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Rachel Dombrowski, Clerk
Appellate Court of Maryland
1/31/2023 8:19 AM

IN THE APPELLATE COURT OF MARYLAND

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc, Appellant	*	No. 1496, September Term 2021
v.	*	CSA-REG-1496-2021
	*	Circuit Court No. C-03-CV-20-003240
Valleys Planning Council, Inc., et al. Appellee	*	

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

MANDATE

On the 28th day of December, 2022, it was ordered and adjudged by the Court of Special Appeals:

Judgment affirmed. Costs to be paid by appellant.

STATE OF MARYLAND, Sct.:
I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Appellate Court of Maryland. In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Appellate Court of Maryland, this 31st day of January, 2023.

Rachel Dombrowski

Rachel Dombrowski, Clerk
Appellate Court of Maryland

MANDATE - STATEMENT OF COSTS

Appellate Court of Maryland

CSA-REG-1496-2021

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc v. Valleys Planning Council, Inc., et al

Appellant

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc	Notice of Appeal	50.00
	RPIF	11.00
	Filing Fee - Lower Court	60.00
	Brief	69.12
	Reply Brief	19.20
	Record Extract	2,801.28
	Appellant Total	**3,010.60**
	Total Costs	**3,010.60**

STATE OF MARYLAND, ss:

I do hereby certify that the foregoing is truly taken from the records and proceedings of the said Appellate Court of Maryland.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Appellate Court of Maryland this 31st day of January, 2023.

Rachel Dombrowski
Clerk of the Appellate Court of Maryland

Costs shown on this Mandate are to be settled between counsel and <u>NOT THROUGH THIS OFFICE.</u>

E-FILED
Rachel Dombrowski, Clerk
Appellate Court of Maryland
12/28/2022 10:53 AM

Circuit Court for Baltimore County
Case No. C-03-CV-20-003240

UNREPORTED

IN THE APPELLATE COURT OF MARYLAND

No. 1496

September Term, 2021

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.

v.

VALLEYS PLANNING COUNCIL, INC., ET AL.

Friedman,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 28, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The appellant in this zoning appeal is Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. ("Holly Springs"). Holly Springs owns two adjacent tracts of land located east of Falls Road in the rural Hampstead area of Baltimore County. Holly Springs' property is split zoned RC-8 and RC-2 and it sought a special exception to build two solar facilities on its property.[1] In both RC-8 and RC-2 zones, solar facilities are permitted but in order to build such a facility, the landowner must meet all of the requirements for a special exception that are set forth in the Baltimore County Zoning Regulations ("BCZR") § 502.1.

In 2018, a petition for special exception to build a solar facility was filed by Holly Springs and Power Factor LLC ("Power Factor"). Power Factor was the lessee of the two parcels. The land Holly Springs owns is composed of two separately deeded properties, *i.e.*, Parcel 144 and Parcel 121.

Initially, the petitioners asked to build a single solar facility on Parcel 144. But after receiving, on December 24, 2018, unfavorable comments from the County Department of Environmental Protection and Sustainability due to the adverse impact on forest stands, floodplains, wetlands, streams and forest buffers, the petitioners filed, on May 17, 2019, an amended petition for a special exception. Attached to the amended petition was a site plan that called for two solar facilities to be constructed on Holly Springs' property. One of the facilities was to be located on Parcel 144 and a second facility was to be located partially on Parcel 144 and partially on Parcel 121 ("Parcel 144/121"). The revised site

[1] The initials "RC" stand for rural conservation.

plan ("the Proposal") shows that there would be a single equipment structure on Parcel 144, serving the solar facilities on both Parcel 144 and the facility on Parcel 144/121. The revised site plan also shows that there would be a six foot high, 125 foot long privacy fence between the southern property line of Parcel 144/121 and the neighboring property.

In the Proposal, Holly Springs and Power Factor also asked for a variance from the 50 foot setback requirements of BCZR § 1A01.3.B.3 that, if granted, would allow the solar facility to be built on Parcel 144/121 zero feet from the interior lot line.

Additionally, in the amended petition, the petitioners requested a "limited exception" from the requirement set forth in the Baltimore County Code ("BCC") § 32-4-106(a)(1)(vi) on the grounds that the commercial structures on the two parcels of land would be "minor commercial structures." The requested exemption, if granted, would allow petitioners to avoid some of Baltimore County's development review processes and procedures.

The amended petition filed by Holly Springs and Power Factor was considered by an administrative law judge ("ALJ") at a public hearing held on May 30, 2019. The ALJ issued a written Opinion and Order on June 20, 2019, approving the special exception petition with conditions. One of the conditions was that the petitioners comply with the comments written by the Department of Environmental Protection and Sustainability ("EPS"). There was more than one comment by EPS, but one of the comments, dated June 3, 2019, read, in pertinent part:

> [T]he underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require EPS review and approval

> of an alternative analysis and must be included in the project's limit of disturbance.

An appeal of the ALJ's decision was filed to the Board of Appeals of Baltimore County ("the Board") by Valley Planning Council, Inc. and several other protestants. The protestants are the appellees in this appeal.

The Board, as required by the Baltimore County Charter § 603, conducted a *de novo* evidentiary hearing. Following that hearing, the Board conducted public deliberations in December 2019 and issued a written Order and Opinion dated April 27, 2020. In its Order and Opinion, the Board denied the special exception petition. In doing so, the Board made a number of findings including: 1) that the proposed solar facility use would be detrimental to the health, safety or general welfare of the locality involved and thus contrary to BCZR § 502.1.A; 2) that the proposed solar facility use would be inconsistent with the spirit and intent of BCZR § 502.1.G; 3) that the proposed solar facility use would be inconsistent with the vegetative retention provisions of BCZR §502.1.H; and 4) that the proposed solar facility would be detrimental to the environmental and natural resources of the site and vicinity including forests, streams, wetlands, aquifers and flood plains in an RC zone and thus inconsistent with BCZR § 502.1.I.

After recognizing that it was not required to address the variance issue, because it had turned down the request for a special exception, the Board nevertheless decided to address the issue to protect against the possibility that its decision denying the special exception might be reversed on appeal. The grounds for the Board's denial of the variance will be set forth, *infra*.

In regard to the request for a limited exemption from the requirements of BCC § 32-4-106(a)(1)(vi), the Board denied that request saying that the solar facilities: "are not minor commercial structures" but are, instead, "two large elaborately designed facilities which consume the majority of both [p]arcels."

Petitioners filed a motion for reconsideration of the Board's opinion and order to which it attached a second revised site plan ("the Redesigned Project"). In their Redesigned Project, the petitioners proposed to build only one solar facility, which was to be located entirely on Parcel 144. If a special exception was granted based on the Redesigned Project, no variance would be needed.

The Board conducted public deliberation on July 15, 2020, to consider the motion for reconsideration. Afterward, in a written Ruling and Opinion dated August 3, 2020, the Board denied the motion for reconsideration.

Holly Springs, but not Power Factor, filed a petition for judicial review in the Circuit Court for Baltimore County on September 1, 2020. After a hearing, the circuit court issued an Opinion and Order on October 22, 2021, affirming the Board's denial of the special exception and its denial of the motion for reconsideration. This timely appeal followed.

I.

QUESTIONS PRESENTED[2]

1. Did the Board err in finding that the proposed Solar Facility use would be inconsistent with the vegetative retention provisions of the BCZR § 502.1.H and would be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, and floodplains in an RC zone § 502.1.I?

[2] Holly Springs lists five questions presented:

1. Did the Board err in finding that the proposed Solar Facility use did not satisfy the statutory standards for special exception uses codified in BCZR § 502.1?

2. Did the Board err in considering and denying the special exception petition based upon factors (*e.g*. the competence of the developer of the project and its financial soundness) that are not contained in BCZR § 502.1?

3. Did the Board err in finding that the proposed Solar Facility use would be inconsistent with the vegetative retention provisions of the BCZR (§ 502.1.H) and would be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, and floodplains in an RC zone (§ 502.1.I)?

4. Did the Board err in finding that the proposed solar facility was not a single facility located on a single tract of land?

5. Did the Board err in not holding an evidentiary hearing and/or approving the Appellant's revised plan submitted with its Motion for Reconsideration?

We note that because the requirements of BCZR § 502.1 are in the conjunctive, it is unnecessary for us to answer Holly Springs' questions 1, 2 and 4 because, as will be demonstrated, *infra*, there was sufficient evidence to support the Board's conclusion that grant of the special exception would be inconsistent with the criteria set forth in BCZR § 502.1.H and I.

2. Did the Board err in not holding an evidentiary hearing and/or approving the Appellant's revised plan submitted with its Motion for Reconsideration?

II.

REQUIREMENTS FOR A SPECIAL EXCEPTION IN BALTIMORE COUNTY

BCZR § 502.1 provides:

> 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 R.C.2, R.C.4, R.C.5, or R.C.7 Zones[.]

These factors are set forth in the conjunctive and, therefore, each of them must be met in order for a special exception to be granted. As mentioned, the Board found that factors set forth in Section 502.1.A, G, H, and I had not been met but, in this opinion, we shall focus on the Board's findings as to § 502.1.H and I.

III.

THE PROPERTY

Parcel 144 consists of 26.34 acres. The entire northern and northeastern portion of Parcel 144 is forested, the majority of which is classified as "Priority" forests, the most sensitive and protected of forests under the State's forest conservation law. The amended site plan shows that one solar facility will be completely within Parcel 144. That parcel is currently unimproved.

Parcel 121 is composed of 6.25 acres and contains a dilapidated and abandoned dwelling and shed and is known as 18627 Falls Road. As shown on petitioners' amended site plan, a second solar facility is to be built that is partially on Parcel 144 and partially on Parcel 121.

A use III stream[3] called Compass Run runs westerly across the forested northern portion of the property and an unnamed tributary of that stream runs southerly and bisects the two proposed solar facilities. There are numerous trees along the banks of the unnamed tributary and on many other parts of Holly Springs' property.

According to Holly Springs' amended site plan, the solar facility that is completely on Parcel 144 will be accessed via a gravel 'S' shaped driveway on the northwestern boundary of Falls Road. The solar facility on Parcel 144/121 will be accessed via a 'U' shaped gravel driveway at the southwestern end of Parcel 121. Under Holly Springs

[3] A use III stream is the highest order of stream under the State's classification of stream systems. Use III streams are ones that are capable of supporting a naturally reproducing trout population.

amended site plan, each of the solar facilities will be enclosed within its own seven foot vinyl coated, chain link fence. Running along each of these fence lines is a 100 foot forest buffer that is necessary because of the aforementioned unnamed stream. In addition, designated areas of wetlands (in the same area as the unnamed steam), are also located between the two proposed solar facilities.

The amended site plan shows that the facilities will be connected by an underground electric line which is designated on the amended site plan as "UGE." The UGE will be installed underneath the stream, the forest buffer, and the line of trees and the vegetation on either side of the stream. On Parcel 144, the UGE will continue beneath the fence and stream buffer and ultimately connect to the Baltimore Gas and Electric ("BGE") interconnector. On the eastern side of the 144/121 solar facility are nine "specimen trees." Those trees are at least 35 inches in diameter at breast level and are subject to regulation under both State and Baltimore County law. Moreover, there are isolated specimen trees throughout the property owned by Holly Springs.

IV.

PERTINENT RULES AND REGULATIONS

A "forest buffer" (as defined and regulated under Baltimore County's Environmental Protections, BCC § 33-3-101(h)) is a protective area adjacent to water resources created to maintain the water quality of those resources.

Section 33-3-111(a) provides:

(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.

Because the surface water design used for the unnamed stream is a use III, the forest buffer must be at least 100 feet. BCC § 33-3-111-(b)(4).

Section 33-3-112(b)(2)(ii) provides that "[e]xcept 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." Subsection (c)(2)(i) of § 33-3-112, authorizes utilities, such as a solar facility, 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." (emphasis added).

V.

THE PROPOSED SOLAR FACILITIES

A solar facility is defined as a series of solar collector panels which harvest energy from the sun to generate photovoltaic power. *See* BCZR § 4F-101.B. The two proposed solar facilities, combined, will cover 9.13 acres. The solar panels will be above ground and mounted atop a post that is then buried in the ground. Grasses, which will absorb storm

water runoff, will be planted underneath the elevated panels. The panels will be approximately nine feet above ground. Each solar facility will contain a series of non-rotating solar panels, which are often referred to as a "solar field." The panels will be oriented in a southerly direction to capture energy from the sun. The energy captured by the panels will be converted to electric current. A structure to be built on Parcel 144 will contain the equipment necessary to convert the energy into electricity. The electricity will be transmitted through a meter that measures the amount of electricity produced; the electricity will then be transmitted, via a UGE, to the public electric transmission wires owned and maintained by BGE. The transmission wires are to be located on Falls Road and are part of BGE's energy grid that is designed to provide electricity to the homes and businesses in the area. Baltimore County Zoning Regulation § 4F-102.B.1 restricts the amount of energy that can be produced by a supplier (such as Holly Springs) to less than two megawatts. Holly Springs proposed solar facilities complied with that limitation inasmuch as the facilities are designed to produce a combined 1.8 megawatts.

V.

TESTIMONY OF WITNESES AND EXHIBITS CONSIDERED BY THE BOARD[4]

A. Testimony of Andrew Streit

Mr. Streit is the Director of Business Development with Power Factor. His employer was Holly Springs' co-petitioner in this case. At the time of the hearing, Mr. Streit had worked for Power Factor for one and one-half years but had been employed in the solar energy business for twelve years. He testified that Power Factor had leased the subject property for 25 years from Holly Springs; later, however, he explained that the lease will be assigned to an entity know as Meade Communities, Inc. ("Meade").

Power Factor's role in the proposed solar energy project will be as a construction and maintenance contractor. Meade will be the entity responsible for connecting the solar facilities to the BGE grid and preparing the application for BGE approval. Additionally, Meade will install the meters needed to monitor the amount of electricity generated to the grid and will maintain the list of subscribers buying electricity from the proposed facilities.

On cross-examination, Mr. Streit conceded that the solar panels to be installed have an efficiency rating of 18%, but that panels with a higher efficiency rating do exist. A high efficiency rating would be 22% and the highest possible rating is 42%. If a higher efficiency panel were used, fewer panels would be needed and less vegetation would be

[4] In its Opinion and Order, the Board summarized the testimony of the witnesses that appeared before it. Appellant does not contest the accuracy of the Board's summary. In our recap of the witnesses' testimony, we have, in some instances, quoted from the Board's Opinion without direct attribution. Our summary, however, does not cover all of the evidence presented to the Board; instead, we have only set forth facts that either put in context or are directly relevant to the questions presented.

disturbed. He did not know the minimum amount of land needed to produce 1.85 megawatts of electricity. Additionally, Mr. Streit admitted that it was possible to run power lines above ground, rather than using an UGE, but it would be more expensive. Arguably, at least, this admission was important because to avoid the necessity of submitting an alternative analysis (under BCC § 33-3-112(c)(2)(i)) there must be a clear showing, *inter alia*, that no other feasible alternative exists.

B. Testimony of Nicholas Leffner

Mr. Leffner was accepted by the Board as a professional engineer with particular expertise in the area of planning, zoning, and limited exemption applications. Mr. Leffner explained to the Board the hydrological conditions of the property and testified that he commissioned a field delineation of wetlands, streams and waters on Holly Springs' property. He further explained that the owner of the property was required by zoning regulations to establish a forest buffer around the wetlands and the streams on the property in accordance with criteria established by Baltimore County. He testified that the amended site plan proposes that all development, *i.e.*, facilities, arrays, etc. are located away from the identified water resources and outside the forest buffer. He opined that Holly Springs' proposal satisfied all the requirements for a special exception set forth in BCZR § 502.1.

In regard to the UGE, Mr. Leffner testified that the forest buffer regulations required non-disturbance of the stream and its buffer. According to Mr. Leffner, a subsurface connection, such as a UGE, is not a disturbance.

Mr. Leffner was asked by a Board member whether Parcel 121, by itself, was of "an adequate size to support the solar facility[.]" Initially, he responded that the Commission

would have to "ask the applicant." He later amended his answer by saying that, to his understanding, Parcel 121 would not be big enough to support a solar facility that would generate two megawatts of electricity.

Mr. Leffner further testified that the horizonal UGE that would connect the two solar facilities, would go under the forest buffer and the unidentified stream. He did not know the depth that the UGE would be buried.

With respect to the consistency of the anticipated use with the impermeable surface and vegetative retention provisions of BCZR § 502.1.H and the requirement of § 502.1.I that requires that the project not have a detrimental impact on environment and natural resources, including forests, streams, wetlands, aquifers and floodplains, Mr. Leffner opined that these solar facilities did not impact the environment. He stressed that drainage from the solar facilities would fall toward the stream.

Mr. Leffner was also asked about the variance that the petitioners had requested. As mentioned earlier, Baltimore County zoning regulations require that there be a 50 foot setback from the interior property lines between Parcel 144 and Parcel 121. Because the proposed 144/121 solar facility is on two adjoining parcels, there will be a zero foot setback rather than the required 50 feet. He testified that the requested variance was justified because of the geographic features of the property, i.e., the streams, the forest buffer, the flood plains, the wetlands, the downward slope of the land from a portion of Parcel 141 and the northern end to a converging point at the stream between the parcels; steep slopes on the eastern end of Parcel 144/121, the shape of 144 and 121; and the specimen trees, particularly the specimen trees located in the middle of Parcel 121. He opined that the two

parcels were unique and, as a result, the petitioners would suffer a hardship if the variance was not approved. He further opined that if the 50 foot setback was required from the internal property lines between Parcel 144 and 121, the scope of the project area would be reduced by one-third; this would require the removal of solar panels within the 50 foot setback area. If such a requirement were met, the project would not be financially viable for the petitioners.

Mr. Leffner agreed that no alternative analysis had been prepared even though an underground utility line is a "utility" within the meaning of BCC § 33-3-112(c)(2)(i). He opined that the 200 foot UGE that would be installed by directional moorings, did not constitute a disturbance under § 33-3-112 of the County Code and therefore no alternative analysis was needed. He admitted, however, that he was unaware that in written comments by the EPS on June 3, 2019, it was stated that an alternative analysis would be required; he was also unaware that the ALJ had listed an alternative analysis as one of the recommended conditions for the grant of a special exception. Later in his testimony, he admitted "there may be some disturbances within the root system" when the UGE is installed. When asked by one of the Board members what happens if there are impacts to the root system and a tree is damaged, he responded "there could be a damage and nothing would happen. It could kill the tree . . . then . . . there could be damages[.] . . . [T]here's a lot of what ifs, so I can't really answer that directly."

C. Testimony of Michael S. Kulis

Mr. Kulis is a Natural Resource Specialist, II, employed by the Baltimore County Department of Environmental Impact Review Section of the EPS. He was subpoenaed by

the petitioners to testify on their behalf. Like Mr. Leffner, he testified that the forest buffer regulations require non-disturbance of the stream and its buffer. But, in his opinion, a subsurface connection of the UGE, as long as it meets EPS criteria insofar as depth is concerned, is not considered a disturbance.

Mr. Kulis admitted on cross-examination that while an alternative analysis is legally required under BCC § 33-3-112(c)(2)(i), and that such an analysis was one of the conditions imposed by the ALJ, this provision would not be enforced by the EPS based on an unwritten policy. That unwritten policy provided that as long as the stream that bisects the solar facilities is not disturbed, an alternative analysis would not be needed.

Mr. Kulis acknowledged on cross-examination that vegetation will be cleared and soil will be disturbed in the forest buffer when the UGE is installed.[5]

D. Testimony of Protestant Kathleen Piper

Ms. Piper testified in her individual capacity and as President of the North County Community Group, LLC ("North County"), a voluntary organization of 500 members. According to Ms. Piper, the most significant concern of North County was the environmental impact of the proposed solar project. She stressed that the site includes streams, solar panels in the RC-8 zone, multiple entrances and solar arrays, and underground cabling. It was very concerning to Ms. Piper that Mr. Streit, one of the petitioners' agents, wasn't even aware of the alternative analysis requirement even though

[5] In its finding, the Board accurately pointed out that there appeared to be a change in the EPS's position as to whether an alternative analysis was needed inasmuch as in a comment set forth in a June 3, 2019 letter, the EPS said that an alternative was needed, but, the position taken by Mr. Kulis, as a representative of EPS, was the opposite.

that requirement was reflected in earlier comments from EPS that were easily available in the file, and it was made a condition of the ALJ's recommending of the special exception.

VI.

THE BOARD'S OPINION

The Board found several reasons why the requirements for a special exception, as set forth in BCZR § 502.1, had not been met. But, for our purposes, we need to examine only the following reasons. The Board said:

> (3) Inconsistent with Vegetative Retention Provisions (BCZR § 502.1.H) and Detrimental to Environmental and Natural Resources (BCZR § 502.1.I)
>
> With regard to vegetative retention provisions under BCZR § 502.1.H, and impact on the environmental and natural resources under BCZR § 502.1.I, the Board finds that the proposed facilities will be inconsistent with, and detrimental to, each of those factors. We note that the Parcels at issue are not cleared, farmland. Rather, each has abundant natural resources and environmental constraints as revealed by Petitioners' photos. The Petitioners' Wetlands Delineation Report provides concrete details about wetlands, vegetation, topography, soil type, trees, specimen trees, floodplains and forests inherent in these Parcels.
>
> According to Mr. Leffner, the initial proposed plan provided for one solar facility confined to Parcel 144. Due to the numerous environmental aspects on Parcel 144 alone including the forest buffer areas, wetlands, floodplains, streams, trees, vegetation, and the limits of disturbance ("LOD") impacts, EPS was not in support of the initial proposal. As a result, Mr. Leffner revised the Site Plan to propose the two solar facilities at issue by utilizing Parcels 144 and 121. In amending the Site Plan, rather than only request one solar facility within the confines of Parcel 144 by using the most efficient solar panels available and reducing the special exception area, the Petitioners desire to maximize their return on investment.
>
> It is a significant concern to this Board that existing trees and vegetation will be removed to make room for the solar facilities in the following areas:

(1) the line of existing trees and vegetation in the center of Solar Facility 144/121;
(2) the line of existing trees and vegetation on the northern end of Solar Facility 144/121;
(3) the line of existing trees and vegetation in the center of Solar Facility 144; and
(4) the line of existing trees and vegetation around the 'S' shaped and 'U' shaped gravel driveways.

We do not agree that the removal of trees and vegetation as listed above, is minimal. In the Board's view, the removal of trees and vegetation is substantial and unnecessary, and directed by the Petitioners' own interests. As Mr. Kulis stated, "if left in their natural state, a forest would grow near the stream." The Site Plan reveals, and this Board so finds, that specimen trees, and the critical root systems of those specimen trees, will be negatively impacted by the construction of solar panels in the area of those root systems. The access driveway to Solar Facility 144/121 will be constructed through not only the critical root system of a specimen tree, but through two areas of trees and vegetation. Moreover, the ZAC [Zoning Advisory Committee] comments dated December 24, 2018 provide useful information to this Board in that a special variance to the Forest Conservation Law must be approved by EPS when critical root zones of specimen trees are impacted. Yet, Mr. Leffner maintained that no special variances would be needed.

Further, it is only because of the Petitioners' desire for two solar facilities rather than one (1), that the UGE is even needed; it is entirely self-imposed. The Board finds that the UGE is detrimental to the stream and the existing trees which line the stream. Mr. Leffner was not clear in his testimony as to the depth necessary for drilling the UGE but acknowledged the horizontal distance would be greater than 200 ft. Mr. Streit admitted that it would be more expensive to connect the two solar facilities above-ground.

The Site Plan shows the forest buffer setback for the stream between Parcels 144 and Parcel 121 running along each of the wire fences to be installed around each facility. We find that the placement of the wire fences along the forest buffer setback shows unnecessary interference by the solar facilities in these environmentally sensitive areas.

We were also alerted to Mr. Kulis' admission on cross[-]examination that while an Alternatives Analysis is legally required under BCC § 33-3-112(c)(1), that provision would be not enforced by EPS based on an unwritten policy, as long as the stream which bisects the solar facilities is not disturbed. While Mr. Kulis stated that this issue would be addressed at the

> time of the grading permit, we find the stream will be disturbed and EPS should have required an Alternatives Analysis. Mr. Kulis further acknowledged that vegetation will be cleared and soil will be disturbed in the forest buffer when the UGE is drilled in violation of BCC § 33-3-112(b)(2)(ii) and (iii). Thus, while E[PS] concedes that there will be impacts to the environment in this case and views these as minimal, this Board does not.

(Emphasis added.)

After the Board rejected the petitioners' request for a special exception, it turned its attention to the petitioners' request for a variance. The Board said:

> Petitioners requested a variance from BCZR § 1A01.3.B.3, if necessary, to permit a solar facility to be as close as 0 feet to an internal lot line. This request is a direct result of the desire to install a second solar facility on Parcel 144/121. Given that this Board has denied the special exception relief requested, we need not address the variance issue. However, we will do so in the event that our decision in regard to the special exception is reversed.
>
> We find it ironic that, in support of its position that Parcels 144 and 121 are unique, Petitioners rely on the environmental factors which they discount as existing and which served as one of the basis for this Board to deny the special exception request. We further find that the Petitioners will not suffer a practical difficulty if the solar facilities are not permitted. Indeed, the evidence did not suggest that the only use of this land was as a solar facility. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). The Court of Special Appeals[6] in *Montgomery County v. Rotwein*, [169] Md. [App.] 716, 732-33 (2006) citing *Cromwell* [*v. Ward*, 102 Md. App. 691 (1995)], held that economic loss alone does not satisfy the 'practical difficulties' test:
>
> > Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* [102 Md. App.] at 715. . . . Indeed, to grant a variance application any time economic loss is

[6] Because of an amendment to the Maryland Constitution that became effective on December 14, 2022, the Court of Special Appeals name was changed to the Appellate Court of Maryland.

> asserted, we have warned, 'would make a mockery of the zoning program.'
>
> In addition, we find that the proposed plan is entirely self-imposed and therefore does not meet the criteria for a variance. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell v. Ward*, 102 Md. App. 691, 722 (1995), Judge Cathell noted:
>
> > Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.
>
> The Petitioners desire for two (2) solar facilities is driven by their economic restrictions as controlled by non-petitioners, and therefore the Site Plan is entirely self-imposed.

On May 27, 2020, petitioners filed a motion for reconsideration. Movants stated that upon consideration of the Board's opinion, they, through their consultants, redesigned the proposed solar facilities "to directly resolve the Board's articulated grounds for denial[.]" According to the Movants, the Redesigned Project, as shown by a new site plan, "will reduce its [the solar facility's] bulk and intensity, so as to make it more compatible with the surrounding area, as well as to correct other purported deficiencies." Later in its motion, movants stated:

> 9. The Redesigned Project is intended to reduce the overall project footprint and avoid purported environmental impacts. The Redesigned Project will remove Parcel 121 from the Special Exception area and be located entirely on Parcel 144. The Redesigned Project will feature one array field (eliminating the second array area). The Special Exception area of the Redesigned Project will be 6.46 acres (originally 9.15 acres). The Redesigned Project will remove the secondary access road (which originally fed the higher portion of the solar facility, as shown on site plan). The

Redesigned project will include one interconnection line to BG&E and eliminate Petitioners' need for an UGE conduit under the stream. The Redesigned Project will reduce grading, environmental, and visual impacts.

10. It is appropriate to file this Motion for Reconsideration, rather than a new zoning Petition for Special Exception, and to include an amended site plan (attached). The original site plan, legal description and other documents filed with the original petitions are all still relevant and applicable to this amended project design. The Special Exception relief requested remains the same; to wit, approval of a solar facility pursuant BCZR 4F.

> Pursuant to BCZR § 500.12:
>
> "If a . . . special exception petition has been denied, the Zoning Commissioner may not accept for filing any . . . special exception petition with respect to the same property . . . until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or . . . by the Board of Appeals."

In the interest of judicial economy and fairness to the parties, there is no reason to require the Petitioners to wait 18 months to file yet another petition and repeat the process. The Redesigned Project is a reduction in the intensity of the use rather than any substantive change in use. By providing a copy of this Motion and amended site plan, all interested parties are given notice of this amended request. This Board can properly reconvene its public hearing on this matter to allow all interested parties to participate and allow the Board members with the opportunity to review the amended proposal and question the Petitioners' consultants and principals.

11. There are no codified procedures or processes to amend a zoning petition. Unlike the Circuit Court and District Court rules in the Maryland Rules, there are no rules in the BCZR or elsewhere governing amending a zoning petition in instant case. But the Maryland Rules, by analogy, are instructive. Assuming that the petition is a zoning case is akin to a pleading in a court case, the following is noted. Md. Rule 2-341 governs amendments in the Circuit Court. That rule has been interpreted thusly: "the objective of this Rule is to facilitate the attainment of a just, speedy and inexpensive determination of all disputes between the same parties." *Robertson v Davis*, 271 Md. 708, 710 (1974). Moreover, an "amendment should be freely allowed to serve the ends of justice." *Stoewer v. Porcelain Enamel & Mfg. Co.*, 199 Md. 146, 151 (1952). The intent of the law to freely allow amendments is manifest. Maryland's appellate courts have held that the

> parties must have reasonable notice of what is to be litigated. *See Cassidy v. County Board of Appeals of Baltimore County*, 218 Md. 418, 424 (1958). The fact of the matter is that the question of the size and scope of the solar facility has been at issue since it was discussed during the Board's proceedings. If Protestants need a postponement of the Board's reconvened hearing because they can't determine the request and need additional time to prepare, then the Petitioners will willingly consent. But absent that, a reconvened hearing should proceed on the requests sought by the Petitioners.

After the Board met on July 15, 2020, to consider the motion for reconsideration, it concluded that after "thorough review of the facts and law in the matter, the Board unanimously agreed to DENY the Motion for Reconsideration." That ruling was later reduced to writing in an opinion dated August 3, 2020. The Board said:

> The Board held its deliberation on the Motion to Reconsider on July 15, 2020. The Board, for the reasons that follow, concluded that no hearing was warranted and denied the Motion,
>
> The Board noted that the plans submitted with the Motion were the third such plans filed by Petitioner and substantially differed from those considered at the hearings before the CBA [County Board of Appeals]. The Board further noted that its authority to consider a special exception petition, once denied, was limited by statute under Baltimore County Zoning Regulation Section 500.12, prohibiting acceptance of such a petition at least eighteen (18) months have passed from the date of the final order of the prior petition.
>
> The Board members also agreed with the legal points raised by Protestants counsel in Protestants' Response to Motion for Reconsideration including, but not limited to, that the Petitioner's only new facts were the amended site plan and that there was no new law, ordinance or other regulation since the [Board's] decision that would provide the Petitioner with the relief it seeks.
>
> Similarly, the Board members noted that the Board's revisory power is limited by its Rule 11, which states "the [B]oard shall have revisory power and control over the order in the event of fraud, mistake or irregularity." The Motion for Reconsideration did not allege any fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant a hearing on the Motion or relief on part of Petitioner and agrees the Motion should be denied.

VII.

STANDARD OF REVIEW

In its brief, the appellant succinctly and accurately set forth the applicable standard of review as follows:

> In an appellate court's review of the [c]ircuit [c]ourt's action on a Petition for Judicial Review of the Board, the appellate court repeats the task of the [c]ircuit [c]ourt and directly evaluates the administrative agency's decision. *Trinity Assembly of God of Baltimore City, Inc. v. People's Counsel for Baltimore City*, 407 Md. 53 (2008). The standard of review to be applied by the Court in its review of the decision of an administration agency (i.e., the Board) is well settled. In reviewing the decision of the Board, a Court's discretion is limited to "determining if there is substantial evidence in the record as a whole to support the agency's [factual] findings and conclusions, and to determine if the administrative decision is premised upon an erroneous conclusion of law." *Lee v. Maryland Nat. Capital Park and Planning Commission*, 107 Md. App. 486, 492 (1995), (quoting *United Parcel Serv., Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994)). The standard of review thus depends upon the nature of the agency finding being reviewed. *Gray v. Anne Arundel County*, 73 Md. App. 301, 308 (1987).
>
> The reviewing court must determine whether the agency interpreted and applied the correct principles of law governing the case, and no deference is given to a decision based solely on an error of law. *See, e.g., State Admin. Bd. Of Election Laws v. Billhimer*, 314 Md. 46, 59 (1988), *cert. denied*, 490 U.S. 1007 (1989). In fact, where an administrative decision is premised upon an erroneous legal conclusion, the reviewing court is under no constraints and may substitute its own judgment. *People's Counsel for Baltimore County v. Maryland Marine Mfg. Co.*, 316 Md. 491, 497 (1989) ("[t]he issues with which we are concerned in this case present purely legal questions, such as the proper interpretation of § 417 of the BCZR"); *Seminary Galleria, LLC v. Dulaney Valley Improvement Ass'n., Inc.*, 192 Md. App. 719, 734 (2010) (holding that reviewing an administrative agency's decision regarding the

> applicability of *res judicata* is a question of law, and the appropriate standard of review is de novo).

Additionally, as pointed out in the seminal case of *Schultz v. Pritts*, 291 Md. 1, 15 (1981) "[t]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is 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."

VIII.

RESOLUTION OF ISSUE NUMBER ONE

Appellant contends that the Board erred when it held that the proposal to build two solar facilities would cause adverse environmental impact and violate BCZR § 502.1.H and 502.1.I.

In support of that contention, appellant starts out by providing what it contends is a summary of the Board's findings. We shall refer to the paragraph that follows as appellant's summary. In its summary, appellant quotes part of the Board's opinion:

> "In the Board's view, ***the removal of trees and vegetation is substantial and unnecessary, and directed by the Petitioners' own interests***. Further, it is only because of the Petitioners' desire for two solar facilities rather than one, that the UGE [(underground utility electric line)] is even needed; it is entirely self-imposed. The Board finds the ***UGE is detrimental to the stream and the existing trees which line the stream . . .*** We find that the placement of the wire fences along the forest buffer setback shows unnecessary interferences by the solar facilities in these environmentally sensitive areas . . . we find the ***stream will be disturbed and EPS should have required an Alternative Analysis.***"

After the summary, appellant goes on to argue:

> Notwithstanding Mr. Kulis's (EIR Section of [ ]EPS) extensive review of the proposed solar facility project and his unrefuted testimony that the Site Plan is compliant with all environmental regulations, the Board denied the Special Exception, citing environmental concerns (e.g. tree/vegetative clearing, stream impacts, disturbance).
>
> The Board's rejection of the analysis by EIR is without basis. None of the findings and conclusions in the Board's Opinion are supported by actual/reliable facts proven in the administrative record. Instead, they are conclusory statements that ignore the evidence presented. Simply stated, the Board's findings do not hold up under the "substantial evidence" test. As is well settled, that test requires that reasoning minds could reasonably reach a conclusion from the facts in the record produced by the agency. *People's Counsel v Mangione*, 85 Md. App. 738 (1991). Indeed, the expert testimony collectively offered through the testimony of Kulis and the [a]ppellant's site engineer (Nicholas Leffner) was not rebutted or even contested by any witness.

Appellant's assertion that the Board's findings were based upon a group of conclusory statements might be convincing if its summary of the Board's findings was complete. But it is not. Appellant's summary omits, and takes out of context, what the Board actually said. We have quoted the Board's findings verbatim, *supra*, at pages 15, 16 and 17, but the only findings cited in appellant's summary are the parts that we have emphasized on pages 16-17, *supra*. Appellant's summary reduces the length of the actual quote of the Board's findings from 69 lines to 10. Those deletions by the appellant makes it appear that the Board did not have substantial evidence to support its findings, but read in context, the substantial basis for the findings become obvious.

Read in context, the Board's view was that it was only because of petitioners' desire to "maximize return on investment" that a second solar facility was proposed. The Board found that by use of more efficient solar panels, less environmental damage would be

caused. The site plan showed that to be true, and subsequently, by submitting a "Redesigned Project," petitioners impliedly conceded that environmental damage and damages to vegetation could be substantially reduced. One solar facility, rather than two, as the Board found, would: 1) eliminate the need for a UGE underneath the 100 foot buffer and the unnamed stream; and 2) eliminate the driveway that was to service the 144/121 facility. If the 'U' shaped driveway were eliminated, the root systems to the trees, including specimen trees, would be protected.

In its brief, appellant ignores the Board's finding that in four areas of the property, some of the damage to vegetation and the environment could have been reduced but for petitioners' desire to maximize investment return by proposing to build two solar facilities rather than one.

Additionally, the Board's finding that petitioners were required to, but did not, submit an alternative analysis was supported by substantial evidence. As mentioned, page 9, *supra*, solar facilities are allowed in the "forest buffer" provided that an alternative analysis has clearly shown that no other feasible alternative exists and that minimal disturbance will take place. Here, a feasible alternative did exist because, as the Board found, one facility rather than two, would eliminate the need for a UGE through the buffer and under the stream.

It is true, as Holly Springs points out, that the protestants did not call any experts to contradict its experts. But the Board was not required to accept the testimony of any expert. Moreover, the Board did not need expert testimony to support its factual findings. Those factual findings were supported by the appellant's own site plan along with other exhibits

that clearly showed where the solar facilities were to be built and the damage to vegetation and the environment if the two facilities were built according to Holly Springs' proposal.

We hold that the Board's findings that we have quoted verbatim at pages 15-17, *supra*, contrary to appellant's argument, were supported by substantial evidence.[7]

IX.

OTHER MATTERS

Although we have discussed at length the issue of whether the Board erred in denying the special exception, the issue appears to be moot. Holly Springs could not build the two solar facilities it proposed, even if we agreed with appellant that the Board's denial of the special exception was not based on substantial evidence. We explain.

The petitioners could not build a solar facility on Parcel 144/121 unless it obtained a variance from the requirement that a facility not be built within 50 feet of an interior lot line. The facility Holly Springs proposed to build on lot 144/121 was zero feet from the interior lot line. As already mentioned, the Board denied the variance and explained why. In neither its opening nor its reply brief did appellant contend that the Board erred in denying that variance. We, of course, have no authority to reverse the decision of the Board (as to the variance issue) when the appellant did not request such a reversal. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) (argument not presented in a brief or not presented with particularity, will not be considered on appeal).

[7] It is difficult to give credence to appellant's contention that the Board was wrong when it said, in effect, that much of the environmental damage and destruction of vegetation was unnecessary when the petitioners, in their Redesigned Project, showed that this was true.

X.

DENIAL OF THE MOTION FOR RECONSIDERATION

Holly Springs argues that the Board erred in failing to either hold a hearing on its motion for reconsideration or to approve the Redesigned Project. Appellant relies upon Rule 10 of the Board's rules which it says confers: "broad authority to revisit issues raised by the Board in its opinion and order." According to Holly Springs, it was "manifestly improper" for the Board to reject the motion without a hearing. We disagree.

The "Redesigned Project, as set forth in the motion for reconsideration, proposes an entirely new project. Although captioned as a "motion for reconsideration" what petitioners filed for was, in essence, a new special exception petition. As the Board found, the motion to reconsider had attached to it plans that were substantially different from the plans considered by it at the initial hearing. The Redesigned Project reduced the overall project footprint by removing the 144/121 facility; it reduced the area to be covered by the special exception from 9.15 acres to 6.46 acres and removed the secondary access road that, in the prior site plan, was to service the facility on Parcel 144/121. Also, the Redesigned Project proposed to reduce the environmental and visual impact of the solar projects and decrease the amount of vegetation destroyed. Therefore, what the petitioners asked for was not a reconsideration but a consideration, for the first time, of a new plan. Put another way, Rule 10 was inapplicable because by attaching to its motion a Redesigned Project, the Board was not asked to "revisit issues" previously decided by the Board.

The Board was correct when it held that the provisions of BCZR § 500.12 prohibited it from considering the new Redesigned Project. Section 500.12 reads:

> If a . . . special exception petition has been denied, the Zoning Commissioner may not accept for filing any . . . special exception petition with respect to the same property . . . until at least eighteen months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or . . . by the Board of Appeals[.]

The Redesigned Project concerned the same property as the property for which the special exception was denied. There were so many changes in the Redesigned Project from the site plan considered by the Board, that it amounted to a new petition and, under BCZR 500.12 a new petition could not be considered until eighteen months had elapsed.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELANT.

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY, MARYLAND

IN THE MATTER OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY	*	
Petitioner	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE BALTIMORE COUNTY BOARD OF APPEALS	*	Case No.: C-03-CV-20-003240
VALLEYS PLANNING COUNCIL, INC.	*	
NORTH COUNTY COMMUNITY GROUP	*	
KEVIN AND MARIA WEBB	*	
LINDA ANN AULT	*	
Respondents	*	

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OCT 27 2021
BALTIMORE COUNTY
BOARD OF APPEALS

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

OPINION AND ORDER

FACTUAL AND PROCEDURAL OVERVIEW

The instant case comes before this Court as a petition for judicial review of a decision by the Board of Appeals for Baltimore County (the "Board"). The Board made an initial ruling in this case on April 27, 2020, and subsequently denied Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.'s (the "Petitioner") Motion for Reconsideration of the Board's ruling on August 3, 2020. The case reached the Board as an Appeal of an Administrative Law Judge's decision on June 20, 2019, to approve a special exemption petition for two proposed groupings of solar panels on adjacent lots located at 18627 Falls Road (the "Property"). Pursuant to Bill 37-17 by the County Council, BCZR § 4F-101 (et

seq.) provides that solar facilities are permissible via special exceptions on properties zoned as RC 2, RC 4, and RC 8. The Property in question is zoned in part as an RC 2 and in part as an RC 8. This petition for judicial review of the Board's Opinion and Order was filed on September 1, 2020 and argued on July 6, 2021.

The Petitioner in this case, Holly Springs Nature & Wildlife Conservancy, Inc., would like to take advantage of the State Public Service Commission's Community Solar Pilot Program and provide solar energy to the utility company BG&E as set forth in § 7-306.2 of the Public Utilities Article. In order to do so, the Petitioner must file for and be granted a Special Exception, a Limited Exception for a "minor commercial structure" under 32-4-106(a)(1)(vi) of the County Code, and a Variance to that Special Exception in order to move forward with this proposal. First, the Special Exceptions granting the solar panel groupings must be granted. Second, a Limited Exception for the small transformer structure proposed to be built on the property must be granted, however, this is not at issue in this Appeal as the question becomes moot if the Appeal is not granted. Third, and finally, a Variance on the Special Exception allowing one of the two solar panel groupings to have no setback from the internal lot line separating the two parcels must be granted, as one of the two proposed solar panel groupings would be straddling both properties.

The first step in obtaining Special Exceptions, Limited Exceptions and Variances is having a public hearing with an ALJ, which was conducted on May 30, 2019. Upon hearing the evidence, an Opinion and Order approving the Special Exception was issued on June 20, 2019, to which the Respondents, Valleys Planning Council, Inc., North County Community Group, Kevin and Maria Webb, et al., filed an Appeal to the Board. The Board conducted a series of *de novo* evidentiary hearings on September 19, 2019,

September 24, 2019, and October 23, 2019. Ultimately, as noted above, the Board issued its Opinion and Order on April 27, 2020.

STANDARD OF REVIEW AND AGENCY DECISION

In reviewing the Board's decision, this Court is tasked with determining whether the Board's conclusions are supported by substantial evidence on the record as a whole. *United Parcel Serv., Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 577 (1994). If, however, the Board's decision is not supported by such an evidentiary record, their findings are considered arbitrary, and capricious and as such are afforded no deference in the judicial review process. *Eastern Outdoor Advertising Co. v. Mayor and City of Baltimore*, 128 Md. App 494, 514 (1999). In such case, the Court would need to remand the case to the Board for a public hearing on the merits.

As in this case, the Court must also consider the "Special Exceptions Standard". The Special Exceptions Standard is unambiguous in the state of Maryland. The Maryland Court of Appeals held that, "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect, and therefore , should be denied is 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." *Shultz v. Pritts*, 291 Md. 1, 22-23 (1981). Furthermore, in the case of *Attar v. DMS Tollgate, LLC,* the Court states that the applicant for a Special Exemption, "must persuade the board 'by a preponderance of the evidence that the special exception will conform to all applicable requirements.'" 451 Md. At 286.

Couched within this language on "applicable requirements" is all of the applicable statutory requirements set forth in §502.1 of the County Code for Baltimore County.

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;

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 environment and natural resources of the site and vicinity including forests, streams, wetlands, aquifers, and floodplains in an RC 2, RC 4, RC 5, or RC 7 Zone, and for considerations of a solar facility use under Article 4F, the incursion of the RC 3, RC 6, and RC 8 Zones.

DISCUSSION

In this case, the Board based its Opinion and Order on a number of findings, specifically, (1) that the proposed Solar Facility use would be detrimental to the health, safety or general welfare of the locality involved (§502.1.A), (2) that the proposed Solar

Facility use would be inconsistent with the spirit and intent of the BCZR (§502.1.G), and (3) that the proposed Solar Facility use would be inconsistent with the vegetative retention provisions of the BCZR (502.1.H) and would be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, and floodplains and RC 2 zone (§502.1.I). In making these findings, the Board relied on testimonial evidence presented at the *de novo* hearings.

First, with regards to the Boards finding on 502.1.A, the Board primarily relies on the fact that the petitioner was contracting Power Factor to construct the solar facility on the Property in question. The Board concludes that, "Power Factor lacks the knowledge and experience with community solar projects," and furthermore, relies upon testimony about Power Factor's history with installing solar panels on military bases, as opposed to rural, residential areas. The Board also opines that Power Factor's, "lack of the financing necessary to construct the solar facilities here and to post bonds required under the Community Solar Program law," and needing an investment from another company, Onyx is also grounds for its violation of 502.1.A.

In considering the language of 502.1.A, it is unclear how any of the Board's objections go to the "health, safety and general welfare of the locality involved." While they are questions to be considered, they are questions that the Board need not consider, or the Agency need not consider, until after the hypothetical Special Exception for the solar panel's approval. In this case, the board is simply looking at a plan as it relates to the property and making determinations based on what is set forth in the provisions 502.1 of the County Code, here, the agency overreaches in its interpretation of the language of the statute, and in their role. When using the substantial evidence test in conjunction with the

evidence and reasoning offered by the Board, this decision is likely arbitrary and capricious.

Next, with regards to the Boards findings on 502.1.G, 502.1.H, and 502.1.I, the Board states that, "Power Factor does not have the finances to post any bonds," and that, "the Board has been entrusted to determine who will own, operate and have control over solar facilities." Further, the Board states that, "the Community Solar Program law…prohibits the construction of solar facilities on contiguous parcels of land…in our reading of BCZR, Article 4F, the County Council expressly provided for a single solar facility to be located on a parcel which is not next to another solar facility." And finally, that, "removal of trees and vegetation is substantial and unnecessary, and directed by the Petitioners' own interests….it is only because of the Petitioners' desire for two solar facilities rather than one, that the UGE [(underground utility electric line)] is even needed; it is entirely self-imposed."

The issue of bonds, and determining who will own, operate and have control over solar facilities is an important issue, however, it is out of the scope of the Board's responsibility. As Petitioner notes in their memo, "as it relates to BCR 14F-406.A&B, it will be Baltimore County who will determine which entity(ies) are responsible for providing of security, who should execute the decommissioning agreement, to whom the building permits should be issued, etc." This is not within the scope of the Board's responsibility, and as such to base their determination of the Petitioners Violation of 502.1.G on this would be incorrect. 502.1.G pertains to the, "spirit and intent" of the zoning regulations, and using these considerations to make a determination on a violation of 502.1.G is convoluted and a misreading of the statute. When considering the substantial evidence test

and the reasoning of the Board here, again, this determination is arbitrary and capricious as the evidence and objection made by the board are inconsistent or unrelated.

The Board makes its strongest determination with regards to its denial of the Special Exception petition as it pertains to regulations 502.1.H, and 502.1.I. Each of these regulations discussed the environmental impact on the property as it is currently zoned. When considering all the evidence proffered in the testimony highlighting the sensitive nature of the forests as well as the waterways on and adjacent to the property; including Common Run and its tributary in combination with the multiple variances and environmental impact studies that would need to be conducted in order to finalize the project with the inclusion of the transformer structure, the driveway on the southern lot, and the boring needed to build the UGE, the board finds that the proposal would be in violation of 502.1H and 502.1.I.

In this case, there is substantial evidence that was offered during the hearing, and upon cross examination, the experts offered by the Petitioners failed to adequately address the concerns of the Board. Based on this substantial showing of evidence, the Board made its determination not to issue the Special Exception. It did this after having a public deliberation and following all required county procedures. As such, the Petitioner has failed to meet its burden as it pertains to these two provisions, 502.1.H and 502.1.I.

Finally, and briefly, with regards to the Motion for Reconsideration, the Board did not err in its unequivocal refusal to review the Redesigned Project. As is noted in the statutory language of County Code 500.12 in clear and unambiguous language, "If a...special exception has been denied, the Zoning Commissioner may not accept for filing any other...special exception petition with respect to the same property or any part of that

property until at least 18 months have passed from the date of the final order." As such, the Redesigned Project need not be considered by the Board, and the Board made no mistakes in not accepting the Motion for Reconsideration.

CONCLUSION

Based upon the foregoing reasoning, the decision of the Baltimore County Board of Appeals is AFFIRMED, it is so

ORDERED, this 22nd day of October, 2021.

Entered: Clerk, Circuit Court for
Baltimore County, MD
October 22, 2021

Jan M. Alexander, Judge
Third Judicial Circuit, Baltimore County

cc: Lawrence E. Schmidt, Esquire
Michael R. McCann, Esquire
Court file

IN THE MATTER OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. - LEGAL OWNER AND POWER FACTOR, LLC - LESSEE, PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 18627 FALLS ROAD 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 19-183-X and CBA-20-004

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the County Board of Appeals ("CBA") on a Motion for Reconsideration which was timely filed by Petitioner, Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc. and Power Factor, LLC, its Lessee (collectively "Petitioner") by their attorneys Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC., proposing that the CBA re-open and reconvene a hearing on the merits of newly submitted plans and evidence.

This matter initially came before the CBA on a Petition for Special Exception to permit a solar facility at the above captioned property. The CBA held three days of hearings on September 19, 2019, September 24, 2019 and October 23, 2019. On April 27, 2020, the CBA issued an Opinion and Order denying the requested relief.

The Board held its deliberation on the Motion to Reconsider on July 15, 2020. The Board, for the reasons that follow, concluded that no hearing was warranted and denied the Motion.

The Board noted that the plans submitted with the Motion were the third such plans filed by Petitioner and substantially differed from those considered at the hearings before the CBA. The Board further noted that its authority to consider a special exception petition, once denied, was limited by statute under Baltimore County Zoning Regulation Section 500.12, prohibiting

acceptance of such a petition at least eighteen (18) months have passed from the date of the final order of the prior petition.

The Board members also agreed with the legal points raised by Protestants counsel in Protestants' Response to Motion for Reconsideration including, but not limited to, that the Petitioner's only new facts were the amended site plan and that there was no new law, ordinance or other regulation since the CBA's decision that would provide the Petitioner with the relief it seeks.

Similarly, the Board members noted that the Board's revisory power is limited by its Rule 11, which states "the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity". The Motion for Reconsideration did not allege any fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant a hearing on the Motion or relief on part of Petitioner and agrees the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 3rd day of August, 2020, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion to Reconsider is hereby **DENIED** for the reasons set forth herein.

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

Maureen E. Murphy, Panel Chair

see following
Deborah C. Dopkin

William A. McComas

herein.

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

See previous
Maureen E. Murphy, Panel Chair

Deborah C. Dopkin
Déborah C. Dopkin

See previous
William A. McComas

Board of Appeals of Baltimore County

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August 3, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: *Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner*
Power Factor, LLC – Lessee
Case Nos.: 19-183-X and CBA-20-004

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion for Reconsideration 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,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: See Distribution List Attached

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Power Factor, LLC
Valleys Planning Council, Inc.
North County Community Group
Kevin and Maria Webb
Linda Ault
Ethan Lavin
Wayne and Allene Yelle
Mary Ruth Fowble
Glenn and Donna Fowble
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Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

IN THE MATTER OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. - LEGAL OWNER AND POWER FACTOR, LLC - LESSEE, PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 18627 FALLS ROAD 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 19-183-X and CBA-20-004

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

OPINION

This case comes before the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted, with conditions, a Petition for Special Exception to allow a Solar Facility by Opinion and Order dated June 20, 2019. Protestants, Valleys Planning Council, Inc., North County Community Group, Kevin Webb, Maria Webb, Linda Ault, Ethan Lavin, Wayne Yelle, Allen Yelle, Mary Ruth Fowble, Glenn Fowble and Donna Fowble (collectively the "Protestants") filed an appeal.

A public hearing was held before this Board on September 19, 2019, September 24, 2019 and October 23, 2019. The Petitioners, Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. ("Holly Springs") and Power Factor, LLC ("Power Factor") (collectively referred to as the "Petitioners") were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. The Protestants were represented by Michael R. McCann, Esquire. A public deliberation was held on December 10, 2019.

FACTUAL BACKGROUND

In this case there are two separately deeded parcels of land at issue upon which two separate solar facilities will be constructed, namely: Parcel 144 which consists of 26.39 acres+/- of land, (Tax Acct No.: 0523015126) ("Parcel 144"); and Parcel 121 which consists of 6.12 acres+/- and

having an address of 18627 Falls Road. (Tax Acct. No.: 0504000210) ("Parcel 121"). (Prot. Ex. 13, 14, 22). (See also Amended Petition for Special Exception and Variance). Parcel 144 sits east of Falls Rd. and north/northeast of Parcel 121. Falls Road is a Baltimore County designated scenic byway. (Pet. Ex. 12; Prot. 7).

Parcel 144 has the remnants of an old barn. (Pet. Ex. 8.O, 8.S, 8.T, 8.U). Parcel 144 is split zoned RC2 and RC8. (Pet. Ex. 3A, 3B, 22A, 22B). Parcel 121 is improved with a house and is zoned RC2. (Prot. Ex. 17.1-17.11). (Pet. Ex. 3A, 3B, 22A, 22B). Both parcels are owned by Holly Springs. (Prot. Ex. 14).

The Petitioners are proposing to use 6.46 acres+/- of Parcel 144, and 2.69 acres+/- of Parcel 121, for two solar facilities as set forth on Petitioners' Site Plan (the "Site Plan"). (Pet. Ex. 3C, 3D, 22C, 22D). Together, these solar facilities will generate 1.8 Mw of AC electricity. The northern and northeastern portions of Parcel 144 (approx. 14.2 acres+/-) is wooded, and is classified as "priority" forest (Pet. Ex. 5, 16, 20, 21).

It is proposed that one of the solar facilities will be located entirely within Parcel 144. ("Solar Facility 144"). (Pet. Ex. 3C, 3D, 22C, 22D). Solar Facility 144 will be accessed via a gravel 'S' shaped driveway on the northwestern boundary along Falls Rd. The second solar facility will be located partly on both Parcel 144, and partly on Parcel 121. ("Solar Facility 144/121"). (Pet. Ex. 3C, 3D, 22C, 22D). Separately, Solar Facility 144/121 will be accessed via a 'U' shaped gravel driveway at the south-western end of Parcel 121. (Pet. Ex. 3C, 3D, 22C, 22D).

Each of the solar facilities will be enclosed with its own 7 ft. vinyl coated, chain linked fence. (Pet. Ex. 3C, 3D, 22C, 22D). Running along each of these fence lines is a 100 ft. stream buffer which was generated as a result of a tree-lined stream flowing south-westerly between the two solar facilities. (Id.) That stream flows from another stream located on the forested, northern

end of Parcel 144. Both streams are tributaries to Compass Run. (Pet. Ex. 20). In addition, designated areas of wetlands are also located between the two solar facilities in the same area as the stream. (Pet. Ex. 3A, 3B, 20, 22A, 22B).

The solar facilities will be connected by an underground electric line represented by "UGE" on the Site Plan (the "UGE"). (Pet. Ex. 3C, 3D, 22C, 22D). The UGE will be installed underneath the stream, the forest buffer, the line of trees, and the vegetation on either side of the stream. On Parcel 144, the UGE will continue beneath the fence and stream buffer ultimately connecting to the BGE interconnector.

On the eastern side of Solar Facility 144/121 are nine specimen trees. Additionally, within the area of the U-shaped gravel driveway of Solar Facility 144/121, exists another specimen tree as well as other trees and vegetation. (Pet. Ex. 3A, 3B, 20, 22A, 22B). (The specimen trees are classified as such because they measure at least 30" in diameter.) (Pet. Ex. 5).

The northern end of Parcel 144 contains not only the aforementioned stream, but numerous wetlands areas, as well as two delineated forest stands identified as 'Stand 1' and 'Stand 2' which were determined by Department of Environmental Protection and Sustainability ("EPS"). (Pet. Ex. 5, 20). Stand 2 continues from the northern end of Parcel 144 and extends along the eastern boundary of Parcel 144/121. (Pet. Ex. 5, 20). In addition, the northern end of Parcel 144 is located within a 100 ft. floodplain. (Pet. Ex. 3A, 3B, 22A, 22B).

STANDARD OF REVIEW

Pursuant to Baltimore County Charter, Article VI, Section 603, this Board heard this case *de novo*.

SOLAR FACILITIES LAW

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC2, RC4, RC5, and RC8. BCZR, §4F-102.A. The County Council imposed limits on the number of facilities per councilmanic district (*i.e.* 10 per district), and on the maximum area for each facility (*i.e.* the amount of acreage that produces no more than 2 megawatts alternating current (AC) of electricity). BCZR, §4F-102.B.1 and 2.

In addition to the special exception factors, there are 10 requirements set forth in BCZR, §4F-104.A:

> 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 RC 4 or RC 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.
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> 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.

There are also provisions regarding maintenance of the facilities:

> § 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.

A solar facility which has reached the end of its useful life must be removed in accordance with §4F-107.

In order to grant a request for a special exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied, is 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."

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Shultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized 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." (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (*See Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed special exception use"). (*See also, Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").

MOTIONS TO DISMISS

The Protestants argued that this case is not ripe for consideration by the Board until the limited exemption process is determined, and the development plan has finished proceeding through the County agencies. The Protestants emphasized that the County agencies may or may not determine that the proposed Site Plan meets with County approval. The Protestants contend that the development process and the County comments impact the scope of review under both BCZR, Article 4F and BCZR, §502.1. In the Protestants' view, the County agencies could advise that zoning relief (other than special exception requested here) is required. As a result, they contend that any opinion and order by this Board would be advisory; therefore the case should be dismissed.

Protestants further allege that because BCZR, §4F-102.B.4 restricts the number of solar facilities to 10 per councilmanic district, the two proposed solar facilities would exceed that limit. This contention is based on the list of solar facilities maintained by the Zoning Office.

In response, Petitioners highlighted that under BCC, §32-4-221, the Petitioners have the option to file for zoning relief first, or to combine the zoning relief along with development plan approval. From the Petitioners' perspective, the use of a property under the requested zoning relief needs to be determined before a financial investment is made on a development plan. Further, if an exemption under BCC, §32-104(b) is granted, a development plan will be reviewed by the County agencies. In regard to the limit on the number of solar facilities per councilmanic district, Petitioners respond that the maximum number of solar facilities is based on the building permits issued.

The Board agrees with the Petitioners on the Motion to Dismiss in that BCC, §32-4-221 permits an applicant to choose whether to combine zoning relief with a development plan case, or to bifurcate those issues. As such, this Board will address the limited exemption requested under BCC, §32-4-106(a)(1) herein.

EVIDENCE

Testifying for the Petitioners were six witnesses.

1. Nick Leffner, PE.

Nick Leffner, PE was accepted by the Board as a professional engineer with particular expertise in the areas of planning, zoning and limited exemption applications. Mr. Leffner was

hired by Power Factor to prepare the Site Plan. (Pet. Ex. 3C, 3D, 22C, 22D).[1] Mr. Leffner testified that neither of the two Parcels at issue were used for farming.

Explaining the various environmental features of these Parcels, Mr. Leffner testified that neither of the two solar facilities would be located within the streams, wetlands, stream buffers, forest stands or floodplains. He advised that no environmental variances or waiver would be requested as none would be needed. He explained that the County Environmental Impact Review department ("EIR") approved the limits of disturbance to the environmental features.

Mr. Leffner testified that the initial proposal submitted to the County in the Petition for Special Exception was for one solar facility to be located entirely on Parcel 144. Having received unfavorable comments from EPS on December 24, 2018 due to the impacts on forest stands, floodplains, wetlands, streams, and forest buffers presented under that proposal, an Amended Petition was filed on May 17, 2019, proposing the two solar facilities here.

Proceeding through the requirements of BCZR, §4F-104, Mr. Leffner opined that the proposed solar facilities will not be located on land encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement. (BCZR, §4F-104.A.1). Similarly, the proposed land areas are not located within a Baltimore County historic district or on the Baltimore County Final Landmarks List. (BCZR, §4F-104.A.2). Likewise, the land is not located in a forest conservation easement or designated conservancy area (BCZR, §4F-104.A.3).

Mr. Leffner stated that the aboveground components of each solar facility including the solar collector panels, inverters and similar equipment would be set back a minimum of 50 feet

[1] The Board required that Mr. Leffner correct the Site Plan (Pet. Ex. 3C, 3D) due to several mistakes and resubmit new Site Plans at the next hearing date. (Pet. Ex. 22C, 22D).

from the tract boundary. (Pet. Ex. 3C, 3D, 22C, 22D). (BCZR, §4F-104.A.4). Fifth, neither solar facility will exceed 20 ft. in height; the actual height of each panel is 9 ft. (BCZR, §4F-104.A.5).

With regard to the landscape buffer requirement, aerial photographs of the Parcels show existing trees and vegetation. (Pet. Ex. 4A and 4B). Mr. Leffner described the existing trees as being of varying heights and density with small breaks in the vegetation along Falls Rd. He stated that the topography generally slopes from the northeastern end into a bowl shape, causing both Parcels to sit at a lower elevation than Falls Rd. (§4F-104.A.6). (Pet. Ex. 20). The Landscape Plan has not been approved by the County. With regard to the security fences, Mr. Leffner reiterated that two 7 ft. black vinyl coated chain link fences will be installed around each of the solar facilities. (§4F-104.A.7).

As to the special sxception factors, it was Mr. Leffner's opinion that the proposed solar facilities would have no impact on the health, safety or general welfare of the locality. In support of this position, he highlighted that each solar facility met the 50 ft. setback and that the proposed landscaping would provide a screen to the neighboring properties. Mr. Leffner commented that a 6 ft. high, 125 ft. long privacy fence would be installed between the southern property line of Parcel 121 and the adjacent neighbor, Linda Ault. In addition, Mr. Leffner said that the Petitioners moved the access driveway for Solar Facility 144/121 away from the property line of adjacent neighbor John Dwyer. (BCZR, §502.1.A).

With regard to the tendency of these solar facilities to cause congestion along Falls Rd., Mr. Leffner stated that because these solar facilities are unmanned, there will be no congestion. (BCZR, §502.1.B). As for the potential to cause fire or other danger, Mr. Leffner mentioned that all solar facilities are required to comply with national and local electrical codes. The fire department will have access via a box posted on a mount at one of the entrance driveways. (BCZR,

§502.1.C). Because this use does not generate traffic or attract people, it was Mr. Leffner's position that there would not be overcrowding of the land or undue concentration of population. (BCZR, §502.1.D).

He further testified that there is no interference with schools, parks, water, sewerage, transportation or other public improvements as these Parcels are located outside the Urban Rural Demarcation Line ("URDL"). (BCZR, §502.1.E). There is no impact on light or air as the maximum height of the solar facilities is 9 ft. and therefore the adjacent homes will not be shadowed. (BCZR, §502.1.F). Mr. Leffner opined that since the proposed solar facilities are permitted by special exception, they are consistent with the purposes of the RC2 and RC8 zoning regulations. Additionally, because neither Parcel was used for farming there is no negative impact on agriculture. (BCZR, §502.1.G).

With regard to consistency with impermeable surface and vegetative retention provisions of BCZR, §502.1.H and detrimental impacts on environmental and natural resources under BCZR, §502.1.I, including forests, streams, wetlands, aquifers and floodplains, Mr. Leffner's testimony was that these solar facilities did not impact the environment. He highlighted that the topography of both Parcels drains toward the stream which runs between those Parcels. As such, drainage from the solar facilities will fall toward that stream.

With regard to the Petition for Variance requesting a 0 ft. setback in lieu of the 50 ft. setback from the property line between Parcel 144 and Parcel 121, Mr. Leffner relied upon the environmental constraints of both parcels (streams, the forest buffer, the floodplains, the wetlands, the downward slope of the land from RC8 land in northern end to a converging point at the stream between the parcels; steep slopes on eastern end of Parcel 144/121; the shape of Parcels 144 and 121; and the specimen trees, particularly the specimen tree located in the middle of Parcel 121) for

his opinion that the Parcels were unique and that, as a result, the Petitioners would suffer a hardship if the solar facilities were not approved.

In support of his opinion that the Petitioners would suffer a practical difficulty, Mr. Leffner stated that, if the 50 ft. setback was required from the internal property line between Parcels 144 and 121 under BCZR, §4F-104.A.4, the scope of the project area would be reduced by one-third (1/3). This which would require the removal of the solar panels within 50 ft. setback area. If the removal of solar panels occurred, he stated that the project would not be financially viable for the Petitioners.

With regard to the Application for a Limited Exemption from the development process under BCC, §32-4-106(a)(1)(vi), Mr. Leffner testified that the solar facilities satisfied the term "minor commercial structure". He relayed that this use is not for human habitation, does not use water, is not a business use, and has no buildings. Consequently, it was his position that the Site Plan should be exempt from the development process and the Petitioners should be permitted to apply directly for a building permit.

On cross, Mr. Leffner stated that the UGE would be installed by using a horizontal directional drill which would be bored ("directional boring") underneath the stream running between Parcel 144 and Parcel 121. The horizontal distance to be drilled would be greater than 200 ft. The drilling would occur at an unknown depth. He admitted that the root system for the trees which line that stream might be impacted by the directional boring and that, in the event a tree root system is damaged, an environmental variance would be required.

It was Mr. Leffner's opinion that under BCC, §33-3-112(b)(2)(i)(ii)(iii), directional boring did not violate the prohibition against disturbance of vegetation and soil within the forest buffer, and that it did not require an alternatives analysis under BCC, §33-3-112(c)(2). (Prot. Ex. 2). Mr.

Leffner did not agree that a UGE was a 'utility' under BCC, §33-3-112(c)(2)(i)(ii) which would only be permitted if EPS approved an alternatives analysis demonstrating that no other feasible alternative exists, and that minimal disturbance would take place.

Mr. Leffner maintained this position notwithstanding comments from EPS dated June 3, 2019 and July 3, 2019 which each stated that: "...the underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require review and approval by EPS of an alternatives analysis, and must be included in the project's limit of disturbance." (Prot. Ex. 3A and 3B).

During cross examination, Mr. Leffner admitted that the reason the Petitioners are proposing to construct two solar facilities rather than one, is due to the stream which bisects them. He conceded that while one solar facility could be constructed, it was not a financially viable option for the Petitioners. He further admitted that these solar facilities will result in clearing of trees in four areas as follows: (1) the line of existing trees and vegetation in the center of Solar Facility 144/121; (2) the line of existing trees and vegetation on the northern end of Solar Facility 144/121; (3) the line of existing trees and vegetation in the center of Solar Facility 144; and (4) the line of existing trees and vegetation around the 'S' shaped and 'U' shaped gravel driveways. In answering this line of questions, he was not able to provide a count of the number of trees which would need to be removed for these solar facilities to be constructed.

2. Stephen Barrett - Glare Expert.

The Petitioners contracted with Stephen Barrett, a principal in Barrett Energy Resources Group located in Concord, MA to conduct a study on whether the proposed solar facilities panels will produce glare from the sun's rays. (BCZR, §4F-104.A.8). The Board accepted Mr. Barrett as an expert in glare analysis. (Pet. Ex. 10).

Toward that end, he prepared a glare study report using computer software known as *GlareGauge* which is accepted by the U.S. Federal Aviation Administration, and is now considered the industry standard. (Pet. Ex. 11). Mr. Barrett was involved in the development of this model which became part of the 2013 FAA Guidance document for solar projects at airports, and is now applied when determining glare in residential areas. The program only considers the solar array, the movement of the sun and the position of observers; it does not take into account terrain, vegetation, or other structures which might obstruct the observer's view of glare. *Id.* The program determines the path of the sun throughout the year.

Mr. Barrett testified that the FAA glare model includes a 3-step process which he applied in this case. The first step is to identify the receptors (adjacent properties, roads, motor vehicles) where glare from the proposed solar panels could potentially reflect the sun's rays. Without considering terrain, vegetation or structures, he then located 17 receptors along Falls Rd. (14 residences and 3 motor vehicle points of impact). The selection of receptor sites was derived from Google Earth. He discovered that 10 of the 17 receptors have the potential for glare (for longer than 5 minutes annually). He is concerned only with whether glare is produced from a selected location, as glare is a function of where the sun is in the sky in relation to the time of year. His focus was on potential glare from these locations due to sun rising in the east and setting in the west, while recognizing that the panels will be fixed toward the south.

Mr. Barrett next factored in the existing vegetation and terrain. His report indicated that there would be no glare from March through September each year. He emphasized the surrounding evergreen trees do not lose their needles during the winter. In addition, the solar panels have an anti-reflective coating which, while producing electricity, does not produce glare. The solar panels will face south to maximize solar electricity. As a result, while the panels will not be invisible, he

opined that there will not be any public hazard or nuisance; any potential glare will be limited. The additional proposed landscaping will also reduce any potential for glare.

The second step of the model factors is the existing trees, vegetation and terrain. Mr. Barrett opined that the existing natural features on this Property obstruct the glare at the receptors. In particular, the shape of the Property is that of a bowl which will minimize and diffuse any glare produced. The third step considers the additional landscaping proposed. In this case, he testified that the proposed landscaping minimizes the potential for glare.

In summary, Mr. Barrett opined that no glare of low or high intensity will be created.

3. Jeffrey Perlow, Zoning Review Office.

Jeffrey Perlow, Planner II of the Zoning Review Office for Baltimore County, was subpoenaed by the Petitioners to testify. Mr. Perlow explained that, pursuant to BCZR, §4F-102.B.3 and 4, the Zoning Office has kept a list of petitions for solar facilities and the building permits issued per councilmanic districts. (Pet. Ex. 18). He confirmed that while there have been 11 petitions, as of July 8, 2019, no permits have been issued for the 3rd District. (Pet. Ex. 18). Lastly, Mr. Perlow confirmed that the Zoning Office would continue to review petitions until the maximum 10 permits are issued.

4. Michael Kulis - Natural Resource Specialist II, Environmental Impact Review.

Michael Kulis of EIR, was also subpoenaed by the Petitioners to testify. It was Mr. Kulis' job to review this Petition. By letter dated June 6, 2019, Mr. Kulis approved the wetland delineations, but disapproved the forest stand delineations due to the specimen trees which are located within the solar array areas. (Pet. 21). Mr. Kulis also confirmed that the County had not

yet received a Forest Conservation Plan for the northern part of Parcel 144 which must be submitted prior to the issuance of the grading and building permits. (Pet. Ex. 21).

With regard to the analysis of steep slopes and erodible soils, he testified that the minimum required setbacks of 100 ft. from a stream, and 25 ft. from edge of a wetland, were not adequate here due to the steep slopes. Thus, by letter dated June 6, 2019, Mr. Kulis disapproved of that analysis and requested revisions. (Pet. 21).

Mr. Kulis mentioned that, if left in their natural state, a forest would grow near the stream. With regard to potential disturbance of the forest buffer by the UGE, he added that EIR would require and review the limits of disturbance on the grading plan to make certain that the connection points were contained within each solar array and not within the forest buffer. Because it has been proposed that the UGE will travel underneath the stream and forest buffer, Mr. Kulis feels that the Forest Buffer law is not violated. He admitted that if the UGE cannot avoid impacts, then impacts must be minimized. He clarified that as long as the stream is not disturbed, the County would not require an Alternative Analysis. The County has discretion in determining the location for the crossing area and the depth of the UGE. Finally, because EIR will need to sign off on the building permit(s), EIR will have further revisions to the Forest Stand Delineations and Steep Slopes Analysis.

On cross examination, Mr. Kulis explained that while there will be impacts to environmental resources here, EIR views these as minimal. Although there will be violations of BCC §33-1-112(c)(ii) and (iii) with regard to clearing vegetation and soil disturbance within the Forest Buffer, EIR has an unwritten policy of permitting what EIR views as minimal. He further conceded that while an Alternatives Analysis is legally required under BCC §33-1-112(c), EIR does not require one if the stream is not disturbed. Here, EIR believes the UGE is not a disturbance.

EIR views the Forest Buffer law as protecting water quality which will not be affected by the proposed UGE.

5. Jon Kraft – Landscape Architect.

Jon Kraft was admitted as an expert landscape architect licensed in the State of Maryland. (Pet. Ex. 23). Although Mr. Kraft prepared a landscape plan, the Board was not presented with that plan. While it has not been formally filed with the County, the County's Landscape Architect has preliminarily reviewed it. At the recommendation of the County, Mr. Kraft changed the gravel driveway for Parcel 121 to an 'S' shape. Mr. Kraft opined that his Landscape Plan meets the requirements of the Comprehensive Manual of Development Policies, the Baltimore County Landscape Manual, and the BCZR. Along Falls Rd., he stated that diverse trees will be planted measuring 45 ft. (30 ft. is required) to supplement the existing ones. Along the Fowble property, proposed landscaping measuring 25 ft. (10 ft. is minimum) will be installed. The proposed landscaping will consist of various deciduous trees in layers of shrubs and trees. Mr. Kraft explained that approval of the final Landscape Plan is an ongoing process.

6. Andrew Streit – Power Factor.

Andrew Streit testified as the representative of Power Factor where he has been employed as the Director of Business Development for 1½ years. Mr. Streit explained that Power Factor has never installed a Community Solar Facility. Power Factor's experience with solar is installing residential roof top units and solar facilities on military bases. It has installed a ground mounted solar facility in South Carolina, but not in Baltimore County. Power Factor is not a Subscriber Organization under the Community Solar Energy Generating Systems Pilot Program under MD Code Ann., PU, §7-306.2 ("Community Solar Program"). Mr. Streit testified that, an unrelated

entity namely, Meade Communities, Inc. ("Meade"), has been approved by the Public Service Commission ("PSC") as a Subscriber Organization for this project.

Initially, Mr. Streit testified that Meade would be the entity constructing both solar facilities, would be responsible for connecting the solar facilities to the BGE grid, and would prepare the application for BGE approval. Additionally, he stated that Meade will install the meter(s) needed to monitor the amount of electricity generated to the grid. Meade will maintain the list of subscribers buying electricity from the proposed facilities. Meade will also post the security bond required under BCZR, §4F-105.

Mr. Streit testified that the solar panels on both facilities will not rotate; they will be fixed facing south. Together these solar facilities will generate 1.85 mg of AC electricity. He explained that the solar panels do not emit chemicals. Beneath the panels will be ground cover. Rain will clean the panels. With regard to noise, there will be a humming sound which can be heard on-site. With regard to the potential for fire, Mr. Streit testified that he is aware of six fires on roof top solar installations. There is a potential for the transformer to catch on fire.

On cross examination, Mr. Streit admitted that Power Factor is paying for OSHA violations due to an incident where one of their employees was electrocuted.[2] He stated the Power Factor would enter into a 25-year lease with Holly Springs but later admitted that the lease would be assigned to Meade. Power Factor has never connected separate solar facilities underneath a stream.

He also conceded that the solar panels to be installed have an efficiency rating of 18% but that panels with a higher efficiency rating do exist. A high efficiency rating would be 22% and the highest possible rating is 42%. If a higher efficiency panel were used, he agreed that less panels would be needed. He did not know the minimum amount of land needed to produce 1.85

[2] The Board did not admit into evidence the OSHA violation documents offered by Protestants (Prot. Ex. 8).

mg. When asked about the number of inverters, Mr. Streit testified that there would be 35 inverters within each of the solar facilities.

Mr. Streit admitted that if they were to run power lines above ground (rather than using an UGE), it would be more expensive. Additionally, if the solar facilities were separately connected to the BGE interconnector, it would require additional BGE approvals.

He acknowledged that Power Factor's role in regard to this project will be as a maintenance contractor. Power Factor will not have a partnership agreement or other business agreement with Meade. There is no common ownership between Power Factor and Meade. With regard to the ownership of the equipment for each solar facility to be installed, Mr. Streit initially testified that Meade would own the equipment, but then stated that the solar facilities would be owned by another entity namely, "Onyx Renewable Group" ("Onyx"), a New York based energy business. Onyx would enter into an agreement with Holly Springs through Meade. He then indicated that Power Factor would have a maintenance agreement for the equipment with Onyx and would apply for the building permit under BCZR, §4F-105.

Protestants' Case.

1. Glenn Fowble – 3306 Baker's Schoolhouse Rd., Freeland, MD 21053. Mr. Fowble owns the property at 18728 Falls Rd., Hampstead, MD 21074 which is a 6 ½ acre unimproved piece of land. His mother, Mary Fowble lives at 18719 Falls Rd., Hampstead, MD 21074, where Glenn Fowble lived for 20 years as a child. Mr. Fowble will inherit his mother's property. Glenn Fowble is concerned that the solar panels will produce glare on his mother's property even with the proposed trees to be planted. At the present, there is no vegetation between her house and the Solar Facility 144. (Prot Exs. 4A-4D). Even as matured, the proposed landscaping will not block

her view of the solar panels. The installation of the solar facilities will decrease their property values.

Mr. Fowble is also concerned about the environmental factors on Parcels 144 and 121. In particular, he pointed out that Compass Run runs through both his mom's and his property. Compass Run is a tributary to Prettyboy Reservoir. He believes that the floodplains on Parcels 144 and 121 will be negatively affected by the water runoff from the panels.

2. Wayne Yelle. 18708 Falls Rd., Hampstead, MD 21074. Wayne Yelle has lived in his home for 20 years. His wife has lived in the same home for 41 years. His house sits on 1.23 acres, is 10-12 ft. above Falls Rd., and is approximately 50 yards from Falls Rd. He presented the Board with photographs of his property. (Prot. Ex. 10A-10E). He testified that he is concerned that he will be staring at the solar facilities even if additional landscaping is planted. This view will devalue his property.

3. Theresa Moore. Executor Director of Greenspring Valley Planning Council, 118 West Pennsylvania Avenue, Towson, MD 21204. Ms. Moore testified on behalf of the Valleys Planning Council ("VPC") who, in accordance with Rule 8 papers, voted to oppose the special exception request here. (Prot. Ex. 11). She investigated the background of Holly Springs and its owners. In this case, she discovered that Holly Springs is a 501(c)(3) organization formed to preserve land and to educate the public. (Prot. Ex. 12). The non-profit corporation has three board members, two of whom are married. She stated that the marital status violates the IRS rule that 51% of the board cannot be related. She reviewed Holly Springs' IRS form 990 which indicated that Holly Springs reported more in rent than contributions. (Prot. Ex. 12). She tried to make sense out of the conservation easements listed but acknowledged that no agricultural preservation,

environmental or rural legacy easements are recorded in the Land Records for these Parcels. She also did not find any easements.

VPC opposes the special exception here because it involves two separately fenced-in solar facilities connected by an UGE. There are two separately deeded parcels of land. (Prot. Ex. 14). Ms. Moore emphasized that the Community Solar Program prohibits solar facilities on adjacent properties. (Prot. Ex. 15). In this case, trees will be cut down and tunneling underneath a stream will occur in order to make this project work.

4. Renee Hamidi 8 Sparks Station Rd., Sparks, MD. Renee Hamidi is the Executive Director of Manor Conservancy. Ms. Hamidi researched conservation easements for Holly Springs in the Land Records of Baltimore County but did not find any. As Executive Director, she works with land trusts in Baltimore County to preserve land using conservation easements. She testified that the IRS regulation requires perpetuity of the easements.

5. Kathleen Pieper – 4310 Beckleysville Rd., Hampstead MD 21074.

Ms. Pieper is a retired biochemical engineer who worked at Proctor and Gamble. She lives a 4310 Beckleysville Rd., Hampstead MD 21074. She is also the President of the North County Community Group, LLC ("North County"); is on the Prettyboy Reservoir Council; and on the BGE Community Advisory Council. Ms. Pieper testified in her individual capacity and as President of North County pursuant to Rule 8 papers. (Prot. Ex. 16).

North County is a volunteer organization of 500 members formed in 2015 with boundaries from the Maryland-Pennsylvania line in the north, York Rd. in the east, the Baltimore/Carroll County line in the west and Mt. Carmel Rd. in the south. Parcel 144 and 121 are within the boundaries of North County.

Ms. Pieper presented information to the Board showing all of the BGE Subscriber Organizations with projects completed or pending under the Community Solar Program. (Prot. Ex. 18 and 19). She pointed out that Meade's subscriber application ("Meade's Application") filed in November of 2018, had not been approved by the PSC for this project as of October 7, 2019 as evidenced by the BGE Community Solar Pilot Program Application List. (Prot. Ex. 18).

A supplemental submission to the Meade Application entitled "Attachment B: Planned Project Information" (which was filed by another entity, Corvias Military Living, LLC ("Corvias"), indicating that it was the parent company of the managing member of Meade), was filed. Meade did not check the boxes that it will own or operate the solar facilities but that the facilities would be collectively controlled by a group of subscribers. (Prot. Ex. 20).

On the supplement, Corvias indicated that the owner of these facilities would be "Solar Mission 1, LLC" and the operator is "Onyx Asset Services Group, LLC". (Prot. Ex. 20). It further states that Meade is not the developer, contractor or owner of these projects; Meade is the Subscriber Organization which handles the metering and billing of the subscribers. Corvias oversees the billing. (Prot. Ex. 20). With this evidence, Ms. Pieper expressed her concern that an unknown entity would be responsible in event there is a problem with the solar facilities.

Ms. Pieper testified that on August 30, 2019, Power Factor also submitted a Subscriber Application signed by both Mr. Streit and George Lang, IV ("Mr. Lang") (the "Power Factor Application"). (Prot. Ex. 19). On the Power Factor Application, Power Factor indicated that it would "develop", "build" and "operate" the facilities at issue. (*Id*). That application also stated that Power Factor "has no affiliated approved Subscriber Organizations." (*Id*). Ms. Pieper further highlighted that Mr. Streit and Mr. Lang both affirmed by sworn Affidavit attached to the Power

Factor Application that the applicant, Power Factor, had no actions or fines taken or pending against it and specifically that:

> The Applicant, including any of its affiliates engaged in the sale of electricity or related services, the general partners, corporate officers or directors, or limited liability company members, managers or officers of the Applicant or its affiliates:
>
> > 1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any State or Federal consumer protection law or regulation; and has not ever been convicted of a felony; or alternatively
> >
> > 2. Has disclosed by attachment all such sanctions, penalties or convictions.

(Prot. Ex. 19). Ms. Pieper expressed her concern that the both Mr. Streit and Mr. Lang were not truthful about the pending OSHA violation as admitted by Mr. Streit for which Power Factor was paying a fine. (*Id*). Ms. Pieper also testified that, based on her research, Power Factor did not have the experience to design, build, operate or decommission ground-mounted community solar facilities.

Rebuttal.

Andrew Streit. In light of the evidence produced by the Protestants, Mr. Streit testified again in rebuttal in an attempt to change his testimony in accordance with counsel's leading questions. Mr. Streit testified that Power Factor was a contractor responsible for building and maintaining the facilities. Power Factor was charged with obtaining the zoning approvals, getting all approvals through BGE and PSC, and obtaining all building and electrical permits from Baltimore County. Mr. Lang, the owner of Power Factor, has a Maryland Home Improvement Commission License (MHIC) and also holds a Master Electrician license.

Mr. Streit corrected his previous testimony that Meade still needed to get PSC approval to be a Subscriber Organization in this case. Power Factor also applied to be a Subscriber Organization for these facilities but has not yet been approved by the PSC. Because of this, Power Factor is not permitted to enter into the interconnection agreement with BGE. Power Factor has built over 1,000 solar facilities (over 50 mg) on military properties, none of which are located in Baltimore County. Corvias is the largest owner of military housing. The Department of Justice has jurisdiction over these military properties. Baltimore County permits are not needed to construct solar facilities on military bases.

Mr. Streit agreed that the lease between Power Factor and Holly Springs will be assigned to Meade. He changed his testimony that "investors" such as Onyx (not Meade) would own the solar facilities equipment. Onyx was providing the funds to buy the equipment and post the bond required under BCZR §4F-105.A. Holly Springs will have no involvement with the maintenance, ownership or operation of the solar facilities. In regard to a decommissioning agreement, Power Factor and/or Onyx would be responsible.

DECISION

A. Special Exception

As set forth above in BCZR, §4F-102.A, solar facilities are only permitted by special exception under the factors set forth in BCZR §502.1. The Board unanimously finds that the evidence presented in support of proposed solar facilities at issue failed to satisfy several of the special exception factors in that these solar facilities:

> (1) would be detrimental to the health, safety or general welfare of the locality involved (§502.1.A);
>
> (2) would be inconsistent with the spirit and intent of the BCZR (§502.1.G);

> (3) would be inconsistent with the vegetative retention provisions of the BCZR (§502.1.H); and would be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, and floodplains and R.C.2 zone (§502.1.I).

This Board was not persuaded by the evidence presented by the Petitioners and found the evidence presented by the Protestants more convincing as follows:

(1) Detrimental to Health, Safety and General Welfare of the Locality Involved – BCZR, §502.1A.

With regard to the health, safety and welfare of the Hampstead area, the Board specifically finds that Power Factor lacks the knowledge and the experience with community solar projects; that the Petitioners were unclear about relevant details about the proposed facilities; that the Petitioners were less than forthcoming on the Power Factor Application and in its testimony before this Board; the Petitioners lack the financing necessary to construct the solar facilities here and to post bonds required under the Community Solar Program law and BCZR, §4F-105.A, and as a result of these facts, requires the involvement of multiple non-petitioner entities over whom this Board has no authority.

First, Power Factor, through Andrew Streit, discussed its intention to become part of the Community Solar Program as set forth in MD Code Ann., PU, 7-306.2 *et seq*. However, it is undisputed that Power Factor's experience in the solar industry is limited to installing residential rooftop panels and solar facilities on military bases. The installation of solar facilities on military bases does not require approvals under the Community Solar Program or through Baltimore County. While the Petitioners' inexperience alone is not dispositive, that fact, in combination with Mr. Streit's testimony that 35 inverters would be installed within each solar facility, revealed a lack of knowledge about community solar facilities which use one inverter.

Second, Power Factor has not been approved as a Subscriber Organization by the PSC. (Prot. Ex. 19). As a result, in order to enter into the interconnection agreement with BGE, Power Factor needs Meade to be the Subscriber Organization. Yet, according to a list of approved Subscriber Organizations maintained by BGE under the Community Solar Program, Meade is not an approved Subscriber Organization for this project, as that list . identifies community solar projects with expected operation dates through December 31, 2020. (Prot. Ex. 18).

In reviewing Meade's Application (Prot. Ex. 20), the Board finds the statement submitted by Corvias on behalf of Meade, also contradicted Mr. Streit's testimony. Mr. Streit testified that Meade was to be the owner, and developer of the solar facilities. Through the Protestants' evidence, we learned about four non-petitioner entities that would be controlling these facilities. Mr. Streit testified that Onyx would be the owner and Power Factor would be the operator. Meade indicated on its Application that "Solar Mission I, LLC will be the owner; Onyx will be the operator; Meade would be the Subscriber Organization; and Corvias would oversee the billing. It was not lost on this Board that all of this inconsistency, and lack of candor, came to light through evidence offered by the Protestants, not the Petitioners. More importantly, it became clear that Power Factor's role was limited to that of a maintenance contractor.

Further, although Mr. Streit testified that Power Factor is relying on Meade to be the Subscriber Organization, Mr. Streit did not mention on direct exam that Power Factor had also applied to be a Subscriber Organization in August of 2019. (Prot. Ex. 19). Again, it was the Protestants, not the Petitioners, who produced the Power Factor Application. (Prot Ex. 19). Through cross examination, the Protestants pointed out that there were several false statements and omissions on that application which was executed by Mr. Streit and/or Mr. Lang under oath.

While the Board did not admit the OSHA violation document into evidence, Mr. Streit admitted in cross examination that Power Factor did not disclose the OSHA violation on the Power Factor Application. He explained that Power Factor is paying a fine for the electrocution of an employee. Yet, on the Power Factor Application, Power Factor checked the box that there were no actions taken against it:

> 8. Actions Against Applicant. Provide the following information or the Applicant.
>
> □ Actions such as Suspensions/Revocations, Limitation, Reprimands, Fines, Consent Decrees, or other similar actions have been taken or are pending against the Applicant. If checked, provide an attachment describing the action; and include docket numbers, offense dates, and case numbers, if applicable.
>
> ■ No such action has been taken.

Moreover, on the Affidavit attached to the Power Factor Application, Mr. Lang swore under oath that for the previous 10 years, neither Power Factor, nor any of its members, managers, officers had any civil, criminal or regulatory sanctions or penalties imposed against it:

> 1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any State or Federal consumer protection law or regulation, and has not ever been convicted of a felony; or alternatively
>
> 2. Has disclosed by attachment all such sanctions, penalties or convictions.

(Prot. Ex. 19).

Next, on the Verification page of the application, Mr. Lang swore to the following:

> The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application.
>
> * * * * *
>
> That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she

> expects said Applicant to be able to prove the same at any hearing hereof.

(Prot. Ex. 19). In our view, these false statements and omissions, which were submitted to gain access to the Community Solar Program (not some other unrelated application), negatively impact the Petitioners' credibility in this case and is detrimental to the health, safety and welfare of the local.

Additionally, on the Power Factor Application, Power Factor did not disclose its affiliation/connection with Meade as a Subscriber Organization for this project. (Prot. Ex. 19, p. 10). Equally problematic for the Petitioners, Meade also failed to disclose its connection to Power Factor on the Meade Application. Even if there is no parent/subsidiary relationship between these entities, according to Mr. Streit, Power Factor will execute a 25 year lease with Holly Springs but then will assign this lease to Meade, thus establishing a relevant connection. The Petitioners also did not disclose that they had filed a Subscriber Application in August, 2019 which filing date occurred before the first hearing date before this Board.

The Board has determined that, in light of the omissions and inconsistencies, installing solar facilities on these Parcels will be detrimental to the safety and general welfare of this locality. Power Factor will only be a maintenance contractor and is the only entity to which the Board's Order will apply. It is undisputed that Holly Springs will not be involved with the solar facilities; its role is to collects rent payment under the lease.[3]

[3] MD Code Ann., PU, §7-306.2(d)(11) a Subscriber Organization may contract with third parties to finance, build, own or operate a community solar energy generating system. Here, the Petitioners are not the Subscriber Organization.

(2) Inconsistent with the Spirit and Intent of BCZR. (§502.1G).

The Board finds that the evidence is inconsistent with the spirit and intent of the BCZR as required by BCZR, §502.1.G. Specifically, the proposed solar facilities will be inconsistent with BCZR, §4F-105 and §4F-106. While Mr. Streit testified that Power Factor will apply for the building permit if the special exception is approved, we learned that Power Factor does not have the finances to post any bonds. BCZR, §4F-105 states that the applicant for the building permit shall also post the bond. Mr. Streit's testimony vacillated in that he initially testified that Meade would post the bond, and then stating that Onyx would post the bond.

Importantly, the Board is reminded that the purpose of the bond is to: "procure the repair of any unsafe or hazardous conditions under BCZR, §4F-106, or removal of a solar facility under Section 4F-107, in accordance with Section 3-6-402 of the County Code." In short, the Petitioners will not be responsible in the event that there is an "unsafe or hazardous condition" requiring such correction.

Similarly, this Board finds that the proposed ownership of the solar facilities by a non-petitioner entity, Onyx (or some other undisclosed entity), contradicts BCZR, §4F-406.A and B. The Board has been entrusted to determine who will own, operate and have control over solar facilities. Initially, Mr. Streit testified that Meade would own the facilities, then he stated that the facilities would be owned by "a group of investors". When pressed, he changed his testimony for a third time and claimed that Onyx, or a subsidiary of Onyx, may own the facilities.

BCZR, §4F-406.A and B require that all parties who have a lease or ownership interest in the solar facilities be responsible for maintenance of the solar facilities:

> A. All parties having a lease or ownership interest in a solar facility are responsible for maintenance of the facility.

> B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under the 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.

Holly Springs will own the land but not the solar facilities equipment installed on the land. (Prot. Ex. 14). Based on the evidence, non-petitioners will either have a lease or ownership interest in the solar facilities. Consequently, this Board's Order will have no force or effect against the lessee (Meade as the assignee) or the owner. The Board finds that, in this regard, the proposed facilities fail to meet BCZR, §502.1G because they are inconsistent with BCZR, §4F-105 and §4F-106.

The Board is equally concerned with the abandonment and removal of the facilities at the end of the lease. Under BCZR, §4F-107, the "owner" or "operator" also have numerous legal obligations in regard to decommissioning and removal of the facilities. The Board views its determination under BCZR, §502.1 and Article 4F as all-encompassing. Mr. Streit admitted that Power Factor has no experience in decommissioning and removal of solar facilities. Indeed, the Office of Planning Comments dated January 10, 2019 specifies that if approved as a special exception, the Site Plan shall be subject to BCZR, §4F-107. (Prot. Ex. 14).

This Board does not have a reasonable level of confidence that the County will be able to enforce BCZR, §4F-107 obligations against Power Factor who is only a maintenance contractor, and depends on the existence and renewal of a contract with a non-petitioner entity or with an unknown entity. Certainly, given that an Order issued by this Board is not enforceable against Onyx or some other unknown entity, the County, in a code enforcement case, will not be in a position to compel Onyx, or a non-petitioner owner of the solar facilities, to decommission or remove the facilities.

Finally, the Board finds that the proposed solar facilities violate the spirit and intent of the BCZR, Article 4F. BCZR, Article 4F was enacted pursuant to the Community Solar Program law found in MD Code Ann., PU, §7-306.2. The Petitioners do not dispute the application of the Community Solar Program law here. Indeed, in Petitioners' Written Memorandum in Lieu of Closing Argument, and in a letter from Counsel for Petitioners to Office of Planning dated February 14, 2019, Petitioners states that: "The subject proposal is pursuant to that program." (See Pet. Closing Memo, p. 4) (Prot. Ex. 6) , p. 2).

On this point, we note that the Community Solar Program law, MD Code Ann., PU, §7-306.2(d)(13) prohibits the construction of solar facilities on contiguous parcels of land as follows:

> (13) Equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops.

BCZR, §4F-103.B mirrors Subsection (13) of the Community Solar Program law by also exempting rooftop solar facilities.

In our reading of BCZR, Article 4F, the County Council expressly provided for a single solar facility to be located on a parcel which is not next to another solar facility . In support of our interpretation, BCZR, §4F-101.B defines a solar facility as "A facility… on a tract of land." In addition, the following references to a 'single solar facility' appear in Article 4F here:

> §4F-102.A. – "…a solar facility"
> §4F-102.B.1 – "a single solar facility"
> §4F-102.B.3 – "all permits issued for a single solar facility in the County".

In this case, Solar Facility 144/121 is located on two contiguous tracts of land. The Petitioners are requesting two separate solar facilities with separate driveways onto Falls Rd. Each solar facility here is separately fenced in and has its own access driveway. Accordingly, we find that

the proposed solar facilities violate the unambiguous wording of both the Community Solar Program law as well as BCZR, Article 4F.

(3) Inconsistent with Vegetative Retention Provisions (BCZR, §502.1.H) and Detrimental to Environmental and Natural Resources (BCZR, §502.1.I).

With regard to vegetative retention provisions under BCZR, §502.1.H, and impact on the environmental and natural resources under BCZR, §502.1.I, the Board finds that the proposed facilities will be inconsistent with, and detrimental to, each of those factors. We note that the Parcels at issue are not cleared, farmland. Rather, each has abundant natural resources and environmental constraints as revealed by Petitioners' photos. (Pet. Ex. 8.A-8.U; 16). The Petitioners' Wetlands Delineation Report provides concrete details about wetlands, vegetation, topography, soil type, trees, specimen trees, floodplains and forests inherent in these Parcels. (Pet. Ex. 20).

According to Mr. Leffner, the initial proposed plan provided for one solar facility confined to Parcel 144. Due to the numerous environmental aspects on Parcel 144 alone including the forest buffer areas, wetlands, floodplains, streams, trees, vegetation, and the limits of disturbance ("LOD") impacts, EPS was not in support of the initial proposal. As a result, Mr. Leffner revised the Site Plan to propose the two solar facilities at issue by utilizing Parcels 144 and 121. (Pet. Exs. 3C, 3D, 22C, 22D). In amending the Site Plan, rather than only request one solar facility within the confines of Parcel 144 by using the most efficient solar panels available and reducing the special exception area, the Petitioners desire to maximize their return on investment.

It is a significant concern to this Board that existing trees and vegetation will be removed to make room for the solar facilities in the following areas:

(1) the line of existing trees and vegetation in the center of Solar Facility 144/121;

(2) the line of existing trees and vegetation on the northern end of Solar Facility 144/121;

(3) the line of existing trees and vegetation in the center of Solar Facility 144; and

(4) the line of existing trees and vegetation around the 'S' shaped and 'U' shaped gravel driveways.

We do not agree that the removal of trees and vegetation as listed above, is minimal. In the Board's view, the removal of trees and vegetation is substantial and unnecessary, and directed by the Petitioners' own interests. As Mr. Kulis stated, "if left in their natural state, a forest would grow near the stream." The Site Plan reveals, and this Board so finds, that specimen trees, and the critical root systems of those specimen trees, will be negatively impacted by the construction of solar panels in the area of those root systems. (Pet. Ex. 3C, 3D, 22C, 22D). The access driveway to Solar Facility 144/121 will be constructed through not only the critical root system of a specimen tree, but through two areas of trees and vegetation. Moreover, the ZAC comments dated December 24, 2018 provide useful information to this Board in that a special variance to the Forest Conservation Law must be approved by EPS when critical root zones of specimen trees are impacted. (Prot. Ex. 5). Yet, Mr. Leffner maintained that no special variances would be needed.

Further, it is only because of the Petitioners' desire for two solar facilities rather than one (1), that the UGE is even needed; it is entirely self-imposed. The Board finds the UGE is detrimental to the stream and the existing trees which line the stream. Mr. Leffner was not clear in his testimony as to the depth necessary for drilling the UGE but acknowledged the horizontal distance would be greater than 200 ft. Mr. Streit admitted that it would be more expensive to connect the two solar facilities above-ground.

The Site Plan shows the forest buffer setback for the stream between Parcels 144 and Parcel 121 running along each of the wire fences to be installed around each facility. We find that the

placement of the wire fences along the forest buffer setback shows unnecessary interference by the solar facilities in these environmentally sensitive areas.

We were also alerted to Mr. Kulis' admission on cross examination that while an Alternatives Analysis is legally required under BCC, §33-3-112(c)(1), that provision would be not enforced by EPS based on an unwritten policy, as long as the stream which bisects the solar facilities is not disturbed. While Mr. Kulis stated that this issue would be addressed at the time of the grading permit, we find the stream will be disturbed and EPS should have required an Alternatives Analysis. Mr. Kulis further acknowledged that vegetation will be cleared and soil will be disturbed in the forest buffer when the UGE is drilled in violation of BCC, §33-3-112(b)(2)(ii) and (iii). Thus, while EIR concedes that there will be impacts to the environment in this case and views these as minimal, this Board does not.

In the Board's view, there is an unexplained change in position by EIR where by letter from EIR to the ALJ regarding a ZAC meeting on June 3, 2019, EIR required an alternatives analysis due to the UGE through the Forest Buffer Easement and under the stream. (Prot. Exs. 3A, 3B). In the letter, EIR expressed the need to review and approve an Alternatives Analysis in regard to the LOD. Additionally, the County's Development Plans Review office, in its ZAC Comments dated June 19, 2019 confirmed that solar panels are considered "utilities" which would require an alternatives analysis under BCC, 33-3-112(c)(2)(i). (Pet. Ex.12). We did not find Mr. Leffner's testimony clear in providing the actual level of disturbance within the environmental areas of these parcels. For all of these reasons, we are convinced that an Alternatives Analysis was required in accordance with BCC.

We would add that in reviewing the purpose of solar facilities legislation set forth in BCZR, 4F-101.A, the County Council specified that solar facilities would be permitted if it met the special

exception factors, balancing the benefits of a solar energy against the potential impact on the County's land use policies. Yet, as stated by counsel for the Petitioners in a letter to the Office of Planning dated February 14, 2019, RC8 land use policies favor maintaining and protecting environmental resources such as forests, streams, wetlands, trees, floodplains and forest buffers. (Prot. Ex. 6). Based on the evidence presented, this Board is not able to provide "sufficient safeguards" in an Order to protect the forests, wetlands, streams, forest buffers, specimen trees and other natural resources which exist on Parcels 144 and 121. The Board finds the "potential impact" to the natural resources of Parcels 144 and 121 identified in BCZR, §4F-101.A is significant and as such, there is no amount of landscaping or other safeguard which could be imposed as a condition in order to accomplish the purpose of the solar facilities law in this case.

B. Variance.

Petitioners requested a variance from BCZR, §1A01.3.B.3, if necessary, to permit a solar facility to be as close as 0 feet to an internal lot line. This request is a direct result of the desire to install a second solar facility on Parcel 144/121. Given that this Board has denied the special exception relief requested, we need not address the variance issue. However, we will do so in the event that our decision in regard to the special exception is reversed.

We find it ironic that, in support of its position that Parcels 144 and 121 are unique, Petitioners rely on the environmental factors which they discount as existing and which served as one of the basis for this Board to deny the special exception request. We further find that the Petitioners will not suffer a practical difficulty if the solar facilities are not permitted. Indeed, the evidence did not suggest that the only use of this land was as a solar facility. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). The Court of

Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715.....Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

In addition, we find that the proposed plan is entirely self-imposed and therefore does not meet the criteria for a variance. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell v Ward,* 102 Md. App. 691, 722 (1995), Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Petitioners desire for two (2) solar facilities is driven by their economic restrictions as controlled by non-petitioners, and therefore the Site Plan is entirely self-imposed.

C. Limited Exemption, BCC, §32-4-106(a)(1)(vi).

Given our denial of the special exception request, the Board need not address the Petitioners' request for limited exemption as a minor commercial structure. However, in the event that our decision on the special exception is reversed, we find that the solar facilities presented here are not minor commercial structures. This is not a small structure but rather two large elaborately designed facilities which consume the majority of both Parcels. As mentioned, these facilities have two separate access driveways and two fenced in areas connected by an UGE. Given the totality of the facts in this case, we do not find these facilities to be either "minor" or "small".

CONCLUSION

After reviewing all of the testimony and evidence presented, the Board finds that Petition for Special Exception pursuant to BCZR, Article 4F should be denied, that the Petition for Variance should be denied, and that the Application for Limited Exemption should be denied.

ORDER

THEREFORE, IT IS THIS 27th day of April, 2020, by the Board of Appeals of Baltimore County,

ORDERED, that the Protestants' Motion to Dismiss the Petition, be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED, that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan be, and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Petition for Variance be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Application for Limited Exemption under BCC, §32-4-106(a)(1)(vi) be and the same is hereby **DENIED** for the reasons set forth herein.

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

BOARD OF APPEALS OF
BALTIMORE COUNTY

Jason S. Garber, Panel Chair

Maureen E. Murphy

Deborah C. Dopkin

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

April 27, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: *Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner*
Power Factor, LLC – Lessee
Case Nos.: 19-183-X and CBA-20-004

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,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: See Distribution List Attached

Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Power Factor, LLC
Valleys Planning Council, Inc.
North County Community Group
Kevin and Maria Webb
Linda Ault
Ethan Lavin
Wayne and Allene Yelle
Mary Ruth Fowble
Glenn and Donna Fowble
Office of People's Counsel
C. Pete Gutwald, Director/Department of Planning
Paul M. Mayhew, Managing Administrative Law Judge
David V. Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

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

October 28, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-20-003240
In the Matter of: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Petitioner
Board of Appeals Case Nos.: 19-183-X and CBA-20-004

Dear Counsel:

Kindly note that the Proceedings before the Administrative Law Judge and the Board of Appeals of Baltimore County has been filed with the Circuit Court for Baltimore County via the Maryland Electronic Courts and E-filing system. Enclosed is a copy for your records.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Tammy A. Zahner
Legal Secretary

Duplicate Original Letter
Enclosure

c: Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
George Lang/Power Factor, LLC
Valleys Planning Council, Inc.
North County Community Group
Peter M. Zimmerman, Esquire/Office of People's Counsel
Carol S. Demilio, Esquire/Office of People's Counsel
Linda Ault
Ethan Lavin
Wayne and Allene Yelle
Mary Ruth Fowble
Glenn and Donna Fowble
Kevin and Maria Webb

IN THE CIRCUIT COURT FOR BALTIMORE COUNTY	*	
PETITION OF: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.	*	
FOR JUDICIAL REVIEW OF THE DECISION OF THE BOARD OF APPEALS FOR BALTIMORE COUNTY Jefferson Building, Suite 203 105 W. Chesapeake Avenue Towson, MD 21204	*	CIVIL ACTION NO.: C-03-CV-20-003240
IN THE MATTER OF: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. – Petitioner	*	
RE: Petition for Special Exception on the Property Located at 18627 Falls Road	*	
BOARD OF APPEALS CASE NOS.: 19-183-X AND CBA-20-004	*	

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

PROCEEDINGS BEFORE THE ADMINISTRATIVE LAW JUDGE AND THE BOARD OF APPEALS OF BALTIMORE COUNTY

TO THE HONORABLE, THE JUDGE OF SAID COURT:

And now comes the Board of Appeals of Baltimore County and, in answer to the Petition for Judicial Review directed against it in this case, herewith transmits the record of proceedings had in the above-entitled matter, consisting of the original papers on file in the Department of Permits, Approvals and Inspections and the Board of Appeals of Baltimore County:

ENTRIES FROM THE DOCKET OF THE BOARD OF APPEALS AND DEPARTMENT OF PERMITS, APPROVALS AND INSPECTIONS OF BALTIMORE COUNTY

Case No.: 19-183-X

December 18, 2018 Entry of Appearance filed by People's Counsel for Baltimore County.

February 22, 2019	ZAC Comments.
February 25, 2019	Letter from Lawrence E. Schmidt, Esquire to ALJ requesting a postponement.
February 25, 2019	E-mail from ALJ to Lawrence E. Schmidt, Esquire granting postponement and providing additional guidance for notification to parties and opposition.
February 25-28, 2019	Miscellaneous correspondence between ALJ and parties
April 23, 2019	Notice of Zoning Hearing
May 9, 2019	Certificate of Posting
May 10, 2019	Certificate of Publication in newspaper
May 17, 2019	Handwritten note from Lawrence E. Schmidt, Esquire to Carl – with handwritten response.
May 17, 2019	Amended Petition for Special Exception filed by Lawrence E. Schmidt, Esquire on behalf of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., Legal Owner, and Power Factor, LLC, Lessee, requesting a Petition for Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and Petition for Variance if necessary, to grant Variance relief from BCZR § 1A01.3.B.3 to permit a solar facility to be as close as 0 feet to an internal lot line.
May 29, 2019	Second Certificate of Posting
May 30, 2019	Administrative Law Judge convened for a hearing.
February – June 2019	Letters and e-mails in opposition.
June 7, 2019	E-mail to ALJ Beverungen from Lawrence E. Schmidt, Esquire providing a pdf showing slight change to the driveway/access road to the facility.
June 12, 2019	Letter to ALJ Beverungen from Lawrence E. Schmidt, Esquire providing a full size copy of amended site plan.
June 20, 2019	Opinion and Order issued by the Administrative Law Judge wherein the Petition for Special Exception pursuant to Section 4F-102 of the BCZR for a Solar Facility was GRANTED, with conditions.

July 1, 2019	E-mail to ALJ Beverungen from Lawrence E. Schmidt, Esquire.
July 3, 2019	Memo to ALJ Stahl from Department of EPS providing comments.
July 16, 2019	Notice of Appeal filed by Michael R. McCann, Esquire on behalf of Valleys Planning Council, Inc., North County Community Group, Kevin and Maria Webb, Linda Ann Ault, Ethan Lavin, Wayne and Allene Yelle, Mary Ruth Fowble, and Glenn and Donna Fowble, Protestants.
July 17, 2019	Appeal received by the Board.
July 25, 2019	Notice of Assignment issued by the Board, Days 1 and 2.

Case No.: CBA-20-004

June 4, 2019	Development Review Committee (DRC) Application, Checklist, Letter of Request, DRC Plan Set and application fee filed by Kimley-Horn on behalf of Power Factor requesting a Limited Exemption under Section 32-4-106(a)(1)(vi) of the Baltimore County Code for the construction of a solar facility located along Falls Road.
June 24, 2019	Letter from Statement Highway Administration to PAI providing comments.
June 25, 2019	Development Review Committee Meeting Sign-In Sheet
July 2, 2019	Letter from Director of PAI finding the project provisionally meets the requirements of a Limited Exemption under Section 32-4-106(a)(1)(vi).
July 30, 2019	Notice of Appeal filed by Michael R. McCann, Esquire on behalf of Valleys Planning Council, Inc., North County Community Group, Kevin and Maria Webb, Linda Ann Ault, Ethan Lavin, Wayne and Allene Yelle, Mary Ruth Fowble, and Glenn and Donna Fowble, Protestants.
August 14, 2019	Appeal received by the Board.

Case Nos.: 19-183-X and CBA-20-004

August 8, 2019	Letter to Board from Lawrence E. Schmidt, Esquire requesting the cases be consolidated for hearing.
August 13, 2019	E-mail to Board from Michael R. McCann, Esquire consenting to consolidation.

August 16, 2019 Amended Notice of Assignment issued by the Board, Days 1 and 2.

September 11, 2019 Subpoena Duces Tecum issued to Mary Zodhiates, to Marcia Brice, and to Custodian of Records for Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. by the Board at the request of Michael R. McCann, Esquire.

September 17, 2019 Subpoena Duces Tecum issued to Michael Kuhlis, Department of EPS, Mary Zodhiates, and to Custodian of Records for Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. by the Board at the request of Michael R. McCann, Esquire.

September 19, 2019 Board convened for a Hearing, Day 1.

September 20, 2019 Subpoena issued to Mike Kulis, Department of EPS, and to Jeff Perlow, Department of PAI, by the Board at the request of Lawrence E. Schmidt, Esquire.

September 24, 2019 Board convened for a Hearing, Day 2.

September 25-26, 2019 Miscellaneous scheduling e-mails.

September 27, 2019 Notice of Assignment issued by the Board, Day 3.

October 23, 2019 Board convened for a Hearing, Day 3.

Exhibits submitted at Hearings before the Board of Appeals:

Petitioner's Exhibit No.

1 – DRC approval letter for exemption
2 – Nicholas Leffner Curriculum Vitae
3A – Existing Conditions Plan
3B – Close-up of Existing Conditions Plan
3C – Proposed Conditions Plan
3D – Close-up of Proposed conditions Plan
4A – My Neighborhood Map 9/19/19
4B – My Neighborhood Map close-up 9/19/19
5 – Forest Stand Delineation Plan
6 – Steep Slopes Analysis
7 – EPS 7/1/19 approval letter
8A-U – Photos of Property
9 – County GIS Conservation Easement
10 – Stephen Barrett Flare Expert Curriculum Vitae
11 – Barrett Glare Report

12 – Letter from Plans Review to PAI dated 6/19/19
13 – Letter from MDOT to PAI dated 6/24/19
14 – Letter from Zoning to Schmidt dated 2/22/19
15 – E-mail from Planning to Schmidt dated 8/21/19
16 – Colored Site Plan Exhibit
17 – Key Map for Photos 8A – 8U
18 – Zoning Office List of Solar Facilities
19 – BCZR Article 4F Solar Facilities Law
20 – Wetlands Delineation Report 4/5/19
21 – EPS letter to Petitioner's Wetlands Delineation dated 6/6/19
22A – Corrected Petitioner's Exhibit 3A Existing Conditions
22B – Corrected Petitioner's Exhibit 3B Close-Up Existing Conditions
22C – Corrected Petitioner's Exhibit 3C Proposed Changes
22D – Corrected Petitioner's Exhibit 3D Proposed Changes close-up
23 – Jon Kraft, PLA Curriculum Vitae – Landscape Architect
24 – Andrew M. Streit Curriculum Vitae
25 – GCL Spec Sheet
26 – My Neighborhood Conservation Easements

Protestants Exhibit No.

1 – Copy of Petitioner's Exhibit 3C with highlights
2 – BCC § 33-3-111 and § 33-3-112
3A – EPS ZAC Comments 6/3/19
3B – EPS ZAC Comments (Board file copy) received 7/3/19
4A-D – Photos from Fowble Property
5 – EPS ZAC Comments 12/24/18
6 – Letter from Schmidt to DOP dated 2/14/19
7 – Memo to PAI from DOP dated 6/25/19
8 – (Not Admitted)
9 – SDAT Record for Power Factor
10A-D – Yelle Photos
11 – Rule 8 Valleys Planning Council
12 – Holly Springs Form 990
13 – My Neighborhood Map
14 – Deed of 7/22/13 for Parcel 0121
15 – MD Code Ann., Public Utilities § 7-306.2
16 – Rule 8 The North County Community Group, Inc.
17, 17 1-11 – Photo Key and 11 Photos of View of Subject Property
18 – BGE List of Community Solar Applicants
19 – Power Factor LLC Subscriber Application to PSC

20 – Meade Communities, LLC Subscriber Application to PSC
21 – LandScope Website – Targeted Ecological Areas
22 – DNR/MERLIN Aerial Tax Map
23 – Aerial Photo of Protestants' Property

November 6, 2019	Letter to Board from Lawrence E. Schmidt, Esquire providing 3 copies of Petitioner's Exhibit No. 9 for the Board.
November 18, 2019	E-mail to Board from Michael R. McCann, Esquire requesting extension to file briefs.
November 19, 2019	E-mail to counsel from Board granting extension to file Memos.
November 27, 2019	Written Memorandum in Lieu of Closing Argument filed by Lawrence E. Schmidt, Esquire on behalf of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., Property Owner, and Power Factor, LLC, Lessee.
November 27, 2019	Protestants' Post-Hearing Memorandum filed by Michael R. McCann, Esquire.
December 10, 2019	Board convened for Public Deliberation.
April 27, 2020	Opinion and Order issued by the Board wherein the Protestants' Motion to Dismiss the Petition was DENIED; the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan, was DENIED; the Petition for Variance was DENIED; and the Application for a Limited Exemption under BCC §32-4-106(a)(1)(vi) was DENIED.
May 27, 2020	Motion for Reconsideration filed by Lawrence E. Schmidt, Esquire on behalf of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., Property Owner, and Power Factor, Lessee.
June 15, 2020	Protestants' Response to Motion for Reconsideration filed by Michael R. McCann, Esquire.
July 15, 2020	Board convened for Public Deliberation on the Motion for Reconsideration and Response thereto.
August 3, 2020	Ruling on Motion for Reconsideration issued by the Board wherein the Motion to Reconsider was DENIED.

September 1, 2020	Petition for Judicial Review filed in the Circuit Court for Baltimore County by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC on behalf of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., Petitioner.
September 9, 2020	Copy of Petition for Judicial Review received from the Circuit Court for Baltimore County by the Board of Appeals.
September 9, 2020	Certificate of Compliance and notification letter sent to all parties.
October 28, 2020	Transcript of testimony filed.
October 28, 2020	Record of Proceedings filed in the Circuit Court for Baltimore County.

Record of Proceedings pursuant to which said Order was entered and upon which said Board acted are hereby forwarded to the Court, together with exhibits entered into evidence before the Board.

Tammy A. Zahner

Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of October, 2020 a copy of the foregoing was mailed first class mail, postage prepaid, or inter-office mail to the following:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Mary Zodhiates
Holly Springs Nature Conservancy &
Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, MD 21074

George Lang
Power Factor, LLC
c/o 8240 Beachwood Road
Baltimore, MD 21222

Valleys Planning Council, Inc.
118 W. Pennsylvania Avenue
Towson, MD 21204

North County Community Group
P.O. Box 132
Monkton, MD 21111

Kevin and Maria Webb
18702 Falls Road
Hampstead, MD 21074

Linda Ann Ault
18621 Falls Road
Hampstead, MD 21074

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

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

Ethan Lavin
18821A Falls Road
Hampstead, MD 21074

Wayne and Allene Yelle
18708 Falls Road
Hampstead, MD 21074

Mary Ruth Fowble
18719 Falls Road
Hampstead, MD 21074

Glenn and Donna Fowble
3306 Baker School House Road
Freeland, MD 21053

Tammy A. Zahner

Tammy A. Zahner

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY

*

PETITION OF:
HOLLY SPRINGS NATURE CONSERVANCY & *
WILDLIFE SANCTUARY, INC.

*

FOR JUDICIAL REVIEW OF THE DECISION CIVIL ACTION
OF THE BOARD OF APPEALS * NO.: C-03-CV-20-003240
FOR BALTIMORE COUNTY
Jefferson Building, Suite 203 *
105 W. Chesapeake Avenue
Towson, MD 21204 *

IN THE MATTER OF: *
HOLLY SPRINGS NATURE CONSERVANCY &
WILDLIFE SANCTUARY, INC. – Petitioner *

RE: Petition for Special Exception on the *
Property Located at 18627 Falls Road

*

BOARD OF APPEALS
CASE NOS.: 19-183-X AND CBA-20-004 *

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

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

Mary Zodhiates
Holly Springs Nature Conservancy &
Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, MD 21074

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

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Carole S. Demilio, Esquire
Office of People's Counsel
The Jefferson Building, Suite 204
105 W. Chesapeake Avenue
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George Lang
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c/o 8240 Beachwood Road
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18708 Falls Road
Hampstead, MD 21074

Mary Ruth Fowble
18719 Falls Road
Hampstead, MD 21074

Glenn and Donna Fowble
3306 Baker School House Road
Freeland, MD 21053

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 9th day of September 2020, a copy of the foregoing was mailed first class mail, postage prepaid, to the individuals listed above.

Tammy A. Zahner

Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

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

September 9, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: Petition for Judicial Review
Circuit Court Civil Action No.: C-03-CV-20-003240
In the Matter of: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Petitioner
Board of Appeals Case Nos.: 19-183-X and CBA-20-004

Dear Counsel:

Notice is hereby given, in accordance with the Maryland Rules, that a Petition for Judicial Review was filed by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC on behalf of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., in the Circuit Court for Baltimore County from the decision of the County Board of Appeals rendered in the above matter. The County Board of Appeals received written notification of acceptance on September 2, 2020. Any party wishing to oppose the petition must file a response with the Circuit Court for Baltimore County within 30 days after the date of this letter, pursuant to the Maryland Rules.

In accordance with the Maryland Rules, the Board of Appeals is required to submit the record of proceedings of the Petition for Judicial Review within 60 days. The transcript has already been provided by Counsel. Additional copies can be purchased from the Board of Appeals in accordance with the County's copying policy.

A copy of the Certificate of Compliance has been enclosed for your convenience.

Very truly yours,

Tammy A. Zahner

Tammy A. Zahner
Legal Secretary

Duplicate Original Cover Letter
Enclosure
c: See Distribution List following

c: Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
George Lang/Power Factor, LLC
Valleys Planning Council, Inc.
North County Community Group
Kevin and Maria Webb
Linda Ault
Ethan Lavin
Wayne and Allene Yelle
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Peter M. Zimmerman, Esquire/Office of People's Counsel
Carol S. Demilio, Esquire/Office of People's Counsel

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
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TOWSON, MARYLAND, 21204
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September 9, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
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Tammy A. Zahner

Tammy A. Zahner
Legal Secretary

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Peter M. Zimmerman, Esquire/Office of People's Counsel
Carol S. Demilio, Esquire/Office of People's Counsel

IN THE CIRCUIT COURT *
FOR BALTIMORE COUNTY *

PETITION OF:
HOLLY SPRINGS NATURE CONSERVANCY & *
WILDLIFE SANCTUARY, INC.
*

FOR JUDICIAL REVIEW OF THE DECISION CIVIL ACTION
OF THE BOARD OF APPEALS * NO.: C-03-CV-20-003240
FOR BALTIMORE COUNTY
Jefferson Building, Suite 203 *
105 W. Chesapeake Avenue
Towson, MD 21204 *

IN THE MATTER OF: *
HOLLY SPRINGS NATURE CONSERVANCY &
WILDLIFE SANCTUARY, INC. – Petitioner *

RE: Petition for Special Exception on the *
Property Located at 18627 Falls Road
*

BOARD OF APPEALS
CASE NOS.: 19-183-X AND CBA-20-004 *

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

CERTIFICATE OF COMPLIANCE

Madam Clerk:

Pursuant to the Provisions of Rule 7-202(d) of the *Maryland Rules*, the Board of Appeals of Baltimore County has given notice by mail of the filing of the Petition for Judicial Review to the representative of every party to the proceeding before it; namely:

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

Mary Zodhiates
Holly Springs Nature Conservancy &
Wildlife Sanctuary, Inc.
4209 Beckleysville Road
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Mary Ruth Fowble
18719 Falls Road
Hampstead, MD 21074

Glenn and Donna Fowble
3306 Baker School House Road
Freeland, MD 21053

A copy of said Notice is attached hereto and prayed that it may be made a part hereof.

I HEREBY CERTIFY that on this 9th day of September 2020, a copy of the foregoing was mailed first class mail, postage prepaid, to the individuals listed above.

Tammy A. Zahner

Tammy A. Zahner, Legal Secretary
Board of Appeals for Baltimore County
The Jefferson Building, Suite 203
105 W. Chesapeake Avenue
Towson, Maryland 21204
(410) 887-3180
appealsboard@baltimorecountymd.gov

PETITION OF: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. 4209 Beckleysville Road Hampstead, MD 21074	*	IN THE CIRCUIT COURT FOR
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Jefferson Building, Suite 203 105 W. Chesapeake Avenue Towson, MD 21204	*	BALTIMORE COUNTY C-03-CV-20-003240 **Case No.:** _____
IN THE MATTER OF: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.- Petitioner RE: Petition for Special Exception on the Property Located at 18627 Falls Road Board of Appeals Case Nos. 19-183-X and CBA-20-004	*	

RECEIVED
SEP 09 2020
BALTIMORE COUNTY
BOARD OF APPEALS

* *

PETITION FOR JUDICIAL REVIEW

Petitioner, Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of both the Opinion of the Board of Appeals for Baltimore County dated April 27, 2020, a copy of which is attached as Exhibit A, and judicial review of the Ruling on Motion for Reconsideration of the Board of Appeals for Baltimore County dated August 3, 2020, a copy of which is attached as Exhibit B, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.

This Petition is filed pursuant to Rules 7-202 and 7-203(b) of the Maryland Rules of Procedure.

LAWRENCE E. SCHMIDT
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com
CPF # 7905010152

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this **1st** day of **September, 2020,** a copy of the foregoing Petition for Judicial Review was emailed to:

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, MD 21204

Krysundra Cannington, Administrator
Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

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

LAWRENCE E. SCHMIDT

E-FILED; Baltimore County Circuit Court
Docket: 9/1/2020 2:24 PM; Submission: 9/1/2020 2:24 PM

PETITION OF: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. 4209 Beckleysville Road Hampstead, MD 21074	*	IN THE CIRCUIT COURT FOR
FOR JUDICIAL REVIEW OF THE DECISION OF THE COUNTY BOARD OF APPEALS FOR BALTIMORE COUNTY Jefferson Building, Suite 203 105 W. Chesapeake Avenue Towson, MD 21204	*	BALTIMORE COUNTY C-03-CV-20-003240 **Case No.:** _____
IN THE MATTER OF: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.- Petitioner RE: Petition for Special Exception on the Property Located at 18627 Falls Road Board of Appeals Case Nos. 19-183-X and CBA-20-004	*	

RECEIVED
SEP 02 2020
BALTIMORE COUNTY
BOARD OF APPEALS

* *

PETITION FOR JUDICIAL REVIEW

Petitioner, Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, requests judicial review of both the Opinion of the Board of Appeals for Baltimore County dated April 27, 2020, a copy of which is attached as Exhibit A, and judicial review of the Ruling on Motion for Reconsideration of the Board of Appeals for Baltimore County dated August 3, 2020, a copy of which is attached as Exhibit B, in the above referenced matter. Petitioner was a party below and fully participated, individually and through other counsel, in the proceedings.

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Towson, MD 21204

Krysundra Cannington, Administrator
Board of Appeals of Baltimore County
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

LAWRENCE E. SCHMIDT

IN THE MATTER OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. - LEGAL OWNER AND POWER FACTOR, LLC - LESSEE, PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 18627 FALLS ROAD 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 19-183-X and CBA-20-004

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

RULING ON MOTION FOR RECONSIDERATION

This case comes to the County Board of Appeals ("CBA") on a Motion for Reconsideration which was timely filed by Petitioner, Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc. and Power Factor, LLC, its Lessee (collectively "Petitioner") by their attorneys Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC., proposing that the CBA re-open and reconvene a hearing on the merits of newly submitted plans and evidence.

This matter initially came before the CBA on a Petition for Special Exception to permit a solar facility at the above captioned property. The CBA held three days of hearings on September 19, 2019, September 24, 2019 and October 23, 2019. On April 27, 2020, the CBA issued an Opinion and Order denying the requested relief.

The Board held its deliberation on the Motion to Reconsider on July 15, 2020. The Board, for the reasons that follow, concluded that no hearing was warranted and denied the Motion.

The Board noted that the plans submitted with the Motion were the third such plans filed by Petitioner and substantially differed from those considered at the hearings before the CBA. The Board further noted that its authority to consider a special exception petition, once denied, was limited by statute under Baltimore County Zoning Regulation Section 500.12, prohibiting

acceptance of such a petition at least eighteen (18) months have passed from the date of the final order of the prior petition.

The Board members also agreed with the legal points raised by Protestants counsel in Protestants' Response to Motion for Reconsideration including, but not limited to, that the Petitioner's only new facts were the amended site plan and that there was no new law, ordinance or other regulation since the CBA's decision that would provide the Petitioner with the relief it seeks.

Similarly, the Board members noted that the Board's revisory power is limited by its Rule 11, which states "the board shall have revisory power and control over the order in the event of fraud, mistake or irregularity". The Motion for Reconsideration did not allege any fraud, mistake or irregularity.

Conclusion

After reviewing the Motion and the case record, the Board unanimously finds none of the issues raised warrant a hearing on the Motion or relief on part of Petitioner and agrees the Motion should be denied.

ORDER

THEREFORE, IT IS THIS 3rd day of August, 2020, by the Board of Appeals of Baltimore County,

ORDERED, that the Motion to Reconsider is hereby **DENIED** for the reasons set forth herein.

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

Maureen E. Murphy, Panel Chair

see following
Deborah C. Dopkin

William A. McComas

herein.

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

See previous
Maureen E. Murphy, Panel Chair

Deborah C. Dopkin
Deborah C. Dopkin

See previous
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

August 3, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: *Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner*
Power Factor, LLC – Lessee
Case Nos.: 19-183-X and CBA-20-004

Dear Counsel:

Enclosed please find a copy of the Ruling on Motion for Reconsideration 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 Hay

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: See Distribution List Attached

Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Power Factor, LLC
Valleys Planning Council, Inc.
North County Community Group
Kevin and Maria Webb
Linda Ault
Ethan Lavin
Wayne and Allene Yelle
Mary Ruth Fowble
Glenn and Donna Fowble
Office of People's Counsel
C. Pete Gutwald, Director/Department of Planning
Paul M. Mayhew, Managing Administrative Law Judge
David V. Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
Power Factor, LLC – Lessee

19-183-X

DATE: July 15, 2020

BOARD/PANEL: Maureen E. Murphy, Panel Chair
Deborah C. Dopkin
William A. McComas

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the Motion for Reconsideration filed by Petitioner, and response thereto.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board reviewed the history of the case. The Board held three days of hearings on the Petition for Special Exception, and issued its Opinion wherein the petition was denied based on at least four factors. The Petitioner filed a Motion for Reconsideration, and Protestants filed a Response. Mr. McComas was not on the original panel, but read into the case and is familiar with it.
- The Board discussed the Petitioner's Motion for Reconsideration wherein they request the Board consider a new plan, and hold a hearing on the merits.
- The Board discussed the Protestants Response and objection to the reconsideration wherein they note the Motion does not allege any new evidence, fraud, mistake or irregularity. The Protestants also point out that BCZR §500.12 does not permit the review of a new plan for the same property until 18 months have passed from the final order date.
- The Board agreed with the Protestants, finding no new evidence, fraud, mistake or irregularity.

CONCLUSION: After thorough review of the facts and law in the matter, the Board unanimously agreed to DENY the Motion for Reconsideration.

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

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 18, 2020

NOTICE OF DELIBERATION ON MOTION FOR RECONSIDERATION

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
19-183-X Power Factor, LLC – Lessee
And CBA-20-004 18627 Falls Road
5th Election District; 3rd Councilmanic District

A public deliberation has been scheduled on the Motion for Reconsideration filed on May 27, 2020 by Lawrence E. Schmidt, Esquire on behalf of Petitioners and any response thereto.

DATE AND TIME: **July 15, 2020 at 9:00 a.m.**

The above scheduled public deliberation will be held remotely using WebEx for audio and video participation. **Call-in information and a link to the public deliberation will be posted on our web calendar the night before at** www.baltimorecountymd.gov/Agencies/appeals/index.html.

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

If you do not have access to a computing device, please contact our office for the call-in information the day before the scheduled deliberation.

Krysundra Cannington
Administrator

c:	Counsel for Petitioners	: Lawrence E. Schmidt, Esquire
	Petitioners/Legal Owners	: Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
	Lessee	: Power Factor, LLC
	Counsel for Protestants	: Michael R. McCann, Esquire
	Protestants	: Valleys Planning Council, Inc.; North County Community Group; Kevin and Maria Webb; Linda Ault; Ethan Lavin; Wayne and Allene Yelle; Mary Ruth Fowble; and Glenn and Donna Fowble

C. Pete Gutwald, Director/Department of Planning
David Lykens, Director/DEPS
James R. Benjamin, Jr., County Attorney
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
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Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

RECEIVED
JUN 15 2020
BALTIMORE COUNTY
BOARD OF APPEALS

June 15, 2020

Via email and Hand-Delivery

Krysundra Cannington
Baltimore County Board of Appeals
1o5 W. Chesapeake Ave.
Towson, Maryland 21204

Re: 18627 Falls Road
Case o. 2019-0183-X

Dear Ms. Cannington:

Enclosed for filing in the above-referenced matter please find an original and three (3) copies of Protestants' Response to Motion for Reconsideration.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Sincerely,

Michael R. McCann

RECEIVED
JUN 15 2020
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

PROTESTANTS' RESPONSE TO MOTION FOR RECONSIDERATION

Protestants, Valleys Planning Council, Inc., North County Community Group, Kevin and Maria Webb, Linda Ann Ault, Ethan Lavin, Wayne and Allene Yelle, Mary Ruth Fowble, and Glenn and Donna Fowble ("Protestants"), submit this response to the Motion for Reconsideration filed by the Developer.

1. In a thorough and well-reasoned 37-page Opinion, this Board denied the Developer's petition for special exception to construct a solar facility at the subject property. The Board set forth numerous reasons and cited abundant evidence to support its decision.[1]

2. Petitioners have now "redesigned" their proposed solar facility in an attempt to "directly resolve the Board's articulated grounds for denial" to make it "more compatible" with the surrounding area and to "correct other purported deficiencies." (Mot., p. 1). As will be discussed below, Protestants disagree completely that this new plan addresses, much less resolves, the numerous issues raised by the Board in its Opinion. However, there are more fundamental problems with the motion for reconsideration that, alone, warrant its denial.

3. First, the Developer's motion should be seen for what it is. It is not a motion for "reconsideration" at all – that is, the Developer is not asking the Board to reconsider the decision

[1] These reasons need not be repeated here, but they are not fully encapsulated by the Developer's description of them as falling neatly into "Issue No. 1," "Issue No. 2," and "Issue No. 3."

it already made based on the evidence that was presented – but rather the Developer is requesting that the Board issue a *new* decision based on a *new* plan that has not been through the procedure that all petitions for special exception must undergo in Baltimore County. Section 500.12 of the Zoning Regulations, which the Developer barely mentions in its motion, addresses this very situation:

> If a ... special exception has been denied, the Zoning Commissioner may not accept for filing any other ... special exception petition with respect to the same property or any part of that property until at least 18 months have passed from the date of the final order relating to the previous petition....

BCZR, § 500.12.

This provision could not be any clearer. After a denial of a petition for special exception, a second petition cannot even be accepted if it concerns the same property or any part of it.

4. The Developer offers no reason why the Board should simply ignore section 500.12, but instead cites (i) "interests of judicial economy and fairness to the parties" and (ii) the amendment provisions in Rule 2-341 of the Maryland Rules of Civil Procedure.

5. "Judicial economy and fairness" hardly help the Developer's cause. The process that the Developer proposes would entail yet another evidentiary hearing before the Board after multiple days of hearing have already taken place before the Board and the Administrative Law Judge. (The Developer does not mention or address the fact that County agencies would have to have opportunity to review and comment on the New Plan). More important is the unfairness to Protestants that would result. The Protestants have spent innumerable hours and incurred substantial costs investigating and addressing their concerns regarding the plan that the Developer submitted to the County and that was before the Board. They prepared for and attended the hearing based on the plan that they assumed was being advanced. To force Protestants to shift gears again

and confront a plan that could have been filed initially is grossly unfair. Indeed, it should be remembered that the Developer originally proposed a large single solar facility on Parcel 144. Although that plan was eventually withdrawn because of concerns raised by the Department of Environmental Protection and Sustainability, Protestants were nevertheless forced to address it. The proposed new plan is now the Developer's third bite at the apple.

6. The Developer's analogy to Maryland Rule 2-341 is a poor one. As we all know, Rule 2-341 applies to amendments to pleadings *before* trial and the Court's adjudication of the case. Here, the Developer seeks to submit an amended/new plan *after* the Board has already heard the case and issued its ruling. What the Developer proposes would be akin to a party filing an amended complaint with new causes of action after the Court entered judgment. The more appropriate analogy is to the Maryland Rules governing post-judgment motions, which allow the losing party to file a motion asking the Court to reconsider or revise its judgment but based on narrow grounds such as newly discovered evidence or some fraud, mistake or irregularity. Md. Rule 2-534, -535. These rules do not permit a party to re-allege or change their claims after a decision has been made.[2]

7. Even if section 500.12 of the Zoning Regulations did not exist and even if the Developer were permitted to simply amend its plan at this juncture, the fact remains that the new plan does not address many of the reasons why the Board denied the special exception:

* The Board expressed "significant concern" regarding the existing trees and vegetation that would be removed. (Bd. Op., pp. 32-33). The Board disagreed with the Developer that these disturbances would be "minimal," finding them instead to be "substantial and unnecessary" and "directed by the Petitioners' own interests." (*Id.*, p. 33). The Board identified

[2] Protestants are not suggesting that these Rules apply or should apply to proceedings before the Board of Appeals.

four (4) specific areas where this tree and vegetation would take place. (*Id.*, pp. 32-33). Of these four areas, two of them will *still* be impacted under the Developer's new plan, namely (i) the line of existing trees and vegetation in the center of the solar facility on Parcel 144, and (ii) the line of existing trees and vegetation around the "S" shaped gravel driveways. The Developer's new plan does not address this important concern of the Board's.

* The Board expressed concern in its Opinion that the proposed fence for *both* arrays was to be installed along, or coextensive, with the edge of the forest buffer. (Bd. Op., pp. 33-34). The Board found this aspect of the plan to constitute "unnecessary interference by the solar facilities in these environmentally sensitive areas." (*Id.*, p. 34). The Developer's new plan still shows the fencing around the solar facility to be coextensive with the forest buffer edge and thus does not resolve the Board's concern. (*See* Mot., at Ex. A (sheet 2 and 2A)).

* The Board expressed numerous, legitimate concerns regarding the abilities and competence of the Developer, noting, *inter alia*, that Power Factor's experience was limited to residential roof top units and solar facilities on military bases and that it had never installed a community solar facility or ground-mounted facility in the County nor had it decommissioned or removed a solar facility. (Bd. Op., pp. 17, 25, 30).[3] These concerns are not addressed, of course, by the Developer's new plan.

* The Board expressed serious concern regarding who, precisely, would be involved in the leasing, ownership, maintenance, and operation of the facility and the ability of the County to enforce statutory obligations against the appropriate party. (Bd. Op., pp. 17-19, 24, 25-30). The Developer does not address this concern in any meaningful way other than to say that Meade's application to the State's community solar pilot program was approved by the Public Service

[3] The Board noted more than once Mr. Streit's mistaken belief that there would 35 inverters installed at each solar array. (Bd. Op., pp. 19, 25

Commission. (Mot., p. 6). Indeed, the Developer only muddies the waters on this issue by introducing still more corporations who will allegedly be involved in the project. (*Id.*) (referring to "Blackstone" and "Northern New England Energy Corporation"). Most oddly, the Developer attaches a "Letter of Intent" signed by "Neighborhood Sun Benefit Corp" (yet another previously unidentified entity). According to this letter, NSBC "intends to develop the site … to construct a solar array" along with "Standard Solar" (another previously unidentified entity) who will "provide financing, commissioning, and operations and maintenance of the project in the long term." (*Id.*, Ex. B, p.1).[4]

* The Developer's position at the hearing was that a project with one solar facility was not financially viable. (Bd. Op., p. 13). Either that was untrue or something has changed to allow the Developer the wherewithal to proceed with this new plan. The motion does not provide any proof of the latter. Thus, even if the Board were to grant the Developer's motion and the new plan were approved, there still should be significant concerns about the viability of the project.

* Throughout its Opinion, the Board expressed concern regarding Mr. Streit's false and contradictory statements, omissions, lack of candor, and "attempt to change his testimony in accordance with counsel's leading questions." (Bd. Op., pp. 23, 26-28). None of this is altered, of course, by the filing of the Developer's new plan.

8. Finally, it is apparent from the Board's decision that it contemplated the possibility of approving the plan subject to certain conditions, but rejected that idea because it was "not able to provide sufficient safeguards in order to protect the forests, wetlands, streams, forest buffers, specimen trees and other natural resources which exist on Parcels 144 *and* 121." (*Id.*, p. 35) (emphasis added). The Board concluded that the "potential impact to the natural resources on

[4] Extraneously, the letter also states that NSBC, Standard Solar, and Power Factor "will work together to appeal the Court Order No _____ that halted the project on _____." (*Id.*).

Parcels 144 *and* 121 … is significant and as such, *there is no amount of landscaping or other safeguard which could be imposed as a condition in order to accomplish the purpose of the solar facilities law in this case*." (*Id.*) (emphasis added).

9. In sum, the Developer's motion for reconsideration should be denied outright because the acceptance of a new plan at this juncture would violate the clear mandate of section 500.12 of the Zoning Regulations. The Developer has offered no meaningful reason why section 500.12 should simply be ignored. Even if the Board entertained the motion for reconsideration, the motion should be rejected because the Developer's new plan does not address, much less resolve, numerous concerns raised by the Board in its Opinion.

WHEREFORE, Protestants respectfully request that the Board deny the Developer's motion for reconsideration.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Protestants

CERTIFICATE OF SERVICE

I hereby certify that on 15th day of June 2020 a copy of the foregoing Response to Motion for Reconsideration was emailed and mailed, *via* first-class mail, postage prepaid to:

Lawrence Schmidt
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

Michael R. McCann

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
	*	BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. *Legal Owners*	*	FOR
Power Factor, LLC *Lessee*	*	BALTIMORE COUNTY
Petitioners	*	**Case No.: 2019-0183-X**
18627 Falls Road	*	
5th Election District 3rd Councilmanic District	*	
	*	

* *

MOTION FOR RECONSIDERATION

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. ("Property Owner" or "Holly Springs") and Power Factor, LLC ("Power Factor" or "Lessee") (hereinafter collectively called "Petitioners"), by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submit this Motion for Reconsideration pursuant to Rule 10 of the Rules of Practice and Procedure of the Baltimore County Board of Appeals ("Board") and respectfully requests that the Board revise its' Opinion and Order issued in the above captioned matter dated April 27, 2020 ("Board's Opinion") and reconvene a hearing on the merits. In support of this Motion, Petitioners offer the following:

1. Upon receipt of the Board's Opinion, Petitioners, through their consultants, redesigned the proposed solar facility to directly resolve the Board's articulated grounds for denial (hereinafter referred to as "Redesigned Project"). The Redesigned Project (See attached Exhibit A, blueline) will reduce its bulk and intensity, so as to make it more compatible with the surrounding area, as well as to correct other purported deficiencies.

2. Rule 10 states that a party has 30 days, in this case until May 27, 2020, to file a Motion for Reconsideration. As such, the instant motion has been timely filed.

3. This matter came before the Board for public hearing on three dates: September 19, 2019, September 24, 2019, and October 23, 2019 to consider a Petition for Special Exception to permit a Solar Facility submitted in accordance with the Baltimore County Zoning Regulations ("BCZR") §§ 502.1 & 4F. As provided during the public hearing, the subject property comprised of two separately deeded parcels, which are both owned by Holly Springs. Parcel 144 (26.34 acres) is an unimproved property (Tax Account No. 0523015126); Parcel 121 (6.25 acres) contains a dwelling and accessory structure and is known as 18627 Falls Road (Tax Account No. 0504000210). Parcel 121 is zoned RC-2 (Resource Conservation) and Parcel 144 is split-zoned RC-2 and RC-8, although most of the solar panels and related infrastructure would be in the RC-2 zone. As shown on the site plan (Petitioners' Exhibit No. 22A-D), there are two "areas" or "sections" of the solar arrays. That is, although this is but a single "project", the array fields are separated into two sections. As further shown on the site plan, there is an electrical connection between the two array fields. This connection is via an underground link; achieved through a process of "horizontal boring". In addition to the Petition for Special Exception, a Variance request, if necessary, was filed for relief from BCZR § 1A01.3.B.3. to permit a setback of 0 feet for an internal lot line.

4. The proposed solar facility is pursuant to the Community Solar Energy Generating System Pilot Program, established by the Public Service Commission (See Maryland Code, Public Utilities Article § 7-306.2), to enable the development of solar energy facilities as an alternative to the use of fossil fuels.

5. The Petitions for Special Exception and Variance were denied via the Board's Opinion. The Board found that the proposed Special Exception would be: (1) detrimental to the health,

safety or general welfare of the locality involved (§502.1.A) (hereinafter referred to as "Issue No. 1"); (2) inconsistent with the spirit and intent of the BCZR (§502.1.G) (hereinafter referred to as "Issue No. 2"); and (3) inconsistent with the vegetative retention provisions of the BCZR (§502.1.H) and would be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, and floodplains and R.C.2 zone (§502.1.I) (hereinafter referred to as "Issue No. 3").

6. Specifically, as it relates to Issue No. 1, the Board found that:

   "Power Factor lacks the knowledge and the experience with community solar projects; that the Petitioners were unclear about relevant details about the proposed facilities; that the Petitioners were less than forthcoming on the Power Factor Application and in its testimony before this Board; the Petitioners lack the financing necessary to construct the solar facilities here and to post bonds required under the Community Solar Program law and BCZR §4F-105.A, and as a result of these facts, requires the involvement of multiple non-petitioner entities over whom this Board has no authority."

7. Specifically, as it relates to Issue No. 2, the Board found that:

   "The proposed solar facilities will be inconsistent with BCZR §4F-105 and §4F-106. While Mr. Streit testified that Power Factor will apply for the building permit if the special exception is approved, we learned that Power Factor does not have the finances to post any bonds…he initially testified that Meade would post the bond, and then stating that Onyx would post the bond…Similarly, this Board finds that the proposed ownership of the solar facilities by a non-petitioner entity, Onyx contradicts BCZR §4F-406.A and B…The Board has been entrusted to determine who will own, operate and have control over solar facilities." The Board further provided "we note that the Community Solar Program law…prohibits the construction of solar facilities on contiguous parcels of land…in our reading of BCZR, Article 4F, the County Council expressly provided for a single solar facility to be located on a parcel which is not next to another solar facility…Petitioners are requesting two separate solar facilities with separate driveways onto Falls Rd. Each solar facility here is separately fenced in and has its own access driveway."

8. Specifically, as it relates to Issue No. 3, the Board found that:

   "In the Board's view, the removal of trees and vegetation is substantial and unnecessary, and directed by the Petitioners' own interests. Further, it is only because of the Petitioners' desire for two solar facilities rather than one, that the UGE [(underground utility electric line)] is even needed; it is entirely self-imposed. The Board finds the UGE is detrimental to the stream and the existing trees which line the stream…We find that the placement of the wire fences along the forest buffer setback shows unnecessary interferences by the solar

facilities in these environmentally sensitive areas...we find the stream will be disturbed and EPS should have required an Alternative Analysis."

9. The Redesigned Project is intended to reduce the overall project footprint and avoid purported environmental impacts. The Redesigned Project will remove Parcel 121 from the Special Exception area and be located entirely on Parcel 144. The Redesigned Project will feature one array field (eliminating the second array area). The Special Exception area of the Redesign Project will be 6.46 acres (originally 9.15 acres). The Redesigned Project will remove the secondary access road (which originally fed the higher portion of the solar facility, as shown on site plan). The Redesigned Project will include one interconnection line to BG&E and eliminate Petitioners' need for an UGE conduit under the stream. The Redesigned Project will reduce grading, environmental, and visual impacts.

10. It is appropriate to file this Motion for Reconsideration, rather than a new zoning Petition for Special Exception, and to include an amended site plan (attached) The original site plan, legal description and other documents filed with the original petitions are all still relevant and applicable to this amended project design. The Special Exception relief requested remains the same; to wit, approval of a solar facility pursuant BCZR 4F.

Pursuant to BCZR § 500.12:

"If a ... special exception petition has been denied, the Zoning Commissioner may not accept for filing any ... special exception petition with respect to the same property ... until at least 18 months have passed from the date of the final order relating to the previous petition, whether that order is issued by the Zoning Commissioner or ... by the Board of Appeals."

In the interest of judicial economy and fairness to the parties, there is no reason to require the Petitioners to wait 18 months to file yet another petition and repeat the process. The Redesigned Project is a reduction in the intensity of the use rather than any substantive change in use. By providing a copy of this Motion and amended site plan, all interested parties are given notice of

this amended request. This Board can properly reconvene its public hearing on this matter to allow all interested parties to participate and allow the Board members with the opportunity to review the amended proposal and question the Petitioners' consultants and principals.

11. There are no codified procedures or processes to amend a zoning petition. Unlike the Circuit Court and District Court rules in the Maryland Rules, there are no rules in the BCZR or elsewhere governing amending a zoning petition in instant case. But the Maryland Rules, by analogy, are instructive. Assuming that the petition in a zoning case is akin to a pleading in a court case, the following is noted. Md. Rule 2-341 governs amendments in the Circuit Court. That rule has been interpreted thusly: "the objective of this Rule is to facilitate the attainment of a just, speedy and inexpensive determination of all disputes between the same parties." *Robertson v. Davis,* 271 Md. 708, 710 (1974). Moreover, an "amendment should be freely allowed to serve the ends of justice." *Stoewer v. Porcelain Enamel & Mfg. Co.,* 199 Md. 146, 151 (1952). The intent of the law to freely allow amendments is manifest. Maryland's appellate courts have held that the parties must have reasonable notice of what is to be litigated. See *Cassidy v. County Board of Appeals of Baltimore County,* 218 Md. 418, 424 (1958). The fact of the matter is that the question of the size and scope of the solar facility has been at issue since it was discussed during the Board's proceedings. If Protestants need a postponement of the Board's reconvened hearing because they can't determine the request and need additional time to prepare, then the Petitioners will willingly consent. But absent that, a reconvened hearing should proceed on the requests sought by the Petitioners.

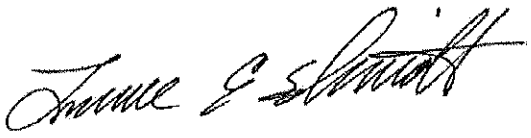
12. As was discussed during the public hearing, Power Factor and Holly Springs are the proper and necessary parties on the Special Exception petition. Holly Springs is the Property Owner and Power Factor is the developer/builder of the solar facility. Contrary to the Board's Opinion, Power

Factor has experience in the construction and maintenance of dozens of utility and private solar commercial projects spanning multiple states. The Board seemingly questions its own jurisdictional authority, providing that an order may not be enforceable against certain parties regarding the development of the proposed solar facility. As this Board is no doubt aware, zoning and zoning relief regulates the use of land, not the status or identity of the lessee or contract purchaser. An approval or condition issued by this Board affects development of the solar facility, no matter the party. This matter is no different than if relief to permit a fast food restaurant had been granted to a property owner who intended to lease the property for a McDonald's restaurant and then terminated that lease and entered into a lease with Burger King. It is the use of the property that the Board need consider, not critique the expertise of the applicant. Like other solar facility projects, the installation of the facility involves multiple parties. There is the property owner and developer. There are subscribers who will utilize the energy produced and an organization that will identify and designate those ultimate users. There are (like most businesses) investors. Mead and Onyx Renewable Group ("Onyx") are such additional parties. Subsequent to the public hearing, Mead's application for the State's Community Solar Energy Generating System Pilot Program was approved by the Public Service Commission. Onyx is funded by Blackstone, which has $571 billion under management and is one of the largest finance companies in the world. Power Factor was awarded funding from Standard Solar, which is owned by Northern New England Energy Corporation, a fully owned subsidiary of Energir, L.P. The Board cannot seriously contend that every contractual party need be on the Special Exception petition and present during the proceedings before the Board. This is not consideration of a PUD (Planned Unit Development), which requires an analysis of the ability of the applicant to complete the project Baltimore County Code § 32-4-245(c)(3). As this matter moves forward past the special exception phase and towards

the ultimate issuance of permits, the requirements specified in BCZR § 4F will attach to the proposal. That is, BCZR § 4F requires that the applicant post security, sign a decommissioning agreement, etc. That is, there are procedures and protocols in place under the County's rules and regulations that assure that the facility will properly operate, and that the County and community will be "protected" if it is not. The County will require not only the posting of security, but the execution of a "decommissioning agreement" outlining the responsibilities of the "parties having a lease or ownership interest". It will be Baltimore County who will determine which entity(ies) are responsible for the providing of security, who should execute the decommissioning agreement, to whom the building permits should be issued, etc.

