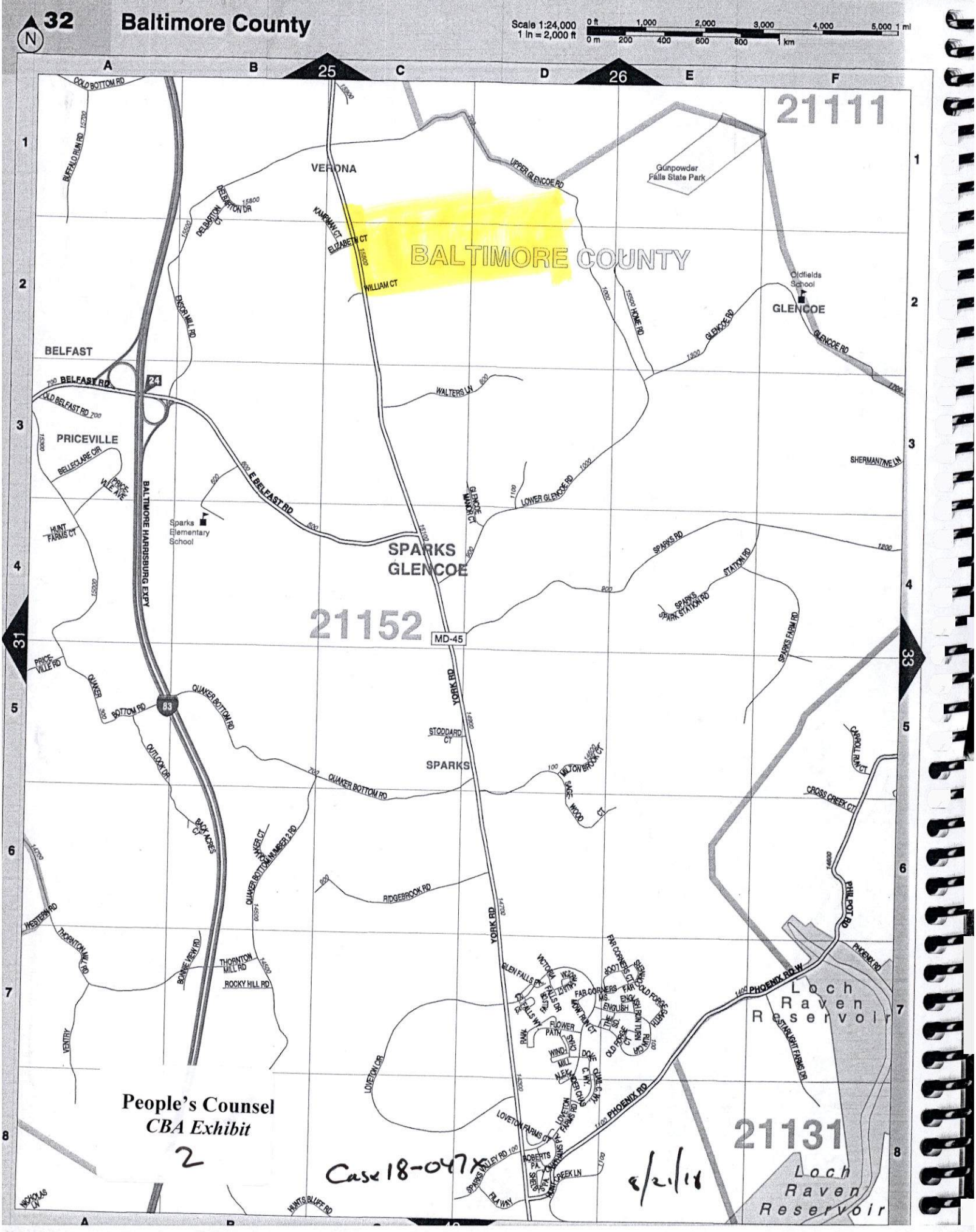
Case No: 18-047-X Case Name: Robert Gerney

Exhibit List

Party: People's Counsel Date: ~~8/21~~ 10/24/18

Exhibit No:	Description:
✓ 14	Bill No. 121-01
✓ 15	Section 33-3-108
✓ 16	Section 33-3-104
	VERIFIED BY KC DATE: 12/10/18

KC 10/25/18


32
Baltimore County
Scale 1:24,000
1 In = 2,000 ft
0 ft 1,000 2,000 3,000 4,000 5,000 1 mi
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21152
21131
BALTIMORE COUNTY
VERONA
Gunpowder Falls State Park
Oldfields School
GLENCOE
BELFAST
PRICEVILLE
Sparks Elementary School
SPARKS GLENCOE
SPARKS
BALTIMORE HARRISBURG EXPY
MD-45
YORK RD
PHOENIX RD
PHOENIX RD W
Loch Raven Reservoir
COLD BOTTOM RD
BUFFALO RUN RD
DELBARTON DR
DELBARTON CT
KAMRIMAN CT
ELIZABETH CT
WILLIAM CT
UPPER GLENCOE RD
EASOR MILL RD
700 BELFAST RD
COLD BELFAST RD
BELLECLARE CIR
PRICE VILLE AVE
HUNT FARMS CT
E BELFAST RD
WALTERS LN
GLENCOE WOODS CT
LOWER GLENCOE RD
15500 HOME RD
GLENCOE RD
SHERMANTINE LN
SPARKS RD
SPARKS STATION RD
SPARKS FARM RD
PRICE VILLE RD
QUAKER BOTTOM RD
OUTLOOK DR
BACK ACRES
QUAKER BOTTOM MEWS CT
QUAKER BOTTOM MEWS RD
STODDARD CT
WILTON BROOK CT
SAGE WOOD CT
CARROLL RUN CT
CROSS CREEK CT
RIDGEBROOK RD
WESTERN RD
THORNTON MILL RD
BONNIE VIEW RD
ROCKY HILL RD
VENTRY
GLEN FALLS CT
FALLS DR
FALLS WY
FAR CORNERS CT
FAR CORNERS DR
FAR CORNERS WAY
ENGLISH RUN TURN
ENGLISH RUN CT
OLD FORGE CT
FLOWER PATH
LOW RUN CT
WINDY HILL
DOVE CT
LOVETON DR
LOVETON FARMS CT
LOVETON FARMS RD
ROBERTS PL
SPARKS VALLEY RD
FLA WAY
HUNTS BLUFF RD
NICHOLAS LN
PHILPOT RD
PHOENIX RD
STARLIGHT FARMS DR
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James E. Deriu

KCI TECHNOLOGIES, INC.

James has 18 years of progressive experience in delineation and functional assessment of wetlands, streams, forests, and riparian habitats. He has completed hundreds of wetland and forest stand delineations, as well as geomorphic assessments, wetland and stream restoration design projects from concept to PS&E. He prepares Chesapeake Bay Critical Area Studies and is proficient in ArcGIS. He has completed hundreds of joint permits, several Individual Department of the Army Permits and frequently serves as the Principal Contact for KCI's most complex local, state, and federal permitting efforts.

James has been involved in development of environmental compliance and permitting documents for a variety of projects including, large-scale utility installation/infrastructure projects, solid waste management facilities, waterfront construction, bridge and railroad rehabilitation and construction, combined sewer/stormwater management facilities, dredging and various activities within tidal and freshwater wetlands and adjacent riparian areas. He is experienced in the development of NEPA environmental analyses as well as Phase I Environmental Site Assessments, coastal zone management documentation, shoreline and land use characterization and waterfront revitalization studies.

Education
M.S. / 2009 / Environmental Science / Towson University
B.A. / 2000 / Environmental Science / Gettysburg College

Relevant Training & Certifications
2013 / PennDOT / Section 4(f) Training
2013 / CSX / Railroad Worker Safety Training
2013 / XL Group / Managing Construction Risks Training
2010 / Ohio DOT / Ecological Surveys Training
2010 / Ohio DOT / Waterway Permitting Training
2007 / Rutgers University / Wetland Construction & Hydrology
2007 / Environmental Compliance & Awareness Training (ECAT)
2006 / USACE / Wetland Delineation Management Training
2006 / MBSS / Spring Index Period Sampling
2005 / MDE / E& SC Certification "Green Card" / #28855
2000 / OSHA / HAZWOPER Training and Refreshers

Years of Experience: 18 Total
KCI Technologies, Inc. / Sparks, MD / 2004-Present
HydroQual, Inc. / Mahwah, NJ / 2000-2004

James has worked in the acquisition of approvals and permits from a range of regulatory agencies, including but not limited to:

- U.S. Army Corps of Engineers: Section 10 / 404, Individual & Nationwide Permits
- U.S. Coast Guard: Bridge Permits, Letters of Advanced Approval
- National Marine Fisheries Service: Essential Fish Habitat (EFH) Analysis
- United States Fish and Wildlife Service: Federal Endangered and Threatened Species (Section 7) Review
- National Pollutant Discharge Elimination System (NPDES) Permits for Stormwater Discharge during Construction
- National Historic Preservation Act Project (Section 106) Compliance
- Section 4(f) (USDOT Transportation Act of 1966) Analysis for Parklands and other Public Lands
- Section 6(f) Federal Land & Water Conservation Fund Analysis and Approvals
- State Level Water Quality Certifications (CWA Section 401)- MD, VA, DC, PA, NY, NJ
- State Level Rare, Threatened and Endangered Species Studies and Review
- State and County Forest Conservation Act Approvals
- State and Municipal Level Soil Erosion and Sediment Control (ESC) Permits
- Critical Area Commission for the Chesapeake and Atlantic Coastal Bays (CBCA) Approvals
- Coastal Zone Consistency Approval / Waterfront Revitalization.

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As Regional Practice Leader, James leads a staff of more than 40 environmental professionals in the assessment, design, and implementation of ecological restoration and permitting projects throughout the Mid-Atlantic Region. James manages and participates in on-call services contracts related to ecosystem restoration as part of NPDES and TMDL compliance programs. In this role, he directs the assessment, survey, design, construction, inspection, and monitoring of stream and wetland restoration efforts and biological assessments throughout the region, including MD, PA, VA, DE and WV. He actively participates in the construction phase of projects to ensure both environmental commitments and design requirements are implemented.

James recently served as an advisor to the Natural Resources Working Group of the Baltimore County Sustainability Network (BCSN), served as an appointed member of the Baltimore County Commission on Environmental Quality (CEQ) from 2015-2018 and led the American Council of Engineering Company's Maryland (ACEC/MD) Environmental Committee from 2014-2017. He currently serves on the Board of Directors for NeighborSpace of Baltimore County (NSBC), a non-profit land trust dedicated to acquiring, developing and managing green space inside the County's Urban Rural Demarcation Line (URDL).

On-Call Stream Restoration Design, Management & Monitoring Services (RFP 2002-02, 2004-04, 2005-04, 2010-08) Baltimore County DEPS. *Senior Environmental Scientist and Program Manager.* KCI has provided consulting ...dor restoration projects throughout Baltimore County under multiple agreements. These projects have incl... ...of assessment, design, permitting and construction/post-construction monitoring, as well as NPDES ... / Impervious Reduction Computations. From 2004-2010, James completed and/or managed wetland c... ...nd delineations, as well as Joint Permit Applications, Individual Permits and Forest conservation Plans. He ... ...cy

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meetings to reach a consensus on permitting issues, ensuring the timely approval of the projects. He coordinated with MHT, MDNR, and USFWS to determine existence of historic or archaeological resources and RTE species within project limits. From 2010 to the present, James has served as the Program Manager for the agreement and directs KCI's stream restoration services on these contracts. In that capacity, he attends progress meetings, develops scope, schedule and budgets for task assignments, handles client communication, manages subconsultant participation towards Minority Business Enterprise (MBE) goals and ensures appropriate technical and administrative resources are available to complete projects in accordance with County timelines.

Environmental Consultant Services for the Little Patuxent Parallel Sewer, Howard County DPW. *Environmental Program Manager.* Since 2005, James has managed all aspects of the environmental clearance process for the rehabilitation of 10.4 miles of large diameter sewer serving 125,000 residents of Howard County. James conducted natural resource evaluations including wetland delineations (including Significant Nexus Determinations for 90+ systems), function & value assessments (New England Methodology) and forest stand delineations / large tree surveys for the project corridor. He managed the habitat investigations for rare, threatened, and endangered species throughout the corridor and coordinated with DNR staff to ensure the protection of a Great Blue Heron rookery within the project limits. James organized KCI's cultural resources staff conducting archaeological surveys and later participated in the development of an MOA with the State Historic Preservation Officer. James was responsible for preparing MDE Nontidal Wetlands and Waterway and Department of the Army Individual Permit (IP) applications, including an extensive avoidance / minimization process where he conducted plan review for four engineering firms working on the sewer design. He secured Program Open Space (POS) and Land & Water Conservation Fund (L&WCF) approvals for the project and prepared a Forest Conservation Plan. James developed the mitigation program for the project, including three stream restoration projects and one wetland creation / invasive species eradication project, totaling over 2,000 feet of channel and six acres of wetlands. He participated in geomorphic assessments for the stream sites, including the selection of reference reaches and developed the water budget, grading plan and landscaping for the wetland site. James developed a public outreach and community involvement program, including a web-based GIS map repository for project information and presentations at several public meetings. James's staff provides on-site environmental compliance services as-needed for the sewer and mitigation sites construction. Post-construction monitoring was completed in 2017.

FY 14-15 Reforestation Projects, Howard County DPW. *Project Manager.* James managed and directed KCI's work related to reforestation planting design, approvals and construction management services for approximately 20 acres of reforestation throughout Howard County. This involved coordination with DPW personnel and members of the County's Office of Sustainability, as well as facility managers from the Howard County Public School System (HCPSS). As part of this task, James led the development of planting plans which included determining suitable native tree species and appropriate planting locations for each site. Along with subcontractor HTI, KCI assisted in tree planting operations at a density of approximately 200 trees per acre, satisfying the requirements for TMDL reforestation credit. These reforestation projects will provide water quality benefits such as load reduction for nitrogen, phosphorus, and suspended solids. Additionally, KCI provided assistance during tree planting events and has completed post-construction warranty inspections for sites planted in FY 14.

Stormwater & Watershed Management Evaluation / Design / Build Services (CA 05-22, CA 08-29, and CA 23-2013). Howard County DPW. *Senior Environmental Scientist and Deputy Program Manager.* Since 2004, KCI has performed planning, surveying, design, environmental permitting, and construction and post-construction monitoring services for various countywide NPDES projects focusing on all aspects of environmental enhancement, urban stream channel restoration and SWM retrofit projects. Due to the design/build nature of the projects under this contract, KCI's expertise in all facets of restoration, from initial problem identification and assessment through design and ultimately construction have been invaluable to the County in the successful delivery on almost 200 task assignments. From 2004-2010, James completed and/or managed wetland delineations and forest stand delineations, as well as Joint Permit Applications, Individual Permits and Forest conservation Plans. He conducted regulatory agency meetings to reach a consensus on permitting issues and coordinated with MHT, MDNR, and USFWS to determine existence of historic or archaeological resources and RTE species within project limits.

From 2010 to the present, James has served as the Deputy Program Manager for these agreements and directs KCI's ecosystem restoration services on these contracts. In that capacity, he attends all monthly progress meetings, develops scope, schedule and budgets for task assignments, handles stakeholder and client communication, manages subconsultant participation towards MBE goals and ensures appropriate technical and administrative resources are available to complete projects in accordance with the County's expectations. James serves as the liaison between the contractor and County for all stream and reforestation projects.

Stream Restoration Design Services Open-End Contract, BCS 2002-22B, Statewide, MD State Highway Administration. *Task Manager / Senior Environmental Scientist.* KCI provided stream restoration design services and associated environmental design services under this $500,000 open-end contract. James was responsible for conducting and managing wetland delineations in accordance with USACE (1987) methodologies and for the preparation of permit application materials for submittal to MDE and USACE for several tasks under this contract. *BIRED Wetland Delineation (80 Sites).* KCI provided wetland delineation services at 80 Bridge Inspection and Remedial Engineering Division (BIRED) culvert structures along Maryland highways, statewide. KCI also provided SHA with information concerning potential fish blockages at the 80 subject sites by calculating the difference in elevation from

the culvert invert to the adjacent streambed along the downstream side of the structure. James' staff completed background information and data gathering, field investigations and report preparation for all 80 project sites within 45 days of task initiation.

Wetland Creation, Remediation, and Restoration at Former American Legion Site 238, MD State Highway Administration. *Senior Environmental Scientist and Project Manager.* SHA proposed creation, hazardous material remediation, and restoration of non-tidal wetland areas associated with the former ALP Post 238 along MD Route 5, including coordination with MDE's Voluntary Cleanup Program. James conducted a wetland delineation verification, forest stand delineation, and large tree survey. He assisted in the collection of geomorphic data for the stream stabilization design, identified the reference reach and developed a water budget for the wetland site. With that data, James developed the Preliminary Investigation (PI) plans, final (90%) plans, and a full PS&E (100%) design package for the remediation and restoration of the contaminated wetland area. James developed the JPA package and Forest Conservation Plan. He also developed addenda as necessary during the bid process and has assisted SHA personnel during construction to ensure grades and elevations were properly established. Under James' direction, KCI completed the Final Review submittal in 3 weeks and PS&E package in 2 weeks in order to meet SHA's funding requirements.

Water, Sewer & Meter Vault Rehabilitation/Relocation Basic Ordering Agreements, WSSC, Prince George's and Montgomery Counties, MD. Senior Environmental Scientist. Since 2001 under multiple Basic Ordering Agreement (BOA) contracts, two currently in progress, KCI has provided water and sewer design services for more than 85 projects totaling more than $11 million. James has been responsible for several tasks under these contracts related to wetland delineations, forest stand delineations, and the preparation of permit application materials for submittal to various local, state and federal regulatory agencies, including MDE and USACE, in order to secure the authorization of work within wetlands, Waters of the U.S., and the 100-year floodplain. These tasks typically involved coordinating with regulatory agencies for temporary impacts related to stream crossings and the design and construction oversight of fish passage structures near exposed utilities.

Bundled Compensatory Mitigation Project Site Search and Design Services, Prince George's County DPW&T. *Project Manager.* KCI is supporting Prince George's County in the identification and design of 20 acres of wetland mitigation and 5,000 LF of stream mitigation throughout the Anacostia and Patuxent watersheds within Prince George's County. As part of this task, James has led the site search process to identify suitable sites, supported the County in negotiations with the Interagency Review Team (IRT) and is currently managing the design of one wetland and two stream projects on County-owned lands. As a bundled mitigation package, these projects will allow the County to advertise a total of six CIP projects in the near future. In addition to his technical responsibilities, James has managed several subconsultants, handled coordination with MDE and USACE personnel and has conducted periodic briefings with the Director of DPW&T and other County personnel on several occasions.

Environmental Consultant Services for the Deep Run / Shallow Run Interceptor Improvements, Howard County, DPW. *Environmental Program Manager.* KCI was recently selected to lead all aspects of the environmental clearance process for the rehabilitation of nine miles of large diameter sewer. Similar to the Little Patuxent Project, James will lead KCI's efforts and guide the County through all local, state and federal permit processes and stakeholder coordination necessary to gain approval for this work. To date, James has been involved in the development of scope, schedule and budget for the initial field investigations and preliminary site searches for wetland and stream compensatory mitigation opportunities. It is anticipated that over five acres of wetlands and 2,500 LF of stream mitigation, along with several environmental stewardship projects, will be necessary to satisfy all regulatory requirements.

Prairie Creek Ecosystem Delta Restoration, Littoral Wetland Design and Permitting, USACE Louisville District. *Project Manager.* James led the assessment, design and permitting of an 85-acre littoral wetland that restored historic wetland extents within Grand Lake St. Mary's. James completed and/or directed the feasibility study and design alternatives analysis, and steered the team to a final design submission that incorporated several habitat elements that also maximized water quality benefit, provide substantial ecological lift for target wildlife species and provide for the replacement of wetland functionality as compared to historic reference conditions. James also provided overall project coordination and scheduling, and served as the principal point-of-contact with the Louisville District USACE. He performed a final QC check of all documents prior to submittal to the client or reviewing agencies. KCI completed the work on this task, from assessment through design and permitting, in less than 12 months.

George Washington Memorial Parkway Columbia Island Bridge Project, Federal Highway Administration, *Senior Environmental Scientist.* KCI prepared design and construction documents for a new 375-foot long, 5-span, pre-stressed concrete beam bridge over Boundary Channel in Arlington County, Virginia and the District of Columbia. James was responsible for the development of permitting materials to secure authorization from U.S. Army Corps of Engineers (Baltimore District) and D.C. Department of the Environment (DCDOE) related to the preliminary geotechnical investigation for the bridge. Work included extensive coordination with regulatory personnel and the Design Team to ensure proper precautions were instituted at the site during drilling operations. James led agency coordination regarding rare, threatened, and endangered species for submittal to USFWS, and the DC Department of the Environment, as well as coordination for historic resources for submittal to the DC Historic Preservation Office. In addition, James coordinated with National Marine Fisheries Service personnel to secure a waiver for work within the in-stream construction closure period. The fast-tracked geotechnical investigation was ultimately approved under a Nationwide Permit 15 for US Coast Guard approved bridges.

Petitioner 3
CBA Exhibit 15

MITCHELL J. KELLMAN

VICE PRESIDENT - DIRECTOR OF ZONING SERVICES

Education

Towson University, BA, Geography and Environmental Planning, Urban Planning

Towson University, Masters, Geography and Environmental Planning, Urban Planning

Professional Summary

Mr. Kellman has over 30 years of experience working in zoning, subdivision, and development regulations for the public and private sector; 15 of those years were with the Baltimore County Office of Planning and Zoning. His responsibilities included review, approval and signatory powers on behalf of the Director of Final Development Plans and Record Plats. He represented the Zoning Office on the County Development Review Committee, a body reviewing the procedural compliance of all development submissions. Review of petitions and site plans filed for zoning hearing approvals were within his authority. Additionally, he supervised county review staff, met with professionals and the public on development project matters, and made determinations regarding developments and their compliance with county regulations. In working for DMW, he has extensive experience in testifying before the Baltimore County Zoning Commissioner, Hearing Officer, Administrative Law Judges, and Board of Appeals. He also regularly represents the company at the Baltimore County Development Review Committee meetings. He is also a member of Baltimore County's Design Review Panel, which formulates design recommendations to the Planning staff and Administrative Law Judges, and the Landmarks Preservation Commission.

Partial List of Projects

Saint Michael's Roman Catholic Church, Howard County, MD

Hunt Valley Towne Centre, Baltimore County, MD

Charlestown Retirement Community, Baltimore County, MD

Goucher College, Baltimore County, MD

Greenspring Quarry, Baltimore County, MD

Norris Acura West, Howard County, MD

Sheppard Pratt Health Systems (Elkridge Campus), Howard County, MD

Towson Town Center, Baltimore County, MD

Corridor 95 Business Park, Howard County, MD

Memberships and Associations

Baltimore County Landmarks Preservation Commission, 2014, 2015, 2016, 2017, 2018

Baltimore County Design Review Panel, 2012, 2013, 2014, 2015, 2016, 2017, 2018

Greater Towson Committee, Planning & Development Sub-Committee, 2012, 2013, 2014, 2015, 2016, 2017, 2018

Greater Towson Committee, Government Relations Sub-Committee Chair, 2013, 2014, 2015

Greater Towson Committee Board of Directors – 2014 (Secretary), 2015, 2016, 2017, 2018

Leadership Baltimore County, 2013

Leadership Baltimore County, Class Interviewer, Member, 2015

Professional Experience

Daft-McCune-Walker, Inc., Towson, MD: 2000-Present

Baltimore County Zoning Review Office, Towson, MD: 1985-2000

Petitioner
CBA Exhibit
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Rural Zones

Resource Conservation Zones Comparison Chart

	RC-2 Agricultural Protection	RC-3 Deferral of Planning and Development	RC-4 Watershed Protection	RC-5 Rural Residential	RC-6 Rural Conservation and Residential	RC-7 Resource Preservation	RC-8 Environmental Enhancement	RC-20 Critical Area	RC-50 Critical Area Agricultural	RCC Resource Conservation, Commercial
Purpose	To foster and protect agriculture	To defer substantial development pending future planning and utilities	To protect the watersheds of the three regional reservoirs	To provide for residential development in appropriate rural areas	Greater protection for resource areas	To protect cultural, historical, recreational and environmental resources	To protect reservoir watersheds and extensive natural areas	To protect the natural resources of the Chesapeake Bay Critical Area	To protect water quality consistent with the Chesapeake Bay Critical Area	To provide small areas of commercial development for rural needs
Permitted Uses	Preferred use agriculture; limited residential development	Agriculture; low density residential	Agriculture; low density residential	Low density residential; agriculture uses	Agriculture; low density residential	Agriculture; low density residential	Agriculture; low density residential	Agriculture Aquaculture; low density residential; fish & wildlife preservation	Agriculture Aquaculture; low density residential; fish & wildlife preservation	Agricultural - related retail, general retail, office, and service use.
Special Exceptions	Antique shop, animal boarding, church, farm market	Animal boarding, camp, farm market, golf course	Antique shop, church, golf course	Antique shop, golf course	Antique shop, bed and breakfast, camp, golf course	Antique shop, bed and breakfast, winery	Antique shop, bed and breakfast, winery	Agricultural support services, specific recreational uses	Agricultural support services, specific recreational uses	Agricultural machine repair, landscape service operations
Lot Area	1 acre (min.)	1 acre (min.)	3 acres (min.), or 1 acre for clustered subdivisions	1.5 acres (min.)	1 acre (min.) 1.5 acres (max.)	1 acre (min.)	3 acres (min.)	Clustering encouraged[4]	Clustering encouraged[4]	2 acres (max.)
Maximum Number of Lots and/or Maximum Density	For a lot of record between 2 and 100 acres: 2 lots; lot of record over 100 acres: one lot for each 50 acres of gross area	Maximum tract density: 0.3 units per acre Minimum diametral dimension[1]: 150 feet	Maximum tract density: 0.2 dwelling units per acre; a tract between 6 and 10 acres may be subdivided into 2 lots total[2]	Maximum tract density 0.5 dwellings per acre	Maximum tract density: 0.2 lot per acre Primary and secondary conservancy areas are required	Maximum density: 0.04 lot per acre for tracts ≥50 acres Tracts <50 acres cannot be subdivided	Maximum density: 0.02 lot per acre for tracts ≥51 acres[3]	A lot of record with a gross area of 20 or more acres may be subdivided at a rate of 1 lot for each 20 acres	A lot of record with gross area between 20 and 100 acres may be subdivided once if the average density is at least 1 unit per 20 acres[5]	Gross floor area of all proposed buildings on the lot shall not exceed 3000 square feet

[1] Diametral dimension is the diameter of the largest circle that may be inscribed within a lot

[2] Rural clustering standards apply to development of tracts more than 10 acres, unless an alternative, non-clustering development alternative is followed at a density of 0.1 dwelling units per acre.

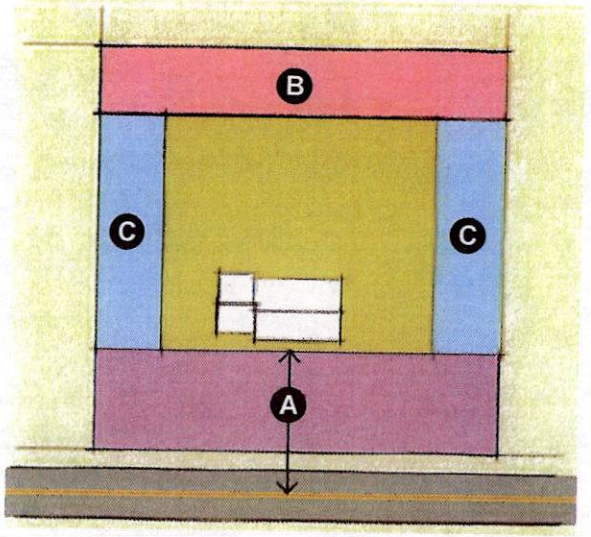
[3] Maximum number of lots for tracts ≤10 acres is one; 10 to 30 acres is two; 30 to 50 acres is three

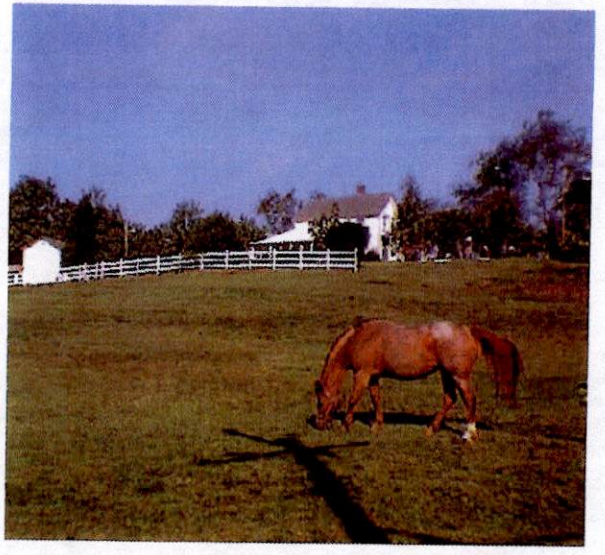
[4] Will be determined in accordance with the county health and Department of Environmental Protection and Sustainability regulations.

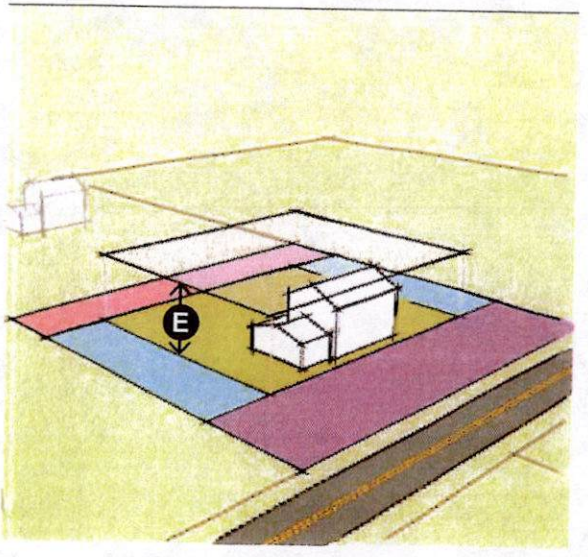
[5] A lot of record over 100 acres may be subdivided at a rate of 1 lot per 50 acres

RC-2
Agriculture

Height and Area Requirements		
A	Minimum front setback from centerline of road	75 feet
B	Minimum rear setback	35 feet
C	Minimum side setback	35 feet
E	Maximum building height	35 feet







Intent: To foster conditions favorable to a continued agricultural use of the productive agricultural areas of Baltimore County by preventing incompatible forms and degrees of urban uses.

Typical Uses Permitted by Right: Farm, farmette, single-family detached dwelling, farmer's roadside stand, tenant house.

Typical Uses Permitted by Special Exception: Antique shop, animal boarding place, church, farm market, landscape operation, agricultural support uses.

Note: The minimum lot size is one acre.

RC-7
Resource Preservation

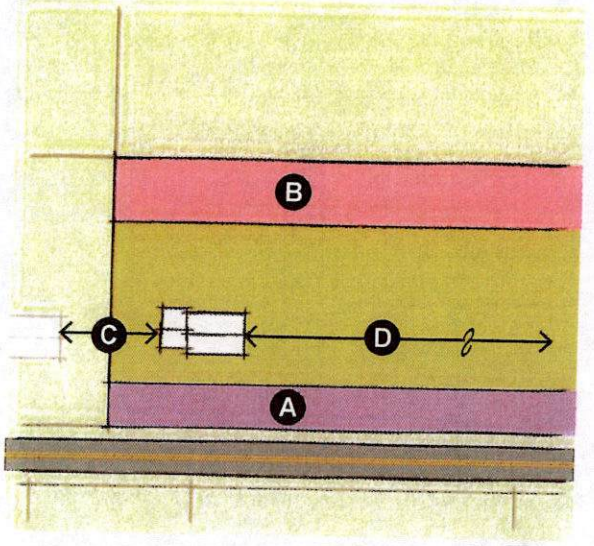
Intent: To protect and preserve valuable cultural, historical, recreational and environmental resources through a low density rural zone.

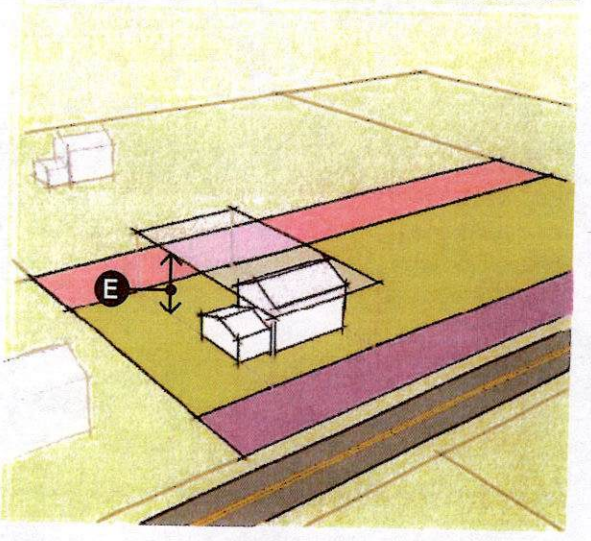
Typical Uses Permitted by Right: Single-family detached dwelling, farm, farm roadside stand.

Typical Uses Permitted by Special Exception: Antique shop, bed and breakfast, winery, church (see note below).

Notes:

- Churches are permitted on property that was appropriately zoned before being zoned RC-7.
- This zone may not be applied to current RC-2 zoned land.
- Maximum tract density is 0.04 lots per acre (one lot/25 acres). Tracts less than 50 acres cannot be subdivided. The minimum lot size is one acre.
- Subject to performance standards that include site plan and architectural review to ensure preservation of natural resources and rural character.





Height and Area Requirements		
A	Minimum front setback	35 feet*
B	Minimum rear setback	50 feet
C	Minimum side setback from a principal building	80 feet
D	Minimum side setback from a cultivated field or pasture	300 feet
E	Maximum building height	35 feet

* 35 feet minimum from edge of private road

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CBA Exhibit
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BALTIMORE COUNTY

DEPARTMENT OF PERMITS APPROVALS AND INSPECTIONS

SOLAR FACILITY DECOMMISSIONING AND SECURITY AGREEMENT

Project Name/ Site Address: _____

_____

Property Owner: _____

Applicant: _____

Applicant Address: _____

_____

Permit Number: _____ Date: _____

Total Estimated Cost Of Decommissioning: _____

Security Required (120% of cost estimate): _____

Whereas, the Applicant desires to construct, install and maintain solar facilities, as defined in Article 4F of the Baltimore County Code of Zoning Regulations, all of the said improvements contained in the referenced project, and being more fully described in Exhibit A, plans attached hereto and incorporated hereby.

Whereas, in accordance with the applicable provisions of the Baltimore County Code, 2015, as amended, (the "Code") and the Code of Zoning Regulations (the "BCCZR"), the Department of Permits, Approvals and Inspections ("PAI") has reviewed plans, and received and approved the cost estimates and plans for decommissioning of the solar facilities to which this Agreement pertains, and all applicable fees have been paid.

Whereas, the Applicant/ Property Owner is requesting authorization to proceed with construction and installation of the solar facilities.

Now THEREFORE, in consideration of the foregoing and in order to obtain a building permit for the solar facilities hereunder, the Applicant/ Property Owner confirms its understandings and obligations as follows:

1. With respect to the solar facilities covered under this Agreement, the Applicant shall construct all facilities as shown in the reviewed and approved final plans signed by all relevant County agencies.

2. All the construction and maintenance work for the solar facilities shall be performed by qualified licensed contractors, in accordance with all applicable laws and regulations.

3. Prior to issuance of a building permit for the solar facilities, the Applicant/ Property Owner shall deliver:

a. If the Property Owner is not the Applicant, a copy of the Lease to the Site for the Project, which may be appropriately redacted to protect confidential or proprietary information; and,

b. An estimate for the cost of removal of the solar facilities from the Site from a qualified independent third party civil engineer, to include physical removal of all the solar energy systems, structures, equipment, security barriers and transmissions lines; disposal of all solid and hazardous waste in accordance with local state and federal waste disposal regulations; and stabilization or revegetation of the site as necessary to minimize erosion; and,

c. A letter of credit in a form and amount approved by the County (the "Letter of Credit"), which may be used by the County for the repair of any unsafe or hazardous condition or the removal of an abandoned solar facility; and,

d. A maintenance and operation plan; and,

e. A certificate of liability insurance in a form acceptable to the County.

4. Access and security must be maintained at all times in a manner that is acceptable to the Fire Department.

5. The failure of the Applicant/ Property Owner or its contractor to fully comply with the terms of this Agreement may result in the issuance of a Stop Work Order by the County, authorized by relevant provisions of the Code, including, but not limited to, Article 3, Title 6. Upon receipt of Stop Work Order from the County, the Applicant shall cause all work to stop until the County expressly authorizes work to resume in writing.

6. The solar facilities shall be removed by the Applicant/ Property Owner when they have reached the end of their useful life or their operations cease. If more than 150 days have passed after the date that operations discontinued, the solar facilities may be deemed abandoned, and Baltimore County can take any and all actions authorized by the Code, the BCCZR, this Agreement and the Letter of Credit to remove the solar facilities from the Site.

7. The Applicant and Property Owner shall protect, defend, hold harmless and indemnify Baltimore County (including its officers, agents and employees) from all liability, losses, damage, expenses, causes of action, claims or judgments resulting from injury to, or death of any person, or any damage to property to any kind, which injury, death or damage arises out of, or is in any way connected with the construction, installation or maintenance of the solar facilities or any agreements pertaining to the construction,

operation or maintenance of the solar facilities, verbal or written, to which the County is not a party.

8. The Property Owner acknowledges, on behalf of the Property Owner and Applicant (if they are not the same person) that County shall not be responsible for posting or providing any notice to a successor in interest to title of the Property Owner regarding any laws, regulations, restrictions, responsibilities or obligations pertaining to the solar facilities.

APPLICANT:

_____ _____

Witness *Authorized Signature*

_____

Printed Name

Title: _____

Email: _____ *Phone Number:* _____

PROPERTY OWNER:

_____ _____

Witness *Signature*

_____

Printed Name

Title: _____

Phone number: _____

Director, Permits, Approvals and Inspections:

_____

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Account Identifier: District - 07 Account Number - 0710045500

Owner Information

Owner Name:	JONES IAN CALDER JONES ROBERT W JONES MARY M ET AL	**Use:** **Principal Residence:**	AGRICULTURAL YES
Mailing Address:	815 STABLERS CHURCH RD PARKTON MD 21120	**Deed Reference:**	/07806/ 00849

Location & Structure Information

Premises Address:	815 STABLERS CHURCH RD 0-0000	**Legal Description:**	143.031 AC ES YORK RD SE COR STABLERS CH

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0012	0016	0086		0000				2017	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1750	1,680 SF		143.0300 AC	05

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
2	YES	STANDARD UNIT	FRAME	1 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	127,200	127,200		
Improvements	31,600	121,800		
Total:	158,800	249,000	188,867	218,933
Preferential Land:	37,200			37,200

Transfer Information

Seller: JONES ROBERT WALLACE	**Date:** 03/04/1988	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /07806/ 00849	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 10/07/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

1. This screen allows you to search the Real Property database and display property records.
2. Click here for a glossary of terms.
3. Deleted accounts can only be selected by Property Account Identifier.
4. The following pages are for information purpose only. The data is not to be used for legal reports or documents. While we have confidence in the accuracy of these records, the Department makes no warranties, expressed or implied, regarding the information.

Petitioner
CBA Exhibit
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TIMOTHY M. KOTROCO, Esq.

305 Washington Avenue, Suite 502
Towson, Maryland 21204
410-299-2943
Tkotroco@gmail.com

January 12, 2018

The Honorable John E. Beverungen
Administrative Law Judge for Baltimore County
105 West Chesapeake Avenue, Suite 103
Towson, Maryland 21204

Re: Case No. 2018-0047-X, ESA Sparks Glenco, LLC
Letter of Clarification of Restriction #4

Dear Judge Beverungen:

I write to you regarding your recent order issued the 21st day of December, 2017, in Case No. 2018-0047-X. (Copy attached) Your Order approved our Special Exception request to locate a solar farm on our property located at 15637 York Road in Sparks, Maryland.

Restriction number 4 of your decision states that my client is prohibited from removing any trees associated with the installation and/or operation of our solar facility. The testimony at the hearing was very clear. My client stated that it would not be necessary to remove any trees in the field where the panels would be installed. In that we respect, we understand your restriction.

However, it may very well be necessary for my client to have to remove trees or bushes in order to install the driveway to our solar panels from York Road. You will recall that we are located more than 1,200 feet off of York Road and it may be necessary to remove some trees in order to install or our access road and/or for the installation of the telephone poles that will carry our newly generated electricity out to the York Road grid.

Therefore, I am requesting a simple clarification of your decision and specifically restriction number 4, that my client shall be permitted to remove any trees necessary in order to install the access road and telephone poles leading from York Road to our solar panel field. If you agree with this interpretation, I respectfully request that you sign the statement at the bottom of this letter affirming same. Thank you for your time and consideration of this matter.

This letter is intended to be for the purpose of clarifying your recent decision and is not intended to be a request for a modification of your decision. Therefore, by signing below it is acknowledged that the appeal period associated with this case shall not be extended beyond the

30 days as stated within your original decision and yourRules of Procedure. I will leave it to your further discretion as to whether this request should be considered a modification which might require an additional haring and an amended Order.

Very Truly Yours,

Timothy Kotroco

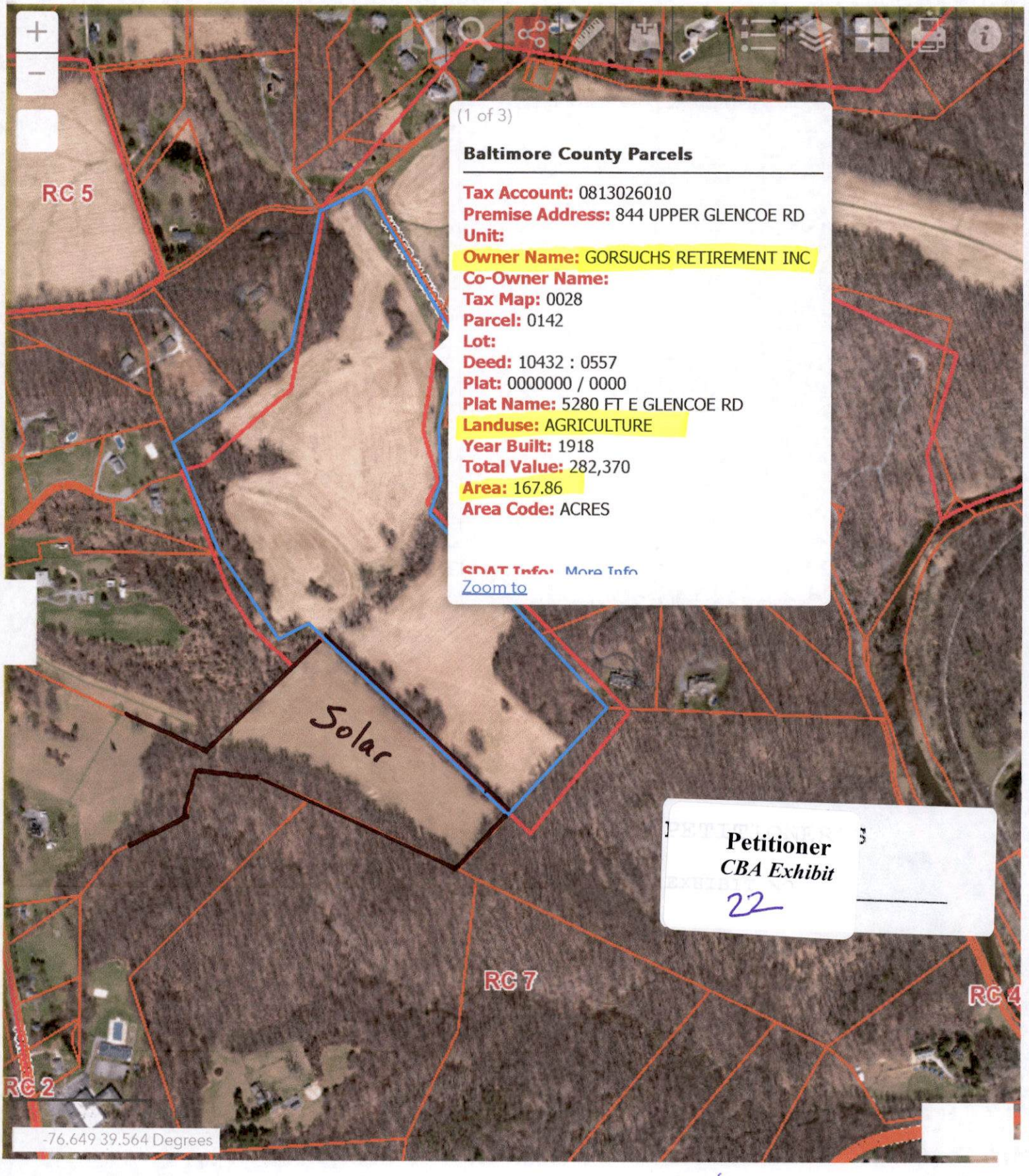
Timothy M. Kotroco

The applicant, ESA Sparks Glencoe LLC shall be permitted to remove any and all trees and shrubs necessary to install their access driveway and telephone poles from York Road to their solar panel facility. This request shall be treated as a clarification and accordingly, the original 30 day appeal period shall apply.

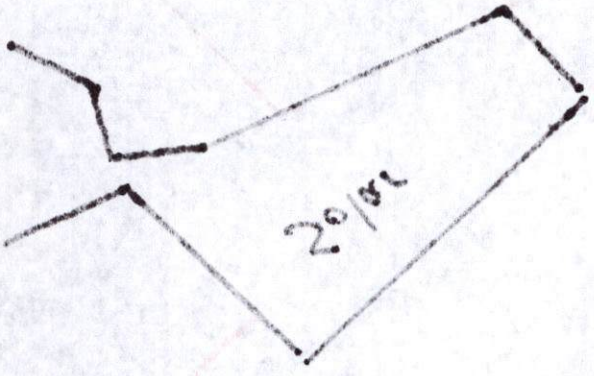
1-16-2018
Date

John E. Beverungen, ALJ

Baltimore County - My Neighborhood



11/28/18 18-047X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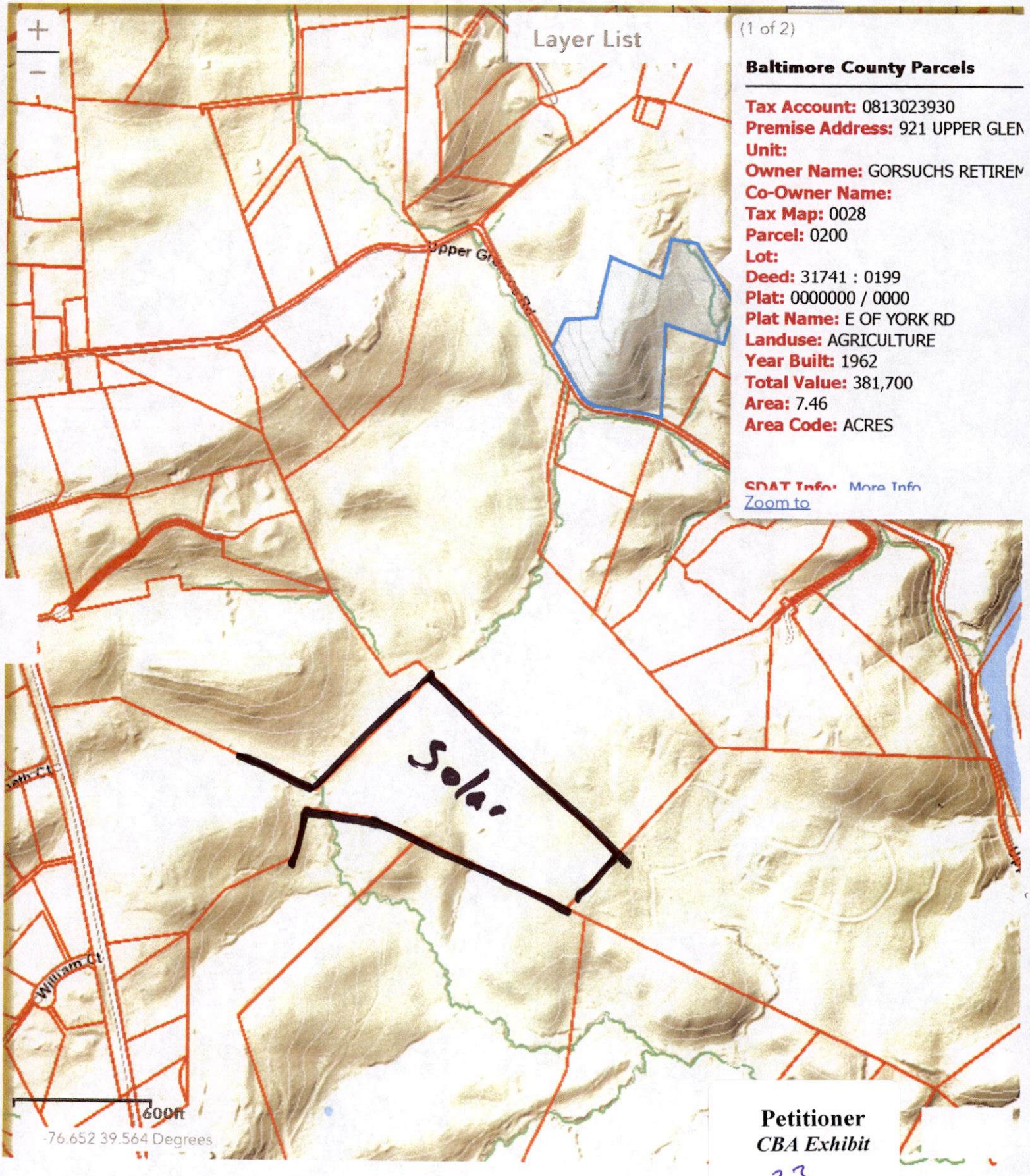
Baltimore County - My Neighborhood



Petitioner
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11/28/18 18-047X

Real Property Data Search (w1)

Search Result for BALTIMORE COUNTY

View Map | View GroundRent Redemption | View GroundRent Registration

Account Identifier: District - 08 Account Number - 0813023930

Owner Information

Owner Name:	GORSUCHS RETIREMENT INC	**Use:**	AGRICULTURAL
		Principal Residence:	NO
Mailing Address:	1311 GLENCOE RD GLENCOE MD 21152-	**Deed Reference:**	/31741/ 00199

Location & Structure Information

Premises Address:	921 UPPER GLENCOE RD 0-0000	**Legal Description:**	7.46 AC NS UPPER GLENCOE RD E OF YORK RD

Map:	Grid:	Parcel:	Sub District:	Subdivision:	Section:	Block:	Lot:	Assessment Year:	Plat No:
0028	0016	0200		0000				2017	Plat Ref:

Special Tax Areas: **Town:** NONE
Ad Valorem:
Tax Class:

Primary Structure Built	Above Grade Living Area	Finished Basement Area	Property Land Area	County Use
1962	1,863 SF	812 SF	7.4600 AC	33

Stories	Basement	Type	Exterior	Full/Half Bath	Garage	Last Major Renovation
1 1/2	YES	STANDARD UNIT	SIDING	2 full		

Value Information

	Base Value	Value As of 01/01/2017	Phase-in Assessments As of 07/01/2017	As of 07/01/2018
Land:	142,400	142,400		
Improvements	193,700	222,600		
Total:	336,100	365,000	345,733	355,367
Preferential Land:	2,400			2,400

Transfer Information

Seller:	**Date:** 02/22/2012	**Price:** $0
Type: NON-ARMS LENGTH OTHER	**Deed1:** /31741/ 00199	**Deed2:**
Seller:	**Date:**	**Price:** $0
Type:	**Deed1:** /06943/ 00564	**Deed2:**
Seller:	**Date:**	**Price:**
Type:	**Deed1:**	**Deed2:**

Exemption Information

Partial Exempt Assessments:	Class	07/01/2017	07/01/2018
County:	000	0.00	
State:	000	0.00	
Municipal:	000	0.00|0.00	0.00|0.00

Tax Exempt: **Special Tax Recapture:**
Exempt Class: AGRICULTURAL TRANSFER TAX

Homestead Application Information

Homestead Application Status: Approved 07/29/2008

Homeowners' Tax Credit Application Information

Homeowners' Tax Credit Application Status: No Application **Date:**

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IN THE BOARD OF APPEALS FOR

BALTIMORE COUNTY, MARYLAND

In the Matter of	:	CASE NO.
ESA SPARKS GLENCOE	:	18-047-X
15637 YORK ROAD	:	

TRANSCRIPTION OF EXCERPT OF PROCEEDINGS FROM AUDIO FILES CONTAINING THE TESTIMONY OF JOHN M. ALTMEYER

BE IT REMEMBERED that the above-entitled action came on for hearing before the Baltimore County Board of Appeals, on Wednesday, August 22, 2018, at 1:14 p.m.