WHEREFORE, the Petitioners request that the Board reconsider its Order and reconvene a hearing on the merits.

Respectfully Submitted,



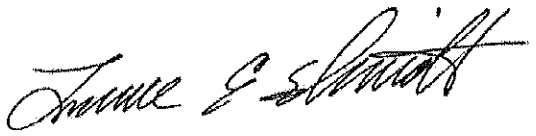
Lawrence E. Schmidt
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, MD 21204
(410) 821-0070
lschmidt@sgs-law.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 27th day of May, 2020, a copy of the foregoing Motion for Reconsideration was mailed, postage pre-paid, to:

Michael R. McCann, Esquire
Michael McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

Krysundra L. Cannington
Board of Appeals of Baltimore County
The Jefferson Building, Suite 203
105 West Chesapeake Avenue
Towson, MD 21204



LAWRENCE E. SCHMIDT

SOIL TYPES

MAP UNIT SYMBOL	SOIL NAME	HYDROLOGIC SOIL GROUP	CLASSIFICATION	HYDRIC	% OF PROPERTY
BhD	BRINKLOW CHANNERY LOAM, 15-25% SLOPES	C	NOT PRIME FARMLAND	NO	24.9%
GeA	GLENELG LOAM, 0-3% SLOPES	B	PRIME FARMLAND	NO	0.6%
GeB	GLENELG LOAM, 3-8% SLOPES	B	PRIME FARMLAND	NO	0.8%
GeC	GLENELG LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	14.5%
GnC	GLENELG CHANNERY LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	12.4%
GnD	GLENVILLE SILT LOAM, 3-8% SLOPES	D/D	NRNC FARMLAND	NO	11.5%
GoC	GLENVILLE SILT LOAM, 8-15% SLOPES	C	FARMLAND OF STATEWIDE IMPORTANCE	NO	0.3%
HbA	HATBORO SILT LOAM, 0-3% SLOPES	B/D	NOT PRIME FARMLAND	YES	32.9%
MeE	MANOR-BRINKLOW COMPLEX, 25-45% SLOPES, VERY ROCKY	B	NOT PRIME FARMLAND	NO	2.9%

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	
	PARCEL 144:	±28.34 AC
	TOTAL:	±28.33 AC △
3.	PROJECT AREA:	
	PARCEL 144:	±5.25 AC △
	TOTAL:	±5.48 AC △
4.	PROPERTY INFORMATION:	
A.	ENSLAVED PREMISES ADDRESS:	ADJACENT TO 10677 FALLS ROAD
B.	TAX ACCOUNT NUMBER:	
	PARCEL 144:	0529019126
C.	DEED REFERENCE:	
	PARCEL 144:	3666/140/456
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	5
F.	CENSUS TRACT:	403000
5.	BALTIMORE COUNTY ZONING MAP REFERENCES:	
A.	GIS TILE:	015A1
B.	TAX MAP:	0015
C.	PARCELS:	0144
D.	GRID:	0001
6.	WATERSHED:	PRETTYBOY RESERVOIR
F.	BASIC SERVICES - WATER MAP:	N/A
G.	BASIC SERVICES - SEWER MAP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETTYBOY
6.	EXISTING LAND USE:	VACANT
7.	PROPOSED LAND USE:	SOLAR FACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4 PRESERVATION AND CONSERVATION AREAS – NO MAJOR SUBDIVISIONS ON SEPTIC

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4E (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. A. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, PER ZONING PARCEL VIEW BY BALTIMORE COUNTY ON 12/5/2019.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND A BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS. △

ENVIRONMENTAL/SITE NOTES

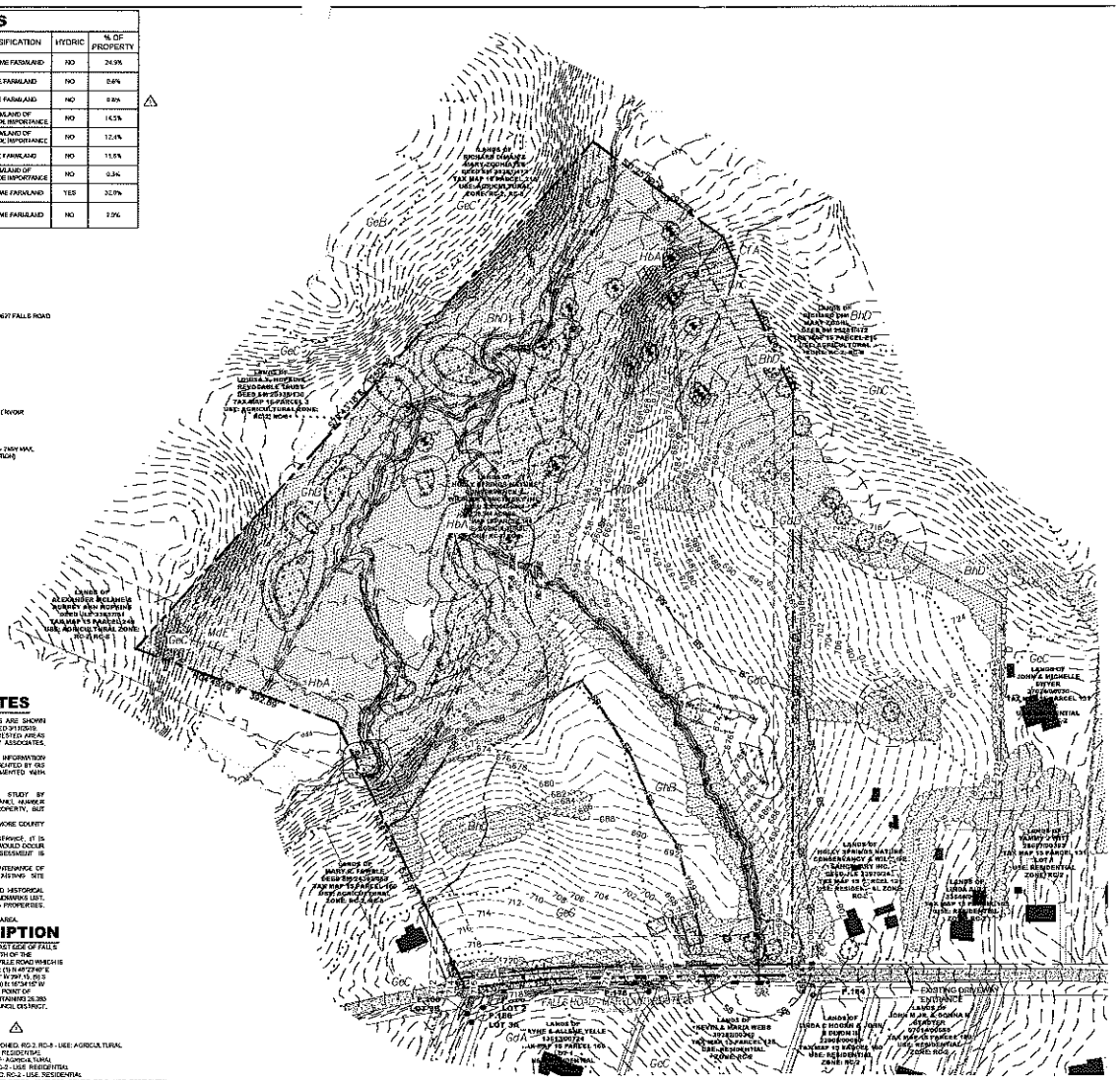
1. PROPERTY BOUNDARY, TOPOGRAPHIC AND EXISTING FEATURES ARE SHOWN BASED ON A SURVEY COMPLETED BY KARINS AND ASSOCIATES, DATED 9/11/2019.
2. ALL STREAMS, SEEPS, BODIES OF WATER, WETLANDS, AND FORESTED AREAS ARE BASED ON FIELD WORK COMPLETED BY GEO-TECHNOLOGY ASSOCIATES, INC. IN MARCH 2019.
3. TOPOGRAPHIC, EXISTING FEATURES, AND ENVIRONMENTAL INFORMATION SHOWN OUTSIDE OF THE PROPOSED PROJECT AREA IS SUPPLEMENTED BY GIS FROM BALTIMORE COUNTY, RECEIVED 10/4/2019 AND SUPPLEMENTED WITH AERIAL PHOTOGRAPHY WHERE NECESSARY.
4. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS.
5. FLOODPLAIN IS SHOWN BASED ON MARCH 2019 SITE STUDY BY GEO-TECHNOLOGY ASSOCIATES, INC., AGREEING WITH FEMA PANEL NUMBER 24005C0010F. THERE IS A FLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED PROJECT AREA.
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND ERNCS WEB SOIL SURVEY WEBSITE ON 4/25/2019.
7. PER LETTER DATED 4/16/2019 FROM THE FISH AND WILDLIFE SERVICE, IT IS UNLIKELY THAT RARE, THREATENED, OR ENDANGERED SPECIES WOULD OCCUR WITHIN THE PROJECT AREA. NO FURTHER BIOLOGICAL ASSESSMENT IS REQUIRED.
8. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENTS/ RELOCATION OF EXISTING SITE ACCESS.
9. THERE ARE NO KNOWN ENTITIES INCLUDED ON THE MARYLAND HISTORICAL TRUST INVENTORY, MEDUSA ONLINE MAP, BALTIMORE COUNTY LANDMARKS LIST, AND BALTIMORE COUNTY GIS WITHIN THE SITE, ON OR ADJOINING PROPERTIES. AS CONFIRMED BY BALTIMORE COUNTY EMAIL DATED 5/2/2019.
10. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

ZONING PROPERTY DESCRIPTION

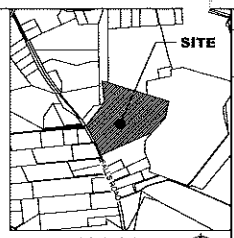
1. ADJACENT TO 10677 FALLS ROAD BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,458 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BEAUTYVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 44°27'49" E 525.60, (2) S 04°15'00" E 360.24, (3) S 85°57'00" E 155.74, (4) S 80°38'00" W 299.15, (5) S 42°47'00" W 312.76, (6) S 76°15'00" W 104.26, (7) S 74°16'00" W 20.00, (8) N 15°34'15" W 446.09, (9) N 21°59'00" W 156.10, (10) N 48°37'00" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER A.E 3666/140/456 AND CONTAINING 28.383 ACRES, LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

ADJOINING LANDOWNERS △

MAP 15 PARCEL: 000 – LOUISA Y. HOPKINS REVOCABLE TRUST – 26303/180 – ZONED: RC-2, RC-8 – USE: AGRICULTURAL
MAP 15 PARCEL 035 – KEVIN & JOSHUA WEBB – 7959/240 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 15 PARCEL 150 – MARY P FOWBLE – 2480/463 – ZONED: RC-2, RC-8 – USE: AGRICULTURAL
MAP 15 PARCEL 186 LOT 1 – WAYNE L & LESLIE YELLE – 13613/304 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 15 PARCEL 163 LOT 2 – KENNETH P & JANET L HARRY – 5730/852 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 15 PARCEL 135 – RICHARD JEAN P JR & KATHERINE REGINI DEMARIS TRUSTEES – 29737/337 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 15 PARCEL 163 LOT 1 – LINDA C HOGAN & JOSHUA HOGAN III – 7999/96 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 15 PARCEL 164 – GREGORY & TRACY COARSEY – 3634/199 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 15 PARCEL 216 – RICHARD GIMAN AND MARY ZOOMBITES – 22351/472 – ZONED: RC-2, RC-8 – USE: RESIDENTIAL
MAP 15 PARCEL 246 – ALEXANDER MCILHINE & AUDREY NOEL HOPKINS – 32852/61 – ZONED: RC-2, RC-8 – USE: AGRICULTURAL
MAP 51 PARCEL 186 LOT 3A – DARLENE S M NAFTA – 6323/85 – ZONED: RC-2 – USE: RESIDENTIAL
MAP 51 PARCEL 186 LOT 3B – GEORGE E JR & CHERYL HER WEBB – 7575/313 – ZONED: RC-2 – USE: RESIDENTIAL



OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION
SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OHE — OVERHEAD ELECTRIC
- FFP — FEMA FLOODPLAIN
- VS — STREAM
- 25' STREAM BUFFER
- WETLAND LIMITS △
- 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- XX — CONTOUR
- STORM PIPE
- BUILDING
- 15-25% SLOPES
- >25% SLOPES
- FOREST CONSERVATION AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE △

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1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

NO.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 163	05/26/2020	CH
2	REVISIONS WITH REMOVAL OF PARCEL 121	06/26/2020	CH

PROPERTY OWNER (P. 144)
HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZOOMBATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
ORANGESHEET@COMCAST.NET

DEVELOPER/APPLICANT
POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MINCE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT
KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

GRAPHIC SCALE IN FEET
0 50 100 200

KHA PROJECT 114066000
DATE 05/26/2020
SCALE AS SHOWN
DESIGNED BY N.J.L.
DRAWN BY HHH
CHECKED BY N.J.L.

OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION/DRC

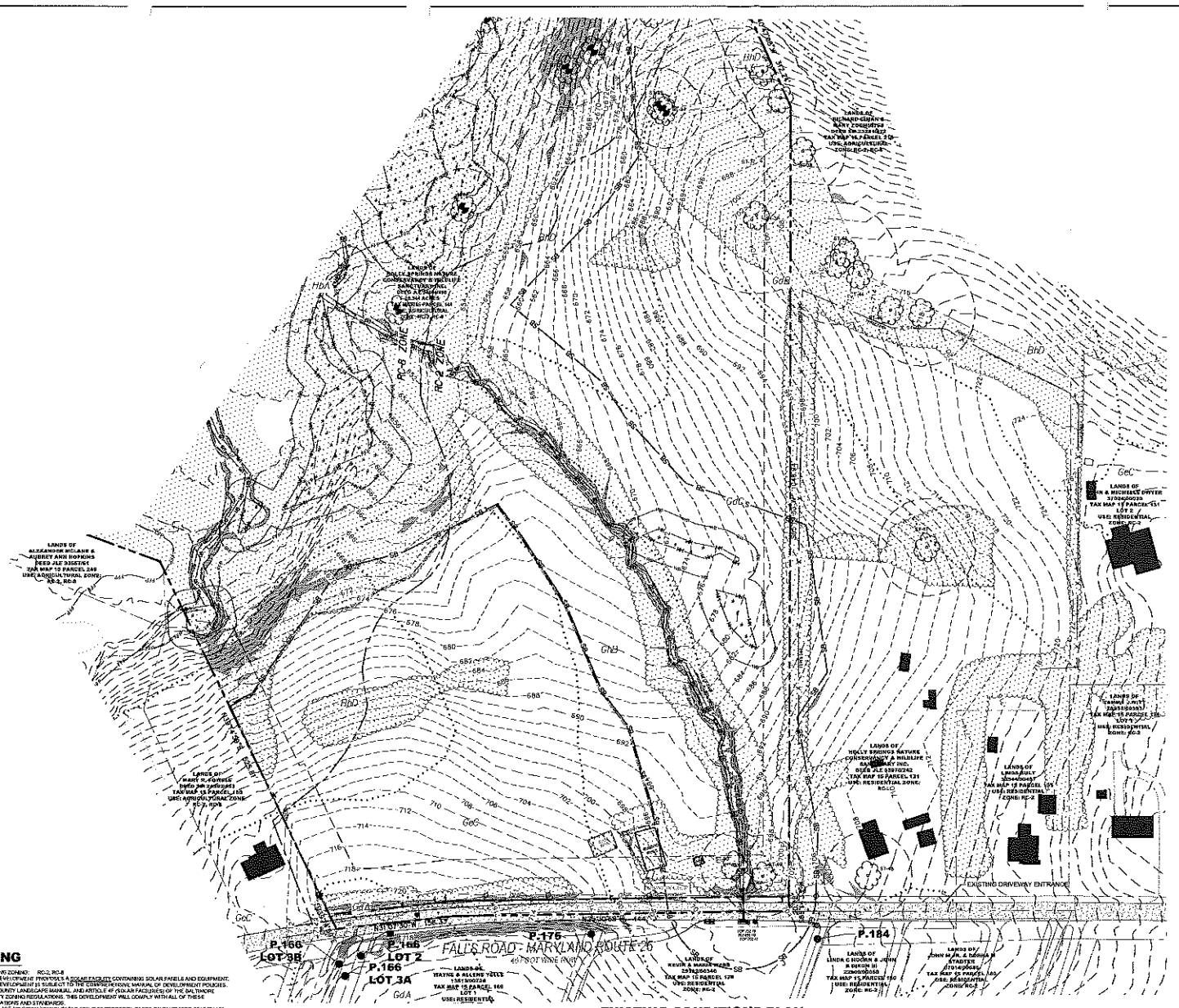
FALLS ROAD SOLAR

PREPARED FOR POWERFACTOR COMPANY

BALTIMORE COUNTY MD.

SHEET NUMBER
SHEET 1

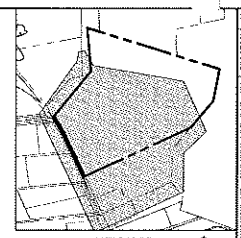
Plotted By: Mary Beth Streit, Sparrows Road Solar Date/Time: May 29, 2020 - 08:30:21am K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\Cad Sheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
The document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.



EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'

GRAPHIC SCALE IN FEET
0 30 60 120



KEY MAP
SCALE: 1" = 500'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OHE — OVERHEAD ELECTRIC
- 100 YEAR FLOODPLAIN
- STREAM
- 100' STREAM BUFFER
- WETLAND LIMITS
- 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZOOKHATES
4208 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21074
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREET
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-8174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

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1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

ZONING

EXISTING ZONING: RC-2, RC-8
THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4F-SOLAR FACILITIES OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.

4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 10/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 211	05/26/2020	NH
2	REVISIONS WITH REMOVAL OF PARCEL 121	09/25/2020	NH

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MHA PROJECT 114066000
DATE 05/26/2020
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1A

BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400+FT
SIDE[1]	35-FT	50-FT[2]	50-FT
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

1 - 50-FT REQUIRED FOR SOLAR USE
2 - 85-FT REQUIRED FROM ADJACENT STRUCTURE

ZONING PROPERTY DESCRIPTION

ADJACENT TO 16627 FALLS ROAD BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,498 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET SECTION 1 FALLS ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCES, (1) N 46°29'40" E 525.82, (2) N 44°10'00" E 899.24, (3) S 63°37'40" E 1251.74, (4) S 00°37'30" W 851.35, (5) S 45°49'00" W 310.36, (6) S 74°16'00" W 1042.80, (7) S 74°16'00" W 25.00, (8) N 15°34'15" W 446.66, (9) N 21°56'00" W 156.10, (10) N 48°27'40" E 17.30, (WCA TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39664, FOLIO 496, CONTAINING 25.280 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

SITE DATA

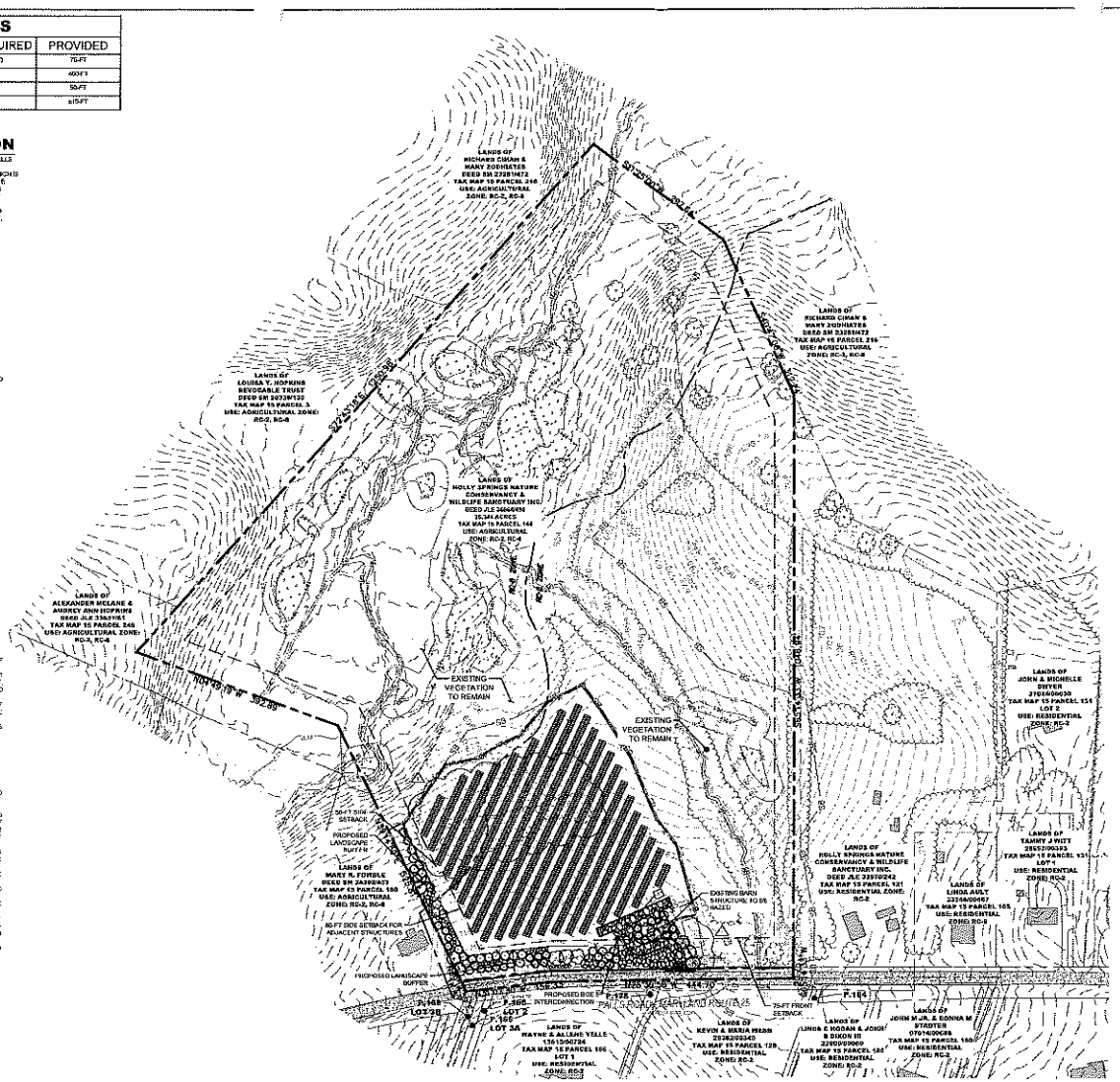
1.	EXISTING ZONING:		RC-2, RC-8
2.	PROPERTY AREA:		
		PARCEL 144:	158.36 AC
		TOTAL:	158.36 AC △
3.	PROJECT AREA:		
		PARCEL 144:	14.45 AC △
		TOTAL:	14.45 AC △
4.	PROPERTY INFORMATION:		
A.	EXISTING PREMISES ADDRESS:		ADJACENT TO 16627 FALLS ROAD
B.	TAX ACCOUNT NUMBER:		
		PARCEL 144:	0923015126
C.	DEED REFERENCE:		
		PARCEL 144:	39664 / 0496
D.	COUNCILMANIC DISTRICT:		3
E.	ELECTION DISTRICT:		5
F.	CENSUS TRACT:		670500
5.	BALTIMORE COUNTY ZONING MAP REFERENCES:		
A.	GIS TILE:		015A1
B.	TAX MAP:		0015
C.	PARCELS:		0144
D.	GRID:		0001
E.	WATERSHED:		PATAPSCO, BEAVERDAM CREEK
F.	BASIC SERVICES - WATER MAP:		N/A
G.	BASIC SERVICES - SEWER MAP:		N/A
H.	REGIONAL PLANNING DISTRICT:		PATAPSCO
I.	EXISTING LAND USE:		VACANT
J.	PROPOSED LAND USE:		SOLAR FACILITY - 20MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4 - PRESERVATION AND CONSERVATION AREAS - NO MAJOR SUBDIVISIONS ON SEPTIC

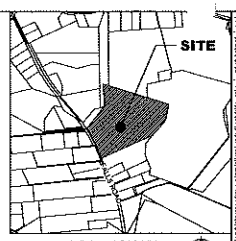
SITE NOTES △

1. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENTS TO PORTIONS OF EXISTING SITE ACCESS.
2. STORMWATER TREATMENT WILL BE MET VIA IMPLEMENTATION OF NON-SHEET DISTANCE (NS 1127), AND A COMBINATION OF NONROOFTOP DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR MICRO-SCALE BSD DEVICES.
3. 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 (DEPS), TO BE STABILIZED WITH NON-GROWTH SEED MIX, AND RELOCATOR SPECIES OUTSIDE OF ANY AREA.
4. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE.
5. THE SITE IS LOCATED BEYOND THE URBAN-RURAL DEMARCATION LINE (URDL).
6. ANY NEW AREA PROPOSED SHALL COMPLY WITH SECTION 2.468.
7. PARKING:
   REQUIRED: 0 SPACES
   PROPOSED: 0 SPACES
8. BASE DENSITIES - TRANSFORMATION MAP: N/A
9. THERE WERE NO COMMERCIAL, PERVERT OR ACTIVE ZONING VIOLATIONS FOUND ON THE SITE PER THE ZONING COMMISSIONER.
10. THE PROPOSED SOLAR FACILITY WILL BE SUBJECT TO BCZR [illegible]
11. THE PROPOSED SOLAR FACILITY WILL NOT EXCEED THE MAXIMUM PERMITTED NUMBER OF FACILITIES ALLOWED IN ITS RESPECTIVE COUNCILMANIC DISTRICT. IF APPROVED, THE APPLICANT SHALL SUBMIT TO THE COUNTY AT THE TIME OF BUILDING PERMIT APPLICATION THE FINAL SOLID LOCATION AND AREA OF THE FACILITY BY COORDINATE DATA.
12. LIGHTING SHALL BE LIMITED TO WHAT IS REQUIRED FOR SECURITY PURPOSES ONLY AND WILL BE SIZED IN SUCH A WAY AS TO HAVE MINIMAL SPILLAGE ONTO ADJOINING PROPERTIES.
13. NO DELIVERIES OR OUTDOOR MAINTENANCE WHICH MAY GENERATE EXCESSIVE NOISE MAY OCCUR ON-SITE BETWEEN THE HOURS OF 8 PM THROUGH 8 AM.
14. THERE ARE NO KNOWN RARE SPECIES, THREATENED SPECIES OR ENDANGERED SPECIES HABITAT, HISTORICAL OR ARCHEOLOGICAL SITES ON-SITE.
15. STORMWATER MANAGEMENT TO BE IN COMPLIANCE WITH MDE DESIGN GUIDANCE FOR SOLAR FARMS.
16. THE LOCATION OF THE PANELS AS SHOWN HEREON IS CONCEPTUAL AND MAY CHANGE AS THE PROJECT EVOLVES TO FINAL DESIGN. HOWEVER, ALL PANELS SHALL BE LOCATED WITHIN THE AREA OF THE SPECIAL EXCEPTION AS SHOWN HEREON.
17. FINAL LOCATION AND DESIGN OF PROPOSED ONE ENTRANCE/EXIT SUBJECT TO CHANGE BASED ON FINAL DESIGN AND APPROVAL BY DOT.



OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UGE UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- DRIVE, DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

LANDSCAPE NOTES △

1. [illegible]

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZIOMKETES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21074
GRANDSWEET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
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BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
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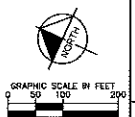
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM



No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 214	05/26/2020	KH
2	REVISIONS WITH REMOVAL OF PARCEL 129	05/26/2020	KH

Kimley»Horn
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PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

KHA PROJECT 114066000
DATE 05/26/2020
SCALE AS SHOWN
DESIGNED BY N.J.L.
DRAWN BY STM
CHECKED BY N.J.L.

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

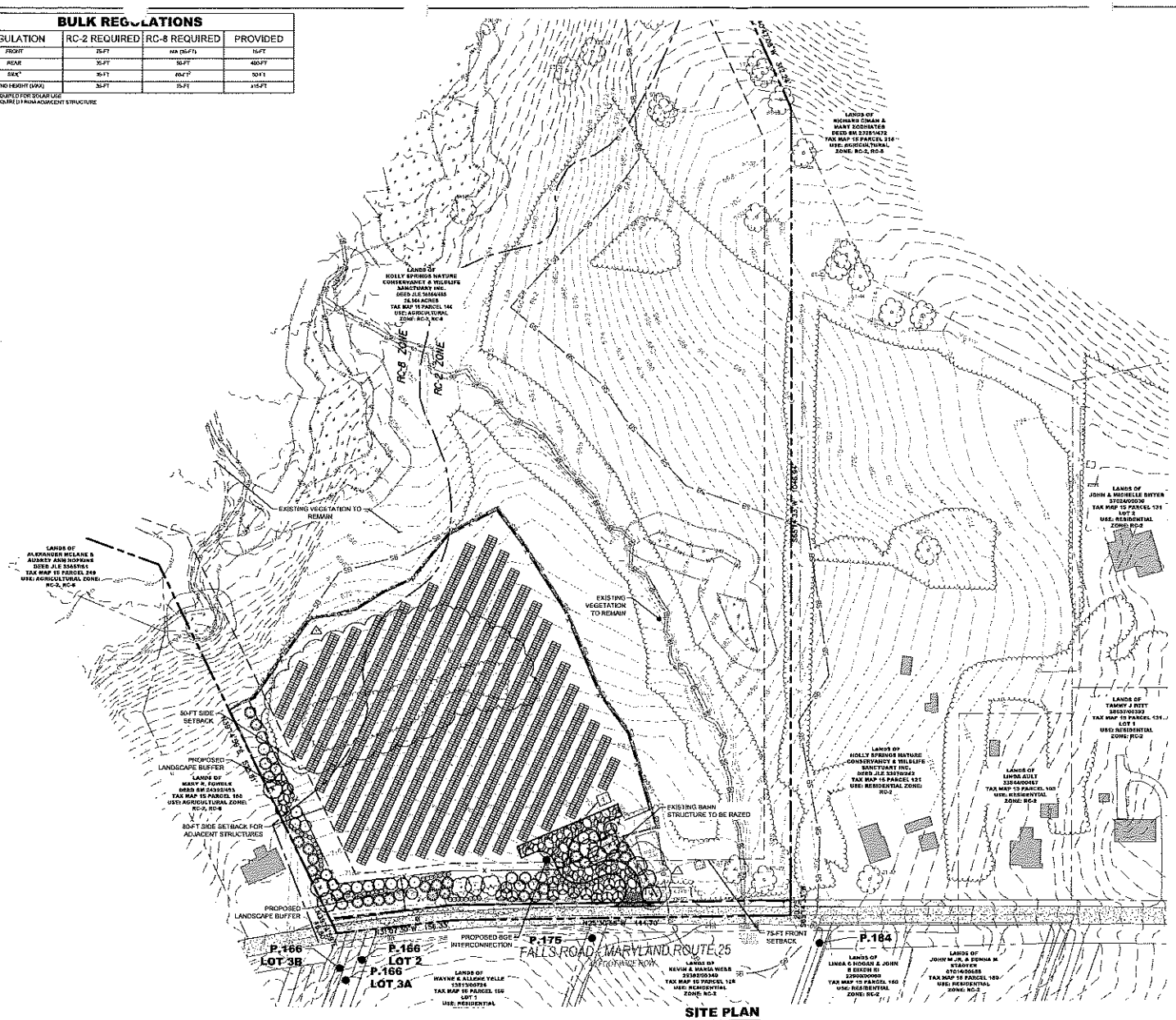
SHEET NUMBER
SHEET 2

Plotted By: Kelley, Sean Plot Scale: 1.0000 Plot Date: Mar 23, 2020 - 08:40:22pm G:\BAL_CIVIL\114066000-Falls Rd Solar\Civil\Plan\Sheet\Special Exception Plan\Site Plan in Accordance Special Exception.dwg
Kimley»Horn and Associates, Inc. and its consultants have prepared these plans and documents in accordance with the terms and conditions of our agreement with our client. Any reuse of these plans and documents by any party other than our client or for any purpose other than that for which they were prepared, or any modification to these plans and documents made by any party other than Kimley»Horn and Associates, Inc. shall be without liability to Kimley»Horn and Associates, Inc. and its consultants. Kimley»Horn and Associates, Inc. shall be indemnified, held harmless and defended by the party responsible for any reuse or modification. Reuse of and reliance on this document without written authorization and adaptation by

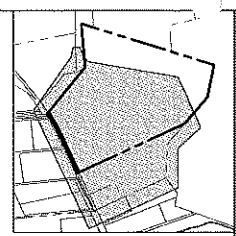
BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (50-FT)	75-FT
REAR	30-FT	50-FT	400-FT
SIDE*	30-FT	60-FT**	50-FT
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

*- 50-FT REQUIRED FOR SOLAR USE
**- 60-FT REQUIRED FROM ADJACENT STRUCTURE



SITE PLAN
TO ACCOMPANY SPECIAL EXCEPTION
SCALE = 1" = 60'



KEY MAP
SCALE: 1" = 500'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UGE UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS VIRGINIA)
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- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

PROPERTY OWNER
(P. 144)
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DEVELOPER/APPLICANT
POWERFACTOR COMPANY
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1 MACE AVENUE
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EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

GRAPHIC SCALE IN FEET
0 30 60 120

No.	REVISIONS	DATE	BY
1	REVISIONS WITH REMOVAL OF PARCEL 121	05/26/2020	RH
2	REVISIONS WITH ADDITION OF PARCEL 131	10/29/2020	MT
3	REVISIONS WITH ADDITION OF PARCEL 131	12/30/2020	MT

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PHONE: 443-743-3470
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KHA PROJECT 114065000
DATE 05/26/2020
SCALE AS SHOWN
DESIGNED BY N.L.
DRAWN BY STM
CHECKED BY N.L.

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2A

Plotted By: Mike Bean Sheet: Falls Rd Solar - Layout1 SHEET 2A SITE PLAN May 22, 2020 09:40:22am K:\BAL_Civil\114065000-Falls Rd Solar\Civil\Cad\Sheets\Special Exception Site Plan to Accompany Special Exception.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associations, Inc. shall be without liability to Kimley-Horn and Associations, Inc.

Neighborhood Sun Benefit Corp ("NSBC")
8121 Georgia Ave,
Suite 300
Silver Spring MD 20910
www.neighborhoodsun.solar

Contact person: Armando Gaetaniello
armando@neighborhoodsun.solar
301 256 5948

Power Factor
Address_____

_____
Website
Contact person

Letter of Intent regarding solar energy site development at 18627 Falls Rd, Hampstead, MD 21074

NSBC and Power Factor (together, the Team Members) intend to develop the site specified above to construct a solar array. The solar energy produced from the array will be made available to BGE customers as a Community Solar Project. The capacity of the project is planned to be of 1.15 MWDC over 8 acres of land. Power Factor is also attaching all specifications of the project.

With this Letter of Intent, it is agreed that the Team Members at NSBC and Power Factor will work together to appeal the Court Order No _____ that halted the project on _____. NSBC shall provide community solar aggregator and customer management services, while Power Factor shall provide project design, engineering, procurement, installation services for the Project. Both Company shall be responsible for their expertise and to undertake commercially reasonable efforts within their respective areas of responsibility. A Third Team Member, Standard Solar, is also involved in this effort and will provide project financing, commissioning, and operations and maintenance of the project in the long term.

Power Factor, as the Company appealing the Court Order, has determined that they would benefit from a collaboration with NSBC. NSBC has been a Community Solar Subscriber Organization since the launch of the Maryland Community Solar Pilot Program. From May 2018 when the first project was launched, NSBC has provided outreach and education, customer acquisition and management, in addition to billing and utility interface on behalf of Maryland ratepayers. NSBC currently has 2400+ customers subscribed to six different community solar projects in Maryland.

The numerous benefits of the community solar model is detailed in the attached brochure. In summary, through community solar, NSBC can:

- provide a local clean energy option to all those that can't or don't want to install solar panels;

- guarantee economic savings to enrolled households;
- help achieve local and state-wide goals to source more clean renewable energy.

The Team Members agree to cooperate in good faith to appeal the Court Order No. _____. Each Team Member shall be responsible for its own direct costs and expenses with respect to the pursuit of the Projects. If any Party incurs in any third-party costs or expenses with respect to the pursuit of the Projects, the Party incurring such costs shall be responsible for them, unless otherwise agreed in writing.

Nothing contained in this Letter of Intent is precluding a Team Member from any and all work unrelated to the Project.

AGREED AND ACCEPTED THIS 26 DAY OF May, 2020.

Power Factor

By: Power Factor

Name: George Lang IV

Title: Owner

Signature: George Lang IV

Neighborhood Sun Benefit Corp

By: NEIGHBORHOOD SUN BENEFIT CORP

Name: ARMANDO GAETANIELLO

Title: DIRECTOR OF STRATEGY AND MD SALES

Signature:

Krysundra Cannington

From: Alyssa Moyers <amoyers@sgs-law.com>
Sent: Wednesday, May 27, 2020 2:53 PM
To: Appeals Board; 'michael@mmccannlaw.net'
Cc: Lawrence Schmidt; Zachary Wilkins
Subject: Power Factor(Case No. 2019-0183-X)
Attachments: Motion for Reconsideration.PDF; Exhibit A - Redesigned Project.pdf; Exhibit B - Letter of Intent.pdf

CAUTION: This message from amoyers@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny,

Please see the attached Motion for Reconsideration to be filed in the above referenced case. At the direction of the security officer, the original Motion has been placed in the Board's bin on the 1st level of the Jefferson Building. A copy of the attached documents, including a full size copy of the plan, have been placed in the mail to Mr. McCann today.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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IN THE MATTER OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC. - LEGAL OWNER AND POWER FACTOR, LLC - LESSEE, PETITIONERS FOR SPECIAL EXCEPTION ON THE PROPERTY LOCATED AT 18627 FALLS ROAD 5TH ELECTION DISTRICT 3RD COUNCILMANIC DISTRICT	*	BEFORE THE BOARD OF APPEALS OF BALTIMORE COUNTY Case Nos. 19-183-X and CBA-20-004

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

OPINION

This case comes before the Board on appeal of the final decision of the Administrative Law Judge ("ALJ") in which the ALJ granted, with conditions, a Petition for Special Exception to allow a Solar Facility by Opinion and Order dated June 20, 2019. Protestants, Valleys Planning Council, Inc., North County Community Group, Kevin Webb, Maria Webb, Linda Ault, Ethan Lavin, Wayne Yelle, Allen Yelle, Mary Ruth Fowble, Glenn Fowble and Donna Fowble (collectively the "Protestants") filed an appeal.

A public hearing was held before this Board on September 19, 2019, September 24, 2019 and October 23, 2019. The Petitioners, Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. ("Holly Springs") and Power Factor, LLC ("Power Factor") (collectively referred to as the "Petitioners") were represented by Lawrence E. Schmidt, Esquire and Smith, Gildea & Schmidt, LLC. The Protestants were represented by Michael R. McCann, Esquire. A public deliberation was held on December 10, 2019.

FACTUAL BACKGROUND

In this case there are two separately deeded parcels of land at issue upon which two separate solar facilities will be constructed, namely: Parcel 144 which consists of 26.39 acres+/- of land, (Tax Acct No.: 0523015126) ("Parcel 144"); and Parcel 121 which consists of 6.12 acres+/- and

having an address of 18627 Falls Road. (Tax Acct. No.: 0504000210) ("Parcel 121"). (Prot. Ex. 13, 14, 22). (See also Amended Petition for Special Exception and Variance). Parcel 144 sits east of Falls Rd. and north/northeast of Parcel 121. Falls Road is a Baltimore County designated scenic byway. (Pet. Ex. 12; Prot. 7).

Parcel 144 has the remnants of an old barn. (Pet. Ex. 8.O, 8.S, 8.T, 8.U). Parcel 144 is split zoned RC2 and RC8. (Pet. Ex. 3A, 3B, 22A, 22B). Parcel 121 is improved with a house and is zoned RC2. (Prot. Ex. 17.1-17.11). (Pet. Ex. 3A, 3B, 22A, 22B). Both parcels are owned by Holly Springs. (Prot. Ex. 14).

The Petitioners are proposing to use 6.46 acres+/- of Parcel 144, and 2.69 acres+/- of Parcel 121, for two solar facilities as set forth on Petitioners' Site Plan (the "Site Plan"). (Pet. Ex. 3C, 3D, 22C, 22D). Together, these solar facilities will generate 1.8 Mw of AC electricity. The northern and northeastern portions of Parcel 144 (approx. 14.2 acres+/-) is wooded, and is classified as "priority" forest (Pet. Ex. 5, 16, 20, 21).

It is proposed that one of the solar facilities will be located entirely within Parcel 144. ("Solar Facility 144"). (Pet. Ex. 3C, 3D, 22C, 22D). Solar Facility 144 will be accessed via a gravel 'S' shaped driveway on the northwestern boundary along Falls Rd. The second solar facility will be located partly on both Parcel 144, and partly on Parcel 121. ("Solar Facility 144/121"). (Pet. Ex. 3C, 3D, 22C, 22D). Separately, Solar Facility 144/121 will be accessed via a 'U' shaped gravel driveway at the south-western end of Parcel 121. (Pet. Ex. 3C, 3D, 22C, 22D).

Each of the solar facilities will be enclosed with its own 7 ft. vinyl coated, chain linked fence. (Pet. Ex. 3C, 3D, 22C, 22D). Running along each of these fence lines is a 100 ft. stream buffer which was generated as a result of a tree-lined stream flowing south-westerly between the two solar facilities. (Id.) That stream flows from another stream located on the forested, northern

end of Parcel 144. Both streams are tributaries to Compass Run. (Pet. Ex. 20). In addition, designated areas of wetlands are also located between the two solar facilities in the same area as the stream. (Pet. Ex. 3A, 3B, 20, 22A, 22B).

The solar facilities will be connected by an underground electric line represented by "UGE" on the Site Plan (the "UGE"). (Pet. Ex. 3C, 3D, 22C, 22D). The UGE will be installed underneath the stream, the forest buffer, the line of trees, and the vegetation on either side of the stream. On Parcel 144, the UGE will continue beneath the fence and stream buffer ultimately connecting to the BGE interconnector.

On the eastern side of Solar Facility 144/121 are nine specimen trees. Additionally, within the area of the U-shaped gravel driveway of Solar Facility 144/121, exists another specimen tree as well as other trees and vegetation. (Pet. Ex. 3A, 3B, 20, 22A, 22B). (The specimen trees are classified as such because they measure at least 30" in diameter.) (Pet. Ex. 5).

The northern end of Parcel 144 contains not only the aforementioned stream, but numerous wetlands areas, as well as two delineated forest stands identified as 'Stand 1' and 'Stand 2' which were determined by Department of Environmental Protection and Sustainability ("EPS"). (Pet. Ex. 5, 20). Stand 2 continues from the northern end of Parcel 144 and extends along the eastern boundary of Parcel 144/121. (Pet. Ex. 5, 20). In addition, the northern end of Parcel 144 is located within a 100 ft. floodplain. (Pet. Ex. 3A, 3B, 22A, 22B).

STANDARD OF REVIEW

Pursuant to Baltimore County Charter, Article VI, Section 603, this Board heard this case *de novo*.

SOLAR FACILITIES LAW

On July 17, 2017, the County Council enacted Bill 37-17 permitting solar facilities by special exception in certain zones, including RC2, RC4, RC5, and RC8. BCZR, §4F-102.A. The County Council imposed limits on the number of facilities per councilmanic district (*i.e.* 10 per district), and on the maximum area for each facility (*i.e.* the amount of acreage that produces no more than 2 megawatts alternating current (AC) of electricity). BCZR, §4F-102.B.1 and 2.

In addition to the special exception factors, there are 10 requirements set forth in BCZR, §4F-104.A:

> 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 RC 4 or RC 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.

There are also provisions regarding maintenance of the facilities:

§ 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.

A solar facility which has reached the end of its useful life must be removed in accordance with §4F-107.

In order to grant a request for a special exception under BCZR, §502.1, 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.

In *Schultz v. Pritts*, 291 Md. 1, 22-23, 432 A.2d at 1331 (1981), the Court of Appeals held that "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and therefore should be denied, is 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."

The Court of Appeals in *People's Counsel for Baltimore County v. Loyola College in Md.* 406 Md. 54, 106, 956 A.2d 166 (2008) upheld that longstanding *Shultz* analysis, explaining that a special exception use has "certain [inherent] adverse effects....[which] are likely to occur". In its analysis, the *Loyola* Court observed that "[t]he special exception adds flexibility to a comprehensive legislative zoning scheme by serving as a 'middle ground' between permitted use and prohibited uses in a particular zone." *Id.*, 406 Md. at 71, 956 A.2d at 176 (2008).

The *Schultz* and *Loyola* Courts, and more recently in *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 285 (2017) have expressly recognized 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." (See also *Loyola*, 406 Md. at 84, 88; 105 *Schultz*, 291 Md. at 11). Based on this standard, once an applicant puts on its *prima facie* evidence in support of a special exception, the opponents must then "set forth sufficient evidence to indicate that the proposed [use] would have any adverse effects above and beyond those inherently associated with such use under the *Schultz* standard." *Attar*, 451 Md. at 287. (*See Montgomery County v. Butler*, 417 Md.271, 276-77 (2010) (opponent must show "non-inherent adverse effects" to "undercut the presumption of compatibility enjoyed by a proposed special exception use"). (*See also*, *Clarksville Residents Against Mortuary Defense Fund, Inc. v. Donaldson Properties*, 453 Md. 516, 543 (2017) ("there is a presumption that the [special exception] use is in the interest of the general welfare, a presumption that may only be overcome by probative evidence of unique adverse effects").

MOTIONS TO DISMISS

The Protestants argued that this case is not ripe for consideration by the Board until the limited exemption process is determined, and the development plan has finished proceeding through the County agencies. The Protestants emphasized that the County agencies may or may not determine that the proposed Site Plan meets with County approval. The Protestants contend that the development process and the County comments impact the scope of review under both BCZR, Article 4F and BCZR, §502.1. In the Protestants' view, the County agencies could advise that zoning relief (other than special exception requested here) is required. As a result, they contend that any opinion and order by this Board would be advisory; therefore the case should be dismissed.

Protestants further allege that because BCZR, §4F-102.B.4 restricts the number of solar facilities to 10 per councilmanic district, the two proposed solar facilities would exceed that limit. This contention is based on the list of solar facilities maintained by the Zoning Office.

In response, Petitioners highlighted that under BCC, §32-4-221, the Petitioners have the option to file for zoning relief first, or to combine the zoning relief along with development plan approval. From the Petitioners' perspective, the use of a property under the requested zoning relief needs to be determined before a financial investment is made on a development plan. Further, if an exemption under BCC, §32-104(b) is granted, a development plan will be reviewed by the County agencies. In regard to the limit on the number of solar facilities per councilmanic district, Petitioners respond that the maximum number of solar facilities is based on the building permits issued.

The Board agrees with the Petitioners on the Motion to Dismiss in that BCC, §32-4-221 permits an applicant to choose whether to combine zoning relief with a development plan case, or to bifurcate those issues. As such, this Board will address the limited exemption requested under BCC, §32-4-106(a)(1) herein.

EVIDENCE

Testifying for the Petitioners were six witnesses.

1. Nick Leffner, PE.

Nick Leffner, PE was accepted by the Board as a professional engineer with particular expertise in the areas of planning, zoning and limited exemption applications. Mr. Leffner was

hired by Power Factor to prepare the Site Plan. (Pet. Ex. 3C, 3D, 22C, 22D).[1] Mr. Leffner testified that neither of the two Parcels at issue were used for farming.

Explaining the various environmental features of these Parcels, Mr. Leffner testified that neither of the two solar facilities would be located within the streams, wetlands, stream buffers, forest stands or floodplains. He advised that no environmental variances or waiver would be requested as none would be needed. He explained that the County Environmental Impact Review department ("EIR") approved the limits of disturbance to the environmental features.

Mr. Leffner testified that the initial proposal submitted to the County in the Petition for Special Exception was for one solar facility to be located entirely on Parcel 144. Having received unfavorable comments from EPS on December 24, 2018 due to the impacts on forest stands, floodplains, wetlands, streams, and forest buffers presented under that proposal, an Amended Petition was filed on May 17, 2019, proposing the two solar facilities here.

Proceeding through the requirements of BCZR, §4F-104, Mr. Leffner opined that the proposed solar facilities will not be located on land encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement. (BCZR, §4F-104.A.1). Similarly, the proposed land areas are not located within a Baltimore County historic district or on the Baltimore County Final Landmarks List. (BCZR, §4F-104.A.2). Likewise, the land is not located in a forest conservation easement or designated conservancy area (BCZR, §4F-104.A.3).

Mr. Leffner stated that the aboveground components of each solar facility including the solar collector panels, inverters and similar equipment would be set back a minimum of 50 feet

[1] The Board required that Mr. Leffner correct the Site Plan (Pet. Ex. 3C, 3D) due to several mistakes and resubmit new Site Plans at the next hearing date. (Pet. Ex. 22C, 22D).

from the tract boundary. (Pet. Ex. 3C, 3D, 22C, 22D). (BCZR, §4F-104.A.4). Fifth, neither solar facility will exceed 20 ft. in height; the actual height of each panel is 9 ft. (BCZR, §4F-104.A.5).

With regard to the landscape buffer requirement, aerial photographs of the Parcels show existing trees and vegetation. (Pet. Ex. 4A and 4B). Mr. Leffner described the existing trees as being of varying heights and density with small breaks in the vegetation along Falls Rd. He stated that the topography generally slopes from the northeastern end into a bowl shape, causing both Parcels to sit at a lower elevation than Falls Rd. (§4F-104.A.6). (Pet. Ex. 20). The Landscape Plan has not been approved by the County. With regard to the security fences, Mr. Leffner reiterated that two 7 ft. black vinyl coated chain link fences will be installed around each of the solar facilities. (§4F-104.A.7).

As to the special sxception factors, it was Mr. Leffner's opinion that the proposed solar facilities would have no impact on the health, safety or general welfare of the locality. In support of this position, he highlighted that each solar facility met the 50 ft. setback and that the proposed landscaping would provide a screen to the neighboring properties. Mr. Leffner commented that a 6 ft. high, 125 ft. long privacy fence would be installed between the southern property line of Parcel 121 and the adjacent neighbor, Linda Ault. In addition, Mr. Leffner said that the Petitioners moved the access driveway for Solar Facility 144/121 away from the property line of adjacent neighbor John Dwyer. (BCZR, §502.1.A).

With regard to the tendency of these solar facilities to cause congestion along Falls Rd., Mr. Leffner stated that because these solar facilities are unmanned, there will be no congestion. (BCZR, §502.1.B). As for the potential to cause fire or other danger, Mr. Leffner mentioned that all solar facilities are required to comply with national and local electrical codes. The fire department will have access via a box posted on a mount at one of the entrance driveways. (BCZR,

§502.1.C). Because this use does not generate traffic or attract people, it was Mr. Leffner's position that there would not be overcrowding of the land or undue concentration of population. (BCZR, §502.1.D).

He further testified that there is no interference with schools, parks, water, sewerage, transportation or other public improvements as these Parcels are located outside the Urban Rural Demarcation Line ("URDL"). (BCZR, §502.1.E). There is no impact on light or air as the maximum height of the solar facilities is 9 ft. and therefore the adjacent homes will not be shadowed. (BCZR, §502.1.F). Mr. Leffner opined that since the proposed solar facilities are permitted by special exception, they are consistent with the purposes of the RC2 and RC8 zoning regulations. Additionally, because neither Parcel was used for farming there is no negative impact on agriculture. (BCZR, §502.1.G).

With regard to consistency with impermeable surface and vegetative retention provisions of BCZR, §502.1.H and detrimental impacts on environmental and natural resources under BCZR, §502.1.I, including forests, streams, wetlands, aquifers and floodplains, Mr. Leffner's testimony was that these solar facilities did not impact the environment. He highlighted that the topography of both Parcels drains toward the stream which runs between those Parcels. As such, drainage from the solar facilities will fall toward that stream.

With regard to the Petition for Variance requesting a 0 ft. setback in lieu of the 50 ft. setback from the property line between Parcel 144 and Parcel 121, Mr. Leffner relied upon the environmental constraints of both parcels (streams, the forest buffer, the floodplains, the wetlands, the downward slope of the land from RC8 land in northern end to a converging point at the stream between the parcels; steep slopes on eastern end of Parcel 144/121; the shape of Parcels 144 and 121; and the specimen trees, particularly the specimen tree located in the middle of Parcel 121) for

his opinion that the Parcels were unique and that, as a result, the Petitioners would suffer a hardship if the solar facilities were not approved.

In support of his opinion that the Petitioners would suffer a practical difficulty, Mr. Leffner stated that, if the 50 ft. setback was required from the internal property line between Parcels 144 and 121 under BCZR, §4F-104.A.4, the scope of the project area would be reduced by one-third (1/3). This which would require the removal of the solar panels within 50 ft. setback area. If the removal of solar panels occurred, he stated that the project would not be financially viable for the Petitioners.

With regard to the Application for a Limited Exemption from the development process under BCC, §32-4-106(a)(1)(vi), Mr. Leffner testified that the solar facilities satisfied the term "minor commercial structure". He relayed that this use is not for human habitation, does not use water, is not a business use, and has no buildings. Consequently, it was his position that the Site Plan should be exempt from the development process and the Petitioners should be permitted to apply directly for a building permit.

On cross, Mr. Leffner stated that the UGE would be installed by using a horizontal directional drill which would be bored ("directional boring") underneath the stream running between Parcel 144 and Parcel 121. The horizontal distance to be drilled would be greater than 200 ft. The drilling would occur at an unknown depth. He admitted that the root system for the trees which line that stream might be impacted by the directional boring and that, in the event a tree root system is damaged, an environmental variance would be required.

It was Mr. Leffner's opinion that under BCC, §33-3-112(b)(2)(i)(ii)(iii), directional boring did not violate the prohibition against disturbance of vegetation and soil within the forest buffer, and that it did not require an alternatives analysis under BCC, §33-3-112(c)(2). (Prot. Ex. 2). Mr.

Leffner did not agree that a UGE was a 'utility' under BCC, §33-3-112(c)(2)(i)(ii) which would only be permitted if EPS approved an alternatives analysis demonstrating that no other feasible alternative exists, and that minimal disturbance would take place.

Mr. Leffner maintained this position notwithstanding comments from EPS dated June 3, 2019 and July 3, 2019 which each stated that: "...the underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require review and approval by EPS of an alternatives analysis, and must be included in the project's limit of disturbance." (Prot. Ex. 3A and 3B).

During cross examination, Mr. Leffner admitted that the reason the Petitioners are proposing to construct two solar facilities rather than one, is due to the stream which bisects them. He conceded that while one solar facility could be constructed, it was not a financially viable option for the Petitioners. He further admitted that these solar facilities will result in clearing of trees in four areas as follows: (1) the line of existing trees and vegetation in the center of Solar Facility 144/121; (2) the line of existing trees and vegetation on the northern end of Solar Facility 144/121; (3) the line of existing trees and vegetation in the center of Solar Facility 144; and (4) the line of existing trees and vegetation around the 'S' shaped and 'U' shaped gravel driveways. In answering this line of questions, he was not able to provide a count of the number of trees which would need to be removed for these solar facilities to be constructed.

2. Stephen Barrett - Glare Expert.

The Petitioners contracted with Stephen Barrett, a principal in Barrett Energy Resources Group located in Concord, MA to conduct a study on whether the proposed solar facilities panels will produce glare from the sun's rays. (BCZR, §4F-104.A.8). The Board accepted Mr. Barrett as an expert in glare analysis. (Pet. Ex. 10).

Toward that end, he prepared a glare study report using computer software known as *GlareGauge* which is accepted by the U.S. Federal Aviation Administration, and is now considered the industry standard. (Pet. Ex. 11). Mr. Barrett was involved in the development of this model which became part of the 2013 FAA Guidance document for solar projects at airports, and is now applied when determining glare in residential areas. The program only considers the solar array, the movement of the sun and the position of observers; it does not take into account terrain, vegetation, or other structures which might obstruct the observer's view of glare. *Id.* The program determines the path of the sun throughout the year.

Mr. Barrett testified that the FAA glare model includes a 3-step process which he applied in this case. The first step is to identify the receptors (adjacent properties, roads, motor vehicles) where glare from the proposed solar panels could potentially reflect the sun's rays. Without considering terrain, vegetation or structures, he then located 17 receptors along Falls Rd. (14 residences and 3 motor vehicle points of impact). The selection of receptor sites was derived from Google Earth. He discovered that 10 of the 17 receptors have the potential for glare (for longer than 5 minutes annually). He is concerned only with whether glare is produced from a selected location, as glare is a function of where the sun is in the sky in relation to the time of year. His focus was on potential glare from these locations due to sun rising in the east and setting in the west, while recognizing that the panels will be fixed toward the south.

Mr. Barrett next factored in the existing vegetation and terrain. His report indicated that there would be no glare from March through September each year. He emphasized the surrounding evergreen trees do not lose their needles during the winter. In addition, the solar panels have an anti-reflective coating which, while producing electricity, does not produce glare. The solar panels will face south to maximize solar electricity. As a result, while the panels will not be invisible, he

opined that there will not be any public hazard or nuisance; any potential glare will be limited. The additional proposed landscaping will also reduce any potential for glare.

The second step of the model factors is the existing trees, vegetation and terrain. Mr. Barrett opined that the existing natural features on this Property obstruct the glare at the receptors. In particular, the shape of the Property is that of a bowl which will minimize and diffuse any glare produced. The third step considers the additional landscaping proposed. In this case, he testified that the proposed landscaping minimizes the potential for glare.

In summary, Mr. Barrett opined that no glare of low or high intensity will be created.

3. Jeffrey Perlow, Zoning Review Office.

Jeffrey Perlow, Planner II of the Zoning Review Office for Baltimore County, was subpoenaed by the Petitioners to testify. Mr. Perlow explained that, pursuant to BCZR, §4F-102.B.3 and 4, the Zoning Office has kept a list of petitions for solar facilities and the building permits issued per councilmanic districts. (Pet. Ex. 18). He confirmed that while there have been 11 petitions, as of July 8, 2019, no permits have been issued for the 3rd District. (Pet. Ex. 18). Lastly, Mr. Perlow confirmed that the Zoning Office would continue to review petitions until the maximum 10 permits are issued.

4. Michael Kulis - Natural Resource Specialist II, Environmental Impact Review.

Michael Kulis of EIR, was also subpoenaed by the Petitioners to testify. It was Mr. Kulis' job to review this Petition. By letter dated June 6, 2019, Mr. Kulis approved the wetland delineations, but disapproved the forest stand delineations due to the specimen trees which are located within the solar array areas. (Pet. 21). Mr. Kulis also confirmed that the County had not

yet received a Forest Conservation Plan for the northern part of Parcel 144 which must be submitted prior to the issuance of the grading and building permits. (Pet. Ex. 21).

With regard to the analysis of steep slopes and erodible soils, he testified that the minimum required setbacks of 100 ft. from a stream, and 25 ft. from edge of a wetland, were not adequate here due to the steep slopes. Thus, by letter dated June 6, 2019, Mr. Kulis disapproved of that analysis and requested revisions. (Pet. 21).

Mr. Kulis mentioned that, if left in their natural state, a forest would grow near the stream. With regard to potential disturbance of the forest buffer by the UGE, he added that EIR would require and review the limits of disturbance on the grading plan to make certain that the connection points were contained within each solar array and not within the forest buffer. Because it has been proposed that the UGE will travel underneath the stream and forest buffer, Mr. Kulis feels that the Forest Buffer law is not violated. He admitted that if the UGE cannot avoid impacts, then impacts must be minimized. He clarified that as long as the stream is not disturbed, the County would not require an Alternative Analysis. The County has discretion in determining the location for the crossing area and the depth of the UGE. Finally, because EIR will need to sign off on the building permit(s), EIR will have further revisions to the Forest Stand Delineations and Steep Slopes Analysis.

On cross examination, Mr. Kulis explained that while there will be impacts to environmental resources here, EIR views these as minimal. Although there will be violations of BCC §33-1-112(c)(ii) and (iii) with regard to clearing vegetation and soil disturbance within the Forest Buffer, EIR has an unwritten policy of permitting what EIR views as minimal. He further conceded that while an Alternatives Analysis is legally required under BCC §33-1-112(c), EIR does not require one if the stream is not disturbed. Here, EIR believes the UGE is not a disturbance.

EIR views the Forest Buffer law as protecting water quality which will not be affected by the proposed UGE.

5. Jon Kraft – Landscape Architect.

Jon Kraft was admitted as an expert landscape architect licensed in the State of Maryland. (Pet. Ex. 23). Although Mr. Kraft prepared a landscape plan, the Board was not presented with that plan. While it has not been formally filed with the County, the County's Landscape Architect has preliminarily reviewed it. At the recommendation of the County, Mr. Kraft changed the gravel driveway for Parcel 121 to an 'S' shape. Mr. Kraft opined that his Landscape Plan meets the requirements of the Comprehensive Manual of Development Policies, the Baltimore County Landscape Manual, and the BCZR. Along Falls Rd., he stated that diverse trees will be planted measuring 45 ft. (30 ft. is required) to supplement the existing ones. Along the Fowble property, proposed landscaping measuring 25 ft. (10 ft. is minimum) will be installed. The proposed landscaping will consist of various deciduous trees in layers of shrubs and trees. Mr. Kraft explained that approval of the final Landscape Plan is an ongoing process.

6. Andrew Streit – Power Factor.

Andrew Streit testified as the representative of Power Factor where he has been employed as the Director of Business Development for 1½ years. Mr. Streit explained that Power Factor has never installed a Community Solar Facility. Power Factor's experience with solar is installing residential roof top units and solar facilities on military bases. It has installed a ground mounted solar facility in South Carolina, but not in Baltimore County. Power Factor is not a Subscriber Organization under the Community Solar Energy Generating Systems Pilot Program under MD Code Ann., PU, §7-306.2 ("Community Solar Program"). Mr. Streit testified that, an unrelated

entity namely, Meade Communities, Inc. ("Meade"), has been approved by the Public Service Commission ("PSC") as a Subscriber Organization for this project.

Initially, Mr. Streit testified that Meade would be the entity constructing both solar facilities, would be responsible for connecting the solar facilities to the BGE grid, and would prepare the application for BGE approval. Additionally, he stated that Meade will install the meter(s) needed to monitor the amount of electricity generated to the grid. Meade will maintain the list of subscribers buying electricity from the proposed facilities. Meade will also post the security bond required under BCZR, §4F-105.

Mr. Streit testified that the solar panels on both facilities will not rotate; they will be fixed facing south. Together these solar facilities will generate 1.85 mg of AC electricity. He explained that the solar panels do not emit chemicals. Beneath the panels will be ground cover. Rain will clean the panels. With regard to noise, there will be a humming sound which can be heard on-site. With regard to the potential for fire, Mr. Streit testified that he is aware of six fires on roof top solar installations. There is a potential for the transformer to catch on fire.

On cross examination, Mr. Streit admitted that Power Factor is paying for OSHA violations due to an incident where one of their employees was electrocuted.[2] He stated the Power Factor would enter into a 25-year lease with Holly Springs but later admitted that the lease would be assigned to Meade. Power Factor has never connected separate solar facilities underneath a stream.

He also conceded that the solar panels to be installed have an efficiency rating of 18% but that panels with a higher efficiency rating do exist. A high efficiency rating would be 22% and the highest possible rating is 42%. If a higher efficiency panel were used, he agreed that less panels would be needed. He did not know the minimum amount of land needed to produce 1.85

[2] The Board did not admit into evidence the OSHA violation documents offered by Protestants (Prot. Ex. 8).

mg. When asked about the number of inverters, Mr. Streit testified that there would be 35 inverters within each of the solar facilities.

Mr. Streit admitted that if they were to run power lines above ground (rather than using an UGE), it would be more expensive. Additionally, if the solar facilities were separately connected to the BGE interconnector, it would require additional BGE approvals.

He acknowledged that Power Factor's role in regard to this project will be as a maintenance contractor. Power Factor will not have a partnership agreement or other business agreement with Meade. There is no common ownership between Power Factor and Meade. With regard to the ownership of the equipment for each solar facility to be installed, Mr. Streit initially testified that Meade would own the equipment, but then stated that the solar facilities would be owned by another entity namely, "Onyx Renewable Group" ("Onyx"), a New York based energy business. Onyx would enter into an agreement with Holly Springs through Meade. He then indicated that Power Factor would have a maintenance agreement for the equipment with Onyx and would apply for the building permit under BCZR, §4F-105.

Protestants' Case.

1. Glenn Fowble – 3306 Baker's Schoolhouse Rd., Freeland, MD 21053. Mr. Fowble owns the property at 18728 Falls Rd., Hampstead, MD 21074 which is a 6 ½ acre unimproved piece of land. His mother, Mary Fowble lives at 18719 Falls Rd., Hampstead, MD 21074, where Glenn Fowble lived for 20 years as a child. Mr. Fowble will inherit his mother's property. Glenn Fowble is concerned that the solar panels will produce glare on his mother's property even with the proposed trees to be planted. At the present, there is no vegetation between her house and the Solar Facility 144. (Prot Exs. 4A-4D). Even as matured, the proposed landscaping will not block

her view of the solar panels. The installation of the solar facilities will decrease their property values.

Mr. Fowble is also concerned about the environmental factors on Parcels 144 and 121. In particular, he pointed out that Compass Run runs through both his mom's and his property. Compass Run is a tributary to Prettyboy Reservoir. He believes that the floodplains on Parcels 144 and 121 will be negatively affected by the water runoff from the panels.

2. Wayne Yelle. 18708 Falls Rd., Hampstead, MD 21074. Wayne Yelle has lived in his home for 20 years. His wife has lived in the same home for 41 years. His house sits on 1.23 acres, is 10-12 ft. above Falls Rd., and is approximately 50 yards from Falls Rd. He presented the Board with photographs of his property. (Prot. Ex. 10A-10E). He testified that he is concerned that he will be staring at the solar facilities even if additional landscaping is planted. This view will devalue his property.

3. Theresa Moore. Executor Director of Greenspring Valley Planning Council, 118 West Pennsylvania Avenue, Towson, MD 21204. Ms. Moore testified on behalf of the Valleys Planning Council ("VPC") who, in accordance with Rule 8 papers, voted to oppose the special exception request here. (Prot. Ex. 11). She investigated the background of Holly Springs and its owners. In this case, she discovered that Holly Springs is a 501(c)(3) organization formed to preserve land and to educate the public. (Prot. Ex. 12). The non-profit corporation has three board members, two of whom are married. She stated that the marital status violates the IRS rule that 51% of the board cannot be related. She reviewed Holly Springs' IRS form 990 which indicated that Holly Springs reported more in rent than contributions. (Prot. Ex. 12). She tried to make sense out of the conservation easements listed but acknowledged that no agricultural preservation,

environmental or rural legacy easements are recorded in the Land Records for these Parcels. She also did not find any easements.

VPC opposes the special exception here because it involves two separately fenced-in solar facilities connected by an UGE. There are two separately deeded parcels of land. (Prot. Ex. 14). Ms. Moore emphasized that the Community Solar Program prohibits solar facilities on adjacent properties. (Prot. Ex. 15). In this case, trees will be cut down and tunneling underneath a stream will occur in order to make this project work.

4. Renee Hamidi 8 Sparks Station Rd., Sparks, MD. Renee Hamidi is the Executive Director of Manor Conservancy. Ms. Hamidi researched conservation easements for Holly Springs in the Land Records of Baltimore County but did not find any. As Executive Director, she works with land trusts in Baltimore County to preserve land using conservation easements. She testified that the IRS regulation requires perpetuity of the easements.

5. Kathleen Pieper – 4310 Beckleysville Rd., Hampstead MD 21074.

Ms. Pieper is a retired biochemical engineer who worked at Proctor and Gamble. She lives a 4310 Beckleysville Rd., Hampstead MD 21074. She is also the President of the North County Community Group, LLC ("North County"); is on the Prettyboy Reservoir Council; and on the BGE Community Advisory Council. Ms. Pieper testified in her individual capacity and as President of North County pursuant to Rule 8 papers. (Prot. Ex. 16).

North County is a volunteer organization of 500 members formed in 2015 with boundaries from the Maryland-Pennsylvania line in the north, York Rd. in the east, the Baltimore/Carroll County line in the west and Mt. Carmel Rd. in the south. Parcel 144 and 121 are within the boundaries of North County.

Ms. Pieper presented information to the Board showing all of the BGE Subscriber Organizations with projects completed or pending under the Community Solar Program. (Prot. Ex. 18 and 19). She pointed out that Meade's subscriber application ("Meade's Application") filed in November of 2018, had not been approved by the PSC for this project as of October 7, 2019 as evidenced by the BGE Community Solar Pilot Program Application List. (Prot. Ex. 18).

A supplemental submission to the Meade Application entitled "Attachment B: Planned Project Information" (which was filed by another entity, Corvias Military Living, LLC ("Corvias"), indicating that it was the parent company of the managing member of Meade), was filed. Meade did not check the boxes that it will own or operate the solar facilities but that the facilities would be collectively controlled by a group of subscribers. (Prot. Ex. 20).

On the supplement, Corvias indicated that the owner of these facilities would be "Solar Mission 1, LLC" and the operator is "Onyx Asset Services Group, LLC". (Prot. Ex. 20). It further states that Meade is not the developer, contractor or owner of these projects; Meade is the Subscriber Organization which handles the metering and billing of the subscribers. Corvias oversees the billing. (Prot. Ex. 20). With this evidence, Ms. Pieper expressed her concern that an unknown entity would be responsible in event there is a problem with the solar facilities.

Ms. Pieper testified that on August 30, 2019, Power Factor also submitted a Subscriber Application signed by both Mr. Streit and George Lang, IV ("Mr. Lang") (the "Power Factor Application"). (Prot. Ex. 19). On the Power Factor Application, Power Factor indicated that it would "develop", "build" and "operate" the facilities at issue. (*Id*). That application also stated that Power Factor "has no affiliated approved Subscriber Organizations." (*Id*). Ms. Pieper further highlighted that Mr. Streit and Mr. Lang both affirmed by sworn Affidavit attached to the Power

Factor Application that the applicant, Power Factor, had no actions or fines taken or pending against it and specifically that:

> The Applicant, including any of its affiliates engaged in the sale of electricity or related services, the general partners, corporate officers or directors, or limited liability company members, managers or officers of the Applicant or its affiliates:
>
> 1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any State or Federal consumer protection law or regulation; and has not ever been convicted of a felony; or alternatively
>
> 2. Has disclosed by attachment all such sanctions, penalties or convictions.

(Prot. Ex. 19). Ms. Pieper expressed her concern that the both Mr. Streit and Mr. Lang were not truthful about the pending OSHA violation as admitted by Mr. Streit for which Power Factor was paying a fine. (*Id*). Ms. Pieper also testified that, based on her research, Power Factor did not have the experience to design, build, operate or decommission ground-mounted community solar facilities.

Rebuttal.

Andrew Streit. In light of the evidence produced by the Protestants, Mr. Streit testified again in rebuttal in an attempt to change his testimony in accordance with counsel's leading questions. Mr. Streit testified that Power Factor was a contractor responsible for building and maintaining the facilities. Power Factor was charged with obtaining the zoning approvals, getting all approvals through BGE and PSC, and obtaining all building and electrical permits from Baltimore County. Mr. Lang, the owner of Power Factor, has a Maryland Home Improvement Commission License (MHIC) and also holds a Master Electrician license.

Mr. Streit corrected his previous testimony that Meade still needed to get PSC approval to be a Subscriber Organization in this case. Power Factor also applied to be a Subscriber Organization for these facilities but has not yet been approved by the PSC. Because of this, Power Factor is not permitted to enter into the interconnection agreement with BGE. Power Factor has built over 1,000 solar facilities (over 50 mg) on military properties, none of which are located in Baltimore County. Corvias is the largest owner of military housing. The Department of Justice has jurisdiction over these military properties. Baltimore County permits are not needed to construct solar facilities on military bases.

Mr. Streit agreed that the lease between Power Factor and Holly Springs will be assigned to Meade. He changed his testimony that "investors" such as Onyx (not Meade) would own the solar facilities equipment. Onyx was providing the funds to buy the equipment and post the bond required under BCZR §4F-105.A. Holly Springs will have no involvement with the maintenance, ownership or operation of the solar facilities. In regard to a decommissioning agreement, Power Factor and/or Onyx would be responsible.

DECISION

A. Special Exception

As set forth above in BCZR, §4F-102.A, solar facilities are only permitted by special exception under the factors set forth in BCZR §502.1. The Board unanimously finds that the evidence presented in support of proposed solar facilities at issue failed to satisfy several of the special exception factors in that these solar facilities:

> (1) would be detrimental to the health, safety or general welfare of the locality involved (§502.1.A);
>
> (2) would be inconsistent with the spirit and intent of the BCZR (§502.1.G);

> (3) would be inconsistent with the vegetative retention provisions of the BCZR (§502.1.H); and would be detrimental to the environmental and natural resources of the site and vicinity including forest, streams, wetlands, and floodplains and R.C.2 zone (§502.1.I).

This Board was not persuaded by the evidence presented by the Petitioners and found the evidence presented by the Protestants more convincing as follows:

(1) Detrimental to Health, Safety and General Welfare of the Locality Involved – BCZR, §502.1A.

With regard to the health, safety and welfare of the Hampstead area, the Board specifically finds that Power Factor lacks the knowledge and the experience with community solar projects; that the Petitioners were unclear about relevant details about the proposed facilities; that the Petitioners were less than forthcoming on the Power Factor Application and in its testimony before this Board; the Petitioners lack the financing necessary to construct the solar facilities here and to post bonds required under the Community Solar Program law and BCZR, §4F-105.A, and as a result of these facts, requires the involvement of multiple non-petitioner entities over whom this Board has no authority.

First, Power Factor, through Andrew Streit, discussed its intention to become part of the Community Solar Program as set forth in MD Code Ann., PU, 7-306.2 *et seq.* However, it is undisputed that Power Factor's experience in the solar industry is limited to installing residential rooftop panels and solar facilities on military bases. The installation of solar facilities on military bases does not require approvals under the Community Solar Program or through Baltimore County. While the Petitioners' inexperience alone is not dispositive, that fact, in combination with Mr. Streit's testimony that 35 inverters would be installed within each solar facility, revealed a lack of knowledge about community solar facilities which use one inverter.

Second, Power Factor has not been approved as a Subscriber Organization by the PSC. (Prot. Ex. 19). As a result, in order to enter into the interconnection agreement with BGE, Power Factor needs Meade to be the Subscriber Organization. Yet, according to a list of approved Subscriber Organizations maintained by BGE under the Community Solar Program, Meade is not an approved Subscriber Organization for this project, as that list . identifies community solar projects with expected operation dates through December 31, 2020. (Prot. Ex. 18).

In reviewing Meade's Application (Prot. Ex. 20), the Board finds the statement submitted by Corvias on behalf of Meade, also contradicted Mr. Streit's testimony. Mr. Streit testified that Meade was to be the owner, and developer of the solar facilities. Through the Protestants' evidence, we learned about four non-petitioner entities that would be controlling these facilities. Mr. Streit testified that Onyx would be the owner and Power Factor would be the operator. Meade indicated on its Application that "Solar Mission I, LLC will be the owner; Onyx will be the operator; Meade would be the Subscriber Organization; and Corvias would oversee the billing. It was not lost on this Board that all of this inconsistency, and lack of candor, came to light through evidence offered by the Protestants, not the Petitioners. More importantly, it became clear that Power Factor's role was limited to that of a maintenance contractor.

Further, although Mr. Streit testified that Power Factor is relying on Meade to be the Subscriber Organization, Mr. Streit did not mention on direct exam that Power Factor had also applied to be a Subscriber Organization in August of 2019. (Prot. Ex. 19). Again, it was the Protestants, not the Petitioners, who produced the Power Factor Application. (Prot Ex. 19). Through cross examination, the Protestants pointed out that there were several false statements and omissions on that application which was executed by Mr. Streit and/or Mr. Lang under oath.

While the Board did not admit the OSHA violation document into evidence, Mr. Streit admitted in cross examination that Power Factor did not disclose the OSHA violation on the Power Factor Application. He explained that Power Factor is paying a fine for the electrocution of an employee. Yet, on the Power Factor Application, Power Factor checked the box that there were no actions taken against it:

> 8. Actions Against Applicant. Provide the following information or the Applicant.
>
> □ Actions such as Suspensions/Revocations, Limitation, Reprimands, Fines, Consent Decrees, or other similar actions have been taken or are pending against the Applicant. If checked, provide an attachment describing the action; and include docket numbers, offense dates, and case numbers, if applicable.
>
> ■ No such action has been taken.

Moreover, on the Affidavit attached to the Power Factor Application, Mr. Lang swore under oath that for the previous 10 years, neither Power Factor, nor any of its members, managers, officers had any civil, criminal or regulatory sanctions or penalties imposed against it:

> 1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any State or Federal consumer protection law or regulation, and has not ever been convicted of a felony; or alternatively
>
> 2. Has disclosed by attachment all such sanctions, penalties or convictions.

(Prot. Ex. 19).

Next, on the Verification page of the application, Mr. Lang swore to the following:

> The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application.
>
> * * * * *
>
> That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she

> expects said Applicant to be able to prove the same at any hearing hereof.

(Prot. Ex. 19). In our view, these false statements and omissions, which were submitted to gain access to the Community Solar Program (not some other unrelated application), negatively impact the Petitioners' credibility in this case and is detrimental to the health, safety and welfare of the local.

Additionally, on the Power Factor Application, Power Factor did not disclose its affiliation/connection with Meade as a Subscriber Organization for this project. (Prot. Ex. 19, p. 10). Equally problematic for the Petitioners, Meade also failed to disclose its connection to Power Factor on the Meade Application. Even if there is no parent/subsidiary relationship between these entities, according to Mr. Streit, Power Factor will execute a 25 year lease with Holly Springs but then will assign this lease to Meade, thus establishing a relevant connection. The Petitioners also did not disclose that they had filed a Subscriber Application in August, 2019 which filing date occurred before the first hearing date before this Board.

The Board has determined that, in light of the omissions and inconsistencies, installing solar facilities on these Parcels will be detrimental to the safety and general welfare of this locality. Power Factor will only be a maintenance contractor and is the only entity to which the Board's Order will apply. It is undisputed that Holly Springs will not be involved with the solar facilities; its role is to collects rent payment under the lease.[3]

[3] MD Code Ann., PU, §7-306.2(d)(11) a Subscriber Organization may contract with third parties to finance, build, own or operate a community solar energy generating system. Here, the Petitioners are not the Subscriber Organization.

(2) Inconsistent with the Spirit and Intent of BCZR. (§502.1G).

The Board finds that the evidence is inconsistent with the spirit and intent of the BCZR as required by BCZR, §502.1.G. Specifically, the proposed solar facilities will be inconsistent with BCZR, §4F-105 and §4F-106. While Mr. Streit testified that Power Factor will apply for the building permit if the special exception is approved, we learned that Power Factor does not have the finances to post any bonds. BCZR, §4F-105 states that the applicant for the building permit shall also post the bond. Mr. Streit's testimony vacillated in that he initially testified that Meade would post the bond, and then stating that Onyx would post the bond.

Importantly, the Board is reminded that the purpose of the bond is to: "procure the repair of any unsafe or hazardous conditions under BCZR, §4F-106, or removal of a solar facility under Section 4F-107, in accordance with Section 3-6-402 of the County Code." In short, the Petitioners will not be responsible in the event that there is an "unsafe or hazardous condition" requiring such correction.

Similarly, this Board finds that the proposed ownership of the solar facilities by a non-petitioner entity, Onyx (or some other undisclosed entity), contradicts BCZR, §4F-406.A and B. The Board has been entrusted to determine who will own, operate and have control over solar facilities. Initially, Mr. Streit testified that Meade would own the facilities, then he stated that the facilities would be owned by "a group of investors". When pressed, he changed his testimony for a third time and claimed that Onyx, or a subsidiary of Onyx, may own the facilities.

BCZR, §4F-406.A and B require that all parties who have a lease or ownership interest in the solar facilities be responsible for maintenance of the solar facilities:

> A. All parties having a lease or ownership interest in a solar facility are responsible for maintenance of the facility.

> B. Maintenance shall include painting, structural repairs, landscape buffers and vegetation under the 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.

Holly Springs will own the land but not the solar facilities equipment installed on the land. (Prot. Ex. 14). Based on the evidence, non-petitioners will either have a lease or ownership interest in the solar facilities. Consequently, this Board's Order will have no force or effect against the lessee (Meade as the assignee) or the owner. The Board finds that, in this regard, the proposed facilities fail to meet BCZR, §502.1G because they are inconsistent with BCZR, §4F-105 and §4F-106.

The Board is equally concerned with the abandonment and removal of the facilities at the end of the lease. Under BCZR, §4F-107, the "owner" or "operator" also have numerous legal obligations in regard to decommissioning and removal of the facilities. The Board views its determination under BCZR, §502.1 and Article 4F as all-encompassing. Mr. Streit admitted that Power Factor has no experience in decommissioning and removal of solar facilities. Indeed, the Office of Planning Comments dated January 10, 2019 specifies that if approved as a special exception, the Site Plan shall be subject to BCZR, §4F-107. (Prot. Ex. 14).

This Board does not have a reasonable level of confidence that the County will be able to enforce BCZR, §4F-107 obligations against Power Factor who is only a maintenance contractor, and depends on the existence and renewal of a contract with a non-petitioner entity or with an unknown entity. Certainly, given that an Order issued by this Board is not enforceable against Onyx or some other unknown entity, the County, in a code enforcement case, will not be in a position to compel Onyx, or a non-petitioner owner of the solar facilities, to decommission or remove the facilities.

Finally, the Board finds that the proposed solar facilities violate the spirit and intent of the BCZR, Article 4F. BCZR, Article 4F was enacted pursuant to the Community Solar Program law found in MD Code Ann., PU, §7-306.2. The Petitioners do not dispute the application of the Community Solar Program law here. Indeed, in Petitioners' Written Memorandum in Lieu of Closing Argument, and in a letter from Counsel for Petitioners to Office of Planning dated February 14, 2019, Petitioners states that: "The subject proposal is pursuant to that program." (See Pet. Closing Memo, p. 4) (Prot. Ex. 6) , p. 2).

On this point, we note that the Community Solar Program law, MD Code Ann., PU, §7-306.2(d)(13) prohibits the construction of solar facilities on contiguous parcels of land as follows:

> (13) Equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops.

BCZR, §4F-103.B mirrors Subsection (13) of the Community Solar Program law by also exempting rooftop solar facilities.

In our reading of BCZR, Article 4F, the County Council expressly provided for a single solar facility to be located on a parcel which is not next to another solar facility . In support of our interpretation, BCZR, §4F-101.B defines a solar facility as "A facility... on a tract of land." In addition, the following references to a 'single solar facility' appear in Article 4F here:

> §4F-102.A. – "...a solar facility"
> §4F-102.B.1 – "a single solar facility"
> §4F-102.B.3 – "all permits issued for a single solar facility in the County".

In this case, Solar Facility 144/121 is located on two contiguous tracts of land. The Petitioners are requesting two separate solar facilities with separate driveways onto Falls Rd. Each solar facility here is separately fenced in and has its own access driveway. Accordingly, we find that

the proposed solar facilities violate the unambiguous wording of both the Community Solar Program law as well as BCZR, Article 4F.

(3) Inconsistent with Vegetative Retention Provisions (BCZR, §502.1.H) and Detrimental to Environmental and Natural Resources (BCZR, §502.1.I).

With regard to vegetative retention provisions under BCZR, §502.1.H, and impact on the environmental and natural resources under BCZR, §502.1.I, the Board finds that the proposed facilities will be inconsistent with, and detrimental to, each of those factors. We note that the Parcels at issue are not cleared, farmland. Rather, each has abundant natural resources and environmental constraints as revealed by Petitioners' photos. (Pet. Ex. 8.A-8.U; 16). The Petitioners' Wetlands Delineation Report provides concrete details about wetlands, vegetation, topography, soil type, trees, specimen trees, floodplains and forests inherent in these Parcels. (Pet. Ex. 20).

According to Mr. Leffner, the initial proposed plan provided for one solar facility confined to Parcel 144. Due to the numerous environmental aspects on Parcel 144 alone including the forest buffer areas, wetlands, floodplains, streams, trees, vegetation, and the limits of disturbance ("LOD") impacts, EPS was not in support of the initial proposal. As a result, Mr. Leffner revised the Site Plan to propose the two solar facilities at issue by utilizing Parcels 144 and 121. (Pet. Exs. 3C, 3D, 22C, 22D). In amending the Site Plan, rather than only request one solar facility within the confines of Parcel 144 by using the most efficient solar panels available and reducing the special exception area, the Petitioners desire to maximize their return on investment.

It is a significant concern to this Board that existing trees and vegetation will be removed to make room for the solar facilities in the following areas:

(1) the line of existing trees and vegetation in the center of Solar Facility 144/121;

(2) the line of existing trees and vegetation on the northern end of Solar Facility 144/121;

(3) the line of existing trees and vegetation in the center of Solar Facility 144; and

(4) the line of existing trees and vegetation around the 'S' shaped and 'U' shaped gravel driveways.

We do not agree that the removal of trees and vegetation as listed above, is minimal. In the Board's view, the removal of trees and vegetation is substantial and unnecessary, and directed by the Petitioners' own interests. As Mr. Kulis stated, "if left in their natural state, a forest would grow near the stream." The Site Plan reveals, and this Board so finds, that specimen trees, and the critical root systems of those specimen trees, will be negatively impacted by the construction of solar panels in the area of those root systems. (Pet. Ex. 3C, 3D, 22C, 22D). The access driveway to Solar Facility 144/121 will be constructed through not only the critical root system of a specimen tree, but through two areas of trees and vegetation. Moreover, the ZAC comments dated December 24, 2018 provide useful information to this Board in that a special variance to the Forest Conservation Law must be approved by EPS when critical root zones of specimen trees are impacted. (Prot. Ex. 5). Yet, Mr. Leffner maintained that no special variances would be needed.

Further, it is only because of the Petitioners' desire for two solar facilities rather than one (1), that the UGE is even needed; it is entirely self-imposed. The Board finds the UGE is detrimental to the stream and the existing trees which line the stream. Mr. Leffner was not clear in his testimony as to the depth necessary for drilling the UGE but acknowledged the horizontal distance would be greater than 200 ft. Mr. Streit admitted that it would be more expensive to connect the two solar facilities above-ground.

The Site Plan shows the forest buffer setback for the stream between Parcels 144 and Parcel 121 running along each of the wire fences to be installed around each facility. We find that the

placement of the wire fences along the forest buffer setback shows unnecessary interference by the solar facilities in these environmentally sensitive areas.

We were also alerted to Mr. Kulis' admission on cross examination that while an Alternatives Analysis is legally required under BCC, §33-3-112(c)(1), that provision would be not enforced by EPS based on an unwritten policy, as long as the stream which bisects the solar facilities is not disturbed. While Mr. Kulis stated that this issue would be addressed at the time of the grading permit, we find the stream will be disturbed and EPS should have required an Alternatives Analysis. Mr. Kulis further acknowledged that vegetation will be cleared and soil will be disturbed in the forest buffer when the UGE is drilled in violation of BCC, §33-3-112(b)(2)(ii) and (iii). Thus, while EIR concedes that there will be impacts to the environment in this case and views these as minimal, this Board does not.

In the Board's view, there is an unexplained change in position by EIR where by letter from EIR to the ALJ regarding a ZAC meeting on June 3, 2019, EIR required an alternatives analysis due to the UGE through the Forest Buffer Easement and under the stream. (Prot. Exs. 3A, 3B). In the letter, EIR expressed the need to review and approve an Alternatives Analysis in regard to the LOD. Additionally, the County's Development Plans Review office, in its ZAC Comments dated June 19, 2019 confirmed that solar panels are considered "utilities" which would require an alternatives analysis under BCC, 33-3-112(c)(2)(i). (Pet. Ex.12). We did not find Mr. Leffner's testimony clear in providing the actual level of disturbance within the environmental areas of these parcels. For all of these reasons, we are convinced that an Alternatives Analysis was required in accordance with BCC.

We would add that in reviewing the purpose of solar facilities legislation set forth in BCZR, 4F-101.A, the County Council specified that solar facilities would be permitted if it met the special

exception factors, balancing the benefits of a solar energy against the potential impact on the County's land use policies. Yet, as stated by counsel for the Petitioners in a letter to the Office of Planning dated February 14, 2019, RC8 land use policies favor maintaining and protecting environmental resources such as forests, streams, wetlands, trees, floodplains and forest buffers. (Prot. Ex. 6). Based on the evidence presented, this Board is not able to provide "sufficient safeguards" in an Order to protect the forests, wetlands, streams, forest buffers, specimen trees and other natural resources which exist on Parcels 144 and 121. The Board finds the "potential impact" to the natural resources of Parcels 144 and 121 identified in BCZR, §4F-101.A is significant and as such, there is no amount of landscaping or other safeguard which could be imposed as a condition in order to accomplish the purpose of the solar facilities law in this case.

B. Variance.

Petitioners requested a variance from BCZR, §1A01.3.B.3, if necessary, to permit a solar facility to be as close as 0 feet to an internal lot line. This request is a direct result of the desire to install a second solar facility on Parcel 144/121. Given that this Board has denied the special exception relief requested, we need not address the variance issue. However, we will do so in the event that our decision in regard to the special exception is reversed.

We find it ironic that, in support of its position that Parcels 144 and 121 are unique, Petitioners rely on the environmental factors which they discount as existing and which served as one of the basis for this Board to deny the special exception request. We further find that the Petitioners will not suffer a practical difficulty if the solar facilities are not permitted. Indeed, the evidence did not suggest that the only use of this land was as a solar facility. *McLean v. Soley*, 270 Md. 208 (1973); *Trinity Assembly of God v. People's Counsel*, 407 Md. 53 (2008). The Court of

Special Appeals in *Montgomery County v. Rotwein*, 176 Md. 716, 732-33 (2006) citing *Cromwell*, held that economic loss alone does not satisfy the 'practical difficulties' test:

> Economic loss alone does not necessarily satisfy the 'practical difficulties' test because, as we have previously observed, 'every person requesting a variance can indicate some economic loss.' *Cromwell* at 715.....Indeed, to grant a variance application any time economic loss is asserted, we have warned, 'would make a mockery of the zoning program.

In addition, we find that the proposed plan is entirely self-imposed and therefore does not meet the criteria for a variance. The law is clear that self-inflicted hardship cannot form the basis for a claim of practical difficulty. Speaking for the Court in *Cromwell v Ward,* 102 Md. App. 691, 722 (1995), Judge Cathell noted:

> Were we to hold that self-inflicted hardships in and of themselves justified variances, we would, effectively, not only generate a plethora of such hardships but we would also emasculate zoning ordinances. Zoning would become meaningless. We hold that practical difficulty or unnecessary hardship for zoning variance purposes cannot generally be self-inflicted.

The Petitioners desire for two (2) solar facilities is driven by their economic restrictions as controlled by non-petitioners, and therefore the Site Plan is entirely self-imposed.

C. Limited Exemption, BCC, §32-4-106(a)(1)(vi).

Given our denial of the special exception request, the Board need not address the Petitioners' request for limited exemption as a minor commercial structure. However, in the event that our decision on the special exception is reversed, we find that the solar facilities presented here are not minor commercial structures. This is not a small structure but rather two large elaborately designed facilities which consume the majority of both Parcels. As mentioned, these facilities have two separate access driveways and two fenced in areas connected by an UGE. Given the totality of the facts in this case, we do not find these facilities to be either "minor" or "small".

CONCLUSION

After reviewing all of the testimony and evidence presented, the Board finds that Petition for Special Exception pursuant to BCZR, Article 4F should be denied, that the Petition for Variance should be denied, and that the Application for Limited Exemption should be denied.

ORDER

THEREFORE, IT IS THIS 27th day of April, 2020, by the Board of Appeals of Baltimore County,

ORDERED, that the Protestants' Motion to Dismiss the Petition, be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED, that the Petition for Special Exception for a solar facility pursuant to BCZR, Article 4F as set forth on the Site Plan be, and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Petition for Variance be and the same is hereby **DENIED** for the reasons set forth herein, and it is further,

ORDERED that the Application for Limited Exemption under BCC, §32-4-106(a)(1)(vi) be and the same is hereby **DENIED** for the reasons set forth herein.

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

BOARD OF APPEALS OF
BALTIMORE COUNTY

Jason S. Garber, Panel Chair

Maureen E. Murphy

Deborah C. Dopkin

Board of Appeals of Baltimore County

JEFFERSON BUILDING
SECOND FLOOR, SUITE 203
105 WEST CHESAPEAKE AVENUE
TOWSON, MARYLAND, 21204
410-887-3180
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April 27, 2020

Lawrence E. Schmidt, Esquire
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann, Esquire
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: In the Matter of: *Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner*
Power Factor, LLC – Lessee
Case Nos.: 19-183-X and CBA-20-004

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,

Krysundra "Sunny" Cannington
Administrator

KLC/taz
Enclosure
Duplicate Original Cover Letter

c: See Distribution List Attached

In the Matter of: *Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner*
Power Factor, LLC – Lessee
Case Nos.: 19-183-X and CBA-20-004
Distribution List
April 27, 2020

Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Power Factor, LLC
Valleys Planning Council, Inc.
North County Community Group
Kevin and Maria Webb
Linda Ault
Ethan Lavin
Wayne and Allene Yelle
Mary Ruth Fowble
Glenn and Donna Fowble
Office of People's Counsel
C. Pete Gutwald, Director/Department of Planning
Paul M. Mayhew, Managing Administrative Law Judge
David V. Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
Nancy C. West, Assistant County Attorney/Office of Law
James R. Benjamin, Jr., County Attorney/Office of Law

BOARD OF APPEALS OF BALTIMORE COUNTY
MINUTES OF DELIBERATION

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
Power Factor, LLC – Lessee

19-183-X &
CBA-20-004

DATE: December 10, 2019

BOARD/PANEL: Jason S. Garber, Chair
Maureen E. Murphy
Deborah C. Dopkin

RECORDED BY: Tammy A. Zahner, Legal Secretary

PURPOSE: To deliberate the following:

1. Petition for Special Exception pursuant to BCZR Section 4F-102 (as established by Bill 37-17); and
2. Petition for Variance, if necessary, from BCZR Section 1A01.3.B.3 to permit a solar facility to be as close as 0 feet to an internal lot line; and
3. Appeal of Director's letter granting a Limited Exemption under BCC Section 32-4-106(a)(1)(vi) for a minor commercial structure.

PANEL MEMBERS DISCUSSED THE FOLLOWING:

DISCUSSION

- The Board discussed the request to operate a solar facility with the solar fields to be located on two parcels, which are split zoned. The solar facility would generate 1.85 megawatts of electricity.

- The Board discussed the Special Exception requirements contained in BCZR Section 502.1. The Board expressed concerns over the environmental features located on the property including a stream in the middle, the removal of specimen trees, and disturbance of tree roots. The topography of the property creates visibility impacts to neighboring properties. There are two parcels which will each contain a solar field, and there are two entrances. The Board found the proposal is not consistent with the spirit and intent of the zoning regulations and found that the property will have a greater impact at this location than another in the zone. The Bound found that the Petitioners did not meet their burden.

- The Board discussed the solar facility requirements contained in BCZR Section 4F-102. The Board does not feel that the landscape buffer will be effective due to the topography of the property. The Board expressed concern that Section 4F-102 states "a" solar facility. The proposed solar facility has 2 access points, 2 solar fields, and 2 enclosures. The Petitioner chose not to combine the parcels. The County Council could have added an exception to the solar facilities Bill for parcels under common ownership but did not. The Board also noted that the project would be subject to the Community Solar Pilot Program and pursuant to Section 7-306.2 a solar field cannot be located on contiguous parcels of land. The Board found that the Petitioners have not met their burden.

- The Board noted that the Legal Owner of the property did not testify. There was also conflicting testimony from the representative of Power Factor which the Board did not find credible. The Board also expressed concern that Power Factor is a contractor, and not the lessee or subscriber.

- The Board discussed the Petition for Variance and noted that the request is moot as the Petition for Special Exception is being denied. However, the Board noted they would deny the Petition for Variance.

- The Board discussed the Motion to Dismiss filed by Protestants in the limited exemption case. The Board noted that they routinely hear zoning and limited exemption case together. The Board unanimously agreed to DENY the Motion to Dismiss.

- The Board discussed the Petitioners request for a limited exemption to BCC Section 32-4-106(a)(1)(vi) for a minor commercial structure. The Board noted that there is no definition of "minor commercial structure" in the BCC. The Board feels that due to the scope of the proposed project it is not a minor commercial structure.

CONCLUSION: After thorough review of the facts, testimony, and law in the matter, the Board unanimously agreed to DENY the Petition for Special Exception; DENY the Motion to Dismiss; and DENY the request for limited exemption to BCC Section 32-4-106(a)(1)(vi). The Petition for Variance is MOOT.

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

Michael R. McCann, P.A.
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Phone: (410) 825-2150
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RECEIVED
NOV 27 2019
BALTIMORE COUNTY
BOARD OF APPEALS

November 27, 2019

Via Hand-Delivery

Krysundra Cannington
Baltimore County Board of Appeals
1o5 W. Chesapeake Ave.
Towson, Maryland 21204

Re: 18627 Falls Road
Case o. 2019-0183-X

Dear Ms. Cannington:

Enclosed for filing in the above-referenced matter please find an original and three (3) copies of Protestants' Post-Hearing Memorandum.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Sincerely,

Michael R. McCann

RECEIVED
NOV 27 2019
BALTIMORE COUNTY
BOARD OF APPEALS

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

PROTESTANTS' POST-HEARING MEMORANDUM

Protestants, Valleys Planning Council, Inc., North County Community Group, Kevin and Maria Webb, Linda Ann Ault, Ethan Lavin, Wayne and Allene Yelle, Mary Ruth Fowble, and Glenn and Donna Fowble ("Protestants"), submit this post-hearing memorandum in support of their opposition to the petition for special exception and their appeal of the limited exemption granted by the DRC.

FACTUAL BACKROUND/SUMMARY OF EVIDENCE[1]

A. The Subject Property

The property that is the subject of the petition for special exception (the "Property") is situated on Falls Road in the Hampstead area of the County. The Property is 32.59 acres and comprised of two adjoining parcels of 26.34 (parcel 144) and 6.25 acres (parcel 121). Parcel 144 sits roughly north/northwest of the 6.25-acre parcel (parcel 121). Falls Road is a Maryland scenic byway and a County scenic route. The Property is split zoned RC8 and RC2. (Dev's Ex. 22A-D).

There are abundant natural resources on site. The entire northern and northeastern portions of the Property are forested, roughly 14.2 acres, the majority of which is classified

[1] The hearing lasted over three days. References herein to the transcript of the hearing will be as follows "T1, pp. __" for day one, "T2, pp. __" for day two, and "T3, pp. __" for day three.

as "priority" forest. (Dev's Ex. 5 (forest stand delineation); Dev's Ex. 16 (colored site plan)). A use-III stream called Compass Run runs westerly across the forested northern portion of the Property and an un-named tributary of that stream runs southerly and bisects the Property. There are also areas of trees along the unnamed tributary and on other parts of the site. On cross-examination, the Developer's engineer, Nick Leffner, highlighted the streams and their associated resources on a copy of Developer's Ex. 3C. The streams are depicted in blue, the forest buffer in green, wetland areas in purple, and floodplains in orange. (Prots' Ex. 11; T1, pp. 209-16). There are isolated specimen trees throughout the Property. (T1, p. 60, 71-73).

The topography of the Property varies greatly, but generally there are highpoints (slopes of 10-20% or higher) on the western, northern and eastern portions of the Property. (Dev's Ex. 6 (Steep Slopes and Erodible Soils Analysis)). As a result, Mr. Leffner acknowledged, "everything on [the] property is going towards the stream" in the middle of the site. (T1, p. 134).

B. The Proposed Solar Facility

The Developer proposes two, separate solar arrays on the Property which are roughly equal in size. The northern array sits on parcel 144; the southern array straddles both parcels 144 and 121. Separate entrances off of Falls Road are proposed for the arrays, which wind through the Property. The Developer proposes to connect the two arrays by installing an electrical line that would run between the arrays through the forest buffer and under the stream that bisects the Property. (Dev's Ex. 22C, D (identified as "UGE")).

C. The Testimony of Nick Leffner

The Developer's consultant and primary witness, Mr. Leffner, has been a licensed engineer since 2013. He has worked on three or four community solar projects, but this is his

first in Baltimore County and the first on an agriculturally-zoned property. (T1, pp. 196-97).[2] He was not involved in the selection of the Property for this project; it had already been selected. (T1, p. 204).[3]

Mr. Leffner did not look into any alternative sites for the project, including any alternative that did not entail two arrays. (T1, pp. 204, 319). When asked by a Board member whether parcel 121 alone would be adequate to support the facility, he responded "You'd have to ask the applicant." (T1, p. 372). When pressed, he responded: "Not as I understand it. … I'm not responsible for the electrical design, by any means…. [A]s I understand,… panels have different wattages, they have different efficiencies… so, there's a lot that goes into the production and sizing. I think as it is right now, if it was on one [parcel] it would not support the, the development…. [I]t would not have the same, it would not be same project, it would be half of what is proposed." (T1, pp. 373-74).

The Mistakes in the Developer's Plan

Mr. Leffner acknowledged several rather basic, but significant, mistakes in the Developer's plan for the project (Dev's Ex. 3A-D). First, the Developer's original plan showed the northerly arrow pointed in the wrong direction. (*See* Dev's Exs. 3A and 3B). Second, the original plan showed the limit of disturbance ("LOD") extending into the forest buffer ("SB") at the proposed southern entrance. (Dev's Ex. 3D). Mr. Leffner admitted this was a mistake and that the plan should not show these impacts to the forest buffer. (T1, pp.

[2] Notably, Mr. Leffner stated that he is currently working on other projects but those applicants elected not to seek approval yet because ten applications have already been filed in the County. When asked why he filed the instant petition, he stated because "[t]he applicant chose to move forward with this project." (T1, pp. 197-98).

[3] Mr. Leffner had previously filed a plan that was limited to parcel 144. He acknowledged that the plan was based on available records regarding the natural resources and not on a field visit. He explained that the weather at that time, in December or January, was not conducive to doing field work for environmental features. (T1, pp. 204-05). The current plan was filed because of new information regarding wetlands. (T1, p. 206).

239-41). Third, the original plan also showed new plantings within the forest buffer at the proposed northern entrance. (Dev's Ex. 3D). The Developer corrected these mistakes and introduced revised versions of the plan. (Devs' Ex. 22A-D; T2, pp. 115-23).

The Mysterious And Vanishing Alternatives Analysis

As noted above, the Developer proposes to connect the two solar arrays by means of an underground utility line that would run from one array to the other, through the forest buffer and under the unnamed tributary of Compass Run. In its December 26, 2018 comments, DEPS informed the Developer that the "underground utility line in the forest buffer will require EPS alternatives analysis approval." (Prots' Ex. 5).[4] In its July 3, 2019 comments, DEPS again informed the Developer that "the underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require [D]EPS review and approval of an alternatives analysis and must be included in the project's limit of disturbance. Furthermore, depending on the type of cross method employed, State and Federal authorization may be required and must be obtained prior to [D]EPS approval of any grading permit to accomplish this crossing.... [D]EPS respectfully requests that the requirements above be made conditions on any zoning relief to minimize impacts to water quality and forest buffer in accordance with the Forest Buffer law and [D]EPS requirements." (Prots' Ex. 3A, B).

Although DEPS's December 26, 2018 comments were attached to the ALJ's Opinion and the July 3, 2019 comments are part of the ALJ's and the Board's file, Mr. Leffner testified

[4] DEPS's comments dated December 26, 2018 were directed to the initial plan filed by the Developer, which likewise called for the underground utility line.

that he does not recall seeing either of the comments. (T1, pp. 231-32, 241-42, 321-22, 326).[5] He further testified that in all of his meetings and communications with DEPS, no one ever told him that an alternatives analysis was need for the underground utility line. (T1, pp. 233, 327).

Mr. Leffner agreed that the underground utility line is a "utility" but that an alternatives analysis is not required because the directional boring that would be performed does not constitute a "disturbance" under section 33-3-112 of the County Code. (T1, pp. 229-30, 210-12, 218, 22, 228-29, 369-70). He explained that installation of the line entails surface grading at the ends of the boring, but no "surface grading" between the borings.[6] (T1, p. 369-70). However, he conceded on direct examination that there would be disturbance below grade.

> MR. SCHMIDT: ... So, there will be within the area of the forest, of the stream and of the forest buffer created by the stream, no disturbance in that area, is that correct?
>
> MR. LEFFNER: Just below grade.

(T1, p. 370).

Moreover, when asked whether the boring will compromise any root system, he acknowledged "there may be some disturbances within the root system." (T1, p. 219-20). "[T]here is an amount of disturbance within a tree's root system that the tree can accommodate...." (T1, p. 220). When asked by the Board what happens if there are impacts to the root system and a tree is damaged, he responded "there could be damage and nothing

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[5] Mr. Leffner testified that, "throughout the whole process, we had a difficult time getting any correspondence back from ZAC, including all the comment letters....[W]e never received a complete []..., though they were requested numerous times.... [W]e received a package, we were told it was the entire package and I don't believe this [comment] was part of that package." (T1, pp. 321-22).

[6] Mr. Leffner testified that utility lines under streams is fairly common, but has never performed one himself. (T1, pp. 224, 369).

would happen. It could kill the tree...then there would be damages owed or a variance required.... [T]here's a lot of what ifs, so I really can't answer that directly." (T1, p. 221). "The directional boring is typically done to avoid impacts...." (T1, p. 224).

Other Tree Removal

Mr. Leffner testified that there will be no clearing of trees on site that meet the classification of "forest," *i.e.,* the trees within the two forest stands identified in the Developer's forest stand delineation. (T1, p. 335-36). He acknowledged, however, that there are four other areas on the Property where trees or vegetation will be removed – (i) two areas at the entrances along Falls Road, (ii) the area at the southern portion of the Property where the driveway will be located, and (iii) the row of trees on parcel 121 along that parcel's boundary with parcel 144 where the panels will be located.[7] (T1, pp.334-38, 340-41, 345).[8]

D. <u>The Testimony of Andrew Streit</u>

Mr. Streit is the Director of Business Development for co-petitioner Power Factor. He has been with the company one and a half years. (T2, p. 229). Power Factor was formed in 2013 as a home improvement company; it has an MHIC license. Robert Lang, the owner, is a master electrician. (T3, p. 153). According to Mr. Striet, the company has built "thousands of solar facilities," roughly 50 megawatts worth. (T3, p. 154). He admitted, however, that a

[7] These trees are in good condition. (T1, p. 340-41).

[8] The Bureau of Development Plans Review, in its comments, stated that the Developer "must minimize tree and vegetation removal.... Solar panels are a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact." (Devs' Ex. 12). Landscape planting along Falls Road "may need to be set back from the existing overhead power lines to allow the diversity of screen plant materials to mature and not be effected by standard vegetation maintenance typically associated with the existing overhead power line." (*Id.*). The Planning Office commented that the project "shall minimize grading, tree and vegetation removal along Falls Road." (Devs' Ex.14). The Planning Office also recommended that "the barn be restored and remain on site thereby remaining the point of interest of the focused view." (*Id.*). The Developer is proposing to remove the barn.

lot of those are residential solar installations or carports and that "[t]here may only be a couple ground mounted facilities." He does not know if Power Factor has ever performed a solar installation in Baltimore County or in Maryland, other than Aberdeen Proving Ground. (T3, pp. 169, 175). When pressed by a Board member to identify a single project in a rural area anywhere in the county similar to the one proposed here, he identified only a single, ground mounted facility in North Carolina, which is located on a military base. (T3, p. 171). Power Factor has not been involved in a solar project involving a stream crossing and connection between two solar arrays. (T2, pp. 238-40). Power Factor has no experience in decommissioning a solar facility. (T2, p. 238).

It was apparent at the hearing that the exact operational and financial arrangement of this project is less than crystalline. Mr. Streit testified that Power Factor will be the developer of the solar project, meaning that it will shepherd the project through the County and State approval processes and then construct, operate and maintain the facility. (T3, pp. 145-48, 161-62). He explained that Power Factor has entered into a 25-year lease with the owner of the Property, co-petitioner Holly Springs, which includes an option for an additional 5-year term. (T2, pp. 196-97). Power Factor will assign the lease to an entity called Meade Communities. (T2, 284).[9] Meade Communities is a subsidiary of Corvius, which Mr. Streit described as "one of the largest military housing companies"; it is "a large organization [with] a lot of experience with community solar in other parts of the country." (T2, pp. 199, 214; T3, p. 149). Mr. Streit knew nothing else about Corvius. (T3, pp. 173-74).

[9] Mr. Streit later testified, in response to questioning from the Board, that he was unsure if there will be an assignment of the lease to Meade. "[A]t this point I need to say, we have a legal team who will make sure that we structure, the project so that it meets all the regulations in Maryland." (T3, p. 172).

Power Factor cannot finance this project itself; it has to get investors. (T3, p. 187). Meade Communities, Mr. Streit initially stated, will be the owner of the facility. (T2, p. 286). It will also be the "subscriber organization" that will manage the sale of subscriptions for the community solar program and the entity that enters into the Interconnection Agreement with BGE. (T3, pp. 148, 163).[10] He does not think Meade will have any responsibility for the operation or maintenance of the facility. (T2, p. 254).[11]

Mr. Streit later testified that the facility would *not* be owned by Meade Communities, but rather by a "group of investors" (T3, pp. 165, 173), then still later said that Power Factor would have an "investment partner." (T3, pp.175-76). When pressed on the subject, he identified the investment partner as "a subsidiary of Onyx Renewable Partners," which he said is "an experienced solar finance company that is backed by a very, very large company." (T3, p. 176; T2, p. 258-59). The unidentified Onyx subsidiary will not have any legal interest in the Property, only the equipment sitting on the property. (T3, p. 181). The owner would be responsible for the cost of maintaining the facility and access roads and for removing the facility once its discontinued. (254-55).

Power Factor's OSHA Violations And Its Application for Approval As A Subscriber Organization

In August 2019, Power Factor submitted an application to the PSC for approval as a subscriber organization. (Prots' Ex. 19).[12] The application is signed by Mr. Streit and Mr.

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[10] When asked what happens if Meade fails to get subscriptions, Mr. Streit stated that Meade would have to sell to BGE wholesale because "any money is still better than no money." (254).

[11] Mr. Streit initially stated that Power Factor would have a contract with Onyx for the construction, operation and maintenance of the facility, but later stated the contract would be with Meade Communities. (T2, pp. 283, 286).

[12] When asked why Power Factor submitted an application when Meade Communities had already been accepted as a subscriber organization, Mr. Streit explained it was "a paperwork issue... to make sure that if needed, Power Factor could be a subscriber organization." (T3,p. 150).

Lang under oath. (*Id.*, pp. 6, 9). In the application, Mr. Streit represented that no suspensions, reprimands, fines or similar actions had been taken or were pending against Power Factor. (*Id.*, p. 5). At the hearing, Mr. Streit was asked whether there is a reason why he would anticipate the application may not be accepted. He answered "no." (T2, p. 220). He was then asked whether, for example, Power Factor has a history of OSHA violations and again he answered "no." (T2, p. 220).

The application and Mr. Streit's testimony are false. As reflected in Protestants' Ex. 8, Power Factor was cited by OSHA for "serious" safety violations arising out of an incident that occurred on July 24, 2018 in which an employee was electrocuted to death while installing solar panels. (Prots' Ex. 8). When confronted with the document, Mr. Streit admitted that the incident took place and that Power Factor was paying fines to the Department of Labor. (T2, pp. 222-24).

The Panels

Mr. Streit testified that the two solar arrays would have 5600 GCL mono-crystalline modules. (T2, p. 202). The modules have a capacity of 370 watts and produce 1.85 megawatts in alternating current. (T2, pp. 203-04). That was the extent of Mr. Streit's knowledge about the arrays and their panels. He does not know the specific number of panels in each of the two arrays or the breakdown of the wattage generated by each array. (T2, p. 267). He does not know the exact measurements of the panels and "guessed" that their efficiency rating is "somewhere around eighteen percent." (T2, p. 244). He admitted that there are panels with higher efficiencies, including what are known as "high efficiency" panels with efficiency rates as high as 42 percent, and that various factors can affect efficiency, such as the design, size of solar cells, and whether cells are mono or multi-crystalline. (T2, p. 245). He admitted that

the 370 watt module is a high wattage module, but not the highest. (T2, p. 250). He admitted that if higher efficiency panels are used then fewer of them are needed. (T2, p. 246). He admitted that the technology of the panels is constantly evolving and that the wattage efficiency of the panels improves as much as three to five percent per year. (T2, pp. 246-47). Most importantly, Mr. Streit admitted that neither he nor anyone else at Power Factor has conducted an analysis of the minimum number of panels, or the minimum amount of land, necessary to generate the 1.85 megawatts they intend to generate with this project. (T2, pp.249-50). He acknowledged that an analysis of the precise number of panels and amount of land can be performed. (T2, p. 250).

On redirect examination, Mr. Streit attempted to change his testimony in the following rather sarcastic colloquy:

> MR. SCHMIDT: Is this the minimum size that you can use to produce a facility of the, producing the amount of energy that you propose.
> MR. STREIT: It is.
> * * *
> MR. SCHMIDT: Was this some random application you decided to do it this size or I assume there was some type of analysis that went into this?
> MR. STREIT: That's correct. We started out with a larger system size and as environmental factors came in, we reduced the system size.
> MR. SCHMIDT: Can it be reduced further?
> MR. STREIT: NASA makes modules so physically, yes, we could buy modules from the space agency that are more efficient than commercially available modules.
> MR. SCHMIDT: Okay, But how, is that practical from a financial or other standpoint?
> MR. STREIT: I don't think they actually sell them to the public.... But there are more efficient modules....
> MR. SCHMIDT: Assuming that's not an available option for you, ...is there a way to make it smaller without having to avail yourself of theft of government property or whatever the case may be?
> MR. STREIT: I don't think so.
> MR. SCHMIDT: Okay. You've designed this, I assume, Mr. Streit, to be as efficient and to be as least invasive of impacting the environmental resources and the property as possible, have you not?

MR. STREIT: That's correct.

(T2, pp. 273-76).

> MR. SCHMIDT: Do you have an opinion, sir, ... as to whether this is the most appropriate and the best layout from a power standpoint... to connect to the BG&E grid? Is this the best layout that ... is practical on this site?
> MR. STREIT: We could clear those trees.
> MR. SCHMIDT: ...Which, which trees are you talking about? The forest?
> MR. STREIT: ...[T]his is the best design meeting the needs of the landowner, I believe the community, and the program.... I mean, I've done lots, a fair amount of solar projects and this one is a minimally impactful beneficial project....
> MR. SCHMIDT: And you believe this is the most efficient and best design?
> MR. STREIT: We're close.

(T2, pp. 279-80).

On further cross-examination, Mr. Streit admitted that there are higher efficiency panels that are not "NASA-rated" that could be used at this site. (T2, p. 282).

E. <u>The Testimony of Mike Kuhlis (DEPS)</u>

Mike Kuhlis is a Natural Resource Specialist II with the Environmental Impact Review section of DEPS. (T2, p. 33). He approved the forest stand delineation, erodible soils and steep slopes analysis, and wetland delineation submitted by the Developer, but noted there will be additional studies as part of DEPS's review before any grading permit will be issued. (T2, p. 53).

Mr. Kuhlis testified that the underground electric connection shown on the Developer's plan would not constitute a disturbance or infringement in the forest buffer and therefore an alternatives analysis would not be required. (T2, pp. 57, 58, 61, 67). He explained that as long as the connection points are outside of the forest buffer, the boring will avoid impacts to the buffer. (T2, p. 59). If the Developer was cutting across the ground or

open trenching or digging a trench to bury the line, then an alternatives analysis would be required. (T2, pp. 67-68).

On cross-examination and upon further questioning by the Board, Mr. Kuhlis conceded that it is possible that tree roots would be impacted when boring under a forest buffer. (T2, p. 64). He conceded that a 6-inch boring, as an example, would have at least some impact. (T2, pp. 65, 84-85).[13] When asked whether the underground utility line, as a factual matter, will involve "any disturbance" of vegetation or soil, he answered "[s]ure, there will be disturbance." (T2, p. 94).

Mr. Kuhlis was asked about the DEPS comment informing the Developer that an alternatives analysis would be required. His responses were less than compelling. He testified that the comment was made "because it was not clear if this was an aerial crossing or underground crossing." (T2, pp. 61, 99-100). He also testified that he believed the original plan showed an aerial connection and surmised that the discussion about an alternatives analysis was simply to make sure, if it was an aerial connection, the utility would keep clear and free of trees and shrubs. (T2, p. 66). He conceded, ultimately, that he did not know that the Developer's plan, and each iteration of it, has showed the utility line to be underground. (T2, pp. 99-100, 103, 104).

Notably, Mr. Kuhlis has reviewed many solar projects, but has never reviewed or been involved in one that included an underground utility connection under a forest buffer and a stream. (T2, pp. 96-99). In fact, he was not the reviewer on this project either. His name appears nowhere on the two DEPS comments. Rather, the reviewer is identified in the two

[13] Mr. Kuhlis did not know the width of the boring proposed for this project.

DEPS comments as Glenn Shaffer. Mr. Shaffer is the supervisor of EIR and Mr. Kuhlis's boss.

Finally, Mr. Kuhlis conceded that DEPS does not have a policy that the physical impacts associated with boring do not constitute legal impacts for purposes of whether an alternatives analysis is required. (T2, p. 88).[14]

F. The Testimony of Jeff Perlow (Zoning Office)

Jeff Perlow is a Planner II with the Zoning Office. He testified that the Zoning Office maintains a chart of the petitions for special exception for a solar facility that are filed with the County. The list, which was introduced as Developer's Exhibit 18, identifies the petitions that have been filed as well as the special exceptions that have been issued. (T2, p. 25).

Mr. Perlow opined that the Board of Appeals is able to consider the subject petition and that the Developer may construct its proposed facility so long as it is one of the first ten applicants to obtain a building permit. (T2, p. 20). He acknowledged, however, that the Zoning Office is required to accept all petitions for special exception that are filed with it and does not have the authority to prevent a petition for special exception from going forward before the Board. (T2, pp. 19-20, 26-27). As he put it, "[a]nybody has the right to file a petition and if we take away that due process right, we could get in trouble for that." (T2, p. 27). Importantly, Mr. Perlow is not the head of the Zoning Review Office and was not testifying on behalf of that Office, but only as a witness subpoenaed by Mr. Schmidt. (T2, p. 24).

[14] When asked by the Board whether there was anyone at DEPS that would look any impacts to stream quality as a result of increased water temperature during rain events coming off panels, he did not know. (T2, p. 70).

G. The Testimony of Wayne Yelle

Mr. Yelle resides with his wife at 18708 Falls Road, which is across the street from the western array. They have lived there for 20 years, since 1999. His wife grew up in the house. (T2, pp. 294-95).

Mr. Yelle expressed his concern regarding the visual impact of the solar facility and its effect on the value of his property. He showed photographs of the viewsheds from his property. (Prots' Exs 10A-D).[15] He explained that if he stood on the edge of Falls Road in front of his property he would look down into the Property. The fall is even greater from his house, which sits about 14 feet above Falls Road. He can see the field on the Property from his house. (T2, pp. 298, 300, 303). He believes that, even in 10 years when the plantings are mature, he is still going to see the solar facility and does not believe it will look like a vineyard, as Mr. Streit contended, or that many people would feel the same. He does not want to look out his front door and see the facility, and does not think that a prospective buyer would either. He explained that his daughter had intended to buy their house but she now will not be doing so. (T2, pp. 305-06).

H. The Testimony of Teresa Moore

Ms. Moore is the Executive Director of the Valleys Planning Council ("VPC"). She expressed the concerns that the VPC has had with all of the solar cases in the rural areas of the County, but noted that this project was different because of the special environmental features on the site and because the property owner is a non-profit organization. (T3, p. 10).

She explained that she was unfamiliar with the property owner, Holly Springs Nature Conservancy & Wildlife Sanctuary, as a land preservation organization, which struck her as

[15] Mr. Yelle marked in red, on Protestants' Ex. 1, the direction shown in the photographs that are Exhibits A-D. (301-04).

unusual in her line of business. She did some research and found no website or other information on Holly Springs, but discovered the organization's Form 990's (Prots' Ex. 12) which are the tax returns that non-profits must file and make publicly available. A number of things jumped out to her from the information contained in the Form 990: the organization has three Board members and two of them appeared married, which does not comply with the IRS's 50% rule requiring a separation of private and charity interests; one of the properties owned by Holly Springs was donated by an LLC that is managed by one of the board members; the organization has very low contributions ($11,000)[16] and receives more in rental income ($18,000) from the properties it owns; the organization's primary asset is land, which is valued at $1.1 million; its annual income is minimal; it receives a substantial part of its support from the government or the general public and reports over 2000 volunteer hours in monitoring and enforcing conservation easements, yet no one in the community has ever heard of the organization. (Prots' Ex. 12; T3, pp. 12-26).

Ms. Moore noted that Holly Spring's mission, according to its 990, is "to educate and care for our earth and the needy." (Prots' Ex. 12, p. 1). She observed that for an organization whose mission is to educate, it has a very low profile and no presence in the community. (T3, p. 23). She also pointed to the deed for parcel 121 in which the President of Holly Springs, Mary Zodhiates, represented, for the purpose of avoiding transfer taxes, that the organization "intends to use the land conveyed to assist in the preservation of a natural area for the environmental education of the public, to conserve agricultural land, and to promote continued agricultural use of the land....." (Prots' Ex. 14, p. 3).

[16] Ms. Moore checked with the Secretary of State and Holly Springs is not registered as a charitable organization and therefore is not eligible to solicit contributions. (T3, p. 14).

Ms. Moore also questioned whether the Property is under easement and, therefore, not eligible for a solar facility under section 4F-104.A.1 of the Zoning Regulations. She conducted a search of Maryland Land Records and found *four* properties owned by Holly Springs, yet the organization's 990 states that it holds *five* properties under easement. (Exhibit 12 at Schedule D, p. 1). She prepared a color-coded map (Prots' Ex. 13) which depicts in green highlighting the properties owned by Holly Springs and in blue highlighting the properties owned by the individual members of the organization. (T3, p. 26).[17]

Finally, Ms. Moore expressed the VPC's concerns regarding the unique environmental impacts of this project. She explained that this project differed from all of the other solar projects because it involves two separately-deeded properties and, thus, double the impacts. There are two separate arrays with two entrances and two fenced areas, which are connected *via* an underground electric line that would go under the stream. (T3, pp. 30-31).

Ms. Moore made clear in her testimony that although the VPC opposed the Bill that allows solar facilities in the rural areas of the County, the VPC is not opposed to solar. The VPC is concerned with prioritizing solar so that farmers would not be incentivized to convert their farms to solar facilities. (T3, pp. 36-37, 49-50). As she put it, while solar is generally a good thing, "there are tradeoffs, depending on the siting, and that the tradeoffs sometimes don't turn out to be a net benefit for the environment." (T3, p. 50).

I. The Testimony of Kathie Pieper

Ms. Peiper is President of the North County Community Group, a grassroots organization dedicated to preserving open space, the environmental integrity and rural culture

[17] Ms. Moore search Land Records and the County's My Neighborhood database but did not find any evidence of an easement. (T3, pp. 40-43). Renee Hamidi, Executive Director of the Manor Conservancy, testified she searched the Land Records for every County in Maryland as well as Baltimore City and did not find any conservation easements recorded by Holly Springs. She also had never heard of Holly Springs. (T3, p. 61).

in northwestern Baltimore County. She serves on the Board of the Prettyboy Watershed Alliance and is a member of BG&E's Community Advisory Council, which is a coalition of community members who advise BG&E on issues affecting the community. Prior to her retirement in 2015, Ms. Pieper, who is a biochemical engineer, managed the design and engineering department at Proctor & Gamble. She lives less than a mile from the Property and testified on behalf of both the North County Community Group and herself. (T3, pp. 78-81).

Ms. Peiper first showed a number photographs depicting the views from various vantage points around the Property. (Prots' Ex. 17; T2, pp. 84-91). She next expressed a number of concerns regarding the credibility of Power Factor and whether it has the experience, expertise or competency to design, build, operate or decommission the proposed facility:

- Neither Power Factor nor Meade Communities has been accepted by the PSC for participation in the community solar program. (Prots' Ex. 18 (current listing of approved participants); T3, pp. 97-98).
- The application submitted by Power Factor to become a subscriber organization, which is signed by Mr. Streit and the owner of Power Factor, George Lang, under oath, contains several false statements. (Prots' Ex. 19; T3, pp. 107-08). On page 5 of the application, in response to question 8, Mr. Streit and Mr. Lang falsely represented that there have been no reprimands or fines or similar actions against the company. At pages 7 and 8, Mr. Lang falsely represented that Power Factor has no civil or regulatory sanctions imposed against it. (Ex. 19, pp. 7-8). In response to question 10, Mr. Streit falsely represented that there are no entities affiliated with the company that have applied for admission as a subscriber organization.
- Question 9 on page 5 of the application requires the applicant to submit a statement of its technical and managerial competency. In response, Power Factor does not provide any such information.
- The application submitted by Meade Communities for approval as a subscriber organization, which is signed under oath, states that Meade's involvement in the project will be limited to solicitation and managing subscriptions and that it will not develop, finance, own or build the project.

(Prots' Ex. 20, p. 3). On the last page of the application, Meade states that it "not developer, contractor, or owner of the solar projects."

- The company has supplied no evidence of operational project work that is similar in design or scope. The community repeatedly asked for information from Power Factor but received nothing but vague responses and indirect answers.
- The sales force is overselling the technical capability of the company. Management is very heavy in new business development and that only junior staff are employed in technical roles.
- The company is owned and operated by a licensed home improvement company. Mr. Streit presented himself as the technical person who worked closed with Mr. Leffner on the design of the project; yet, Mr. Leffner testified there is one inverter for the project; Mr. Streit testified that there are 35 inverters. No community solar plan in the District has more than one inverter. (T3, 114-19).
- Mr. Lang, the owner of the company, told Ms. Peiper at a community meeting that he's "never done a project like this and his wife thinks he's absolutely crazy for trying." (T3, p. 132).

Ms. Pieper also expressed concern that the financial responsibility and accountability for the project is unclear. There is a complex mix of companies with no defined accountability. As she put it, "[i]t was extremely confusing to get at who's ultimately responsible here and who should be sitting in this courtroom asking for the special exception....Who's responsible if there's a problem that impacts the community? "[I]t's not clear who is that person that's responsible. I've never seen a project where it is so confusing who was saying that they were responsible for putting that security together."" (T3, pp. 119, 121, 136).

The community's most significant concern is the environmental impacts of the project. (T3, p. 123). She observed that while she has been involved in several solar projects, this one stands out for the unprecedented level of detail in DEPS's comments and its initial rejection of the project. The site includes streams, panels in the RC8 zone, multiple entrances and arrays and underground cabling. It is very concerning to her that the Developer wasn't aware of the alternatives analysis requirement when that requirement was reflected in early comment

from DEPS which was easily available in its file and was attached to the ALJ's Opinion. (T3, pp. 123-31). She expressed her concern regarding the installation of an electric line under a stream on a property classified as a targeted environmental area (TEA), which are "areas that rank exceptionally high for ecological criteria and that have a practical potential for preservation." (Prots' Ex. 21). "This is not like running fiber optic cable under a road." (T3, p. 124). She believes removing trees along the common property line will diminish the property's water infiltration capability and pointed out that no other community solar project in the District has required the removal of any trees, whether they were hedges, trees, or shrubs. She agreed with the ALJ's opinion that tree removal should not be allowed. (T3, pp. 130-31). Ms. Pieper noted that County law limits the size of solar facilities to the amount of acreage that produces no more than two megawatts and the Developer made no showing that they developed the project with the minimal use of land. Mr. Streit testified that no analysis was done to determine the minimum panel area and the plan was designed for standard or average efficiency solar panels. (T3, p. 131). Finally, Ms. Pieper testified that none of the adjacent property owners supported the project. She produced a colored map identifying all of the adjacent properties and their owners who do not support the project. (Prots' Ex. 23).[18]

[18] Contrary to Mr. Streit's suggestions, the community never indicated to him that the proposal or any changes to it were acceptable. (T3, p. 138). During her discussions with Mr. Streit, "we found that if we were in full agreement with what he wanted to do, things were fine.... If there was any opposition, we were told things like you should be happy we're not putting in a pig farm and we found him very condescending to the community and it was not a good relationship." (T3, pp. 138-39).

ARGUMENT[19]

A. The Developer Failed To Demonstrate That The Area Of The Proposed Solar Facility Is The Minimum Area Needed To Generate 1.85 Two Megawatts

Section 4E-102B of the Zoning Regulations provides, in pertinent part, as follows:

> 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 alternate 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 unless an existing facility previously approved under this Article has been removed pursuant to section 4E-107.

§ 4E-102B (emphasis added).

The clear and obvious intent of these limitations in section 4F-102 is to control the number of solar facilities and to allocate a limited amount of land for them. The County

[19] At the beginning of the hearing, counsel for Protestants moved to dismiss this appeal on the basis that it is not ripe for the Board's adjudication and it would be premature for the Board to proceed. Specifically, counsel argued that the appeal was premature and not ripe because (i) the development review process has not been completed and, indeed, the scope of that process is the subject of the DRC appeal before the Board; (ii) Power Factor has not applied for participation in the community solar program; and (iii) ten solar projects have already been approved, which is the maximum number allowed under section 4F-102.B of the Zoning Regulations. (T1, pp. 5-42). The Board did not rule on the issue and decided to proceed to the merits of the appeal. (T1, pp. 37-42). As the evidence bore out the basis of their motion, Protestants renew that motion.

Council was concerned, it is fair to say, that large swaths of rural or agricultural areas would be used for such facilities and adversely impact the natural resources in these areas. This concern is expressed in the Purpose clause of the Bill 37-17:

> 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.

Id., § 4E-101.1.

In the present case, the Developer made no showing that the area proposed for this solar facility is the minimum amount of land necessary to generate two megawatts of electricity. Mr. Streit admitted that neither he nor anyone else at Power Factor conducted an analysis of the amount of land, or the number of panels, necessary to generate the 1.85 megawatts they intend to generate with this project. (T2, pp. 249-50). He acknowledged that such an analysis *could* be performed but simply was not done. (T2, p. 250). Indeed, Mr. Streit did not even know the number of panels in each of the two arrays, the wattage generated by each array, the measurements of the panels, or their efficiency (he "guessed" their efficiency rating is "somewhere around eighteen percent") (T2, pp. 244, 267). He admitted that there are panels with higher efficiencies, that the wattage of the modules could be higher and that fewer panels would be need if the efficiency was higher. (T2, pp. 245, 246-47, 250).

It cannot reasonably be asserted that it was Protestants' burden to establish the minimum acreage to generate 1.85 megawatts. However, irrespective of whose burden it was, the fact remains that there is no evidence to support compliance with section 4F-102.B.1. The

Board cannot and should not approve this solar facility without some assurance that this critical part of the law is satisfied.[20]

B. The Proposed Solar Facility Is Sited On "Contiguous Parcels" And Otherwise Violates State Law

Section 7-306.2 of the Public Utilities Article sets forth the requirements of the Community Solar Pilot Program. Among these is the following:

> Equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops

§ 7-306.2(d)(13), Public Utilities, Annotated Code of Maryland.[21]

Here, the Developer proposes two arrays on contiguous parcels and does not propose to install any equipment on roof tops. For this reason alone, the petition for special exception must be denied.

The arrangement proposed by the Developer for this project violates section 7-306.2 in another respect. Section 7-306.2 defines a "subscriber organization" as follows:

> (6) "Subscriber organization" means:
> (i) a person that owns or operates a community solar energy generating system; or
> (ii) the collective group of subscribers of a community solar energy generating system.

Id. § 7-306.2(a)(6).[22]

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[20] The fact that the Board has approved other solar facilities of similar size is, of course, not a substitute for this evidence and cannot be relied upon to support that this facility is the minimum acreage necessary.

[21] COMAR 20.62.03.08.B prohibits the construction of "multiple facilities on a single parcel of property" and exempts from this restriction parcels subdivided after May 12, 2015.

[22] COMAR 20.62.01.02 states that "'Subscriber organization' has the meaning stated in Public Utilities Article, 7-306.2, Annotated Code of Maryland."

According to Mr. Streit, the subscriber organization for this project will be Meade Communities. That entity will not be the "owner or operator" of the system. The "owner," according to Mr. Streit, will be some unidentified subsidiary of Onyx Renewable Partners, and the "operator" will be Power Factor. Under any reasonable reading of this subsection, Meade Communities is not a "collective group of subscribers."[23] For this additional reason, the petition should be denied.

C. The Developer Failed To Demonstrate That The Impacts Of The Proposed Solar Facility Are Not Greater Than Inherently Associated With Such A Use

Under *Shultz v. Pritts*, "the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect, and, therefore, should be denied is 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 (1981). The Board is charged with determining "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." *Id.* at 11. "These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied." *Id.* at 12.

Despite the presumption in favor of a special exception, "'both the burden of production and the burden of persuasion on the issue of whether the special exception should

[23] Mr. Streit did make the half-hearted assertion that Meade is "a collective group of subscribers of a community solar energy generating system." (T3, p. 167). When asked how it is that Meade will be "a collective group of subscribers," he responded "I'm not an expert in everything." (*Id.*).

be granted' fall on the applicant...." *Attar v. DMS Tollgate, LLC*, 451 Md. 272, 286 (2017) (*quoting People's Counsel for Baltimore County v. Loyola Coll. of Md.*, 406 Md. 54, 109 (2008)). The applicant "must persuade the Board 'by a preponderance of the evidence that the special exception will conform to all applicable requirements.'" *Attar*, 451 Md. at 286.

In the present case, Protestants identified numerous ways in which the proposed solar facility would have adverse impacts above and beyond those inherently associated with a solar facility. The impacts are driven by both (i) the unique nature of the subject property and surrounding area and (i) the unique aspects of the project.

The Property has abundant natural resources on site, including two streams that bisect the Property, two large forest stands and other treed areas, and substantial areas of forest buffer, wetlands, floodplain and steep slopes. Falls Road is a State scenic byway and a County scenic route. The proposed solar facility is sited in the middle of these resources, as is best demonstrated by the Developer's proposal to have two solar arrays on either side of the Compass Run tributary, connected by an underground electric line through the forest buffer and under that stream. This is also demonstrated by the fact that the limit of disturbance (LOD) line is co-extensive with the forest buffer in many areas along the interior length of the panel arrays. Even if we assume that these resources are not impacted in a way that would violate the law – or even if an alternatives analysis is not necessary – the presence of these resources and the particulars of this project, collectively present unique circumstances and impacts that preclude the granting of a special exception. Moreover, given the topography of the Property and the area around it, the proposed facility will have unique impacts on the neighboring property owners and the viewsheds they presently enjoy. The Fowbles and the Yelles, in particular, will be impacted because of their proximity to the Property and the

elevation at which their properties sit. All of these impacts are greater here than they would be elsewhere. The Developer did not meet its burden to demonstrate that there will not be such impacts.

D. There Is No Support For The Developer's Position That An Alternatives Analysis Is Not Required; That An Alternatives Analysis Is Required Demonstrates That There Are Unique Impacts From This Project That Are Not Inherently Associated With Such A Use

Title 3 of Article 33 of the County Code (entitled "Protection of Water Quality, Streams, Wetlands, and Floodplains") sets forth the County's regulations regarding the delineation of "forest buffers" and their protection. A "forest buffer" is a wooded area adjacent to a stream system that protects that stream system and its associated wetland and floodplain areas. BCC, § 33-3-101(b)(1). Forest buffers provide "multiple environmental protection and resource management values." BCC § 33-3-103(b)(1). They reduce erosion and control sedimentation, filter out nutrients and toxins, stabilize stream banks, provide tree canopy and shade to streams so that trout and other aquatic species may exist, provide riparian wildlife habitat, and protect the natural ecology and overall quality of the stream system. *See id.* at (b)(2), (3).[24]

The forest buffer regulations set forth certain criteria that determine the specific width and limit of a forest buffer (that is, the amount of forest that must be preserved adjacent to a stream). *Id.* § 33-3-111(b), (c). In terms of what impacts are allowed within the forest buffer, the regulations distinguish between "prohibited practices" and "authorized practices." "Prohibited

[24] The purpose of Title 3 is to protect the County's streams, wetlands, riverine floodplains, riparian and aquatic ecosystems, and the water quality of its watercourses. *See* BCC § 33-3-103(a). Title 3 "applies to all proposed development" in Baltimore County. BCC § 33-3-104(a)(1).

practices" are delineated in section 33-3-112(b), which generally prohibits any disturbance within the buffer:

> (ii) Except as provided in subsection (c), 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 by grading, stripping of topsoil, plowing, cultivating *or other practices*.

BCC § 33-3-112(b) (emphasis added(. A developer may request a variance from this requirement "where strict compliance ... would result in practical difficulty or unreasonable hardship." BCC § 33-3-106(a)(1). The application for a variance must be a "written request" and "shall include specific reasons justifying the variance and any other information necessary to evaluate the proposed variance request." BCC § 33-3-106(b)(2).

In contrast to prohibited disturbances of the forest buffer, there are certain types of impacts that are "authorized practices" (such as *utilities*, roads, bridges, stormwater management devices), but a developer must submit an "alternatives analysis" to DEPS. An alternatives analysis must "clearly demonstrate" that (1) "no other feasible alternative exists" to disturbing the forest buffer, and (2)"minimal disturbance" will take place. § 33-3-112(c)(2)(i).

Here, assuming *arguendo* that the underground electric line proposed by the Developer is a "utility," an alternatives analysis ("AA") is plainly required. As Mr. Kuhlis and Mr. Leffner each admitted after considerable hemming and hawing, there will be at least some "disturbance" in the buffer as a factual matter. (T2, pp. 64, 65, 84-85, 94 and T1, pp. 220, 221, 370).

The Developer's reliance on Mr. Kuhlis's testimony that an AA is not required is misplaced for several reasons. First, as Mr. Kuhlis admitted, he was not testifying on behalf of DEPS but rather as a subpoenaed witness. Second, Mr. Kuhlis's supervisor and the head of EIR, Glenn Shaffer, was the reviewer on this project and the person whose name appears on the two DEPS

comments informing the Developer, twice, that an AA is necessary. It is unclear why the Developer did not call Mr. Shaffer, but the testimony of Mr. Kuhlis does not establish any authority for the Developer's position. Third, Mr. Kuhlis acknowledged that while he has reviewed many solar projects, he has never reviewed or been involved in one that included an underground utility connection under a forest buffer and a stream. (T2, pp. 96-99). Fourth, and most importantly, if the Developer is relying upon some administrative practice of DEPS rather than the plain language of section 33-3-112(c) to support that an AA is not required, then there is no evidence such a practice exists. To the contrary, Mr. Kuhlis admitted that DEPS does not have a policy regarding whether the impacts associated with boring constitute impacts for purposes of whether an alternatives analysis is required. (T2, p. 88).

In short, as the two DEPS comments unequivocally state and as section 33-3-112(c) plainly provides, an alternatives analysis is required for the underground electric line proposed by the Developer. The fact that an AA is required, however, is not the precise point in this special exception case. Rather the significance of the AA requirement (irrespective of whether it is granted or not) is that it establishes, as a matter of law, that there exists an impact that is unique to this project and one not inherently associated with a solar facility.

E. The Developer's Reliance On The Merger Doctrine Is Misplaced

Along with its petition for special exception, the Developer filed a petition for variance relief, requesting "if necessary" relief from section 1A01.3.B.3 to allow the southern solar array to "be as close as 0 feet to an internal lot line." (Am. Pet. for Variance). At the hearing, counsel for the Developer characterized the variance request as a "conditional zoning variance" or "belts and suspenders" request. Counsel posited that a variance is not necessary because this situation is akin to what transpired in *BG&E v. Friends of the Ridge Co.*, 352

Md. 645 (1999) in which the Court of Appeals "held that the property line, essentially, was extinguished for zoning purposes when you had multiple tracts on which a single project was requested." (T1, p. 161).

The Developer misconstrues the merger doctrine. As the Court held in *Friends of the Ridge*, the "primary function" of the doctrine is "to *prohibit* the re-subdivision of 'combined lots' into smaller substandard lots." 352 Md. at 653 (emphasis); *see also Stansbury v. Jones*, 372 Md. 172, 181 (2002). Here, the Developer proposes application of the doctrine as a sword rather than as a shield, that is, to allow it to ignore lot lines and avoid the setback because it affirmatively seeks to use the two parcels for a single purpose. The lot merger doctrine has traditionally only been applied in a defensive posture to preclude a property owner from taking some action.

F. The Solar Arrays Violate The Forest Buffer Setback

Section 33-3-111 of the Code sets forth certain design standards and setbacks applicable to forest buffers. Subsection (d) provides, in pertinent part:

> (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.

County Code, 33-3-111(d)(3)(1).[25]

Assuming the solar arrays are a "commercial structure" as the Developer contends, then the arrays violate the 25-foot setback applicable to such structures. At several locations along the southern edge of the *northern* panel array, the panels are located closer than 25 feet to the

[25] Section 33-3-111(d)(3) states that "*[a]ppurtenant or accessory structures*, including roads and driveways, *utilities*, recreational facilities, and patios, are allowed within the setback area." Even if the panels are considered "utilities," the solar arrays proposed by the Developer are a principal, not an appurtenant or accessory, use and therefore are not permitted in the setback.

forest buffer (identified as "SB" and coextensive with the LOD). (Devs' Ex. 22C, D). And at numerous locations along the western edge of the *southern* array, the setback is violated. (*Id.*).

G. There Are Legitimate Questions Regarding The Ability, Capability, Competency Of The Developer That Create Additional Impacts Relevant To The Special Exception Standard

It is fair to say that there was substantial evidence at the hearing to give the Board pause as to whether Power Factor is capable or competent enough to properly, adequately, and safely construct, operate, maintain and, when necessary, decommission this proposed facility.

First, there is a legitimate question regarding whether Power Factor has the technical experience or expertise to construct a ground-mounted solar facility in a rural area with abundant natural resources and entailing the installation of underground electric line through a forest buffer and under a stream. Neither Power Factor nor Mr. Leffner has ever been involved in such a project or in the decommissioning of any solar project. As Mr. Lang admitted to Ms. Peiper, he's "never done a project like this and his wife thinks he's absolutely crazy." (T3, p. 112).

Then there is the matter of credibility. Mr. Streit and Power Factor's owner, Mr. Lang, made false statements under oath in their subscriber application to the PSC. Mr. Streit falsely testified that the Power Factor did not have a history of OSHA violations and admitted the truth only when confronted with documentary evidence of those violations. Mr. Streit also repeatedly changed his testimony regarding how the project would be arranged and the roles of the various players in this project. Mr. Leffner, for his part, made significant mistakes in the Developer's plan which required correction, and was somehow unaware of DEPS's comments informing the Developer that an alternatives analysis was needed

The evidence in this regard has legal relevance. Section 4F-105 requires the "applicant for a building permit for a solar facility" to provide a security bond or other security to repair ay unsafe or hazardous condition or to remove a solar facility once it is abandoned. Here, according to Mr. Streit, Power Factor would be the applicant for the building permit. Yet, as Mr. Streit conceded, Power Factor does not have the financial wherewithal to finance this project or, assumedly, to post the required bond or security. Mr. Streit could not identify who would providing the security, only that it would be one of Power Factor's "partners" (*i.e.,* not Power Factor itself). (T2, pp. 287-89; T3, p.182). He also suggested that Power Factor would be turning over the project and that whomever ends up with it would take on the bond. (T3, pp. 183, 185-86).

Section 4F-106A states that "all parties having a *lease or ownership interest* in a solar facility are responsible for maintenance of the facility." *See also id.* subsection B ("the *owner, operator, or lessee* are responsible for the cost of maintaining the facility and any access roads"). Section 4F-107A similarly imposes the responsibility on "owner or operator" for physically removing the facility and notifying the County of the discontinued operations and plans for removal. Mr. Streit testified that Power Factor has entered into a lease with the property owner but will assign the lease to Meade Communities if the project is approved. The owner of the project, according to Mr. Streit, will be the unidentified subsidiary of Onyx. Thus, legal responsibility under County law for maintaining and decommissioning the facility will rest entirely with large corporations that, by all accounts, have no connection with this Property or Baltimore County.

All of this evidence relates to the special exception standard in this respect. If the Developer is unable to properly, adequately and safely construct, maintain, repair, and

decommission this facility – as the evidence clearly suggests – then that is an impact associated with this project that does not exist generally or at other locations.

H. The DRC/PAI Erred In Granting A Limited Exemption From The Development Review Process

The Developer sought and obtained from the DRC a limited exemption under 32-4-106(a)(1)(6). This is not a "minor commercial structure" under any definition of that term. First, there is nothing "minor" about this project in terms of its scope or impacts. The special exception area is 9.15 acres or 398,574 square feet. In addition to the panels themselves, construction of the facility will include two entrances and two extended driveways (one approximately 600 feet long), an underground utility line, an inverter, perimeter fencing, and landscaping. (T2, pp. 43-44).

PAI's Policy Manual provides some guidance on this issue. It states:

> In determining whether a proposed addition or independent commercial structure should be exempted, the following guidelines should be utilized: up to 25,000 square feet (not to exceed to percent of the existing size) and measurable degree of community interest.

The proposed facility far exceeds this 25,000 square foot threshold. And, it is fair to say, this project has generated more than a "measurable degree of community interest."

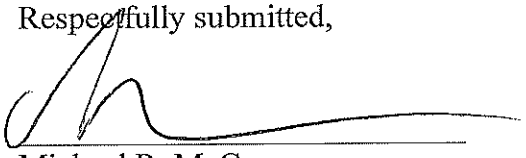
Second, the proposed facility is not a "commercial," but rather an industrial, structure. It is true that the electricity generated by the panels will be sold to customers, but the sale will not take place on site or at the "structures" themselves (e.g., the panels). As Mr. Leffner admitted, no commerce takes place at the structures or anywhere on the Property. (T1, pp. 188-89).[26]

[26] Mr. Leffner testified that the solar arrays are a minor commercial structure because there is no water service and there will be no inhabitants. (T1, pp. 188-90). He identified no legal basis for these facts as determinative of the issue.

CONCLUSION

For all of the reasons stated, the Board should (i) deny the petition for special exception and petition for variance filed by the Developer, and (ii) reverse the decision of the DRC granting a limited exemption.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on 27th day of November 2019 a copy of the foregoing post-hearing memorandum was mailed, *via* first-class mail, postage prepaid to:

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Towson, Maryland 21204

Michael R. McCann

RE: PETITION FOR SPECIAL EXCEPTION	*	BEFORE THE
	*	BOARD OF APPEALS
RE: APPLICATION FOR LIMITED EXEMPTION	*	FOR
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. *Legal Owners*	*	BALTIMORE COUNTY
Power Factor, LLC *Lessee*	*	**Case No.: 2018-0183-X**
Petitioners	*	**Case No.: CBA 20-004**
18627 Falls Road	*	
5th Election District 3rd Councilmanic District	*	

RECEIVED
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BALTIMORE COUNTY
BOARD OF APPEALS

* *

WRITTEN MEMORANDUM IN LIEU OF CLOSING ARGUMENT

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. ("Property Owner" or "Holly Springs") and Power Factor, LLC ("Power Factor" or "Lessee") (hereinafter collectively called "**Petitioners**"), by and through their attorneys, Lawrence E. Schmidt and Smith, Gildea & Schmidt, LLC, submit this Written Memorandum in Lieu of Closing Argument and respectfully state:

STATEMENT OF THE CASE AND BACKGROUND

This matter comes before the Board as a consolidated appeal of the approval of a Petition for Special Exception to permit a solar facility and the decision of the Director of the Department of Permits, Approvals and Inspections ("PAI"), which adopted the

recommendation of the Development Review Committee ("DRC") to approve a limited exemption pursuant to Baltimore County Code ("BCC") § 32-4-106 (a)(1)(vi).

The Petition for Special Exception was originally filed for Parcel 144 (Tax Account No. 0523015126) but was later amended to include the adjacent Parcel 121 (Tax Account No. 0504000210). The Petition for Special Exception (as amended with Parcels 144 and 121) then proceeded forward to a public hearing before the ALJ. A DRC application for a limited exemption was subsequently filed by Power Factor. By Opinion and Order of the Administrative Law Judge, dated June 20, 2019, the Petition for Special Exception was granted, with conditions. By Letter from the Director of PAI, dated July 2, 2019, the requested limited exemption under BCC § 32-4-106(a)(1)(vi) was granted.

The appeals of the Special Exception approval and the Limited Exemption approval were heard *de novo* by this Board. The public hearing before the Board was held on three dates: September 19, 2019, September 24, 2019 and October 23, 2019. Testimony was offered in support of the petition and exemption by Andrew Streit, Director of business development with Power Factor and responsible for site selection and development; Nicholas Leffner, Professional Engineer and Surveyor with Kimley-Horn and Associates, Inc.; Jon Kraft, Professional Landscape Architect with Kimley-Horn and Associates, Inc.; Stephen Barrett, energy consultant with Barrett Energy Resources Group with expertise on glare analysis. Testimony was offered by Jeffrey Perlow with the Baltimore County Zoning Review Office of PAI and by Michael Kulis with the Baltimore County Environmental Impact Review of the Department of Environmental Protection and Sustainability ("DEPS"). Several residents of the area and others appeared and

testified in opposition to the petition and exemption (collectively, hereinafter referred to as the "Protestants"). The Protestants were represented by Michael R. McCann, Esquire. The relevant testimony and evidence will be recounted as appropriate herein. In lieu of closing argument, this written memorandum is submitted to the Board to summarize the Petitioners' arguments.