Transcribed by:

Paul A. Gasparotti II

Petitioner
CBA Exhibit
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EXCERPTS OF PROCEEDINGS

(Excerpt begins at 2:48 p.m.)

Whereupon,

JOHN M. ALTMEYER,

being first duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

MR. BELT: Please state your name, your business address for the record, and spell your last name.

THE WITNESS: My name is John Michael Altmeyer, A-L-T-M-E-Y-E-R. Currently I'm a construction consultant. I was employed by Baltimore County for 32-and-a-half years as a building inspector, and the last 14 years I was chief inspector for building, electric and plumbing inspection.

DIRECT EXAMINATION

BY MR. MOWELL:

Q. All right, Mr. Altmeyer, tell me a little bit about your current work, what you say,

Page 3

you are a construction consultant?

A. I do construction consulting work on the east end of the county dealing with flood plain issues. I do construction consulting work in the northern part of the county for new home and office construction. I work with several engineers, and give construction consulting information to residents as well.

MR. BELT: If I could stop you there, is he being called as a fact or expert witness, or both?

MR. MOWELL: Fact witness, yes.

MR. BELT: Okay, so is he a neighbor that lives close to the property?

MR. MOWELL: No.

MR. BELT: Okay.

MR. MOWELL: He was simply asked to, based on his work with the county, to do a slope percentage.

MR. BELT: That's fine. I just wanted to know for purposes, since you were asking about

Page 4

addresses, if he lives close, that would be a necessary fact for the record.

MR. MOWELL: Right.

MR. BELT: Sorry, sir.

THE WITNESS: Okay, that's not a problem. I also give information to community groups seeking information about different classifications of construction. I've done inspections for the county on environmental issues with council people at job sites. Most of that was dealing with water runoffs and issues like impervious surface issues and so on, most of that was done in the 15th and 12th districts.

BY MR. MOWELL:

Q. You'll have to explain where those are.

A. It's down in the Essex, Middle River, Dundalk, and even up on the Route 7 area where we have river and flood plain areas.

Q. In your current work or in your work with Baltimore County, what if any experience have you had with sediment control and stormwater

Page 5

management?

A. Sediment control issues, especially with these solar farms, I've had contact with environmental impact review people, Glen Shaffer and Mike Coles and a couple of the other inspectors over there. Stormwater management people, I did deal with Wally Lippincott over at the planning board and so on in relationship to farm preservation areas and so on that I've done some work with. And basically, it's just a whole myriad of information giving people based on my expertise what I saw for over 32-and-a-half years. I've been basically doing construction probably 50-plus years of my life.

Q. And in that experience, have you had occasion to compute slope percentages on properties?

A. Yes, sir.

Q. Tell us a little bit about that.

A. Basically a lot of times too, we would have issues where we would get inquiries from

Page 6

council people to go out on a job site and evaluate the conditions on a job site versus the grading plans and so on, and a lot of that did require we calculated slopes and so on. And at one time, permits and development management was the enforcement arm for the county, as I'm sure Mr. Kotroco can avow for that. Environmental didn't have the teeth basically to bring violations before a hearing officer, they would come down to our facility and we would coordinate with them, and we would take the leadership and the forefront of taking those cases before a hearing officer for disposition.

Q. Have you become familiar with the MDE guidelines for solar panel installations?

A. Yes, sir.

MR. MOWELL: I believe this was put into evidence by the petitioner, I'm not sure of the number, the MDE stormwater design for solar panel installations.

MR. KOTROCO: Exhibit E, Petitioner's

Page 7

Exhibit E.

MR. MOWELL: All right.

BY MR. MOWELL:

Q. Let me show you what has been marked as Petitioner's Exhibit E and ask if you can identify this document.

A. Yes, sir, I've seen this documentation.

Q. All right. What is it?

A. Basically it's design criteria for solar facilities that were set forth by MDE. Basically, what it basically says is that they're calculating impervious surfaces and so on by only the poles that go into the ground and the roadways that go into the solar facility, the disturbed area where they're going to be putting the fences in and so on. But the solar panels, due to regulations by the state, are not classified as an impervious surface.

It also gives us information on how they would like to see slopes addressed as far as the slopes that are more than five percent, and more

Page 8

than ten percent. Basically what they're talking about, when you have slopes more than five percent but less than ten percent, the design professional can use something, what's called the leveled spreader.

Q. Mr. Altmeyer, let me hold you up there, and I'll ask you to identify another document and then we'll get into that part of it. This will be marked as the next, Protestant's Exhibit Number 4. Let me show you what has been marked as Protestant's Exhibit Number 4 and ask you if you can identify that.

A. Yes, sir. This is some information that I put together about some slopes on the Garner property.

Q. Did we ask you to do that, to go out there, or to compute the slope percentage?

A. Yes, sir. I basically used My Neighborhood to calculate these slopes. I couldn't go out on the property to basically do any kind of research so to speak because I didn't

Page 9

have the ability to go on the property, and I didn't want to get into any trespass issues.

Q. Explain to us what this document shows.

A. Basically this document shows four areas on that property where we have slopes, and if you look at the second page, number one, we have a slope of 13.38 percent.

MR. KOTROCO: I'm going to object. Do you think he could give a foundation as to how he came up with that calculation?

THE WITNESS: Sure.

MR. BELT: Well, I think first it would be helpful if on page one we could identify -- you know, I understand this to be on the Garner property, but where on the Garner property would be helpful as well.

THE WITNESS: Obey.

MR. BELT: And then we can get into how it was calculated.

MR. MOWELL: Okay.

THE WITNESS: Okay. We're talking this

Page 10

area right in here.
MR. BELT: I'm sorry, you have to back up. How about either, is there a way you can show on the aerial map, the colored one?
THE WITNESS: On this one, the colored map you want?
MR. BELT: Yeah.
THE WITNESS: It would be right in this area right in here.
MR. BELT: So the entire page one of your exhibit here --
THE WITNESS: Is basically this swatch right here.
MR. BELT: It would be the cleared out swatch with the woods to the southwest and east, right?
MR. KOTROCO: The record's not going to reflect when he says here.
MR. BELT: I'm trying to do that. So it would be the proposed solar field with the woods to the southwest through east, is that section,

Page 11

the right side of the bowtie as we've been calling it, is what's depicted on page one of Protestant's Exhibit 4.
THE WITNESS: Yes, sir, that was basically taken from -- let me see which one -- from My Neighborhood is where I got this from, and I did compare it with what we have from Mr. Doak's work, and it was basically in coordination with that. Like I said, we have this area right in here where the contours on My Neighborhood definitely show that we have a 13.8 percent slope, and if you turn it over to the first page, you can see where I have a printout of My Neighborhood.
MR. BELT: Okay, but sir, I need to jump in here. The page you just pointed to is actually the third page of the exhibit, right?
THE WITNESS: Yes, sir.
MR. BELT: Okay, and that is for what has been marked on page one as number one.
THE WITNESS: Yes, sir.

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MR. BELT: And do I understand, then, that each successive page then follows, number two, number three, number four?
THE WITNESS: Yes, sir.
MR. BELT: And it corresponds to the numbers that are on the first page.
THE WITNESS: Right. And if you look at the top of like page one where the exhibits are, to verify the footage that I was calculating, it has the footage of 149 feet for a run, and the rise for the difference in elevation was 20 feet. And then basically to calculate that, you divide the run into the rise, and that gave me a .1338, and you multiply that times 100 and that gives you the 13.38 percent. And that's basically the same situation that I used for number two, three and four. I always made sure that I had the footage off of My Neighborhood that was by them, rather than a calculation by myself.
MR. BELT: Okay. So do I understand numbers one, two three and four, if you look at

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page one of that exhibit --
THE WITNESS: Yes, sir.
MR. BELT: -- and you flip to this page, page one?
THE WITNESS: Yes, sir.
MR. BELT: Numbers one, two, three and four, if you were to look on the aerial map, it would be roughly within where the woods are of the proposed solar field, just to the south?
THE WITNESS: It would be over in the solar field itself and then come into the woods area.
MR. BELT: Okay. Sorry to interrupt.
MR. MOWELL: That's all right.
BY MR. MOWELL:
Q. Tell us again -- you have a run here for each number. How did you compute the run?
A. I computed the run by using myneighborhood.com where you can compute length. You basically use the program, get a start and a finish, and then it basically comes up with a

Page 14

number right underneath this black line right here, which is 189 feet. If I may approach?

MR. BELT: Okay.

THE WITNESS: This will give you where I got my distances for my run.

MR. BELT: I think you have to show Mr. Kotroco.

MR. KOTROCO: I think I'm following him. Go ahead, John, you can go up there.

THE WITNESS: Okay. And then also, basically the contour lines is what I got for my rise.

MR. BELT: Right.

THE WITNESS: So that's how I calculated it.

MR. BELT: Right. So for example, even if you go to page one, there's a mark of 410 here, and then you would go to whatever the run is to a particular point.

THE WITNESS: Yes, sir.

MR. BELT: And use ten feet per

Page 15

gradation here, and that's how you'd come up with your run.

THE WITNESS: Yes, sir.

MR. BELT: Okay.

MR. MOWELL: Okay.

BY MR. MOWELL:

Q. So you took four spots, came up with four slope percentages, and what are those slope percentages?

MR. BELT: You can have a seat, sir.

THE WITNESS: Okay. The slope percentages for number one, like I said before, was 13.38 percent. Number two is 15.83 percent, number three is 16.54 four percent, and number four was 7.6 percent. The reason that I showed those marks as slopes on there like that was because the way MDE regulations are, anything that shows slopes over ten percent in areas, they're requiring a grading study. I've talked to some length with EIR about --

BY MR. MOWELL:

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Q. Sorry, you have to explain what that is, EIR.

A. Environmental impact review, in regard to, you know, these situations, and they said that they were mandated by state regulations that they adopted with these, to use these as a guideline for their review.

Q. Actually, let's look at the guidelines then. Do the guidelines talk about what stormwater controls should be used for slopes less than five percent? And we don't have any less than five percent, but what do the guidelines say should be done for less than five percent?

A. Less than five percent, and I know a lot of times they'll use areas like warm season grass plantings and different types of other, you know, floral type plantings, a lot of them which are conducive to like butterflies and bees and so on, that basically have a good root system that won't basically wash out or die over a period of time.

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Q. So, what does the term disconnection mean?

A. A disconnector is an area in between the solar panels where they would have plantings in there that basically would catch the runoff from the solar panels onto the ground and basically slow the amount of exacerbation of the runoff into the area.

Q. What do, and what do the guidelines say for slopes less than five percent, is disconnection all that is required?

A. Disconnectors are something that is required, but there's other methods.

Q. I'm talking about slopes less than five percent.

A. Yes.

Q. Is that all that's required for a slope less than five percent?

A. Yes.

Q. And were you here when Mr. Quinlan testified that that's what he has in mind for his

Page 18

site, which is to let the water run off the panels onto the grass? I don't know if you were here; were you here when he testified?

A. Yes, sir, part of the time.

Q. Okay.

A. You know, the thing that I'm concerned about here is the situation, I think that everybody realizes we got to have some form of alternative energy source, period. Nobody's going to disagree with that. The only thing I think that community organizations and so on are concerned about, that if these facilities are put in, we want to see them put in so that they're not going to do any harm to the environment and so that we don't have any exacerbated runoffs into streams and other areas that could basically impact the environment.

Q. All right. Let me ask you about the stormwater guidelines. So less than five percent, the water can run on, just run off the panels onto the grass?

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A. Yes, sir.

Q. What do the guidelines say about for slopes between five percent and ten percent?

A. Basically what they're doing is they're talking about using what's called a level spreader. A level spreader is basically a trench that's cut in the ground and has stone in there, and what that stone does is actually captures the rainwater and impedes the runoff of the water on the grass area down a hill so that it doesn't, you know, pick up momentum and create more of an exacerbated runoff.

MR. BELT: Would it kind of be like if you have a sump pump and you have a pit with drainage rock in it so it doesn't erode away?

THE WITNESS: Sure. The water would drain into it and then it would slow it up, and then it would, you know, exactly.

MR. BELT: And so it would drain into a trench where the rock is --

THE WITNESS: And be absorbed into the

Page 20

ground, and then if there was any that was over that, it would basically spill over onto the ground and hopefully be taken care of.

BY MR. MOWELL:

Q. Do the guidelines talk about any other control other than the box spreader that you just talked about?

A. That basically is depending upon what would be submitted to environment impact review and stormwater management, to Baltimore County by the engineer that would provide a plan. He would suggest whether they're going to be using, like I said before, some form of warm season grass, if they were going to be using another particular type of flora, and then it would be reviewed by the county EIR and stormwater management for the effectiveness and for the controls, and then they would possibly make comments back to the engineer of record to basically insure that what they were going to put in wasn't going to be creating a problem.

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Q. Do the guidelines talk about terraces, do you know what a terrace is?

A. Yes, sir. When they get into terraces and doing terraces, it seems like it would get into some grading issues and so on. And what I've gathered from going to some of these, you know, hearings on these solar panels, they don't want to really get into too much terracing and so on, because that's a disturbed area.

MR. BELT: Could we go back a second? I have a general idea of what you mean by terracing, but could you explain that for the record?

THE WITNESS: A terrace would be like if you had an area that was coming down, they would grade it out a little bit, and drop down, and drop down.

MR. BELT: Almost like steps.

THE WITNESS: Yes, sir, exactly.

BY MR. MOWELL:

Q. Do the guidelines suggest terraces as a

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way to handle slopes greater than five percent?

A. Yes, sir, that's an alternative measure. Again, it's like I said, that's something that the engineer of record doing the plan would have to come up with, devise a plan, but then a lot of times too, this would trigger over 5,000 square feet of disturbed area, which would require a full-blown grading study, which can be expensive.

Q. Are you saying they don't like to do terraces?

A. Right. And I mean, you know, face it. I mean, anybody that's doing a project doesn't want to throw money away, they want to try to do it as cheap as possible.

Q. How about berms, do you know what a berm is?

A. Yes, sir.

Q. What is a berm?

A. A berm is an area where they have would have, you know, like some slopes up that would slow the water run down, and then it would come

Page 23

down again.

Q. Does that involve dirt work as well?

A. Yes, sir.

Q. Is berm another method of control for slopes greater than five percent?

A. It would be -- it could possibly be effective. It would be depending, again, on how it was installed and you know, the height of the berm and the length of it and so on. That may require, if we're using berms, to get hydraulic calculations.

Q. And you in your study, you only found one slope that is under ten percent, that's between five and ten percent, you found one at 7.6 percent?

A. Yes, sir.

Q. And the other three are over ten percent. What do the guidelines say about a slope over ten percent where solar panels are going to be installed?

A. Over ten percent, it would require that

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we have a full-blown grading study that would be submitted to stormwater management.

Q. Do you know what kind of controls could be used to control runoff when panels are installed on slopes greater than ten percent?

A. They could basically put situations in like a stormwater management pond, there's different measures they could go with, but like I said, it depends on the engineer of record when he would be working with his clients to figure out what he would consider the most cheapest and effective way of handling it, because what they would have to do, I would think at first, would be to calculate the amount of water runoff of each solar panel, and then basically use those calculations along with the topographics of the property to come up with an adequate means of enforcement, or not enforcement, but, let me try to think of a good word here.

MR. BELT: Design?

THE WITNESS: Yes, sir, it would be a

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good thing, a good way to minimally take care of the water runoff without a large expense to them. I mean, that's basically part of an engineer's job, is to try to do something for his clients that's cost effective and that is also code compliant.

MR. MOWELL: Mr. Altmeyer, that's all I have. We would like to offer his exhibit into evidence.

MR. BELT: Mr. Kotroco?

MR. KOTROCO: I'm going to object to the --

MR. BELT: We're doing the document.

MR. KOTROCO: Yeah, I'm going to object to the exhibit.

MR. BELT: On what basis?

MR. KOTROCO: I would have preferred it would show the area where the solar panels are going to go, it doesn't. This appears, from what I understand from Mr. Altmeyer, to be the outline of the perimeters of the property.

Is that correct, Mr. Altmeyer, it's the outline of the perimeter of the property?

THE WITNESS: Yes, sir.

MR. KOTROCO: Not where the solar panels are going to go.

THE WITNESS: See, what you can do is look basically on this particular plan right here, you can see right in here where like Exhibit Number 1 is, where it comes down and it runs down.

MR. BELT: Mr. Altmeyer, let's do this. I'm going to give you a pen. Could you put on the marked up one --

MR. MOWELL: Can I give him a red pen?

MR. BELT: That's fine, that's much better. I didn't have a red pen available here, so thank you. Could you mark the area, one, two, three and four?

THE WITNESS: Here is one.

MR. MOWELL: Is that writing okay?

THE WITNESS: Two would be this area

right in here, three would be this area, and four is here.

MR. BELT: Recognizing this is an estimate based on your comparing your exhibit to 1-A, you drew it as best as you could.

MR. MOWELL: Is that a fair assessment?

THE WITNESS: Yeah, I think that looks pretty close.

MR. BELT: That's a fair assessment?

THE WITNESS: Yes, sir.

MR. BELT: Okay. So with respect to your objection, Mr. Kotroco?

MR. KOTROCO: I'm still -- I mean, it's -- I guess my objection is the lack of detail or exactness of his calculations, that's the point of the objection. It was difficult do follow, I think I followed him, I'm going to ask him a couple questions about it.

THE WITNESS: Sure.

MR. BELT: I think that's going to go to the weight of the testimony.

MR. KOTROCO: Okay, that's fine.

MR. BELT: Or the weight to be given to this document as opposed to whether or not it should be admissible, so we'll admit it.

MR. KOTROCO: All right, thank you.

MR. BELT: All right, go ahead.

CROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Mr. Altmeyer, what were the years in which you worked for Baltimore County?

A. What years?

Q. What years, yeah, when did you start and when did you retire?

A. I started working for Baltimore County in 1977 and I worked there until 2008, 2009 rather, excuse me.

Q. Did you work for Mr. Kotroco when he was the department head?

A. I certainly did.

MR. KOTROCO: Don't get into too much of that.

THE WITNESS: I worked for him especially during the Hurricane Isabel incident.

BY MR. ZIMMERMAN:

Q. You and I haven't talked about your exhibit or the details of anything that you testified about, have we?

A. No.

Q. So I want to ask you some questions and if you don't know the answer, just let me know.

A. Certainly.

Q. I'm looking at Protestant's Exhibit 4. Now we've heard that the solar panels are going to kind of face south, right?

A. That's what I understand.

Q. Do you know enough to tell us based on your review of the slopes, that any water coming off these panels for the most part is going to be heading south, southwest, or what direction, what direction, can you tell us that?

A. I haven't really thought about that because a lot of the runoff on the panels, for

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one, is going to be determined by the amount of rain that's coming down and the wind factors involved with the rain, because we have got some real crazy storms up in the northern part of the county this year where I've seen water running in places that I've never seen it run before.

Q. And that's the same for the central part of the county?

A. Yes, sir.

Q. Let's, as a baseline, let's suppose it's not a windy day, but it rains.

A. Okay.

Q. Can you give us a ballpark estimate based on what you see on your exhibit as to the general direction of the water runoff?

A. Again, like I said, that would be hard for me to do it, because I don't know the hydrology of how much water comes off of each panel from the rain.

Q. Okay. Forgive me, but I'm not asking you about the amount of runoff, I'm just asking

Page 31

you which way does the land slope down. The land does slope downwards, does it not?

A. Yes, sir.

Q. And correct me if I'm wrong, but does your exhibit more or less show a stream area offsite?

A. It doesn't show the stream area.

Q. It doesn't?

A. No.

Q. Okay. Well, at this point, are you trying to tell us that there's, you're uncertain as to any proof that the stormwater will be handled in the right way?

A. What I'm trying to say is I think it would be a worth a second look by the environmental department when they would be reviewing this site to take a look at these grades on, and slopes on this property as they will do in a field visit, and incorporate their data in with their final decisions on what they're expecting to see on that property.

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Q. Is there any reason why some preliminary evaluations could not have been done as to --

A. Preliminary evaluations --

MR. BELT: Let him finish his question before you answer.

THE WITNESS: Okay.

BY MR. ZIMMERMAN:

Q. Is there any reason why preliminary evaluations could not be done as to generally what we're looking at here?

A. Well, they haven't applied for permits yet and they won't do any preliminary evaluations of the site until, you know, the site plans are submitted with the application for a permit.

Q. You're not an expert on what's required for a special exception, are you?

MR. MOWELL: You asked him.

MR. KOTROCO: It sounds like he is. It sounds like it to me.

BY MR. ZIMMERMAN:

Q. I mean, look, Mr. Altmeyer, it sounds

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like as far as you're concerned, no big deal here?

A. I'm not saying it's no big deal. I'm saying I think, I think it is something that needs to be well considered, and the thing that I haven't heard from any of these solar companies is the fact that yeah, we do have these steep slopes and we may address it in this particular fashion or this fashion. I haven't heard any of that from any of them and it's kind of, I'm not going to say it's disturbing, but it kind of raises a flag up to me.

Q. Okay.

A. I mean, I think that, you know, the constituents and I think the council should realize that it's nice to have, you know, alternative forms of energy and so on, but a lot of times, I think it would be an advantage if they took a second look at it rather than jump on a bandwagon and just want to approve it.

Q. I don't want to misunderstand what

you're saying, but from your perspective, would it be feasible to get a ballpark expert understanding and evaluation of the situation, rather than coming in and saying we'll take care of everything later?

MR. MOWELL: I'm going to object. It's, I don't know if that's a question or if it's just testimony that Mr. Zimmerman is giving. I'm not sure what the question is.

MR. ZIMMERMAN: Well, it is a question.

MR. BELT: Why don't you ask it again please.

BY MR. ZIMMERMAN:

Q. For you to get a sense of what's going on on this site given the topography and what you've shown, would it be reasonable at this juncture in your view for the petitioner to have provided us with a ballpark idea or concept at least, of where they think they can handle the stormwater?

A. That would sure be definitely an

advantage. I think it would answer a lot of questions from people and I think it would put a lot of community organizations at rest with what we have out there on these sites, because you know, I think in talking to some of the community organizations along with knowing how the county system works and so on, I think they're just looking for some assurance that if these are put in, they're going to be put in in accordance with the regulations that, you know, MDE wants, but they also have to realize too that Baltimore County has the ability to modify regulations, as I'm sure you all well know. They can modify regulations to suit basically the situation we have.

Most of these regulations by MDE were basically, came from the Eastern Shore. The Eastern Shore is nothing but flat, flat and more flat. Up here we don't have that up in the northern part of the county, we have rolling sloped terrains. None of these regulations here

outside of the over ten percent, addresses that.

Q. Are you ready for another question?

A. Yes, sir.

Q. On this property here today based on what you've heard so far in this case, do you have any clue as to how the petitioner is going to handle it, other than they say they're going to comply with the regulations?

A. No, sir, I can't make a speculation on nothing without evidence.

MR. ZIMMERMAN: Thank you, that's all I have.

CROSS-EXAMINATION

BY MR. KOTROCO:

Q. So Mr. Altmeyer, as you mentioned, if an engineer of record does all these calculations like you've done, puts them on a plan and seals it, turns it in to Baltimore County and the county approves it, you would be okay with that?

A. If he shows how they're going to contain the runoff.

Q. Correct, if all that's shown on a plan and the county likes it, approves it and says we like it, would you be okay with that?

A. If they made the field visit along with it?

Q. Right.

A. Sure. I think people would be more, more satisfied with it.

Q. Right. And that's all got to be done before you go get a permit to put them in?

A. When you apply for a permit, that's got to be in the package of drawings with the solar array, and also with the site plans.

Q. And that's the way we did it when we worked together at the county?

A. Yes, sir.

Q. Okay, and I was your boss for eight years?

A. Right.

Q. You were there longer than I, 30-some, how many years?

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A. 32-and-a-half.

Q. Okay. Have you testified in other solar cases yet, is this your first one testifying?

A. I basically am involved with the one on Freeland Road and so and on, and I have to testify yet on that. I haven't gotten up to testify yet.

Q. Okay. You live close either to the one on Freeland Road?

A. It's right next to my house.

Q. Okay. But there are some other parts of this site that are pretty flat, you just looked at the ones that were the steepest; is that right?

A. I looked at the ones where I thought there was going to be a runoff, and then from what I understand was a stream area down there. I didn't have any drawings to verify the fact of the stream, and I didn't, couldn't make a site visit because I didn't want to trespass.

Q. No, okay, I understand that you did the

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best you could with My Neighborhood, clicking on it with the distances.

A. That's for sure.

Q. I've done the same thing, okay.

And I just would like to ask you a couple other questions. Well, you didn't work in the stormwater management department at the county, did you?

A. I enforced stormwater management regulations.

Q. Yeah, you enforced them, but you always were in the buildings and permits?

A. I was always in the building end where we basically had the enforcement arm.

Q. Right. And I'm not trying to be tricky here, but I know we were friends and we worked together?

A. Sure.

Q. Were you always in the building inspections department?

A. Yes, sir.

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Q. You were, okay.

A. And I also was on the emergency response team for 14 years with the fire and police department.

Q. Yes, I remember that. I guess the last question, when we worked together, were you sitting down in the basement calculating stuff, doing these kinds of plans down there? You did?

MR. BELT: Is that a yes?

THE WITNESS: Yes.

BY MR. KOTROCO:

Q. Okay. I didn't know you were doing that down there, that's fine.

A. When environmental came down to us and they wanted to get prosecution or get cases presented between either you or Lawrence Smith, a lot of times I had to do things like that, to offer them as exhibits.

Q. Well, I miss those days, Mr. Altmeyer, I enjoyed working with you.

A. I enjoyed working with you too.

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MR. KOTROCO: Okay. No further questions.

MR. BELT: Mr. Mowell, any redirect/TKPREBGT.

MR. MOWELL: Yes, I'm a little confused.

REDIRECT EXAMINATION

BY MR. MOWELL:

Q. Is it your testimony that you think that the, at this stage the petitioner should explain how he intends to handle stormwater and have an engineer approve a plan when the permit is pulled, or do you think it's good enough just to let, wait until the permit gets pulled?

A. When the permits are applied for, he has to submit an engineered drawing with it as to what they're going to be doing for the runoff with this. At that particular time stormwater management and environmental impact review would go out on the site and take a look at the site. I talked to Jim Markle about this over at stormwater management, I talked to Glen Shaffer

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and a couple other people over at environmental impact review, and when that would get submitted with the drawing, with the package for permits, they would go out on the site and look at it. They would then basically make recommendations back to the engineer of record as to whether they approved what they were suggesting or whether it needed further remediation for the water runoff or containment of water runoff.

Q. That's after we get through this process. Are you content with that process to control stormwater or would you like to hear here how the petitioner intends to handle stormwater?

A. I think it would be good --

MR. KOTROCO: Can I object? I think he's already answered that, he's already given his opinion on that.

MR. BELT: Yeah, I think he has given his opinion, but I also don't know how relevant that is to this proceeding as to where he believes it should fit in with within the system.

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The question in my mind is, there's a process in place that will yield the same protections that he has concerns about, and that's what I think the ultimate question is.

MR. KOTROCO: Right.

MR. MOWELL: Can he answer that question?

MR. BELT: Sure.

MR. KOTROCO: It's his question. I won't object to that.

THE WITNESS: I would think that it would be in the interest of a better rapport with the community, so to speak, to have that information, or at least a preliminary submitted for a perusal of the constituents in the area. I think it would give people more of a relaxed view of what's going to happen, because a lot of people, to be blunt, think that we're getting this shoved down our throat without any recourse. I'm not going to pull any punches, that's basically, I've heard that a lot.

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I've heard one person in one county agency say well, zoning is decimated where I live at, now it's your turn. I'm going to tell you, that's -- I'm not -- I would swear on a stack of bibles to that, and what can I say?

Q. Do you think it would help the Board too, to know how the petitioner intends to handle stormwater in making their decision about whether to approve or disapprove the plan?

MR. KOTROCO: I object to the leading nature of the question.

THE WITNESS: Well, my own thoughts --

MR. BELT: Just a second. Mr. Mowell, can you rephrase the question?

BY MR. MOWELL:

Q. What if any benefit do you think it would be to the Board in rendering its decision to know how the petitioner intends to handle stormwater on the property?

A. I think it would give everybody on the Board a lot better of an idea rather than not

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seeing anything at all, because it would make you understand when you look at this particular form from the MDE regulations --

MR. BELT: You're referring to Petitioner's Exhibit 8. Go ahead.

THE WITNESS: That would give you a better idea of what they're going to try to accomplish by putting these control measures in because you know, face it, I mean, everybody's not an architect, everybody's not an engineer, but the thing I have it is you present it in a way that, you bring it down on a level to where people can understand what's going to take place and how it's going to help to contain the issues to be compliant, because I think nobody wants a situation where we're calling up, not MDE, but environmental impact review and saying we got a tremendous runoff from that rain last night, what are you going to do about it? And then, you know, typically, maybe one of the answers you might get was well, last night it was a kind of

unusual rain, what do you expect?

I'm just saying, I think we need a little bit more of a full disclosure all around as to what's happened here, and to realize that these MDE regulations were basically tailored not for this area of the state, but for more down on the Eastern Shore where it's flat. They don't have the runoff issues that we have up here, and the one thing that we have up here too is, we have an area up here, like for instance Prettyboy Reservoir that supplies over 60 percent of the drinking water for Baltimore City and Baltimore County, and it is a concern for people.

We have other areas where we have native trout species in some streams. We're wondering about the exacerbated effects of the water runoff and is it going to raise the water temperature to kill these trout which need roughly at a maximum of 68 degrees to live in.

MR. BELT: Mr. Mowell?

MR. MOWELL: Thank you, Mr. Altmeyer.

No further questions.

MR. ZIMMERMAN: Just quickly.

RECROSS-EXAMINATION

BY MR. ZIMMERMAN:

Q. Do you know, Mr. Altmeyer, this is the last time there will be any public hearing on this project?

A. Yes.

MR. BELT: Thank you. That's all I have.

MR. KOTROCO: No questions.

MR. BELT: Okay. You can step down, sir. Thank you.

THE WITNESS: Thank you for your time.

(Witness excused and the excerpt concluded at 3:25 p.m.)

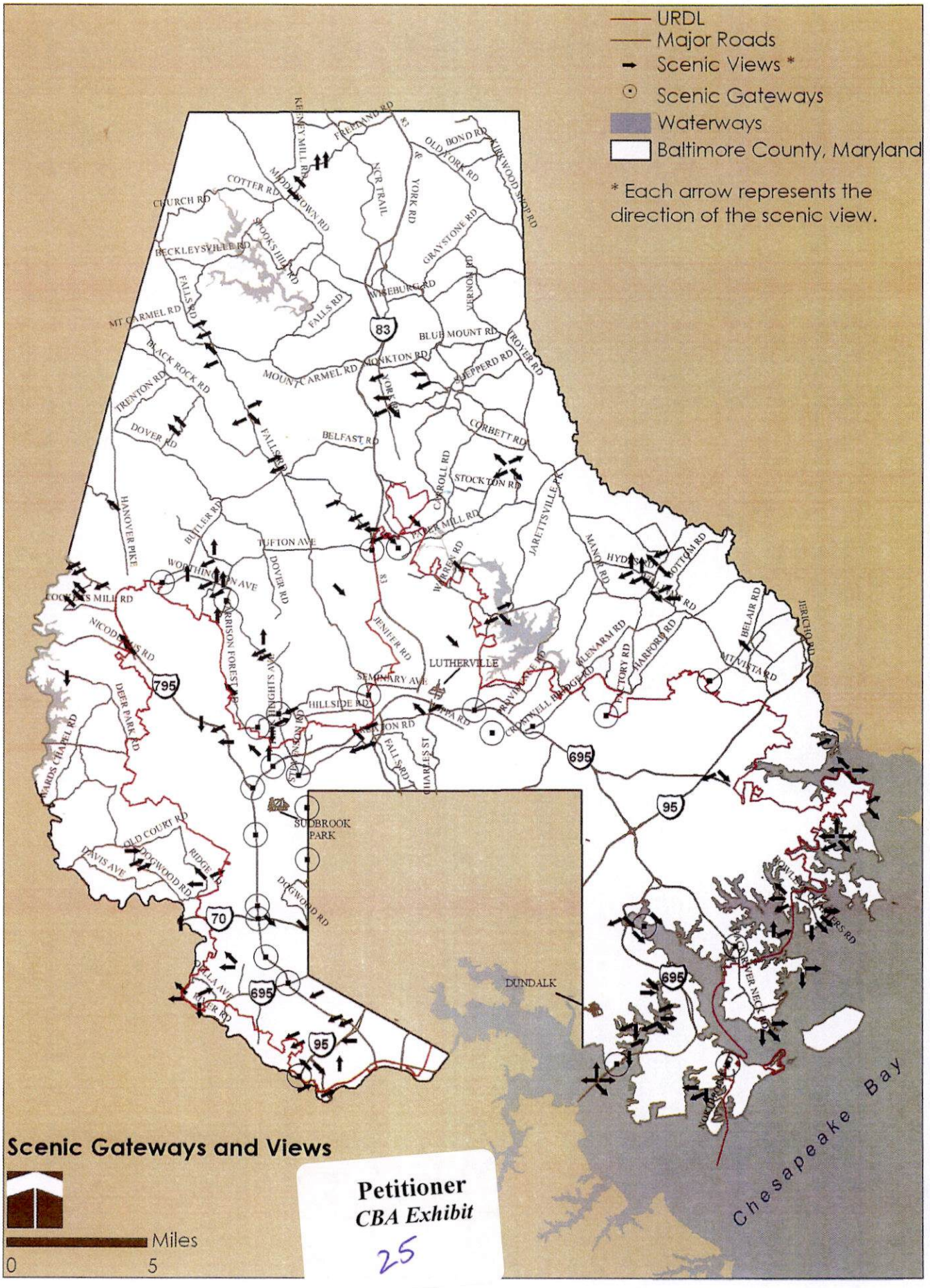
TRANSCRIBER'S CERTIFICATE

I, PAUL A. GASPAROTTI, II, Notary Public, hereby certify that I transcribed from audio file the proceedings to the best of my ability in the foregoing-entitled matter; and I further certify that the foregoing is a full, true and correct statement of such proceedings and a full, true and correct transcript of the audio file produced.

IN WITNESS WHEREOF, I have subscribed my name on October 23, 2018.

PAUL A. GASPAROTTI, II
Notary Public - Maryland
My Commission Expires
September 3, 2019

11/28/18 18-047X



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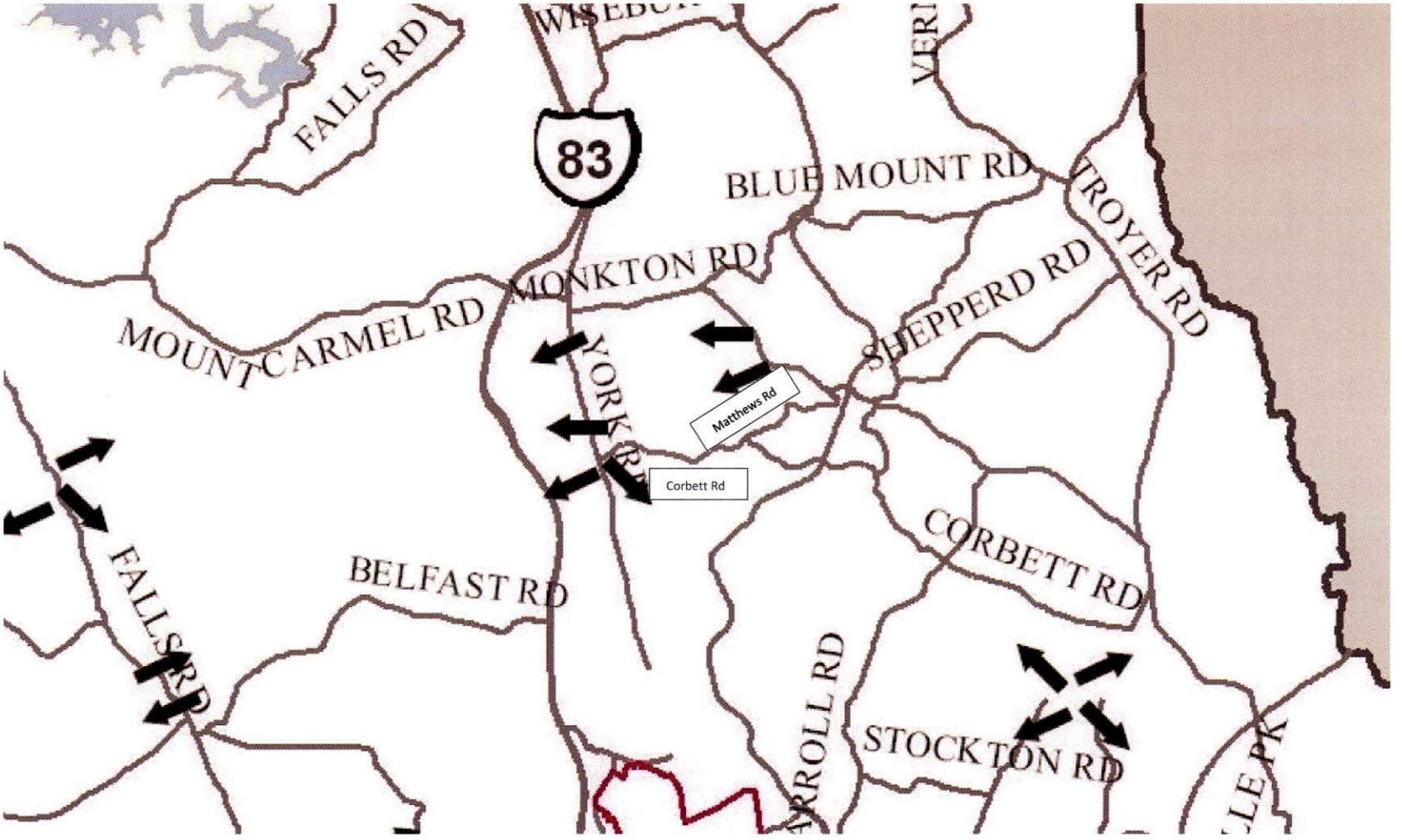
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83
BLUE MOUNT RD
TROYER RD
MONKTON RD
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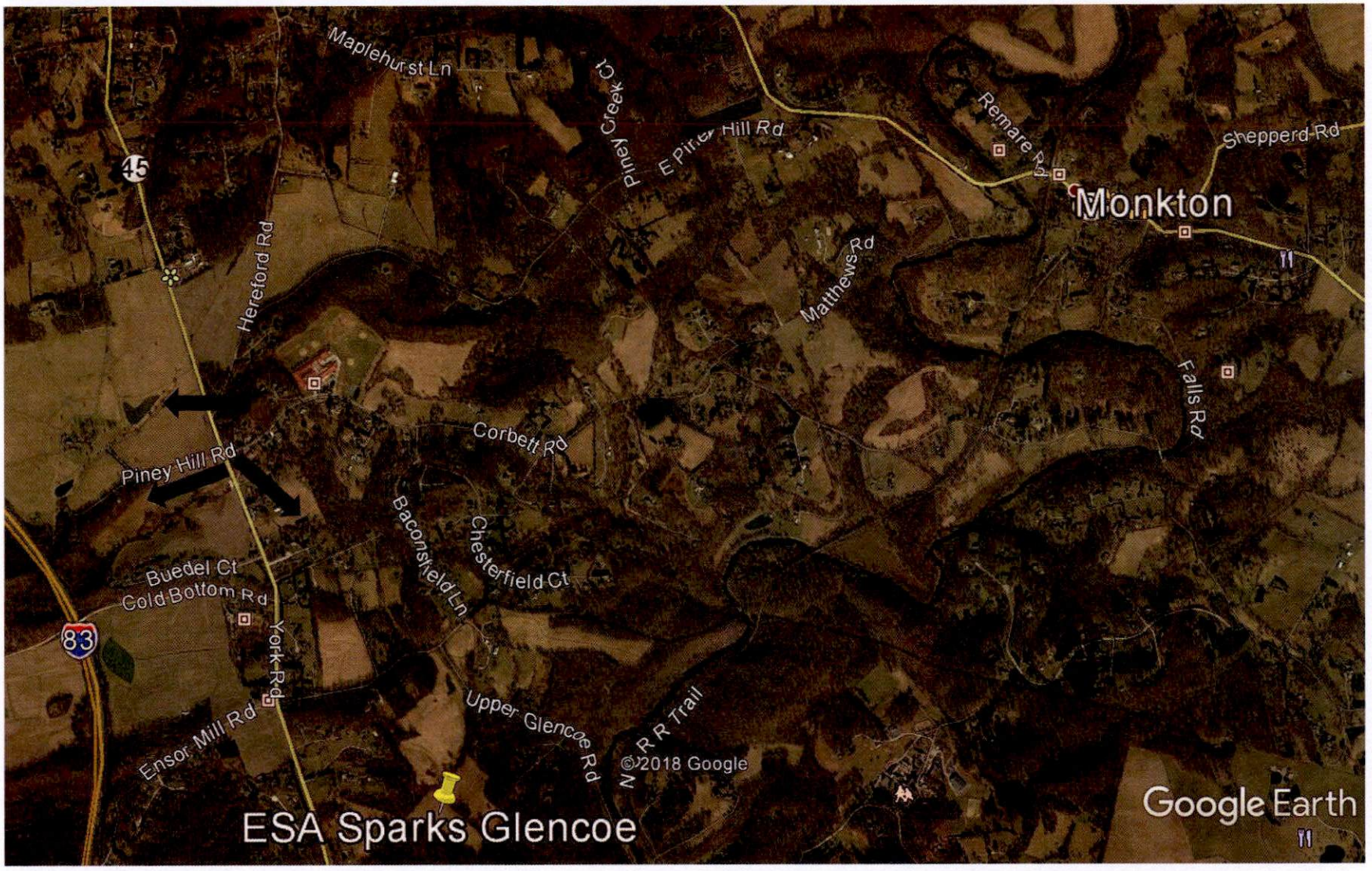
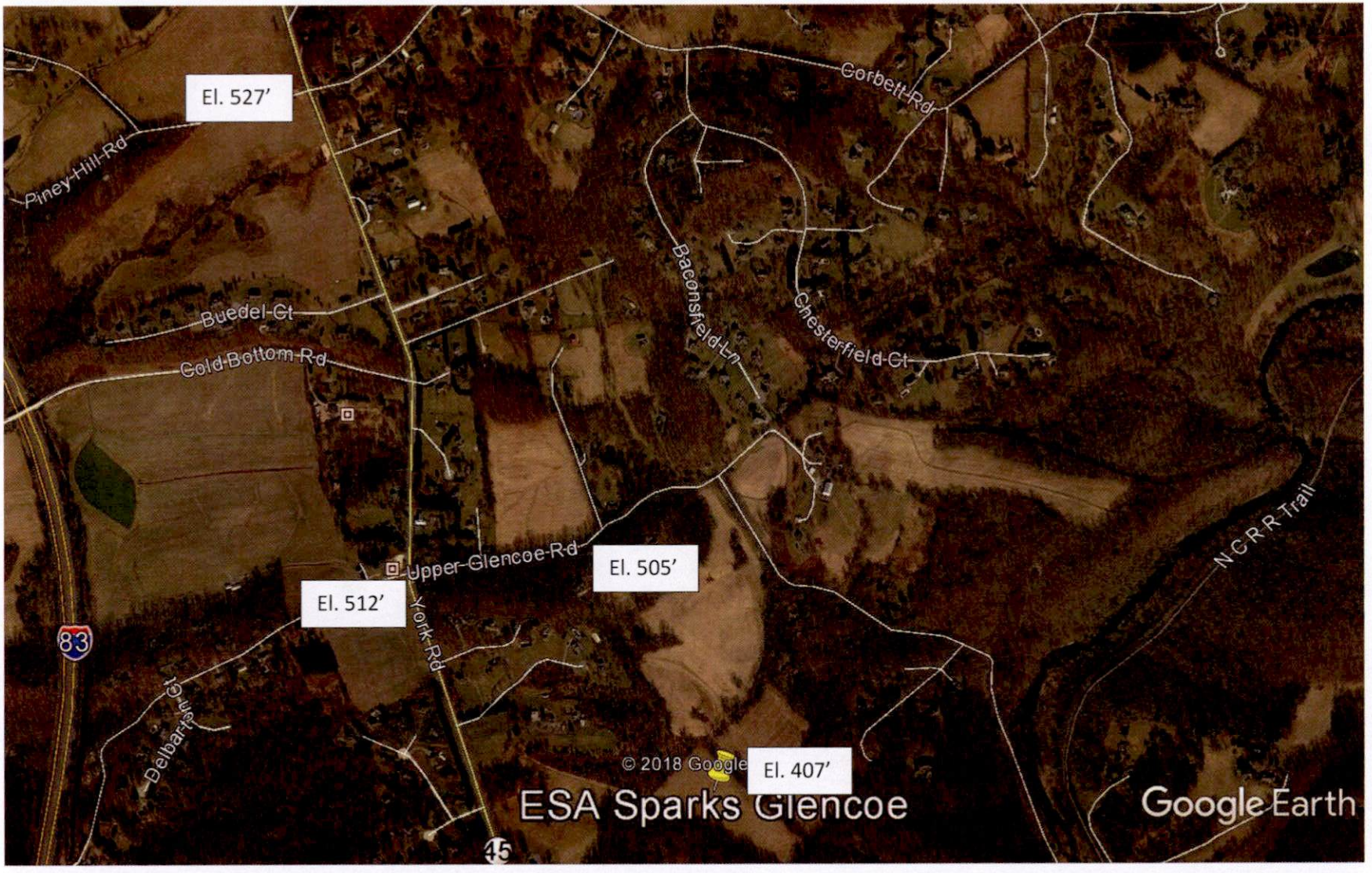
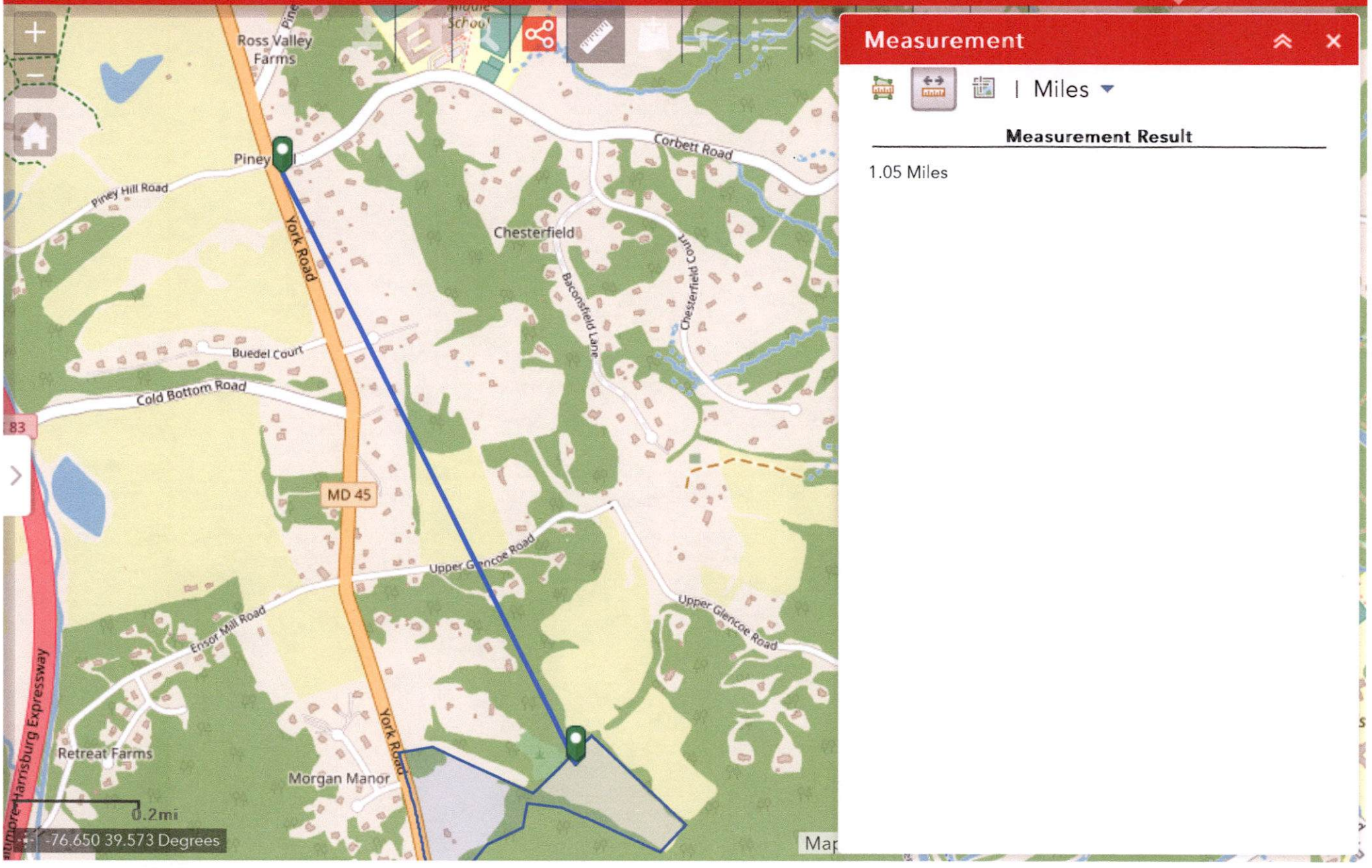
FALLS RD
BELFAST RD
CORBETT RD
STOCKTON RD


Maplehurst Ln
Piney Creek Ct
E Piney Hill Rd
Remare Rd
Shepperd Rd
Monkton
45
Hereford Rd
Matthews Rd
Falls Rd
Corbett Rd
Piney Hill Rd
Baconsfield Ln
Chesterfield Ct
Buedel Ct
Cold Bottom Rd
83
York Rd
Ensor Mill Rd
Upper Glencoe Rd
NCR Trail
©2018 Google
ESA Sparks Glencoe
Google Earth


El. 527'
Piney Hill Rd
Gorbett Rd
Baconsfield Ln
Chesterfield Ct
Buedel Ct
Cold Bottom Rd
Upper Glencoe Rd
El. 505'
El. 512'
York Rd
N C R R Trail
83
Delbarton Ct
© 2018 Google
El. 407'
ESA Sparks Glencoe
Google Earth
45

Baltimore County - My Neighborhood



View from corner of York Road and Corbett Road looking southeast. It is 5,450 feet (1.05 miles) from the intersection to the site.

Subject: FW: Freshwater Fisheries Data request form
Date: Wednesday, November 28, 2018 at 7:37:32 AM Eastern Standard Time
From: Timothy M. Kotroco <tkotroco@gmail.com>
To: Timothy Kotroco <tkotroco@gmail.com>

From: Mark Staley -DNR- <mark.staley@maryland.gov>
Sent: Tuesday, November 27, 2018 3:21 PM
To: brian@calvertenergy.com
Subject: Re: Freshwater Fisheries Data request form

Brian,

We (Freshwater Fisheries) have no data on the un-named tributary to the Gunpowder Falls that flows through the property at 15637 York Rd, Sparks, MD.

Wild trout (brook and brown) are found in tributaries surrounding your project site watershed, therefore we would ask that you proceed in your site planning as if trout occur on your property.

The Gunpowder Falls downstream of your project site is managed as a put and take trout stocking area, We stock 5000 adult size trout into the river each spring. This is a very popular and heavily used recreational fishery.

Any measures you can take to reduce or eliminate warm water discharges or heating to the tributary will benefit trout. Controlling sediment inputs is equally important.

Mark

On Tue, Nov 27, 2018 at 2:52 PM Brian Quinlan <brian@calvertenergy.com> wrote:

> Mark – I hope that you had a nice Thanksgiving. I wanted to see if you had any feedback on our fisheries request or other feedback on our request for DNR feedback at the site. We have a hearing tomorrow so any information that you could provide would be greatly appreciated. Thanks.
>
> Brian Quinlan
> President/CEO
> Calvert Energy LLC
> brian@calvertenergy.com
> (301) 208-0153
> (301) 367-9131 (cell)
> www.calvertenergy.com

Petitioner
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11/28/18 18-049X

From: Brian Quinlan <brian@calvertenergy.com>
Sent: Thursday, November 15, 2018 8:23 AM
To: 'Mark Staley -DNR-' <mark.staley@maryland.gov>
Subject: RE: Freshwater Fisheries Data request form

Mark – I filled out the google docs form, but it doesn't get to a specific location. I have attached a copy of the letter that I sent in to DNR that provides more detailed information. I would appreciate any feedback that you could provide on streams surrounding the site and fishery information that we should be aware of in our development process. Thanks.

Brian Quinlan
President/CEO
Calvert Energy LLC
brian@calvertenergy.com
(301) 208-0153
(301) 367-9131 (cell)
www.calvertenergy.com

From: Mark Staley -DNR- <mark.staley@maryland.gov>
Sent: Wednesday, November 14, 2018 9:32 AM
To: brian@calvertenergy.com
Subject: Freshwater Fisheries Data request form

https://docs.google.com/forms/d/e/1FAIpQLSewsll3QWBHsoHZtynwL9gZJlK2GsFYctxGwrr6TCvWrbDH8g/viewform

The google doc form will result in a query of our Freshwater Fisheries data which is focused on gamefish like trout and bass.

Maryland Biological Stream Survey also compiles data on stream ecology more focused on the entire biological community. They also have a data request system and a public GIS based map of some of their data See link below:

https://geodata.md.gov/streamhealth/

--

Mark Staley
Central Region Manager
Freshwater Fisheries Program
Fishing and Boating Services
Department of Natural Resources
17400 Annapolis Rock Rd
Woodbine, Maryland 21797
410-442-2080 (office)
mark.staley@maryland.gov
dnr.maryland.gov

ISO 9001:2008 CERTIFIED
ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS
936 Ridgebrook Road • Sparks, MD 21152 • Phone 410-316-7800 • Fax 410-316-7885

November 19, 2018

SENT VIA EMAIL: brian@calvertenergy.com

Mr. Brian Quinlan
President and CEO
Calvert Energy, Inc.
12921 Buckeye Drive
Gaithersburg, MD 20878

RE: KCI Technologies, Inc. Scope of Work and Cost Proposal
Engineering and Environmental Studies - Sparks-Glencoe Solar Site

Dear Mr. Quinlan:

KCI Technologies, Inc., (KCI) is pleased to submit this scope of work and cost proposal for the above-referenced project. We understand that various engineering and environmental permitting support services are required for the development of a solar array on a 30.7-acre parcel in Baltimore County, Maryland.

SCOPE OF SERVICES

KCI understands that the following tasks are required for final approval of the proposed solar facility:

- Detailed topographic survey of the project site and surrounding area, including property boundaries;
- Concept-level Development Plan (includes stormwater management concept plan and public hearing)
- Forest Stand Delineation, Forest Conservation Plan and Associated Worksheets;
- Wetland and Stream Delineation;
- Forest Conservation Plan and Associated Worksheets;
- Steep Slopes and Erodible Soils Evaluation;
- Forest Buffer Easement (FBE) Limits Evaluation (in accordance with Section 330-3-111 of the FB Law);
- Final Engineering Drawings, including:
    - Stormwater Management;
    - Erosion and Sediment Control;
    - Landscaping;
    - Standard notes regarding non disturbance and protective covenants;
- A right of way plat to record any Forest Buffer Easements and/or Forest Conservation Easements;
- An Alternatives Analysis for any impact to the forest buffer (solar panels do not count as utilities, only transmission lines to and from);
- Applications for any requested variance to the Forest Buffer Law, and/or Forest Conservation Law, if required;
- Pre-Application meeting with Maryland Department of the Environment and US Army Corps of Engineers to review wetland and waterway boundaries and discuss potential impacts;
- Joint Permit Application for wetland and waterway impacts (will include a public hearing);
- Mitigation design for onsite wetland creation (if permanent impacts cannot be avoided);
- Hydrology and Hydraulics studies for any necessary culvert improvements.

Petitioner
CBA Exhibit
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18-047X 11/26/19

COST PROPOSAL

KCI will provide the services outlined in this Scope of Work for a total Lump Sum Fee of $ 365,000.00. This fee includes all labor and materials necessary to complete the above-referenced scope of work. The following task breakdown is provided for your consideration:

	TASK NAME	ESTIMATED COST
1	Detailed Land Survey, Including Property Boundary	$ 32,000.00
2	Phase I Plans (Concept Level Development Plan)	$ 95,000.00
3	Review Agency Correspondence (RTE Letters)	$ 500.00
4	Natural Resources Inventory (Wetlands, Forests)	$ 7,500.00
5	Steep Slopes, Erodible Soils, & Forest Buffer Analysis	$ 6,000.00
6	Pre-Application Meeting with MDE and USACE	$ 1,500.00
7	Joint Permit Application to MDE & USACE	$ 14,000.00
8	Forest Conservation Plan	$ 8,500.00
9	Phase II Plans (Construction Documents)	$ 125,000.00
10	Wetland Mitigation - Preliminary & Final Design (If Required)	$ 75,000.00
	ESTIMATED TOTAL	**$ 365,000.00**

CONCLUSION

KCI welcomes the opportunity to support Calvert Energy on this project. Please do not hesitate to contact me if you have any questions or require additional information before issuing a Notice to Proceed.

Very truly yours,
KCI TECHNOLOGIES, INC.

James E. Deriu
Vice President
Natural Resources Management

Direct Dial: 410.316.7865
Email: james.deriu@kci.com

ACCEPTANCE

Calvert Energy, in consideration of the terms and conditions of the Proposal and General Provisions which are fully set forth herein, does hereby accept this Proposal and General Provisions as the complete and final Agreement with KCI Technologies, Inc. for the performance of the Work described herein, and does hereby further agree to comply with all the covenants in this Agreement.

ACCEPTED BY:

_____
Signature

_____
Printed Name

_____
Date

Board of Appeals

Case No: 18-047-X Case Name: Robert Gerner

Exhibit List

Party: [redacted] Protestant Date: 8/21/18

Exhibit No:	Description:
✓ 1	Maryland Business Express - ESA Sparks Glenco, LLC
✓ 2	- Small Site Plan / Aerial - 6840 pdf
✓ 3	Balto. Co. 33-3-108
✓ 4	Slope Info from Altmeyer
✓ 5	Rule 8 - Sparks Glencoe
✓ 6	8/20 Letter from Sparks Glencoe
✓ 7	502.1
✓ 8	Section 1A08. R.C7
✓ 9	32-4-413 - 32-4-414 - Floodplain & Wetland Protection
✓ 10	8/1/18 Letter to John Tower from Planning Board
✓ 11	2020 / Master Plan / Scenic Resources
✓ 12	Scenic Roads + Byways Map / ADC
✓ 13	USDA - Definition of Prime Farmland
✓ 14	Farmland Conservation Map of Site
	VERIFIED BY KC DATE: 10/25/18

KC 8/21/18

KC 8/23/18

10/24

Board of Appeals

Case No: 18-047X Case Name: Gernir

Exhibit List

Party: Protestant Date: 10/24/18

Exhibit No:	Description:
✓15	Class III Trout Stream Map / ID only
✓16	Tops - Map of Propts in My Neighborhood
✓17	- Map - g Areas / Key
✓17a	Photo - of Green Grass - Spring Head + Slope Runoff
✓ b	Woods / Pond - covered with leaves / Photo
✓ c	Photo - - "Open area would be solar array" - Hydro-Channel
✓ d	Photo - Stream / Gorsuch Road property
✓18	WBAC - Flood Photo / ID only
✓19	Maps of Watersheds / Key
✓19a	- Photo / Road, Tank / Trees / - Green Grass
✓19b	Green field to Right - area of proposed Array Foreground Brady Property
✓ c	Photo taken from Upper Glen Co Road / Gorsuch Property site Behind Treeline
✓ d	- My Neighborhood Map of Surrounding Homes + Properties
✓ e	Photo - Wide - from Area 4 on Key
✓ f	Photo Green Trees from Brady Property

VERIFIED BY KC DATE: 10/25/18

Board of Appeals

Case No: 18-047X Case Name: Gerner

Exhibit List

Party: Protestant Date: 10/24/18

Exhibit No:	Description:
✓ 19 g	Fall Picture of 19 f- site in Background
✓ 20a-h	Key 1-8 for Photos showing slope from Rude Property & Subject Property
✓ 20 I	Rainfall Charts
✓ 21	My Neighborhood Map / Bowtie - measurement
✓ 22a-g	Key to Photos
✓ 23	Map of Historic Landmarks
✓ 24a	Photos of Animals + Fence ID only
✓ 24b	Fence ID only
✓ 25	Metal Fence at Organ Ridge ID only
✓ 26	Solar Array / Not this site / ID only
✓ 27	Roemer - CV
✓ 28	Map - Excerpt from GIS - showing wetlands
✓ 28 a	" Marked Copy
~~29~~	
	VERIFIED BY _____ DATE: _____

KC 10/25/18

Board of Appeals

Case No: 18-047-X Case Name: Robert Gurney

Exhibit List

Party: Protestant Date: 11/28/18

Exhibit No:	Description:
✓29	Photo of Hereford Truck, Fire
✓30	Manufac Tag on Door Jam of Fire Truck
✓31	Photograph
	VERIFIED BY KC DATE: 12/10/18

Maryland Business Express

ESA SPARKS GLENCO, LLC: W17591975

General Information | Filing History | Annual Report/Personal Property

General Information

Department ID Number:	W17591975
Business Name:	ESA SPARKS GLENCO, LLC
Principal Office:	12505 PARK POTOMAC AVENUE 6TH FLOOR POTOMAC MD 20854
Resident Agent:	MARC B. BERGOFFEN 12505 PARK POTOMAC AVENUE 6TH FLOOR POTOMAC MD 20854
Status:	ACTIVE
Good Standing:	THIS BUSINESS IS IN GOOD STANDING » Order Certificate of Status
Business Type:	DOMESTIC LLC
Business Code:	20 ENTITIES OTHER THAN CORPORATIONS
Date of Formation/ Registration:	11/03/2016
State of Formation:	MD
Stock Status:	N/A
Close Status:	N/A

New Search | Order Documents

Protestant
CBA Exhibit
1

Case No. 18-047-X 8/21/18

Maryland Business Express

ESA SPARKS GLENCO, LLC: W17591975

General Information | Filing History | Annual Report/Personal Property

Annual Report/Personal Property

Mailing Address: ESA SPARKS GLENCO, LLC
4155 ST. JOHNS PKWY STE 1100
STE. 1100
SANFORD FL 32771

Annual Report/Personal Property Filings

Asmt. Year	Date Filed	Extension	Penalty Amount	Date Penalty Paid
2018	04/13/2018	No		
2017	10/27/2017	No		
2016		No		
2015		No		
2014		No		

Personal Property Assessments Summary (Select year to view details)

Asmt. Year	County Base	Town Base	Date Certified
2018	0	0	04/23/2018
2017	0	0	10/30/2017
2016	0	0	
2015	0	0	
2014	0	0	

New Search Order Documents

5000000000970441

ARTICLES OF ORGANIZATION

The undersigned, with the intention of creating a Maryland Limited Liability Company files the following Articles of Organization:

(1) The name of the Limited Liability Company is:
ESA Sparks Glenco, LLC

(2) The purpose for which the Limited Liability Company is filed is as follows:
Solar Farm

(3) The address of the Limited Liability Company in Maryland is:
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD, 20854

(4) The Resident Agent of the Limited Liability Company in Maryland is:
Marc B. Bergoffen

whose address is:
12505 PARK POTOMAC AVENUE, 6TH FLOOR, POTOMAC, MD, 20854

(5) Signature(s) of Authorized Person(s):
Lindsay Herold

(6) Signature(s) of Resident Agent(s):
Marc B. Bergoffen

(7) Filing party's name and return address:
Lindsay Herold, 4155 St. Johns. Pkwy, Ste. 1100, Sanford, FL, 32771

I hereby consent to my designation in this document.

2.0 MWac PV SYSTEM

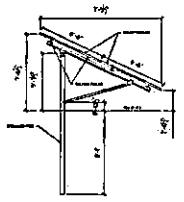
PV Array:
Number of PV Modules: 6840
Peak Power: 2,701,800 Wp DC
DC/AC Ratio: 1.3
Module Type: LG 395Wp (LG395N2W-A5)
Module Tilt: 25°
Module Orientation: South (Az. 180°)
Proposed Leased Area: 9 Acres

Project Owner:
Sparks Glenco, LLC
4155 St. Johns Pkwy. Ste 1100
Sanford, FL 32771

Site Location:
39°33'19.51"N 76°38'53.85"W

Layout is preliminary, awaiting surveys as well as zoning and permitting approvals. Layout is based on GIS information, not a survey.

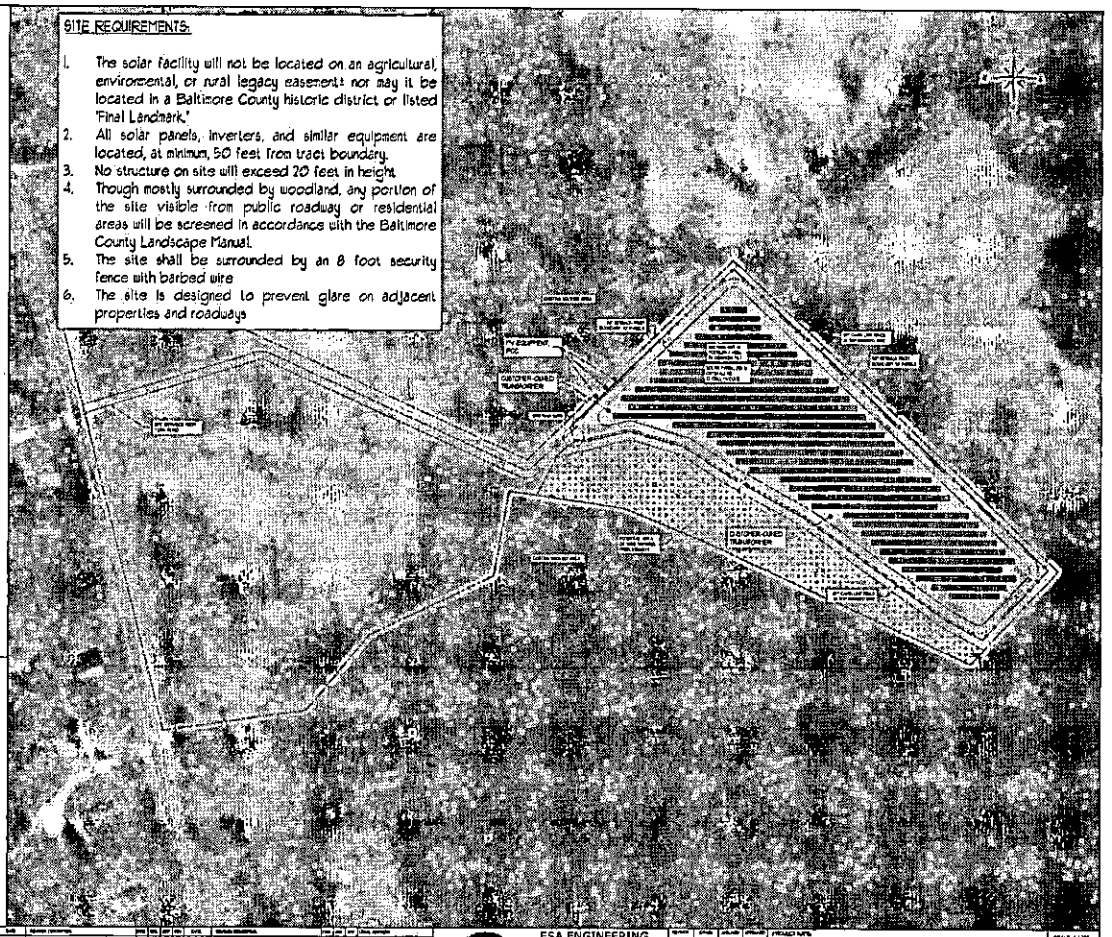
25 DEGREES



Typical Array (25°) NTS

SITE REQUIREMENTS:

1. The solar facility will not be located on an agricultural, environmental, or rural legacy easement nor may it be located in a Baltimore County historic district or listed 'Final Landmark.'
2. All solar panels, inverters, and similar equipment are located, at minimum, 50 feet from tract boundary.
3. No structure on site will exceed 20 feet in height.
4. Though mostly surrounded by woodland, any portion of the site visible from public roadway or residential areas will be screened in accordance with the Baltimore County Landscape Manual.
5. The site shall be surrounded by an 8 foot security fence with barbed wire
6. The site is designed to prevent glare on adjacent properties and roadways



ESA ENGINEERING SERVICES MD, LLC

06 | ML | DC | DC

SPARKS GLENCO, LLC

SITE PLAN

G202

Case No: 18-047-X

8/21/18

Protestant
CBA Exhibit
2

§ 33-3-108. - PLAN INFORMATION.

(a) *Required.* In accordance with § 33-3-104 of this title or Article 32, Title 4 of the Code, a plan approved by the Department is required for all development, forest harvesting operations, surface mining operations, and agricultural operations.

(b) *Details of plan — In general.* The plan shall include an informative, conceptual, and schematic representation of the proposed activity by means of maps, graphs, charts, or other written or drawn documents to enable the Department to make a reasonably informed decision regarding the proposed activity.

(c) *Same — Specific requirements.* The plan shall contain the following information:

(1) A location or vicinity map;

(2) Property lines;

(3) Existing structures or facilities, including buildings, roads, wells, and sewage disposal systems (include 100 feet into adjacent properties where possible);

(4) Existing and proposed contour lines;

(5) Proposed sewage disposal areas;

(6) Field delineated, marked, and surveyed streams, springs, seeps, bodies of water, and wetlands (include 200 feet into adjacent properties where possible);

(7) Field delineated, marked, and surveyed forest buffers;

(8) Department of Public Works approved riverine floodplain limits;

(9) Soils mapped and labeled in accordance with the soil survey of the county;

(10) (i) Slopes greater than 10% for areas adjacent to and within 500 feet of streams, wetlands, or other bodies of water; and

(ii) Slopes greater than 25% for all other areas;

(11) Rare species, threatened species, or endangered species habitat;

(12) Existing vegetation;

(13) Location and type of stormwater management devices and practices;

(14) Building envelopes;

(15) Existing and proposed utility lines and easements;

(16) Historical and archaeological sites;

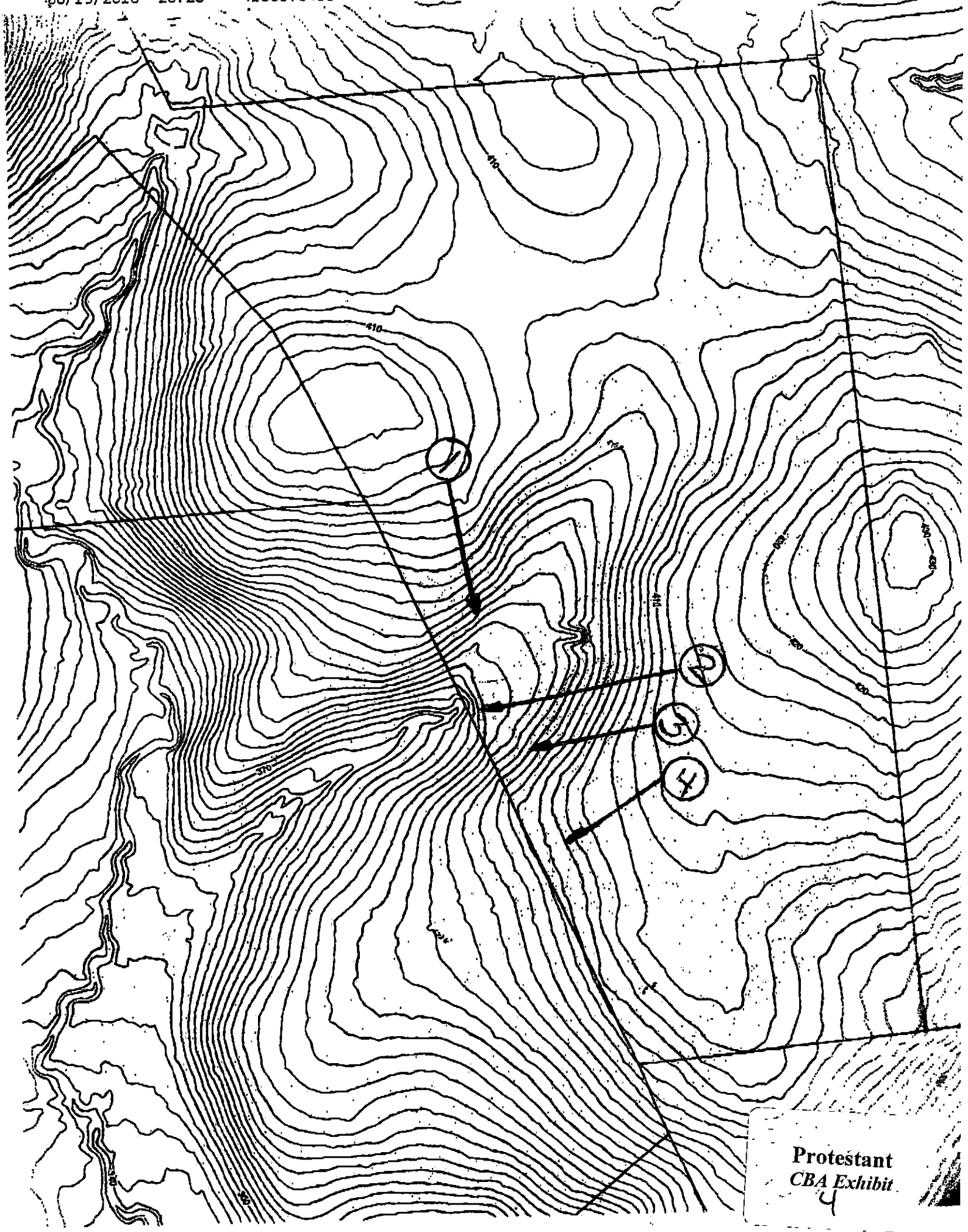
(17) A note indicating: "There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County Department of Environmental Protection and Sustainability"; and

(18) Supporting documentation for variance requests, including alternatives analyses and conceptual mitigation plans.

(1988 Code, § 14-338) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004; Bill No. 122-10, [illegible]

Case No: 18-047-X 8/21/18

Protestant
CBA Exhibit
3



Protestant
CBA Exhibit 4

LEGAND

(1) 149.4' RUN
20' RISE

149.4 | 20.00 = .1338

.1338
X 100
13.38 % SLOPE

(2) 189.5' RUN
30.0' RISE

189.5 | 30.00 = .1583

.1583
X 100
15.83 % SLOPE

(3) 120.9' RUN
20.0' RISE

120.9 | 20.00 = .1654

.1654
X 100
16.54 % SLOPE

(4) 131.5' RUN
10.0' RISE

131.5 | 10.00 = .076

.076
X 100
7.6 % SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

15637 york rd

Search

Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More Info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

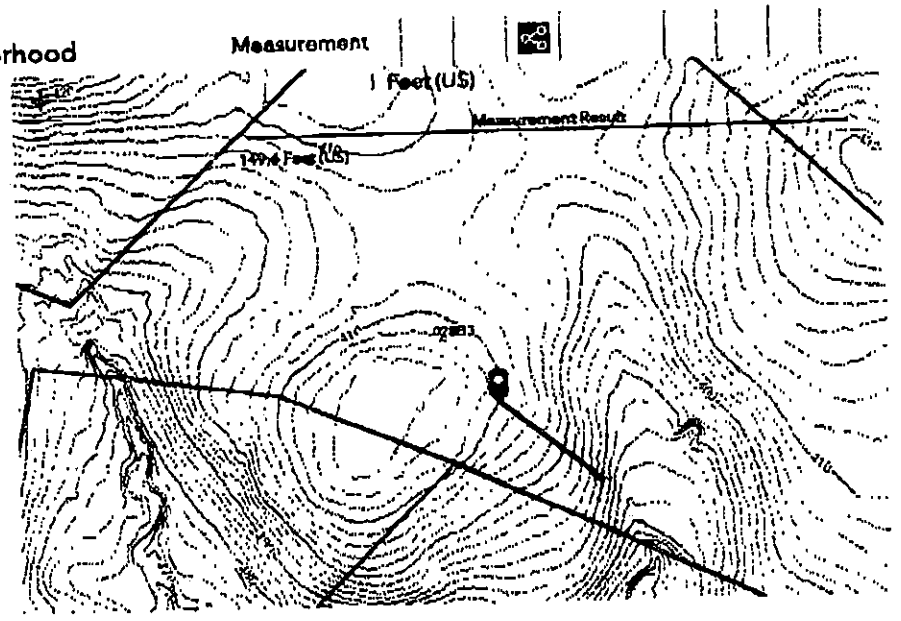
Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Piney Creek
Subshed Name	Gunpowder Falls
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 8 to 15 percent slopes
Soil Name	Glenelg loam, 3 to 8 percent slopes
Soil Name	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky
Soil Name	Manor loam, 3 to 8 percent slopes
Soil Name	Glenville silt loam, 3 to 8 percent slopes
Soil Name	Manor loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#1

149.4' RUN
20.0' RISE

.1338
149.4) 20.00

.1338
x 100
13.38% SLOPE

200ft

-76.649 39.535 Degrees

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 2

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	2
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

ENVIRONMENTAL

Watershed Name	Loch Raven Reservoir
River Basin Name	Gunpowder River
Subshed Name	Piney Creek
Subshed Name	Gunpowder Falls
Soil Name	Manor channery loam, 15 to 25 percent slopes
Soil Name	Glenville silt loam, 8 to 15 percent slopes
Soil Name	Manor loam, 8 to 15 percent slopes
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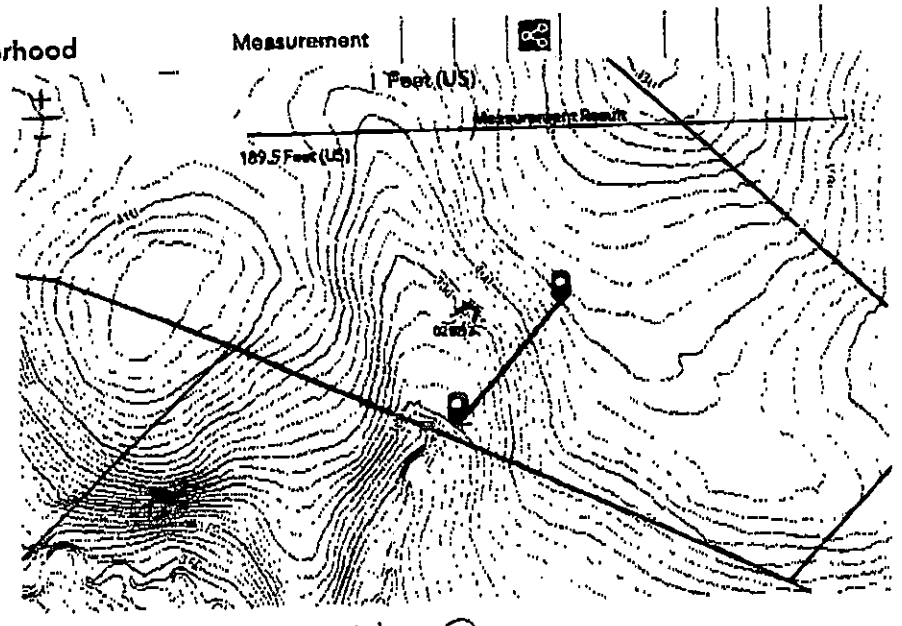
HISTORIC

National Register	No Feature Found



2

189.5' RUN
30.0' RISE

.158
189.5) 30.00

.1583
X 100
15.83% SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

Enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Real Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0802004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	2
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

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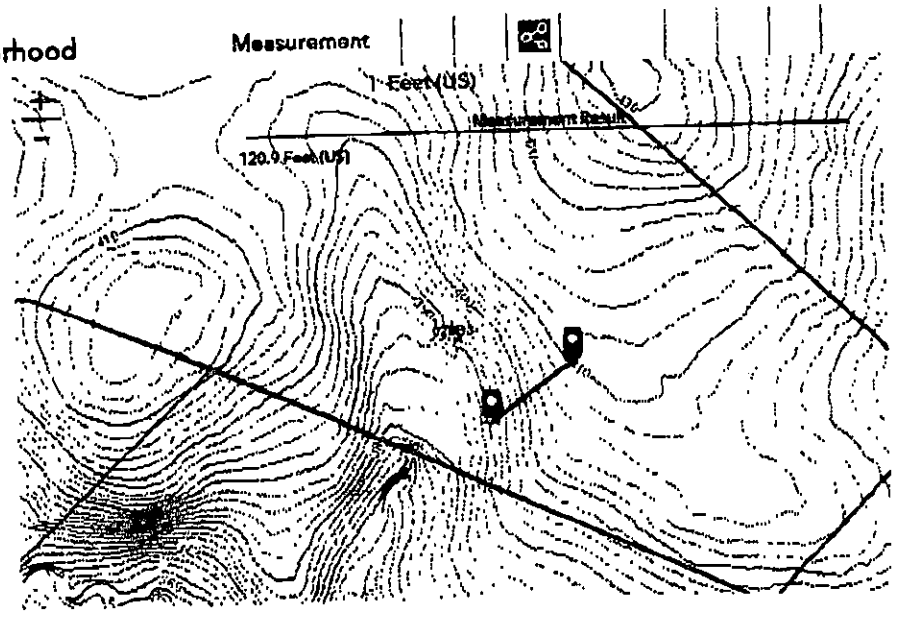
Soil Name	Manor loam, 15 to 25 percent slopes
Soil Name	Glenelg loam, 8 to 15 percent slopes

HISTORIC

National Register	No Feature Found



#3

120.9' RUN
20.0' RISE

120.9) 20.000 .1654

.1654
x 100
16.54% SLOPE

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

My Neighborhood

Select a Property from the Map

enter ADDRESS or 10-DIGIT TAX ACCOUNT

Search

Get Started Property Report - 15637 YORK RD

15637 YORK RD

Tax Account Number	0602004200
Owner Name	GERNER ROBERT K
Premise Address	15637 YORK RD
Tax Map	0028
Parcel	0114
Real Property Report	More info
StreetView	Click for StreetView

ZONING INFORMATION

Zoning	RC 7

SCHOOL DISTRICTS

Elementary School District	Sparks ES
Middle School District	Hereford MS
High School District	Hereford HS

CIVIC - GOVERNMENT

Police Precinct	Cockeysville
Councilmanic District	3
Congressional District	7
Legislative District	42B
Election District	8
Voting Precinct	08-001

ECONOMIC

Commercial Revitalization District	No Feature Found
Enterprise Zone	No Feature Found
Economic Park Center Name	No Feature Found
Economic Park Center Type	No Feature Found

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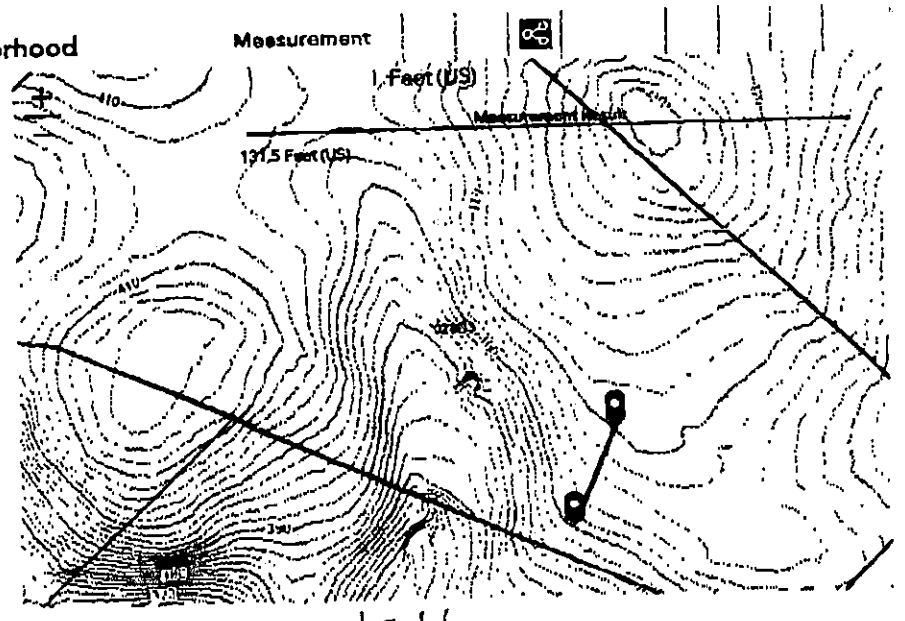
HISTORIC

National Register	No Feature Found



2000 ft

7e 648 39.555 Degrees

#4

131.5' RUN
10.0' RISE

.076
131.5) 10.000

.076
x 100
7.6 % SLOPE

THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL, INC.

BE IT RESOLVED: That at the ANNUAL MEETING of The Sparks Glencoe Community Planning Council, Inc. held on April 18, 2018, it was decided that responsibility for review and action on all zoning and development matters for the period 2018-2019 be placed on the Board of Directors and/or members of the duly elected Zoning Committee.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

President
Lynne Jones

Reporting Secretary
Wendy McIver

Protestant
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THE SPARKS GLENCOE COMMUNITY PLANNING COUNCIL INC.

RESOLVED: That the position of the Sparks Glencoe Community Planning Council: Inc. as adopted by the Board of Directors on the zoning matter known as:

15637 York Road Solar Special Exception CBA-18-047-X

The Sparks-Glencoe Community Planning Council ("Sparks-Glencoe" or "SGCPC") is an organization dedicated to preserving the rural character and natural resources of northern Baltimore County.

Sparks-Glencoe is opposed to the special exception in this matter for the following reasons:

1. The development removes prime and productive land from agricultural production and preservation easements; drives up the cost of leased agricultural land; and diminishes the property values of contiguous landowners.
2. There is no adequate program for remediation of the site at the end of the useful life of the facility.
3. Constructing large commercial energy facilities of any sort in resource conservation areas is inconsistent with the Baltimore County Master Plan goal of maintaining the rural character of the area and is a prime example of "incremental development" which the Master Plan identifies as a threat to the agriculture industry.

Therefore, we ask the Board of Appeals to uphold the spirit and intent of the Zoning Regulations and the Master Plan, which are to protect natural resources and maintain the character of the rural area, by denying this special exception.

AS WITNESS OUR HANDS AND SEAL THIS 10th DAY OF September, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Wendy McIver, Reporting Secretary

Lynne Jones, President

AFFIDAVIT

STATE OF MARYLAND

BALTIMORE COUNTY, SS:

TO WIT:

I hereby swear upon penalty of perjury that I, Lynne Jones, am currently a duly elected member of the Board of Directors of The Sparks Glencoe Community Planning Council, Inc.

AS WITNESS OUR HANDS AND SEAL THIS 10th DAY OF September, 2018.

ATTEST: The Sparks Glencoe Community Planning Council, Inc.

Wendy McIver, Reporting Secretary

Lynne Jones, President

Sparks-Glencoe Community Planning Council
P.O. Box 937, Sparks, MD 21152

Protestant
CBA Exhibit
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August 20, 2018

The Board of Appeals for Baltimore County
The Jefferson Building
105 West Chesapeake Avenue
Towson, Maryland 21204

Re: Case No. 2018-0047-X
15637 York Road
8th Election District-3rd Councilmanic District
Legal Owner: Robert Gerner
Contract Purchaser/Lessee: ESA Sparks Glencoe, LLC

Dear Board of Appeals:

The Sparks-Glencoe Community Planning Council (SGCPC) is submitting this letter regarding the above referenced case. The purpose of this letter is twofold. First, we want to state the reasons why we oppose the special exception request. Secondly, without intending to minimize our opposition, we want to request two very important limitations in the event that the special exception is granted.

This, and all such facilities, are euphemistically referred to as "solar farms", but they are not farms and they are not agricultural. SGCPC as an organization, and its many members and supporters, strongly endorse solar power as a wonderful alternative to fossil fuel-based power. The issue here is not solar power *per se*; it is solar power on prime and productive agricultural land which could be used for farming or which could be placed in conservation easement. It also must be understood that our opposition is not directed at solar power systems which are intended to primarily serve a home or an ongoing agricultural enterprise.

Bill 37-17 was passed in the face of strong opposition by the SGCPC, the North County Community Association, the Manor Conservancy, the Valleys Planning Council, as well as other relevant agricultural organizations, Third District residents and their Councilman. There were a number of reasons for this opposition. Primarily, it was viewed as an effort at commercial development in RC zones which citizen groups have been fighting for decades. Constructing large commercial energy facilities of any sort in resource conservation areas is inconsistent with the Baltimore County Master Plan goal of maintaining the rural character of the area and is a prime example of "incremental development" which the Master Plan identifies as a threat to the agriculture industry.

Secondly, the bill was passed with no effort to study and understand the long term effects of this development. Instead, the Bill provides for a study to be made one year **AFTER** implementation of the special exception provision. Of course, one year later, the developers have been pursuing the seven solar facilities already in "the pipeline", and probably more, in the

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Third District, and any study will be too late. This is why the study provision in the Bill was viewed as a deeply cynical and artificial claim of due diligence to occur only after installation has already been approved and the special exceptions have been granted. Our cynicism has been reinforced by the recent actions of the Baltimore County Planning Board. While the Board appears to be leaning toward a recommendation to halt future applications, it also appears to be leaning toward not addressing pending applications because the developers have already spent money to pursue those applications. This was a bootstrapping use of pending applications to justify those very same pending applications which were filed with full recognition that a study may threaten those very same applications.

Putting aside the background of these applications, there are very real concerns which justify the denial of the special exception in this case. The development removes prime and productive land from agricultural production and the possibility of a preservation easement. It also drives up the cost of leased agricultural land which is central to the Baltimore County agricultural industry. It also removes land from potential preservation.

While our opposition is very real, we do believe it is extremely important that two limitations should be imposed in the event the special exception is granted. Bill 37-17 requires an applicant for a building permit hall provide a surety bond or equivalent financial security. The Code official MAY use the bond for removal of a solar facility. The SGCPC requests that the Board direct that the applicant be required to provide a bond sufficient to cover the costs of removal of a solar facility and stipulate in its order that the bond shall be used for the that purpose should the solar company no longer be able or willing to fulfill its contractual obligations to the landowner.

A representative of the Gerner project attended one of our open meetings to explain the contours of that project. A number of issues were explained and clarified. What became clear, however, was that the only plan for remediation was the LLC's contractual obligation to do so. A facility's useful life is generally understood to be 20 to 30 years. The only guarantee for clean-up is the continued existence and/or financial solvency of these LLCs.

There is no guarantee that the corporation set up to develop the solar facility will still be in existence when the clean-up and remediation phase must begin. Like many local development projects, once development is completed the corporation disappears either by way of bankruptcy or dissolution. The future costs of dismantling and removing the solar panels and remediating the soil so that it is once again ready for farm use is difficult to determine at the present time. The farmer/landowner may not be in a position to bear the burden of such an expense. What happens then? Will the costs be paid for by the taxpayers after the corporation is long gone? Accordingly, any special exception should include an irrevocable bond guaranteed to cover the costs of not only removal but also remediation.

Secondly, the SGCPC is concerned about the impact on neighboring landowners. The prospect of diminished land values for the surrounding area is real. It is certainly foreseeable that the viewshed of the larger resource conservation area will also be significantly impaired. One of the concerns raised in our meeting with the representative of the lessee of the Gerner property was that the proposed buffers were inadequate. It appeared that the trees that were to be

planted would not large enough to screen the facility until the facility had reached its expiration. It is for that reason any special exception must include significant natural buffers which not only protect the view from the adjoining roadways, the adjacent property owners, but also the wider vista and viewshed. Any such buffer needs to meet its objectives from the outset.

We have many concerns about the rapid and precipitous adventure into commercial solar facilities in conservation areas and on prime and productive farmland. No one has presently done the kind of work necessary to know where and how to proceed with the production of commercial solar energy on agricultural land. It is primarily for that reason that SGCPC opposes the special exception in this case. If, however, the special exception is granted, there must obviously be many limitations designed to protect the agricultural industry and the public. We sincerely request that the two limitations outlined in this letter be among those incorporated into any such grant.

Thank you for your patience and consideration in this matter.

Sincerely,

Lynne Jones

Lynne Jones, President

§ 502.1. Conditions determining granting of special exception.

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;
B. Tend to create congestion in roads, streets or alleys therein;
C. Create a potential hazard from fire, panic or other danger;
D. Tend to overcrowd land and cause undue concentration of population;
E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
F. Interfere with adequate light and air;
[Bill No. 45-1982]
G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations;
[Bill No. 45-1982]
H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor
[Bill No. 45-1982]
I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone, and for consideration of a solar facility use under Article 4F, the inclusion of the R.C. 3, R.C. 6, and R.C. 8 Zones.
[Bill Nos. 74-2000; 37-2017]

§ 502.2. Protection of surrounding properties; agreement governing special exception.

In granting any special exception, the Zoning Commissioner or the Board of Appeals, upon appeal, shall impose such conditions, restrictions or regulations as may be deemed necessary or advisable for the protection of surrounding and neighboring properties. The owners, lessees or tenants of the property for which a special exception is granted, if required by the Zoning Commissioner, or Board of Appeals, upon appeal, shall enter into an agreement in writing with said Zoning Commissioner and/or the County Commissioners of Baltimore County, *Editor's Note: Under Section 1107 of the Baltimore County Charter, the County Council and County Executive have succeeded "to all powers heretofore vested in the county commissioners by the constitution and laws of this state."* stipulating the conditions, restrictions or regulations governing such special exception, the same to be recorded among the land records of Baltimore County. The cost of such agreement and the cost of recording thereof shall be borne by the party requesting such special exception. When so recorded, said agreement shall govern the exercise of the special exception as granted, as to such property, by any person, firm or corporation, regardless of subsequent sale, lease, assignment or other transfer.

§ 502.3. Time limit for utilization of special exception; extensions.

[Bill Nos. 42-1962; 85-1967; 68-1968; 172-1993]
A special exception which has not been utilized within a period of two years from the date of the final order granting same, or such longer period not exceeding five years, as may have been specified therein, shall thereafter be void. The Zoning Commissioner or, on appeal, the County Board of Appeals, in connection with the grant of any special exception, shall fix within the aforegoing limits the period of time for its utilization. Any party to the proceedings may, by so

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1. An easement guaranteeing maintenance of, and county access to, any well or septic or stormwater management facilities that may be approved for location in common areas on any part of the tract; and
2. An easement to provide for the maintenance of open views.

SECTION 1A08. R.C.7 (Resource Preservation) Zone

[Bill No. 74-2000]

§ 1A08.1. Findings and legislative goals.

A. Findings.
1. Master Plan 2010, adopted by the County Council in February 2000, identifies specific resource preservation areas where valuable cultural, historic, recreational and environmental resources are located and should be protected for the health of the local community and the community at large.
2. Among the actions recommended in Master Plan 2010 to protect resources in resource preservation areas is the reduction of permitted residential densities in these areas to one dwelling per 25-50 acres of land.
3. An R.C.7 Zone would allow limited development, compatible with the rural community, and at the same time protect rural resources.
4. The county recognizes the importance of retaining large-acreage parcels to protect and promote the agricultural industry.

B. Legislative goals. The Baltimore County Council seeks to achieve the following goals in the R.C.7 Zone:
1. To preserve and protect total ecosystem function, including riparian and aquatic ecosystems;
2. To protect forests, streams, wetlands and floodplains;
3. To protect the water quality of watercourses, the Chesapeake Bay and regional biodiversity;
4. To respect historic sites in their settings;
5. To provide a quality recreational experience to visitors;
6. To protect remaining prime and productive soils in areas not currently protected by the R.C.2 Zone.
7. To maintain the unique character of a rural area by preserving its natural, historic, cultural, recreational, scenic, architectural and archaeological resources.
8. To provide for the environmentally sound use of land and forest resources, and to prevent forest fragmentation, especially in areas of extensive interior forest;
9. To implement state and federal mandates for the protection of natural resources and rural legacy;
10. To enhance rural character and environmental protection by locating buildings in harmony with site conditions;
11. To preserve the traditional character of rural communities by limiting the scale and intensity of development;
12. To incorporate traditional features of the local built environment into development; and
13. To maintain the rural scale and character of area roads by limiting growth in the volume of traffic generated by local development.