STATEMENT OF FACTS

The collective testimony and evidence offered in this case established the following essential facts. The subject property is approximately 32.59 acres in size and is comprised of two separately deeded parcels. Both parcels are owned by Holly Springs. Parcel 144 (26.34 acres) is an unimproved property (Tax Account No. 0523015126); Parcel 121 (6.25 acres) contains a dwelling and accessory structure and is known as 18627 Falls Road (Tax Account No. 0504000210). Parcels 144 and 121 (collectively, hereinafter referred to as the "Property") are located immediately adjacent to Falls Road (Maryland Route 25) in northwestern Baltimore County. The Property is split-zoned RC-2 and RC-8 (Resource Conservation), although most of the solar panels and related infrastructure would be in the RC-2 zone. The proposed special exception area of the Property to be utilized for the solar facility is approximately +/-nine (9.13) acres. The portion of Falls Road adjacent to the Property is classified as a scenic byway under the Baltimore County Master Plan 2020.[1]

[1] The classification of Falls Road as a scenic byway triggers consideration contained in the Comprehensive Manual of Development Policies ("CMDP") and the Baltimore County Landscape Manual. These considerations were addressed by the Petitioners on the site plan submitted at the hearing and will further be addressed on the final landscape plan, which will ultimately require Baltimore County approval.

Holly Springs is a nonprofit organization dedicated to environmental protection and sustainability. Pursuant to a 25-year lease, Holly Springs has contracted with Power Factor to install a solar facility on the Property. The solar facility will be comprised of nearly 6,000 solar arrays (commonly referred to as "solar panels") which are glass encased structures. As the Board is no doubt familiar from other similar cases that have come before it, solar energy is a renewable energy source, whose development and use is encouraged by the State of Maryland. Pursuant to legislation enacted by the State (See Annotated Code of Maryland, Public Utilities Article, Sec. 7-306.2), there has been a Community Solar Energy Generating System Pilot Program established. This program encourages the development of solar energy facilities to be utilized as an alternative to the use of fossil fuels and is to comprise 25% of the State's energy use by 2021. The subject proposal is pursuant to that program.

The details of the operation were described by Mr. Streit and are more particularly shown on the revised site plan (Petitioners' Exhibit No. 22A-D). The solar facility will contain a series of fixed (i.e. non-rotating) solar panels that will be oriented in a southerly direction to capture energy from the sun. The energy produced by the proposed facility will be converted to electric current and fed into the public power grid (owned and maintained by BGE). There is a single equipment structure proposed on the Property (an inverter) that will contain the equipment required to convert the energy into electricity. Mr. Streit explained, in detail, how the process works from a scientific standpoint. The sun's energy is absorbed by the panels which then, through underground wires, transmit the energy captured to the inverter. There, the energy is converted from Direct Current

("DC") to Alternating Current ("AC"), which is the electric current which powers our homes, businesses, etc. This AC current is then transmitted to a meter (also via underground wires) and then onto the public electric transmission wires owned and maintained by BGE, which run up and down Falls Road. Those transmission wires comprise the public grid which provides electricity to the homes and businesses in this area. The amount of energy fed into the grid will be monitored and used by subscribers to the Community Solar Energy Generating System Pilot Program. As required by Baltimore County, the subject facility will generate less than two megawatts (See Baltimore County Zoning Regulations "BCZR" 4F-102).

As shown in a series of exhibits presented at the hearing, the solar facility will be surrounded by a fenced and landscaped buffer. The proposed landscaping was designed with the purpose of buffering the solar facility from surrounding properties and to meet the provisions of County law regarding development on a scenic byway. The solar facility will cause no effective impact to the surrounding locale. This will be an unmanned facility. The panels do not require regular maintenance, they do not generate noise or odors, they cause no environmental impact, they produce no traffic, they cast no shadow or glare.

Just as cell phone towers caused unwarranted fear in communities a generation ago, solar facilities are the latest development in the evolution of technology that have evoked unsubstantiated fears. Quite possibly, in twenty years, the presence of solar panels throughout the County will become as common as the current presence of cell towers/antennae. Certainly, this is the hope of many, who desire that the United States

utilize renewable energy and lessen its reliance on non-renewable energy produced by fossil fuels and the carbon footprint and other associated adverse effects caused by the same.

STANDARD OF REVIEW

A. Section 502.1

As with any special exception, the subject request must be adjudged in accordance with the provisions of BCZR § 502.1. That section states:

> "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 the 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 light 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 the vicinity, including forests, streams, wetlands, aquifers and floodplains in an RC-2, RC-4, RC-5, and RC-7 zones."

The law of special exceptions in Maryland has been comprehensively addressed by the appellate courts of this state. As is well settled, the criteria stated in BCZR § 502.1 is to be applied to each petition in the manner as outlined in the seminal case of *Schultz*

v. Pritts, 291 Md. 1 (1981). The holding in *Schultz* has been clarified and affirmed over the years, most notably and recently in *Attar v. DMS Tollgate, LLC* 451 Md. 272 (2017).

B. The *Schultz v. Pritts* Standard.

In *Schultz*, the court discussed the role of special exceptions in the comprehensive zoning scheme enacted by the local jurisdiction and opined, "[t]he 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." *Id.* at 11. Thus, a special exception use is not an exception to the zoning ordinance at all, rather, it is a conditional use that shares the legal presumption of validity, absent a showing that it should be denied because of egregious impacts at the locale considered. Power factorAs stated by the Court in *Shultz*, "[t]he appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that a particular use proposed at the particular location proposed would have an adverse effects above and beyond those inherently associated with such special exception use irrespective of its location within the zone." *Id.* at 15.

In *Mossburg v. Montgomery Co.*, 107 Md. App. 1 (1995), the Court of Special Appeals further clarified this standard and stated that impacts from special exception uses are not, in and of themselves, a basis by which the special exception can be denied. *Id.* 8-9. As held by the court, it is the existence of these impacts in the first instance that justify the use being a special exception use (rather than allowed by right). *Id.*

The holding that detrimental impacts from a proposed special exception must be greater than those normally associated with impacts in similarly zoned areas is premised upon the concept that a special exception are part of the contemplated zoning process established by the County Council. As such, all special exceptions are presumptively permissible and, therefore, in the interest of the general welfare of the public. *See* Schultz, 291 Md. at 11.

As such, the *Schultz* Court found:

> "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." *Id.*

Therefore, the Board is guided by the special exception factors listed in § 502 of the BCZR with special attention placed upon whether these detrimental effects would be any greater than in any other similarly zoned area in the County.

As to the appeal of the Director's decision adopting the recommendation of the DRC, the matter is simply one of statutory construction. That is, does this proposal constitute one of the exemptions listed in BCC § 32-4-106? In this regard, Baltimore County's development/subdivision regulations are contained in Article 32, Title 4 of the BCC. Therein, a process is laid out by which development of property is reviewed by the County. BCC § 32-4-106 sets out several exceptions to that process. These exceptions are applied when the Director of PAI determines that the "full" review process is not appropriate given the nature of the proposed development. The Board considers whether

the Director's decision was appropriate following a *de novo* hearing. Baltimore County Charter, Article VI, § 603.

ISSUES PRESENTED

A. THE PROPOSAL IS IN COMPLIANCE WITH BILL 37-17 (BCZR § 4F)

The technology of capturing the sun's energy and converting it to electricity by way of a "solar facility" is governed in Baltimore County (from a zoning perspective) pursuant to § 4F-101 et. seq. of the BCZR. This section was added to the BCZR pursuant to the enactment of Bill 37-17 by the County Council, effective July 17, 2017. The instant special exception petition is brought pursuant to that section. As a threshold issue, the Board need find that the proposal is compliant with the provisions of Bill 37-17.

BCZR § 4F-101 (et seq.) provides that solar facilities are permitted in the RC 2 and the RC 8 zones by special exception and sets out the requirements for such facilities. Specifically, there are a series of criteria set out in BCZR § 4F-104 which the proposed use must satisfy. That is, largely through the unrefuted testimony and evidence offered by Mr. Streit, Mr. Leffner, Mr. Barrett, and Mr. Kraft, there is no dispute that the proposal meets the following requirements of BCZR § 4F identified in quotation marks below:

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." As Mr. Leffner testified, the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural

legacy easement. (See Petitioner's Exhibit No. 26 and Tr. 9-19-19, pg. 88-89).[2] This requirement will be discussed in further detail in the "Protestants' Issues" section within this memo.

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." As Mr. Leffner testified, the Property is not located in a Baltimore County Historic District, nor is it listed on the Baltimore County Final Landmarks List. (Tr. 9-19-19, pg. 89).

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." As testified by Mr. Leffner , the Property is currently not encumbered by a forest conservation easement. (Tr. 9-19-19, pg. 89-90) Pursuant to Baltimore County's environmental regulations, certain environmental easements and restrictions will be imposed on the Property as part of the development/permit review process, but no portion of the facility will infringe upon these areas. Further, it is not zoned RC 4 or RC 6 and thus there is no designated conservancy area.

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." (emphasis added) This requirement is met in that the entire facility will be setback at least fifty feet from the overall tract boundary which is established around

[2] References to the transcript of the hearings will be noted via a "Tr", followed by the hearing date and page number. A copy of the relevant page(es) is attached.

the perimeter of the two consolidated parcels. (Tr. 9-19-19, pg. 93) However, the components (i.e. the solar panels/arrays and equipment box/inverter) of the solar facility are located closer than fifty (50) feet from the internal lot line that divides these two parcels (actually the facility extends across this internal lot line). However, the requirement is satisfied because parcels 144 and 121 have merged for zoning purposes. Additionally, landscaping, fencing, etc. for the facility is permitted within this fifty-foot area. This requirement will be discussed in further detail in the "Protestants' Issues" section within this memo.

5. "A structure may not exceed 20 feet in height." The panels (structures) are less than the required 20 feet in height (the panels are approximately eight feet high). (Tr. 9-19-19, pg. 93).

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." A landscaping buffer around the "perimeter" of the solar facility is provided. (Tr. 9-19-19, pg. 95-118). Details of the landscaping are shown on the site plan (Petitioners' Exhibit No. 22 Sheets C-D). This requirement will be discussed in further detail in the "Protestants' Issues" section within this memo.

7. "Security fencing shall be provided between the landscaping buffer and the solar facility." Security fencing is provided around the perimeter, between the landscape buffer and the solar facility. (Tr. 9-19-19, pg. 156).

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." The solar panels are designed and located in an arrangement that minimizes glare or reflection onto adjacent properties and roadways (see Glare Analysis Report, Petitioners' Exhibit No. 11). Moreover, the panels (from a visual perspective) will not interfere with traffic or create a safety hazard. This requirement will be discussed in further detail in the "Protestants' Issues" section within this memo.

9. "A petitioner shall comply with the plan requirements of § 33-3-108 of the County Code." This identified Code section is located within the County's environmental regulations (Title 33) and, more specifically, located within Subtitle 3, entitled "Wetlands Protection." Obviously, the intent of this requirement is that the County have (for its review) a plan which identifies environmental features and constraints of the property in enough detail to enable County reviewers to thoroughly and intelligently review the project. The information required includes, for example, that the plan show soil types, field delineated wetlands/springs/streams, floodplains, vegetation, etc. Through the collective testimony of Mr. Leffner (who prepared the plan) and Michael Kulis (who reviewed it on behalf of the Department of Environmental Protection and Sustainability" DEPS"), it is apparent that the plan is compliant. In fact, Mr. Kulis testified about his Department's extensive review of the project and the substantial information that he reviewed. He said, "I have reviewed the project. I've reviewed the wetland delineation verification plan and data sheets, forest stand delineations and their data sheets, forest

stand assessment data sheets, I looked at the plans, spent three hours on site, walking the property." (Tr. 9-24-19, pg. 35.) (See also, e.g. Wetlands Delineation Report, Pet. Ex. 20 and DEPS approval of the same, Pet. Ex. 21). Later during his testimony, Mr. Kulis was asked the following: "is it accurate to say that the department has received the forest stand delineation, and approved it, has received the erodible soils and steep slopes analysis and approved it and has received the wetland delineation and approved that?" He answered, "That is correct." (Tr., 9-24-19, pg. 53). The County has thus received abundant environmental information about the Property.

At the Board's de novo hearing for these matters, the Petitioners initially submitted a four-page plan (Developer's Exhibit 3A-3D). This plan was prepared and included all the data that had been contained on the respective Special Exception petition (considered below by the ALJ) and the DRC plan. As the Board had consolidated these appeals, a single plan was submitted for simplicity and readability. During the hearing, it came to light that there were insignificant drafting errors on the plan that adversely reflected its readability (e.g. the north arrow). Thus, a revised plan was submitted into evidence (Petitioner's Ex. No. 22 A -22D). It is this plan that the Developer submits for the Board's approval. That plan depicts "existing conditions", both in a larger broader scale (Pet. Ex. 22 A) as well as in a smaller scale, more "close up" depiction (Pet. Ex. 22 B). Similarly, it depicts proposed conditions, again in a broader scale (Pet. Ex. 22C) and smaller more detailed scale (Pet. Ex. 22D). The information required by 33-3-108 is shown either schematically on the plan; or in the notes on the plan, including the "environmental/site notes". As importantly, and for the purposes of a thorough

examination by the agency charged with reviewing these issues (i.e. DEPS), substantial information (as verified by Mr. Kulis) was provided via the studies and reports submitted directly to DEPS.

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." As shown in a series of exhibits presented at the hearing, the solar facility will be surrounded by a fenced and landscaped buffer. This includes retention of existing vegetation, additional plantings and a privacy fence. Some of the aspects of the landscape were at the request of immediate neighbors. The proposed landscaping was designed with the purpose of buffering the solar facility from surrounding properties and to meet the provisions of County law regarding development on a scenic byway. The solar facility will cause no effective impact to the surrounding locale. This will be an unmanned facility. The panels do not require regular maintenance, they do not generate noise or odors, they cause no environmental impact, they produce no traffic, they cast no shadow or glare. The Board may attach conditions in its approval as necessary.

In summary, the subject proposal complies with the threshold requirements set forth for a solar facility in Bill 37-17, as codified in BCZR § 4F.

B. THE PETITION FOR SPECIAL EXCEPTION SHOULD BE GRANTED.

As noted above, the Petition for Special Exception shall be adjudged in accordance with the provisions of BCZR § 502.1. That section sets out specific criteria which must be evaluated. As set forth as follows, the proposal meets these criteria.

A. The proposed solar facility will not be detrimental to the health, safety or general welfare of the locality involved. The inherent impacts of the proposed use are limited, and they are certainly not any greater here than they would be elsewhere in the zone. This will be an unmanned facility. The panels do not require regular maintenance, they do not generate noise or odors, they cause no environmental impact, they produce no traffic, they cast no shadow or glare. The facility is proposed immediately adjacent to Falls Road (Maryland Route 25); a major traffic corridor that leads through the rural areas of northwestern Baltimore County. The Property is not nestled in a tranquil agricultural community adjacent only to farms and agricultural uses, on a winding narrow country road away from busy public streets and highways. The topography of the Property presents no unique impacts, and to the contrary, the existing grades and vegetation serve to shield the interior of the Property from view. Under the legal standard articulated in *Schultz,* infra, the proposed special exception use will certainly not result in any impacts greater here than elsewhere in the zone.

B. The proposed solar facility will not tend to create congestion in the roads, streets or alleys in this locale. The facility will be unmanned. It will generate limited traffic. Except for limited visits to the site for routine maintenance, there will be no traffic

generated. As noted above, the Property is adjacent to Falls Road (Md. Rte. 25) the major roadway serving this area of the County.

C. The proposal will not create a potential hazard from fire, panic, or other danger. The panels used will meet all industry standards and fire codes as to construction and fire rating. There is little likelihood for a fire and the panels are set back a significant distance from the property line and any adjacent structures. There are no adjacent buildings to which flames would spread. There is no evidence in the record of this case suggesting that there is any "hazard" that will be generated. As Mr. Streit testified, in addition to periodic onsite inspections, the facility will be continuously monitored remotely so that any irregularities in the operation of the facility will be immediately identified and addressed.

D. The proposed use will not tend to overcrowd land and cause undue concentration of population. There are no persons used at this site and thus no "concentration of population." The project will not overcrowd the land. The entire property is not utilized by the special exception. The Property is approximately 32 acres in size and the special exception area encompasses approximately 9 acres. The required setbacks are maintained and there are no area or bulk standards requested.

E. The proposed use will not interfere or impact adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements. There is simply no impact regarding these criteria.

F. The proposed use will not interfere with adequate light and air. It does not case a shadow on adjacent properties. There are no odors generated. The inverter

building and panels will produce minimal noise, not detectable at adjacent homes (particularly given traffic volumes on Falls Road). As with the criteria in BCZR § 502.1 (e) above, there is no impact to these criteria.

G. The proposed use is consistent with the purposes of the Property's zoning classification and not inconsistent in any way with the spirit and intent of these zoning regulations. The use is permitted by special exception in the RC 2 and RC 8 zones and Bill 37-17 permits such facilities along scenic routes. As such (as noted above in the discussion of the standard or review to be applied) it is presumptively permissible. Further, pursuant to BCC § 1A09.4., before the approval of any special exception plan in a RC-8 zone, "the Director of Planning or the Director's designee must certify in a written finding that the plan ... is consistent with the spirit and intent of these regulations." Such certification requirement was provided in the ZAC comments. As noted herein above, Petitioners provided the Department of Planning with a narrative explaining that the plan is consistent with the spirit and intent of the regulations. (Prot. Ex. No. 6) Thereafter, the ZAC comments were revised to reflect Petitioners' satisfaction of BCC § 1A09.4. (Prot. Ex. No. 7).

H. The proposed use will not be inconsistent with the impermeable surface and vegetative retention provisions of these zoning regulations. As testified to at the hearing, the proposal is subject to the storm water management regulations and will meet those requirements. There is limited impermeable surface, as the panels are affixed to the ground via a post and there will grass planted underneath that will absorb storm water runoff.

I. The proposed use will not be detrimental to the environmental and natural resources of the site and the vicinity, including forests, streams, wetlands, aquifers and floodplains in an RC-2, RC-4, RC-5, and RC-7 zones. This solar facility will not produce toxins, chemicals or other similar impacts that might result in environmental degradation. The Petitioners presented expert testimony on this matter. Petitioners have already consulted DEPS and have adopted its recommendations and requirements to protect the environmental and natural resources on site. DEPS is charged with review of stormwater management and will be undertaking a more detailed analysis pursuant to BCC § 33-3-108. The Property drains towards its interior and will not cause run off to adjacent properties.

C. THE PROPOSED SPECIAL EXCEPTION COMPLIES WITH BCZR § 1B01.2.C.

For any special exception petitioned for in the RC 2 zone, BCZR § 1B01.2.C requires that the hearing authority (Board) find that the use will not be detrimental to agricultural uses in the vicinity. It is to be particularly noted that there is no requirement for a finding that the use "support" agricultural uses; only that it not detrimentally impact them. [3] Based upon the testimony and evidence offered, there will be no impact by this use on agricultural uses in the vicinity. First, it is noted that although there are agricultural uses in the area, the immediately adjacent land uses are primarily residential and open space. As to this proposal, it will have no impact on the farms and other agricultural uses in the area. As noted above, the proposed use does not generate traffic, storm water runoff will

[3] It is particularly noted that for cellular towers, a finding that such a proposed use support nearby agricultural uses is required. But this provision does not apply to solar facilities.

be properly managed, and the project will not create any impacts that would affect adjacent and nearby uses. This requirement and required finding are thus easily satisfied.

D. THIS PROJECT IN ENTITLED TO AN EXEMPTION FROM THE DEVELOPMENT REVIEW PROCESS PURSUANT TO BCC § 32-4-106 (A)(1)(VI)

As noted above, Baltimore County's development review regulations are contained in Article 32, Title 4 of the BCC. Therein, a review process is established which governs how the County reviews proposed development. Under this process (frequently referred to as the: full review process"), an applicant is required to file a concept plan, attend a concept plan conference, conduct a community input meeting, submit a development plan and participate in a hearing before the ALJ. The Board is no doubt familiar with this process as it hears appeals on the approval (or denial) of a development plan.

However, this process may be streamlined based upon a recommendation of the Development Review Committee and decision of the Director of PAI. There are two types of exemptions identified under County law and they are often referred to as "A" and "B" exemptions; based upon BCC § 32-4-106 under which they are listed. The "A" exemption permits the applicant to avoid the filing of a concept plan and development plan and eliminates the community input meeting and Hearing Officer's Hearing steps. Instead, upon obtaining an "A" exemption, the applicant proceeds to the path which results in the issuance of permits (i.e. grading, building, etc.) which allow construction. But this does not mean that, obtaining an "A" exemption, bulldozers will immediately appear on the scene and construction will commence. As Mr. Kulis testified, significant review by

DEPS is required before any grading is allowed on the Property (Tr. 9-24-19, Pg. 53, Lines 19-24). DEPS review will include not only examination of issues surrounding the environmental resources and constraints associated with the Property, but a storm water management plan will also be required. Not only will DEPS undertaker substantial review, but other County departments will review the project before any construction can begin. For example, the Department of Permits, Approvals and Inspections (PAI) will require the review and approval of a landscape plan and decommissioning agreement. The Development Plan's Review division of PAI will also review the plan for Fire Department standards related to access and public safety issues. The inference that the Protestants present that projects granted an "A" exemption sail along to construction is simply false.

On the other hand, the DRC can grant a "B" exemption. A "B" exemption also eliminates the requirement for a community input meeting and a Hearing Officer's Hearing. In fact, the biggest difference between an "A" and a "B" is that the "B" requires the filing of a development plan and that an "A" does not. Given all the other reviews required in order to secure permits; as well as the substantial information required on the plan (as well as the public's opportunity to participate through both the zoning (special exception) and DRC processes, an "A" exemption is clearly warranted.

As noted earlier, then PAI Director Michael Mallinoff approved a "BCC § 32-4-106(a)(1)(vi)" request which was appealed to the Board. On appeal, the Petitioners request that the Board likewise determine that an "A" exemption is proper.

The DRC/Director has routinely granted "A" exemptions for solar cases. BCC § 32-4-106(a)(1)(vi) identifies an exemption for "residential accessory structures or minor commercial structures." The solar panels proposed here (and the small structure housing the electronic equipment serving the same) are clearly "minor" in size and scope. They are not buildings designed or used for human occupancy. They are small. They use no public utilities (i.e. public water or sewer). For all these reasons, this project clearly falls within that exemption.

The Petitioner is mindful that in several recent cases involving DRC appeals, that the Board has indicated that a "B" exemption is appropriate for solar facility projects. The undersigned counsel was not involved in those cases and does not know what facts and evidence were introduced which led to the Board's determination. The Petitioner understands that the Board will likely want to be consistent in its approach. But in acknowledging that fact, the Petitioner asks that the Board consider the substantial review yet to come under an "A" exemption and consider that the filing and review of a development plan provides no additional meaningful review. Additionally, the "B" exemption provided no additional opportunity for public comment (which is already afforded via the zoning and DRC processes). All in all, the granting of an "A" is appropriate and legally proper; preserves the rights of the parties, gives all parties a meaningful chance to participate and avoids bureaucratic redundancy.

PARCELS 144 AND 121 HAVE MERGED FOR ZONING PURPOSES

As mentioned above, the Petition for Special Exception was originally filed for Parcel 144 but was later amended to include Parcel 144 and the adjacent Parcel 121

because of environmental considerations identified by DEPS. As a result of the change to the site plan, the group of panels furthest from Falls Road is proposed to be constructed on the internal property line that separates Parcels 144 and 121. In addition to the Petition for Special Exception, a variance request, if necessary, was filed for relief from BCZR § 1A01.3.B.3. to permit a solar facility setback of 0 feet for an internal lot line. Petitioners filed this variance request out of precaution (a belts and suspenders approach), as Parcels 144 and 121 have merged for zoning purposes and thus a variance from an internal lot line is not necessary. Zoning merger is the common law principle that when adjacent lots in common ownership are used in connection with the same use, the lots merge for zoning purposes (i.e. zoning regulations such as setback requirements).

The Court of Appeals first discussed the common law doctrine of zoning merger in *Friends of the Ridge v. Baltimore Gas & Elec. Co.*, 352 Md. 645, 724 A.2d 34 (1999). The Court permitted BGE to expand its electric power substation onto its adjoining parcel, without a variance for setbacks from internal lot lines. As discussed by the Court, [Zoning] merger occurs without the need for official subdivision process and approval and requires minimum proof of the owner's intent.[4] 352 Md. at 653-54, 724 A.2d at 38. In *Remes v. Montgomery County*, 387 Md. 52 (2005), the Court determined the use merged the adjoining parcels and prohibited the issuance of a building permit on the vacant lot, despite the owner's claim that no merger was intended. The evidence that the subject

[4] Although no process or approval is required for a merger to occur, the Property Owner here is combining/merging the parcels through their participation in the development review process. BCC 32-4-101(p) includes in the definition of "development" the following: "the combination of any two or more lots, tracts, or parcels of property for any purpose." Thus, the Property Owner's development of these parcels with a solar facility has, in fact, combined them into a single lot.

parcel served as yard space accessory to the dwelling supported a merger even if the lots remained in separate deeds.

Assuming arguendo that that the Board determines that no merger occurred, and a variance is required, the Petitioner meets the two-part test articulated in *Cromwell v. Ward* 102 Md. App. 691 (1995). This well-established test requires a finding that the property is unique, and that the applicant would suffer an undue hardship if relief were denied. That the Property is unique is manifest. Unique means "one of a kind" and "different from others". The adjacent parcels at issue are unique given their size, topography, shape and configuration. There are no other parcels of this acreage and shape, containing the environmental constraints associated with these parcels. Moreover, as is evident, these physical characteristics drive the need for variance. As noted, the Petitioners initially filed the Petition to permit the solar facility on Parcel 144 only. However, based upon the input from DEPS and the unique environmental constraints associated with the Property, the Petition was amended to include the adjacent parcel (121). This amendment evidences the uniqueness of the parcels and demonstrates that the layout as proposed is driven by these characteristics. The second part of the test requires a finding of "practical difficulty". This phrase is essentially defined (in a zoning context) as the inability of a property owner to reasonably use their property for a permitted purpose. That is, that the owner is deprived of the property use and enjoyment thereof in a manner enjoyed by other similar owners. Here, the proposed use (as articulated above) is presumptively permitted by special exception. The features of the

Property; coupled with the setbacks that would be required, would render compliance impossible for this permitted use.[5]

PROTESTANTS' ISSUES

Although Petitioners aver that this proposal easily meets each required element for special exception approval and a limited exemption pursuant to BCC § 32-4-106 (a)(1)(vi), a discussion of the issues raised through the Protestants' testimony is presented. Those issues are:

1. The Protestants "Landscaping Argument"

The Petitioners' have submitted into evidence a Site Plan (Petitioners' Exhibit No. 22), that satisfies the requirements of the law. The plan was prepared under the direction and supervision of Mr. Leffner and Mr. Kraft. Both Mr. Leffner and Mr. Kraft testified, without contradiction, that the plan meets the requirements of the BCZR § 4F-104.A.6, the Comprehensive Manual of Development Polices (CMDP) and the County's Landscape Manual. Protestants apparently contend that a landscape plan must be approved by the County's Landscape Architect *prior* to approval of the Petition for Special Exception by the Board. Such contention is simply wrong and contrary to the provisions of law and prior practice of the Board. The Board can impose conditions upon the grant of special exception relief (per BCZR § 502.2) and in fact has conditioned the approval of other special exceptions for other solar facilities by requiring that a landscape plan thereafter be approved by Baltimore County (See e.g., Cases No. 18-194-X,

[5] As noted herein, the solar facility must be setback fifty feet from the tract boundary. For the sake of argument, if the parcels were not merged, and the tract boundary were considered the perimeter of each parcel; these required setbacks (in conjunction with the environmental buffers required) would render the Property unusable.

Atkinson/owner; 18-030-X, HHK Farms/owner; and 17-108-X, Matthews/owner). The Petitioners are agreeable to such a condition in this case and have been working with the County Landscape Architect in formulating the landscape plan. A review of that plan shows that significant landscaping is proposed, and existing woods/buffer are being retained. Off-site areas of woods (which are themselves protected and must be retained under the County's forest conservation laws) will also provide screening. Insofar as proposed landscaping, it will be provided around the perimeter of the Property (where required under Bill 37-17) and most heavily implemented where most appropriate. There is significant screening to the west buffering Falls Road and traffic approaching from the south. Additional new plantings are provided along the northern and southern property line to screen neighboring properties in that direction. A privacy fence will be constructed. Perhaps most importantly, the landscape plan shows an area or "contour" or "interior" screening within the facility (i.e. not just around the perimeter). Obviously, any screening of this type needs to be carefully located to not interfere with the panels' direct orientation to sunlight and designed so as not to cast shadows and negatively impact the purpose of the use (i.e. to capture the suns energy). But the landscape plan fully shows careful consideration to the topography of the area and Property and an effort to buffer the use possible.

2. The Protestants "Argue in The Negative – Easement Argument"

As noted above, Mr. Leffner testified that he researched the County's Land Records and concluded that the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy

easement. Not only was Mr. Leffner's sworn testimony presented, Baltimore County GIS Land Preservation database and the Baltimore County My Neighborhood Website both indicate that the Property is not encumbered with an easement. The Protestants offered no evidence to rebut this evidence. Instead, they claim that the Property Owner identified a certain acreage of its land holdings as being in "conservation" in its tax filings and that this claim somehow translates into the conclusion that the subject Property is so encumbered. The Protestants' claim is irrational and endeavors to require that the Petitioners prove a negative. Simply stated, there is no agricultural preservation easement, no environmental preservation easement, and no rural legacy easement recorded on the Property in the Land Records of Baltimore County. It is acknowledged that the adjacent property (owned by individuals affiliated with Holly Springs) is encumbered by an easement. Perhaps that is the source of Protestants' "confusion". Whatever the situation, the evidence is uncontradicted that the Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement. If the Protestants have some direct proof (and there is none) that the Property is encumbered, then they should have produced it at the hearing. They should have presented the deed or other document establishing the encumbrance. Absent that, there is simply no issue.

3. The Protestants "Holly Springs Incorporation Argument"

The legal owner of the Property is Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. Members of the community testified the entity is registered with the IRS as a Section 501(c)(3) organization, and that the proposed use of the Property is contrary

to purpose of the entity as provided for in the articles of incorporation. Protestants offer an undecipherable claim that the Property Owner's non-profit status and corporate mission is somehow relevant for this Board in considering the special exception request. This is a zoning case. The criteria for the Board to consider are well stated and laid out in the BCZR. The Property Owner has (through its signature on both the original and amended petitions) properly brought the petition (and the DRC application) before the appropriate authorities in Baltimore County. Whether the Property Owner is a non-profit, a for profit, brings the request in furtherance of its corporate mission or whatever slanderous inference the Protestants raise is simply irrelevant. The Board (respectfully) is not a tax court, Circuit Court or forum where the "motives" of a petitioner are relevant. The Board's jurisdiction is based upon the law and this argument is simply irrelevant.

4. **The Protestants' Underground Utility Connection Line**: As shown on the site plan, there are two "areas" or "sections" of the solar arrays. That is, although this is but a single "project", the array fields are separated into two sections. This separation is driven by the environmental features of the Property, specifically the stream which traverses the site. As further shown on the plan, there is an electrical connection between the two array fields. This connection is via an underground link; achieved through a process of "horizontal boring". An excavation will be drilled (outside of the forest buffer) through which a line will be installed to pass under the stream and then "resurface" at a location on the other side of the stream, which is also outside of the buffer. The Protestants claim that this underground connection of the two array fields requires a forest buffer variance or alternatives analysis which has not been requested.

Insofar as the need for a forest buffer variance or alternative analysis pursuant to BCC 33-3-112, In responding to this claim, it is first to be noted that it is premature and not part of the special exception criteria. BCZR 502.1 contains no standard relevant to Protestants' argument. But more importantly, as Mr. Kulis testified, Protestants argument is simply wrong. When asked if the connection shown would constitute a disturbance or infringement of the forest buffer, he responded, "as shown, no, it would not." (Tr. 9-24-19, pg. 57. As he further explained, "making an underground connection from one solar array to the other provided those sending and receiving areas for the underground connection are within the limit of the solar array disturbance, those solar arrays are outside of the area established as the forest buffer." (Tr. 9-24-19, pg. 57.) Both Mr. Leffner and Mr. Kulis explained that the forest buffer regulations required non disturbance of the stream and its buffer, and that a subsurface connection (for so long as it meets DEPS criteria insofar as depth) is not a disturbance. Again, simply state, the Protestants ignore the plain meaning of the law and there is no viable issue in this regard.

5. The Protestants "Power Factor Is Not A Proper Party Argument"

Among the more specious arguments that the Protestants have offered in this matter was an unrelenting attack on the co-Petitioner Power Factor LLC and its alleged inability to move forward with this project. This argument wholly fails for a variety of reasons.

First, it is noted that the BCZR establishes a requirement of "need" for certain land uses. For example, a special exception for a service garage cannot be granted if it is established that there is no need for the proposed use (See BCZR 405.3). In a similar vein,

a Planned Unit Development ("PUD") plan can be approved only after a finding that the developer has the wherewithal to complete the project and that there is a "reasonable expectation" that the project will be developed as proposed.

There is no similar requirement for solar facilities. However, the County Council (in enacting Article 4F of the BCZR) has taken extraordinary safeguards to ensure that such facilities will not become a blight in the event the use is discontinued or abandoned. BCZR 4F-105 requires that "an applicant for a building permit for a solar facility shall provide a security bond or equivalent financial security" that can be used to remove or repair a facility. Further, BCZR 4F-106 imposed a duty on "*all parties* having a lease or ownership interest in a solar facility are responsible for the maintenance of the facility" (emphasis added). Further provisions in Article 4F authorize the County to utilize the security posted to remedy a violation of the Article; to wit, to remove or repair a facility that is not properly maintained or abandoned. As this matter moves forward past the special exception phase and towards the ultimate issuance of permits, the County will require not only the posting of security, but the execution of a "decommissioning agreement" outlining the responsibilities of the "parties having a lease or ownership interest". It will be Baltimore County who will determine which entity(ies) are responsible for the providing of security, who should execute the decommissioning agreement, to whom the building permits should be issued, etc. The Protestants incessant questions of "who's going to own it", "who's responsible for it", "who will maintain it" etc. are simply not part of the criteria in determining whether the special exception should be granted. More to the point, the answer to these questions is simply that Holly Springs

is the Property Owner (and thus bears ultimate responsibility as such) and that Power Factor is the developer/builder of the facility. Most importantly it is Baltimore County (as the regulatory authority under its zoning ordinance) who will decide "who does what" and "who is responsible for what."

The Protestants inquiries in this regard are also inappropriate in that they endeavor to have the Board usurp the jurisdiction and authority of the Public Service Commission of the State of Maryland.[6] The subject project is part of the State's Community Solar Program. It is regulated as such. Like similar projects, the installation of the facility involves multiple parties. There is the property owner and developer. There are subscribers who will utilize the energy produced and an organization that will identify and designate those ultimate users. There are (like most businesses) investors. The point is that this project will need to jump through multiple hurdles in order to come to fruition. The hurdle before the Board is the zoning (special exception) and Baltimore County development review (DRC) issues, not the issues that involve the PSC and/or the relationships of the business entities involved. Finally, the Protestants' attacks on the character of the individuals who operate Power Factor LLC are not only irrelevant/inappropriate but simply "beyond the pale". The Protestants attempted introduction of evidence about the unfortunate work-related accident death of a Power Factor employee out of state is simply insulting. The particulars of that unfortunate event have nothing to do with the question of whether a special exception for a solar facility

[6] In a recent case before the Court of Appeals, Maryland highest court held that the PSC preempts a local governments authority over certain solar facilities (See *Board of County Commissioner v. Perennial Solar* 464 Md. 610 (2019))

should be granted at 18627 Falls Road. As Mr. Striet testified, the company has vast experience in the construction and operation of solar facilities and the Protestants attempted character assassination of the Petitioners should not be condoned by the Board by giving the allegations any credence or impact.

6. The Protestants "view argument"

There was repeated testimony from the Protestants that there is some requirement that the facility be invisible from adjacent properties. However, there is no requirement of invisibility, just as the Protestants have no "right to a view" across the Property. In fact, such a contention is contrary to the designation of Falls Road as a scenic byway. The Comprehensive Manual of Development Policies ("CMDP") discusses "expansive" views when addressing the requirements of development along scenic views. This suggests that views remain open and that a "wall" of landscaping (obscuring a property) is not desirable. The County's Landscape Manual in fact states (page 6) that landscaping is to "diminish" views, not "eliminate" them. As Mr. Kraft testified, the landscape plan proposed here will "soften" the view of the facility from adjacent properties and roads. As Mr. Kraft testified, this is precisely the result designed for in the preparation of the site plan and landscape plan. Those plans propose retention and utilization of existing forested areas and trees, interior screening within the panels itself and heavier planting and screening where the view from adjacent properties warrants it. Protestants argue that due to the topography of certain areas, the panels may be visible and thus the special exception should be denied. The Protestants misrepresent the applicable provision of law. BCZR § 4F does not state (as claimed by Protestants) that a petition for special

exception for a solar facility may be ***denied*** because of unusual or unique conditions of topography. Instead, BCZR 4F-104(10) states, in part, "(i)n granting a special exception, the . . .Board of Appeals on appeal, *may impose conditions or restrictions* . . .taking into account such factors as the topography of adjacent land, the presence of natural forest buffers and the proximity of streams and wetlands." (emphasis added) The Board may impose conditions (i.e. obtain approval of a landscape plan from Baltimore County) in order to address the concerns of a neighbor, but not deny the plan. Such a result is also suggested in the Zoning Advisory Committee comments from both the Department of Planning and Department of Development Plans Review. These comments are part of the record of the case as part of the file maintained by the Office of Administrative Hearings.

7. The Protestants "Water Run-Off Argument"

The Protestants expressed concern about water run-off as a result of the solar facility. There was testimony from Petitioners that plantings will be located under the solar panels. The Department of Environmental Protection and Sustainability ("DEPS") is charged with stormwater management requirements and will ensure compliance. With approval of the special exception, the Petitioner will be required to comply with the recommendations of DEPS. As Mr. Kulis confirmed, DEPS is charged with review of stormwater management and will be reviewing a storm water management plan for approval. There was testimony from the community expressing concern that when rain contacts the solar panels the temperature of the rain will rise and make its way to stream which could prove to be detrimental. However, Protestants produced no expert testimony on this matter.

8. The Protestants "Glare Argument"

The glare analysis report submitted (Petitioners' Exhibit No. 11) and the testimony on this subject offered by Petitioners' expert witness (Stephen Barrett) was not contradicted and is persuasive. As that evidence indicated, the amount of glare produced by the proposed facility is minimal and will be barely detectable from offsite locations. There will be no danger to traffic on the adjacent roads. There will be no adverse impacts on surrounding properties. The panels are designed to absorb; and not reflect, the sun. Given the fixed orientation of the panels, there will be a minimal amount of glare produced. Further, as detailed in the glare analysis report submitted, as well as through the testimony of Mr. Barrett, nearly all the glare produced will be mitigated by the existing topography and landscaping. Finally, the additional landscaping proposed pursuant to the landscape plan will further mitigate any impacts. Simply stated, there will be no adverse impact caused by glare or reflection from the panels and there was no evidence presented to the contrary. As with the project's visibility, the requirement is not that there not be any glare and/or visibility, but that such impact be minimal and less at this location then elsewhere in the zone. That is clearly the situation here.

CONCLUSION

For the foregoing reasons, the Petition for Special Exception should be granted. The proposal meets all the requirements in BCZR § 502.1 and the provisions in BCZR § 4F. The inherent effects of this proposal (already limited in the first instance) are no worse here than elsewhere in the zone and, given the character of the Property, proposal and locale, are less impactful than they would be elsewhere in the zone. Additionally, the

BCC § 32-4-106(a)(1)(6) exemption should be granted. This is consistent with the County's long-standing practice for such development proposals. As importantly, the proposal represents a minor development as it contains no habitable structures and does not require public utilities to operate.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this Nov. 27, 2019, a copy of the foregoing Memorandum was mailed, postage pre-paid, to:

Michael R. McCann, Esquire
Michael McCann, P.A.
118 West Pennsylvania Avenue
Towson, MD 21204

LAWRENCE E. SCHMIDT

MR. LEFFNER: Correct.
CHAIR: And that would include any access road or other equipment or, or security system, correct?
MR. LEFFNER: Correct.
MS. MURPHY: So, did your, your plan then, was it amended after, and I realize this hasn't come in yet, but the EPS comments from December of 2018 where they indicate that there might need (inaudible) variances and they indicated there won't be approval, you're nodding your head?
MR. LEFFNER: Yes, it was revised since we received that letter.
MS. MURPHY: Okay. So, now, so now, based on that letter, though, you're saying, your testimony is there should be no administrative variances that we need.
MR. LEFFNER: Correct.
MS. MURPHY: Okay, thank you.
CHAIR: So, is that the purpose of why you were asking about that earlier, is to show that some of the ZAC comments would not be applicable to the plan that's presented to this Board?
MR. SCHMIDT: Yes, sir.
MS. MURPHY: I realize the ZAC comments haven't come in but they're in the file so.
MR. SCHMIDT: Yes, and, and if I just can, just for clarity's sake, you'll notice that there are three sets of

comments from the State Highway, from the Office of Planning and also Development Plan Review and you actually have some from January of 2019, which is the, what I'd call the original plan and then over the summer, June/July time frame, there are comments when this plan was submitted.
CHAIR: So, there are two sets of comments --
MR. SCHMIDT: I just wanted to clear up that discrepancy because you'll look at them and --
CHAIR: Right.
MR. SCHMIDT: -- not be able to figure out what's what.
CHAIR: Thank you.
MR. SCHMIDT: I think we're up to Petitioner's Exhibit --
CHAIR: Well, before you go any further, Mr. McCann, any objections to Exhibit 6? Again, recognizing your continuing objection.
MR. MCCANN: Subject to that, no objection. Thank you very much.
CHAIR: Admitted.
MR. SCHMIDT: Board's indulgence. I just wanted to mark these before I gave them to you. And Mr. --
MR. MCCANN: Thank you.
MR. SCHMIDT: -- Coolis (phonetic), you indicated that Environmental Impact Review had reviewed --

MS. MURPHY: Mr. who?
CHAIR: Leffner?
MR. SCHMIDT: What did I say, Mr. Coolis? I'm looking at the name of the signature, I'm sorry. Mr. Leffner, you indicated that Environmental Impact Review had reviewed the steep slopes and erodible soils analysis and the revised forest stand delineation and had accepted it, is that correct?
MR. LEFFNER: Correct.
MR. SCHMIDT: And I'm showing you a letter dated July the 1st, 2019. Is that the letter was, your office was received indicating that those reports were, I think it says in the first paragraph, we have determined that the recent revised submission satisfactorily reflect the resources and also address our stated concerns and that's what, by, this letter is by which they accepted those studies?
MR. LEFFNER: Correct.
MR. SCHMIDT: Okay. I would offer that as exhibit number seven.
CHAIR: Mr. McCann?
MR. MCCANN: No objection, thank you.
CHAIR: So admitted.
MR. SCHMIDT: Okay. Board's indulgence for just, just a second. Okay. Let me ask you, Mr. Leffner, if I can, some questions about the property as, as well, and some of the require, well, let me ask you this. Are you familiar with the

requirements in Section 4-F of the zoning regulations as it relates to solar facilities?
MR. LEFFNER: Yes.
MR. SCHMIDT: Let me ask you some questions arising from those requirements. First of all, does this property, when I say the property, I mean the two lots, is it encumbered by any environmental preservation easement, any agricultural preservation easement or any rural legacy easement?
MR. LEFFNER: No, not to my knowledge.
MR. SCHMIDT: Okay. I know --
CHAIR: Well, if I could stop there. You, I assume you searched to see if it was?
MR. LEFFNER: Correct.
CHAIR: Right? And your search yielded no results that is --
MR. LEFFNER: No results.
CHAIR: -- that none of these are within any of those protected easements?
MR. LEFFNER: Correct.
MR. SCHMIDT: Yes.
CHAIR: All right.
MR. SCHMIDT: The way you said that is if --
MR. LEFFNER: No.
MR. SCHMIDT: -- you have done an analysis.
MR. LEFFNER: Correct.

MR. SCHMIDT: You have found neither an environmental preservation easement, an ag preservation easement or a rural legacy easement, correct?
MR. LEFFNER: No.
MR. SCHMIDT: Is it true, Mr. Leffner, that some of the adjacent properties are so encumbered?
MR. LEFFNER: Yes.
MR. SCHMIDT: But not this property?
MR. LEFFNER: Correct.
MR. SCHMIDT: And you've looked at that issue in the Land Records?
MR. LEFFNER: Correct.
MR. SCHMIDT: Okay. Is this property in any County historic district or do any of the buildings of the property have any historic designation?
MR. LEFFNER: No.
MR. SCHMIDT: Or landmarking?
MR. LEFFNER: No.
MR. SCHMIDT: No? Okay. Does the property have presently any kind of forest conservation easement area?
MR. LEFFNER: No.
MR. SCHMIDT: Okay. Will there be one ultimately at the end of this project, if, when permits are issued, will there be an easement dedicated before that?
MR. LEFFNER: Yes.

MR. SCHMIDT: And will the area of the easement be outside of where the solar facilities are proposed?
MR. LEFFNER: Yes.
MR. SCHMIDT: Will that be within the area as shown on your forest stand delineation?
MR. LEFFNER: Yes.
MR. SCHMIDT: So, the area --
CHAIR: Well, which area on your forest stand delineation?
MR. LEFFNER: It, it would be within one of the two foreated areas identified on the forest stand delineation.
MR. SCHMIDT: Okay. So, the County will require a forest conservation easement of, on a, on a portion of this property outside of where the solar facilities are?
MR. LEFFNER: Yes.
MR. SCHMIDT: And that will be in that portion of the property where you have determined there are mature forests that warrant conservation?
MR. LEFFNER: Yes.
MR. SCHMIDT: As approved by the County?
MR. LEFFNER: Yes.
MR. SCHMIDT: Okay.
CHAIR: Can you show us where that would be?
MR. SCHMIDT: Do you know where they'll be, the forest conservation area will be, generally?

MR. LEFFNER: The, in, in one of the two forest areas.
MR. SCHMIDT: Yeah.
MR. LEFFNER: I think there's stand A and stand B right now defined on the exhibit.
MR. SCHMIDT: Why don't you show me where stand A and stand B is?
MR. MCCANN: Stand one and two.
CHAIR: Do you need Exhibit 5 or do you, what, what is --
MR. LEFFNER: Yeah, I don't have a --
CHAIR: -- what works best for you to be able to do that? I believe it's referred to on here as there's stand one and two.
MR. LEFFNER: Yeah. Would have been sheet two of three on Exhibit 5. It'd be within an area identified as stand one.
CHAIR: So, to be clear, stand one on sheet two of Exhibit 5, that is the area that will be dedicated for forest conservation easements.
MR. LEFFNER: Or a portion of stand two, also identified on that sheet and sheet three.
CHAIR: Okay. You said or.
MR. LEFFNER: Correct.
CHAIR: So, --

MR. SCHMIDT: Who makes that determination as to whara the forest conservation areas will be?
MR. LEFFNER: The landowner or applicant can.
MR. SCHMIDT: Okay and is that subject to the approval of Environmental Protection?
MR. LEFFNER: Yes.
MR. SCHMIDT: Okay.
CHAIR: Is, so it would be the discretion of the landowner, it's not required by the County?
MR. LEFFNER: The forest conservation is a requirement by Baltimore County to be done, as noted in the approval letter from Environmental Impact Review. The forest conservation plan is required, one just hasn't been prepared at this time because of the ongoing proceedings.
CHAIR: So, do, so I understood your testimony, the landowner will decide though?
MR. LEFFNER: Correct.
CHAIR: As to which one?
MR. LEFFNER: Correct.
CHAIR: But the County is requiring at least one?
MR. LEFFNER: Correct.
CHAIR: Could the County require both?
MR. LEFFNER: Yes. There's forest conservation requirements as far as the total area that would need to be put into a conservation easement and it could move or be located in

either of those stands.

MR. SCHMIDT: And just to maybe make this clear, the, the County will require a certain number of acres to be dedicated into forest conservation, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Once they determine how many acres, then the property owner will have input as to which of those stands, one, the other, both, will be utilized to satisfy the County's acreage requirement?

MR. LEFFNER: Correct.

MR. SCHMIDT: Mr. Garber, does that help as to the --

CHAIR: It does.

MR. SCHMIDT: -- way that process works? Okay. Okay. Let me continue on, if I can, Mr. Leffner. Are the panels setback at least fifty feet from the tract boundary, the overall tract boundary?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and they're set back at least seventy-five feet from the center line of any public road?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. Do the panels exceed a height of twenty feet?

MR. LEFFNER: No.

MR. SCHMIDT: Do you know how tall they typically are?

MR. LEFFNER: It depends on the actual panel selected. Again, when it comes time to building permit, generally they're less than like nine feet.

MR. SCHMIDT: Okay. But that --

CHAIR: Does that include the space, just so I understand what you're measuring.

MR. LEFFNER: Um hm.

CHAIR: Are you talking about the panels themselves, or are you talking about the panel from the top of the, the, we'll just say apex of the panel, down to the, to the ground?

MR. LEFFNER: Yeah, apex down to the ground.

CHAIR: So, that would be, that would therefore include the entirety of the panel and the space underneath the panel?

MR. LEFFNER: Correct.

CHAIR: All right. So, it would be no higher than nine feet?

MR. SCHMIDT: Yes.

MR. LEFFNER: Yes.

MR. SCHMIDT: Yes. Okay. Let me ask you, if I can, Mr. Leffner, have, have you, on your plan, proposed any landscaping or screening of the proposed panels and arrays?

MR. LEFFNER: Yes.

MR. SCHMIDT: May, it might help if you approach the board to answer this next series of questions. And maybe you

flip to Exhibit B and D, which are closer versions. So, if you want to flip those pages over, because I'm going to ask you, if I can, to describe first, Mr. Leffner, I guess, some existing areas of vegetation and then secondly, the landscaping that you're proposing, just so the Board understands the landscaping that's proposed. Okay, starting with the plan on the top, Petitioner's 3-B, does that show any of the proposed landscaping?

MR. LEFFNER: It does not.

MR. SCHMIDT: Okay. Does it --

CHAIR: I'm sorry, it does not?

MR. LEFFNER: It does not.

MR. SCHMIDT: Okay. Does it show any of the areas of existing vegetation?

MR. LEFFNER: It does.

MR. SCHMIDT: Can you describe that for us?

MR. LEFFNER: Yes. Starting again with the incorrect north area, kind of the northern most part of the proposed project area.

CHAIR: We're recognizing that what appears to, to you know, me at least, the north arrow that you're just referenced, does appear to be inaccurate in terms of its orientation.

MR. LEFFNER: Correct.

CHAIR: On 3-B. But 3-D is correct.

MR. LEFFNER: On 3-B, correct.

CHAIR: Okay, sorry. So, go ahead.

MR. LEFFNER: The forested area that's identified on the forest stand delineation, as well along Compass Run in the northern and north east portion of the property, there's an existing forest, existing vegetation along the entire stream that bisects the property. More forested area along Compass Run, as you continue towards the eastern portion of the property, forested area along the south eastern portion of the property. Then there's, it's not a forest stand area but existing vegetation along the entire southern boundary. A pocket as you continue back towards the rear of the existing barn structures, as well as along the southern boundary adjacent to the existing residential structure and garages. Along Falls Road there's existing vegetation.

CHAIR: Is it consistent vegetation or is it intermittent?

MR. LEFFNER: It varies in different areas.

CHAIR: Does it vary by height?

MR. LEFFNER: Varies in height, as well as material.

CHAIR: Does it vary by density?

MR. LEFFNER: It does.

MR. SCHMIDT: We have some photographs --

CHAIR: Okay.

MR. SCHMIDT: -- which I'll show, Mr. Garber.

CHAIR: Well, I'm looking at Petitioner's Exhibit 4-B, which may be a better representation as to what is being described as to where, you know, what is going on and where. Only because it actually depicts some of the forested areas and some of the open meadow and some of the pockets we're referring to. All right, go ahead. Sorry.

MR. LEFFNER: So, along Falls Road there's existing vegetation along the area of the stream buffer, as well as the existing ruins. There's a break as you get to the existing barn structure that's on the property where, again, that access road is used to access the property and again, as the grade begins to get cut down along Falls Road and up into the site, there's existing vegetation along the entire property as you get to the northern corner along Falls Road.

MR. SCHMIDT: So, if the site has forested areas and plantings of varying degrees and heights and thickness around its entire perimeter?

MR. LEFFNER: Small breaks mainly along Falls Road for the access points.

MR. SCHMIDT: Okay.

MR. LEFFNER: As well as the northern portion adjacent to the structure to the north.

MR. SCHMIDT: All right. Now, how about the topography? You described that briefly, is the site higher than the road, when I say the road, Falls Road, lower, can you

describe that?

MR. LEFFNER: Generally, the site is lower than Falls Road. Again, really the, the exception is along Falls Road in the northern portion of the property, Falls Road is cut down so the site is higher than Falls Road.

CHAIR: I'm sorry, hold on. I understood you just said site lower than, generally lower than Falls Road but now you just said --

MR. LEFFNER: Correct.

CHAIR: -- there's an area that's higher than Falls Road.

MR. LEFFNER: Yes, a small portion in the north west corner of the site is higher than Falls Road and then generally it drops off down to the east, to the existing Compass Run and the stream that bisects the property. That area being lower than Falls Road. Where the existing stream bisects the property, as you continue south along Falls Road, the site sits slightly higher as would most of the residential uses in the property, where you would come up to the residential building. Behind that residential building it drops off yet again down towards the stream that bisects the property. So, there's a low laying area as you go east behind the existing residential structure, then about halfway down the lot, as you work towards the east, there's a hill that comes back up again to a high point along the south east corner of the property within that

existing forested area.

MR. SCHMIDT: Okay. Mr. Leffner, I think you've described the existing vegetation and also the, the topography. How about, is there landscaping proposed?

MR. LEFFNER: Yes.

MR. SCHMIDT: And is that shown on any of the plans?

MR. LEFFNER: Yes.

MR. SCHMIDT: Which one?

MR. LEFFNER: Exhibit 3-D.

MR. SCHMIDT: Okay and can you draw the Board's attention to where existing planting is proposed?

MR. LEFFNER: Yes. So, the northern --

CHAIR: Hold on one second. Are you ready? Okay. Okay, go ahead. So, we're on 3-D.

MR. LEFFNER: So, 3-D, on the left side of the page, again, the northern portion of the property adjacent to the existing residential structure to the north, there is a, there is existing vegetation to the east that's being supplemented by landscape buffer plantings. There was the break in existing vegetation that we identified on the last sheet, which is being enhanced with the proposed landscape buffer for its entirety. Until you get to Falls Road. Along Falls Road, the existing vegetation within the right of way and adjacent, immediately adjacent to its proposed to be retained, or remain in place.

CHAIR: The right of way you're referring to is the

BGE right of way?

MR. LEFFNER: Is both Falls Road and BGE right of way.

MR. SCHMIDT: Falls Road right of way by the State Highway Administration.

CHAIR: Right.

MR. LEFFNER: Correct.

MR. SCHMIDT: And BG&E.

CHAIR: Right, okay.

MR. LEFFNER: So, vegetative screening will be provided behind those right of ways within the property. As you continue south along Falls Road, to where the proposed entrance location is, again, generally located where the existing equipment accesses the property for maintenance. There's a proposed access drive that's been kind of shifted in its alignment so that landscape buffer can be provided throughout its entirety, so you kind of drive into the property, you make a left turn and then a right turn so that there's a continuous landscape buffer through the access drive.

MR. SCHMIDT: Instead of having a straight shot.

MR. LEFFNER: Instead of having a straight shot where you can see in.

MR. SCHMIDT: Where you could see down the straight shot.

MR. LEFFNER: Correct.

MR. SCHMIDT: Its turned?
MR. LEFFNER: Yep.
MR. SCHMIDT: Okay. So, it would be landscaping in front of it and behind it?
MR. LEFFNER: And behind it. Based on coordination again, the existing barn structure that's in kind of a state of disrepair that's proposed to be razed through coordination with Planning and the landscape reviewer, we're to replace it with landscaping. So, we've provided even additional landscape planting behind that proposed access drive. South of the proposed access drive, in the area of the existing ruins and where the existing vegetation again starts to pick back up again and exist along Falls Road, there's a few plantings that we propose to supplement the existing vegetation. South of that, as you approach the existing stream channel, the existing vegetation is proposed to be maintained. South of that, the existing vegetation along Falls Road, as mentioned earlier, is a little bit less dense. So, there's a proposed full landscape buffer proposed on the southern property in front of the existing residential unit with only a break proposed where the driveway improvement will be done to the existing driveway to the property. Along the southern boundary, as you work behind the existing residential unit, there's existing vegetation kind of along the property line, which as mentioned, some of it'll be, need to be cleared to make way for the driveway. Currently

proposed is a privacy fence and that was something that came out of the Administrative Law Judge hearing, was to propose a fence in that area in lieu of vegetative screening, though there's no solar panels proposed in the area. Continuing to work back towards the rear of the site, the access drive comes internal to the lot surrounding existing barn structures. To the south of those barn structures, there's a large existing vegetated area that's proposed to remain as well as be supplemented by an additional landscape buffer behind that. Along the southern boundary, there's an adjacent residential unit as well. There's existing vegetation along the property line which is proposed to be supplemented with a buffer along its entirety. The south eastern portion of the property where the previous identified forest stand area is that are potentially to be re, well, to be retained potentially in a conservation easement, those will all be retained along the south east portion of the property and all the vegetation within Compass Run will be maintained.
MR. SCHMIDT: Okay. I'm going to show you some photographs, give a copy of these to Mr. McCann.
MR. MCCANN: Thank you.
MR. SCHMIDT: And also one for all Board members and I pre-marked it number eight. And they are labeled A, B, C consecutively.
CHAIR: Thank you.

MR. SCHMIDT: Mr. Leffner, maybe you can take a copy and if I can ask you to start with A and just tell us kind of what we're looking at, where the property is, anything that you want to remark about in terms of features or landscaping or screening or existing vegetation or anything. So, start with A.
MR. LEFFNER: Sure.
MR. SCHMIDT: What's on A?
MR. LEFFNER: A is a view along Falls Road facing to the south.
MR. SCHMIDT: Okay.
MR. LEFFNER: So, the proposed property is on the left side of that page and the picture is taken generally in the area of where the proposed access drive will be.
CHAIR: Hold on. So, just so I'm clear, there are two access points, correct?
MR. LEFFNER: Correct.
CHAIR: For each, so one per solar field. One is using the existing access and there's a proposed one, is that the driveway?
MR. LEFFNER: Correct.
CHAIR: Right, okay.
MR. LEFFNER: So, there's two.
CHAIR: I want to make sure we're talking about, which one we're talking about when you say that.

MR. LEFFNER: Yeah, and I think that, I don't, I, there was a letter that was mentioned from State Highway, they also issued a letter from the DRC review, kind of identifying what their permit process for the project would be. The southern driveway that exists today to that residential unit will just, there will be an improvement to it but the access will just be an improvement to the existing drive. A new access point will be proposed to the array on the northern portion of the property.
CHAIR: All right. So, the question posed by Mr. Schmidt then and with your answer, you're talking about the existing drive, not the proposed one?
MR. LEFFNER: The pro, the proposed one.
CHAIR: I'm sorry.
MR. LEFFNER: The proposed drive. This is the northern portion of the property, approximately where the pickup truck is in the photograph.
CHAIR: Okay.
MR. LEFFNER: Is at the low point in Falls Road and that's generally where the existing stream that bisects the property is immediately next to where that black truck is, to the left.
CHAIR: Okay.
MR. SCHMIDT: Okay. So, the black truck, the, the, the, the pickup truck in the picture, is at about this location

where the stream comes and meets Falls Road?
MR. LEFFNER: Correct. And you're looking from the left to the right of that (inaudible).
MR. SCHMIDT: Okay. So, the telephone pole, I don't, is the telephone pole shown, okay. Is, and, and this, the pole that's in Petitioner's Exhibit A is, which one of that is these? Okay. So, that's, Mr. Leffner is indicating where the pole is.
CHAIR: Right.
MR. SCHMIDT: That you can see in the photograph, okay?
CHAIR: Okay.
MR. SCHMIDT: Okay. Exhibit B, is this north or south (inaudible) again or looking south?
MR. LEFFNER: Yes. It's a little bit further to the left, to the right of the page. This is where, I'll point to the exhibit on the board. The existing driveway across the street from the proposed entrance location is. In the picture, you can see the zoning sign as well as the back of a sign on the left side of the road. And that's generally where the stream is located.
MR. SCHMIDT: Okay and that vegetation that's by Falls Road on the subject property, or in the right of way, will that be retained?
MR. LEFFNER: Retained.

MR. SCHMIDT: Okay. Okay. C?
MR. LEFFNER: C is again, a little bit further to the south. Where the car is parked is the approximate location of the existing driveway, that's the --
MR. SCHMIDT: At, at the very southern end of our property?
MR. LEFFNER: Correct.
MR. SCHMIDT: Okay. So, again, just so the Board understands that, where is that? Okay. So, where that car is parked is where Mr. Leffner is pointing. The location of the, the --
CHAIR: Existing.
MR. SCHMIDT: -- existing driveway to the house, parked in the front of that driveway. Okay. D?
MR. LEFFNER: I think, as you can see in this picture, there's a --
CHAIR: Well, this picture is?
MR. SCHMIDT: Which one, C?
MR. LEFFNER: Exhibit number C.
MR. SCHMIDT: Uh huh.
CHAIR: Okay.
MR. LEFFNER: The existing vegetation varies both in height as well as type.
MR. SCHMIDT: Okay. Okay, D?
MR. LEFFNER: D is a picture from generally the same

vantage point but turned around to look back north.
MR. SCHMIDT: Okay.
MR. LEFFNER: So, in this picture, the proposed property area is actually on the right side of the road, which is reflected by the side of the road with the zoning sign.
MR. SCHMIDT: Okay.
CHAIR: Hold on a second. You say that it's from the same vantage point.
MR. LEFFNER: The same --
CHAIR: Sam vantage point as?
MR. LEFFNER: Exhibit C.
CHAIR: Exhibit C has an address that's depicted in the forefront as 18620 and D it's 18616, so I'm assuming the, you know, the mailbox next, you know, in the background there, maybe the one that's 18620, so it's slightly off from C, right?
MR. LEFFNER: Slightly.
CHAIR: Okay. So, now Exhibit D, it's facing north.
MR. LEFFNER: Correct.
CHAIR: The property would be on the right side.
MR. LEFFNER: Correct.
CHAIR: We see the zoning sign. Is that, is that approximately where the stream is again where the zoning sign is?
MR. LEFFNER: Just beyond the yellow left turn sign or the left bend sign, there's an existing overhead pole and

the low point of that road is where the existing stream meets Falls Road.
CHAIR: Okay. So, now we have D oriented, okay.
MR. SCHMIDT: Okay. E, Mr. Leffner?
MR. LEFFNER: E is also looking north along Falls Road, further up the hill, back towards the area of the proposed entrance drive. Again, there's the clearing and the pole that was shown previously on Exhibit A.
MR. SCHMIDT: Okay.
MR. LEFFNER: In this picture, you can see, as mentioned before, the existing vegetation, as well as the topography change where a portion of the property where the existing vegetation is located to the left of the break is actually Falls Road, lower than the existing site where it's been cut in.
CHAIR: Again, maybe I'm alone in this, I, I'm certainly having trouble with the orientation of the plan versus photos versus the map and everything. The clearing that's depicted in E on the right side of the photo, where would that be on the, on 3-D?
MR. LEFFNER: In the location of the proposed access drive.
CHAIR: Okay. So, --
MR. LEFFNER: Generally, from where the, the proposed entrance drive meets Falls Road to beyond where the turn in the

access drive is proposed.

CHAIR: That opening that's, you can see in E, will you be able to see any of the proposed solar panels from Falls Road or from, if you were standing where you took, you took these photos, right?

MR. LEFFNER: I didn't take these photos, but.

CHAIR: Okay. If you were standing at 18700, at that mailbox.

MR. LEFFNER: Yeah.

CHAIR: Looking into the right side where the clearing is, can you see any of the proposed solar panels?

MR. LEFFNER: You may be able to see the solar panels, but the, it'd be buffered by the landscape planting.

CHAIR: Okay. So, if there was no additional plantings, you would be able to see it?

MR. LEFFNER: Correct.

CHAIR: But you're proposing additional plantings to screen it?

MR. LEFFNER: To buffer the screen, yeah.

CHAIR: Okay.

MR. SCHMIDT: All right and additional planting is sort of where that gap is between the existing vegetation in Exhibit E.

MR. LEFFNER: Correct.

MR. SCHMIDT: And you're retaining the existing

vegetation on the subject property or in the right of way that's shown in E on both sides of that gap, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and as you indicated, you can see the vegetation that's farther away from the photographer on the subject property, even though it's a two dimensional picture, is actually higher at its, the ground slopes up from the property, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Okay. How about F?

MR. LEFFNER: F is looking across the road. So, the property would be behind where the vantage point is.

MS. DOPKIN: Are we looking north or south?

MR. LEFFNER: You're looking south west. And that mailbox, 18620, you can see it again, which is previously shown on Exhibit C. So, it's kind of the view from across the road looking up towards the existing residences.

CHAIR: Got it.

MR. SCHMIDT: Okay. G?

MR. LEFFNER: G, again, is looking west from Falls Road across the street from the project area, up at an existing residence.

MR. SCHMIDT: Okay. H?

MR. LEFFNER: H is looking also south west from Falls Road.

MR. SCHMIDT: Okay. Okay. So, those are all, those photograph --

CHAIR: One second, one second.

MR. SCHMIDT: I'm sorry.

MS. DOPKIN: You said that we're looking south west at 18620 and then you're saying we're looking south west at 18627. So, we've gone from the even side to the odd side? How could that be? The addresses are not consistent.

MR. LEFFNER: I'm not sure what the mailbox, it may be that the mailbox is across the street for the unit to the east of Falls Road.

CHAIR: If I can, if we look at F, you see --

MS. DOPKIN: See the house, same house, okay.

CHAIR: It appears --

MR. SCHMIDT: I think --

MR. LEFFNER: Because this is the mailbox for the subject property --

CHAIR: -- F, in F and H --

MS. DOPKIN: I got it, I got it.

CHAIR: -- Exhibit F, looks like the house in the background on the left side of the page is the same as that depicted in H.

MS. DOPKIN: Okay.

MR. SCHMIDT: And, and I think that's the explanation that the mailbox for the subject house is on the other side of

the street.

MS. DOPKIN: Must be.

MR. SCHMIDT: Because of the, I assume because of the vegetation. The mailman just goes up, only has one side of the street to worry about when he's dropping off mail. Okay. How about I?

MR. LEFFNER: I, on the left side of the photograph, again, this is Falls Road looking to the east into the property. On the left side of the photograph is the existing stream channel that bisects the property, as well as a small break in the landscape where the existing, and a farm access road is that we mentioned earlier. The existing residential unit is just to the right of this photograph.

MR. SCHMIDT: Okay. So, where that posted sign is the old access road.

MR. LEFFNER: Um hm.

MR. SCHMIDT: It's not improved.

MR. LEFFNER: No.

MR. SCHMIDT: It's not a macadam or asphalt road.

MR. LEFFNER: No.

MR. SCHMIDT: It's just a cut in the landscaping.

MR. LEFFNER: A farm road, correct.

MR. SCHMIDT: Farm road. Okay.

CHAIR: Thank you. That was actually my exact question.

MR. SCHMIDT: Okay. J, that appears to be similar to some of the earlier ones from across the street looking into the subject property?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. K?

MR. LEFFNER: K is a picture of the zoning sign that's pictured in J.

MR. SCHMIDT: Okay and that vegetation will be retained?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. L?

MR. LEFFNER: Is the zoning sign on the right hand side, is where there's a, kind of a chain that you can see, is where the existing driveway was.

MR. SCHMIDT: Okay. The unimproved road that we just talked about.

MR. LEFFNER: The, I believe, that's across the other existing driveway to the residential unit.

MR. SCHMIDT: Oh, okay, okay.

CHAIR: Well, hold on. This is where I get confused.

MR. SCHMIDT: Point, point it out, if you can. Oh, it's there, okay.

MR. LEFFNER: Yeah. So, the --

CHAIR: So, the, at the corner of the property at, at Falls Road.

MR. LEFFNER: Yeah.

CHAIR: The, well, south eastern corner, is that right?

MR. LEFFNER: The south western corner.

CHAIR: South western corner, sorry, yes. Right.

MR. SCHMIDT: M, Mr. Leffner?

MR. LEFFNER: M is a photograph of the zoning sign shown in K. It's a separate, this is a, sorry, Exhibit M has the zoning sign that's posted in front of the existing residential structure.

MR. SCHMIDT: Okay.

CHAIR: I'm sorry, it has a zoning sign in front of the residential structure?

MR. LEFFNER: Yeah.

CHAIR: On N?

MR. LEFFNER: N?

CHAIR: You said N or M?

MR. SCHMIDT: M.

MR. LEFFNER: M.

CHAIR: Okay. On M, that's the zoning sign in front of the existing residential structure. I thought you said N. So, what is N?

MR. LEFFNER: N is a photograph of the existing structure.

MR. SCHMIDT: The residential structure?

MR. LEFFNER: Yeah, and the, the barn, the garage.

MS. DOPKIN: On the southern lot or the northern lot?

MR. LEFFNER: South western portion of the property.

MS. DOPKIN: I'm sorry?

MR. LEFFNER: South western.

MS. DOPKIN: South western.

CHAIR: So, this is the residential structure or the garage?

MR. LEFFNER: I believe it's the residential structure.

MS. DOPKIN: And that is on Parcel 121, correct?

MR. LEFFNER: Correct.

CHAIR: And that is proposed to be removed?

MR. SCHMIDT: No.

MR. LEFFNER: To, to remain.

CHAIR: To remain.

MR. SCHMIDT: That's to remain.

CHAIR: Okay.

MR. SCHMIDT: Okay. O?

MR. LEFFNER: O, is a similar photograph to earlier, and that's the existing barn structure that's proposed to be razed.

MR. SCHMIDT: Okay. Why don't you show where that barn is on the plan?

MS. DOPKIN: On Parcel 144?

CHAIR: 144.

MR. LEFFNER: Correct.

MR. SCHMIDT: So, the white structure that you can see is the garage/dwelling on one, on one --

MS. DOPKIN: Twenty-one.

MR. LEFFNER: Twenty-one.

MR. SCHMIDT: -- twenty-one and the barn, which is the brown building, is 144.

CHAIR: All right. So, I'm sorry, sorry to have you sit down again, where on one, where is that on 3-D? Okay.

MR. LEFFNER: 3-D there's a label that says existing barn structure to be razed.

CHAIR: So, without additional plantings, could you, from Exhibit, looking at Exhibit O, could you see the solar panels from that vantage point?

MR. LEFFNER: Without the landscape buffer, yes.

CHAIR: Okay and so, you propose to have a landscape buffer there to screen the solar facility?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. P?

MR. LEFFNER: P is the similar photograph, just without the barn. The barn is just off the page to the right.

MR. SCHMIDT: Q?

MR. LEFFNER: There's a small break in, I'm trying to see if you can see that, it's a small break just to the side of

MR. SCHMIDT: So, you moved the driveway and the security fencing further away from the Ault, from the Dwyer property line?

MR. LEFFNER: Correct. Previously it was, you know, parallel to the property line. It's been moved away and made parallel to the orientation of the solar panels.

MR. SCHMIDT: Okay. Is there any existing vegetation in that area?

MR. LEFFNER: There is.

MR. SCHMIDT: And will that be retained?

MR. LEFFNER: It, it will be.

MR. SCHMIDT: Will there any, will there be any additional vegetation proposed?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and, in your opinion, will that screen the panels and the driveway from view from the Dwyer residence?

MR. LEFFNER: Yeah, it'll provide buffering.

MR. SCHMIDT: Okay.

MR. MCCANN: Can you tell us what the distance is from the access road at its closest point to the Dwyer property line and then to their residence?

MR. SCHMIDT: That was my next question.

CHAIR: Sorry.

MR. SCHMIDT: That's all right.

MR. LEFFNER: It's approximately fifty feet.

MR. SCHMIDT: That's --

CHAIR: What, what is fifty feet?

MR. LEFFNER: From the corner of the proposed access drive to the closest point of the shared property line.

MR. SCHMIDT: Now, how about to the panels, not the driveway, that's to the driveway. How far is the closest panel?

MR. LEFFNER: Eighty feet.

MR. SCHMIDT: Okay.

CHAIR: Panel to property line is eighty feet?

MR. LEFFNER: Correct.

CHAIR: Now, what about to the house from the access drive?

MR. LEFFNER: From the access drive.

CHAIR: To the house.

MR. LEFFNER: To the house is a hundred and thirty feet.

MR. SCHMIDT: And how about to the panel?

CHAIR: And then panel to the house?

MR. LEFFNER: A hundred and sixty.

MR. SCHMIDT: Okay.

CHAIR: All right. And so, there is no privacy fence to be there, at the Dwyer property line, correct?

MR. LEFFNER: No.

CHAIR: That's correct?

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. SCHMIDT: But there is existing vegetation there?

MR. LEFFNER: Correct.

MR. SCHMIDT: Which will be maintained?

MR. LEFFNER: And a site security fence.

MR. SCHMIDT: And a site, and a security fence?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay.

CHAIR: And just to be clear, the site security fence is going to be on the, again, because I'm trying to orient myself with the map, the north side of the access road or the south side?

MR. LEFFNER: It'll be on the south side of the access road.

CHAIR: So, the fence will be closer to the Dwyer property line?

MR. LEFFNER: Than the access road.

CHAIR: All right. So, that we know that that is fifty feet to the property line, that is from the closest point in the access road. With, factoring in the fence, how close is that to the property line?

MR. LEFFNER: I would say forty feet. Typically there's a ten foot separation provided.

CHAIR: So, fence to property line is forty feet. All right.

MS. DOPKIN: It doesn't look like it on the drawing. It shows a fifty foot setback.

MR. LEFFNER: Yeah, I think if you said fifty feet, we're maintaining the entire fifty foot structure setback to the actual fence line on that southern boundary. So, it would be fifty feet, the fence would be provided just inside of the fifty foot setback.

CHAIR: So, to be clear, the fence would be at fifty feet to the property line, the access road at its southern most point closest to the Dwyer property line would have to be just over that?

MR. LEFFNER: Yeah.

CHAIR: So, your estimate of forty feet is wrong.

MR. SCHMIDT: Yes.

MR. LEFFNER: Fifty.

CHAIR: Because it has to be at least fifty.

MR. SCHMIDT: You have to say yes or no.

MR. LEFFNER: Yes.

CHAIR: Thank you. That makes it easier to understand.

MS. DOPKIN: What color will the fence be, do you know?

MR. LEFFNER: So, the County preference and kind of

can have a seat, right? I'm sorry.

MS. DOPKIN: Yes, I'm sorry.

CHAIR: I'm just confirming. All right. So, you're with DEPS, sir, and you're in the Environmental Impact Review Section, Natural Resource Specialist II.

MR. KULIS: Yes, sir, that is correct.

CHAIR: All right. Mr. Schmidt?

MR. SCHMIDT: Mr. Kulis, can you just tell the Board kind of generally what you do as a --

MR. KULIS: Certainly.

MR. SCHMIDT: And, and, I guess, particularly, obviously this is a zoning case, so what your responsibilities would be in terms of participation in a zoning case more particularly. I'm sure you do a bunch of things but as it's really relevant to this case.

MR. KULIS: Okay. So, I happen to be the area reviewer for this project. Our work is assigned by watersheds more so that councilmanic districts. So, my area extends, I have the Jones Falls and part of the Gunpowder, so I go from the City line all the way up to Parkton, over to Reisterstown. So, I appreciate you letting me get back to work because I've got a lot on my desk.

MR. SCHMIDT: Okay. I'm sure you do.

MR. KULIS: I am a qualified professional in the State of Maryland, to implement the forest conservation law. I

am a qualified professional, State of Maryland, for the roadside tree law. I also have Army Corps wetland training, although certification is not required for regulators.

CHAIR: I'm sorry, what was that last part? Wetland training, what did you say?

MR. KULIS: Yes, Army, Army Corps of Engineers wetland training.

CHAIR: Okay.

MR. KULIS: So, again, I'm the area reviewer. I, I have visited the site, as, again, as it pertains to this job, I mean, our, our job is assessing environmental impact and applying the County laws to development projects and that runs the gamut from, from building permits to County highway jobs to solar facilities. To, for this project, we've applied, again, the Environmental Protection Articles, Article 33, so this project has to qualify for both Title 3, which the name is the protection of water quality, streams, wetlands and flood plains. We, kind of euphemism, we call it the forest buffer law.

CHAIR: Forest to buffer law?

MR. KULIS: Forest buffer.

CHAIR: Forest buffer law?

MR. KULIS: Yes. The other title is Title 6, forest conservation, also pertains to this project.

CHAIR: All right. We have Article 33, Titles 3 and

6 you believe apply to this project.

MR. KULIS: Yes.

CHAIR: Have you actually reviewed this project in particular?

MR. KULIS: I, I have reviewed the project. I've reviewed the wetland delineation verification plan and data sheets, forest stand delineations and their data sheets, forest stand assessment data sheets, looked at the plans, spent three hours on site, walking the property.

MR. SCHMIDT: Mr. Kulis, if I can, about those reports that you've indicated. I think, and you weren't here the first day in the hearing, but there was previously submitted in, into evidence a forest stand delineation report and approval letter that you signed. Do you recall that you received a forest stand delineation for this project, reviewed it and approved it?

MR. KULIS: I do recall actually. I asked for revisions before I approved it.

MR. SCHMIDT: Okay. But, --

CHAIR: So, you do recall sign, reviewing and signing off on a forest stand plan?

MR. KULIS: Correct.

CHAIR: And, and you recall it because you recall that there were revisions that you required?

MR. KULIS: Correct.

MR. SCHMIDT: And if I could get Ms. Murphy, if I can approach? Actually, it's an exhibit and I think there's a letter that he signed also. I just want the witness to identify that.

MS. MURPHY: Do you know what it is?

MR. SCHMIDT: (inaudible). And, yes, and Mr. Kulis, just, I'm showing you for the record what is Exhibit, what's been marked in this case as Exhibit 5 and is, and it's entitled up at the top of the page forest stand delineation. Is this, you can just take a quick look at it. I know it's a smaller copy, but is that the forest stand delineation report, or forest stand delineation, I guess, exhibit that you reviewed and ultimately approved? I know it's a smaller version, but--

MR. KULIS: Right. Again, without, without checking revision dates, I mean, I have to say yes, it could be. Without checking the revision dates, I mean, if you had a, if I was looking at a copy of --

MR. SCHMIDT: Would you have it in your file?

MR. KULIS: -- the one in the file, I would say then yeah, I saw it and I approved it.

MR. SCHMIDT: Yeah, okay. Why don't you see if you've got the one in your file?

MR. KULIS: So, we're looking at, that would be the July 1st, 2019 letter?

MR. SCHMIDT: Well, that's what I was going to show

predates, so this was before the, was revision, this was, this was before the revisions were made --

MR. KULIS: Yes.

MR. SCHMIDT: -- to the other two studies. But was this in response to the wetland delineation report?

MR. KULIS: That is correct. They were all received together, the wetland delineation steep slope erodible soils analysis and forest stand were all received as a packet and reviewed together, both in office review and then an on-site assessment of the documents.

MR. SCHMIDT: Okay. So, to cut to the chase, is it accurate to say that the department has received the forest stand delineation and approved it, has received the erodible soils and steep slopes analysis and approved it, and has received the wetland delineation and approved that?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay.

MR. KULIS: All three have been approved.

MR. SCHMIDT: And with, and saying that, you are nonetheless, as reflected in your advisory comment and your testimony here today, will require additional studies, forest stand, forest conservation studies, etcetera, as part of your ongoing review before any grading permits would be issued?

MR. KULIS: Yes, correct.

MR. SCHMIDT: Okay and the department does not oppose

or you do not oppose the granting of this special exception before those approvals are given?

MR. KULIS: Correct.

MR. SCHMIDT: Okay. Now, let me ask you, if I can, about a specific issue that's been raised in this particular case. You've kind of given us the general overview of the environmental laws and the regulations and things that have been reviewed. There are streams on the property, correct?

MR. KULIS: Yes, correct.

MR. SCHMIDT: And what are the regulations called that protect streams or provide protection for streams, what --

MR. KULIS: Right, that's the one that I had referred to earlier, is Title 3.

MR. SCHMIDT: Okay.

MR. KULIS: Protection of water quality, streams, wetlands and flood plains.

MR. SCHMIDT: Okay and that --

CHAIR: Forest buffer law.

MR. KULIS: The forest buffer law as, yeah, --

MR. SCHMIDT: Yeah, and even though it's called a forest buffer, it's really a buffer to water resource, correct?

MR. KULIS: It's a riparian stream buffer regulation of, that establishes a zone of non-disturbance. So, if left alone, theoretically, a forest should grow there, hence it's called the forest buffer law.

MR. SCHMIDT: Okay. Now, the plans that were submitted show the forest buffers that were determined, based on your analysis and all these reports that were submitted, correct?

MR. KULIS: I'm sorry, could you repeat that?

MR. SCHMIDT: The plans that you've reviewed, that we referenced and you've test, testified, ultimately established a required buffer for the streams on this site, is that correct?

MR. KULIS: Yes, they have.

MR. SCHMIDT: Okay and is it the department's conclusion that the solar facility, the actual panels and the areas of disturbance with the driveways and the panels, are outside and respect those buffers?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. So, this plan is then compliant with the environmental regulations as it relates to the protection of the water resource?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. With that being said, there was a question raised, specifically, Mr. Kulis, which I wanted to ask you about, regarding a connection, an actual utility connection or wire connection, a physical connection, between the two areas of the array. And that is shown, just so that Mr. McCann knows what we're talking about, as a, I think it's labeled UGE, and it's been described as a horizontal or boring

that'll be underground.

MR. MCCANN: Can we, can we just ask non-leading questions?

MR. SCHMIDT: I'm sorry.

MR. MCCANN: It's a critical issue --

CHAIR: I think that he's just drawing his attention in this instance to the specific --

MR. MCCANN: I think he's describing --

CHAIR: -- item that's going to be --

MR. MCCANN: He's describing the boring in that question. So, let's just ask the witness --

MR. SCHMIDT: Okay.

CHAIR: Well, hold on. I think you're just trying to establish the foundation for the purpose of his question. I don't think it's at dispute that that's what it's called, or where it's located on the map. We all have been through that on day one. So, let's, let's hear the question and then you can, --

MR. SCHMIDT: Mr. Kulis, --

CHAIR: -- you can certainly object again.

MR. MCCANN: Okay, thank you.

CHAIR: But let's hear it.

MR. SCHMIDT: Mr. Kulis, what do you call that? I want to call that whatever you would call it. Is it a horizontal boring or do you call it something else?

MR. KULIS: Well, the plan represents an, an underground electric connection between the two solar arrays.

MR. SCHMIDT: All right. So, there is shown on the plan an underground electric connection. Mr. Kulis, would that underground electric connection constitute a disturbance or an infringement on the area of the forest buffer?

MR. KULIS: As shown, no, it would not.

MR. SCHMIDT: Okay. Why not? I mean, it's going, it's going underground but it's going across the forest buffer. How does the department, how do you treat those in terms of forest buffer regulation?

MR. KULIS: Making an underground connection from one solar array to the other provided those sending and receiving areas for that underground connection are within the limit of the solar array disturbance, those solar arrays are outside of the area established as the forest buffer.

MR. SCHMIDT: Okay. So, the connection points are shown, where are the connection points shown? Are they inside or outside of the buffer, where you'll go down from the ground?

MR. KULIS: The connection points are, are shown in, within the solar fields.

CHAIR: So, if I could stop you there. The, what you're measuring for purposes of disturbance or infringement is the connection point, not the course of travel underground. It's only where it goes down and re-emerges, that is for

purposes of its location relative to the forest buffer.

MR. KULIS: And, and again, this, this is a, the, it's the colored site plan exhibit.

MR. SCHMIDT: Number sixteen.

MR. KULIS: Yes.

MR. SCHMIDT: That's what it shows.

MR. KULIS: Exhibit 16 is what it shows.

CHAIR: I'm saying for your review, you look at the connection points.

MR. KULIS: For our review, we will see a grading plan as part of this development project. And that grading plan, we will expect to see and require to see if this is an underground connection, we'll see a limit of disturbance, making sure that there are not those sending and receiving pits within the buffer.

CHAIR: So, you wouldn't, what I'm hearing and correct me if I'm wrong, would you consider to be disturbance or infringement by traveling underneath the stream?

MR. KULIS: No, no, we do not consider that disturbance.

CHAIR: And traveling underneath the forest buffer?

MR. KULIS: Correct.

MR. SCHMIDT: Why, why not, Mr. Kulis? Why isn't that disturbance? It's been alleged in this case that if you go under the stream, you're still disturbing and you're

violating the forest buffer law. Why aren't you if that's your opinion?

MR. KULIS: The forest buffer law, Title 3, speaks to surface water quality, the disturbance of the buffer zone, disturbance of vegetation. By, by directionally boring under the stream from the development sites, it avoids those impacts.

MR. SCHMIDT: Okay. So, as long as you keep, again, where, to make this simple sort of laymen's, as long as you keep where the wires go into the ground, because you're disturbing that area, obviously, but as long as you keep that within the array fields and outside the buffer, you're okay, essentially?

MR. KULIS: Yes, correct.

MR. SCHMIDT: Are there rules and regulations that the department would require in terms of how deep you have to do the underground connection? I mean, or how is that determined?

MR. KULIS: It would be reviewed for, at the very least, a note on the plan, stating the directional boring. Also, the utilities typically require a three foot cover from the lower invert of the stream to, to that utility.

MR. SCHMIDT: So, you got to keep three feet from the, essentially, the bottom part of the stream to where the conn, where the wire is?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. Have you, in your experience, Mr. Kulis, seen other utility type connections under environmental resources? This is an electric line, but sewer lines, water lines, those kinds of things?

MR. KULIS: Yes.

MR. SCHMIDT: Does this happen frequently?

MR. KULIS: Yes, it does.

MR. SCHMIDT: Okay and how is the department, how does the department regulate then, the same way or is it different?

MR. KULIS: It, it, it's applied the same way.

MR. SCHMIDT: Okay. Okay.

MR. KULIS: I mean, there are, again, there are, I guess, management requirements for forest buffers and there are certain uses that are permitted within forest buffers. The, the standards should be avoidance of impacts and if you can't avoid, then you minimize.

MR. SCHMIDT: And that, that kind of gets us into isn't that what an alternatives analysis is for?

MR. KULIS: That's correct.

MR. SCHMIDT: And what's an alternatives analysis?

MR. KULIS: And I believe it was mentioned in our, again, in our earlier zoning comments.

MR. SCHMIDT: Um hm, but what is that, so the Board knows what an alternatives analysis is?

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, November 19, 2019 9:15 AM
To: 'Michael McCann'
Cc: Lawrence Schmidt; Zachary J. Wilkins; 'Kelly Benton'
Subject: RE: 18627 Falls Road/Holly Springs Wildlife Sanctuary - Case No. 2019-0183-X

Good morning Counsel,

The Board has granted Mr. McCann's request to extend the memos until Wednesday November 27th by 3:00 p.m. Please note, we still require an original and 3 paper copies of the memos. We appreciate electronic copies but do not require them at this time.

(I hope you are feeling better soon, Michael.)

Sunny

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

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From: Michael McCann <michael@mmccannlaw.net>
Sent: Monday, November 18, 2019 5:03 PM
To: Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Lawrence Schmidt <lschmidt@sgs-law.com>; Zachary J. Wilkins <zwilkins@sgs-law.com>
Subject: 18627 Falls Road/Holly Springs Wildlife Sanctuary - Case No. 2019-0183-X

CAUTION: This message from michael@mmccannlaw.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny: I write to ask for the Board's approval for the parties to file their briefs on Wednesday, November 27th, instead of Monday, November 25th. I had a fall last week and bruised several ribs. I am back at work, but it has slowed me down a bit.

I have reached out to Larry and Zach, and they are ok with the request.

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Monday, November 18, 2019 5:03 PM
To: Krysundra Cannington
Cc: Lawrence Schmidt; Zachary J. Wilkins
Subject: 18627 Falls Road/Holly Springs Wildlife Sanctuary - Case No. 2019-0183-X

CAUTION: This message from michael@mmccannlaw.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

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I have reached out to Larry and Zach, and they are ok with the request.

Please let me know if you need any additional information or a more formal letter.

Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

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SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
* Admitted in MD, PA, FL
** Admitted in MD, NC

LAUREN D. BENJAMIN
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
MARY G. LOKER
STEPHEN J. NOLAN

November 6, 2019

RECEIVED
NOV - 8 2019
BALTIMORE COUNTY
BOARD OF APPEALS

Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re: **Legal Owner:** **Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.**
Lessee: **Power Factor, LLC**
Property: **18627 Falls Road**
Case Nos. **2019-0183-X and DRC 062519A**

Dear Ms. Cannington,

Enclosed please find 3 copies of Petitioner's Exhibit No. 9 as it relates to the above captioned case. I had not originally anticipated this document to be an exhibit in this case, however during the course of the hearing I found it to be necessary to do so. I submitted my only copy that day, which is in your file, however the Board requested additional copies be provided to each of them individually.

As such, please distribute the enclosed copies to the Board members based upon their request.

Very truly yours,

Lawrence E. Schmidt

LES/kmb
cc: Michael McCann, Esquire (w/enclosure)

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

October 29, 2019

NOTICE OF DELIBERATION

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
19-183-X Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4F-102 to operate a solar facility on property that is split-zoned RC-2 and RC-8.

6/20/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, with conditions.

-----SET WITH-----

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
CBA-20-004 Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Application for Limited Exemption

7/2/19 Letter from Director of PAI granting the requested Limited Exemption under BCC § 32-4-106(a)(1)(vi).

This matter having been heard September 19, September 24, and concluded on October 23, 2019, a public deliberation has been scheduled for the following:

DATE AND TIME: **DECEMBER 10, 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 **November 25, 2019 no later than 3:00 p.m.**
(Please provide one original and three copies)

NOTE: PUBLIC DELIBERATIONS ARE OPEN WORK SESSIONS WHICH ALLOW THE PUBLIC TO WITNESS THE DECISION-MAKING PROCESS. A WRITTEN OPINION AND ORDER WILL BE ISSUED BY THE BOARD WITHIN A REASONABLE TIMEFRAME AFTER DELIBERATION AND A COPY SENT TO ALL PARTIES.

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

Krysundra Cannington
Administrator

c: Counsel for Petitioners : Lawrence E. Schmidt, Esquire
Petitioners/Legal Owners : Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Lessee : Power Factor, LLC

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Valleys Planning Council, Inc.; North County Community Group; Kevin and Maria Webb; Linda Ault; Ethan Lavin; Wayne and Allene Yelle; Mary Ruth Fowble; and Glenn and Donna Fowble

C. Pete Gutwald, Director/Department of Planning
David Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

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

September 27, 2019

NOTICE OF ASSIGNMENT
Day 3

IN THE MATTER OF: Holly Springs Nature Conservancy &
Wildlife Sanctuary, Inc. – Legal Owner
19-183-X Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4F-102 to operate a solar facility on property that is split-zoned RC-2 and RC-8.

6/20/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, with conditions.

-----SET WITH-----

IN THE MATTER OF: Holly Springs Nature Conservancy &
Wildlife Sanctuary, Inc. – Legal Owner
CBA-20-004 Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Application for Limited Exemption

7/2/19 Letter from Director of PAI granting the requested Limited Exemption under BCC § 32-4-106(a)(1)(vi).

ASSIGNED FOR: **OCTOBER 23, 2019, AT 9:00 A.M. - Day 3**

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 with the Board unless otherwise requested.
- Please contact our office for information about projection equipment. 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 Cannington
Administrator

c: Counsel for Petitioners : Lawrence E. Schmidt, Esquire
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David Lykens, Director/DEPS
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel
Paul M. Mayhew, Managing Administrative Law Judge

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Thursday, September 26, 2019 8:31 AM
To: Alyssa Moyers; Lawrence Schmidt; Krysundra Cannington
Subject: RE: Holly Springs 19-183-X
Attachments: ATT00001.txt; ATT00002.htm

Sunny: The dates good for us are: October 23, 31, Nov 20, Dec. 4, 5, 12.

Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

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From: Alyssa Moyers [mailto:amoyers@sgs-law.com]
Sent: Wednesday, September 25, 2019 1:13 PM
To: Lawrence Schmidt <lschmidt@sgs-law.com>; Krysundra Cannington <kcannington@baltimorecountymd.gov>
Cc: Michael McCann <michael@mmccannlaw.net>
Subject: RE: Holly Springs 19-183-X

Sunny,

I am double checking with our team, but Larry is available the following dates:

October 1, 23, 24, 31, November 5, 20, 26, December 4, 5, 11, 17, 18, 19, 2019.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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Krysundra Cannington

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Cc: Michael McCann, Esquire
Subject: RE: Holly Springs 19-183-X
Attachments: ATT00001.txt; ATT00002.htm

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October 1, 23, 24, 31, November 5, 20, 26, December 4, 5, 11, 17, 18, 19, 2019.

- *Alyssa*

Alyssa Fiore Moyers | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
amoyers@sgs-law.com | www.sgs-law.com

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Please consider the environment before printing this email.

From: Lawrence Schmidt
Sent: Wednesday, September 25, 2019 12:03 PM
To: Krysundra Cannington
Cc: Michael McCann, Esquire; Alyssa Moyers
Subject: Re: Holly Springs 19-183-X

Sunny
Thank you for your email
Alyssa in my office can advise of my availability
I believe that we only need one more date
Starting at 9:00 works for me

Sent from my iPhone

On Sep 25, 2019, at 9:41 AM, Krysundra Cannington <kcannington@baltimorecountymd.gov> wrote:

> Good morning Counsel,
>
> It is my understanding that the case yesterday did not conclude and additional hearing dates are necessary. At this time, I have the following dates available: October 1, 3, 8, 9, 23, 24, 31, November 5, 20, 26, 27, December 4, 5, 11, 12, 17, 18, 19, 2019.

Krysundra Cannington

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Wednesday, September 25, 2019 12:03 PM
To: Krysundra Cannington
Cc: Michael McCann, Esquire; Alyssa Moyers
Subject: Re: Holly Springs 19-183-X

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny
Thank you for your email
Alyssa in my office can advise of my availability
I believe that we only need one more date
Starting at 9:00 works for me

Sent from my iPhone

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>
> Please note: 1) the early October dates need to be by agreement of the parties and I need to know by close of business tomorrow. (October 1 and 3 are next week.)
> 2) These dates have not yet been reviewed by the Board members. I am checking with them now.
> 3) If you wish, and upon agreement with the Board, we could begin future hearings at 9 a.m.
>
> Please advise if you believe we need 1 or 2 hearing dates. (Or more.)
>
> Please let me know as soon as possible which dates you are available.
>
> Thank you!
>
> Sunny
>
> Krysundra "Sunny" Cannington
> Administrator
> Board of Appeals of Baltimore County
> 410-887-3180
>
> Confidentiality Statement

Krysundra Cannington

From: Krysundra Cannington
Sent: Wednesday, September 25, 2019 9:41 AM
To: Lawrence Schmidt, Esquire; Michael McCann, Esquire
Subject: Holly Springs 19-183-X

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Please let me know as soon as possible which dates you are available.

Thank you!

Sunny

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

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2019-183-X

HOLLY SPRINGS-FALLS RD 9/24/19

Printed Name	~~Signature~~	Address		~~Date~~
Mary Ruth Fowble		18719 Falls Rd. Hampstead, md. 21074		
JANET HARRY		18710 FALLS RD HAMPSTEAD, MD 21074		
KEN HARRY		" " " "		
Allene Yelle		18708 Falls Rd. Hampstead MD 21074		
Wayne Yelle		" " " " " "		
PATRICIA SHOOK		18613 Falls RD HAMSTEAD MD 21074		
LINDA AULT		18621 Falls Rd. Hampstead, MD 21074		
Glen Fowble		3306 Bakerschoch House Rd Freeland, md 21053		
Renee Hamidi		8 Sparks Station Rd Sparks MD 21152		
MARY PETRUCCI		19408 Resh Mill Rd HAMPSTEAD MD 21074		
Tessa Moore		PO BOX 5402 Towson 21285		
KATHIE PIEPER		4310 BECKLEYSVILLE RD 21074		
LYNNE JONES		815 STABLERS CHURCH RD, PARKTON 21120		
MIKE KULIS		EPS - EIR		

IN THE MATTER OF:	*	BEFORE THE
Holly Springs Nature Conservancy & Wildlife Sanctuary Inc. - Legal Owner	*	BOARD OF APPEALS
Power Factor, LLC - Lessee	*	OF
18627 Falls Road	*	BALTIMORE COUNTY
5th Election District	*	CASE NO.: 19-183-X & CBA-20-004
3rd Councilmanic District		

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) Mike Kulis, Department of EPS
111 West Chesapeake Avenue, Room 319
Towson, MD 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and/or objects only; (X) Personally appear and produce documents or objects; in **Hearing Room 2, The Jefferson Building, 105 W. Chesapeake Avenue, Towson, Maryland 21204 on** September 24, 2019 **at** 10:00 a.m. **a.m./p.m.**

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated): Any and all documentation the Department of Environmental Protection and Sustainability has in their files related to the property at issue.

SUBPOENA REQUESTED BY:
Lawrence E. Schmidt
(Name of Party/Attorney)
600 Washington Avenue, Suite 200
(Address/Telephone #)
Towson, MD 21204

(410) 821-0070

The witness named above is hereby ORDERED to so appear before the Board of Appeals of Baltimore County. The Board requests (____) the Sheriff, (X) Private Process Server, to issue the summons set forth herein.

Sunny Cannington
Board of Appeals for Baltimore County

RECEIVED
SEP 20 2019
BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:	*	BEFORE THE
Holly Springs Nature Conservancy & Wildlife Sanctuary Inc. - Legal Owner	*	BOARD OF APPEALS
Power Factor, LLC - Lessee	*	OF
18627 Falls Road	*	BALTIMORE COUNTY
5th Election District	*	CASE NO.: 19-183-X & CBA-20-004
3rd Councilmanic District		

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

SUBPOENA

STATE OF MARYLAND, BALTIMORE COUNTY TO WIT:

TO: (Name, Address, County) Jeff Perlow, Department of PAI
111 West Chesapeake Avenue, Room 111
Towson, MD 21204

YOU ARE HEREBY COMMANDED TO: ( ) Personally appear; ( ) Produce documents and/or objects only; (X) Personally appear and produce documents or objects; in **Hearing Room 2, The Jefferson Building, 105 W. Chesapeake Avenue, Towson, Maryland 21204 on** September 24, 2019 **at** 10:00 a.m. **a.m./p.m.**

YOU ARE COMMANDED TO produce the following documents or objects (for general purpose as stated): Any and all documentation the Department of Permits, Approvals and Inspections has in their files related to the property at issue.

SUBPOENA REQUESTED BY:
Lawrence E. Schmidt
(Name of Party/Attorney)
600 Washington Avenue, Suite 200
(Address/Telephone #)
Towson, MD 21204

(410) 821-0070

The witness named above is hereby ORDERED to so appear before the Board of Appeals of Baltimore County. The Board requests (____) the Sheriff, (X) Private Process Server, to issue the summons set forth herein.

Sunny Cannington
Board of Appeals for Baltimore County

RECEIVED
SEP 20 2019
BOARD OF APPEALS

9/19/19 HOLLY SPRINGS, FALLS RD 2019-183-X

Printed Name	~~Signature~~	Address		~~Date~~
LYNNE JONES	815 STABLERS CHURCH RD,	PARKTON. MD 21120		
Ethan Lavin	18821 Falls Rd	Hampstead 21074		
Glen Fowble	3306 BAKERSHOCK Haise	Freeland, md 21053		
Mary Ruth Fowble	18719 Falls Rd	Hampstead, md. 21074		
Patricia Shook	18613 Falls RD	Hampstead, Md 21074		
KATHIE PIEPER	4310 BECKLEYSVILLE RD	HAMPSTEAD, MD 21074		
MARY PETRUCCI	19408 RESH MILL RD	HAMPSTEAD, MD 21074		
Renee Hamidi	8 Sparks Station Rd	Sparks MD 21152		
Teresa Moore	PO Box 5402	Towson 21285		

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

SUBPOENA DUCES TECUM

To: Michael Kuhlis
Baltimore County Dept. of Environmental Protection and Sustainability
111 W. Chesapeake Avenue
Towson, MD 21204

You are hereby summoned and commanded to appear personally before the Baltimore County Board of Appeals, Jefferson Building, Room 203, 105 W. Chesapeake Avenue, Towson, Maryland, 21204 on Tuesday, the 24th day of September, 2019 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case and bringing the documents identified in the attached Document Schedule, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of Appellants.

Sunny Cannington
County Board of Appeals

Dated: September 17, 2019

RECEIVED
SEP 17 2019
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF REQUESTED DOCUMENTS

1. All documents comprising or constituting the file of the Department of Environmental Protection and Sustainability for this project.

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

SUBPOENA DUCES TECUM

To: Mary Zodhiates
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, MD 21074

You are hereby summoned and commanded to appear personally before the Baltimore County Board of Appeals, Jefferson Building, Room 203, 105 W. Chesapeake Avenue, Towson, Maryland, 21204 on Tuesday, the 24th day of September, 2019 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case and bringing the documents identified in the attached Document Schedule, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of Appellants.

Sunny Cannington
County Board of Appeals

Dated: September 17, 2019

RECEIVED
SEP 17 2019
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF REQUESTED DOCUMENTS

1. All documents comprising or constituting the five (5) conservation easements referenced in the attached Schedule D to the IRS Form 990 filed by Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

2. All documents identifying the property(ies) and/or acreage encumbered by the conservation easements referenced in the attached Schedule D to the IRS Form 990 filed by Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

SUBPOENA DUCES TECUM

To: Custodian of Records
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, MD 21074

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Sunny Cannington
County Board of Appeals

Dated: September 17, 2019

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BALTIMORE COUNTY
BOARD OF APPEALS

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IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

SUBPOENA DUCES TECUM

To: Mary Zodhiates
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.
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Hampstead, MD 21074

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Tammy A. Zahner
County Board of Appeals

Dated: September 11, 2019

RECEIVED
SEP 11 2019
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF REQUESTED DOCUMENTS

1. All documents comprising or constituting the five (5) conservation easements referenced in the attached Schedule D to the IRS Form 990 filed by Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

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SCHEDULE D (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
▶ Attach to Form 990.
▶ Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

		(a) Donor advised funds	(b) Funds and other accounts
1	Total number at end of year		
2	Aggregate value of contributions to (during year)		
3	Aggregate value of grants from (during year)		
4	Aggregate value at end of year		

5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? ☐ Yes ☐ No

6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit? ☐ Yes ☐ No

Part II Conservation Easements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).
- ☐ Preservation of land for public use (e.g., recreation or education)
- ☐ Preservation of a historically important land area
- ☐ Protection of natural habitat
- ☐ Preservation of a certified historic structure
- ☐ Preservation of open space

2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

		Held at the End of the Tax Year
a	Total number of conservation easements	2a 5
b	Total acreage restricted by conservation easements	2b 110
c	Number of conservation easements on a certified historic structure included in (a)	2c 0
d	Number of conservation easements included in (c) acquired after 7/25/06, and not on a historic structure listed in the National Register	2d 0

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶ 0

4 Number of states where property subject to conservation easement is located ▶ 1

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? ☑ Yes ☐ No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ 300

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ $ 0

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? ☐ Yes ☑ No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenue included on Form 990, Part VIII, line 1 ▶ $
(ii) Assets included in Form 990, Part X ▶ $

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items

a Revenue included on Form 990, Part VIII, line 1 ▶ $

b Assets included in Form 990, Part X ▶ $

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets *(continued)*

3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply)

a ☐ Public exhibition
b ☐ Scholarly research
c ☐ Preservation for future generations
d ☐ Loan or exchange programs
e ☐ Other .....

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? . . ☐ Yes ☐ No

Part IV Escrow and Custodial Arrangements.
Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? . . . . . ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII and complete the following table.

		Amount
c	Beginning balance	1c
d	Additions during the year	1d
e	Distributions during the year	1e
f	Ending balance	1f

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII . . . ☐

Part V Endowment Funds.
Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

		(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a	Beginning of year balance					
b	Contributions					
c	Net investment earnings, gains, and losses					
d	Grants or scholarships					
e	Other expenditures for facilities and programs					
f	Administrative expenses					
g	End of year balance					

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

a Board designated or quasi-endowment ▶ ..... %
b Permanent endowment ▶ ..... %
c Temporarily restricted endowment ▶ ..... %
The percentages on lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

		Yes	No
(i)	unrelated organizations	3a(i)	
(ii)	related organizations	3a(ii)	
b	If "Yes" on line 3a(ii), are the related organizations listed as required on Schedule R?	3b	

4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.
Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

	Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a	Land		1,047,836		1,047,836
b	Buildings		0		0
c	Leasehold improvements		0		0
d	Equipment		11,200		11,200
e	Other		0		0
Total.	Add lines 1a through 1e. *(Column (d) must equal Form 990, Part X, column (B), line 10c.)* ▶				1,059,036

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

▶ Go to *www.irs.gov/Form990* for the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part 1V Section C 19: Governing documents are available upon request.

Part 1X Other Expense Supplies including signs, tools, trees, tree supplies, gas and equipment repair, tree pruning or dropping trees near structures, den & nest boxes

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE COUNTY BOARD OF APPEALS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

SUBPOENA DUCES TECUM

To: Marcia Brice
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, MD 21074

You are hereby summoned and commanded to appear personally before the Baltimore County Board of Appeals, Jefferson Building, Room 203, 105 W. Chesapeake Avenue, Towson, Maryland, 21204 on Thursday, the 19th day of September, 2019 at 10:00 a.m., for the purpose of testifying at the hearing in the above-captioned case and bringing the documents identified in the attached Document Schedule, at the request of Michael R. McCann, Michael R. McCann, P.A., 118 West Pennsylvania Avenue, Towson, Maryland 21204, 410-825-2150, on behalf of Appellants.

Tommy L. Zahner
County Board of Appeals

Dated: September 11, 2019

RECEIVED
SEP 11 2019
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF REQUESTED DOCUMENTS

1. All documents comprising or constituting the five (5) conservation easements referenced in the attached Schedule D to the IRS Form 990 filed by Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

2. All documents identifying the property(ies) and/or acreage encumbered by the conservation easements referenced in the attached Schedule D to the IRS Form 990 filed by Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

SCHEDULE D (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
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OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

		(a) Donor advised funds	(b) Funds and other accounts
1	Total number at end of year		
2	Aggregate value of contributions to (during year)		
3	Aggregate value of grants from (during year)		
4	Aggregate value at end of year		

5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? ☐ Yes ☐ No

6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit? ☐ Yes ☐ No

Part II Conservation Easements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).

☐ Preservation of land for public use (e.g., recreation or education) ☐ Preservation of a historically important land area
☐ Protection of natural habitat ☐ Preservation of a certified historic structure
☐ Preservation of open space

2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

			Held at the End of the Tax Year
a	Total number of conservation easements	2a	5
b	Total acreage restricted by conservation easements	2b	110
c	Number of conservation easements on a certified historic structure included in (a)	2c	0
d	Number of conservation easements included in (c) acquired after 7/25/06, and not on a historic structure listed in the National Register	2d	0

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶ 0

4 Number of states where property subject to conservation easement is located ▶ 1

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? ☑ Yes ☐ No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ 300

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ $ 0

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? ☐ Yes ☑ No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

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Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets *(continued)*

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b If "Yes," explain the arrangement in Part XIII and complete the following table.

		Amount
c	Beginning balance	1c
d	Additions during the year	1d
e	Distributions during the year	1e
f	Ending balance	1f

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII . . . ☐

Part V Endowment Funds.

Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

		(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a	Beginning of year balance					
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d	Grants or scholarships					
e	Other expenditures for facilities and programs					
f	Administrative expenses					
g	End of year balance					

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

a Board designated or quasi-endowment ▶ _____ %
b Permanent endowment ▶ _____ %
c Temporarily restricted endowment ▶ _____ %

The percentages on lines 2a, 2b, and 2c should equal 100%.

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Total.	Add lines 1a through 1e. *(Column (d) must equal Form 990, Part X, column (B), line 10c.)* ▶				1,059,036

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.

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OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part 1V Section C 19: Governing documents are available upon request.

Part 1X Other Expense. Supplies including signs, tools, trees, tree supplies, gas and equipment repair, tree pruning or dropping trees near structures, den & nest boxes

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Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	Case No. 2019-0183-X

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

SUBPOENA DUCES TECUM

To: Custodian of Records
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, MD 21074

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Jeremy A. Zahner
County Board of Appeals

Dated: September 11, 2019

RECEIVED
SEP 11 2019
BALTIMORE COUNTY
BOARD OF APPEALS

SCHEDULE OF REQUESTED DOCUMENTS

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SCHEDULE D (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

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▶ Attach to Form 990.
▶ Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

		(a) Donor advised funds	(b) Funds and other accounts
1	Total number at end of year		
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3	Aggregate value of grants from (during year)		
4	Aggregate value at end of year		

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Part II Conservation Easements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).

☐ Preservation of land for public use (e.g., recreation or education) ☐ Preservation of a historically important land area
☐ Protection of natural habitat ☐ Preservation of a certified historic structure
☐ Preservation of open space

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		Held at the End of the Tax Year
a	Total number of conservation easements	2a 5
b	Total acreage restricted by conservation easements	2b 110
c	Number of conservation easements on a certified historic structure included in (a)	2c 0
d	Number of conservation easements included in (c) acquired after 7/25/06, and not on a historic structure listed in the National Register	2d 0

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶ 0

4 Number of states where property subject to conservation easement is located ▶ 1

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? ☑ Yes ☐ No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ 300

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ $ 0

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? ☐ Yes ☑ No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenue included on Form 990, Part VIII, line 1 ▶ $
(ii) Assets included in Form 990, Part X ▶ $

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items

a Revenue included on Form 990, Part VIII, line 1 ▶ $
b Assets included in Form 990, Part X ▶ $

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets *(continued)*

3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply)

a ☐ Public exhibition
b ☐ Scholarly research
c ☐ Preservation for future generations
d ☐ Loan or exchange programs
e ☐ Other _____

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? . . ☐ Yes ☐ No

Part IV Escrow and Custodial Arrangements.
Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? . . . . . ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII and complete the following table.

		Amount
c	Beginning balance	1c
d	Additions during the year	1d
e	Distributions during the year	1e
f	Ending balance	1f

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII . . . . ☐

Part V Endowment Funds.
Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

		(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a	Beginning of year balance					
b	Contributions					
c	Net investment earnings, gains, and losses					
d	Grants or scholarships					
e	Other expenditures for facilities and programs					
f	Administrative expenses					
g	End of year balance					

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

a Board designated or quasi-endowment ▶ _____ %
b Permanent endowment ▶ _____ %
c Temporarily restricted endowment ▶ _____ %
The percentages on lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

		Yes	No
(i)	unrelated organizations	3a(i)	
(ii)	related organizations	3a(ii)	
b	If "Yes" on line 3a(ii), are the related organizations listed as required on Schedule R?	3b	

4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.
Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

	Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a	Land		1,047,836	[redacted]	1,047,836
b	Buildings		0		0
c	Leasehold improvements		0		0
d	Equipment		11,200		11,200
e	Other		0		0
Total.	Add lines 1a through 1e. *(Column (d) must equal Form 990, Part X, column (B), line 10c.)* ▶				1,059,036

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

▶ Go to *www.irs.gov/Form990* for the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part 1V Section C 19: Governing documents are available upon request.

Part 1X Other Expense Supplies including signs, tools, trees, tree supplies, gas and equipment repair, tree pruning or dropping trees near structures, den & nest boxes

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 16, 2019

AMENDED NOTICE OF ASSIGNMENT

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
19-183-X Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4F-102 to operate a solar facility on property that is split-zoned RC-2 and RC-8.

6/20/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, with conditions.

-----SET WITH-----

IN THE MATTER OF: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. – Legal Owner
CBA-20-004 Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Application for Limited Exemption

7/2/19 Letter from Director of PAI granting the requested Limited Exemption under BCC § 32-4-106(a)(1)(vi).

ASSIGNED FOR: SEPTEMBER 19, 2019, AT 10:00 A.M. - Day 1
AND SEPTEMBER 24, 2019, 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 with the Board unless otherwise requested.
- Please contact our office for information about projection equipment. 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 : Lawrence E. Schmidt, Esquire
Petitioners/Legal Owners : Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Lessee : Power Factor, LLC

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Valleys Planning Council, Inc.; North County Community Group; Kevin and Maria Webb; Linda Ault; Ethan Lavin; Wayne and Allene Yelle; Mary Ruth Fowble; and Glenn and Donna Fowble

C. Pete Gutwald, Director/Department of Planning
David Lykens, Director/DEPS
Lawrence M. Stahl, Managing Administrative Law Judge
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel

Krysundra Cannington

From: Michael McCann <michael@mmccannlaw.net>
Sent: Tuesday, August 13, 2019 1:37 PM
To: Krysundra Cannington
Cc: Lawrence Schmidt
Subject: Holly Springs Nature Conservancy - Case No. 2019-0183-X and DRC Number: 062519A

CAUTION: This message from michael@mmccannlaw.net originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Sunny: I rec'd Larry's letter requesting a consolidation of the two appeals. My folks are ok with that.

Thank you.

Michael

Michael R. McCann
Michael R. McCann, PA
118 W. Pennsylvania Avenue
Towson, Maryland 21204
(p) 410-825-2150
(f) 410-825-2149

E-mail Confidentiality: The information contained in this message may be confidential, proprietary and/or protected by the attorney-client privilege or work product doctrine. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please delete/destroy any copy of this message and notify Michael R. McCann at 410 825-2150.

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
*Admitted in MD, FL, PA
**Admitted in MD, NC

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

August 8, 2019

Sent Hand Delivery
Ms. Krysundra L. Cannington, Administrator
Board of Appeals of Baltimore County
Jefferson Building
105 W. Chesapeake Avenue, Suite 203
Towson, MD 21204

Re:	**Legal Owner:**	**Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.**
	Lessee:	**Power Factor, LLC**
	Property:	**18627 Falls Road**
	Case Nos.	**2019-0183-X and DRC 062519A**

Dear Ms. Cannington,

This is in reference to the above appeals, both of which relate to a proposed solar facility on the property generally known as 18627 Falls Road. The appeals at issue relate to two approvals granted by Baltimore County. In case no. 2019-0183-X, Administrative Law Judge John E. Beverungen granted a petition for special exception to approve a proposed solar facility on property that is split-zoned RC 2 and RC 8. This approval has been appealed to the Board by Michael R. McCann, Esquire on behalf of several residents in the locale. In case no. DRC-062519A, the County Development Review Committee ("DRC") approved an exception from the full development review process for this project pursuant to Baltimore County Code § 32-4-106 (a)(1)(vi). This approval was also appealed to the Board by Mr. McCann on behalf of his clients.

Obviously, both appeals relate to the same property and also the same proposed development; to wit, a proposed solar facility. Also, the same parties are involved. Finally, both appeals will be considered by the Board de novo.

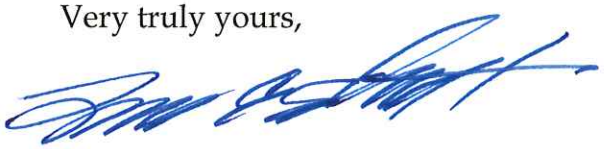
Under the circumstances, I respectfully suggest that these appeals be consolidated for the purposes of hearing which have been scheduled for September 19, 2019 and September 24, 2019. Such a consolidation would promote judicial economy and efficiency and allow the parties to expediently have these matters considered. Obviously, as the party at the hearing who has the

burden of proof, I will offer evidence on both appeals and can easily differentiate the evidence offered in support of one, the other, or both matters.

I appreciate the Board's attention to this request and please do not hesitate to contact me should you have any questions.

Thank you for your courtesy.

Very truly yours,



Lawrence E. Schmidt

LES/am
cc: Michael McCann, Esquire

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

July 30, 2019

Via Hand-Delivery

Michael D. Mallinoff, Director,
Baltimore County Department of
Permits, Approvals and Inspections
111 W. Chesapeake Ave., Ste. 123
Towson, Maryland 21204

Re: Notice of Appeal
Decision of Development Review Committee
18627 Falls Road
Tracking No.: 2019-00080
DRC Number: 062519A

Dear Mr. Mallinoff:

On behalf of the organizations and persons identified below, please let this letter serve as a Notice of Appeal of the exemption approved by the DRC in connection with the above-mentioned property.

Valleys Planning Council, Inc.
118 W. Pennsylvania Avenue
Towson, MD 21204

North County Community Group
PO Box 132
Monkton, MD 21111

Kevin and Maria Webb
18702 Falls Road
Hampstead, MD 21074

Linda Ann Ault
18621 Falls Road
Hampstead, MD 21074

RECEIVED
AUG 14 2019
BALTIMORE COUNTY
BOARD OF APPEALS

DATE STAMP REQUIRED

Ethan Lavin
18821 Falls Road
Hampstead, MD 21074

Wayne and Allene Yelle
18708 Falls Road
Hampstead, MD 21074

Mary Ruth Fowble
18719 Falls Road
Hampstead, MD 21074

Glenn and Donna Fowble
3306 Baker School House Road
Freeland, MD 21053

Along with a copy of this letter, I am providing the Board of Appeals with proof of my payment to the County of the filing fee for this appeal.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

.

Sincerely,

Michael R. McCann

cc: Lawrence Schmidt, Esq.
Baltimore County Board of Appeals (via hand-delivery)

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

No. 187725

Date: 07/30/19

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000			6150			$300.00

Total: $300.00

Rec From: THE VALLEYS PLANNING COUNCIL, INC. 118 W. Pennsylvania Ave, Towson, MD. 21204

For: DRC Appeal Fee for DRC#062519A Address: 18627 Falls Rd., Tracking# 2019-00280

Check # 5223

DISTRIBUTION
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

CASHIER'S VALIDATION

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
7/31/2019 7/30/2019 14:10:47 5
REG WS05 WALKIN LRB
>>RECEIPT 9 022461 7/30/2019 OPLN
528 ZONING VERIFICATION
187725
Receipt Tot $ 300.00
300.00 CK .00 CA
Baltimore County, Maryland

Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204
Phone: (410) 825-2150
Facsimile: (410) 825-2149
michael@mmccannlaw.net

July 30, 2019

Via Hand-Delivery

Michael D. Mallinoff, Director,
Baltimore County Department of
Permits, Approvals and Inspections
111 W. Chesapeake Ave., Ste. 123
Towson, Maryland 21204

Re: Notice of Appeal
Decision of Development Review Committee
18627 Falls Road
Tracking No.: 2019-00080
DRC Number: 062519A

Dear Mr. Mallinoff:

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Valleys Planning Council, Inc.
118 W. Pennsylvania Avenue
Towson, MD 21204

North County Community Group
PO Box 132
Monkton, MD 21111

Kevin and Maria Webb
18702 Falls Road
Hampstead, MD 21074

Linda Ann Ault
18621 Falls Road
Hampstead, MD 21074

RECEIVED
JUL 31 2019
BALTIMORE COUNTY
BOARD OF APPEALS

Ethan Lavin
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Hampstead, MD 21074

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18708 Falls Road
Hampstead, MD 21074

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Hampstead, MD 21074

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3306 Baker School House Road
Freeland, MD 21053

Along with a copy of this letter, I am providing the Board of Appeals with proof of my payment to the County of the filing fee for this appeal.

Thank you for your attention to this matter. Please contact me if you have any questions or concerns.

Sincerely,

Michael R. McCann

cc: Lawrence Schmidt, Esq.
Baltimore County Board of Appeals (via hand-delivery)

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

No. 187725

Date: 07/30/19

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	506	0000			6150			$300

Total: $300.00

Rec From: THE VALLEYS PLANNING COUNCIL, Inc.
118 W. Pennsylvania Ave, Towson, MD. 21204

For: DRC Appeal Fee for Dec# 062519A
Address: 1836 Falls Rd. ; Tracking# 2019-02080

Check # 5223

CASHIER'S VALIDATION

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

Baltimore County Government
Department of Permits Approvals and Inspections
Development Management

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

July 2, 2019

Kimley- Horn
Mr. Nick Leffner, P.E.
1801 Porter Street, Suite 401
Baltimore, Maryland 21230

RE: Falls Road Solar – 18637 Falls Road
Tracking Number: DRC-2019-00080
DRC Number: 062519A; Dist. 5C3

Dear Mr. Leffner:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code, and to make recommendations to the Director, Department of Permits Approvals and Inspections (PAI).

The DRC has, in fact, met in an open meeting on June 25, 2019, and made the following recommendations:

The DRC has determined, your project provisionally meets the requirements of a **limited exemption** under Section 32-4-106(a)(1)(vi).

Now that you have received this limited exemption, please proceed with building permit application.

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a building permit.

Please note that compliance with subtitles 3, 4 and 5 of Title 4, Article 32, Baltimore County Code, is required, as is compliance with all applicable zoning regulations. Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement. Also, sidewalks are required whenever the site is within the Metropolitan District.

Herein find a Zoning Review Hearing Checklist that will serve as a guide when preparing plans for building permit applications. Please be advised, plans not meeting minimum checklist requirements will not be accepted for filing. This will consequently delay building permit approval. Please note, the "conceptual" plan required for DRC review, does not necessarily meet the checklist guidelines. Therefore, it should not be assumed that the DRC plan is acceptable for building permit applications. Should you have any questions regarding the above, please contact the Zoning Review Section at 410-887-3391.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 2nd day of July 2019, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permit that may be required for this project, your application will be processed subject to the conditions set forth above, and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Additionally, this project is located on a state road; therefore, the State Highway Administration requires the plan to be reviewed prior to the permit approval. For further information, contact Richard A. Zeller at 410-229-2332.

Sincerely,

For Michael D. Mallinoff
Director

MM: JMC:jmk

C: Zach Wilkins
Teresa Moore
Kathie Peiper
Richard Zeller, SHA
File

BALTIMORE COUNTY
Development Review Committee Meeting
DEPARTMENT OF PERMITS, APPROVALS & INSPECTIONS

COUNTY AGENCY SIGN-IN

ATTENDANCE RECORD

Date: June 25, 2019

RECEIVED
JUN 25 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

PLEASE PRINT

Name	Department/Section	PHONE EXT.	
Jan M. Cook	PAI - Dev. Mngt.		
Steve Ford	EPS - P.C.	x-5859	
Joe Merrey	Zoning	3391	
Carl Richards	Zoning	x3391	
Vishnu Desai	DPR - PAI	x3751	
Jennifer Nugent	Planning	x3480	

BALTIMORE COUNTY
Development Review Committee Meeting
DEPARTMENT OF PERMITS, APPROVALS & INSPECTIONS

APPLICANT/CITIZEN
ATTENDANCE RECORD

Date: JUNE 25, 2019

RECEIVED
JUN 25 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

PLEASE PRINT

NAME	ADDRESS Including City, State, Zip Code	E-MAIL	PHONE
KATHIE PIEPER	4310 BECKLEYSVILLE RD 21074	KNOTGARDEN52@COMCAST.NET	
Teresa Moore	118 W. Pennsylvania 21204	teresa@thevpc.org	410-337-6877
Sarah Keenan	9600 Naygall Road, Parkville, MD 21234	skkeenan@loyola.edu	410-292-4178
THOMAS SKILES	201A SYCAMORE RD BALTIMORE, MD 21228	TSKILES@CDDPLANS.COM	443-829-8356
Zach Wilkins	600 Washington Ave, Towson, MD	zwilkins@bgs-law.com	410-821-0070
Nick Leffler	1801 Porter St, Suite 401 Baltimore, MD 21230	Nick.Leffler@kimley-horn.com	443-743-3470

MARYLAND DEPARTMENT OF TRANSPORTATION
STATE HIGHWAY ADMINISTRATION

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

June 24, 2019

Mr. Jan M. Cook
Development Manager
Development/Management/Permits
Inspections & Approvals
County Office Building-Room 123
111 West Chesapeake Avenue
Towson, MD 21204

RECEIVED
JUL 01 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

Dear Mr. Cook:

Thank you for the opportunity to review the DRC Plan for the proposed Falls Road Solar development on Falls Road (MD 25) in Baltimore County. The Maryland Department of Transportation State Highway Administration (MDOT SHA) has reviewed the plan submittal listed below and is pleased to respond:

Falls Road Solar
DRC Plan No. 062519A
County Tracking No. DRC-2019-00080
SHA Tracking No. 19APBA013XX
MD 25 (east side) 3300' south of Beckleysville Road
Mile Post 21.20
Baltimore County

An access permit will be required to construct the proposed entrances to this site on MD 25. The following criteria and detail will apply and should be reflected on future plan submittals:

The proposed entrances must be 25' wide with 25' radii. These entrances must be shaded on the plan from the existing edge of pavement on MD 25 back to the radius returns within the entrances, and the following full depth pavement section utilized and noted on the plan:

1.5" Superpave Asphalt Mix 9.5mm for Surface – PG 64S-22, Level 2
6" Superpave Asphalt Mix 19.0mm for Base – PG 64S-22, Level 2 (Two 3" lifts)
6" Graded Aggregate Base or 12" Capping Borrow

To initiate the plan review cycle toward the issuance of the access permit the design engineer must submit nine (9) sets of plans reflecting the criteria and details. The plan submittal should include 1 set of hydraulic computations, and a CD containing plans and all supporting documentation to Wendy Wolcott at 320 West Warren Road, Hunt Valley, MD 21030 to the attention of Mr. Richard Zeller. Please utilize the SHA tracking number when making this submission.

All SHA Policies, Standards and Specifications must be followed when preparing the above plan submittal including but not limited to the following documents:

MDOT SHA Access Manual
MDOT SHA Business Standards and Specifications

The Access Management Plan Review Checklist must be utilized in drafting the SHA Improvement Plans. Please include a copy of the completed checklist when making this submittal. All of these documents along with additional guidance can be found on our web site at www.roads.maryland.gov under Business Center.

The plan proposes dedication of property frontage on MD 25 to the MDOT SHA. The MDOT SHA requires that any right-of-way or easement donation (dedication) be platted to MDOT SHA standards. These standards may be found at http://www.roads.maryland.gov; - Business Center; - Surveyors Center; then follow the link to Developer Donation Plat Standards. Please contact Mr. Robert Hammond-Bey, Chief, Records & Research Section, Office of Real Estate at 410-545-0358 or rhammondbey@mdot.maryland.gov for existing right-of-way information. Note that any plats produced for the MDOT SHA shall be on NAD83/91 datum. Please contact Mr. Erik Donald, Geodetic Area Engineer, Plats and Surveys Division (PSD) at 410-545-8976 or edonald@mdot.maryland.gov for SHA-GPS control location and information. All plats must be submitted in hard copy format for review, checking and final issuance. All subdivision plats that will be showing donated area must be approved by PSD prior to recordation at the County level.

The first plat submission must include two (2) copies of the plat reflecting the proposed dedication of property frontage, and a CD containing the plat to be sent to Ms. Wendy Wolcott, at 320 West Warren Road, Hunt Valley, MD 21030 to the attention of Mr. Richard Zeller. Please utilize the above SHA tracking number when making this submission. Subsequent plat submissions shall be made directly to the Plats and Surveys Division. Please contact Mr. Matt Bloedorn, Acting Assistant Division Chief, Plats and Surveys Division (PSD) at 410-545-8516 or mbloedorn@mdot.maryland.gov for additional information about the Donation Plat review process. Additionally, contact Mr. Robertallen Webb, Chief, District 4 Right-of-Way at 410-229-2401 or by email rwebb@mdot.maryland.gov for information about the Donation Deed requirements and procedures. The deed, description, plats and appropriate title documentation must be approved by the MDOT SHA, and evidence of the deed recordation shall be provided prior to the issuance of the Access Permit.

If there are any questions, please contact Mr. Richard Zeller at 410-229-2332, or toll free (in Maryland only) at 1-866-998-0367 (x2332), or via email at rzeller@mdot.maryland.gov.

Sincerely,

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

cc: Kimley – Horn & Associates, Inc. / 1801 Porter Street, Suite 401, Baltimore, MD 21230
Powerfactor Company / 1 Mace Avenue, Baltimore, MD 21221
Mr. Vishnu Desai / 111 West Chesapeake Avenue, Towson, MD 21204
Mr. Michael Pasquariello, MDOT SHA District 4 Utilities
Mr. Kimon Johnson, MDOT SHA District 4, Traffic
Mr. Robert Hammond-Bey, MDOT SHA Office of Real Estate
Mr. Erik Donald, MDOT SHA Plats & Surveys Division
Mr. Matt Bloedorn, MDOT SHA Plats & Surveys Division
Mr. Robertallen Webb, MDOT SHA District 4 Right-of-Way

BALTIMORE COUNTY
DEPARTMENT OF PERMITS APPROVALS AND INSPECTIONS
DEVELOPMENT REVIEW COMMITTEE (DRC) APPLICATION

DRC# Q02519A /Tracking# DRC-2019-00080
County Use Only County Use Only

RECEIVED
JUN 04 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

This application must be accompanied by the following:

Filing Date: _____
Stamp in w/PAI date stamp here

1. **One copy of the completed DRC checklist.**
2. **Three copies of this DRC application, completed in full.**
3. **Three copies of a letter of request (attach one to each DRC application).**
4. **Nine copies of the plan folded to 8 ½ x 11 inches.**
5. **$100 fee for limited exemption request; $375 for waiver request (check made payable to Baltimore County, MD and are non-refundable; Applicant shall deliver check to County Finance Office cashier. Submit paid receipt w/package.**

Project Name: FALLS ROAD SOLAR PAI File No.: _____

Project Address: ADJACENT TO 18627 FALLS ROAD & 18627 FALLS ROAD Zip Code: 21074 ADC Map #: 4118C8-C9

Councilmanic District: 3RD Election District: 5TH Project Acreage: +/- 9.13 ACRES

Tax Account No(s): 0523015126 & 0504000210 Zoning: RC-2 & RC-8

Engineer: NICK LEFFNER, KIMLEY-HORN N/A: _____ Engineer's Phone No.: 443-743-3470

Address: 1801 PORTER ST, SUITE 401, BALTIMORE, MD Zip 21230 Email: nick.leffner@kimley-horn.com
(City)

Applicant: ANDREW STREIT, POWERFACTOR COMPANY Applicant's Phone No.: 443-559-0174

Address: 1 MACE AVE, BALTIMORE, MD Zip 21219 Email: ANDREW@POWERFACTORCO.COM
(City)

Attorney: LAWRENCE E SCHMIDT, SMITH, GILDEA & SCHMIDT, LLC N/A: _____ Attorney's Phone No.: 410-821-0070

Address: 600 WASHINGTON AVE, SUITE 200, TOWSON, MD Zip 21204 Email: LSCHMIDT@SGS-LAW.COM
(City)

Is this a tower? ___ Yes _X_ No If "Yes" check one of the following: Cellular ____ Water Tower ____ MonoPole _____
(CAC) (WTC) (CFC)

REQUESTED ACTION (TO BE COMPLETED BY THE APPLICANT)

4 JUN '19 PM 3:04

(County Use only)
Action: a, 1.vi
2019-0183-X

(X) Limited Exemption under Section 32-4-106 (A) (1) (vi)
( ) Plan Refinement
( ) Planned Shopping Center Designation under Section 101 of BCZR
( ) Waiver under Section 32-4-107 (_____) (_____) (_____)
( ) Requires a Zoning ( ) Special Hearing; ( ) Special Exception; ( ) Variance
( ) Lot Line Adjustment (LLA)
( ) Other NICK LEFFNER / ZACH WILKINS / TERESA MOORE / KATHIE PIEPER - REMOVED PER ALJ ORDER NO TREES TO BE

This application must be accompanied by a written request. That request must be in the form of a letter, legibly printed or typed, and signed by the applicant. The letter must contain the name, address and telephone number of the applicant and must provide details of the request. A copy of the checklist must be completed and included along with this DRC application. Please note that a DRC application form and checklist is available in room 123 of the County Office Building and on the County web site www.baltimorecountymd.gov/Agencies/permits/pdm_devmanage/pdmfdmgt.html
Please see page 2 for the checklist of complete submittal requirements

c: Council, Planning, DEPS, Zoning

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

No. 183123

Date: 6/4/19

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				$150.00

Total: $150.00

Rec From: Kimley-Horn

For: DRC Appeal for Project Falls Road Solar
Check # 4507 - $100.00
cash: $50.00
Project Name: Falls Rd Solar
Address: Adjacent to 18627 Falls Rd & 18627 Falls Rd

DISTRIBUTION

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS DATE	ACTUAL TIME	CSH
6/06/2019	6/04/2019 13:09:47	1

WALKIN LJR
>>RECEIPT # 010694 6/04/2019 OFLN
Dept 5 528 ZONING VERIFICATION
183123
Total $ 150.00
100.00 CK 50.00 CA
Baltimore County, Maryland

BALTIMORE COUNTY
DEPARTMENT OF PERMITS APPROVALS AND INSPECTIONS

Development Review Committee (DRC)
Application Form Checklist

All applications to the DRC must include the following:

- ✓ 1. Three copies of the DRC Application.
- ✓ 2. Three copies (one attached to each DRC Application) of a letter of request to the DRC containing the following:
  - ✓ a. Name, address and phone number of the applicant
  - ✓ b. Explanation of the request to the DRC.
  - ✓ c. Signature of the applicant.
- ✓ 3. Nine copies of a plan*** showing the following:
  - ✓ a. A plan title box noting "Plan to accompany DRC request."
  - ✓ b. North arrow.
  - ✓ c. Vicinity map.
  - ✓ d. Election district.
  - ✓ e. Councilmanic district.
  - ✓ f. Property tax account numbers.
  - ✓ g. Site property owner's name and address.
  - ✓ h. Scale of the drawing.
  - ✓ i. Boundaries of the property lines shown in heavy bold lines.
  - ✓ j. Lengths of property lines
  - ✓ k. Area of project site in square feet and acreage.
  - ✓ l. Proposed structures, heights and dimensions.
  - ✓ m. Setbacks.
  - NA n. Location of existing wells and septic systems.
  - ✓ o. Zoning information:
    - ✓ 1. Current zoning on the property.
    - ✓ 2. Case numbers of any zoning hearings.
    - ✓ 3. Dates of zoning orders.
    - ✓ 4. Indication of what was granted or denied by the zoning commissioner.
    - ✓ 5. Copies of zoning orders attached to the DRC Application.

***Note: For refinements and material changes to previously approved plans you must use copies of the last approved plan to show items 3a-o listed above. Please show all changes in red.

- ✓ 4. One copy of this checklist completed and signed by the applicant or the consultant.
- ✓ 5. Check for $100 for limited exemption request or check for $375 for waiver request , payable to Baltimore County, MD-non-refundable. **(Do not staple check to forms) Applicant shall deliver payment to County Finance Office cashier. Submit paid receipt with this package.**

RECEIVED
JUN 04 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

I have reviewed the **DRC application and plan using this checklist to** insure that the application and plan are complete. I **understand that an incomplete application or plan** may cause the DRC to delay its action on this request.

Signed Andrew Streit 5/29/19
Date

Print Name Andrew Streit

Kimley»Horn

TRANSMITTAL

Date:	6/4/2019	**Project Name / Number:**	Falls Road Solar / 114066000
Name:	Jan Cook	**Phone:**	(410) 887-3321
Company Name:	Baltimore County Dept. of Permits, Approvals, and Inspections		
Address:	111 West Chesapeake Avenue, Room 123		
City:	Towson	**State:** MD	**Zip** 21204

We are sending you via ☐ FedEx ☐ Courier ☒ Hand Delivery ☐ Street Mail **the following items:**

☐ Shop Drawings ☒ Prints/Plans ☐ Specifications ☐ Change Orders ☐ Samples ☐ CD/DVD

Item #	# of Copies	Item Description
1	3	Completed DRC Application/Checklist
3	3	Letter of Request
4	9	DRC Plan Set
5	1	$100 DRC Application Fee Receipt

☐ For Your Use ☐ Returned for Corrections ☐ Corrected Prints ☐ For Your Review & Comment

☐ As Requested ☐ Approved as Noted ☐ Copies for Distribution ☐ Approved as Submitted

☐ Return ☒ Submit ☐ Resubmit ☒ Copies for Approval

Remarks:	Please find the enclosed copies for review.

RECEIVED
JUN 04 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

Received By:		**Sender:**	Nick Leffner

4 JUN '19 PM 1:03

June 4, 2019

Development Review Committee
111 West Chesapeake Avenue
Towson, Maryland 21204

RE: Letter of Request for DRC
Power Factor Company – Falls Road Solar
1 Mace Ave
Baltimore, MD 21221

Power Factor Company is respectfully requesting a Development Review Committee (DRC) review and approval of a Limited Exemption under Section 32-4-106 (A-1-vi) in accordance with Baltimore County Zoning Regulations Section 256.5.E. The purpose of this application is for the construction of a solar facility located along Falls Road in Hampstead, MD 21074. The site is currently of an agricultural use.

Power Factor is proposing to build a community solar facility consisting of solar panels, inverters, fencing, access roads, and a transformer. The proposed use is permitted under special exception for the RC-2 & RC-8 zoning that encompasses the site.

Please contact me by email at andrew@powerfactorco.com or by phone at (443) 559-0174 if you have any questions or concerns.

Thank you,

4 JUN '19 PM 1:04

Andrew Streit
Power Factor Company
1 Mace Avenue
Baltimore, MD 21221

RECEIVED
JUN 04 2019
DEPARTMENT OF PERMITS
APPROVALS AND INSPECTIONS

Krysundra Cannington

From: Krysundra Cannington
Sent: Tuesday, August 6, 2019 10:24 AM
To: Jan Cook
Cc: Tammy Zahner
Subject: DRC No 062519A Appeal to Board

Good morning Jan,

We received a courtesy copy of a notice of appeal on July 31, 2019, with regard to 18627 Falls Road, DRC No: 062519A. When can we expect to receive the documents for this matter?

Thank you,

Sunny

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

Confidentiality Statement

This electronic mail transmission contains confidential information belonging to the sender which is legally privileged and confidential. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or taking of any action based on the contents of this electronic mail transmission is strictly prohibited. If you have received this electronic mail transmission in error, please immediately notify the sender.

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 25, 2019

NOTICE OF ASSIGNMENT

IN THE MATTER OF: Holly Springs Nature Conservancy &
Wildlife Sanctuary, Inc. – Legal Owner
19-183-X Power Factor, LLC – Lessee
18627 Falls Road
5th Election District; 3rd Councilmanic District

Re: Petition for Special Exception pursuant to BCZR Section 4F-102 to operate a solar facility on property that is split-zoned RC-2 and RC-8.

6/20/19 Opinion and Order of the Administrative Law Judge wherein the Petition for Special Exception was GRANTED, with conditions.

ASSIGNED FOR: **SEPTEMBER 19, 2019, AT 10:00 A.M. - Day 1**
AND **SEPTEMBER 24, 2019, 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 with the Board unless otherwise requested.
- Please contact our office for information about projection equipment. 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 : Lawrence E. Schmidt, Esquire
Petitioners/Legal Owners : Mary Zodhiates/Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Lessee : Power Factor, LLC

Counsel for Protestants : Michael R. McCann, Esquire
Protestants : Valleys Planning Council, Inc.; North County Community Group; Kevin and Maria Webb; Linda Ault; Ethan Lavin; Wayne and Allene Yelle; Mary Ruth Fowble; and Glenn and Donna Fowble

C. Pete Gutwald, Director/Department of Planning
David Lykens, Director/DEPS
Lawrence M. Stahl, Managing Administrative Law Judge
Michael D. Mallinoff, Director/PAI
Michael E. Field, County Attorney
Nancy C. West, Assistant County Attorney
Office of People's Counsel

RECEIVED
JUL 17 2019
BALTIMORE COUNTY
BOARD OF APPEALS

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

July 17, 2019

Lawrence E. Schmidt, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Avenue
Towson, Maryland 21204

RE: **APPEAL TO BOARD OF APPEALS** – Petition for Special Exception
Case No. 2019-0183-X
Property: 18627 Falls Road

Dear Counsel:

Please be advised that an appeal of the above-referenced case was filed in this Office on July 16, 2019. 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
Peter Max Zimmerman, People's Counsel for Baltimore County
Glen & Donna Fowble, 3306 Bakerschool House Road, Freeland, Maryland 21053
Linda Ault, 18621 Falls Road, Hampstead, Maryland 21074
Allene Yelle, 18708 Falls Road, Hampstead, Maryland 21074

Ken & Jan Harry, 18710 Falls Road, Hampstead, Maryland 21074
Steve Yeager, 3105 Cotter Road, Millers, Maryland 21102
Linda Hogan, 18616 Falls Road, Hampstead, Maryland 21074
Mary Ruth Fowble, 18719 Falls Road, Hampstead, Maryland 21074
Donna Stadter, 18618 Falls Road, Hampstead, Maryland 21074
Kevin & Maria Webb, 18702 Falls Road, Hampstead, Maryland 21074
Erika & Patricia Shook, 18613 Falls Road, Hampstead, Maryland 21074
Kathie Pieper, 4310 Beckleysville Road, Hampstead, Maryland 21074
Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
John & Michelle Dwyer, 18619 Falls Road, Hampstead, Maryland 21074
A.Oelke, 4537 Black Rock Road, Upperco, Maryland 21155
Renee Hamidi, 8 Sparks Station Road, Sparks, Maryland 21152
Teresa Moore, 118 W. Pennsylvania Avenue, Towson, Maryland 21204
Penny Wilson, 18603 Falls Road, Hampstead, Maryland 21074
Ethan Lavin, 18821 Falls Road, Hampstead, Maryland 21074
Mary Petrucci, 19408 Resh Mill Road, Hampstead, Maryland 21074
Wanda Lehman, 19701 Gunpowder Road, Millers, Maryland 21102
George Della, 4331 Church Road, Hampstead, Maryland 21074
Jackie Brooks, 411 Buedel Ct., Sparks, Maryland 21152

APPEAL

Petition for Special Exception
(18627 Falls Road)
5th Election District – 3rd Councilmanic District
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.
Lessee: Power Factor, LLC
Case No. 2019-0183-X

Petition for Special Exception (Original filing date December 7, 2018)
Amended Petition date (May 17, 2019)

Zoning Description of Property

Certificate of Postings –
1st Posting: May 9, 2019 (Linda O'Keefe)
2nd Posting: May 29, 2019 (Linda O'Keefe)

Newspaper Advertisement –May 10, 2019 (The Daily Record)

Notice of Zoning Hearing – April 23, 2019

People's Counsel Entry of Appearance – December 18, 2018

Zoning Advisory Committee Comments

Petitioner's Sign-in Sheets – 1 Sheet

Citizen's Sign-in Sheets- 1 Sheet

Petitioner(s) Exhibits –
1. Amended Site Plan
2. Original Site Plan
3. RC-8 zone Narrative
4. Leffner CV
5. My Neighborhood Map with property outlined
6. 6A-6C Aerial Exhibits
7. 7A-U Site Plans
8. DCE Solar brochure
9. SMA "Sunny Tripower" brochure
10. Amended site pan with red and green revisions

RECEIVED
JUL 17 2019
BALTIMORE COUNTY
BOARD OF APPEALS

Protestant(s) Exhibits –

Miscellaneous (Not Marked as Exhibits)-

Administrative Law Judge Order and Letter (GRANTED with Conditions – June 20, 2019)

Appeal Notice, Letter & Receipt received from Michael R. McCann, Esq. July 16, 2019

APPEAL

Petition for Special Exception
(18627 Falls Road)
5th Election District – 3rd Councilmanic District
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Appeal Notice, Letter & Receipt received from Michael R. McCann, Esq. July 16, 2019

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

No. 174825

Date: 11/01/19

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				400.00 CR

Total: 400.00

Rec From: Michael McCann, Esq

For: OFFICE OF ADMINISTRATIVE HEARINGS (CD OR (APPEAL))

CASE NO. 19-018-3-X

ADDRESS OR PROJECT: 18627 Hollis Rd

HEARING DATE(S): 5/30/19

CHECK # 5425

DISTRIBUTION

WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER GOLD - ACCOUNTING

PLEASE PRESS HARD!!!!

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS ACTUAL DATE
/30/2019 5/16/2019 14:55:26

REG# 0001 WALK-IN

CEIPT # 010876 5/16/2019

Q ZONING VERIFICATION

O. 174825

Recpt Tot $ 400.00

400.00 CR

Baltimore County, Maryland

RECEIVED
JUL 16 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE OFFICE OF
	*	ADMINISTRATIVE HEARINGS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	FOR BALTIMORE COUNTY Case No. 2019-0183-X

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

NOTICE OF APPEAL

Appellants, Valleys Planning Council, Inc., North County Community Group, Kevin and Maria Webb, Linda Ann Ault, Ethan Lavin, Wayne and Allene Yelle, Mary Ruth Fowble, and Glenn and Donna Fowble, by and through undersigned counsel, pursuant to Baltimore County Code §32-3-401, hereby file an appeal to the Baltimore County Board of Appeals from the Opinion and Order of the Administrative Law Judge dated June 20, 2019. Pursuant to Rule 3 of the Rules of Practice and Procedure of the Board of Appeals, the addresses of the appellants are: Valleys Planning Council, Inc., 118 W. Pennsylvania Avenue, Towson, MD 21204; North County Community Group, PO Box 132, Monkton, MD 21111; Kevin and Maria Webb, 18702 Falls Road, Hampstead, MD 21074; Linda Ann Ault, 18621 Falls Road, Hampstead, MD 21074; Ethan Lavin, 18821A Falls Road, Hampstead, MD 21074; Wayne and Allene Yelle, 18708 Falls Road, Hampstead, MD 21074; Mary Ruth Fowble, 18719 Falls Road, Hampstead, MD 21074; and Glenn and Donna Fowble, 3306 Baker School House Road, Freeland, MD 21053.

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on 16th day of July 2019 a copy of the foregoing Notice of Appeal was mailed, *via* first-class mail, postage prepaid to:

Larry Schmidt
Schmidt, Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

And hand-delivered to:

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

and

Michael D. Malinoff, Director
Department of Permits Approvals and Inspections
111 W. Chesapeake Avenue
Towson, MD 21204

Michael R. McCann

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Councilmanic District	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., *Legal Owner* Power Factor, LLC, *Lessee* Petitioners	*	FOR BALTIMORE COUNTY Case No. 2019-0183-X

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

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JUL 16 2019
BALTIMORE COUNTY
BOARD OF APPEALS

Respectfully submitted,

Michael R. McCann
Michael R. McCann, P.A.
118 W. Pennsylvania Ave.
Towson, MD 21204
(410) 825-2150

Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on 16th day of July 2019 a copy of the foregoing Notice of Appeal was mailed, *via* first-class mail, postage prepaid to:

Larry Schmidt
Schmidt, Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson, Maryland 21204

And hand-delivered to:

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

and

Michael D. Malinoff, Director
Department of Permits Approvals and Inspections
111 W. Chesapeake Avenue
Towson, MD 21204

Michael R. McCann

RECEIVED
JUL 03 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

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: July 3, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18627 Falls Road
(Holly Springs Nature Conservancy & Wildlife Property)

Zoning Advisory Committee Meeting of **June 3, 2019**.

__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).

Additional Comments:

The revised site plan and the Forest Buffer Easement shown thereon are based on field delineated wetlands, streams, and forest as well as a steep slopes and erodible soils analysis. Those items are pending EPS review, and any revisions to the Forest Buffer Easement and forest limits resulting from that review may affect the design of the solar facility.

The revised plan submitted with the amended zoning petition appears to have eliminated many of the impacts to water quality and resources proposed on the plan submitted with the original petition and appears to be generally be consistent with §1A09.5 of Baltimore County Zoning Code pertaining to the RC-8 zoning classification. Regardless, the

underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require EPS review and approval of an alternatives analysis and must be included in the project's limit of disturbance. Furthermore, depending on the type of crossing method employed, State and Federal authorization may be required and must be obtained prior to EPS approval of any grading permit to accomplish this crossing.

EPS cannot approve any grading plan until this occurs along with the following: a final Forest Buffer Protection Plan detailing any EPS-required mitigation is approved; a final Forest Conservation Plan is approved. Moreover, the following must occur prior to EPS approval of any permit application: any planting requirement addressed including posting of necessary securities via an Environmental Agreement; the Forest Buffer Easement and Forest Conservation Easements recorded in Land Records via a right of way plat along with their respective Declarations of Protective Covenants; any onsite protective measures implemented; and, any applicable conditions of alternatives analysis approval met.

EPS respectfully requests that the requirements above be made conditions of any zoning relief to minimize impacts to water quality and forest buffer in accordance with the Forest Buffer law and EPS requirements.

Reviewer: Glenn Shaffer

Sherry Nuffer

From: John E. Beverungen
Sent: Thursday, July 11, 2019 12:38 PM
To: Sherry Nuffer
Subject: FW: Holly Springs Conservancy solar facility (2019-183-X)

Can you please print out a copy of this e-mail and include in the case file.