§ 1A08.2. Definitions.

In this section, the following term has the meaning indicated:

BUILDING ENVELOPE

The area on a lot within which all structures except wells, septic systems, stormwater management systems, driveways or fences are permitted to be built.

§ 1A08.3. Permitted uses.

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§ 32-4-416. - PRESERVATION OF NATURAL FEATURES.

(a) *Preservation of features.* Each Development Plan shall preserve natural features, including watercourses, waterfalls, beaches, and significant vegetation.

(b) *Duty to protect habitats.* The county shall require adequate protection of any known habitat of an endangered species.

(1988 Code, § 26-278) (Bill No. 29-95, § 1, 5-21-1995; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004; Bill No. 26-07, § 1, 4-29-2007)

§ 32-4-417. - SCENIC VIEWSHEDS.

The Planning Board shall:

(1) Provide to the Zoning Commissioner a catalogue of the elements for each scenic viewshed in the Master Plan;

(2) Identify the scenic route or view, as designated in the Baltimore County Master Plan as either enclosed, expansive, focused or a combination; and

(3) Identify the aspects of the visual quality, unity of the elements, and integrity of the elements.

(1988 Code, § 26-284) (Bill No. 121-01, § 3, 1-29-2002; Bill No. 75-03, § 28, 7-1-2004)

413. - GRADING AND EROSION AND SEDIMENT CONTROL.

A plat may not be approved unless provision is made for grading or for erosion and sediment control that will minimize soil erosion, loss of topsoil, sedimentation of streams, and degradation of water quality in the area.

(1988 Code, § 26-275) (Bill No. 79-01, § 2, 7-1-2004; Bill No. 72-12, § 1, 1-9-2013)

§ 32-4-414. - FLOODPLAIN AND WETLAND PROTECTION.

(a) *Definitions.* In this section, "base flood", "development", "flood insurance rate map", "flooding", "floodway" and "riverine floodplain" have the meanings stated in Title 8 of this article.

(b) *Purpose.* The purpose of this section to:

(1) Reduce loss of life and property from flooding;

(2) Avoid the need for public expenditures for flood protection; and

(3) Protect or enhance the environmental quality of watersheds.

(c) *Development in floodplain prohibited; exceptions.* The county may not permit development in a riverine floodplain except for:

(1) The establishment of property subdivision lines; and

(2) The installation of a pond, culvert, bridge, street, utility, or drainage facility that the county finds is not detrimental to floodplain management programs.

(d) *Base flood elevation.*

(1) Except as provided in paragraph (2) of this subsection, if the floodplain is shown on the flood insurance rate map, the county shall limit any increase in the existing base flood elevation to a maximum of 1 foot.

(2) The county may not allow encroachment in the floodway causing an increase in the existing base flood elevation.

(3) In areas where the base flood elevation has not been established, the county shall determine the riverine floodplain and flood elevation by means of a flood study prepared in accordance with the requirements of the Department of Public Works Design Manual and sealed by a registered professional engineer before the issuance of a permit or the recording of a subdivision plat.

(e) *Wetlands.*

(1) The county may not permit dredging, filling, or construction in any nontidal wetland or tidal wetland.

(2) The county shall require adequate protection of nontidal wetlands or tidal wetlands from contamination.

(1988 Code, § 26-276) (Bill No. 173-93, § 3, 11-17-1993; Bill No. 79-01, § 2, 7-1-2004; Bill No. 75-03, § 27, 7-1-2004)

§ 32-4-415. - SLOPE PROTECTION AND SOILS.

(a) *Development Plan or plat approval; slope protection required.* The county may not approve a Development Plan or plat unless the county finds that the proposed development:

(1) Includes protective measures adequate to prevent erosion or sloughing of any steep slope or unstable slope; and

(2) Promotes the preservation of the natural topographic features of the steep slope or unstable slope.

(b) *Same; soil limitation.* The county may not approve a Development Plan or plat on soils that present a severe or moderate limitation to development unless the county finds that adequate measures have been taken to mitigate the effects of the limitation.

(c) *Same; prime and productive soils.* On prime and productive soils within the RC-2 zone, the county may not approve a Development Plan or plat unless the county finds that construction, excavations, buildings, structures, pavements, grading, clearing, or other disturbances of the soils will be limited or restricted in accordance with policies established by the Department of Environmental Protection and Sustainability to promote agricultural uses and protect the county's soil resources.

(1988 Code, § 26-277) (Bill No. 18, 1990, § 2, 3-30-1990; Bill No. 113, 1992, § 5, 7-1-1992; Bill No. 79-01, § 2, 7-1-2004; Bill No. 122-10, § 12, 1-16-2011)

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DONALD I. MOHLER III
County Executive

ANDREA VAN ARSDALE, *Director*
Department of Planning

August 1, 2018

The Honorable Julian E. Jones, Jr.
Chairman, Baltimore County Council
Historic Courthouse
400 Washington Avenue
Towson, MD 21204

RE: County Council Bill 37-17: Solar Facilities

Dear Chairman Jones:

At the May 17, 2018 meeting of the Baltimore County Planning Board, an evaluation of the impacts of solar facilities in Baltimore County pursuant to County Council Bill 37-17 was presented by Department of Planning staff. A Public Hearing followed on June 7, 2018 and was well attended by the community. At its July 19, 2018 meeting, the Planning Board voted to forward these recommendations on solar facilities to the Baltimore County Council and to the County Executive.

The following recommendations are now offered by the Planning Board:

The Planning Board recognizes that the development of solar power and other renewable sources of energy is critical for our future, however;

- Solar facilities should not be permitted on prime and productive soils;
- Solar facilities should be directed into business and manufacturing zones, brownfields, rooftops and parking lots where financially feasible;
- Further in-depth study of how other similar jurisdictions have responded to the use should be considered in a review of the current law;
- The feasibility of establishing locational criteria to determine appropriate siting of solar facilities should be investigated;
- Solar facilities should not be detrimental to scenic views or routes; and
- Participation in future studies should be broadened to include stakeholders from each Councilmanic District.

105 West Chesapeake Avenue, Suite 101 | Towson, Maryland 21204 | Phone: 410-887-3211 | Fax: 410
planning@baltimorecountymd.gov | www.baltimorecountymd.gov/planning

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Date: July 30, 2018

If you have any questions regarding these recommendations please contact me at 410-887-3211.

Sincerely,

Andrea J. Van Arsdale

Andrea Van Arsdale
Secretary to the Planning Board

AVA:jdd

Enclosures

c: Members, Baltimore County Council
Members, Baltimore County Planning Board
Thomas Peddicord, Jr., Legislative Counsel/Secretary
Lauren M. Smelkinson, County Auditor
Fred Homan, Administrative Officer
Arnold Jablon, Deputy Administrative Officer and Director, Permits, Approvals, and Inspections
Donna Morrison, Deputy Administrative Officer
Mike Field, County Attorney

are important to the agricultural history of Baltimore County and which are located along scenic routes.

(2) Continue to protect designated "view sheds" of historic resources, either by limiting new development within view of the historic resource, or by buffering new development from the view of such resources.

SCENIC RESOURCES

The preservation and enhancement of the scenic resources in Baltimore County is an essential component contributing to the quality of life of residents. Scenic resources consist of scenic corridors, scenic views, and gateways. In 1991, the County adopted a set of development guidelines that have raised awareness and recommended development alternatives for protecting scenic resources.

Scenic Corridors and Views

Most of the scenic corridors and views are located in rural areas. The scenic view map provides the beginning of a list of the views for establishing a comprehensive inventory in the near future. Following the adoption of the 1989 Master Plan, the County produced a series of scenic route maps for each council district, which combined the significant visual and historical elements into self-guided scenic tours. The protection of the Interstate 83 (I-83) corridor in northern Baltimore County is a showcase of the inter-governmental efforts on scenic views

The endeavor for preserving scenic corridors and views ought to emphasize lands zoned for resource protection including RC 2, RC 4, and RC 7. The County will continue to maintain coordination with the State Highway Administration (SHA) and seek available state and federal funds for protection of scenic corridors and views.

Policy: Preserve scenic corridors and views through proper zoning and coordination with federal and state governments.

Actions:

(1) Coordinate scenic resource management practices with the national and state Scenic Byways Programs.

(2) Continue to preserve properties within the I-83 scenic view shed through easement purchases, as funds are available and through RC4 clustering.

(3) Evaluate proposed improvements to state and county roads and bridges regarding their impact on scenic resources in compliance with the adopted *Rural Roads Standards*. Where public safety allows, the narrow and/or winding character of roads is part of the scenic experience and ought to be preserved.

(4) Assess proposed development impacts o
scenic resources.

(5) Clarify language regarding scenic c
and views protection and make it con
amongst the Master Plan, Comprehe
Manual of Development Policies,
County Zoning Regulations, Ba
Code, and SHA Context Sensi
for work on scenic byways.

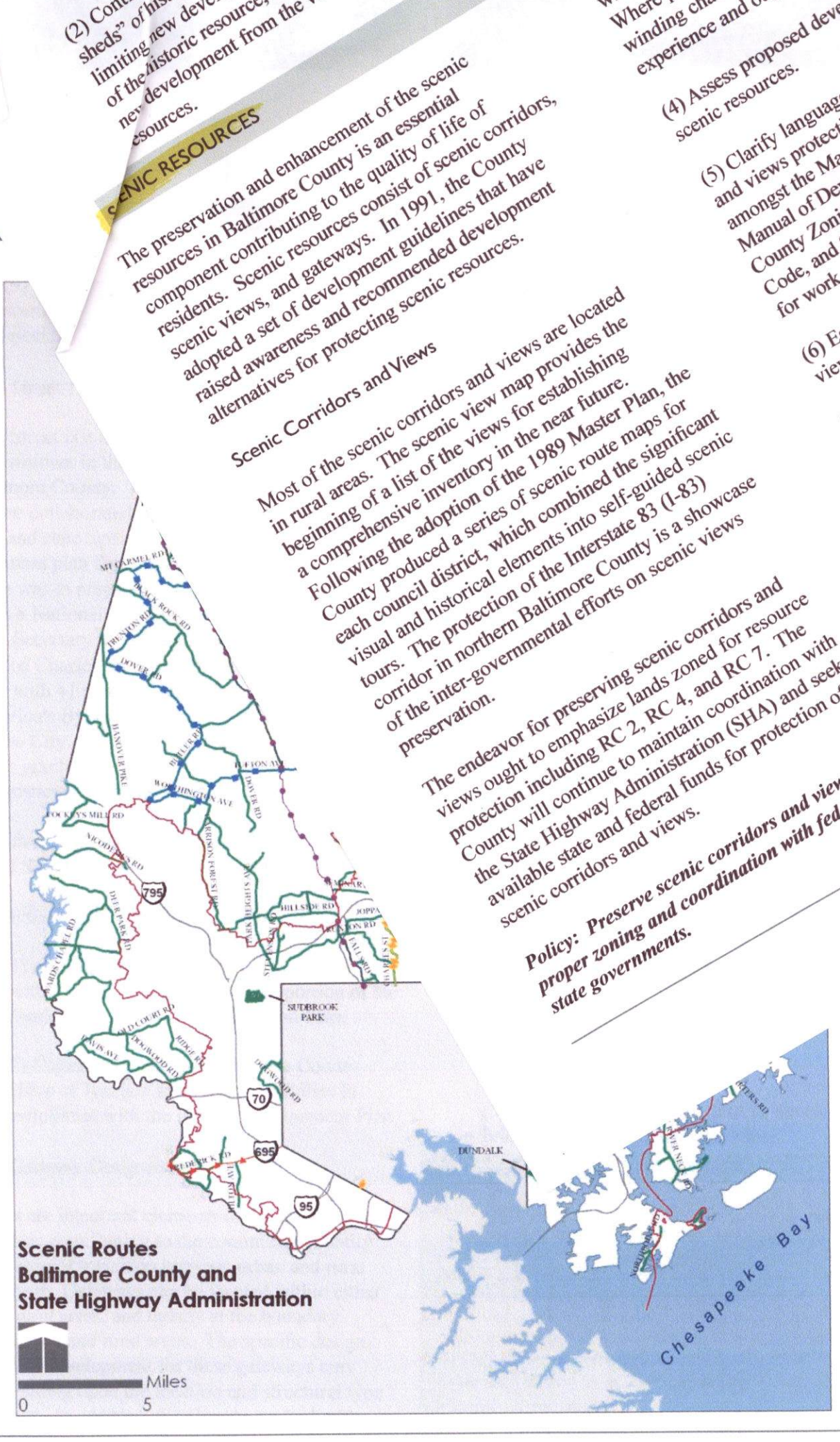
(6) Establish criteria for
views and geocode the

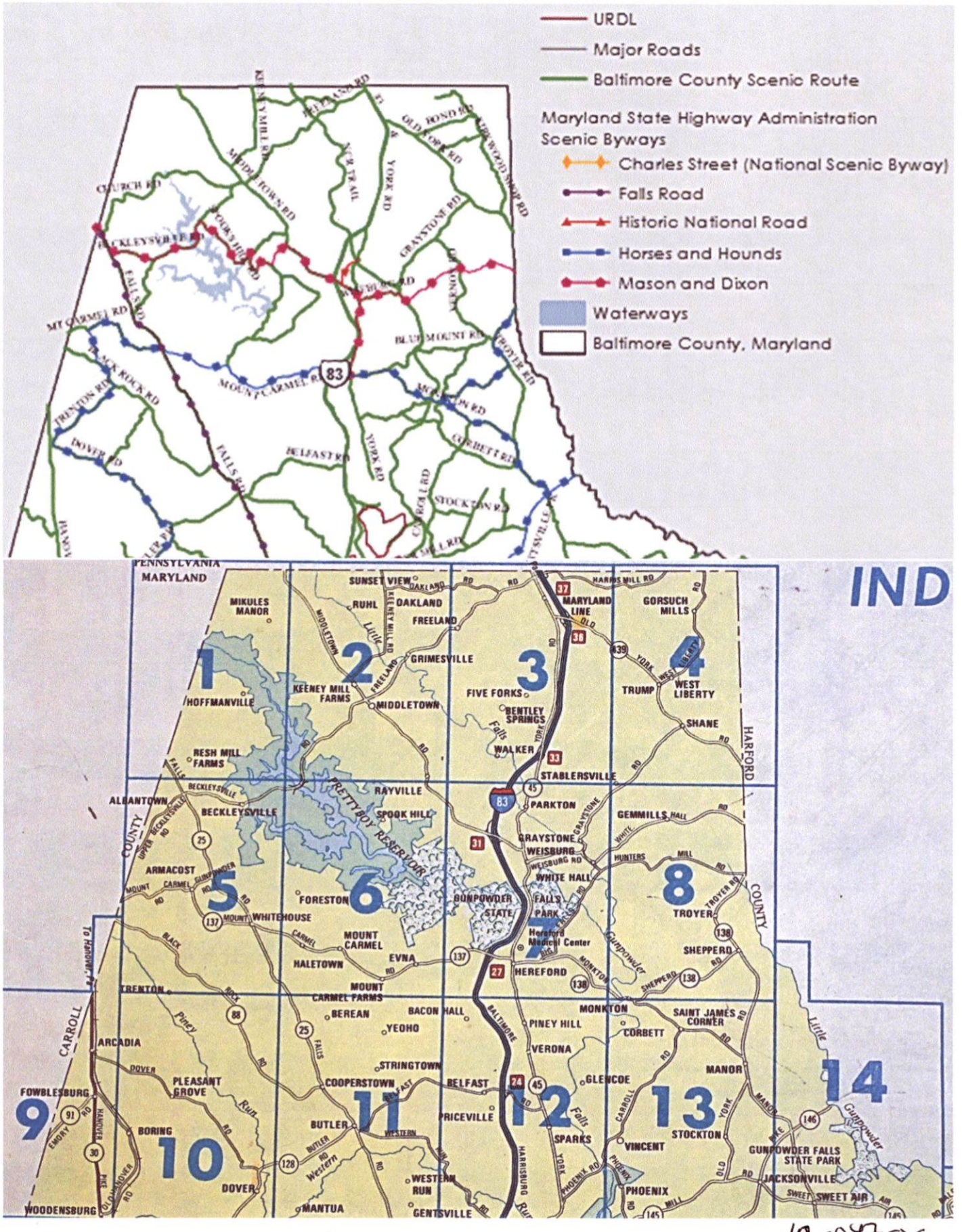
(7) Apply a system
evaluation of scen
techniques.

(8) Update s

*The County has e
view shed of I-8
Pennsylvania
piedmont ar
rural hom
Many pr
as part
donc
sig
th*

18-





18-047-X

Scenic Roads and Byways in this section of Baltimore County: 53
All roads (not including Lanes or Courts) in this section: 301
Percentage of Scenic Roads and Byways to Regular roads: 17.6%

ADC MAP 1988 10/24
Gerner

Protestant
CBA Exhibit
12

www.nrcs.usda.gov/wps/portal/nrcs/detail/pr/soils/?cid=nrcs141p2_037285

Prime & Other Important Farmlands Definitions

This table lists the map units in the survey area that are considered important farmlands. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. This list does not constitute a recommendation for a particular land use.

In an effort to identify the extent and location of important farmlands, the Natural Resources Conservation Service, in cooperation with other interested Federal, State, and local government organizations, has inventoried land that can be used for the production of the Nation's food supply.

"Prime farmland" is of major importance in meeting the Nation's short- and long-range needs for food and fiber. Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland.

Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

For some of the soils identified in the table as prime farmland, measures that overcome a hazard or limitation, such as flooding, wetness, and droughtiness, are needed. Onsite evaluation is needed to determine whether or not the hazard or limitation has been overcome by corrective measures.

A recent trend in land use in some areas has been the loss of some prime farmland to industrial and urban uses. The loss of prime farmland to other uses puts pressure on marginal lands, which generally are more erodible, droughty, and less productive and cannot be easily cultivated.

"Unique farmland" is land other than prime farmland that is used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables. It has the special combination of soil quality, growing season, moisture supply, temperature, humidity, air drainage, elevation, and aspect needed for the soil to economically produce sustainable high yields of these crops when properly managed. The water supply is dependable and of adequate quality. Nearness to markets is an additional consideration. Unique farmland is not based on national criteria. It commonly is in areas where there is a special microclimate, such as the wine country in California.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be "farmland of statewide importance" for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate State agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

In some areas that are not identified as having national or statewide importance, land is considered to be "farmland of local importance" for the production of food, feed, fiber, forage, and oilseed crops. identified by the appropriate local agencies. Farmland of local importance may include tracts of been designated for agriculture by local ordinance.

Protestant
CBA Exhibit
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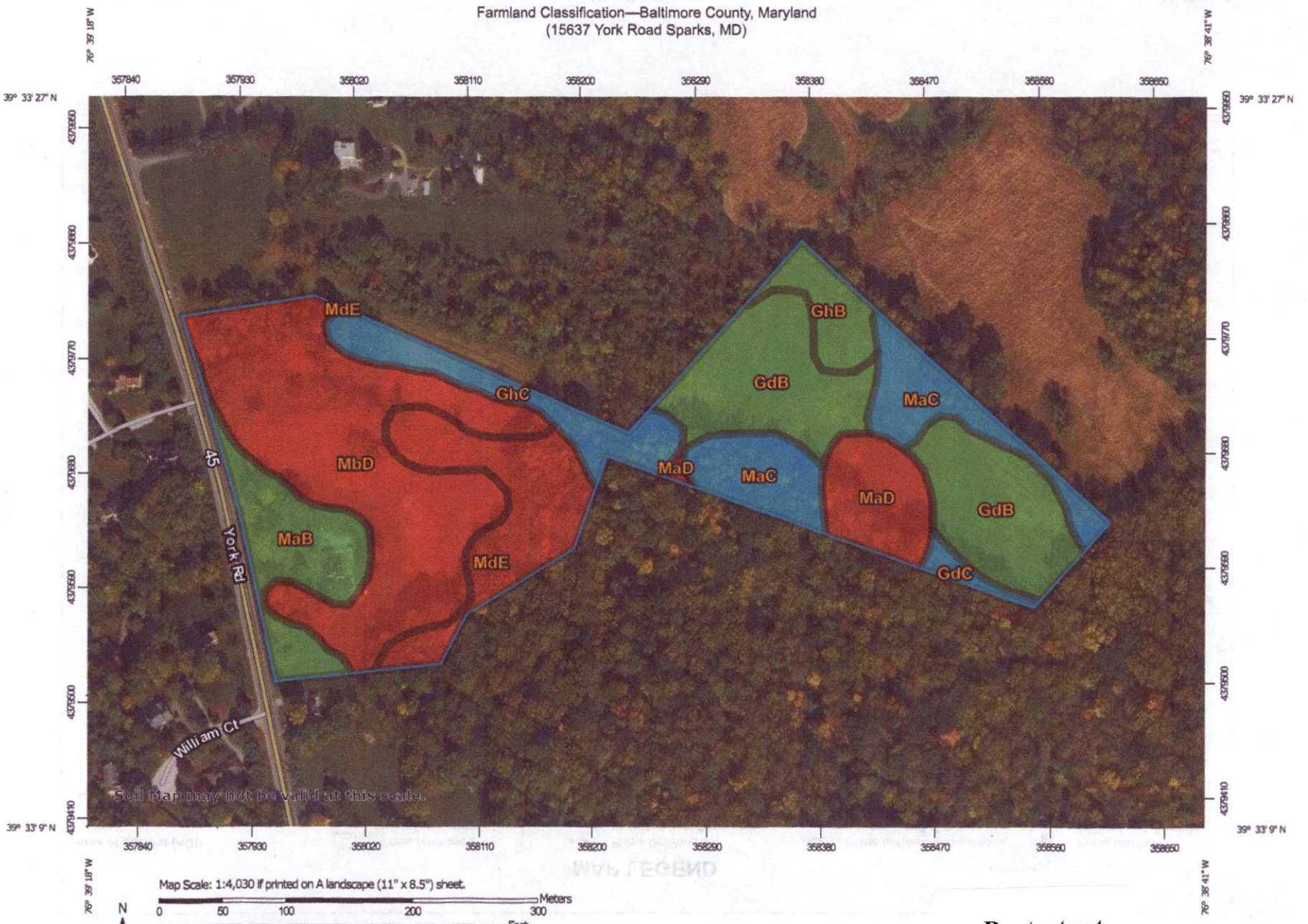
18-047X
Gurney



USDA Natural Resources Conservation Service

Web Soil Survey
National Cooperative Soil Survey

18-017-X

10/24

Protestant
CBA Exhibit
14

Gerner

MAP LEGEND

Area of Interest (AOI)

- Area of Interest (AOI)

Soils

Soil Rating Polygons

- Not prime farmland
- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated
- Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated and drained
- Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if subsoiled, completely removing the root inhibiting soil layer
- Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60
- Prime farmland if irrigated and reclaimed of excess salts and sodium
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

Soil Rating Lines

- Not prime farmland
- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated
- Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated and drained
- Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if subsoiled, completely removing the root inhibiting soil layer
- Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60
- Prime farmland if irrigated and reclaimed of excess salts and sodium
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

Soil Rating Points

- Not prime farmland
- All areas are prime farmland
- Prime farmland if drained
- Prime farmland if protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated
- Prime farmland if drained and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if irrigated and drained
- Prime farmland if irrigated and either protected from flooding or not frequently flooded during the growing season
- Prime farmland if subsoiled, completely removing the root inhibiting soil layer
- Prime farmland if irrigated and the product of I (soil erodibility) x C (climate factor) does not exceed 60
- Prime farmland if irrigated and reclaimed of excess salts and sodium
- Farmland of statewide importance
- Farmland of local importance
- Farmland of unique importance
- Not rated or not available

Water Features

MAP INFORMATION

Streams and Canals

Transportation

Rails

Interstate Highways

US Routes

Major Roads

Local Roads

Background

Aerial Photography

The soil surveys that comprise your AOI were mapped at 1:12,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Baltimore County, Maryland
Survey Area Data: Version 13, Sep 10, 2018

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Aug 23, 2013—Feb 22, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Farmland Classification

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
GdB	Glenelg loam, 3 to 8 percent slopes	All areas are prime farmland	6.1	20.7%
GdC	Glenelg loam, 8 to 15 percent slopes	Farmland of statewide importance	0.3	1.0%
GhB	Glenville silt loam, 3 to 8 percent slopes	All areas are prime farmland	1.1	3.8%
GhC	Glenville silt loam, 8 to 15 percent slopes	Farmland of statewide importance	1.9	6.5%
MaB	Manor loam, 3 to 8 percent slopes	All areas are prime farmland	2.6	8.9%
MaC	Manor loam, 8 to 15 percent slopes	Farmland of statewide importance	3.1	10.6%
MaD	Manor loam, 15 to 25 percent slopes	Not prime farmland	1.8	6.2%
MbD	Manor channery loam, 15 to 25 percent slopes	Not prime farmland	9.1	30.9%
MdE	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky	Not prime farmland	3.3	11.3%
Totals for Area of Interest			**29.4**	**100.0%**

Description

Farmland classification identifies map units as prime farmland, farmland of statewide importance, farmland of local importance, or unique farmland. It identifies the location and extent of the soils that are best suited to food, feed, fiber, forage, and oilseed crops. NRCS policy and procedures on prime and unique farmlands are published in the "Federal Register," Vol. 43, No. 21, January 31, 1978.

Rating Options

Aggregation Method: No Aggregation Necessary

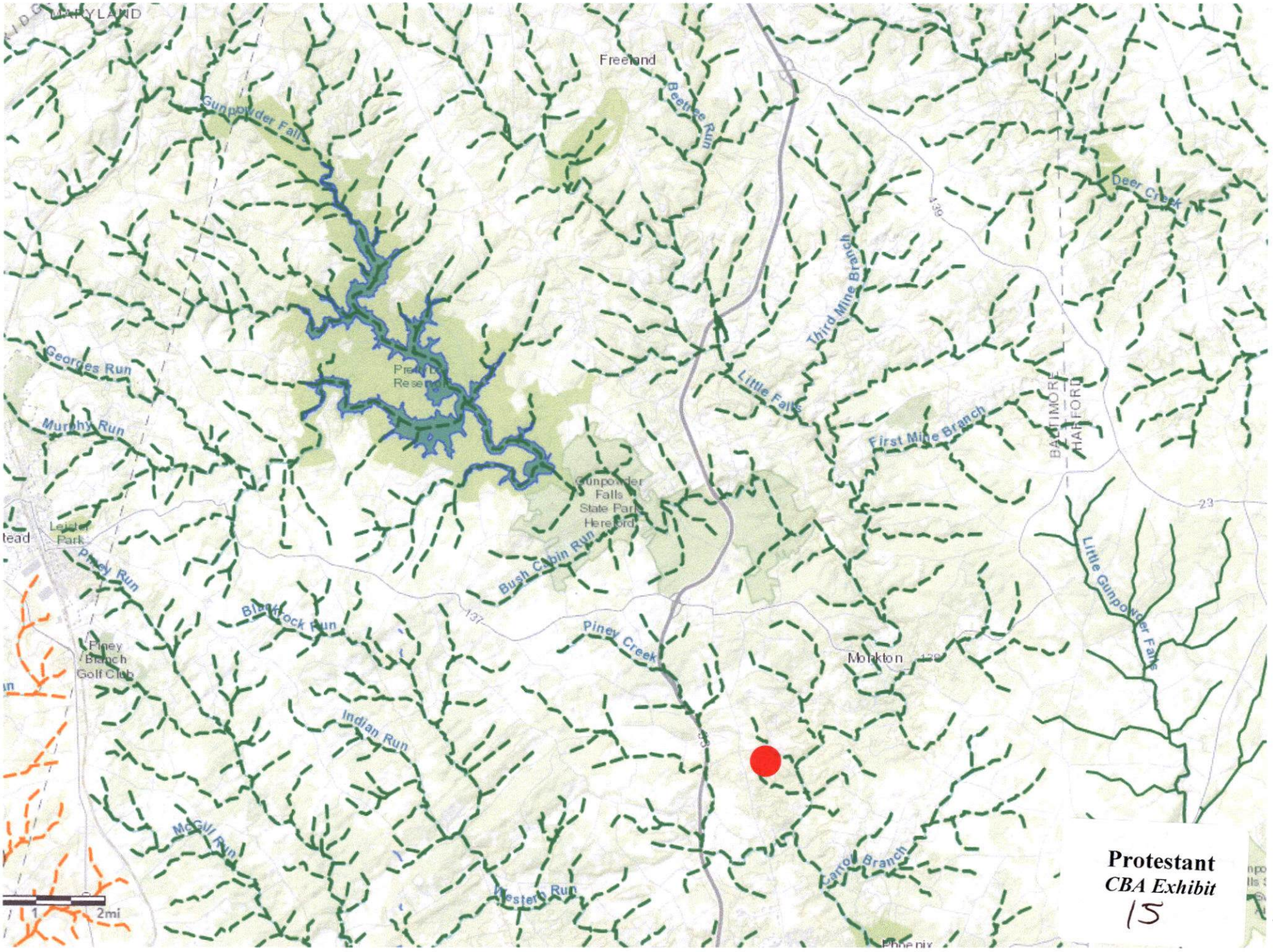
Tie-break Rule: Lower

Soil Survey Map Information
websoilsurvey.nrcs.usda.gov/app/WebSoilSurvey.aspx
15637 York Road
Spark-Glencoe, Maryland 21152
Back Field considered for Solar Field
Download Link: wss_aoi_2018-04-22_21-05-03.zip (this link will take you to the NRCS site for the field in quesiton- click on the "Soil Map" tab to see the soil map)

Map Unit Symbol	Map Unit Name	Acres In Area of Interest	Percent of AOI
GdB	Glenelg loam, 3 to 8 percent slopes	7.2	44.2%
GdC	Glenelg loam, 8 to 15 percent slopes	0.5	2.9%
GhB	Glenville silt loam, 3 to 8 percent slopes	2.5	15,3%
GhC	Glenville silt loam, 8 to 15 percent slopes	0.2	1.3%
MaC	Manor loam, 8 to 15 percent slopes	4.2	25.6%
MaD	Manor loam, 15 - 25 percent slopes	1.7	10.7%
	Total Areas of Interest (AOI)	**16.4**	**100%**

Glenelg Series - USE AND VEGETATION: Most areas of Glenelg soils are in crops including corn, soybeans, small grains, hay, and to a limited extent, pasture. Native vegetation is red oak, white oak, hickory, and tulip poplar.
Glenville Series - USE AND VEGETATION: General crops but mostly grain, hay and pasture. Native vegetation consists of mixed hardwoods. Sizable areas are adjacent to community development and urban expansion.
Manor Series - USE AND VEGETATION: Major Uses: Cropland, woodland, and urban development; Dominant Vegetation: Where cultivated--corn, soybeans, small grain, pasture and hay. Where wooded--black oak, chestnut oak, red oak, white oak, hickory, yellow popular, red maple, shortleaf pine and Virginia pine.

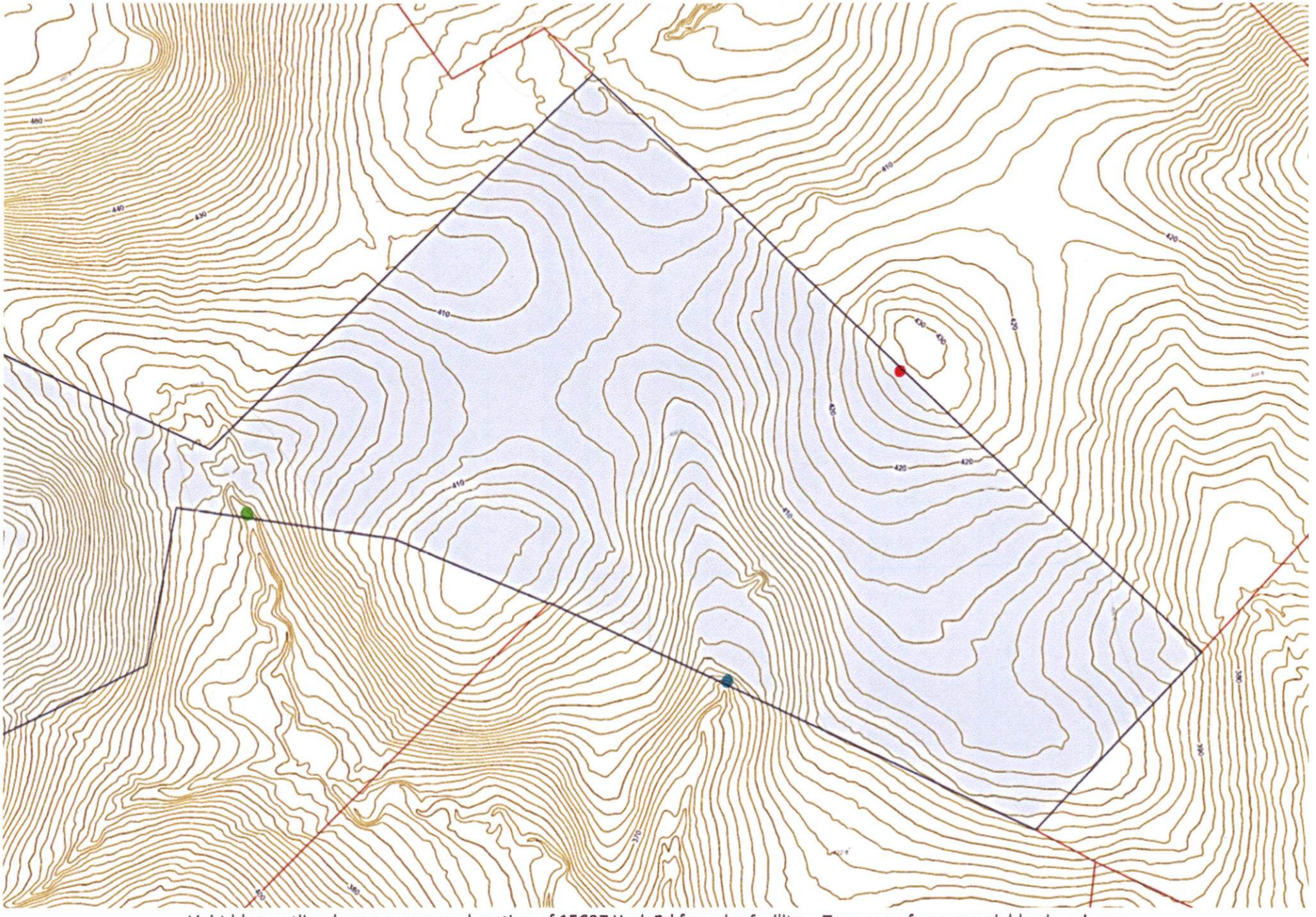
Series information: https://soilseries.sc.egov.usda.gov/OSD_Docs/M/Manor.html



Class III Trout Streams, North Balto County

10/24

18-047X Garner



Light blue outlined area = proposed section of 15637 York Rd for solar facility Topo map from myneighbor[illegible].com

● Elevation at highest point of proposed property: 428'

● ● Elevation at lowest points on this portion of property: 378' and 372'

56' total difference in elevation in this area.

18-047X

Protestant
CBA Exhibit
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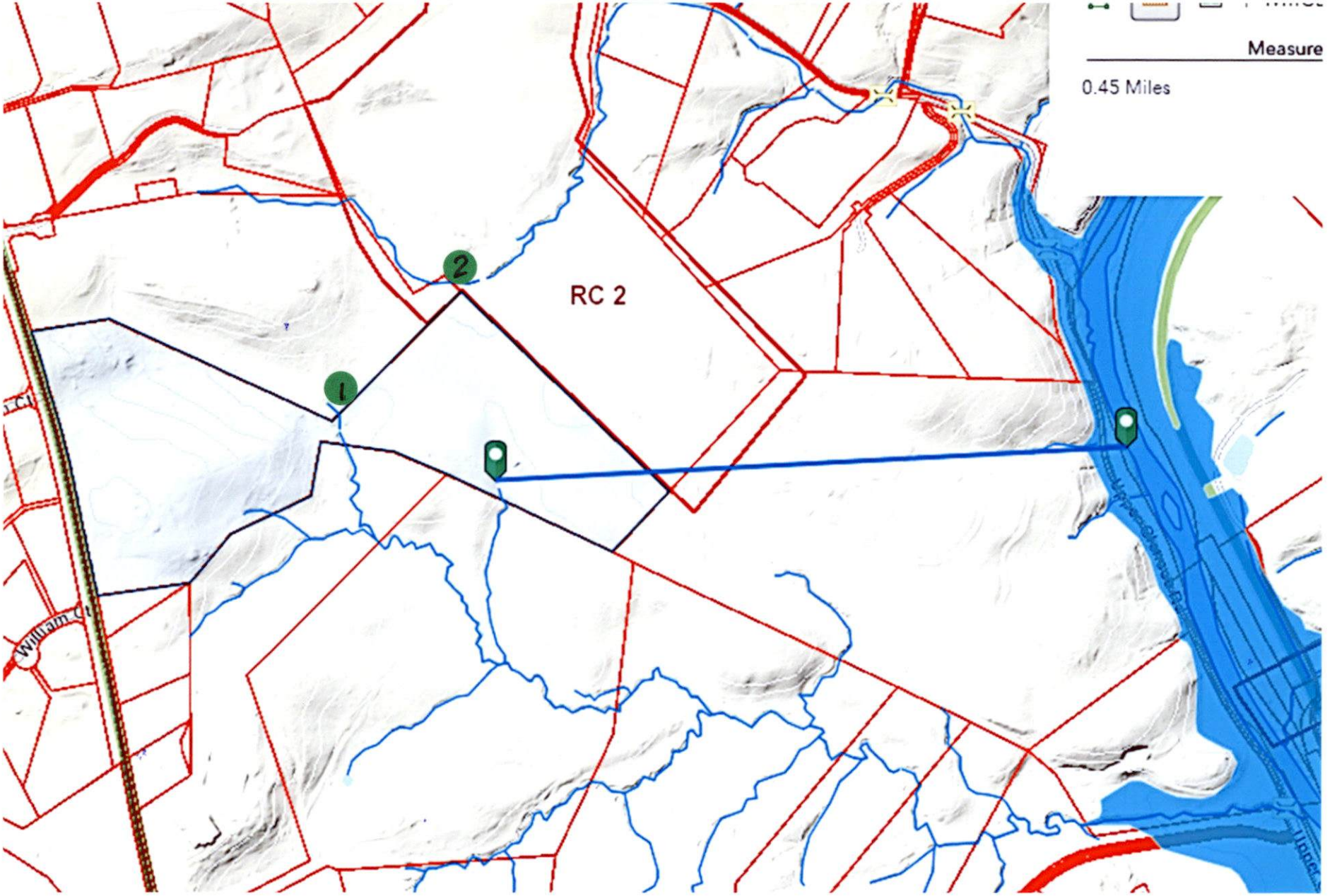
Gerner
10/24



Streams (blue lines) and Floodplains (turquoise area) on or close by Gerner property.

The proposed area of development on this property has 2 delineated waterways onsite, plus a 3rd one adjacent on north corner. Due steep slopes on this property, all runoff will be channeled into these 3 surrounding streams. Excessive runoff would exacerbate already sens streams.

Distance to Gunpowder River from hydro channel on property: 45 mile

Protestant
CBA Exhibit
17

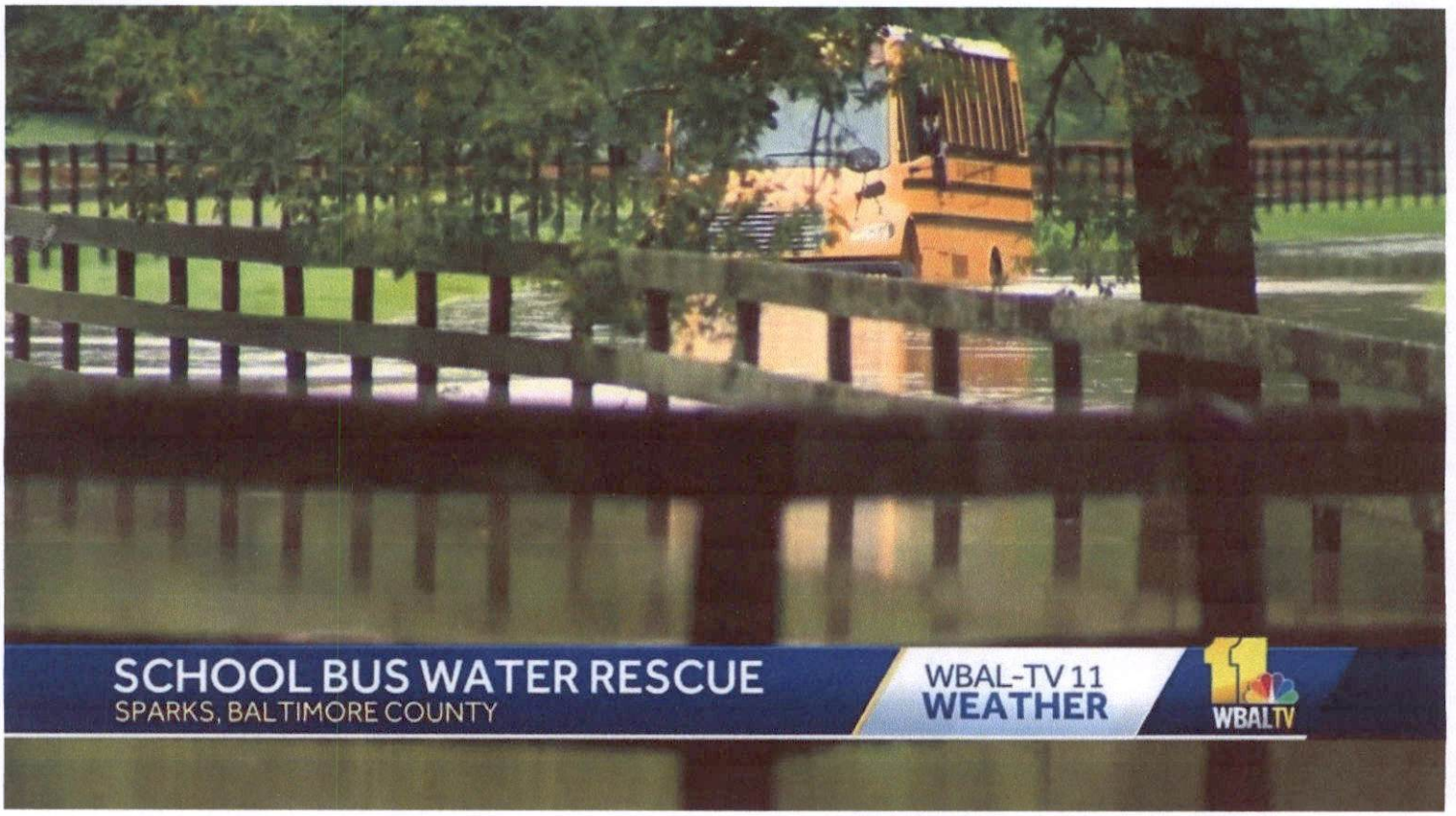
Springhead (green grassy area) and 2nd hydro channel for runoff from slopes (on right). 'Bridge' is to left in image. The width of this section of property is less than 80' wide. Photo taken 1-11-2018.

Pond created by 'bridge' of stones (covered with soil) that were dumped years ago for roadway. Spring water and storm runoff is backed up into this area, since there is no visible pipe under road for outlet, water must seep through stones into channel on other side. This has changed the natural flow of water in this area. Photo taken 3-4-2018.

North corner of Gerner property (light colored field). Note eroded hydro channel, this flows onto Mayo Property. 1-11-18

Mayo field on Left, Gerner field on Right, treeline in middle. Year-round stream with wetland grasses is adjacent to both properties. Photo taken on Rude property 3-4-2018

(2)



Crews rescue 3 people from school bus stuck in floodwaters in Sparks

WBALTV 11 NEWS

Updated: 12:22 PM EDT Jul 24, 2018

Saliqa A. Khan

Digital Editor

SPARKS GLENCOE, Md. — Crews rescued three people in a Baltimore County school bus stuck in floodwater.

First responders were called around 7:30 a.m. Tuesday to the 1100 block of Lower Glencoe Road in Sparks Glen. were stuck on the bus, but were rescued a short time later, police said.

Gerner

18-047X
10/24

Protestant
CBA Exhibit
18

Top photo: Before: Normal Gunpowder River flow.

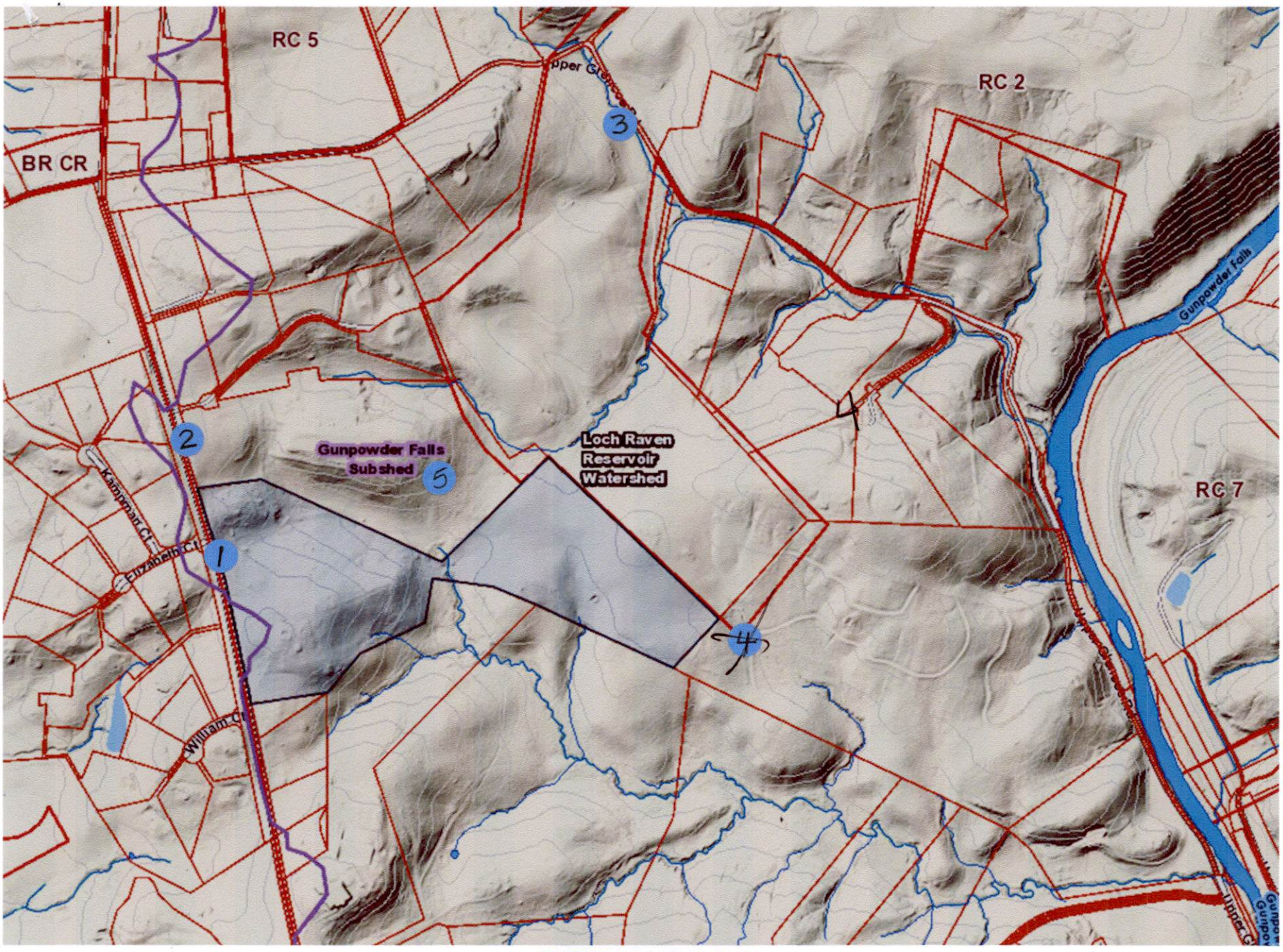
Bottom photo: During flooding 7/24/2018, Upper-, Lower- and Glencoe Roads (images Google Maps and WBAL News).

Both streams that are either on or surround the proposed solar facility run into the Gunpowder River, north of this intersection on Upper Glencoe Rd.

Runoff from impervious solar panels that is not absorbed into the ground would increase volume of water flowing downstream.

These roads are used regularly by personal vehicles, farm equipment, school buses, horse riders, hikers and bicyclers (NCR Trail to right in bottom photo).

A private boarding school, Oldfields, is located .6 mile from this intersection (road to right in photo).



~~15837 York Rd Watersheds~~
~~Watershed: Loch Raven Reservoir~~
~~River Basin: Gunpowder River~~
~~Subshed: Gunpowder Falls~~
~~Map: My Neighborhood~~

PHOTOS: 3/4/2018
4/21
8/20
10/22

Protestant
CBA Exhibit
19

View of Gerner Property, 15637 York Rd, Sparks
Green field (in back center) is solar facility site.

Protestant
CBA Exhibit
A

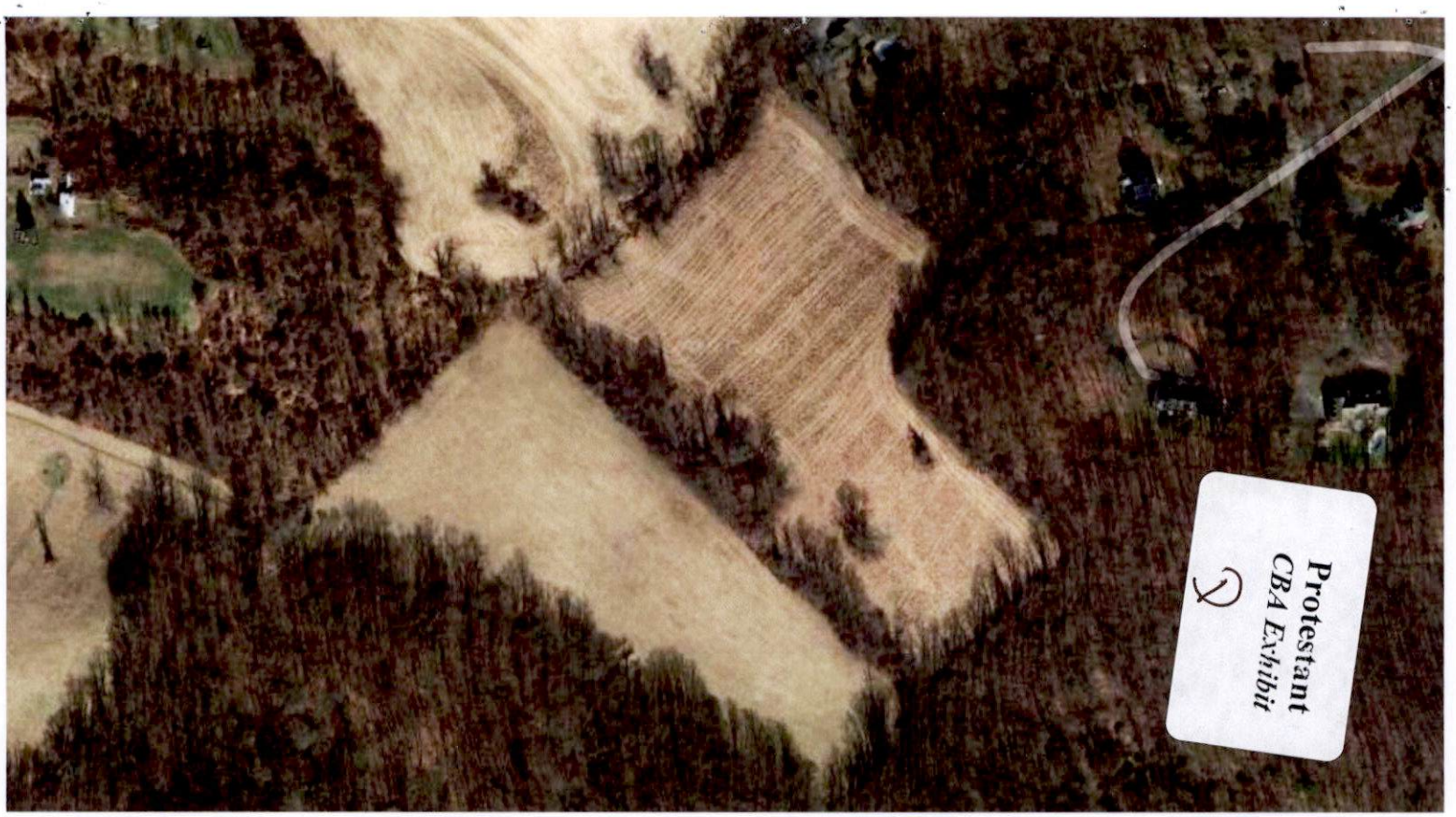
View from York Rd, just north and next to 15637 York Rd
Rudie Residence on left and proposed facility (green field to right and rear of tree stump in foregro

Protestant
CBA Exhibit
B

View of proposed solar facility field from Upper Glencoe Rd (center, green field in rear).

Stream in foreground continues downstream from north point of Gerner property. This is an extension of a Class III Trout stream.

Shallow stream beds such as this are used by federally protected brown trout, especially for laying their eggs.



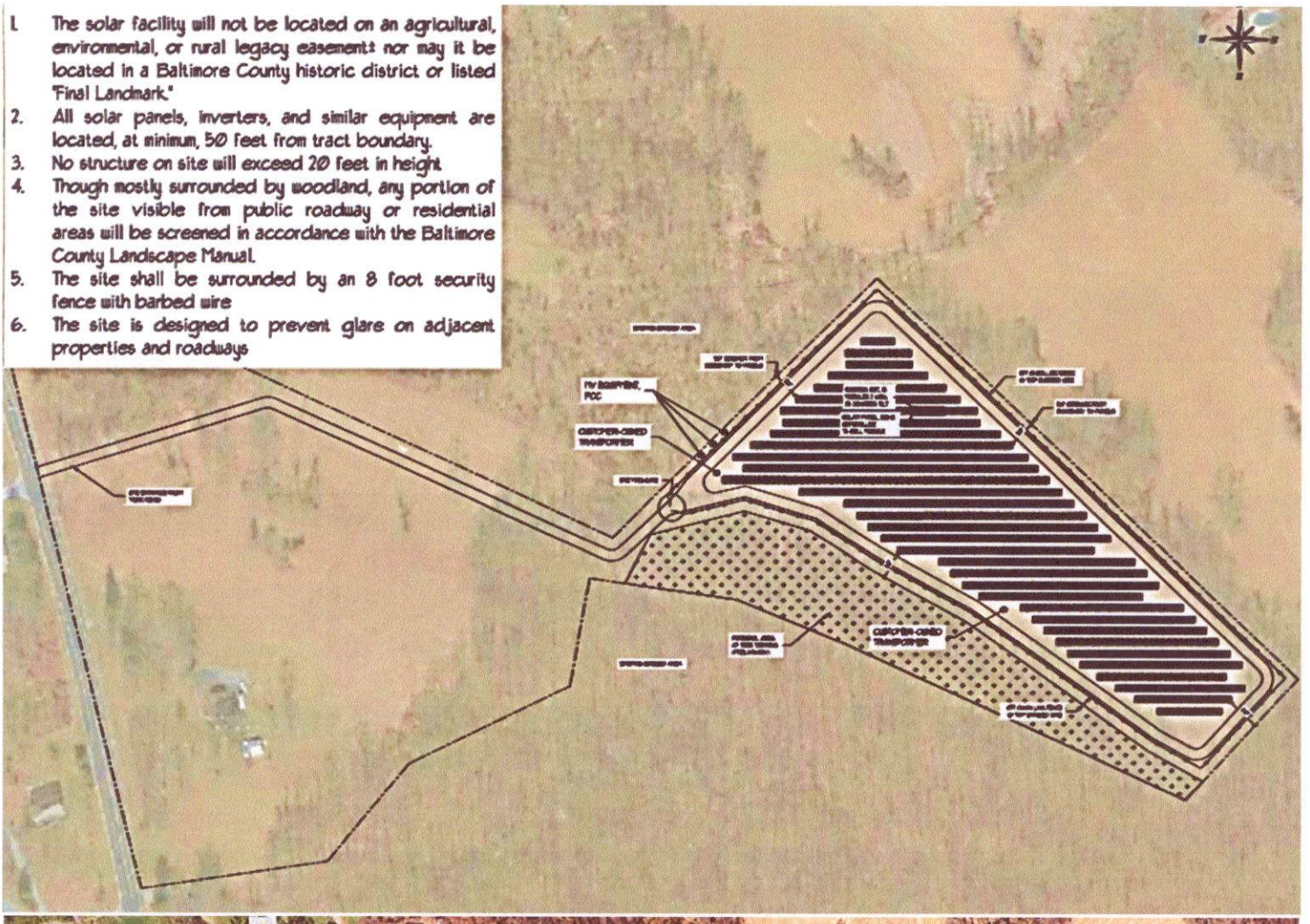
Lowest field is proposed solar site. Home owners will be visually impacted by a solar development at this location.

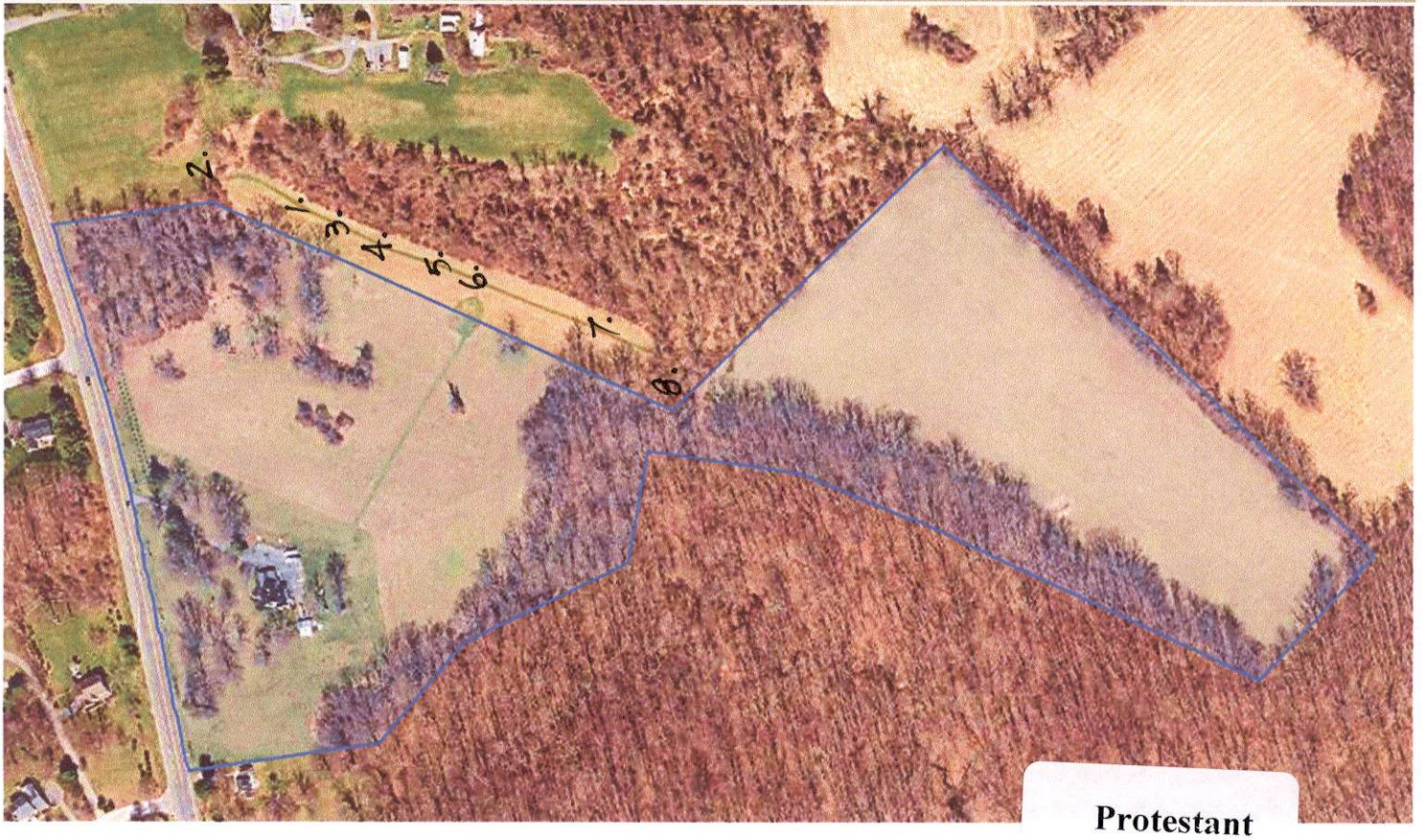
Aerial view from residence of 1030 Upper Glencoe Rd, looking towards proposed solar facility field.

VIEW FROM RIDE PROPERTY FACING SE

Protestant
CBA Exhibit
F -/18

1. The solar facility will not be located on an agricultural, environmental, or rural legacy easement nor may it be located in a Baltimore County historic district or listed "Final Landmark."
2. All solar panels, inverters, and similar equipment are located, at minimum, 50 feet from tract boundary.
3. No structure on site will exceed 20 feet in height
4. Though mostly surrounded by woodland, any portion of the site visible from public roadway or residential areas will be screened in accordance with the Baltimore County Landscape Manual.
5. The site shall be surrounded by an 8 foot security fence with barbed wire
6. The site is designed to prevent glare on adjacent properties and roadways





Protestant
CBA Exhibit
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10/24

Gerner Property: Top, Site Plan 2017
Bottom: My Neighborhood.com

18-047-x

Gerner

Photo taken on S side of neighboring Rude property, facing SE. Line of trees on left: Rude; Trees on right: Gerner; Grassy area in

All photos taken 9/30/2018.

Protestant
CBA Exhibit
A

Photo taken from Rude property, north of Gerner property, facing West towards York Rd (see electric lines whi
Grassy area is Rude's. Straight downhill line of trees, behind mown grass in center of photo, are Gerner's. Trees in foregrou lude's.

Protestant
CBA Exhibit
B

Photo taken on Rude property facing SE towards Gerner property. Grassy area in foreground up to trees is Rude's. Trees in ner's. Gerner home is on top of hill to right in photo.

According to site plan, proposed roadway to solar site would be between the 2 small copses of trees l

Protestant
CBA Exhibit
C

Wet channels of runoff from storm, 2 days prior. Photo facing SW towards Gerner home. Trees and part of grassy ar
are on Gerner property. Proposed roadway to solar site would be in this area.

Protestant
CBA Exhibit
D

A.

Photo taken on Rude property facing SE; proposed solar site is visible through trees near top of photo in center, lighter green area. The e ge, from left to the right side, including area around single tree, is wet during rains from runoff.

Protestant
CBA Exhibit
E

Deep, muddy truck tracks on Rude's property, facing SE towards Gerner property where gravel road would be installed, behi
The soil in this area, including up to this tree, absorbed several days of rain and became unstable for drive

Protestant
CBA Exhibit
F

Protestant
CBA Exhibit
6

View from Rude's property facing S towards Gerner property. The proposed gravel roadway, which would be located behind single s to be removed. Clay in the soil in this area is prone to absorb and hold runoff from storms.

Gerner property 'bridge' crossing over dammed-up spring-fed stream (which originates on Rude's property). Deep, muddy tr
narrow structure seen in photo.

Protestant
CBA Exhibit
H

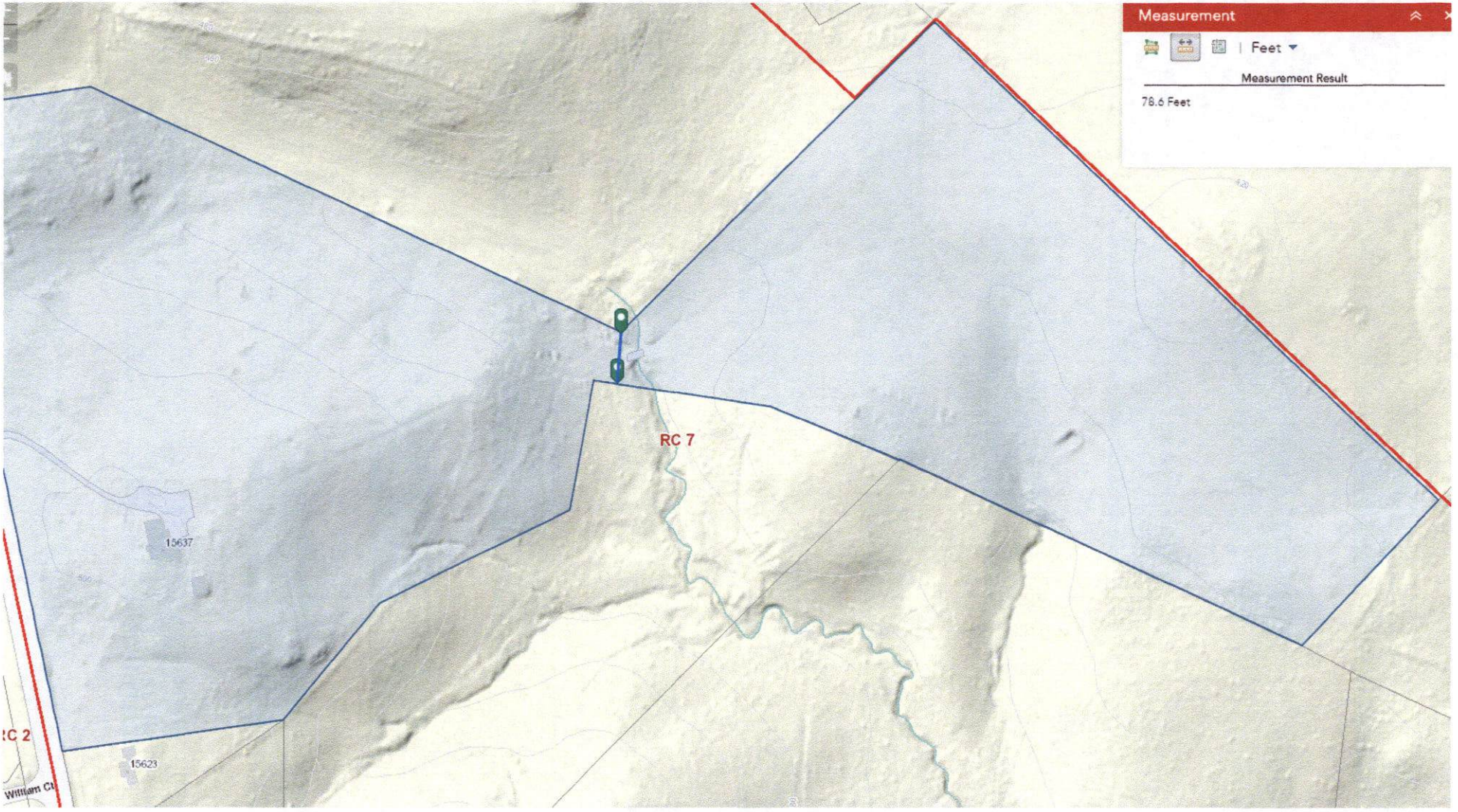
Date	Hi/Lo	Precip	Snow	Forecast	Avg. Hi / LO
Sat 9/1	84°/73°	0.03 in	0 in		85°/69°
Sun 9/2	89°/75°	0 in	0 in		85°/68°
Mon 9/3	94°/78°	0 in	0 in		85°/68°
Tue 9/4	96°/80°	0 in	0 in		84°/68°
Wed 9/5	96°/81°	0 in	0 in		84°/68°
Thu 9/6	97°/79°	0 in	0 in		84°/68°
Fri 9/7	88°/74°	0.51 in	0 in		84°/67°
Sat 9/8	76°/62°	0.57 in	0 in		83°/67°
Sun 9/9	64°/60°	1.90 in	0 in		83°/66°
Mon 9/10	72°/63°	0.04 in	0 in		83°/66°
Tue 9/11	75°/68°	0.09 in	0 in		82°/66°
Wed 9/12	86°/70°	0.01 in	0 in		82°/66°
Thu 9/13	79°/74°	0.04 in	0 in		82°/65°
Fri 9/14	77°/71°	0.07 in	0 in		81°/65°
Sat 9/15	85°/69°	0 in	0 in		81°/64°
Sun 9/16	82°/69°	0 in	0 in		80°/64°
Mon 9/17	80°/72°	1.37 in	0 in		80°/64°
Tue 9/18	82°/73°	2.99 in	0 in		80°/63°
Wed 9/19	86°/72°	0 in	0 in		79°/63°
Thu 9/20	82°/70°	0 in	0 in		79°/62°
Fri 9/21	77°/71°	0 in	0 in		78°/62°
Sat 9/22	78°/64°	0.03 in	0 in		78°/61°
Sun 9/23	64°/61°	0.98 in	0 in		77°/61°
Mon 9/24	69°/62°	0.12 in	0 in		77°/60°
Tue 9/25	80°/65°	0.28 in	0 in		77°/60°
Wed 9/26	89°/72°	0.55 in	0 in		76°/60°
Thu 9/27	73°/59°	0.64 in	0 in		76°/59°
Fri 9/28	76°/60°	0.25 in	0 in		75°/59°
Sat 9/29	80°/64°	0 in	0 in		75°/58°
Sun 9/30	76°/62°	0 in	0 in		74°/58°

September 2018 Weather and Rainfall in Sparks, MD

www.accuweather.com/en/us/verona-md/21152/september-weather/2120611?monyr=9/1/2018&view=table

Protestant
CBA Exhibit
1

9.



15637 York Rd, Gerner property

Map: Baltimore County.gov/myneighborhood/

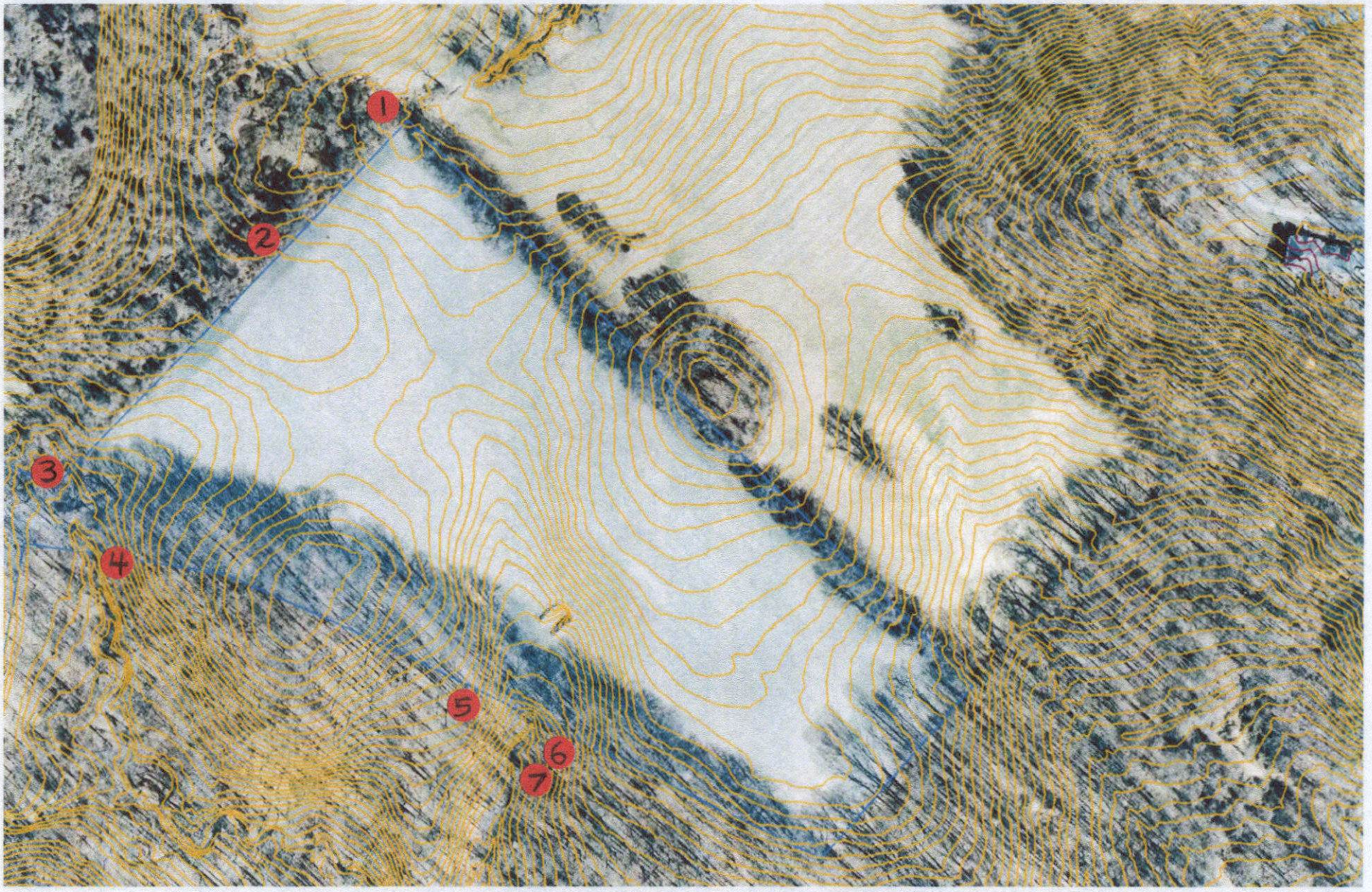
Distance between the two closest points of property (next to stream): 78.6'

Note steep slopes on all sides surrounding this narrow area and the direction that runoff water would trave

18-047X

Protestant
CBA Exhibit
21

10/24



15537 York Rd. Proposed Solar Facility (outlined in blue)

Numbered dot locations relate to photos taken by Lynne Jones on 12/7/2017, 1/31 & 3/4/2018.

Map: MyNeighborhood. Yellow lines: Topography Contours

10/24

19-047x

Protestant
CBA Exhibit
22


Protestant
CBA Exhibit
A


Protestant
CBA Exhibit
B


Protestant
CBA Exhibit
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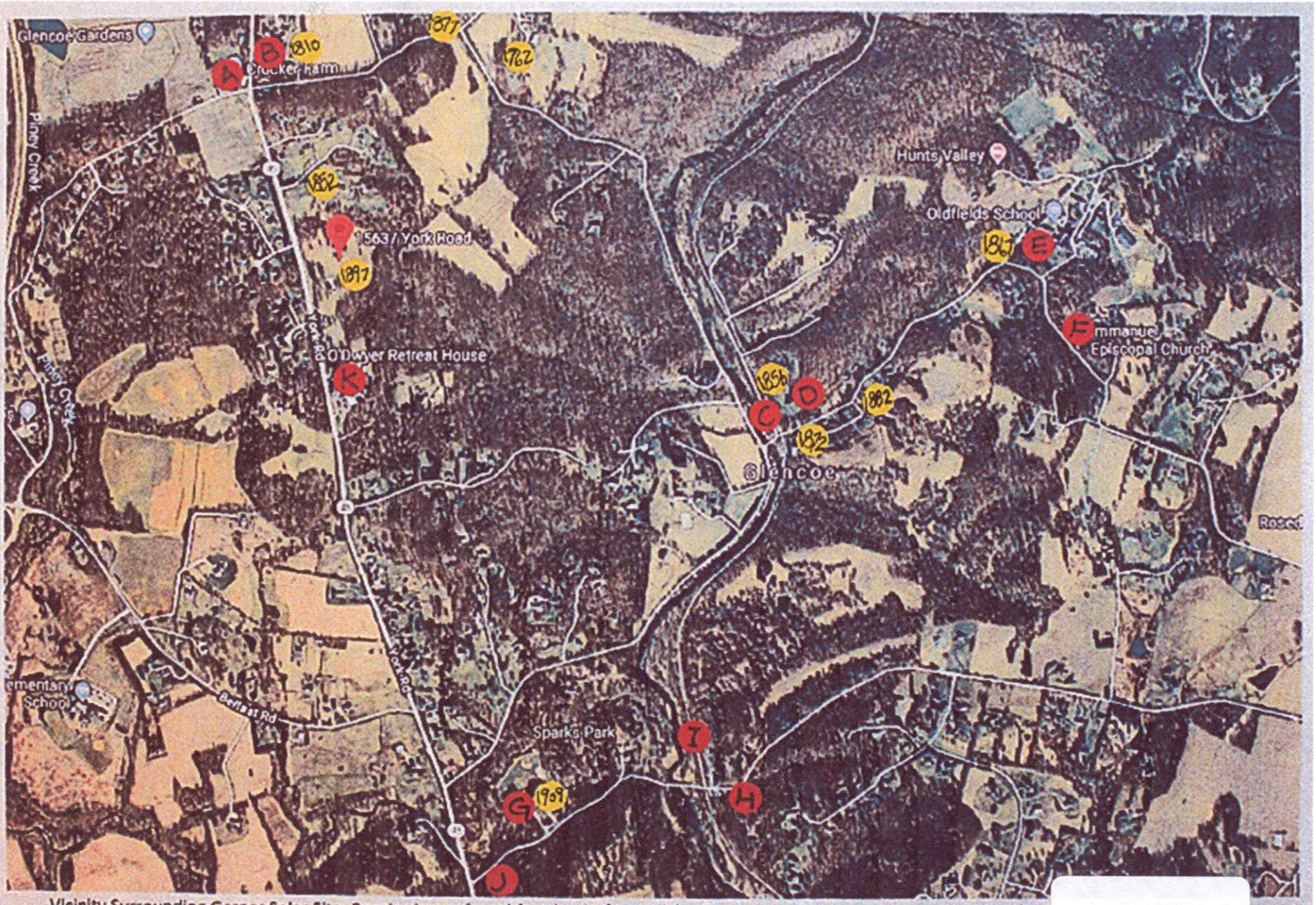
CBA Exhibit
f

Protestant
CBA Exhibit

9



Vicinity Surrounding Gerner Solar Site: Scenic views of rural farmlands, forests, the Gunpowder River and streams are prevalent
Baltimore County Landmarked (BA#) and historic buildings are (red dots):
Within this area is A. the historic Gorsuch Stone barn BA# 129, B. Gorsuch Tavern BA# 130, C. Glencoe RailRoad Station BA# 546, D.
7, E.
Oldfields private girls' boarding school BA# 126, F. Immanuel Church, G. former Sparks Elementary School (now a county park), H. Sparl
CR Trail,
J. Rogney House BA# 431 and K. the O'Dwyer Catholic Retreat Center.

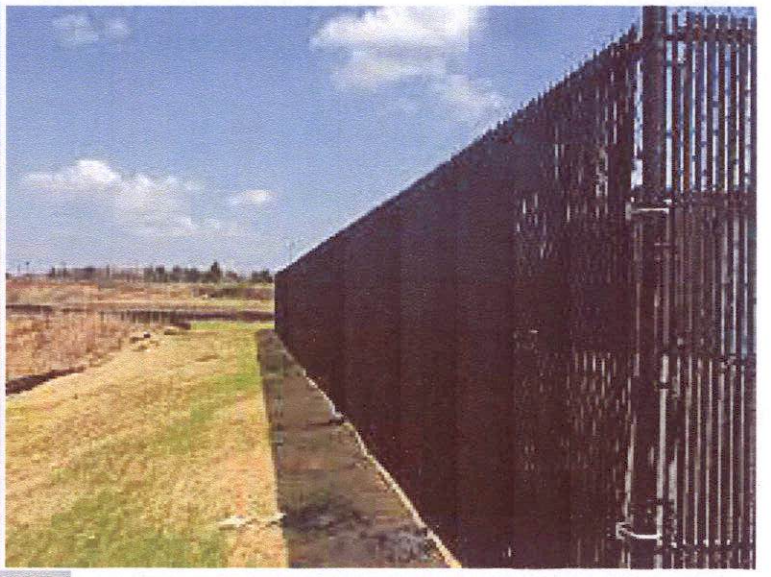
Dates of structures in yellow dots

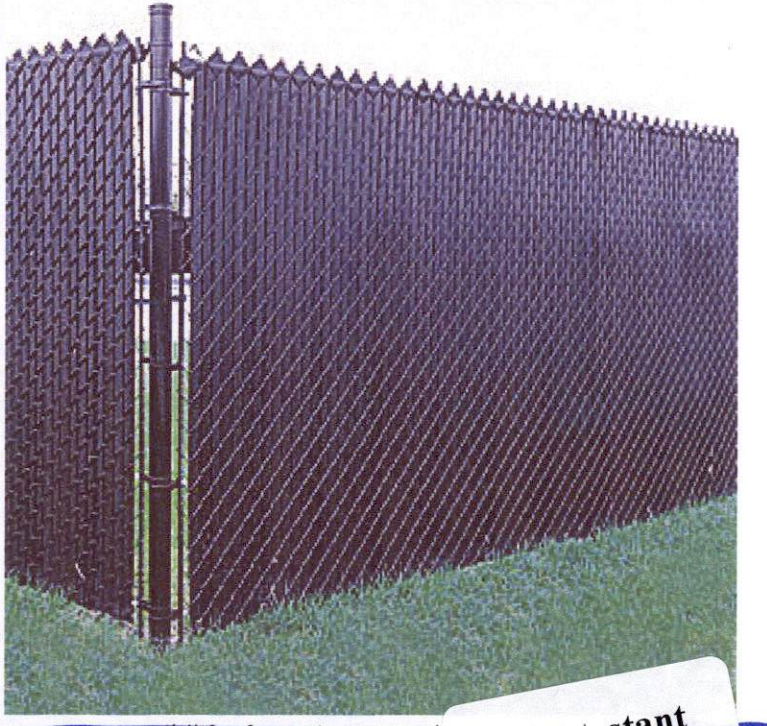
Protestant
CBA Exhibit
23

Erecting a chain link fence in open agricultural areas has a damaging impact on wildlife. Barbed wire should never be considered deer have been known to jump up to 15'. Birds and other animals are accustomed to certain flyways and migratory paths whicl especially surrounded by relatively unfractured landscapes such as this property on York Rd.

All these creatures are Indigenous to Baltimore County.

Protestant
CBA Exhibit
24



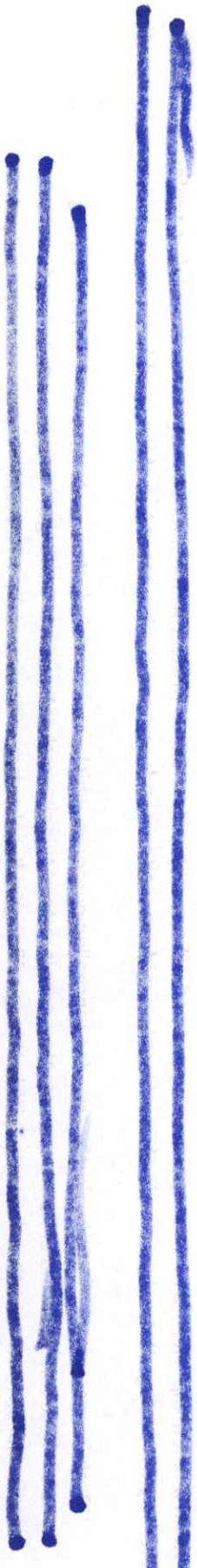


Images of chain link fencing. The 3 black fences have exposed ends of wire at top. In order to protect wildlife, fence image on t… r rural environments for top of fencing. Not only are ends of wire bent to avoid exposed raw ends, but positioning bar at top of fence add… rotection.

Protestant
CBA Exhibit
24b

Both images on right include plastic strips for concealing purposes, which would look industrial, not natural in thi…

None of these fences would enhance or promote a scenic vista at this site, rather they would change the appearance o… and promote a commercial environment that does not exist in this specific agricultural community, especially on a scenic route with community views.



Three views of metal fence surrounding electric station at Oregon Ridge; photos taken 10/2/2018.
Top photo: Beaver Dam Rd in front of metal fence, approx. 615' L, 130' W = approx. 80,000 sq. feet of
Middle & Bottom: Rear of Electrical Station which faces Oregon Ridge's nature trails
Note landscape plantings: small trees to screen fence from public view. It will take decades for
enough to conceal this area from public view.

Protestant
CBA Exhibit
25

Simmons Road Solar Facility

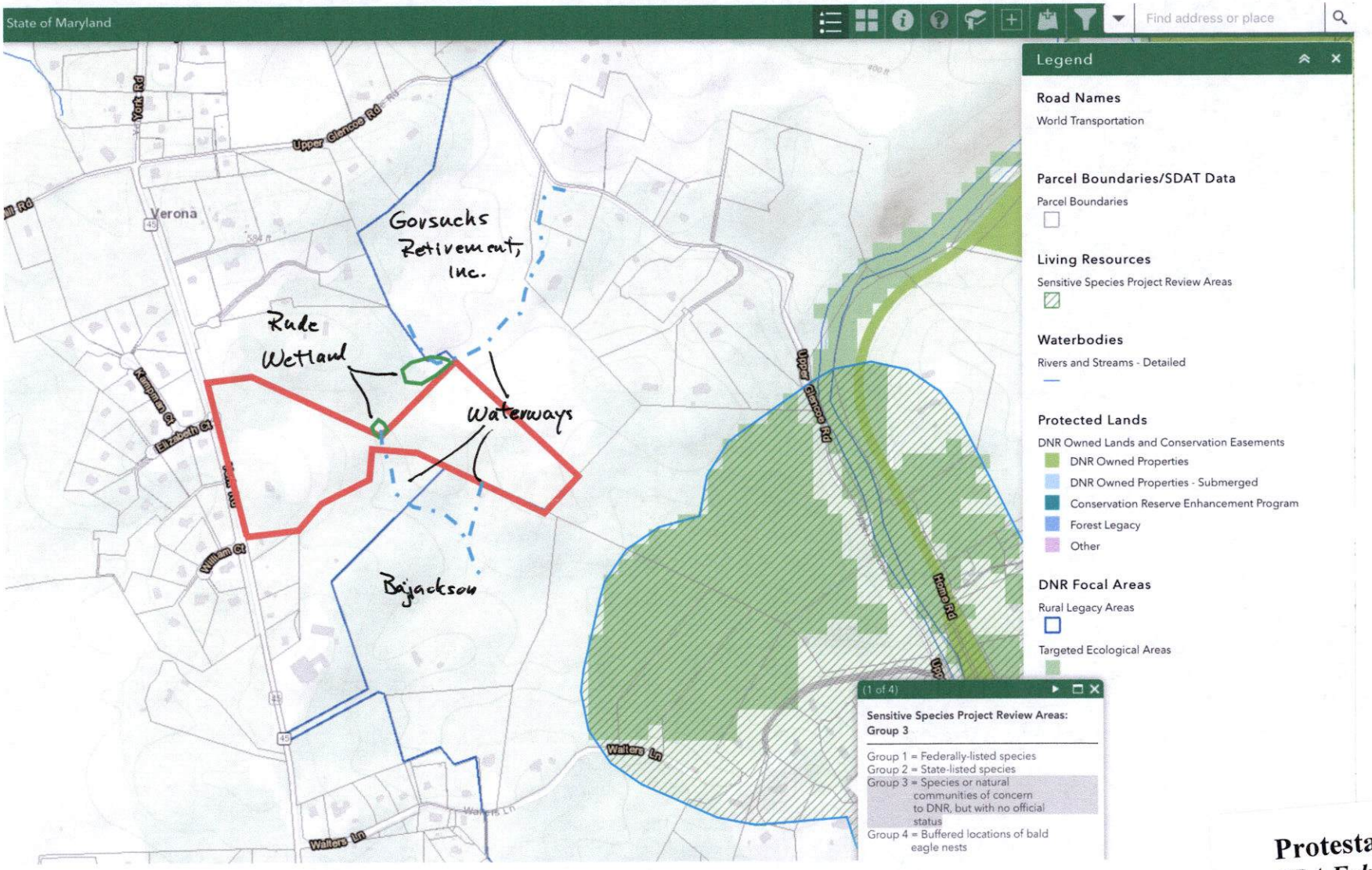
The 2 MW Simmons Road Solar facility commissioned in January of 2018 and is located on the City's northside. The site is estimated to generate about 3,850 MWh in the first year (Jacksonville)

https://www.jea.com/about/electric_systems/generation_strategy/alternative_energy/solar_generation/

18-047X

10/24/18

Protestant
CBA Exhibit
26



Protestant
CBA Exhibit

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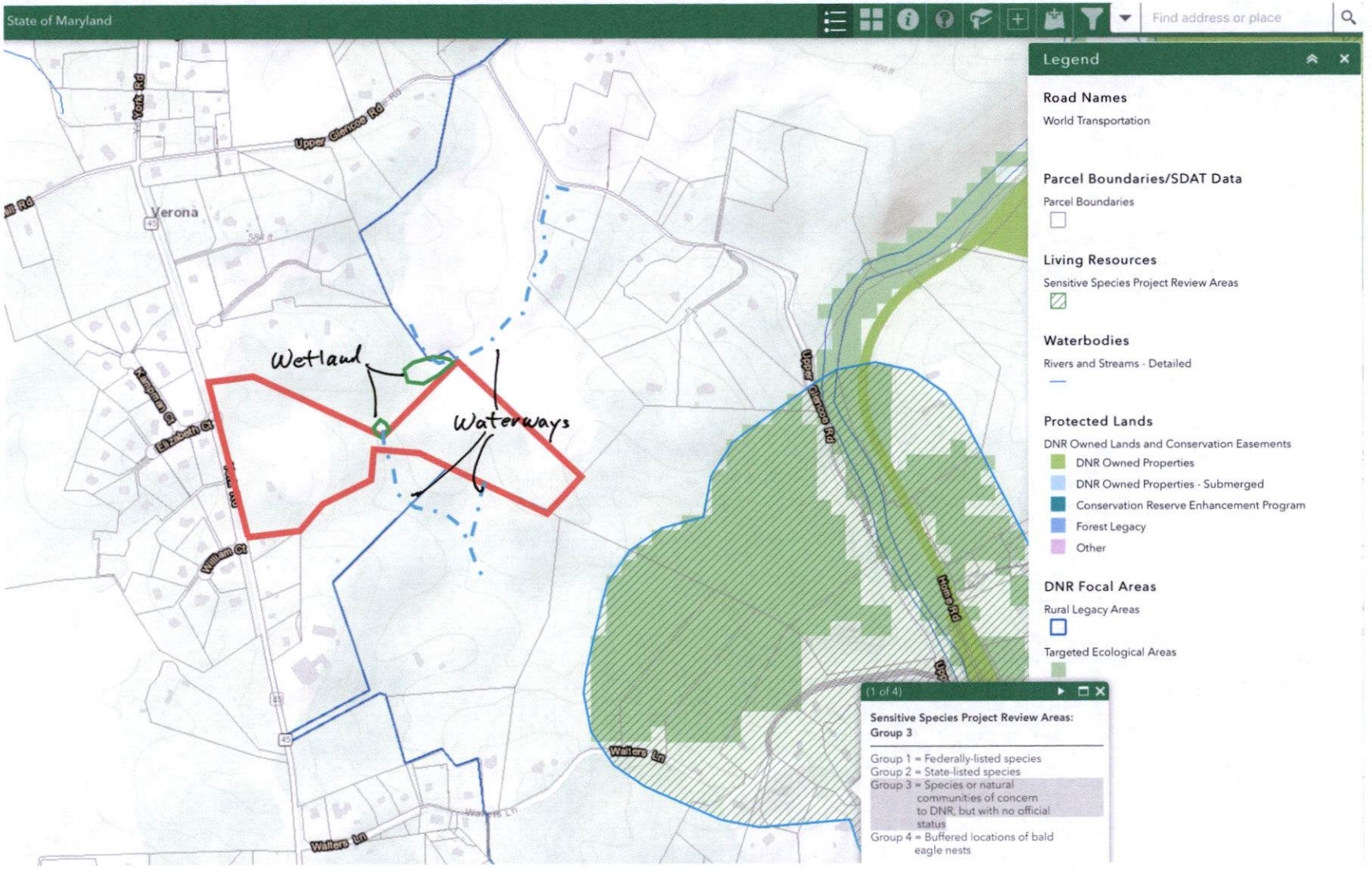
Prot. Exh. 28A



18-047X

11/28

Protestant
CBA Exhibit
28

John C. Roemer IV

President, Roemer Ecological Services, Inc.

Education

B.A. Earth and Planetary Sciences, Johns Hopkins University, Baltimore, Maryland, 1983.

Certifications

US Army Corps of Engineers: Wetland Delineator (Certificate WDCP93MD0410020A)
Maryland Department of Natural Resources: Forestry Conservation Act Professional

Summary of Experience

John Roemer IV specializes professionally in environmental consulting, with emphasis on delineation, assessment, and creation of wetlands. Major projects involving tidal and nontidal wetlands focus on obtaining agency authorization for development that achieves his client's objectives and compensates for environmental impacts. He conducts rare plant surveys and crafts compromises that satisfy the agencies and landowners when such species are present.

Mr. Roemer field-delineates and accurately maps wetland boundaries, assesses the impacts of proposed development and conducts alternatives analyses, guides original plans through the regulatory process, and designs and implements wetland creation projects. His reports are crafted both to be accessible to the layperson and to satisfy precise technical requirements.

Mr. Roemer has established a reputation for credibility with developers, conservation groups, Federal, State, and local agencies, attorneys, and fellow professionals. His experience primarily is in Maryland, New Jersey, and Pennsylvania, where he has studied thousands of acres and carefully documented hundreds of miles of wetland boundary.

1991 - present President, Roemer Ecological Services, Inc., Parkton, Maryland.

Mr. Roemer consults as president of Roemer Ecological Services, Inc. He studies project site conditions, routinely identifying soils, vegetation, and wildlife habitat. He coordinates with allied professionals on major projects, ensuring that environmental regulations are anticipated and considered during all planning stages. Negotiating with regulatory agencies for permits for unavoidable impacts, Mr. Roemer thoroughly evaluates alternatives and proposed mitigation and wetland creation concepts, which are adopted as permit conditions and implemented under his oversight. He has authored or has been primary contributor to numerous contract reports and has responded as an expert to legal interrogatories and in depositions. He teaches professionals and high school students wetland delineation and plant identification. Mr. Roemer also investigates land for the presence of threatened and endangered plants.

1986 - 1991 Staff Ecologist, Schmid & Company, Inc., Media, Pennsylvania.

Mr. Roemer managed projects and participated in report preparation and review, including data acquisition, data analysis, and map drafting. He investigated project site conditions as field supervisor, and routinely identified soils, vegetation, and wildlife habitat. He conferred with clients, Federal and state agencies, coordinated laboratory analyses, and testified as an expert witness before municipal boards.

Protestant
CBA Exhibit
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18-017X 11/28

1985 - 1986 Program Supervisor, Martel Laboratory Services, Inc., Baltimore, Maryland.

Mr. Roemer coordinated an oil analysis program for jet and propeller aircraft engines. He reviewed all analytical results and evaluation procedures and marketed the laboratory services nationally. He evaluated samples for chemical parameters using a variety of analytical instruments.

1983 - 1985 Laboratory Supervisor, Goucher College, Towson, Maryland.

Mr. Roemer prepared over one dozen labs each semester for the Chemistry/Physics Department. He maintained a safe laboratory environment and was the liaison between the Department and area businesses and chemical companies.

Representative project experience

The US Army Corps of Engineers, requiring a Corps-certified Wetland Delineator, asked Mr. Roemer to expeditiously identify and document jurisdictional wetlands on 400 acres of a US Army proving ground in Frederick, Maryland. Carefully evaluating wetland characteristics in the field after studying aerial photography spanning four decades, he delineated a complicated wetland boundary altered by nearly 60 years of aggressive landscape manipulation. An independent Corps reviewer verified the accuracy of the wetland boundary.

The New York office of the Trust for Public Land, with the Ocean County [NJ] Chapter of the Izaak Walton League, bought private land in the Reedy Creek area of New Jersey's Barnegat Bay for conveyance of ownership to the US Fish & Wildlife Service. Mr. Roemer provided tidal and nontidal wetland regulatory guidance as well as a wetland delineation and report to assist these groups in negotiation for several tracts. As informed buyers, they acquired the land at a fair price and have transferred it to the government.

Advocates for a proposed assisted care facility in Maryland's Chesapeake Bay Critical Area sought Growth Allocation to alter the existing land use classification on a 22-acre site. Mr. Roemer delineated tidal and nontidal wetlands on the tract and investigated how decades-old disturbance has influenced current vegetation and soils. His documentation enabled this project to begin Baltimore County's lengthy and competitive development review process.

Subcontracted to perform wetland consulting services for the US Department of Defense through a large telecommunications firm, Mr. Roemer walked most of the 80-mile fiber optic cable route from a Naval Research facility near Harrisburg, Pennsylvania to Frederick, Maryland. The route included rural country roads, railroads, and densely-populated urban areas. Mr. Roemer obtained permits from the US Army Corps of Engineers, the Pennsylvania Department of Environmental Protection, and the Maryland Department of the Environment for cable installation.

11/28/18 18-047-x

Protestant
CBA Exhibit
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11/28/18 18-0477

MANUFACTURED BY NEW LEXIN
FIRE EQUIPMENT CO. INC.

DATE: March 28,1998

INCOMPLETE VEHICLE
MANUFACTURED BY Internation.