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Monday, July 1, 2019 9:12 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Alyssa Moyers <amoyers@sgs-law.com>; Teresa Moore (teresa@thevpc.org) <teresa@thevpc.org>
Subject: Holly Springs Conservancy solar facility (2019-183-X)

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Judge Beverungen:

This is to acknowledge your recent decision regarding the above matter. My clients are appreciative of your order granting the requested special exception for the proposed solar facility.

I do note the dicta in your decision regarding the mission, corporate status and tax ramifications of the co-petitioner/owner, Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc. insofar as this zoning matter, I represent both the owner and Power Factor, LLC; the entity that is constructing the proposed solar facility.

As the your comments in your order, they solicited the below response (via email) after I forwarded your order to Holly Springs. Specifically, a representative of that entity responded to me and wrote,

"The solar farm/facility is not incongruent with our charitable work because mitigating pollution, as stated in our organizing documents, is an objective of the organization. Only the open areas, which are less than one third of the property will have solar. The remaining land which is forested will remain unchanged. This aligns with the organization's work.

Holly Springs is exempt from county transfer taxes but is not exempt from property taxes. These are two completely different taxes. An environmental 501c 3, like Holly Springs, receives the same property tax treatment as for-profit organizations and individuals.

The case the judge cited, Maryland State Fair V. Supervisor, 225 Md. 574 (1964), is about property taxes. I don't understand how it relates to Holly Springs because Holly Springs is not exempt from property tax as stated above. The agricultural tax rate on the 26 acre parcel is not because it is a 501 c 3, but because the land is undeveloped.

A 501 c 3 can legally make a profit, so long as the profit is used for IRS approved charitable purposes. Holly Springs uses its profits for charitable purposes.

On the last page the judge said that he believes the adverse impacts of the solar facility are inherent in the operation of a solar facility, but that doesn't mean they are inherent in ours. Each one is different, and we have been diligent in addressing such concerns. Moreover, visual blight and property values are subjective. There will not be negative environmental impacts because of our solar, only positive impacts due to the clean energy it creates. The perceived impacts cited by the protestants are not objective facts and many do not agree with such views. Additionally, most of the population believes measures including solar farms such as ours are necessary to avert the calamitous effects of our climate crises."

I do not offer these remarks as a request for reconsideration or for any evidentiary purpose. Your written decision is as it is. However, Holly Springs respectfully disagrees with certain of your conclusions and I thought that forwarding this response to you was appropriate. As I am zoning counsel in connection with this matter, I have performed no analysis of the corporate or tax status of Holly Springs as I believe it not to be relevant to the zoning issues for which I was retained. I have also copied Ms. Moore at VPC on this email.

Thank you again for your timely decision on this matter and I hope that the above information is instructive.

Respectfully,

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

JOHN A. OLSZEWSKI, JR.
County Executive

ADMINISTRATIVE LAW JUDGE
Office of Administrative Hearings

June 20, 2019

Lawrence E. Schmidt, Esq.
Smith, Gildea & Schmidt, LLC
600 Washington Avenue, Suite 200
Towson, Maryland 21204

RE: Petition for Special Exception
Case No. 2019-0183-X
Property: 18627 Falls Road

Dear Mr. Schmidt:

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

c: Glen & Donna Fowble, 3306 Bakerschool House Road, Freeland, Maryland 21053
Linda Ault, 18621 Falls Road, Hampstead, Maryland 21074
Allene Yelle, 18708 Falls Road, Hampstead, Maryland 21074
Ken & Jan Harry, 18710 Falls Road, Hampstead, Maryland 21074
Steve Yeager, 3105 Cotter Road, Millers, Maryland 21102
Linda Hogan, 18616 Falls Road, Hampstead, Maryland 21074

Mary Ruth Fowble, 18719 Falls Road, Hampstead, Maryland 21074
Donna Stadter, 18618 Falls Road, Hampstead, Maryland 21074
Kevin & Maria Webb, 18702 Falls Road, Hampstead, Maryland 21074
Erika & Patricia Shook, 18613 Falls Road, Hampstead, Maryland 21074
Kathie Pieper, 4310 Beckleysville Road, Hampstead, Maryland 21074
Lynne Jones, 815 Stablers Church Road, Parkton, Maryland 21120
John & Michelle Dwyer, 18619 Falls Road, Hampstead, Maryland 21074
A. Oelke, 4537 Black Rock Road, Upperco, Maryland 21155
Renee Hamidi, 8 Sparks Station Road, Sparks, Maryland 21152
Teresa Moore, 118 W. Pennsylvania Avenue, Towson, Maryland 21204
Penny Wilson, 18603 Falls Road, Hampstead, Maryland 21074
Ethan Lavin, 18821 Falls Road, Hampstead, Maryland 21074
Mary Petrucci, 19408 Resh Mill Road, Hampstead, Maryland 21074
Wanda Lehman, 19701 Gunpowder Road, Millers, Maryland 21102
George Della, 4331 Church Road, Hampstead, Maryland 21074
Jackie Brooks, 411 Buedel Ct., Sparks, Maryland 21152

IN RE: PETITION FOR SPECIAL EXCEPTION (18627 Falls Road) 5th Election District 3rd Council District Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. *Legal Owner* Power Factor, LLC *Lessee* Petitioners	*	BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR BALTIMORE COUNTY **Case No. 2019-0183-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 Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., legal owner and Power Factor, LLC, lessee ("Petitioners"). The special exception petition was filed pursuant to Section 4F-102 of the Baltimore County Zoning Regulations ("BCZR") for a solar facility.

Andrew Streit and Nick Leffner appeared in support of the petition. Lawrence E. Schmidt, Esq. represented the Petitioners. Several neighbors opposed the request. Substantive Zoning Advisory Committee ("ZAC") comments were received from the Bureau of Development Plans Review ("DPR"), the Department of Environmental Protection and Sustainability ("DEPS"), the Department of Planning ("DOP") and the State Highway Administration ("SHA").

The subject property is approximately 32.59 acres in size and is comprised of two separately deeded parcels. The property is split-zoned RC-2 and RC-8, although Petitioners amended the site plan so that the vast majority of the solar panels and related infrastructure would be located in the RC-2 zone. One of the parcels (Parcel 144, 26.34 Ac.) is unimproved and the other (Parcel 121, 6.25 Ac.) contains a dwelling and accessory structures. The property is located in rural northern Baltimore County, and Falls Road at this location is a state and county designated

ORDER RECEIVED FOR FILING
Date 6/20/19
By

scenic roadway. Petitioners propose to construct and operate on the property a solar facility, a use permitted by special exception.

This is an unusual case in one important respect. The legal owner of the property is Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc. ("Holly Springs"). Members of the community testified the entity is registered with the IRS as a Section 501©(3) organization, and documents were submitted to substantiate that claim. To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an entity must be organized and operated exclusively for exempt purposes.

To qualify for tax-exempt status Holly Springs filed with the Maryland Department of Assessments and Taxation in 2006 documents which stated the organization was formed to: "serve and educate the public about protecting our natural environment and wildlife and also works to mitigate the effects of pollution on our air, lands and waters. The mission is to educate others about the humane treatment of wildlife, to prevent cruelty to wildlife, and to provide habitat for small mammals that are displaced or unwanted in urban and suburban development." It would seem, as the community argues, the proposed use of the land for a solar facility would be contrary to the limited purposes for which this charitable entity was formed.

Most corporations in Maryland are formed as for-profit entities, and their organizational documents state they are permitted to engage in "any lawful business." But Holly Springs is a charitable non-stock corporation which was formed for a very different purpose, as noted above. While perhaps not relating directly to the propriety of special exception relief under BCZR Section 502.1, I agree with the Protestants it is counter-intuitive or unseemly to allow a charitable entity which promotes—among other things—preservation of wildlife habitat to lease the subject property to a solar power company for operation of a public utility on this site.

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Date 6/20/19
By DLN

Other aspects of the case concern me as well. Holly Springs acquired the subject property by deed in 2015, and that instrument notes it was exempt from County transfer tax since the grantee is a charitable entity. Liber 36664, folio 498. But according to state and county tax records, the 26.34 acre parcel is used for agricultural purposes, and as such is assessed at a value of only $9,800. The same records show the owner has paid just $117.70 in yearly real property taxes for the years 2016-2019. This is at odds with the testimony of Petitioners' engineer who stated the property is not used for agricultural purposes. Thus it is unclear how or why the property would be entitled to an agricultural exemption from property tax.

Along the same lines, the court of appeals has held that to be exempt from taxation a charitable corporation's "use of the property must be reasonably necessary for the charitable or educational work of the institution." *Maryland State Fair v. Supervisor*, 225 Md. 574 (1967). Allowing the charity's tax-exempt property to be used for a solar facility in these circumstances would appear to violate restrictions imposed by Maryland law governing corporations and federal and state taxation principles. Even so, I believe such issues would need to be resolved in a different forum, since they are not (strictly speaking) relevant to the zoning issue in this case.

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. Mr.

ORDER RECEIVED FOR FILING
Date 6/20/19
By

Leffner, a professional engineer accepted as an expert, opined the proposal satisfied the requirements for a special exception as set forth at BCZR Section 502.1.

As in several previous cases involving solar facilities in rural Baltimore County, I believe all of the adverse impacts identified by the Protestants (*i.e.,* visual blight, environmental concerns, and potential impact upon property values) are inherent in the operation of a solar facility. As such, I do not believe the petition can be denied on this basis, although I will impose certain conditions below in an effort to minimize the adverse impact upon the community.

THEREFORE, IT IS ORDERED this **20th** day of **June, 2019,** by this Administrative Law Judge, that the Petition for Special Exception pursuant to Section 4F-102 of the BCZR for a solar facility, 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 comments of the Bureau of DPR, DOP & DEPS, copies of which are attached.
3. No signage or lighting shall be installed at the site in connection with the solar facility.
4. No deliveries to or maintenance of the solar facility shall occur between the hours of 6:00 PM – 7:00 AM.
5. Other than the "limited clearing" at the site access location described by Petitioners, no trees shall be cut or removed from the subject property in connection with the construction and operation of the proposed solar facility.
6. No barbed wire fencing shall be permitted in connection with the solar facility.
7. The proposed gravel access road for the solar facility shall be constructed in the location shown on the amended site plan, a copy of which was filed with the Office of Administrative Hearings on June 12, 2019, and marked as Petitioners' Ex. No. 10.

ORDER RECEIVED FOR FILING
Date 6/20/19
By Den

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 6/20/19
By sln

AMENDED REVISED

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 18627 Falls Road and Adjacent Undeveloped Property on Falls Road **which is presently zoned** RC 2 and RC 8

Deed References: 36664/00498 and 33970/00242 10 Digit Tax Account # 0523015126 and 0504000210

Property Owner(s) Printed Name(s) Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

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

Please see attached.

3.✓ **a Variance** from Section(s)

Please see the attached.

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)**

TO BE PRESENTED AT HEARING

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:

Andrew Streit, Authorized Rep. of Power Factor, LLC
Name- Type or Print

Andrew Streit
Signature

1 Mace Avenue | Baltimore | MD
Mailing Address | City | State

21221 | 443-559-0174 | andrew@powerfactorco.com
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners): Authorized Rep. of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Mary Zodhiates
Name #1 – Type or Print

Name #2 – Type or Print

Signature #1 | Signature # 2

4209 Beckleysville Rd. | Hampstead | MD
Mailing Address | City | State

21074 | | grandstreet@comcast.net
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name- Type or Print

Signature

600 Washington Avenue, Suite 200 | Towson | MD
Mailing Address | City | State

21204 | (410) 821-0070 | lschmidt@sgs-law.com
Zip Code | Telephone # | Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name – Type or Print

Signature

600 Washington Avenue, Suite 200 | Towson | MD
Mailing Address | City | State

21204 | (410) 821-0070 | lschmidt@sgs-law.com
Zip Code | Telephone # | Email Address

ORDER RECEIVED FOR FILING
Date 6/20/19
By

CASE NUMBER 19-183-X **Filing Date** OR 16. 12/7/18 5/17/19 **Do Not Schedule Dates:** **Reviewer** JCM

REV. 10/4/11

AMENDED

REVISED

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 18627 Falls Road and Adjacent Undeveloped Property on Falls Road **which is presently zoned** RC 2 and RC 8

Deed References: 36664/00498 and 33970/00242 10 Digit Tax Account # 0523015126 and 0504000210

Property Owner(s) Printed Name(s) Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

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

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

Please see attached.

3.✓ **a Variance** from Section(s)

Please see the attached.

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)**

TO BE PRESENTED AT HEARING

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:

Andrew Streit, Authorized Rep. of Power Factor, LLC
Name- Type or Print

Andrew Streit
Signature

1 Mace Avenue | Baltimore | MD
Mailing Address | City | State

21221 | 443-559-0174 | andrew@powerfactorco.com
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners): Authorized Rep. of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Mary Zodhiates / Sanctuary, Inc.
Name #1 – Type or Print | Name #2 – Type or Print

/
Signature #1 | Signature # 2

4209 Beckleysville Rd. | Hampstead | MD
Mailing Address | City | State

21074 / | grandstreet@comcast.net
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name- Type or Print

Signature

600 Washington Avenue, Suite 200 | Towson | MD
Mailing Address | City | State

21204 | (410) 821-0070 | lschmidt@sgs-law.com
Zip Code | Telephone # | Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name – Type or Print

Signature

600 Washington Avenue, Suite 200 | Towson | MD
Mailing Address | City | State

21204 | (410) 821-0070 | lschmidt@sgs-law.com
Zip Code | Telephone # | Email Address

OR16

CASE NUMBER 19-183-X **Filing Date** 12/7/19 5/17/19 **Do Not Schedule Dates**

ORDER RECEIVED FOR FILING
Date 6/20/19
By

Reviewer ICM

REV. 10/4/11

CASE NO
19-183-X

ATTACHMENT TO AMENDED PETITION
FOR SPECIAL EXCEPTION AND VARIANCE
18627 Falls Road and adjacent undeveloped property
Tax Account Nos. 0523015126 and 0504000210
3rd Councilmanic District
5th Election District

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Variance Relief:

3. If necessary, to grant Variance relief from BCZR §1A01.3.B.3.to permit a solar facility to be as close as 0 feet to an internal lot line; and

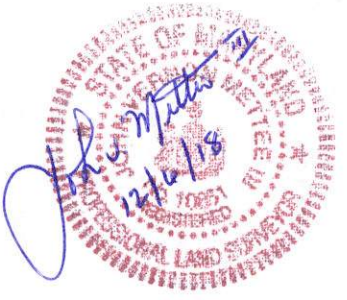
4. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Karins and Associates
Engineering • Planning • Surveying
Newark and Georgetown, DE; Bryn Mawr, PA; Edgewood, MD
2113 Emmorton Park Road, Suite 208, Edgewood, MD 21040
Phone: (410) 612-9900

ZONING PROPERTY DESCRIPTION FOR FALLS ROAD, TAX ACCT. NO. 0523015126

BEGINNING at a point on the east side of Falls Road which is 40 feet wide at the distance of 2,459 feet south of the centerline of the improved intersecting street Beckleysville Road which is 40 feet wide. Thence the following courses and distances: (1) N 48°23'40" E 525.62, (2) N 04°15'30" E 393.24, (3) S 63°37'45" E 1251.74, (4) S 20°33'30" W 297.15, (5) S 49°45'00" W 312.76, (6) S 74°16'00" W 1047.86, (7) S 74°16'00" W 20.00, (8) N 16°34'15" W 446.88, (9) N 21°59'00" W 156.10, (10) N 48°23'40" E 17.50, back to the point of beginning as recorded in Deed Liber JLE 36664, Folio 498, containing 26.393 acres. Located in the 5th Election District and the 3rd Council District.

I, John V. Mettee III, a Maryland professional land surveyor #10851, personally prepare this legal description on December 5, 2018 and my current license expires on 04/04/2020.



19-183-X
REVISED

Karins and Associates
Engineering • Planning • Surveying
Newark and Georgetown, DE; Bryn Mawr, PA; Edgewood, MD
2113 Emmorton Park Road, Suite 208, Edgewood, MD 21040
Phone: (410) 612-9900

ZONING PROPERTY DESCRIPTION FOR FALLS ROAD, TAX ACCT. NO. 0523015126

BEGINNING at a point on the east side of Falls Road which is 40 feet wide at the distance of 2,459 feet south of the centerline of the improved intersecting street Beckleysville Road which is 40 feet wide. Thence the following courses and distances: (1) N 48°23'40" E 525.62, (2) N 04°15'30" E 393.24, (3) S 63°37'45" E 1251.74, (4) S 20°33'30" W 297.15, (5) S 49°45'00" W 312.76, (6) S 74°16'00" W 1047.86, (7) S 74°16'00" W 20.00, (8) N 16°34'15" W 446.88, (9) N 21°59'00" W 156.10, (10) N 48°23'40" E 17.50, back to the point of beginning as recorded in Deed Liber JLE 36664, Folio 498, containing 26.393 acres. Located in the 5th Election District and the 3rd Council District.

I, John V. Mettee III, a Maryland professional land surveyor #10851, personally prepare this legal description on December 5, 2018 and my current license expires on 04/04/2020.

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

Falls Road
Tax Account No. 0523015126
3rd Councilmanic District
5th Election District

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

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 twenty (20) 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: 2019-0183-XA

Property Address: 18627 FALLS RD.

Property Description: THAT PROPERTY LOCATED ON THE E/S of FALLS Rd., 2459 ft.± SOUTH of C/L of Beckleysville RD.

Legal Owners (Petitioners): MARY ZADHIATES

Contract Purchaser/Lessee: ANDREW STREIT, AUTHORIZED Rep of POWER FACTORY, LLC.

PLEASE FORWARD ADVERTISING BILL TO:

Name: LAWRENCE SCHMIDT, ESQ.

Company/Firm (if applicable): SMITH, GILDEA & SCHMIDT, LLC

Address: 600 WASHINGTON AVE. SUITE 205 TOWSON, MD. 21204

Telephone Number: 410-821-0070

Revised 7/9/2015

TO: THE DAILY RECORD
Friday, May 10, 2019 - Issue

Please forward billing to:
Lawrence Schmidt
Smith, Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson, MD 21204

410-821-007

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: 2019-0183-X
Falls Road
E/s Falls Road, 2,459 ft. from centerline of Beckleysville Road
5th Election District – 3rd Councilmanic District
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep.
Contract Purchaser/Lessee: Power Factor, LLC, Andrew Streit, Rep.

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge.

Hearing: Thursday, May 30, 2019 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Mike Mohler
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.

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL MOHLER, *Director*
Department of Permits, Approvals & Inspections

January 28, 2019

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: 2019-0183-X
Falls Road
E/s Falls Road, 2,459 ft. from centerline of Beckleysville Road
5th Election District – 3rd Councilmanic District
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep.
Contract Purchaser/Lessee: Power Factor, LLC, Andrew Streit, Rep.

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge.

Hearing: Thursday, February 28, 2019 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Mike Mohler
Director

AJ:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Andrew Steit, 1 Mace Avenue, Baltimore 21221
Mary Zodhiates, 4209 Beckleysville Road, Hampstead 21074

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, FEBRUARY 8, 2019.**
(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.

TO: THE DAILY RECORD
Friday, February 8, 2019 - Issue

Please forward billing to:
Lawrence Schmidt
Smith, Gildea & Schmidt
600 Washington Avenue, Ste. 200
Towson, MD 21204

410-821-007

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: 2019-0183-X
Falls Road
E/s Falls Road, 2,459 ft. from centerline of Beckleysville Road
5th Election District – 3rd Councilmanic District
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep.
Contract Purchaser/Lessee: Power Factor, LLC, Andrew Streit, Rep.

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge.

Hearing: Thursday, February 28, 2019 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Mike Mohler
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.

The Daily Record

11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
http://www.thedailyrecord.com

Order #: 11686958
Case #: 2019-0183-X
Description:

NOTICE OF ZONING HEARING CASE NUMBER: 2019-0183-X

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

2/8/2019

Darlene Miller

Darlene Miller, Public Notice Coordinator
(Representative Signature)

Baltimore County

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: 2019-0183-X
Falls Road
E/s Falls Road, 2,459 ft. from centerline of Beckleysville Road
5th Election District - 3rd Councilmanic District

Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep. Contract Purchaser/Lessee: Power Factor, LLC, Andrew Streit, Rep. Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge.

Hearing: Thursday, February 28, 2019 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Mike Mohler
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.

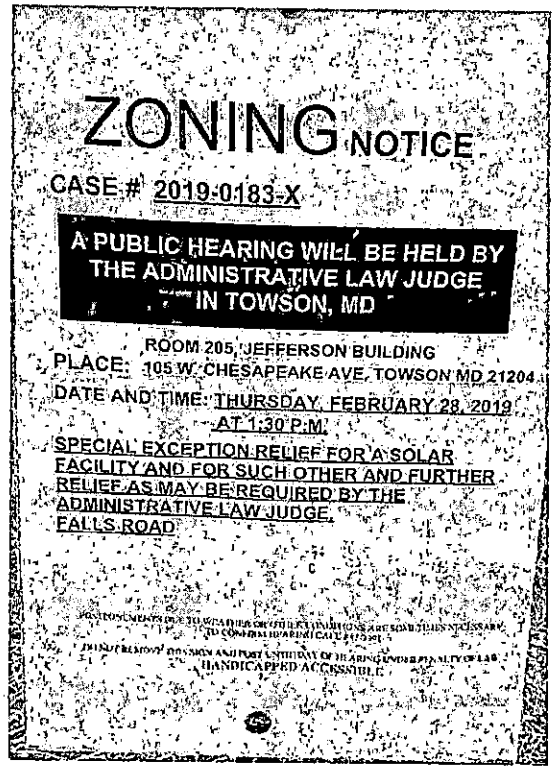
f8

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 2/8/2019
Case Number: 2019-0183-X
Petitioner / Developer: LAWRENCE SCHMIDT, ESQ. ~ ANDREW STEIT ~ MARY ZODHIATES
Date of Hearing: FEBRUARY 28, 2019

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
FALLS ROAD (ON-SITE)

The sign(s) were posted on: FEBRUARY 8, 2019



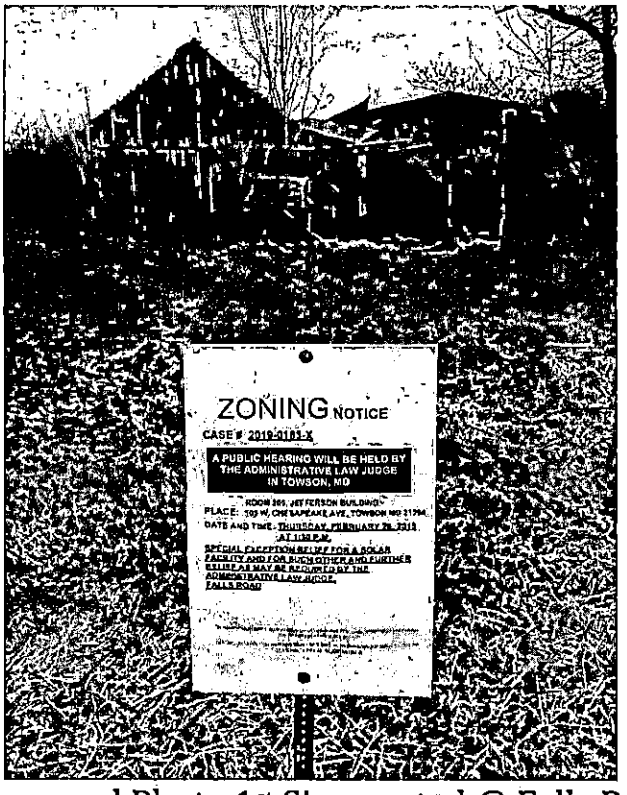
Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)



Background Photo 1st Sign posted @ Falls Road ~ 2/8/2019

Background Photo 2nd Sign posted @ Falls Road ~ 2/8/2019

CASE # 2019-0183-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: 2019-0183-X

Property Address: Falls Road No # (TAX ID. 52301512G)

Property Description: E/S of FALLS RD, 2,459 ft.± SOUTH of THE ℄ of BECKLEYSVILLE Rd.

Legal Owners (Petitioners): Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Contract Purchaser/Lessee: Power Factor, LLC

PLEASE FORWARD ADVERTISING BILL TO:

Name: Lawrence E. Schmidt, Esquire

Company/Firm (if applicable): Smith, Gildea & Schmidt, LLC

Address: 600 Washington Avenue, Suite 200

Towson, MD 21204

Telephone Number: 410-821-0070

Revised 5/20/2014

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

No. 177734

Date: 12/7/18

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				500.—

Total: 500.—

Rec From: S.G.S., LLC

For: 2019-0133-X

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

CASHIER'S VALIDATION

PAID RECEIPT

BUSINESS	ACTUAL	TIME	DRW
12/10/2018	12/07/2018	09:10:46	3

REG 0503 WALKIN CAM

>>RECEIPT # 799496 12/07/2018 OFLN

Dept 5 526 ZONING VERIFICATION

Amount: 177734

Rec Tot $500.00

$500.00 CK $.00 CA

Baltimore County, Maryland

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

No. 184801

Date: 5/17/19

PAID RECEIPT
BUSINESS ACTUAL TIME DRW
5/21/2019 5/21/2019 14:07:18 3
REG WS03 WALKIN CAM
>>RECEIPT # 008333 5/21/2019 OFLN
5 528 ZONING VERIFICATION
CK NO. 184801
Recpt Tot $ 250.00
250.00 CK .00 CA
Baltimore County, Maryland

Fund	Dept	Unit	Sub Unit	Rev Source/ Obj	Sub Rev/ Sub Obj	Dept Obj	BS Acct	Amount
001	806	0000		6150				250.—

Total: 250.—

Rec From: Smith, Gildean & Schmidt, LLC.

For: 2019-0183-XA (Refinement).

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

CASHIER'S VALIDATION

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Mike Mohler
Acting Director, Permits, Approvals and Inspections

DATE: 1/10/2019

FROM: Jeff Mayhew
Acting Director, Department of Planning

SUBJECT: ZONING ADVISORY COMMITTEE COMMENTS
Case Number: 19-183

INFORMATION:

Property Address: Falls Road
Petitioner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Zoning: RC 2, RC 8
Requested Action: Special Exception

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

A site visit was conducted on 6/6/2018 and 01/09/2019. The subject site is within a Master Plan 2020 Agricultural Priority Preservation Area (APPA).

The Department does not oppose granting the petitioned zoning relief conditioned upon the following:

A portion of the proposed special exception is located within the RC 8 zone. Pursuant to BCZR §1A09.4.A a finding is required on the part of the Director of the Department of Planning **prior** to the approval of the special exception plan. To support such a finding the petitioners must submit to the contact person listed below a narrative explaining how the proposal is consistent with the spirit and intent of said BCZR.

Falls Road is a state designated scenic byway and a Baltimore County Master Plan designated scenic road presenting a "focused view" as defined in the Comprehensive Manual of Development Policies (CMDP). When developing on a scenic route, the CMDP development guidelines instructs one to *"minimize tree and vegetation removal"* and to *"maintain a buffer between the road and the new development"* (CMDP pgs. 178,180).

- The proposal shall minimize grading, tree and vegetation removal along Falls Road. Reduce the limit of disturbance at that location where the swale meets Falls Road and in the area around the existing barn to be salvaged. Reduce the proposed drive to the narrowest functional width and site any parking pads or pullovers such that they may not be viewed from Falls Road. Where disturbance must occur, plantings consisting of native deciduous and evergreen trees and shrubs shall be installed in a naturalistic manner to mitigate the impacts of the special exception use upon the scenic route while allowing a view of the restored barn.

- The plan is not clear as to whether the barn is to remain on site. The Department recommends that the barn be restored and remain on site thereby remaining the point of interest of the focused view.

- The Department supports the Baltimore County Landscape Architect in planting requirements deemed necessary to include interior contour screening and other planting schemes that will mitigate the visual impact of the special exception proposal upon the scenic route.

Additional conditions are as follows:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall specifically note on the plan that the proposed solar facility will be subject to BCZR §4F-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.
- 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.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.
- All proposed security fencing shall be black vinyl coated chain-link.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

JM/JGN/LTM/

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
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: 6/21/19

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

SHA No. 19APBA013XX

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 5/29/19. A field inspection and internal review reveals that an entrance onto MD25 consistent with current State Highway Administration guidelines is required. As a condition of approval for Special Exception Case Number 2019-0183-X.

Holly Springs Nature Conservancy & Wild Life
Falls Road Solar 18622 Falls Road.
MD25

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

WW/RAZ

* The MDOT SHA has also received a DRC Plan for this proposed solar from on MD 25, A letter will be forwarded to Tom Cook outlining the requirements for the access permit. The developer and design engineer will receive a copy of that letter as well.

RAZ

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Kimley-Horn & Associates / 1801 Porter Street, Suite 400 Baltimore, MD 21230
Powerfactor Company / 1 Mace Avenue, Baltimore, MD 21221

MARYLAND DEPARTMENT
OF TRANSPORTATION

STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor

Pete K. Rahn
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Sincerely,

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

* The MDOT SHA has also received a DRC Plan for this proposed solar farm on MD 25. A letter will be forwarded to Tom Cook outlining the requirements for the access permit. The developer and design engineer will receive a copy of this letter as well.

RAZ

WW/RAZ

cc: Mr. Michael Pasquariello, Utility Engineer, SHA
Kimley-Horn & Associates / 1801 Porter Street Suite 404 Baltimore, MD 21230
Power Factor Company / 1 Mace Avenue, Baltimore, MD 21221

Sherry Nuffer Duplicate

From: Teresa Moore <teresa@thevpc.org>
Sent: Monday, February 25, 2019 4:30 PM
To: Lawrence Schmidt; John E. Beverungen; Kelly Benton
Cc: Peoples Counsel; Kristen L Lewis; Debra Wiley; Sherry Nuffer; Alyssa Moyers
Subject: RE: Case no. 19-183-X / Falls Road

Got it.
Thank you.

Teresa Moore
Executive Director
Valleys Planning Council
410-337-6877

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Monday, February 25, 2019 4:10 PM
To: 'John E. Beverungen' <jbeverungen@baltimorecountymd.gov>; Kelly Benton <kbenton@sgs-law.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>; Teresa Moore <teresa@thevpc.org>
Subject: RE: Case no. 19-183-X / Falls Road

Will do. I have also copied Teresa Moore of the VPC on this email so she can get the word out. I had spoken to her earlier today. Thanks.
Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Monday, February 25, 2019 4:07 PM
To: Lawrence Schmidt; Kelly Benton
Cc: Peoples Counsel; Kristen L Lewis; Debra Wiley; Sherry Nuffer
Subject: RE: Case no. 19-183-X / Falls Road

Mr. Schmidt,

I am in receipt of your request for postponement of the above-captioned case, which will be granted. As referenced in your e-mail, please post ASAP on the signs a conspicuous notice indicating the case has been postponed. Also, please notify the neighbor who expressed an interest in the case as well as the VPC. Hopefully the Dept. of PAI will be able to revise the online calendar so that it indicates the case has been postponed. Finally, please make arrangements for someone from your office to be present in the hearing room on Friday at 1:30 in case anyone attends. In addition to explaining that the case has been postponed I would ask that he/she request anyone present to provide their name and address on the sign-in sheet so that they can be notified when the case is rescheduled.

John Beverungen
ALJ

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Monday, February 25, 2019 3:30 PM
To: Kelly Benton <kbenton@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Case no. 19-183-X / Falls Road

Deb: I saw that Kelly Benton did not copy you and I apologize for that oversight. Hopefully, you did get this.

Judge Beverungen, the specific issue in this case is the location of a forest buffer. We are trying to come to some resolution with EPS regarding that issue but it remains unresolved at present. I have had a phone call from one neighbor and can reach out to her and advise of the postponement. We can also note the sign. I have a call into the Valleys Planning Council and will ascertain if they are involved and advise them of the request too.
Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Kelly Benton
Sent: Monday, February 25, 2019 1:27 PM
To: jbeverungen@baltimorecountymd.gov
Cc: 'peoplescounsel@baltimorecountymd.gov'; Kristen L Lewis; Lawrence Schmidt
Subject: Case no. 19-183-X / Falls Road

Good afternoon Judge Beverungen,

Attached please find a Request for Postponement of the hearing in the above case, presently scheduled for this Thursday, February 28, 2019.

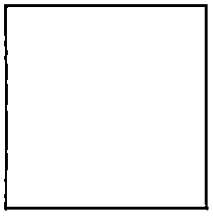
Should you have any questions or require additional information, please do not hesitate to contact me.

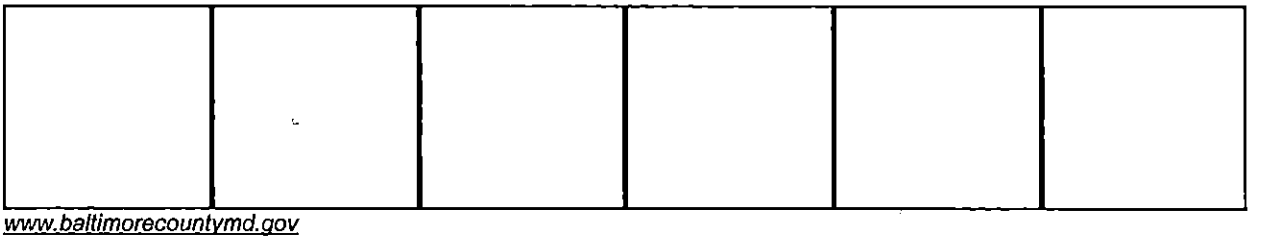
Best regards,
Kelly

Kelly Benton | Paralegal
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
kbenton@sgs-law.com | www.sgs-law.com

This email contains information from the law firm of Smith, Gildea & Schmidt, LLC which may be confidential and/or privileged. The information is intended to be for the exclusive use of the individual or entity named above. If you are not the intended recipient, be advised that any disclosure, copying, distribution or other use of this information is strictly prohibited. If you have received this e-mail in error, please notify Smith, Gildea & Schmidt, LLC by telephone immediately.

CONNECT WITH BALTIMORE COUNTY





www.baltimorecountymd.gov

CASE NO. 2019-0183-X

CHECKLIST

Comment Received	Department	Support/Oppose/ Conditions/ Comments/ No Comment
1/17	DEVELOPMENT PLANS REVIEW (if not received, date e-mail sent _____)	Comment
12/26	DEPS (if not received, date e-mail sent _____)	Comment
_____	FIRE DEPARTMENT	_____
1/10	PLANNING (if not received, date e-mail sent _____)	Comment
12/20	STATE HIGHWAY ADMINISTRATION	Comment
_____	TRAFFIC ENGINEERING	_____
_____	COMMUNITY ASSOCIATION	_____
_____	ADJACENT PROPERTY OWNERS	_____

ZONING VIOLATION (Case No. _____)

PRIOR ZONING (Case No. _____)

NEWSPAPER ADVERTISEMENT Date: 5/10/19

SIGN POSTING (1st) Date: 5/9/19 by O'Keefe

SIGN POSTING (2nd) Date: 5-29-19 by "

PEOPLE'S COUNSEL APPEARANCE Yes ☒ No ☐

PEOPLE'S COUNSEL COMMENT LETTER Yes ☐ No ☐

Comments, if any: _____

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: December 26, 2018

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18200 block Falls Road
(Zodhiates Property)

Zoning Advisory Committee Meeting of **December 24, 2018**.

__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 Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (aka Forest Buffer law) (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). In accordance with Section 33-3-108 of the Forest Buffer Law, sufficient information must be provided by the applicant to enable EPS to make an informed decision regarding the proposed activities.

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

Additional Comments:

All streams and wetlands must be field delineated, and the delineations must be approved by EPS. A Forest Buffer Easement (FBE) must be delineated in accordance with Section 33-3-111 of the Forest Buffer Law.

The 100-foot stream buffers shown on the plan do not meet the minimum 100-foot forest buffer width. The forest buffer would likely extend well beyond that minimum based on the floodplain and hydric soils (Hatboro – HbA) shown on the plan and the steep slopes/erodible soils analysis required by Section 33-3-111(b) of the Code. The 50-foot stream setbacks on the plan are unrelated to any EPS regulatory requirement.

ORDER RECEIVED FOR FILING
Date 6/20/19
By DLN

The proposed gravel road and underground electric line in the forest buffer will require EPS alternatives analysis approval. It appears as though proposed water quality impacts could be substantially reduced by redesigning gravel road access points and turn-around areas and by eliminating the proposed stream crossing.

The extensive solar array and limit of disturbance (LOD) forest buffer impacts shown on the plan would require approval of an administrative variance to the Forest Buffer Law by the EPS Director. There is no guarantee of variance approval. The forest buffer solar array and LOD impacts could all be avoided by reducing the scope of the overall project and adjusting the project LOD.

A forest stand delineation and forest conservation plan must be submitted to EPS and approved prior to approval of any development plan or grading/sediment control plan.

If any specimen trees or critical root zones of these trees are proposed to be impacted, special variance to the Forest Conservation Law must be submitted and approved by the EPS Director. There is no guarantee of special variance approval.

Based upon our review of the special exception application, we have determined that the proposed extensive forest buffer impacts would be detrimental to water quality in Compass Run, a tributary to Compass Run, and Prettyboy Reservoir into which these streams drain. Furthermore, given that these impacts are largely avoidable, we do not believe that the applicant has taken into consideration the presence of natural forest buffers and the proximity of streams and wetlands when designing the site layout. For these reasons, we recommend that the Administrative Law Judge either deny the subject application, or condition the application to substantially reduce and minimize forest buffer and water quality impacts in accordance with the Forest Buffer Law and EPS requirements.

Reviewer: Glenn Shaffer

ORDER RECEIVED FOR FILING
Date 12/20/19
By Glen

d-28

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Mike Mohler
Acting Director, Permits, Approvals and Inspections

DATE: 1/10/2019

FROM: Jeff Mayhew
Acting Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-183

RECEIVED
JAN 15 2018
OFFICE OF
ADMINISTRATIVE HEARINGS

INFORMATION:
Property Address: Falls Road
Petitioner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Zoning: RC 2, RC 8
Requested Action: Special Exception

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

A site visit was conducted on 6/6/2018 and 01/09/2019. The subject site is within a Master Plan 2020 Agricultural Priority Preservation Area (APPA).

The Department does not oppose granting the petitioned zoning relief conditioned upon the following:

A portion of the proposed special exception is located within the RC 8 zone. Pursuant to BCZR §1A09.4.A a finding is required on the part of the Director of the Department of Planning **prior** to the approval of the special exception plan. To support such a finding the petitioners must submit to the contact person listed below a narrative explaining how the proposal is consistent with the spirit and intent of said BCZR.

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- The proposal shall minimize grading, tree and vegetation removal along Falls Road. Reduce the limit of disturbance at that location where the swale meets Falls Road and in the area around the existing barn to be salvaged. Reduce the proposed drive to the narrowest functional width and site any parking pads or pullovers such that they may not be viewed from Falls Road. Where disturbance must occur, plantings consisting of native deciduous and evergreen trees and shrubs shall be installed in a naturalistic manner to mitigate the impacts of the special exception use upon the scenic route while allowing a view of the restored barn.

- The plan is not clear as to whether the barn is to remain on site. The Department recommends that the barn be restored and remain on site thereby remaining the point of interest of the focused view.

ORDER RECEIVED FOR FILING
Date 6/20/19
By DEN

- The Department supports the Baltimore County Landscape Architect in planting requirements deemed necessary to include interior contour screening and other planting schemes that will mitigate the visual impact of the special exception proposal upon the scenic route.

Additional conditions are as follows:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall specifically note on the plan that the proposed solar facility will be subject to BCZR §4F-107.
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- 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.
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- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.
- All proposed security fencing shall be black vinyl coated chain-link.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

JM/JGN/LTM/

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

ORDER RECEIVED FOR FILING
Date 6/20/19
By

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Michael Mohler, Acting Director
Department of Permits, Approvals
And Inspections

DATE: Jan 17, 2019

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For December 24, 2018
Item No. 2019-0183-A

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. Falls Road is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 6),
5. The landscape planting along Falls Road may need to be set back from the existing overhead power lines to allow the diversity of screen plant materials to mature and not be effected by standard vegetation maintenance typically associated with existing overhead power line.
6. Perimeter landscape buffers should address adjacent property views to provide maximum screening potential when it relates to the proposed solar facility. Including but not limited to 18702, 18708, 18719 and 18720 Falls Road.
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should continue across the entire length of the Falls Road frontage to assure screening of the solar array field from Falls Road views with special attention around the access drive.
9. Consideration should be given to the proposed access drive being moved approximately 100 to 150 feet to the north on Falls Road, the access drive may need to have a chicane or bends to assure screening of the solar array field from the adjacent driveway and Falls Road views, if landscape screening does not,
10. More comments may be rendered during review of the landscape plan.

We noticed that there is a few existing streams or watercourses that are located on the property. The main stream flood plain delineation is shown on the plan and it is very close to the delineation shown on FIRM 2400100020F dated September 26, 2008. The proposed solar array is located outside of the delineation and it appears to meet the Public Works' requirements.

The watercourse located at the south of the site may be a Baltimore County regulated flood plain associated with a drainage area equal to or greater than 30 acres. The plan proposes to place a road and culvert overtop of this watercourse. A flood study is required to establish the flood plain delineation and the site must adhere to the Baltimore County DPR Policy Manual, the Building Code and the Design Manual.

* * * * *

VKD: cen
cc: file

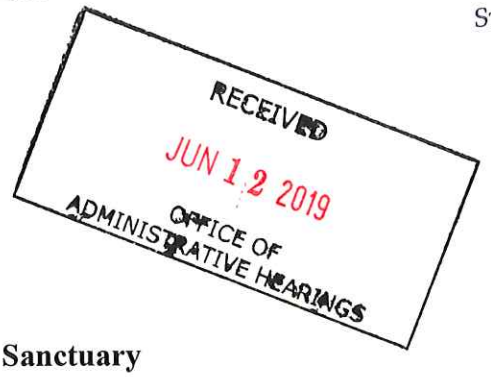
ORDER RECEIVED FOR FILING
Date 6/20/19
By

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH**
*Admitted in MD, FL, PA
**Admitted in MD, NC

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

June 12, 2019



Sent Via Hand Delivery
The Honorable John Beverungen
Administrative Law Judge for Baltimore County
105 W. Chesapeake Avenue
Towson, MD 21204

Re: Case No. 2019-0183-X
Holly Springs Nature Conservancy & Wildlife Sanctuary

Dear Judge Beverungen,

Please find enclosed a full sized copy of the amended site plan for the above referenced matter. Pursuant to my email of June 7, 2019 (which attached a pdf copy of the plan), the attached plan reflects a minor change to the layout for this project. Please note that the change is minor and does not impact any of the solar panels or solar facility itself. Rather, the change relates to the proposed access road. Specifically, at the request of the adjacent neighbors, the access road has been slightly reconfigured and related changes have been made to the landscaping. Please accept this plan as the Petitioner's final proposal. I believe that you have received correspondence from Mr. and Mrs. Dwyer supporting this change and that they are and no longer objecting to the solar facility. The other impacted neighbor, Ms. Linda Ault, requested these changes but does not support the project.

Please let me know if you have any questions and thank you for your courtesy in accepting this change at the request of the Petitioner and most impacted neighbors.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Power Factor, LLC
Holly Springs Nature Conservancy & Wildlife Sanctuary
Kimley - Horn
North Point Community Association
Linda Ault
John and Michelle Dwyer
Valley's Planning Council

John E. Beverungen

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Friday, June 7, 2019 3:26 PM
To: John E. Beverungen
Cc: 'kathie@stoneponyrestoration.com'; la.ault@yahoo.com; 'jpdwyer@gmail.com'; andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com); 'sean.miller@kimley-horn.com'; Alyssa Moyers
Subject: Power Factor/Falls Road (Case No. 2019-0183-X)
Attachments: 2019-06-07_Falls Road Solar_Special Exception Greenline Submission.pdf

CAUTION: This message from lschmidt@sgs-law.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Judge Beverungen,

Attached is a pdf showing a slight change to the driveway/access road to the facility. The road has been modified to reduce impact to neighboring properties. We know that the Dwyers have submitted a letter indicating that they were requesting this, and we understand that Ms. Ault remains opposed to this project, however, pursuant to discussions with her prior to the hearing, we have included a privacy fence and landscaping as promised.

The following is a further detailed explanation of the revisions made on the Plan from the engineer:

1. In consideration of input/request from the adjacent owners of Parcel 131, Lot 2, we have shifted the location of the proposed gravel access drive, security fence, and gate further from the property line. While this revision may result in the removal of some on-site vegetation, no Forest Stands or Specimen trees are expected to be impacted by this revision.
2. The proposed access from Falls Rd on Parcel 121 has be shifted slightly north (closer to existing garage and shed) and a privacy fence is proposed along the access drive where closest to the adjacent property (Parcel 105).

We will bring a full size, sealed copy of the GreenLined Plan to you early next week. Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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PLEASE PRINT CLEARLY

CASE NAME Holly Springs
CASE NUMBER 19-853-X
DATE 5/30/19

PETITIONER'S SIGN-IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Laurelle E Schmidt	600 Washington Ave Ste 200	Towson MD 21204	lschmidt@sgs-law.com
ANDREW STREIT	1 MACE AVE ESSEX	ESSEX MD 21221	ANDREW@POWERFACTORCO.
George Lang III	1 MACE AVE ESSEX	ESSEX MD 21221	george@powerfactorco.com
Nick Leffler	1801 Porter St, Ste 401,	Baltimore, MD 21230	nick.leffler@kimley-ho.com
Zach Wilkins	600 Washington Ave, Ste 200	Towson, MD 21204	zwilkins@sgs-law.com

PLEASE PRINT CLEARLY

CASE NAME
CASE NUMBER 2019-0183-X
DATE 5/30/2019

CITIZEN'S SIGN - IN SHEET

NAME	ADDRESS	CITY, STATE, ZIP	E - MAIL
Glen Fowble	3306 Bakenschool House Rd	Freeland, md 21053	BASSGFE@VERIZON.NET
LINDA AULT	18621 Falls ROAD	HAMPSTEAD, MD 21074	la.ault@YAHOO.COM
Allene Yelle	18708 Falls Road	Hampstead MD 21074	wyelle@comcast.net
JAN & KEN HARRY	18710 FALLS RD	HAMPSTEAD, MD 21074	KENNETHRHARRY@YAHOO.COM
Steve Yeager	3105 Cotter Rd Millers, MD 21102 →		yeagersteven81@gmail.com
Linda Hogan	18616 Falls Rd	Hampstead MD 21074	Linda.hogan18616@comcast.Net
Mary Ruth Fowble	18719 Falls Rd.	Hampstead, M. 21074	
DONNA Stadter	18618 Falls ROAD	HAMPSTEAD, Md. 21074	—
Donna Fowble	3306 Baker Schoolhouse Rd.	Freeland, MD 21053	dfowble85@gmail.com
Maria & Kevin Webb	18702 Falls Rd	Hampstead MD 21074	mariacwebb2000@gmail
ERIKA SHOOK	18613 Falls Rd	Hampstead, MD 21074	ERIKALSHOOK@gmail
PATRICIA SHOOK	18613 Falls RD	HAMPSTEAD, MD 21074	bbones413@Yahoo.com
KATHIE PIEPER	4310 BECKLEYSVILLE RD.	HAMPSTEAD, MD 21074	KATHIE@STONEPONYRESTORATION.COM
LYNNE JONES	815 STABLERS CHURCH RD	PARKTON, MD 21120	dr4sad101@hotmail.com
John & Michelle Dwyer	18619 Falls Rd	HAMPSTEAD MD 21074	JPDWYER@GMAIL.COM
A. OELKE	4537 Blackrock Rd.	Upperco MD 21155	AVAOELKE@OLS.Net
Renee Hamidi	8 Sparks Station Rd	Sparks MD 21152	reneehamidi@gmail.com
TERESA MOORE	118 W. Pennsylvania Ave	~~Sparks~~ Towson MD 21204	teresa@thelyn.org
Penny Wilson	18603 Falls Rd	Hampstead Md 21074	Penny@FalesRealty
Ethan Lavin	18821 Falls Rd		ethan218@yahoo.com
MARY PETRUCCI	19408 REH MILL RD	HAMPSTEAD MD 21074	countryartspeople@pc.com
WANDA LEHMAN	19701 GUNPOWDER Rd.	Millers, MD 21102	WANDA.LEHMAN@Gmail.com
[illegible]	4331 CHURCH RD	[illegible]	
JACKIE BROOKS	411 BUEDEL CT	SPARKS, MD 21152	

JB 5-30
1:30 PM

Debra Wiley

From: Linda Okeefe <luckylinda1954@yahoo.com>
Sent: Thursday, May 30, 2019 12:50 AM
To: Administrative Hearings
Subject: Falls Road Cert Case # 2019-0183-X
Attachments: Falls Rd. Cert..jpeg; Falls Rd. Photos #1.docx; Falls Rd. Photos #2.docx

CAUTION: This message from luckylinda1954@yahoo.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Hi Debbie,

I have another Cert. for you. Case # 2019-0183-X @ Falls Road (On-Site) and background photos. Have a great Day,

Linda

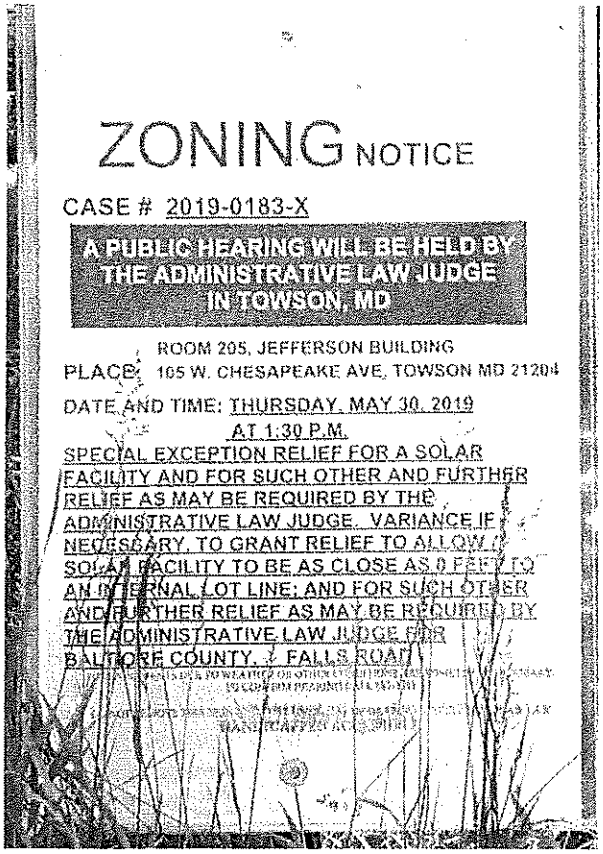
Linda O'Keefe
523 Penny Lane
Hunt Valley MD 21030
Phone # 410-666-5366
Cell# 443-604-6431
Fax# 410-666-0929
luckylinda1954@yahoo.com

SECOND CERTIFICATE OF POSTING

ATTENTION: SHERRY NUFFER
DATE: 5/29/2019
Case Number: 2019-0183-X
Petitioner / Developer: LAWRENCE SCHMIDT, ESQ. ~ ANDREW STEIT~ MARY ZODHIATES
Date of Hearing: MAY 30, 2019

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
FALLS ROAD (ON-SITE) PARCEL # 144 (TAX # 0523015126) &
FALLS ROAD (ON-SITE) PARCEL # 121 (TAX # 0504000210)

The sign(s) were posted on: MAY 9, 2019
The sign(s) were re-photographed on: MAY 29, 2019



Linda O'Keefe
(Signature of Sign Poster)

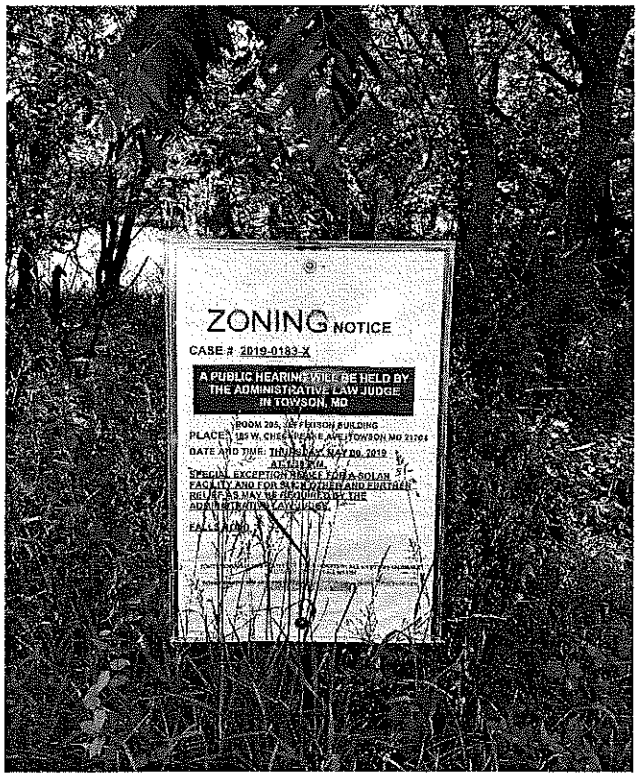
Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)

Re-photographed 1st Sign @ Parcel # 144 ~ 5/29/2019



Re-Photographed 2nd Sign @ Parcel # 144 ~ 5/29/2019

Tax Account # 0523015126

FALLS ROAD – (ON-SITE)

CASE # 2019-0183-X

Re-photographed 1st Sign @ Parcel # 121 ~ 5/29/2019

Re-photographed 2nd Sign @ Parcel # 121 ~ 5/29/2019
Tax Account # 0504000210
Falls Road (On-Site)
CASE # 2019-0183-X

CARL-

NEVER TOLD LARRY I COULD DROP IT OFF. NEEDED YOUR PERMISSION

Attached is an amended Petition that (per my conversation with Joe at the counter) I am dropping off. This Petition was filed on 12/7/18 + assigned case no 19-183-X. After the Petition was filed, the engineer + EPS determined there were certain environmental features on site. The owner actually owns 2 separate adjoining lots of record. In order to meet the required buffers, the lay out has changed + therefore the amended plan. We have a hearing on May 30, 2019. Yesterday, I sent a copy of the plan + cover letter to all adjoining property owners. The sign poster (posting this Friday 5/17/19) has been given instructions + am meeting Planning tomorrow

to go over the changes. Please accept this amended Petition & I will present & further explain to ALJ Berrungen on 5/30/19. Thanks,

Lacey Schmidt
410-521-0070

REVISED

AMENDED
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 18627 Falls Road and Adjacent Undeveloped Property on Falls Road **which is presently zoned** RC 2 and RC 8

Deed References: 36664/00498 and 33970/00242 10 Digit Tax Account # 0523015126 and 0504000210

Property Owner(s) Printed Name(s) Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

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

Please see attached.

3.✓ **a Variance** from Section(s)

Please see the attached.

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)**

TO BE PRESENTED AT HEARING

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:

Andrew Streit, Authorized Rep. of Power Factor, LLC
Name- Type or Print

Signature

1 Mace Avenue | Baltimore | MD
Mailing Address | City | State

21221 | 443-559-0174 | andrew@powerfactorco.com
Zip Code | Telephone # | Email Address

Legal Owners (Petitioners): Authorized Rep. of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Mary Zodhiates / Sanctuary, Inc.
Name #1 – Type or Print | Name #2 – Type or Print

Signature #1 / Signature # 2

4209 Beckleysville Rd. | Hampstead | MD
Mailing Address | City | State

21074 | | grandstreet@comcast.net
Zip Code | Telephone # | Email Address

Attorney for Petitioner:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name- Type or Print

Signature

600 Washington Avenue, Suite 200 | Towson | MD
Mailing Address | City | State

21204 | (410) 821-0070 | lschmidt@sgs-law.com
Zip Code | Telephone # | Email Address

Representative to be contacted:

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Name – Type or Print

Signature

600 Washington Avenue, Suite 200 | Towson | MD
Mailing Address | City | State

21204 | (410) 821-0070 | lschmidt@sgs-law.com
Zip Code | Telephone # | Email Address

CASE NUMBER 19-183-X Filing Date 12/7/18 OR 12/6 5/17/19

ORDER RECEIVED FOR FILING
Do Not Schedule Dates: Reviewer JCM
Date 6/20/19
By

REV. 10/4/11

C NO. 19-183-X
REVISED

ATTACHMENT TO AMENDED PETITION
FOR SPECIAL EXCEPTION AND VARIANCE
18627 Falls Road and adjacent undeveloped property
Tax Account Nos. 0523015126 and 0504000210
3rd Councilmanic District
5th Election District

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Variance Relief:

3. If necessary, to grant Variance relief from BCZR §1A01.3.B.3.to permit a solar facility to be as close as 0 feet to an internal lot line; and

4. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

Karins and Associates
Engineering • Planning • Surveying
Newark and Georgetown, DE; Bryn Mawr, PA; Edgewood, MD
2113 Emmorton Park Road, Suite 208, Edgewood, MD 21040
Phone: (410) 612-9900

19-183-X
REVISED

ZONING PROPERTY DESCRIPTION FOR FALLS ROAD, TAX ACCT. NO. 0523015126

BEGINNING at a point on the east side of Falls Road which is 40 feet wide at the distance of 2,459 feet south of the centerline of the improved intersecting street Beckleysville Road which is 40 feet wide. Thence the following courses and distances: (1) N 48°23'40" E 525.62, (2) N 04°15'30" E 393.24, (3) S 63°37'45" E 1251.74, (4) S 20°33'30" W 297.15, (5) S 49°45'00" W 312.76, (6) S 74°16'00" W 1047.86, (7) S 74°16'00" W 20.00, (8) N 16°34'15" W 446.88, (9) N 21°59'00" W 156.10, (10) N 48°23'40" E 17.50, back to the point of beginning as recorded in Deed Liber JLE 36664, Folio 498, containing 26.393 acres. Located in the 5th Election District and the 3rd Council District.

I, John V. Mettee III, a Maryland professional land surveyor #10851, personally prepare this legal description on December 5, 2018 and my current license expires on 04/04/2020.

The Daily Record
11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
http://www.thedailyrecord.com

PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

5/10/2019

Darlene Miller, Public Notice Coordinator
(Representative Signature)

Order #: 11738146
Case #: 2019-0183-X
Description:

NOTICE OF ZONING HEARING - CASE NUMBER: 2019-0183-X

Baltimore County

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: 2019-0183-X

Falls Road

E/s Falls Road, 2,459 ft. from centerline of Beckleysville Road

5th Election District - 3rd Councilmanic District

Legal Owners: Holly Springs Nature Conservancy &Wildlife Sanctuary, Mary Zodhiates, Rep. Contract Purchaser/Lessee: Power Factor, LLC, Andrew Streit, Rep.

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge.

Hearing: Thursday, May 30, 2019 at 1:30 p.m. in Room 205, Jefferson Building, 105 West Chesapeake Avenue, Towson 21204

Mike Mohler
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.

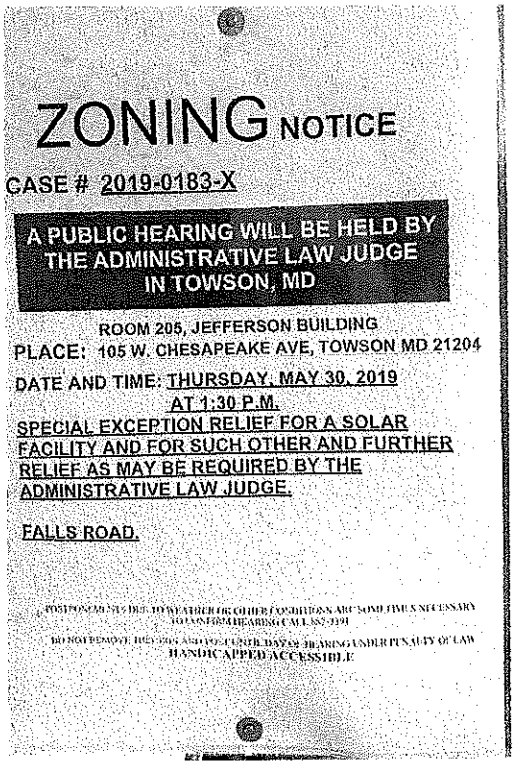
my 10

CERTIFICATE OF POSTING

ATTENTION: KRISTEN LEWIS
DATE: 5/9/2019
Case Number: 2019-0183-X
Petitioner / Developer: LAWRENCE SCHMIDT, ESQ. ~ ANDREW STEIT~ MARY ZODHIATES
Date of Hearing: MAY 30, 2019

This is to certify under the penalties of perjury that the necessary sign(s) required by law were posted conspicuously on the property located at:
FALLS ROAD (ON-SITE) PARCEL #144 (TAX # 0523015126) &
FALLS ROAD (ON-SITE) PARCEL # 121 (TAX # 0504000210)

The sign(s) were posted on: MAY 9, 2019



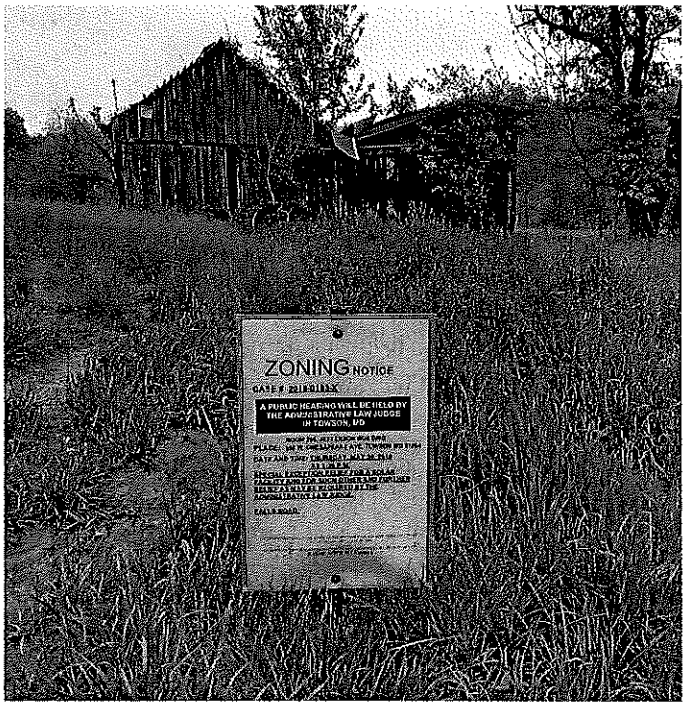
Linda O'Keefe
(Signature of Sign Poster)

Linda O'Keefe
(Printed Name of Sign Poster)

523 Penny Lane
(Street Address of Sign Poster)

Hunt Valley, Maryland 21030
(City, State, Zip of Sign Poster)

410 – 666 – 5366
(Telephone Number of Sign Poster)



Background Photo 1st Sign @ Parcel # 144 posted 5/9/2019

Background Photo 2nd Sign @ parcel # 144 posted 5/9/2019

Tax Account # 0523015126

FALLS ROAD (ON-SITE)

CASE # 2019-0183-X

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL MOHLER, *Director*
Department of Permits, Approvals & Inspections

April 23, 2019

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: 2019-0183-X
Falls Road
E/s Falls Road, 2,459 ft. from centerline of Beckleysville Road
5th Election District – 3rd Councilmanic District
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep.
Contract Purchaser/Lessee: Power Factor, LLC, Andrew Streit, Rep.

Special Exception relief for a solar facility and for such other and further relief as may be required by the Administrative Law Judge.

Hearing: Thursday, May 30, 2019 at 1:30 p.m. in Room 205, Jefferson Building,
105 West Chesapeake Avenue, Towson 21204

Mike Mohler
Acting Director

MM:kl

C: Lawrence Schmidt, 600 Washington Avenue, Ste. 200, Towson 21204
Andrew Steit, 1 Mace Avenue, Baltimore 21221
Mary Zodhiates, 4209 Beckleysville Road, Hampstead 21074

NOTES: (1) **THE PETITIONER MUST HAVE THE ZONING NOTICE SIGN POSTED BY AN APPROVED POSTER ON THE PROPERTY BY FRIDAY, MAY 10, 2019.**
(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.

Sherry Nuffer

From: John E. Beverungen
Sent: Thursday, February 28, 2019 2:27 PM
To: Sherry Nuffer
Subject: FW: Power Factor - Falls Road
Attachments: Falls Rd. #1.jpg; Falls Rd. #2.jpg

For the file

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Thursday, February 28, 2019 2:20 PM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Teresa Moore (teresa@thevpc.org) <teresa@thevpc.org>; 'Kathie Pieper' <knotgarden57@comcast.net>
Cc: Zachary J. Wilkins <zwilkins@sgs-law.com>; Alyssa Moyers <amoyers@sgs-law.com>; andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com) <Nick.Leffner@kimley-horn.com>
Subject: FW: Power Factor - Falls Road

Judge Beverungen: At your request, I appeared in your hearing room today. I arrived at about 1:20 and departed at 1:35. No one appeared. It appears that everyone with an interest in the matter was advised of the postponement. Also, eh advertising signs were noted. Please see attached.
Thank you for your courtesy and I will advise when a new hearing date is assigned.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Linda Okeefe [mailto:luckylinda1954@yahoo.com]
Sent: Wednesday, February 27, 2019 1:44 AM
To: Kelly Benton; Lawrence Schmidt
Subject: Re: Power Factor - Falls Road

Hi Kelly,

I have attached the photos thing the postponed overlay on the signs. (No Charge). I will be back Friday to retrieve the signs and posts.

Best Wishes,

Linda

Linda O'Keefe
523 Penny Lane
Hunt Valley MD 21030
Phone # 410-666-5366
Cell# 443-604-6431
Fax# 410-666-0929
luckylinda1954@yahoo.com

On Tuesday, February 26, 2019, 1:53:38 PM EST, Lawrence Schmidt <lschmidt@sgs-law.com> wrote:

Thanks Linda.

Lawrence E. Schmidt|Partner

Smith, Gildea & Schmidt, llc

600 Washington Avenue|Suite 200|Towson, MD 21204|(410) 821-0070

lschmidt@sgs-law.com|www.sgs-law.com

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From: Linda Okeefe [mailto:luckylinda1954@yahoo.com]
Sent: Tuesday, February 26, 2019 1:53 PM
To: Kelly Benton; Lawrence Schmidt
Subject: Re: Power Factor - Falls Road

Hi Lawrence & Kelly,

I have your request and will put overlays on the signs today showing postponed. I will also send you a photograph later this evening.

Thank you,

Linda

Linda O'Keefe

523 Penny Lane

Hunt Valley MD 21030

Phone # 410-666-5366

Cell# 443-604-6431

Fax# 410-666-0929

luckylinda1954@yahoo.com

On Tuesday, February 26, 2019, 9:26:20 AM EST, Lawrence Schmidt <lschmidt@sgs-law.com> wrote:

It was actually scheduled for Friday, the 28th. Linda if you can change the sign to show that the postponement has been given I'd appreciate it. I or Alyssa will let you know when the matter is re-scheduled.

Lawrence E. Schmidt|Partner

Smith, Gildea & Schmidt, llc

600 Washington Avenue|Suite 200|Towson, MD 21204|(410) 821-0070

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From: Kelly Benton
Sent: Tuesday, February 26, 2019 7:56 AM
To: luckylinda1954@yahoo.com
Cc: Lawrence Schmidt
Subject: Power Factor - Falls Road

Good morning Linda,

There has been a postponement of the hearing in Case No. 19-183-X. The hearing was originally scheduled for this Friday. I believe Alyssa had you post this property already, and as such, Judge Beverungen has asked that the signs have a "conspicuous note indicating the case has been postponed." Are you able to post such a Notice today or tomorrow?

Thank you,

Kelly

Kelly Benton|Paralegal

Smith, Gildea & Schmidt, llc

600 Washington Avenue|Suite 200|Towson, MD 21204|(410) 821-0070

kbenton@sgs-law.com | www.sgs-law.com

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NING NOTICE
CASE -0183-X
A PUBL RING WILL BE HELD BY
THE AD RATIVE LAW JUDGE
SON, MD
PLACE: ROOM 20 SON BUILDING
105 W. CHE AVE, TOWSON MD 21204
DATE AND TIME: THU EBRUARY 28, 2019
AT 1:3
SPECIAL EXCEPTION REL A SOLAR
FACILITY AND FOR SUCH O D FURTHER
RELIEF AS MAY BE REQUIRE
ADMINISTRATIVE LAW JUDGE.
FALLS ROAD
POSTPONED
POSTPONEMENTS DUE TO WEATHER OR OTHER CONDITIONS ARE SOM IMES NECESSARY.
TO CONFIRM HEARING CALL 887-3391
DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

ONING NOTICE
CASE 9-0183-X
A PUBLIC HEARING WILL BE HELD BY
THE ADMINISTRATIVE LAW JUDGE
TOWSON, MD
POSTPONED
ROOM 20 TOWSON BUILDING
PLACE: 105 W. CHE AVE, TOWSON MD 21204
DATE AND TIME: THUR BRUARY 28, 2019
AT 1:30
SPECIAL EXCEPTION RELIE SOLAR
FACILITY AND FOR SUCH OTH FURTHER
RELIEF AS MAY BE REQUIRED
ADMINISTRATIVE LAW JUDGE.
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DO NOT REMOVE THIS SIGN AND POST UNTIL DAY OF HEARING UNDER PENALTY OF LAW
HANDICAPPED ACCESSIBLE

Sherry Nuffer

From: John E. Beverungen
Sent: Tuesday, February 26, 2019 11:12 AM
To: Sherry Nuffer
Subject: FW: Case no. 19-183-X / Falls Road

For the file

From: Kathie Pieper [mailto:knotgarden57@comcast.net]
Sent: Monday, February 25, 2019 6:52 PM
To: lschmidt@sgs-law.com
Cc: John E. Beverungen <jbeverungen@baltimorecountymd.gov>; Peoples Counsel <peoplescounsel@baltimorecountymd.gov>
Subject: FW: Case no. 19-183-X / Falls Road

Larry,

For your awareness, the community group impacted by this project is the North County Community Group. Please note that there is significant community opposition. Many individuals planned to attend and testify at this hearing. Spreading the word with only two days' notice that you are still working with EPS and are not prepared for the hearing will be a challenge.

Please advise me when the hearing is rescheduled.

Kathleen Pieper
President
North County Community Group

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Monday, February 25, 2019 4:10 PM
To: 'John E. Beverungen' <jbeverungen@baltimorecountymd.gov>; Kelly Benton <kbenton@sgs-law.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>; Teresa Moore <teresa@thevpc.org>
Subject: RE: Case no. 19-183-X / Falls Road

Will do. I have also copied Teresa Moore of the VPC on this email so she can get the word out. I had spoken to her earlier today. Thanks.
Larry Schmidt

Lawrence E. Schmidt | Partner

SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070

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From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Monday, February 25, 2019 4:07 PM
To: Lawrence Schmidt; Kelly Benton
Cc: Peoples Counsel; Kristen L Lewis; Debra Wiley; Sherry Nuffer
Subject: RE: Case no. 19-183-X / Falls Road

Mr. Schmidt,

I am in receipt of your request for postponement of the above-captioned case, which will be granted. As referenced in your e-mail, please post ASAP on the signs a conspicuous notice indicating the case has been postponed. Also, please notify the neighbor who expressed an interest in the case as well as the VPC. Hopefully the Dept. of PAI will be able to revise the online calendar so that it indicates the case has been postponed. Finally, please make arrangements for someone from your office to be present in the hearing room on Friday at 1:30 in case anyone attends. In addition to explaining that the case has been postponed I would ask that he/she request anyone present to provide their name and address on the sign-in sheet so that they can be notified when the case is rescheduled.

John Beverungen
ALJ

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Monday, February 25, 2019 3:30 PM
To: Kelly Benton <kbenton@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Case no. 19-183-X / Falls Road

Deb: I saw that Kelly Benton did not copy you and I apologize for that oversight. Hopefully, you did get this.

Judge Beverungen, the specific issue in this case is the location of a forest buffer. We are trying to come to some resolution with EPS regarding that issue but it remains unresolved at present. I have had a phone call from one neighbor and can reach out to her and advise of the postponement. We can also note the sign. I have a call into the Valleys Planning Council and will ascertain if they are involved and advise them of the request too.
Larry Schmidt

Lawrence E. Schmidt | Partner

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From: Kelly Benton
Sent: Monday, February 25, 2019 1:27 PM
To: jbeverungen@baltimorecountymd.gov
Cc: 'peoplescounsel@baltimorecountymd.gov'; Kristen L Lewis; Lawrence Schmidt
Subject: Case no. 19-183-X / Falls Road

Good afternoon Judge Beverungen,

Attached please find a Request for Postponement of the hearing in the above case, presently scheduled for this Thursday, February 28, 2019.

Should you have any questions or require additional information, please do not hesitate to contact me.

Best regards,
Kelly

Kelly Benton | Paralegal

SMITH, GILDEA & SCHMIDT, LLC

600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070

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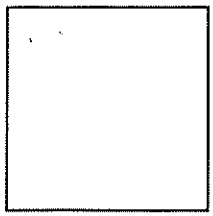

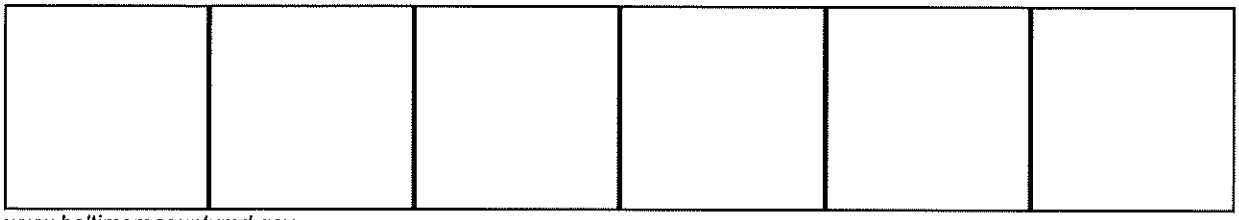

www.baltimorecountymd.gov

Sherry Nuffer

From: Lawrence Schmidt <lschmidt@sgs-law.com>
Sent: Tuesday, February 26, 2019 9:23 AM
To: John E. Beverungen; Kelly Benton; Alyssa Moyers
Cc: Peoples Counsel; Kristen L Lewis; Debra Wiley; Sherry Nuffer; 'Kathie Pieper'; Teresa Moore (teresa@thevpc.org)
Subject: RE: Case no. 19-183-X / Falls Road

Judge Beverungen: I just noticed in your email below that you requested that someone in my office appear at the previously scheduled hearing date to circulate a sign in sheet to register any individual who appears and who did not get notice of the postponement. I am pleased to do that and I will be there. I do note that your email (below) indicates **Friday** and in fact the hearing was scheduled for **Thursday**, the 28th of February. I wanted to send this email to confirm that I will attend on Thursday and didn't want for there to be any further confusion.
I have also copied Teresa Moore of the Valleys Planning Council and Kathie Pieper of the North County Community Group. I understand that their members may have an interest and they have been made aware of the postponement and will be advised when a new date is assigned.

Thank you.

Larry Schmidt

Lawrence E. Schmidt | Partner
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Sent: Monday, February 25, 2019 4:07 PM
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Subject: RE: Case no. 19-183-X / Falls Road

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notify the neighbor who expressed an interest in the case as well as the VPC. Hopefully the Dept. of PAI will be able to revise the online calendar so that it indicates the case has been postponed. Finally, please make arrangements for someone from your office to be present in the hearing room on Friday at 1:30 in case anyone attends. In addition to explaining that the case has been postponed I would ask that he/she request anyone present to provide their name and address on the sign-in sheet so that they can be notified when the case is rescheduled.

John Beverungen
ALJ

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Sent: Monday, February 25, 2019 3:30 PM
To: Kelly Benton <kbenton@sgs-law.com>; John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Case no. 19-183-X / Falls Road

Deb: I saw that Kelly Benton did not copy you and I apologize for that oversight. Hopefully, you did get this.

Judge Beverungen, the specific issue in this case is the location of a forest buffer. We are trying to come to some resolution with EPS regarding that issue but it remains unresolved at present. I have had a phone call from one neighbor and can reach out to her and advise of the postponement. We can also note the sign. I have a call into the Valleys Planning Council and will ascertain if they are involved and advise them of the request too.
Larry Schmidt

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Sent: Monday, February 25, 2019 1:27 PM
To: jbeverungen@baltimorecountymd.gov
Cc: 'peoplescounsel@baltimorecountymd.gov'; Kristen L Lewis; Lawrence Schmidt
Subject: Case no. 19-183-X / Falls Road

Good afternoon Judge Beverungen,

Attached please find a Request for Postponement of the hearing in the above case, presently scheduled for this Thursday, February 28, 2019.

Should you have any questions or require additional information, please do not hesitate to contact me.

Best regards,
Kelly

Kelly Benton | Paralegal
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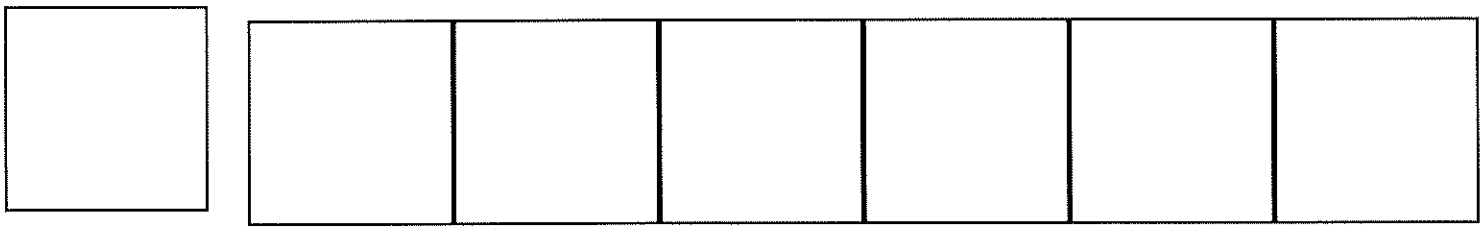

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2/28
1:30

Debra Wiley

From: Teresa Moore <teresa@thevpc.org>
Sent: Monday, February 25, 2019 4:30 PM
To: Lawrence Schmidt; John E. Beverungen; Kelly Benton
Cc: Peoples Counsel; Kristen L Lewis; Debra Wiley; Sherry Nuffer; Alyssa Moyers
Subject: RE: Case no. 19-183-X / Falls Road

Got it.
Thank you.

Teresa Moore
Executive Director
Valleys Planning Council
410-337-6877

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Monday, February 25, 2019 4:10 PM
To: 'John E. Beverungen' <jbeverungen@baltimorecountymd.gov>; Kelly Benton <kbenton@sgs-law.com>
Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>; Sherry Nuffer <snuffer@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>; Teresa Moore <teresa@thevpc.org>
Subject: RE: Case no. 19-183-X / Falls Road

Will do. I have also copied Teresa Moore of the VPC on this email so she can get the word out. I had spoken to her earlier today. Thanks.
Larry Schmidt

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ALJ

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Cc: Peoples Counsel <peoplescounsel@baltimorecountymd.gov>; Kristen L Lewis <klewis@baltimorecountymd.gov>; Debra Wiley <dwiley@baltimorecountymd.gov>
Subject: RE: Case no. 19-183-X / Falls Road

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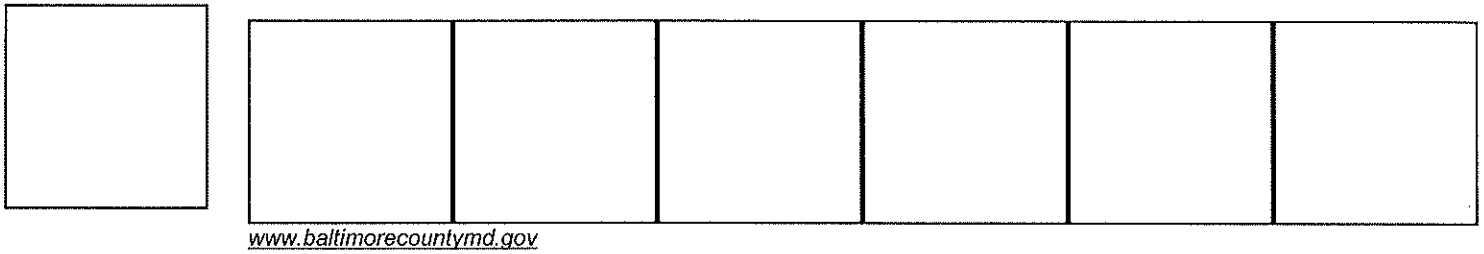

www.baltimorecountymd.gov

5/30/19
1:30 PM

~~2/28~~
1:30 PM
(PP)

Debra Wiley

From: John E. Beverungen
Sent: Monday, February 25, 2019 4:07 PM
To: Lawrence Schmidt; Kelly Benton
Cc: Peoples Counsel; Kristen L Lewis; Debra Wiley; Sherry Nuffer
Subject: RE: Case no. 19-183-X / Falls Road

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2/28/19
1 PM

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MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

February 25, 2019

RECEIVED
MAR 01 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

Sent Via Email and First Class Mail
The Honorable John Beverungen
Administrative Law Judge for Baltimore County
105 W. Chesapeake Avenue
Towson, MD 21204

Re: Case No. 2019-0183-X
Falls Road
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep.

Dear Judge Beverungen,

I am in receipt of the Notice of Zoning Hearing in connection with the above referenced matter. I understand that this matter has been scheduled for a hearing on Februar 28, 2019 beginning at 1:00 p.m. The Department of Environmental Protection and Sustainability has identified certain environmental issues on the subject property, which may result in the modification of the Plan. We are requesting this postponement in an attempt to address those issues and to continue to communicate with that Department and would appreciate this matter being postponed to a later date at the convenience of the Administrative Law Judge's calendar.

Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Kristen Lewis, Zoning Review, 111 W. Chesapeake Ave, Rm 111, Towson, MD 21204

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN D. BENJAMIN
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

February 25, 2019

Sent Via Email and First Class Mail
The Honorable John Beverungen
Administrative Law Judge for Baltimore County
105 W. Chesapeake Avenue
Towson, MD 21204

Re: Case No. 2019-0183-X
Falls Road
Legal Owners: Holly Springs Nature Conservancy & Wildlife Sanctuary, Mary Zodhiates, Rep.

Dear Judge Beverungen,

I am in receipt of the Notice of Zoning Hearing in connection with the above referenced matter. I understand that this matter has been scheduled for a hearing on Februar 28, 2019 beginning at 1:00 p.m. The Department of Environmental Protection and Sustainability has identified certain environmental issues on the subject property, which may result in the modification of the Plan. We are requesting this postponement in an attempt to address those issues and to continue to communicate with that Department and would appreciate this matter being postponed to a later date at the convenience of the Administrative Law Judge's calendar.

Thank you for your courtesy. I look forward to hearing from you.

Very truly yours,

Lawrence E. Schmidt

LES/amf
cc: Peter Max Zimmerman, Esquire, People's Counsel for Baltimore County
Kristen Lewis, Zoning Review, 111 W. Chesapeake Ave, Rm 111, Towson, MD 21204

JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL MOHLER, *Director*
Department of Permits, Approvals & Inspections

February 22, 2019

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson MD 21204

RE: Case Number: 2019-0183-X, Falls Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on December 07, 2018. 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/kl

Enclosures

c: People's Counsel
Holly Springs Nature Conservancy & Wildlife, Attn: Marry Zodhiates 4209 Beckleysville Road Hampstead MD 21074
Power Factor, LLC 1 Mace Avenue Baltimore MD 21221

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Acting Director, Permits, Approvals and Inspections

DATE: 6/25/2019

FROM: C. Pete Gutwald
Acting Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-183

INFORMATION:
Property Address: Falls Road
Petitioner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Zoning: RC 2, RC 8
Requested Action: Special Exception

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

A site visit was conducted on 6/6/2018 and 01/09/2019. The subject site is within a Master Plan 2020 Agricultural Priority Preservation Area (APPA). Falls Road is a state designated scenic byway and a Baltimore County Master Plan designated scenic road presenting a "focused view" as defined in the Comprehensive Manual of Development Policies (CMDP).

Pursuant to BCZR§1A09.4.A, the Department finds the proposal to be within in the spirit and intent of the RC 8 regulations. Site disturbance is primarily located in the RC 2 zone and will have minimal impacts on the natural resources located along the edge of the RC 8 zone portion of the property.

The Department does not oppose granting the petitioned zoning relief conditioned upon the following:

When developing on a scenic route, the CMDP development guidelines instructs one to *"minimize tree and vegetation removal"* and to *"maintain a buffer between the road and the new development"* (CMDP pgs. 178,180).

- The proposal shall minimize grading, tree and vegetation removal along Falls Road. Where disturbance must occur, plantings consisting of native deciduous and evergreen trees and shrubs shall be installed in a naturalistic manner to mitigate the impacts of the special exception use upon the scenic route while allowing a view of the restored barn.
- The Department supports the Baltimore County Landscape Architect in planting requirements deemed necessary to include interior contour screening and other planting schemes that will mitigate the visual impact of the special exception proposal upon the scenic route.

Additional conditions are as follows:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall specifically note on the plan that the proposed solar facility will be subject to BCZR §4F-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.
- 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.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.
- All proposed security fencing shall be black vinyl coated chain-link.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

JM/JGN/LTM/

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

2-28

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Mike Mohler
Acting Director, Permits, Approvals and Inspections

DATE: 1/10/2019

FROM: Jeff Mayhew
Acting Director, Department of Planning

RECEIVED
JAN 15 2018
OFFICE OF
ADMINISTRATIVE HEARINGS

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-183

INFORMATION:
Property Address: Falls Road
Petitioner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Zoning: RC 2, RC 8
Requested Action: Special Exception

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

A site visit was conducted on 6/6/2018 and 01/09/2019. The subject site is within a Master Plan 2020 Agricultural Priority Preservation Area (APPA).

The Department does not oppose granting the petitioned zoning relief conditioned upon the following:

A portion of the proposed special exception is located within the RC 8 zone. Pursuant to BCZR §1A09.4.A a finding is required on the part of the Director of the Department of Planning **prior** to the approval of the special exception plan. To support such a finding the petitioners must submit to the contact person listed below a narrative explaining how the proposal is consistent with the spirit and intent of said BCZR.

Falls Road is a state designated scenic byway and a Baltimore County Master Plan designated scenic road presenting a "focused view" as defined in the Comprehensive Manual of Development Policies (CMDP). When developing on a scenic route, the CMDP development guidelines instructs one to *"minimize tree and vegetation removal"* and to *"maintain a buffer between the road and the new development"* (CMDP pgs. 178,180).

- The proposal shall minimize grading, tree and vegetation removal along Falls Road. Reduce the limit of disturbance at that location where the swale meets Falls Road and in the area around the existing barn to be salvaged. Reduce the proposed drive to the narrowest functional width and site any parking pads or pullovers such that they may not be viewed from Falls Road. Where disturbance must occur, plantings consisting of native deciduous and evergreen trees and shrubs shall be installed in a naturalistic manner to mitigate the impacts of the special exception use upon the scenic route while allowing a view of the restored barn.

- The plan is not clear as to whether the barn is to remain on site. The Department recommends that the barn be restored and remain on site thereby remaining the point of interest of the focused view.

- The Department supports the Baltimore County Landscape Architect in planting requirements deemed necessary to include interior contour screening and other planting schemes that will mitigate the visual impact of the special exception proposal upon the scenic route.

Additional conditions are as follows:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall specifically note on the plan that the proposed solar facility will be subject to BCZR §4F-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.
- 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.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.
- All proposed security fencing shall be black vinyl coated chain-link.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

JM/JGN/LTM/

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
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: December 26, 2018

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18200 block Falls Road
(Zodhiates Property)

Zoning Advisory Committee Meeting of **December 24, 2018.**

__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 Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (aka Forest Buffer law) (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). In accordance with Section 33-3-108 of the Forest Buffer Law, sufficient information must be provided by the applicant to enable EPS to make an informed decision regarding the proposed activities.

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

Additional Comments:

All streams and wetlands must be field delineated, and the delineations must be approved by EPS. A Forest Buffer Easement (FBE) must be delineated in accordance with Section 33-3-111 of the Forest Buffer Law.

The 100-foot stream buffers shown on the plan do not meet the minimum 100-foot forest buffer width. The forest buffer would likely extend well beyond that minimum based on the floodplain and hydric soils (Hatboro – HbA) shown on the plan and the steep slopes/erodible soils analysis required by Section 33-3-111(b) of the Code. The 50-foot stream setbacks on the plan are unrelated to any EPS regulatory requirement.

The proposed gravel road and underground electric line in the forest buffer will require EPS alternatives analysis approval. It appears as though proposed water quality impacts could be substantially reduced by redesigning gravel road access points and turn-around areas and by eliminating the proposed stream crossing.

The extensive solar array and limit of disturbance (LOD) forest buffer impacts shown on the plan would require approval of an administrative variance to the Forest Buffer Law by the EPS Director. There is no guarantee of variance approval. The forest buffer solar array and LOD impacts could all be avoided by reducing the scope of the overall project and adjusting the project LOD.

A forest stand delineation and forest conservation plan must be submitted to EPS and approved prior to approval of any development plan or grading/sediment control plan.

If any specimen trees or critical root zones of these trees are proposed to be impacted, special variance to the Forest Conservation Law must be submitted and approved by the EPS Director. There is no guarantee of special variance approval.

Based upon our review of the special exception application, we have determined that the proposed extensive forest buffer impacts would be detrimental to water quality in Compass Run, a tributary to Compass Run, and Prettyboy Reservoir into which these streams drain. Furthermore, given that these impacts are largely avoidable, we do not believe that the applicant has taken into consideration the presence of natural forest buffers and the proximity of streams and wetlands when designing the site layout. For these reasons, we recommend that the Administrative Law Judge either deny the subject application, or condition the application to substantially reduce and minimize forest buffer and water quality impacts in accordance with the Forest Buffer Law and EPS requirements.

Reviewer: Glenn Shaffer

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 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) 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 access vegetated areas to maintain the disconnection.
- Disconnections should be located on gradual slopes ($\leq 5\%$) to maintain sheet flow. Level spreaders, terraces, or berms may be used to maintain sheet flow 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.

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.

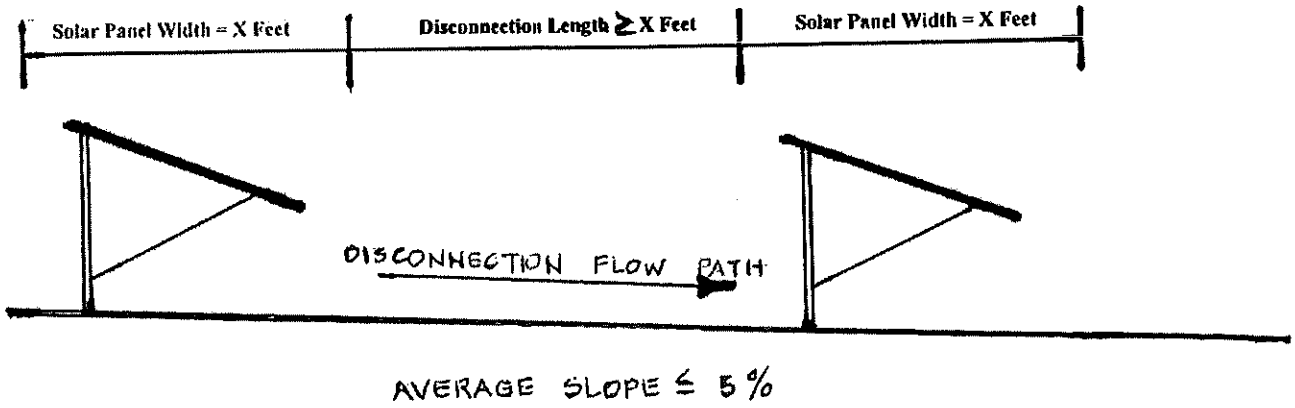


Figure 1. Typical Installation – Slope ≤5%

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 soalr 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 sheet flow.

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.

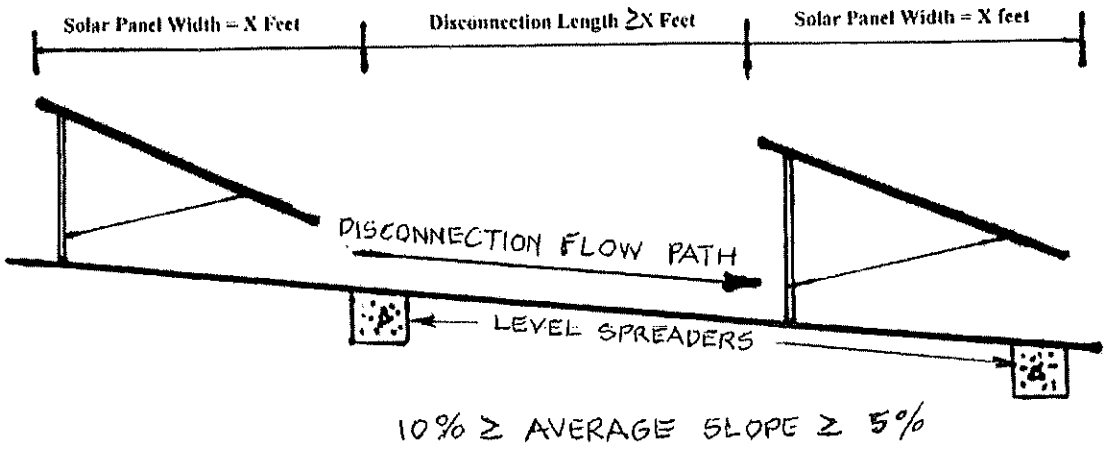


Figure 2. Typical Installation – Slope ≥5% but ≤10%

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/stormwaterdesign/index.aspx)

December 20, 2018

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

Dear Ms. Lewis:

Thank you for the opportunity to review the site plan to accompany the petition for a special exception to allow a solar facility on the subject property. The Maryland Department of Transportation State Highway Administration (MDOT SHA) has reviewed the submittal listed below and is pleased to respond.

Falls Road Solar
Site Plan Review for Special Exception
Case No. 2019-0183-X
MD 25 (east side) 2500' south of Beckleysville Road
Mile Post 21.36
Baltimore County

The proposed entrance to this site will be subject to the terms of an access permit to construct a paved apron on MD 25. That permit may be obtained by contacting Mr. Brian Gneiting, Resident Maintenance Engineer – Hereford Shop at 410-329-6752. A copy of the plan will be forwarded to his office.

If there are any questions, please contact Mr. Richard Zeller at 410-229-2332 or toll free (in Maryland only), 1-866-998-0367 (x2332) 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

cc: Kimley-Horn and Associates, Inc. / 1801 Porter Street, Suite 401, Baltimore, MD 21230
Powerfactor Company / 1 Mace Avenue, Baltimore, MD 2221 attn: Andrew Streit
Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc. / 4209 Beckleysville Road
Hampstead, MD 21704
Mr. Brian Gneiting, MDOT SHA Resident Maintenance Engineer – Hereford Shop

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

TO: Michael Mohler, Acting Director
Department of Permits, Approvals
And Inspections

DATE: Jan 17, 2019

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For December 24, 2018
Item No. 2019-0183-A

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. Falls Road is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 6),
5. The landscape planting along Falls Road may need to be set back from the existing overhead power lines to allow the diversity of screen plant materials to mature and not be effected by standard vegetation maintenance typically associated with existing overhead power line.
6. Perimeter landscape buffers should address adjacent property views to provide maximum screening potential when it relates to the proposed solar facility. Including but not limited to 18702, 18708, 18719 and 18720 Falls Road.
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should continue across the entire length of the Falls Road frontage to assure screening of the solar array field from Falls Road views with special attention around the access drive.
9. Consideration should be given to the proposed access drive being moved approximately 100 to 150 feet to the north on Falls Road, the access drive may need to have a chicane or bends to assure screening of the solar array field from the adjacent driveway and Falls Road views, if landscape screening does not,
10. More comments may be rendered during review of the landscape plan.

We noticed that there is a few existing streams or watercourses that are located on the property. The main stream flood plain delineation is shown on the plan and it is very close to the delineation shown on FIRM 2400100020F dated September 26, 2008. The proposed solar array is located outside of the delineation and it appears to meet the Public Works' requirements.

The watercourse located at the south of the site may be a Baltimore County regulated flood plain associated with a drainage area equal to or greater than 30 acres. The plan proposes to place a road and culvert overtop of this watercourse. A flood study is required to establish the flood plain delineation and the site must adhere to the Baltimore County DPR Policy Manual, the Building Code and the Design Manual.

* * * * *

VKD: cen
cc: file

RE:	PETITION FOR SPECIAL EXCEPTION Falls Road; E/S Falls Road, 2,459' from c/line of Beckleysville Road 5th Election & 3rd Councilmanic Districts Legal Owner(s): Holly Springs Nature Conservancy and Wildlife Contract Purchaser(s): Power Factor, LLC Petitioner(s)	*	BEFORE THE OFFICE OF ADMINSTRATIVE HEARINGS FOR BALTIMORE COUNTY 2019-183-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

RECEIVED
DEC 18 2018

Carole S Demilio

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December, 2018, a copy of the foregoing Entry of Appearance was mailed to Lawrence Schmidt, Esquire, 600 Washington Avenue, Suite 200, Towson, Maryland 21204, Attorney for Petitioner(s).

Peter Max Zimmerman

PETER MAX ZIMMERMAN
People's Counsel for Baltimore County

Board of Appeals

Case No: 19-183-X Case Name: Holly Springs

Exhibit List

Party: Petitioner. Date: 9/19/19
9/24/19.

Exhibit No:	Description:
✓ 1	DRC Approval letter exemption
✓ 2.	Nicolas Leffner CV
✓ 3A	Existing Conditions Plan
✓ 3B	Closeup. Existing Conditions Plan
✓ 3C	Proposed Conditions Plan
✓ 3D	Closeup Proposed Conditions Plan
✓ 4A	My Neighborhood 9/19/19
✓ 4B	My Neighborhood Closeup. 9/19/19
✓ 5	Forest Stand Delineation Plan
✓ 6	Steep Slopes Analysis
✓ 7	EPS 7/1/19 approval letter
✓ 8A-H	Photos of Property
✓ 9	County GIS Conservation Easement
	VERIFIED BY KC DATE: 9/20/19

Board of Appeals

Case No: 19-183-X Case Name: Holly Springs.

Exhibit List

Party: Petitioner Date: 9/19/19
9/24/19

Exhibit No:	Description:
✓ 10	Barrett Glare Expert CV
✓ 11	Barrett Glare Report.
✓ 12	6/19/19 From Plans Review to PAI
✓ 13	6/24/19 From MDOT to PAI
✓ 14	6/22/19 From Zoning to Schmidt,
✓ 15	8/21/19 From Planing to Schmidt.
✓ 16	Colored Site Plan Exhibits
✓ 17	Key Map for Photos 8A - 8U
✓ 18	Zoning Office List Solar Facilities
✓ 19	BCZR 4F Solar Facility Law
✓ 20	Wetlands Delineation Report 7/5/19
✓ 21	6/6/19 EPS letter to Pet Wetlands Delineation
✓ 22A	Corrected Pet Ex: 3A Exist Conditions
✓ 22B	Corrected Pet Ex: 3B Closeup Exist Conditions
	VERIFIED BY KC DATE: 9/25/19

KC 9/20/19

9/24/19

Board of Appeals

Case No: 19-183-X Case Name: Holly Springs

Exhibit List

Party: Petitioner Date: 9/24/19

Exhibit No:	Description:
✓22C	Corrected Pet 3C Proposed Conditions
✓22D	Corrected Pet 3D Proposed Closr
✓23	CV Jonathan Kraft Landscape Architect
9/25/19 KC ✓24	CV Andrew Street
✓25	GCL Spec Sheet
✓26	My Neighborhood Conservation Easements
	VERIFIED BY KC DATE: 10/25/19

Baltimore County Government
Department of Permits Approvals and Inspections
Development Management

Petitioner
CBA Exhibit
1

111 West Chesapeake Avenue
Towson, MD 21204

410-887-3335

July 2, 2019

Kimley- Horn
Mr. Nick Leffner, P.E.
1801 Porter Street, Suite 401
Baltimore, Maryland 21230

RE: Falls Road Solar – 18637 Falls Road
Tracking Number: DRC-2019-00080
DRC Number: 062519A; Dist. 5C3

Dear Mr. Leffner:

Pursuant to Article 25A, Section 5 (U) of the Annotated Code of Maryland, and as provided in Section 602 (d) of the Baltimore County Charter, and Sections 32-1-101, 32-3-401, and 32-3-517 of the Baltimore County Code, this letter constitutes an administrative order and decision on the request for issuance, renewal, or modification of a license, permit, approval, exemption, waiver, or other form of permission you filed with this department.

Your request has been submitted for careful review and consideration to the Development Review Committee (DRC), which is composed of representatives from each of those departments involved in land-use decisions. These representatives are designees of the directors of these departments. The purpose of the DRC is to ensure compliance with Section 32-4-106 and Section 32-4-262 of the Baltimore County Code, and to make recommendations to the Director, Department of Permits Approvals and Inspections (PAI).

The DRC has, in fact, met in an open meeting on June 25, 2019, and made the following recommendations:

The DRC has determined, your project provisionally meets the requirements of a **limited exemption** under Section 32-4-106(a)(1)(vi).

Now that you have received this limited exemption, please proceed with building permit application.

A copy of this letter must be presented when submitting engineering/construction plans to this office, and/or when applying for a building permit.

Please note that compliance with subtitles 3, 4 and 5 of Title 4, Article 32, Baltimore County Code, is required, as is compliance with all applicable zoning regulations. Phase 2 review fees may apply, depending on the amount of site disturbance, and/or the requirement of a Public Works Agreement. Also, sidewalks are required whenever the site is within the Metropolitan District.

Herein find a Zoning Review Hearing Checklist that will serve as a guide when preparing plans for building permit applications. Please be advised, plans not meeting minimum checklist requirements will not be accepted for filing. This will consequently delay building permit approval. Please note, the "conceptual" plan required for DRC review, does not necessarily meet the checklist guidelines. Therefore, it should not be assumed that the DRC plan is acceptable for building permit applications. Should you have any questions regarding the above, please contact the Zoning Review Section at 410-887-3391.

I have reviewed the recommendations carefully, and I have determined to adopt the recommendations set forth above. It is this 2nd day of July 2019, ordered and decided that the recommendations of the DRC are hereby adopted.

Should you submit an application for any permit that may be required for this project, your application will be processed subject to the conditions set forth above, and any plans, securities, or non-county permits that may be required in accordance with County, State, or Federal regulations.

Additionally, this project is located on a state road; therefore, the State Highway Administration requires the plan to be reviewed prior to the permit approval. For further information, contact Richard A. Zeller at 410-229-2332.

Sincerely,

For Michael D. Mallinoff
Director

MM: JMC:jmk

C: Zach Wilkins
Teresa Moore
Kathie Peiper
Richard Zeller, SHA
File

Petitioner
CBA Exhibit
2

Kimley»Horn

RESUME

Nicholas J. Leffner, P.E.
Kimley-Horn and Associates, Inc.
1801 Porter Street, Suite 401
Baltimore, MD 21230

Civil Engineer

Education: Bachelor of Science in Civil Engineering
Virginia Polytechnic Institute and State University, Blacksburg, VA

Registration: Registered Professional Engineer in Maryland (#44113)

Professional Organizations: Urban Land Institute (ULI)

Professional Experience:

Civil Engineer, Bowman Consulting Group, Ltd. – 6 years

- Provided design, entitlement, and permitting consulting services to support a variety of land development projects; including, residential, commercial, retail, industrial, institutional, and mixed-use land development projects.
- Prepared conceptual, final, and construction document level design plans, computations, and reports for a variety of civil engineering related disciplines; including, site planning/feasibility, site design, grading and drainage, utilities, roadways, stormwater management, soil erosion and sediment control, and construction phase services.

Civil Engineer/Project Manager, Kimley-Horn and Associates, Inc – 5 years

- Serves as project manager and civil engineering consultant
- Responsible for the design, entitlement, and permitting services for a variety of land development projects; including, residential, commercial, retail, industrial, institutional, mixed-use, and energy (solar) land development projects.

Project Experience: Maryland – Baltimore City, Baltimore County, Howard County, Montgomery County, Frederick County, Prince George's County, Anne Arundel County, Calvert County, St. Mary's County, Dorchester County, Harford County, Cecil County

Other States – Kansas, Oklahoma, Pennsylvania, Virginia, South Carolina

SOIL TYPES

MAP UNIT SYMBOL	SOILNAME	HYDROLOGIC SOIL GROUP	CLASSIFICATION	HYDRIC	% OF PROPERTY
3hD	BRINKLOW CHANNERY LOAM, 15-35% SLOPES	C	NOT PRIME FARMLAND	NO	22.4%
3dA	GLENELG LOAM, 0-3% SLOPES	B	PRIME FARMLAND	NO	03%
3dB	GLENELG LOAM, 3-8% SLOPES	B	PRIME FARMLAND	NO	60%
3dC	GLENELG LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	22.1%
3eC	GLENELG CHANNERY LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	99%
3hB	GLENVILLE SILT LOAM, 3-8% SLOPES	C/D	PRIME FARMLAND	NO	96%
3hC	GLENVILLE SILT LOAM, 8-15% SLOPES	C	FARMLAND OF STATEWIDE IMPORTANCE	NO	19%
1hA	HATBORO SILT LOAMS, 0-3% SLOPES	B/D	NOT PRIME FARMLAND	YES	21.6%
WdE	MANOR BRINLOW COMPLEX, 25-45% SLOPES, VERY ROCKY	B	NOT PRIME FARMLAND	NO	2.2%

SITE DATA

1. EXISTING ZONING: RC-2, RC-8
2. PROPERTY AREA:
   - PARCEL 144: ±26.34 AC.
   - PARCEL 121: ±5.25 AC.
   - TOTAL: ±32.59 AC.
3. PROJECT AREA:
   - PARCEL 144: ±6.46 AC.
   - PARCEL 121: ±2.69 AC.
   - TOTAL: ±9.15 AC.
4. PROPERTY INFORMATION:
   - A. EXISTING PREMISES ADDRESS: 18827 FALLS ROAD & ADJACENT TO 18827 FALLS ROAD
   - B. TAX ACCOUNT NUMBER:
     - PARCEL 144: 0523011126
     - PARCEL 121: 0504003210
   - C. DEED REFERENCE:
     - PARCEL 144: 36664 /00498
     - PARCEL 121: 33970 /00242
   - D. COUNCILMANIC DISTRICT: 3
   - E. ELECTION DISTRICT 5
   - F. CENSUS TRACT: 405000
5. BALTIMORE COUNTY* ZONING MAP REFERENCES:
   - A. GIS TILE: 015A1
   - B. TAX MAP: 0015
   - C. PARCELS: 0144 &3121
   - D. GRID: 0001
   - E. WATERSHED: PRETTYBOY RESERVOIR
   - F. BASIC SERVICES - WATER MAP: N/A
   - G. BASIC SERVICES - SEWER MAP: N/A
   - H. REGIONAL PLANNING DISTRICT PRETTYBOY
6. EXISTING LAND USE VACANT / RESIDENTIAL
7. PROPOSED LAND USE: SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION
ARSAS - NC MAJOR SUBDIVISIONS ON SEPTIC

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4* (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

ENVIRONMENTAL/SITE NOTES

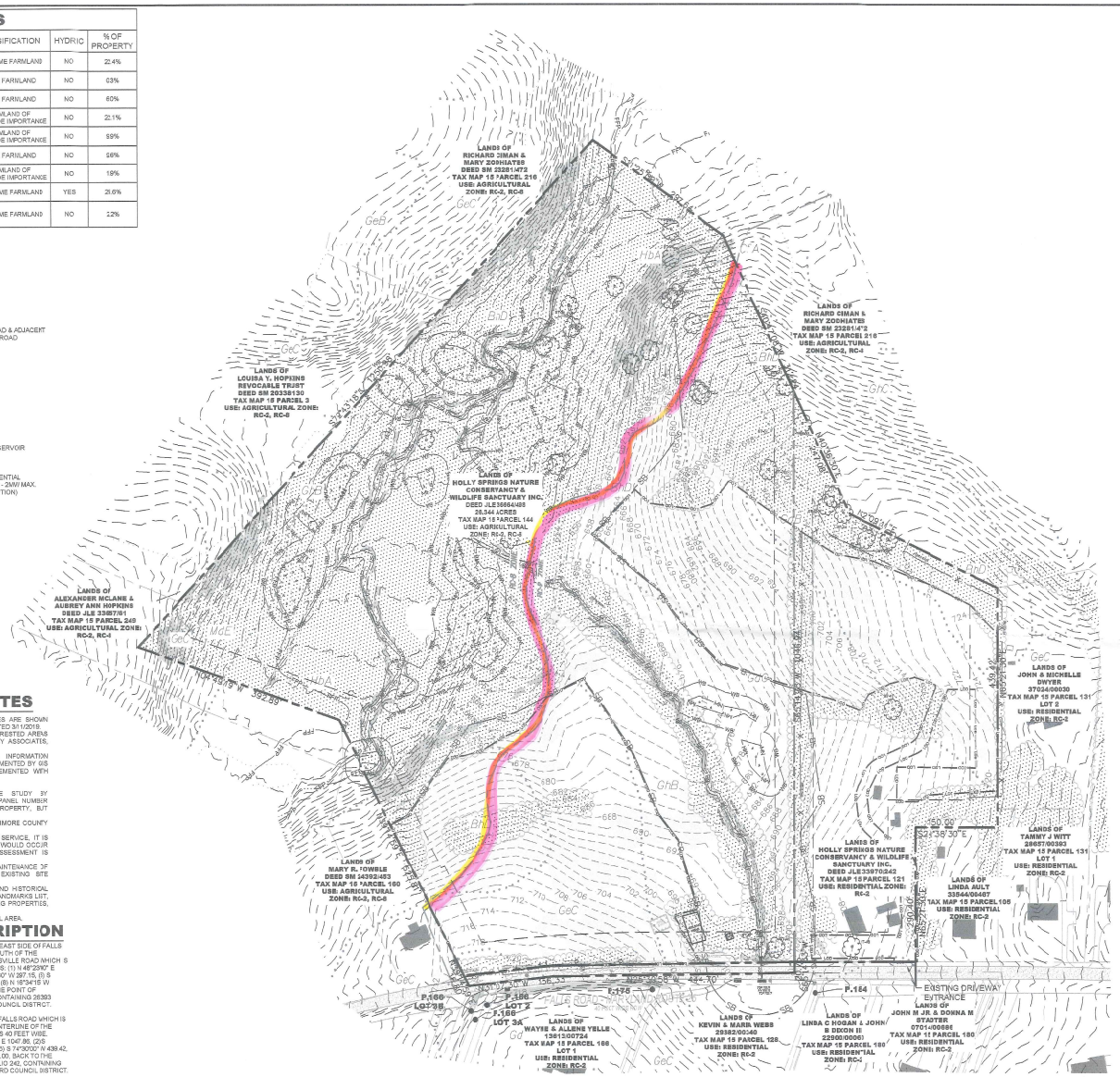
1. PROPERTY BOUNDARY, TOPOGRAPHIC AND EXISTING FEATURES ARE SHOWN BASED ON SURVEY COMPLETED BY KARINS AND ASSOCIATES, DATED 3/1/2019.
2. ALL STREAMS, SEEPS, BODIES OF WATER, WETLANDS AND FORESTED AREAS ARE BASED ON FIELD WORK COMPLETED BY GEO-TECHNOLOGY ASSOCIATES, INC. IN MARCH 2018.
3. TOPOGRAPHIC, EXISTING FEATURES, AND ENVIRONMENTAL INFORMATION SHOWN OUTSIDE OF THE PROPOSED PROJECT AREA IS SUPPLEMENTED BY GIS FROM BALTIMORE COUNTY. RECEIVED 12/4/2018 AND SUPPLEMENTED WITH AERIAL PICTOMETRY WHERE NECESSARY.
4. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS.
5. FLOODPLAIN IS SHOWN BASED ON MARCH 2018 SITE STUDY BY GEO-TECHNOLOGY ASSOCIATES, INC., AGREEING WITH FEMA PANEL NUMBER 24005C0020F. THERE IS A FLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED PROJECT AREA.
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND NRCS WEB SOIL SURVEY WEBSITE ON 1/25/2018.
7. PER LETTER DATED 4/10/2019 FROM THE FISH AND WILDLIFE SERVICE, IT IS UNLIKELY THAT RARE, THREATENED, OR ENDANGERED SPECIES WOULD OCCUR WITHIN THE PROJECT AREA. NO FURTHER BIOLOGICAL ASSESSMENT IS REQUIRED.
8. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/ RELOCATION OF EXISTING SITE ACCESS.
9. THERE ARE NO KNOWN ENTITIES INCLUDED ON THE MARYLAND HISTORICAL TRUST INVENTORY MEDUSA ONLINE MAP, BALTIMORE COUNTY LANDMARKS LIST, AND BALTIMORE COUNTY GIS WITHIN THE SITE OR ON ADJOINING PROPERTIES, AS CONFIRMED BY BALTIMORE COUNTY EMAIL DATED 3/1/2019.
10. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 18827 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,465 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH S 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 525.62, (2) N 04°16'39" E 393.24, (3) S 83°37'07" E 1,201.74, (4 S 20°29'30" W 287.15, (5) S 49°45'00" W 312.76, 6) S 74°16'00" W 1047.85, (7) S 74°16'02 W 20.00, (8) N 16°34'15 W 446.58, (9) N 21°39'00" W 156.10, (10) N 48°23'40" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER/JLE 36664, FOLIO 498, CONTAINING 26393 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.
2. 18827 FALLS ROAD BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,062 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE: (1) N74°16'00" E 1047.86, (2) S 49°45'00" W 247.08, 3) S 16°43'18" E 210.79,(4) S 12°26'30" 1 104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'07" W 178.00, 7 S 74°30'00" W 299.40, (8) N 15°44'07" W 232.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 3970, FOLIO 242, CONTAINING 6.116 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

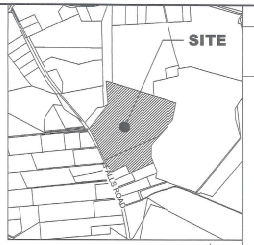
ADJOINING LANDOWNERS

MAP 16 PARCEL 003 - LOUISA Y. HOPKINS REVOCABLE TRUST - 20335/130 - ZONED: RC-2 RC-8 - USE: AGRICULTURAL
MAP 16 PARCEL 105 - LINDA AULT - 33544/467 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 16 PARCEL 125 - KEVIN & MARA WEBB - 28382/340 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 2 JOHN & MICHELLE DWYER - 37024/30- ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 1 TAMMY J WITT - 28657/303 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 160 - MARY R FOWBLE - 24392/453 - ZONED: RC-2 RC-8 -USE: AGRICULTURAL
MAP 15 PARCEL 166 LOT 1 - WAYNE & ALLENE YELLE - 13613/724 ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 169 LOT 2 KENNETH R & JANET , HARRY - 5734/852 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 175 - RICHARD JAMES JR & KATHERINE REGINA DEMANNS TRUSTEES - 20172/397 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1 - LINDA C HOGAN & JOHN B DIXON III - 22900/60 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1A - JOHN M JR. & DONNA M STAOTER - 7014/686 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 194 - GREGORY & TRACY CZARSKI - 36361/89 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 16 PARCEL 218 - RICHARD CIMAN AND MARY ZODHIATES - 21391/472 - ZONED: RC-2 RC-8 - USE: RESIDENTIAL
MAP 16 PARCEL 248 - ALEXANDER MCLANE & AUBREY ANN HOPKINS - 33857/81 - ZONED RC-2, RC-8 - USE: AGRICULTURAL
MAP 51 PARCEL 169 LOT 3A - DARLENE S BENNET - 6932/38 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 51 PARCEL 169 LOT 3B - GEORGE S JR & CHERYL PIER WEBBS - 7517/313 - ZONED: RC-2 - USE: RESIDENTIAL



OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OVERHEAD ELECTRIC
- FEMA FLOODPLAIN
- STREAM
- 100' STREAM BUFFER
- WETLAND LIMITS
- 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDRY
- CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSRSET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 159-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) *43-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner CBA Exhibit 34

NORTH

GRAPHIC SCALE IN FEET
0 50 100 200

No.	REVISIONS	DATE	BY

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST., SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

KHA PROJECT 114066000
DATE 09/19/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION/DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1

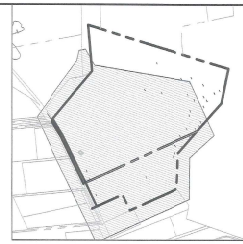
Plotted By: Miller, Sara Sheet Set: Falls Road Solar Layout SHEET 1 - OVERALL EXISTING CONDITIONS PLAN.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL AND ARTICLE 4F (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.



KEY MAP
SCALE: 1" = 500'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OVERHEAD ELECTRIC
- FEMA FLOODPLAIN
- STREAM
- 100' STREAM BUFFER
- WETLAND LIMITS
- 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

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ATTN: ANDREW STREIT
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TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner
CBA Exhibit
13

NORTH

GRAPHIC SCALE IN FEET
0 30 50 120

No.	REVISIONS	DATE	BY

Kimley»Horn
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1801 PORTER ST, SUITE 101, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. 22521 EXPIRATION DATE: 09/27/2020

KHA PROJECT	114086000
DATE	09/19/2019
SCALE	AS SHOWN
DESIGNED BY	NJL
DRAWN BY	HHH
CHECKED BY	NJL

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1A

Plotted By: Miller, Sean Sheet: Set-Falls Road Solar Layout-SHEET 1A EXISTING CONDITIONS PLAN September 18, 2019 09:10:43am K:\BAL_DEV\114086000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
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BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT[2]	50-FT[3]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

1 - 15-FT REQUIRED FOR SOLAR USE
2 - 10-FT REQUIRED FROM ADJACENT STRUCTURE
3 - INTERNAL SETBACKS OFT, PROVIDED WITH ARRAY

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 18627 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,495 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 525.62, (2) N 04°15'52" E 393.24, (3) S 63°37'40" E 1251.74, (4) S 20°33'00" W 287.15, (5) S 49°48'00" W 312.78, (6) S 74°18'00" W 1047.86, (7) S 74°18'00" W 20.00, (8) N 18°34'15"W 446.58, (9) N 21°59'00" W 156.10, (10) N 48°23'40" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER ILE 36664, FOLIO 498, CONTAINING 26.93 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

2. 18627 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,062 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLYSVILLE ROADWHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE: (1) N74°18'00" E 1047.86, (2) S 49°48'00" W 247.09, (3) S 16°43'18" E 210.79, (4) S 12°28'30" E104.83, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 150.00, 7 S 74°30'00" W 290.40, (8) N 15°44'00" W 232.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39870, FOLIO 242, CONTAINING 6.116 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AID THE 3RD COUNCIL DISTRICT.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	
	PARCEL 144:	±26.34 AC.
	PARCEL 121:	±6.25 AC.
	TOTAL:	±32.59 AC.
3.	PROJECT AREA:	
	PARCEL 144:	±6.45 AC.
	PARCEL 121:	±2.69 AC.
	TOTAL:	±9.15 AC.
4.	PROPERTY INFORMATION:	
A.	EXISTING PREMISES ADDRESS:	18627 FALLS ROAD & ADJACEIT TO 18627 FALLS ROAD
B.	TAX ACCOUNT NUMBER:	
	PARCEL 144:	0523019126
	PARCEL 121:	0504003210
C.	DEED REFERENCE:	
	PARCEL 144:	36664 /00498
	PARCEL 121:	33870 /00262
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	5
F.	CENSUS TRACT:	405000
5.	BALTIMORE COUNTY ZONING MAP REFERINCES:	
A.	GIS TILE:	015A1
B.	TAX MAP:	0015
C.	PARCELS:	0144 &2121
D.	GRID:	0001
E.	WATERSHED:	PRETTYBOY RESERVOIR
F.	BASIC SERVICES - WATER MAP:	N/A
G.	BASIC SERVICES - SEWER MAP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETTYBOY
6.	EXISTING LAND USE:	VACANT / RESIDENTIAL
7.	PROPOSED LAND USE:	SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

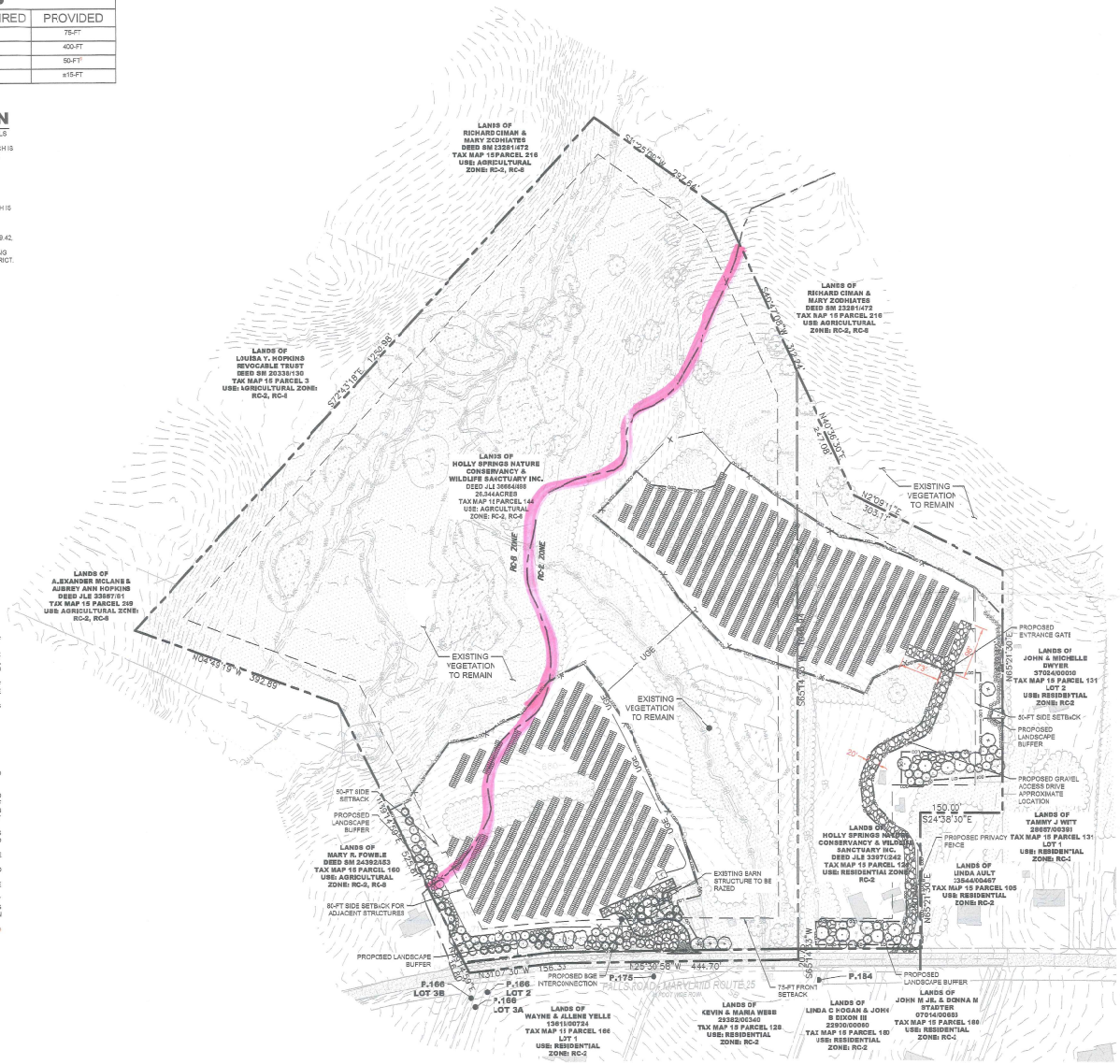
TIER 4: PRESERVATION AND CONSERVATION AREAS - NO MAJOR SUBDIVISIONS ON SEPTIC

SITE NOTES

1. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/RELOCATION OF EXISTING SITE ACCESS.
2. STORMWATER TREATMENT WILL BE MET VIA IMPLEMENTATION OF MDE SCLAR GUIDANCE (HB 1111), AND A COMBINATION OF NON-ROOFTOP DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR MICRO-SCALE BSD DEVICES.
3. 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.
4. SITE TO BE STABILIZED WITH LOW-GROWTH SEED MIX, AND POLLINATOR SPECIES OUTSIDE OF ARRAY AREA.
5. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE
6. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
7. ANY SIGNAGE PROPOSED SHALL COMPLY WITH BCZR § 450.
8. PARKING:
   REQUIRED: 0 SPACES
   PROPOSED: 0 SPACES
9. BASIC SERVICES - TRANSPORTATION MAP: N/A
10. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
11. THE PROPOSED SCLAR FACILITY WILL BESUBJECT TO BZCR § 4F-107.
12. THE PROPOSED SOLAR FACILITY WILL NOT EXCEED THE MAXIMUM PERMITTED NUMBER OF FACILITIES ALLOWED IN ITS RESPECTIVE COUNCILMANIC DISTRICT. IF APPROVED PETITIONER SHALL SUBMIT TO THE COUNTY AT THE TIME OF BUILDING PERMIT APPLICATION THE FINAL TIXED LOCATION AND AREA OF THE FACILITY BY COORDINATE DATA.
13. 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.
14. NO DELIVERIES OR OUTDOOR MAINTENANCE WHICH MAY GENERATE EXCESSIVE NOISE MAY OCCURON-SITE BETWEEN THE HOURS OF 6 M THROUGH 6 AM.
15. THERE ARN NO KNOWN RARE SPECIES, THREATENED SPECIES OR ENDANGRERED SPECIES HABITAT, HISTORICAL OR ARCHEOLOGICAL AREAS ON SITE.
16. STORMWATER MANGEMENT TO BE IN COMPLIANCE WITH MDE DESIGN GUIDANCE FOR SOLAR PANELS.
17. THE LOCATION OF THE PANELS AS SHOWN HEREON IS SCHEMATIC AND MAY CHANGE AS THE PROJECT EVOLVES TO FINAL DESIGN, HOWEVER, ALL PANELS SHALL BE LOCATED WITHIN THE AREA OF THE SPEGIL EXCEPTION AS SHOWN HEREON.
18. FINAL LOCATION AID DESIGN OF PROPOSED BGE INTERCONNECTION SUBJECT TO CHANGE BASED OF FINAL DESIGN AND REQUIREMENTS BY BGE.

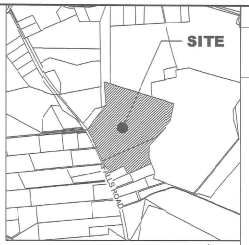
VARIANCE REQUESTS

1. IF NECESSARY, TO GRANT VARIANCE RELIEF FROM BCZR §1A01.3.B.3.TO PERMIT A SOLAR FACILITY TO BE AS CLOSE AS 0 FEET TO AN INTERNAL LOT LINE; AND
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.



OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

LANDSCAPE NOTE:

LANDSCAPE BUFFER DESIGN SUBJECT TO FINAL LANDSCAPE PLAN REVIEW AND APPROVAL BY BALTIMORE COUNTY

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner
CRA Exhibit
3e

GRAPHIC SCALE IN FEET
0 50 00 200

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST., SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 44322, EXPIRATION DATE: 07/09/2020

KHA PROJECT	114066000
DATE	09/19/2019
SCALE	AS SHOWN
DESIGNED BY	NJL
DRAWN BY	STM
CHECKED BY	NJL

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2

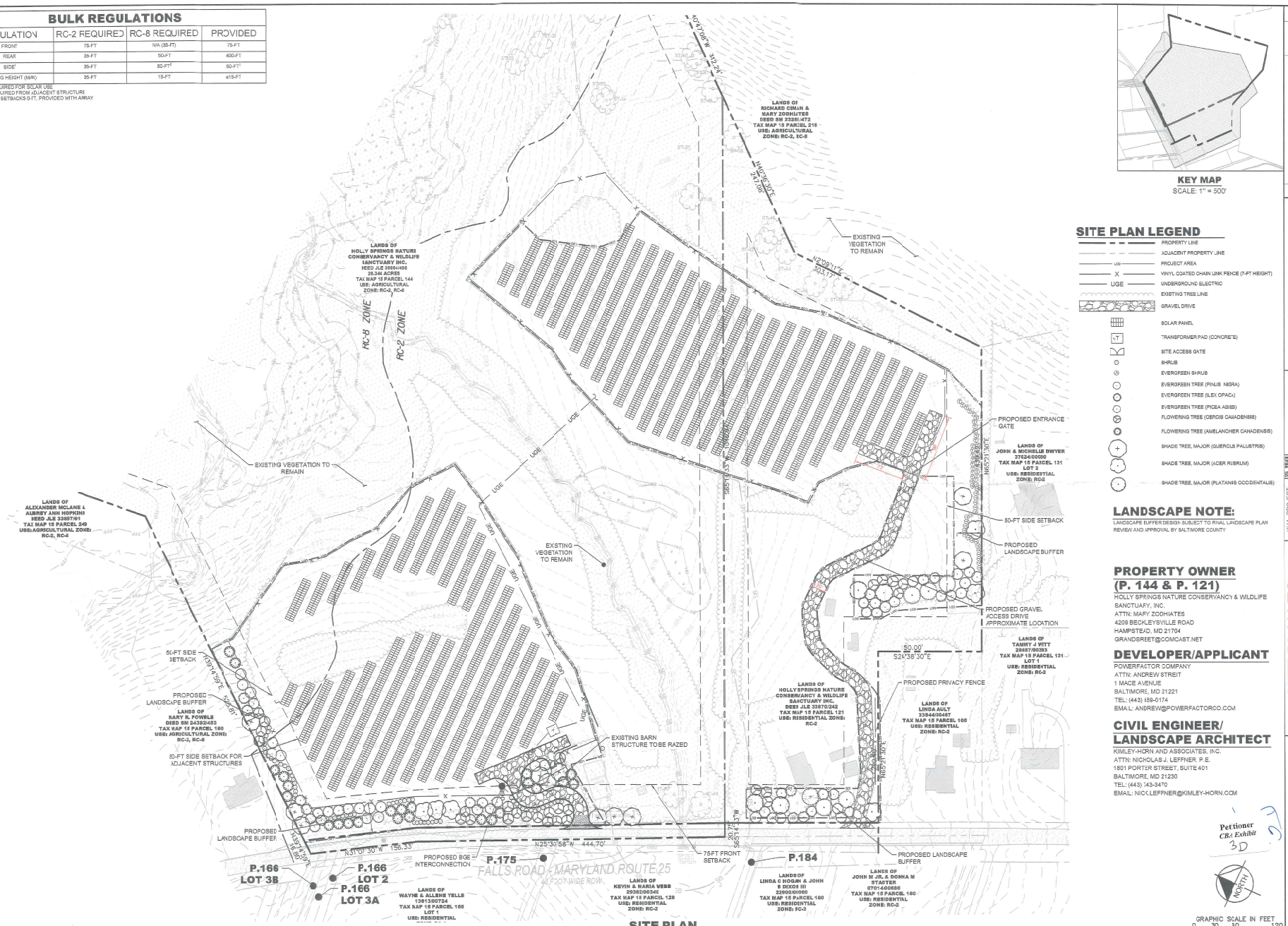
No.	REVISIONS	DATE	BY

Plotted By: Miller, Sam Sheet Set: Falls Road Solar Layout: SHEET 2 OVERALL SITE PLAN September 18, 2019 09:10:57pm K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\PhotSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	50-FT[2]	50-FT[3]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

[1] - 50-FT REQUIRED FOR SOLAR USE
[2] - 35-FT REQUIRED FROM ADJACENT STRUCTURE
[3] - INTERNAL SETBACKS 0-FT, PROVIDED WITH ARRAY



SITE PLAN
TO ACCOMPANY SPECIAL EXCEPTION
SCALE = 1" = 60'

KEY MAP
SCALE: 1" = 500'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- LOD — PROJECT AREA
- X — VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANIS OCCIDENTALIS)

LANDSCAPE NOTE:

LANDSCAPE BUFFER DESIGN SUBJECT TO FINAL LANDSCAPE PLAN REVIEW AND APPROVAL BY BALTIMORE COUNTY

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUAFY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
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1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner CBA Exhibit 3D

GRAPHIC SCALE IN FEET
0 30 60 120

No.	REVISIONS	DATE	BY

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST, SUITE 101, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. 22022 EXPIRATION DATE: 09/30/2020

KHA PROJECT 114066000
DATE 09/19/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY STM
CHECKED BY NJL

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2A

Plotted By: Miller, Sean Sheet Set: Falls Road Solar Layout: SHEET 2A SITE PLAN September 18, 2019 09:11:04pm K:\BAL_DOV\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Baltimore County - My Neighborhood

Baltimore County - My Neighborhood

FOREST STAND DELINEATION

FALLS ROAD SOLAR

HAMPSTEAD, MARYLAND 21074

GENERAL NOTES

1. PROPERTY OWNER(S): HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY INC
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MARYLAND 21074

2. APPLICANT/DEVELOPER: POWERFACTOR COMPANY
1 IMACE AVENUE
BALTIMORE, MARYLAND 21221
ATTN: ANDREW STREIT

3. ENGINEER: KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER STREET, SUITE 401
BALTIMORE, MARYLAND 21230
ATTN: HEATHER HUTTON

4. PLAN PREPARER: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
ATTN: MAXWELL D. POTEMBER
PHONE: 410-515-9446
EMAIL: MPOTEMBER@GTAENG.COM

5. PROPERTY INFORMATION:
A. TAX ACCOUNT #(S): 0523015128 & 0504000210
B. PARCEL(S): 121 & 144
C. TAX MAP: 15
D. DEED REFERENCE(S): L. 36604 / F. 00498 & L. 33970 / F. 00242
E. COUNCILMANIC DISTRICT: 3
F. ELECTION DISTRICT: 5
G. EXISTING ZONING: RC 2 (AGRICULTURAL) & RC 8 (ENVIRONMENTAL ENHANCEMENT)
H. EXISTING LAND USE: AGRICULTURAL
I. PROPOSED LAND USE: SOLAR FACILITY
J. WATERSHED/SUBWATERSHED: PRETTYBOY RESERVOIR/COMPASS RUN

6. SUBJECT PROPERTY ACREAGE: 32.514 ACRES

7. THE TOPOGRAPHIC AND BOUNDARY INFORMATION SHOWN HEREON WAS BASED ON A FIELD RUN SURVEY PROVIDED BY KARINS AND ASSOCIATES, DATED MARCH 11, 2019. THE TOPOGRAPHIC INFORMATION AND EXISTING CONDITIONS WERE SUPPLEMENTED WITH BALTIMORE COUNTY PHOTOGRAMMETRIC GEOGRAPHIC INFORMATION SYSTEM (GIS) TILE 015A1.

8. THE SUBJECT PROPERTY IS NOT LOCATED WITHIN THE URBAN RURAL DEMARCATION LINE.

9. A WETLAND DELINEATION OF THE SUBJECT PROPERTY, SOUTH OF COMPASS RUN, WAS PERFORMED BY GTA IN FEBRUARY AND MARCH 2019. THE LIMITS OF STREAMS AND WETLANDS WERE LOCATED BY GTA USING A GLOBAL POSITIONING SYSTEM (GPS) UNIT RATED WITH SUBMETER ACCURACY. THE WETLAND DELINEATION, SOUTH OF COMPASS RUN, WAS APPROVED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY (EPS) ON JUNE 6, 2019. A PRELIMINARY WETLAND EVALUATION (PWE) WAS PERFORMED BY GTA ON THE PORTIONS OF THE SUBJECT PROPERTY NORTH OF COMPASS RUN. THE WETLAND AND STREAM LIMITS SHOWN NORTH OF COMPASS RUN ARE APPROXIMATED AND ARE NOT MEANT FOR ENGINEERING OR CONSTRUCTION PURPOSES.

10. THE FOREST STAND DELINEATION OF THE SUBJECT PROPERTY WAS PERFORMED BY GTA IN FEBRUARY AND MARCH 2019. SPECIMEN TREES ON THE SUBJECT PROPERTY LOCATED SOUTH OF COMPASS RUN ARE SHOWN ON THIS PLAN. SPECIMEN TREES WERE LOCATED BY GTA USING A GPS UNIT RATED WITH SUBMETER ACCURACY.

11. THE FLOODPLAIN SHOWN HEREON IS FROM FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FEDERAL INSURANCE RATE MAP (FIRM) NUMBER 24005C0020F, EFFECTIVE SEPTEMBER 26, 2008.

12. THE SUBJECT PROPERTY IS NOT WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

13. ACCORDING TO MS. LORI BRYNE, ENVIRONMENTAL REVIEW COORDINATOR FOR THE MARYLAND DEPARTMENT OF NATURAL RESOURCES WILDLIFE AND HERITAGE SERVICE, IN A LETTER RECEIVED MARCH 18, 2019, "THE WILDLIFE AND HERITAGE SERVICE HAS DETERMINED THAT THERE ARE NO OFFICIAL STATE OR FEDERAL RECORDS FOR LISTED PLANT OR ANIMAL SPECIES WITHIN THE DELINEATED AREA AS SHOWN ON THE MAP PROVIDED. AS A RESULT, WE HAVE NO SPECIFIC CONCERNS REGARDING POTENTIAL IMPACTS OR RECOMMENDATIONS FOR PROTECTION MEASURES AT THIS TIME."

14. AN INQUIRY REQUESTING THE STATUS OF FEDERALLY-LISTED THREATENED OR ENDANGERED SPECIES PRESENCE ON THE SUBJECT PROPERTY WAS SENT TO THE UNITED STATES FISH AND WILD LIFE SERVICE (USFWS) ON MARCH 3, 2019. THE INQUIRY INCLUDED AN OFFICIAL SPECIES LIST GENERATED FROM THE USFWS' INFORMATION FOR PLANNING AND CONSULTATION (IPAC) ONLINE DATABASE. A RESPONSE LETTER FROM THE USFWS, DATED APRIL 10, 2019, "THIS PROJECT AS PROPOSED IS NOT LIKELY TO ADVERSELY AFFECT THE ENDANGERED, THREATENED, OR CANDIDATE SPECIES ON YOUR IPAC SPECIES LIST BECAUSE WHILE THE PROJECT IS WITHIN THE RANGE OF THE SPECIES, IT IS UNLIKELY THAT THE SPECIES WOULD OCCUR WITHIN THE PROJECT AREA THAT WAS SUBMITTED. THEREFORE, NO BIOLOGICAL ASSESSMENT OR FURTHER SECTION 7 CONSULTATION WITH THE U.S. FISH AND WILDLIFE SERVICE IS REQUIRED."

15. ACCORDING TO TERI RISING, BALTIMORE COUNTY HISTORIC PLANNER, IN AN ELECTRONIC MAIL RESPONSE DATED MARCH 7, 2019 "THERE ARE NO DESIGNATED BALTIMORE COUNTY LANDMARK PROPERTIES ON THE SUBJECT PARCEL. IT IS NOT PART OF A DESIGNATED BALTIMORE COUNTY HISTORIC DISTRICT."

16. THE SUBJECT PROPERTY DRAINS TOWARDS COMPASS RUN, WHICH CONTRIBUTES TO THE PRETTYBOY RESERVOIR AND GUNPOWDER FALLS. IN THE VICINITY OF THE SUBJECT PROPERTY, UNNAMABLE TO GUNPOWDER FALLS ARE CLASSIFIED IN THE CODE OF MARYLAND REGULATIONS (COMAR) 26.08.02.08 AS DESIGNATED USE "CLASS III-P: NONTIDAL COLD WATER AND PUBLIC WATER SUPPLY."

17. THE FOREST BUFFER LIMITS SHOWN ON THIS PLAN INCLUDE ADJUSTMENTS FOR STEEP SLOPES AND/OR ERODIBLE SOILS, AND WERE PREPARED BY GTA. THE FOREST BUFFER LIMITS HAVE NOT BEEN APPROVED BY THE BALTIMORE COUNTY EPS. THE MINIMUM REQUIRED FOREST BUFFER FOR USE III-P WATERS IS THE GREATER OF 100 FEET TO THE STREAM, 25 FEET TO THE WETLANDS, AND 25 FEET TO THE 100-YEAR FLOODPLAIN.

18. THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF KIMLEY-HORN AND ASSOCIATES, INC. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND KIMLEY-HORN AND ASSOCIATES, INC. IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.

FOREST STAND SUMMARY/NARRATIVE

THE SUBJECT PROPERTY IS AN APPROXIMATELY 32.51-ACRE, FLAT TO STEEPLY SLOPED SITE, IN THE HAMPSTEAD AREA OF BALTIMORE COUNTY. THE SUBJECT PROPERTY IS LOCATED EAST OF FALLS ROAD, AND CONSISTS OF PARCELS 121 AND 144, AS SHOWN ON BALTIMORE COUNTY TAX MAP 15. THE SUBJECT PROPERTY CONSISTS PREDOMINANTLY OF OPEN, APPARENT FORMER AGRICULTURAL FIELDS, AND WOODED LAND. THE SUBJECT PROPERTY ALSO CONTAINS A SINGLE-FAMILY RESIDENCE AND DILAPIDATED ACCESSORY STRUCTURES. HEDGEROWS ARE LOCATED WITHIN THE SUBJECT PROPERTY ALONG FALLS ROAD, BETWEEN THE TWO PARCELS THAT COMPRISE THE SUBJECT PROPERTY, AND ALONG AN INTERMITTENT STREAM THAT BISECTS THE SUBJECT PROPERTY. AREAS OF SCRUB-SHRUB VEGETATION AND INDIVIDUAL TREES ARE LOCATED AROUND THE DILAPIDATED STRUCTURES AND WITHIN THE OPEN FIELD PORTIONS OF THE SUBJECT PROPERTY. THE FOREST ON-SITE IS PREDOMINANTLY LOCATED ON THE NORTHERN PORTION OF THE SUBJECT PROPERTY ALONG COMPASS RUN AND ALONG THE EASTERN SUBJECT PROPERTY BOUNDARY. THE FOREST WITHIN THE SUBJECT PROPERTY IS COMPRISED OF TWO FOREST STANDS, TOTALING APPROXIMATELY 14.2 ACRES. THE SUBJECT PROPERTY CONTAINS THIRTY SPECIMEN TREES. A SUMMARY OF THE TWO STANDS IS PROVIDED BELOW.

FOREST STAND 1:
STAND 1 CONSISTS OF APPROXIMATELY 6.7 ACRES AND GROWS ON THE NORTHWESTERN PORTION OF THE SUBJECT PROPERTY. STAND 1 IS CONTIGUOUS WITH OFF-SITE FOREST TO THE NORTHEAST OF THE SUBJECT PROPERTY. THE STAND CONSISTS OF A MID-SUCCESSIONAL FOREST DOMINATED BY *ACER RUBRUM* AND *JUGLANS NIGRA*. DOMINANT TREES WITHIN THE STAND EXHIBIT AN AVERAGE DIAMETER AT BREAST HEIGHT (DBH) OF BETWEEN 12" AND 18.9". FIVE SPECIMEN TREES WERE OBSERVED WITHIN THE STAND. COMPASS RUN AND AN INTERMITTENT STREAM CROSS THE STAND, AND THREE NONTIDAL WETLANDS ARE LOCATED WITHIN THE STAND. THE MAJORITY OF THE STAND IS LOCATED WITHIN THE FEMA 100-YEAR FLOODPLAIN. THE STAND IS BORDERED TO THE SOUTH BY APPARENT, FORMER AGRICULTURAL FIELDS. FRAGMENTATION BY COMPASS RUN AND WINDTHROW HAS ALLOWED FOR LIGHT INFILTRATION, WHICH HAS SUPPORTED UNDERSTORY AND HERBACEOUS GROWTH WITHIN THE STAND. FRAGMENTATION OF THE FOREST HAS ALSO RESULTED IN EDGE HABITAT ALONG PORTIONS OF THE STAND. THE UNDERSTORY WITHIN THE STAND IS DOMINATED BY YOUNG *A. RUBRUM*, *ILEX OPACA*, *PRUNUS SEROTINA*, AND *LINDERA BENZOIN*. THE UNDERSTORY COVERAGE WITHIN STAND 1 IS DENSER THAN OTHER AREAS OF FOREST WITHIN THE SUBJECT PROPERTY. WOODY VINE SPECIES WITHIN THE STAND INCLUDE *HEDERA HELIX*, *LONICERA JAPONICA*, *TOXICODENDRON RADICANS*, AND *CELASTRUS ORBICULATUS*. GTA'S FOREST STAND DELINEATION FIELD EVALUATION WAS PERFORMED IN FEBRUARY AND MARCH 2019, OUTSIDE OF THE GROWING SEASON. HOWEVER, GTA NOTED THE PRESENCE OF HERBACEOUS VEGETATION, WHICH WAS DOMINATED BY EXOTIC INVASIVE SPECIES INCLUDING *MICROSTEGIUM VIMINEUM* AND *POLYGONUM PERFOLIATUM*. THE MAJORITY OF THE EXOTIC AND INVASIVE SPECIES OBSERVED IN THE CANOPY AND UNDERSTORY LAYERS CONSISTED OF WOODY VINE SPECIES. SEVERAL STANDING SNAGS WERE OBSERVED WITHIN THE STAND, AND THE STAND GENERALLY EXHIBITS GOOD FOREST STRUCTURE BUT LACKED SPECIES DIVERSITY. THE STAND HAS A FOREST STRUCTURE RATING OF 14 OUT OF 27, INDICATING GOOD FOREST STRUCTURE. EVIDENCE OF DISRUPTION/DISTURBANCE OR MANAGEMENT WAS NOT APPARENT WITHIN THE STAND.

FOREST STAND 2:

STAND 2 CONSISTS OF APPROXIMATELY 7.5 ACRES AND GROWS ON THE WESTERN AND NORTHERN PORTIONS OF THE SUBJECT PROPERTY. STAND 2 IS CONTIGUOUS WITH OFF-SITE FOREST TO THE EAST AND NORTHWEST OF THE SUBJECT PROPERTY. HOWEVER, THE PORTIONS OF THE STAND THAT GROW ALONG THE EASTERN SUBJECT PROPERTY BOUNDARY AND THE CONTIGUOUS OFF-SITE FOREST TO THE EAST OF THIS PORTION OF THE STAND, IS NARROW AND LIMITED BY EXISTING MAINTAINED FIELDS TO THE EAST AND WEST. THE STAND IS GENERALLY COMPRISED OF A MID-SUCCESSIONAL FOREST DOMINATED BY *A. RUBRUM*, *L. STYRACIFLUA*, AND *QUERCUS SPP.* DOMINANT TREES WITHIN THE STAND EXHIBIT AN AVERAGE DIAMETER AT DBH OF BETWEEN 12" AND 18.9" OR GREATER. TWENTY-ONE SPECIMEN TREES WERE OBSERVED WITHIN THE STAND. COMPASS RUN CROSSES THE STAND AND SEVERAL NONTIDAL WETLANDS ARE LOCATED WITHIN THE NORTHERN PORTION OF THE STAND. PORTIONS OF THE STAND ARE LOCATED WITHIN THE FEMA 100-YEAR FLOODPLAIN. THE STAND IS BORDERED TO THE NORTH, SOUTH, AND EAST BY OPEN FIELDS. RELATIVE TO STAND 1, STAND 2 EXHIBITS LESS FRAGMENTATION AND LESS UNDERSTORY AND HERBACEOUS GROWTH. EDGE HABITAT IS LOCATED ALONG THE EASTERN AND WESTERN SIDES OF THE PORTIONS OF THE STAND LOCATED ALONG THE EASTERN SUBJECT PROPERTY BOUNDARY. THE UNDERSTORY WITHIN THE EASTERN PORTION OF THE STAND IS SPARSE. THE NORTHERN PORTIONS OF THE STAND NEAR COMPASS RUN ARE RELATIVELY DENSER AND DOMINATED BY YOUNG *A. RUBRUM*, *I. OPACA*, *P. SEROTINA*, AND *QUERCUS RUBRA*. WOODY VINE SPECIES WITHIN THE STAND INCLUDE *LONICERA JAPONICA*, *T. RADICANS*, AND *C. ORBICULATUS*. GTA'S FOREST STAND DELINEATION FIELD EVALUATION WAS PERFORMED IN FEBRUARY AND MARCH 2019, OUTSIDE OF THE GROWING SEASON. HOWEVER, GTA DID NOT OBSERVE EVIDENCE OF PREVIOUS HERBACEOUS VEGETATION, INDICATING THAT THE FOREST EXHIBITS SPARSE HERBACEOUS COVERAGE. SIMILAR TO STAND 1, THE MAJORITY OF THE EXOTIC AND INVASIVE SPECIES OBSERVED IN THE CANOPY AND UNDERSTORY LAYERS CONSISTED OF WOODY VINE SPECIES. THE STAND GENERALLY EXHIBITS GOOD FOREST STRUCTURE AND GOOD SPECIES DIVERSITY. THE STAND HAS A FOREST STRUCTURE RATING OF 21 OUT OF 27, INDICATING PRIORITY FOREST STRUCTURE. EVIDENCE OF DISRUPTION/DISTURBANCE OR MANAGEMENT WAS NOT APPARENT WITHIN THE STAND.

PRIORITY FOREST RETENTION RATING:

FOREST STAND #	FOREST STRUCTURE ANALYSIS VALUE	PRIORITY 1 RETENTION AREAS
1	14 (GOOD)	FOREST BUFFER AREAS SLOPES > 25% HYDRIC SOILS (GhB & HbA) SLOPES > 20% WITH SOILS K VALUE > 0.32
2	21 (PRIORITY)	FOREST BUFFER AREAS SLOPES > 25% HYDRIC SOILS (GhB & HbA) SLOPES > 20% WITH SOILS K VALUE > 0.32 FOREST WITH HIGH STRUCTURAL DIVERSITY (ENTIRE STAND)

VICINITY MAP
SCALE: 1" = 2,000'

SPECIMEN TREE LIST

NUMBER	SCIENTIFIC NAME	COMMON NAME	DBH (INCHES)	CONDITION	COMMENT
ST-21	*QUERCUS ALBA*	WHITE OAK	38	GOOD	
ST-22	*QUERCUS ALBA*	WHITE OAK	36	GOOD	
ST-23	*QUERCUS RUBRA*	NORTHERN RED OAK	33	GOOD	
ST-24	*ACER RUBRUM*	RED MAPLE	37	GOOD	
ST-25	*ACER RUBRUM*	RED MAPLE	31	GOOD	
ST-26	*ACER RUBRUM*	RED MAPLE	31	GOOD	
ST-27	*ACER RUBRUM*	RED MAPLE	35	GOOD	
ST-28	*JUGLANS NIGRA*	BLACK WALNUT	31	GOOD	
ST-29	*QUERCUS ALBA*	WHITE OAK	34	GOOD	
ST-30	*JUGLANS NIGRA*	BLACK WALNUT	38	GOOD	
ST-31	*QUERCUS ALBA*	WHITE OAK	34	GOOD	
ST-32	*QUERCUS ALBA*	WHITE OAK	34	GOOD	
ST-33	*QUERCUS VELUTINA*	BLACK OAK	33	GOOD	
ST-34	*QUERCUS VELUTINA*	BLACK OAK	33	GOOD	
ST-35	*QUERCUS VELUTINA*	BLACK OAK	33	GOOD	
ST-36	*QUERCUS RUBRA*	NORTHERN RED OAK	69	FAIR	TRIPLE TRUNK, ONE-THIRD DEAD
ST-38	*QUERCUS RUBRA*	NORTHERN RED OAK	38	GOOD	
ST-39	*QUERCUS MONTANA*	CHESTNUT OAK	32	GOOD	
ST-40	*QUERCUS PALUSTRIS*	PIN OAK	30	GOOD	
ST-41	*QUERCUS RUBRA*	NORTHERN RED OAK	32	GOOD	
ST-42	*QUERCUS RUBRA*	NORTHERN RED OAK	54	FAIR	ENTANGLED WITH VINES, HALF DEAD
ST-43	*QUERCUS PALUSTRIS*	PIN OAK	32	GOOD	
ST-44	*QUERCUS RUBRA*	NORTHERN RED OAK	35	GOOD	
ST-45	*QUERCUS RUBRA*	NORTHERN RED OAK	35	GOOD	
ST-46	*QUERCUS RUBRA*	NORTHERN RED OAK	47	POOR	DEAD LIMBS, TRUNK DECAY
ST-47	*QUERCUS RUBRA*	NORTHERN RED OAK	43	FAIR	ENTANGLED WITH VINES
ST-48	*ACER PLATANOIDES*	NORWAY MAPLE	29	POOR	TRUNK DECAY, HALF DEAD
ST-49	*PLATANUS OCCIDENTALIS*	AMERICAN SYCAMORE	36	GOOD	
ST-50	*ACER RUBRUM*	RED MAPLE	30	FAIR	TRUNK DECAY, HALF DEAD
ST-51	*ACER RUBRUM*	RED MAPLE	38	GOOD	

SPECIAL EXCEPTION CASE NUMBER 19-183

GEO-TECHNOLOGY ASSOCIATES, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
410-515-9446
FAX: 410-515-4895
WWW.GTAENG.COM
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FOREST STAND DELINEATION PLAN

FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

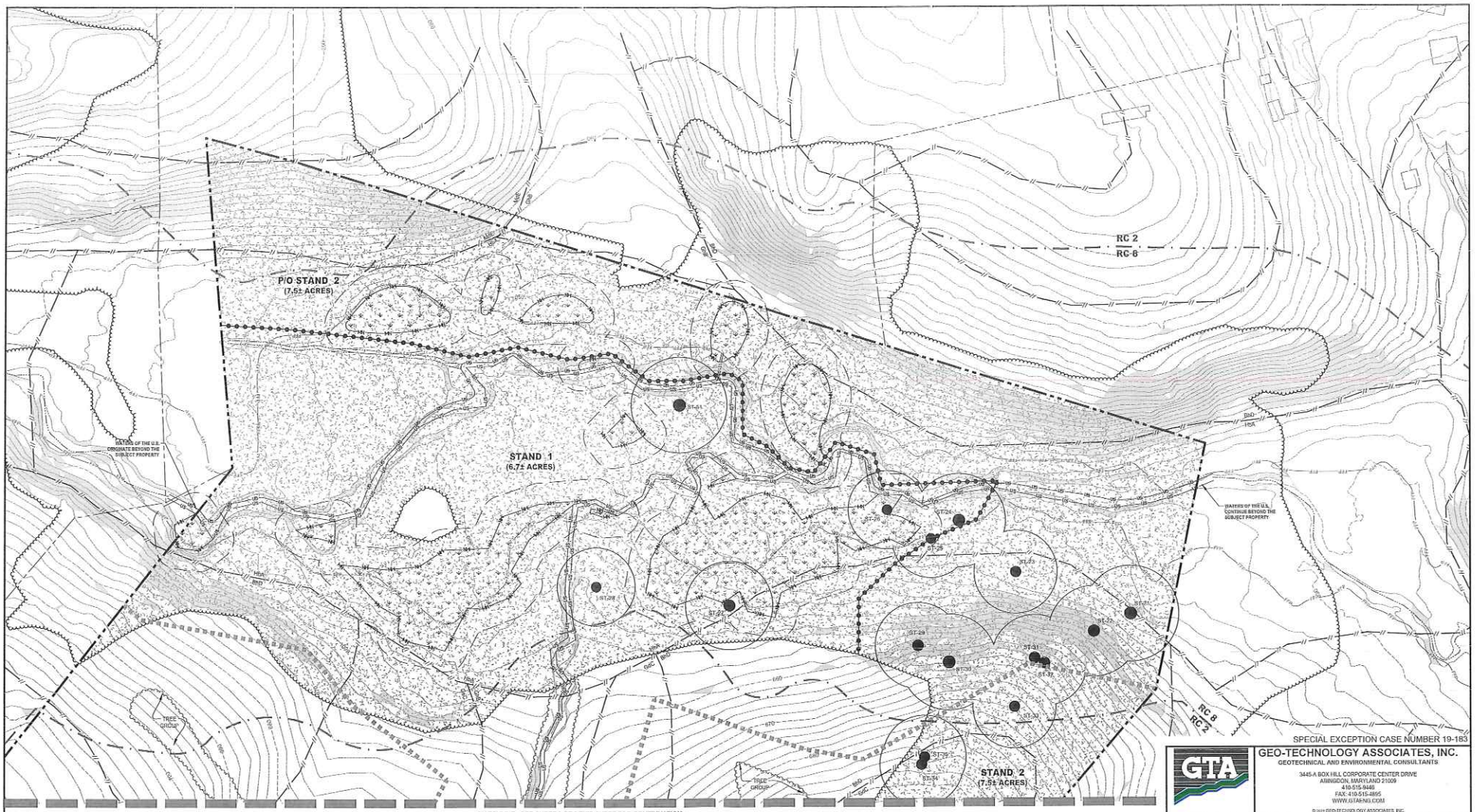
REVISIONS:
JUNE 7, 2019

"MORE"

Maxwell D. Potember — JUNE 7, 2019
MAXWELL D. POTEMBER — DATE
DEPARTMENT OF NATURAL RESOURCES
QUALIFIED PROFESSIONAL
PER COMAR 08.19.06.01

JOB NO:	31190299
SCALE:	N/A
DATE:	APRIL 10, 2019
DRAWN BY:	MDP
DESIGN BY:	MDP
REVIEW BY:	FSG/TAS
SHEET:	1 OF 3

Petitioner
CBA Exhibit
5
5



LEGEND:

- SUBJECT PROPERTY
- EX. PROPERTY BOUNDARY
- EX. ZONING BOUNDARY
- EX. INTERMI CONTOUR
- EX. INDEX CONTOUR
- EX. PAVING
- EX. SOIL BOUNDARY AND MAP UNITS
- EX. BUILDING
- EX. HEDGEROW, SCRUB/SHRUB, GROUPS OF TREES <10,000 SQUARE FEET
- EX. FORESTED AREAS
- APPROXIMATE FOREST STAND BOUNDARY
- EX. 100-YEAR FEMA FLOODPLAIN
- CALCULATED FOREST BUFFER
- PERENNIAL OR INTERMITTENT STREAM (DELINEATED BY GTA) APPROXIMATE LOCATION OF STREAM (FIELD APPROXIMATED OR COUNTY GIS)
- EX. NONTIDAL WETLAND (DELINEATED BY GTA)
- APPROXIMATE LOCATION OF NONTIDAL WETLAND (NORTH OF COMPASS RUN)
- 25-FOOT WETLAND BUFFER
- SLOPES > 25%
- EX. SPECIMEN TREES

SOILS CHART

SYMBOL	NAME/DESCRIPTION	HYDRIC SOIL	HYDRIC COMPONENT	PERCENTAGE OF MAPPING UNIT	POSITION IN LANDSCAPE	SOIL ERODIBILITY SCORE
BhD	BRINKLOW CHANNERY LOAM, 15 TO 25 PERCENT SLOPES	-	-	-	-	HIGH
GdA	GLENELG LOAM, 0 TO 3 PERCENT SLOPES	-	-	-	-	MEDIUM
GdB	GLENELG LOAM, 3 TO 8 PERCENT SLOPES	-	-	-	-	MEDIUM
GdC	GLENELG LOAM, 8 TO 15 PERCENT SLOPES	-	-	-	-	MEDIUM
GeC	GLENELG CHANNERY LOAM, 8 TO 15 PERCENT SLOPES	-	-	-	-	HIGH
GhB	GLENVILLE SILT LOAM, 3 TO 8 PERCENT SLOPES	YES	BAILE	10	SWALES, DRAINAGEWAYS	HIGH
HbA	HATBORO SILT LOAMS, 0 TO 3 PERCENT SLOPES	YES	HATBORO	85	FLOOD PLAINS	HIGH
MdE	MANOR-BRINKLOW COMPLEX, 25 TO 45 PERCENT SLOPES, VERY ROCKY	NO	-	-	-	HIGH

1. UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCE CONSERVATION SERVICE. GRIDDED SOIL SURVEY GEOGRAPHIC (gSSURGO) DATABASE FOR MARYLAND, DATED 2017. ACCESSED ON FEBRUARY 23, 2019.
2. HYDRIC SOILS INFORMATION AVAILABLE FROM THE STATE SOIL DATA ACCESS HYDRIC SOILS LIST, AT <HTTPS://WWW.NRCS.USDA.GOV/WPS/PORTAL/NRCS/DETAIL/MD/SOILS/?CID=NRCSEPRD1316619>. ACCESSED FEBRUARY 25, 2019.

NORTH

0' 25' 50' 100'

SCALE: 1"=50'

I HEREBY CERTIFY THAT THE FOREST STAND DELINEATION PLAN WAS PREPARED BY ME OR UNDER MY SUPERVISION AND THAT I AM A DULY QUALIFIED PROFESSIONAL PER COMAR 08.19.06.01

MARK P. PENDREL
SIGNATURE

JUNE 7, 2019
DATE

MARKELL D. POTEMKIN
DEPARTMENT OF NATURAL RESOURCES
QUALIFIED PROFESSIONAL

REVISIONS:

JUNE 7, 2019 — REVISED SPECIMEN TREE TABLE AND FOREST BUFFER PER BALTIMORE COUNTY EPS ENVIRONMENTAL IMPACT REVIEW COMMENTS.

SPECIAL EXCEPTION CASE NUMBER 19-183

GEO-TECHNOLOGY ASSOCIATES, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
410-515-9480
FAX: 410-515-4895
WWW.GTAENG.COM

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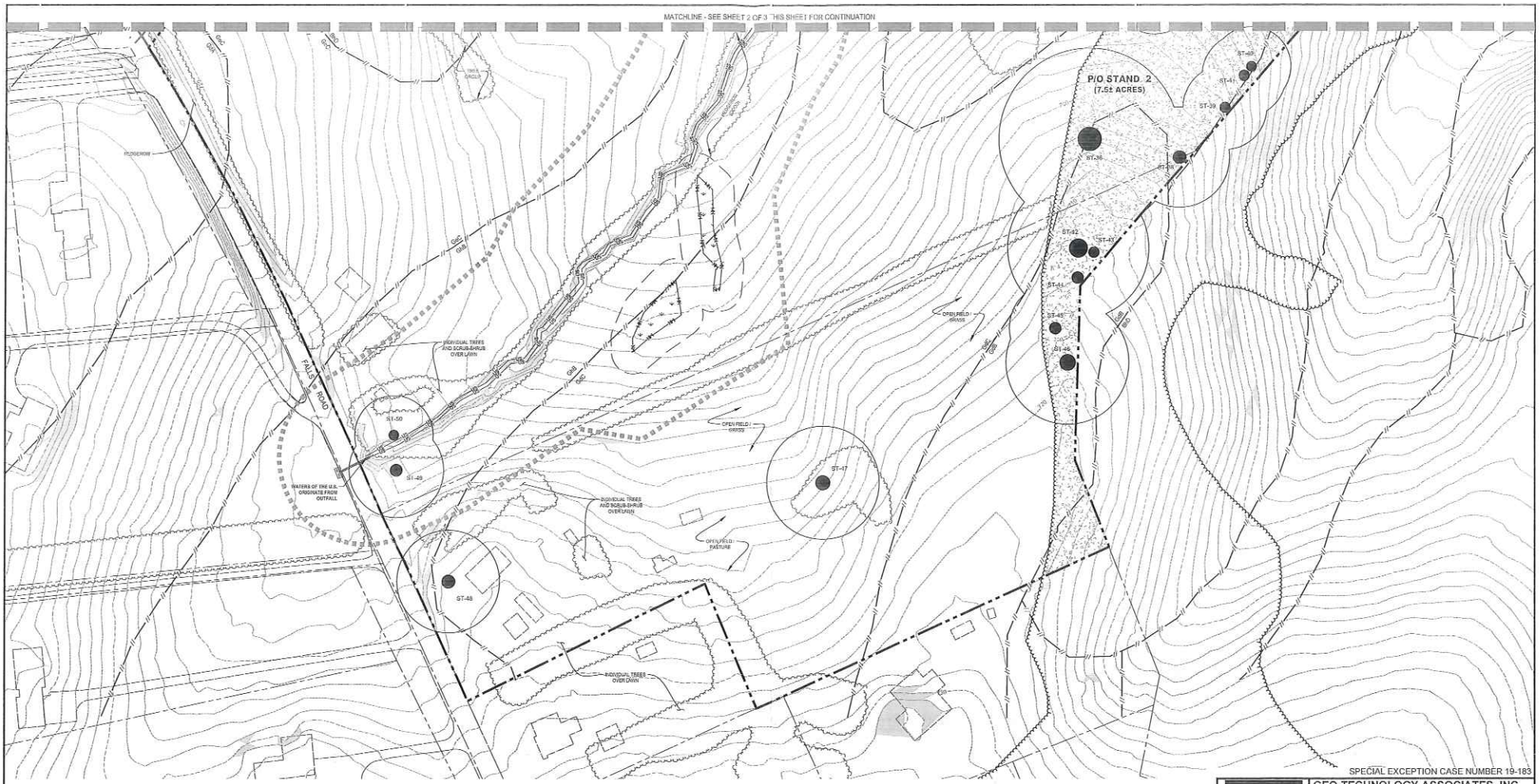
FOREST STAND DELINEATION PLAN

FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO:	31150059
SCALE:	1" = 50'
DATE:	APRIL 10, 2019
DRAWN BY:	MDP
DESIGN BY:	MDP
REVIEW BY:	MAJ/TAS
SHEET:	2 OF 3



SPECIAL EXCEPTION CASE NUMBER 19-183

LEGEND:

- SUBJECT PROPERTY
- EX. PROPERTY BOUNDARY
- EX. ZONING BOUNDARY
- EX. INTERIM CONTOUR
- EX. INDEX CONTOUR
- EX. PAVING
- EX. SOIL BOUNDARY AND MAP UNITS (GeC, GhB)
- EX. BUILDING
- EX. HEDGEROW, SCRUB/SHRUB, GROUPS OF TREES <10,000 SQUARE FEET
- EX. FORESTED AREAS
- APPROXIMATE FOREST STAND BOUNDARY
- EX. 100-YEAR FEMA FLOODPLAIN
- CALCULATED FOREST BUFFER
- PERENNIAL OR INTERMITTENT STREAM (DELINEATED BY GTA)
- APPROXIMATE LOCATION OF STREAM (FIELD APPROXIMATED OR COUNTY GIS)
- EX. NONTIDAL WETLAND (DELINEATED BY GTA)
- APPROXIMATE LOCATION OF NONTIDAL WETLAND (NORTH OF COMPASS RUN)
- 25-FOOT WETLAND BUFFER
- SLOPES ≥ 25%
- ST-22 — EX. SPECIMEN TREES

SCALE: 1"=50'

GEO-TECHNOLOGY ASSOCIATES, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
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FOREST STAND DELINEATION PLAN

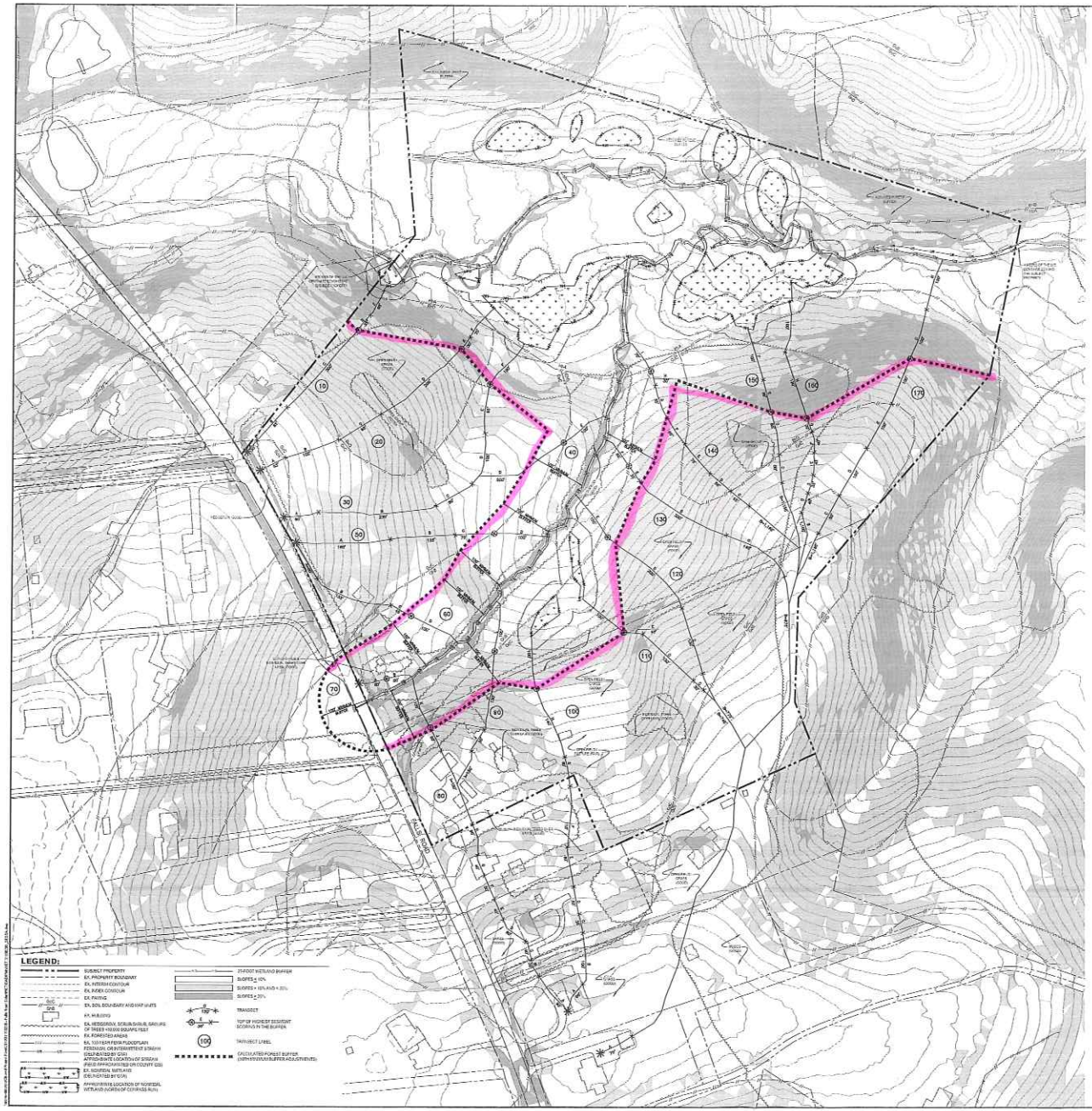
FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

MAXWELL D. POTEMBER
DEPARTMENT OF NATURAL RESOURCES
QUALIFIED PROFESSIONAL
PER COMAR 08.19.05.01
JUNE 7, 2019
DATE

REVISIONS:
JUNE 7, 2019 — REVISED SPECIMEN TREE TABLE AND FOREST BUFFER PER BALTIMORE COUNTY EPS ENVIRONMENTAL IMPACT REVIEW COMMENTS.

JOB NO:	31190299
SCALE:	1" = 50'
DATE:	APRIL 10, 2019
DRAWN BY:	MDP
DESIGN BY:	MDP
REVIEW BY:	MAJ/TAS
SHEET:	3 OF 3



VICINITY MAP
SCALE: 1" = 2,000'

GENERAL NOTES

1. PROPERTY OWNER: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY INC
2. APPLICANT DEVELOPER: ROUSE FACTOR COMPANY
3. ENGINEER: CENTURY ENGINEERING, INC.
4. PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)
5. PROPERTY INFORMATION:
   A. TAX ACCOUNT #'S:
   B. PARCEL(S):
   C. TAX MAP:
   D. DEED REFERENCE(S):
   E. COMPLAINTAD DISTRICT:
   F. ELECTION DISTRICT:
   G. EXISTING ZONING:
   H. EXISTING LAND USE:
   I. PROPOSED LAND USE:
   J. WATERSHED/SUBWATERSHED:
6. SUBJECT PROPERTY ACREAGE: 29.84 ACRES
7. THE TOPOGRAPHIC AND BOUNDARY INFORMATION SHOWN HEREON WAS BASED ON A FIELD RUN SURVEY PROVIDED BY AARDUS (AIR ASSOCIATES, DATED MARCH 11, 2015. THIS SUPPORTING INFORMATION AND EXISTING CONDITIONS WERE SUPPLEMENTED FROM BALTIMORE COUNTY PHOTOGRAMMETRIC GEOGRAPHIC INFORMATION SYSTEM (GIS) FILE DATA.
8. A FIELD RUN DELINEATION OF THE SUBJECT PROPERTY, SOUTHEAST CONTRACT RUN, WAS PERFORMED BY GTA IN FEBRUARY AND MARCH 2015. THE LIMITS OF STREAMS AND THE FLOW PATHS WERE LOCATED BY GTA USING A GLOBAL POSITIONING SYSTEM UNIT PAIRED WITH SUBMETER ACCURACY. THE WETLAND DELINEATION SOUTH OF CONTRACT RUN, WAS APPROVED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY (DEPS) ON JUNE 6, 2013. A PRELIMINARY, NON-TIDAL WETLAND DELINEATION (JVS) WAS PERFORMED BY GTA ON THE PORTIONS OF THE SUBJECT PROPERTY NORTH OF CONTRACT RUN. THE WETLAND AND STREAM LIMITS SHOWN NORTH OF CONTRACT RUN ARE APPROXIMATED AND WILL NOT BE FLAGGED BY DEPS FOR CONSTRUCTION PURPOSES.
9. THE FOREST STAND DELINEATION OF THE SUBJECT PROPERTY WAS PERFORMED BY GTA IN FEBRUARY AND MARCH 2015.
10. THE FLOODPLAIN LIMITS HEREON ARE FROM FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FEDERAL INSURANCE RATE MAP (FIRM) NUMBER 24005C0095F, EFFECTIVE SEPTEMBER 29, 2010.
11. THE SUBJECT PROPERTY IS NOT WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
12. THE SUBJECT PROPERTY DRAINS TOWARDS CONTRACT RUN, WHICH CONTRIBUTES TO THE PRETTYBOY RESERVOIR WATERSHED. FALLS, IN THE VICINITY OF THE SUBJECT PROPERTY, TRIBUTARIES TO CONTRACT RUN ARE CLASSIFIED BY THE CODE OF MARYLAND REGULATIONS (COMAR) 26.08.02.08 AS DESIGNATED USE 1 CLASS I&P - NATURAL COLD WATER AND PUBLIC WATER SUPPLY.
13. THE FOREST BUFFER LIMITS SHOWN ON THIS PLAN INCLUDE ADJUSTMENTS FOR STEEP SLOPES AND ERODIBLE SOILS, AND HAVE BEEN REVIEWED BY GTA. THE FOREST BUFFER LIMITS WERE LAST REVIEWED BY THE BALTIMORE COUNTY DEPS. THE MINIMUM REQUIRED FOREST BUFFER OR USE (MP WIDTH) IS THE GREATER OF 100 FEET TO THE STREAM, 25 FEET TO THE WETLANDS, AND 25 FEET TO THE 100-YEAR FLOODPLAIN.
14. BALTIMORE COUNTY STANDARD FOREST BUFFER NOTES:
   A. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION, OR DISTURBANCE OF VEGETATION IN THE FOREST BUFFER EASEMENT EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPS.
   B. THE FOREST BUFFER SHOWN HEREON IS DIFFICULT TO MONITOR IN THE FIELD. IT SHOULD THEREFORE BE SURVEYED AND MONUMENTED AS SHOWN ON THE FINAL PLANS AND RECORDED IN THE LAND RECORDS OF BALTIMORE COUNTY AND IS NOT TO BE DISTURBED WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND HALEY, HORN AND ASSOCIATES, INC. IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.
15. THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF KIMLEY-HORN AND ASSOCIATES, INC. ANY REPRODUCTION OF THIS PLAN IN ANY OTHER MEDIUM WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND HALEY, HORN AND ASSOCIATES, INC. IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.

SOILS CHART

SYMBOL[1]	NAME/DESCRIPTION[1]	HYDRIC SOIL[2]	HYDRIC COMPONENT[3]	PERCENTAGE OF MAPPING UNIT[3]	POSITION IN LANDSCAPE[3]	SOIL ERODIBILITY SCORE[3]
BnD	BROHLOW CHANNERY LOAM, 15 TO 25 PERCENT SLOPES	-	-	-	-	HIGH
GuA	GLENELG LOAM, 0 TO 3 PERCENT SLOPES	-	-	-	-	MEDIUM
GuB	GLENELG LOAM, 3 TO 8 PERCENT SLOPES	-	-	-	-	MEDIUM
GuC	GLENELG LOAM, 8 TO 15 PERCENT SLOPES	-	-	-	-	MEDIUM
GuC	GLENELG CHANNERY LOAM, 8 TO 15 PERCENT SLOPES	-	-	-	-	HIGH
GuE	GLENELG STONY LOAM, 3 TO 8 PERCENT SLOPES	YES	ALLE	10	SIDESLOPES, DRAINAGEWAYS	HIGH
HkA	HATBORO SILT LOAM, 0 TO 3 PERCENT SLOPES	YES	HATBORO	85	FLOOD PLAINS	HIGH
WcE	WAKONICHI SILT LOAM, 25 TO 15 PERCENT SLOPES, VERY ROCKY	NO	-	-	-	HIGH

1. SOILS DESCRIPTIONS AND NAMES ARE FROM THE SOIL SURVEY OF BALTIMORE COUNTY, MARYLAND, UNITED STATES DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE, AUGUST 1976, AS REVISED.
2. HYDRIC SOILS ARE SOILS THAT ARE SATURATED, FLOODED, OR PONDED LONG ENOUGH DURING THE GROWING SEASON TO DEVELOP ANAEROBIC CONDITIONS THAT FAVOR THE GROWTH AND REGENERATION OF HYDROPHYTIC VEGETATION.
3. SOIL INFORMATION IS OBTAINED FROM SOILS DATA BASE FOR BALTIMORE COUNTY, MARYLAND, DEPARTMENT OF AGRICULTURE, SOIL CONSERVATION SERVICE, AUGUST 1976. THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY IS RESPONSIBLE FOR MAKING FINAL DETERMINATIONS ON THE LOCATION OF STEEP SLOPES AND ERODIBLE SOILS BASED ON ON-SITE INVESTIGATIONS.

LEGEND:

- SUBJECT PROPERTY
- EX. PROPERTY BOUNDARY
- EX. INTERMEDIATE CONTOUR
- EX. INDEX CONTOUR
- EX. PAVING
- EX. SOIL BOUNDARY AND MAP UNITS
- EX. BUILDING
- EX. HARDWOOD, SCRUB/SHRUB, GROUPS OF TREES >10,000 SQUARE FEET
- EX. FORESTED AREAS
- EX. 100-YEAR FEMA FLOODPLAIN
- PERENNIAL OR INTERMITTENT STREAM (DELINEATED BY GTA)
- APPROXIMATE LOCATION OF STREAM (FIELD APPROXIMATED OR COUNTY GIS)
- EX. WETLAND, SWITLAND (DELINEATED BY GTA)
- APPROXIMATE LOCATION OF NON-TIDAL WETLANDS (CENTER OF CONTRACT RUN)
- 25-FOOT WETLAND BUFFER
- SLOPES ≥ 15%
- SLOPES ≥ 25% AND ≤ 50%
- SLOPES ≥ 50%
- TRANSECT
- TOP OF HIGHEST SEVERITY SCORING IN THE BUFFER
- TRANSECT LABEL
- CALCULATED FOREST BUFFER (100% EXISTING BUFFER AS A CONSTRAINT)

SCALE: 1"=50'

SPECIAL EXCEPTION CASE NUMBER 19-183

GEO-TECHNOLOGY ASSOCIATES, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
410.515.9426
FAX: 410.515.9256
WWW.GTAENG.COM

STEEP SLOPES AND ERODIBLE SOILS ANALYSIS

FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

REVISIONS:	JOB NO.	15170.00
JUNE 7, 2019 - SLOPES AND FOREST BUFFER REVISED TO ADDRESS SPECIAL EXCEPTION ISSUES	SCALE	1" = 50'
	DATE	AUGUST, 2015
	DESIGNED BY	MCP
	DRAWN BY	MCP
	REVIEWED BY	TJC/PMC
	SHEET	1 OF 1

Petitioner
CBA Exhibit
6

STEEP SLOPES & ERODIBLE SOILS ANALYSIS WORKSHEET
GEO-TECHNOLOGY ASSOCIATES, INC.

PROJECT NAME: FALLS ROAD SOLAR **DATE: JUNE 7, 2019**

BY: M. POTEMBER

SEGMENT LABEL	SLOPE (%)	Score	SLOPE LENGTH (in feet)	Score	K FACTOR	Score	LAND COVER	Score	SEDIMENT DELIVERY LENGTH (in feet)	Score	TOTAL SCORE	
10A	3	0	30	0	MED	5	GRASS-G	0	380	0	5	
B	7	0	110	5	HIGH	10	GRASS-G	0	300	0	15	
C	16	5	310	10	HIGH	10	WOODS	0	100	5	30	
D	15	5	345	10	HIGH	10	WOODS	0	65	10	35	*
E	35	10	410	10	HIGH	10	BARE	10	0	10	50	*
20A	1	0	55	5	MED	5	GRASS-G	0	500	0	10	
B	8	0	160	5	HIGH	10	GRASS-G	0	395	0	15	
C	13	5	255	10	HIGH	10	GRASS-G	0	300	0	25	
D	15	5	455	10	HIGH	10	WOODS	0	100	5	30	
E	21	10	485	10	HIGH	10	WOODS	0	70	10	40	*
F	11	5	555	10	HIGH	10	BARE	10	0	10	45	*
30A	8	0	60	5	HIGH	10	GRASS-G	0	610	0	15	
B	12	5	290	10	HIGH	10	GRASS-G	0	380	0	25	
C	7	0	370	10	HIGH	10	GRASS-G	0	300	0	20	
D	6	0	475	10	HIGH	10	GRASS-G	0	195	5	25	
E	11	5	570	10	HIGH	10	WOODS	0	100	5	30	
F	13	5	670	10	HIGH	10	BARE	10	0	10	45	*
40A	8	0	60	5	HIGH	10	GRASS-G	0	610	0	15	
B	12	5	290	10	HIGH	10	GRASS-G	0	380	0	25	
C	7	0	370	10	HIGH	10	GRASS-G	0	300	0	20	
D	5	0	570	10	HIGH	10	GRASS-G	0	100	5	25	
E	12	5	670	10	HIGH	10	BARE	10	0	10	45	*
50A	11	5	180	5	HIGH	10	GRASS-G	0	300	0	20	
B	11	5	305	10	HIGH	10	GRASS-G	0	175	5	30	
C	9	0	380	10	HIGH	10	GRASS-G	0	100	5	25	
D	8	0	480	10	HIGH	10	BARE	10	0	10	40	*
60A	1	0	80	5	HIGH	10	GRASS-G	0	300	0	15	
B	12	5	235	10	HIGH	10	GRASS-G	0	145	5	30	
C	9	0	280	10	HIGH	10	GRASS-G	0	100	5	25	
D	8	0	380	10	HIGH	10	BARE	10	0	10	40	
70A	11	5	50	0	HIGH	10	SCRUB	0	50	10	25	
B	12	5	100	5	HIGH	10	BARE	10	0	10	40	*

STEEP SLOPES & ERODIBLE SOILS ANALYSIS WORKSHEET
GEO-TECHNOLOGY ASSOCIATES, INC.

PROJECT NAME: FALLS ROAD SOLAR DATE: JUNE 7, 2019

BY: M. POTEMBER

SEGMENT LABEL	SLOPE (%)	Score	SLOPE LENGTH (in feet)	Score	K FACTOR	Score	LAND COVER	Score	SEDIMENT DELIVERY LENGTH (in feet)	Score	TOTAL SCORE	
80A	5	0	90	5	MED	5	SCRUB	0	625	0	10	
B	10	0	125	5	MED	5	MACADAM	10	590	0	20	
C	4	0	165	5	MED	5	GRASS-G	0	550	0	10	
D	4	0	225	10	MED	5	GRASS-G	0	490	0	15	
E	14	5	265	10	MED	5	GRASS-G	0	450	0	20	
F	9	0	315	10	MED	5	MACADAM	10	400	0	25	
G	4	0	355	10	MED	5	GRASS-G	0	360	0	15	
H	8	0	415	10	MED	5	GRASS-G	0	300	0	15	
I	4	0	565	10	MED	5	SCRUB	0	150	5	20	
J	11	5	615	10	MED	5	GRASS-G	0	100	5	25	
K	19	5	715	10	HIGH	10	BARE	10	0	10	45	*
90A	5	0	90	5	MED	5	SCRUB	0	775	0	10	
B	10	0	125	5	MED	5	MACADAM	10	740	0	20	
C	4	0	165	5	MED	5	GRASS-G	0	700	0	10	
D	4	0	225	10	MED	5	GRASS-G	0	640	0	15	
E	14	5	265	10	MED	5	GRASS-G	0	600	0	20	
F	9	0	315	10	MED	5	MACADAM	10	550	0	25	
G	4	0	355	10	MED	5	GRASS-G	0	510	0	15	
H	8	0	415	10	MED	5	GRASS-G	0	450	0	15	
I	5	0	565	10	MED	5	GRASS-G	0	300	0	15	
J	9	0	615	10	MED	5	GRASS-G	0	250	5	20	
K	13	5	765	10	MED	5	GRASS-G	0	100	5	25	
L	9	0	865	10	HIGH	10	BARE	10	0	10	40	*
100A	5	0	60	5	MED	5	GRASS-G	0	685	0	10	
B	7	0	160	5	MED	5	GRASS-G	0	585	0	10	
C	11	5	195	5	MED	5	GRASS-G	0	550	0	15	
D	7	0	250	10	MED	5	WOODS	0	495	0	15	
E	11	5	330	10	MED	5	WOODS	0	415	0	20	
F	9	0	445	10	MED	5	PASTURE-F	5	300	0	20	
G	11	5	505	10	MED	5	PASTURE-F	5	240	5	30	
H	7	0	645	10	MED	5	GRASS-G	0	100	5	20	
I	12	5	745	10	MED	5	BARE	10	0	10	40	*
110A	0	0	70	5	MED	5	GRASS-G	0	1045	0	10	
B	4	0	815	10	MED	5	GRASS-G	0	300	0	15	
C	8	0	845	10	MED	5	GRASS-G	0	270	5	20	
D	12	5	975	10	MED	5	GRASS-G	0	140	5	25	
E	20	10	1015	10	MED	5	GRASS-G	0	100	5	30	
F	13	5	1115	10	MED	5	BARE	10	0	10	40	*

STEEP SLOPES & ERODIBLE SOILS ANALYSIS WORKSHEET
GEO-TECHNOLOGY ASSOCIATES, INC.

PROJECT NAME: FALLS ROAD SOLAR **DATE: JUNE 7, 2019**

BY: M. POTEMBER

SEGMENT LABEL	SLOPE (%)	Score	SLOPE LENGTH (in feet)	Score	K FACTOR	Score	LAND COVER	Score	SEDIMENT DELIVERY LENGTH (in feet)	Score	TOTAL SCORE	
120A	0	0	70	5	MED	5	GRASS-G	0	1205	0	10	
B	4	0	845	10	MED	5	GRASS-G	0	430	0	15	
C	12	5	975	10	MED	5	GRASS-G	0	300	0	20	
D	12	5	1175	10	MED	5	GRASS-G	0	100	5	25	
E	10	0	1275	10	HIGH	10	BARE	10	0	10	40	*
130A	0	0	70	5	MED	5	GRASS-G	0	1415	0	10	
B	4	0	1045	10	MED	5	GRASS-G	0	440	0	15	
C	11	5	1185	10	MED	5	GRASS-G	0	300	0	20	
D	13	5	1385	10	MED	5	GRASS-G	0	100	5	25	
E	9	0	1420	10	MED	5	GRASS-G	0	65	10	25	
F	10	0	1485	10	HIGH	10	BARE	10	0	10	40	*
140A	0	0	70	5	MED	5	GRASS-G	0	1555	0	10	
B	4	0	1230	10	MED	5	GRASS-G	0	395	0	15	
C	12	5	1275	10	MED	5	GRASS-G	0	350	0	20	
D	16	5	1325	10	HIGH	10	GRASS-G	0	300	0	25	
E	16	5	1400	10	HIGH	10	GRASS-G	0	225	5	30	
F	12	5	1460	10	MED	5	GRASS-G	0	165	5	25	
G	10	0	1525	10	MED	5	GRASS-G	0	100	5	20	
H	10	0	1555	10	MED	5	WOODS	0	70	10	25	
I	4	0	1625	10	HIGH	10	BARE	10	0	10	40	*
150A	0	0	70	5	MED	5	GRASS-G	0	1455	0	10	
B	4	0	1225	10	MED	5	GRASS-G	0	300	0	15	
C	11	5	1275	10	MED	5	GRASS-G	0	250	5	25	
D	17	5	1360	10	HIGH	10	GRASS-G	0	165	5	30	
E	21	10	1425	10	HIGH	10	GRASS-G	0	100	5	35	*
F	15	5	1525	10	HIGH	10	BARE	10	0	10	45	*
160A	0	0	70	5	MED	5	GRASS-G	0	1515	0	10	
B	4	0	1170	10	MED	5	WOODS	0	415	0	15	
C	12	5	1210	10	MED	5	WOODS	0	375	0	20	
D	6	0	1245	10	MED	5	WOODS	0	340	0	15	
E	11	5	1285	10	MED	5	WOODS	0	300	0	20	
F	12	5	1325	10	HIGH	10	GRASS-G	0	260	5	30	
G	17	5	1355	10	HIGH	10	GRASS-G	0	230	5	30	
H	20	10	1485	10	HIGH	10	WOODS	0	100	5	35	*
I	13	5	1585	10	HIGH	10	BARE	10	0	10	45	*
170A	0	0	70	5	MED	5	GRASS-G	0	1750	0	10	
B	4	0	1235	10	MED	5	WOODS	0	585	0	15	
C	12	5	1320	10	MED	5	WOODS	0	500	0	20	

STEEP SLOPES & ERODIBLE SOILS ANALYSIS WORKSHEET
GEO-TECHNOLOGY ASSOCIATES, INC.

PROJECT NAME: FALLS ROAD SOLAR DATE: JUNE 7, 2019

BY: M. POTEMBER

SEGMENT LABEL	SLOPE (%)	Score	SLOPE LENGTH (in feet)	Score	K FACTOR	Score	LAND COVER	Score	SEDIMENT DELIVERY LENGTH (in feet)	Score	TOTAL SCORE	
D	6	0	1420	10	MED	5	WOODS	0	400	0	15	
E	12	5	1520	10	MED	5	WOODS	0	300	0	20	
F	15	5	1620	10	HIGH	10	WOODS	0	200	5	30	
G	26	10	1720	10	HIGH	10	WOODS	0	100	5	35	*
H	6	0	1820	10	HIGH	10	BARE	10	0	10	40	*

JOHN A. OLSZEWSKI, JR.
County Executive

DAVID V. LYKENS, *Director*
Department of Environmental Protection and Sustainability

July 1, 2019

Mr. Maxwell D. Potember
Geo-Technology Associates, Inc.
3445-A Box Hill Corporate Center Drive
Abingdon, Maryland 21009

Re: Falls Roads Solar, (18627)
AKA: Zodhaites Property
Revised Steep Slopes and
Erodible Soils Analysis
Revised Forest Stand Delineation

Dear Mr. Potember:

Environmental Impact Review (EIR) staff have reviewed the revised slope analysis, the resultant Forest Buffer limits and the revised forest stand delineation, which were received on June 11, 2019, in response to our comment letter of June 6, 2019. We have determined that the recent, revised submissions satisfactorily reflect the resources and also address our stated concerns. Therefore, the revised submissions are approved.

Please note that the approvals pertain to the resources to the south of the mainstem of Compass Run since the entire property that lies to the north of the run is proposed to be placed in permanent protective easements. Furthermore, please ensure that the revised, approved information is reflected on all subsequent plans and plats for the project. Lastly, please prepare and submit a preliminary forest conservation plan and fully completed forest conservation worksheet for the project at your earliest convenience.

Thank you for the opportunity to review your submissions. If you have any questions regarding this correspondence or the outstanding regulatory requirements, please do not hesitate to contact me at 410-887-3980.

Very truly yours,

Michael S. Kulis
Environmental Impact Review

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7

Sheir/Mike/18627 Falls Road Solar Zodhaites-Holly Springs Nature Cons Prop FSD SA OK 7-1-19

Petitioner
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8

Petitioner's Exhibit A

Petitioner's Exhibit B

18620
Petitioner's Exhibit C

18616
Petitioner's Exhibit 0

18700
Petitioner's Exhibit E

LEGND
Petitioner's Exhibit F

Petitioner's Exhibit 6

18627
Petitioner's Exhibit H

Petitioner's Exhibit 1

18620
Petitioner's Exhibit J

Petitioner's Exhibit K

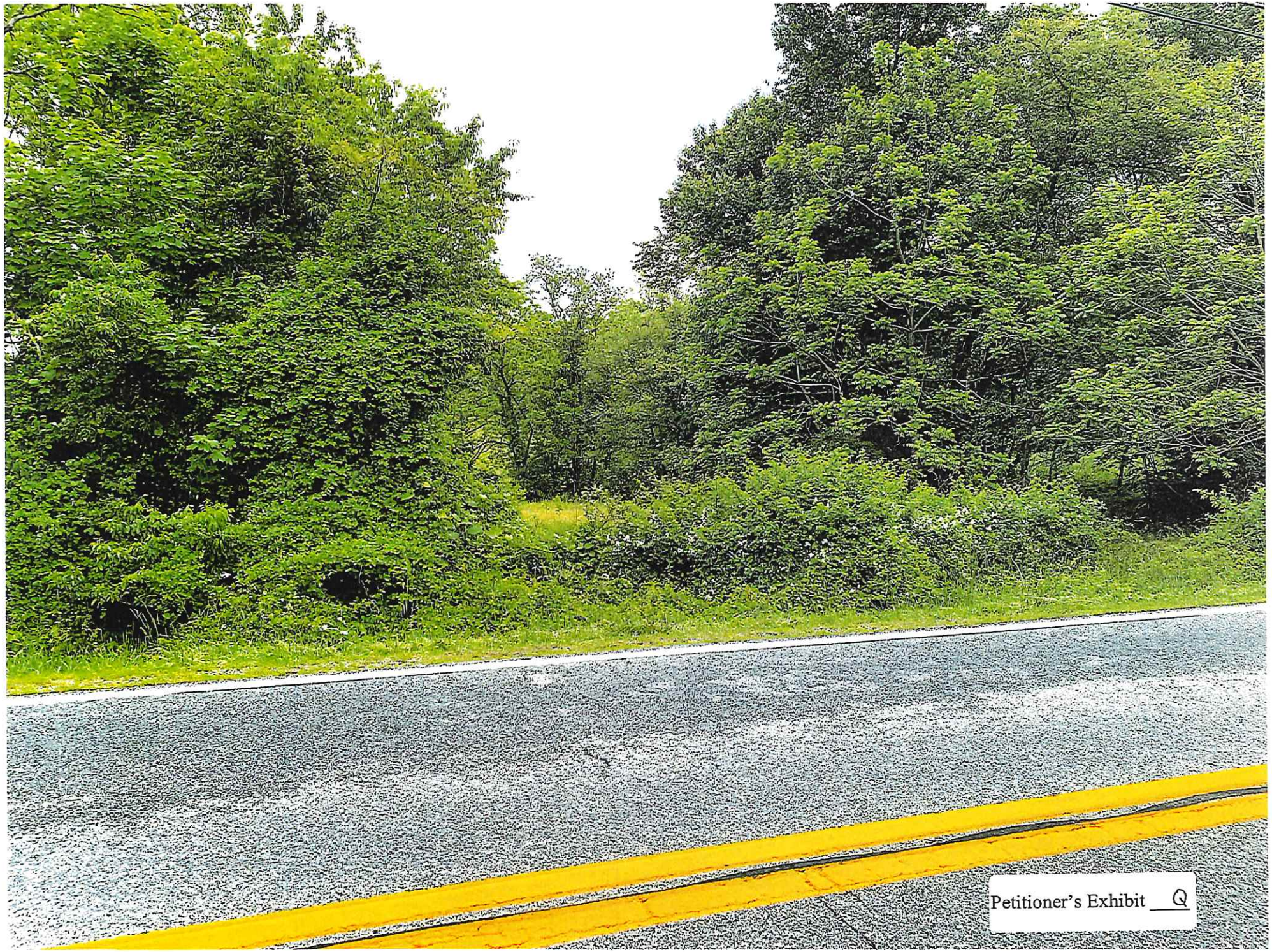
Petitioner's Exhibit 4

Petitioner's Exhibit M

Petitioner's Exhibit 11

Petitioner's Exhibit 0

Petitioner's Exhibit P


Petitioner's Exhibit Q

Petitioner's Exhibit R

Petitioner's Exhibit S

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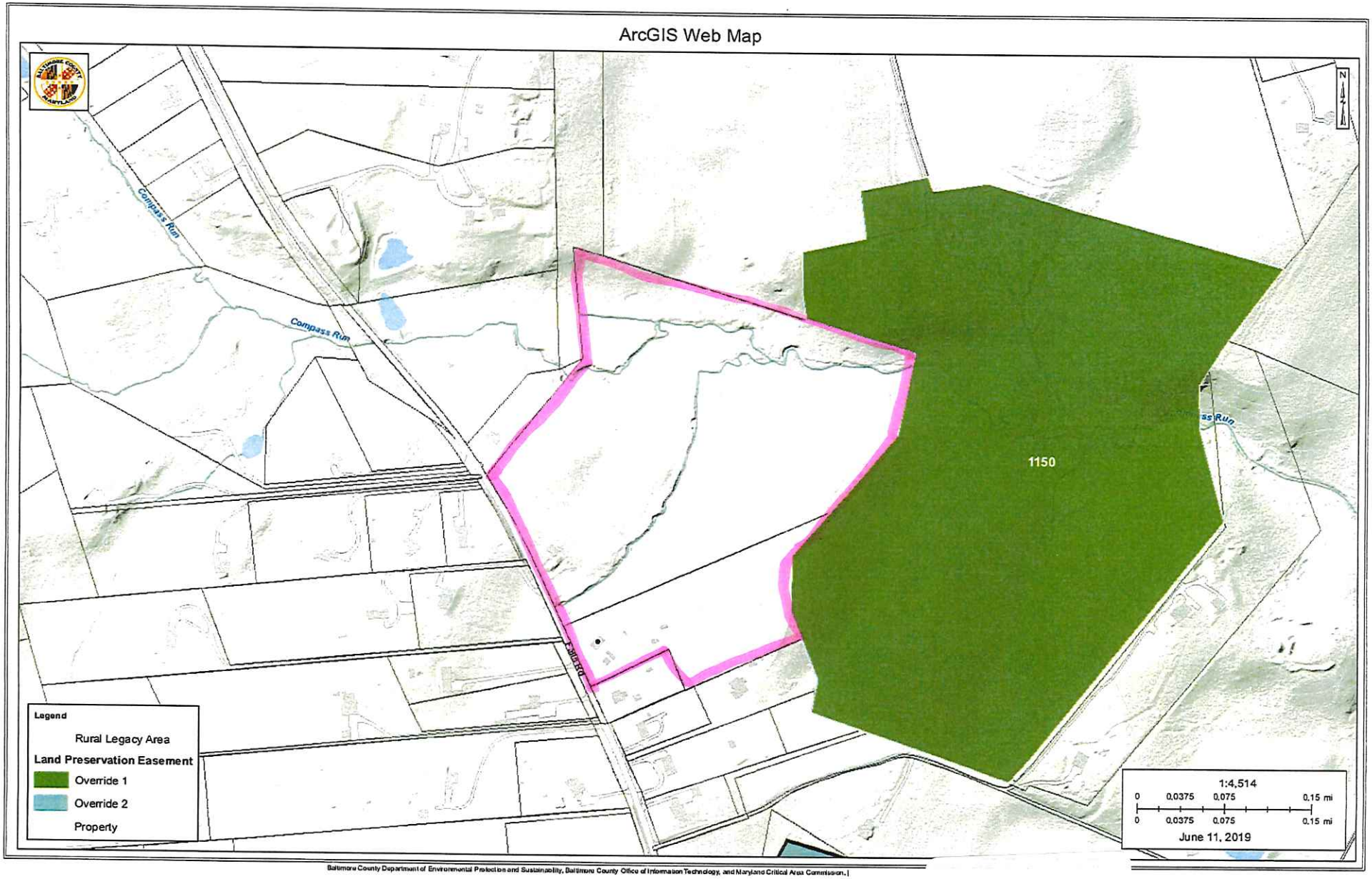
Petitioner's Exhibit 1

Petitioner's Exhibit U



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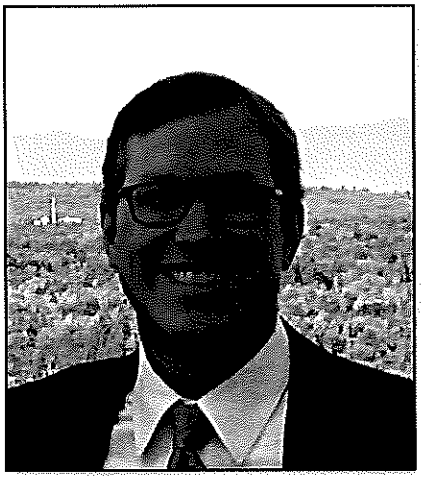
STEPHEN BARRETT, LEED Accredited Professional



Combining an extensive background in environmental policy with a pragmatic approach to developing sustainable energy projects, Stephen Barrett draws on 20+ years' experience to help identify, evaluate, and facilitate strategic environmental plans and renewable energy opportunities at airports in New England, across the United States, and beyond.

Steve presently serves a wide range of public and private sector clients including: supporting the United Nation's International Civil Aviation Organization (ICAO) as a technical advisor for airport solar projects being constructed in Kingston, Jamaica, and Mombasa, Kenya; advising the design team at Salt Lake City International Airport for integrating renewable energy into the 10-year, $1 billion terminal redevelopment program; serving the Rocky Mountain Institute's team on the Airport Cooperative Research Program (ACRP) project the Airport Microgrid Toolkit; and serving solar developers proposing project at or near airports to comply with FAA design standards.

With a strong background in project siting, regulatory compliance, and financial analysis, Steve helps clients create commonsense solutions that meet environmental and economic objectives within a real-world framework.

REPRESENTATIVE PROJECT EXPERIENCE

→ FAA Solar Guide, Federal Aviation Administration, 2010; Project Manager and Lead Author

→ Seattle-Tacoma International Airport, Renewable Energy Feasibility for On-Site and Off-Site Projects, 2016-17,

→ General Mitchell International Airport, Solar Feasibility Study for Milwaukee County, 2014; Project Manager

→ Developing the Business Case for Renewable Energy at Airports, ACRP, 2016; Principal Investigator

→ Siting and FAA approval, 25 MW Solar Project at Indianapolis International Airport, 2012

PROFESSIONAL EXPERIENCE

2016-Present	Barrett Energy Resources Group
2016-Present	United Nation's International Civil Aviation Organization
2003-Present	Minuteman Wind
2009-2016	HMMH Consultants
2006-2009	Blue Wave Strategies
1998-2006	Epsilon Associates
1995-1998	Massachusetts Coastal Zone Management

CERTIFICATION & AFFILIATION

- LEED-AP since 2008
- Environmental Business Council of New England, Board Director
- Marine Renewable Energy Collaborative of New England, Board President

EDUCATION

- BA, Union College, International Relations
- MA, University of Virginia, Environmental Science

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STEPHEN B. BARRETT, PEER-REVIEWED ARTICLES AND PUBLICATIONS

- **Renewable Energy for Aviation: Practical Applications to Achieve Carbon Reductions and Cost Savings**, Barrett, S., et al. International Civil Aviation Organization. November 2017.
- **Financing Aviation Emissions Reductions**, Barrett, S., et al. International Civil Aviation Organization. November 2017.
- **Regulatory and Organizational Framework to Address Aviation Emissions**, Barrett, S., et al. International Civil Aviation Organization. November 2017.
- **Developing the Business Case for Renewable Energy at Airports**, Barrett, S. et al. ACRP Report 151, for the National Academy of Science, Airport Cooperative Research Program. March 2016.
- **Ownership structures and the implications for developing airport solar projects in the U.S.**, Barrett, S. for the *Journal of Airport Management*. Summer 2015 Vol 9, No. 3.
- **Renewable Energy as an Airport Revenue Source**, Barrett, S. et al. ACRP Report 141, for the National Academy of Science, Airport Cooperative Research Program. August 2015.
- **Energy technologies compatibility with airports and airspace: Guidance for aviation and energy planners**, Barrett, S. and P. DeVita for the *Journal of Airport Management*. Fall 2014 Vol 8, No. 4.
- **Energy Technologies Compatibility with Airports and Airspace**, Barrett, S. et al. ACRP Report 108, for the National Academy of Science, Airport Cooperative Research Program. April 2014.
- **Glare Factor; Solar Installations and Airports**, Barrett, S. for *Solar Industry Magazine*. June 2013.
- **Investigating Safety Impacts of Energy Technologies on Airports and Aviation**, Barrett S. for the National Academy of Sciences, Airport Cooperative Research Program. October 2011.
- **Technical Guidance for Evaluating Selected Solar Technologies on Airports**, Barrett, S., and J. Plante, et al. for the Federal Aviation Administration. 2010.
- **Forecast of More Wind Bodes Well for New England**, Barrett, S. and C. Dietrich for the *New England Real Estate Journal*. February 2009.
- **Marrying Wind to Desalination**, Podolsky, R. and S. Barrett, *North American Wind Power*. 2008.
- **The Mount Hope Bay Tidal Restriction Atlas: Identifying Man-made Structures, which Potentially Degrade Coastal Habitats in Mount Hope Bay, Massachusetts**, Barrett, S., B. Graves, and B. Blumeris for *Northeastern Naturalist*. Volume 13, Special Issue 4, 2006.
- **Analysis of Intake and Discharge Salinity Regimes for a Desalination Plant**, Mueller, C., C. Swanson, and S. Barrett for Oceans Conference. 2006.

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11

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Technical Memorandum

To:	Andrew Streit, Power Factor
From:	Stephen Barrett
Date:	September 16, 2019
RE:	Glare Study, Solar Photovoltaic Project at 18627 Falls Road Hampstead, Maryland

Executive Summary

Power Factor is developing a nominal 2 MWdc solar photovoltaic (PV) project at 18627 Falls Road in Hampstead, MD. Power Factor has engaged Barrett Energy Resources Group (BERG) to analyze potential impacts of glare from the project on nearby roadway and residential receptors.

To complete this work, BERG has utilized the Solar Glare Hazard Analysis Tool (SGHAT) which was developed by the US Department of Energy for the Federal Aviation Administration (FAA) to protect aviation sensitive receptors from glare from solar PV facilities. Because SGHAT does not consider terrain or existing vegetation, the glare modeling was supplemented with a line-of-sight analysis using Google Earth to validate the results.

The glare analysis was completed on 17 receptors: 14 residences and 3 motor vehicle locations. Glare was recorded on 10 of the 17 receptors located west of the project area. Those receptors to the north and south did not record glare as is expected. The line-of-sight analysis shows that the view of the solar project from the 10 receptors where glare was recorded will be obscured by existing and proposed vegetation. This Technical Memorandum describes the project, methodology, and results.

Project Description

The Falls Road Solar Photovoltaic (PV) Project is located on about 32 acres of undeveloped forest and farmland east of Fall Road as shown on **Figure 1**. The project, which will occupy less than 10 acres, is designed with two fixed tilt arrays with a combined nameplate capacity of about 2 MWdc.

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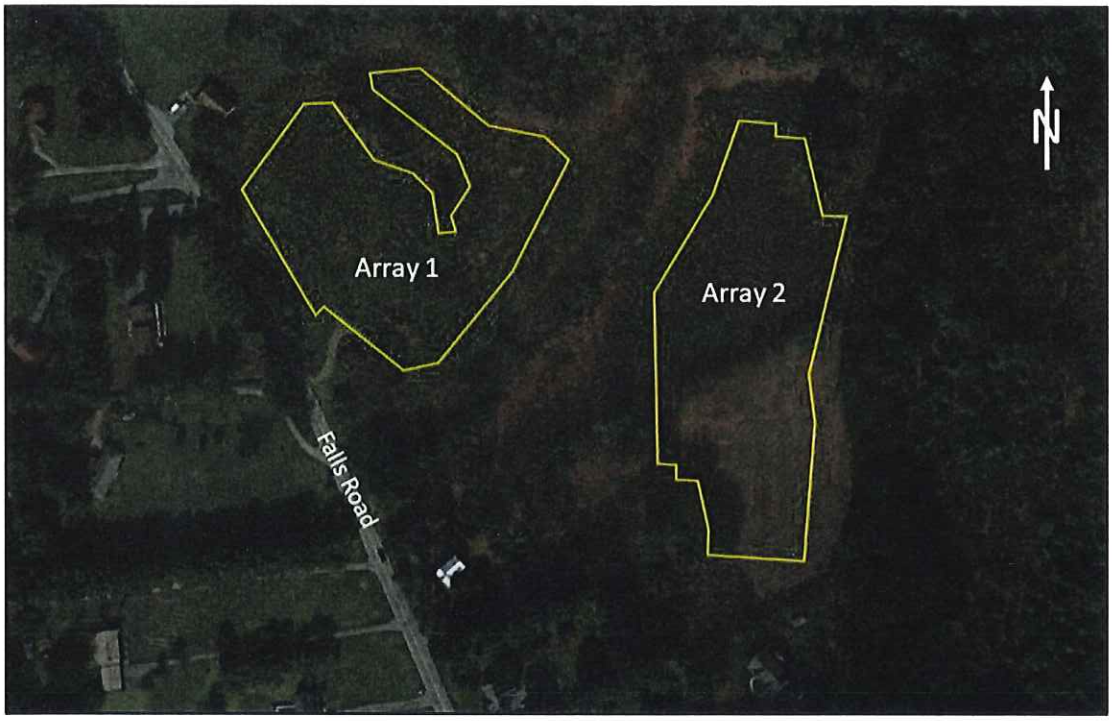

Figure 1. Falls Road Solar Project Locus

Sources of Glare

Glare can reflect from numerous natural and manmade surfaces. The most common and difficult glare encountered is from direct view of the rising or setting sun. Other common sources of glare include glass and metal buildings, vehicle windshields, water bodies like lakes and ponds, and snow. The intensity of glare is affected not only by the amount of sunlight reflected but also the character of the reflective surface. If the surface is smooth and shiny, the reflection is more concentrated and referred to as specular. If the surface is rough, the reflection is scattered or diffuse. This concept is illustrated by glare from a lake, where glare may be seen on a calm lake one day and not seen on a windy lake the next. The concept of specular and diffuse reflections is shown in **Figure 2** below. While solar PV panels reflect very little light as shown in the figure, the smooth glass used to allow sunlight to pass through to the solar cells can also increase the potential for glare during certain conditions.

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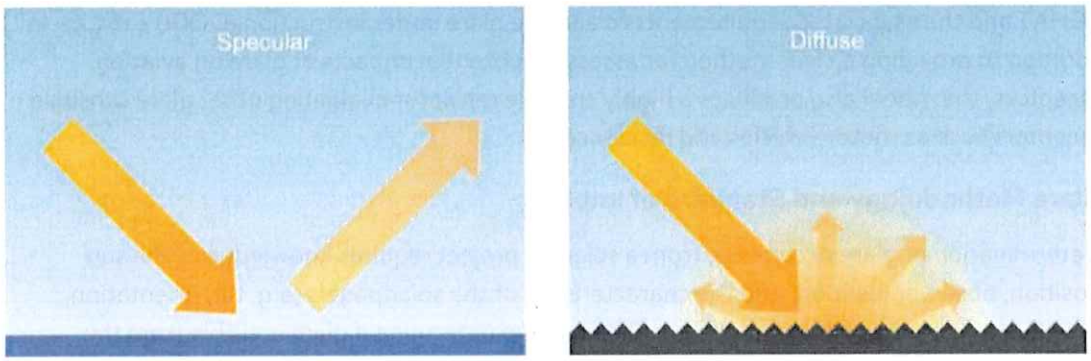
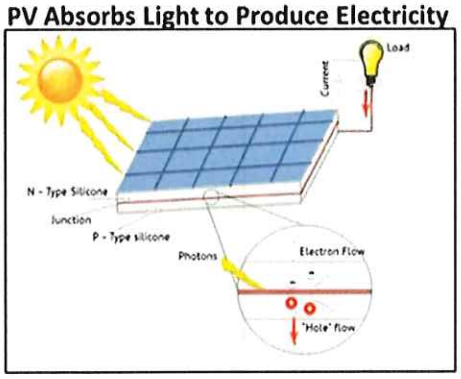


Figure 2. Types of Reflections

People adjust to glare by drawing blinds and shades in homes and adjusting visors when driving. Sunglasses are also effective in limiting the nuisance of glare. The proposed Falls Road solar project uses photovoltaic (PV) technology which generates electricity from light. The panels are designed to maximize absorption of light. Any light that is not absorbed and is reflected is wasted. Design factors that maximize absorption include a black background for the cells and a clear and smooth glass cover. The Project is not proposing concentrating solar power (CSP) technology which uses mirrors to reflect the sun's heat to a generator to produce power. **Figure 3** below illustrates the differences between the two technologies.

PV Absorbs Light to Produce Electricity



CSP Uses Mirrors to Reflect Light for Power

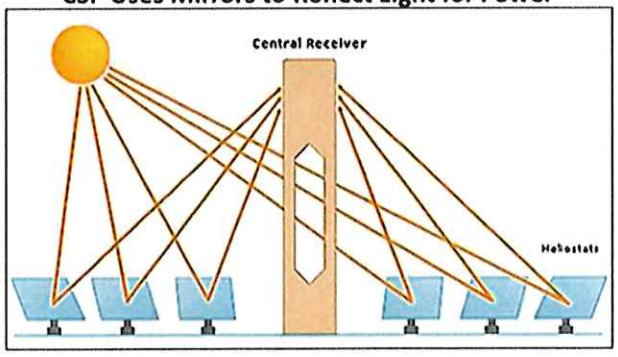


Figure 3. Solar PV vs Concentrating Solar Power

FAA Solar Policy

In 2013, the Federal Aviation Administration (FAA) published "Interim Policy, FAA Review of Solar Energy System Projects on Federally-Obligated Airport," which sets forth methods for assessing glare and the standards for determining impact for projects proposed on airport property. It also requires the use of modeling to assess glare and directs project proposers to the Solar Glare Hazard Analysis Tool (SGHAT) which was developed by the US Department of Energy at the request of the FAA. The US Department of Defense (DOD) has also adopted

SGHAT and the associated requirements to analyze glare under Instruction (DODI) 4165.57. In addition to providing a clear method for assessing potential impacts of glare on aviation receptors, the model also produces a highly credible result for evaluating other glare sensitive receptors such as motor vehicles and residences.

Glare Methodology and Standard of Impact

Determination of glare occurrence from a solar PV project requires knowledge of the sun position, observer location, and the characteristics of the solar panels (e.g. tilt, orientation, location, extent, etc.). Vector algebra is then used to determine if glare is visible from the prescribed observation points. **Figure 4** provides a simple representation of how the sun can produce glare on an automobile for a specific time and location. The angle of the light source from the sun must be equal to the angle of the reflection on a receptor. Therefore, when receptors are close to the ground (like a house or car), the reflection is only possible when the sun is also close to the ground (i.e., near sunrise or sunset). As the sun moves, the incidence of glare ends.

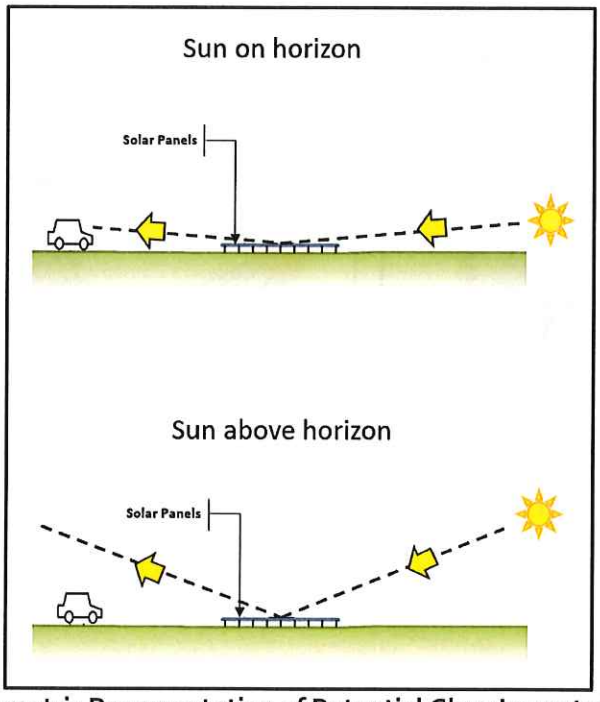


Figure 4. Geometric Representation of Potential Glare Impacts from the Sun

The SGHAT model is a credible tool for predicting glare based on the characteristics of the project and the identified receptor. It produces results that identify three categories of glare based on relative intensity: green (low potential for an after-image), yellow (potential for an after-image), and red (retinal burn). These categories apply to the FAA Policy and are not

specifically relevant for glare assessment of other receptors. For non-aviation receptors, like those associated with the Falls Road Solar Project, the results are simply used to determine if glare is predicted or not.

SGHAT Model Setup for Proposed Project

Regardless of the receptor to be analyzed, the model set-up entails locating the solar project, inputting its design characteristics, and identifying sensitive receptors for analysis. The position and movement of the sun throughout the year is built into the SGHAT model.

For the Falls Road Solar Project, BERG used the PV project polygon tool to draw the footprint of the solar arrays on SGHAT's interactive Google map. The specific attributes of the solar array were then input into the model. As the project proposes a fixed tilt array, SGHAT includes relevant fields for those elements including for this project design: tilt angle of 25°, azimuth orientation of 180°, panel height of 6 feet above ground level (agl), and a panel surface with smooth glass.

To analyze the sensitive receptors, BERG identified representative motor vehicle receptors associated with the Falls Road as well as nearby residential receptors. The model's observation point tool was used to select individual points located on the Google map. Three motorist and 14 residential locations were analyzed as shown on **Figure 5**. For the motorist receptors, the driver's height above the roadway was set at 5 feet. For the residential receptors, the viewpoint was set at 5 feet above ground level to represent the view of a person standing on the property.

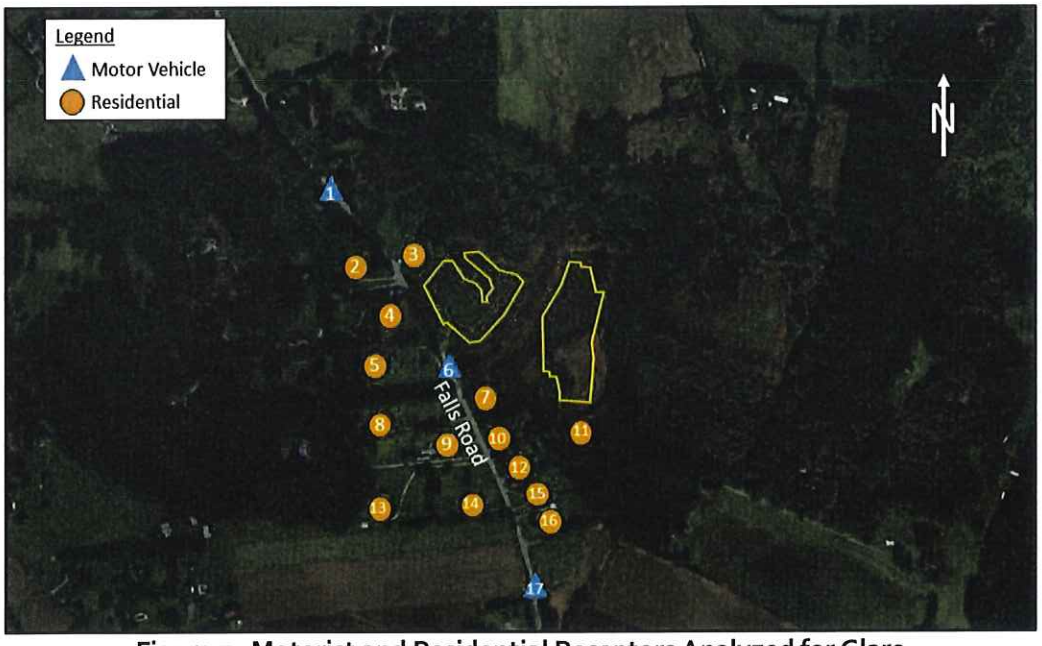


Figure 5. Motorist and Residential Receptors Analyzed for Glare

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For each model run, the glare analysis button was activated, and the model evaluated glare from various sun angles at 1-minute intervals throughout the year to predict if glare could be observed by the sensitive receptors.

Glare Model Results

The SGHAT-generated report is included in Attachment A and results are summarized in **Table 1**. They show that glare could be observed from 10 of the 17 receptors based on the location and design of the solar project, the location of the receptor, and the path of the sun throughout the year.

Table 1. SGHAT Glare Results for Fall Road Solar Project

Receptor #	Receptor Type	Glare?
1	Motor Vehicle	No
2	Residence	Yes
3	Residence	Yes
4	Residence	Yes
5	Residence	Yes
6	Motor Vehicle	Yes
7	Residence	Yes
8	Residence	Yes
9	Residence	Yes
10	Motor Vehicle	Yes
11	Residence	No
12	Residence	No
13	Residence	No
14	Residence	No
15	Residence	No
16	Residence	No
17	Motor Vehicle	No

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The ten receptors that registered glare are highlighted in **Figure 6** and the months, times and duration are included for each. All of the receptors that registered glare are west of the project and experience glare in the morning when looking toward the east. The duration presented is the maximum amount of time that glare could be seen in one day. Receptors shown on Figure 6 that are not highlighted did not register glare.

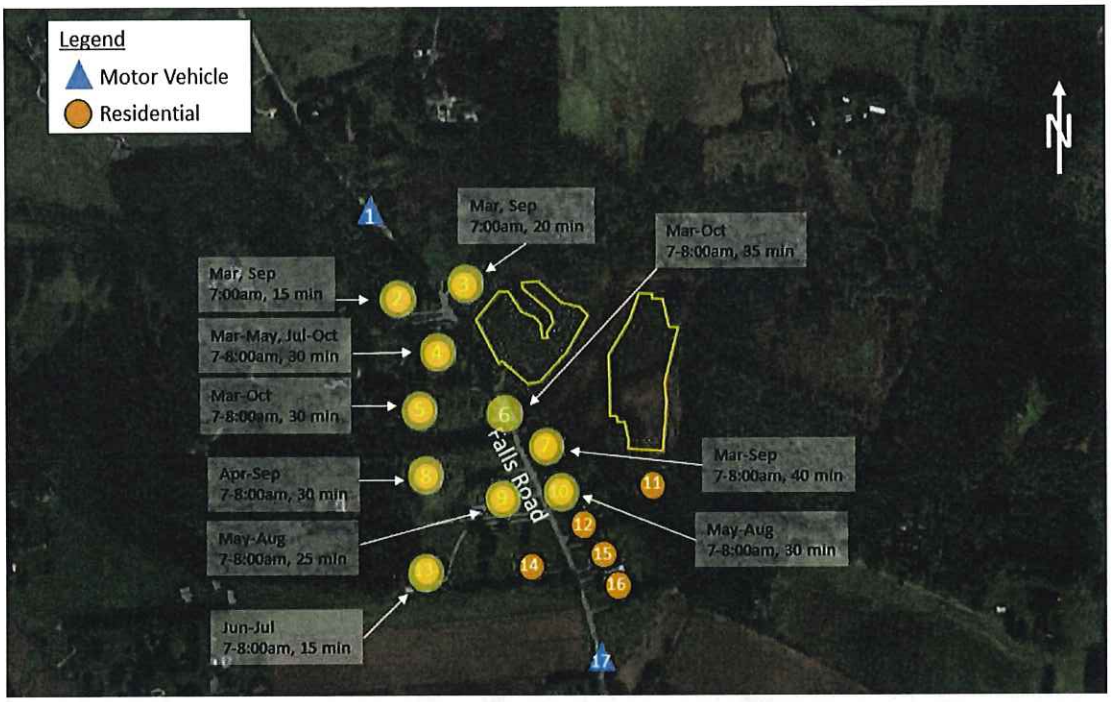

Figure 6. Receptors That Registered Glare

Because the SGHAT model was developed for airports (flat, open spaces) and does not account for terrain, vegetation or manmade structures, a line-of-sight analysis is required to validate the results for the five receptors where glare was registered.

Line-of-Sight Analysis

To determine if topography and vegetation affect the ability to see glare from the receptors, a line-of-sight analysis was prepared. To maximize consistency among tools, an elevation profile feature in Google Earth was used providing the same basis for locations and elevations as the SGHAT model. Google Earth has a path tool that allows the user to select two points and analyze information along a path in between including distance and elevation. The user can generate an elevation profile that presents a cross-sectional view of the topography of the land between the two points. Through this simple analysis, one can evaluate whether the selected observer can see the solar project given the terrain of land in between the two locations. As

necessary, vegetation and manmade structures can then be layered into the cross-sectional view.

Figure 7 shows the location and direction of each line-of-sight analysis conducted. The view starts from the receptor location and is directed to that portion of the project where glare is most concentrated as shown in the glare report in Attachment A. For example, Receptors 2 and 3 only see glare from the northern part of the arrays, whereas Receptors 8, 9, 10 and 13 view the glare from the southern edge of array 2 only.

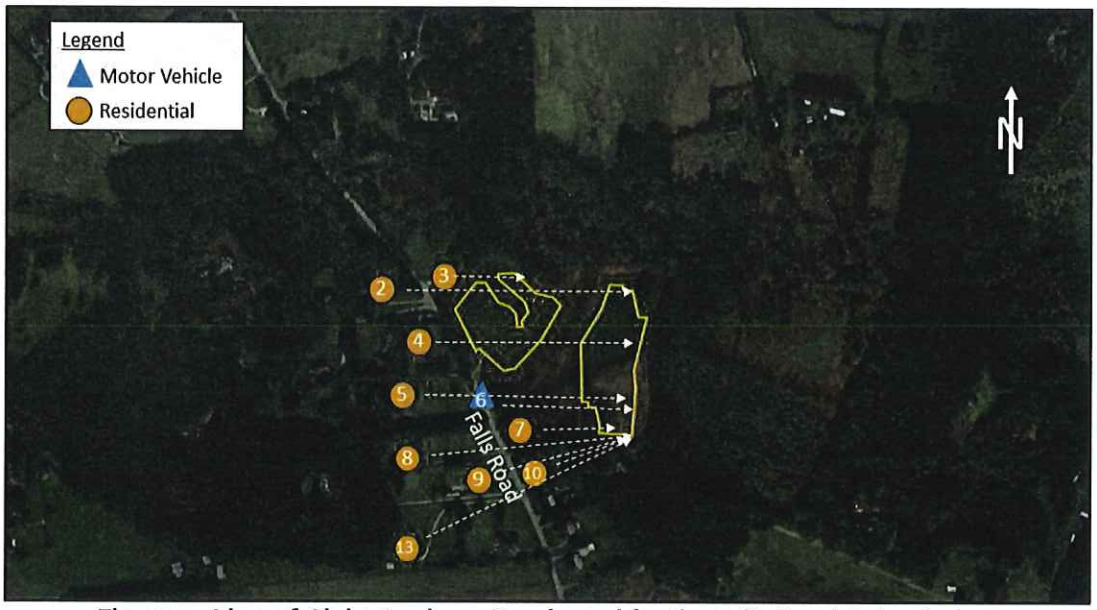

Figure 7. Line-of-Sight Analyses Conducted for the Falls Road Solar Project

Table 2 summarizes the line-of-sight results for each of the receptors analyzed. If the terrain will obstruct the view of the solar project from the receptor, then it has been determined that there will be no impact. This is the conclusion for one (Receptor 2) of the ten receptors evaluated.

If there is existing vegetation between the receptor and the solar project that is high enough to obstruct the view, then it has been determined that glare is unlikely. Glare could potentially be viewed seasonally depending on the type of vegetation (deciduous or evergreen) or if the vegetation is cut in the future. However, based a conservative assessment of vegetation height (>20 feet), existing vegetation appears to represent a significant screen. This is the finding of the other nine receptors assessed.

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Table 2. Line-of-Sight Analysis Results

Receptor #	Receptor Type	Result	Comment
2	Residence	No Glare Possible	Terrain Obstruction
3	Residence	Glare Unlikely	Existing Vegetation
4	Residence	Glare Unlikely	Existing Vegetation
5	Residence	Glare Unlikely	Existing Vegetation
6	Motor Vehicles	Glare Unlikely	Existing Vegetation
7	Residence	Glare Unlikely	Existing Vegetation
8	Residence	Glare Unlikely	Existing Vegetation
9	Residence	Glare Unlikely	Existing Vegetation
10	Residence	Glare Unlikely	Existing Vegetation
13	Residence	Glare Unlikely	Existing Vegetation

The view of the solar project and the location of existing vegetation is provided in **Figure 8**.

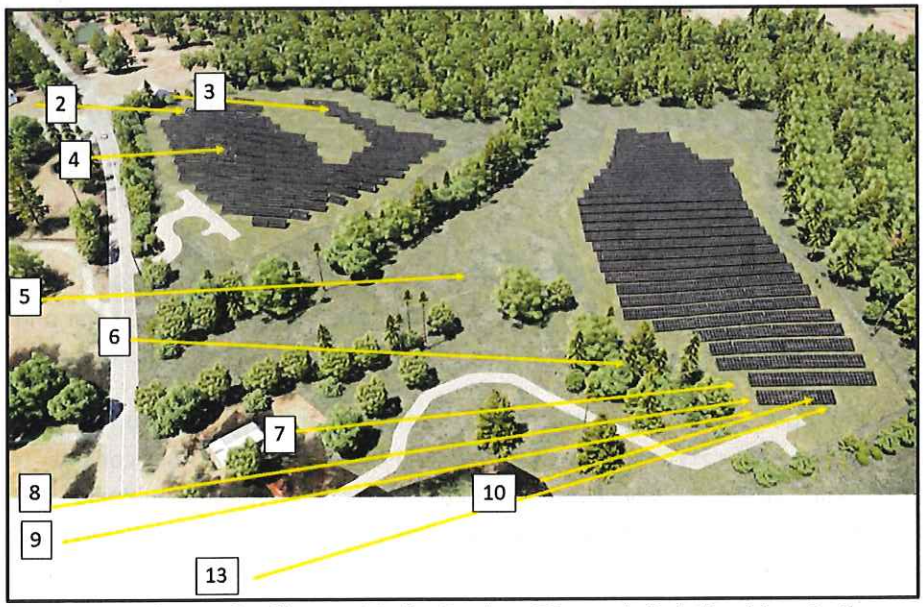

Figure 8. Views of Falls Road Solar Project Through Existing Vegetation

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While deciduous trees lose their leaves in winter reducing their effectiveness in screening glare, the model predicted potential glare from March through October when leaves will be on the trees. To enhance screening, the proponent has proposed additional landscape plantings as shown on **Figure 9**. The locations of the plantings will further mitigate any potential glare on residential receptors 2, 3, 4, 8, 9 and 10.

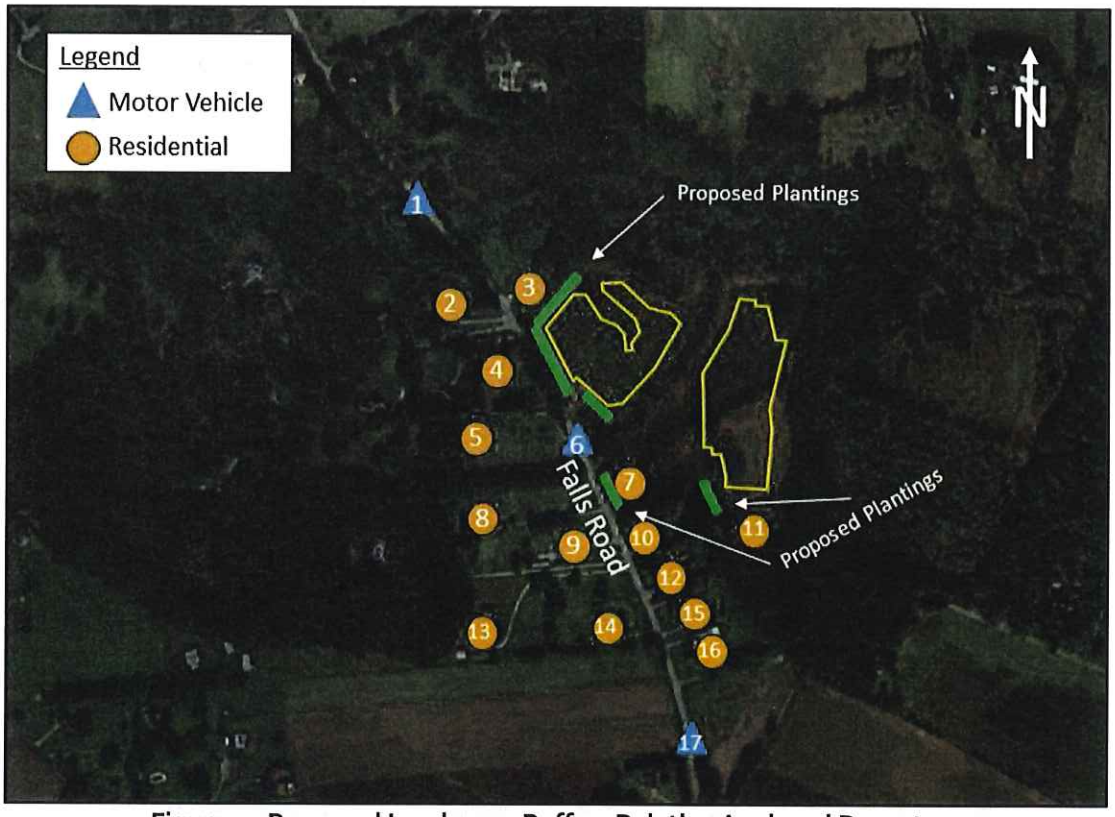

Figure 9. Proposed Landscape Buffers Relative Analyzed Receptors

Conclusions

Barrett Energy Resources Group (BERG) has utilized the SGHAT modeling tool developed by the US Department of Energy to assess the potential effects of glare from a solar photovoltaic (PV) project on receptors near Power Factor's solar project on Falls Road in Hampstead, MD.

The modeling report, provided as Attachment A, shows that the project has a potential to produce glare on 10 of 17 receptors analyzed. Because the model does not consider terrain and vegetation, a line-of-sight analysis was conducted to verify the modeling results. This analysis shows that terrain (i.e. hills) and existing vegetation, as glare is predicted during the growing season, will block any view of glare demonstrating that the project impacts are limited. The proponent has also included additional landscape screening to further mitigate any glare.

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Attachment A

Glare Modeling Results

ForgeSolar
PV planning & glare analysis

GlareGauge Glare Analysis Results

Site Configuration: Untitled

Project site configuration details and results.

Created **Sept. 15, 2019 10:08 p.m.**
Updated **Sept. 15, 2019 10:33 p.m.**
DNI **varies** and peaks at **1,000.0 W/m^2**
Analyze every **1** minute(s)
0.5 ocular transmission coefficient
0.002 m pupil diameter
0.017 m eye focal length
9.3 mrad sun subtended angle
Timezone **UTC-5**
Site Configuration ID: 31179.5688

Summary of Results Glare with potential for temporary after-image predicted

PV name	Tilt	Orientation	"Green" Glare	"Yellow" Glare	Energy Produced
	deg	deg	min	min	kWh
Array 1	25.0	180.0	0	6,518	-
Array 2	25.0	180.0	0	30,387	-

Component Data

PV Array(s)

Name: Array 1
Axis tracking: Fixed (no rotation)
Tilt: 25.0 deg
Orientation: 180.0 deg
Rated power: -
Panel material: Smooth glass without AR coating
Vary reflectivity with sun position? Yes
Correlate slope error with surface type? Yes
Slope error: 6.55 mrad

Vertex	Latitude	Longitude	Ground elevation	Height above ground	Total elevation
	deg	deg	ft	ft	ft
1	39.639823	-76.798705	697.07	6.00	703.07
2	39.639815	-76.798898	702.44	6.00	708.44
3	39.639427	-76.799187	718.78	6.00	724.78
4	39.638890	-76.798833	713.62	6.00	719.62
5	39.639014	-76.798662	707.64	6.00	713.64
6	39.638625	-76.798404	698.34	6.00	704.34
7	39.638659	-76.798082	691.68	6.00	697.68
8	39.639072	-76.797675	678.56	6.00	684.56
9	39.639559	-76.797406	672.39	6.00	678.39
10	39.639642	-76.797610	671.99	6.00	677.99
11	39.639766	-76.797975	675.35	6.00	681.35
12	39.639939	-76.798125	676.08	6.00	682.08
13	39.639939	-76.798469	684.84	6.00	690.84
14	39.639534	-76.797964	676.96	6.00	682.96
15	39.639336	-76.798039	682.97	6.00	688.97

Name: Array 2
Axis tracking: Fixed (no rotation)
Tilt: 25.0 deg
Orientation: 180.0 deg
Rated power: -
Panel material: Smooth glass without AR coating
Vary reflectivity with sun position? Yes
Correlate slope error with surface type? Yes
Slope error: 6.55 mrad

Vertex	Latitude	Longitude	Ground elevation	Height above ground	Total elevation
	deg	deg	ft	ft	ft
1	39.639819	-76.796065	663.63	6.00	669.63
2	39.639811	-76.796398	659.77	6.00	665.77
3	39.639406	-76.796580	671.95	6.00	677.95
4	39.639026	-76.796891	674.69	6.00	680.69
5	39.638225	-76.796891	696.21	6.00	702.21
6	39.638225	-76.796655	702.64	6.00	708.64
7	39.638093	-76.796655	705.42	6.00	711.42
8	39.638084	-76.796484	712.91	6.00	718.91
9	39.637836	-76.796484	717.65	6.00	723.65
10	39.637845	-76.796076	724.68	6.00	730.68
11	39.638497	-76.796022	711.18	6.00	717.18
12	39.638745	-76.796087	701.92	6.00	707.92
13	39.639406	-76.795797	693.35	6.00	699.35
14	39.639423	-76.795990	689.46	6.00	695.46

Discrete Observation Receptors

Number	Latitude	Longitude	Ground elevation	Height above ground	Total Elevation
	deg	deg	ft	ft	ft
OP 1	39.640381	-76.800432	682.29	5.00	687.29
OP 2	39.639791	-76.800335	702.97	5.00	707.97
OP 3	39.639808	-76.799316	709.24	5.00	714.24
OP 4	39.638940	-76.799670	734.66	5.00	739.66
OP 5	39.638337	-76.799928	740.68	5.00	745.68
OP 6	39.638379	-76.798747	704.66	5.00	709.66
OP 7	39.637891	-76.797986	713.70	5.00	718.70
OP 8	39.637478	-76.799820	731.83	5.00	736.83
OP 9	39.637247	-76.798629	723.25	5.00	728.25
OP 10	39.637346	-76.797782	723.20	5.00	728.20
OP 11	39.637511	-76.796280	727.30	5.00	732.30
OP 12	39.637065	-76.797449	732.46	5.00	737.46
OP 13	39.636520	-76.799788	737.95	5.00	742.95
OP 14	39.636462	-76.798190	743.04	5.00	748.04
OP 15	39.636734	-76.797085	743.44	5.00	748.44
OP 16	39.636354	-76.796999	748.70	5.00	753.70
OP 17	39.635685	-76.797256	738.03	5.00	743.03

PV Array Results

Array 1 potential temporary after-image

Component	Green glare (min)	Yellow glare (min)
OP: OP 1	0	0
OP: OP 2	0	948
OP: OP 3	0	1130
OP: OP 4	0	2268
OP: OP 5	0	2172
OP: OP 6	0	0
OP: OP 7	0	0
OP: OP 8	0	0
OP: OP 9	0	0
OP: OP 10	0	0
OP: OP 11	0	0
OP: OP 12	0	0
OP: OP 13	0	0
OP: OP 14	0	0
OP: OP 15	0	0
OP: OP 16	0	0
OP: OP 17	0	0

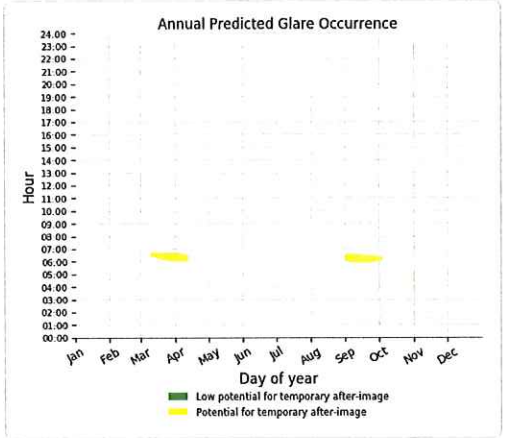
Array 1 - OP Receptor (OP 1)

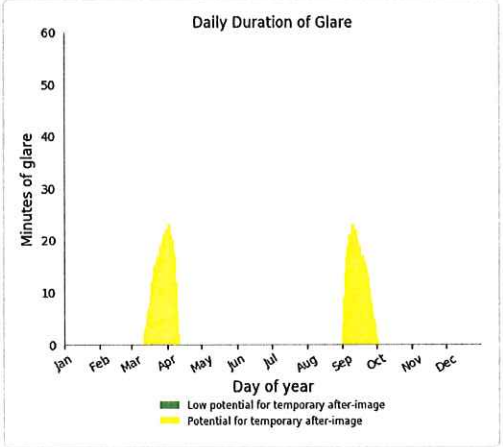
No glare found

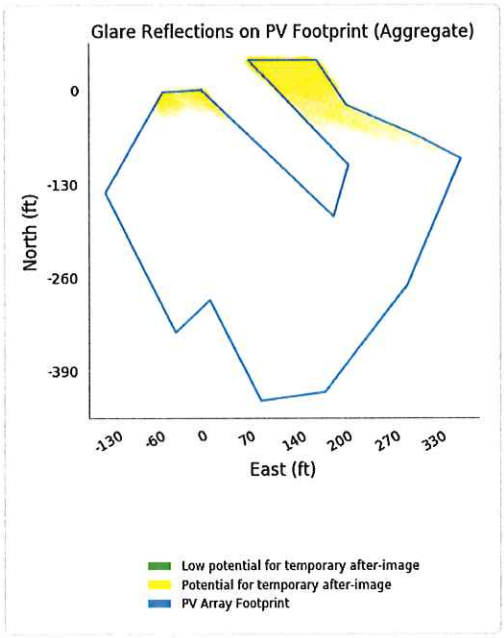
Array 1 - OP Receptor (OP 2)

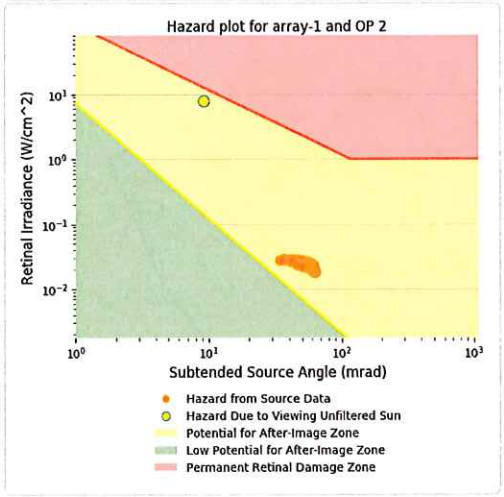
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 948 minutes of "yellow" glare with potential to cause temporary after-image.





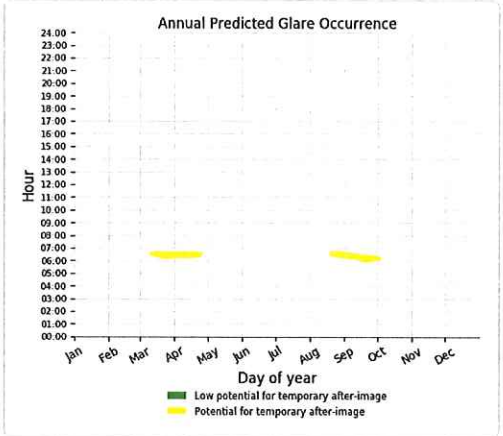


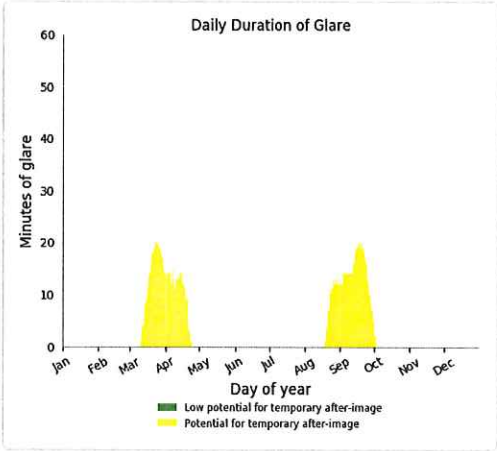


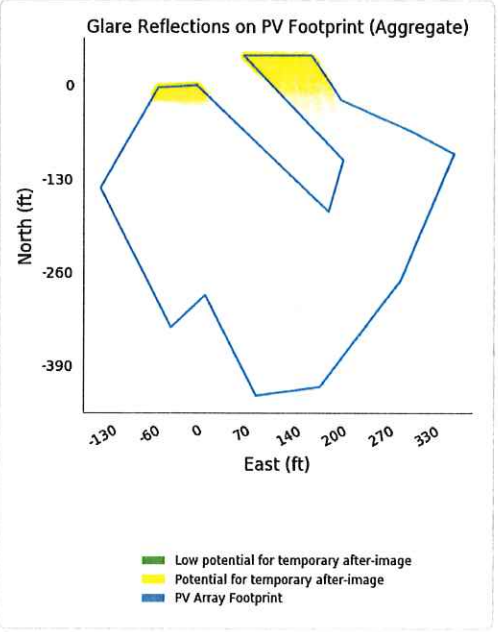
Array 1 - OP Receptor (OP 3)

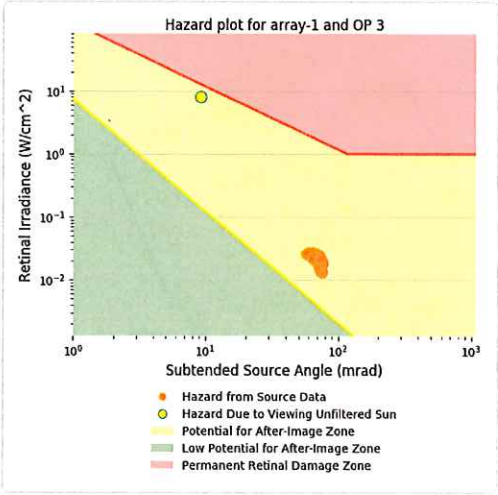
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 1,130 minutes of "yellow" glare with potential to cause temporary after-image.





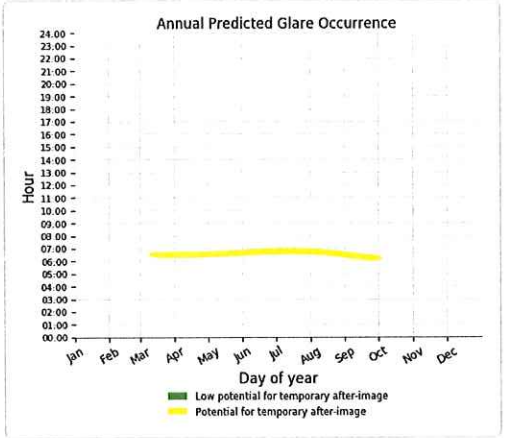


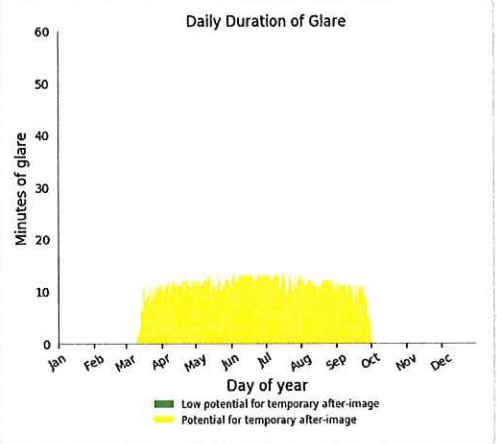


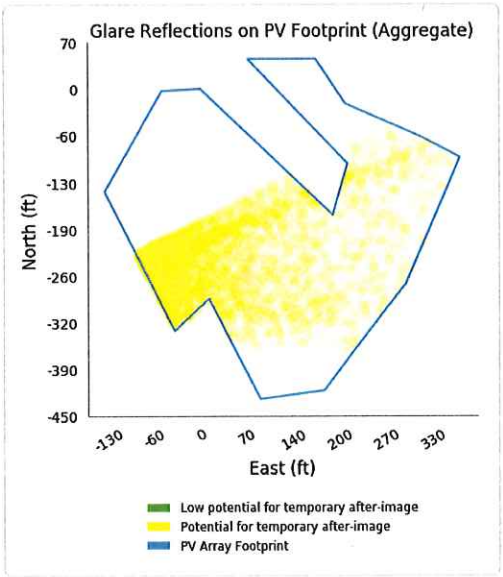
Array 1 - OP Receptor (OP 4)

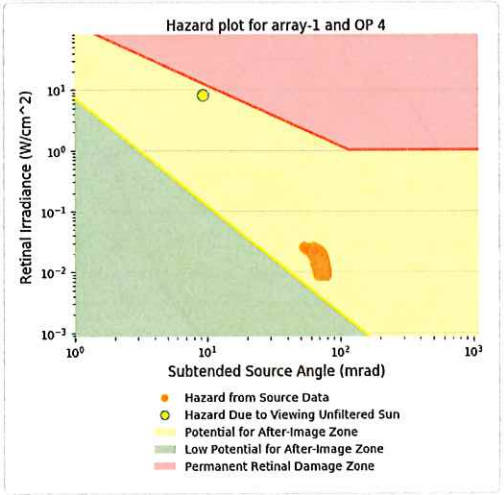
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 2,268 minutes of "yellow" glare with potential to cause temporary after-image.





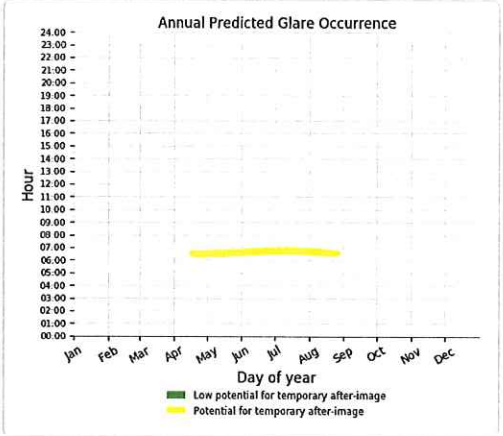


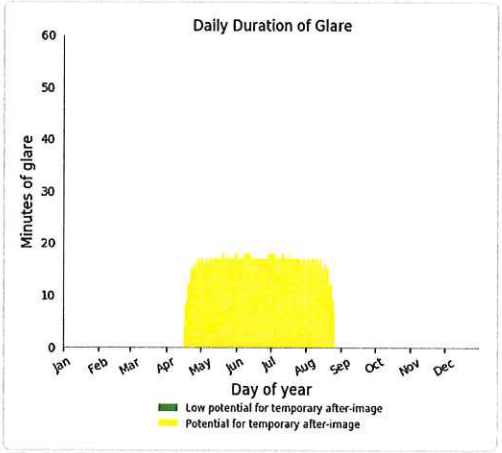


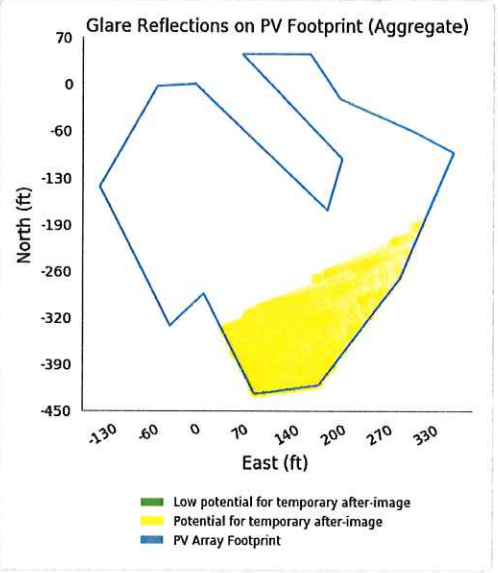
Array 1 - OP Receptor (OP 5)

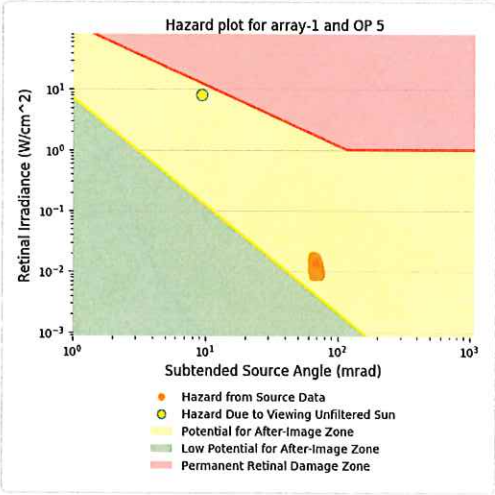
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 2,172 minutes of "yellow" glare with potential to cause temporary after-image.









Array 1 - OP Receptor (OP 6)

No glare found

Array 1 - OP Receptor (OP 7)

No glare found

Array 1 - OP Receptor (OP 8)

No glare found

Array 1 - OP Receptor (OP 9)

No glare found

Array 1 - OP Receptor (OP 10)

No glare found

Array 1 - OP Receptor (OP 11)

No glare found

Array 1 - OP Receptor (OP 12)

No glare found

Array 1 - OP Receptor (OP 13)

No glare found

Array 1 - OP Receptor (OP 14)

No glare found

Array 1 - OP Receptor (OP 15)

No glare found

Array 1 - OP Receptor (OP 16)

No glare found

Array 1 - OP Receptor (OP 17)

No glare found

Array 2 potential temporary after-image

Component	Green glare (min)	Yellow glare (min)
OP: OP 1	0	0
OP: OP 2	0	391
OP: OP 3	0	563
OP: OP 4	0	3599
OP: OP 5	0	5490
OP: OP 6	0	5798
OP: OP 7	0	5616
OP: OP 8	0	4185
OP: OP 9	0	2530
OP: OP 10	0	1768
OP: OP 11	0	0
OP: OP 12	0	0
OP: OP 13	0	447
OP: OP 14	0	0
OP: OP 15	0	0
OP: OP 16	0	0
OP: OP 17	0	0

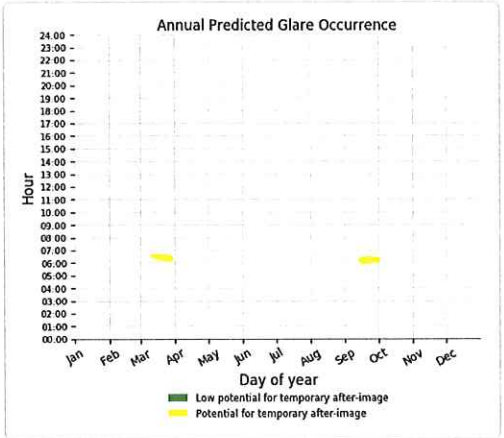
Array 2 - OP Receptor (OP 1)

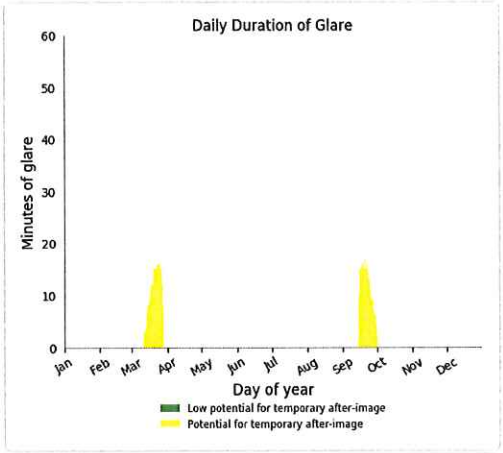
No glare found

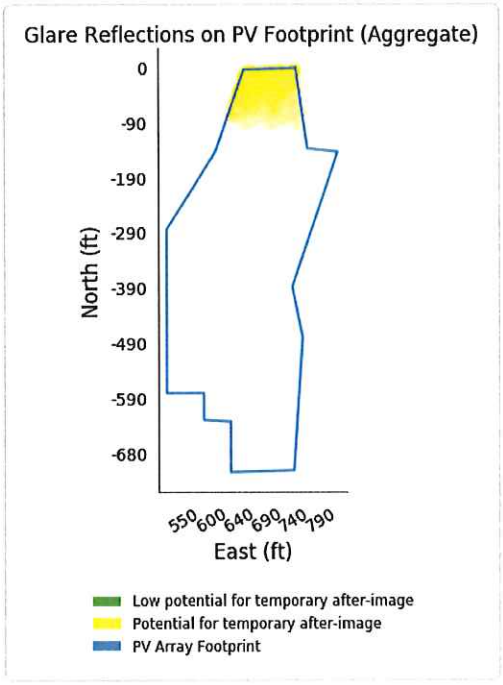
Array 2 - OP Receptor (OP 2)

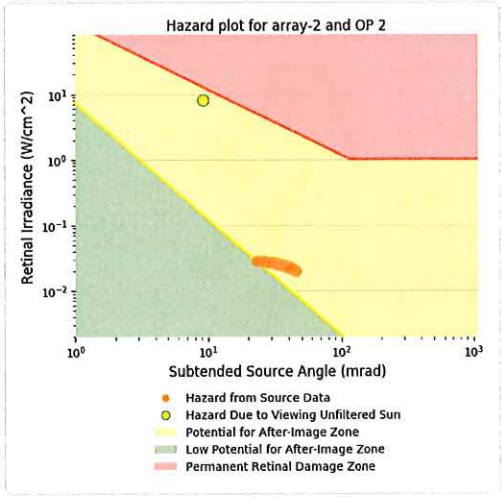
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 391 minutes of "yellow" glare with potential to cause temporary after-image.





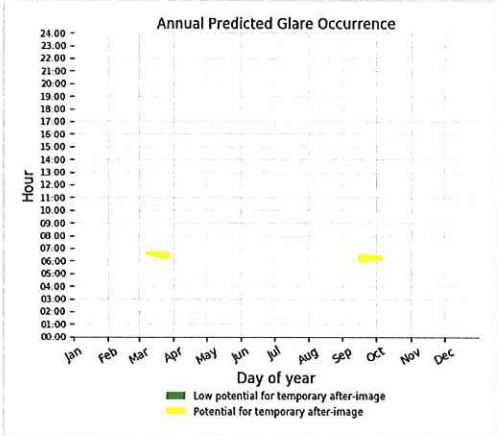


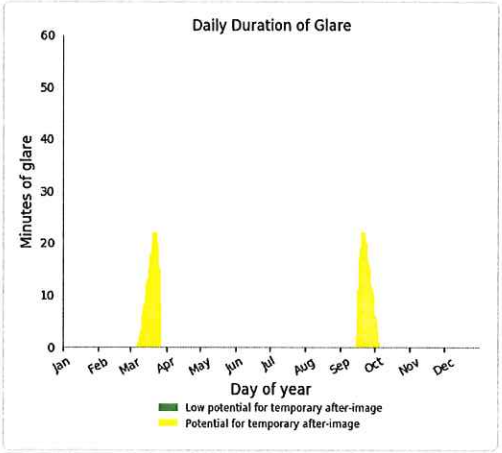


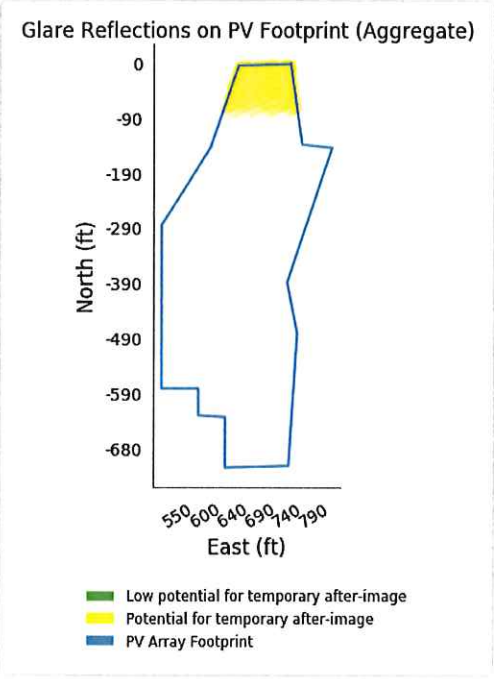
Array 2 - OP Receptor (OP 3)

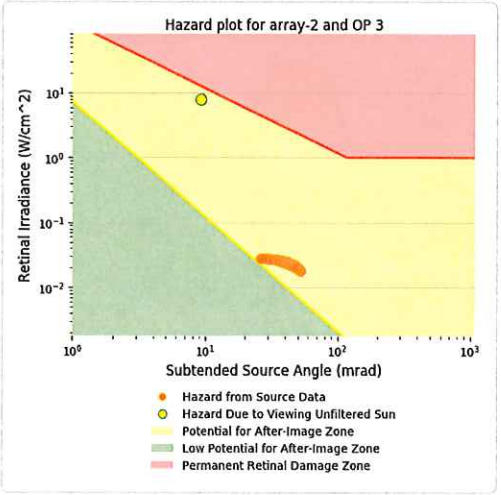
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 563 minutes of "yellow" glare with potential to cause temporary after-image.





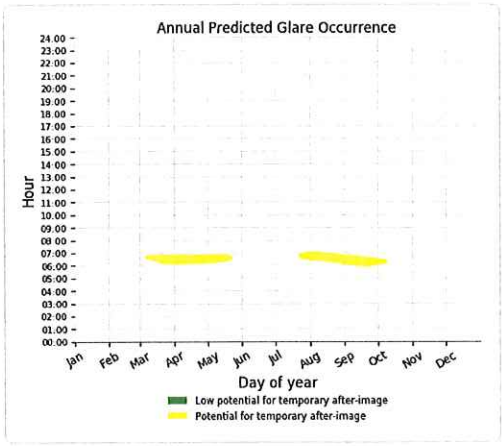


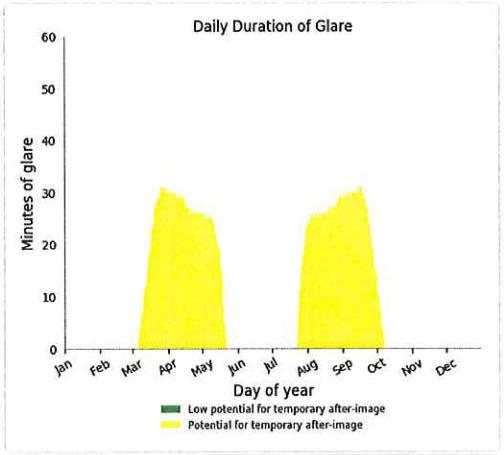


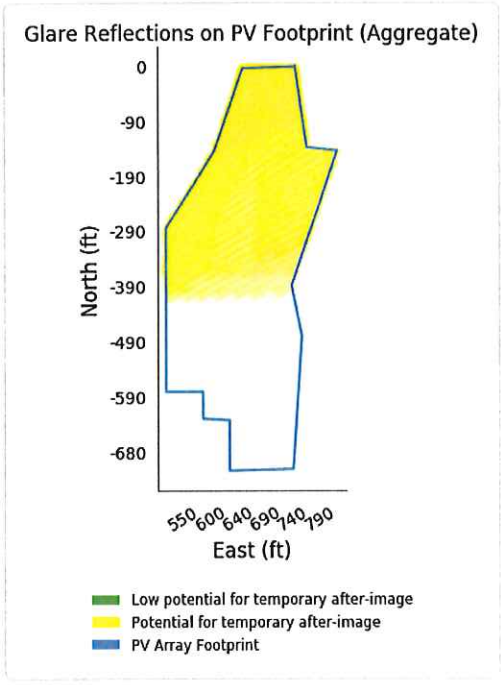
Array 2 - OP Receptor (OP 4)

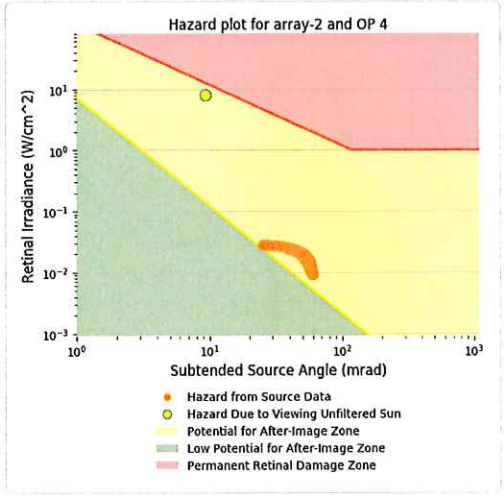
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 3,599 minutes of "yellow" glare with potential to cause temporary after-image.





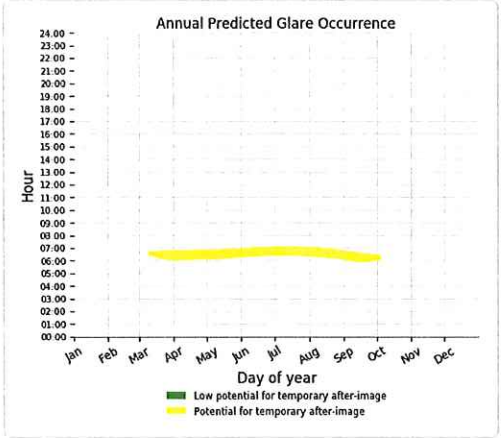


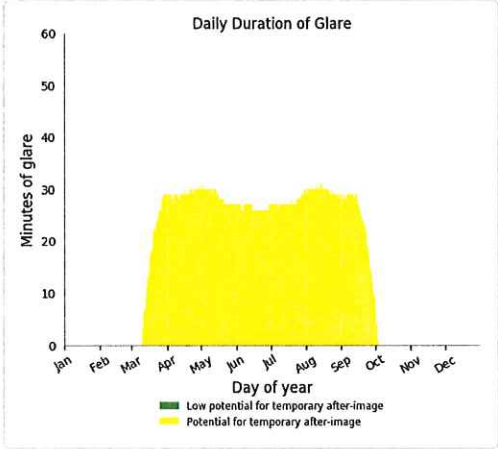


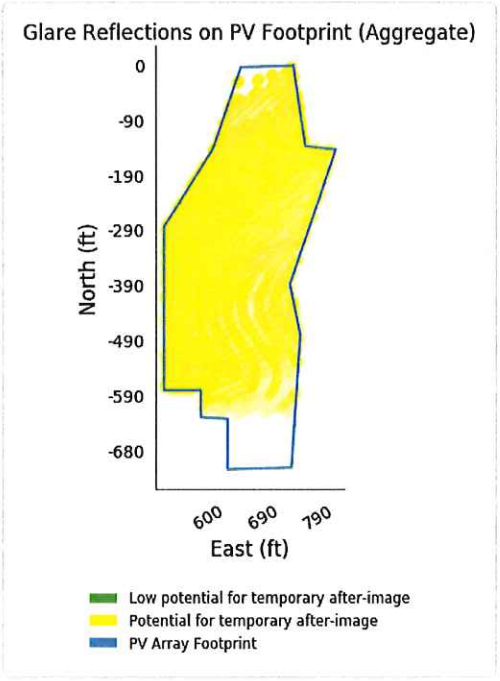
Array 2 - OP Receptor (OP 5)

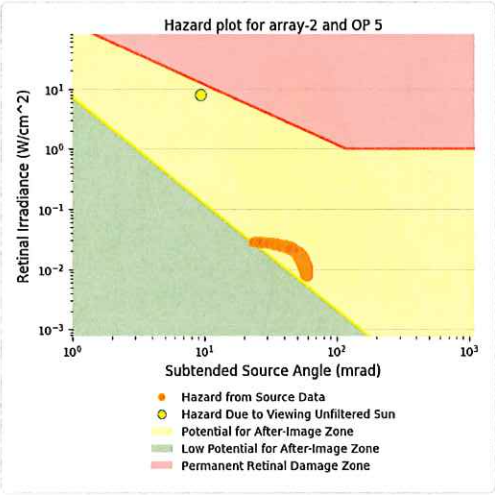
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 5,490 minutes of "yellow" glare with potential to cause temporary after-image.





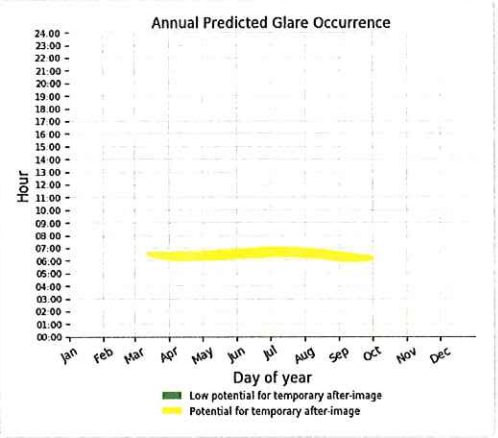


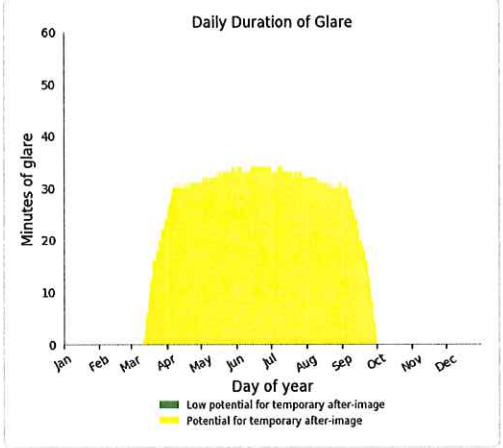


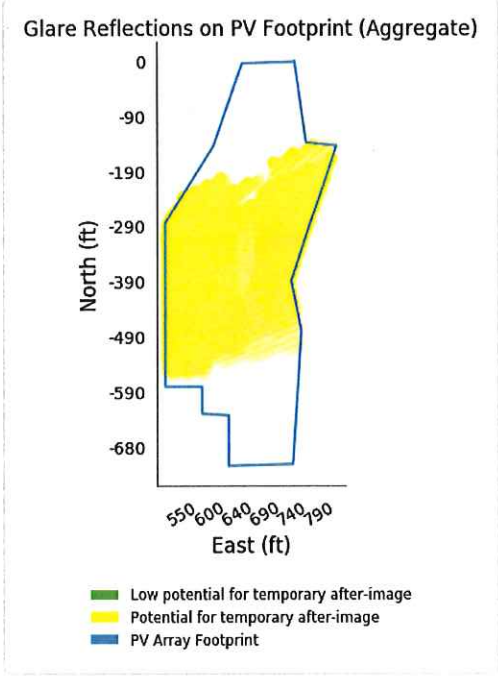
Array 2 - OP Receptor (OP 6)

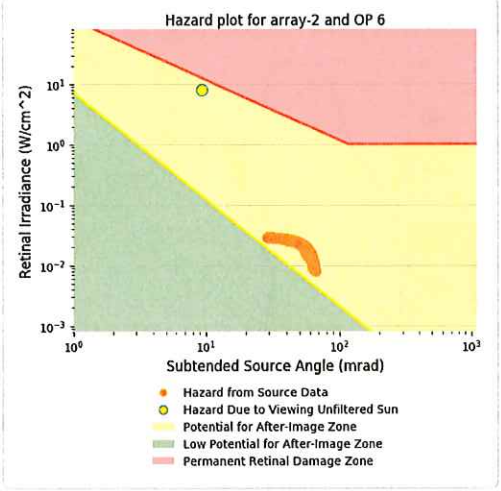
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 5,798 minutes of "yellow" glare with potential to cause temporary after-image.





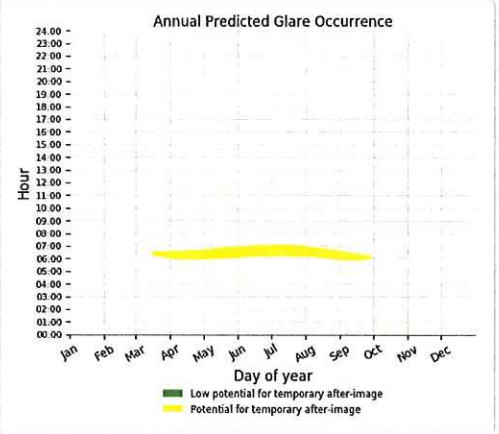


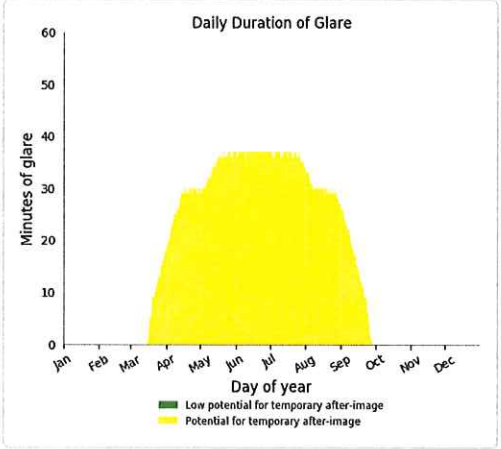


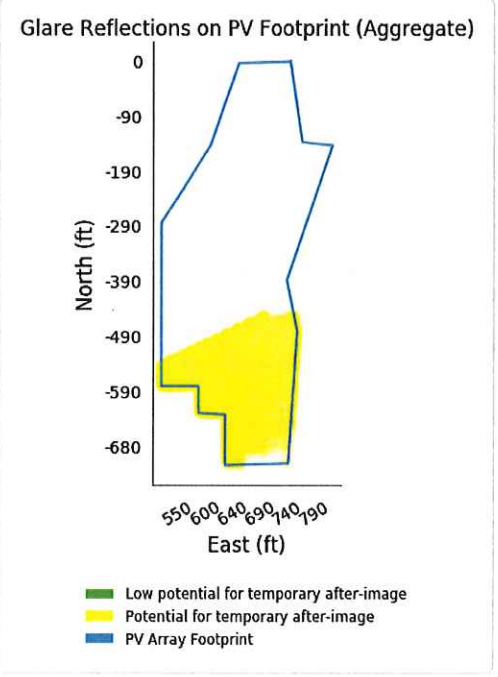
Array 2 - OP Receptor (OP 7)

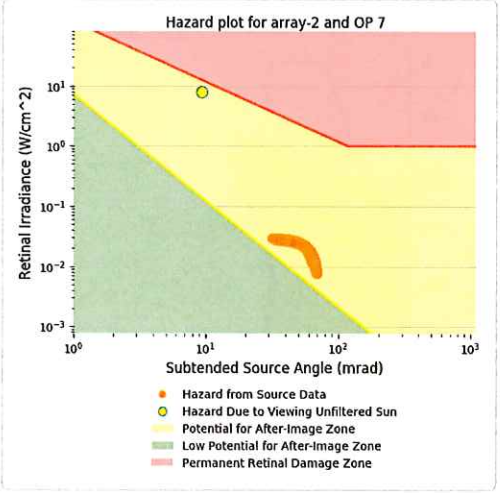
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 5,616 minutes of "yellow" glare with potential to cause temporary after-image.





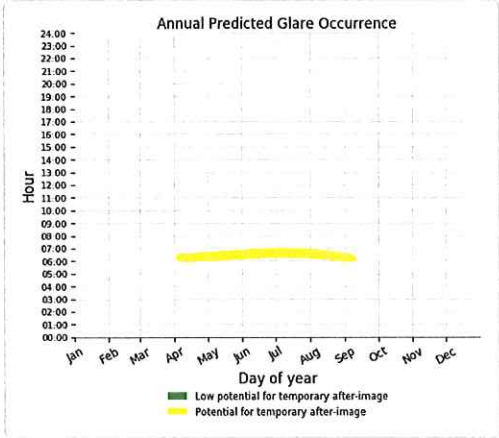


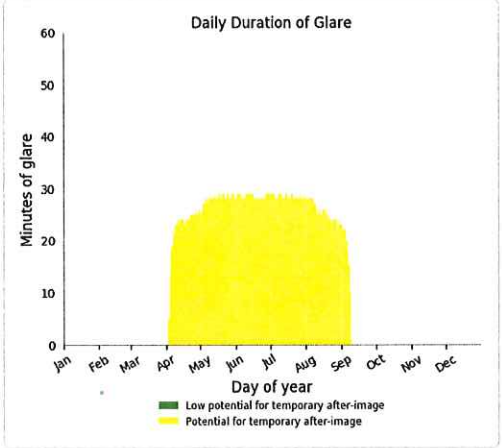


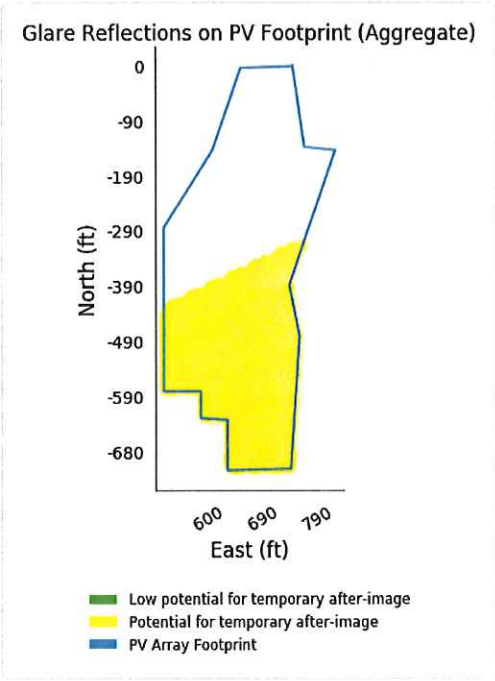
Array 2 - OP Receptor (OP 8)

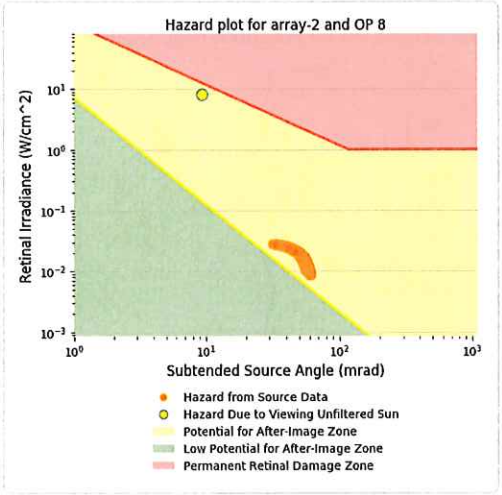
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 4,185 minutes of "yellow" glare with potential to cause temporary after-image.





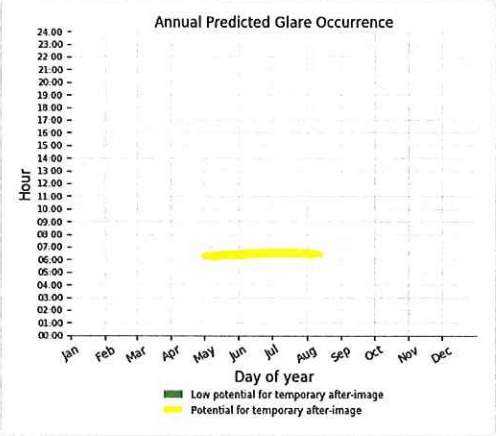


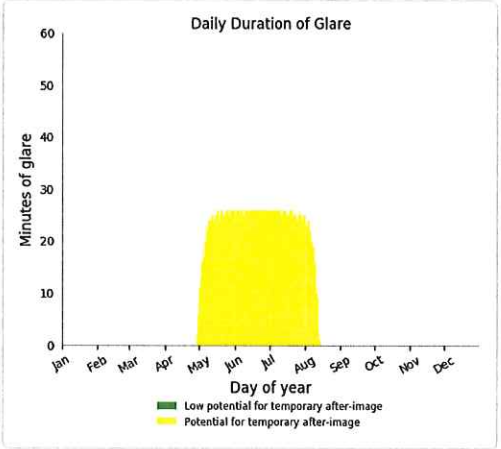


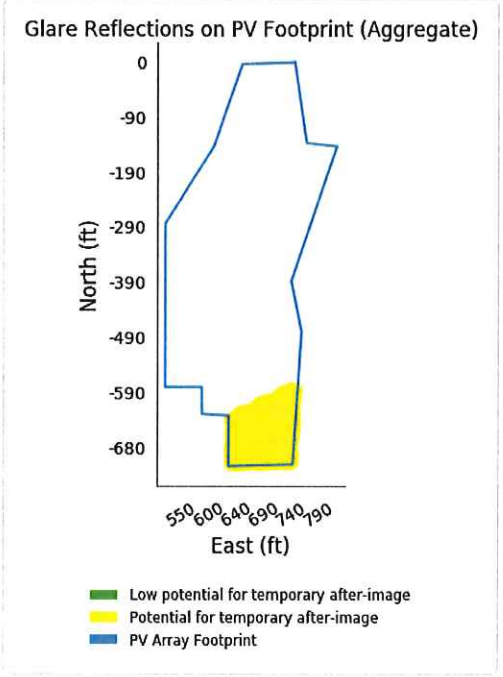
Array 2 - OP Receptor (OP 9)

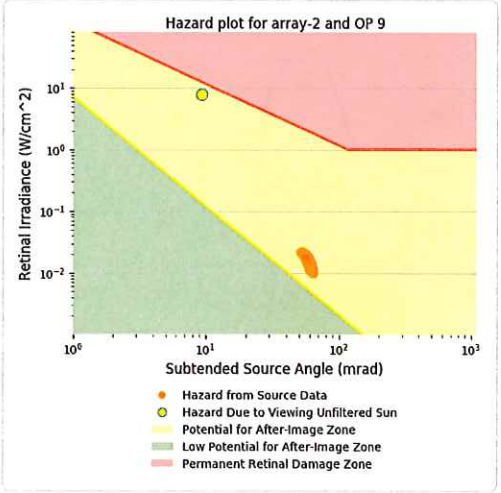
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 2,530 minutes of "yellow" glare with potential to cause temporary after-image.





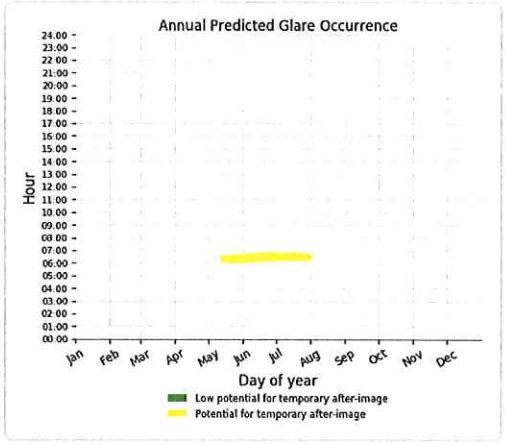


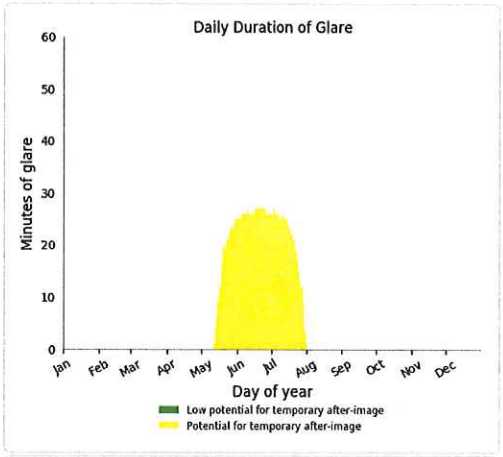


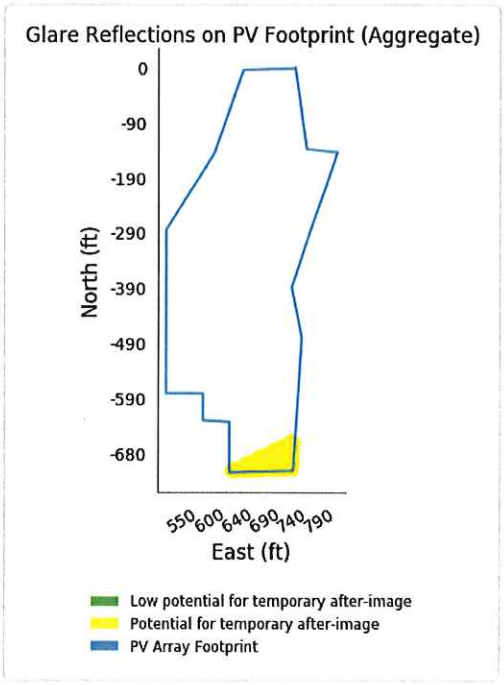
Array 2 - OP Receptor (OP 10)

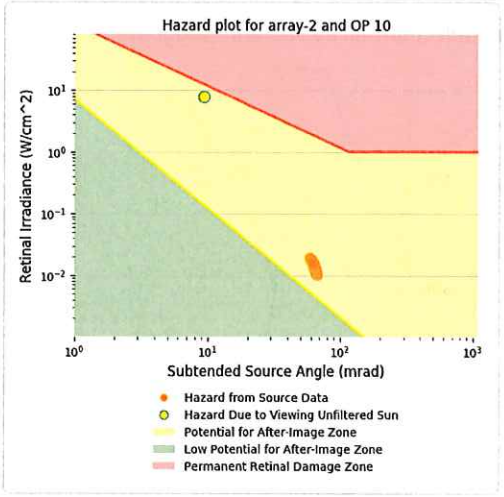
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 1,768 minutes of "yellow" glare with potential to cause temporary after-image.









Array 2 - OP Receptor (OP 11)

No glare found

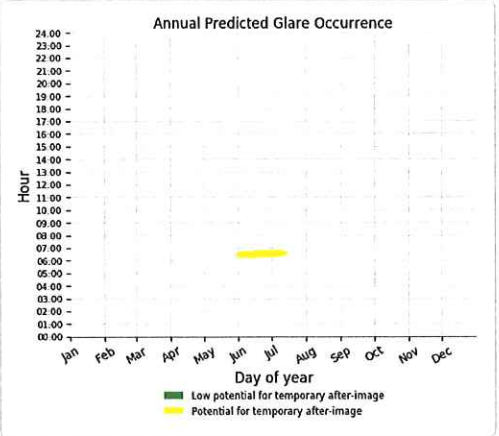
Array 2 - OP Receptor (OP 12)

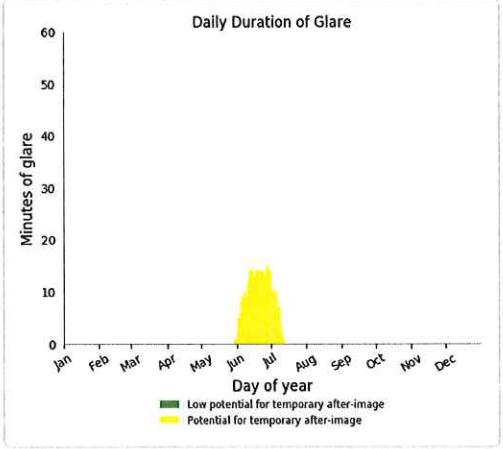
No glare found

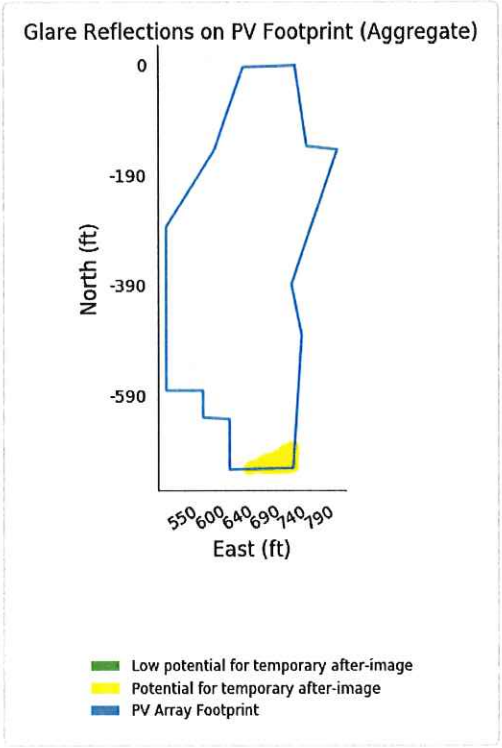
Array 2 - OP Receptor (OP 13)

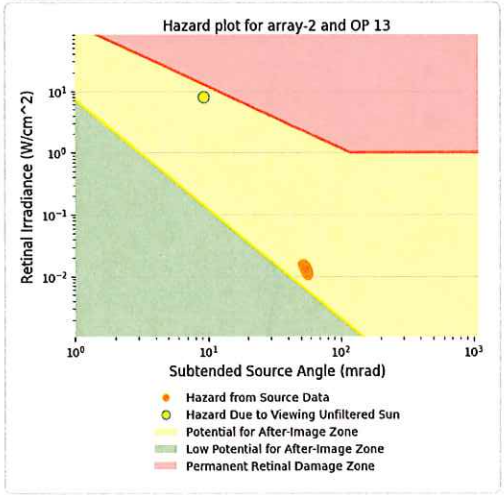
PV array is expected to produce the following glare for receptors at this location:

- 0 minutes of "green" glare with low potential to cause temporary after-image.
- 447 minutes of "yellow" glare with potential to cause temporary after-image.









Array 2 - OP Receptor (OP 14)

No glare found

Array 2 - OP Receptor (OP 15)

No glare found

Array 2 - OP Receptor (OP 16)

No glare found

Array 2 - OP Receptor (OP 17)

No glare found

Assumptions

- Times associated with glare are denoted in Standard time. For Daylight Savings, add one hour.
- Glare analyses do not account for physical obstructions between reflectors and receptors. This includes buildings, tree cover and geographic obstructions.
- Detailed system geometry is not rigorously simulated.
- The glare hazard determination relies on several approximations including observer eye characteristics, angle of view, and typical blink response time. Actual values and results may vary.
- Several calculations utilize the PV array centroid, rather than the actual glare spot location, due to algorithm limitations. This may affect results for large PV footprints. Additional analyses of array sub-sections can provide additional information on expected glare.
- The subtended source angle (glare spot size) is constrained by the PV array footprint size. Partitioning large arrays into smaller sections will reduce the maximum potential subtended angle, potentially impacting results if actual glare spots are larger than the sub-array size. Additional analyses of the combined area of adjacent sub-arrays can provide more information on potential glare hazards. (See previous point on related limitations.)
- Hazard zone boundaries shown in the Glare Hazard plot are an approximation and visual aid. Actual ocular impact outcomes encompass a continuous, not discrete, spectrum.
- Glare locations displayed on receptor plots are approximate. Actual glare-spot locations may differ.
- Glare vector plots are simplified representations of analysis data. Actual glare emanations and results may differ.
- Refer to the **Help page** for assumptions and limitations not listed here.

Petitioner
CBA Exhibit
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BALTIMORE COUNTY, MARYLAND

INTEROFFICE CORRESPONDENCE

TO: Michael Mallinoff, Director
Department of Permits, Approvals

DATE: June 19, 2019

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For June 03, 2019
Item No. 2019-0183-X

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

Provide property addresses on the plans.

We noticed that there is a few existing streams or watercourses that are located on the property. The main stream flood plain delineation is shown on the plan and it is very close to the delineation shown on FIRM 2400100020F dated September 26, 2008. The proposed solar array is located outside of the delineation and it appears to meet the Public Works' requirements. The watercourse located at the south of the site may be a Baltimore County regulated flood plain associated with a drainage area equal to or greater than 30 acres. The plan proposes to place a road and culvert overtop of this watercourse. A flood study is required to establish the flood plain delineation and the site must adhere to the Baltimore County DPR Policy Manual, the Building Code and the Design Manual.

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. Falls Road is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 6),
5. The landscape planting along Falls Road may need to be set back from the existing overhead power lines to allow the diversity of screen plant materials to mature and not be effected by standard vegetation maintenance typically associated with existing overhead power line.
6. Perimeter landscape buffers should address adjacent property views to provide maximum screening potential when it relates to the proposed solar facility. Including but not limited to 18702, 18708, 18719 and 18720 Falls Road.
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should continue across the entire length of the Falls Road frontage to assure screening of the solar array field from Falls Road views with special attention around the access drive.
9. Consideration should be given to the proposed access drive being moved approximately 100 to 150 feet to the north on Falls Road, the access drive may need to have a chicane or bends to assure screening of the solar array field from the adjacent driveway and Falls Road views, if landscape screening does not,
10. More comments may be rendered during review of the landscape plan.

VKD: cen
cc: file

June 24, 2019

Petitioner
CBA Exhibit
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Mr. Jan M. Cook
Development Manager
Development/Management/Permits
Inspections & Approvals
County Office Building-Room 123
111 West Chesapeake Avenue
Towson, MD 21204

Dear Mr. Cook:

Thank you for the opportunity to review the DRC Plan for the proposed Falls Road Solar development on Falls Road (MD 25) in Baltimore County. The Maryland Department of Transportation State Highway Administration (MDOT SHA) has reviewed the plan submittal listed below and is pleased to respond:

Falls Road Solar
DRC Plan No. 062519A
County Tracking No. DRC-2019-00080
SHA Tracking No. 19APBA013XX
MD 25 (east side) 3300' south of Beckleysville Road
Mile Post 21.20
Baltimore County

An access permit will be required to construct the proposed entrances to this site on MD 25. The following criteria and detail will apply and should be reflected on future plan submittals:

The proposed entrances must be 25' wide with 25' radii. These entrances must be shaded on the plan from the existing edge of pavement on MD 25 back to the radius returns within the entrances, and the following full depth pavement section utilized and noted on the plan:

1.5" Superpave Asphalt Mix 9.5mm for Surface – PG 64S-22, Level 2
6" Superpave Asphalt Mix 19.0mm for Base – PG 64S-22, Level 2 (Two 3" lifts)
6" Graded Aggregate Base or 12" Capping Borrow

To initiate the plan review cycle toward the issuance of the access permit the design engineer must submit nine (9) sets of plans reflecting the criteria and details. The plan submittal should include 1 set of hydraulic computations, and a CD containing plans and all supporting documentation to Wendy Wolcott at 320 West Warren Road, Hunt Valley, MD 21030 to the attention of Mr. Richard Zeller. Please utilize the SHA tracking number when making this submission.

All SHA Policies, Standards and Specifications must be followed when preparing the above plan submittal including but not limited to the following documents:

MDOT SHA Access Manual
MDOT SHA Business Standards and Specifications

The Access Management Plan Review Checklist must be utilized in drafting the SHA Improvement Plans. Please include a copy of the completed checklist when making this submittal. All of these documents along with additional guidance can be found on our web site at www.roads.maryland.gov under Business Center.

The plan proposes dedication of property frontage on MD 25 to the MDOT SHA. The MDOT SHA requires that any right-of-way or easement donation (dedication) be platted to MDOT SHA standards. These standards may be found at http://www.roads.maryland.gov; - Business Center; - Surveyors Center; then follow the link to Developer Donation Plat Standards. Please contact Mr. Robert Hammond-Bey, Chief, Records & Research Section, Office of Real Estate at 410-545-0358 or rhammondbey@mdot.maryland.gov for existing right-of-way information. Note that any plats produced for the MDOT SHA shall be on NAD83/91 datum. Please contact Mr. Erik Donald, Geodetic Area Engineer, Plats and Surveys Division (PSD) at 410-545-8976 or edonald@mdot.maryland.gov for SHA-GPS control location and information. All plats must be submitted in hard copy format for review, checking and final issuance. All subdivision plats that will be showing donated area must be approved by PSD prior to recordation at the County level.

The first plat submission must include two (2) copies of the plat reflecting the proposed dedication of property frontage, and a CD containing the plat to be sent to Ms. Wendy Wolcott, at 320 West Warren Road, Hunt Valley, MD 21030 to the attention of Mr. Richard Zeller. Please utilize the above SHA tracking number when making this submission. Subsequent plat submissions shall be made directly to the Plats and Surveys Division. Please contact Mr. Matt Bloedorn, Acting Assistant Division Chief, Plats and Surveys Division (PSD) at 410-545-8516 or mbloedorn@mdot.maryland.gov for additional information about the Donation Plat review process. Additionally, contact Mr. Robertallen Webb, Chief, District 4 Right-of-Way at 410-229-2401 or by email rwebb@mdot.maryland.gov for information about the Donation Deed requirements and procedures. The deed, description, plats and appropriate title documentation must be approved by the MDOT SHA, and evidence of the deed recordation shall be provided prior to the issuance of the Access Permit.

If there are any questions, please contact Mr. Richard Zeller at 410-229-2332, or toll free (in Maryland only) at 1-866-998-0367 (x2332), or via email at rzeller@mdot.maryland.gov.

Sincerely,

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

cc: Kimley – Horn & Associates, Inc. / 1801 Porter Street, Suite 401, Baltimore, MD 21230
Powerfactor Company / 1 Mace Avenue, Baltimore, MD 21221
Mr. Vishnu Desai / 111 West Chesapeake Avenue, Towson, MD 21204
Mr. Michael Pasquariello, MDOT SHA District 4 Utilities
Mr. Kimon Johnson, MDOT SHA District 4, Traffic
Mr. Robert Hammond-Bey, MDOT SHA Office of Real Estate
Mr. Erik Donald, MDOT SHA Plats & Surveys Division
Mr. Matt Bloedorn, MDOT SHA Plats & Surveys Division
Mr. Robertallen Webb, MDOT SHA District 4 Right-of-Way

Petitioner
CBA Exhibit
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JOHN A. OLSZEWSKI, JR.
County Executive

MICHAEL MOHLER, *Director*
Department of Permits, Approvals & Inspections

February 22, 2019

Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
600 Washington Ave, Suite 200
Towson MD 21204

RE: Case Number: 2019-0183-X, Falls Road

To Whom It May Concern:

The above referenced petition was accepted for processing **ONLY** by the Bureau of Zoning Review, Department of Permits, Approvals, and Inspection (PAI) on December 07, 2018. 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/kl

Enclosures

c: People's Counsel
Holly Springs Nature Conservancy & Wildlife, Attn: Marry Zodhiates 4209 Beckleysville Road Hampstead MD 21074
Power Factor, LLC 1 Mace Avenue Baltimore MD 21221

BALTIMORE COUNTY, MARYLAND
INTEROFFICE CORRESPONDENCE

DATE: Jan 17, 2019

TO: Michael Mohler, Acting Director
Department of Permits, Approvals
And Inspections

FROM: Vishnu Desai, Supervisor
Bureau of Development Plans Review

SUBJECT: Zoning Advisory Committee Meeting
For December 24, 2018
Item No. 2019-0183-A

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. Falls Road is a Baltimore County Scenic Route,
2. Perimeter landscape buffers are required,
3. Must minimize tree and vegetation removal,
4. Solar panels are considered a utility and should be designed and located to harmonize with the surroundings and to create the least visual impact. (See Comment # 6),
5. The landscape planting along Falls Road may need to be set back from the existing overhead power lines to allow the diversity of screen plant materials to mature and not be effected by standard vegetation maintenance typically associated with existing overhead power line.
6. Perimeter landscape buffers should address adjacent property views to provide maximum screening potential when it relates to the proposed solar facility. Including but not limited to 18702, 18708, 18719 and 18720 Falls Road.
7. Proposed perimeter fence shall be black vinyl-coated chain-link fence,
8. Proposed landscape screening should continue across the entire length of the Falls Road frontage to assure screening of the solar array field from Falls Road views with special attention around the access drive.
9. Consideration should be given to the proposed access drive being moved approximately 100 to 150 feet to the north on Falls Road, the access drive may need to have a chicane or bends to assure screening of the solar array field from the adjacent driveway and Falls Road views, if landscape screening does not,
10. More comments may be rendered during review of the landscape plan.