DATE: 26-Jan-98

G.V.W.R. 35,000 lbs

GROSS AXLE WEIGHT RATING

FRONT AXLE 12,000 lbs
WITH 11R22.5
ON 22.5x8.25
AT 105 PSI COLD SIN

1ST INT. AXLE
WITH N/A
ON N/A
AT N/A

2ND INT. AXLE COL

Protestant
CBA Exhibit
30

18-047x 11/28/18

Case No.: 2018-0047-X

Exhibit Sheet

SEN 12-21-17

Petitioner/Developer		Protestants
No. 1	Site plan	Map showing distance b/w two closest points of prop.
No. 2	site plan - highlighted + redlined	Topo map w/ 3 photos
No. 3	Aerial image w/ site outlines	Photos - wildlife
No. 4	"Locality" exhibit	
No. 5	Aerial image showing tree buffer	
No. 6	Powerpoint presentation	
No. 7		
No. 8		
No. 9		
No. 10		
No. 11		
No. 12		

Surrounding Residences

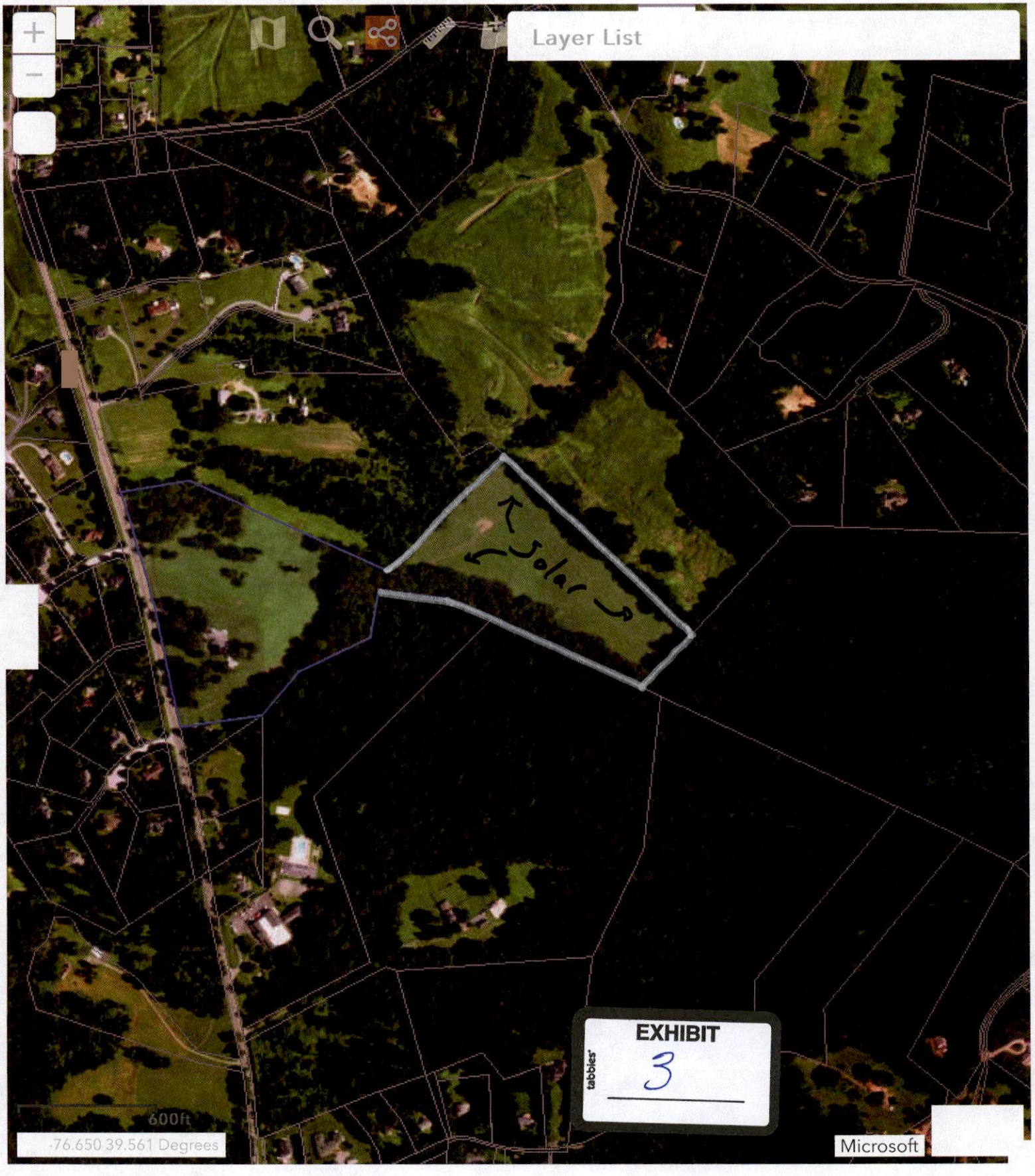
Baltimore County - My Neighborhood

#3

Surrounding Residences

3

Baltimore County - My Neighborhood



Baltimore County - My Neighborhood

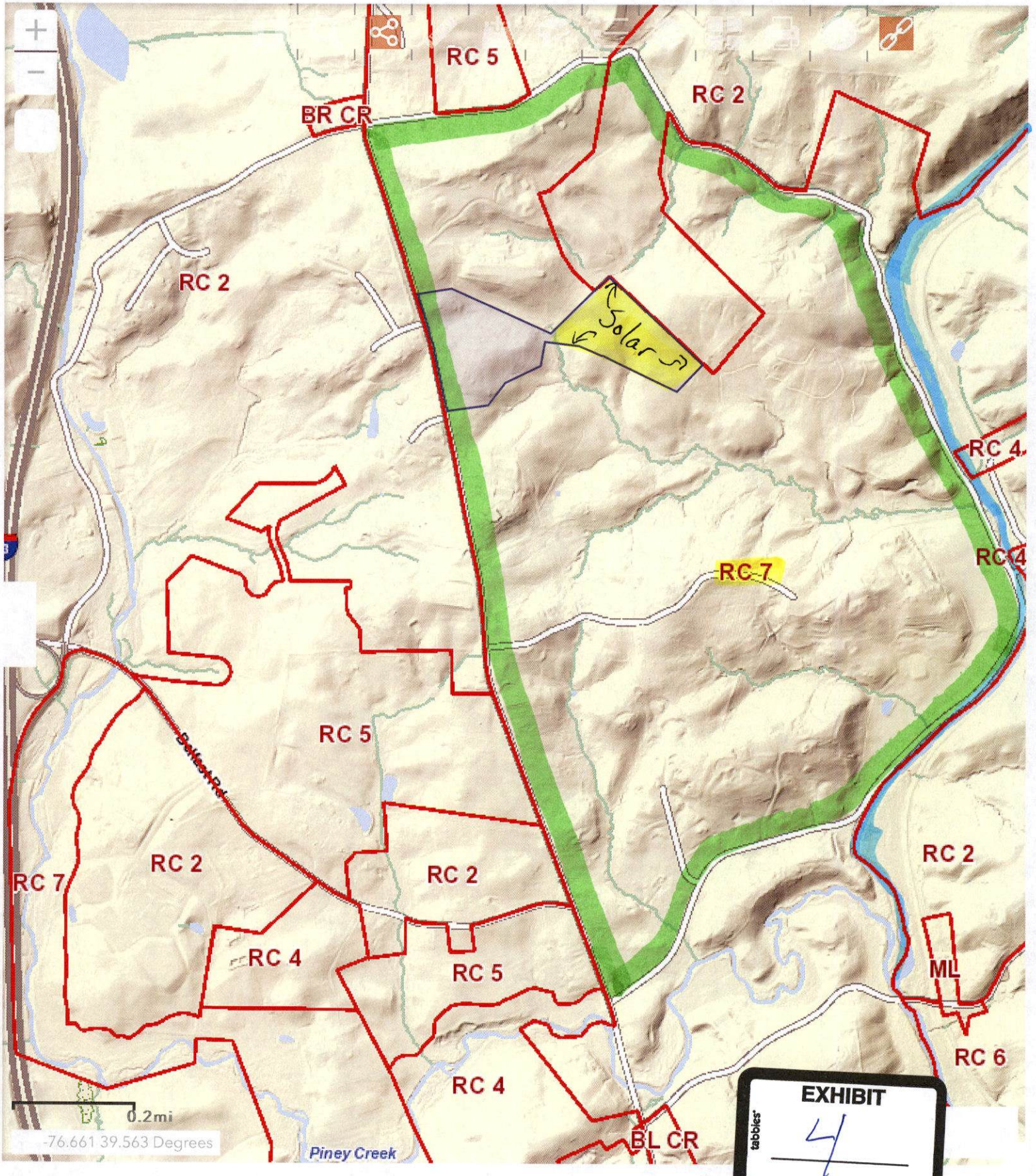
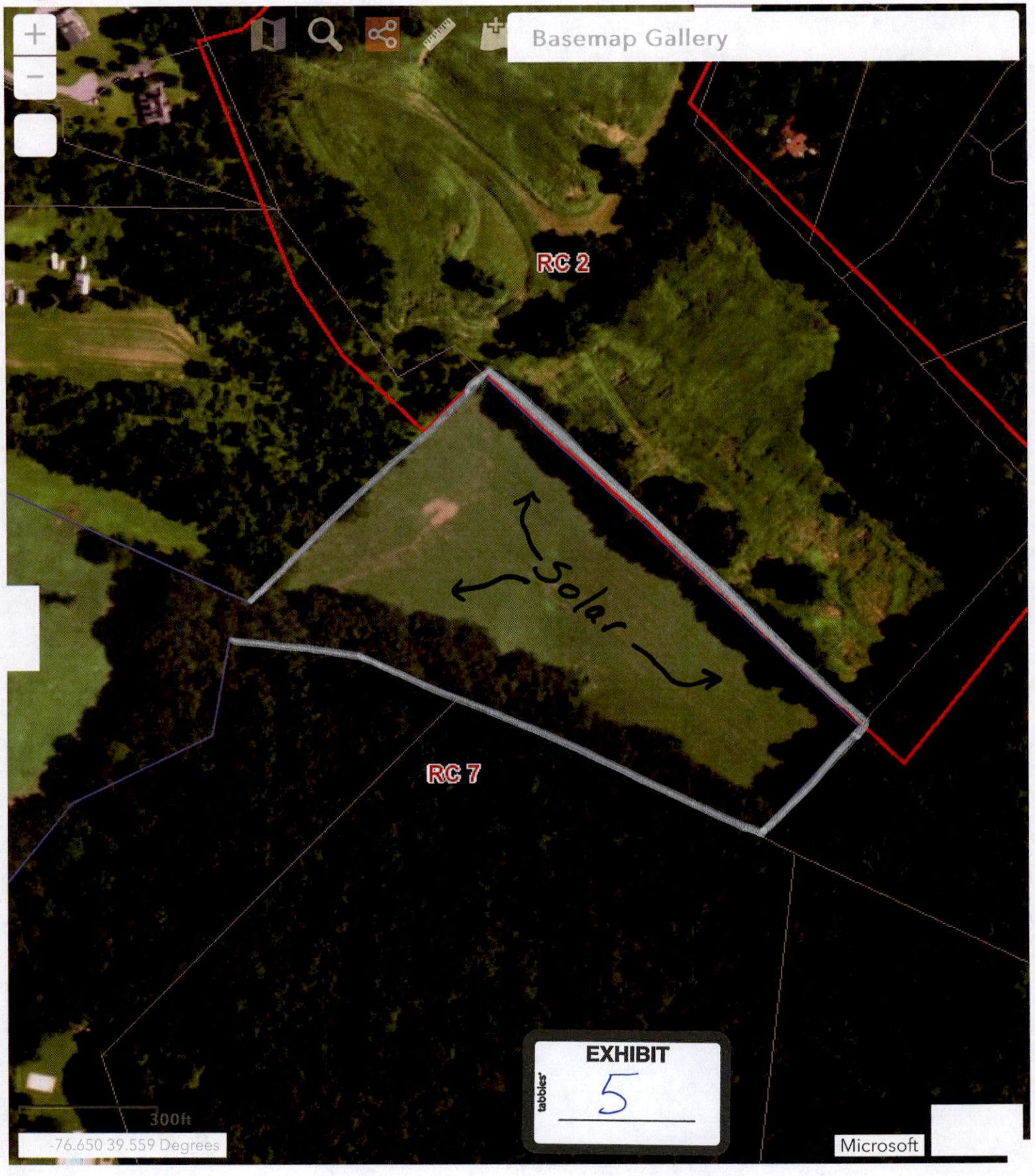


EXHIBIT 4

Tree Buffer

5

Baltimore County - My Neighborhood



CALVERT ENERGY LLC

ESA Sparks Glenco, LLC Solar Project

November 8, 2017

#6

CALVERT ENERGY LLC

- Requested special exception permit for the construction of a solar project per County regulations for the property
  - Baltimore County zoning ordinance allows for solar projects in R.C. 7 zoning with special exception permit (Bill No. 37-17)
- 1.85 MWac solar project
  - Low, Moderate income category in MD community solar program
    - 30% subscribers low and moderate income
      - 10% low income
  - Enough power for approximately 270 homes

CALVERT ENERGY LLC

CALVERT ENERGY LLC

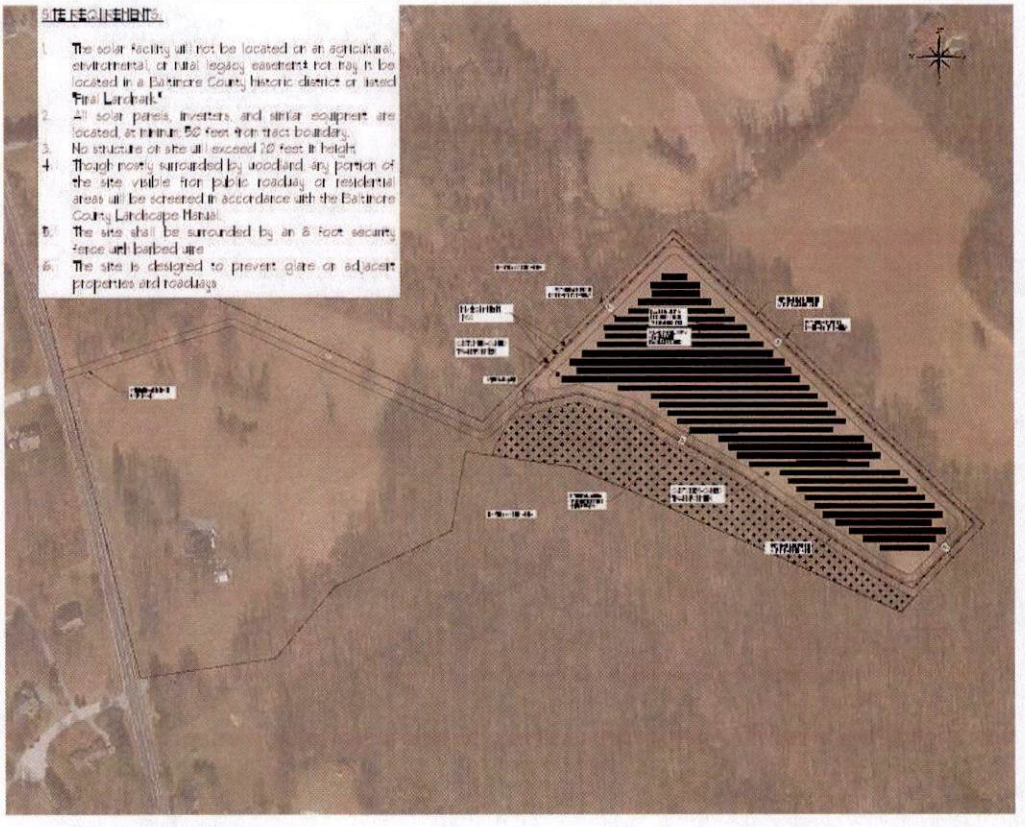
- Over 30 years of project development, power plant operations and finance experience
- Extensive solar power experience
  - Developed/managed development of over 45 MW of solar PV projects
  - Developing 75 MW of solar projects in MD, NC, SC and IL
- Broad energy/electricity background
  - Power plant operations – U.S. Navy nuclear power
  - Solar, gas turbine, coal, hydro and nuclear plant development
  - Electricity wholesale markets
  - Transmission & distribution construction
- Veteran owned business

esa ESA Renewables, LLC

- Over 30 years of experience in solar project development, construction, management and long term operation of solar systems
- Global development and construction of over 500 solar and thermal installations; ranging from large scale solar farms to commercial rooftop installations
- Development, construction, and operation of 140MW, and approximately 30 independent projects, in MD, FL, SC and North Carolina

Site plan

CALVERT ENERGY LLC

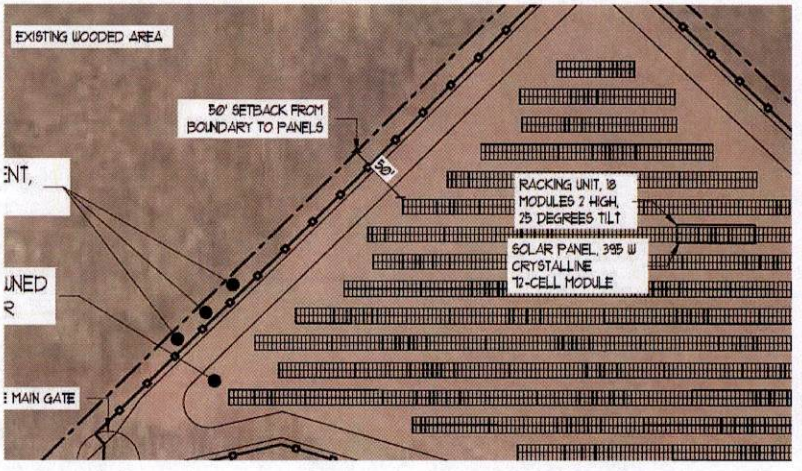


Site aerial

CALVERT ENERGY LLC

4. ABOVEGROUND COMPONENTS OF THE SOLAR FACILITY, INCLUDING SOLAR COLLECTOR PANELS, INVERTERS, AND SIMILAR EQUIPMENT, MUST BE SET BACK A MINIMUM OF 50 FEET FROM THE TRACT BOUNDARY. THIS SETBACK DOES NOT APPLY TO THE INSTALLATION OF THE ASSOCIATED LANDSCAPING, SECURITY FENCING, WIRING, OR POWER LINES.

- The site plan includes a 50' setback



1. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT.

2. THE LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE LOCATED IN A BALTIMORE COUNTY HISTORIC DISTRICT OR ON A PROPERTY THAT IS LISTED ON THE BALTIMORE COUNTY FINAL LANDMARKS LIST.

3. THE PORTION OF LAND ON WHICH A SOLAR FACILITY IS PROPOSED MAY NOT BE IN A FOREST CONSERVATION EASEMENT, OR BE IN A DESIGNATED CONSERVANCY AREA IN AN R.C.4 OR R.C.6 ZONE.

- The property does not have any agricultural easements or forest conservation easements and is not located in Baltimore Historic district or designated landmark

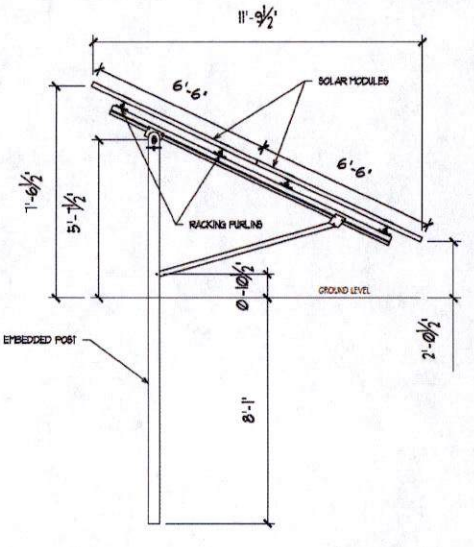
6. A LANDSCAPING BUFFER SHALL BE PROVIDED AROUND THE PERIMETER OF ANY PORTION OF A SOLAR FACILITY THAT IS VISABLE FROM AN ADJACENT RESIDENTIALLY USED PROPERTY OR A PUBLIC STREET. SCREENING OF STATE AND LOCAL SCENIC ROUTES AND SCENIC VIEWS IS REQUIRED IN ACCORDANCE WITH THE BALTIMORE COUNTY LANDSCAPE MANUAL.

- Existing trees provide buffer to adjacent residences and roads so landscaping buffer is not required/provided

Bill 37-17 Solar Project Requirements (cont'd)

5. A STRUCTURE MAY NOT EXCEED 20 FEET IN HEIGHT.
7. SECURITY FENCING SHALL BE PROVIDED BETWEEN THE LANDSCAPING BUFFER AND THE SOLAR FACILITY.

- The panel height is 7'6.5" and the security fence is 8' tall – these are the tallest structures



§ 502.1. Conditions determining granting of special exception.

CALVERT ENERGY LLC

Before any special exception may be granted, it must appear that the use for which the special exception is requested will not:

A. Be detrimental to the health, safety or general welfare of the locality involved;

B. Tend to create congestion in roads, streets or alleys therein;

C. Create a potential hazard from fire, panic or other danger;

D. Tend to overcrowd land and cause undue concentration of population;

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

I. Be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and floodplains in an R.C.2, R.C.4, R.C.5 or R.C.7 Zone. **[Bill No. 74-2000]**

Bill 37-17 Solar Project Requirements (cont'd)

CALVERT ENERGY LLC

8. A SOLAR COLLECTOR PANEL OR COMBINATION OF SOLAR COLLECTOR PANELS SHALL BE DESIGNED AND LOCATED IN AN ARRANGEMENT THAT MINIMIZES GLARE OR REFLECTION ONTO ADJACENT PROPERTIES AND ADJACENT ROADWAYS, AND DOES NOT INTERFERE WITH TRAFFIC OR CREATE A SAFETY HAZARD.

- Existing trees provide buffer to minimize/eliminate glare to adjacent properties and roads
- Solar panels face away from the nearest homes and parallel to York Road
- Distance minimizes glare
  - 1,400' to York Road
  - 1,150' to nearest adjacent residence
- Glare analysis performed to York Road and nearest residences using Solar Glare Hazard Analysis Tool (used by FAA)
  - Glare levels are not significant (without any tree buffer)

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

- Solar facilities have no affect on the valuation of surrounding property
  - Property appraisal report has been performed indicating no impact to adjacent home values
    - Matched pair analysis for projects in MD, NC and TX
  - Existing tree buffer minimizes visual impact
  - No discernible sound off property
  - No lights on facility
  - No odor generated from facility
  - No increase in traffic during operation

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

A. Be detrimental to the health, safety or general welfare of the locality involved;

- Solar projects are safe for the community
  - Low voltage
    - Array at much lower voltages than substations and power lines
    - System output voltage same as existing distribution line
  - All wiring and electrical equipment are covered/sealed
    - Oils used in electrical equipment are mineral based
  - Design and construction meets all local and state electrical requirements, as well as national electric codes
  - All equipment certified to appropriate UL Standards
  - Facility fenced with locked gate to prevent unauthorized entry
  - Solar panels active components are stable and not soluble in water
    - EPA has determined that solar panels are non-hazardous and may be disposed in municipal waste landfills
  - Within 6 months of end of operation – components of the solar facility removed, site fertilized and reseeded with native grass

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

E. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;

- Solar facility is unmanned and does not require any water or sewer on site
- Facility does not increase traffic during operation

F. Interfere with adequate light and air; **[Bill No. 45-1982]**

- Solar facility does not cause any shading on adjacent properties or prevent air flow

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

B. Tend to create congestion in roads, streets or alleys therein;

- Solar facility is unmanned during operation with 2-3 scheduled maintenance periods lasting 2-3 days each involving 1-2 pickup trucks
- Construction period lasts 2-3 months – peak personnel for 30-45 days up to 20 people

C. Create a potential hazard from fire, panic or other danger;

- Electrical equipment is UL certified
- Transformers/inverters contain mineral based oils

D. Tend to overcrowd land and cause undue concentration of population;

- Solar facility is not manned – there is no office space or buildings on site

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

H. Be inconsistent with the impermeable surface and vegetative retention provisions of these Zoning Regulations; nor **[Bill No. 45-1982]**

- Piles are direct driven into ground to minimize impact on soil permeability
- Grasses permitted to grow naturally during operation of the facility
- No trees removed on site
- Access road will be gravel
- <10% impact on permeability of existing land
- Project will meet state and local stormwater regulations
- Upon decommissioning land is returned to original condition for future use

§ 502.1. Conditions determining granting of special exception (cont'd)

CALVERT ENERGY LLC

G. Be inconsistent with the purposes of the property's zoning classification nor in any other way inconsistent with the spirit and intent of these Zoning Regulations; **[Bill No. 45-1982]**

- Solar facility is consistent with the rural nature of property
- No lights on facility
- No discernible noise off the property from facility
- Facility is buffered by existing trees which minimizes/eliminates ability to see the facility
- Solar facility generates renewable energy with no emissions and without using any water
- Solar facility is not manned and therefore does not increase local population or place any burden on existing infrastructure
- Installation and construction of facility meets all County and State requirements to mitigate any impact on existing natural resources
- No major civil work conducted – piles are direct driven into ground – minimize impact on soil

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
5. Tax Map / Parcel / Tax account #: 28 / 15 / 08-02-004200
6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 028B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
7. The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tile 028B3 and the information provided by Baltimore County on the internet.
8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.
5. There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

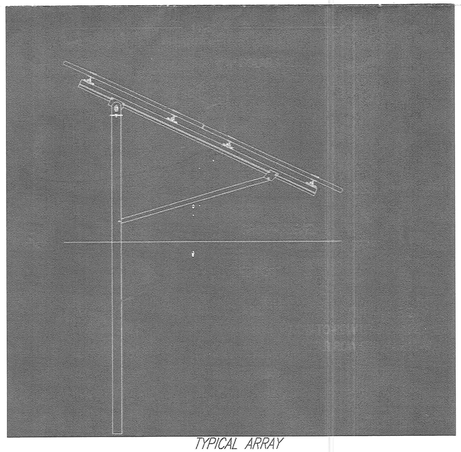
The construction and implementation of a 2.0 MW solar facility on a 9 acre leased area of a 30.723 acre parcel of land.

Information pertaining to the subject property:

*The subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
*The subject property is not located in a Baltimore County Historic District.
*The subject property is not listed on the Baltimore County Final Landmarks List.
*The subject property is not in a forest conservation easement or a designated conservancy area in an RC 4 or RC 6 zone.

Information pertaining to the proposed solar facility:

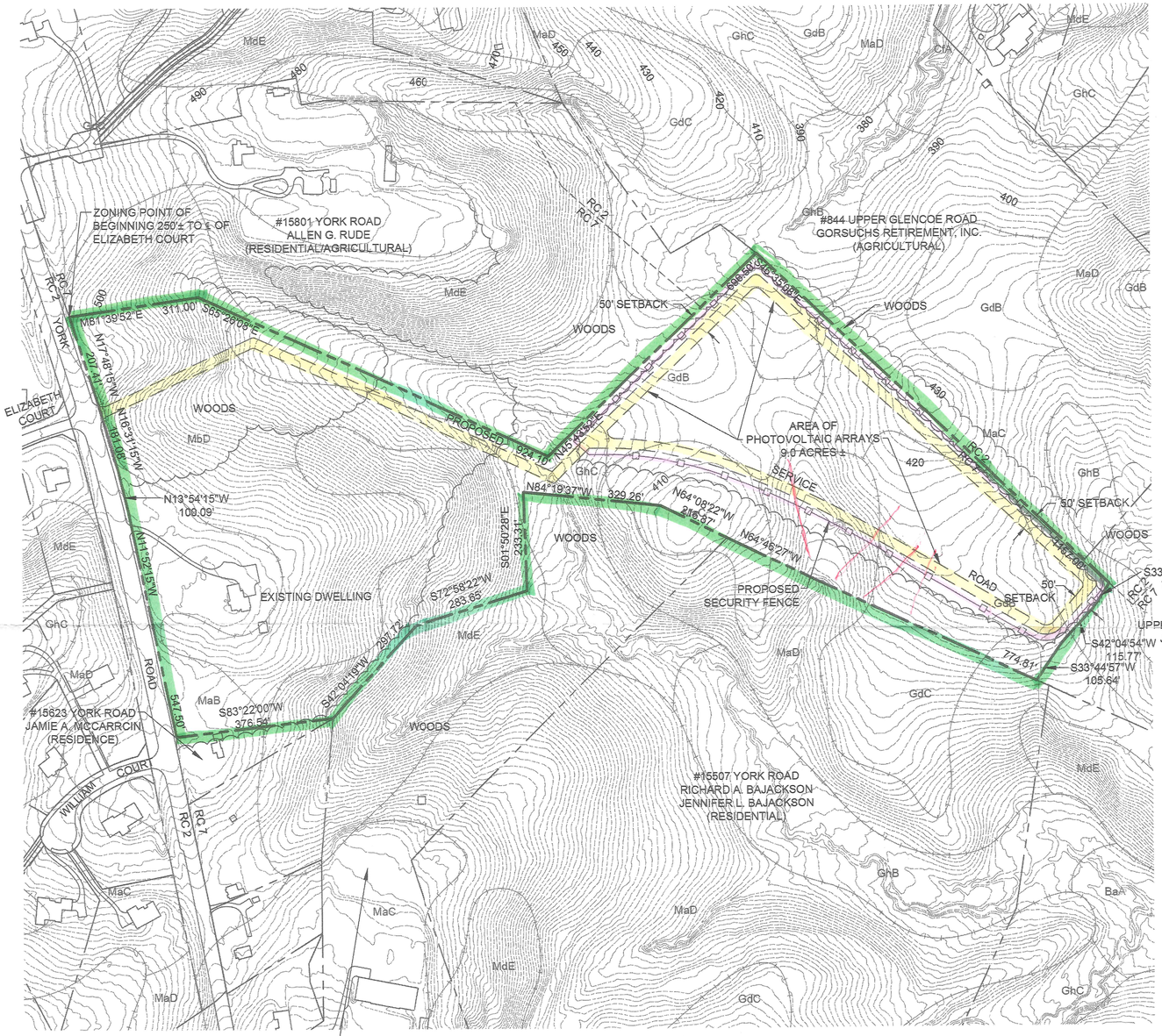
*A landscaping buffer may not be required around the perimeter since it will not be visible from an adjacent residentially used property or a public street.
*Screening of York Road may not be required since it will not be visible from a state or local scenic route or scenic route per the Baltimore County Landscape Manual.
*The solar collector panels or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and will not interfere with traffic or create a safety hazard.

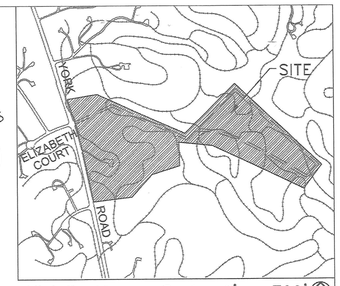


TYPICAL ARRAY

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES w/BASEMENT	STREETS & PARKING
GdC			
MdE			
MaD			
GhC			
MbD			
GdB			
MaC			
GhB			
MaB			
CfA			
BaA			





Vicinity Map – Scale: 1' = 700'

Petitioner
CBA Exhibit
1A

PETITIONER'S
EXHIBIT NO. _____

0' 150' 300' 450'

REVISION
8/15/18 Revision to notes,detail, & soils

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@brucedoakconsulting.com

PLAN TO ACCOMPANY A
ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Date: 3/15/2017
Scale: 1"=150'

STATE OF MARYLAND BRUCE EDWIN DOAK No. 571 REGISTERED PROPERTY LINE SURVEYOR

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
5. Tax Map / Parcel / Tax account #: 28 / 15 / 08-02-004200
6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 02B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
7. The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tile 02B3 and the information provided by Baltimore County on the internet.
8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.
5. There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

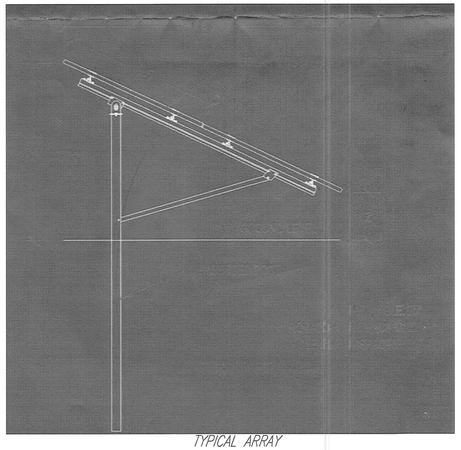
The construction and implementation of a 2.0 MW solar facility on a 9 acre leased area of a 30.723 acre parcel of land.

Information pertaining to the subject property:

*The subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
*The subject property is not located in a Baltimore County Historic District.
*The subject property is not listed on the Baltimore County Final Landmarks List.
*The subject property is not in a forest conservation easement or a designated conservancy area in an RC 4 or RC 6 zone.

Information pertaining to the proposed solar facility:

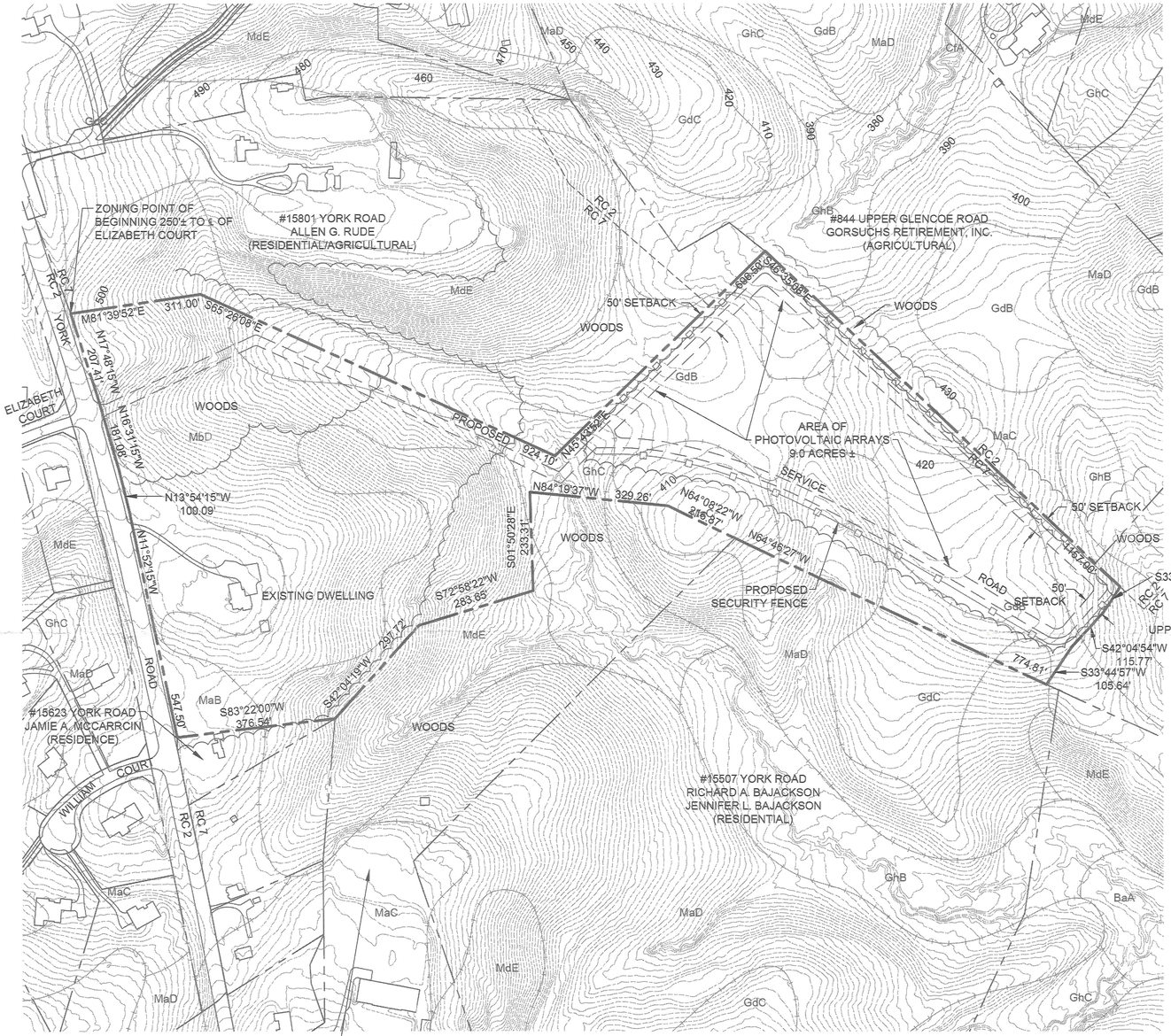
*A landscaping buffer may not be required around the perimeter since it will not be visible from an adjacent residentially used property or a public street.
*Screening of York Road may not be required since it will not be visible from a state or local scenic route or scenic route per the Baltimore County Landscape Manual.
*The solar collector panels or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and will not interfere with traffic or create a safety hazard.

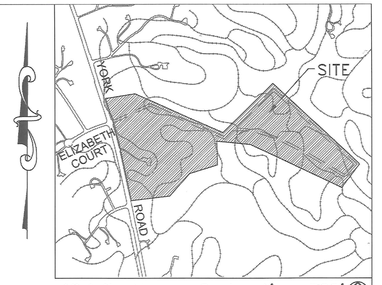


TYPICAL ARRAY

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
GdC			
MdE			
MaD			
GhC			
MbD			
GdB			
MaC			
GhB			
MaB			
CfA			
BaA			





Vicinity Map – Scale: 1' = 700'

Petitioner
CBA Exhibit
1

PETITIONER'S
EXHIBIT NO. _____

0' 150' 300' 450'

REVISION
8/15/18 Revision to notes,detail, & soils

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PLAN TO ACCOMPANY A ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Date: 3/15/2017
Scale: 1"=150'

STATE OF MARYLAND BRUCE EDWIN DOAK No. 531 REGISTERED PROFESSIONAL LAND SURVEYOR

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
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6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 028B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
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8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

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Information pertaining to the subject property:

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*A landscaping buffer may not be required around the perimeter since it will not be visible from an adjacent residentially used property or a public street.
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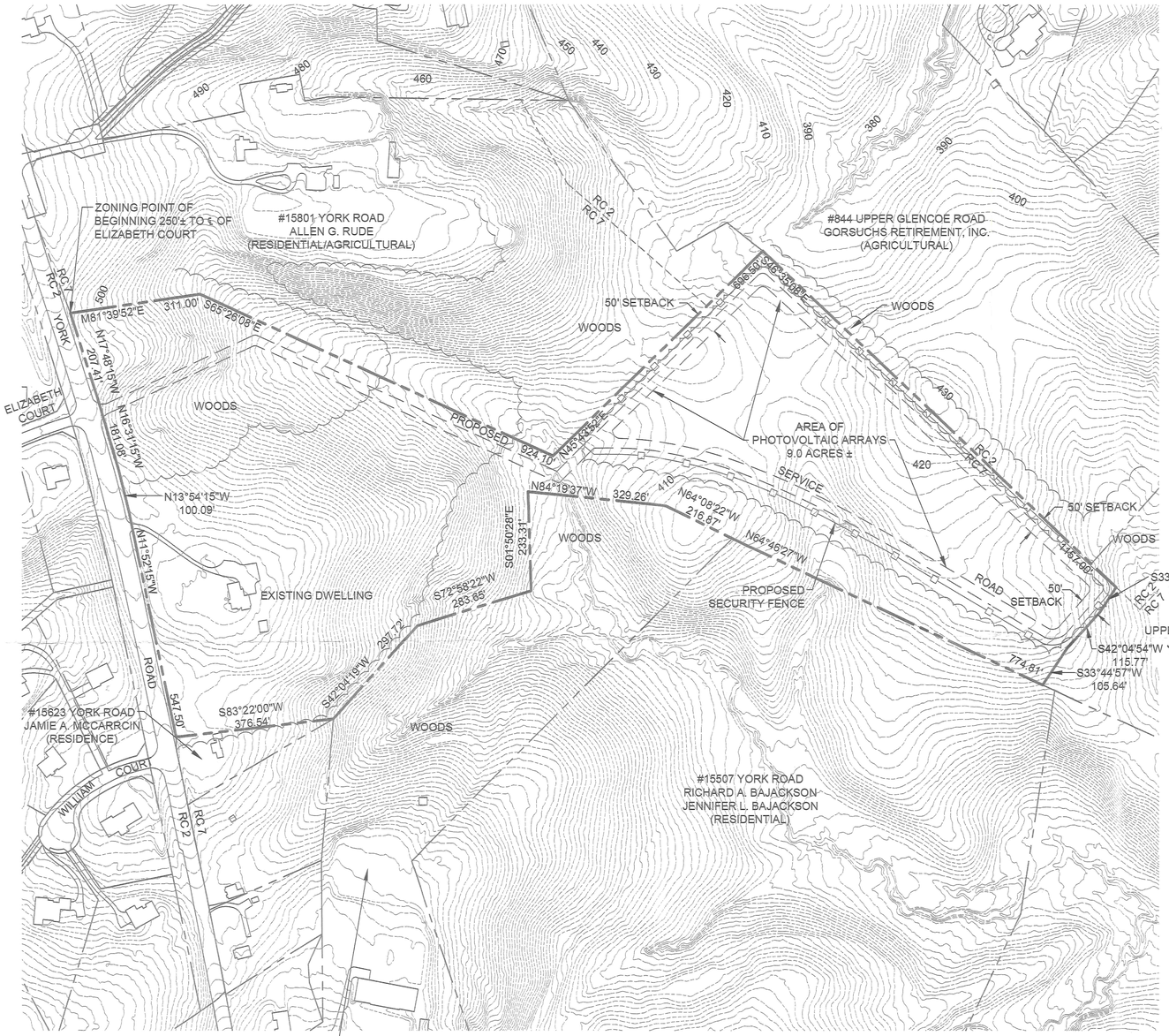
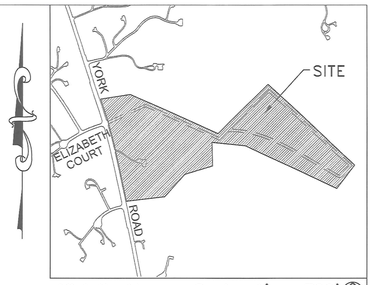
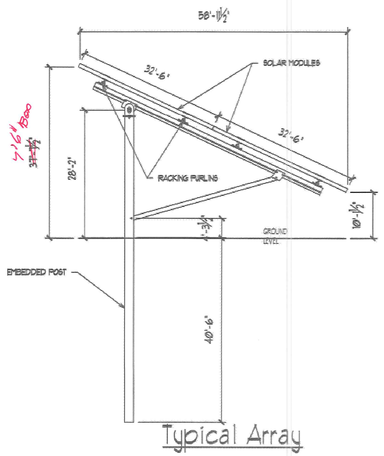
*The solar collector panels or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and will not interfere with traffic or create a safety hazard.







Typical Array

EXHIBIT

0' 150' 300' 450'

REVISION

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bdoak@bruceedoakconsulting.com

PLAN TO ACCOMPANY A
ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

STATE OF MARYLAND
BRUCE EDWIN DOAK
No. 631
REGISTERED
PROPERTY LINE SURVEYOR
8/10/17

Date: 8/8/17
Scale: 1"=150'

PETITIONER'S
EXHIBIT NO. 1

GENERAL SITE INFORMATION

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   15637 York Road Sparks, MD 21152
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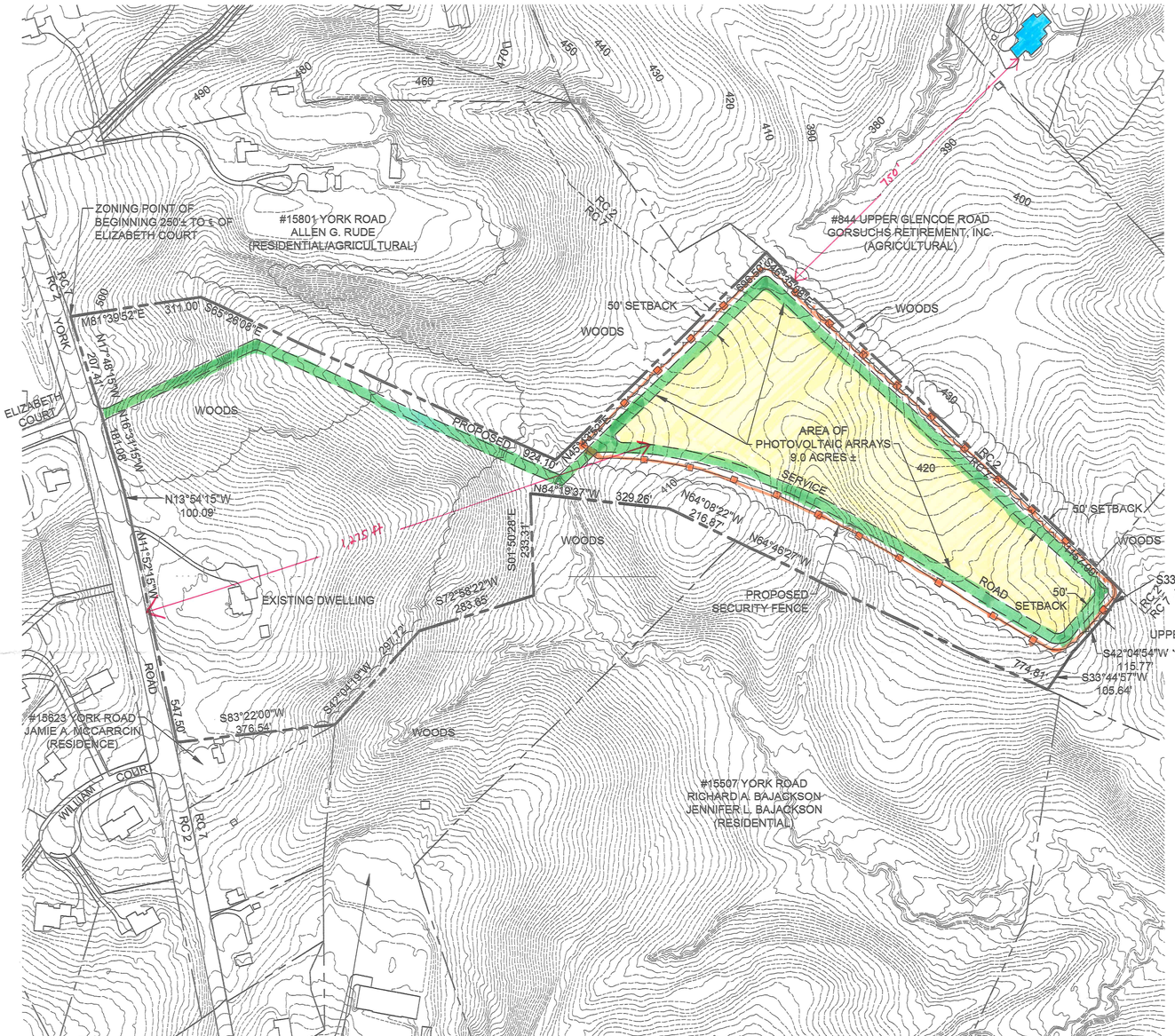
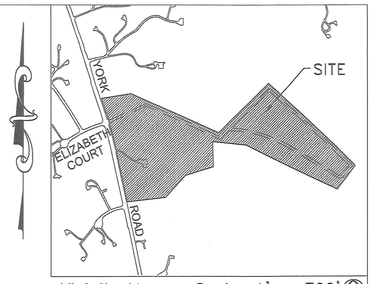
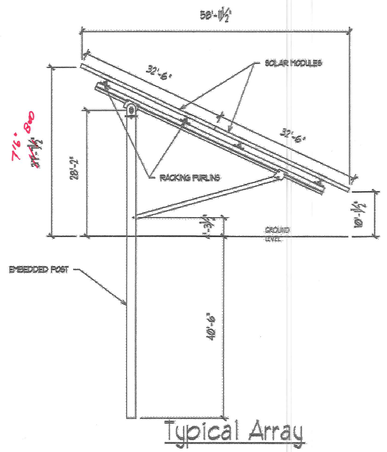




Vicinity Map – Scale: 1' = 700'



Typical Array

0' 150' 300' 450'

REVISION

EXHIBIT

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PLAN TO ACCOMPANY A ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

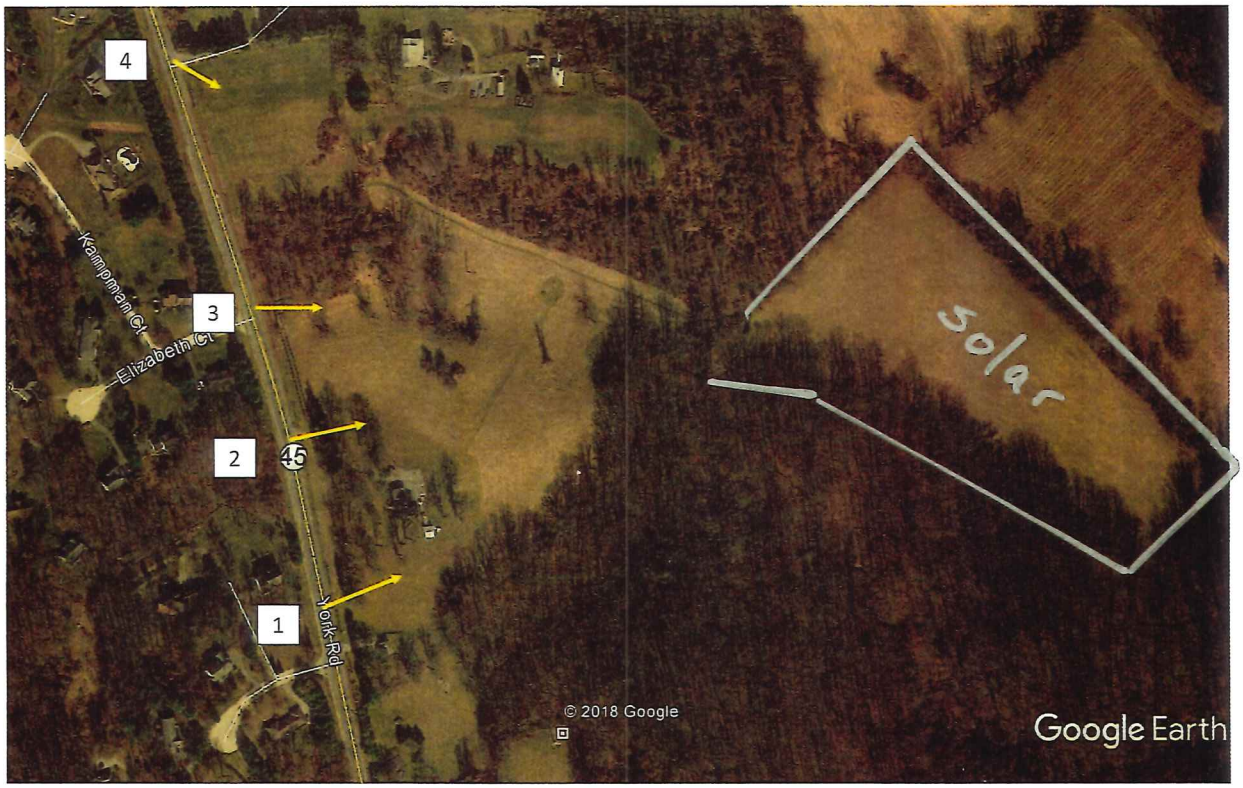
Date: 8/8/17
Scale: 1"=150'

STATE OF MARYLAND BRUCE EDWIN DOAK NO. 831 REGISTERED PROFESSIONAL LAND SURVEYOR 8/10/17

PETITIONER'S
EXHIBIT NO. 2

Site photos from York Road
(Google Earth)

CALVERT ENERGY LLC



Petitioner
CBA Exhibit
2A-E

Case No. 18-047X Garner 8/21/18

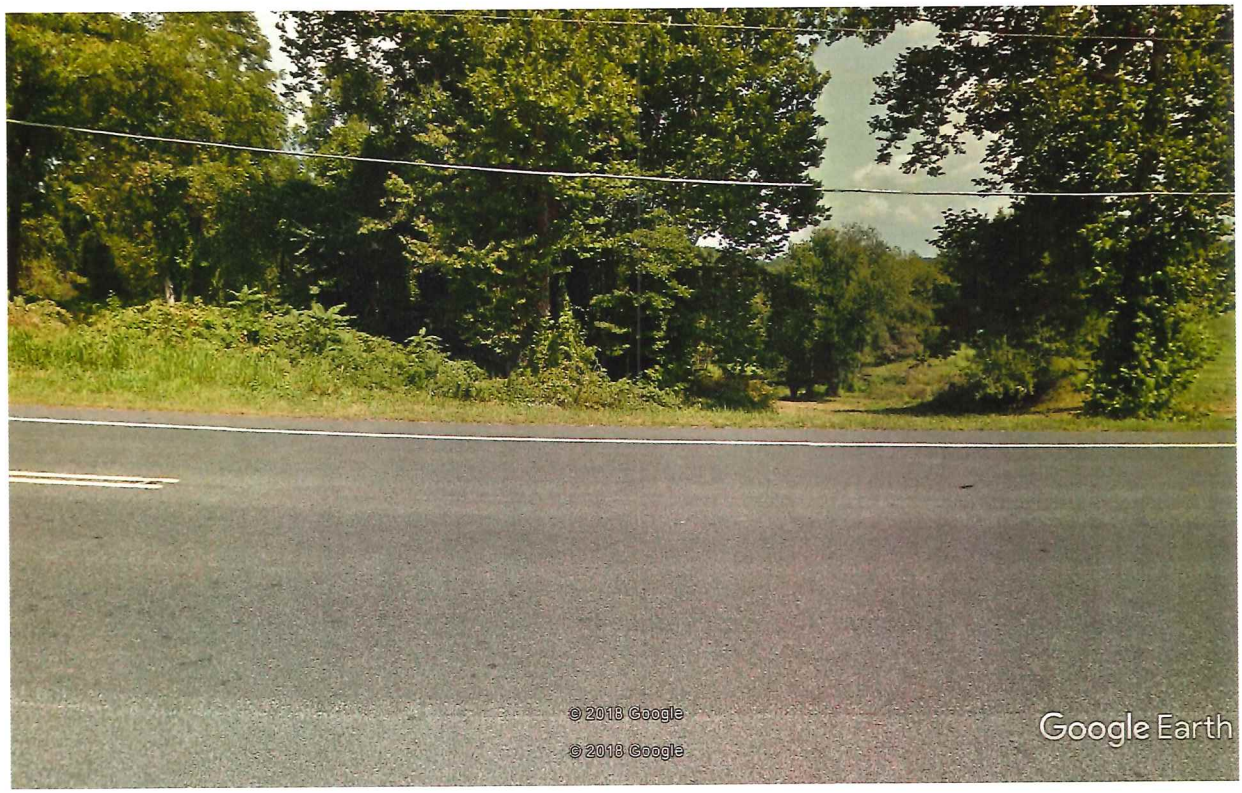
Picture 1

CALVERT ENERGY LLC

2B

Picture 3

CALVERT ENERGY LLC



Picture 2

CALVERT ENERGY LLC

2c

Picture 4

CALVERT ENERGY LLC

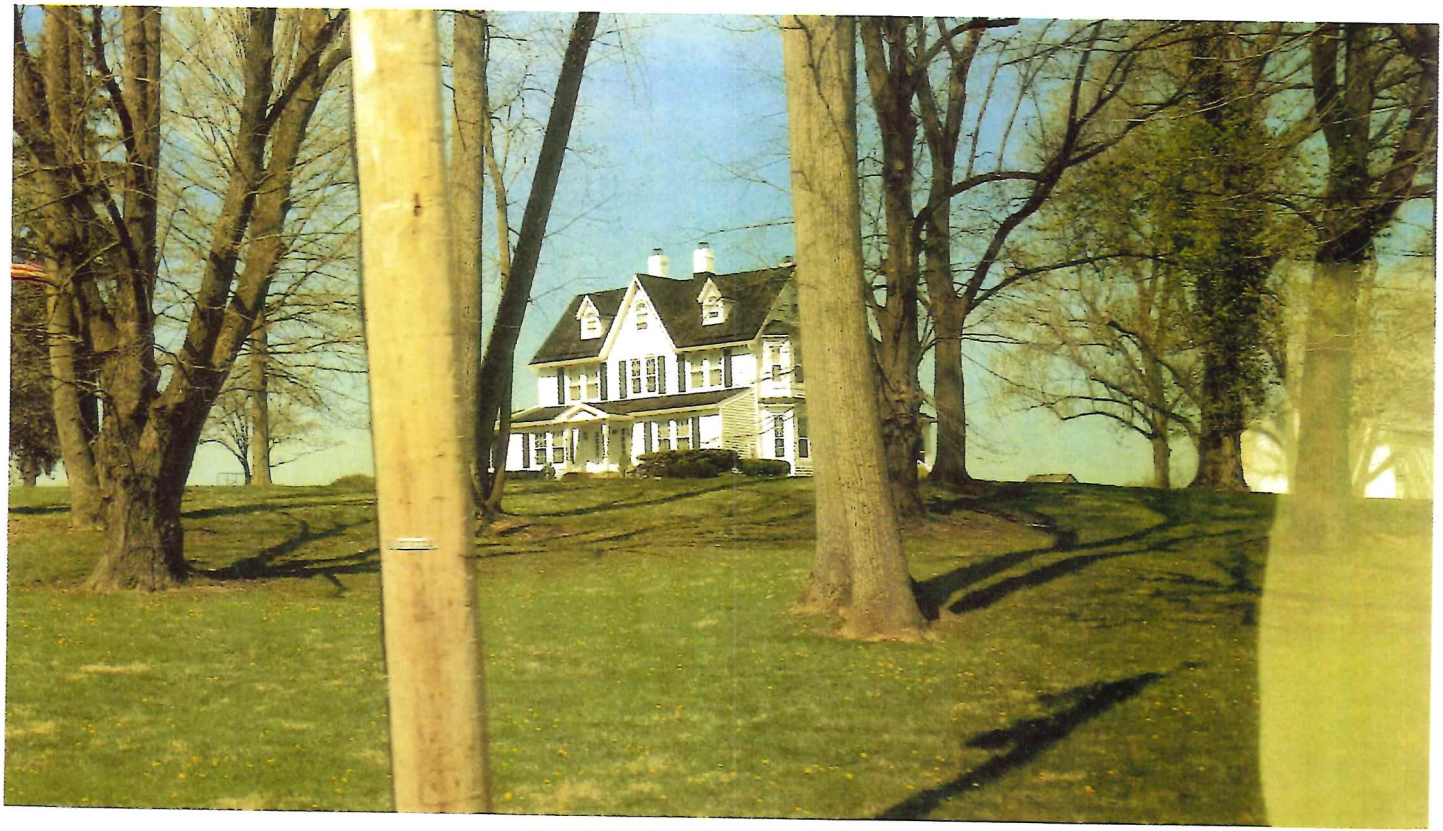
2E

3A 1

3B 2

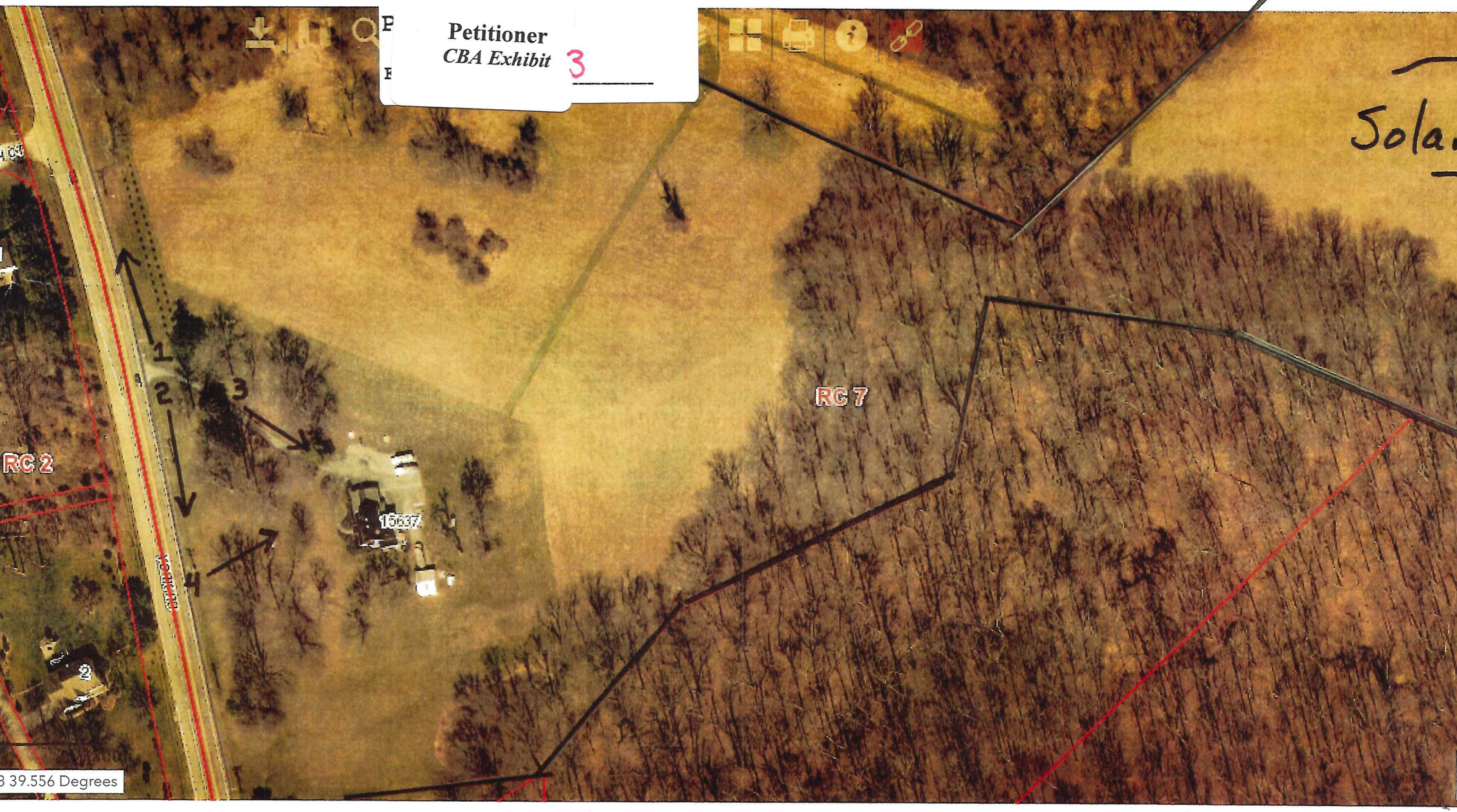
3C 3

3D 4



Baltimore County - My Neighborhood

Petitioner
CBA Exhibit 3



imorecountymd.gov/myneighborhood/

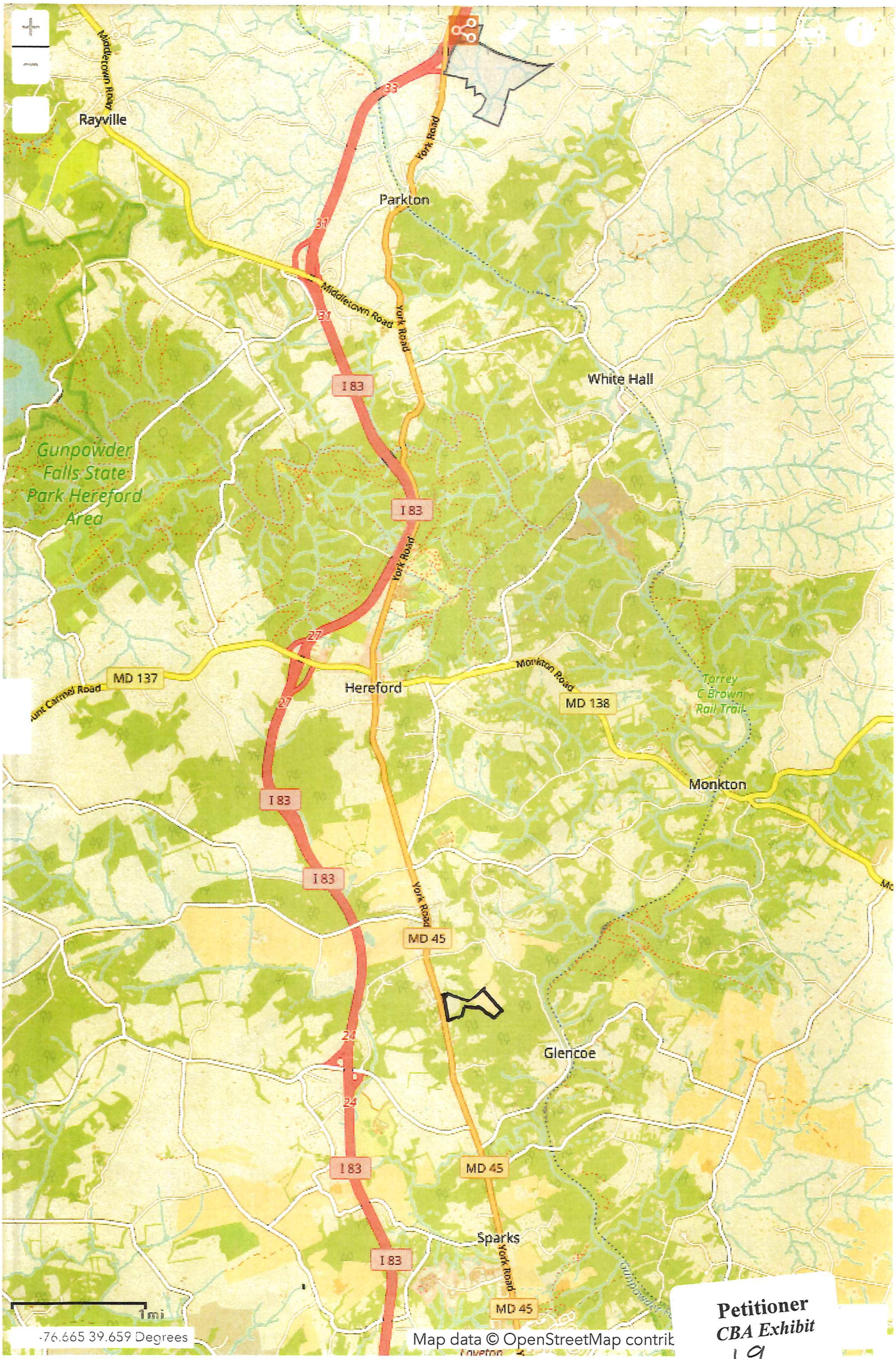
Case No. 18-047X Green 8/21/17

4A 1

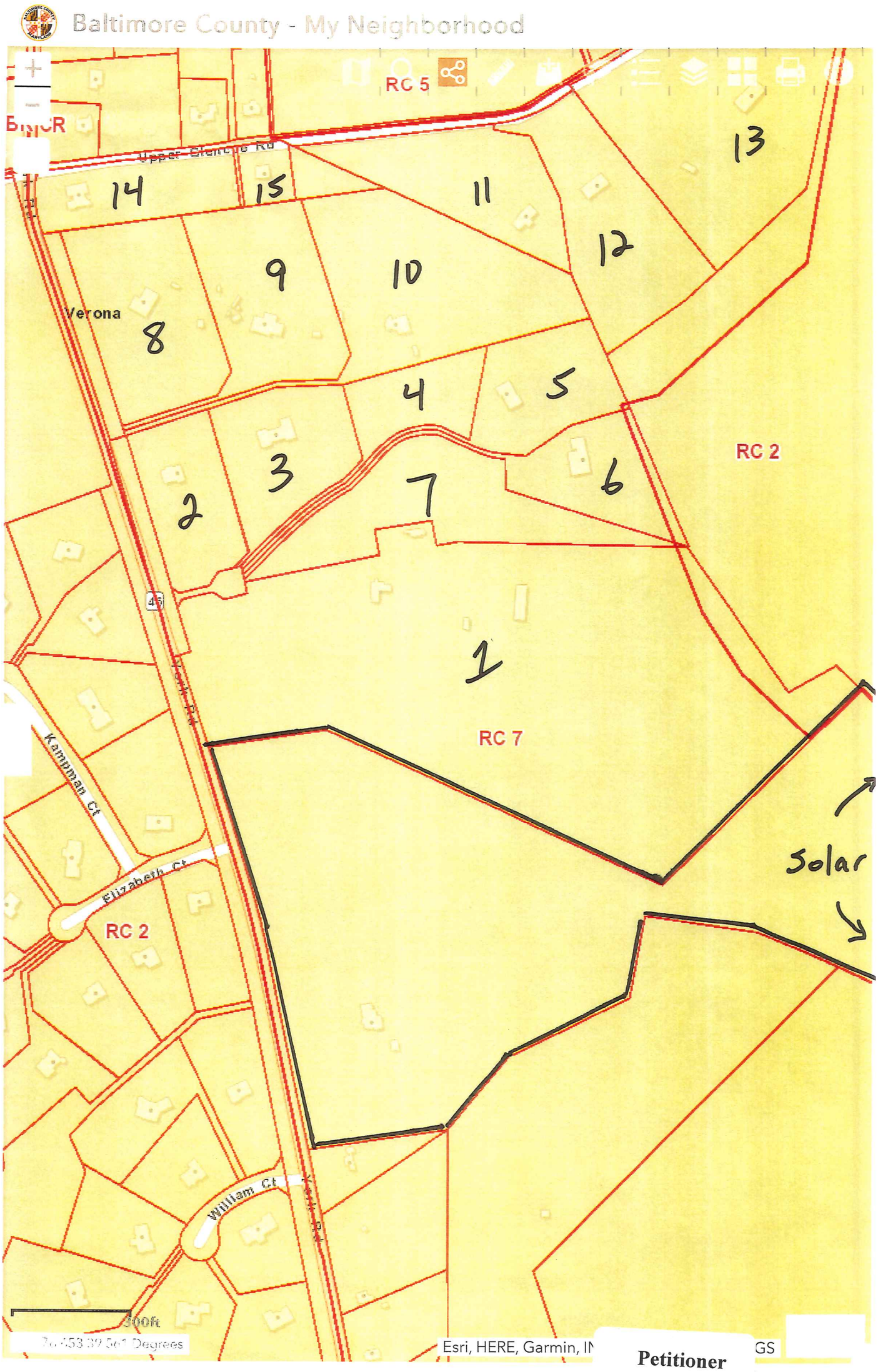
4B 2

No: 18-047-X 8/24/18

Baltimore County - My Neighborhood

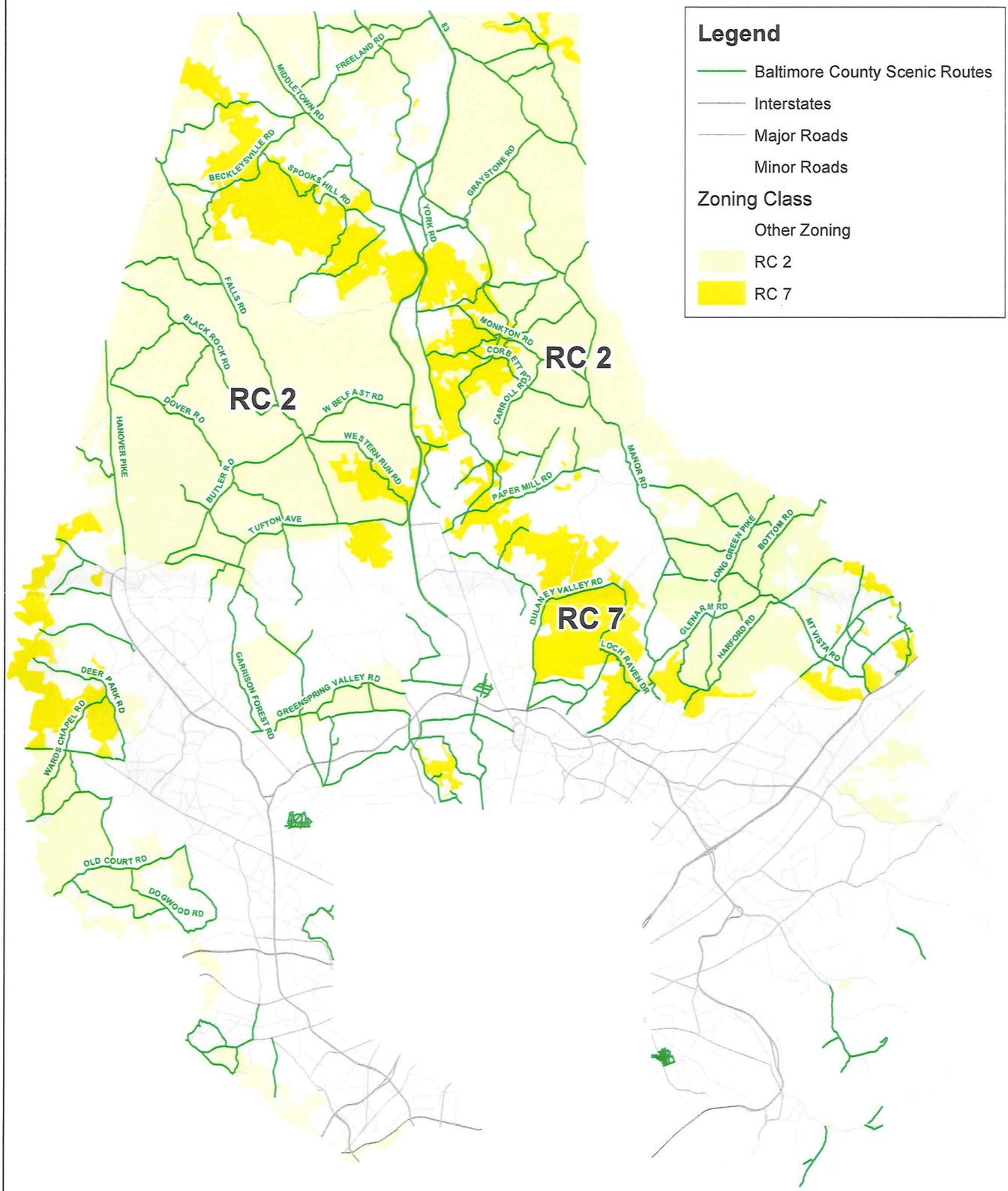


Petitioner
CBA Exhibit
19



Petitioner
CBA Exhibit
20

Zoning 2018



Total Zoning Area:
RC 2 = 139,053.40 Acres
RC 7 = 36,290.24 Acres

Prepared by Geographic Information Services
Baltimore County Office of Information Technology
Zoning and Scenic Routes Data Source:
Baltimore County Department of Planning
Date: October 23, 2018

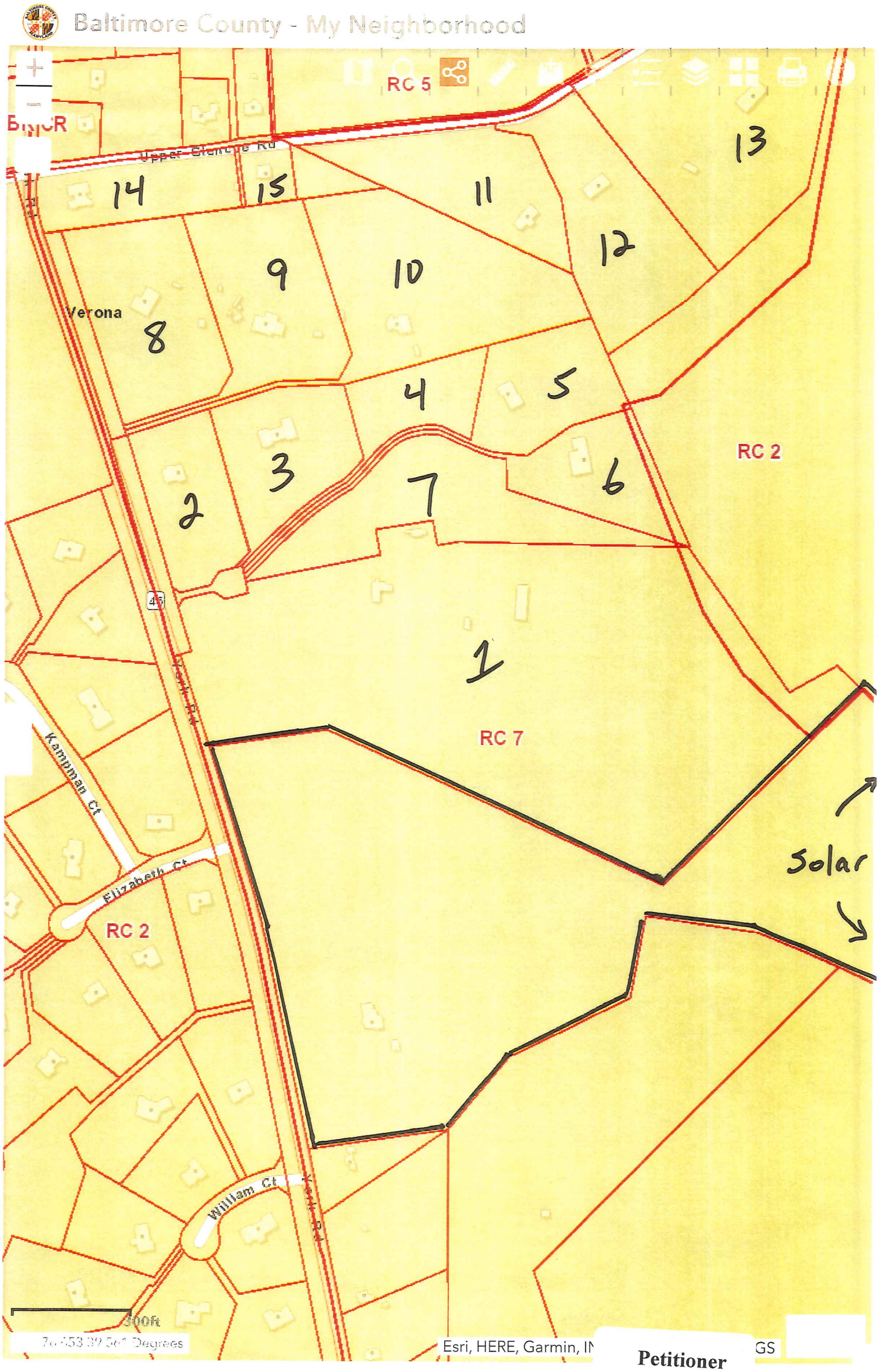
1 Inch = 3 miles

0 1 2 4 6 8
Miles

N

People's Counsel
CBA Exhibit
12

18-047X



Petitioner
CBA Exhibit
20

Prepared by Geographic Information Services
Baltimore County Office of Information Technology
Date: March 27, 2018
2017 Imagery

1 Inch = 100 feet

0 45 90 180 270 360
Feet

People's Counsel
CBA Exhibit
1

N
W E
S

ZONING: RG 5

ZONING: RG 2

ZONING: RG 7

ZONING: RG 2

ZONING: RG 2

WILLIAM CT

DRIVEWAY

DRIVEWAY

DRIVEWAY

DRIVEWAY

DRIVEWAY

DRIVEWAY

KAMPMAN CT

ELIZABETH CT

YORK RD

UPPER GLENCOE RD

SHEEHAN MOST REV L J

SHEEHAN MOST REV L J ROMAN

KEELER WILLIAM H CARDINAL

KEELER WILLIAM H CARDINAL

MOST REVEREND WILLIAM D BORDERS

MOST REVEREND WILLIAM D BORDERS

ORSULAK JOSEPH M

FARAGE JOSEPH P 3RD

REZAVI NILOOFAR

WALKER DONALD W

ROGERS SEAN C

NAVARRE MICHAEL J

FOSTER & VEGAS OF HARFORD INC

GILLETTE MARMANEH

KIEFER JEFFREY L

RUDICK LENORER

HUDOCK JAMES P

PRICE NICHOLAS S

PRICE NICHOLAS S

MOCARRON JAMES A

HEBERT SEAN D

ZUBECK MICHAEL J

DANNALS ROBERT F

PRAMANIK SUDEEP

BAKER JAMES

CASTILLO BANAP

REIER DENNIS G JR

SHIFFLETT ANTHONY

LUMNSDEN SAMUEL H III

GERMAN HARRY D

GUATTERY PETER D

STOUT JOSEPH

SHAMUS EDWARD D

LARGEY DAVID R

KOUSOURIS PATRICIA LENTZ

LATIGHFORD PAUL C

MOONEY TIMOTHY J

HOWSON JOHN

TROJANOWSKI P

MORAN RYAN P

JOHNSON NORTH

ENSOR CHARLES E JR

PARKS ANTHONY RAY

SOMMERS BRIAN D JR

MEMBRENO EDITH D

WEED JOHN T

HOLLINS DOUGLAS A

HOLLINS DOUGLAS A

ANTHONY ANDREW

RUDE VICTOR N

SULLENDER ALLEN O

GREENSPAN LARRY ALLEN

PLEISS COURTNEY S

WESTER ROBERT L

SWANSON RONALD G

RUDE ALLEN G

COURSUCHS RETIREMENT INC

GERNER ROBERT K

BAJACKSON RICHARD A

FITZPATRICK MICHAEL

WEYKAMP PAUL A

WEYKAMP PAUL

IGUSA JUN-ICHI

COLLINS SUSAN E

FAW JOHN E JR

WADOVICK KENNETH JOSEPH III

IZADI ASHLEY L

LAFOND SALLY A

MOXLEY AMESA

HOFFMAN JOHN P

HOFFMAN JOHN

MATCZUK EDWARD J

MATCZUK ANTOINETTE M

SILLDORFF CAROL N

SILLDORFF CAROL N

SWINDELL THOMAS PARRAN JR

HALL EMILY SWINDELL

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ANTHONY JAMES G

CORSUCHS RETIREMENT INC

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OFFICE OF ZONING

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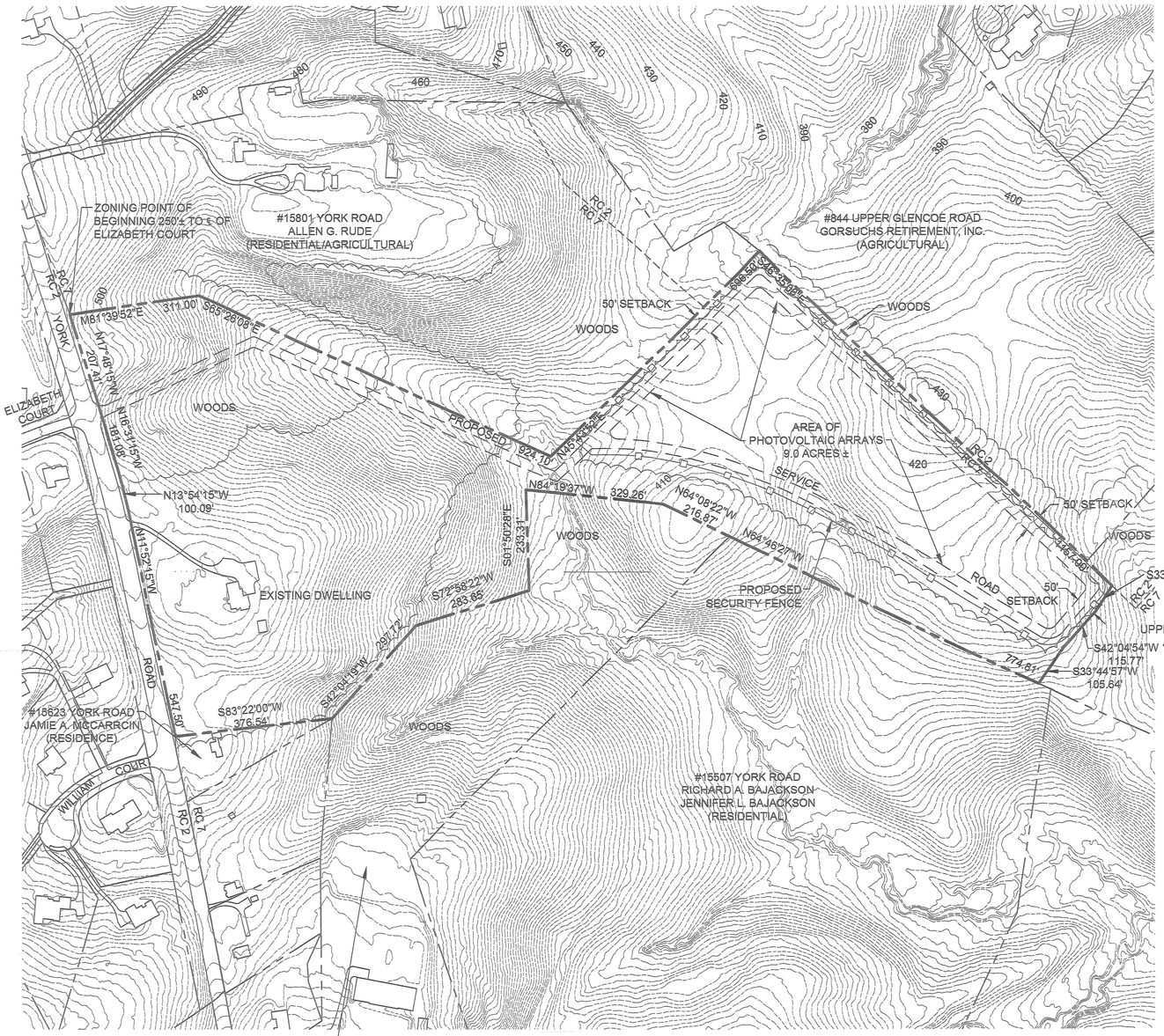

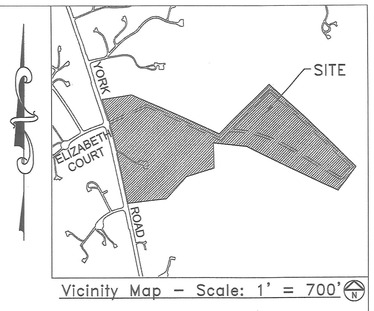

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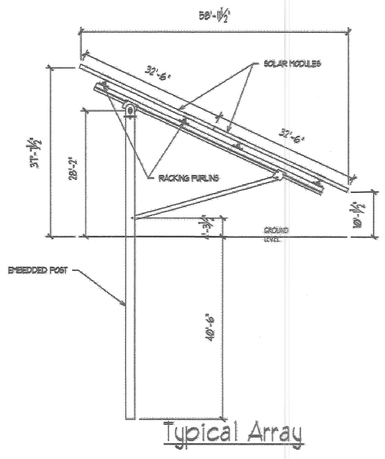

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3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@brucedoakconsulting.com

PLAN TO ACCOMPANY A
ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 831
REGISTERED
PROFESSIONAL LAND SURVEYOR
8/10/17

Date: 8/8/17
Scale: 1"=150'

Case # 2018-0047-X

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
5. Tax Map / Parcel / Tax account #: 28 / 15 / 08-02-004200
6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 028B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
7. The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tile 028B3 and the information provided by Baltimore County on the internet.
8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.
5. There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

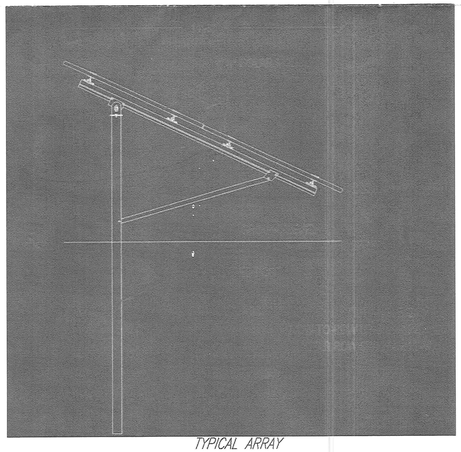
The construction and implementation of a 2.0 MW solar facility on a 9 acre leased area of a 30.723 acre parcel of land.

Information pertaining to the subject property:

*The subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
*The subject property is not located in a Baltimore County Historic District.
*The subject property is not listed on the Baltimore County Final Landmarks List.
*The subject property is not in a forest conservation easement or a designated conservancy area in an RC 4 or RC 6 zone.

Information pertaining to the proposed solar facility:

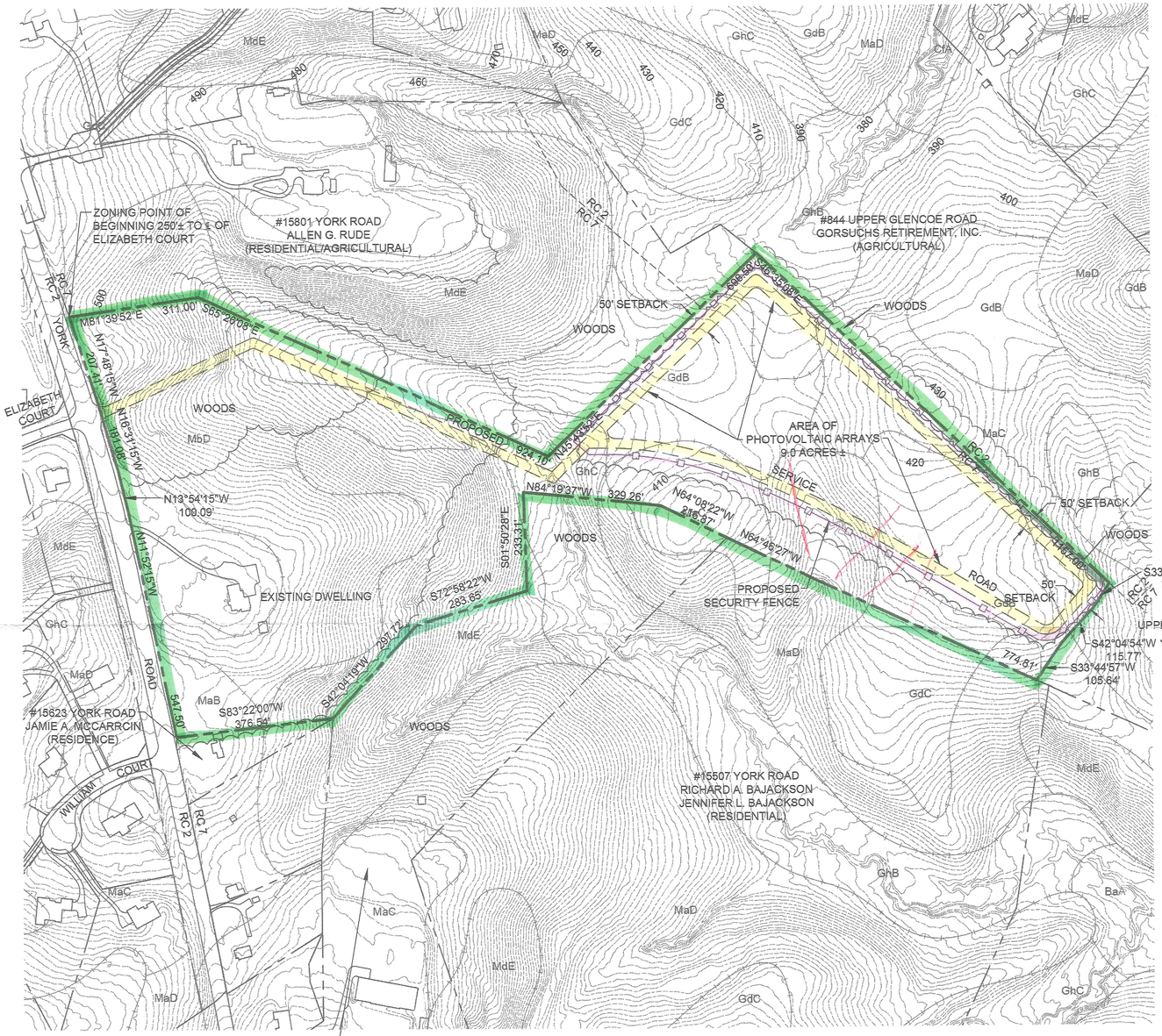
*A landscaping buffer may not be required around the perimeter since it will not be visible from an adjacent residentially used property or a public street.
*Screening of York Road may not be required since it will not be visible from a state or local scenic route or scenic route per the Baltimore County Landscape Manual.
*The solar collector panels or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and will not interfere with traffic or create a safety hazard.

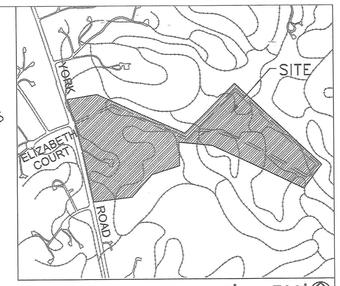


TYPICAL ARRAY

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES w/BASEMENT	STREETS & PARKING
GdC			
MdE			
MaD			
GhC			
MbD			
GdB			
MaC			
GhB			
MaB			
CfA			
BaA			





Vicinity Map – Scale: 1' = 700'

Petitioner
CBA Exhibit
1A

PETITIONER'S
EXHIBIT NO. _____

0' 150' 300' 450'

REVISION
8/15/18 Revision to notes,detail, & soils

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
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o 443-900-5535 m 410-419-4906
bdoak@brucedoakconsulting.com

PLAN TO ACCOMPANY A
ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Date: 3/15/2017
Scale: 1"=150'

STATE OF MARYLAND BRUCE EDWIN DOAK No. 571 REGISTERED PROPERTY LINE SURVEYOR

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
5. Tax Map / Parcel / Tax account #: 28 / 15 / 08-02-004200
6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 02B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
7. The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tile 02B3 and the information provided by Baltimore County on the internet.
8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.
5. There shall be no clearing, grading, construction or disturbance of vegetation in the forest buffer, except as permitted by the Baltimore County.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

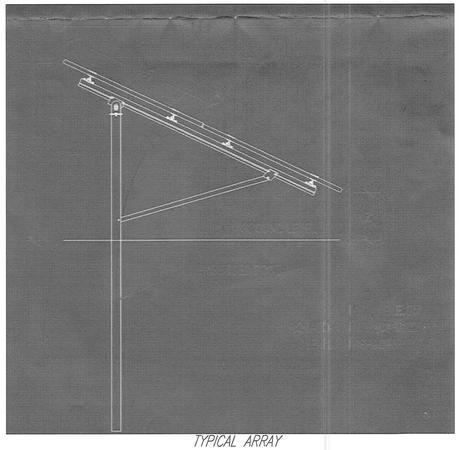
The construction and implementation of a 2.0 MW solar facility on a 9 acre leased area of a 30.723 acre parcel of land.

Information pertaining to the subject property:

*The subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
*The subject property is not located in a Baltimore County Historic District.
*The subject property is not listed on the Baltimore County Final Landmarks List.
*The subject property is not in a forest conservation easement or a designated conservancy area in an RC 4 or RC 6 zone.

Information pertaining to the proposed solar facility:

*A landscaping buffer may not be required around the perimeter since it will not be visible from an adjacent residentially used property or a public street.
*Screening of York Road may not be required since it will not be visible from a state or local scenic route or scenic route per the Baltimore County Landscape Manual.
*The solar collector panels or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and will not interfere with traffic or create a safety hazard.



TYPICAL ARRAY

SOIL TYPES & LIMITATIONS

TYPE	SEPTIC FILTER FIELDS	HOMESITES W/BASEMENT	STREETS & PARKING
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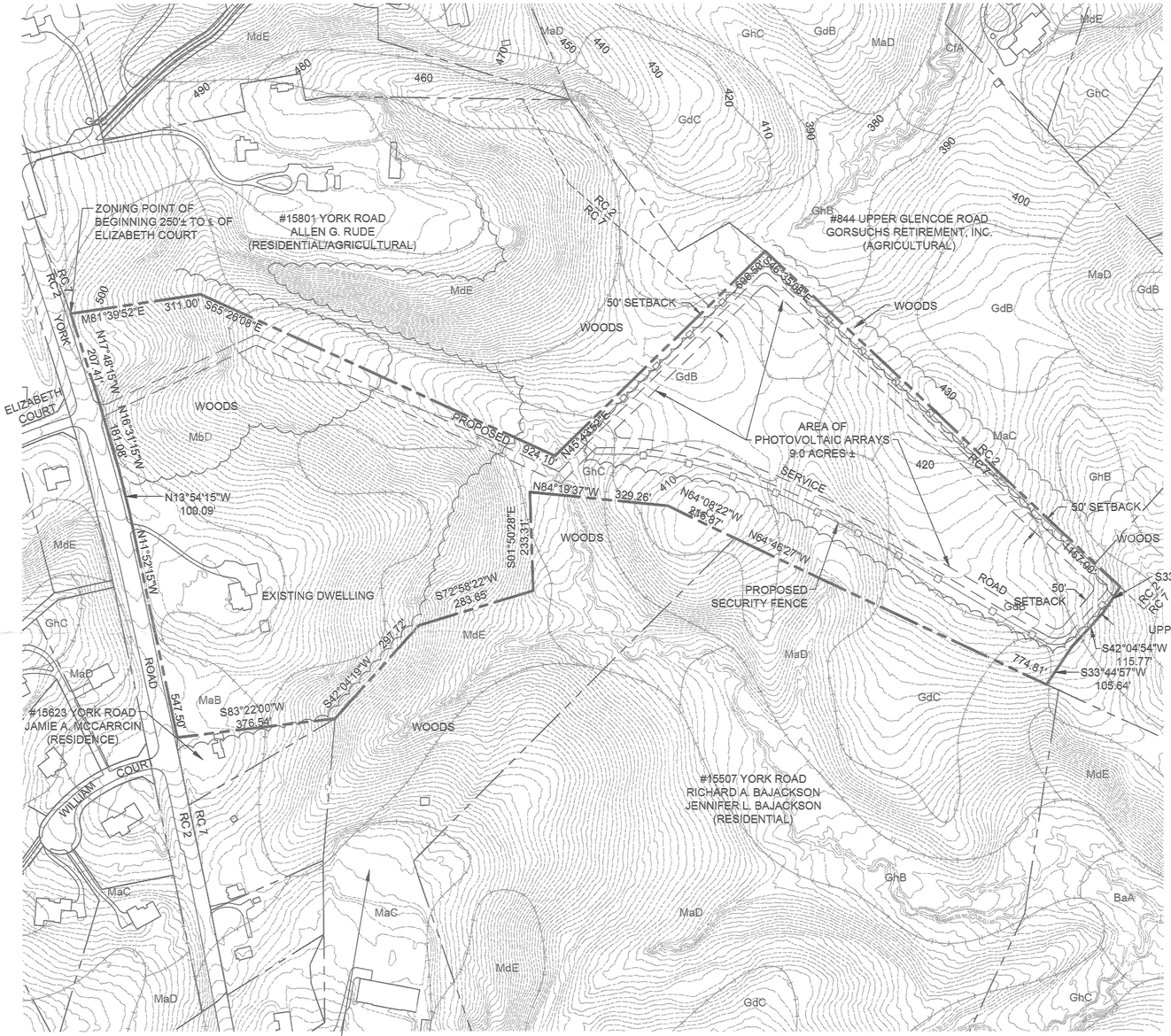
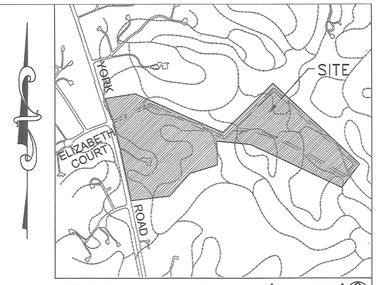
MdE			
MaD			
GhC			
MbD			
GdB			
MaC			
GhB			
MaB			
CfA			
BaA			





Vicinity Map – Scale: 1' = 700'

Petitioner
CBA Exhibit
1

PETITIONER'S
EXHIBIT NO. _____

0' 150' 300' 450'

REVISION
8/15/18 Revision to notes,detail, & soils

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PLAN TO ACCOMPANY A ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

Date: 3/15/2017
Scale: 1"=150'

STATE OF MARYLAND BRUCE EDWIN DOAK No. 531 REGISTERED PROFESSIONAL LAND SURVEYOR

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
5. Tax Map / Parcel / Tax account #: 28 / 15 / 08-02-004200
6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 028B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
7. The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tile 028B3 and the information provided by Baltimore County on the internet.
8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

The construction and implementation of a 2.0 MW solar facility on a 9 acre leased area of a 30.723 acre parcel of land.