We noticed that there is a few existing streams or watercourses that are located on the property. The main stream flood plain delineation is shown on the plan and it is very close to the delineation shown on FIRM 2400100020F dated September 26, 2008. The proposed solar array is located outside of the delineation and it appears to meet the Public Works' requirements.

The watercourse located at the south of the site may be a Baltimore County regulated flood plain associated with a drainage area equal to or greater than 30 acres. The plan proposes to place a road and culvert overtop of this watercourse. A flood study is required to establish the flood plain delineation and the site must adhere to the Baltimore County DPR Policy Manual, the Building Code and the Design Manual.

* * * * *

VKD: cen
cc: file

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

DATE: 1/10/2019

TO: Mike Mohler
Acting Director, Permits, Approvals and Inspections

FROM: Jeff Mayhew
Acting Director, Department of Planning

SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-183

INFORMATION:
Property Address: Falls Road
Petitioner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Zoning: RC 2, RC 8
Requested Action: Special Exception

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

A site visit was conducted on 6/6/2018 and 01/09/2019. The subject site is within a Master Plan 2020 Agricultural Priority Preservation Area (APPA).

The Department does not oppose granting the petitioned zoning relief conditioned upon the following:

A portion of the proposed special exception is located within the RC 8 zone. Pursuant to BCZR §1A09.4.A a finding is required on the part of the Director of the Department of Planning **prior** to the approval of the special exception plan. To support such a finding the petitioners must submit to the contact person listed below a narrative explaining how the proposal is consistent with the spirit and intent of said BCZR.

Falls Road is a state designated scenic byway and a Baltimore County Master Plan designated scenic road presenting a "focused view" as defined in the Comprehensive Manual of Development Policies (CMDP). When developing on a scenic route, the CMDP development guidelines instructs one to *"minimize tree and vegetation removal"* and to *"maintain a buffer between the road and the new development"* (CMDP pgs. 178,180).

- The proposal shall minimize grading, tree and vegetation removal along Falls Road. Reduce the limit of disturbance at that location where the swale meets Falls Road and in the area around the existing barn to be salvaged. Reduce the proposed drive to the narrowest functional width and site any parking pads or pullovers such that they may not be viewed from Falls Road. Where disturbance must occur, plantings consisting of native deciduous and evergreen trees and shrubs shall be installed in a naturalistic manner to mitigate the impacts of the special exception use upon the scenic route while allowing a view of the restored barn.

- The plan is not clear as to whether the barn is to remain on site. The Department recommends that the barn be restored and remain on site thereby remaining the point of interest of the focused view.

- The Department supports the Baltimore County Landscape Architect in planting requirements deemed necessary to include interior contour screening and other planting schemes that will mitigate the visual impact of the special exception proposal upon the scenic route.

Additional conditions are as follows:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall specifically note on the plan that the proposed solar facility will be subject to BCZR §4F-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.
- 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.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.
- All proposed security fencing shall be black vinyl coated chain-link.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

JM/JGN/LTM/

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
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

December 20, 2018

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

Dear Ms. Lewis:

Thank you for the opportunity to review the site plan to accompany the petition for a special exception to allow a solar facility on the subject property. The Maryland Department of Transportation State Highway Administration (MDOT SHA) has reviewed the submittal listed below and is pleased to respond.

Falls Road Solar
Site Plan Review for Special Exception
Case No. 2019-0183-X
MD 25 (east side) 2500' south of Beckleysville Road
Mile Post 21.36
Baltimore County

The proposed entrance to this site will be subject to the terms of an access permit to construct a paved apron on MD 25. That permit may be obtained by contacting Mr. Brian Gneiting, Resident Maintenance Engineer – Hereford Shop at 410-329-6752. A copy of the plan will be forwarded to his office.

If there are any questions, please contact Mr. Richard Zeller at 410-229-2332 or toll free (in Maryland only), 1-866-998-0367 (x2332) 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

cc: Kimley-Horn and Associates, Inc. / 1801 Porter Street, Suite 401, Baltimore, MD 21230
Powerfactor Company / 1 Mace Avenue, Baltimore, MD 2221 attn: Andrew Streit
Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc. / 4209 Beckleysville Road
Hampstead, MD 21704
Mr. Brian Gneiting, MDOT SHA Resident Maintenance Engineer – Hereford Shop

Alyssa Moyers

Subject: FW: Falls Road Solar

Petitioner
CBA Exhibit
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From: Joseph W. Wiley [mailto:jwiley@baltimorecountymd.gov]
Sent: Wednesday, August 21, 2019 9:19 AM
To: Lawrence Schmidt
Subject: Falls Road Solar

Good Morning Larry,

I spoke with Lloyd, Since the plan was amended and approved at the hearing, it is what it is and no new comments are needed. We did file the green line plan in our case file for the project.

Joseph W. Wiley
Planner & Land Preservation Specialist

Department of Planning
Community Planning
105 W. Chesapeake Avenue, Suite 101
Towson, MD 21204

410-887-3480
Fax:410-887-5862

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

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From: prvs=1296edb18=jwiley@baltimorecountymd.gov

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My Spam Blocking Level: Medium

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Block baltimorecountymd.gov

High (60): Pass
Medium (75): Pass
Low (90): Pass

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COLORED SITE PLAN EXHIBIT
SCALE: 1" = 80'

Petitioner
CBA Exhibit
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No.	REVISIONS	DATE	BY

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST., SUITE 404, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. _____ EXPIRATION DATE: _____

KHA PROJECT	114066000
DATE	09/24/2019
SCALE	AS SHOWN
DESIGNED BY	NJL
DRAWN BY	STM
CHECKED BY	NJL

COLORED SITE PLAN EXHIBIT TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
EXHIBIT

Plotted By: Miller, Sean Sheet Set: Falls Road Solar Layout: EXHIBIT September 24, 2019 07:53:43pm K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\Exhibits\2019-09-24 Hearing Exhibit\Site Plan Exhibit to Accompany Special Exception DRC.dwg
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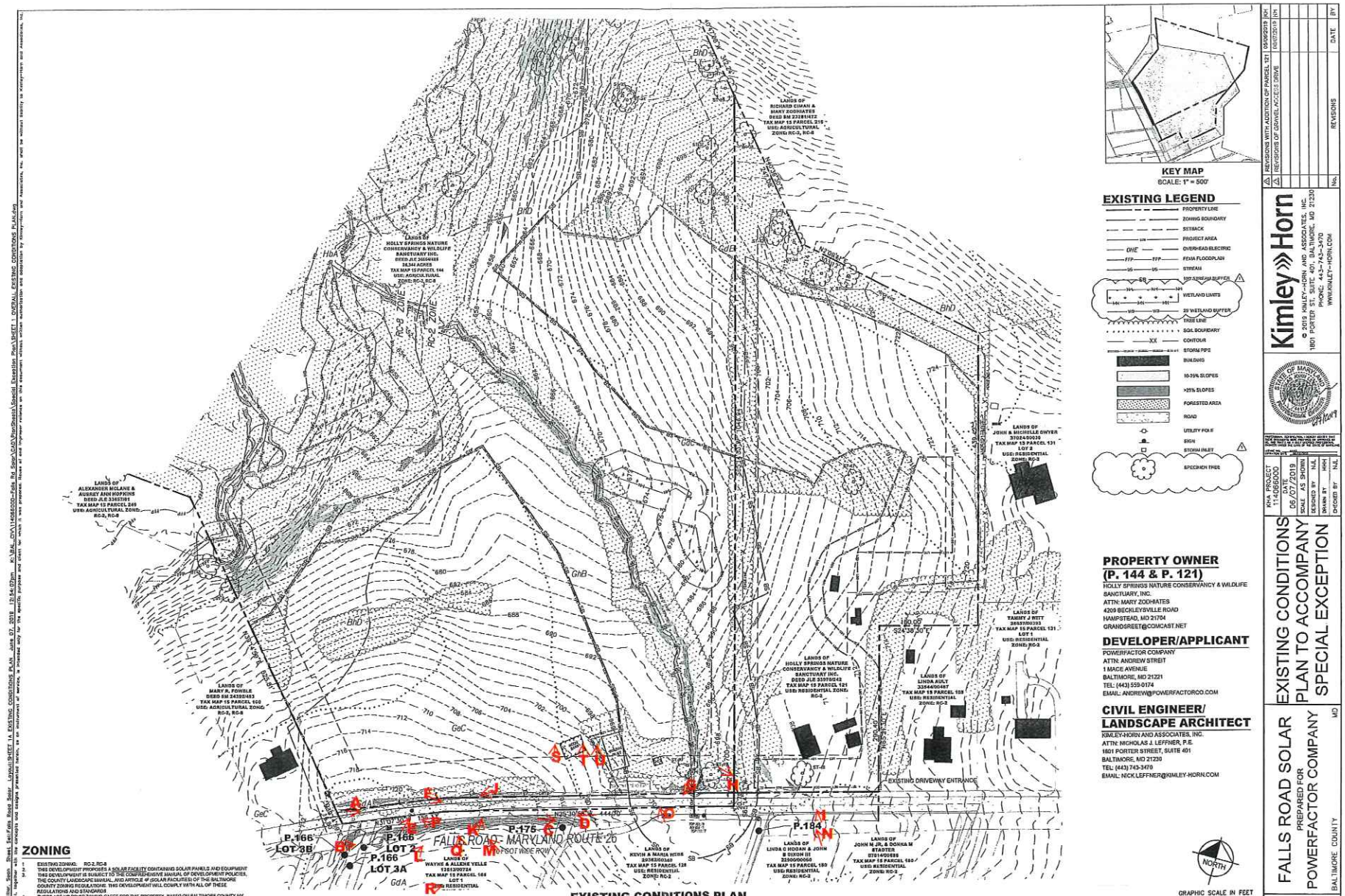

KEY MAP
SCALE: 1" = 500'

EXISTING LEGEND

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4F (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS
3. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/9/2018.
4. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3479
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	09/06/2019	KH
2	REVISIONS OF GRAVEL ACCESS DRIVE	10/07/2019	KH

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

KHA PROJECT 114066000
06/07/2019
SCALE AS SHOWN
DESIGNED BY N.L.
DRAWN BY HHH
CHECKED BY N.L.

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1A

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PROPOSED PRINCIPAL USE SOLAR FACILITIES BY COUNCIL DISTRICT (Maximum 10)

	1st CD	2nd CD	3rd CD **	4th CD	5th CD	6th CD	7th CD
1.)			2017-0107-X 5298 Frye Road (Re-filed 6/11/18 Case Now Subject to Council Bill # 37-17) ALJ Granted w/ restrictions on 12/5/18 No Permits as of 7/8/19	2018-0077-X 2316 Ridge Rd Hearing Postponed by ALJ Until Further Notice No ALJ Decision as of 7/8/19 No Permit as of 7/8/19	2018-0127-X 10790 Raphel Rd ALJ Granted w/ restrictions on 5/11/18 No Permits as of 7/8/19	2018-0095-SPHXA 11956 Philadelphia Rd Granted In Part & Dismissed w/o Prejudice In Part on 12/29/17. Permit Issued 3/7/19 (B952048)	
2.)			2017-0108-X 20450 Middletown Road ALJ Granted w/ restrictions on 1/22/18 Bd. Of Appeals Granted w/ restrictions on 4/25/19 No Permits as of 7/8/19	2018-0078-X 9155 Old Court Rd ALJ Granted w/restrictions on 12/7/2017 Permit Approved By Zoning on 4/11/19			
3.)			2017-0344-X (Refiled 3/7/18) 14503 Green Rd ALJ Granted w/ restrictions on 4/25/18 Bd. Of Appeals Filing on 5/24/18 No Permits as of 7/8/19	2018-0123-SPHXA 9203 Dogwood Rd ALJ Granted 1/26/18. Motion for Recon. Granted 3/6/18. Permit Issued 4/4/19 (B954947)			
4.)			2018-0030-X 1139 Monkton Rd ALJ Granted w restrictions on 5/7/18 Bd. Of Appeals Granted w/ restrictions on 5/16/19 No Permits as of 7/8/19	2018-0124-SPHX 10021 Old Court Rd ALJ Granted w/ restricted on 1/26/18 Permit Issued 4/4/19 (B954946)			
5.)			2018-0047-X 15637 York Rd ALJ Granted w/ restrictions on 12/21/17 Bd. Of App. Granted w/ restrictions on 7/29/19 No Permits as of 7/8/19	2019-0147-X 715 Westminster Pike ALJ Granted w Restrictions on 1/4/19 No Permits as of 7/8/19			
6.)			2018-0194-X 632 Freeland Rd ALJ Granted w/ restrictions on 4/3/18. Board Of App. Granted w/ restrictions on 5/10/19 No Permits as of 7/8/19				
7.)			2019-0057-X (Filed 8/20/18) 20920 Old York Road ALJ Granted w/ restrictions on 11/27/18 Bd. Of App. Filing 2/5/19 No Permits as of 7/8/19				
8.)			2019-0099-SPHXA 4618 Jolly Acres Road (Filed 9/28/18) ALJ Hearing Not Scheduled Yet No Permits as of 7/8/19				

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Revised 9/19/19

9.)			2019-0138-X (Filed 10/29/18) 21138 Old York Road ALJ Granted w Restr. on 1/14/19 Bd. Of App. Granted w/ restrictions on 7/24/19. No Permits as of 7/8/19				
10.)			2019-0141-X 15009 Hanover Pike ALJ Granted w/ Restrictions on 3/12/19 No Permits as of 7/8/19				
11.)			2019-0183-X Falls Road near Beckleysville Rd. ALJ Granted w/ restrictions on 6/20/19 No Permits as of 7/8/19 **				
12.)			**				

** ANY ADDITIONAL PETITION FILINGS IN THE 3RD. COUNCILMANIC DISTRICT WILL INCLUDE AN INTER-OFFICE MEMO, SIMILAR TO THE ATTACHED SAMPLE ON PAGE 4.

THE FOLLOWING SOLAR FACILITY ZONING CASES BELOW WERE FILED BEFORE THE OCTOBER 18, 2016 RETROACTIVE DATE REFERENCED IN COUNCIL BILL # 37-17, SECTION 3 OR THE ZONING PETITION WAS WITHDRAWN/DISMISSED, AND THEREBY, THESE ZONING CASES ARE NOT INCLUDED IN COUNCIL DISTRICT TOTALS.

(THE CASES LISTED BELOW ARE SHOWN FOR HISTORIC INFORMATION PURPOSES ONLY!)

			2016-0335-X (Filed 6/24/16) 15700 Hanover Pike Denied by Bd. Of Appeals 4/28/18 as solar array not being a "Public Utility Use" Denied by Circuit Ct. and Affirmed by Board Of Appeals (See Refiled Case # 2018-0052-XA & Permit Status Below Subject to Council Bill 37-17)		2016-0086-X (Filed 10/5/15) 11121 Pfeffers Road ALJ Granted 12/16/15 Permit Approved by Zoning 1/13/2016 (B901259)	2017-0101-X (Filed 10/12/16) 11956 Philladelphia Road Withdrawn 10/27/17 (See Refiled Case # 2018-0095-SPHXA & Permit Approval Above)	
			2017-0104-X (Filed 10/13/16) 632 Freeland Road Petition Withdrawn (See Refiled Case # 2018-0194-X & Permit Status Above subject to Council Bill 37-17)				
			2017-0107-X (Filed 10/17/16) 5298 Frye Road (See 6/11/18 Refiled Case & Permit Status Above Subject to Council Bill # 37-17). Same case number was used above.				
			2018-0052-XA 15700 Hanover Pike Bd. Of App.- Petition Withdrawn & Dismissed w/ Prejudice 9/28/18 No Permits as of 7/8/19				
			2018-0072-X 19735 Graystone Road ALJ Granted in Part & Denied in Part 1/3/18 (See Order). Mot. For Recon. Granted in Part & Denied in Part 2/16/18. Board Of App. Remand to ALJ for further proceedings on 1/16/19 ALJ Dismissed the Petition w/o Prejudice on 4/8/19 No Permits as of 7/8/19				
			2019-0056-X 20135 Old York Road Petition Withdrawn on 9/20/18 No Permits as of 7/8/19				
			2019-0142-X (Filed 10/30/18) 19620 Resh Mill Road ALJ Dismissed w/o Prejudice on 1/17/19 No Permits as of 7/8/19				

DATE: December 7, 2018

TO: John E. Beverungen, Administrative Law Judge
Office of Administrative Hearings

FROM: John Q. Planner, Planner II, Zoning Review Office
Department of Permits, Approvals & Inspections

SUBJECT: Recommendation for Zoning Case # 2019-0183-X

Pursuant to Section 4F-102.B.4, BCZR:

"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."

Since this case would be the "twelfth" petition filed in the 3rd Councilmanic District, the Zoning Review Office recommends that an advisory statement (i.e., a restriction) be included in any order granting the special exception that states:

"The granting of this special exception by the ALJ or the Board of Appeals upon appeal, does not guarantee that a building permit will ultimately be available for construction, pursuant to Section 4F-102.B.4, BCZR."

If you have any questions, please feel free to contact me at extension 3391.

ARTICLE 4F
SOLAR FACILITIES

§ 4F-101. Purpose and definitions.
§ 4F-102. Location of solar facilities.
§ 4F-103. Exception.
§ 4F-104. Requirements.
§ 4F-105. Required security.
§ 4F-106. Maintenance.
§ 4F-107. Abandonment; removal.

[Bill No. 37-2017[1]]

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.

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§ 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.
2. No more than ten 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 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 percent 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 § 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 § 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.

WETLAND DELINEATION REPORT

FALLS ROAD SOLAR
BALTIMORE COUNTY, MARYLAND

April 5, 2019

Prepared For:

KIMLEY-HORN AND ASSOCIATES, INC.
1801 Porter Street, Suite 401
Baltimore, Maryland 21230
Attn: Ms. Heather Hutton

Prepared By:

GEO-TECHNOLOGY ASSOCIATES, INC.
Geotechnical and Environmental Consultants
3445-A Box Hill Corporate Center Drive
Abingdon, Maryland 21009
Phone: (410) 515-9446
Fax: (410) 515-4895
www.gtaeng.com

GTA Project No: 31190299

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GEO-TECHNOLOGY ASSOCIATES, INC.

GEOTECHNICAL AND
ENVIRONMENTAL CONSULTANTS

A Practicing Geoprofessional Business Association Member Firm

April 5, 2019

Kimley-Horn and Associates, Inc.
1801 Porter Street, Suite 401
Baltimore, Maryland 21230

Attn: Ms. Heather Hutton

Re: Wetland Delineation Report
Falls Road Solar
Baltimore County, Maryland

Dear Ms. Hutton:

Pursuant to your request, Geo-Technology Associates, Inc. (GTA) has performed a wetland delineation at the above referenced project site ("subject property") which encompasses approximately 32.51 acres and is located east of Falls Road, in the Hampstead area of Baltimore County, Maryland. The subject property consists of Parcels 121 and 144 as shown on Baltimore County Tax Map 15. The purpose of the review was to evaluate the presence and extent of wetlands and/or waterways with respect to Federal and State regulatory authority. This Report and the accompanying *Wetland Delineation Plan* summarize GTA's findings.

We appreciate the opportunity to have been of service to you. If you have questions or require additional information, please contact this office at (410) 515-9446.

Sincerely,
GEO-TECHNOLOGY ASSOCIATES, INC.

Maxwell D. Potember
Environmental Scientist

T. Andy Stansfield, Jr.
Vice President

MDP/MAJ/TAS/cds
31190299
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WETLAND DELINEATION REPORT

FALLS ROAD SOLAR
BALTIMORE COUNTY, MARYLAND
APRIL 5, 2019

1.0 INTRODUCTION

The subject property encompasses approximately 32.51 acres and is located east of Falls Road, in the Hampstead area of Baltimore County, Maryland. The subject property consists of Parcels 121 and 144 as shown on Baltimore County Tax Map 15. Geo-Technology Associates, Inc. (GTA) has been retained to provide a review and delineation of the subject property's wetlands and/or "waters of the United States."

At the time of GTA's environmental review, the subject property was comprised of open, former agricultural fields and wooded areas. The subject property also contained a single-family residence and accessory dilapidated structures. The subject property consists of topography ranging from flat to steep slopes. The approximate latitude and longitude coordinates of the center of the subject property is 39.639935° and -76.796814° respectively.

2.0 DOCUMENT REVIEW

2.1 Site Plans

GTA personnel utilized a plan that included the subject property boundary overlain on a 2017 aerial image base in order to conduct the field evaluation.

2.2 United States Geological Survey Topographic Maps

The United States Geological Survey (USGS), Hampstead, MD and Lineboro, MD-PA Quadrangles, 7.5-minute Topographic Map Series (*Figure 2*), both dated 2016, were used as a reference to identify possible waterways within and immediately surrounding the subject property. USGS Topographic Maps identify elevations, streams, wetlands, ponds, and roads. The USGS Topographic Maps depict Falls Road along the western boundary of the subject property. The topography depicted on the USGS Topographic Maps indicate that the subject property generally drains to the north towards Compass Run, which is depicted as a perennial stream that crosses through the northern portion of the subject property.

The subject property drains towards Compass Run, which contributes to the Prettyboy Reservoir and Gunpowder Falls. In the vicinity of the subject property, tributaries to Gunpowder Falls are classified in the Code of Maryland Regulations (COMAR) 26.08.02.08 as Designated Use "Class III-P: Nontidal Cold Water and Public Water Supply."

2.3 Soil Survey Information

GTA consulted the U.S. Department of Agriculture, Natural Resources Conservation Service's (NRCS) soil survey data[1] to identify the presence of possible hydric soils, wetlands, and waterways. The *Soil Survey Map* (*Figure 3*) depicts eight soil units (*Table 1*) within the subject property. According to the NRCS National Hydric Soils List[2], two soil units within the subject property contains hydric components (*Table 1*).

Table 1: Mapped Soil Units

SYMBOL[1]	NAME/DESCRIPTION[1]	HYDRIC SOIL[2]	HYDRIC COMPONENT[2]	PERCENTAGE OF MAPPING UNIT	POSITION IN LANDSCAPE[2]
BhD	Brinklow channery loam, 15 to 25 percent slopes	No			
GdA	Glenelg loam, 0 to 3 percent slopes	No			
GdB	Glenelg loam, 3 to 8 percent slopes	No			
GdC	Glenelg loam, 8 to 15 percent slopes	No			
GeC	Glenelg channery, 8 to 15 percent slopes	No			
GhB	Glenville silt loam, 3 to 8 percent slopes	Yes	Baile	10	Swales, drainageways
HbA	Hatsboro silt loams, 0 to 3 percent slopes	Yes	Hatboro	15	Flood plains
MdE	Manor-Brinklow complex, 25 to 45 percent slopes, very rocky	No			

[1] United States Department of Agriculture, Natural Resource Conservation Service, Gridded Soil Survey Geographic (gSSURGO) Database for Maryland, dated 2018.

[2] United States Department of Agriculture, Natural Resource Conservation Service, Hydric Soils List by State, available at *<Https://Www.Nrcs.Usda.Gov/Internet/Fse_Documents/Nrcseprd1316619.Html#Reportref>*, and accessed on February 25, 2019.

2.4 Wetland Indicator Maps

GTA's environmental scientists also consulted digital wetland data available from the United States Fish and Wildlife Service's (USFWS) National Wetlands Inventory[3] (NWI; *Figure 4*) and the Maryland Department of Natural Resources[4] (MD DNR; *Figure 5*).

The NWI Wetlands Map depicts a linear palustrine system (PFO1A) that crosses along the northern portion of the subject property. This palustrine system appears to correlate with Compass Run, depicted on the USGS Topographic Map. The features depicted on the NWI Wetlands Map are classified by USFWS using the Cowardin system, as detailed in *Table 2*.

Table 2: USFWS NWI Cowardin Designations

SYMBOL[3]	SYSTEM[3]	SUBSYSTEM[3]	CLASS[3]	SUBCLASS[3]	WATER REGIME[3]	SPECIAL MODIFIER
PFO1A	Palustrine (P)	N/A	Forested (FO)	Barred-Leaved Deciduous (1)	Temporarily Flooded (A)	N/A

The MD DNR Wetlands Map depicts a linear riverine system along the northern boundary of the subject property, which appears to correlate with the palustrine system depicted on the NWI Wetlands Map, and with Compass Run, as identified on the USGS Topographic Map

2.5 Aerial Imagery

GTA reviewed aerial imagery dated 1957, 1964, 1971, 1981, 1982, 1994, 2005 through 2009, 2011, 2013, 2014 (*Figure 6*), 2015, and 2017, available from the Environmental Title Research[5], MD iMAP[6], and the National Agricultural Imagery Program[7]. Based on aerial imagery reviewed by GTA, the subject property appeared to contain predominantly open, apparent agricultural fields, and wooded areas since 1957. Structures along Falls Road are also

[3] United States Fish and Wildlife Service, National Wetlands Inventory. Last updated October 15, 2018.
[4] Maryland Department of Natural Resources Wetlands Inventory. Last updated August 2017.
[5] Environmental Title Research, LLC. NETR Online. <<https://www.historicaerials.com>>.
[6] Maryland Department of Information Technology (DoIT). MD iMAP.
[7] United States Department of Agricultural (USDA) Farm Service Agency, National Agricultural Imagery Program.

discernable on the 1957 aerial. A linear water signature is apparent on the imagery reviewed by GTA within the wooded area on the northern portion of the subject property. This linear water signature appears to correlate with Compass Run, as identified on the USGS Topographic Map. A linear water signature that appears to originate at Falls Road and bisect the subject property is apparent on the aerial imagery reviewed by GTA. An apparent area of saturation within the open field on the central portion of the subject property is discernable on the 1994, 2007, 2014, 2015, and 2017 aerial imagery reviewed by GTA. Other linear water signatures and apparent areas of inundation or saturation are not discernable within the subject property on the aerial imagery reviewed by GTA.

3.0 METHODOLOGY

3.1 General Methodology

The purpose of GTA's review was to evaluate the presence and extent of wetlands and waterways with respect to Federal and State jurisdictional authority. GTA based its evaluation on the United States Army Corps of Engineers' (Corps) definition of "waters of the U.S." and "navigable waters of the U.S.," which are defined in Title 33 Code of Federal Regulations (CFR), Parts 328 and 329. GTA employed the three-parameter approach set forth in the *Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-01*, dated 1987 (*1987 Manual*) and the Corps *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region, Version 2.0.),* dated April 2012 (*Supplement*), as a reference for delineating wetlands. The methodology of wetland delineation included identifying hydric soil, wetland hydrology, and dominant hydrophytic vegetation. GTA also considered other regulated waters of the United States, such as ponds, lakes, streams, and rivers. If these waters were observed on the property, GTA incorporated them into the nontidal wetland delineation and labeled them accordingly.

3.2 Hydrology

The *1987 Manual* defines wetland hydrology as the sum of the total wetness characteristics in areas that are inundated or have saturated soils for a sufficient duration to support hydrophytic vegetation. *The 1987 Manual* further defines areas with evident characteristics of wetland hydrology as those where the presence of water has an overriding

influence on characteristics of vegetation and soils due to anaerobic and reducing conditions. Wetland hydrology exists when a minimum of one primary indicator or two secondary indicators are present. Indicators of wetland hydrology are generally derived from observations of surface water or saturated soils, evidence of recent inundation, evidence of current or recent soil saturation, and evidence from other site conditions or data. Additional evidence of wetland hydrology can also be used with appropriate documentation.

3.3 Vegetation

Hydrophytic vegetation can be defined as plant life growing in water or on a substrate that is at least periodically inundated by water. The Corps, as part of an interagency effort with the U.S. Environmental Protection Agency (EPA), the USFWS, and the NRCS published the National Wetland Plant List[8] (NWPL). The NWPL lists indicator statuses to plants that occur in and around wetlands, describing the likelihood that species occurs in a wetland:

> Obligate Wetland (OBL): Occur in wetlands with an estimated 99% probability.
>
> Facultative Wetland (FACW): Usually occur in wetlands, with an estimated 67%-99% probability.
>
> Facultative (FAC): Equally likely to occur in wetlands and uplands, with an estimated 34%-66% probability of occurring in wetlands.
>
> Facultative Upland (FACU): Usually occur in uplands, with an estimated 67%-99% probability of occurring in uplands.
>
> Obligate Upland (UPL): Occur in uplands with an estimated 99% probability.

For vegetation within a community to be determined hydrophytic in accordance with the *Supplement,* it must pass the Dominance Test, where more than 50% of the dominant plant species observed must have the indicator statuses OBL, FACW, and FAC. If the vegetation observed in the community fails the Dominance Test and indicators of wetland hydrology and hydric soils are present, the Prevalence Index should be applied. Hydrophytic vegetation is present if a prevalence index of 3.0 or less is determined.

[8] U.S. Army Corps of Engineers. 2016. National Wetland Plant List, Version 3.3. Available online at <http://wetland_plants.usace.army.mil>."

3.4 Soils

A hydric soil is defined as a soil that is saturated, flooded, or ponded long enough during the growing season to develop anaerobic conditions (*Supplement*). According to the *Supplement,* indicators of hydric soils form mostly from the loss or accumulation of iron, manganese, sulfur, or carbon compounds during saturated and anaerobic conditions.

3.5 On-Site Data Collection

Data Collection Points (DCPs) were established on-site at locations to evaluate the presence of jurisdictional wetlands and waterways, and to demonstrate the typical characteristics of uplands and wetlands. In areas where hydrologic indicators were observed with hydrophytic vegetation, GTA personnel excavated or augured test pits in the ground to a depth of 20 inches or more to observe features of the soil solum. GTA personnel reviewed soil samples from test pits at numbered DCPs in order to describe and classify the soil as either hydric or non-hydric. At these DCPs, GTA personnel also evaluated the surrounding vegetative species and hydrologic indicators. Data Forms were prepared to record observations of the conditions within the wetland and upland areas. Data Forms were also prepared to record data from adjacent upland areas to further support the delineation in the field. The DCPs have been labeled on the *Wetland Delineation Plan* as DCP-1 through DCP-9. Data Forms with reference photographs are included in Appendix B to support the determination depicted on the accompanying *Wetland Delineation Plan* (Appendix D).

3.6 Delineation

In February and March 2019, GTA's wetland scientists performed an on-site review to evaluate whether jurisdictional wetlands and/or waterways are present within the subject property. GTA's field delineation of jurisdictional wetlands and/or waterways consisted of identifying the limits of the wetlands and waterways with pink and black striped flags, numbered sequentially. Wetland flags were hung at the time of GTA's field visit. GTA used the base plan described in *Section 2.1* to navigate the site. Wetland and waterway flag locations were located in the field using a Trimble Geo-XH handheld global positioning system (GPS), rated with sub-meter accuracy, and are shown on the accompanying *Wetland Delineation Plan* (Appendix D).

4.0 SYSTEMS IDENTIFIED

Two systems were identified within the subject property and are described in the following sections:

4.1 System 1: Perennial Stream (Compass Run), Intermittent Stream, and Palustrine Forested Wetlands

System 1 is located on the northern portion of the subject property and consists of Compass Run (Waters A) and adjacent and abutting palustrine emergent and forest wetlands. Compass Run originates off-site to the west and flows east along the northern portion of the subject property. Compass Run continues east, beyond the subject property. Two intermittent streams, which originate on the northern portion of the subject property and flow east and south, contribute to Compass Run. Within the subject property, GTA's wetland scientists observed consistent ordinary high-water marks and defined beds and banks along Compass Run and the two intermittent streams.

GTA's wetland scientists observed two palustrine forested, oxbow wetlands along the southern banks of Compass Run (Wetland 1 and Wetland 2). GTA's wetland scientists also observed an oxbow wetland along the northern bank of Compass Run. Within these wetlands, GTA's wetland scientists observed predominantly hydrophytic vegetation species, including northern spicebush (*Lindera benzoin*, FACW) and Nepalese browntop (*Microstegium vimineum*; FAC). Evidence of primary indicators of wetland hydrology included indicators A1 (Surface Water) and A3 (Saturation). Evidence of secondary indicators of wetland hydrology included indicator D2 (Geomorphic Position). GTA personnel excavated test pits to depths of 20 inches or greater within the limits of the wetland boundaries and observed the NRCS and Corps hydric soils field Indicator F3 (Depleted Matrix).

GTA's wetland scientists also observed three adjacent and abutting forested nontidal wetlands (Wetland 3, Wetland 4, and Wetland 5) south of Compass Run. GTA's wetland scientists also observed six adjacent and abutting forested nontidal wetlands north of Compass Run. Within these wetlands, scientists observed predominantly hydrophytic vegetation species,

including red maple (*Acer rubrum*; FAC), northern spicebush, skunk cabbage (*Symplocarpus foetidus*; OBL), Nepalese browntop, and eastern poison ivy (*Toxicodendron radicans*; FAC). Evidence of primary indicators of wetland hydrology included indicators A1 (Surface Water), A2 (High Water Table), A3 (Saturation), B3 (Drift Deposits), B4 (Algal Mat or Crust), and B9 (Water-Stained Leaves); evidence of secondary indicators of wetland hydrology included indicator B10 (Drainage Patterns), D2 (Geomorphic Position), and D5 (positive FAC-Neutral Test). GTA personnel excavated test pits to depths of 20 inches or greater within the limits of the wetland boundaries and observed the NRCS and Corps hydric soils field Indicator F3 (Depleted Matrix) and Indicator F19 (Piedmont Floodplain Soils).

4.2 System 2: Intermittent Stream and Adjacent Emergent Wetlands

System 2 is located on the northern portion of the subject property and consists of an intermittent stream (Waters B) and two adjacent palustrine emergent wetlands (Wetland 6 and Wetland 7). Waters B originates from a culvert beneath Falls Road and continues northeast, bisecting the subject property, and contributes to Compass Run on the northern-central portion of the subject property. GTA's wetland scientists observed consistent ordinary high-water marks and a defined bed and banks along Waters B.

Wetland 6 and Wetland 7 are located adjacently south of Waters B, on the central portion of the subject property. GTA's wetland scientists observed predominantly hydrophytic vegetation species, including sensitive fern (*Onoclea sensibilis*; FACW). Evidence of primary indicators of wetland hydrology included indicators A1 (Surface Water), A2 (High Water Table), A3 (Saturation), and B4 (Algal Mat or Crust). GTA personnel excavated test pits to depths of 20 inches or greater within the limits of the wetland boundaries and observed the NRCS and Corps hydric soils field Indicator F3 (Depleted Matrix).

5.0 CONCLUSION

As a result of GTA's environmental review of the subject property, it is GTA's professional opinion that there is a jurisdictional non-tidal wetland and jurisdictional streams present within the subject property. These areas were flagged in the field and are identified on the *Wetland Delineation Plan*.

Our conclusions regarding this subject property have been based on observations of existing conditions, professional experience in the area with similar projects, and generally accepted professional environmental practice under similar circumstances. Seasonal fluctuations in precipitation or weather conditions can result in differences in the perception of hydrologic conditions, which can alter GTA's evaluation of wetlands/waterways. It is important to note that this delineation is GTA's professional opinion, only. Decisions regarding the official jurisdictional status of wetlands/waterways are made by Federal, State, and/or local regulatory agencies.

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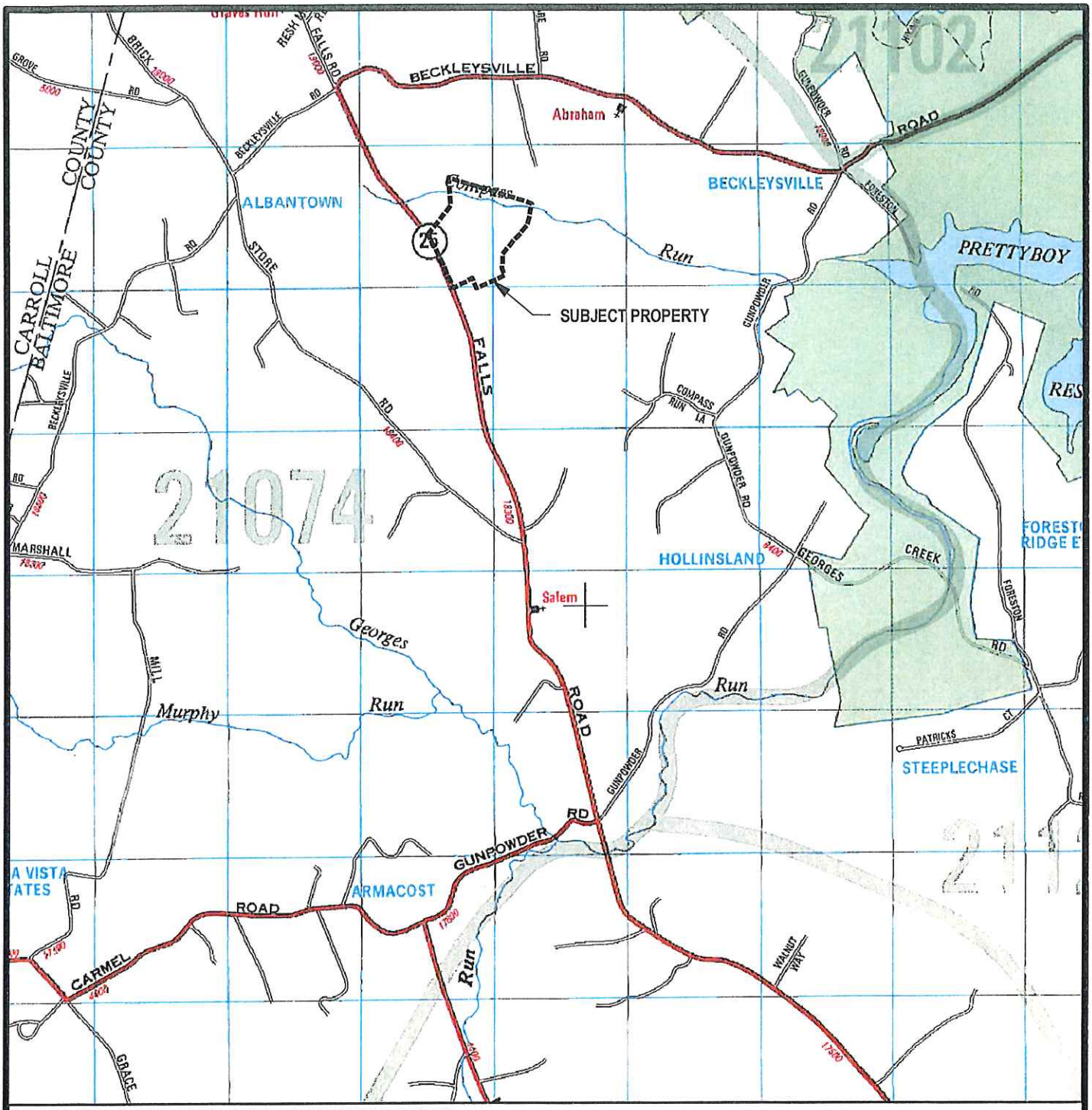
******* END OF REPORT *******

APPENDIX A

FIGURES



SOURCE: ADC, THE MAP PEOPLE. PERMITTED USE NUMBER 21006238.

NORTH

0 2,000

APPROXIMATE SCALE
1 INCH = 2,000 FEET

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SITE LOCATION MAP
FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO.	SCALE:	DATE:	DRAWN BY:	REVIEW BY:	FIGURE:
31190299	1" = 2,000'	MARCH 6, 2019	MDP	TAS	1

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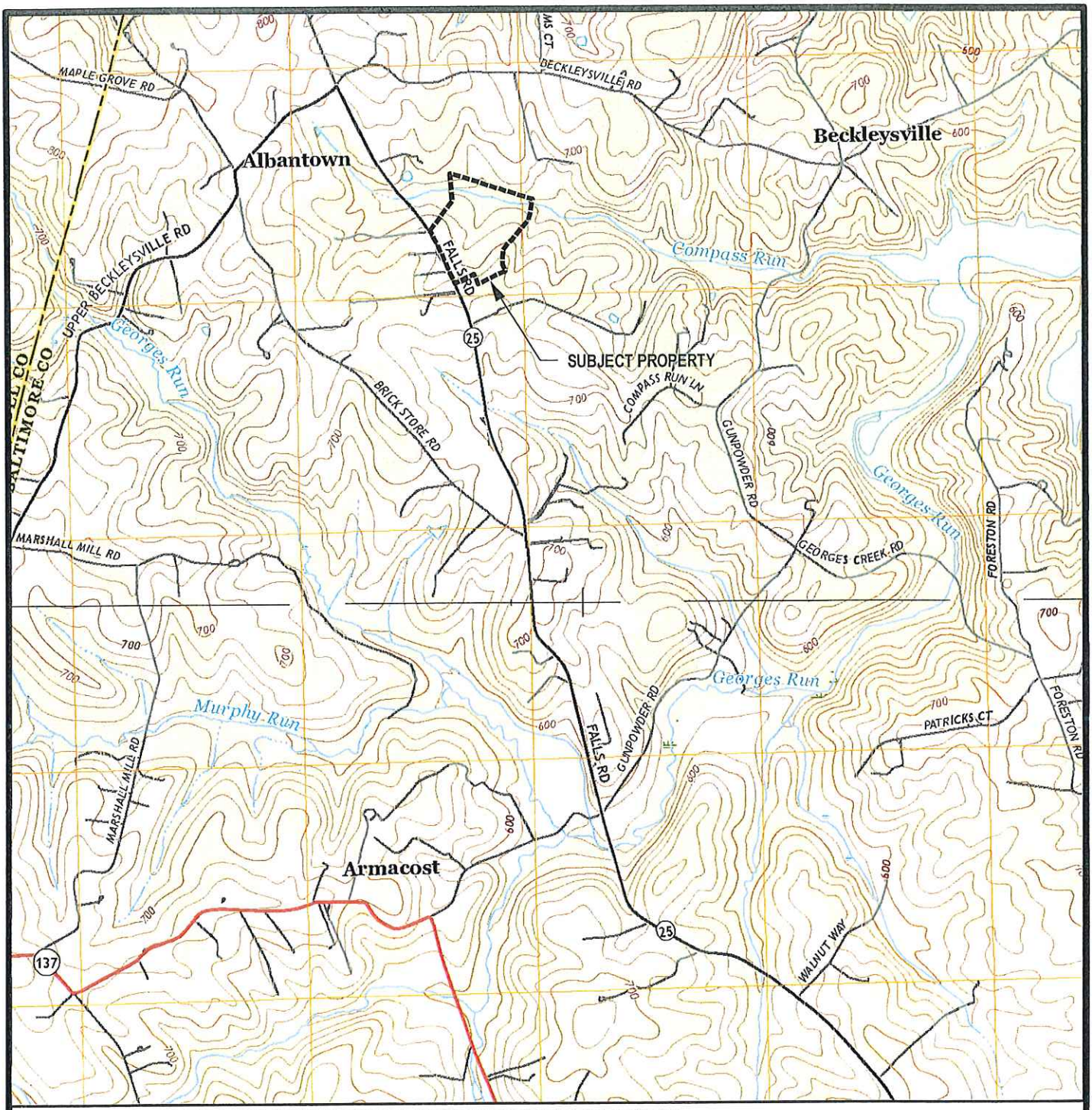

SOURCE: UNITED STATES GEOLOGICAL SURVEY, HAMPSTEAD, MD AND LINEBORO, MD-PA QUADRANGLES, 7.5 MINUTES TOPOGRAPHIC MAP SERIES, BOTH DATED 2016.

NORTH

0 2,000

APPROXIMATE SCALE
1 INCH = 2,000 FEET

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USGS TOPOGRAPHIC MAP
FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO.	31190299	SCALE:	1" = 2,000'	DATE:	MARCH 6, 2019	DRAWN BY:	MDP	REVIEW BY:	TAS	FIGURE:	2

\\psmc-data\gta\Shared\Project Files\2019\31190299 - Falls Road Solar\WET\CAD\GIS\31190299 - TOPO.mxd

SOURCE: UNITED STATES DEPARTMENT OF AGRICULTURE, NATURAL RESOURCES CONSERVATION SERVICE. GRIDDED SOIL SURVEY GEOGRAPHIC (gSSURGO) DATABASE FOR MARYLAND. DATED 2018.
2014 BASE AERIAL IMAGERY PROVIDED BY MARYLAND IMAP.

NORTH

0 400

APPROXIMATE SCALE
1 INCH = 400 FEET

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SOIL SURVEY MAP
FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO.	31190299	SCALE:	1" = 400'	DATE:	MARCH 6, 2019	DRAWN BY:	MDP	REVIEW BY:	TAS	FIGURE:	3

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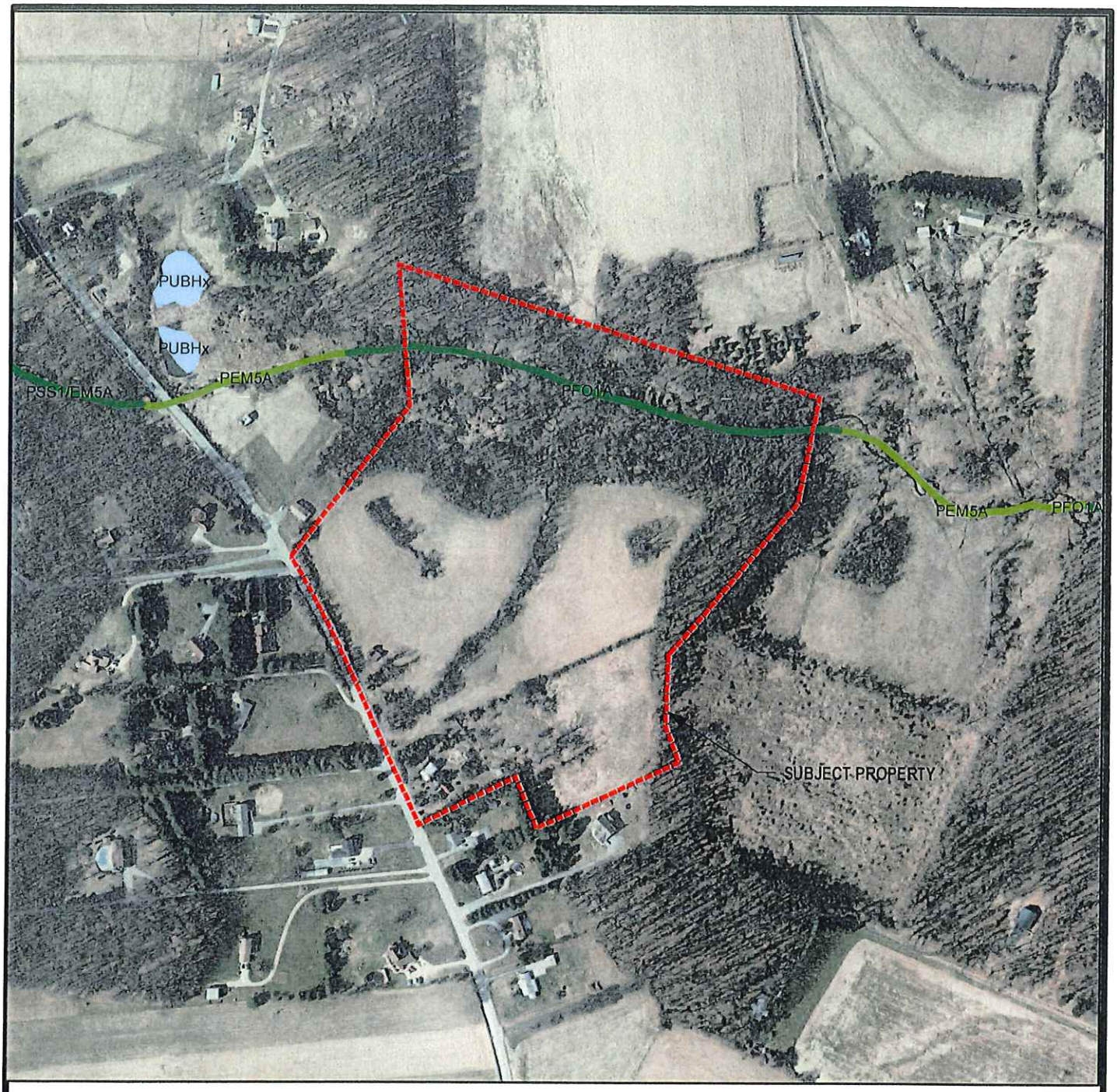

SOURCE: UNITED STATES FISH AND WILDLIFE SERVICE, NATIONAL WETLANDS INVENTORY. DATED 2018.
2014 BASE AERIAL IMAGERY PROVIDED BY MARYLAND IMAP.

LEGEND

- FRESHWATER EMERGENT WETLAND
- FRESHWATER FORESTED/SHRUB WETLAND
- FRESHWATER POND

NORTH

0 400

APPROXIMATE SCALE
1 INCH = 400 FEET

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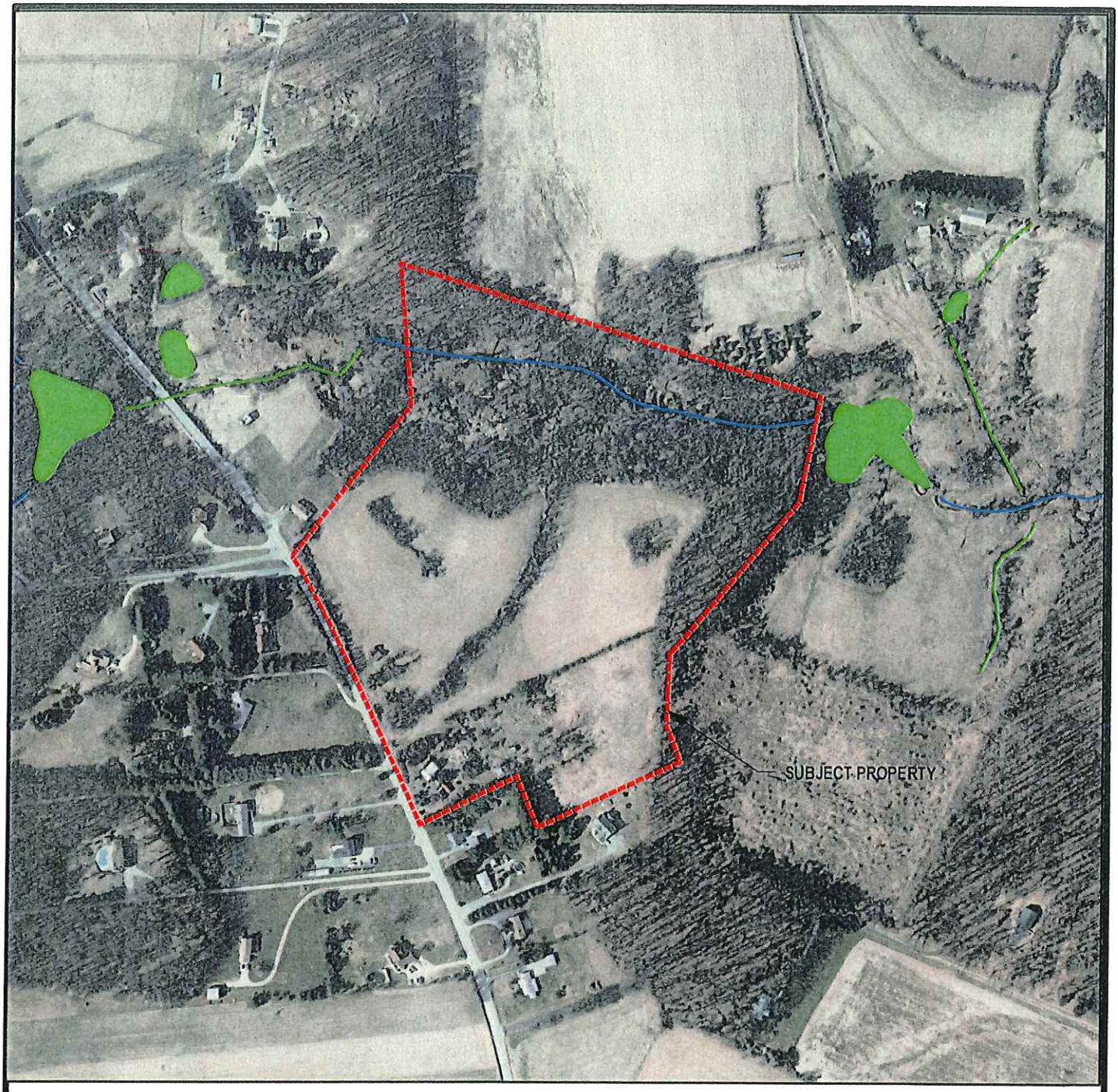
NWI WETLANDS MAP
FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO.	SCALE:	DATE:	DRAWN BY:	REVIEW BY:	FIGURE:
31190299	1" = 400'	MARCH 6, 2019	MDP	TAS	4

\\psmc-data\gta\Shared\Project Files\2019\31190299 - Falls Road Solar\WETCAD\GIS\31190299 - NWI.mxd



SOURCE: MARYLAND DEPARTMENT OF NATURAL RESOURCES WETLAND INVENTORY.
2014 BASE AERIAL IMAGERY PROVIDED BY MARYLAND IMAP.

LEGEND

PALUSTRINE (LINEAR)
PALUSTRINE
RIVERINE

NORTH

0 400
APPROXIMATE SCALE
1 INCH = 400 FEET

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MD DNR WETLANDS MAP

FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO.	31190299	SCALE:	1" = 400'	DATE:	MARCH 6, 2019	DRAWN BY:	MDP	REVIEW BY:	TAS	FIGURE:	5

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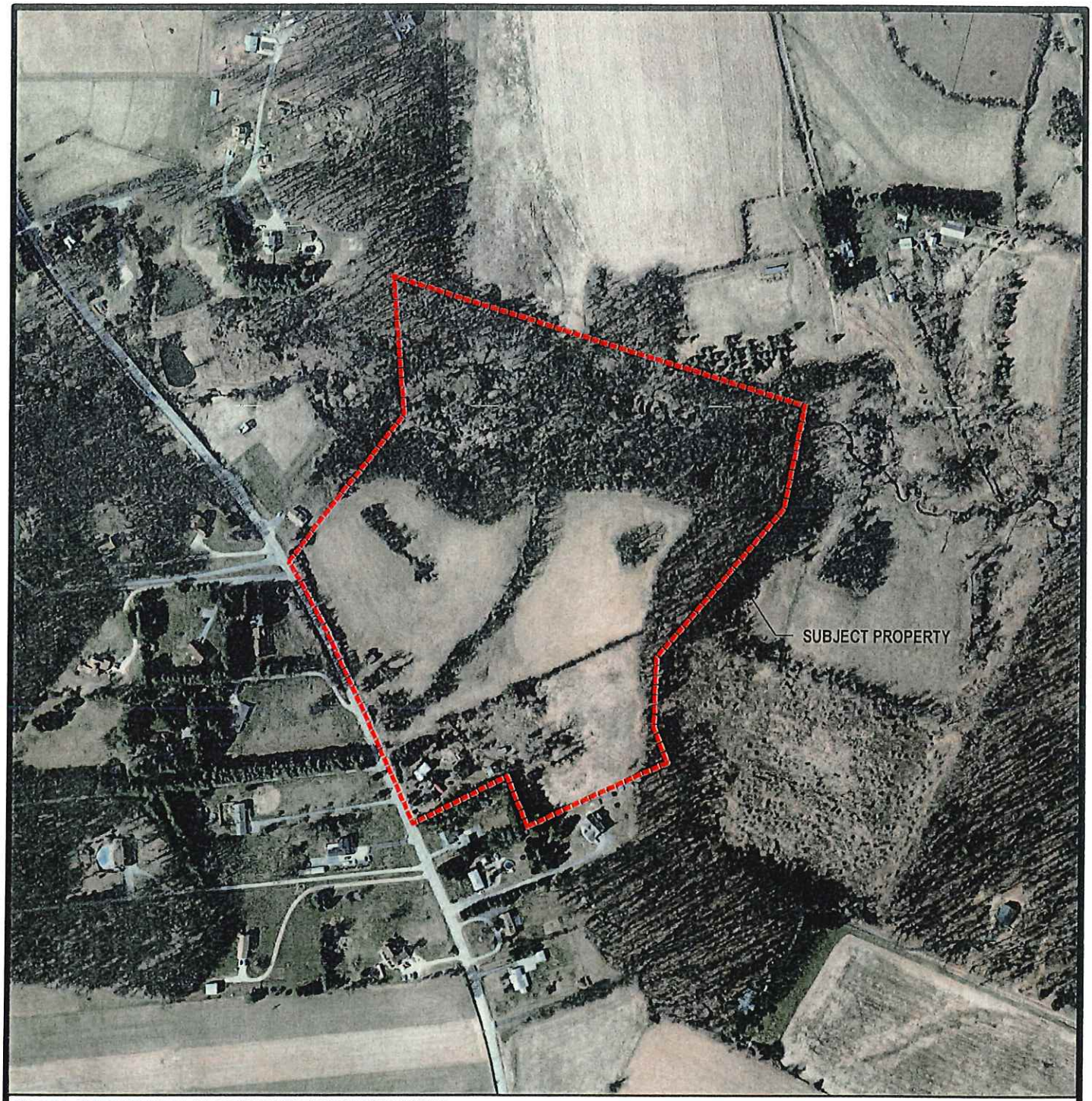

SOURCE: 2014 BASE AERIAL IMAGERY PROVIDED BY MARYLAND IMAP.

NORTH

0 400

APPROXIMATE SCALE
1 INCH = 400 FEET

GTA

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2014 AERIAL IMAGERY

FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

JOB NO.	31190299	SCALE:	1" = 400'	DATE:	MARCH 6, 2019	DRAWN BY:	MDP	REVIEW BY:	TAS	FIGURE:	6

\\psmc-data\gta\Shared\Project Files\2019\31190299 - Falls Road Solar\WET\CAD\GIS\31190299 -AERIAL.mxd

APPENDIX B

DATA FORMS

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore Coutny Sampling Date: 27-Feb-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-1
Investigator(s): R. McGehee Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Hillslope Local relief (concave, convex, none): None Slope (%): 4±
Subregion (LLR or MLRA): MLRA 148 Lat: 39.63894° Long: -76.79712° Datum: NAD83
Soil Map Unit Name: Glenville silt loam, 3 to 8 percent slopes (GhB) NWI classification: PEM
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes X No ____
Hydric Soil Present?	Yes X No ____		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established within Wetland 6 to document conditions observed in Wetlands 6 and 7.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- X Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- ____ Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- ____ Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X	No ____	Depth (inches):	1/4"
Water Table Present?	Yes X	No ____	Depth (inches):	1"
Saturation Present? (includes capillary fringe)	Yes X	No ____	Depth (inches):	0"

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-1

Tree Stratum (Plot size: 100' x 20')	Absolute % Cover	Dominant Species?	Indicator Status
1. Stratum Not Present			
2.			
3.			
4.			
5.			
6.			
7.			
	0 = Total Cover		
50% of total cover: 0	20% of total cover: 0		
Sapling / Shrub Stratum (Plot size: 100' x 20')			
1. Stratum Not Present			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	0 = Total Cover		
50% of total cover: 0	20% of total cover: 0		
Herb Stratum (Plot size: 100' x 20')			
1. *Schedonorus arundinaceus*	30	Y	FACU
2. *Onoclea sensibilis*	20	Y	FACW
3. *Juncus effusus*	10	N	FACW
4. *Solidago canadensis*	5	N	FACW
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	65 = Total Cover		
50% of total cover: 32.5	20% of total cover: 13		
Woody Vine Stratum (Plot size: 100' x 20')			
1. Stratum Not Present			
2.			
3.			
4.			
5.			
	0 = Total Cover		
50% of total cover: 0	20% of total cover: 0		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 1 (A)

Total Number of Dominant Species Across All Strata: 2 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 50% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species	0	x 1 =	0
FACW species	35	x 2 =	70
FAC species	0	x 3 =	0
FACU species	30	x 4 =	120
UPL species	0	x 5 =	0
Column Totals:	65 (A)		190 (B)

Prevalence Index = B/A = 2.92

Hydrophytic Vegetation Indicators:

- ____ 1 - Rapid Test for Hydrophytic Vegetation
- ____ 2 - Dominance Test is >50%
- X 3 - Prevalence Index is ≤3.0[1]
- ____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- ____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No ____

Remarks: (Include photo numbers here or on a separate sheet).

The plot size was limited to the feature.

SOIL

Sampling Point: DCP-1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-20	10YR 4/2	80	10YR 5/8	20	C	M	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Gleyed Matrix (F2)
- X Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 136, 122)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes ___X___ No _____

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 27-Feb-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-2
Investigator(s): R. McGehee Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Hillslope Local relief (concave, convex, none): None Slope (%): 2±
Subregion (LLR or MLRA): MLRA 148 Lat: 39.6391° Long: -76.79709° Datum: NAD83
Soil Map Unit Name: Glenville silt loam, 3 to 8 percent slopes (GhB) NWI classification: N/A
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____ , or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____ , or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes ____ No X	Is the Sampled Area within a Wetland?	Yes ____ No X
Hydric Soil Present?	Yes ____ No X		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established northeast of Wetland 6 to document upland conditions.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- ____ Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- ____ Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- ____ Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X	No ____	Depth (inches):	1/4"
Water Table Present?	Yes X	No ____	Depth (inches):	8"
Saturation Present? (includes capillary fringe)	Yes ____	No X	Depth (inches):	____

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks: Surface water in this portion of the agricultural field is due to increased rainfall and snow melt/

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-2

Tree Stratum (Plot size: 30' Radius)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Juglans nigra*	20	Y	FACU
2.			
3.			
4.			
5.			
6.			
7.			
	20 = Total Cover		
50% of total cover: 10	20% of total cover: 4		
Sapling / Shrub Stratum (Plot size: 15' Radius)			
1. *Rosa multiflora*	15	Y	FACU
2. *Robinia pseudoacacia*	10	Y	FACU
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	25 = Total Cover		
50% of total cover: 12.5	20% of total cover: 5		
Herb Stratum (Plot size: 5' Radius)			
1. *Solidago canadensis*	30	Y	FACU
2. *Apocynum cannabinum*	25	Y	FACU
3. *Smilax rotundifolia*	10	N	FAC
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	65 = Total Cover		
50% of total cover: 32.5	20% of total cover: 13		
Woody Vine Stratum (Plot size: 30' Radius)			
1. *Vitis labrusca*	10	Y	FACU
2. *Smilax rotundifolia*	10	Y	FAC
3.			
4.			
5.			
	20 = Total Cover		
50% of total cover: 10	20% of total cover: 4		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 1 (A)

Total Number of Dominant Species Across All Strata: 7 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 14% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:
OBL species	x 1 =	
FACW species	x 2 =	
FAC species	x 3 =	
FACU species	x 4 =	
UPL species	x 5 =	
Column Totals:	(A)	(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

_____ 1 - Rapid Test for Hydrophytic Vegetation

_____ 2 - Dominance Test is >50%

_____ 3 - Prevalence Index is ≤3.0[1]

_____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

_____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes _____ No X

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-2

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-7	10YR 4/3	90	10YR 5/6	10	C	M	CL	
7-20	10YR 5/3	70	10YR 5/6	30	C	M	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 136, 122)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes _____ No X

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-3
Investigator(s): M. Potember Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Stream Oxbow Local relief (concave, convex, none): Concave Slope (%): 2±
Subregion (LLR or MLRA): MLRA 148 Lat: 39.64037° Long: -76.79782° Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) NWI classification: PFO
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____ , or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____ , or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes X No ____
Hydric Soil Present?	Yes X No ____		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established in Wetland 2 to document typical conditions in Wetlands 1 and 2.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- X Surface Water (A1)
- ____ High Water Table (A2)
- X Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- ____ Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- X Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- ____ Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X No ____	Depth (inches):	1/2"
Water Table Present?	Yes X No ____	Depth (inches):	16"
Saturation Present? (includes capillary fringe)	Yes X No ____	Depth (inches):	10"

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-3

		Absolute % Cover	Dominant Species?	Indicator Status
Tree Stratum	(Plot size: 30' Radius)			
1. Stratum Not Present				
2.				
3.				
4.				
5.				
6.				
7.				
		0	= Total Cover	
	50% of total cover: 0		20% of total cover: 0	
Sapling / Shrub Stratum	(Plot size: 15' Radius)			
1. *Lindera benzoin*		15	Y	FAC
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
		15	= Total Cover	
	50% of total cover: 7.5		20% of total cover: 3	
Herb Stratum	(Plot size: 5' Radius)			
1. *Microstegium vimineum*		80	Y	FAC
2. *Solidago canadensis*		5	N	FACU
3. *Carex stricta*		5	N	OBL
4. *Schedonorus arundinaceus*		5	N	FACU
5. *Rubus hispidus*		3	N	FACW
6. *Plantago rugelii*		2	N	FACU
7.				
8.				
9.				
10.				
11.				
12.				
		100	= Total Cover	
	50% of total cover: 50		20% of total cover: 20	
Woody Vine Stratum	(Plot size: 30' Radius)			
1. Stratum Not Present				
2.				
3.				
4.				
5.				
		0	= Total Cover	
	50% of total cover: 0		20% of total cover: 0	

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 2 (A)

Total Number of Dominant Species Across All Strata: 2 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species		x 1 =	
FACW species		x 2 =	
FAC species		x 3 =	
FACU species		x 4 =	
UPL species		x 5 =	
Column Totals:	(A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- 3 - Prevalence Index is ≤3.0[1]
- 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-3

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features				Texture	Remarks
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]		
0-17	10YR 4/2	75	10YR 3/4	25	C	M	SaL	
17-24	10YR 5/1	100						

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

___ Histosol (A1)
___ Histic Epipedon (A2)
___ Black Histic (A3)
___ Hydrogen Sulfide (A4)
___ Stratified Layers (A5)
___ 2 cm Muck (A10) **(LRR N)**
___ Depleted Below Dark Surface (A11)
___ Thick Dark Surface (A12)
___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
___ Sandy Gleyed Matrix (S4)
___ Sandy Redox (S5)
___ Stripped Matrix (S6)

___ Dark Surface (S7) **(LRR P, S, T, U)**
___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
___ Thin Dark Surface (S9) **(MLRA 147, 148)**
___ Loamy Gleyed Matrix (F2)
X Depleted Matrix (F3)
___ Redox Dark Surface (F6)
___ Depleted Dark Surface (F7)
___ Redox Depressions (F8)
___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
___ Umbric Surface (F13) **(MLRA 136, 122)**
___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

___ 2 cm Muck (A10) **(MLRA 147)**
___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
___ Very Shallow Dark Surface (TF12)
___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):
Type: _____
Depth (inches): _____

Hydric Soil Present? Yes X No ___

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-4
Investigator(s): M. Potember Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Hillslope Local relief (concave, convex, none): None Slope (%): 2±
Subregion (LLR or MLRA): MLRA 148 Lat: 39.64025° Long: -76.79774° Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) NWI classification: PFO
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____ , or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____ , or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes X No ____
Hydric Soil Present?	Yes X No ____		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established in Wetland 5.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- ____ Surface Water (A1)
- ____ High Water Table (A2)
- ____ Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- X Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- ____ Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes ____	No X	Depth (inches): ____
Water Table Present?	Yes X	No ____	Depth (inches): 17"
Saturation Present? (Includes capillary fringe)	Yes ____	No X	Depth (inches): ____

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-4

Tree Stratum (Plot size: 30' Radius)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Acer rubrum*	60	Y	FAC
2.			
3.			
4.			
5.			
6.			
7.			
	60 = Total Cover		
50% of total cover: 30	20% of total cover: 12		
Sapling / Shrub Stratum (Plot size: 15' Radius)			
1. *Lindera benzoin*	25	Y	FAC
2. *Rosa multiflora*	15	Y	FACU
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	40 = Total Cover		
50% of total cover: 20	20% of total cover: 8		
Herb Stratum (Plot size: 5' Radius)			
1. *Microstegium vimineum*	40	Y	FAC
2. *Pilea pumila*	15	Y	FACW
3. *Symplocarpus foetidus*	10	N	OBL
4. *Onoclea sensibilis*	5	N	FACW
5. *Alliaria petiolata*	5	N	FACU
6. *Rubus hispidus*	5	N	FACW
7.			
8.			
9.			
10.			
11.			
12.			
	80 = Total Cover		
50% of total cover: 40	20% of total cover: 16		
Woody Vine Stratum (Plot size: 30' Radius)			
1. *Vitis labrusca*	10	Y	FACU
2.			
3.			
4.			
5.			
	10 = Total Cover		
50% of total cover: 5	20% of total cover: 2		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 4 (A)

Total Number of Dominant Species Across All Strata: 6 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 67% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species		x 1 =	
FACW species		x 2 =	
FAC species		x 3 =	
FACU species		x 4 =	
UPL species		x 5 =	
Column Totals:	(A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- ____ 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- ____ 3 - Prevalence Index is ≤3.0[1]
- ____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- ____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No ____

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-4

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(Inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-12	10YR 4/3	80	10YR 5/6	20	C	M	CL	
12-22	10YR 5/3	80	10YR 4/6	20	C	M	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 136, 122)**
- X Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes X No ___

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-5
Investigator(s): M. Potember Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Broad Swale Local relief (concave, convex, none): Concave Slope (%): 2±
Subregion (LLR or MLRA): MLRA 148 Lat: 39.64031° Long: -76.79702° Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) NWI classification: PFO
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____ , or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____ , or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes X No ____
Hydric Soil Present?	Yes X No ____		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established in Wetland 5.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- X Drift Deposits (B3)
- X Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- X Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- X Microtopographic Relief (D4)
- X FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X No ____	Depth (inches):	3/4"
Water Table Present?	Yes X No ____	Depth (inches):	9"
Saturation Present? (includes capillary fringe)	Yes X No ____	Depth (inches):	8"

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-5

Tree Stratum (Plot size: 30' Radius)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Acer rubrum*	25	Y	FAC
2.			
3.			
4.			
5.			
6.			
7.			
	25 = Total Cover		
50% of total cover: 12.5	20% of total cover: 5		
Sapling / Shrub Stratum (Plot size: 15' Radius)			
1. *Lindera benzoin*	10	Y	FAC
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	10 = Total Cover		
50% of total cover: 5	20% of total cover: 2		
Herb Stratum (Plot size: 5' Radius)			
1. *Symplocarpus foetidus*	30	Y	OBL
2. *Microstegium vimineum*	20	Y	FAC
3. *Carex stricta*	10	N	OBL
4. Unidentified Herbaceous Plant	10	N	FAC
5. *Schedonorus arundinaceus*	10	N	FACU
6. *Onoclea sensibilis*	5	N	FACW
7.			
8.			
9.			
10.			
11.			
12.			
	85 = Total Cover		
50% of total cover: 42.5	20% of total cover: 17		
Woody Vine Stratum (Plot size: 30' Radius)			
1. Stratum Not Present			
2.			
3.			
4.			
5.			
	0 = Total Cover		
50% of total cover: 0	20% of total cover: 0		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 5 (A)

Total Number of Dominant Species Across All Strata: 5 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:
OBL species	x 1 =	
FACW species	x 2 =	
FAC species	x 3 =	
FACU species	x 4 =	
UPL species	x 5 =	
Column Totals:	(A)	(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- ____ 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- ____ 3 - Prevalence Index is ≤3.0[1]
- ____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- ____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No ____

Remarks: (Include photo numbers here or on a separate sheet).

The unidentified herbaceous plant lack identifiable characteristics, therefore; was assigned an indicator status of FAC.

SOIL

Sampling Point: DCP-5

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-7	10YR 4/2	80	7.5YR 4/6	20	C	M	CL	
7-13	10YR 5/2	85	7.5YR 4/6	15	C	PL	CL	
13-21	10YR 5/2	90	5YR 5/6	10	C	PL	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Gleyed Matrix (F2)
- X Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 136, 122)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes ___X___ No _____

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-6
Investigator(s): M. Potember Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Flat Local relief (concave, convex, none): None Slope (%): 0%
Subregion (LLR or MLRA): MLRA 148 Lat: 39.64069° Long: -76.79655° Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) NWI classification: PFO
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes X No ____
Hydric Soil Present?	Yes X No ____		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established in Wetland 4, which is located in a clearing in the woods.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- X Surface Water (A1)
- ____ High Water Table (A2)
- X Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- X Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- X Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X	No ____	Depth (inches):	1/4"
Water Table Present?	Yes X	No ____	Depth (inches):	16"
Saturation Present? (includes capillary fringe)	Yes X	No ____	Depth (inches):	7"

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-6

Tree Stratum (Plot size: 30' Radius)	Absolute % Cover	Dominant Species?	Indicator Status
1. Stratum Not Present			
2.			
3.			
4.			
5.			
6.			
7.			
	0 = Total Cover		
50% of total cover: 0	20% of total cover: 0		
Sapling / Shrub Stratum (Plot size: 15' Radius)			
1. *Lindera benzoin*	20	Y	FAC
2. *Acer rubrum*	5	Y	FAC
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	25 = Total Cover		
50% of total cover: 12.5	20% of total cover: 5		
Herb Stratum (Plot size: 5' Radius)			
1. *Microstegium vimineum*	60	Y	FAC
2. *Symplocarpus foetidus*	15	N	OBL
3. *Carex stricta*	5	N	OBL
4. *Alliaria petiolata*	5	N	FACU
5. *Onoclea sensibilis*	5	N	FACW
6. *Solidago altissima*	5	N	FACU
7. *Allium canadense*	5	N	FACU
8.			
9.			
10.			
11.			
12.			
	100 = Total Cover		
50% of total cover: 50	20% of total cover: 20		
Woody Vine Stratum (Plot size: 30' Radius)			
1. *Lonicera japonica*	5	Y	FACU
2.			
3.			
4.			
5.			
	5 = Total Cover		
50% of total cover: 2.5	20% of total cover: 1		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 3 (A)

Total Number of Dominant Species Across All Strata: 4 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 75% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species		x 1 =	
FACW species		x 2 =	
FAC species		x 3 =	
FACU species		x 4 =	
UPL species		x 5 =	
Column Totals:	(A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- 3 - Prevalence Index is ≤3.0[1]
- 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-6

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-7	10YR 5/2	60	7.5YR 5/6	40	C	M	CL	
7-18	10YR 5/1	90	7.5YR 5/6	10	C	M/PL	C	
18-22	10YR 4/1	100					C	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

___ Histosol (A1)
___ Histic Epipedon (A2)
___ Black Histic (A3)
___ Hydrogen Sulfide (A4)
___ Stratified Layers (A5)
___ 2 cm Muck (A10) **(LRR N)**
___ Depleted Below Dark Surface (A11)
___ Thick Dark Surface (A12)
___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
___ Sandy Gleyed Matrix (S4)
___ Sandy Redox (S5)
___ Stripped Matrix (S6)

___ Dark Surface (S7) **(LRR P, S, T, U)**
___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
___ Thin Dark Surface (S9) **(MLRA 147, 148)**
___ Loamy Gleyed Matrix (F2)
X Depleted Matrix (F3)
___ Redox Dark Surface (F6)
___ Depleted Dark Surface (F7)
___ Redox Depressions (F8)
___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
___ Umbric Surface (F13) **(MLRA 136, 122)**
___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

___ 2 cm Muck (A10) **(MLRA 147)**
___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
___ Very Shallow Dark Surface (TF12)
___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes X No ___

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-7
Investigator(s): M. Potember Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Flat Local relief (concave, convex, none): None Slope (%): 0%
Subregion (LLR or MLRA): MLRA 148 Lat: 39.64082° Long: -76.79673° Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) NWI classification: N/A
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes ____ No X
Hydric Soil Present?	Yes ____ No X		
Wetland Hydrology Present?	Yes ____ No X		

Remarks: The DCP was established outside of Wetland 4 to document upland conditions.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- ____ Surface Water (A1)
- ____ High Water Table (A2)
- ____ Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- ____ Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- ____ Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes ____	No X	Depth (inches): ____	
Water Table Present?	Yes ____	No X	Depth (inches): ____	
Saturation Present? (includes capillary fringe)	Yes ____	No X	Depth (inches): ____	Wetland Hydrology Present? Yes ____ No X

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-7

Tree Stratum (Plot size: 30' Radius)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Acer rubrum*	55	Y	FAC
2. *Ilex opaca*	25	Y	FACU
3.			
4.			
5.			
6.			
7.			
	80 = Total Cover		
50% of total cover: 40		20% of total cover: 16	
Sapling / Shrub Stratum (Plot size: 15' Radius)			
1. *Lindera benzoin*	25	Y	FAC
2. *Ilex opaca*	15	Y	FACU
3. *Prunus serotina*	10	Y	FACU
4.			
5.			
6.			
7.			
8.			
9.			
	50 = Total Cover		
50% of total cover: 25		20% of total cover: 10	
Herb Stratum (Plot size: 5' Radius)			
1. *Microstegium vimineum*	60	Y	FAC
2. *Rosa multiflora*	5	N	FACU
3. *Alliaria petiolata*	5	N	FACU
4. *Symplocarpus foetidus*	5	N	OBL
5. *Lindera benzoin*	5	N	FAC
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	80 = Total Cover		
50% of total cover: 40		20% of total cover: 16	
Woody Vine Stratum (Plot size: 30' Radius)			
1. *Toxicodendron radicans*	5	Y	FAC
2.			
3.			
4.			
5.			
	5 = Total Cover		
50% of total cover: 2.5		20% of total cover: 1	

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 4 (A)

Total Number of Dominant Species Across All Strata: 7 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 57% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species		x 1 =	
FACW species		x 2 =	
FAC species		x 3 =	
FACU species		x 4 =	
UPL species		x 5 =	
Column Totals:	(A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- ____ 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- ____ 3 - Prevalence Index is ≤3.0[1]
- ____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- ____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No ____

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-7

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-14	10YR 5/6	75	10YR 6/4	25	C	M	CL	
14-20	10YR 5/4	75	5YR 4/6	25	C	M	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 136, 122)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes _____ No X

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar | City/County: Baltimore County | Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. | State: MD | Sampling Point: DCP-8
Investigator(s): M. Potember | Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Hillslope | Local relief (concave, convex, none): Concave | Slope (%): 2±
Subregion (LLR or MLRA): MLRA 148 | Lat: 39.64025° | Long: -76.79627° | Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) | NWI classification: PFO
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____, or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____, or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X No ____	Is the Sampled Area within a Wetland?	Yes X No ____
Hydric Soil Present?	Yes X No ____		
Wetland Hydrology Present?	Yes X No ____		

Remarks: The DCP was established within Wetland 3.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- X Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- X Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- X Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X No ____	Depth (inches):	1"
Water Table Present?	Yes X No ____	Depth (inches):	12"
Saturation Present? (includes capillary fringe)	Yes X No ____	Depth (inches):	5"

Wetland Hydrology Present? Yes X No ____

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-8

Tree Stratum (Plot size: 30' Radius)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Acer rubrum*	40	Y	FAC
2.			
3.			
4.			
5.			
6.			
7.			
	40 = Total Cover		
50% of total cover: 20	20% of total cover: 8		
Sapling / Shrub Stratum (Plot size: 15' Radius)			
1. *Lindera benzoin*	40	Y	FAC
2. *Ilex opaca*	5	N	FACU
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	45 = Total Cover		
50% of total cover: 22.5	20% of total cover: 9		
Herb Stratum (Plot size: 5' Radius)			
1. *Microstegium vimineum*	25	Y	FAC
2. *Symplocarpus foetidus*	20	Y	OBL
3. *Carex stricta*	15	N	OBL
4. *Rubus hispidus*	10	N	FACW
5. *Pilea pumila*	5	N	FACW
6. *Onoclea sensibilis*	5	N	FACW
7.			
8.			
9.			
10.			
11.			
12.			
	80 = Total Cover		
50% of total cover: 40	20% of total cover: 16		
Woody Vine Stratum (Plot size: 30' Radius)			
1. *Toxicodendron radicans*	5	Y	FAC
2. *Celastrus orbiculatus*	3	Y	FACU
3. *Lonicera japonica*	2	Y	FACU
4.			
5.			
	10 = Total Cover		
50% of total cover: 5	20% of total cover: 2		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 5 (A)

Total Number of Dominant Species Across All Strata: 7 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 71% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species		x 1 =	
FACW species		x 2 =	
FAC species		x 3 =	
FACU species		x 4 =	
UPL species		x 5 =	
Column Totals:	(A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

- ____ 1 - Rapid Test for Hydrophytic Vegetation
- X 2 - Dominance Test is >50%
- ____ 3 - Prevalence Index is ≤3.0[1]
- ____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)
- ____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes X No ____

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-8

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-8	10YR 4/2	80	7.5YR 4/6	20	C	M/PL	CL	
8-22	10YR 4/2	75	7.5YR 4/6	25	C	M	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

___ Histosol (A1)
___ Histic Epipedon (A2)
___ Black Histic (A3)
___ Hydrogen Sulfide (A4)
___ Stratified Layers (A5)
___ 2 cm Muck (A10) **(LRR N)**
___ Depleted Below Dark Surface (A11)
___ Thick Dark Surface (A12)
___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
___ Sandy Gleyed Matrix (S4)
___ Sandy Redox (S5)
___ Stripped Matrix (S6)

___ Dark Surface (S7) **(LRR P, S, T, U)**
___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
___ Thin Dark Surface (S9) **(MLRA 147, 148)**
___ Loamy Gleyed Matrix (F2)
X Depleted Matrix (F3)
___ Redox Dark Surface (F6)
___ Depleted Dark Surface (F7)
___ Redox Depressions (F8)
___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
___ Umbric Surface (F13) **(MLRA 136, 122)**
___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

___ 2 cm Muck (A10) **(MLRA 147)**
___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
___ Very Shallow Dark Surface (TF12)
___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes X No ___

Remarks:

WETLAND DETERMINATION DATA FORM-Eastern Mountains and Piedmont

Project/Site: Falls Road Solar City/County: Baltimore County Sampling Date: 11-Mar-19
Applicant/Owner: Kimley-Horn and Associates Inc. State: MD Sampling Point: DCP-9
Investigator(s): M. Potember Section, Township, Range: N/A
Landform (hillslope, terrace, etc.): Flat Local relief (concave, convex, none): None Slope (%): 0%
Subregion (LLR or MLRA): MLRA 148 Lat: 39.64034° Long: -76.79654° Datum: NAD83
Soil Map Unit Name: Hatsboro silt loams, 0 to 3 percent slopes (HbA) NWI classification: N/A
Are climatic/hydrologic conditions on the site are typical for this time of year? Yes X No ____ (If no, explain in Remarks)
Are Vegetation ____, Soil ____ , or Hydrology ____ significantly disturbed? Are "Normal Circumstances" present? Yes X No ____
Are Vegetation ____, Soil ____ , or Hydrology ____ naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS- Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes ____ No X	Is the Sampled Area within a Wetland?	Yes ____ No X
Hydric Soil Present?	Yes ____ No X		
Wetland Hydrology Present?	Yes ____ No X		

Remarks: The DCP was established between Wetland 3 and Waters B to document upland conditions.

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required, check all that apply)

- ____ Surface Water (A1)
- ____ High Water Table (A2)
- ____ Saturation (A3)
- ____ Water Marks (B1)
- ____ Sediment Deposits (B2)
- ____ Drift Deposits (B3)
- ____ Algal Mat or Crust (B4)
- ____ Iron Deposits (B5)
- ____ Inundation Visible on Aerial Imagery (B7)
- ____ Water-Stained Leaves (B9)
- ____ Aquatic Fauna (B13)
- ____ True Aquatic Plants (B14)
- ____ Hydrogen Sulfide Odor (C1)
- ____ Oxidized Rhizospheres on Living Roots (C3)
- ____ Presence of Reduced Iron (C4)
- ____ Recent Iron Reduction in Tilled Soils (C6)
- ____ Thin Muck Surface (C7)
- ____ Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- ____ Surface Soil Cracks (B6)
- ____ Sparsely Vegetated Concave Surface (B8)
- ____ Drainage Patterns (B10)
- ____ Moss Trim Lines (B16)
- ____ Dry-Season Water Table (C2)
- ____ Crayfish Burrows (C8)
- ____ Saturation Visible on Aerial Imagery (C9)
- ____ Stunted or Stressed Plants (D1)
- ____ Geomorphic Position (D2)
- ____ Shallow Aquitard (D3)
- ____ Microtopographic Relief (D4)
- ____ FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes ____	No X	Depth (inches): ____
Water Table Present?	Yes X	No ____	Depth (inches): 18"
Saturation Present? (includes capillary fringe)	Yes ____	No X	Depth (inches): ____

Wetland Hydrology Present? Yes ____ No X

Describe Recorded Data (stream gage, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION - Use scientific names of plants.

Sampling Point: DCP-9

Tree Stratum (Plot size: 30')	Absolute % Cover	Dominant Species?	Indicator Status
1. *Juglans nigra*	60	Y	FACU
2. *Acer rubrum*	10	N	FAC
3.			
4.			
5.			
6.			
7.			
	70 = Total Cover		
50% of total cover: 35	20% of total cover: 14		
Sapling / Shrub Stratum (Plot size: 15')			
1. *Lindera benzoin*	10	Y	FAC
2. *Ilex opaca*	5	Y	FACU
3.			
4.			
5.			
6.			
7.			
8.			
9.			
	15 = Total Cover		
50% of total cover: 7.5	20% of total cover: 3		
Herb Stratum (Plot size: 5')			
1. *Microstegium vimineum*	60	Y	FAC
2. *Persicaria perfoliata*	15	N	FAC
3. *Symplocarpus foetidus*	10	N	OBL
4. *Rubus aboriginum*	5	N	FACU
5. *Alliaria petiolata*	5	N	FACU
6. *Allium canadense*	5	N	FACU
7.			
8.			
9.			
10.			
11.			
12.			
	100 = Total Cover		
50% of total cover: 50	20% of total cover: 20		
Woody Vine Stratum (Plot size: 30')			
1. Stratum Not Present			
2.			
3.			
4.			
5.			
	0 = Total Cover		
50% of total cover: 0	20% of total cover: 0		

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 2 (A)

Total Number of Dominant Species Across All Strata: 4 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 50% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species		x 1 =	
FACW species		x 2 =	
FAC species		x 3 =	
FACU species		x 4 =	
UPL species		x 5 =	
Column Totals:	(A)		(B)

Prevalence Index = B/A =

Hydrophytic Vegetation Indicators:

_____ 1 - Rapid Test for Hydrophytic Vegetation

_____ 2 - Dominance Test is >50%

_____ 3 - Prevalence Index is ≤3.0[1]

_____ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

_____ Problematic Hydrophytic Vegetation[1] (Explain)

[1] Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree - Woody plants, excluding woody vines, approximately 20 ft (6 m) or more in height and 3 in. (7.6 cm) or larger in diameter at breast height (DBH).

Sapling/Shrub - Woody plants, excluding woody vines, a less than 3in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb - All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft. tall

Woody vine - All woody vines, greater than 3.28 ft. in height.

Hydrophytic Vegetation Present? Yes _____ No X

Remarks: (Include photo numbers here or on a separate sheet).

SOIL

Sampling Point: DCP-9

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-2	10YR 4/4	100					CL	
2-22	10YR 4/4	95	7.5YR 4/6	5	C	M	CL	

[1]Type: C=concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- ___ 2 cm Muck (A10) **(LRR N)**
- ___ Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Sandy Mucky Mineral (S1) **(LRR N, MLRA 147, 148)**
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7) **(LRR P, S, T, U)**
- ___ Polyvalue Below Surface (S8) **(MLRA 147, 148)**
- ___ Thin Dark Surface (S9) **(MLRA 147, 148)**
- ___ Loamy Gleyed Matrix (F2)
- ___ Depleted Matrix (F3)
- ___ Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Iron-Manganese Masses (F12) **(LRR N, MLRA 136)**
- ___ Umbric Surface (F13) **(MLRA 136, 122)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 148)**
- ___ Red Parent Material (F21) **(MLRA 127, 147)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) **(MLRA 147)**
- ___ Coast Prairie Redox (A16) **(MLRA 147, 148)**
- ___ Piedmont Floodplain Soils (F19) **(MLRA 136, 147)**
- ___ Very Shallow Dark Surface (TF12)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? Yes _____ No X

Remarks:

APPENDIX C

PHOTOGRAPHS

Photograph 1: Typical view, facing south, of open fields within subject property.

Photograph 2: Typical view, facing east, of open fields within subject property.

Photograph 3: View upstream of Compass Run (Waters A), facing west.

Photograph 4: View upstream of Waters B, facing south.

Photograph 5: View of Wetland 1, facing southwest.

Photograph 6: View of Wetland 2, facing southwest.

Photograph 7: View of Wetland 3, facing southeast.

Photograph 8: View of Wetland 4, facing southeast.

Photograph 9: View of Wetland 5, facing southeast.

Photograph 10: View of Wetlands 6 and 7, facing southeast.

Photograph 11: DCP-1, sample location.

Photograph 12: DCP-1, soil sample.

Photograph 13: DCP-2, sample location.

Photograph 14: DCP-2, soil sample.

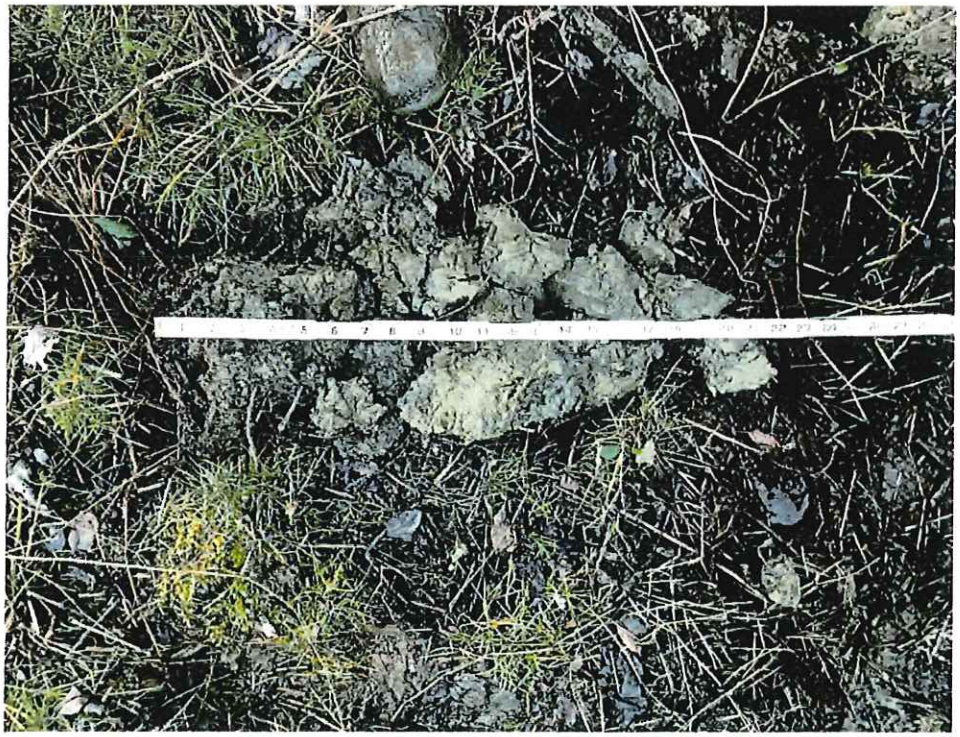
Photograph 15: DCP-3, sample location.

Photograph 16: DCP-3, soil sample.

Photograph 15: DCP-4, sample location.

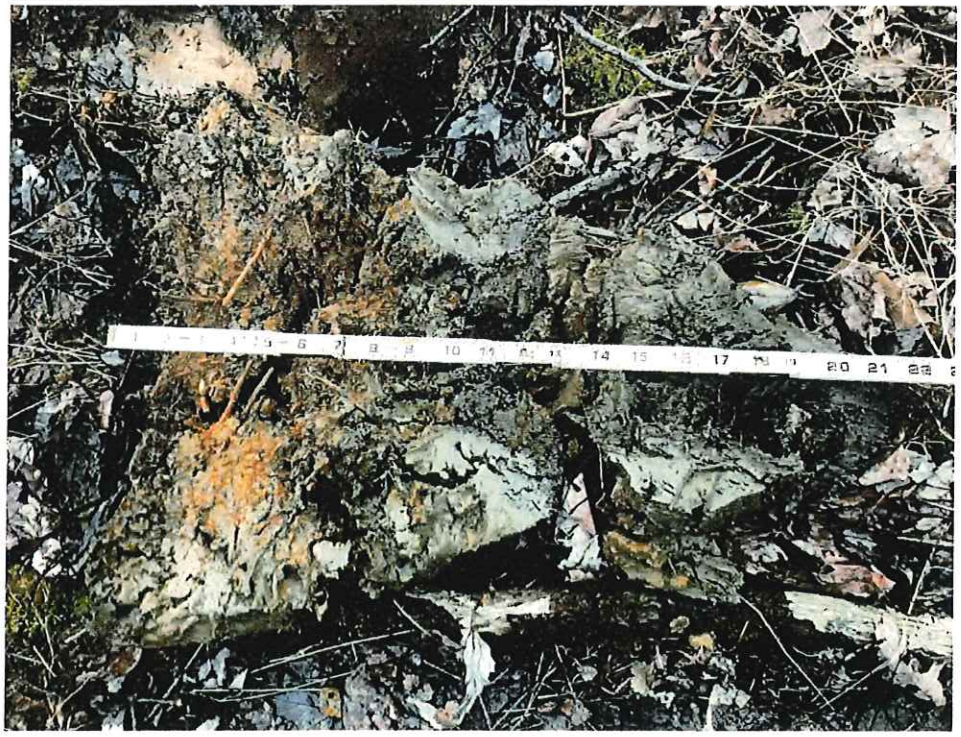
Photograph 16: DCP-4, soil sample.

Photograph 17: DCP-5, sample location.



Photograph 18: DCP-5, soil sample.

Photograph 19: DCP-6, sample location.

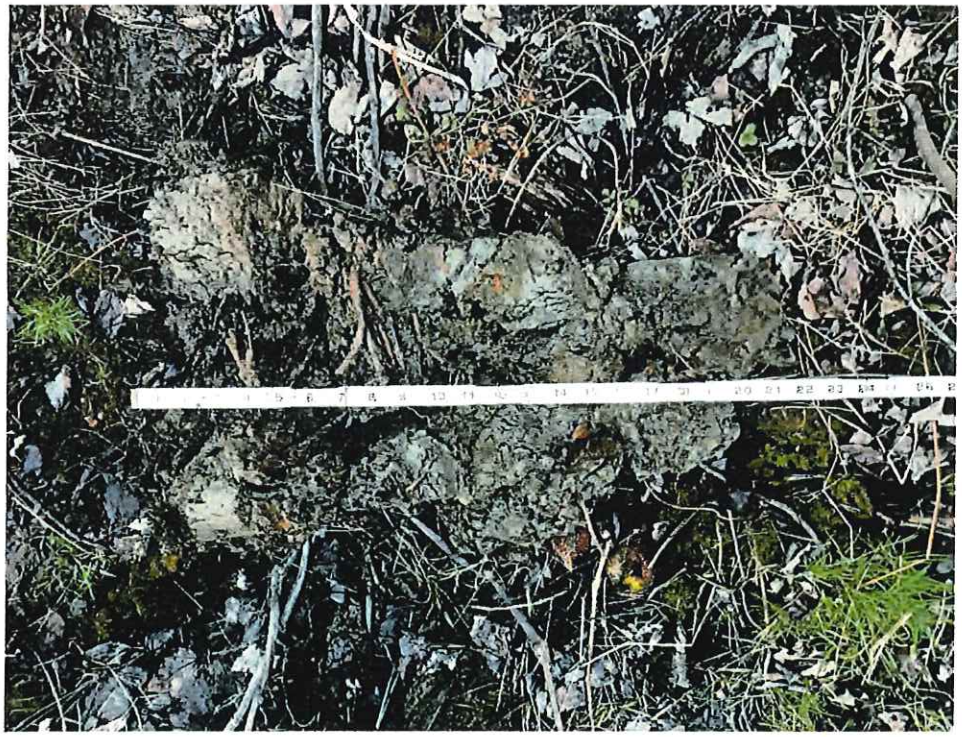


Photograph 20: DCP-6, soil sample.

Photograph 21: DCP-7, sample location.

Photograph 22: DCP-7, soil sample.

Photograph 23: DCP-8, sample location.



Photograph 24: DCP-8, soil sample.

Photograph 25: DCP-9, sample location.

Photograph 26: DCP-9, soil sample.

APPENDIX D

WETLAND DELINEATION PLAN

VICINITY MAP
SCALE: 1" = 2,000'

GENERAL NOTES

1. PROPERTY OWNER: HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY INC
4200 BELAIR/STEVILLE ROAD
HAMPSTEAD, MARYLAND 21074

2. APPLICANT/DEVELOPER: POWERFACTOR COMPANY
1 MACE AVENUE
BALTIMORE, MARYLAND 21221
ATTN: ANDREW STREET

3. ENGINEER: KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER STREET, SUITE 401
BALTIMORE, MARYLAND 21230
ATTN: HEATHER HUTTON

4. PLAN PREPARED BY: GEO-TECHNOLOGY ASSOCIATES, INC. (GTA)
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
ATTN: MAXWELL G. POTSANDER
PHONE: 410-515-0448
EMAIL: MPOTSANDER@GTAENG.COM

5. PROPERTY INFORMATION:
A. TAX ACCOUNT #(S): 02232181[illegible] & 0902439279
B. PARCEL(S): 121 & 144
C. TAX MAP: 15
D. DEED REFERENCE(S): L. 20564 / F. 00428 & L. 32970 / F. 00242
E. COUNCILMANIC DISTRICT: 3
F. ELECTION DISTRICT: 3
G. EXISTING ZONING: RC 3 (AGRICULTURAL) & RC 5 (ENVIRONMENTAL ENHANCEMENT)
H. EXISTING LAND USE: AGRICULTURAL
I. PROPOSED LAND USE: SOLAR FACILITY
J. WATERSHED/SUBWATERSHED: PRETTYBOY RESERVOIR/COMPASS RUN

6. SUBJECT PROPERTY ACREAGE: 32.01± ACRES

7. THE TOPOGRAPHIC AND BOUNDARY INFORMATION SHOWN HEREON WAS BASED ON A FIELD RUN SURVEY PROVIDED BY KARINS AND ASSOCIATES, DATED MARCH 11, 2016. THE TOPOGRAPHIC INFORMATION AND EXISTING CONDITIONS WERE SUPPLEMENTED WITH BALTIMORE COUNTY PHOTOGRAMMETRIC GEOGRAPHIC INFORMATION SYSTEM (GIS) TILE D1A1.

8. A WETLAND DELINEATION OF THE SUBJECT PROPERTY WAS PERFORMED BY GTA IN FEBRUARY AND MARCH 2016. WETLAND FLAG LOCATIONS WITHIN THE REVIEW AREA WERE LOCATED BY GTA USING A GLOBAL POSITIONING SYSTEM (GPS) UNIT RATED WITH SUBMETER ACCURACY. A PRELIMINARY WETLAND EVALUATION (PWE) WAS PERFORMED BY GTA ON THE PORTIONS OF THE SUBJECT PROPERTY NORTH OF COMPASS RUN. THE WETLAND AND STREAM LIMITS SHOWN NORTH OF COMPASS RUN ARE APPROXIMATED AND ARE NOT MEANT FOR ENGINEERING OR CONSTRUCTION PURPOSES.

9. THE FLOODPLAIN SHOWN HEREON IS FROM FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) FEDERAL INSURANCE RATE MAP (FIRM) NUMBER 24005C0215F, EFFECTIVE SEPTEMBER 28, 2008.

10. THE SUBJECT PROPERTY IS NOT WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

11. THE SUBJECT PROPERTY DRAINS TOWARDS COMPASS RUN, WHICH CONTRIBUTES TO THE PRETTYBOY RESERVOIR AND GUNPOWDER FALLS. IN THE VICINITY OF THE SUBJECT PROPERTY, TRIBUTARIES TO GUNPOWDER FALLS ARE CLASSIFIED IN THE CODE OF MARYLAND REGULATIONS (COMAR) 26.08.02.08-4A DESIGNATED USE "CLASS III-P: NONTIDAL COLD WATER AND PUBLIC WATER SUPPLY."

12. GTA'S CONCLUSIONS REGARDING THIS SITE HAVE BEEN BASED ON OBSERVATIONS OF EXISTING CONDITIONS, PROFESSIONAL EXPERIENCE, AND GENERALLY ACCEPTED PROFESSIONAL ENVIRONMENTAL PRACTICE UNDER SIMILAR CIRCUMSTANCES. SEASONAL VEGETATION CYCLES AND FLUCTUATIONS IN PRECIPITATION OR WEATHER CONDITIONS CAN RESULT IN DIFFERENCES IN THE PERCEPTION OF HYDROLOGIC CONDITIONS AND THE PRESENCE OF PREDOMINANTLY HYDROPHYTIC VEGETATION, WHICH CAN ALTER GTA'S EVALUATION OF WETLANDS/WATERWAYS.

13. IT IS IMPORTANT TO NOTE THAT THIS EVALUATION IS GTA'S PROFESSIONAL OPINION, ONLY. DECISIONS REGARDING THE OFFICIAL JURISDICTIONAL STATUS OF WETLANDS/WATERWAYS ARE MADE BY FEDERAL, STATE, AND/OR LOCAL REGULATORY AGENCIES.

14. THIS PLAN WAS PREPARED BY GTA FOR THE SOLE AND EXCLUSIVE USE OF KIMLEY-HORN AND ASSOCIATES, INC. ANY REPRODUCTION OF THIS PLAN BY ANY OTHER PERSON WITHOUT THE EXPRESSED WRITTEN PERMISSION OF GTA AND KIMLEY-HORN AND ASSOCIATES, INC. IS UNAUTHORIZED, AND SUCH USE IS AT THE SOLE RISK OF THE USER.

AREA OF WETLANDS / WATERWAYS WITHIN THE SUBJECT PROPERTY:

WETLAND	APPROXIMATE AREA
WETLAND 1	1,337 SF (0.03 AC)
WETLAND 2	663 SF (0.01 AC)
WETLAND 3	27,115 SF (0.62 AC)
WETLAND 4	1,022 SF (0.02 AC)
WETLAND 5	17,026 SF (0.39 AC)
WETLAND 6	1,705 SF (0.04 AC)
WETLAND 7	1,948 SF (0.04 AC)
OTHER WETLANDS (OUTSIDE COMPASS RUN)	14,231 SF (0.33 AC)
TOTAL WETLAND AREA	64,957 SF (1.49 AC)

WATERWAY	APPROXIMATE AREA	APPROXIMATE LENGTH
WATERS A	9,548 SF (0.22 AC)	1,288 LINEAR FEET
WATERS B	6,448 SF (0.15 AC)	1,438 LINEAR FEET
OTHER WATERS (OUTSIDE COMPASS RUN)	600 SF (0.01 AC)	325 LINEAR FEET
TOTAL WATERWAYS	16,844 SF (0.39 AC)	3,051 LINEAR FEET

LEGEND

- SUBJECT PROPERTY
- EX. PROPERTY BOUNDARY
- EX. INTERIOR CONTOUR
- EX. INDEX CONTOUR
- EX. PAVING
- EX. SOIL BOUNDARY AND MAP UNITS
- EX. HEDGEROW, BORDER, SHRUB, GROUPS OF TREES <10,000 SQUARE FEET
- EX. FORESTED AREAS
- EX. BUILDING
- EX. 100-YEAR FEMA FLOODPLAIN
- EX. NONTIDAL WETLAND (WITH NUMBERED FLAG LOCATIONS)
- EX. 25-FOOT WETLAND BUFFER
- EX. PERENNIAL OR INTERMITTENT STREAM (WITH NUMBERED FLAG LOCATIONS)
- APPROXIMATE NONTIDAL WETLAND (NORTH OF COMPASS RUN)
- APPROXIMATE LOCATION OF STREAM (FIELD APPROXIMATED OR COUNTY GIS)
- WETLAND DELINEATION DATA COLLECTION POINT (DCP)
- NUMBERED PHOTOGRAPH LOCATION

SCALE: 1"=50'

SOILS CHART

SYMBOL[1]	NAME/DESCRIPTION[1]	HYDRIC SOIL[2]	HYDRIC COMPONENT[2]	PERCENTAGE OF MAPPING UNIT[1]	POSITION IN LANDSCAPE[3]
BhD	BRINKLOW CHANNERY LOAM, 15 TO 25 PERCENT SLOPES	-	-	-	-
GaA	GLENELG LOAM, 0 TO 3 PERCENT SLOPES	-	-	-	-
GaB	GLENELG LOAM, 3 TO 8 PERCENT SLOPES	-	-	-	-
GaC	GLENELG LOAM, 8 TO 15 PERCENT SLOPES	-	-	-	-
GcC	GLENELG CHANNERY LOAM, 8 TO 15 PERCENT SLOPES	-	-	-	-
GhB	GLENVILLE SILT LOAM, 3 TO 8 PERCENT SLOPES	YES	BAILE	10	SWALES, DRAINAGEWAYS
HbA	HATBORO SILT LOAM, 0 TO 3 PERCENT SLOPES	YES	HATBORO	85	FLOOD PLAINS
MkE	MANOR-BRINKLOW COMPLEX, 25 TO 45 PERCENT SLOPES, VERY ROCKY	NO	-	-	-

1. SARGENT (1989) SOIL SURVEY OF HOWARD AND MONTGOMERY COUNTIES, MARYLAND.
2. NATIONAL SOIL SURVEY HANDBOOK, TITLE 430-VI. (2009). EFFECTIVE 07/02/2009.
3. NATURAL RESOURCES CONSERVATION SERVICE, U.S. DEPARTMENT OF AGRICULTURE. SOIL SURVEY OF HOWARD AND MONTGOMERY COUNTIES, MARYLAND. ISSUED 1989.

GEO-TECHNOLOGY ASSOCIATES, INC.
GEOTECHNICAL AND ENVIRONMENTAL CONSULTANTS
3445-A BOX HILL CORPORATE CENTER DRIVE
ABINGDON, MARYLAND 21009
PHONE: 410-515-0448
FAX: 410-515-0525
WWW.GTAENG.COM

WETLAND DELINEATION PLAN

FALLS ROAD SOLAR

BALTIMORE COUNTY, MARYLAND

REVISIONS:

JOB NO	3114A02A
SCALE	1" = 50'
DATE	APRIL 1, 2016
DRAWN BY	MDP
DESIGN BY	MDP
REVIEW BY	MAP/AS
SHEET	1 OF 1

JOHN A. OLSZEWSKI, JR.
County Executive

DAVID V. LYKENS, *Director*
Department of Environmental Protection and Sustainability

June 6, 2019

Mr. Maxwell D. Potember
Geo-Technology Associates, Inc.
3445-A Box Hill Corporate Center Drive
Abingdon, Maryland 21009

Re: Falls Roads Solar, (18627)
AKA: Zodhaites Property/
Holly Springs Nature Conservancy
Wetland Delineation Verification
Steep Slopes and
Erodible Soils Analysis
Forest Stand Delineation

Dear Mr. Potember:

Environmental Impact Review (EIR) staff of this Department have reviewed the above-referenced submissions and performed a site visit and offer the following comments:

1. The delineations of both wetlands and Waters of the United States have been reviewed and approved. Please note the approvals pertain to the mainstem of Compass Run and the resources to the south of the run since the wetlands to the north of the waterway have not been located and are proposed to be placed in a permanent, protective Forest Buffer Easement (FBE) of non-disturbance.

2. The Steep Slopes and Erodible Soils has been reviewed and cannot be approved at this time. Please ensure that the minimum design standard 100' FBE setback from the centerline of the intermittent stream channel is observed (Enclosure 1). Additionally, please ensure that slopes (or resource limits) that have irregular shapes are adequately evaluated by placement of additional transects. (Section IV (C) of A Methodology for Evaluating Steep Slopes and Erodible Soils Adjacent to Wetlands and Watercourses). Staff have taken the liberty of adding or modifying several transects and have determined that the FBE also requires revisions (Enclosures 1 & 2).

Petitioner
CBA Exhibit
21

3. The forest stand delineation has also been reviewed and disapproved. Please revise the identities of specimen trees 33-36 and 46-48 (inclusive) as well as the stated condition of specimen trees 37. Furthermore, the specimen trees and forest to the north of Compass Run need not be assessed if the area is to be placed in a permanent, protective Forest Buffer and Forest Conservation Easement.

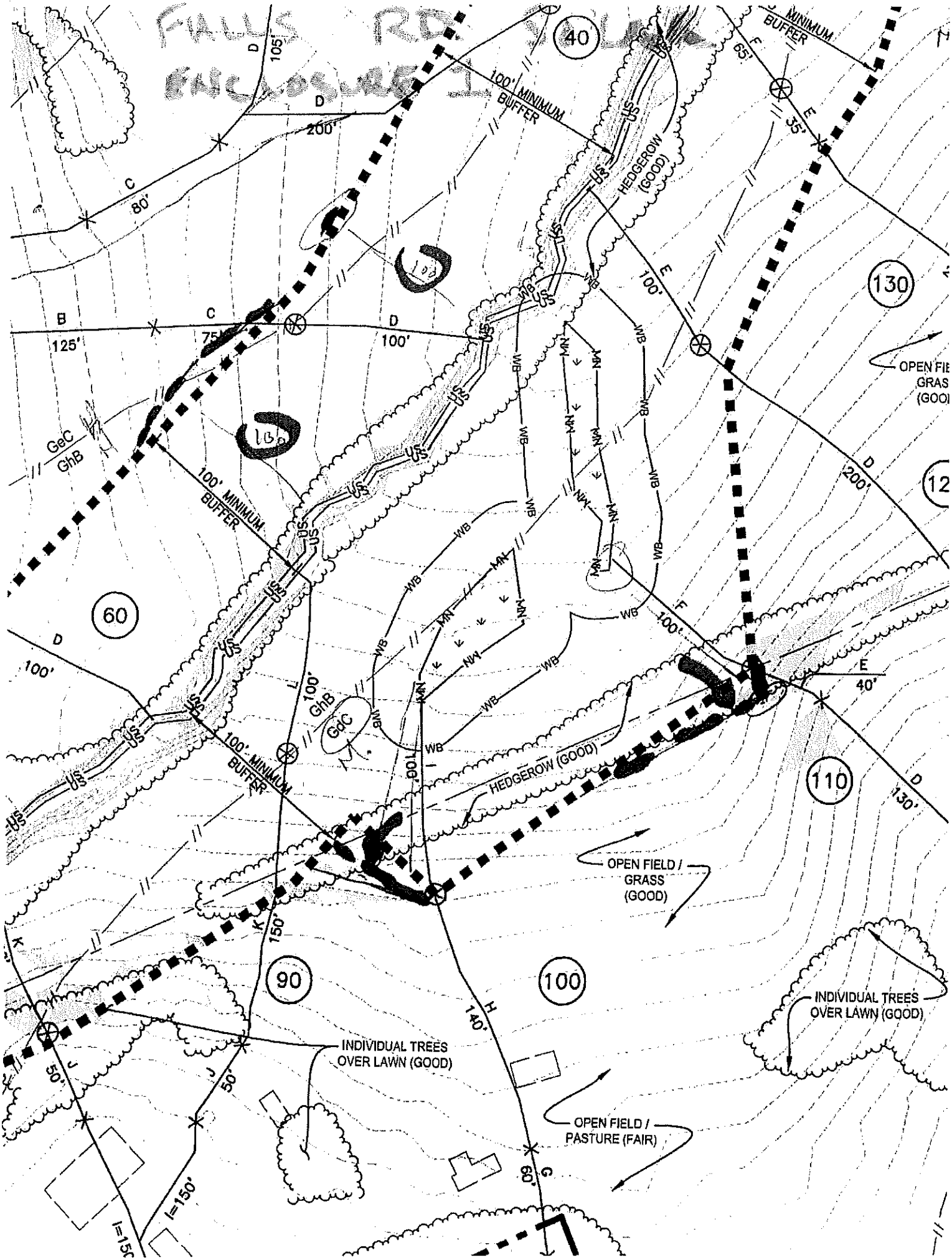
We look forward to working with you in the future to address these and the remaining components of both Title 3 and Title 6 of Article 33 of the Baltimore County Code.

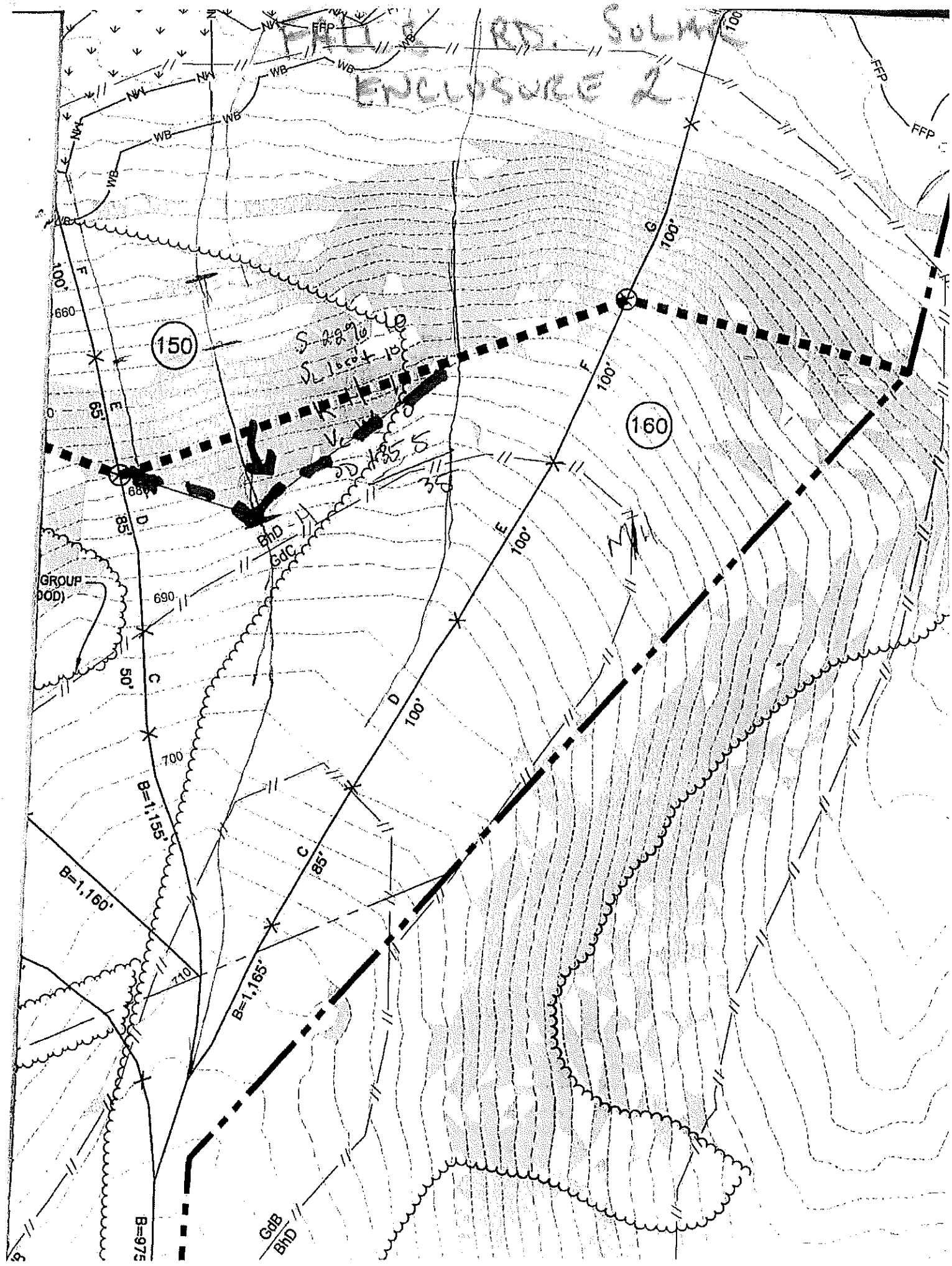
Thank you for the opportunity to review your submissions. If you have any questions regarding this correspondence or the outstanding regulatory requirements, please feel free to contact me at 410-887-3980.

Very truly yours,

Michael S. Kulis
Environmental Impact Review

Enclosures (2)


FALLS RD.
ENCLOSURE 1
40
105'
D
200'
C
80'
100' MINIMUM BUFFER
US
HEDGEROW (GOOD)
65'
F
35'
E
B
125'
C
75'
D
100'
WB
NW
130
OPEN FIE
GRAS
(GOO
GeC
GhB
100' MINIMUM BUFFER
200'
12
60
D
100'
L
100'
GhB
GeC
100' MINIMUM BUFFER
HEDGEROW (GOOD)
E
40'
110
D
130'
OPEN FIELD / GRASS (GOOD)
K
150'
90
100
INDIVIDUAL TREES OVER LAWN (GOOD)
INDIVIDUAL TREES OVER LAWN (GOOD)
H
140'
J
50'
J
50'
OPEN FIELD / PASTURE (FAIR)
G
60'
I=150'
I=15


ENCLOSURE 2
150
160
B=1,155'
B=1,160'
B=1,165'
GdB
BhD
GdC
GROUP
100'
85'
65'
50'
660
690
700
710

SOIL TYPES

MAP UNIT SYMBOL	SOIL NAME	HYDROLOGIC SOIL GROUP	CLASSIFICATION	HYDRIC	% OF PROPERTY
3hD	BRINKLOW CHANNERY LOAM, 15-35% SLOPES	C	NOT PRIME FARMLAND	NO	22.4%
3dA	GLENELG LOAM, 0-3% SLOPES	B	PRIME FARMLAND	NO	0.3%
3dB	GLENELG LOAM, 3-8% SLOPES	B	PRIME FARMLAND	NO	6.0%
3dC	GLENELG LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	21.1%
3eC	GLENELG CHANNERY LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	0.9%
3hB	GLENVILLE SILT LOAM, 3-8% SLOPES	C/D	PRIME FARMLAND	NO	0.6%
3hC	GLENVILLE SILT LOAM, 8-15%SLOPES	C	FARMLAND OF STATEWIDE IMPORTANCE	NO	1.9%
4bA	HATBORO SILT LOAMS, 0-3% SLOPES	B/D	NOT PRIME FARMLAND	YES	26.6%
MdE	MANOR-BRINKLOW COMPLEX, 25-45% SLOPES, VERY ROCKY	B	NOT PRIME FARMLAND	NO	1.2%

SITE DATA

1. EXISTING ZONING: RC-2, RC-8
2. PROPERTY AREA:
   - PARCEL 144: ±26.34 AC.
   - PARCEL 121: ±5.25 AC.
   - TOTAL: ±32.59 AC.
3. PROJECT AREA:
   - PARCEL 144: ±6.46 AC.
   - PARCEL 121: ±2.69 AC.
   - TOTAL: ±9.15 AC.
4. PROPERTY INFORMATION:
   - A. EXISTING PREMISES ADDRESS: 18827 FALLS ROAD & ADJACENT TO 18827 FALLS ROAD
   - B. TAX ACCOUNT NUMBER:
     - PARCEL 144: 0523011126
     - PARCEL 121: 0504003210
   - C. DEED REFERENCE:
     - PARCEL 144: 36664 /00498
     - PARCEL 121: 33970 /00242
   - D. COUNCILMANIC DISTRICT: 3
   - E. ELECTION DISTRICT 6
   - F. CENSUS TRACT: 405000
5. BALTIMORE COUNTY* ZONING MAP REFERENCES:
   - A. GIS TILE: 015A1
   - B. TAX MAP: 0015
   - C. PARCELS: 0144 & 0121
   - D. GRID: 0001
   - E. WATERSHED: PRETTYBOY RESERVOIR
   - F. BASIC SERVICES - WATER MAP: N/A
   - G. BASIC SERVICES - SEWER MAP: N/A
   - H. REGIONAL PLANNING DISTRICT PRETTYBOY
6. EXISTING LAND USE VACANT / RESIDENTIAL
7. PROPOSED LAND USE: SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION AREAS - NC MAJOR SUBDIVISIONS ON SEPTIC

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES. THE COUNTY LANDSCAPE MANUA., AND ARTICLE 4F (SCLAR FACILITIES OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPER'Y, BASED ON BALTIMORE COUNTY MY NEIGHORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AID BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMETS.

ENVIRONMENTAL/SITE NOTES

1. PROPERTY BOUNDRY, TOPOGRAPHIC AND EXISTING FEATURES ARE SHOWN BASED ON SURVEY COMPLETED BY KARINS AND ASSOCIATES, DATED 3/11/2019.
2. ALL STREAMS, SEEPS, BODIES OF WATER, WETLANDS, AND FORESTED AREAS ARE BASED ON FIELD WORK COMPLETED BY GEO-TECHNOLOGY ASSOCIATES, INC. IN MARCH 2019
3. TOPOGRAPHIC, EXISTING FEATURES, AND ENVIROMENTAL INFORMATION SHOWN OUTSIDE OF THE PROPOSED PROJECT AREA IS SUPPLEMENTED BY GIS FROM BALTIMORE COUNTY, RECEIVED 12/4/2018 AND SUPPLEMENTED WITH AERIAL PICTOMETRY WHERE NECESSARY.
4. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS.
5. FLOODPLAIN IS SHOWN BASED ON MARCH 2019 SITE STUDY BY GEO-TECHNOLOGY ASSOCIATES, INC., AGREEING WITH FEMA PANEL NUMBER 24005C0005F. THERE IS A FLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED PROJECT AREA.
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND NRCS WEB SOIL SURVEY WEBSITE ON 1/25/2018.
7. PER LETTER DATED 4/10/2019 FROM THE FISH AND WILDLIFE SERVICE, IT IS UNLIKELY THAT RARE, THREATENED, OR ENDANGERED SPECIES WOULD OCCUR WITHIN THE PROJECT AREA. NO FURTHER BIOLOGICAL ASSESSMENT IS REQUIRED.
8. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/ RELOCATON OF EXISTING SITE ACCESS.
9. THERE ARE NO KIOWN ENTITIES INCLUDED ON THE MARYLAND HISTORICAL TRUST INVENTORY MEDUSA ONLINE MAP, BALTIMORE COUNTY LANDMARKS LIST, AND BALTIMORE COUNTY GIS WITHIN THE SITE OR ON ADJOINING PROPERTIES, AS CONFIRMED BY BALTIMORE COUNTY EMAIL DATED 3/7/2019.
10. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 18827 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,465FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THEIICE THE FOLLOWING COURSES AND DISTANCES: (1) * 48°2310" E 525.62, (2) N 04°15'39" E 393.24, (3) S 83°37-5" E 1,251.74, (4 S 20°39'00" W 287.15, (5) S 49°45'00" W 312.78, 6) S 74°18'00" W 1047.8, (7) S 74°18'00 W 20.00, (8) N 8°34'15 W 445.88, (9) N 21°59'00" W 159.10, (10 W 48°2'40" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBERJLE 36664, FOLO 498, CONTAINING 26393 ACRES. LOCATED IB THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.
2. 18827 FALLS ROAD:BEGINNING AT A POIN' ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,062°FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE: (1) N74°18'00" E 1047.86, (2)S 49°45'00" W 247.08, (3) S 16°43'18" E 210.79,(4) S 12°39'30" E 104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 159.00, 7 S 74°30'00" W 294.40, (8) N 15°44'37" W 232.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DIED LIBER JLE 3970, FOLIO 242, CONTNINING 6.116 ACRES, LOCA'ED IN "HE 5TH ELECTON DISTRICT AND THE 3RD COUNCIL INSTRICT.

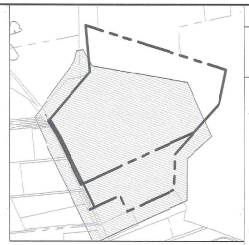
ADJOINING LANDOWNERS

MAP 15 PARCEL 003 - LOUISA Y. HOPKINS REVOCABLE TRUST - 2638/130 - ZONED: RC-2 RC-8 - USE: AGRICULTURAL
MAP 15 PARCEL 105 - LINDA AULT - 33544/467 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 128 - KEVIN & MARIA WEBB - 29382/040 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 2 - JOHN & MICHELLE DWYER - 37024/50- ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 1 - TAMMY J WITT - 29857/283 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 166 - MARY R FOWBLE - 2439/2403 - ZONED: RC-2 RC-8 - USE: AGRICULTURAL
MAP 15 PARCEL 166 LOT 1 WAYNE & ALLENE YELLE - 13613/724 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 166 LOT 2 KENNETH & JANET , HARRY - 5734/652 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 175 - RICHARD JAMES JR & KATHERINE REGINA NEMANIS TRUSTEES - 30172/337 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1 - LINDA C HOGAN & JOHN B DIXON III - 22900/60 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1A - JOHN M JR. & DONNA M STATTER - 7014/686 - ZONED: RC-2- USE: RESIDENTIAL
MAP 15 PARCEL 184 - GREGORY & TRACY CIARISI - 36361/69 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 216 - RICHARD CIMAN AND MARY ZODHIATES - 2138/1472 - ZONED: RC-2 RC-8 - USE: RESIDENTIAL
MAP 15 PARCEL 249 - ALEXANDER MCLANE & AUBREY ANN HOPKINS - 33857/61 - ZONED RC-2, RC-8 - USE: AGRCULTURAL
MAP 51 PARCEL 109 LOT 3A - DARLENE S BENNETT - 6932/36 - ZOVED: RC-2 - USE: RESIDENTIAL
MAP 51 PARCEL 166 LOT 3B - GEORGE S JR & CHERYL PIER WEEMS - 7517/313 - ZONED: RC-2 - USE: RESIDENTIAL

LANDS OF RICHARD CIMAN & MARY ZODHIATES DEED SM 2328/1472 TAX MAP 15 PARCEL 216 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF LOUISA Y. HOPKINS REVOCABLE TRUST DEED SM 2033/130 TAX MAP 15 PARCEL 3 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY INC. DEED JLE36664/498 26.344 ACRES TAX MAP 15 PARCEL 144 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF ALEXANDER MCLANE & AUBREY ANN HOPKINS DEED JLE 33857/61 TAX MAP 15 PARCEL 249 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF MARY R. FOWBLE DEED SM 2439/2403 TAX MAP 15 PARCEL 166 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF JOHN & MICHELLE DWYER 37024/00030 TAX MAP 15 PARCEL 131 LOT 2 USE: RESIDENTIAL ZONE: RC-2
LANDS OF TAMMY J WITT 29857/00283 TAX MAP 15 PARCEL 131 LOT 1 USE: RESIDENTIAL ZONE: RC-2
LANDS OF LINDA AULT 33544/00467 TAX MAP 15 PARCEL 105 USE: RESIDENTIAL ZONE: RC-2
LANDS OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY INC. DEED JLE33970/242 TAX MAP 15 PARCEL 121 USE: RESIDENTIAL ZONE: RC-2
LANDS OF KEVIN & MARIA WEBB 29382/00140 TAX MAP 15 PARCEL 128 USE: RESIDENTIAL ZONE: RC-2
LANDS OF LINDA C HOGAN & JOHN B DIXON III 22900/00060 TAX MAP 15 PARCEL 180 USE: RESIDENTIAL ZONE: RC-2
LANDS OF JOHN M JR. & DONNA M STATTER 07014/00686 TAX MAP 15 PARCEL 180 USE: RESIDENTIAL ZONE: RC-2
LANDS OF WAYNE & ALLENE YELLE - 13613/00724 TAX MAP 15 PARCEL 166 LOT 1 USE: RESIDENTIAL ZONE: RC-2
P.166 LOT 3B
P.166 LOT 3A
P.166 LOT 2
P.166 LOT 1
P.184
EXISTING DRIVEWAY ENTRANCE
150.00'
S 24°38'30" E
N 65°21'30" W
445.88'
S 83°37'51" E 1251.74'
S 74°18'00" W 1047.86'
S 74°18'00" W 20.00'
S 74°30'00" W 439.42'
N 15°30'00" W 159.00'
S 74°30'00" W 294.40'
N 15°44'37" W 232.00'
S 49°45'00" W 312.78'
S 49°45'00" W 247.08'
S 20°39'00" W 287.15'
S 16°43'18" E 210.79'
S 12°39'30" E 104.63'
N 48°23'10" E 525.62'
N 04°15'39" E 393.24'
N 21°59'00" W 159.10'
N 48°23'40" E 17.50'
N 8°34'15" W 445.88'
N 48°23'40" E 1,251.74'
N 74°18'00" E 1047.86'
N 74°18'00" E 1,062.78'
N 74°18'00" E 1,062.78'
N 74°18'00" E 1,062.78

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'



KEY MAP

SCALE: 1" = 500'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OVERHEAD ELECTRIC
- FEMA FLOODPLAIN
- STREAM
- 100' STREAM BUFFER
- WETLAND LIMITS
- 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 359-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner
CBA Exhibit
22

GRAPHIC SCALE IN FEET
0 30 60 120

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4F (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

No	REVISIONS	DATE	BY

Kimley»Horn

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1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

STATE OF MARYLAND
NICHOLAS JOHN LEFFNER
21113
PROFESSIONAL ENGINEER

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND.
LICENSE NO. 21113 EXPIRATION DATE: 09/30/2020

KHA PROJECT 114066000
DATE 09/24/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1A

Plotted By: Miller, Sean Sheet Set: Falls Road Solar Layout: SHEET 1A EXISTING CONDITIONS PLAN September 24, 2019 08:42:03am K:\BAL_CIV\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT	50-FT[1]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

[1] - 50-FT REQUIRED FOR SOLAR USE
[2] - 80-FT REQUIRED FROM ADJACENT STRUCTURE
[3] - INTERNAL SETBACKS 0-FT, PROVIDED WITH ARRAY

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 19827FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF 'ALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,459 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BICKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 525.60, (2) N 64°15'30 E 393.24, (3) S 63°37'40" E 125 .74, (4) S 20°53'00" W 297.15, (5 S 49°48'00" W 312.78, (6) S 74°16'00" W 1047.86 (7) S 74°1.6'00" W 20.00 (8) N 16°34'15" W 446.69, (9) N 21°59'00 W 155.10, (10) N 48°23'40" E 17.50, BAIK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39864, FOLIO 498, CONTAINING 26.393 ACRES. LOCATED INTHE 5TH ELECTION DISTRICT AND THE 3RD COUNCILDISTRICT.

2. 19827 FALLS ROAD: BEGINNING AT A POINTON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,082 FEET SOUTH OFTHE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROADWHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE (1) N 4°16'07 E 1047.86, (2) S 49°48'00" W 247.08, (3) S 16°45'18" E 210.79, 4) S 12°28'30" E104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 150.00, 7 S 74°30'00" W 260.40, (8) N 15°44'00" W 230.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39370, FOLIO 242 CONTAINING 5.116 ACRES LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	
	PARCEL 144:	±26.34 AC.
	PARCEL 121:	±5.25 AC.
	TOTAL:	±32.59 AC.
3.	PROJECT AREA:	
	PARCEL 144:	±6.46 AC.
	PARCEL 121:	±2.69 AC.
	TOTAL:	±9.15 AC.
4.	PROPERTY INFORMATION:	
A.	EXISTING PREMISES ADDRESS:	19827 FALLS ROAD & ADJACENT TO 19827 FALLS ROAD
B.	TAX ACCOUNT NUMBER:	
	PARCEL 144:	0523011126
	PARCEL 121:	0904002210
C.	DEED REFERENCE:	
	PARCEL 144:	39864 / 00498
	PARCEL 121:	33970 / 00242
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT	5
F.	CENSUS TRACT:	405000
5.	BALTIMORE COUNTY ZONING MAP REFERENCES:	
A.	GIS TILE:	015A1
B.	TAX MAP:	0015
C.	PARCELS:	0144 & 0121
D.	GRID:	0001
E.	WATERSHED:	PRETTYBOY RESERVOIR
F.	BASIC SERVICES - WATER MAP:	N/A
G.	BASIC SERVICES - SEWER MAP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETTYBOY
6.	EXISTING LAND USE	VACANT / RESIDENTIAL
7.	PROPOSED LAND USE:	SOLAR FACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION AREAS - NO MAJOR SUBDIVISIONS ON SEPTIC

SITE NOTES

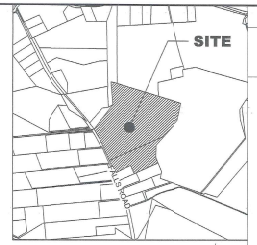
1. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENTI RELOCATION OF EXISTING SITE ACCESS.
2. STORMWATER TREATMENT WILL BE ME' VIA IMPLEMENTATION OF NDE SO.AR GUIDANCE (+B 1113, AND A COMBINATION OF NONROOFTOP DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR MICRO-SCALE ISD DEVICES.
3. 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.
4. SITE TO BE STABILIZED WITH LOW-GROWTH SEED MIX, AND PO.LINATOR SPECIES OUTSIDE OF ARRAY AREA.
5. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE.
6. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
7. ANY SIGNAGE PROPOSED SHALL COMPLY WITH BCZR § 460.
8. PARKING:
   REQUIRED: 0 SPACES
   PROPOSED: 0 SPACES
9. BASIC SERVICES - TRANSPORTATION MAP N/A
10. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
11. THE PROPOSED SO.AR FACILITY WILL BE SUBJECT TO BCZR § 4F-107.
12. THE PROPOSED SOLAR FACILITY WILL 40T EXCEED THE MAXIMUM PERMITTED NUMBER OF FACILITIES ALLOWED IN ITS RESPECTIVE COUNCILMANIC DISTRIC'. IF APPROVED, PETITIONER SHALL SUBMIT TO THE COUNTYAT THE TIME OF BUILDING PERMIT APPLICATION THE FINAL FIXED LOCATION AND AREA OF THE FACILITY BY COORDINATE DATA
13. 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.
14. NO DELIVERIES OR OUTDOOR MAINTENANCE WHICH MAY GENERATE EXCESIVE NOISE MAY OCCUR ON-SITE BETWEEN THE HOURS OF 6 PM THROUGH 6 AM.
15. THERE ARE NO KNOWN RARE SPECIES, THREATENED SPECIES OR ENDANGERED SPECIES HABITAT, HISTORICAL OR ARCHEOLOGICAL ARIAS ON SITE.
16. STORMWATER MANAGEMENT TO BE IN COMPLIANCE WITH MDE DESIGN GUIDANCE FOR SOLAR PANELS.
17. THE LOCATION OF THE PANELS AS SHOWN HEREON IS SCHEMATIC AND MAY CHANGE AS THE PROJECT EVOLVES TC FINAL DESIGN, HOWEVER, ALL PANELS SHALL BE LOCATED WITHIN THE AREA OF THE SPECIAL EXCEPTION AS SHOWN HEREON.
18. FINAL LOCATION AND DESIGN OF PROPOSED BGE INTERCONNECTION SUBJECT TO CHANGE BASED ON FINAL DESIGN AND REQUIREMENTS BY BGE.

VARIANCE REQUESTS

1. IF NECESSARY, TO GRANT VARIANCE RELIEF FROM BCZR §1A01.3.B.3.TO PERMIT A SOLAR FACILITY TO BE AS CLOSE AS 0 FEET TO AN INTERNAL LOT LINE AND
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- LOD — PROJECT AREA
- X — VINYL COATED CHAIN LINK FENCE (7FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

LANDSCAPE NOTE:

LANDSCAPE BUFFER DESIGN SUBJECT TC FINAL LANDSCAPE PLAN REVIEW AND APPROVAL BY BALTIMORE COUNTY

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZCOHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSHEET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443)559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443)743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner
CBA Exhibit
32C

GRAPHIC SCALE IN FEET
0 50 100 200

No.	REVISIONS	DATE	BY

Kimley»Horn

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1001 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 24511, EXPIRATION DATE: 04/09/2020

KHA PROJECT 114066000
DATE 09/24/2019
SCALE AS SHOWN
DESIGNED BY N.A.L.
DRAWN BY S.T.M.
CHECKED BY N.J.L.

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2

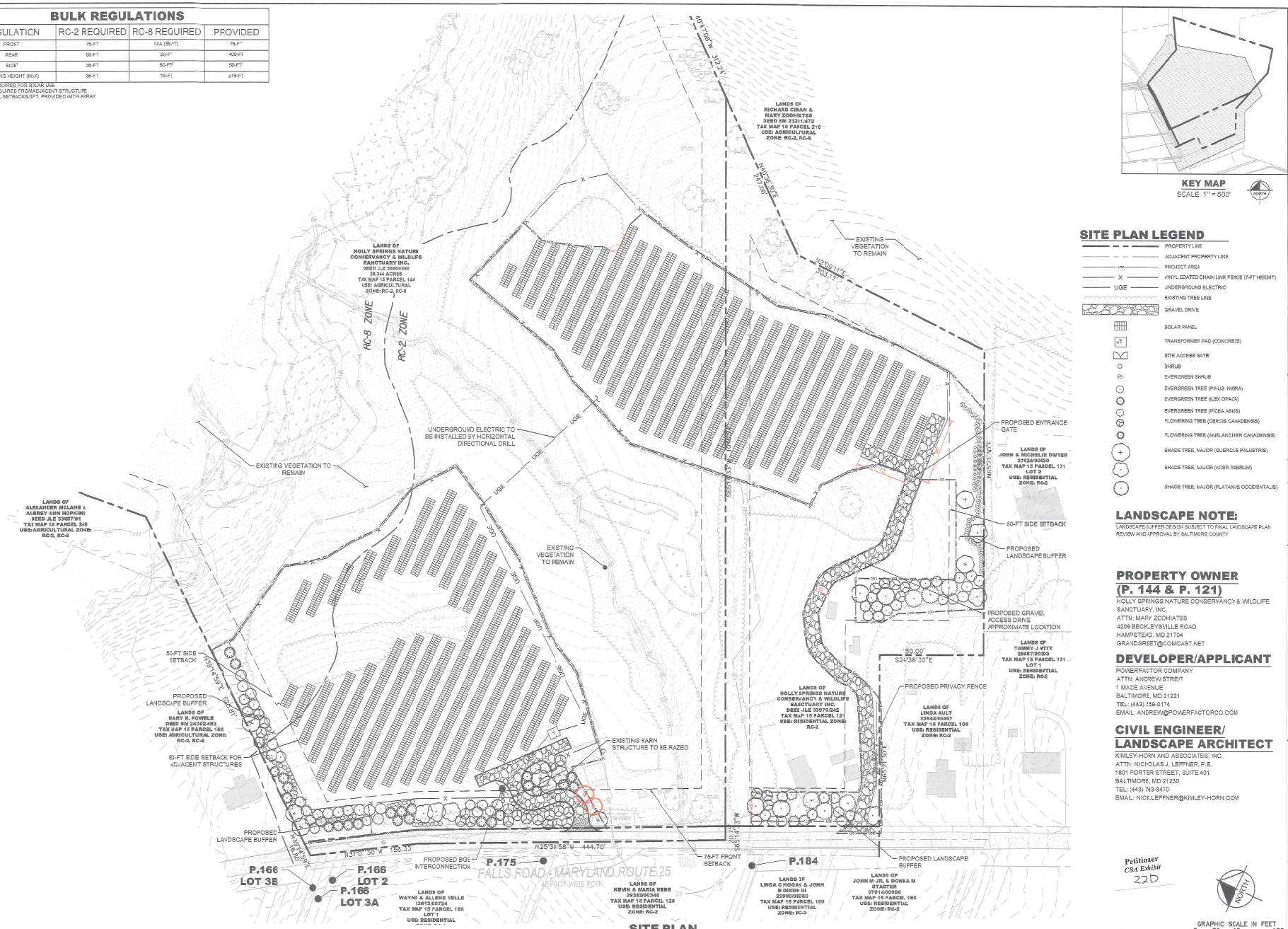
This documents, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Plotted By: Miller, Sean Sheet Set: Falls Road Solar Layout: SHEET 2 OVERALL SITE PLAN September 24, 2019 06:42:17pm K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg

BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	30-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT[2]	50-FT[3]
BUILDING HEIGHT (MAX)	35-FT	15-FT	≤15-FT

1 - 50-FT REQUIRED FOR SOLAR USE
2 - 80-FT REQUIRED FROM ADJACENT STRUCTURE
3 - INTERNAL SETBACKS OFF, PROVIDED WITH ARRAY



SITE PLAN
TO ACCOMPANY SPECIAL EXCEPTION
SCALE = 1" = 60'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
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- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

LANDSCAPE NOTE:

LANDSCAPE BUFFER DESIGN SUBJECT TO FINAL LANDSCAPE PLAN REVIEW AND APPROVAL BY BALTIMORE COUNTY

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECK,EYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
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BALTIMORE, MD 21221
TEL: (443) 759-0174
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TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Petitioner CBA Exhibit 22D

GRAPHIC SCALE IN FEET
0 30 60 120

No.	REVISIONS	DATE	BY

Kimley»Horn
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1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

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KHA PROJECT	114066000
DATE	09/24/2019
SCALE	AS SHOWN
DESIGNED BY	NJL
DRAWN BY	STM
CHECKED BY	NJL

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2A

Plotted By: Miller, Jason Sheet Set: Falls Road Solar Layout: SHEET 2A SITE PLAN September 24, 2019 - 06:42:25pm K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
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Kimley»Horn

RESUME

Jon Kraft, PLA
Kimley-Horn and Associates, Inc.
1801 Porter Street, Suite 401
Baltimore, MD 21230

Landscape Architect

Education:

Master of Business Administration (2011)
Loyola University of Maryland

Bachelor of Landscaper Architecture (2001)
Virginia Polytechnic Institute and State University

Registration: Registered Professional Landscape Architect in Maryland (#3744)

Professional Organizations: Urban Land Institute (ULI)

Professional Experience:

Landscape Designer
The Brickman Group – 2 years (2002-2004)

- Provided design services to support a variety of land development projects; including, residential, commercial, retail, industrial, institutional, and mixed-use land development projects.
- Prepared field reconnaissance and final construction document level design plans, for a variety of landscape design applications.

Landscape Architect
Morris & Ritchie Associates – 3 years (2004-2007)

- Provided design and entitlement consulting services to support a variety of land development projects; including, residential, commercial, retail, industrial, institutional, and mixed-use land development projects.
- Prepared conceptual, final, and construction document level design plans, for a variety of land planning and landscape architecture related disciplines; including, site planning/feasibility, site design, grading and drainage, roadways, landscape plans, forest conservation plans and construction phase services.

Landscape Architect/Branch Manager,
Bowman Consulting Group, Ltd. – 7 years (2007-2014)

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- Provided design, entitlement, and permitting consulting services to support a variety of land development projects; including, residential, commercial, retail, industrial, institutional, and mixed-use land development projects.
- Prepared conceptual, final, and construction document level design plans, for a variety of land planning and landscape architecture related disciplines; including, site planning/feasibility, site design, grading and drainage, roadways, landscape plans, forest conservation plans and construction phase services.

Landscape Architect/Senior Project Manager,
Kimley-Horn and Associates, Inc – 5 years (2014-current)

- Serves as senior project manager and landscape architectural consultant
- Responsible for the design, entitlement, and permitting services for a variety of land development projects; including, residential, commercial, retail, industrial, institutional, mixed-use projects.

Project Experience: Maryland – Baltimore City, Baltimore County, Howard County, Montgomery County, Prince George's County, Anne Arundel County, St. Mary's County,

Other States – Kansas, Oklahoma

Andrew M Streit
Director of Business Development

1044 South Shem Dr.
Charleston, SC 29464

andrewstreit@gmail.com
803 665 6688

SUMMARY OF QUALIFICATIONS

- Grew company sales from $600k in 2011 to $20,000,000 in 2014.
- 50+ MW developed and contracted both military and commercial
- Cultivated relationship leading to portfolio of nineteen stores with one of world's largest retailers
- Sourced $20m of private equity, sponsor capital and debt for range of projects
- Trained and managed new sales and operations staff
- Service before, during and beyond commissioning and O&M.
- Experience in Federal RFP estimating and proposals
- Developed strategic partnership with three utilities to bring multiple projects to fruition
- Experienced in complex system design and installation for solar industry
- Strong understanding of market dynamics, federal and state incentives, system requirements, string sizing and AC/DC requirements, load calculations and client desires
- Cost containment, Debt/equity financing, Strategic planning and Corporate messaging
- Ability to coordinate the efforts of many to meet organizational goals
- Project management experience in over 6MW of projects
- OSHA 30hr, competent person, NABCEP Intro, Safety plan manager
- Expert in MS office, Smartsheet, PV-watts, Procore, Energy Toolbase, Helioscope, Also Energy, Solaredge e-networking and proficient in web design

PROFESSIONAL EXPERIENCE

- Founder, Solar Business Alliance SC 2010
- *"The legislative, educational and business promotion of adoption of safe, clean, domestic energy sources."*
- Former Board member, South Carolina Solar Council
- Former Board Member, South Carolina Small Business Chamber
- **NABCEP** certified PV 2009
- Duke DER advisory Council SC 2018
- SCE&G advisory Council SC 2018
- Executive management training program
- NC State PV certified 2009
- 2010 Solar volunteer of the Year
- Licensed residential builder
- OSHA 30hr safety training
- Built first SC network of energy professionals to build solar industry 92 current members
- First speaker on SC Senate hearing on RPS

EMPLOYMENT HISTORY

Power Factor LLC **2018-**

Director of Business Development

- Develop new web presence focusing on residential and commercial PV sales
- Structure company to compete in utility and large commercial PV market
- Integrate CRM tools develop marketing plan and materials
- Move to S Corp and prepare audited financials.
- Target customer retention and project development processes

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SolBright Renewable Energy **2012-2018**

Director of Project Management-2014 Director of Business Development

- EPC of Canopy, ground and Rooftop Photovoltaic Systems
- Develop long-term relationships with MACON, MATOC, USACE, NAVFAC, USAF MILCON to deliver seamless, turnkey, cost managed, UFC compliant, superior quality RE systems
- Review AE plans, MEP plans and vendor shop drawings to maximize efficiency and aesthetics
- Manage UFC compliant Submittals, RFP responses, RFI requests
- Project manage Military projects on 7 bases across 4 states
- Coordinate multiple trades to execute on 1.6MW of contracted projects
- Developed Database repository for upstream value management and project tracking
- OSHA Safety compliance and coordination
- Estimating, permitting, ISA, ROI, Procurement, Design, Contract, Deliver.
- Coordinated Hub zone employee hiring and training
- Develop new capital preservation tools and programs to maximize fixed cost reductions

Ontility **2011-2012**

Business Development Manager

- Sales and design of PV and thermal system components
- Identified and recruited 175 EPC's and integrators for Ontility's growing network of Solar partners
- Signed first PM deal for internal partner Solar Community
- Developed, managed, supervised and completed a 168kw multi-site PV array in record time.
- Built relationships with National Vendors to create stronger value chain
- Utilized new CRM and integrated Real time inventory management software
- Handled first international sale for Ontility
- Created new business opportunity thru strategic partnership with super regional engineering firm

Sunstore Solar **2009-2011**

Sales Manager

- Lead in training and education workshops, B2B relationships, tax advice and system design
- Created winning grant solicitation for large non-profit
- Co-wrote feasibility study for first structured PPA in SC
- Public speaker on state and national energy policy
- Member of ASES, EDF, SEIA

Argand Energy Solutions **2007-2009**

Vice President of Solar Business Development,

- Designed solar thermal and PV systems
- Installed all solar thermal systems first year
- No.1 in Sales, presented on Solar, trained employees

Prestige Contracting **2002-2007**
Owner

- Specialized in starter home renovations and
- historic Preservation and renovation

Computer Sciences Corporation **1998-2002**

Business Analyst

- Lead Analyst for two clients both using new client server web interfaced software platform
- w/ AS400 back office processing
- Awarded employee recognition awards and promoted 2 times.

EDUCATION

BA, English/minor Economics, 1996
University of Georgia, Athens

Computer Science certificate 1997
COBOL, Network/LAN/PC
Dekalb Technical College

GCL-M6/72
GCL-M6/72H

Monocrystalline Module

335-370W

370W
Maximum Power Output

19.1%
Maximum Module Efficiency

0~+5W
Power Output Guarantee

Cell Type

5BB MBB

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Ideal choice for large scale ground installation

High conversion efficiency due to top quality wafers and advanced cell technology

PID

Selected encapsulating material and stringent production process control ensure the product is highly PID resistant and snail trails free

Sand blowing test, salt mist test and ammonia test passed to endure harsh environments

Optimized system performance due to module level current sorting

Special cell process ensures great performance under low irradiance conditions...

Highly transparent self-cleaning glass brings additional yield and easy maintenance

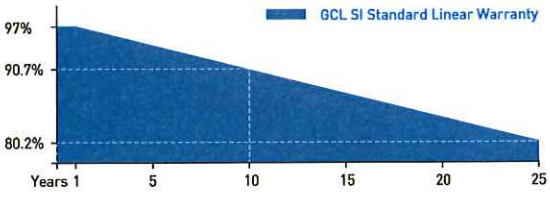
Company Introduction

GCL System Integration Technology Co. Ltd (002506 Shenzhen Stock) (GCL System) is part of GOLDEN CONCORD Group (GCL) which is an international energy company specializing in clean and sustainable power production. The group, founded in 1990 now employs 30,000 people.

GCL Delivers Reliable Performance Over Time

- World-class manufacturer of crystalline silicon photovoltaic modules
- Fully automatic facility and world-class technology
- Rigorous quality control to meet the highest standard: ISO9001:2015, ISO14001: 2015 and OHSAS: 18001 2007
- Tested for harsh environments (salt mist, ammonia corrosion and sand blowing test: IEC 61701, IEC 62716, DIN EN 60068-2- 68)
- Long term reliability tests
- 2*100% EL inspection ensuring defect-free modules

Linear Performance Warranty



10 Years Product Warranty 25 Years Linear Power Warranty

* Please refer to GCL standard warranty for details

Additional Insurance Backed by Swiss RE

* Please refer to GCL for details

GCL-M6/72
GCL-M6/72H

GCL-Saturn Series Monocrystalline Module | 335-370W

Electrical Specification (STC*)

Maximum Power	Pmax(W)	335	340	345	350	355	360	365	370
Maximum Power Voltage	Vmp(V)	38.00	38.20	38.40	38.60	38.80	39.00	39.20	39.40
Maximum Power Current	Imp(A)	8.82	8.90	8.99	9.07	9.15	9.23	9.31	9.39
Open Circuit Voltage	Voc(V)	46.40	46.60	46.80	47.00	47.20	47.40	47.60	47.80
Short Circuit Current	Isc(A)	9.41	9.49	9.57	9.65	9.73	9.81	9.89	9.97
Module Efficiency	(%)	17.3	17.5	17.8	18.0	18.3	18.6	18.8	19.1
Power Output Tolerance	(W)	0~+5							

* Irradiance 1000W/m², Module Temperature 25°C, Air Mass 1.5

Electrical Specification (NOCT*)

Maximum Power	Pmax (W)	249.56	252.38	256.30	260.24	263.85	267.48	270.75	274.43
Maximum Power Voltage	Vmp (V)	35.10	35.20	35.40	35.60	35.80	36.00	36.10	36.30
Maximum Power Current	Imp (A)	7.11	7.17	7.24	7.31	7.37	7.43	7.50	7.56
Open Circuit Voltage	Voc(V)	43.10	43.20	43.40	43.60	43.80	44.00	44.20	44.30
Short Circuit Current	Isc (A)	7.61	7.68	7.74	7.80	7.87	7.93	8.00	8.06

* Irradiance 800W/m², Ambient Temperature 20°C, Wind Speed 1m/s

Mechanical Data

Solar Cell Type	Mono 156.75×156.75mm (6 inches)
Number of Cells	72 Cells (6×12)
Dimensions of Module L*W*H (mm)	1956×992×35mm (77 × 39.05 × 1.38 inches)
Weight (kg)	22.2 kg
Glass	High transparency solar glass 3.2mm (0.13 inches)
Backsheet	White
Frame	Silver, anodized aluminium alloy
J-Box	IP68 Rated
Cable	4.0mm² (0.006 inches2), 1200mm (35.4 inches)
Number of diodes	3
Wind/ Snow Load	2400Pa/5400Pa*
Connector	MC4 Compatible

* For more details please check the installation manual of GCLSI

Temperature Ratings

Nominal Operating Cell Temperature (NOCT)	45±2°C
Temperature Coefficient of Isc	+0.06%/°C
Temperature Coefficient of Voc	-0.30%/°C
Temperature Coefficient of Pmax	-0.39%/°C

Maximum Ratings

Operational Temperature	-40~+85°C
Maximum System Voltage	1000V DC
	1500V DC-(H)
Max Series Fuse Rating	15A

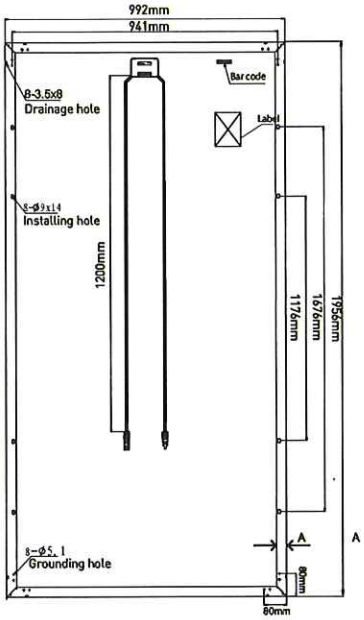
Optional

Connector:	☐ Original MC4

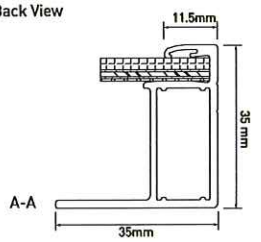
Packaging Configuration

Module per box	30 pieces
Module per 40' container	720 pieces

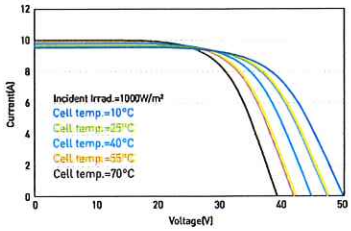
Module Dimension



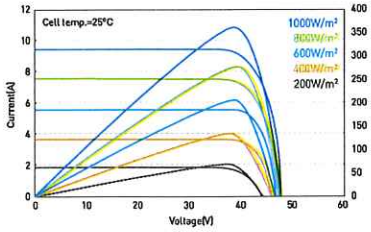
Back View



U-I Curve at Different Temperature (360W)



U-I/P-U Curve at Different Irradiation (360W)



CAUTION: READ INSTALLATION MANUAL BEFORE USING THE PRODUCT

Contact Us for More Information

website: en.gclsi.com email: gclsisales@gclsi.com

Baltimore County - My Neighborhood

Pet No 26

Petitioner
CBA Exhibit
26

Board of Appeals

Case No: 19-183-X Case Name: Holly Springs

Exhibit List

Party: Protestants Date: 9/19/19

Exhibit No:	Description:	
✓ 1	Copy of Pet 3C with highlights.	
✓ 2	BCC 33-3-111 and 33-3-112	
✓ 3A	EPS 6/3/19 Zac Comments.	
✓ 3B	EPS 7/3/19 Zac Comment (Bd File)	
✓ 4A-D	Photos from Fowble Progerty.	
✓ 5	EPS 12/26/18 ZAC Comments	
✓ 6	2/14/19 Letter Schmidt to DOP	
KC 9/20/19 ✓ 7	6/25/19 Memo to PAI from DOP	
9/24/19 ~~✓ 8~~	~~OSHA Violations Power Factor~~	not admitted
✓ 9	SDAT Record for Power Factor	
✓ 10 A-E	Yelle Photos.	
10/23/19. ✓ 11	Rule 8 Valleys Planning Council	
✓ 12	Holly Springs Form 990	
✓ 13	My Neighborhood Map.	
	VERIFIED BY KC DATE: 10/25/19	

Board of Appeals

Case No: 19-183-X Case Name: Holly Springs

Exhibit List

Party: Protestants Date: 10/23/19

Exhibit No:	Description:
✓ 14	Deed 7/22/13 Parcel 0121
✓ 15	MD Code Ann., Public Utilities, §7-306.2
✓ 16	Rule 8 North County Community Group
✓ 17, 17-1-11	Photo Key and 11 Photos View Subj Property
✓ 18	BGE List Community Solar Applicants
✓ 19	Power Factor LLC Subscriber Application to PSC
✓ 20	Meade Comm Subscriber Application to PSC
✓ 21	Landscope Website - TEA
✓ 22	DNR/MERLIN Aerial Tax Map
✓ 23	Aerial Photo of Protestants Property
	VERIFIED BY KC DATE: 10/25/19

Protestant
CBA Exhibit

BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	50-FT	50-FT[1]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

[1] - 50-FT REQUIRED FOR SOLAR USE
[2] - 150-FT REQUIRED FROM ADJACENT STRUCTURE
[3] - INTERNAL SETBACKS 0-FT, PROVIDED WITH ARRAY

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 18827 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,469 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'47" E 525.62, (2) N 04°15'32" E 393.24, (3) S 63°37'47" E 1251.74, (4) S 20°33'00" W 297.15, (5) S 49°48'00" W 312.76, (6) S 74°16'00" W 1047.86, (7) S 74°16'00" W 20.00, (8) N 15°34'15" W 446.88, (9) N 21°59'00" W 156.10, (10) N 48°23'47" E 11.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39664, FOLIO 488, CONTAINING 26.93 ACRES, LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

2. 18827 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,062 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROADWHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE (1) N 74°16'00" E 1047.86, (2) S 49°48'00" W 247.08, (3) S 16°42'16" E 210.79, 4) S 12°29'30" E104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 150.00, 7 S 74°30'00" W 280.40, (8) N 15°44'00" W 232.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39970, FOLIO 242, CONTAINING 6.116 ACRES, LOCATED IN THE 5THELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	
	PARCEL 144:	±26.34 /C.
	PARCEL 121:	±6.25 AC.
	TOTAL:	±32.59 /C.
3.	PROJECT AREA:	
	PARCEL 144:	±6.46 AC.
	PARCEL 121:	±2.69 AC.
	TOTAL:	±9.15 AC.
4.	PROPERTY INFORMATION:	
A.	EXISTING PREMISES ADDRESS:	18827 FALLS ROAD & ADJACEIT TO 18827 FALLS ROAD
B.	TAX ACCOUNT NUMBER:	
	PARCEL 144:	0523011126
	PARCEL 121:	0904009210
C.	DEED REFERENCE:	
	PARCEL 144:	39664 /00488
	PARCEL 121:	39970 /00242
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	5
F.	CENSUS TRACT:	405000
5.	BALTIMORE COUNT" ZONING MAP REFERINCES:	
A.	GIS "ILE:	015A1
B.	TAX MAP:	0015
C.	PARCELS:	0144 &3121
D.	GRID:	0001
E.	WATERSHED:	PRETT"BOY RESERVOIR
F.	BASIC SERVICES - WATER MAP:	N/A
G.	BASIC SERVICES - IBWER MAP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETT"BOY
6.	EXISTING LAND USE	VACANT / RESIDENTIAL
7.	PROPOSED ,AND USE:	SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

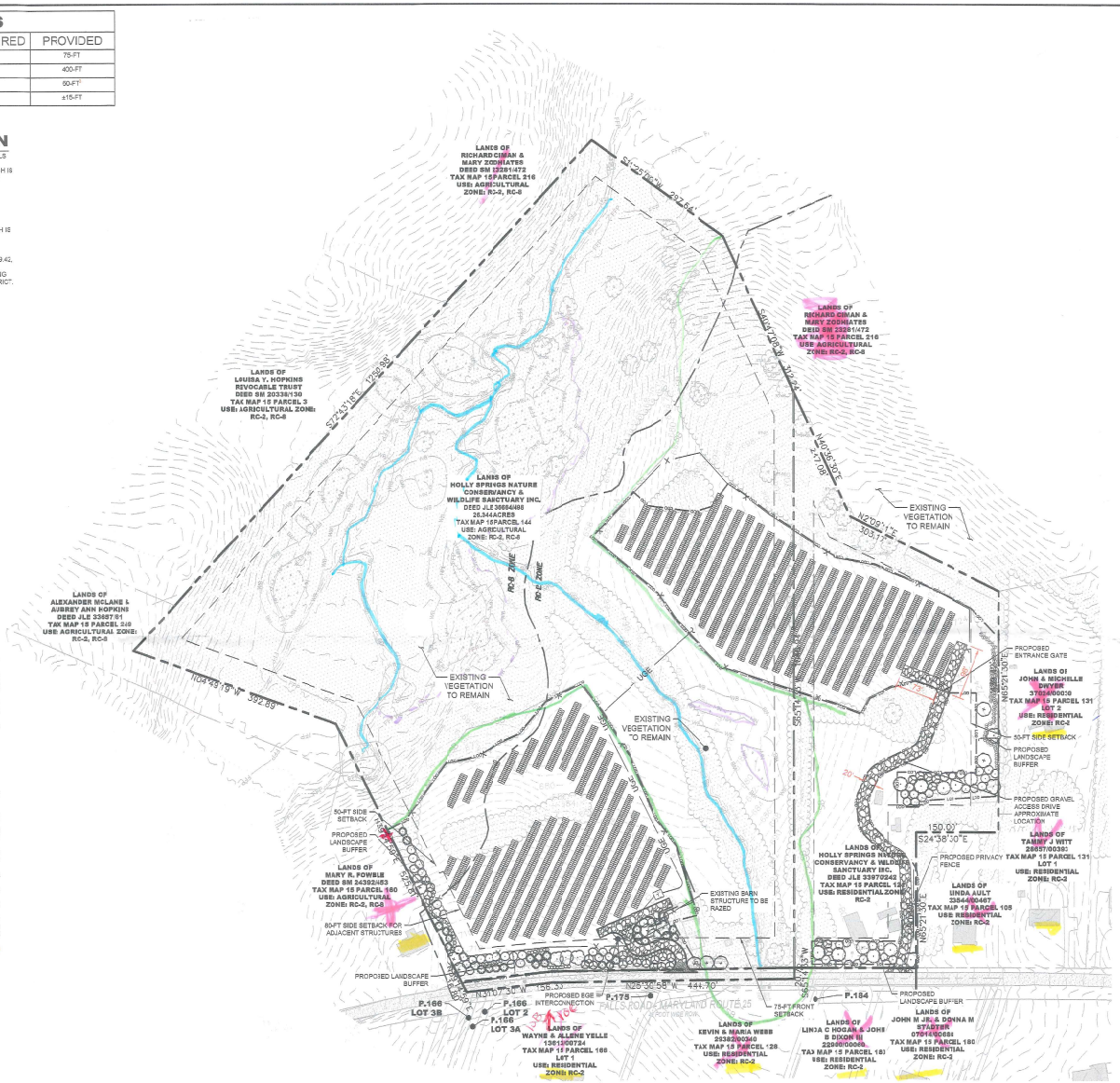
TIER 4: PRESERVATION AND CONSERVATION AREAS - NO MAJOR SUBDIVISIONS ON SEPTIC

SITE NOTES

1. VEHICULAR ACCESS TO "HE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/RELOCATION OF EXISTING SITE ACCESS.
2. STORMWATER TREATMENT WILL BE MET VIA IMPLEMENTATION OF NDE SOLAR GUIDANCE (HB 1117), AND A COMBINATION OF NON-AND/OT DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR MICRO-SCALE SSO DEVICES.
3. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE OF VEGETATION IN TH(FOREST BUFFER, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PRO"ECTION AND SUSTAINABILITY.
4. SITE TO BE STABILIZED WITH LOW-GROWTH SEED MIX, AND POLLINATOR SPECIES OUTSIDE OF ARRAY AREA.
5. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE.
6. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
7. ANY SIGNAGE PROPOSED SHALL COMPLY WITH BCZR § 460.
8. PARKING:
   REQUIRED: 0 SPACES
   PROPOSED: 0 SPACES
9. BASIC SERVICES - TRANSPORTATION MAP N/A
10. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
11. THE PROPOSED SOLAR FACILITY WILL BESUBJECT TO BCZR § 4F-107.
12. THE PROPOSED SOLAR FACILITY WILL 4OT EXCEED THE MAXIMUM PERMITTED NUMBER OF FACILITIES ALLOWED IN ITS RESPECTIVE COUNCILMANIC DISTRICT. IF APPROVED, PETITIINER SHALL SUBMIT TO THE COUNTY AT THE TIME OF BUILDING PERMIT APPLICATION THE FINAL FIXED LOCATION AND AREA OF THE FACILITY BY COORDINATE DATA
13. LIGHTING SHALL BE LIMITED TO WHAT S REQUIRED FOR SECURITY PURPOSES ONLY AND WILL BE SITED IN SUCH A WAY AS TO HAVE MINIMAL SPILLAGE ONTO NEIGHBORING PROPERTIES.
14. NO DELIVERIES OR OUTDOOR MAINTENANCE WHICH MAY GENERATE EXCESSIVE NOISE MAY OCCURON-SITE BETWEEN THE HOURS OF 8 PM THROUGH 8AM.
15. THERE ARE NO KNOWN RARE SPECIES, THREATENED SPECIES OR ENDANGERED SPECIES HABITAT, HISTORICAL OR ARCHEOLOGICAL AREAS ON SITE.
16. STORMWATER MANAGEMENT TO BE IN COMPLIANCE WITH MDE DESIGN GUIDANCE FOR SOLAR PANELS.
17. THE LOCATION OF THE PANELS AS SHOWN HEREON IS SCHEMATIC AND MAY CHANGE AS THE PROJECT EVOLVES TC FINAL DESIGN, HOWEVER, ALL PANELS SHALL BE LOCATED WITHIN THE AREA OF THE SPECIAL EXCEPTION AS SHWN HEREON.
18. FINAL LOCATION AND DESIGN OF PROPOSED BGE INTERCONNECTION SUBJEC" TO CHANGE BASED ON FINAL DESIGN AND REQUIREMENTS BY BGE.

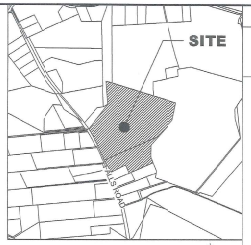
VARIANCE REQUESTS

1. IF NECESSARY, TO GRANT VARIANCE RELIEF FROM BCZR §1A01.3.B.3.TO PERMIT A SOLAR FACILITY TO BE AS CLOSE AS 0 FEET TO AN INTERNAL LOT LINE; AND
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE CCUNTY.



OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7FT HEIGHT)
- UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PAUSTRIE)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

LANDSCAPE NOTE:

LANDSCAPE BUFFER DESIGN SUBJECT TO FINAL LANDSCAPE PLAN REVIEW AN APPROVAL BY BALTIMORE COUNTY

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAC
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STRE:T
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443)559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443)743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

GRAPHIC SCALE IN FEET
0 50 100 200

No.	REVISIONS	DATE	BY

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 41611, EXPIRATION DATE: 09/30/2020

KHA PROJECT 114066000
DATE 09/19/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY STM
CHECKED BY NJL

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION/ DRC

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2

Posted By:Miller, Sean Sheet Set:Falls Road Solar Layout:SHEET 2 OVERALL SITE PLAN September 18, 2019 09:10:57am K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\PanSheet\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

§ 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.

Protestant
CBA Exhibit
2

(c) *Adjusted forest buffer standards and requirements for streams and wetlands with adjacent steep slop 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
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;

(ii) Surface mining operations that are operating in compliance with a state surface mining permit; and

(iii) Agricultural operations in accordance with a soil conservation and water quality plan approved by the County Soil Conservation District.

(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.

(c) *Authorized structures, practices, and activities.*

(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.

(1988 Code, § 14-342) (Bill No. 224, 1990, § 1, 1-1-1991; Bill No. 94-02, § 2, 7-1-2004)

BALTIMORE COUNTY, MARYLAND

Inter-Office Correspondence

Protestant
CBA Exhibit
3A

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: LEAVE BLANK

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18627 Falls Road
(Holly Springs Nature Conservancy & Wildlife Property)

Zoning Advisory Committee Meeting of **June 3, 2019**.

_____ The Department of Environmental Protection and Sustainability has no comment on the above-referenced zoning item.

__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).

Additional Comments:

The revised site plan and the Forest Buffer Easement shown thereon are based on field delineated wetlands, streams, and forest as well as a steep slopes and erodible soils analysis. Those items are pending EPS review, and any revisions to the Forest Buffer Easement and forest limits resulting from that review may affect the design of the solar facility.

The revised plan submitted with the amended zoning petition appears to have eliminated many of the impacts to water quality and resources proposed on the plan submitted with the original petition and appears to be generally be consistent with §1A09.5 of Baltimore

County Zoning Code pertaining to the RC-8 zoning classification. Regardless, the underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require EPS review and approval of an alternatives analysis and must be included in the project's limit of disturbance. Furthermore, depending on the type of crossing method employed, State and Federal authorization may be required and must be obtained prior to EPS approval of any grading permit to accomplish this crossing.

EPS cannot approve any grading plan until this occurs along with the following: a final Forest Buffer Protection Plan detailing any EPS-required mitigation is approved; a final Forest Conservation Plan is approved. Moreover, the following must occur prior to EPS approval of any permit application: any planting requirement addressed including posting of necessary securities via an Environmental Agreement; the Forest Buffer Easement and Forest Conservation Easements recorded in Land Records via a right of way plat along with their respective Declarations of Protective Covenants; any onsite protective measures implemented; and, any applicable conditions of alternatives analysis approval met.

EPS respectfully requests that the requirements above be made conditions of any zoning relief to minimize impacts to water quality and forest buffer in accordance with the Forest Buffer law and EPS requirements.

Reviewer: Glenn Shaffer

Prot 3B

RECEIVED
JUL 03 2019
OFFICE OF
ADMINISTRATIVE HEARINGS

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: July 3, 2019

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18627 Falls Road
(Holly Springs Nature Conservancy & Wildlife Property)

Zoning Advisory Committee Meeting of **June 3, 2019.**

__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).

Additional Comments:

The revised site plan and the Forest Buffer Easement shown thereon are based on field delineated wetlands, streams, and forest as well as a steep slopes and erodible soils analysis. Those items are pending EPS review, and any revisions to the Forest Buffer Easement and forest limits resulting from that review may affect the design of the solar facility.

The revised plan submitted with the amended zoning petition appears to have eliminated many of the impacts to water quality and resources proposed on the plan submitted with the original petition and appears to be generally be consistent with §1A09.5 of Baltimore County Zoning Code pertaining to the RC-8 zoning classification. Regardless, the

underground electric cable currently proposed through the Forest Buffer Easement and under the stream will require EPS review and approval of an alternatives analysis and must be included in the project's limit of disturbance. Furthermore, depending on the type of crossing method employed, State and Federal authorization may be required and must be obtained prior to EPS approval of any grading permit to accomplish this crossing.

EPS cannot approve any grading plan until this occurs along with the following: a final Forest Buffer Protection Plan detailing any EPS-required mitigation is approved; a final Forest Conservation Plan is approved. Moreover, the following must occur prior to EPS approval of any permit application: any planting requirement addressed including posting of necessary securities via an Environmental Agreement; the Forest Buffer Easement and Forest Conservation Easements recorded in Land Records via a right of way plat along with their respective Declarations of Protective Covenants; any onsite protective measures implemented; and, any applicable conditions of alternatives analysis approval met.

EPS respectfully requests that the requirements above be made conditions of any zoning relief to minimize impacts to water quality and forest buffer in accordance with the Forest Buffer law and EPS requirements.

Reviewer: Glenn Shaffer

Prot 4A
Protestant
CBA Exhibit

46

48

4D

5
Protestant
CBA Exhibit

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: December 26, 2018

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18200 block Falls Road
(Zodhiates Property)

Zoning Advisory Committee Meeting of **December 24, 2018.**

__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 Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (aka Forest Buffer law) (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). In accordance with Section 33-3-108 of the Forest Buffer Law, sufficient information must be provided by the applicant to enable EPS to make an informed decision regarding the proposed activities.

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

Additional Comments:

All streams and wetlands must be field delineated, and the delineations must be approved by EPS. A Forest Buffer Easement (FBE) must be delineated in accordance with Section 33-3-111 of the Forest Buffer Law.

The 100-foot stream buffers shown on the plan do not meet the minimum 100-foot forest buffer width. The forest buffer would likely extend well beyond that minimum based on the floodplain and hydric soils (Hatboro – HbA) shown on the plan and the steep slopes/erodible soils analysis required by Section 33-3-111(b) of the Code. The 50-foot stream setbacks on the plan are unrelated to any EPS regulatory requirement.

The proposed gravel road and underground electric line in the forest buffer will require EPS alternatives analysis approval. It appears as though proposed water quality impacts could be substantially reduced by redesigning gravel road access points and turn-around areas and by eliminating the proposed stream crossing.

The extensive solar array and limit of disturbance (LOD) forest buffer impacts shown on the plan would require approval of an administrative variance to the Forest Buffer Law by the EPS Director. There is no guarantee of variance approval. The forest buffer solar array and LOD impacts could all be avoided by reducing the scope of the overall project and adjusting the project LOD.

A forest stand delineation and forest conservation plan must be submitted to EPS and approved prior to approval of any development plan or grading/sediment control plan.

If any specimen trees or critical root zones of these trees are proposed to be impacted, special variance to the Forest Conservation Law must be submitted and approved by the EPS Director. There is no guarantee of special variance approval.

Based upon our review of the special exception application, we have determined that the proposed extensive forest buffer impacts would be detrimental to water quality in Compass Run, a tributary to Compass Run, and Prettyboy Reservoir into which these streams drain. Furthermore, given that these impacts are largely avoidable, we do not believe that the applicant has taken into consideration the presence of natural forest buffers and the proximity of streams and wetlands when designing the site layout. For these reasons, we recommend that the Administrative Law Judge either deny the subject application, or condition the application to substantially reduce and minimize forest buffer and water quality impacts in accordance with the Forest Buffer Law and EPS requirements.

Reviewer: Glenn Shaffer

SMITH, GILDEA & SCHMIDT LLC

Protestant
CBA Exhibit
6

MICHAEL PAUL SMITH
DAVID K. GILDEA
LAWRENCE E. SCHMIDT
MICHAEL G. DEHAVEN
JASON T. VETTORI
MARIELA C. D'ALESSIO*
MELISSA L. ENGLISH
*Admitted in MD, FL, PA

LAUREN [illegible]
SARAH A. ZADROZNY
CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

February 14, 2019

Via Email and First Class Mail
Mr. Lloyd T. Moxley
Mr. Joseph Wiley
Department of Planning
105 West Chesapeake Ave, Suite 101
Towson, MD 21204

Re: BCZR § 1A09.4.A Narrative Support Letter
Case No. 19-183 - X
18627 Falls Road, Baltimore, Maryland ("Property")

Dear Mr. Moxley and Mr. Wiley:

Kindly be advised that I represent the contract lessee, Power Factor, LLC and the legal owner, Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., (collectively "Petitioners"), of the above referenced Property. Pursuant to the Department of Planning's 1/10/2019 Zoning Advisory Committee Comments for the above referenced case number and pursuant to Baltimore County Zoning Regulations ("BCZR") § 1A09.4.A, a finding is required on the part of the Director of the Department of Planning prior to the approval of the requested special exception plan in the Resource Conservation ("RC") 8 zone. It should be noted however, only a small portion of the proposed solar panels are located in the RC 8 zone. In order to assist the Department in preparing its recommendation, we are submitting this narrative explaining that the proposed special exception request is consistent with the spirit and intent of BCZR § 1A09.4.A. Please accept this explanatory letter as such narrative.

The applicable provisions are set forth in BCZR § 1A09.1 through § 1A09.8. BCZR § 1A09.1.B. lists overall legislative goals for the RC 8 zone, which generally seek to maintain and protect natural resources, including forests, streams, wetlands, floodplains, and prime and productive soils. BCZR § 1A09.4. further mandates that development be in accordance with standards and guidelines for "rural preservation" and "scenic views." Additionally, BCZR § 1A09.7. provides guidelines for specific development area requirements and standards.

As the Department of Planning is no doubt familiar from other petitions that have come before it, solar energy is a renewable energy source, whose development and use is encouraged by the State of Maryland. In 2016, Maryland passed House Bill 1087, titled "Electricity - Community Solar Energy Generating System Program," which established a pilot program for community solar energy systems. In May of 2016, the Maryland Public Service Commission finalized regulations to guide the process for developing solar facilities throughout the State. As such, solar energy is to be utilized as an alternative to the use of fossil fuels and is to comprise 2.5% of the State's energy use by 2021. Petitioners' proposed project is part of the community solar pilot program. The energy produced by the proposed facility will be fed into the adjacent power grid maintained by BGE. The State's incentivized programs are indicative of an overall encouragement of the development of solar facilities.

As prescribed by BCZR § 1A09, the placement of the proposed solar panels are designed to minimize impacts to the surrounding natural resources. The panels produce no chemicals, odors, toxins or other impacts that might produce environmental degradation or impact the underground water table. As this is an unmanned operation, the solar panels are cleaned off by rain water, which is an intentional design component in order to limit maintenance of this unmanned system and/or the use of any cleaning or chemical agents. The proposed solar facility will follow approved storm water management guidelines that have been developed by the State for solar facilities. The solar panels will be located outside the floodplain, giving due consideration of flood hazards and floodplain management. Additionally, there is no impervious surface but for the ground mounts supporting the panels. The arrays are ground mounted and sit on a pole on the ground. There will be vegetative ground cover underneath to allow for the infiltration of rain/snow that will be routinely maintained.

The proposed solar facility use will not be detrimental to adjacent agricultural uses nor affect prime and productive soils. The Property is not presently used for farming or agricultural purposes, as it is owned by an organization dedicated to the preservation of land and the minimization of pollution. As such, the proposed solar facility does not impact the utilization of prime and productive soils on the Property. Further, there are no impacts of the proposed use which harm crops or farm animals in the vicinity. The State would not be incentivizing solar energy if there was a serious concern about adverse impacts to agriculture.

The portion of Falls Road adjacent to the Property is classified as a scenic byway under the Baltimore County Master Plan 2020. As mandated by the Baltimore County Code, a landscape plan, with the purpose of buffering the solar facility from surrounding properties and Falls Road, will require approval from the Baltimore County Landscape Architect. The proposed solar panel will be strategically situated at a lower elevation compared to Falls Road. As a result, the visibility of the solar panels will be reduced. This buffering is further enhanced through a mix of trees and vegetation, which will soften the view of the solar facility. Given the existing and proposed vegetation/proposed landscaping, as well as the existing topography, the impact on the scenic

byway is minimal. Moreover, there is nothing in the CMDP which prohibits a solar facility use adjacent to a scenic byway.

The proposed solar panel heights range from 4-7 feet depending on the time of day, as these systems are movable "tracking" modules that rotate with the position of the sun and will be surrounded by a fence and significant vegetative screening to protect the existing view corridor. BCZR § 4F-104. mandates a 50 foot minimum setback requirement. The proposed solar facility setback is 75 feet, which is 150% of the required setback. The glare will be minimized and not interfere with traffic or create a safety hazard. Solar panels are designed to absorb as much light as possible and utilize anti-reflective coatings to reduce the possibility of light reflection.

The Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement. Additionally, the Property is not located in a Baltimore County Historic District, nor is it listed on the Baltimore County Final Landmarks List. Finally, the proposal is the subject of a twenty year lease, thus does not represent a permanent alteration as to the use of the land.

Solar facilities are permitted by special exception in the RC 8 zone. Energy is critically important to Maryland's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Maryland's renewable energy resources are currently underutilized. Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Maryland's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Maryland to develop and utilize renewable energy resources to the maximum practicable extent. As such, the proposed solar facility use is consistent with the spirit and intent of BCZR § 1A09.4.A.

Kindly confirm and certify in writing that the proposed solar facility use is consistent with the spirit and intent of the Baltimore County Zoning Regulations.

I sincerely appreciate you taking the time to review this matter and if your office requires any additional information, or has any comments, questions, or concerns regarding the contents of this letter, please contact me.

Very truly yours,

Lawrence E. Schmidt

Protestant
CBA Exhibit
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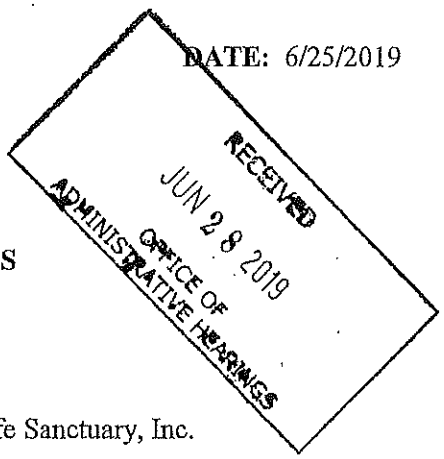
BALTIMORE COUNTY, MARYLAND
INTER-OFFICE MEMORANDUM

TO: Michael D. Mallinoff
Acting Director, Permits, Approvals and Inspections

DATE: 6/25/2019

FROM: C. Pete Gutwald
Acting Director, Department of Planning



SUBJECT: **ZONING ADVISORY COMMITTEE COMMENTS**
Case Number: 19-183

INFORMATION:
Property Address: Falls Road
Petitioner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Zoning: RC 2, RC 8
Requested Action: Special Exception

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

A site visit was conducted on 6/6/2018 and 01/09/2019. The subject site is within a Master Plan 2020 Agricultural Priority Preservation Area (APPA). Falls Road is a state designated scenic byway and a Baltimore County Master Plan designated scenic road presenting a "focused view" as defined in the Comprehensive Manual of Development Policies (CMDP).

Pursuant to BCZR§1A09.4.A, the Department finds the proposal to be within in the spirit and intent of the RC 8 regulations. Site disturbance is primarily located in the RC 2 zone and will have minimal impacts on the natural resources located along the edge of the RC 8 zone portion of the property.

The Department does not oppose granting the petitioned zoning relief conditioned upon the following:

When developing on a scenic route, the CMDP development guidelines instructs one to *"minimize tree and vegetation removal"* and to *"maintain a buffer between the road and the new development"* (CMDP pgs. 178,180).

- The proposal shall minimize grading, tree and vegetation removal along Falls Road. Where disturbance must occur, plantings consisting of native deciduous and evergreen trees and shrubs shall be installed in a naturalistic manner to mitigate the impacts of the special exception use upon the scenic route while allowing a view of the restored barn.
- The Department supports the Baltimore County Landscape Architect in planting requirements deemed necessary to include interior contour screening and other planting schemes that will mitigate the visual impact of the special exception proposal upon the scenic route.

Additional conditions are as follows:

- Pursuant to BCZR §502.1.A, petitioners shall demonstrate to the satisfaction of the Administrative Law Judge that the facility will not be detrimental to the adjacent residential properties as a result of glare emanating from the facility.
- Petitioners shall specifically note on the plan that the proposed solar facility will be subject to BCZR §4F-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.
- 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.
- Indicate on the plan the means and location by which the solar facility connects to the power grid and whether grading or clearing will be involved.
- All proposed security fencing shall be black vinyl coated chain-link.

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

Prepared by:

Lloyd T. Moxley

Division Chief:

Jenifer G. Nugent

JM/JGN/LTM/

c: Joseph Wiley
James Hermann, R.L.A., Department of Permits, Approvals and Inspections
Lawrence E. Schmidt, Smith, Gildea & Schmidt, LLC
Office of the Administrative Hearings
People's Counsel for Baltimore County

CORPORATE CHARTER APPROVAL SHEET

**** EXPEDITED SERVICE**** **** KEEP WITH DOCUMENT ****

DOCUMENT CODE 40 BUSINESS CODE 20

_____

Close _____ Stock _____ Nonstock _____

P.A. _____ Religious _____

Merging (Transferor) _____

Surviving (Transferee) _____

1000362004620078

ID # W15144371 ACK # 1000362004620078
PAGES: 0002
POWER FACTOR LLC

03/21/2013 AT 01:35 P WO # 0004111957

New Name _____

FEES REMITTED

	Base Fee:	100
	Org. & Cap. Fee:	
	Expedite Fee:	20
	Penalty:	
	State Recordation Tax:	
	State Transfer Tax:	
1	Certified Copies	
	Copy Fee:	22
	Certificates	
	Certificate of Status Fee:	
	Personal Property Filings:	
	Mail Processing Fee:	
	Other:	
	TOTAL FEES:	192

Credit Card _____ Check ✓ Cash _____

_____ Documents on _____ Checks

Approved By: IC

Keyed By: _____

COMMENT(S):

_____ Change of Name
_____ Change of Principal Office
_____ Change of Resident Agent
_____ Change of Resident Agent Address
_____ Resignation of Resident Agent
_____ Designation of Resident Agent and Resident Agent's Address
_____ Change of Business Code
_____ Adoption of Assumed Name
_____ Other Change(s)

Code _____

Attention: _____

Mail: Name and Address

George Lang III
342 Essex Ave
Essex MD 21221

Stamp Work Order and Customer Number HERE

CUST ID:0002895377
WORK ORDER:0004111957
DATE:03-21-2013 01:35 PM
AMT. PAID:$192.00

Protestant
CBA Exhibit
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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: Power Factor LLC

(2) The purpose for which the Limited Liability Company is filed is as follows: Full Service Electrical Provider

(3) The address of the Limited Liability Company in Maryland is 342 Essex Ave Essex MD 21221

(4) The resident agent of the Limited Liability Company in Maryland is George Lang III

whose address is 342 Essex Ave Essex MD 21221

(5) George Lang III

(6) George Lang III
Resident Agent
I hereby consent to my designation in this document.

Signature(s) of Authorized Person(s)

Filing party's return address:

(7) 342 Essex Ave
Essex MD 21221

CUST ID:0002895377
WORK ORDER:0004111957
DATE:03-21-2013 01:35 PM
AMT. PAID:$192.00

Protestant
CBA Exhibit
10.A-D

10-B

10-C

10-D

THE VALLEYS
PLANNING COUNCIL INC

Rule 8 Authorization

The Valleys Planning Council (VPC) is a non-profit, land use planning organization established in 1962. It oversees planning issues, policies, and regulations and supports conservation of natural, historic, and environmental assets. Its primary focus is on properties within its 130 square mile territory in the northeast quadrant of Baltimore County; however, it sometimes takes positions on projects or issues that affect a broader area or that would have implications within the VPC territory. The VPC is supported by approximately 500 member families.

RESOLVED: That at the September 17, 2019 annual meeting of the Valleys Planning Council, the board passed a motion stating that responsibility for review and action of all zoning matters is placed in the Zoning Committee and that the Zoning Committee consists of the President, Director, and Assistant Director who can testify on positions adopted by the board or executive committee.

Teresa Moore is currently the executive director.

As witness our hands and seal this October 15, 2019.

Attest: Valleys Planning Council

John W. Beckley, Esq.
Secretary

Peter R. Fenwick
President

Protestant
CBA Exhibit
11

118 W. Pennsylvania Avenue Towson, Maryland 21204
Mailing Address: P.O. Box 5402 Towson, Maryland 21285-5402
Phone: 410-337-6877 *Fax:* 410-296-5409

THE VALLEYS
PLANNING COUNCIL INC

The Valleys Planning Council – Position on Case number: 2019-0183-X
18627 Falls Road

Resolved: That the position of the Valleys Planning Council (VPC) as adopted by the VPC Board at its May 14, 2019 meeting for the zoning matter known as: Holly Springs/Falls Road Special Exception Request for a Solar Facility is OPPOSED.

This property falls within the VPC territory, is zoned RC2 and RC8, and is comprised of prime and productive soils. The property is also situated on a state scenic road and contains a stream network (Compass Run) as well as forest buffers. The environmental conditions on this property raise serious concerns regarding sections of 502.1 and 502.2.

We also believe there are valid questions regarding the easements reported by the non-profit organization that owns the property and whether or not the property in question is among the five conservation easements reported on the organization's federal 990 return.

We therefore recommend that the special exception request for a solar facility at 18627 Falls Road be denied.

As witness our hands and seal this August 20, 2019.

Attest: Valleys Planning Council

John W. Beckley, Esq.
Secretary

Peter R. Fenwick
President

118 W. Pennsylvania Avenue Towson, Maryland 21204
Mailing Address: P.O. Box 5402 Towson, Maryland 21285-5402
Phone: 410-337-6877 *Fax:* 410-296-5409

THE VALLEYS
PLANNING COUNCIL INC

AFFIDAVIT

State of Maryland
Baltimore County

To Wit:

I hearby swear upon penalty of perjury that I am currently the executive director of The Valleys Planning Council and authorized to testify on behalf of the organization before the Baltimore County Board of Appeals in the matter of the Holly Springs/Falls Road Solar Facility request for a special exception.

As witness our hands and seal this 20th day of August 2019.

Teresa Moore, Executive Director
Valleys Planning Council

Attest:

John W. Beckley
Secretary, Valleys Planning Council

Peter R. Fenwick
President, Valleys Planning Council

118 W. Pennsylvania Avenue Towson, Maryland 21204
Mailing Address: P.O. Box 5402 Towson, Maryland 21285-5402
Phone: 410-337-6877 *Fax:* 410-296-5409

29493422842O 8

Form **990**

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Department of the Treasury
Internal Revenue Service

A For the 2017 calendar year, or tax year beginning January 1, , 2017, and ending Dec 1 , 20 17

B Check if applicable:
☐ Address change
☐ Name change
☐ Initial return
☐ Final return/terminated
☐ Amended return
☐ Application pending

C Name of organization Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Doing business as Holly Springs

Number and street (or P O box if mail is not delivered to street address) | Room/suite
4209 Beckleysville Road

City or town, state or province, country, and ZIP or foreign postal code
Hampstead, MD 21074

D Employer identification number [redacted]

E Telephone number
443-291-6040

G Gross receipts $

F Name and address of principal officer Mary Zodhiates

H(a) Is this a group return for subordinates? ☐ Yes ☑ No

H(b) Are all subordinates included? ☐ Yes ☑ No

If "No," attach a list (see instructions)

I Tax-exempt status ☑ 501(c)(3) ☐ 501(c) ( ) ◀ (insert no) ☐ 4947(a)(1) or ☐ 527

J Website: ▶ na

H(c) Group exemption number ▶

K Form of organization ☑ Corporation ☐ Trust ☐ Association ☐ Other ▶

L Year of formation 2006

M State of legal domicile MD

Part I Summary

1 Briefly describe the organization's mission or most significant activities The organization seeks to educate, and to care for our earth and the needy.

2 Check this box ▶ ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.

3	Number of voting members of the governing body (Part VI, line 1a)	3	3
4	Number of independent voting members of the governing body (Part VI, line 1b)	4	3
5	Total number of individuals employed in calendar year 2017 (Part V, line 2a)	5	0
6	Total number of volunteers (estimate if necessary)	6	20
7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
b	Net unrelated business taxable income from Form 990-T, line 34	7b	0

RECEIVED NOV 23 2018 IRS-OSO OGDEN UT

		Prior Year	Current Year
8	Contributions and grants (Part VIII, line 1h)	22841	11000
9	Program service revenue (Part VIII, line 2g)	0	0
10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	0	13.78
11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	13256	12507
12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	36097	23521
13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	0	0
14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
b	Total fundraising expenses (Part IX, column (D), line 25) ▶	[redacted]	[redacted]
17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	8710	3419
18	Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	8710	3419
19	Revenue less expenses. Subtract line 18 from line 12	27387	20102

		Beginning of Current Year	End of Year
20	Total assets (Part X, line 16)	1090521	1110624
21	Total liabilities (Part X, line 26)	0	0
22	Net assets or fund balances. Subtract line 21 from line 20	1090521	1110624

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

Sign Here

Signature of officer — Date 11-15-18

Type or print name and title Mary Zodhiates member

Paid Preparer Use Only

Print/Type preparer's name	Preparer's signature	Date	Check ☐ if self-employed	PTIN

Firm's name ▶ | Firm's EIN ▶

Firm's address ▶ | Phone no

May the IRS discuss this return with the preparer shown above? (see instructions) ☐ Yes ☐ No

SCANNED MAR 11 2019

Protestant
CBA Exhibit
12

Part III Statement of Program Service Accomplishments

Check if Schedule O contains a response or note to any line in this Part III . . . . . ☐

1 Briefly describe the organization's mission:

The organization seeks to educate, and to care for our earth and the needy.

2 Did the organization undertake any significant program services during the year which were not listed on the prior Form 990 or 990-EZ? . . . . . ☐ Yes ☐ No

If "Yes," describe these new services on Schedule O.

3 Did the organization cease conducting, or make significant changes in how it conducts, any program services? . . . . . ☐ Yes ☐ No

If "Yes," describe these changes on Schedule O.

4 Describe the organization's program service accomplishments for each of its three largest program services, as measured by expenses. Section 501(c)(3) and 501(c)(4) organizations are required to report the amount of grants and allocations to others, the total expenses, and revenue, if any, for each program service reported.

4a (Code:) (Expenses $ including grants of $) (Revenue $)

The most significant program service accomplishments include preserving existing forest, reforestation and assistance for the needy

4b (Code:) (Expenses $ including grants of $) (Revenue $)

4c (Code:) (Expenses $ including grants of $) (Revenue $)

4d Other program services (Describe in Schedule O.)
(Expenses $ including grants of $) (Revenue $)

4e Total program service expenses ▶

Part IV Checklist of Required Schedules

			Yes	No
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? *If "Yes," complete Schedule A*	1	✓	
2	Is the organization required to complete *Schedule B, Schedule of Contributors* (see instructions)?	2		✓
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? *If "Yes," complete Schedule C, Part I*	3		✓
4	**Section 501(c)(3) organizations.** Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? *If "Yes," complete Schedule C, Part II*	4		✓
5	Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? *If "Yes," complete Schedule C, Part III*	5		✓
6	Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? *If "Yes," complete Schedule D, Part I*	6		✓
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? *If "Yes," complete Schedule D, Part II*	7	✓	
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? *If "Yes," complete Schedule D, Part III*	8		✓
9	Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? *If "Yes," complete Schedule D, Part IV*	9		✓
10	Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? *If "Yes," complete Schedule D, Part V*	10		✓
11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.			
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? *If "Yes," complete Schedule D, Part VI*	11a	✓	
b	Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VII*	11b		✓
c	Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VIII*	11c		✓
d	Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part IX*	11d		✓
e	Did the organization report an amount for other liabilities in Part X, line 25? *If "Yes," complete Schedule D, Part X*	11e		✓
f	Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? *If "Yes," complete Schedule D, Part X*	11f		✓
12 a	Did the organization obtain separate, independent audited financial statements for the tax year? *If "Yes," complete Schedule D, Parts XI and XII*	12a		✓
b	Was the organization included in consolidated, independent audited financial statements for the tax year? *If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional*	12b		✓
13	Is the organization a school described in section 170(b)(1)(A)(ii)? *If "Yes," complete Schedule E*	13		✓
14 a	Did the organization maintain an office, employees, or agents outside of the United States?	14a		✓
b	Did the organization have aggregate revenues or expenses of more than $10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at $100,000 or more? *If "Yes," complete Schedule F, Parts I and IV.*	14b		✓
15	Did the organization report on Part IX, column (A), line 3, more than $5,000 of grants or other assistance to or for any foreign organization? *If "Yes," complete Schedule F, Parts II and IV*	15		✓
16	Did the organization report on Part IX, column (A), line 3, more than $5,000 of aggregate grants or other assistance to or for foreign individuals? *If "Yes," complete Schedule F, Parts III and IV.*	16		✓
17	Did the organization report a total of more than $15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? *If "Yes," complete Schedule G, Part I* (see instructions)	17		✓
18	Did the organization report more than $15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? *If "Yes," complete Schedule G, Part II*	18		✓
19	Did the organization report more than $15,000 of gross income from gaming activities on Part VIII, line 9a? *If "Yes," complete Schedule G, Part III*	19		✓

Part IV Checklist of Required Schedules *(continued)*

			Yes	No
20 a	Did the organization operate one or more hospital facilities? *If "Yes," complete Schedule H*	20a		✓
b	If "Yes" to line 20a, did the organization attach a copy of its audited financial statements to this return?	20b		✓
21	Did the organization report more than $5,000 of grants or other assistance to any domestic organization or domestic government on Part IX, column (A), line 1? *If "Yes," complete Schedule I, Parts I and II*	21		✓
22	Did the organization report more than $5,000 of grants or other assistance to or for domestic individuals on Part IX, column (A), line 2? *If "Yes," complete Schedule I, Parts I and III*	22		✓
23	Did the organization answer "Yes" to Part VII, Section A, line 3, 4, or 5 about compensation of the organization's current and former officers, directors, trustees, key employees, and highest compensated employees? *If "Yes," complete Schedule J*	23		✓
24a	Did the organization have a tax-exempt bond issue with an outstanding principal amount of more than $100,000 as of the last day of the year, that was issued after December 31, 2002? *If "Yes," answer lines 24b through 24d and complete Schedule K. If "No," go to line 25a*	24a		✓
b	Did the organization invest any proceeds of tax-exempt bonds beyond a temporary period exception?	24b		✓
c	Did the organization maintain an escrow account other than a refunding escrow at any time during the year to defease any tax-exempt bonds?	24c		✓
d	Did the organization act as an "on behalf of" issuer for bonds outstanding at any time during the year?	24d		✓
25a	**Section 501(c)(3), 501(c)(4), and 501(c)(29) organizations.** Did the organization engage in an excess benefit transaction with a disqualified person during the year? *If "Yes," complete Schedule L, Part I*	25a		✓
b	Is the organization aware that it engaged in an excess benefit transaction with a disqualified person in a prior year, and that the transaction has not been reported on any of the organization's prior Forms 990 or 990-EZ? *If "Yes," complete Schedule L, Part I*	25b		✓
26	Did the organization report any amount on Part X, line 5, 6, or 22 for receivables from or payables to any current or former officers, directors, trustees, key employees, highest compensated employees, or disqualified persons? *If "Yes," complete Schedule L, Part II*	26		✓
27	Did the organization provide a grant or other assistance to an officer, director, trustee, key employee, substantial contributor or employee thereof, a grant selection committee member, or to a 35% controlled entity or family member of any of these persons? *If "Yes," complete Schedule L, Part III*	27		✓
28	Was the organization a party to a business transaction with one of the following parties (see Schedule L, Part IV instructions for applicable filing thresholds, conditions, and exceptions).			
a	A current or former officer, director, trustee, or key employee? *If "Yes," complete Schedule L, Part IV*	28a		✓
b	A family member of a current or former officer, director, trustee, or key employee? *If "Yes," complete Schedule L, Part IV*	28b		✓
c	An entity of which a current or former officer, director, trustee, or key employee (or a family member thereof) was an officer, director, trustee, or direct or indirect owner? *If "Yes," complete Schedule L, Part IV*	28c		✓
29	Did the organization receive more than $25,000 in non-cash contributions? *If "Yes," complete Schedule M*	29		✓
30	Did the organization receive contributions of art, historical treasures, or other similar assets, or qualified conservation contributions? *If "Yes," complete Schedule M*	30		✓
31	Did the organization liquidate, terminate, or dissolve and cease operations? *If "Yes," complete Schedule N, Part I*	31		✓
32	Did the organization sell, exchange, dispose of, or transfer more than 25% of its net assets? *If "Yes," complete Schedule N, Part II*	32		✓
33	Did the organization own 100% of an entity disregarded as separate from the organization under Regulations sections 301.7701-2 and 301.7701-3? *If "Yes," complete Schedule R, Part I*	33		✓
34	Was the organization related to any tax-exempt or taxable entity? *If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1*	34		✓
35a	Did the organization have a controlled entity within the meaning of section 512(b)(13)?	35a		✓
b	If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? *If "Yes," complete Schedule R, Part V, line 2*	35b		✓
36	**Section 501(c)(3) organizations.** Did the organization make any transfers to an exempt non-charitable related organization? *If "Yes," complete Schedule R, Part V, line 2*	36		✓
37	Did the organization conduct more than 5% of its activities through an entity that is not a related organization and that is treated as a partnership for federal income tax purposes? *If "Yes," complete Schedule R, Part VI*	37		✓
38	Did the organization complete Schedule O and provide explanations in Schedule O for Part VI, lines 11b and 19? **Note.** All Form 990 filers are required to complete Schedule O.	38	✓	

Part V **Statements Regarding Other IRS Filings and Tax Compliance**

Check if Schedule O contains a response or note to any line in this Part V . . . . . ☐

				Yes	No
1a	Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable	1a	0		
b	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable	1b	0		
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?	1c			
2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return	2a	0		
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns? .	2b			
	Note. If the sum of lines 1a and 2a is greater than 250, you may be required to *e-file* (see instructions) . .				
3a	Did the organization have unrelated business gross income of $1,000 or more during the year?	3a			✓
b	If "Yes," has it filed a Form 990-T for this year? *If "No" to line 3b, provide an explanation in Schedule O* . .	3b			
4a	At any time during the calendar year, did the organization have an interest in, or a signature or other authority over, a financial account in a foreign country (such as a bank account, securities account, or other financial account)?	4a			✓
b	If "Yes," enter the name of the foreign country. ▶ ---------- See instructions for filing requirements for FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).				
5a	Was the organization a party to a prohibited tax shelter transaction at any time during the tax year? . . .	5a			✓
b	Did any taxable party notify the organization that it was or is a party to a prohibited tax shelter transaction?	5b			
c	If "Yes" to line 5a or 5b, did the organization file Form 8886-T?	5c			
6a	Does the organization have annual gross receipts that are normally greater than $100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?	6a			✓
b	If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?	6b			
7	**Organizations that may receive deductible contributions under section 170(c).**				
a	Did the organization receive a payment in excess of $75 made partly as a contribution and partly for goods and services provided to the payor?	7a			✓
b	If "Yes," did the organization notify the donor of the value of the goods or services provided?	7b			
c	Did the organization sell, exchange, or otherwise dispose of tangible personal property for which it was required to file Form 8282?	7c			✓
d	If "Yes," indicate the number of Forms 8282 filed during the year	7d			
e	Did the organization receive any funds, directly or indirectly, to pay premiums on a personal benefit contract?	7e			✓
f	Did the organization, during the year, pay premiums, directly or indirectly, on a personal benefit contract? .	7f			✓
g	If the organization received a contribution of qualified intellectual property, did the organization file Form 8899 as required?	7g			✓
h	If the organization received a contribution of cars, boats, airplanes, or other vehicles, did the organization file a Form 1098-C?	7h			✓
8	**Sponsoring organizations maintaining donor advised funds.** Did a donor advised fund maintained by the sponsoring organization have excess business holdings at any time during the year?	8			✓
9	**Sponsoring organizations maintaining donor advised funds.**				
a	Did the sponsoring organization make any taxable distributions under section 4966?	9a			✓
b	Did the sponsoring organization make a distribution to a donor, donor advisor, or related person? . . .	9b			✓
10	**Section 501(c)(7) organizations.** Enter:				
a	Initiation fees and capital contributions included on Part VIII, line 12	10a			
b	Gross receipts, included on Form 990, Part VIII, line 12, for public use of club facilities .	10b			
11	**Section 501(c)(12) organizations.** Enter:				
a	Gross income from members or shareholders	11a			
b	Gross income from other sources (Do not net amounts due or paid to other sources against amounts due or received from them.)	11b			
12a	**Section 4947(a)(1) non-exempt charitable trusts.** Is the organization filing Form 990 in lieu of Form 1041?	12a			✓
b	If "Yes," enter the amount of tax-exempt interest received or accrued during the year . .	12b			
13	**Section 501(c)(29) qualified nonprofit health insurance issuers.**				
a	Is the organization licensed to issue qualified health plans in more than one state?	13a			✓
	Note. See the instructions for additional information the organization must report on Schedule O.				
b	Enter the amount of reserves the organization is required to maintain by the states in which the organization is licensed to issue qualified health plans	13b			
c	Enter the amount of reserves on hand	13c			
14a	Did the organization receive any payments for indoor tanning services during the tax year?	14a			✓
b	If "Yes," has it filed a Form 720 to report these payments? *If "No," provide an explanation in Schedule O* .	14b			

Part VI **Governance, Management, and Disclosure** *For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions.*

Check if Schedule O contains a response or note to any line in this Part VI . . . . . ☑

Section A. Governing Body and Management

			Yes	No
1a	Enter the number of voting members of the governing body at the end of the tax year . . 1a 3 If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.			
b	Enter the number of voting members included in line 1a, above, who are independent . 1b 3			
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?	2	✓	
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors, or trustees, or key employees to a management company or other person? .	3		✓
4	Did the organization make any significant changes to its governing documents since the prior Form 990 was filed?	4		✓
5	Did the organization become aware during the year of a significant diversion of the organization's assets? .	5		✓
6	Did the organization have members or stockholders?	6		✓
7a	Did the organization have members, stockholders, or other persons who had the power to elect or appoint one or more members of the governing body?	7a		✓
b	Are any governance decisions of the organization reserved to (or subject to approval by) members, stockholders, or persons other than the governing body?	7b		✓
8	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:			
a	The governing body?	8a	✓	
b	Each committee with authority to act on behalf of the governing body?	8b	✓	
9	Is there any officer, director, trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? *If "Yes," provide the names and addresses in Schedule O* . . .	9		✓

Section B. Policies *(This Section B requests information about policies not required by the Internal Revenue Code.)*

			Yes	No
10a	Did the organization have local chapters, branches, or affiliates?	10a		✓
b	If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?	10b		
11a	Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?	11a	✓	
b	Describe in Schedule O the process, if any, used by the organization to review this Form 990.			
12a	Did the organization have a written conflict of interest policy? *If "No," go to line 13*	12a		✓
b	Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?	12b		✓
c	Did the organization regularly and consistently monitor and enforce compliance with the policy? *If "Yes," describe in Schedule O how this was done*	12c		✓
13	Did the organization have a written whistleblower policy?	13		✓
14	Did the organization have a written document retention and destruction policy?	14		✓
15	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?			
a	The organization's CEO, Executive Director, or top management official	15a		✓
b	Other officers or key employees of the organization	15b		
	If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).			
16a	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?	16a		✓
b	If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?	16b		

Section C. Disclosure

17 List the states with which a copy of this Form 990 is required to be filed ▶ 0

18 Section 6104 requires an organization to make its Forms 1023 (or 1024 if applicable), 990, and 990-T (Section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.

☐ Own website ☐ Another's website ☑ Upon request ☐ Other *(explain in Schedule O)*

19 Describe in Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

20 State the name, address, and telephone number of the person who possesses the organization's books and records. ▶

Mary Zodhiates 4209 Beckleysville Rd, Hampstead MD

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII . . . . . ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.
- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."
- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than $100,000 from the organization and any related organizations.
- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than $100,000 of reportable compensation from the organization and any related organizations.
- List all of the organization's **former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than $10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: individual trustees or directors; institutional trustees; officers; key employees; highest compensated employees; and former such persons.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) Marcia Brice Officer	15			✓				0	0	0
(2) Mary Zodhiates Officer	30			✓				0	0	0
(3) Richard Ciman Officer	20							0	0	0
(4)										
(5)										
(6)										
(7)										
(8)										
(9)										
(10)										
(11)										
(12)										
(13)										
(14)										

Part VII **Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees** *(continued)*

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(15)										
(16)										
(17)										
(18)										
(19)										
(20)										
(21)										
(22)										
(23)										
(24)										
(25)										
1b **Sub-total** ▶								0	0	0
c **Total from continuation sheets to Part VII, Section A** ▶								0	0	0
d **Total (add lines 1b and 1c)** ▶								0	0	0

2 Total number of individuals (including but not limited to those listed above) who received more than $100,000 of reportable compensation from the organization ▶

		Yes	No
3	Did the organization list any **former** officer, director, or trustee, key employee, or highest compensated employee on line 1a? *If "Yes," complete Schedule J for such individual*		✓
4	For any individual listed on line 1a, is the sum of reportable compensation and other compensation from the organization and related organizations greater than $150,000? *If "Yes," complete Schedule J for such individual*		✓
5	Did any person listed on line 1a receive or accrue compensation from any unrelated organization or individual for services rendered to the organization? *If "Yes," complete Schedule J for such person*		✓

Section B. Independent Contractors

1 Complete this table for your five highest compensated independent contractors that received more than $100,000 of compensation from the organization. Report compensation for the calendar year ending with or within the organization's tax year.

(A) Name and business address	(B) Description of services	(C) Compensation

2 Total number of independent contractors (including but not limited to those listed above) who received more than $100,000 of compensation from the organization ▶

Part VIII Statement of Revenue

Check if Schedule O contains a response or note to any line in this Part VIII . . . . . ☐

				(A) Total revenue	(B) Related or exempt function revenue	(C) Unrelated business revenue	(D) Revenue excluded from tax under sections 512-514
Contributions, Gifts, Grants and Other Similar Amounts	1a	Federated campaigns	1a				
	b	Membership dues	1b				
	c	Fundraising events	1c				
	d	Related organizations	1d				
	e	Government grants (contributions)	1e				
	f	All other contributions, gifts, grants, and similar amounts not included above	1f	11000			
	g	Noncash contributions included in lines 1a-1f $					
	h	**Total.** Add lines 1a–1f	▶	11000			
Program Service Revenue			Business Code				
	2a						
	b						
	c						
	d						
	e						
	f	All other program service revenue					
	g	**Total.** Add lines 2a–2f	▶				
Other Revenue	3	Investment income (including dividends, interest, and other similar amounts)	▶	13.78			
	4	Income from investment of tax-exempt bond proceeds	▶				
	5	Royalties	▶				
			(i) Real / (ii) Personal				
	6a	Gross rents 6a	18,000				
	b	Less rental expenses 6b	5492.5				
	c	Rental income or (loss) 6c	12,507.50				
	d	Net rental income or (loss)	▶	12507.50			
			(i) Securities / (ii) Other				
	7a	Gross amount from sales of assets other than inventory 7a					
	b	Less cost or other basis and sales expenses 7b					
	c	Gain or (loss) 7c					
	d	Net gain or (loss)	▶				
	8a	Gross income from fundraising events (not including $ ____ of contributions reported on line 1c). See Part IV, line 18 8a					
	b	Less. direct expenses 8b					
	c	Net income or (loss) from fundraising events	▶				
	9a	Gross income from gaming activities See Part IV, line 19 9a					
	b	Less: direct expenses 9b					
	c	Net income or (loss) from gaming activities	▶				
	10a	Gross sales of inventory, less returns and allowances 10a					
	b	Less: cost of goods sold 10b					
	c	Net income or (loss) from sales of inventory	▶				
		Miscellaneous Revenue	Business Code				
	11a						
	b						
	c						
	d	All other revenue					
	e	**Total.** Add lines 11a–11d	▶				
	12	**Total revenue.** See instructions.	▶	23,521			

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX . . . . . ☐

	Do not include amounts reported on lines 6b, 7b, 8b, 9b, and 10b of Part VIII.	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1	Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21	0	0		
2	Grants and other assistance to domestic individuals. See Part IV, line 22	0	0		
3	Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16	0	0		
4	Benefits paid to or for members	0	0		
5	Compensation of current officers, directors, trustees, and key employees	0	0	0	0
6	Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)	0	0	0	0
7	Other salaries and wages	0	0	0	0
8	Pension plan accruals and contributions (include section 401(k) and 403(b) employer contributions)	0	0	0	0
9	Other employee benefits	0	0	0	0
10	Payroll taxes	0	0	0	0
11	Fees for services (non-employees):				
a	Management	0	0	0	0
b	Legal	0	0	0	0
c	Accounting	0	0	0	0
d	Lobbying	0	0	0	0
e	Professional fundraising services. See Part IV, line 17	0			0
f	Investment management fees	0	0	0	0
g	Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.)	3,419			
12	Advertising and promotion	0	0	0	0
13	Office expenses	0	0	0	0
14	Information technology	0	0	0	0
15	Royalties	0	0	0	0
16	Occupancy	0	0	0	0
17	Travel	0	0	0	0
18	Payments of travel or entertainment expenses for any federal, state, or local public officials	0	0	0	0
19	Conferences, conventions, and meetings	0	0	0	0
20	Interest	0	0	0	0
21	Payments to affiliates	0	0	0	0
22	Depreciation, depletion, and amortization	0	0	0	0
23	Insurance	0	0	0	0
24	Other expenses. Itemize expenses not covered above (List miscellaneous expenses in line 24e. If line 24e amount exceeds 10% of line 25, column (A) amount, list line 24e expenses on Schedule O.)				
a		0	0	0	0
b		0	0	0	0
c		0	0	0	0
d		0	0	0	0
e	All other expenses	0	0	0	0
25	**Total functional expenses.** Add lines 1 through 24e	3,419	0	0	0
26	**Joint costs.** Complete this line only if the organization reported in column (B) joint costs from a combined educational campaign and fundraising solicitation. Check here ▶ ☐ if following SOP 98-2 (ASC 958-720)	0	0	0	0

Part X Balance Sheet

Check if Schedule O contains a response or note to any line in this Part X . . . . . ☐

				(A) Beginning of year		(B) End of year
Assets	1	Cash—non-interest-bearing		0	1	0
	2	Savings and temporary cash investments		31485	2	51,588
	3	Pledges and grants receivable, net		0	3	0
	4	Accounts receivable, net		0	4	0
	5	Loans and other receivables from current and former officers, directors, trustees, key employees, and highest compensated employees Complete Part II of Schedule L		0	5	0
	6	Loans and other receivables from other disqualified persons (as defined under section 4958(f)(1)), persons described in section 4958(c)(3)(B), and contributing employers and sponsoring organizations of section 501(c)(9) voluntary employees' beneficiary organizations (see instructions). Complete Part II of Schedule L		0	6	0
	7	Notes and loans receivable, net		0	7	0
	8	Inventories for sale or use		0	8	0
	9	Prepaid expenses and deferred charges		0	9	0
	10a	Land, buildings, and equipment: cost or other basis. Complete Part VI of Schedule D	10a 1,059,036			
	b	Less. accumulated depreciation	10b 0	1,059,036	10c	1,059,036
	11	Investments—publicly traded securities		0	11	0
	12	Investments—other securities. See Part IV, line 11		0	12	0
	13	Investments—program-related. See Part IV, line 11		0	13	0
	14	Intangible assets		0	14	0
	15	Other assets. See Part IV, line 11		0	15	0
	16	**Total assets.** Add lines 1 through 15 (must equal line 34)		1,090,521	16	1,110,624
Liabilities	17	Accounts payable and accrued expenses		0	17	0
	18	Grants payable		0	18	0
	19	Deferred revenue		0	19	0
	20	Tax-exempt bond liabilities		0	20	0
	21	Escrow or custodial account liability. Complete Part IV of Schedule D		0	21	0
	22	Loans and other payables to current and former officers, directors, trustees, key employees, highest compensated employees, and disqualified persons. Complete Part II of Schedule L		0	22	0
	23	Secured mortgages and notes payable to unrelated third parties		0	23	0
	24	Unsecured notes and loans payable to unrelated third parties		0	24	0
	25	Other liabilities (including federal income tax, payables to related third parties, and other liabilities not included on lines 17-24). Complete Part X of Schedule D		0	25	0
	26	**Total liabilities.** Add lines 17 through 25		0	26	0
Net Assets or Fund Balances		**Organizations that follow SFAS 117 (ASC 958), check here ▶ ☐ and complete lines 27 through 29, and lines 33 and 34.**				
	27	Unrestricted net assets		0	27	0
	28	Temporarily restricted net assets		0	28	0
	29	Permanently restricted net assets		0	29	0
		Organizations that do not follow SFAS 117 (ASC 958), check here ▶ ☐ and complete lines 30 through 34.				
	30	Capital stock or trust principal, or current funds		31,485	30	51,588
	31	Paid-in or capital surplus, or land, building, or equipment fund		1,059,036	31	1,059,036
	32	Retained earnings, endowment, accumulated income, or other funds		0	32	0
	33	Total net assets or fund balances		1,090,521	33	1,110,624
	34	Total liabilities and net assets/fund balances		1,090,521	34	1,110,624

Part XI Reconciliation of Net Assets

Check if Schedule O contains a response or note to any line in this Part XI . . . . . ☐

1	Total revenue (must equal Part VIII, column (A), line 12)	1	23,521
2	Total expenses (must equal Part IX, column (A), line 25)	2	3,419
3	Revenue less expenses. Subtract line 2 from line 1	3	20,102
4	Net assets or fund balances at beginning of year (must equal Part X, line 33, column (A))	4	1,090,521
5	Net unrealized gains (losses) on investments	5	0
6	Donated services and use of facilities	6	0
7	Investment expenses	7	0
8	Prior period adjustments	8	0
9	Other changes in net assets or fund balances (explain in Schedule O)	9	0
10	Net assets or fund balances at end of year. Combine lines 3 through 9 (must equal Part X, line 33, column (B))	10	1,110,624

Part XII Financial Statements and Reporting

Check if Schedule O contains a response or note to any line in this Part XII . . . . . ☐

			Yes	No
1	Accounting method used to prepare the Form 990: ☐ Cash ☐ Accrual ☐ Other _____ If the organization changed its method of accounting from a prior year or checked "Other," explain in Schedule O.			
2a	Were the organization's financial statements compiled or reviewed by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were compiled or reviewed on a separate basis, consolidated basis, or both ☐ Separate basis ☐ Consolidated basis ☐ Both consolidated and separate basis	2a		✓
b	Were the organization's financial statements audited by an independent accountant? If "Yes," check a box below to indicate whether the financial statements for the year were audited on a separate basis, consolidated basis, or both. ☐ Separate basis ☐ Consolidated basis ☐ Both consolidated and separate basis	2b		✓
c	If "Yes" to line 2a or 2b, does the organization have a committee that assumes responsibility for oversight of the audit, review, or compilation of its financial statements and selection of an independent accountant? If the organization changed either its oversight process or selection process during the tax year, explain in Schedule O.	2c		✓
3a	As a result of a federal award, was the organization required to undergo an audit or audits as set forth in the Single Audit Act and OMB Circular A-133?	3a		✓
b	If "Yes," did the organization undergo the required audit or audits? If the organization did not undergo the required audit or audits, explain why in Schedule O and describe any steps taken to undergo such audits.	3b		

SCHEDULE A (Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ.

▶ Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part I **Reason for Public Charity Status** (All organizations must complete this part.) See instructions.

The organization is not a private foundation because it is: (For lines 1 through 12, check only one box.)

07

1 ☐ A church, convention of churches, or association of churches described in **section 170(b)(1)(A)(i).**

2 ☐ A school described in **section 170(b)(1)(A)(ii).** (Attach Schedule E (Form 990 or 990-EZ).)

3 ☐ A hospital or a cooperative hospital service organization described in **section 170(b)(1)(A)(iii).**

4 ☐ A medical research organization operated in conjunction with a hospital described in **section 170(b)(1)(A)(iii).** Enter the hospital's name, city, and state:

5 ☐ An organization operated for the benefit of a college or university owned or operated by a governmental unit described in **section 170(b)(1)(A)(iv).** (Complete Part II.)

6 ☐ A federal, state, or local government or governmental unit described in **section 170(b)(1)(A)(v).**

7 ☑ An organization that normally receives a substantial part of its support from a governmental unit or from the general public described in **section 170(b)(1)(A)(vi).** (Complete Part II.)

8 ☐ A community trust described in **section 170(b)(1)(A)(vi).** (Complete Part II.)

9 ☐ An agricultural research organization described in **section 170(b)(1)(A)(ix)** operated in conjunction with a land-grant college or university or a non-land-grant college of agriculture (see instructions). Enter the name, city, and state of the college or university:

10 ☐ An organization that normally receives: (1) more than 33⅓% of its support from contributions, membership fees, and gross receipts from activities related to its exempt functions—subject to certain exceptions, and (2) no more than 33⅓% of its support from gross investment income and unrelated business taxable income (less section 511 tax) from businesses acquired by the organization after June 30, 1975. See **section 509(a)(2).** (Complete Part III.)

11 ☐ An organization organized and operated exclusively to test for public safety. See **section 509(a)(4).**

12 ☐ An organization organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more publicly supported organizations described in **section 509(a)(1)** or **section 509(a)(2).** See **section 509(a)(3).** Check the box in lines 12a through 12d that describes the type of supporting organization and complete lines 12e, 12f, and 12g.

a ☐ **Type I.** A supporting organization operated, supervised, or controlled by its supported organization(s), typically by giving the supported organization(s) the power to regularly appoint or elect a majority of the directors or trustees of the supporting organization. **You must complete Part IV, Sections A and B.**

b ☐ **Type II.** A supporting organization supervised or controlled in connection with its supported organization(s), by having control or management of the supporting organization vested in the same persons that control or manage the supported organization(s). **You must complete Part IV, Sections A and C.**

c ☐ **Type III functionally integrated.** A supporting organization operated in connection with, and functionally integrated with, its supported organization(s) (see instructions). **You must complete Part IV, Sections A, D, and E.**

d ☐ **Type III non-functionally integrated.** A supporting organization operated in connection with its supported organization(s) that is not functionally integrated. The organization generally must satisfy a distribution requirement and an attentiveness requirement (see instructions). **You must complete Part IV, Sections A and D, and Part V.**

e ☐ Check this box if the organization received a written determination from the IRS that it is a Type I, Type II, Type III functionally integrated, or Type III non-functionally integrated supporting organization.

f Enter the number of supported organizations . . . . . ☐

g Provide the following information about the supported organization(s).

(i) Name of supported organization	(ii) EIN	(iii) Type of organization (described on lines 1–10 above (see instructions))	(iv) Is the organization listed in your governing document? Yes	(iv) No	(v) Amount of monetary support (see instructions)	(vi) Amount of other support (see instructions)
(A)						
(B)						
(C)						
(D)						
(E)						
Total						

Part II **Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)**
(Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2013	(b) 2014	(c) 2015	(d) 2016	(e) 2017	(f) Total
1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.")	4,734	6,092	56,400	22,841	11,000	101,067
2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf	0	0	0	0	0	0
3 The value of services or facilities furnished by a governmental unit to the organization without charge	15,475	15,475	6,002	0	0	36,952
4 **Total.** Add lines 1 through 3	20,209	21,567	71,875	22,841	11,000	147,492
5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f)						14,272
6 **Public support.** Subtract line 5 from line 4						133,220

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2013	(b) 2014	(c) 2015	(d) 2016	(e) 2017	(f) Total
7 Amounts from line 4	20,209	21,567	71,875	22,841	11,000	147,492
8 Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources	5,286	43	18	0	12,508	17,869
9 Net income from unrelated business activities, whether or not the business is regularly carried on	0	0	0	0	0	0
10 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.)	0	0	0	0	0	0
11 **Total support.** Add lines 7 through 10						165,361

12 Gross receipts from related activities, etc. (see instructions) 12

13 **First five years.** If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and **stop here** . . . . . ▶ ☐

Section C. Computation of Public Support Percentage

14 Public support percentage for 2017 (line 6, column (f) divided by line 11, column (f)) . . . . 14 81 %

15 Public support percentage from 2016 Schedule A, Part II, line 14 . . . . . 15 90 %

16a **33⅓% support test—2017.** If the organization did not check the box on line 13, and line 14 is 33⅓% or more, check this box and **stop here.** The organization qualifies as a publicly supported organization . . . . . ▶ ☑

b **33⅓% support test—2016.** If the organization did not check a box on line 13 or 16a, and line 15 is 33⅓% or more, check this box and **stop here.** The organization qualifies as a publicly supported organization . . . . . ▶ ☐

17a **10%-facts-and-circumstances test—2017.** If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and **stop here.** Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization . . . . . ▶ ☐

b **10%-facts-and-circumstances test—2016.** If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the "facts-and-circumstances" test, check this box and **stop here.** Explain in Part VI how the organization meets the "facts-and-circumstances" test. The organization qualifies as a publicly supported organization . . . . . ▶ ☐

18 **Private foundation.** If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions . . . . . ▶ ☐

SCHEDULE D (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
▶ Attach to Form 990.
▶ Go to *www.irs.gov/Form990* for instructions and the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts.

Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

	(a) Donor advised funds	(b) Funds and other accounts
1 Total number at end of year		
2 Aggregate value of contributions to (during year)		
3 Aggregate value of grants from (during year)		
4 Aggregate value at end of year		

5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? ☐ Yes ☐ No

6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit? ☐ Yes ☐ No

Part II Conservation Easements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).

☐ Preservation of land for public use (e.g., recreation or education) ☐ Preservation of a historically important land area
☐ Protection of natural habitat ☐ Preservation of a certified historic structure
☐ Preservation of open space

2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

		Held at the End of the Tax Year
a Total number of conservation easements	2a	5
b Total acreage restricted by conservation easements	2b	110
c Number of conservation easements on a certified historic structure included in (a)	2c	0
d Number of conservation easements included in (c) acquired after 7/25/06, and not on a historic structure listed in the National Register	2d	0

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶ 0

4 Number of states where property subject to conservation easement is located ▶ 1

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? ☑ Yes ☐ No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ 300

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ $ 0

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? ☐ Yes ☑ No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets.

Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenue included on Form 990, Part VIII, line 1 ▶ $
(ii) Assets included in Form 990, Part X ▶ $

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items

a Revenue included on Form 990, Part VIII, line 1 ▶ $
b Assets included in Form 990, Part X ▶ $

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets *(continued)*

3 Using the organization's acquisition, accession, and other records, check any of the following that are a significant use of its collection items (check all that apply)

a ☐ Public exhibition
b ☐ Scholarly research
c ☐ Preservation for future generations
d ☐ Loan or exchange programs
e ☐ Other .....

4 Provide a description of the organization's collections and explain how they further the organization's exempt purpose in Part XIII.

5 During the year, did the organization solicit or receive donations of art, historical treasures, or other similar assets to be sold to raise funds rather than to be maintained as part of the organization's collection? . . ☐ Yes ☐ No

Part IV Escrow and Custodial Arrangements.

Complete if the organization answered "Yes" on Form 990, Part IV, line 9, or reported an amount on Form 990, Part X, line 21.

1a Is the organization an agent, trustee, custodian or other intermediary for contributions or other assets not included on Form 990, Part X? . . . . . ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII and complete the following table.

		Amount
c	Beginning balance	1c
d	Additions during the year	1d
e	Distributions during the year	1e
f	Ending balance	1f

2a Did the organization include an amount on Form 990, Part X, line 21, for escrow or custodial account liability? ☐ Yes ☐ No

b If "Yes," explain the arrangement in Part XIII. Check here if the explanation has been provided on Part XIII . . . ☐

Part V Endowment Funds.

Complete if the organization answered "Yes" on Form 990, Part IV, line 10.

		(a) Current year	(b) Prior year	(c) Two years back	(d) Three years back	(e) Four years back
1a	Beginning of year balance					
b	Contributions					
c	Net investment earnings, gains, and losses					
d	Grants or scholarships					
e	Other expenditures for facilities and programs					
f	Administrative expenses					
g	End of year balance					

2 Provide the estimated percentage of the current year end balance (line 1g, column (a)) held as:

a Board designated or quasi-endowment ▶ ..... %
b Permanent endowment ▶ ..... %
c Temporarily restricted endowment ▶ ..... %

The percentages on lines 2a, 2b, and 2c should equal 100%.

3a Are there endowment funds not in the possession of the organization that are held and administered for the organization by:

		Yes	No
(i) unrelated organizations	3a(i)		
(ii) related organizations	3a(ii)		
b If "Yes" on line 3a(ii), are the related organizations listed as required on Schedule R?	3b		

4 Describe in Part XIII the intended uses of the organization's endowment funds.

Part VI Land, Buildings, and Equipment.

Complete if the organization answered "Yes" on Form 990, Part IV, line 11a. See Form 990, Part X, line 10.

	Description of property	(a) Cost or other basis (investment)	(b) Cost or other basis (other)	(c) Accumulated depreciation	(d) Book value
1a	Land		1,047,836		1,047,836
b	Buildings		0		0
c	Leasehold improvements		0		0
d	Equipment		11,200		11,200
e	Other		0		0
Total. Add lines 1a through 1e. *(Column (d) must equal Form 990, Part X, column (B), line 10c.)* ▶					1,059,036

SCHEDULE O
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Supplemental Information to Form 990 or 990-EZ

Complete to provide information for responses to specific questions on Form 990 or 990-EZ or to provide any additional information.

▶ Attach to Form 990 or 990-EZ.

▶ Go to *www.irs.gov/Form990* for the latest information.

OMB No 1545-0047

2017

Open to Public Inspection

Name of the organization

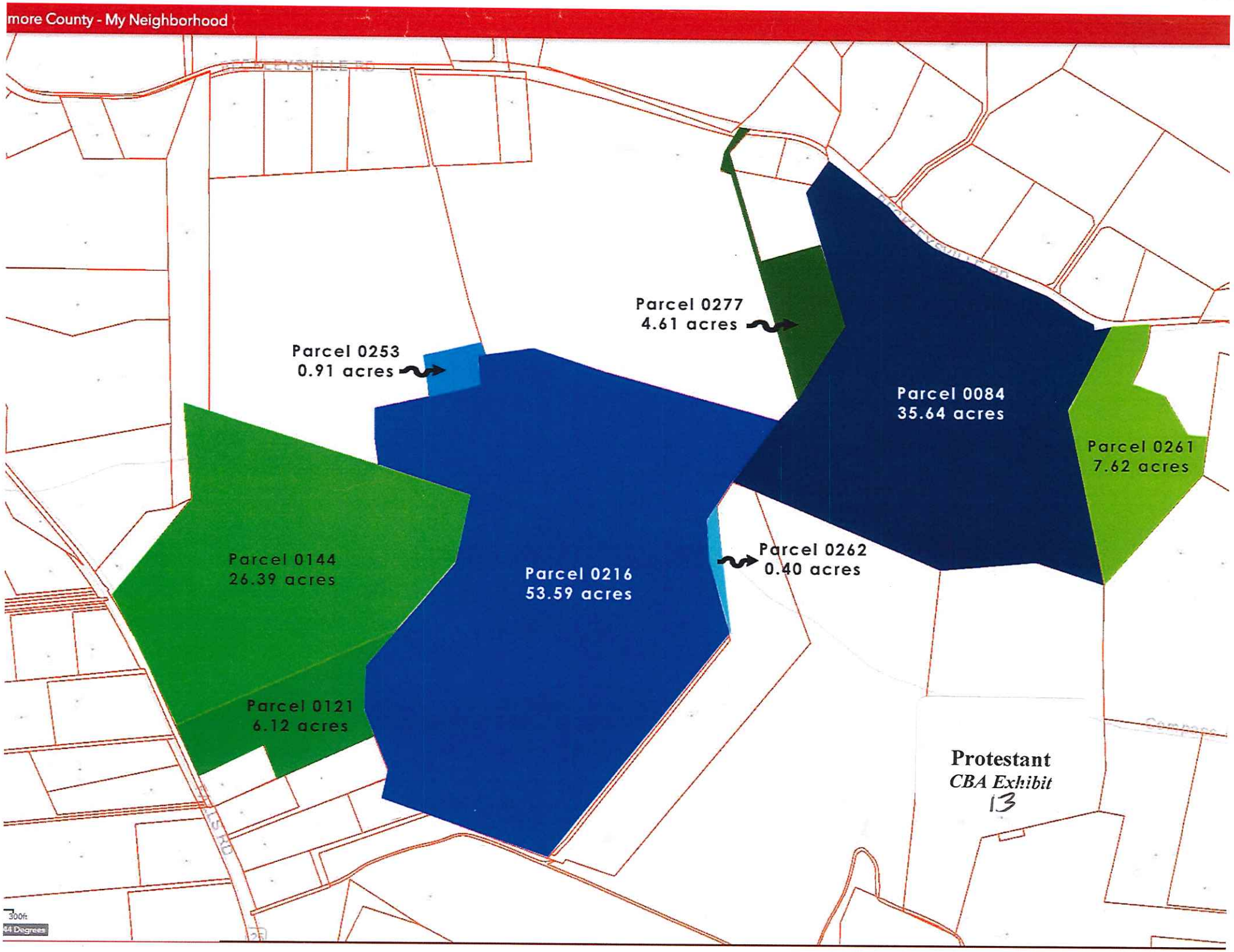
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

[redacted]

Part 1V Section C 19: Governing documents are available upon request.

Part 1X Other Expense Supplies including signs, tools, trees, tree supplies, gas and equipment repair, tree pruning or dropping trees near structures, den & nest boxes


more County - My Neighborhood
Parcel 0277
4.61 acres
Parcel 0253
0.91 acres
Parcel 0084
35.64 acres
Parcel 0261
7.62 acres
Parcel 0144
26.39 acres
Parcel 0216
53.59 acres
Parcel 0262
0.40 acres
Parcel 0121
6.12 acres
Protestant
CBA Exhibit
13
300ft
44 Degrees

FILE NAME: Holly Springs Nature Conservancy
FILE NO.: 13-T-2500

Tax I.D. No.: 05-04-000210
Property Address:
18627 Falls Road
Hampstead, Maryland 21074

EXEMPT FROM COUNTY TRANSFER TAX
PURSUANT TO BALTIMORE COUNTY CODE §11-3-202(a)(5)

THIS DEED, Made this 22nd day of July, 2013, by and between **ELIZABETH SIMPSON SEIDLER**, party of the first part, and **HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.**, a body corporate of the State of Maryland, party of the second part.

WITNESSETH, that in consideration of the sum of **TWO HUNDRED SEVENTY-FIVE THOUSAND DOLLARS AND NO CENTS ($275,000.00)** and such other good and valuable consideration, the receipt of which is hereby acknowledged, the said **ELIZABETH SIMPSON SEIDLER**, party of the first part, does hereby grant and convey unto the said **HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.**, party of the second part, its successors and assigns, in fee simple, all that lot of ground situate in the 5th Election District of Baltimore County, Maryland, and described as follows, that is to say:

BEGINNING FOR THE SAME at an old boundary stone at the end of the south 50 degrees 10 minutes West 561.0 foot line as described in a Deed from Kenneth C. Proctor and Paul Martin, Trustee, to Lawrence H. Roberts and wife, dated June 8, 1956, and recorded among the Land Records of Baltimore County in Liber G.L.B. No. 2945, folio 211, etc., running thence binding on that Deed the two following lines as now surveyed, South 10 degrees 36 minutes 30 seconds West 198.58 feet to a stone and South 12 degrees 35 minutes 50 seconds West 104.63 feet to a pipe, thence by a line of division, south 74 degrees 30 minutes West 439.42 feet to a pipe and to that parcel of land conveyed by Deed from Lawrence H. Roberts and wife, to Joseph S. Hunter and Jacqueline Hunter, his wife, recorded among the Land Records of Baltimore County in Liber WJR No. 3977, folio 133, running thence binding on that Deed the two following lines, North 15 degrees 30 minutes West 150.00 feet to a pipe and South 74 degrees 30 minutes West 290.40 feet to a pipe 20 feet Northeast of the centerline of the

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33970, p. 0242, MSA_CE62_33826. Date available 08/05/2013. Printed 09/10/2019.

Protestant
CBA Exhibit
14

present road-bed of Falls Road, thence running along the Northeast side of that road, North 15 degrees 44 minutes West 232.00 feet to a pipe, thence by a line of division as now surveyed, North 74 degrees 16 minutes East 1047.86 feet to a pipe and to intersect the first above mentioned Deed line, thence binding on that Deed, South 49 degrees 45 minutes West 247.08 feet to the place of beginning. Containing 6.116 acres of land, more or less. The improvements thereon being known as **No. 18627 Falls Road.**

BEING the same lot of ground which by Deed dated June 15, 1987 and recorded among the Land Records of Baltimore County in Liber S.M. No. 7580, folio 201, was granted and conveyed by Kathleen G. Adams and Mary Jane Edmunds unto Alexander John Seidler and Elizabeth Simpson Seidler, his wife. The said Alexander John Seidler departed this life on or about the 21st day of September, 2011, thereby vesting the entire fee simple interest in and to the hereinabove described lot of ground in the said Elizabeth Simpson Seidler, the within Grantor

TOGETHER with the buildings thereupon, and the rights, alleys, ways, waters, privileges, appurtenances and advantages thereto belonging, or in anywise appertaining.

TO HAVE AND TO HOLD the said described lot of ground and premises to the said **HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.**, party of the second part, its successors and assigns, in fee simple.

AND the said party of the first part hereby covenants that she has not done or suffered to be done any act, matter or thing whatsoever, to encumber the property hereby conveyed; that she will warrant specially the property granted and she will execute such further assurances of the same as may be requisite.

WITNESS, the hand and seal of the said grantor.

Witness

Elizabeth Simpson Seidler (SEAL)
ELIZABETH SIMPSON SEIDLER

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33970, p. 0243, MSA_CE62_33826. Date available 08/05/2013. Printed 09/10/2019.

STATE OF WASHINGTON, CITY/COUNTY OF King, to wit:

I HEREBY CERTIFY, that on this 18 day of July, 2013, before me, the subscriber, a Notary Public of the State aforesaid, personally appeared **ELIZABETH SIMPSON SEIDLER**, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged the foregoing Deed to be her act, and in my presence signed and sealed the same.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

Notary Public
State of Washington
CHRISTIANE S PIEPER
My Appointment Expires Mar 2, 2015

My Commission Expires:
03-02-2015

AFFIDAVIT PURSUANT TO BALTIMORE COUNTY CODE §11-3-202(a)(5)

MARY ZODHIATES, President of Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., the Grantee herein, hereby certifies under penalties of perjury as follows:

1. That the grantee is a qualified conservation organization as set forth under §170(h)(3) of the Internal Revenue Code.

2. That the grantee is a non-profit corporation under §501(c)(3) of the Internal Revenue Code.

3. That the grantee intends to use the land conveyed herein to assist in the preservation of a natural area; for the environmental education of the public; to conserve agricultural land and to promote continued agricultural use of the land; generally to promote conservation; or for the maintenance of a natural area for public use or a sanctuary for wildlife.

4. That no part of the net income of the corporation inures to the benefit of private shareholders or individuals.

5. That this transfer is therefore not subject to county transfer tax.

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TEST:

HOLLY SPRINGS NATURE CONSERVANCY
& WILDLIFE SANCTUARY, INC.

_____ By: _____ (SEAL)
MARY ZODHIATES, President

STATE OF MARYLAND, COUNTY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 22nd day of July, 2013, before me, the subscriber, a Notary Public of the State of Maryland, in and for Baltimore County, personally appeared MARY ZODHIATES, who acknowledged herself to be the President of HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC., a body corporate of the State of Maryland, and that she as such President being authorized so to do, executed the aforegoing Declaration Of Intent for the purposes therein contained by signing the name of the Corporation by herself as President thereof and also acknowledged that foregoing Declaration Of Intent to be the act of said body corporate.

AS WITNESS my hand and Notarial Seal.

DEBORAH M. ENGRAM - Notary

DEBORAH M. ENGRAM NOTARY PUBLIC HARFORD COUNTY, MD.
MY COMMISSION EXPIRES AUGUST 1, 2016

My Commission Expires:

August 1, 2016

THIS IS TO CERTIFY that the within instrument was prepared by or under the supervision of the undersigned, an attorney duly admitted to practice before the Court of Appeals of Maryland.

DEBORAH M. ENGRAM, Attorney

AFTER RECORDATION
PLEASE RETURN TO:

Holly Springs Nature Conservancy
& Wildlife Sanctuary, Inc.
4209 Beckleysville Road
Hampstead, Maryland 21074

F:\USERS\AWF\REAL ESTATE\SETTLEMENTS\DME IN OFFICE SETTLEMENTS\18627 Falls Rd\DEED.wpd

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33970, p. 0245, MSA_CE62_33826. Date available 08/05/2013. Printed 09/10/2019.

0033970 246

2013 MARYLAND FORM **Certification of Exemption from Withholding Upon Disposition of Maryland Real Estate**
Affidavit of Residence or Principal Residence

Based on the certification below, Transferor claims exemption from the tax withholding requirements of §10-912 of the Tax-General Article, Annotated Code of Maryland. Section 10-912 provides that certain tax payments must be withheld and paid when a deed or other instrument that effects a change in ownership of real property is presented for recordation. The requirements of §10-912 do not apply when a transferor provides a certification of Maryland residence or certification that the transferred property is the transferor's principal residence.

1. Transferor Information

Name of Transferor

ELIZABETH SIMPSON SEIDLER

2. Reasons for Exemption

Resident Status

☐ I, Transferor, am a resident of the State of Maryland.

☐ Transferor is a resident entity as defined in Code of Maryland Regulations (COMAR) 03.04.12.02B(11), I am an agent of Transferor, and I have authority to sign this document on Transferor's behalf.

Principal Residence

☑ Although I am no longer a resident of the State of Maryland, the Property is my principal residence as defined in IRC 121 and is recorded as such with the State Department of Assessments and Taxation.

Under penalty of perjury, I certify that I have examined this declaration and that, to the best of my knowledge, it is true, correct, and complete.

3a. Individual Transferors

Witness

ELIZABETH SIMPSON SEIDLER

Name

Elizabeth Simpson Seidler

Signature

3b. Entity Transferors

Witness/Attest

Name of Entity

By

Name

Title

12-49

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33970, p. 0246, MSA_CE62_33826. Date available 08/05/2013. Printed 09/10/2019.

0033970 247

State of Maryland Land Instrument Intake Sheet

☐ Baltimore City ☒ County: Baltimore

Information provided is for the use of the Clerk's Office, State Department of Assessments and Taxation, and County Finance Office Only.

(Type or Print in Black Ink Only–All Copies Must Be Legible)

Space Reserved for Circuit Court Clerk Recording Validation

IMP FD SURE 46.00
RECORDING FEE 20.00
TR TAX STATE 1,375.00
TOTAL 1,435.00
Rcpt # 96866 Rcpt # 92472
JLE JLF Blk # 2227
Jul 23, 2013 11:24 am

1 Type(s) of Instruments (☐ Check Box if addendum Intake Form is Attached.)

☒ Deed / Deed of Trust | ☐ Mortgage / Lease | ☐ Other | ☐ Other

2 Conveyance Type Check Box

☒ Improved Sale Arms-Length [1] | ☐ Unimproved Sale Arms-Length [2] | ☐ Multiple Accounts Arms-Length [3] | ☐ Not an Arms-Length Sale [9]

3 Tax Exemptions (if applicable) Cite or Explain Authority

Recordation: Exempt from county transfer tax pursuant
State Transfer: to Balto County Code 311-3-202(a)(5) - transfer
County Transfer: to charitable organization

4 Consideration and Tax Calculations

Consideration Amount		Finance Office Use Only – Transfer and Recordation Tax Consideration	
Purchase Price/Consideration	$ 275,000.00	Transfer Tax Consideration	$
Any New Mortgage	$	X ( )% =	$
Balance of Existing Mortgage	$	Less Exemption Amount –	$
Other:	$	Total Transfer Tax =	$
Other:	$	Recordation Tax Consideration	$
Full Cash Value:	$	X ( ) per $500 =	$ 1375.00
		TOTAL DUE	$

5 Fees

Amount of Fees	Doc. 1	Doc. 2
Recording Charge	$ 20.00	$
Surcharge	$ 40.00	$
State Recordation Tax	$ 1,375.00	$
State Transfer Tax	$ 1,375.00	$
County Transfer Tax	$	$
Other	$	$
Other	$	$

Agent:
Tax Bill:
C.B. Credit:
Ag. Tax/Other:

6 Description of Property SDAT requires submission of all applicable information. A maximum of 40 characters will be indexed in accordance with the priority cited in Real Property Article Section 3-104(g)(3)(i).

District	Property Tax ID No. (1)	Grantor Liber/Folio	Map	Parcel No.	Var. LOG
05	05-04-000210	SM7580/201			☐ (5)

Subdivision Name	Lot (3a)	Block (3b)	Sect/AR (3c)	Plat Ref.	SqFt/Acreage (4)

Location/Address of Property Being Conveyed (2): 18627 Falls Road, Hampstead, MD 21074

Other Property Identifiers (if applicable) | Water Meter Account No.

Residential ☒ or Non-Residential ☐ | Fee Simple ☒ or Ground Rent ☐ | Amount: N/A

Partial Conveyance? ☐ Yes ☒ No | Description/Amt. of SqFt/Acreage Transferred: N/A

If Partial Conveyance, List Improvements Conveyed: N/A

7 Transferred From

Doc. 1 – Grantor(s) Name(s)	Doc. 2 – Grantor(s) Name(s)
Elizabeth Simpson Seidler	
Doc. 1 – Owner(s) of Record, if Different from Grantor(s)	**Doc. 2 – Owner(s) of Record, if Different from Grantor(s)**

8 Transferred To

Doc. 1 – Grantee(s) Name(s)	Doc. 2 – Grantee(s) Name(s)
Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.	

New Owner's (Grantee) Mailing Address: 4209 Beckleysville Road, Hampstead, Maryland 21074

9 Other Names to Be Indexed

Doc. 1 – Additional Names to be Indexed (Optional)	Doc. 2 – Additional Names to be Indexed (Optional)

10 Contact/Mail Information

Instrument Submitted By or Contact Person

Name: Deborah M. Engram, Esquire
Firm: Brennan and Brennan, Attorneys At Law, P.A.
Address: 825 Eastern Boulevard
Baltimore, Maryland 21221 Phone: (410) 687-3434

☒ Return to Contact Person
☐ Hold for Pickup
☒ Return Address Provided

11 Assessment Information

IMPORTANT: *BOTH* THE ORIGINAL DEED *AND* A PHOTOCOPY MUST ACCOMPANY EACH TRANSFER

☐ Yes ☒ No Will the property being conveyed be the grantee's principal residence?
☐ Yes ☒ No Does transfer include personal property? If yes, identify:
☐ Yes ☒ No Was property surveyed? If yes, attach copy of survey (if recorded, no copy required).

Assessment Use Only – Do Not Write Below This Line

Terminal Verification | Agricultural Verification | Whole | Part | Tran. Process Verification

Transfer Number | Date Received: | Deed Reference: | Assigned Property No.:

	Year	20	20
Land			
Buildings			
Total			

Geo.	Map	Sub	Block
Zoning	Grid	Plat	Lot
Use	Parcel	Section	Occ. Cd.
Town Cd.			

TAX NOT REQUIRED
Director of Budget and Finance
BALTIMORE COUNTY, MARYLAND

☐ COUNTY TRANSFER TAX
By _____ ART 11 TITLES
SUBTITLE 2, 11-3-202

☐ RECORDATION TAX
By _____ T.P. ART 12-108

Date 7-23-13

Distribution: ☐ Clerk's Office ☐ Office of Finance ☐ SDAT ☐ Preparer

AOC-CC-300 (5/2007)

13-T-2500DME

BALTIMORE COUNTY CIRCUIT COURT (Land Records) JLE 33870, p. 0247, MSA_CE62_33826. Date available 08/05/2013. Printed 09/10/2019.
Space Reserved for Circuit Court Clerk Recording Validation
Baltimore County, Maryland
$1,375.00 CA
$.00
ACCOUNT# 0504000210
REMARKS:
RECORDATION TAXES
Dept 7/23/2013
RECEIPT # 96866 RROS LRR
REG MSOS MANUAL
7/25/2013
BUSINESS
7/23/2013 11:19:13
ACTUAL TIME
MPIL ICATE PAID RECEIPT

We've updated our Privacy Statement. Before you continue, please read our new Privacy Statement and familiarize yourself with the terms.

WESTLAW

West's Annotated Code of Maryland
Public Utilities (Refs & Annos)
§ 7-306.2. Community Solar Energy Generating System Pilot Program
MD PUBLIC UTIL § 7-306.2 West's Annotated Code of Maryland Public Utilities Effective: June 1, 2019 *(Approx. 4 pages)*
Title 7. Gas, Electric, and Water Companies (Refs & Annos)
Subtitle 3. Consumer Relations (Refs & Annos)

Effective: June 1, 2019

MD Code, Public Utilities, § 7-306.2

§ 7-306.2. Community Solar Energy Generating System Pilot Program

Currentness

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) "Baseline annual usage" means:

(i) a subscriber's accumulated electricity use in kilowatt-hours for the 12 months before the subscriber's most recent subscription; or

(ii) for a subscriber that does not have a record of 12 months of electricity use at the time of the subscriber's most recent subscription, an estimate of the subscriber's accumulated 12 months of electricity use in kilowatt-hours, determined in a manner the Commission approves.

(3) "Community solar energy generating system" means a solar energy system that:

(i) is connected to the electric distribution grid serving the State;

(ii) is located in the same electric service territory as its subscribers;

(iii) is attached to the electric meter of a subscriber or is a separate facility with its own electric meter;

(iv) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering;

(v) has at least two subscribers but no limit to the maximum number of subscribers;

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(vi) does not have subscriptions larger than 200 kilowatts constituting more than 60% of its subscriptions;

(vii) has a generating capacity that does not exceed 2 megawatts as measured by the alternating current rating of the system's inverter; and

(viii) may be owned by any person.

(4) "Program" means the Community Solar Energy Generating Systems Pilot Program.

(5) "Subscriber" means a retail customer of an electric company that:

(i) holds a subscription to a community solar energy generating system; and

(ii) has identified one or more individual meters or accounts to which the subscription shall be attributed.

(6) "Subscriber organization" means:

(i) a person that owns or operates a community solar energy generating system; or

(ii) the collective group of subscribers of a community solar energy generating system.

(7) "Subscription" means the portion of the electricity generated by a community solar energy generating system that is credited to a subscriber.

(8) "Unsubscribed energy" means any community solar energy generating system output in kilowatt-hours that is not allocated to any subscriber.

(9) "Virtual net energy metering" means measurement of the difference between the kilowatt-hours or value of electricity that is supplied by an electric company and the kilowatt-hours or value of electricity attributable to a subscription to a community solar energy generating system and fed back to the electric grid over the subscriber's billing period, as calculated under the tariffs established under subsection (e)(2) of this section.

Findings of General Assembly

(b) The General Assembly finds that:

(1) community solar energy generating systems:

(i) provide residents and businesses, including those that lease property, increased access to local solar electricity while encouraging private investment in solar resources;

(ii) enhance continued diversification of the State's energy resource mix to achieve the State's renewable energy portfolio standard and Greenhouse Gas Emissions Reduction Act goals; and

(iii) provide electric companies and ratepayers the opportunity to realize the many benefits associated with distributed energy; and

(2) it is in the public interest that the State enable the development and deployment of energy generation from community solar energy generating systems in order to:

(i) allow renters and low-income and moderate-income retail electric customers to own an interest in a community solar energy generating system;

(ii) facilitate market entry for all potential subscribers while giving priority to subscribers who are the most sensitive to market barriers; and

(iii) encourage developers to promote participation by renters and low-income and moderate-income retail electric customers.

Community solar energy generating system

(c) A community solar energy generating system, including a subscriber or subscriber organization associated with the community solar energy generating system, is not:

(1) an electric company;

(2) an electricity supplier; or

(3) a generating station.

Pilot established

(d)(1)(i) The Commission shall establish a pilot program for a Community Solar Energy Generating System Program.

(ii) The structure of the pilot program is as provided in this subsection.

(2) All rate classes may participate in the pilot program.

(3) Subscribers served by electric standard offer service and electricity suppliers may hold subscriptions to the same community solar energy generating system.

(4) A subscriber organization shall:

(i) determine how to allocate subscriptions to subscribers; and

(ii) notify an electric company and, if applicable, a relevant electricity supplier about the regulations the Commission adopts under subsection (e) of this section.

(5) An electric company shall use the tariff structure under subsection (e)(2) of this section to provide each subscriber with the credits.

(6) A subscriber may not receive credit for virtual net excess generation that exceeds 200% of the subscriber's baseline annual usage.

(7) Any unsubscribed energy generated by a community solar energy generating system that is not owned by an electric company shall be purchased under the electric company's process for purchasing the output from qualifying facilities at the amount it would have cost the electric company to procure the energy.

(8) An electric company shall use energy generated from a community solar energy generating system to offset purchases from wholesale electricity suppliers for standard offer service.

(9) All costs associated with small generator interconnection standards under COMAR 20.50.09 are the responsibility of the subscriber organization.

(10) A subscriber organization may petition an electric company to coordinate the interconnection and commencement of operations of a community solar energy generating system after the Commission adopts regulations required under subsection (e) of this section.

(11) A subscriber organization may contract with a third party for the third party to finance, build, own, or operate a community solar energy generating system.

(12) A municipal utility or cooperative utility may participate in the pilot program.

(13) Equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops.

(14) The pilot program shall:

(i) begin on the earlier of:

1. the date of submission of the first petition of a subscriber organization under paragraph (10) of this subsection after the Commission adopts the regulations required under subsection (e) of this section; or

2. 6 months after the Commission adopts those regulations; and

(ii) end 7 years after the beginning date, but not sooner than December 31, 2024.

(15) The Commission shall limit the pilot program in such a way that the Commission may conduct a meaningful study of the pilot program and its results, including:

(i) the appropriate number of community solar energy generating systems to be included in the pilot program;

(ii) the appropriate amount of generating capacity of the community solar energy generating systems to be included in the pilot program and the annual capacity limits for each program category, each of which should increase throughout the duration of the pilot program; and

(iii) a variety of appropriate geographical areas in the State for locating community solar energy generating systems to be included in the pilot program.

Regulations

(e) On or before May 15, 2016, the Commission shall adopt regulations to implement this section, including regulations for:

(1) consumer protection;

(2) a tariff structure for an electric company to provide a subscriber with the kilowatt-hours or value of the subscriber's subscription, as the Commission determines;

(3) a calculation for virtual net energy metering as the Commission determines;

(4) a protocol for electric companies, electricity suppliers, and subscriber organizations to communicate the information necessary to calculate and provide the monthly electric bill credits and yearly net excess generation payments required by this section; and

(5) a protocol for a subscriber organization to coordinate with an electric company for the interconnection and commencement of operations of a community solar energy generating system.

Post-termination of pilot program

(f)(1) Subject to regulations or orders of the Commission, a contract relating to a community solar energy generating system or subscriber organization that is entered into during the pilot program shall remain in effect according to the terms of the contract, including after the termination of the pilot program.

(2) After termination of the pilot program, in accordance with the operational and billing requirements in subsection (d) of this section:

(i) a subscriber organization may continue the operation of a community solar energy generating system that began operation during the pilot program, including the creation and trading of subscriptions; and

(ii) in accordance with the tariffs established under subsection (e)(2) of this section, an electric company shall continue to facilitate the operation of a community solar energy generating system that began operation during the pilot program.

Cumulative installed nameplate capacity

(g) The cumulative installed nameplate capacity under the pilot program shall count toward the overall limitation of 1,500 megawatts for all net metering projects in § 7-306(d) of this subtitle.

Credits

Added by Acts 2015, c. 346, § 1, eff. July 1, 2015; Acts 2015, c. 347, § 1, eff. July 1, 2015. Amended by Acts 2019, c. 461, § 1, eff. June 1, 2019; Acts 2019, c. 462, § 1, eff. June 1, 2019.

MD Code, Public Utilities, § 7-306.2, MD PUBLIC UTIL § 7-306.2
Current through all legislation from the 2019 Regular Session of the General Assembly.

End of Document

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North County
Community Group

THE NORTH COUNTY COMMUNITY GROUP, LLC

RESOLVED: That the ANNUAL MEETING of the North County Community Group, LLC held on January 16, 2019, it was decided that responsibility for review and action on all zoning and development matters for the period 2019-2020 be placed on Kathleen Pieper, Wanda Lehman and Mary Petrucci.

ATTEST: The North County Community Group, LLC

President
Kathleen Pieper

Treasurer
Wanda Lehman

Protestant
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North County
Community Group

AFFIDAVIT

STATE OF MARYLAND
BALTIMORE COUNTY

TO WIT:

I hereby swear upon penalty of perjury that I, Wanda Lehman, am currently a duly elected member of the Board of Directors of The North County Community Group, LLC.

AS WITNESS OUR HANDS AND SEAL THIS 16th DAY OF January 2019.

ATTEST: The North County Community Group, LLC

President
Kathleen Pieper

Treasurer
Wanda Lehman

North County Community Group

NORTH COUNTY COMMUNITY GROUP, LLC.

A grassroots, all-volunteer organization, formed to protect the quality of life, resources, rural landscape, scenic byways and property values in northern Baltimore County.

Resolved: That the position of the North County Community Group as adopted by the Board of Directors on the zoning matter known as: 18627 Falls Road Special Exception Request for a Solar Facility (Case Number 2019-0183-X) is OPPOSED.

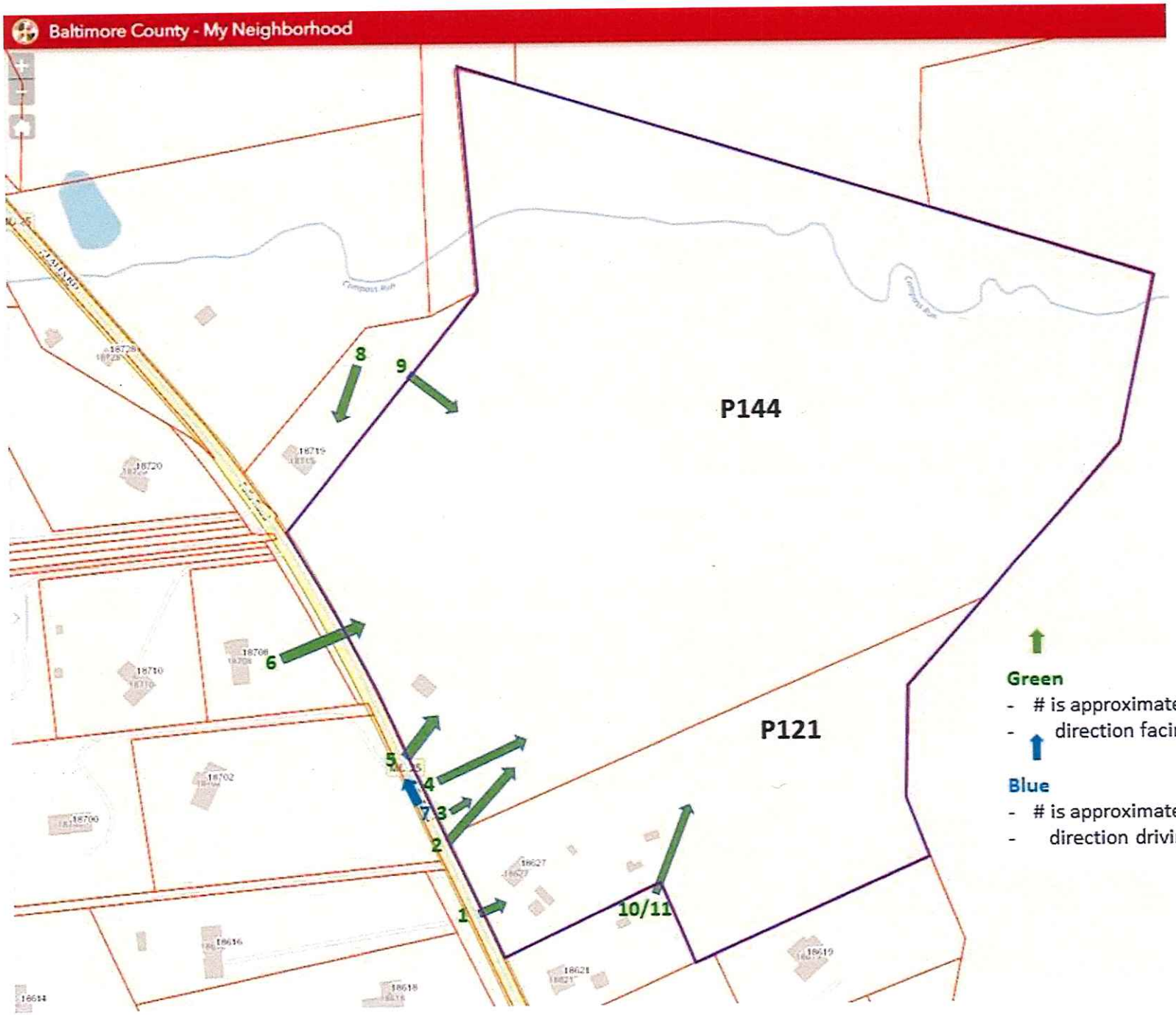
We therefore recommend that the special exception request be DENIED.

As witness our hands and seal this September 18, 2019.

ATTEST: North County Community Group, LLC.

Treasurer

President



K. Pieper 10/18/2019

Protestant
CBA Exhibit
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K. Pieper 10/18/2019

17-1

K. Pieper 10/18/2019

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K. Pieper 10/18/2019

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K. Pieper 10/18/2019

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K. Pieper 10/18/2019

K. Pieper 10/18/2019

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K. Pieper 10/18/2019

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K. Pieper 10/18/2019

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BGE Community Solar Pilot Program Application Listing

10/7/19 7:26 AM

S-Small/Brown/Oth
O-Open
L-LMI

R-Reserved (1,2,3)
I-In-Svc
W-Wait List
WD- Withdrawn

	PSC CSEGS ID	BGE Project ID	Application Date	Applicant	CSEGS Address	CSEGS Zip	(S,O,L) Category	(MW) Size	Expected Operation	(R,I,W) Status	Pilot Year
1	18A2226500004163	4705565	8/3/2017	FFP MD BTC2 Project, LLC	11956 E Philadelphia Rd	21087	O	2.000	7/29/2019	I	1
2	18A2213220004103	4705992	8/7/2017	Dogwood Rd Solar, LLC	9203 Dogwood Rd	21244	O	0.900	8/21/2019	R	1
3	17A2150200003873	4705564	8/14/2017	Cypress Creek Renewables LLC	20450 Middletown Rd	21053	O	1.900	11/1/2019	R	1
4	17A2150140003869	4706010	8/22/2017	TPE Maryland Solar Land Holdings, LLC	5403 Nutwell Sudley Road	20778	O	2.000	7/31/2018	WD	1
5	17A2149970003865	4705567	8/22/2017	CleanChoice Energy Community, LLC	501 Bayard Road	20711	O	2.000	2/28/2020	WD	1
6	18A2213230004104	4706005	8/23/2017	Old Court Rd Solar, LLC	10021 OLD COURT RD	21244	O	1.980	10/4/2019	I	1
7	17A2149970003865	4705573	8/25/2017	CleanChoice Energy Community, LLC	5963 Franklin Gibson Road	20779	O	1.329	2/1/2020	WD	1
8	17A2149560003861	4705971	8/25/2017	Abundant Solar Power Inc.	1700 Ridgely Street (1.8MW)	21230	S	0.000	12/15/2018	WD	1
9	17A2150210003874	4706013	8/28/2017	Community Energy Solar, LLC	790 Bayard Rd	20711	O	2.000	11/15/2019	WD	1
10	17A2149970003865	4705578	8/29/2017	CleanChoice Energy Community, LLC	4913 Sands Rd	20711	L	2.000	2/1/2020	WD	1
11	17A2149970003865	4705581	8/29/2017	CleanChoice Energy Community, LLC	632 Freeland Rd	21053	L	2.000	9/1/2019	WD	1
12	17A2149970003865	4705577	8/29/2017	CleanChoice Energy Community, LLC	1139 Monkton Rd	21111	O	2.000	9/1/2019	WD	1
13	17A2150200003873	4706022	8/30/2017	Cypress Creek Renewables LLC	14466 Green Rd	21013	O	2.000	8/30/2018	WD	1
14	17A2148980003856	4705584	9/1/2017	Forefront Power, LLC	19735 Graystone Rd	21161	O	0.840	6/30/2018	WD	1
15	17A2150700003900	4705605	9/6/2017	Earth and Air Technologies LLC	2117 Old New Windsor Pike	21771	L	1.950	1/31/2018	WD	1
16	17A2148980003856	4705580	9/7/2017	Forefront Power, LLC	2316 Ridge Road(1.980MW)	21244	L	0.000	6/30/2018	WD	1
17	17A2148980003856	4705607	9/7/2017	Forefront Power, LLC	9155 Old Court Rd	21244	L	1.980	6/30/2018	WD	1
18	17A2150800003903	4706009	9/6/2017	New Source Generation LLC	15700 Hanover Pike	21155	O	0.990	2/1/2018	WD	1
19	17C2149980003866	4705614	9/20/2017	Groundswell	4221 Primrose Ave	21215	L	0.322	6/26/2019	WD	1
20	17A2150280003875	4705600	9/22/2017	ESA Sparks Glenco, LLC	15637 York Road	21152	L	1.849	11/15/2019	R	1
21	17B2149960003864	4725902	9/26/2017	Cambridge Flats LLC	2114 Cambridge Street	21231	S	0.00993	4/4/2018	I	1
22	17C2150240003909	4706027	3/22/2018	Power 52 Foundation	11898 Philadelphia Road	21162	S	2.000	6/1/2020	R	1
23	17C2150240003909	4705997	8/1/2018	Power 52 Foundation	1755 Henryton Rd	21104	S	1.900	2/1/2020	R	1
24	17A2150570003894	4809076	8/20/2018	SGC Power LLC	5298 Frye Road	21155	S	1.750	8/30/2019	R	1
25	17A2150570003894	4705590	8/28/2018	SGC Power LLC	17800 Queen Anne Bridge Road	20716	S	2.000	9/13/2019	R	1
26	19A2263070004265	4809085	10/9/2018	Burns Solar One, LLC	715 Westminster pike	21136	L	1.980	4/9/2020	R	1
27	17A2150700003900	4808667	10/16/2018	Earth and Air Technologies, LLC	600 Liberty Rd	21784	S	1.080	10/1/2019	R	1
28	17A2148980003856	4831498	1/14/2019	ForeFront Power, LLC	9155 Old Court Rd	21244	O	1.980	9/2/2019	R	2
29	18A2216230004116	4831501	1/14/2019	TPE Maryland Solar Holdings2, LLC	17205 Mill Branch Place	20716	O	2.000	7/1/2020	R	2
30	18A2216230004116	4831529	1/15/2019	TPE Maryland Solar Holdings2, LLC	3111 Mill Branch Road	20716	O	2.000	7/1/2020	R	2
31	18A2213730004105	4831540	1/22/2019	OneEnergy Development, LLC	12700 Old Frederick Road	21784	O	2.000	7/20/2020	R	2
32	18A2213730004105	4831568	1/24/2019	OneEnergy Development, LLC	700 Sykesville Rd	21784	O	2.000	7/22/2020	R	2
33	18A2205660004072	4831547	1/25/2019	ICFTS MD Solar, LLC	15009 Hanover Pike	21074	O	1.875	12/23/2019	R	2
34	17A2148980003856	4821604	1/30/2019	ForeFront Power, LLC	20920 Old York Road	21120	O	0.825	12/31/2020	R	2
35	18A2214950004106	4831580	1/30/2019	Parkton York Solar, LLC	21138 Old York Road	21120	O	0.824	8/31/2019	R	2
36	18A2200320004052	4831613	1/31/2019	Hartz Solar, LLC	7448 Candlewood Rd	21076	O	1.510	9/1/2019	R	2
37	17C2150240003909	4831525	2/4/2019	Power52 Foundation	5545 Broadwater Lane	21029	S	1.999	12/31/2019	R	2
38	17C2150240003909	4831510	2/4/2019	Power52 Foundation	12855 Frederick Road	21794	S	1.990	12/31/2019	R	2
39	17A2150830003906	4831598	2/6/2019	Ogos Energy LLC	662 Correll Drive	21158	L	1.080	1/20/2020	R	2
40	18A2216230004116	4838144	2/6/2019	TPE Maryland Solar Holdings2, LLC	2420 Spencerville Road	20868	L	2.000	7/17/2019	R	2
41	17A2150200003873	4831588	2/11/2019	Cypress Creek Renewables, LLC	14466 Green Road	21013	O	2.000	1/31/2020	R	2
42	18A2216230004116	4838163	2/18/2019	TPE Maryland Solar Holdings2, LLC	19500 block of Old York Road	21161	L	2.000	8/20/2020	R	2
43	18A2217130004124	4843919	3/5/2019	Wakefield Solar Energy Center LLC	Wakefield Valley Road	21776	S	0.495	2/1/2020	R	2
44	17A2150690003901	4831518	3/11/2019	Alder Energy Systems, LLC	1013 Gold Mine Rd	20833	O	1.450	6/26/2019	WD	2
45	17A2150700003900	4838181	3/18/2019	Earth and Air Technologies, LLC	5124 Klees Mill Road S	21784	L	1.980	2/10/2020	R	2
46	19A2265280004293	4904337	4/30/2019	Ambassador Rd Solar, LLC	7223 Ambassador Rd	21244	S	0.300	11/1/2019	R	2
47	19A2265270004292	4912445	4/30/2019	San Tomas Solar , LLC	6940 San Tomas Road	21075	S	0.780	10/31/2019	R	2
48	19A2265260004294	4904332	4/30/2019	Business Parkway Solar, LLC	6695 Business Parkway	21075	S	0.540	10/31/2019	R	2
49	17A2150210003874	4706013	7/31/2019	Community Energy Solar, LLC	790 Bayard Rd	20711	O	2.000	7/30/2020	R	2
50	18A2205660004072	4934824	9/12/2019	ICFTS MD Solar, LLC	6210 Days Cove Rd	21162	S	0.540	12/15/2019	R	2
51	18A2205660004072	4934831	9/25/2019	ICFTS MD Solar, LLC	6685 Santa Barbara Ct	21075	S	1.080	12/31/2019	R	2

Protestant
CBA Exhibit
18.

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Submission Guidelines

You must use the attached form to submit your Application. Please remove this instruction sheet prior to filing.) If you need more space than is provided on this form or if you are attaching exhibits, please attach label each separate attachment to identify the Application item to which the attachment corresponds. You are also required to file an electronic version of this document **(excluding confidential information)** using Adobe PDF.

To file an Application with the Maryland Public Service Commission, submit:

- A signed and verified original
- 17 copies of the Application
- An electronic version of the Application and attachments
- Application fee of $400 for Type A or $50 for Type B or C. (payable to "Public Service Commission of Maryland")

Send all materials to:

Executive Secretary
Maryland Public Service Commission
6 Saint Paul St.
Baltimore, MD 21202

Concurrently with the filing of the Application with the Executive Secretary, a paper copy of the Application shall be submitted to the Office of People's Counsel, 6 St. Paul St., 21st Floor, Baltimore, MD 21202.

Questions pertaining to completion of this Application may be directed to the Public Service Commission Staff, Energy Analysis and Planning Division, at the above address or you may call the Division at (410) 767-8085.

If your answer to any of the Application items changes pending Application review, or while you are operating within the State of Maryland, you are under a duty to inform the Commission within 30 days.

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Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

1. **Identity of the Applicant:**
(Must match the entity listed on the certificate issued by the State Department of Assessments and Taxation of Maryland if applicable)

Legal Name: Power Factor LLC

Current Address: 1 Mace Ave
Essex
MD 21221

Street Address (if different than above): 8240 Beachwood rd Dundalk MD 21222

2. **Indicate the type of Subscriber Organization authorization requested. Select only one.**

[x] Type A. Proposed Owner and/or Operator of Community Solar Energy Generating System(s) Authorization requires a Subscriber Organization Bond. *See* Attachment A. The bond amount is $10,000 plus $25,000 per each MW of program capacity in excess of 1MW for which the Applicant seeks to apply. Application Fee is $400.

[ ] Type B. Proposed Collective Group of Subscribers of a (single) Community Solar Energy Generating System. Complete Attachment C. A bond is not required for program participation of 1MW or less. The bond amount is $25,000 per each MW of program capacity in excess of 1MW for which the Applicant seeks to apply. *See* Attachment A. Application Fee is $50.

[ ] Type C. Proposed Non-profit Owner and/or Operator of Community Solar Energy Generating System(s) Authorization requires a Subscriber Organization Bond if program capacity requested exceeds 1MW. *See* Attachment A. The bond amount is $25,000 per each MW of program capacity in excess of 1MW for which the Applicant seeks to apply. Application Fee is $50.

3. **Complete Attachment B for each facility that the Applicant plans to apply for capacity in the Pilot Program.**

4. **Applicant Operations:**

In completing, check all boxes that apply in each subsection.

Identify the functions that the Applicant will undertake on its own behalf, and those that it expects to either partner with others to provide or contract to others.

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

(Note: Check more than one box for a particular function if more than one applies.)

	Applicant	Partner/Contract
Develop	[X]	[ ]
Finance	[ ]	[X]
Build	[X]	[ ]
Own	[ ]	[X]
Solicit Subscribers	[ ]	[X]
Operate CSEGS*	[X]	[ ]
Manage Subscriptions*	[ ]	[X]

* "Operate CSEGS" means to operate and maintain the CSEGS facility; "Manage Subscriptions" means maintaining the ongoing subscriber relationships, customer service to subscribers, and data interface with utilities on subscriptions.

Identify which types of subscribers the Applicant intends to serve (Check all that apply):

- [ ] Commercial and Industrial
- [X] Residential
- [X] Low and Moderate Income

Identify each investor owned utility where the Applicant intends to operate (Check all that apply):

- [X] Baltimore Gas & Electric
- [ ] Pepco
- [ ] Delmarva Power & Light
- [ ] Potomac Edison
- [ ] Southern Maryland Electric Cooperative

Identify the number of CSEGS the Applicant intends to operate (Check one):
(Note: Check the box for "Single CSEGS" if Applicant is a special purpose entity organized to legally own a single CSEGS.)

- [X] Single CSEGS
- [ ] Multiple CSEGS

Identify whether Applicant will accept either or both of the following.

- [ ] Security Deposits (as defined in COMAR Regulations 20.62.01.02)
- [ ] Prepaid Subscription Fees (as defined in COMAR Regulations 20.62.05.11)

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

List the names and identification numbers of any affiliated approved Subscriber Organizations. Submit attachments if needed.

[X] Applicant has no affiliated approved Subscriber Organizations

Name	Number

"Affiliate" means a person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

5. Regulatory Contact:

Name and Title: Andrew Streit, Director of Business Development
Address: 1 Mace Ave
Essex MD 21221

Telephone: 803 665 6688
Fax:
E-Mail: andrew@powerfactorco.com

6. Primary Corporate Officers/General Partners/Managing Partners (if applicable)

President/General Partner/Managing Partner:
Name: George Lang IV

Business Address: 1 Mace Ave, Essex, MD 21221

CEO:
Name:

Business Address:

7. **Applicant's Business Form (if applicable):**

- ☐ Proprietorship
- ☐ Corporation
- ☐ Partnership
- ☐ Limited Partnership
- ☒ Limited Liability Company
- ☐ Limited Liability Partnership
- ☐ Other: _____

8. **Actions Against Applicant.** Provide the following information for the Applicant.

- ☐ Actions such as Suspensions/Revocations, Limitations, Reprimands, Fines, Consent Decrees, or other similar actions have been taken or are pending against the Applicant. If checked, provide an attachment describing the action; and include docket numbers, offense dates, and case numbers, if applicable.

- ☒ No such action has been taken.

9. **Technical and Managerial Competency:** The Applicant must submit, in an attachment, a statement of technical and managerial competency. The attachment should also include a description of the Applicant and current U.S. operations, intended operations in Maryland, past work experience relevant to the community solar pilot program, general plans for partnering or contracting pilot program functions, and other items or information that demonstrate technical and managerial competency. Finally, list all states where applicant has built or operates a community solar installation at the time of this application.

10. **Affiliated Applications:** List the name of each company or entity which is affiliated with the applicant, if that company or entity has separately applied for, or intends to apply for, admission to the Maryland CSEGS Program as a Subscriber Organization. Describe the nature of each affiliation.

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

11. **Application Fee:** The Applicant must enclose the required application fee of $400 (Type A) or $50 (Types B and C)

Applicant: Power Factor LLC

By: Andrew M Streit

Andrew M Streit

Title: Director of Business Development

Date: 8/29/19

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

AFFIDAVIT OF GENERAL COMPLIANCE

State of Maryland :
: ss.
County of Baltimore :

George Lang, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the Owner (office of Affiant) of Power Factor LLC (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant;

That the Applicant herein certifies to the Commission that:

The Applicant agrees to comply with the terms and conditions of all applicable electricity company tariffs and agreements with electricity companies.

The Applicant agrees to comply with all applicable requirements of the Federal Energy Regulatory Commission and PJM Interconnection, LLC.

The Applicant agrees to comply with all applicable Federal and state consumer protection and environmental laws and regulations, and Maryland PSC regulations, fees, assessment, and requirements.

The Applicant has obtained all the licenses and permits required to operate as a Subscriber Organization in the State of Maryland. The Applicant agrees that it will obtain all further licenses and permits required to carry out any future activity pursuant to its role as an approved Subscriber Organization, prior to undertaking the respective activity for which local, state or Federal licenses or permits are required.

The Applicant agrees that it shall neither disclose nor resell individual residential customer data provided to the Applicant by any Maryland electricity company. Disclosure or resale of individual non-residential customer data provided to the Applicant by a Maryland electricity company will be governed by customer contract.

The Applicant, including any of its affiliates engaged in the sale of electricity or related services, the general partners, corporate officers or directors, or limited liability company members, managers or officers of the Applicant or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any State or Federal consumer

protection law or regulation; and has not ever been convicted of a felony; or, alternatively

2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the subscriber organization, or a decree by such court adjudging the subscriber organization bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the subscriber organization; and

2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or State bankruptcy/insolvency law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a Subscriber Organization admitted in writing its inability to pay its debts generally as they became due, or consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

George Leung

Signature of Affiant

Sworn and subscribed before me this 30th day of August, 2019.

Signature of official administering oath

My Commission expires 11/19/20

CHRISTINA KWIATKOWSKI
Notary Public
State of Maryland
Baltimore County

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

VERIFICATION

State of Maryland :
: ss.
County of Baltimore :

George Lang, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the Owner (office of Affiant) of Power Factor LLC (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant;

The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the Annotated Code of Maryland as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Commission modifies the approval requirements, or requests further information and that requiring such modification or further information will delay processing of the application.

That the Applicant agrees that an approval issued pursuant to this Application may not be transferred without Commission approval.

That the Applicant understands that authorization as a Subscriber Organization requires participation in the CSEGS Pilot Program which requires the Applicant to retain project, subscriber and any other information as requested and provide that information to the Maryland Public Service Commission upon request or through required reports.

That the Applicant understands that CSEGS Pilot Program tariffs, rules, or other requirements may change over the Pilot Program in accordance with Orders or other regulatory action of the Maryland Public Service Commission.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

George Lang

Signature of Affiant

Sworn and subscribed before me this 30th day of August, 2019.

Signature of official administering oath

My Commission expires 11/19/20

CHRISTINA KWIATKOWSKI
Notary Public
State of Maryland
Baltimore County

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Attachment A

Subscriber Organization Bond **(Insurer Name)**

Bond No. _____

KNOWN ALL MEN BY THESE PRESENTS:

That we, **Company name**, as Principal(s) and **Insurance Co.**, a company authorized to transact surety business in the State of **Maryland**, as Surety, are held and firmly bound unto **Maryland Public Service Commission**, as Obligee, in the penal sum of _____ ($_____) **DOLLARS**, lawful money of the United States of America, for payment of which, well and truly be made, we hereby bind ourselves, our heirs, executors, administrators, legal representatives and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has obtained or is about to obtain, from the Obligee, authorization to do business as a **Subscriber Organization** in Maryland under the Maryland Annotated Code, Public Utilities Article, § 7–306.2 and Code of Maryland Regulations, Title 20.

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall comply with the provisions of the said Code, licenses, all applicable Ordinances, Rules and Regulations, and any Amendments thereto, then this obligation shall not be payable, but shall otherwise remain in full force and effect, subject to the payment as set forth below. This obligation shall become effective on the ____ day of _____, _____, and shall remain in force until cancelled.

PAYMENT under this bond shall be due if the Commission determines that **Company Name** is financially insolvent or unable to meet its obligations as an authorized **Subscriber Organization** in Maryland. **Insurance Co.** will permit the Commission to direct that the proceeds of this bond be paid or disbursed to satisfy the Subscriber Organization's financial obligations to the Commission or other Maryland governmental entity. **Insurance Co.** will permit a Maryland court to direct proceeds of the bond be paid to a person that has obtained a judgment against a authorized subscriber organization and has previously attempted to collect the judgment through all other means available through the Court.

PROVIDED, that the penal amount of this Bond may not exceed its face value during the time the Bond remains in force and the Surety may terminate its liability hereunder as to future acts of the Principal at any time by giving sixty (60) days written notice of such termination to the Obligee.

SIGNED AND SEALED this ____ day of _____, _____.

(Subscriber Organization Name)

BY: (Principal Signature)
Principal Name, Title

(Insurer/Bond Company)

BY: (Signature of Insurer)
Insurer Name, Attorney-in-fact

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Attachment B: Planned Project Information

Address of Facility Site: (Street, City, ZIP)
18627 Falls Rd
Hampstead MD 21074

Local Government Jurisdiction (City, County, Town, Etc.):
Baltimore County

Pilot Program Category – [x] Open [X] LMI [ ] Small/Brownfield/Other

Project Capacity in kilowatts A/C 1850

Expected Number of Subscribers for Project:
[X] Residential 500

% of LMI subscribers 40 % Low Income Customers 10

[ ] Commercial

[ ] Industrial > 600 kW demand.

Utility Service Territory [X] BGE [ ]DPL [ ] Potomac Edison [ ] PEPCO [ ] SMECO

Applicant should check each box for which the applicant intends to:

- [ ] Own the facility;
- [x] Operate the facility;
- [ ] Own and operate the facility, or
- [ ] Collectively control the facility as a group of subscribers.

Applicant should check the appropriate box for the proposed facility,
Indicate whether the applicant intends to:

- [ ] Convert an existing facility that it will own or operate
- [ ] Convert an existing facility that it will control as a group of subscribers
- [x] Develop a new facility that it will operate
- [ ] Develop a new facility that it will operate as a group of subscribers
- [ ] Develop a new facility, for eventual operation by a different S/O
- [ ] Own or operate a new facility to be developed by others
- [ ] Other describe) _____

- [ ] Check box if deposits will be required of customers

(Applicant should attach additional pages for each project as needed)

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Attachment C: Members of Subscriber Group

Members of Subscriber Group must match Subscriber List provided to Electric Co.

Member Name	Service Address	Utility Account Number

Corvias

Executive Secretary
Maryland Public Service Commission
6 Saint Paul St.
Baltimore, MD 21202

To whom it may concern,

On behalf of Meade Communities, LLC (Company certification number: 18A2228350004170) the attached application is being submitted with an updated Attachment B. The remainder of the package is the original that was submitted in November 2018 and approved in December 2018.

The project address listed in the updated Attachment B is 18627 Falls Road, Hampstead, MD 21074.

Sincerely,

Elizabeth Worthley

Strategic Advisor

Corvias

Protestant
CBA Exhibit
20

3080 Ernie Pyle Street Fort Meade, MD 20755 main: (410) 672-4570 fax: (410) 672-8015 corviasmilitaryliving.com

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

1. **Identity of the Applicant:**
(Must match the entity listed on the certificate issued by the State Department of Assessments and Taxation of Maryland if applicable)

Legal Name: Meade Communities, LLC

Current Address: P.O. Box 530
Fort Meade, MD 20755

Street Address (if different than above): 3080 Ernie Pyle St., Fort Meade, MD 20755-5301

2. **Indicate the type of Subscriber Organization authorization requested. Select only one.**

☑ Type A. Proposed Owner and/or Operator of Community Solar Energy Generating System(s) Authorization requires a Subscriber Organization Bond. *See* Attachment A. The bond amount is $10,000 plus $25,000 per each MW of program capacity in excess of 1MW for which the Applicant seeks to apply. Application Fee is $400.

☐ Type B. Proposed Collective Group of Subscribers of a (single) Community Solar Energy Generating System. Complete Attachment C. A bond is not required for program participation of 1MW or less. The bond amount is $25,000 per each MW of program capacity in excess of 1MW for which the Applicant seeks to apply. *See* Attachment A. Application Fee is $50.

☐ Type C. Proposed Non-profit Owner and/or Operator of Community Solar Energy Generating System(s) Authorization requires a Subscriber Organization Bond if program capacity requested exceeds 1MW. *See* Attachment A. The bond amount is $25,000 per each MW of program capacity in excess of 1MW for which the Applicant seeks to apply. Application Fee is $50.

3. **Complete Attachment B for each facility that the Applicant plans to apply for capacity in the Pilot Program.**

4. **Applicant Operations:**

In completing, check all boxes that apply in each subsection.

Identify the functions that the Applicant will undertake on its own behalf, and those that it expects to either partner with others to provide or contract to others.

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

(Note: Check more than one box for a particular function if more than one applies.)

	Applicant	Partner/Contract
Develop	☐	☑
Finance	☐	☑
Build	☐	☑
Own	☐	☑
Solicit Subscribers	☑	☐
Operate CSEGS*	☐	☑
Manage Subscriptions*	☑	☐

* "Operate CSEGS" means to operate and maintain the CSEGS facility; "Manage Subscriptions" means maintaining the ongoing subscriber relationships, customer service to subscribers, and data interface with utilities on subscriptions.

Identify which types of subscribers the Applicant intends to serve (Check all that apply):

- ☑ Commercial and Industrial
- ☑ Residential
- ☑ Low and Moderate Income

Identify each investor owned utility where the Applicant intends to operate (Check all that apply):

- ☑ Baltimore Gas & Electric
- ☐ Pepco
- ☐ Delmarva Power & Light
- ☐ Potomac Edison
- ☐ Southern Maryland Electric Cooperative

Identify the number of CSEGS the Applicant intends to operate (Check one):
(Note: Check the box for "Single CSEGS" if Applicant is a special purpose entity organized to legally own a single CSEGS.)

- ☐ Single CSEGS
- ☑ Multiple CSEGS

Identify whether Applicant will accept either or both of the following.

- ☐ Security Deposits (as defined in COMAR Regulations 20.62.01.02)
- ☐ Prepaid Subscription Fees (as defined in COMAR Regulations 20.62.05.11)

List the names and identification numbers of any affiliated approved Subscriber Organizations. Submit attachments if needed.

☑ Applicant has no affiliated approved Subscriber Organizations

Name	Number

"Affiliate" means a person that directly or indirectly, or through one or more intermediaries, controls, is controlled by, or is under common control with, or has, directly or indirectly, any economic interest in another person.

5. Regulatory Contact:

Name and Title: Elizabeth Worthley
Address: 1405 South County Trail, Suite 530
East Greenwich, RI 02818

Telephone: 401-228-2896
Fax: 401-228-2896
E-Mail: beth.worthley@corvias.com

6. Primary Corporate Officers/General Partners/Managing Partners (if applicable)

President/General Partner/Managing Partner:
Name: John G. Picerne

Business Address: 1405 South County Trail, Suite 530
East Greenwich, RI 02818

CEO:
Name: John G. Picerne

Business Address: 1405 South County Trail, Suite 530
East Greenwich, RI 02818

7. **Applicant's Business Form (if applicable):**

- ☐ Proprietorship
- ☐ Corporation
- ☐ Partnership
- ☐ Limited Partnership
- ☑ Limited Liability Company
- ☐ Limited Liability Partnership
- ☐ Other: _____

8. **Actions Against Applicant.** Provide the following information for the Applicant.

- ☐ Actions such as Suspensions/Revocations, Limitations, Reprimands, Fines, Consent Decrees, or other similar actions have been taken or are pending against the Applicant. If checked, provide an attachment describing the action; and include docket numbers, offense dates, and case numbers, if applicable.

- ☑ No such action has been taken.

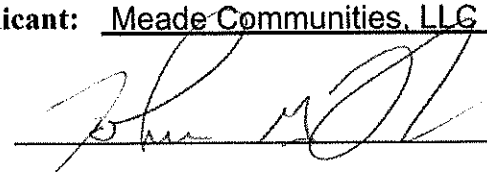
9. **Technical and Managerial Competency:** The Applicant must submit, in an attachment, a statement of technical and managerial competency. The attachment should also include a description of the Applicant and current U.S. operations, intended operations in Maryland, past work experience relevant to the community solar pilot program, general plans for partnering or contracting pilot program functions, and other items or information that demonstrate technical and managerial competency. Finally, list all states where applicant has built or operates a community solar installation at the time of this application.

10. **Affiliated Applications:** List the name of each company or entity which is affiliated with the applicant, if that company or entity has separately applied for, or intends to apply for, admission to the Maryland CSEGS Program as a Subscriber Organization. Describe the nature of each affiliation.

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

11. **Application Fee:** The Applicant must enclose the required application fee of $400 (Type A) or $50 (Types B and C)

Applicant: Meade Communities, LLC

By: 

John G. Picerne

Title: Founder

Date: 10/26/2018

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

AFFIDAVIT OF GENERAL COMPLIANCE

State of Maryland :
: ss.
County of Anne Arundel County :

John G. Picerne, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the _____ (office of Affiant) of Meade Communities, LLC (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant;

That the Applicant herein certifies to the Commission that:

The Applicant agrees to comply with the terms and conditions of all applicable electricity company tariffs and agreements with electricity companies.

The Applicant agrees to comply with all applicable requirements of the Federal Energy Regulatory Commission and PJM Interconnection, LLC.

The Applicant agrees to comply with all applicable Federal and state consumer protection and environmental laws and regulations, and Maryland PSC regulations, fees, assessment, and requirements.

The Applicant has obtained all the licenses and permits required to operate as a Subscriber Organization in the State of Maryland. The Applicant agrees that it will obtain all further licenses and permits required to carry out any future activity pursuant to its role as an approved Subscriber Organization, prior to undertaking the respective activity for which local, state or Federal licenses or permits are required.

The Applicant agrees that it shall neither disclose nor resell individual residential customer data provided to the Applicant by any Maryland electricity company. Disclosure or resale of individual non-residential customer data provided to the Applicant by a Maryland electricity company will be governed by customer contract.

The Applicant, including any of its affiliates engaged in the sale of electricity or related services, the general partners, corporate officers or directors, or limited liability company members, managers or officers of the Applicant or its affiliates:

1. Has had no civil, criminal or regulatory sanctions or penalties imposed against it within the previous ten years pursuant to any State or Federal consumer

protection law or regulation; and has not ever been convicted of a felony; or, alternatively

2. Has disclosed by attachment all such sanctions, penalties or convictions.

The Applicant further certifies that it:

1. Is not under involuntary bankruptcy/insolvency proceedings including but not limited to, the appointment of a receiver, liquidator, or trustee of the subscriber organization, or a decree by such court adjudging the subscriber organization bankrupt or insolvent or sequestering any substantial part of its property or a petition to declare bankruptcy as to reorganize the subscriber organization; and

2. Has not filed a voluntary petition in bankruptcy under any provision of any Federal or State bankruptcy/insolvency law, or its consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or without limiting the generality of the foregoing, a Subscriber Organization admitted in writing its inability to pay its debts generally as they became due, or consents to the appointment of a receiver, trustee or liquidator of it or of all or any part of its property.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this 26 day of October, 2018

Signature of official administering oath

My Commission expires April 3 2021

SUSAN SULLIVAN
Notary Public, State of Rhode Island
My Commission Expires April 3, 2021

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

VERIFICATION

State of Maryland :
: ss.
County of Anne Arundel County :

John G. Picerne, Affiant, being duly [sworn/affirmed] according to law, deposes and says that:

That he/she is the _____ (office of Affiant) of Meade Communities, LLC (Name of Applicant);

That he/she is authorized to and does make this affidavit for said Applicant;

The Applicant understands that the making of false statement(s) herein may be grounds for denying the Application or, if later discovered, for revoking any authority granted pursuant to the Application. This Application is subject to all applicable sections of the Annotated Code of Maryland as may be amended from time to time relating to perjury and falsification in official matters.

That the Applicant will supplement this Application in the event the Commission modifies the approval requirements, or requests further information and that requiring such modification or further information will delay processing of the application.

That the Applicant agrees that an approval issued pursuant to this Application may not be transferred without Commission approval.

That the Applicant understands that authorization as a Subscriber Organization requires participation in the CSEGS Pilot Program which requires the Applicant to retain project, subscriber and any other information as requested and provide that information to the Maryland Public Service Commission upon request or through required reports.

That the Applicant understands that CSEGS Pilot Program tariffs, rules, or other requirements may change over the Pilot Program in accordance with Orders or other regulatory action of the Maryland Public Service Commission.

That the facts above set forth are true and correct to the best of his/her knowledge, information, and belief and that he/she expects said Applicant to be able to prove the same at any hearing hereof.

Signature of Affiant

Sworn and subscribed before me this 26 day of October, 2018

Signature of official administering oath

My Commission expires April 3 2021

SUSAN SULLIVAN
Notary Public, State of Rhode Island
My Commission Expires April 3, 2021

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Attachment A

Subscriber Organization Bond **Travelers Casualty and Surety Company of America**

Bond No. 106843284

KNOWN ALL MEN BY THESE PRESENTS:

That we, **Meade Communities, LLC** Principal(s) and **Travelers Casualty and Surety Company of America**, a company authorized to transact surety business in the State of **Maryland**, as Surety, are held and firmly bound unto **Maryland Public Service Commission**, as Obligee, in the penal sum of Eighty Five Thousand and 00/100 **($85,000) DOLLARS**, lawful money of the United States of America, for payment of which, well and truly be made, we hereby bind ourselves, our heirs, executors, administrators, legal representatives and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has obtained or is about to obtain, from the Obligee, authorization to do business as a **Subscriber Organization** in Maryland under the Maryland Annotated Code, Public Utilities Article, § 7–306.2 and Code of Maryland Regulations, Title 20.

NOW THEREFORE, THE CONDITIONS OF THIS OBLIGATION ARE SUCH, that if the said Principal shall comply with the provisions of the said Code, licenses, all applicable Ordinances, Rules and Regulations, and any Amendments thereto, then this obligation shall not be payable, but shall otherwise remain in full force and effect, subject to the payment as set forth below.

This obligation shall become effective on the 5th day of November, 2018, and shall remain in force until cancelled.

PAYMENT under this bond shall be due if the Commission determines that **Meade Communities, LLC** is financially insolvent or unable to meet its obligations as an authorized **Subscriber Organization** in Maryland. **Travelers Casualty and Surety Company of America** will permit the Commission to direct that the proceeds of this bond be paid or disbursed to satisfy the Subscriber Organization's financial obligations to the Commission or other Maryland governmental entity. **Travelers Casualty and Surety Company of America** will permit a Maryland court to direct proceeds of the bond be paid to a person that has obtained a judgment against a authorized subscriber organization and has previously attempted to collect the judgment through all other means available through the Court.

PROVIDED, that the penal amount of this Bond may not exceed its face value during the time the Bond remains in force and the Surety may terminate its liability hereunder as to future acts of the Principal at any time by giving sixty (60) days written notice of such termination to the Obligee.

SIGNED AND SEALED this 5th day of November, 2018

Meade Communities, LLC

BY: _____

Travelers Casualty and Surety Company of America

BY: _____
Nathan J. Carlone, Attorney-in-fact

TRAVELERS

Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Nathan J. Carlone, of East Weymouth, Massachusetts,** their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February, 2017.**

State of Connecticut

City of Hartford ss.

By: _____
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February, 2017**, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June, 2021**

Marie C. Tetreault
Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this 5th day of November, 2018

Kevin E. Hughes, Assistant Secretary

To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Attachment B: Planned Project Information

Address of Facility Site: (Street, City, ZIP)
18627 Falls Road
Hampstead, MD 21074

Local Government Jurisdiction (City, County, Town, Etc.):

Pilot Program Category – ☐ Open ☑ LMI ☐ Small/Brownfield/Other

Project Capacity in kilowatts A/C 2,000 kW

Expected Number of Subscribers for Project:
☑ Residential 300

% of LMI subscribers 30% % Low Income Customers 10%

☐ Commercial

☐ Industrial > 600 kW demand.

Utility Service Territory ☑ BGE ☐ DPL ☐ Potomac Edison ☐ PEPCO ☐ SMECO

Applicant should check each box for which the applicant intends to:

☐ Own the facility;
☐ Operate the facility;
☐ Own and operate the facility, or
☑ Collectively control the facility as a group of subscribers.

Applicant should check the appropriate box for the proposed facility,
Indicate whether the applicant intends to:

☐ Convert an existing facility that it will own or operate
☐ Convert an existing facility that it will control as a group of subscribers
☐ Develop a new facility that it will operate
☐ Develop a new facility that it will operate as a group of subscribers
☐ Develop a new facility, for eventual operation by a different S/O
☐ Own or operate a new facility to be developed by others
☐ Other describe)

☐ Check box if deposits will be required of customers

(Applicant should attach additional pages for each project as needed)

Subscriber Organization Application for Authorization to Participate in the Community Solar Energy Generating System ("CSEGS") Pilot Program

Attachment C: Members of Subscriber Group

Members of Subscriber Group must match Subscriber List provided to Electric Co.

Member Name	Service Address	Utility Account Number

(Applicant should attach additional pages for member list as needed)

9. Technical and Managerial Competency

Meade Communities, LLC is based in Fort Meade, Maryland. Corvias Military Living, LLC is the parent company of the managing member of Meade Communities, LLC.

There are currently 8.2 MW of non-community solar servicing Meade Communities, LLC. The owner of this solar is Solar Mission 1, LLC and operator is Onyx Asset Services Group, LLC. Meade Communities, LLC is the subscriber organization, not developer, contractor, or owner of the solar projects. Meade Communities, LLC handles all metering and billing for the offtakers/subscribers of this existing solar. Nationally, Corvias (a parent company of Meade Communities, LLC) oversees utility billing for over 25,000 units.

There are no other community solar installations associated with this entity.

10. Affiliated Applications

No affiliated entities or companies have or intend to apply for admission to the Maryland CSEGS Program as a Subscriber Organization.

LandScope America

Maryland GreenPrint Targeted Ecological Areas

Overview

The Maryland GreenPrint Targeted Ecological Areas represent those lands that the State wants to protect because of their high ecological value.

Data Layer Description

Source

Maryland Department of Natural Resources

What this data layer represents

The Maryland GreenPrint Targeted Ecological Areas are a limited number of areas that rank exceptionally high for ecological criteria and that have a practical potential for preservation.

Location

Maryland

Description

Targeted Ecological Areas are a limited number of areas that rank exceptionally high for ecological criteria and that have a practical potential for preservation. The first step was to create an ecological baseline composed of several ecological datasets.

The first component is the original Green Infrastructure Assessment (1995 – 2000) which identifies large, contiguous blocks of significant forests and wetlands that contain Maryland's most ecologically important remaining lands. The Green Infrastructure's hub and corridor network of habitat allows plant and animal migration, reduces forest fragmentation if protected, and provides important ecosystem services, such as biodiversity, cleaning air and water, storing nutrients, and protecting areas against storm and flood damage.

The rare species habitat component identifies areas where biodiversity conservation is needed to protect and restore Maryland's rare, threatened and endangered species, declining wildlife of greatest conservation need, and the key habitats and natural communities required to support them.

The aquatic life hotspots component identifies a network of lands leading to aquatic areas where conservation is needed to protect and restore areas of high aquatic biodiversity. Freshwater hotspots have been identified, and estuarine and marine areas will be identified.

The water quality protection component identifies sensitive lands such as forests, wetlands, and steep slopes where preservation is important for water quality.

From the ecological baseline, areas that scored in the top 10 percent for each of the components were merged to create the Targeted Ecological Areas.