Information pertaining to the subject property:

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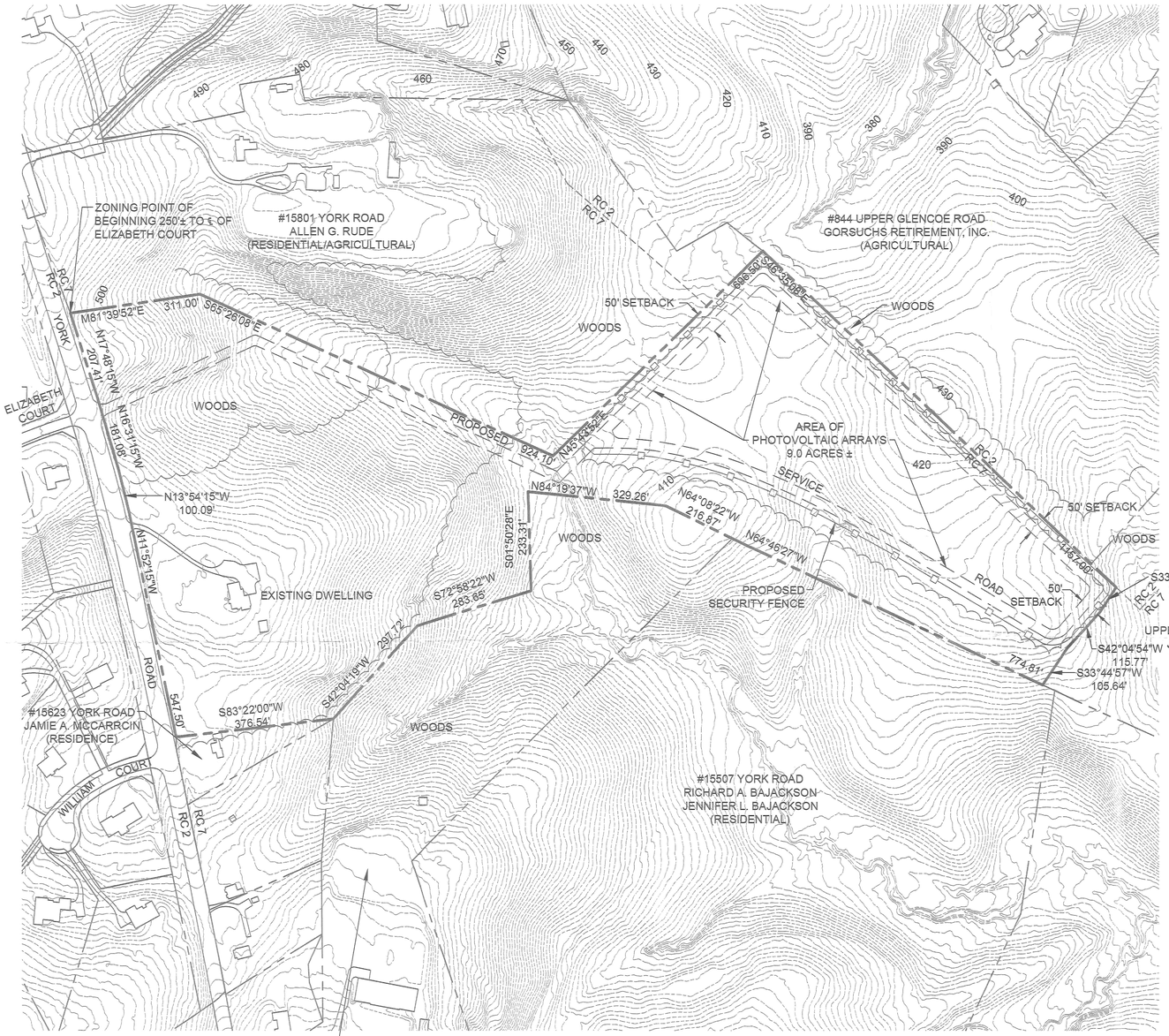

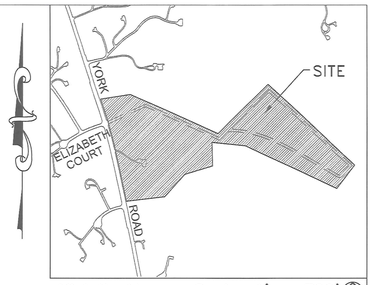

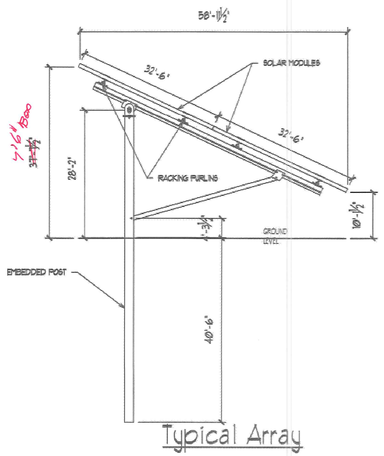

Typical Array

EXHIBIT

0' 150' 300' 450'

REVISION

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PLAN TO ACCOMPANY A
ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

STATE OF MARYLAND
BRUCE EDWIN DOAK
No. 631
REGISTERED
PROPERTY LINE SURVEYOR
8/10/17

Date: 8/8/17
Scale: 1"=150'

PETITIONER'S
EXHIBIT NO. 1

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
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2. Address: 15637 York Road Sparks, MD 21152
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8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

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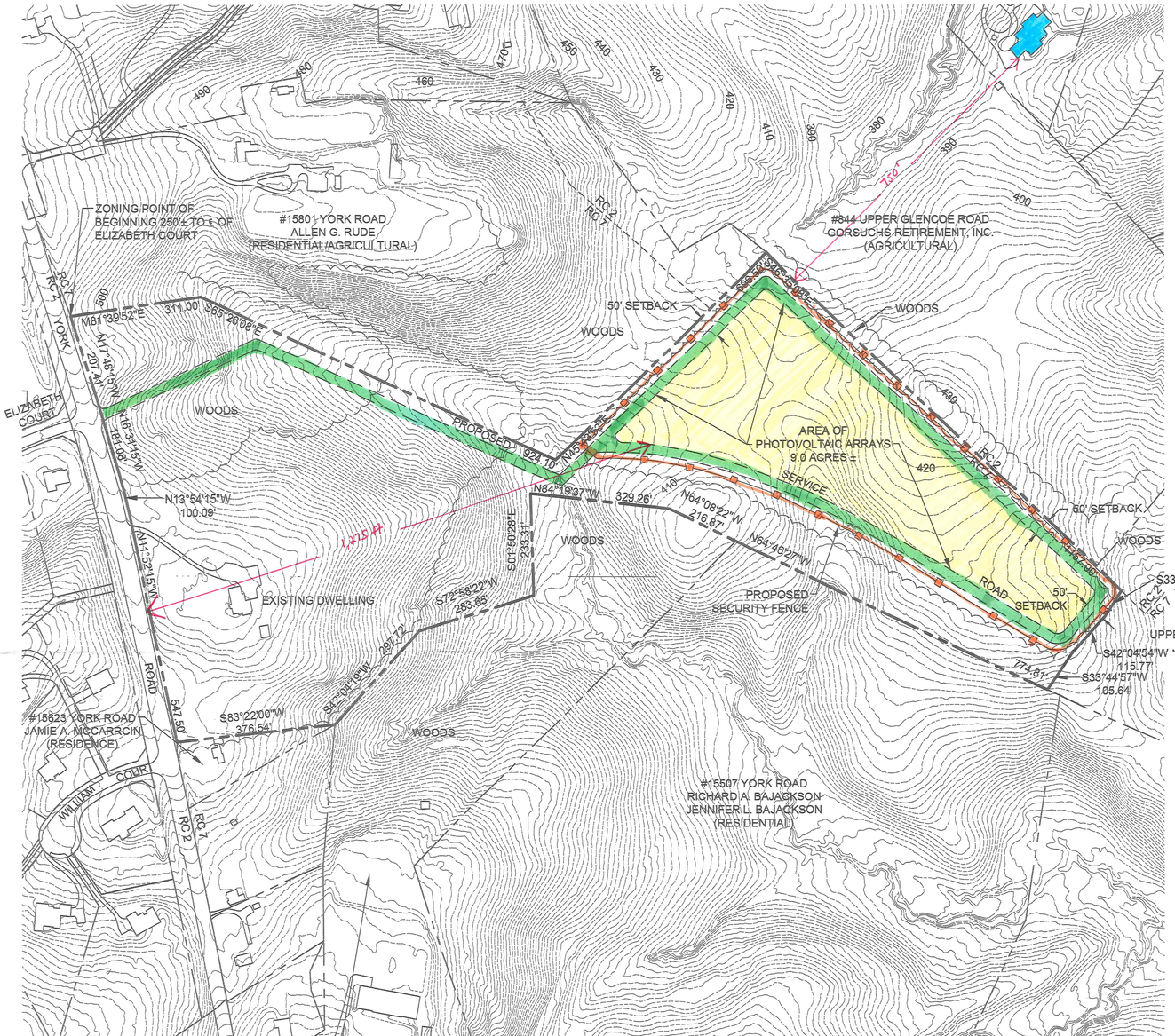
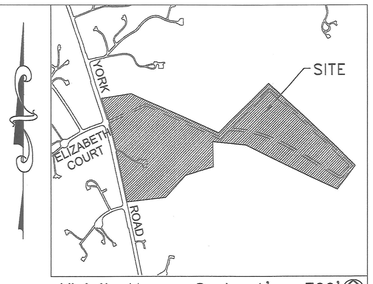
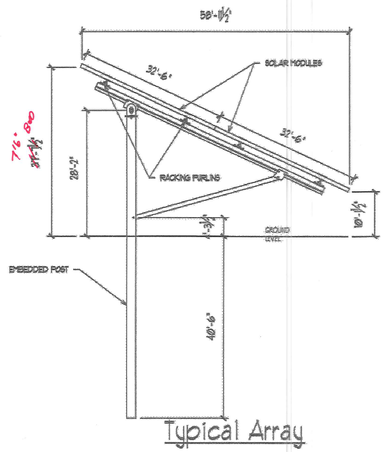




Vicinity Map – Scale: 1' = 700'



Typical Array

0' 150' 300' 450'

REVISION

EXHIBIT

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Land Use Expert and Surveyor
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PLAN TO ACCOMPANY A ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

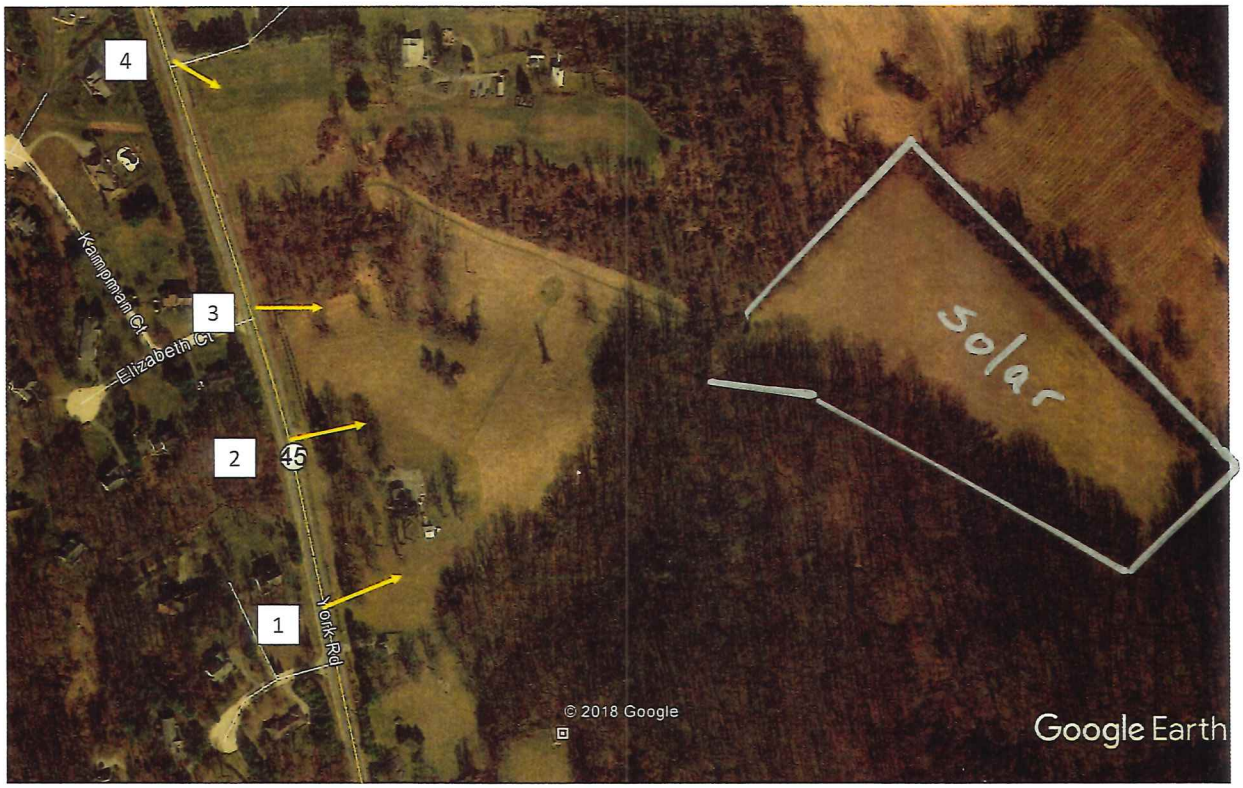
Date: 8/8/17
Scale: 1"=150'

STATE OF MARYLAND BRUCE EDWIN DOAK NO. 831 REGISTERED PROFESSIONAL LAND SURVEYOR 8/10/17

PETITIONER'S
EXHIBIT NO. 2

Site photos from York Road
(Google Earth)

CALVERT ENERGY LLC



Petitioner
CBA Exhibit
2A-E

Case No. 18-047X Garner 8/21/18

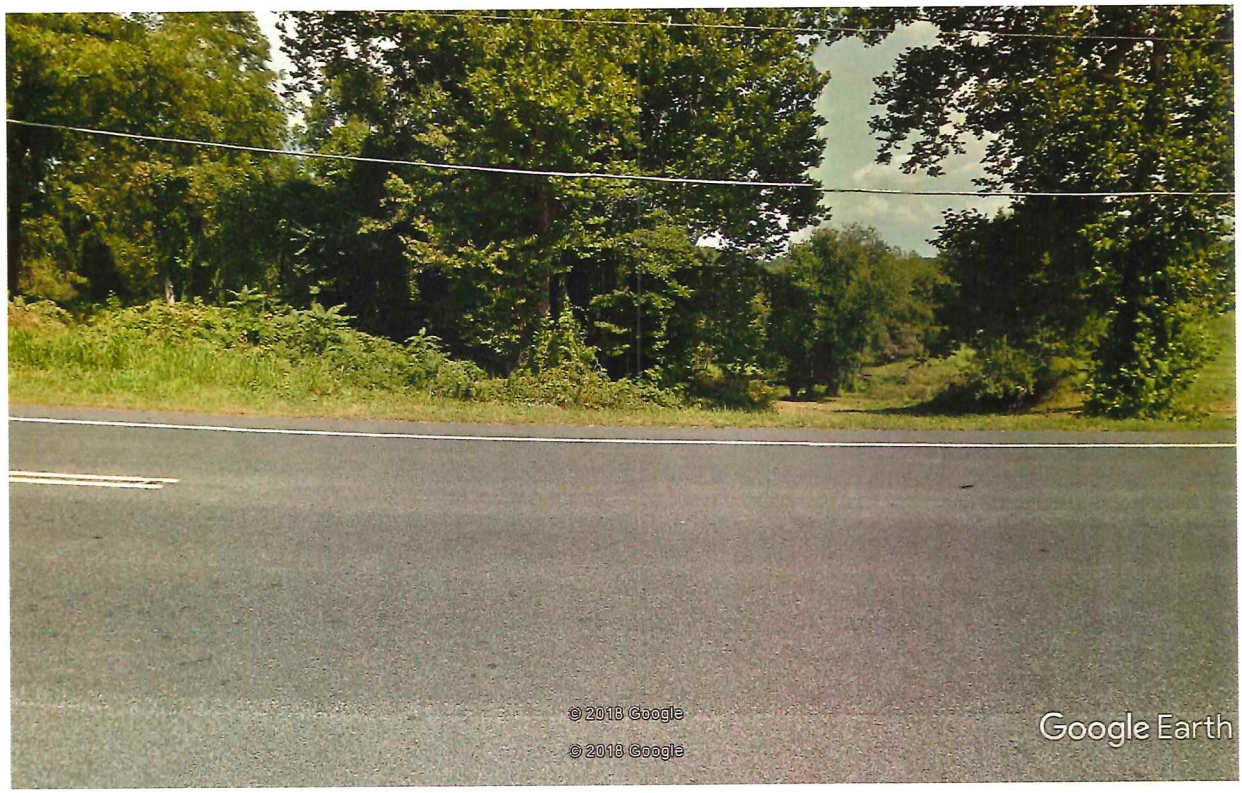
Picture 1

CALVERT ENERGY LLC

2B

Picture 3

CALVERT ENERGY LLC



Picture 2

CALVERT ENERGY LLC

2c

Picture 4

CALVERT ENERGY LLC

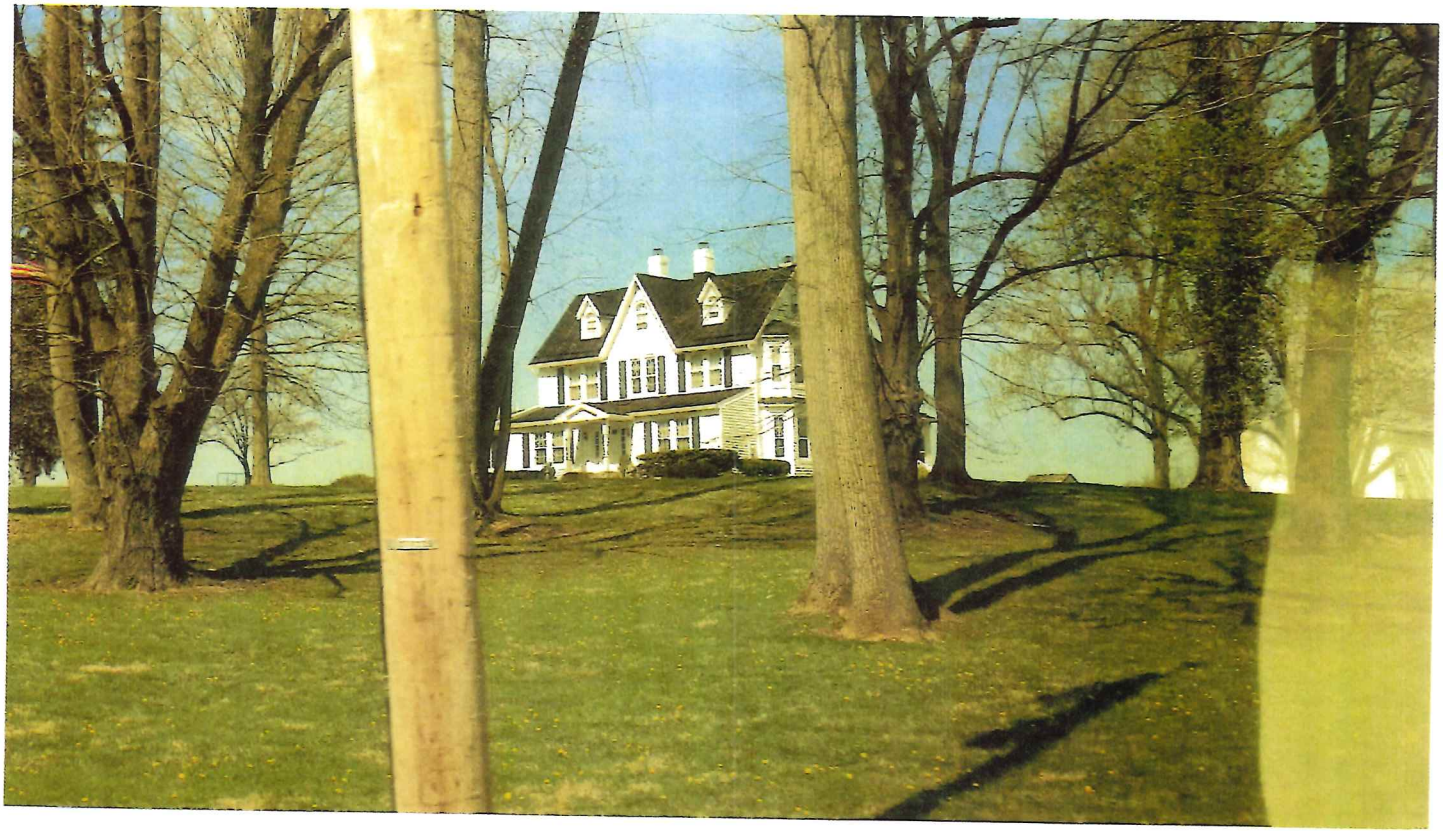
2E

3A 1

3B 2

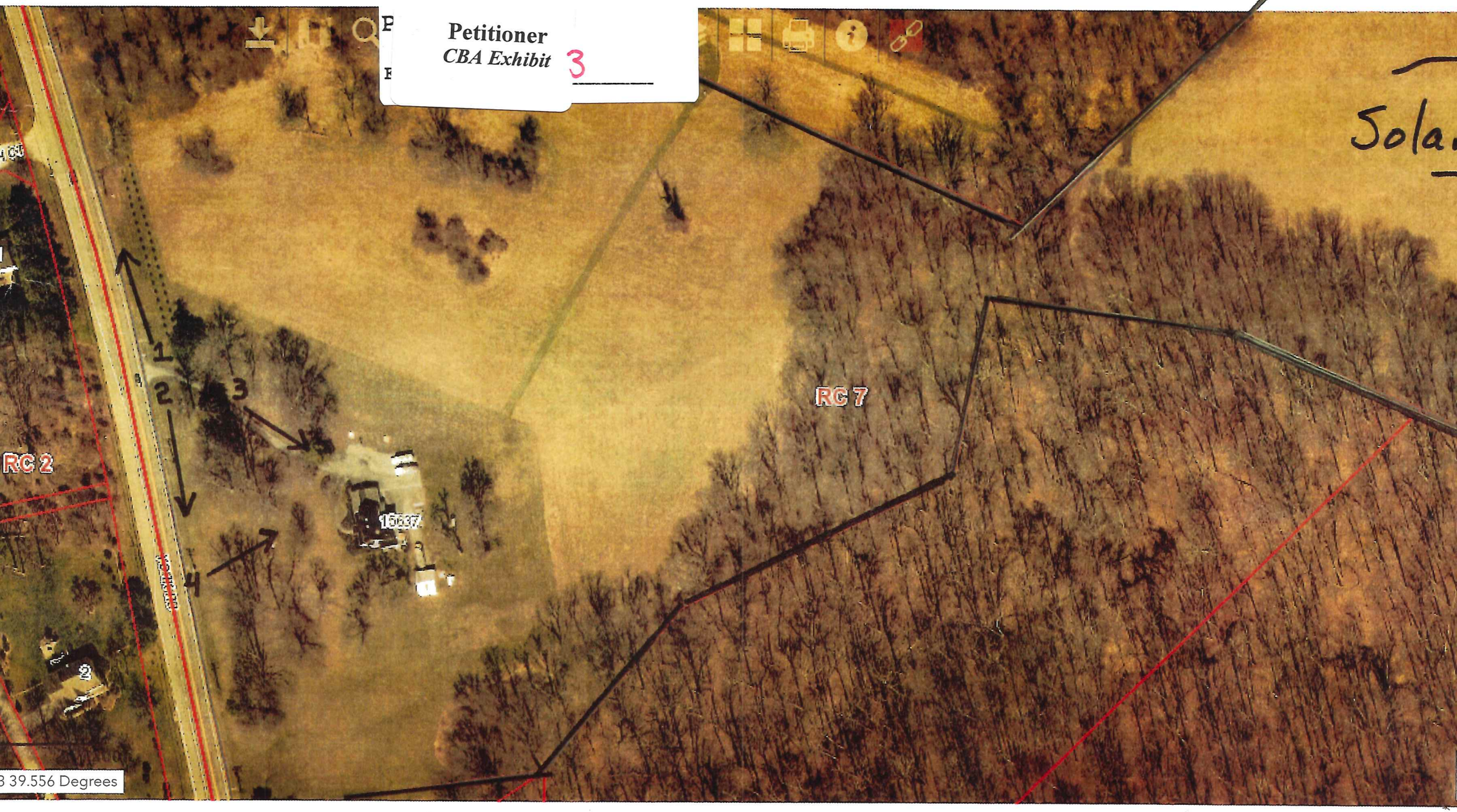
3C 3

3D 4



Baltimore County - My Neighborhood

Petitioner
CBA Exhibit 3



imorecountymd.gov/myneighborhood/

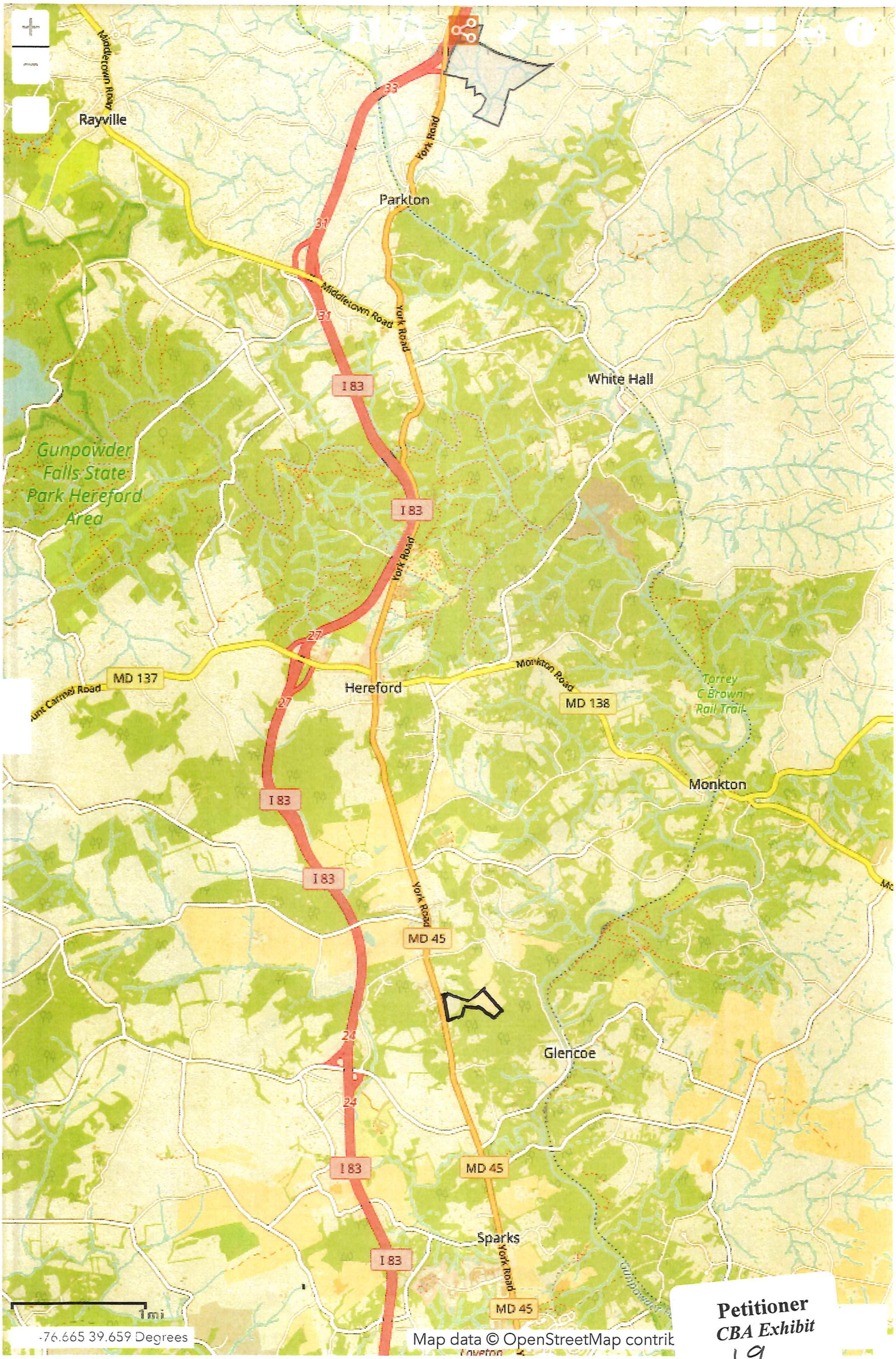
Case No. 18-047X Green 8/21/17

4A 1

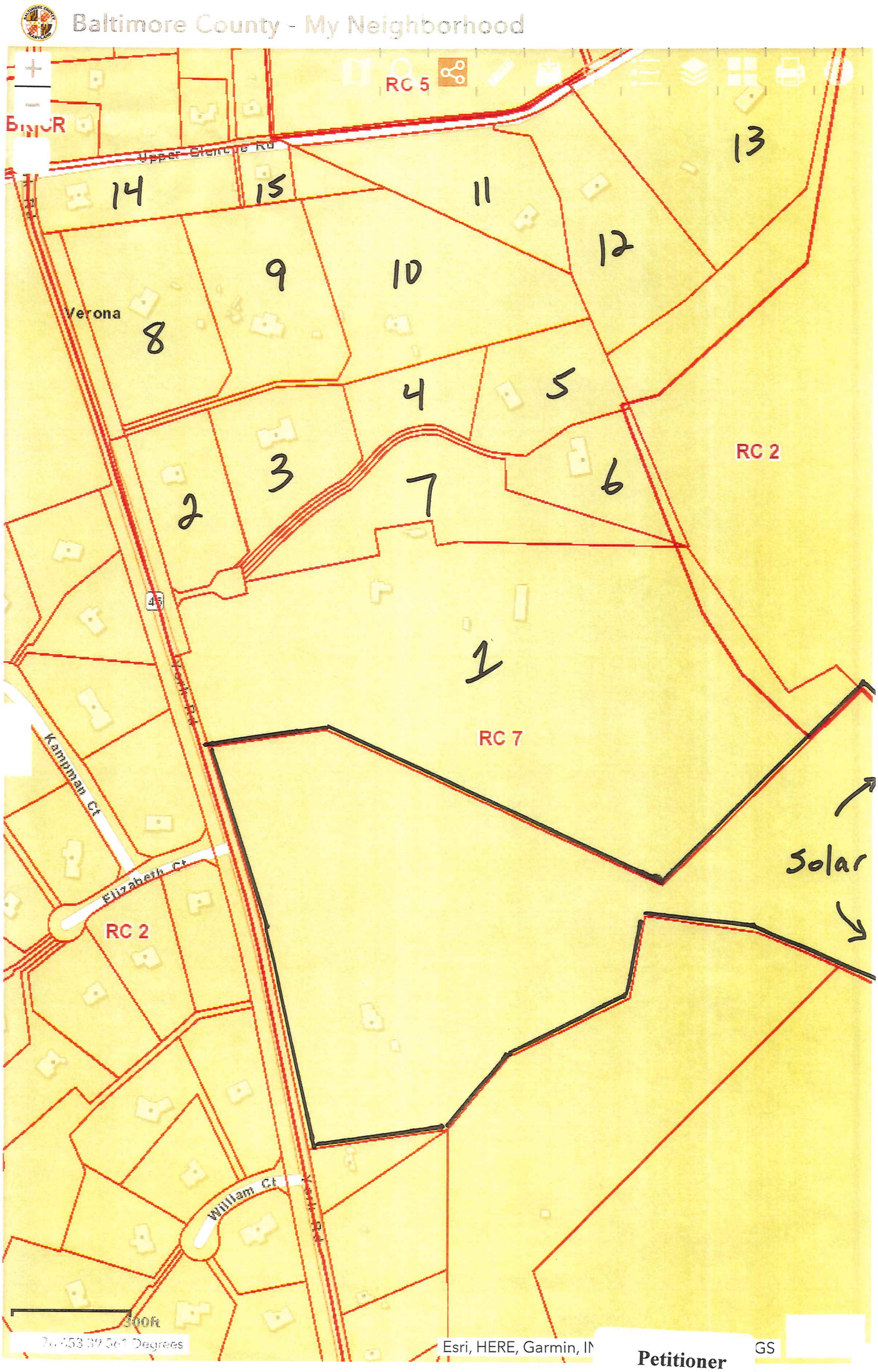
4B 2

No: 18-047-X 8/24/18

Baltimore County - My Neighborhood

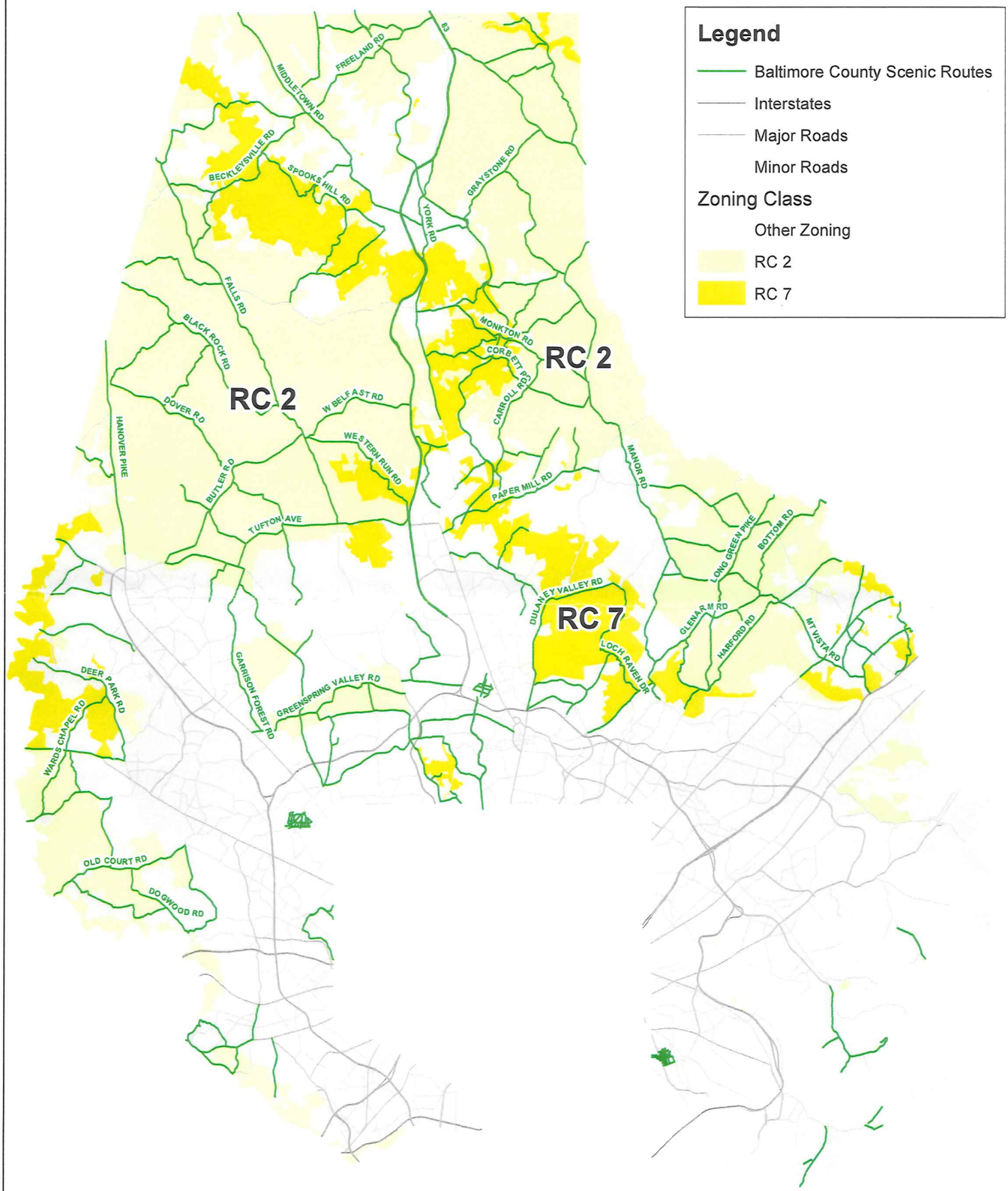


Petitioner
CBA Exhibit
19



Petitioner
CBA Exhibit
20

Zoning 2018



Total Zoning Area:
RC 2 = 139,053.40 Acres
RC 7 = 36,290.24 Acres

Prepared by Geographic Information Services
Baltimore County Office of Information Technology
Zoning and Scenic Routes Data Source:
Baltimore County Department of Planning
Date: October 23, 2018

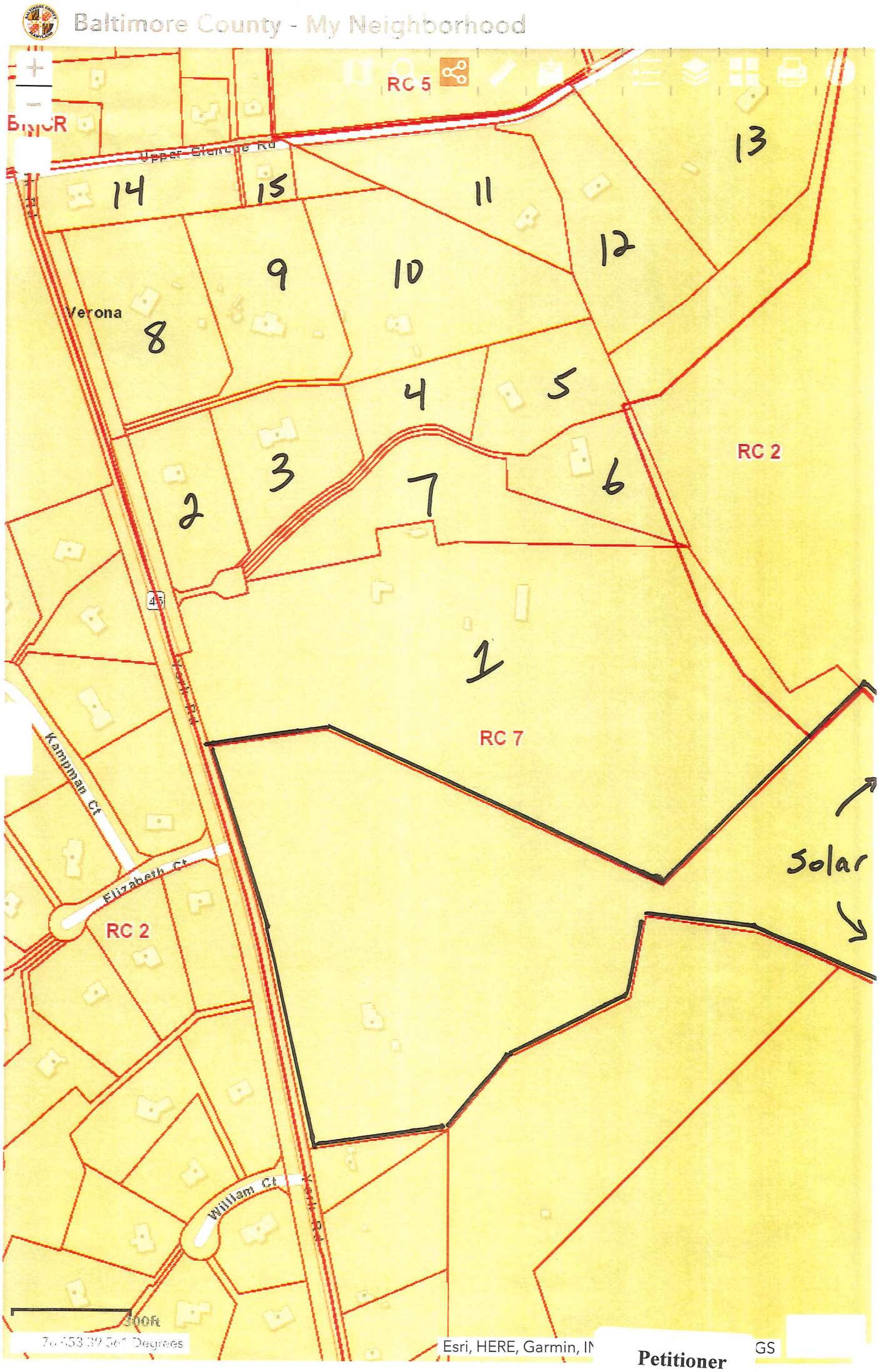
1 Inch = 3 miles

0 1 2 4 6 8
Miles

N

People's Counsel
CBA Exhibit
12

18-047X



Petitioner
CBA Exhibit
20

Prepared by Geographic Information Services
Baltimore County Office of Information Technology
Date: March 27, 2018
2017 Imagery

1 Inch = 100 feet

0 45 90 180 270 360
Feet

People's Counsel
CBA Exhibit
1

N
W E
S

ZONING: RG 5

ZONING: RG 2

ZONING: RG 7

ZONING: RG 2

ZONING: RG 2

WILLIAM CT

DRIVEWAY

DRIVEWAY

DRIVEWAY

DRIVEWAY

DRIVEWAY

DRIVEWAY

KAMPMAN CT

ELIZABETH CT

YORK RD

UPPER GLENCOE RD

SHEEHAN MOST REV L J

SHEEHAN MOST REV L J ROMAN

KEELER WILLIAM H CARDINAL

KEELER WILLIAM H CARDINAL

MOST REVEREND WILLIAM D BORDERS

MOST REVEREND WILLIAM D BORDERS

ORSULAK JOSEPH M

FARAGE JOSEPH P 3RD

REZAVI NILOOFAR

WALKER DONALD W

ROGERS SEAN C

NAVARRE MICHAEL J

FOSTER & VEGAS OF HARFORD INC

GILLETTE MARMANEH

KIEFER JEFFREY L

RUDICK LENORER

HUDOCK JAMES P

PRICE NICHOLAS S

PRICE NICHOLAS S

MOCARRON JAMES A

HEBERT SEAN D

ZUBECK MICHAEL J

DANNALS ROBERT F

PRAMANIK SUDEEP

BAKER JAMES

CASTILLO BANAP

REIER DENNIS G JR

SHIFFLETT ANTHONY

LUMNSDEN SAMUEL H III

GERMAN HARRY D

GUATTERY PETER D

STOUT JOSEPH

SHAMUS EDWARD D

LARGEY DAVID R

KOUSOURIS PATRICIA LENTZ

LATIGHFORD PAUL C

MOONEY TIMOTHY J

HOWSON JOHN

TROJANOWSKI P

MORAN RYAN P

JOHNSON NORTH

ENSOR CHARLES E JR

PARKS ANTHONY RAY

SOMMERS BRIAN D JR

MEMBRENO EDITH D

WEED JOHN T

HOLLINS DOUGLAS A

HOLLINS DOUGLAS A

ANTHONY ANDREW

RUDE VICTOR N

SULLENDER ALLEN O

GREENSPAN LARRY ALLEN

PLEISS COURTNEY S

WESTER ROBERT L

SWANSON RONALD G

RUDE ALLEN G

COURSUCHS RETIREMENT INC

GERNER ROBERT K

BAJACKSON RICHARD A

FITZPATRICK MICHAEL

WEYKAMP PAUL A

WEYKAMP PAUL

IGUSA JUN-ICHI

COLLINS SUSAN E

FAW JOHN E JR

WADOVICK KENNETH JOSEPH III

IZADI ASHLEY L

LAFOND SALLY A

MOXLEY AMESA

HOFFMAN JOHN P

HOFFMAN JOHN

MATCZUK EDWARD J

MATCZUK ANTOINETTE M

SILLDORFF CAROL N

SILLDORFF CAROL N

SWINDELL THOMAS PARRAN JR

HALL EMILY SWINDELL

HALL EMILY SWINDELL

ANTHONY JAMES G

CORSUCHS RETIREMENT INC

CORSUCHS RETIREMENT INC

GENERAL SITE INFORMATION

1. Ownership: Robert K. Gerner
   15637 York Road Sparks, MD 21152
2. Address: 15637 York Road Sparks, MD 21152
3. Deed references: SM 32699/ 228
4. Area: 30.723 acres (per title deed)
5. Tax Map / Parcel / Tax account #: 28 / 15 / 08-02-004200
6. Election District: 8 Councilmanic District: 3
   ADC Map: 4346F2 GIS tile: 028B3
   Position sheets: 94NW6, 94NW7, 94NW8, 95NW6, 95NW7 & 95NW8
   Census tract: 408100 Census block: 240054081002006
   Schools: Sparks ES Hereford MS Hereford HS
7. The boundary shown hereon is from the deed recorded in the Land Records of Baltimore County. All other information shown hereon was taken from Baltimore County GIS tile 028B3 and the information provided by Baltimore County on the internet.
8. Improvements: Single family dwelling. The existing dwelling and the will remain.

OFFICE OF ZONING

Zoning: R.C. 7
There are no previous zoning cases on the subject parcels.

R.C. 7 Setbacks for a Solar Facility

50 feet from any property line on the subject property

ENVIRONMENTAL IMPACT

Watershed: Loch Raven Reservoir URDL land type: 1

1. The existing dwelling is currently serviced by a private well and septic system.
2. There are no underground storage tanks on the subject property.
3. The subject property is not in the Chesapeake Bay Critical Area.
4. The subject property is not located within a 100 year flood plain.

OFFICE OF PLANNING

Regional Planning District: Sparks District Code: 304

1. The subject dwelling is not historic. The subject property is not in a historic district.

PROPOSED DEVELOPMENT

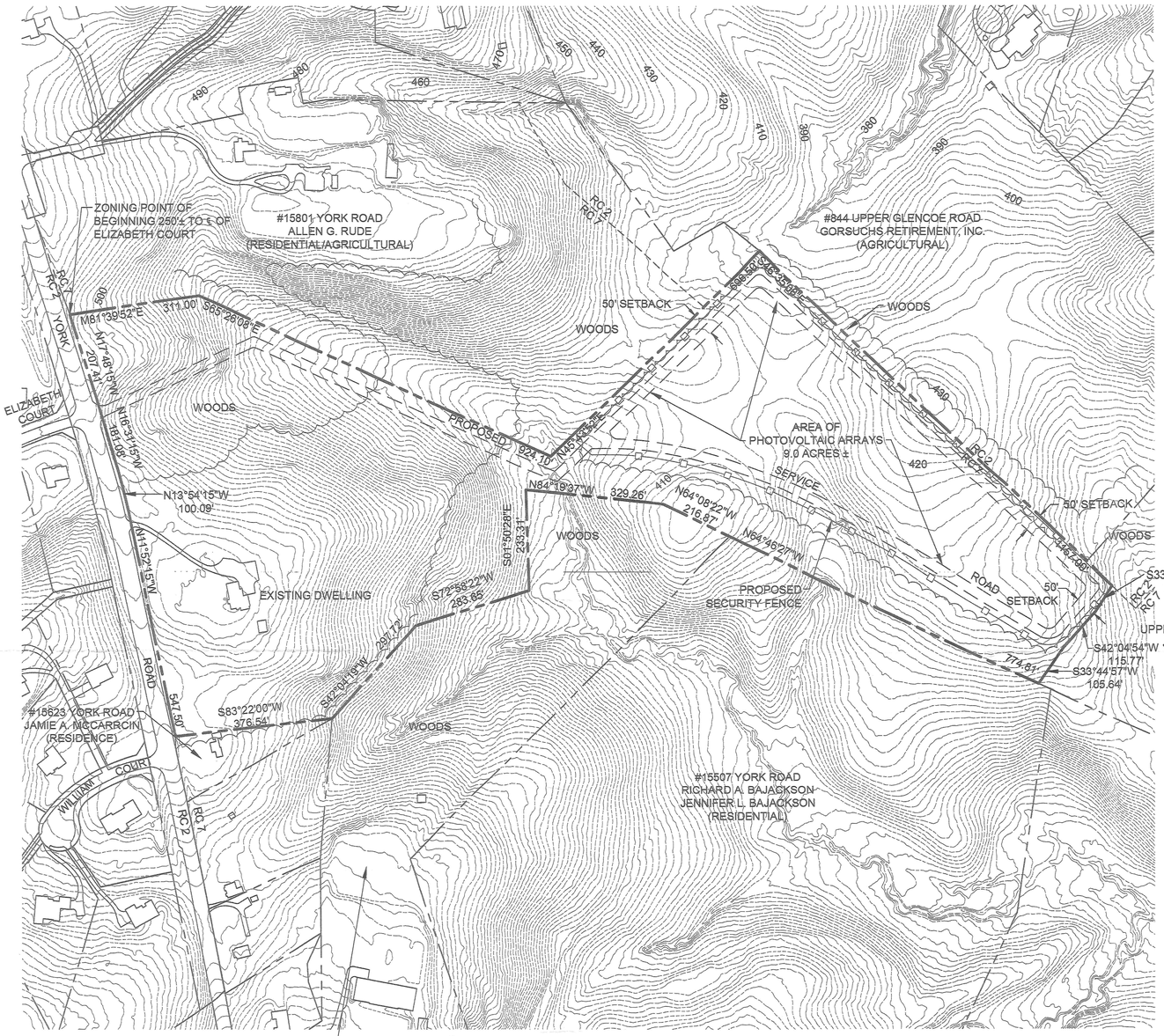
The construction and implementation of a 2.0 MW solar facility on a 9 acre leased area of a 30.723 acre parcel of land.

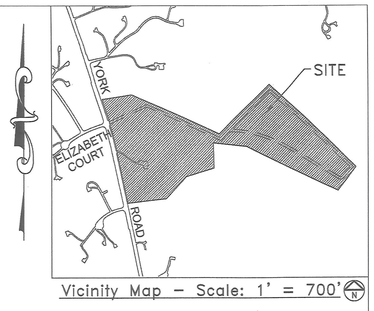
Information pertaining to the subject property:

*The subject property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement.
*The subject property is not located in a Baltimore County Historic District.
*The subject property is not listed on the Baltimore County Final Landmarks List.
*The subject property is not in a forest conservation easement or a designated conservancy area in an RC 4 or RC 6 zone.

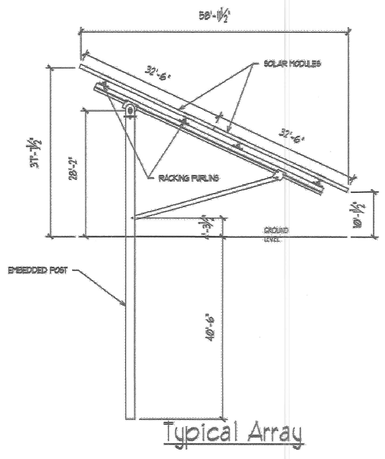
Information pertaining to the proposed solar facility:

*A landscaping buffer may not be required around the perimeter since it will not be visible from an adjacent residentially used property or a public street.
*Screening of York Road may not be required since it will not be visible from a state or local scenic route or scenic route per the Baltimore County Landscape Manual.
*The solar collector panels or combination of solar collector panels shall be designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and adjacent roadways, and will not interfere with traffic or create a safety hazard.





Vicinity Map – Scale: 1' = 700'



Typical Array

0' 150' 300' 450'

REVISION

Bruce E. Doak Consulting, LLC
Land Use Expert and Surveyor
3801 Baker Schoolhouse Road
Freeland, MD 21053
o 443-900-5535 m 410-419-4906
bdoak@brucedoakconsulting.com

PLAN TO ACCOMPANY A
ZONING PETITION
FOR THE
ROBERT K. GERNER PROPERTY

BALTIMORE COUNTY, MARYLAND
8th ELECTION DISTRICT 3rd COUNCILMANIC DISTRICT

STATE OF MARYLAND
BRUCE EDWIN DOAK
NO. 831
REGISTERED
PROFESSIONAL LAND SURVEYOR
8/10/17

Date: 8/8/17
Scale: 1"=150'

Case # 2018-0047-X