How you might make use of this data layer

The Maryland GreenPrint Targeted Ecological Areas represent the most ecologically valuable areas–the ones that provide the most "bang-for-the-conservation-buck" where the State is focusing its efforts to protect. These lands include

- large blocks of forests and wetlands
- wildlife and rare species habitats
- streams and watersheds with aquatic biodiversity
- forests important for protecting water quality
- coastal ecosystems
- lands important for climate change adaptation
- areas supporting important fisheries

How to get more information

Contact
Kevin J. Coyne
Water Resource Engineer - Ecosystem Analysis and Targeting, Maryland Department of Natural Resources
580 Taylor Ave E-2 Tawes Building
Annapolis, MD 21401
(410) 260-8985

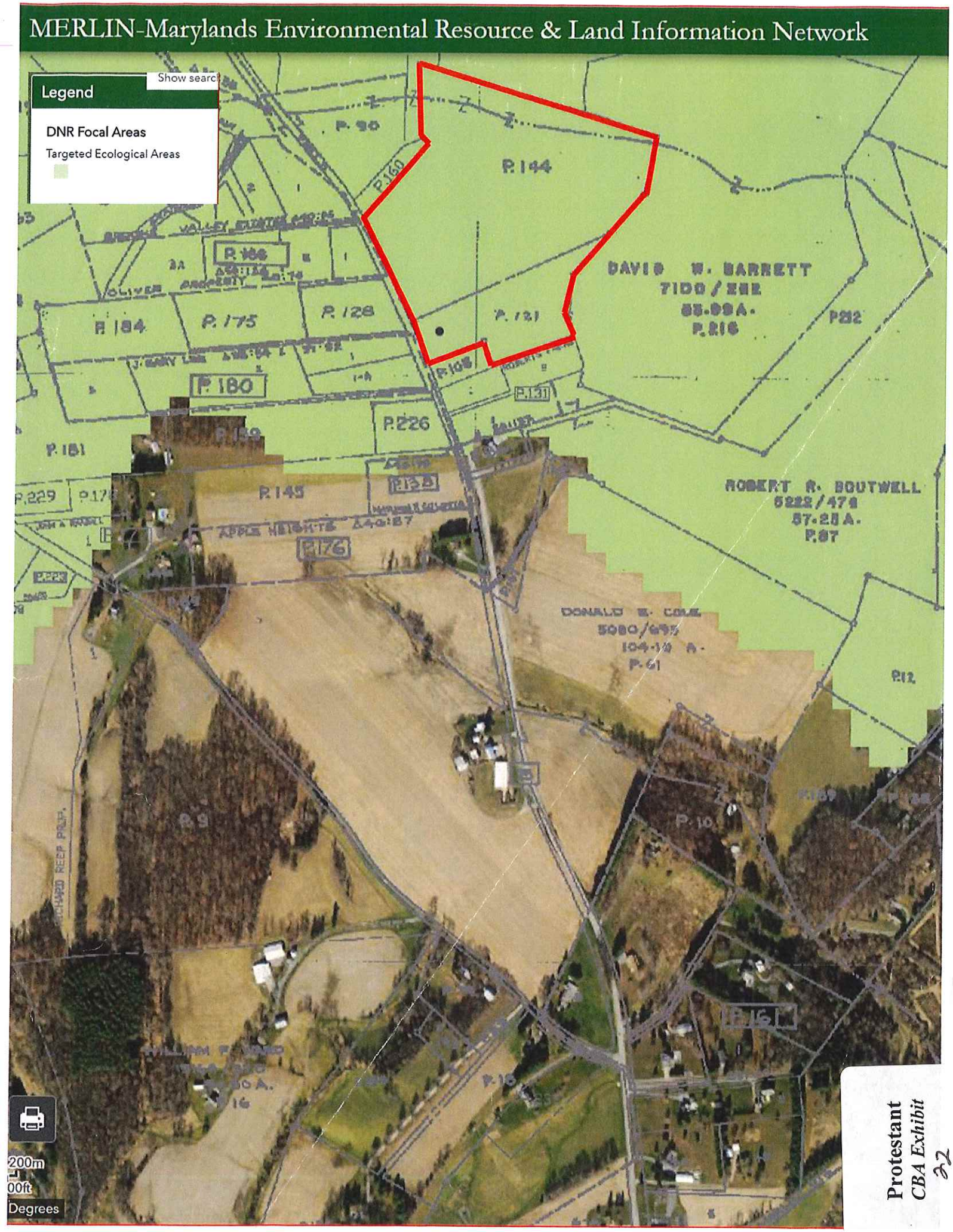
Access and use constraints

Access Constraints: None
Use Constraints: The Department of Natural Resources makes no warranty, expressed or implied, as to the use or appropriateness of Spatial Data, and there are no warranties of merchantability or fitness for a particular purpose or use. The information contained in Spatial Data is from publicly available sources, but no representation is made as to the accuracy or completeness of Spatial Data. The Department of Natural Resources shall not be subject to liability for human error, error due to software conversion, defect, or failure of machines, or any material used in the connection with the machines, including tapes, disks, CD-ROMs or DVD-ROMs and energy. The Department of Natural Resources shall not be liable for any lost profits, consequential damages, or claims against the Department of Natural Resources by third parties. The liability of the Department of Natural Resources for damage regardless of the form of the action shall not exceed any distribution fees that may have been paid in obtaining Spatial Data.

Credits

Maryland Department of Natural Resources

Protestant
CBA Exhibit
21



Protestant
CBA Exhibit
32

Protestant
CBA Exhibit
23

Case No.: 2019-183-X

Exhibit Sheet

AEN 10-20-19

	Petitioner/Developer	Protestants
No. 1	Amended site plan	
No. 2	Original site plan	
No. 3	RC 8 zone Narrative	
No. 4	Leffner CV	
No. 5	My Neighborhood Map w/ property outlined.	
No. 6	6A-6C Aerial Exhibits	
No. 7	7A-U Site photos	
No. 8	DCE Solar brochure	
No. 9	SMA "Sunny Tripower" brochure	
No. 10	Amended Site plan w/ red + green revisions	
No. 11		
No. 12		

SOIL TYPES

MAP UNIT SYMBOL	SOIL NAME	HYDROLOGIC SOIL GROUP	CLASSIFICATION	HYDRIC	% OF PROPERTY
BhD	BRINKLOW CHANNERY LOAM, 15-25% SLOPES	C	NOT PRIME FARMLAND	NO	22.4%
3dA	GLENELGLOAM, 0-3% SLOPES	B	PRIME FARMLAND	NO	0.3%
3dB	GLENELGLOAM, 3-8% SLOPES	B	PRIME FARMLAND	NO	6.0%
3dC	GLENELG LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	22.1%
3eC	GLENELGCHANNERY LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	9.9%
3hB	GLENVILLE SILT LOAM, 3-8% SLOPES	C/D	PRIME FARMLAND	NO	9.6%
3hC	GLENVILLE SILT LOAM, 8-15%SLOPES	C	FARMLAND OF STATEWIDE IMPORTANCE	NO	1.9%
HbA	HATBORO SILT LOAMS, 0-3% SLOPES	B/D	NOT PRIME FARMLAND	YES	26.8%
MdE	MANOR BRINLOW COMPLEX, 25-45% SLOPES, VERY ROCKY	B	NOT PRIME FARMLAND	NO	1.2%

SITE DATA

1. EXISTING ZONING: RC-2, RC-6
2. PROPERTY AREA:
   - PARCEL 144: ±26.34 xC.
   - PARCEL 121: ±6.25 AC.
   - TOTAL: ±32.59 xC.
3. PROJECT AREA:
   - PARCEL 144: ±5.48 AC.
   - PARCEL 121: ±2.67 AC.
   - TOTAL: ±8.13 AC.
4. PROPERTY INFORMATION:
   - A. EXISTING PREMISES ADDRESS: 18827 FALLS ROAD & ADJACENT TO 18827 FALLS ROAD
   - B. TAX ACCOUNT NUMBER:
     - PARCEL 144: 0523011126
     - PARCEL 121: 0504009216
   - C. DEED REFERENCE:
     - PARCEL 144: 36664 /00488
     - PARCEL 121: 33970 /00242
   - D. COUNCILMANIC DISTRICT: 3
   - E. ELECTION DISTRICT: 5
   - F. CENSUS TRACT: 405000
5. BALTIMORE COUNTY* ZONING MAP REFERENCES:
   - A. GIS TILE: 015A1
   - B. TAX MAP: 0015
   - C. PARCELS: 0144 & 0121
   - D. GRID: 0001
   - E. WATERSHED: PRETT*BOY RESERVOIR
   - F. BASIC SERVICES - WATER MAP: N/A
   - G. BASIC SERVICES - SEWER MAP: N/A
   - H. REGIONAL PLANNING DISTRICT: PRETT*BOY
6. EXISTING LAND USE: VACANT / RESIDENTIAL
7. PROPOSED LAND USE: SOLARFACILITY - 3MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION AREAS - NC MAJOR SUBDIVISIONS ON SEPTIC

ZONING

1. EXISTING ZONING: RC-2, RC-6
2. THIS DEVELOPMENT* PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT* IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUA., AND ARTICLE 4F (SCLAR FACILITIES OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMP..Y WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/6/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

ENVIRONMENTAL/SITE NOTES

1. PROPERTY BOUNDARY, TOPOGRAPHIC AND EXISTING FEATURES ARE SHOWN BASED ON SURVEY COMPLETED BY KARINS AND ASSOCIATES, DATED 3/11/2019.
2. ALL STREAMS, SEEPS, BODIES OF WATER, WETLANDS, AND FORESTED AREAS ARE BASED ON FIELD WORK COMPLETED BY GEO-TECHNOLOGY ASSOCIATES, INC. IN MARCH 2018
3. TOPOGRAPHIC, EXISTING FEATURES, AND ENVIROMENTAL INFORMATION SHOWN OUTSIDE OF THE PROPOSED PROJECT AREA IS SUPPLEMENTED BY GIS FROM BALTIMORE COUNTY, RECEIVED 12/4/2018 AND SUPPLEMENTED WITH AERIAL PHOTOMETRY WHERE NECESSARY.
4. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS.
5. FLOODPLAIN IS SHOWN BASED ON MARCH 2019 SITE STUDY BY GEO-TECHNOLOGY ASSOCIATES, INC., AGREEING WITH FEMA PANEL NUMBER 24051C0003F. THERE IS A FLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED PROJECT AREA.
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND NRCS WEB SOIL SURVEY WEBSITE ON 12/5/2018.
7. PER LETTER DATED 4/10/2019 FROM THE FISH AND WILDLIFE SERVICE, IT IS UNLIKELY THAT RARE, THREATENED, OR ENDANGERED SPECIES WOULD OCCUR WITHIN THE PROJECT AREA. NO FURTHER BIOLOGICAL ASSESSMENT IS REQUIRED.
8. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/ RELOCATION OF EXISTING SITE ACCESS.
9. THERE ARE NO KNOWN ENTITIES INCLUDED ON THE MARYLAND HISTORICAL TRUST INVENTORY/MEDUSA ONLINE MAP BALTIMORE COUNTY LANDMARKS LIST, AND BALTIMORE COUNTY GIS WITHIN THE SITE OR ON ADJOINING PROPERTIES, AS CONFIRMED BY BALTIMORE COUNTY* EMAIL DATED 3/7/2019.
10. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

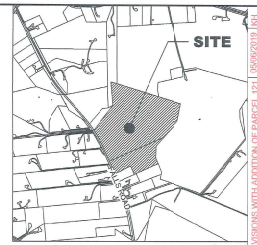
ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 1862' FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DIS'ANCE OF 2,469FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 826.62, (2) N 04°18'39" E 383.24, (3) S 63°37'47" E 1251.74, (4) S 20°33'00" W 287.15, (5) S 49°45'00" W 312.76, (6) S 74°16'00" W 1047.89, (7) S 74°16'00" W 20.00, (8) N 16°34'15" W 446.98, (9) N 21°59'09" W 155.10, (10) N 48°23'40" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER/JLE 36654, FOLD 488, CONTAINING 28.393 ACRES, LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.
2. 18827 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,262 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAC WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCE: (1) N74°16'00" E 1047.89, (2) S 49°45'00" W 247.08, (3) S 16°43'18" E 210.79, (4) S 12°35'30" E 104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 155.00, 7 S 74°30'00" W 291.40, (8) N 15°44'00" W 202.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 3970, FOLIO 242, CONTAINING 6.116 ACRES, LOCA'ED IN THE 5TH ELECTON DISTRICT AND THE 3RD COUNCIL DISTRICT.

ADJOINING LANDOWNERS

MAP 16 PARCEL 003 - LOUISA Y. HOPKINS REVOCABLE TRUST - 21336/135 - ZONED: RC-2 RC-6 - USE: AGRICULTURAL
MAP 15 PARCEL 105 - LINDA AULT - 33544/457 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 124 - KEVIN & MARIA WEBB - 29382/340 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 2 - JOHN & MICHELLE DWYER - 37024/30 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 1 - TAMMY J WITT - 29857/393 - ZONED: RC-2 - USE: RESIDENTIA.
MAP 15 PARCEL 169 - MARY R FOWBLE - 24392/453 - ZONED: RC-2 RC-6 - USE: AGRICULTURAL
MAP 15 PARCEL 186 LOT 1 - WAYNE & ALLENE YEILE - 13613/724 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 186 LOT 2 - KENNETH R & JANET L HARRY - 5734/62 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 175 - RICHARD JAMES JR & KATHERINE REGINA BEMANES TRUSTEES - 30172/337 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1 - LINDA C HOGAN & JOHN B DIXON III - 12900/90 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1A - JOHN M JR. & DONNA M STAATER - 7014/666 - ZONED: RC-2- USE: RESIDENTIAL
MAP 15 PARCEL 184 - GREGORY & TRACY CZARSKI - 36381/99 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 216 - RICHARD CIMAN AND MARY ZOGHIATES - 23281/472 - ZONED: RC-2 RC-6 - USE: RESIDENTIAL
MAP 15 PARCEL 249 - ALEXANDER MCLANE & AUBREY ANN HOPKINS - 33657/61 - ZONED: RC-2, RC-6 - USE: AGRICULTURAL
MAP 51 PARCEL 186 LOT 3A - DARLENE S BENNETT - 9332/36 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 51 PARCEL 186 LOT 3E - GEORGE S JR & CHERYL PIER WEERS - 7517/313 - ZONED: 'C-2 - USE: RESIDENTIAL

OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION
SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OVERHEAD ELECTRIC
- FEMA FLOODPLAIN
- STREAM
- 100' STREAM BUFFER
- WETLAND LIMITS
- 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21074
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

PETITIONER'S EXHIBIT NO. No 1

GRAPHIC SCALE IN FEET
0 50 100 200

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	05/09/2019	NJL

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 22501, EXPIRATION DATE

KHA PROJECT 114066000
DATE 05/09/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR

PREPARED FOR
POWERFACTOR COMPANY

BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1

Plotted By: Hutton, Heather Sheet: Set-Falls Road Solar Layout: SHEET 1 OVERALL EXISTING CONDITIONS PLAN May 09, 2019 - 06:36:48pm K:\BAL_CIV\114066000-Falls Rd Solar\CAD\ProjSheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
Kimley-Horn and Associates, Inc. and its consultants and assigns shall not be liable for any modification made to this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. and its consultants and assigns for any purpose not intended by Kimley-Horn and Associates, Inc. and its consultants and assigns at the sole risk of the user, and the user agrees to defend, indemnify and hold harmless Kimley-Horn and Associates, Inc. and its consultants and assigns from all claims, damages, losses and expenses including attorney's fees arising out of or resulting therefrom. Any transfer of this document to any other party shall indicate that the document was prepared by Kimley-Horn and Associates, Inc. and its consultants and assigns.

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'

GRAPHIC SCALE IN FEET
0 30 60 120

NORTH

KEY MAP
SCALE: 1" = 500'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- LOD — PROJECT AREA
- OHE — OVERHEAD ELECTRIC
- FFP — FEMA FLOODPLAIN
- US — STREAM
- SB — 100' STREAM BUFFER
- WETLAND LIMITS
- WB — 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- XX — CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER
(P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZOCHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21074
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

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1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL AND ARTICLE 4F (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WIL. COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	05/05/2019	KH

Kimley»Horn

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1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

STATE OF MARYLAND — NICHOLAS JOSEPH LEFFNER — 21627 — REGISTERED PROFESSIONAL ENGINEER

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21627, EXPIRATION DATE: [illegible]

KHA PROJECT 114066000
DATE 05/09/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR

PREPARED FOR
POWERFACTOR COMPANY

BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1A

Plotted By: Hutton, Heather Sheet Set: Falls Road Solar Layout: SHEET 1A EXISTING CONDITIONS PLAN May 09, 2019 - 06:36:51pm K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
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BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35FT)	75-FT
REAR	35-FT	50-FT[2]	400-FT
SIDE[1]	35-FT	50-FT[2]	50-FT[1]
BUILDING HEIGHT (MAX)	35-FT	15-FT[3]	±15-FT

[1] - 10-FT REQUIRED FOR SOLAR USE
[2] - 10-FT REQUIRED FROMADJACENT STRUCTURE
[3] - INTERNAL SETBACKS OFT, PROVIDED WITH ARRAY

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 18627 FALLS ROAD: BEGINNING AT A POINTON THE EAST SIDE OFFALLS ROAD (WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2.48FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING S"REET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THEHCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 525.62, (2) N 04°18'53" E 393.24, (3) S 83°37'45" E 120.74, (4)S 20°33'30" W 287.15, (5) S 49°48'00" W 112.78, (6) S 74°16'00" W 1047.8i, (7) S 74°16'00"W 20.00, (8) N 18°34'16"W 446.88, (9) N 21°59'00" W 159.10, (10) N 48°2'40" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED N DEED LIBER JLE 36664, FOLD 498, CONTAINING 26.193 ACRES, LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

2. 18627 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3.062 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROADWHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE (1) N74°16'00" E 1047.86, (2) S 49°48'00" W 247.09, (3) S 16°42'18" E 210.79, (4) S 12°28'30" E104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 150.00, 7 S 74°30'00" W 290.40, (8) N 15°44'40" W 232.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DBED LIBER JLE 31870, FOLIO 242, CONTAINING 6.116 ACRES, LOCATED IN THE 5TH ELECTION DISTRICT AID THE 3RD COUNCIL DISTRICT.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	
	PARCEL 144:	±26.34 AC.
	PARCEL 121:	±6.25 AC.
	TOTAL:	±32.59 AC.
3.	PROJECT AREA:	
	PARCEL 144:	±6.46 AC.
	PARCEL 121:	±2.67 AC.
	TOTAL:	±9.13 AC.
4.	PROPERTY INFORMATION:	
A.	EXISTING PREMISES ADDRESS:	18627 FALLS ROAD & ADJACEIT TO 18627 FALLS ROAD
B.	TAX ACCOUNT NUMBER:	
	PARCEL 144:	0523011126
	PARCEL 121:	0504005218
C.	DEED REFERENCE:	
	PARCEL 144:	36664 /00498
	PARCEL 121:	33070 /00242
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	5
F.	CENSUS TRACT:	405000
5.	BALTIMORE COUNTY ZONING MAP REFERENCES:	
A.	GIS TILE:	015A1
B.	TAX MAP:	0015
C.	PARCELS:	0144 & 3121
D.	GRID:	0001
E.	WATERSHED:	PRETT'BOY RESERVOIR
F.	BASIC SERVICES - WATER MAP:	N/A
G.	BASIC SERVICES - SEWER MAP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETT'BOY
6.	EXISTING LAND USE:	VACANT / RESIDENTIAL
7.	PROPOSED LAND USE:	SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION
ARSAS - NO MAJOR SUBDIVISIONS ON SEPTIC

SITE NOTES

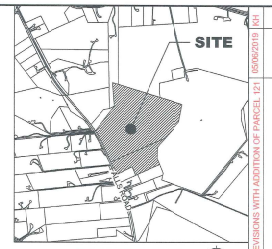
1. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/ RELOCATION OF EXISTING SITE ACCESS.
2. STORMWATER TREATMENT WILL BE MET VIA IMPLEMENTATION OF MDE SOLAR GUIDANCE (HB 1117), AND A COMBINITION OF NONROOFTOP DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR MICRO-SCALE ESD DEVICES.
3. 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
4. SITE TO BE STABILIZED WITH LOWGROWTH SEED MIX, AND POLLINATOR SPECIES OUTSIDE OF ARRA1 AREA.
5. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE
6. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
7. ANY SIGNAGE PROPOSED SHALL COMPLYWITH BCZR § 450.
8. PARKING:
   REQUIRED: 0 SPACES
   PROPOSED: 0 SPACES
9. BASIC SERVICES - TRANSPORTATION MAP N/A
10. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
11. THE PROPOSED SOLAR FACILITY WILL BESUBJECT TO BCZR § 4F-107 NSL 4/20/2019
12. THE PROPOSED SOLAR FACILITY WILL NOT EXCEED THE MAXIMUS PERMITTED NUMBER OF FACILITIES ALLOWED IN ITS RESPECTIVE COUNCILMANIC DISTRICT IF APPROVED. PETITIONER SHALL SUBMIT TO THE COUNTY AT THE TIME OF BUILDING PERMIT APPLICATION THE FINAL FIXED LOCATION AND AREA OF THE FACILITY BY COORINATE DATA.
13. LIGHTING SHALL BE LIMITED TO WHAT IS REQUIRED FOR SECURITY PURPOSES ONLY AND WILL BE SITED IN SUCH A WAY AS TC HAVE iIMMIAL SPILLAGE ONTO NEIGHBORING PROPERTIES.
14. NO DELIVERIES OR OUTDOOR MAINTENANCE WHICH MAY GENERATE EXCESSIVE NOISE MAY OCCURON-SITE BETWEEN THE HOURS OF 6 PM THROUGH 6 AM.
15. THERE ARE NO KNWIN RARE SPECIES, THREATENED SIECIES OR ENDANGERD SPECIES HABITAT, HISTORICAL OR ARCHEOLOGICAL AREAS ON SITE.
16. STORMWATER MANAGEMENT TO BE IN COMPLIANCE WITH MDE DESIGN GUIDANCE FOR SOLAR PANELS.
17. THE LOCATION OF THE PANELS AS SHIWN HEREON S SCHEMATIC AND MAY CHANGE AS THE PROJECT EVOLVES TO FINAL DESIGN, HOWEVER, ALL PANELS SHALL BE LOCATED WITHIN THE AREA OF THE SPECIAL EXCEPTION AS SHOWN HEREON.

VARIANCE REQUESTS

1. IF NECESSARY, TO GRANT VARIANCE RELIEF FROM BCZR §1A01.3.B.3.TO PERMIT A SOLAR FACILITY "O BE AS CLOSE AS 0 FEET TO AN INTERNAL LOT LINE; AND
2. FOR SUCH OTHEI AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAC
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443)559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443)743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

GRAPHIC SCALE IN FEET
0 50 100 200

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	05/09/2019	AS

Kimley»Horn
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1801 PORTER ST., SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 22903 EXPIRATION DATE: 07/09/2020

KHA PROJECT 114066000
DATE 05/09/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY STM
CHECKED BY NJL

OVERALL SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2

Plotted: Burkholton, Heather Sheet Set: Falls Road Solar Layout: SHEET 2 OVERALL SITE PLAN May 09, 2019 06:37:03pm K:\BAL_CIV\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
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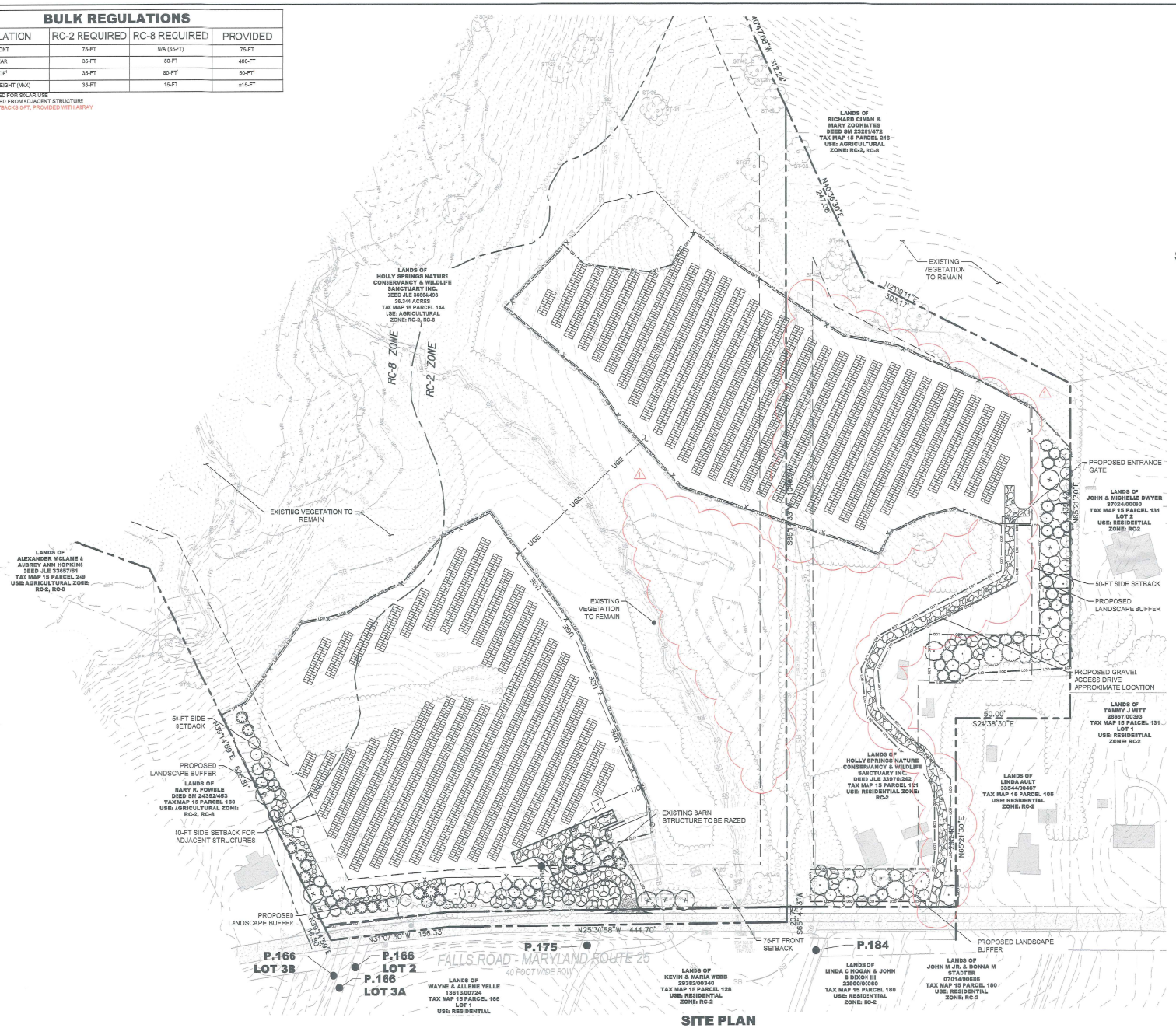
BULK REGULATIONS

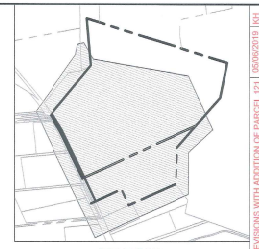
REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT[2]	50-FT[3]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

1 - 50-FT REQUIRED FOR SOLAR USE
2 - 80-FT REQUIRED FROM ADJACENT STRUCTURE
3 - INTERNAL SETBACKS 0-FT, PROVIDED WITH ARRAY



SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'



KEY MAP
SCALE: 1" = 500'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN TREE (PINUS NIGRA)
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- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUAFY, INC.
ATTN: MARY ZODHIATES
4209 BECK_EYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

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EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

GRAPHIC SCALE IN FEET
0 30 60 120

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	05/09/2019	KH

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KHA PROJECT 114066000
DATE 05/09/2019
SCALE AS SHOWN
DESIGNED BY N.L.
DRAWN BY S.T.M.
CHECKED BY N.L.

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2A

Richard Buchalter, Heather Sheet Sat-Falls Road Solar Layout SHEET 2A SITE PLAN May 09, 2019 06:37:11pm K:\BAL_CIVIL\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
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GROWTH TIERS

TIER 4: PRESERVATIONAND CONSERVATION AREAS - NO MAJOR SUBDIVISIONS ON SEPTIC

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4F (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/6/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

ENVIRONMENTAL/SITE NOTES

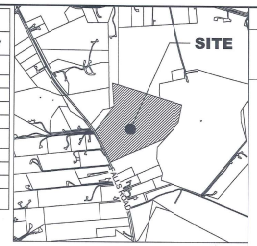
1. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE.
2. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS
3. ALL STREAMS, SPRINGS, SEEPS, BODIES OF WATER, AND WETLANDS ARE BASED ON BALTIMORE COUNTY GIS REFERENCED ON 12/5/2018 AND HAVE NOT BEEN FIELD DELINEATED.
4. VEGETATED AREAS ARE SHOWN BASEDON AERIAL IMAGERY AVAILABLE ON 12/6/2018. FORESTED AREAS HAVE NOT BEEN FIELD DELINEATED.
5. FLOODPLAIN IS SHOWN BASED ON BALTIMORE COUNTYGIS, AGREEING WITH FEMA PANEL NUMBER 24005C0020F. THERE IS A FLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED SITE AREA.
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND NRCS WEB SOIL SURVEY WEBSITE ON 12/5/2018.
7. THERE ARE NO KNOWN RARE, THREATENED, OR ENDANGERED SPECIES ON STE BASED ON THE US FISH AND WILDLIFE SERVICE ONLINECRITICAL HABITAT MAP, REFERENCED ON12/2/2018.
8. STORMWATER TREATMENT WILL BE MET VIA A COMBINTION OF NON-ROOFTOP DISCONNECT CREDIT, SHEET FLOW TO PRESERVATIONAREA CREDIT, AND/OR IMPLEMENTATIONOF MDE SOLAR GUIDANCE.
9. UTILITIES ARE SHOWN AS KNOWN AS OF 12/6/2018. EASIMENTS AND FIELD LOCATIONS OF UTILITIES HAVE NOT BEEN VERIFIED VIAFIELD SURVEY.
4. THERE ARE NO KNOWN ENTITIES INCLUDED ON THE MARYLAND HISTORICAL TRUST INVENTORY MIDLSA ONLINE MAP, BALTIMORE COUNTY LANDMARKS LIST, AND/ BALTIMORE COUNTY GIS WITHIN THE SITE OR ON ADJOINING PROPERTIES.
5. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCEOF VEGETATION IN THE FOREST BUFFER, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMENTAL PROTECTION AND SUSTAINABILITY.
6. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
7. THE VEGETATIVE COVER SHOWN WAS PROVIDED BY AERIAL IMAGERY DATED 12/6/2018.
8. WETLANDS SHOWN WERE PROVIDED BY THE NATIONALWETLAND INVENTORY ONLINE WETLANDMAPPER ON 12/5/2018.
9. STREAMS SHOWN WERE PROVIDED BY BALTIMORE COUNTY GIS DATED 12/6/2018.
10 SITE TO BE STABILIZED WITH LOW-GROWTH POLLINATOR SEED MIX.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	26.39 AC.
3.	PROJECT AREA	10.50 ACs
4.	PROPERTY INFORMATION:	
A.	EXISTING PREMISES ADDRESS	ADJACENT TO 13267 FALLS RD
B.	TAX ACCOUNT NUMBER:	0523015126
C.	DEED REFERENCE:	36664 / 00498
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	5
F.	CENSUS TRACT:	406000
4.	BALTIMORE COUNTY ZONING MAP REFERENCES:	
A.	GIS TILE	
B.	TAX MAP:	0015
C.	PARCEL	0144
D.	GRID:	0001
E.	WATERSHED:	PRETTYBOY RESERVOIR
F.	BASIC SERVICES - WATER MAP	N/A
G.	BASIC SERVICES - SEWER MAP	N/A
H.	REGIONAL PLANNING DISTRICT	PRETTYBOY
5.	EXISTING LAND USE:	VACANT
6.	PROPOSED LAND USE:	SOLAR FACILITY - 2MW MAX. (SPECIAL EXCEPTION)

SOIL TYPES

MAP UNIT SYMBOL	SOIL NAME	HYDROLOGIC SOIL GROUP	CLASSIFICATION	HYDRIC?	% OF PROPERTY
BhD	BRINKLOW CHANNERY LOAM, 15-25% SLOPES	C	NOT PRIME FARMLAND	NO	23.8%
CdA	CODORUS SILT LOAMS, 0-3% SLOPES	C	PRIME FARMLAND	YES	0.1%
GdA	GLENELG LOAM, +-3% SLOPES	B	PRIME FARMLAND	NO	0.4%
GdB	GLENELG LOAM, +-8% SLOPES	B	PRIME FARMLAND	NO	1.0%
GdC	GLENELG LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	13.7%
GeC	GLENELG CHANNERY LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	12.1%
GhB	GLENVILLE SILT LOAM, 3-8% SLOPES	C/D	PRIME FARMLAND	NO	11.3%
GhC	GLENVILLE SILT LOAM, 8-15% SLOPES	C	FARMLAND OF STATEWIDE IMPORTANCE	NO	0.4%
HbA	HATBORO SILT LOAMS, 0-3% SLOPES	B/D	NOT PRIME FARMLAND	YES	35.0%
MdE	MANOR-BRINLOW COMPLEX, 25-45% SLOPES, VERY ROCKY	B	NOT PRIME FARMLAND	NO	2.2%



LOCATION MAP
SCALE: 1" = 1000'

ZONING PROPERTY DESCRIPTION

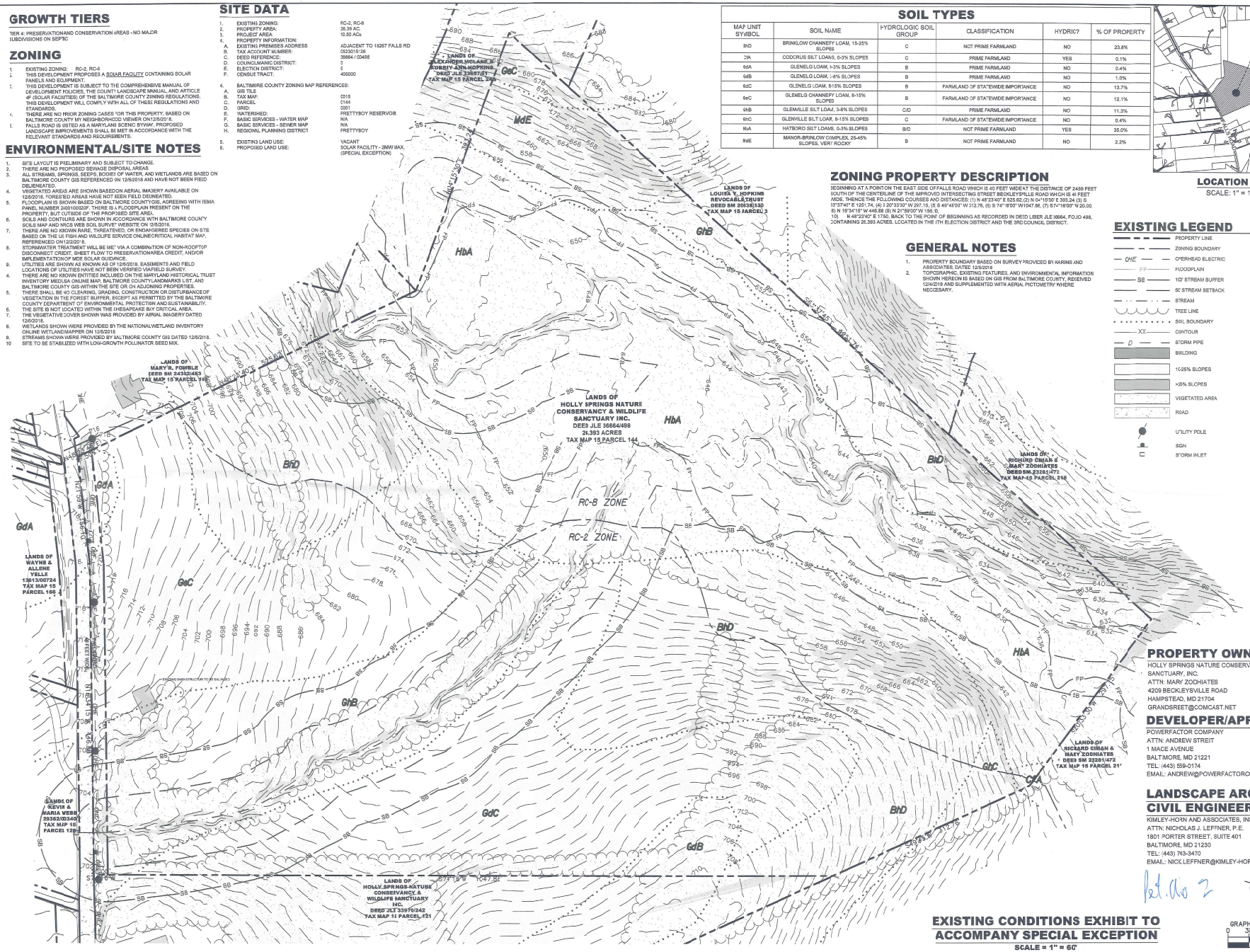
BEGINNING AT A POINT ON THE EAST SIDE OFFALLS ROAD WHICH IS 40 FEET WIDEAT THE DISTANCE OF 2459 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 525.62,(2) N 04°15'30" E 393.24, (3) S 33°37'40" E 1251.74, (4) S 20°33'30" W 297.15, (5) S 49°45'00" W 312.76, (6) S 74° 8'00" W1047.86, (7) S74°16'00" N 20.00 8) N 16°34'15" W 448.88 (9) N 21°59'00"W 156.10, 10) N 48°23'40" E 1750, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 16664, FOLIO 498, CONTAINING 26.393 ACRES, LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

GENERAL NOTES

1. PROPERTY BOUNDARY BASED ON SURVEY PROVIDED BY KARINS AND ASSOCIATES, DATED 12/5/2018
2. TOPOGRAPHIC, EXISTING FEATURES, AND ENVIRONMENTAL INFORMATION SHOWN HEREON IS BASED ON GIS FROM BALTIMORE COUNTY, RECEIVED 12/4/2018 AND SUPPLEMENTED WITH AERIAL PICTOMETRY WHERE NECCESARY.

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- OHE — OVERHEAD ELECTRIC
- FP — FLOODPLAIN
- SB — 10' STREAM BUFFER
- 50' STREAM SETBACK
- STREAM
- TREE LINE
- SOIL BOUNDARY
- XX — CONTOUR
- D — STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- VEGETATED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET



PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY& WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

LANDSCAPE ARCHITECT/ CIVIL ENGINEER

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 763-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

Ref. No 2

NORTH

GRAPHIC SCALE IN FEET
0 30 60 120

EXISTING CONDITIONS EXHIBIT TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'

Kimley»Horn

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1001 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

STATE OF MARYLAND — NICHOLAS JOSEPH LEFFNER — 21430 — REGISTERED PROFESSIONAL ENGINEER

No.	REVISIONS	DATE	BY

KHA PROJECT 114066000
DATE 12/7/2018
SCALE AS SHOWN
DESIGNED BY N.J.L.
DRAWN BY HHH
CHECKED BY N.J.L.

EXISTING CONDITIONS EXHIBIT TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR

PREPARED FOR POWERFACTOR COMPANY

BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1

Plotted By: Hatton, Heather Sheet Set: Falls Road Solar Layout: EXISTING CONDITIONS EXHIBIT December 06, 2018 05:04:28pm K:\BAL_CIVIL\114066000- Falls Rd Solar\CAD\PlanSheets\EXISTING CONDITIONS EXHIBIT.dwg
This document, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

ENVIRONMENTAL/SITE NOTES

1. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE.
2. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS
3. ALL STREAMS, SPRINGS, SEEPS, BODIESOF WATER, AND WETLANDS ARE BASED ON BALTIMORE COUN'Y GIS REFERENCED ON 12/5/2018 AND HAVE NOT BEEN FIELD DELINEATED.
4. VEGETATED AREAS ARE SHOWN BASED ON AERIAL IMAGERY AVAILABLE ON 12/5/2018. FORESTED AREAS HAVE NOT BEEN FIELD DELINEATED.
5. FLCODPLAIN IS SHOWN BASED ON BALTIMORE COUNTY 3IS, AGREEING WITH FIMA PANEL NUMBER 24051008D3F. THERE IS AFLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED SITE AREA
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND NRCS WEB SOIL SURVEYWEBSITE ON 1/5/2018
7. THERE ARE NO KNOWN RARE, THREATENED, OR ENDANGERED SPECIES ON SITE BASED ON THE USFISH AND WILDLIFE SERVICE ONLINE CRITICAL HABITAT MAP, REFERENCED ON 12/2/2018.
8. STORMWATER TREATMENT WILL BE METVIA A COMBINATION OF NON-ROOFTO³ DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR IMPLEMENTATION 3F MDE SOLAR GUIDANCE.
9. UTILITIES ARE SHOVN AS KNOWN AS OF 12/6/2018. EASEMENTS AND FIELD LOCATIONS OF UTILITIES HAVE NOT BEEN VERIFIED VIA FIELD SURVEY.
4. THERE ARE NO KNOWN ENTITIES INCLUCED ON THE MARYLAND HISTORICAL TRUST INVENTORY' MEDUSA ONLINE MAP, BALTIMORE COUNTY ,ANDMARKS LIST, AND BALTIMORE COUN'Y GIS WITHIN THE SITI OR ON ADJOINING PROPERTIES.
5. THERE SHALL BE NO CLEARING, GRADING, CONSTRUCTION OR DISTURBANCE 9F VEGETATION IN THE FOREST BUFFER, EXCEPT AS PERMITTED BY THE BALTIMORE COUNTY DEPARTMENT OF ENVIRONMEN'AL PROTECTION AND SUSTAINABILITY.
6. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.
7. THE VEGETATIVE COVER SHOWN WAS PROVIDED BY AERIAL IMAGERY DATED 12/5/2018.
8. WETLANDS SHOWN WERE PROVIDED BY THE NATIONAL WETLAND INVENTORY ONLINE WETLAND MAPPER ON 12/5/2018.
9. STREAMS SHOWN HERE PROVIDED BY $ALTIMORE COUNTY GIS DATED 12/5/20!8.
10. SITE TO BE STABILIZED WITH LOW-GROWTH POLLINATOR SEED MIX.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	28.39 AC.
3.	PROJECT AREA:	10.50 ACa
4.	PROPERTY INFORMATION:	
A.	EXISTNG PREMISES ADDRESS:	ADJACENT TC 18267 FALLS RD
B.	TAX ACCOUNT NUMBER:	06230 5126
C.	DEED REFERENCE:	39664 / 00498
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	5
F.	CENSUS TRACT:	405009
4.	BALTIMORE COUNTY ZONING MAP REFERENCES:	
A.	GIS TILE:	13
B.	TAX MAP:	0015
C.	PARCEL:	0144
D.	GRID:	0001
E.	WATERSHED:	PRETTYBOY RESERVOIR
F.	BASIC SERVICES - WATER MaP:	N/A
G.	BASIC SERVICES - SEWER MaP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETTYBOY
5.	EXISTING LAND USE:	VACANT
6.	PROPOSED LAND USE:	SOLAR FACILITY - 2MV MAX. (SPECIAL EXCEPTION

BULK REGULATIONS

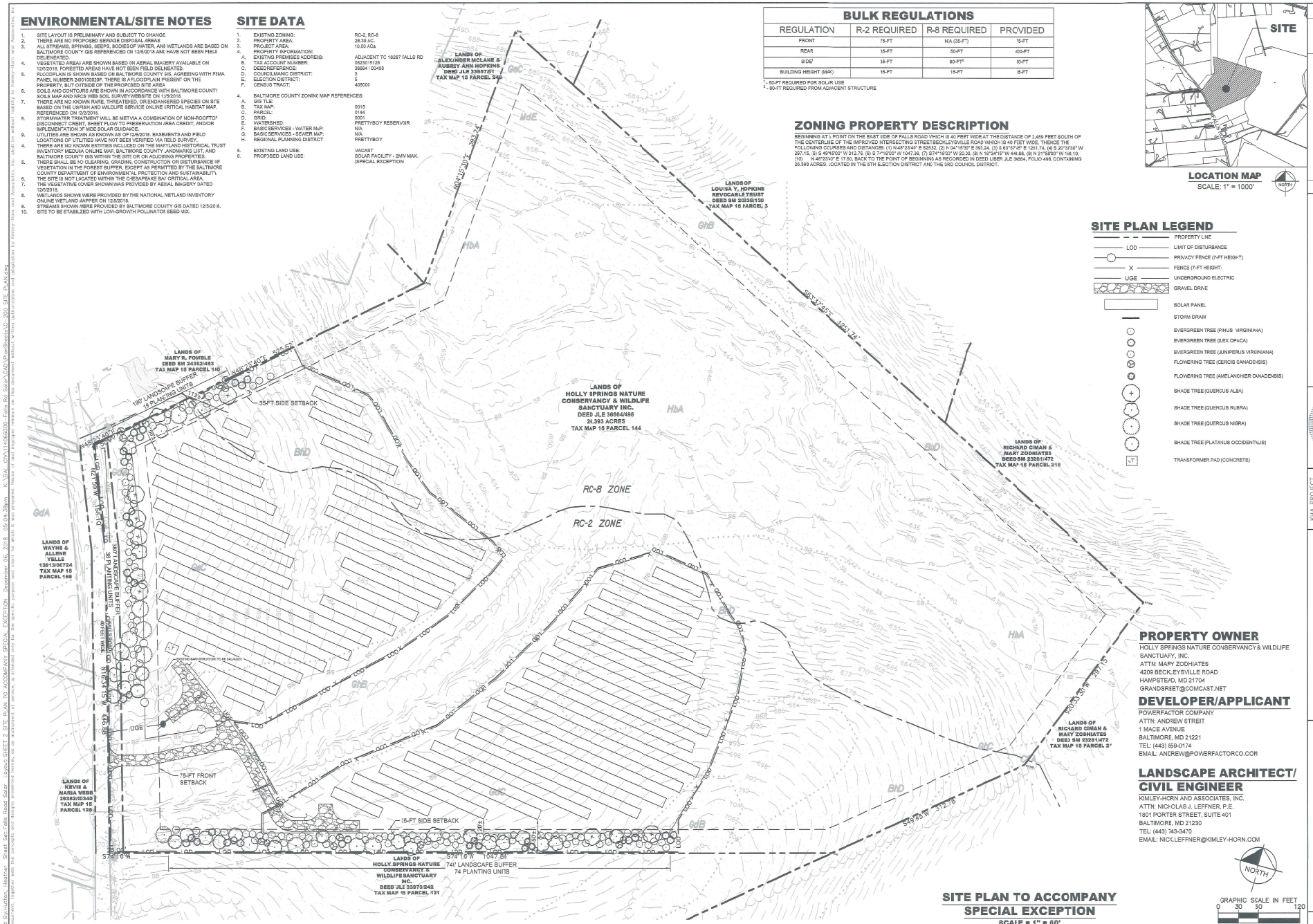
REGULATION	R-2 REQUIRED	R-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT')	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT[2]	10-FT
BUILDING HEIGHT (MAX)	35-FT	15-FT	15-FT

[1] - 50-FT REQUIRED FOR SOLIR USE
[2] - 80-FT REQUIRED FROM ADJACENT STRUCTURE

ZONING PROPERTY DESCRIPTION

BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD VHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,459 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THI FOLLOWING COURSES AND DISTANCES: (1) N 48°23'49" E 52532, (2) N 04°15'30" E 592.24, (3) S 83°37'45" E 1251.74, (4) S 20°30'30" W 297.15, (5) S 49°6'00" W 312.76 (6) S 7°-16'00" W 1047.36, (7) S74°16'03" W 20.00, (8) N 19°34'15" W 446.88, (9) N 21°58'00" W 146.10, (10) W 48°23'49" E 17.60, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 36664, FOLIO 498, CONTAINING 25.393 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

LOCATION MAP
SCALE: 1" = 1000'



SITE PLAN LEGEND

- PROPERTY LINE
- LOD — LIMIT OF DISTURBANCE
- PRIVACY FENCE (7-FT HEIGHT)
- X — FENCE (7-FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- GRAVEL DRIVE
- SOLAR PANEL
- STORM DRAIN
- EVERGREEN TREE (PINUS VIRGINIANA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (JUNIPERUS VIRGINIANA)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE (QUERCUS ALBA)
- SHADE TREE (QUERCUS RUBRA)
- SHADE TREE (QUERCUS NIGRA)
- SHADE TREE (PLATANUS OCCIDENTALIS)
- TRANSFORMER PAD (CONCRETE)

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUAFY, INC.
ATTN: MARY ZODHIATES
4209 BECK.IEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

LANDSCAPE ARCHITECT/ CIVIL ENGINEER

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'

GRAPHIC SCALE IN FEET
0 30 60 120

No.	REVISIONS	DATE	BY

Kimley»Horn
© 2018 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

KHA PROJECT 114066000
DATE 12/7/2018
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2

Plotted By: Hutton, Heather Sheet Set: Falls Road Solar Layout: SHEET 2 SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION December 06, 2018 05:04:18pm K:\BAL_CIV\114066000_Falls Rd Solar\CAD\PlanSheets\C-200 SITE PLAN.dwg
The Contents, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. shall be without liability to Kimley-Horn and Associates, Inc.

Let No 83

SMITH, GILDEA & SCHMIDT LLC

MICHAEL PAUL SMITH
DAVID K. GILDEA
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JASON T. VETTORI
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MELISSA L. ENGLISH
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CARMELO D. MORABITO
ZACHARY J. WILKINS
of counsel:
EUGENE A. ARBAUGH, JR.
DAVID T. LAMPTON
MARY G. LOKER
STEPHEN J. NOLAN

February 14, 2019

Via Email and First Class Mail
Mr. Lloyd T. Moxley
Mr. Joseph Wiley
Department of Planning
105 West Chesapeake Ave, Suite 101
Towson, MD 21204

Re: BCZR § 1A09.4.A Narrative Support Letter
Case No. 19-183 - X
18627 Falls Road, Baltimore, Maryland ("Property")

Dear Mr. Moxley and Mr. Wiley:

Kindly be advised that I represent the contract lessee, Power Factor, LLC and the legal owner, Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc., (collectively "Petitioners"), of the above referenced Property. Pursuant to the Department of Planning's 1/10/2019 Zoning Advisory Committee Comments for the above referenced case number and pursuant to Baltimore County Zoning Regulations ("BCZR") § 1A09.4.A, a finding is required on the part of the Director of the Department of Planning prior to the approval of the requested special exception plan in the Resource Conservation ("RC") 8 zone. It should be noted however, only a small portion of the proposed solar panels are located in the RC 8 zone. In order to assist the Department in preparing its recommendation, we are submitting this narrative explaining that the proposed special exception request is consistent with the spirit and intent of BCZR § 1A09.4.A. Please accept this explanatory letter as such narrative.

The applicable provisions are set forth in BCZR § 1A09.1 through § 1A09.8. BCZR § 1A09.1.B. lists overall legislative goals for the RC 8 zone, which generally seek to maintain and protect natural resources, including forests, streams, wetlands, floodplains, and prime and productive soils. BCZR § 1A09.4. further mandates that development be in accordance with standards and guidelines for "rural preservation" and "scenic views." Additionally, BCZR § 1A09.7. provides guidelines for specific development area requirements and standards.

As the Department of Planning is no doubt familiar from other petitions that have come before it, solar energy is a renewable energy source, whose development and use is encouraged by the State of Maryland. In 2016, Maryland passed House Bill 1087, titled "Electricity - Community Solar Energy Generating System Program," which established a pilot program for community solar energy systems. In May of 2016, the Maryland Public Service Commission finalized regulations to guide the process for developing solar facilities throughout the State. As such, solar energy is to be utilized as an alternative to the use of fossil fuels and is to comprise 2.5% of the State's energy use by 2021. Petitioners' proposed project is part of the community solar pilot program. The energy produced by the proposed facility will be fed into the adjacent power grid maintained by BGE. The State's incentivized programs are indicative of an overall encouragement of the development of solar facilities.

As prescribed by BCZR § 1A09, the placement of the proposed solar panels are designed to minimize impacts to the surrounding natural resources. The panels produce no chemicals, odors, toxins or other impacts that might produce environmental degradation or impact the underground water table. As this is an unmanned operation, the solar panels are cleaned off by rain water, which is an intentional design component in order to limit maintenance of this unmanned system and/or the use of any cleaning or chemical agents. The proposed solar facility will follow approved storm water management guidelines that have been developed by the State for solar facilities. The solar panels will be located outside the floodplain, giving due consideration of flood hazards and floodplain management. Additionally, there is no impervious surface but for the ground mounts supporting the panels. The arrays are ground mounted and sit on a pole on the ground. There will be vegetative ground cover underneath to allow for the infiltration of rain/snow that will be routinely maintained.

The proposed solar facility use will not be detrimental to adjacent agricultural uses nor affect prime and productive soils. The Property is not presently used for farming or agricultural purposes, as it is owned by an organization dedicated to the preservation of land and the minimization of pollution. As such, the proposed solar facility does not impact the utilization of prime and productive soils on the Property. Further, there are no impacts of the proposed use which harm crops or farm animals in the vicinity. The State would not be incentivizing solar energy if there was a serious concern about adverse impacts to agriculture.

The portion of Falls Road adjacent to the Property is classified as a scenic byway under the Baltimore County Master Plan 2020. As mandated by the Baltimore County Code, a landscape plan, with the purpose of buffering the solar facility from surrounding properties and Falls Road, will require approval from the Baltimore County Landscape Architect. The proposed solar panel will be strategically situated at a lower elevation compared to Falls Road. As a result, the visibility of the solar panels will be reduced. This buffering is further enhanced through a mix of trees and vegetation, which will soften the view of the solar facility. Given the existing and proposed vegetation/proposed landscaping, as well as the existing topography, the impact on the scenic

byway is minimal. Moreover, there is nothing in the CMDP which prohibits a solar facility use adjacent to a scenic byway.

The proposed solar panel heights range from 4-7 feet depending on the time of day, as these systems are movable "tracking" modules that rotate with the position of the sun and will be surrounded by a fence and significant vegetative screening to protect the existing view corridor. BCZR § 4F-104. mandates a 50 foot minimum setback requirement. The proposed solar facility setback is 75 feet, which is 150% of the required setback. The glare will be minimized and not interfere with traffic or create a safety hazard. Solar panels are designed to absorb as much light as possible and utilize anti-reflective coatings to reduce the possibility of light reflection.

The Property is not encumbered by an agricultural preservation easement, an environmental preservation easement or a rural legacy easement. Additionally, the Property is not located in a Baltimore County Historic District, nor is it listed on the Baltimore County Final Landmarks List. Finally, the proposal is the subject of a twenty year lease, thus does not represent a permanent alteration as to the use of the land.

Solar facilities are permitted by special exception in the RC 8 zone. Energy is critically important to Maryland's welfare and development, and its use has a profound impact on the economy and environment. Growth of the state's population and economic base will continue to create a need for new energy resources, and Maryland's renewable energy resources are currently underutilized. Therefore, in order to save consumers and businesses money, attract new businesses and jobs, promote development of rural economies, minimize water use for electricity generation, diversify Maryland's energy resources, reduce the impact of volatile fuel prices, and improve the natural environment of the state, it is in the best interests of the citizens of Maryland to develop and utilize renewable energy resources to the maximum practicable extent. As such, the proposed solar facility use is consistent with the spirit and intent of BCZR § 1A09.4.A.

Kindly confirm and certify in writing that the proposed solar facility use is consistent with the spirit and intent of the Baltimore County Zoning Regulations.

I sincerely appreciate you taking the time to review this matter and if your office requires any additional information, or has any comments, questions, or concerns regarding the contents of this letter, please contact me.

Very truly yours,

Lawrence E. Schmidt

Petitioner's Exhibit 4

Kimley»Horn

RESUME

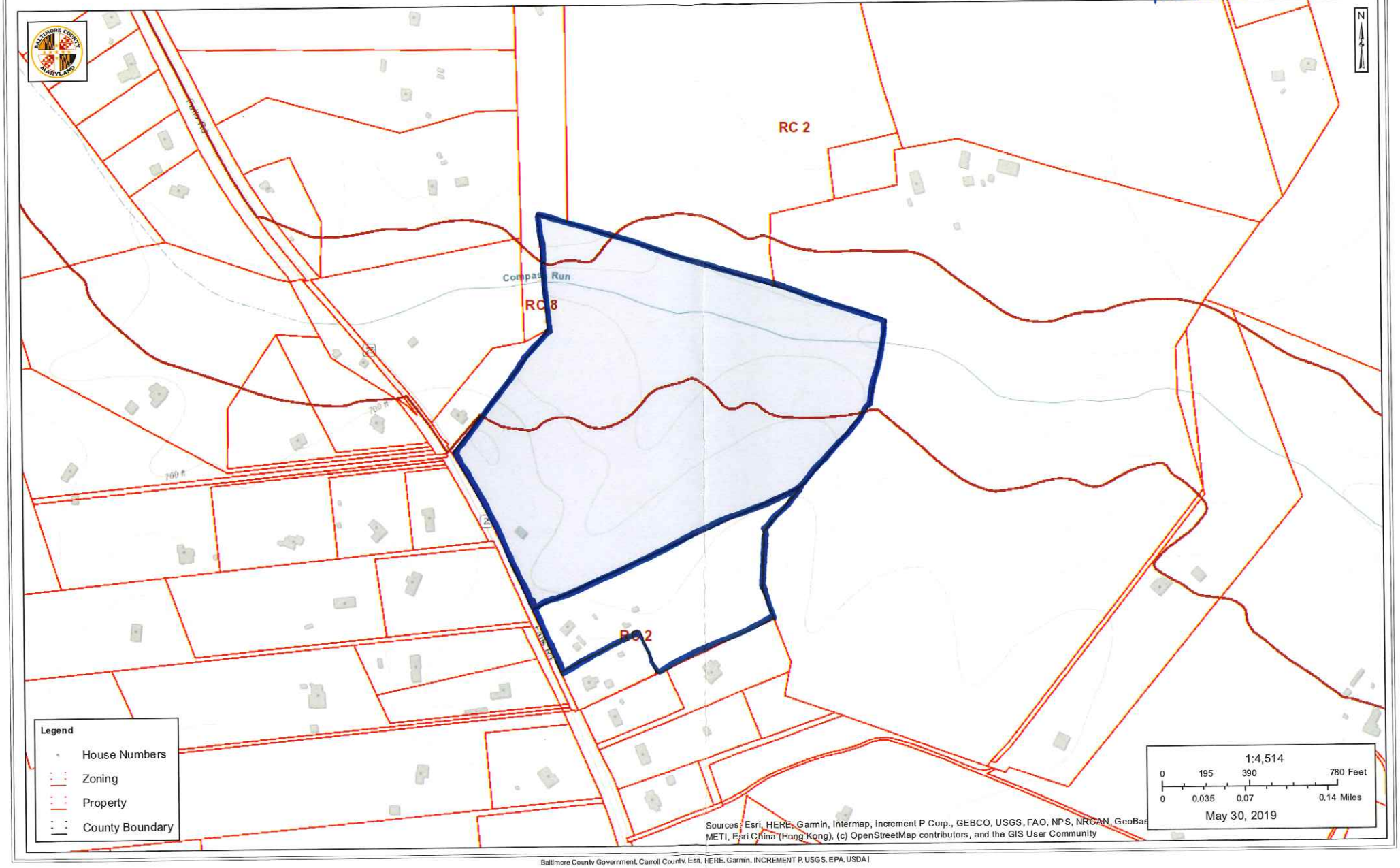
Nicholas J. Leffner, P.E.
Kimley-Horn and Associates, Inc.
1801 Porter Street, Suite 401
Baltimore, MD 21230

Civil Engineer

Education:	Bachelor of Science in Civil Engineering Virginia Polytechnic Institute and State University, Blacksburg, VA
Registration:	Registered Professional Engineer in Maryland (#44113)
Professional Organizations:	Urban Land Institute (ULI)
Professional Experience:	Civil Engineer, Bowman Consulting Group, Ltd. – 6 years • Provided design, entitlement, and permitting consulting services to support a variety of land development projects; including, residential, commercial, retail, industrial, institutional, and mixed-use land development projects. • Prepared conceptual, final, and construction document level design plans, computations, and reports for a variety of civil engineering related disciplines; including, site planning/feasibility, site design, grading and drainage, utilities, roadways, stormwater management, soil erosion and sediment control, and construction phase services. Civil Engineer/Project Manager, Kimley-Horn and Associates, Inc – 5 years • Serves as project manager and civil engineering consultant • Responsible for the design, entitlement, and permitting services for a variety of land development projects; including, residential, commercial, retail, industrial, institutional, mixed-use, and energy (solar) land development projects.
Project Experience:	Maryland – Baltimore City, Baltimore County, Howard County, Montgomery County, Frederick County, Prince George's County, Anne Arundel County, Calvert County, St. Mary's County, Dorchester County, Harford County, Cecil County Other States – Kansas, Oklahoma, Pennsylvania, Virginia, South Carolina

Baltimore County - My Neighborhood

Pet No 5



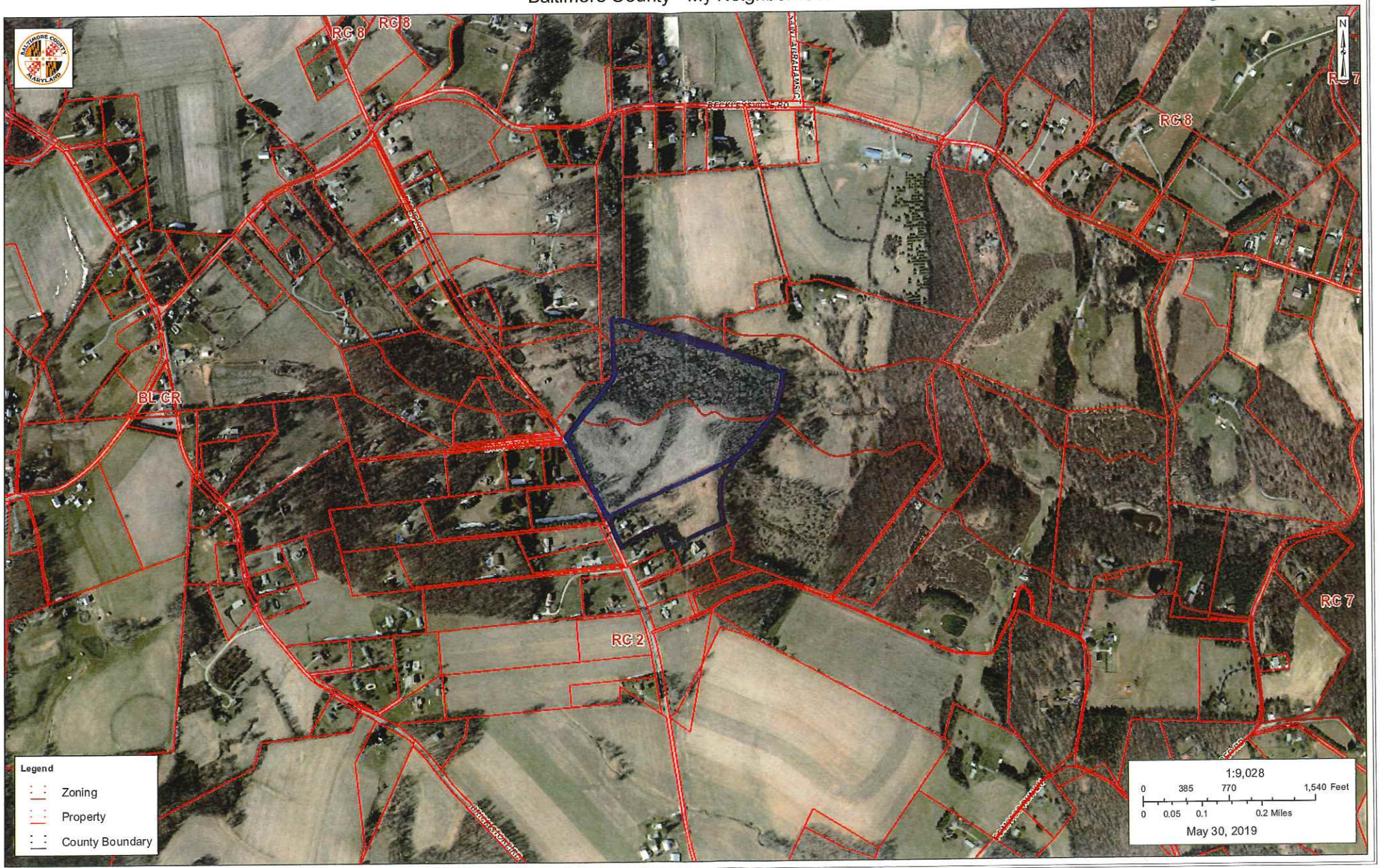
Baltimore County Government, Carroll County, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA |

Petitioner's Exhibit G.
a.

Baltimore County - My Neighborhood

Att C 13

Baltimore County - My Neighborhood

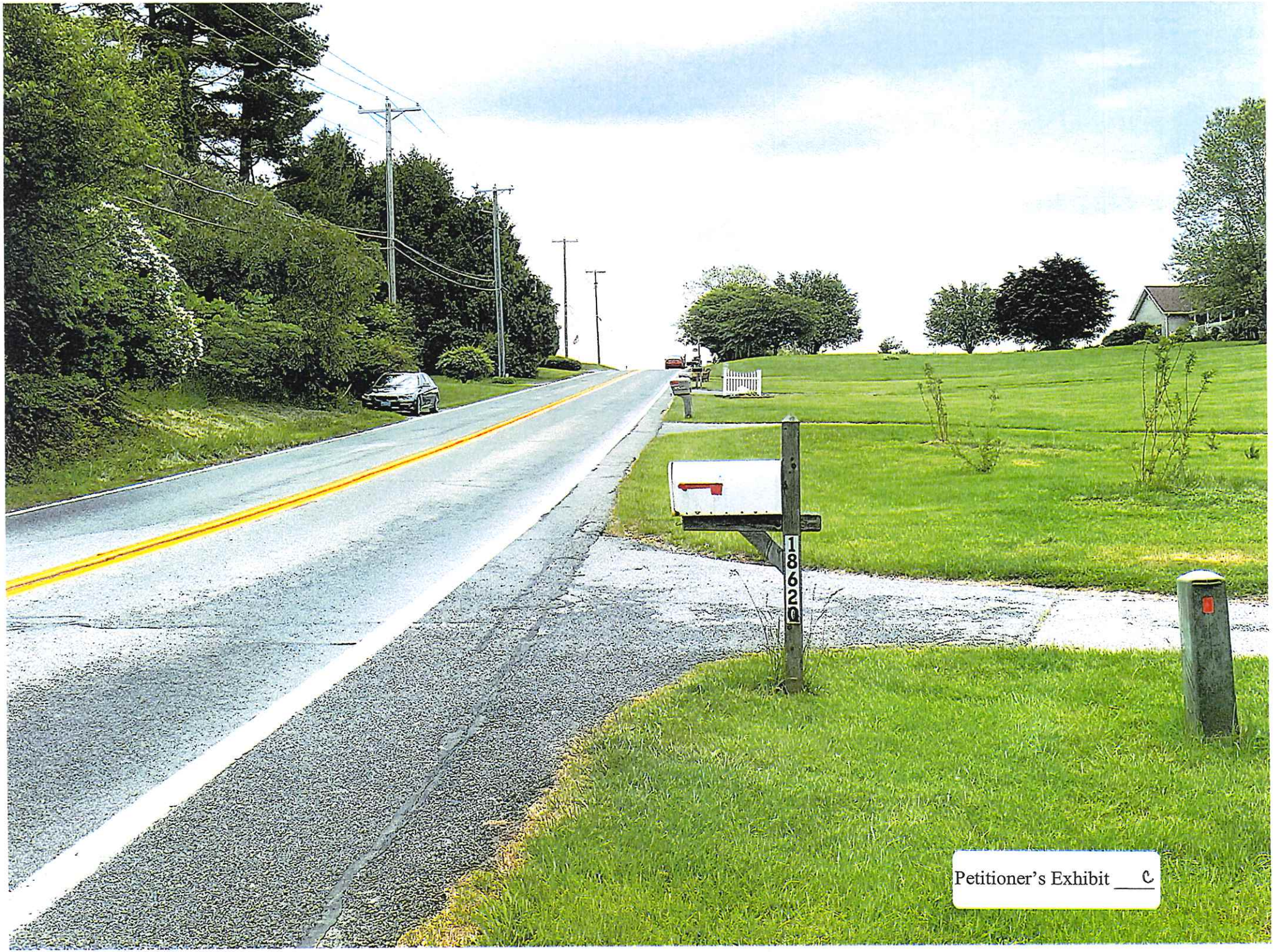


Pet 6 C

Baltimore County - My Neighborhood

Petitioner's Exhibit A

Petitioner's Exhibit B



Petitioner's Exhibit C

18616
Petitioner's Exhibit 9

Petitioner's Exhibit E

18620
Petitioner's Exhibit F

Petitioner's Exhibit 6

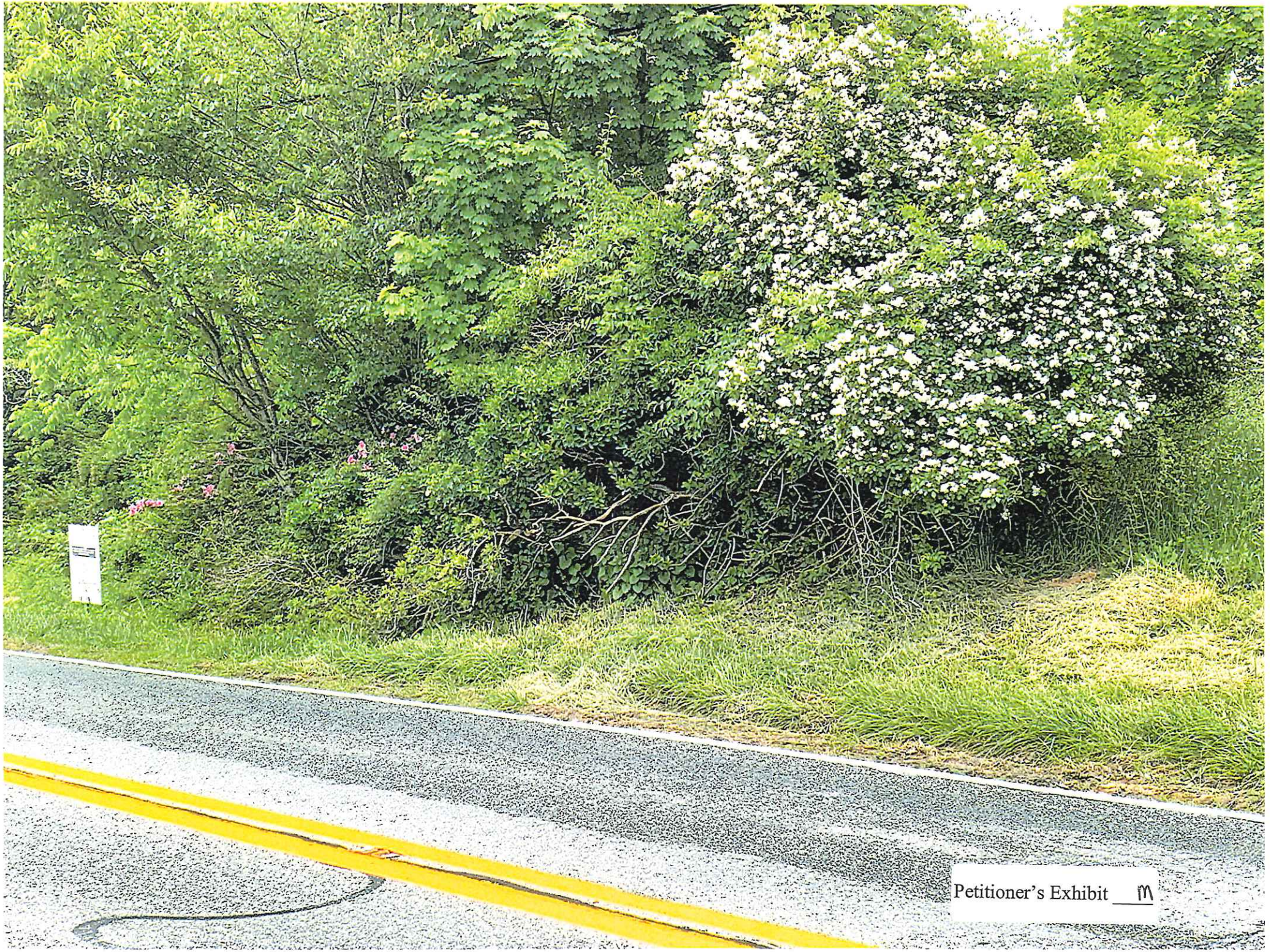
Petitioner's Exhibit H

POSTED
Petitioner's Exhibit 1

18620
Petitioner's Exhibit J

Petitioner's Exhibit K

Petitioner's Exhibit L


Petitioner's Exhibit M

Petitioner's Exhibit 11

Petitioner's Exhibit D

Petitioner's Exhibit P

Petitioner's Exhibit Q

Petitioner's Exhibit R

Petitioner's Exhibit 5

Petitioner's Exhibit 1

Petitioner's Exhibit 11

DCE Solar Solves Site Challenges with Adaptable Ground-Mount System

Berlin, CT

Installed By: EnterSolar **Project Size:** 1.3 MW

Pet No 8

Elevating the Future for Solar

DCE SOLAR

Elevating the Future for Solar | Made in America

Overview

Our client faced a challenging install on their Connecticut site's sloping terrain, with areas as steep as 20%. The cost and time associated with grading the site could have stopped the project in its tracks, as no other site was available on the property.

The Challenge

STANDARD RACKING SYSTEMS require significantly more grading when the site slope exceeds 7 degrees, creating cost challenges that could hinder the ROI on the deal, making project financing extremely difficult.

ROLLING TOPOGRAPHY MEANT that either multiple rack types would need to be used (not a feasible solution), or the entire site would have to be graded to the same level (a very expensive solution).

A RACKING SYSTEM THAT could accommodate different types of terrain while still delivering uniform installation and performance was an absolute necessity.

The Solution

DCE SOLAR'S CONTOUR-DB system was the best choice for this scenario due to its flexibility, and ability to accommodate a greater degree of topographical changes.

GRADING THE SITE WOULD have cost upwards of $75,000.00. This savings applied directly to the job cost, offsetting 50% of the cost of the racking system just by selecting Contour-DB. The quicker installation compared against one that includ-ed grading the site, allowed our client to start utilizing lower-cost clean energy sooner.

The Result: Solar Energy is Made More Accessible for an Important Corporate Client

OUR CLIENT HAS been able to reduce their operating costs while also following through on global environmental initiatives. In return, they enjoy being able to deliver more value and a green-aware brand to the customers they serve.

THE EPC ON THE PROJECT, EnterSolar, was able to demonstrate that solar energy IS a viable option for businesses and property owners - without added site prep costs. This presents more opportunities for future installations.

WITH OVER 4,000 solar panels being used, the array will produce enough energy to offset over 2.5 million pounds of carbon dioxide from traditional electricity gener-ation sources from entering the environment annually.

THE PRODUCED KWH is enough to offset the power used by about 150 average American homes.

To learn more about our products and services designed for solar energy, please visit us online at **DCESolar.com** or call us at **704-659-7474.**

Elevating the Future for Solar

DCE SOLAR

Elevating the Future for Solar | Made in America

SUNNY TRIPOWER CORE1
STP 50-40

Cost-Effective
- Floor-mounted device easy to install
- No DC fuses required
- Integrated DC disconnector

Highly Integrated
- Integrated Wi-Fi access with any mobile device
- 12 direct string inputs reduce labor and material costs
- AC/DC overvoltage protection (optional)

Fastest Installation
- Fast grid connection due to easy inverter configuration and commissioning
- Completely accessible connection areas

Maximum Yields
- Up to 150% DC:AC ratio
- Six independent MPP trackers guarantee optimal energy production for every use, even in shading

Pat No 9

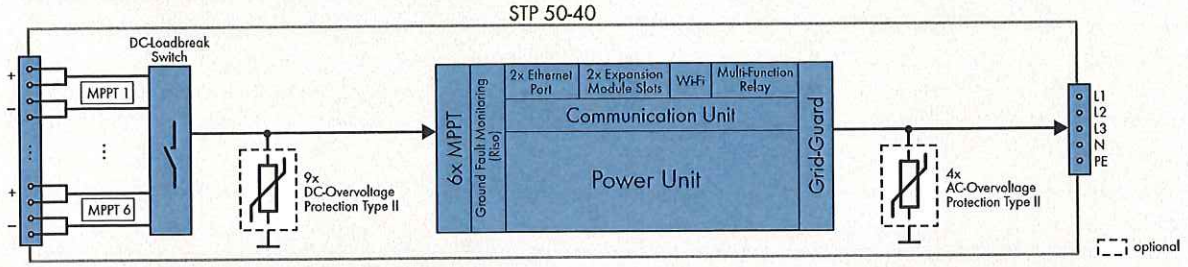
SUNNY TRIPOWER CORE1

Stands on its own

The Sunny Tripower CORE1 is the world's first free-standing string inverter for decentralized rooftop and ground-based PV systems as well as covered parking spaces. The CORE1 is the third generation in the successful Sunny Tripower product family and is revolutionizing the world of commercial inverters with its innovative design. SMA engineers developed an inverter that combines a unique design with an innovative installation method to significantly reduce installation time and provide all target groups with a maximum return on investment.

From delivery and installation to operation, the Sunny Tripower CORE1 generates widespread savings in logistics, labor, materials and services. Commercial PV installations are now quicker and easier to complete than ever before.

BLOCK DIAGRAM



Technical Data	Sunny Tripower CORE1
Input (DC)	
Max. generator power	75000 Wp STC
Max. input voltage	1000 V
MPP voltage range / rated input voltage	500 V to 800 V / 670 V
Min. input voltage / start input voltage	150 V / 188 V
Max. operating input current / per MPPT	120 A / 20 A
Max. short circuit current per MPPT / per string input	30A / 30A
Number of independent MPPT inputs / strings per MPP input	6 / 2
Output (AC)	
Rated power (at 230 V, 50 Hz)	50000 W
Max. apparent AC power	50000 VA
AC nominal voltage	220 V / 380 V 230 V / 400 V 240 V / 415 V
AC voltage range	202 V to 305 V
AC grid frequency / range	50 Hz / 44 Hz to 55 Hz 60 Hz / 54 Hz to 65 Hz
Rated power frequency / rated grid voltage	50 Hz / 230 V
Max. output current / Rated output current	72.5 A / 72.5 A
Output phases / AC connection	3 / 3-(N)-PE
Power factor at rated power / Adjustable displacement power factor	1 / 0.0 leading to 0.0 lagging
THD	< 3%
Protective devices	
Input-side disconnection device	●
Ground fault monitoring / grid monitoring	● / ●
DC reverse polarity protection / AC short-circuit current capability / galvanically isolated	● / ● / –
All-pole sensitive residual-current monitoring unit	●
Protection class (according to IEC 62109-1) / overvoltage category (according to IEC 62109-1)	I / AC: III; DC: II
AC/DC surge arrester (Type II)	o / o

Technical Data	Sunny Tripower CORE1
Efficiency	
Max. efficiency / European efficiency	98.1% / 97.8%
General data	
Dimensions (W/H/D)	621 mm / 733 mm / 569 mm (24.4 in / 28.8 in / 22.4 in)
Weight	84 kg (185 lb)
Operating temperature range	-25°C to +60°C (-13°F to +140°F)
Noise emission (typical)	< 65 dB(A)
Self-consumption (at night)	4.8 W
Topology / Cooling concept	Transformerless / OptiCool
Degree of protection (as per IEC 60529)	IP65
Climatic category (according to IEC 60721-3-4)	4K4H
Max. permissible value for relative humidity (non-condensing)	100%
Features / functions / accessories	
DC connection / AC connection	SUNCLIX / screw terminal
Mounting feet	●
LED indicators (status / fault / communication)	●
Interface: Ethernet / WLAN / RS485	● (2 ports) / ● / o
Data interface: SMA Modbus / SunSpec Modbus / Speedwire, Webconnect	● / ● / ●
Multi-Function relay / Expansion Module Slots	● / ● (2 ports)
OptiTrac Global Peak / Integrated Plant Control / Q on Demand 24/7	● / ● / ●
Off-grid capable / SMA Fuel Save Controller compatible	● / ●
Guarantee: 5/10/15/20 years	● / o / o / o
Certificates and permits (more available on request)	ANRE 30, AS 4777, BDEW 2008, C10/11:2012, CE, CEI 0-16, CEI 0-21, EN 50438:2013*, G59/3, IEC 60068-2-x, IEC 61727, IEC 62109-1/2, IEC 62116, MEA 2016, NBR 16149, NEN EN 50438, NRS 097-2-1, PEA 2016, PPC, RD 1699/413, RD 661/2007, Res. n°7:2013, SI4777, TOR D4, TR 3.2.2, UTE C15-712-1, VDE 0126-1-1, VDE-ARN 4105, VFR 2014, P.O.12.3, NTCO-NTCyS, GC 8.9H, PR20, DEWA

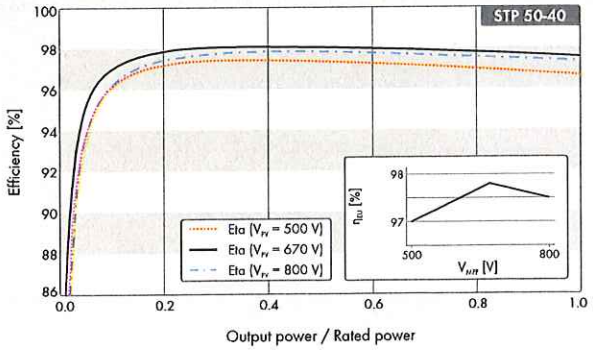
* Does not apply to all national appendices of EN 50438

● Standard features o Optional – Not available

Data at nominal conditions - status: 07/2017

Type designation STP 50-40

Efficiency Curve



Assessories

SMA Sensor Module MD.SEN-40

SMA IO-Module MD.IO-40

SMA RS485 Module MD.485-40

Antenna Extension Kit EXTANT-40

AC Surge Protection Module Kit AC_SPD_Kit1-10
DC Surge Protection Module Kit DC_SPD_Kit4-10

www.SMA-Solar.com

SMA Solar Technology

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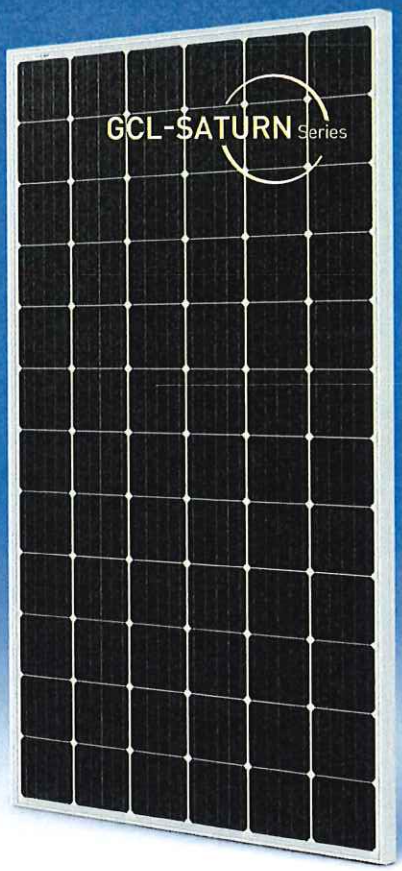
GCL-M6/72
GCL-M6/72H
Monocrystalline Module
335-370W



370W
Maximum Power Output

19.1%
Maximum Module Efficiency

0~+5W
Power Output Guarantee

Cell Type

5BB

MBB

Ideal choice for large scale ground installation

High conversion efficiency due to top quality wafers and advanced cell technology

Selected encapsulating material and stringent production process control ensure the product is highly PID resistant and snail trails free

Sand blowing test, salt mist test and ammonia test passed to endure harsh environments

Optimized system performance due to module level current sorting

Special cell process ensures great performance under low irradiance conditions...

Highly transparent self-cleaning glass brings additional yield and easy maintenance

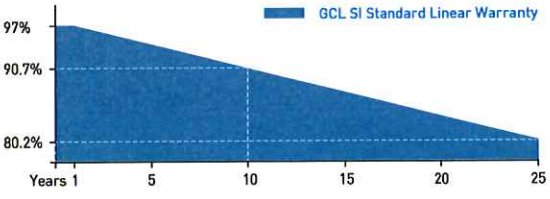
Company Introduction

GCL System Integration Technology Co. Ltd (002506 Shenzhen Stock) (GCL System) is part of GOLDEN CONCORD Group (GCL) which is an international energy company specializing in clean and sustainable power production. The group, founded in 1990 now employs 30,000 people.

GCL Delivers Reliable Performance Over Time

- World-class manufacturer of crystalline silicon photovoltaic modules
- Fully automatic facility and world-class technology
- Rigorous quality control to meet the highest standard: ISO9001:2015, ISO14001: 2015 and OHSAS: 18001 2007
- Tested for harsh environments (salt mist, ammonia corrosion and sand blowing test: IEC 61701, IEC 62716, DIN EN 60068-2- 68)
- Long term reliability tests
- 2*100% EL inspection ensuring defect-free modules

Linear Performance Warranty



10 Years Product Warranty 25 Years Linear Power Warranty

* Please refer to GCL standard warranty for details

Additional Insurance Backed by Swiss RE

* Please refer to GCL for details

GCL-M6/72
GCL-M6/72H

GCL-Saturn Series Monocrystalline Module | 335-370W

Electrical Specification (STC*)

Maximum Power	Pmax(W)	335	340	345	350	355	360	365	370
Maximum Power Voltage	Vmp(V)	38.00	38.20	38.40	38.60	38.80	39.00	39.20	39.40
Maximum Power Current	Imp(A)	8.82	8.90	8.99	9.07	9.15	9.23	9.31	9.39
Open Circuit Voltage	Voc(V)	46.40	46.60	46.80	47.00	47.20	47.40	47.60	47.80
Short Circuit Current	Isc(A)	9.41	9.49	9.57	9.65	9.73	9.81	9.89	9.97
Module Efficiency	(%)	17.3	17.5	17.8	18.0	18.3	18.6	18.8	19.1
Power Output Tolerance	(W)	0~+5							

* Irradiance 1000W/m², Module Temperature 25°C, Air Mass 1.5

Electrical Specification (NOCT*)

Maximum Power	Pmax (W)	249.56	252.38	256.30	260.24	263.85	267.48	270.75	274.43
Maximum Power Voltage	Vmp (V)	35.10	35.20	35.40	35.60	35.80	36.00	36.10	36.30
Maximum Power Current	Imp (A)	7.11	7.17	7.24	7.31	7.37	7.43	7.50	7.56
Open Circuit Voltage	Voc(V)	43.10	43.20	43.40	43.60	43.80	44.00	44.20	44.30
Short Circuit Current	Isc (A)	7.61	7.68	7.74	7.80	7.87	7.93	8.00	8.06

* Irradiance 800W/m², Ambient Temperature 20°C, Wind Speed 1m/s

Mechanical Data

Solar Cell Type	Mono 156.75×156.75mm (6 inches)
Number of Cells	72 Cells (6×12)
Dimensions of Module L*W*H (mm)	1956×992×35mm (77 × 39.05 × 1.38 inches)
Weight (kg)	22.2 kg
Glass	High transparency solar glass 3.2mm (0.13 inches)
Backsheet	White
Frame	Silver, anodized aluminium alloy
J-Box	IP68 Rated
Cable	4.0mm² (0.006 inches2), 1200mm (35.4 inches)
Number of diodes	3
Wind/ Snow Load	2400Pa/5400Pa*
Connector	MC4 Compatible

* For more details please check the installation manual of GCLSI

Temperature Ratings

Nominal Operating Cell Temperature (NOCT)	45±2°C
Temperature Coefficient of Isc	+0.06%/°C
Temperature Coefficient of Voc	-0.30%/°C
Temperature Coefficient of Pmax	-0.39%/°C

Maximum Ratings

Operational Temperature	-40~+85°C
Maximum System Voltage	1000V DC
	1500V DC-(H)
Max Series Fuse Rating	15A

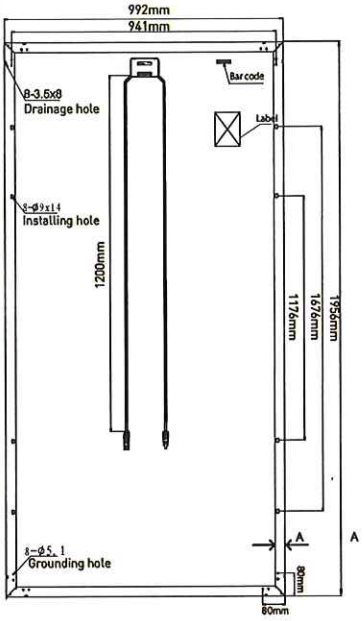
Packaging Configuration

Module per box	30 pieces
Module per 40' container	720 pieces

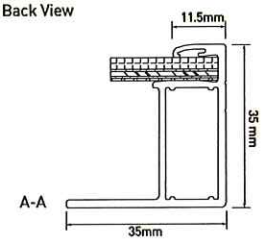
Optional

Connector:	☐ Original MC4

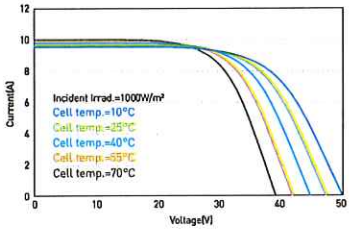
Module Dimension



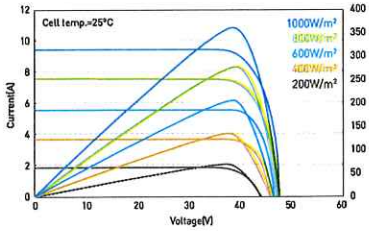
Back View



U-I Curve at Different Temperature (360W)



U-I/P-U Curve at Different Irradiation (360W)



CAUTION: READ INSTALLATION MANUAL BEFORE USING THE PRODUCT

Contact Us for More Information

website: en.gclsi.com email: gclsisales@gclsi.com

SOIL TYPES

MAP UNIT SYMBOL	SOIL NAME	HYCROLOGIC SOIL GROUP	CLASSIFICATION	HYDRIC	% OF PROPERTY
BhD	BRINKLOW CHANNERY LOAM, 15-25% SLOPES	C	NOT PRIME FARMLAND	NO	21.4%
GdA	GLENELG LOAM, 0-3% SLOPES	B	PRIME FARMLAND	NO	1.3%
GdB	GLENELG LOAM, 3-8% SLOPES	B	PRIME FARMLAND	NO	1.0%
GdC	GLENELG LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	21.1%
GeC	GLENELG CHANNERY LOAM, 8-15% SLOPES	B	FARMLAND OF STATEWIDE IMPORTANCE	NO	1.9%
GhB	GLENVILLE SILT LOAM, 3-8% SLOPES	C/D	PRIME FARMLAND	NO	1.8%
GhC	GLENVILLE SILT LOAM, 8-15% SLOPES	C	FARMLAND OF STATEWIDE IMPORTANCE	NO	1.9%
HbA	HATBORO SILT LOAMS, 0-3% SLOPES	B/D	NOT PRIME FARMLAND	YES	21.6%
MdE	MANOR-BRINKLOW COMPLEX, 15-45% SLOPES, VERY ROCKY	B	NOT PRIME FARMLAND	NO	1.2%

SITE DATA

1. EXISTING ZONING: RC-2, RC-8
2. PROPERTY AREA:
   - PARCEL 144: ±26.34 AC.
   - PARCEL 121: ±6.25 AC.
   - TOTAL: ±32.59 AC.
3. PROJECT AREA:
   - PARCEL 144: ±6.46 AC.
   - PARCEL 121: ±2.69 AC.
   - TOTAL: ±9.15 AC.
4. PROPERTY INFORMATION:
   - A. EXISTING PREMISES ADDRESS: 18627 FALLS ROAD & ADJACENT TO 18617 FALLS ROAD
   - B. TAX ACCOUNT NUMBER:
     - PARCEL 144: 0523051126
     - PARCEL 121: 0504000210
   - C. DEED REFERENCE:
     - PARCEL 144: 36864 /00496
     - PARCEL 121: 33970 /00242
   - D. COUNCILMANIC DISTRICT: 3
   - E. ELECTION DISTRICT: 5
   - F. CENSUS TRACT: 405000
5. BALTIMORE COUNTY ZONING MAP REFERENCES:
   - A. GIS TILE: 015A1
   - B. TAX MAP: 0015
   - C. PARCELS: 0144 &121
   - D. GRID: 0001
   - E. WATERSHED: PRETTBOY RESERVOIR
   - F. BASIC SERVICES - WATER MAP: N/A
   - G. BASIC SERVICES - SEWER MAP: N/A
   - H. REGIONAL PLANNING DISTRICT PRETTBOY
6. EXISTING LAND USE: VACANT / RESIDENTIAL
7. PROPOSED LAND USE: SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION AREAS - NO MAJOR SUBDIVISIONS ON SEPTIC

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4# (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WIL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET IN ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

ENVIRONMENTAL/SITE NOTES

1. PROPERTY BOUNDARY, TOPOGRAPHIC AND EXISTING FEATURES ARE SHOWN BASED ON SURVEY COMPLETED BY KARINS AND ASSOCIATES, DATED 5/11/2019.
2. ALL STREAMS, SEEPS, BODIES OF WATER, WETLANDS AND FORESTED AREAS ARE BASED ON FIELD WORK COMPLETED BY GEO-TECHNOLOGY ASSOCIATES, INC. IN MARCH 2015.
3. TOPOGRAPHIC, EXISTING FEATURES, AND ENVIROMENTAL INFORMATION SHOWN OUTSIDE OF THE PROPOSED PROJECT AREA IS SUPPLEMENTED BY GIS FROM BALTIMORE COUNTY. RECEIVED 12/4/2018 AND SUPPLEMENTED WITH AERIAL PICTOMETRY WHERE NECESSARY.
4. THERE ARE NO PROPOSED SEWAGE DISPOSAL AREAS.
5. FLOODPLAIN IS SHOWN BASED ON MARCH 2019 SITE STUDY BY GEO-TECHNOLOGY ASSOCIATES, INC., AGREEING WITH FEMA PANEL NUMBER 24005100020F. THERE IS A FLOODPLAIN PRESENT ON THE PROPERTY, BUT OUTSIDE OF THE PROPOSED PROJECT AREA.
6. SOILS AND CONTOURS ARE SHOWN IN ACCORDANCE WITH BALTIMORE COUNTY SOILS MAP AND NRCS WEB SOIL SURVEY WEBSITE ON 12/5/2018.
7. PER LETTER DATED 4/10/2019 FROM THE FISH AND WILDLIFE SERVICE, IT IS UNLIKELY THAT RARE, THREATENED, OR ENDANGERED SPECIES WOULD OCCUR WITHIN THE PROJECT AREA. NO FURTHER BIOLOGICAL ASSESSMENT IS REQUIRED.
8. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY AND IMPROVEMENT/ RELOCATION OF EXISTING SITE ACCESS.
9. THERE ARE NO KNOWN ENTITIES INCLUDED ON THE MARYLAND HISTORICAL TRUST INVENTORYMEDUSA ONLINE MAP, BALTIMORE COUNTY LANDMARKS LIST, AND BALTIMORE COUNTY GIS WITHIN THE SITE OR ON ADJOINING PROPERTIES. AS CONFIRMED BY BALTIMORE COUNTY EMAIL DATED 3/7/2019.
10. THE SITE IS NOT LOCATED WITHIN THE CHESAPEAKE BAY CRITICAL AREA.

ZONING PROPERTY DESCRIPTION

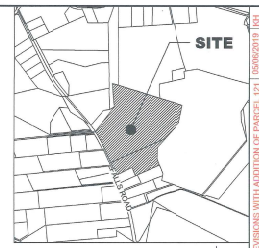
1. ADJACENT TO 1862' FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,459'FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE: (1) N74°18'00" E 1047.88, (2)S 49°48'00" W 247.08, (3) S 16°43'18" E 210.79,(4) S 12°39'30" E 104.83, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 159.00, 7 S 74°30'00" W 299.40, (8) N 16°44'00" W 212.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39870, FOLIO 242, CONTAINING 6.116 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.
2. 18627 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,062 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE. THENCE THE FOLLOWING COURSES AND DISTANCE: (1) N74°18'00" E 1047.88, (2)S 49°48'00" W 247.08, (3) S 16°43'18" E 210.79,(4) S 12°39'30" E 104.83, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 159.00, 7 S 74°30'00" W 299.40, (8) N 16°44'00" W 212.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 39870, FOLIO 242, CONTAINING 6.116 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

ADJOINING LANDOWNERS

MAP 15 PARCEL 003 - LOUISA Y. HOPKINS REVOCABLE TRUST - 26338/130 - ZONED: RC-2 RC-8 - USE: AGRICULTURAL
MAP 15 PARCEL 105 - LINDA AULT - 33544/467 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 128 - KEVIN & MARIA WEBB - 29382/0340 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 2 - JOHN & MICHELLE DWYER - 37024/50 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 131 LOT 1 TAMMY J WITT - 29657/393 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 160 - MARY R FOWBLE - 24392/455 - ZONED: RC-2 RC-8 - USE: AGRICULTURAL
MAP 15 PARCEL 166 LOT 1 - WAYNE & ALLENE YELLE - 13613/724 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 166 LOT 2 - KENNETH R & JANET L HARRY - 5734/652 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 175 - RICHARD JAMES JR & KATHERINE REGINA MENANSS TRUSTEES - 10172/337 - ZONED: RC-2 - USE RESIDENTIAL
MAP 15 PARCEL 180 LOT 1 - LINDA C HOGAN & JOHN B DIXON III - 22808/0060 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 180 LOT 1A - JOHN M JR. & DONNA M STADTER - 7014/888 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 184 - GREGORY & TRACY CZARSKI - 36361/59 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 15 PARCEL 216 - RICHARD CIMAN AND MARY ZOCHIATES - 23381/472 - ZONED: RC-2 RC-8 - USE: RESIDENTIAL
MAP 15 PARCEL 249 - ALEXANDER MCLANE & AUBREY ANN HOPKINS - 33857/81 - ZONED RC-2, RC-8 - USE: AGRICULTURAL
MAP 51 PARCEL 166 LOT 3A - DARLENE S BENNETT - 8332/38 - ZONED: RC-2 - USE: RESIDENTIAL
MAP 51 PARCEL 166 LOT 3B - GEORGE S JR & CHERYL PIER WEEMS - 7817/313 - ZONED: RC-2 - USE: RESIDENTIAL

OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 100'



LOCATION MAP
SCALE: 1" = 1000'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- PROJECT AREA
- OHE — OVERHEAD ELECTRIC
- FFP — FEMA FLOODPLAIN
- US — STREAM
- SB — 100' STREAM BUFFER
- WETLAND LIMITS
- WB — 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- XX — CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZOCHIATES
4209 BECK-EYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
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1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 759-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

PETITIONER'S EXHIBIT NO. 10

GRAPHIC SCALE IN FEET
0 50 100 200

NORTH

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	09/06/2019	KSH
2	REVISIONS OF GRAVEL ACCESS DRIVE	09/07/2019	KSH

Kimley»Horn
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1801 PORTER ST, SUITE 101, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21417, EXPIRATION DATE: 09/30/2020

KHA PROJECT 114086000
DATE 06/07/2019
SCALE AS SHOWN
DESIGNED BY N.A.
DRAWN BY HHH
CHECKED BY N.A.

OVERALL EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR

PREPARED FOR POWERFACTOR COMPANY

BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1

Plotted By: Miller, Sean Sheet Set: Falls Road Solar Layout: SHEET 1 OVERALL EXISTING CONDITIONS PLAN June 07, 2019 12:54:07pm K:\BAL_CIV\114086000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
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EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

SCALE = 1" = 60'

GRAPHIC SCALE IN FEET
0 30 60 120

NORTH

ZONING

1. EXISTING ZONING: RC-2, RC-8
2. THIS DEVELOPMENT PROPOSES A SOLAR FACILITY CONTAINING SOLAR PANELS AND EQUIPMENT.
3. THIS DEVELOPMENT IS SUBJECT TO THE COMPREHENSIVE MANUAL OF DEVELOPMENT POLICIES, THE COUNTY LANDSCAPE MANUAL, AND ARTICLE 4F (SOLAR FACILITIES) OF THE BALTIMORE COUNTY ZONING REGULATIONS. THIS DEVELOPMENT WILL COMPLY WITH ALL OF THESE REGULATIONS AND STANDARDS.
4. THERE ARE NO PRIOR ZONING CASES FOR THIS PROPERTY, BASED ON BALTIMORE COUNTY MY NEIGHBORHOOD VIEWER ON 12/5/2018.
5. FALLS ROAD IS LISTED AS A MARYLAND SCENIC BYWAY AND BALTIMORE COUNTY SCENIC ROUTE. PROPOSED LANDSCAPE IMPROVEMENTS SHALL BE MET N ACCORDANCE WITH THE RELEVANT STANDARDS AND REQUIREMENTS.

KEY MAP
SCALE: 1" = 500'

EXISTING LEGEND

- PROPERTY LINE
- ZONING BOUNDARY
- SETBACK
- LOD — PROJECT AREA
- OHE — OVERHEAD ELECTRIC
- FFP — FEMA FLOODPLAIN
- US — STREAM
- SB — 100' STREAM BUFFER
- WETLAND LIMITS
- WB — 25' WETLAND BUFFER
- TREE LINE
- SOIL BOUNDARY
- XX — CONTOUR
- STORM PIPE
- BUILDING
- 10-25% SLOPES
- >25% SLOPES
- FORESTED AREA
- ROAD
- UTILITY POLE
- SIGN
- STORM INLET
- SPECIMEN TREE

PROPERTY OWNER (P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
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TEL: (443) 559-0174
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TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	10/08/2019	KH
2	REVISIONS OF GRAVEL ACCESS DRIVE	08/07/2019	KH

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PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

STATE OF MARYLAND — NICHOLAS JOHN LEFFNER — 21431 — REGISTERED PROFESSIONAL ENGINEER

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21431, EXPIRATION DATE: 04/27/2020

KHA PROJECT 114066000
DATE 06/07/2019
SCALE AS SHOWN
DESIGNED BY NJL
DRAWN BY HHH
CHECKED BY NJL

EXISTING CONDITIONS PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR
PREPARED FOR
POWERFACTOR COMPANY
BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 1A

Richard Brian Miller, Sean Sheet Set: Falls Road Solar Layout: SHEET 1A EXISTING CONDITIONS PLAN June 07, 2019 12:54:07pm K:\BAL_DIV\114066000-Falls Rd Solar\CAD\PlanSheets\Special Exception Plan\SHEET 1 OVERALL EXISTING CONDITIONS PLAN.dwg
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BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT[2]	50-FT[3]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

[1] - 50-FT REQUIRED FOR SOLAR USE
[2] - 80-FT REQUIRED FROM ADJACENT STRUCTURE
[3] - INTERNAL SETBACKS 0-FT, PROVIDED WITH ARRAY

ZONING PROPERTY DESCRIPTION

1. ADJACENT TO 18627FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 2,459 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCES: (1) N 48°23'40" E 525.82, (2) N 04°15'30" E 393.24, (3) S 83°37'40" E 1251.74, (4) S 20°33'00" W 297.15, (5) S 49°47'00" W 312.78, (6) S 74°16'00" W 1047.86, (7) S 74°16'00" W 20.00, (8) N 18°34'15"W 446.88, (9) N 21°56'00" W 156.10, (10) N 48°23'40" E 17.50, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER LE 36664, FOLIO 468, CONTAINING 26.393 ACRES. LOCATED IN THE 5TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.
2. 18627 FALLS ROAD: BEGINNING AT A POINT ON THE EAST SIDE OF FALLS ROAD WHICH IS 40 FEET WIDE AT THE DISTANCE OF 3,062 FEET SOUTH OF THE CENTERLINE OF THE IMPROVED INTERSECTING STREET BECKLEYSVILLE ROAD WHICH IS 40 FEET WIDE, THENCE THE FOLLOWING COURSES AND DISTANCE (1) N 4°15'00" E 1047.86, (2) S 49°47'00" W 347.08, (3) S 16°43'18" E 210.79, 4) S 12°38'30" E104.63, (5) S 74°30'00" W 439.42, (6) N 15°30'00" W 180.00, 7 S 74°30'00" W 29040, (8) N 15°44'00" W 232.00, BACK TO THE POINT OF BEGINNING AS RECORDED IN DEED LIBER JLE 3970, FOLIO 242, CONTAINING 6.116 ACRES. LOCATED IN THE 6TH ELECTION DISTRICT AND THE 3RD COUNCIL DISTRICT.

SITE DATA

1.	EXISTING ZONING:	RC-2, RC-8
2.	PROPERTY AREA:	
	PARCEL 144:	±26.34 AC.
	PARCEL 121:	±5.25 AC.
	TOTAL:	±32.59 AC.
3.	PROJECT AREA:	
	PARCEL 144:	±6.46 AC.
	PARCEL 121:	±2.69 AC.
	TOTAL:	±9.15 AC.
4.	PROPERTY INFORMATION:	
A.	EXISTING PREMISES ADDRESS:	18627 FALLS ROAD & ADJACENT TO 18627 FALLS ROAD
B.	TAX ACCOUNT NUMBER:	
	PARCEL 144:	0823011128
	PARCEL 121:	0804006210
C.	DEED REFERENCE:	
	PARCEL 144:	36664 /00468
	PARCEL 121:	33970 / 00242
D.	COUNCILMANIC DISTRICT:	3
E.	ELECTION DISTRICT:	6
F.	CENSUS TRACT:	405000
5.	BALTIMORE COUNTY ZONING MAP REFERENCES:	
A.	GIS TILE:	015A1
B.	TAX MAP:	0015
C.	PARCELS:	0144 & #121
D.	GRID:	0001
E.	WATERSHED:	PRETTYBOY RESERVOIR
F.	BASIC SERVICES - WATER MAP:	N/A
G.	BASIC SERVICES - SEWER MAP:	N/A
H.	REGIONAL PLANNING DISTRICT	PRETTYBOY
6.	EXISTING LAND USE	VACANT / RESIDENTIAL
7.	PROPOSED LAND USE:	SOLARFACILITY - 2MW MAX. (SPECIAL EXCEPTION)

GROWTH TIERS

TIER 4: PRESERVATION AND CONSERVATION
ARSAS - NC MAJOR SUBDIVISIONS ON SEPTIC

SITE NOTES

1. VEHICULAR ACCESS TO THE SITE SHALL BE PROVIDED VIA MAINTENANCE OF EXISTING DRIVEWAY (AND IMPROVEMENT/ RELOCATION OF EXISTING SITE ACCESS).
2. STORMWATER TREATMENT WILL BE MET VIA IMPLEMENTATION OF MDE SOLAR GUIDANCE (HB 1117), AND A COMBINATION OF NONROOFTOP DISCONNECT CREDIT, SHEET FLOW TO PRESERVATION AREA CREDIT, AND/OR MICRO-SCALE ESD DEVICES.
3. 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.
4. SITE TO BE STABILIZED WITH LOW-GROW'H SEED MIX, AND POLLINATOR SPECIES OUTSIDE OF ARRAY AREA.
5. SITE LAYOUT IS PRELIMINARY AND SUBJECT TO CHANGE.
6. THE SITE IS LOCATED BEYOND THE URBAN RURAL DEMARCATION LINE (URDL).
7. ANY SIGNAGE PROPOSED SHALL COMPLYWITH BCZR § 450.
8. PARKING:
   REQUIRED: 3 SPACES
   PROPOSED: 0 SPACES
9. BASIC SERVICES - TRANSPORTATION MAP: N/A
10. THERE WERE NO COMMERCIAL PERMITS OR ACTIVE ZONING VIOLATIONS FOUND ON FILE WITH BALTIMORE COUNTY.
11. THE PROPOSED SOLAR FACILITY WILL BE SUBJECT TO BCZR § 4F-107.
12. THE PROPOSED SHLAR FACILITY WILL NOT EXCEED THE MAXIMUM PERMITTED NUMBER OF FACILITIES ALLOWED IN ITS RESPECTIVE COUNCILMANIC DISTRICT. IF APPROVED, PETITIONER SHALL SUBMIT TO THE COINTY AT THE TIME OF BUILDING PERMIT APPLICATION THE FINAL FIXED LOCATION AND AREA OF THE FACILITY BY COORDINATE DATA.
13. LIGHTING SHALL BE LIMITED TO WHAT IS REQUIRED FOR SECURITY PURPOSES ONLY AND WILL BE SITED IN SUCH A WAY AS TC HAVE IIMIMAL SPILLAGE ON'O NEIGHBORING PROPERTIES.
14. NO DELIVERIES OR OUTDOOR MAINTENANCE WHICH MAY GENERATE EXCESSIVE NOISE MAY OCCUR ON-SITE BETWEEN THE HOURS OF 6 IM THROUGH 6 AM.
15. THERE ARE NO KNOWN RARE SPECIES, THREATENED SPECIES OR ENDANGERED SPECIES HABITAT, HISTORICAL OR ARCHEOLOGICAL AREAS ON SITE.
16. STORMWATER MANAGEMENT TO BE IN COMPLIANCE WITH MDE DESIGN GUIDANCE FOR SOLAR PANELS.
17. THE LOCATION OF THE PANELS AS SHOWN HEREON IS SCHEMATIC AND MIY CHANGE AS THE PROJECT EVOLVES TO FINAL DESIGN, HOWEVER, ALL PANELS SHALL BE LOCATED WITHIN THE AREA OF THE SPECIAL EXCEPTION AS SHOWN HEREON.

VARIANCE REQUESTS

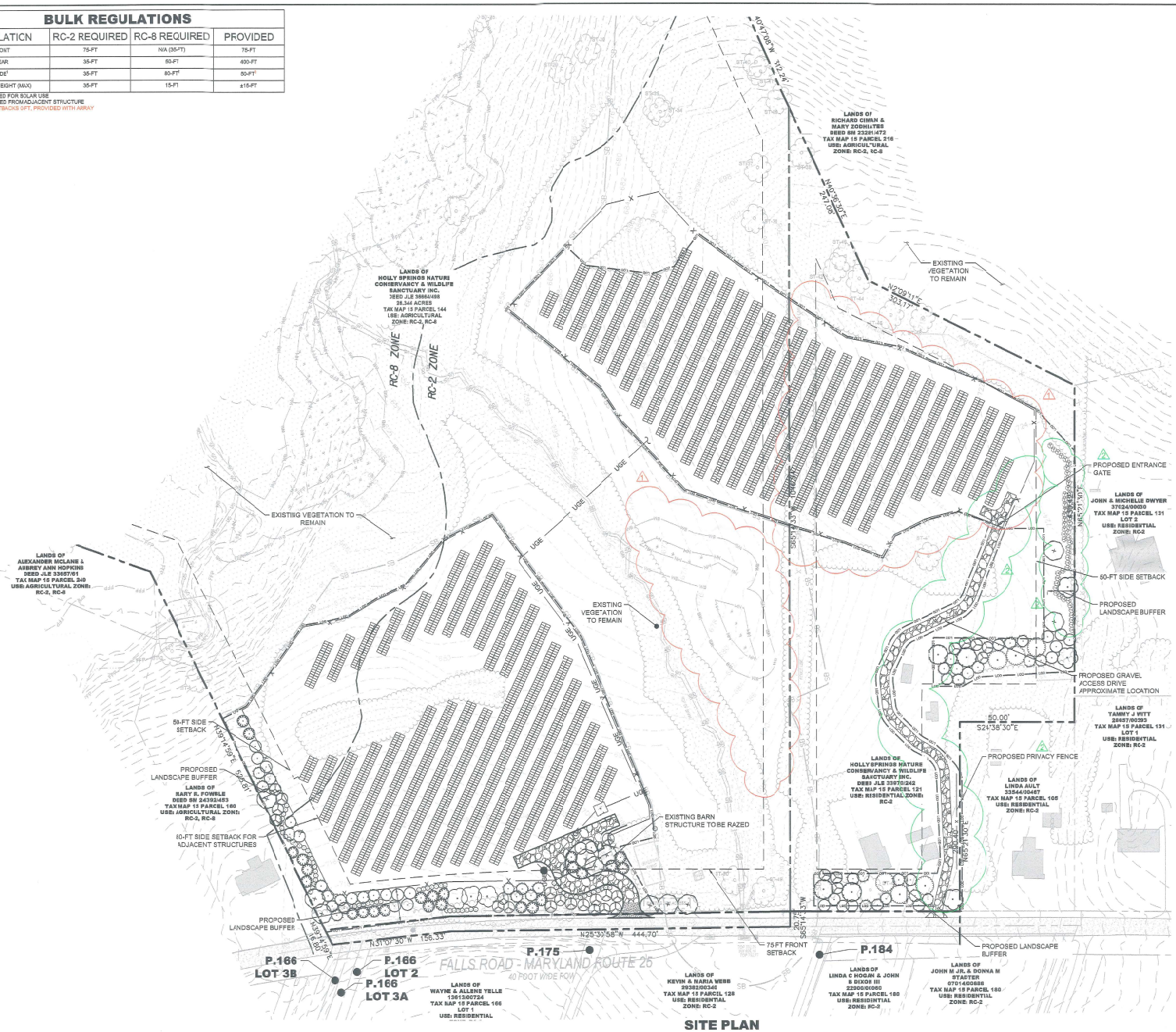
1. IF NECESSARY, TO GRANT VARIANCE RELIEF FROM BCZR §1A01.3.B.3.TO PERMIT A SOLAR FACILITY "O BE AS CLOSE AS 0 REET TO AN INTERNAL LOT LINE; AND
2. FOR SUCH OTHER AND FURTHER RELIEF AS MAY BE REQUIRED BY THE ADMINISTRATIVE LAW JUDGE FOR BALTIMORE COUNTY.

LANDS OF RICHARD CIMAN & MARY ZODHIATES DEED SM 23281/472 TAX MAP 15 PARCEL 216 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF LOUISA Y. HOPKINS REVOCABLE TRUST DEED SN 20338/130 TAX MAP 15 PARCEL 3 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY INC. DEED JLE36664/468 26.344 ACRES TAX MAP 15PARCEL 144 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF ALEXANDER MCLANE & AUBREY ANN HOPKINS DEED JLE 33667/61 TAX MAP 15 PARCEL 2-0 USE AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF MARY R. FOWBLE DEED SM 24392/453 TAX MAP 15 PARCEL 160 USE: AGRICULTURAL ZONE: RC-2, RC-8
LANDS OF WAYNE & ALENE YELLE 13611/00724 TAX MAP 15 PARCEL 166 LOT 1 USE: RESIDENTIAL ZONE: RC-2
LANDS OF KEVIN & MARIA WEBB 29382/00340 TAX MAP 15 PARCEL 128 USE: RESIDENTIAL ZONE: RC-2
LANDS OF LINDA C HOGAN & JOHN B DIXON III 22960/00060 TAX MAP 15 PARCEL 181 LSE: RESIDENTIAL ZONE: RC-2
LANDS OF JOHN M JR. & DONNA M STADTER 07914/00086 TAX MAP 15 PARCEL 180 USE: RESIDENTIAL ZONE: RC-2
LANDS OF LINDA AULT 39544/00467 TAX MAP 15 PARCEL 105 USE: RESIDENTIAL ZONE: RC-2
LANDS OF TANNY J WITT 29857/00393 TAX MAP 15 PARCEL 131 LOT 1 USE: RESIDENTIAL ZONE: RC-2
LANDS OF JOHN & MICHELLE DWYER 37224/00033 TAX MAP 15 PARCEL 131 LOT 2 USE: RESIDENTIAL ZONE: RC-2
EXISTING VEGETATION TO REMAIN
EXISTING BARN STRUCTURE TO BE RAZED
PROPOSED ENTRANCE GATE
50-FT SIDE SETBACK
PROPOSED LANDSCAPE BUFFER
PROPOSED GRAVEL ACCESS DRIVE APPROXIMATE LOCATION
PROPOSED PRIVACY FENCE
80-FT SIDE SETBACK FOR ADJACENT STRUCTURES
75-FT FRONT SETBACK
FALLS ROAD - MARYLAND ROUTE 25
P.166 LOT 3B
P.166 LOT 2
P.166 LOT 3A
P.175
P.184
RC-2 ZONE
RC-8 ZONE
S72°43'18"E 1252.98'
S4°15'00"W 1047.86'
N49°47'00"E 347.08'
N16°43'18"W 210.79'
N12°38'30"W 104.63'
N74°30'00"E 439.42'
S15°30'00"E 180.00'
N74°30'00"E 290.40'
S15°44'00"E 232.00'
N48°23'40"E 525.82'
N4°15'30"E 393.24'
S83°37'40"E 1251.74'
S20°33'00"W 297.15'
S49°47'00"W 312.78'
S74°16'00"W 1047.86'
S74°16'00"W 20.00'
N18°34'15"W 446.88'
N21°56'00"W 156.10'
N48°23'40"E 17.50'
N51°37'30"W 156.32'
N25°30'58"W 44.70'
N65°29'30"E 150.00'
S24°38'30"E 150.00'
N65°29'30"E 150.00'
S24°38'30"E 150.00'
N65°29'30"E 150.00'
S24°38'30"E 150.00

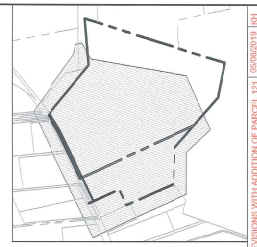
BULK REGULATIONS

REGULATION	RC-2 REQUIRED	RC-8 REQUIRED	PROVIDED
FRONT	75-FT	N/A (35-FT)	75-FT
REAR	35-FT	50-FT	400-FT
SIDE[1]	35-FT	80-FT[2]	50-FT[3]
BUILDING HEIGHT (MAX)	35-FT	15-FT	±15-FT

1 - 50-FT REQUIRED FOR SOLAR USE
2 - 15-FT REQUIRED FROM ADJACENT STRUCTURE
3 - INTERNAL SETBACKS 0FT, PROVIDED WITH ARRAY



SITE PLAN
TO ACCOMPANY SPECIAL EXCEPTION
SCALE = 1" = 60'



KEY MAP
SCALE: 1" = 500'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENSIS)
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDENTALIS)

LANDSCAPE NOTE:

LANDSCAPE BUFFER DESIGN SUBJECT TO FINAL LANDSCAPE PLAN REVIEW AND APPROVAL BY BALTIMORE COUNTY

PROPERTY OWNER
(P. 144 & P. 121)

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 143-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

GRAPHIC SCALE IN FEET
0 30 60 120

No.	REVISIONS	DATE	BY
1	REVISIONS WITH ADDITION OF PARCEL 121	09/06/2019	KH
2	REVISIONS OF GRAVEL ACCESS DRIVE	09/07/2019	KH

Kimley»Horn
© 2019 KIMLEY-HORN AND ASSOCIATES, INC.
1801 PORTER ST, SUITE 401, BALTIMORE, MD 21230
PHONE: 443-743-3470
WWW.KIMLEY-HORN.COM

STATE OF MARYLAND — NICHOLAS JOSEPH LEFFNER — 21432 — REGISTERED PROFESSIONAL ENGINEER — 9/7/2019

PROFESSIONAL CERTIFICATION. I HEREBY CERTIFY THAT THESE DOCUMENTS WERE PREPARED OR APPROVED BY ME, AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MARYLAND, LICENSE NO. 21432, EXPIRATION DATE: 09/30/2020

KHA PROJECT	114066000
DATE	06/07/2019
SCALE	AS SHOWN
DESIGNED BY	NJL
DRAWN BY	STM
CHECKED BY	NJL

SITE PLAN TO ACCOMPANY SPECIAL EXCEPTION

FALLS ROAD SOLAR

PREPARED FOR
POWERFACTOR COMPANY

BALTIMORE COUNTY MD

SHEET NUMBER
SHEET 2A

Plotted By: Miller, Sean Sheet: SeLFalls Road Solar Layout SHEET 2A SITE PLAN June 07, 2019 - 12:54:26pm K:\BAL_DIV\114066000-Falls Rd Solar\CAD\PrintSheets\Special Exception Plan\Site Plan to Accompany Special Exception.dwg
No copies, together with the concepts and designs presented herein, as an instrument of service, is intended only for the specific purpose and client for which it was prepared. Reuse of and improper reliance on this document without written authorization and adaptation by Kimley-Horn and Associates, Inc. and be without liability to Kimley-Horn and Associates, Inc.

February 28, 2019

To: Administrative Law Judge

From: Linda Ault

18621 Falls Road

Hampstead, MD 21074

Your Honor:

I am at this hearing today to oppose the commercial Solar Facility that is proposed for Falls Road. Ever since the zoning sign was posted, I have been dealing with stress due to the fact that the facility is very close to my house and visible (see attachments a). This is not something that will go away quickly as this lease is proposed for the next 25 years.

I moved to Hampstead in the spring of 2013 and choose this area for the rural appeal, open spaces and nature. Prior to this I lived in a congested community close to the city. I was 60 years old when I moved here and it took me 40 years to finally move to a peaceful and tranquil place. This is my retirement home and with this proposal my dreams of a peaceful retirement have been shattered. My neighbors have the same sentiment.

The claims made by Power Factor, LLC that fencing and trees will hide this from our view is obscure. First of all the trees in our area are deciduous and lose their leaves from October to April. Second, this property is on a down slope and all the houses around the property site above the proposed site. Unfortunately Mrs. Mary Fowble will be in full view of the panels and have the panels very close to her property line (see attachment b,c). Also, there has been a change to the plans and now the second section will be directly behind me and in full view. The renditions are very deceiving and show so many mature trees around the site but in fact there are very few (see attachment d).

I also have environmental and wildlife concerns. Compass Run which flows at the base of the property goes directly into the Pretty Boy Watershed and then into

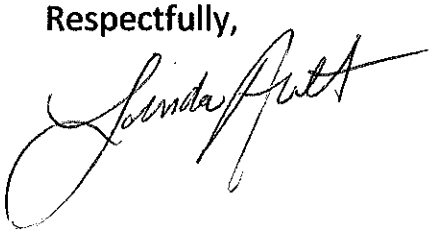
the reservoir. If this proposal goes through will there be runoff into Compass Run and will the ground water be affected as we all have wells in this area. Cutting down and clearing of trees will also cause runoff and cause stress on the wildlife. There is a concern for animal dens on the property being disturbed, bird nesting site and food sources being disturbed and the natural deer trails blocked by fencing. The proposed fence could cause great danger to deer and motorists. Falls Road is a very busy road and if the deer see the fence and panic, will they run out into Falls Road to be hit. We already have a problem with this and the fence will only increase the danger. Also, there are many hawks in the area that ground hunt. Will they dive for their prey and hit the solar panels only to be killed. Who will monitor all of these concerns?

Falls road is designated as a Scenic Byway and many people come out here for a weekend drive to enjoy the open spaces and get away from the hustle and bustle of congested living. Senator Cardin and Senator Collins have introduced legislation to protect America's Scenic Byways (see attachment e). Maryland is home to 18 scenic byways and Falls Road is one of them. I am not against alternative energy but why not use rooftops of commercial and industrial buildings or land surrounding these areas. Solar facilities should not be built on scenic byways and rural open spaces of Baltimore County.

I came here to enjoy the area, walk my dog on the trails surrounding Pretty Boy Reservoir, take care of the area around me and coexist with my neighbors in a quiet and peaceful manner. This intrusion has upset me and my entire community. The people who want this facility and plan this do not live here; do not have to see this facility everyday. They don't have to deal with the stress and anguish for the next 25 years.

Judge, please take into consideration the united voices of the landowners and community surrounding this proposed facility. It is a huge invasion on our privacy.

Respectfully,

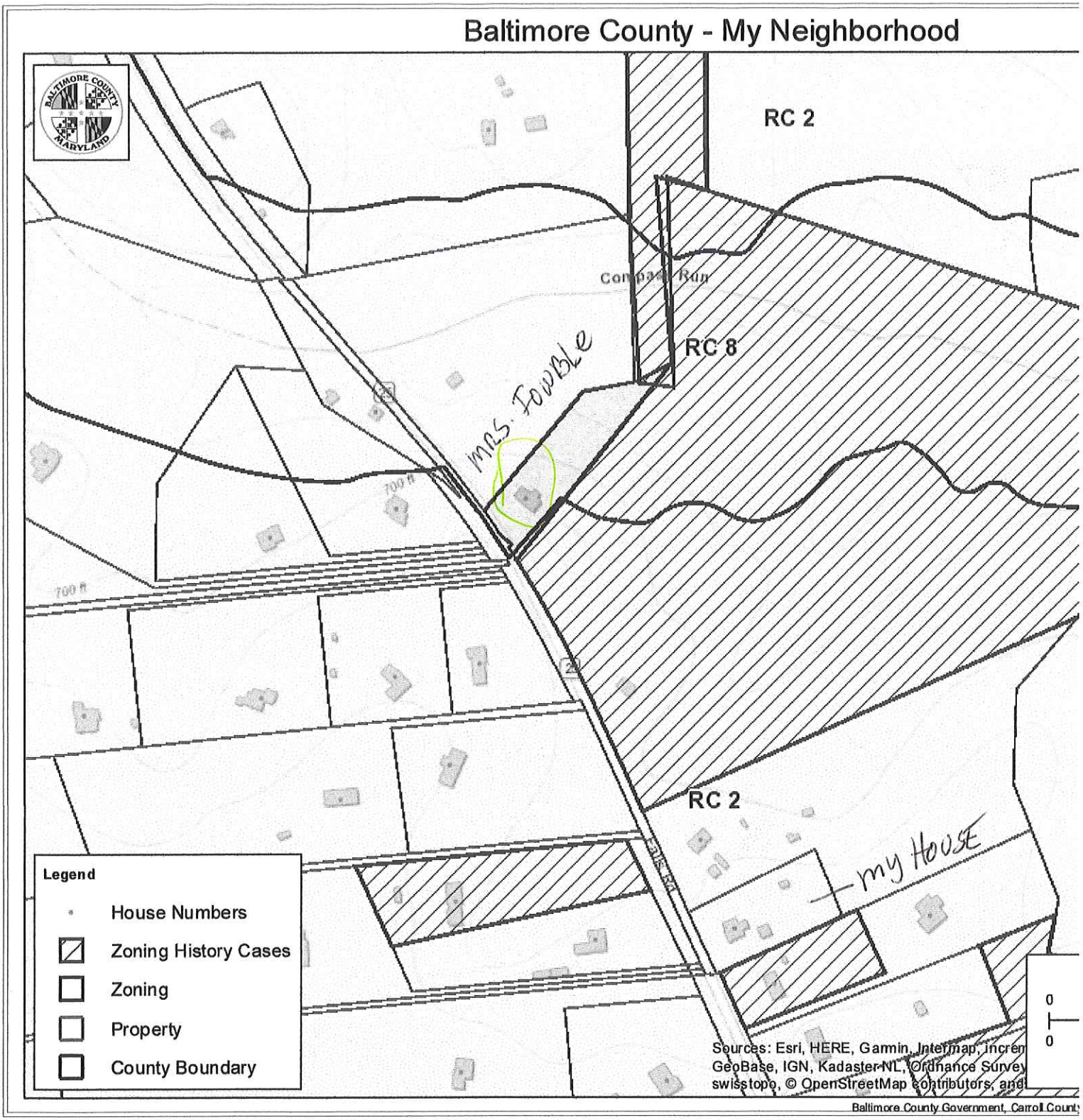


Attachment A

Picture in Winter

Attachment B

Please note all of the houses surrounding this Proposed Facility



Attachment C

Attachment D

MRS FOWBLE →

Attachment E

CARDIN

(/contact)

(/)

FEBRUARY 07, 2019

Legislation to Protect America's Scenic Byways Introduced by Senators Cardin, Collins

WASHINGTON – In a bipartisan effort to protect and promote America's scenic roadways, **U.S. Senators Ben Cardin (D-Md.) and Susan Collins (R-Maine)** have introduced the Reviving America's Scenic Byways Act.

Senators Cardin's and Collins' legislation would restart the dormant designation process for the National Scenic Byways Program, a voluntary, community-based Federal Highway Administration program to help

recognize, preserve and enhance selected roads throughout the United States. The roads are recognized based on one or more archeological, cultural, historic, natural, recreational and scenic qualities.

"Maryland is home to 18 designated byways, and the reopening of this program will be beneficial to future development and maintenance of these important routes," **said Senator Cardin.** "This program helps direct visitors to areas of interest along our Scenic Byways, and generates revenue for the surrounding communities."

"I am proud that Maine boasts not only three National Scenic Byways, but also the Acadia All-American Road. These roadways provide Mainers and tourists alike with spectacular views and memorable experiences, while at the same time spurring much-needed economic activity in the surrounding areas," **said Senator Collins.** "The National Scenic Byways program represents a true win-win scenario by protecting precious corridors and providing tangible benefits for local communities."

"We are thrilled with Senator Collins and Cardin's support for scenic byways," **said Mark Falzone, president of Scenic America.** "The National Scenic Byways Program is a proven winner: it protects places with historic, scenic and cultural significance and contributes to local economies by promoting them as destinations."

Since its inception in 1991, the National Scenic Byways Program has officially recognized 150 roads around the country, but the last round of designations occurred ten years ago.

Subject: Re: Changes to plans

From: linda ault (la.ault@yahoo.com)

To: andrew@powerfactorco.com;

Date: Tuesday, May 28, 2019 8:33 PM

No I am sorry I cannot do that. Andrew we discussed this Friday and I told you then that I was not in favor of the proposal but if it happens I wanted the driveway relocated and you agreed. I did not know this was a bargaining chip and I am very disappointed that you would even pose the question to me.

On May 28, 2019, at 8:26 PM, Andrew <andrew@powerfactorco.com> wrote:

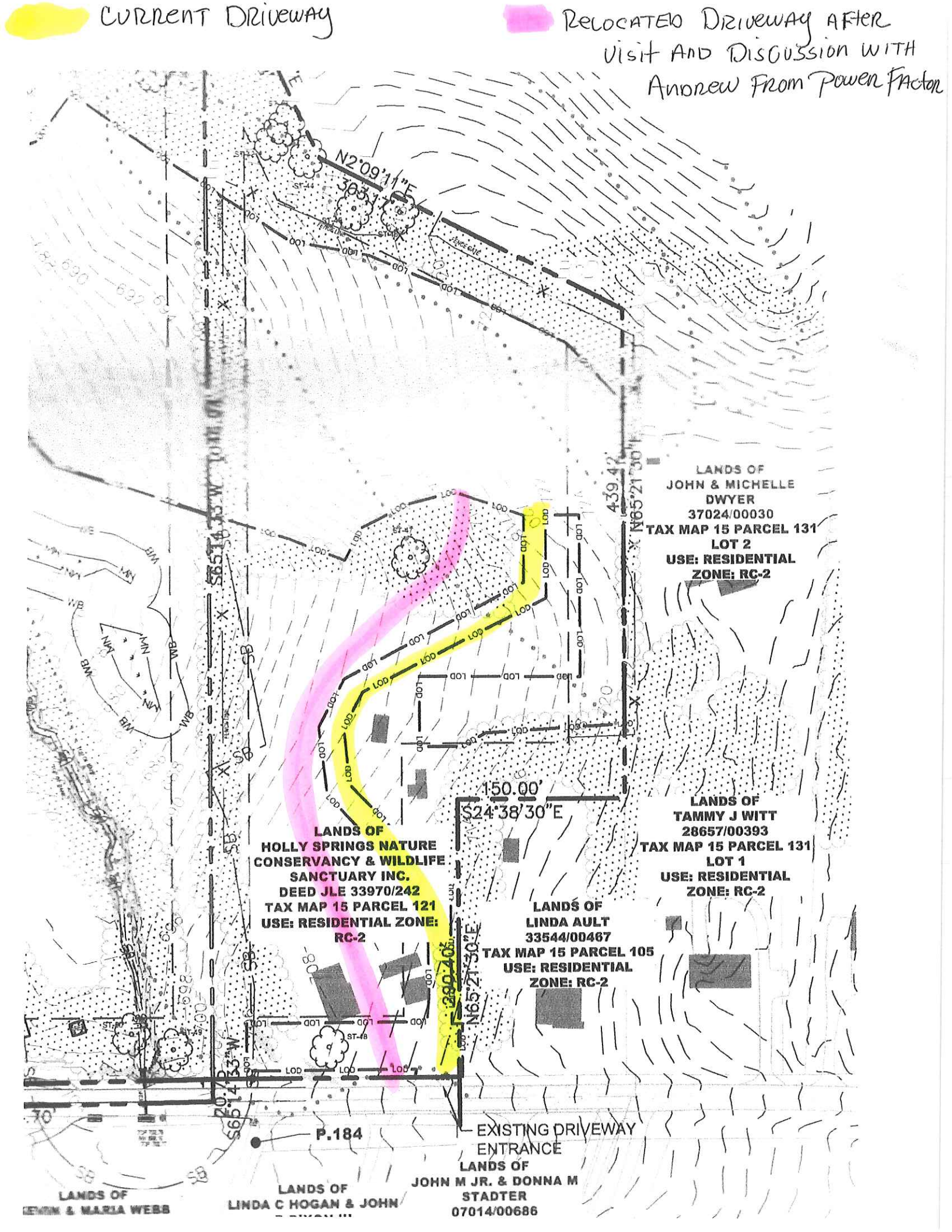
Linda, if I do the changes will you agree not to oppose?

Get

On Tue, May 28, 2019 at 8:07 PM -0400, "linda ault" < > wrote:

Hi...I have not received any updated plans concerning the relocation of the driveway. Please send the

Thank you,
Linda Ault


CURRENT DRIVEWAY
RELOCATED DRIVEWAY AFTER VISIT AND DISCUSSION WITH ANDREW FROM POWER FACTOR
N2°09'11"E
303.17'
S65°14'33"W
439.42'
N65°21'30"E
LANDS OF
JOHN & MICHELLE
DWYER
37024/00030
TAX MAP 15 PARCEL 131
LOT 2
USE: RESIDENTIAL
ZONE: RC-2
150.00'
S24°38'30"E
LANDS OF
HOLLY SPRINGS NATURE
CONSERVANCY & WILDLIFE
SANCTUARY INC.
DEED JLE 33970/242
TAX MAP 15 PARCEL 121
USE: RESIDENTIAL ZONE:
RC-2
LANDS OF
TAMMY J WITT
28657/00393
TAX MAP 15 PARCEL 131
LOT 1
USE: RESIDENTIAL
ZONE: RC-2
LANDS OF
LINDA AULT
33544/00467
TAX MAP 15 PARCEL 105
USE: RESIDENTIAL
ZONE: RC-2
N65°21'30"E
289.40'
S65°14'33"W
20.00'
P.184
EXISTING DRIVEWAY
ENTRANCE
LANDS OF
JOHN M JR. & DONNA M
STADTER
07014/00686
LANDS OF
LINDA C HOGAN & JOHN
LANDS OF
KEVIN & MARIA WEBB

North County
Community Group

May 27, 2019

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

Re: Case No. 2019-0183-X
East side of Falls Road, southeast from centerline of Beckleysville Road
5th Election District-3rd Councilmatic District
Legal Owner: Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc.
Contract Purchaser/Lessee: Power Factor Company / Andrew Streit
Hearing Date: May 30, 2019

Dear Judge Beverungen:

The North County Community Group (NCCG) opposes granting the special exception request referenced above because it is not clear substantial comments provided on the project by the Department of Environmental Protection & Sustainability (DEPS) have been addressed. DEPS Comments for Zoning Item #2019-0183-X, 18200 block Falls Road (Zodhiates Property, dated December 26, 2018, attached).

Your consideration of our community's concerns is greatly appreciated.

Sincerely,

Kathleen A. Pieper, President
North County Community Group

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: December 26, 2018

SUBJECT: DEPS Comment for Zoning Item # 2019-0183-X
Address 18200 block Falls Road
(Zodhiates Property)

Zoning Advisory Committee Meeting of **December 24, 2018.**

__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 Law for the Protection of Water Quality, Streams, Wetlands and Floodplains (aka Forest Buffer law) (Sections 33-3-101 through 33-3-120 of the Baltimore County Code). In accordance with Section 33-3-108 of the Forest Buffer Law, sufficient information must be provided by the applicant to enable EPS to make an informed decision regarding the proposed activities.

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

Additional Comments:

All streams and wetlands must be field delineated, and the delineations must be approved by EPS. A Forest Buffer Easement (FBE) must be delineated in accordance with Section 33-3-111 of the Forest Buffer Law.

The 100-foot stream buffers shown on the plan do not meet the minimum 100-foot forest buffer width. The forest buffer would likely extend well beyond that minimum based on the floodplain and hydric soils (Hatboro – HbA) shown on the plan and the steep slopes/erodible soils analysis required by Section 33-3-111(b) of the Code. The 50-foot stream setbacks on the plan are unrelated to any EPS regulatory requirement.

The proposed gravel road and underground electric line in the forest buffer will require EPS alternatives analysis approval. It appears as though proposed water quality impacts could be substantially reduced by redesigning gravel road access points and turn-around areas and by eliminating the proposed stream crossing.

The extensive solar array and limit of disturbance (LOD) forest buffer impacts shown on the plan would require approval of an administrative variance to the Forest Buffer Law by the EPS Director. There is no guarantee of variance approval. The forest buffer solar array and LOD impacts could all be avoided by reducing the scope of the overall project and adjusting the project LOD.

A forest stand delineation and forest conservation plan must be submitted to EPS and approved prior to approval of any development plan or grading/sediment control plan.

If any specimen trees or critical root zones of these trees are proposed to be impacted, special variance to the Forest Conservation Law must be submitted and approved by the EPS Director. There is no guarantee of special variance approval.

Based upon our review of the special exception application, we have determined that the proposed extensive forest buffer impacts would be detrimental to water quality in Compass Run, a tributary to Compass Run, and Prettyboy Reservoir into which these streams drain. Furthermore, given that these impacts are largely avoidable, we do not believe that the applicant has taken into consideration the presence of natural forest buffers and the proximity of streams and wetlands when designing the site layout. For these reasons, we recommend that the Administrative Law Judge either deny the subject application, or condition the application to substantially reduce and minimize forest buffer and water quality impacts in accordance with the Forest Buffer Law and EPS requirements.

Reviewer: Glenn Shaffer

ATTACHMENT TO PETITION FOR SPECIAL EXCEPTION

Falls Road
Tax Account No. 0523015126
3rd Councilmanic District
5th Election District

Special Exception Relief:

1. To grant Special Exception relief for a solar facility pursuant to BCZR § 4F-102 (as established by Bill 37-17); and

2. For such other and further relief as may be required by the Administrative Law Judge for Baltimore County.

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 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) 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 access vegetated areas to maintain the disconnection.
- Disconnections should be located on gradual slopes ($\leq 5\%$) to maintain sheet flow. Level spreaders, terraces, or berms may be used to maintain sheet flow 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.

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.

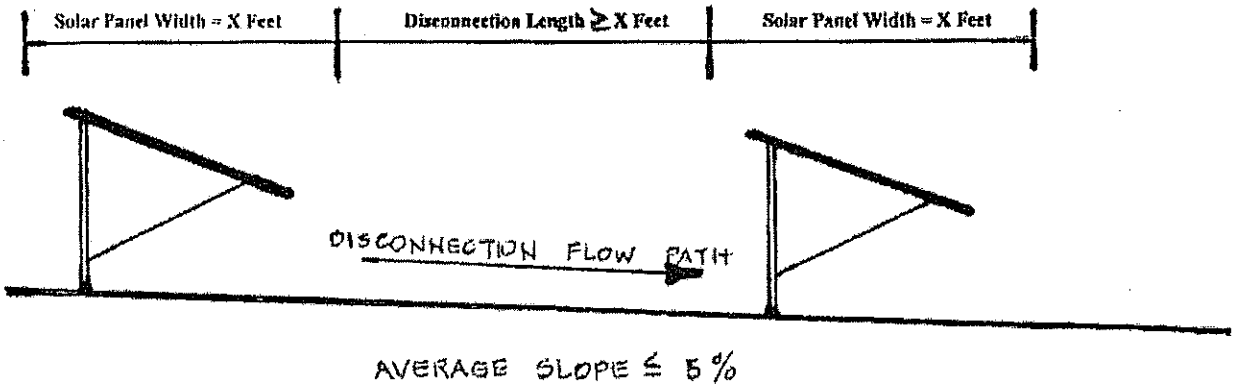


Figure 1. Typical Installation – Slope ≤5%

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 soalr 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 sheet flow.

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.

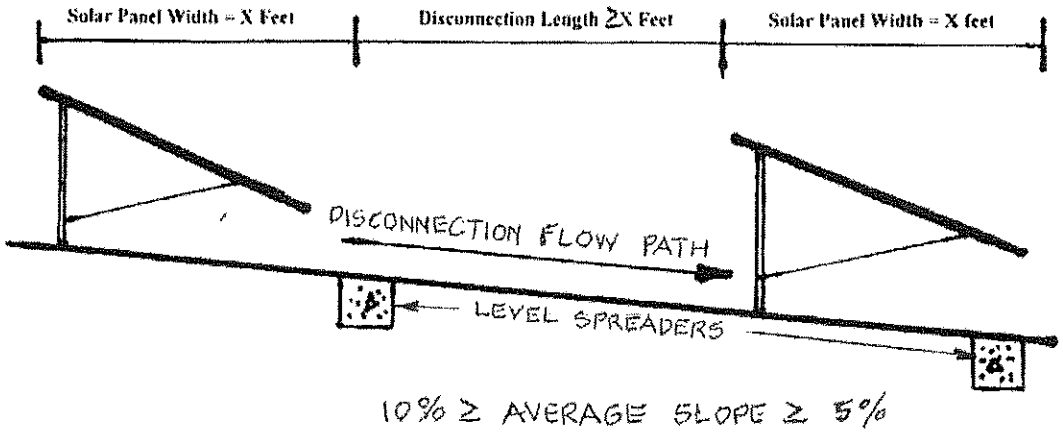


Figure 2. Typical Installation – Slope ≥5% but ≤10%

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)

John E. Beverungen

From: kathy england <kengland7@hotmail.com>
Sent: Tuesday, May 28, 2019 4:43 PM
To: John E. Beverungen
Subject: Zoning Hearing May 30, 2019 for Case Number: 2019-0183-X

CAUTION: This message from kengland7@hotmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Honorable Judge Beverungen:

Please take into consideration my opposition (outlined below) to the Special Exemption request in Case Number 2019-0183-X as I will be unable to attend the hearing in person.

The proposed industrial solar facility on Falls Road is just another example of a company destroying valuable resources of our planet for what could only be described as financial gain. This type of selfish greed is how we got here in the first place.

The fossil fuel industry stripped our valuable land with the mining of coal, drilling and spilling oil, only to savage the landscape and pollute our oceans and waterways. Following that, the burning of the mined fuels is suffocating every living thing on the planet.

Solar energy may well be a valuable alternative to the fossil fuel plight, but isn't it counterintuitive to again savage our landscape to accomplish it? Aren't our natural and wildlife conservancy land, scenic byways and farmland just a drop in the hat of what we are trying to preserve by engaging in solar energy in the first place?

This community does not object to the use of solar power applications to help restore a healthy environment for all. What we object to is these solar power companies stripping away the limited pristine landscape we have left to accomplish it.

We have asked the solar industry to use already existing industrial locations for placement of their solar arrays; tops of existing buildings and over huge existing parking lots. When I worked at the National Institute of Standards and Technology (NIST) in Gaithersburg, MD, they put up a massive solar array above an existing open asphalt parking lot. It was a win-win for everybody. The parking lot allowed a vast solar array facility with full sun exposure and the cars and people underneath were protected from the heat and adverse weather conditions. No one could visually see the solar arrays that would have detracted from the beautiful landscaped campus grounds that NIST proudly resides. That is the balanced technology NIST strives to accomplish.

Power Factor, LLC paints a clear picture that they do not want to infringe on their monetary bottom line to do the right thing by building their solar arrays on existing industrial locations. They evidently do not really want to save the environment and help clean up the planet as they would like us to believe.

Please deny the Special Exemption to build this industrial project on our conservancy land. Let's be part of the solution not part of the already established problem.

Thank you for your attention in this very important and sensitive matter.

Sincerely,

John E. Beverungen

From: Pontone, Kathleen <KPONTONE@MilesStockbridge.com>
Sent: Tuesday, May 28, 2019 3:05 PM
To: John E. Beverungen
Subject: Holly Springs Solar Array on Falls Road near Beckleysville Road

CAUTION: This message from kpontone@milesstockbridge.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

The information provided by this developer provides almost no information on the environmental impact of this project. It is on a State Scenic Byway and a designated county scenic byway, and this project involves both RC2 and RC8. Impacts to our best soils and environmentally sensitive areas need more attention in the hearings. Thank you. K

Kathleen Pontone

100 Light Street | Baltimore, MD 21202
D: +1 410.385.3757 | O: +1 410.727.6464 | F: +1 410.698.1361

MILES & STOCKBRIDGE

bio | vCard | KPONTONE@MilesStockbridge.com

We Go the Extra Mile

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John E. Beverungen

From: Jim Hessenauer <jim@hessenauer.us>
Sent: Wednesday, May 29, 2019 1:13 PM
To: John E. Beverungen
Subject: Hearing 2019-0183-X

CAUTION: This message from jim@hessenauer.us originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Judge Beverungen,

I'm writing you regarding the upcoming zoning hearing 2019-0183-X for the property located at 18627 Falls Rd. On June 3rd I settle on 4305 Beckleysville Rd, which abuts the land in question. I'm purchasing this 30 acres to get away from commercial activities. I specifically sought out a property with a stream (Compass Run) for my kids to explore. During the purchasing process I ran into issues getting a land loan for the one parcel of land because it didn't have a perc test. The county wouldn't approve a perc test because there were no building rights on that plot. So even though I never planned on building on the land, Baltimore County wouldn't give me a pass so I could get a reasonable land loan. Instead I'm paying tens of thousands more to finance the property. Now, my future neighbor is about to get a pass for a huge commercial solar facility? Something seems a little off with that. I didn't purchase this land, next to a nature conservatory so they could then turn it into a commercial solar farm. Mary Zodhiates and Richard Ciman own a large portion of the plots between Falls, Gunpowder, and Beckleysville Roads. They've been slowly acquiring properties as they pop up and keeping them zoned agricultural under the non-profit 501c3, Holly Springs Nature Conservancy and Wildlife Sanctuary. All while pressuring neighbors to donate land under the guise of re-planting trees and turning the landscape back "the way it used to be". Now they want to flip all this land to commercial solar farms. It seems disingenuous at best. With that said, Baltimore County refused to assist me with my zoning issue for something that would have zero affect on the surrounding landscape or environment and is now considering making a huge allowance for another party that could drastically affect the environment. Please remain consistent and do not allow this zoning variance for the solar farm on productive farm land with a healthy stream, directly in my back yard.

Thank you very much for you time,

Jim Hessenauer
2401 Beckleysville Rd
Freeland, MD 21053
443-824-4665

John E. Beverungen

From: Kristen Balint <kristen.balint@gmail.com>
Sent: Wednesday, May 29, 2019 1:25 PM
To: John E. Beverungen
Subject: Zoning issue 2019-0183-X

CAUTION: This message from kristen.balint@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

I understand that you may be looking to approve a variance for Solar Farming in near 4305 Beckleysville Road. We are moving there next week and I wanted to express my disapproval and hopes that you will reconsider, especially as the land backs up to our property.

I'm worried about the long-term environmental impacts of such farms towards land degradation and that's one of the reasons we chose to move to the area. Additionally more than 20 acres of our property is on a farm lease that could be negatively impacted if next to a solar farm.

Thanks for taking the time to listen to a concerned neighbor and I hope you take my opinion in to consideration.

Sincerely,
Kristen Hessenauer

THE VALLEYS
PLANNING COUNCIL INC

May 29, 2019

John E. Beverungen
Administrative Law Judge
Baltimore County
105 W. Chesapeake Avenue
Towson MD 21204

RE: Case No. 2019-0183-X

Dear Judge Beverungen,

At its May 14 meeting, the board of the Valleys Planning Council voted to oppose the request for special exception that would allow a commercial/industrial solar panel array on the property known as Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., located at 18627 Falls Road.

This property falls within VPC's territory and contains some of the best soils in the county, designated as prime and productive and statewide importance. The property also contains streams, forests and forest buffers, and wetlands and is situated along a segment of Falls Road that is designated as scenic by both the state and county government.

There are many unknowns with this new, intensive land use that has not been addressed in the county's master plan. There is scant information provided at the special exception hearings on potential environmental impacts, and since there is no development plan hearing, the community has no opportunity to review and question the more detailed site and storm water management plans. As you have seen, large numbers of residents living adjacent to proposed arrays have voiced strong concerns about adverse impacts to the land and resources as well as surrounding property values.

VPC believes these are valid concerns and also believes that prime soils will be increasingly important due to climate change and other factors. Avoiding these soils to the extent practical should be addressed as part of considerations listed in 502.1 A, E, G, and I.

Section 502.2 calls for protection of surrounding properties. Clearly, residents believe they will suffer reduced enjoyment of their property, negative impacts to shared natural and scenic resources, and reduced property values. The voices of the residents living near these facilities should be given significant weight as part of 502.2.

Thank you for considering our input.

Sincerely,

Teresa Moore

Teresa Moore
Executive Director

118 W. Pennsylvania Avenue Towson, Maryland 21204
Mailing Address: P.O. Box 5402 Towson, Maryland 21285-5402
Phone: 410-337-6877 *Fax:* 410-296-5409

John E. Beverungen

From: Cathy Boutwell <boutwellcbgb@gmail.com>
Sent: Thursday, May 30, 2019 8:00 AM
To: John E. Beverungen
Subject: commercial solar farm

CAUTION: This message from boutwellcbgb@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Judge,

Our beautiful Northern Baltimore County Falls Road area is in danger of becoming a commercial business zone.
We have neighbors, Holly Springs Nature Conservancy & Wildlife that stop progress in the immediate area any chance they get, stating that this area needs to be left to nature & not developed.

This is such a hypocritical move on their part and it is strictly for profit. This solar farm is not going to benefit our area or our neighbors. I am led to believe this energy source will be used elsewhere.

We have "BOG TURTLES" in our area which are endangered and they have been spotted on Holly Springs Nature Conservancy & Wildlifes property and adjoining properties.

Furthermore, these solar panels increase the ground temperature by 5 degrees, which will change the native habitat that these "BOG TURTLES" survive off of.

A nature conservancy should be more concerned with our native wildlife here in our area over profitability.

Thank you, PLEASE take this into consideration and SAVE OUR BOG TURTLES!

TO:

Baltimore County Zoning

Administrative Law Judge

RE: 2019-0183-X

May 30, 2019

My wife Michelle and I have lived in rural Baltimore County almost as long as we've been married (17 years). First on Upper Beckleysville Rd, and then in 2015 we purchsed our current home, only 1.5 miles away from our first, at 18619 Falls Rd. We grew up in neighboring Hampstead and we choose to live in a rural, agricultural setting.

As homeowners on the adjoining property to the proposed facility, and as homeowners of one of the homes that will be physially closest to the solar arrays, we have some concerns. First, we understand that the use of this land for a solar power generation facility is permitted by the county (by special exception.) We also understand that the property in question is private property, not owned by us, and the homeowner has a right to use it as they see fit under the law. That said, the proposed solar array could be sited as close as 85 feet from our home, and the site is highly visible from multiple rear windows, including the dining room and breakfast room, and the front and rear yards of the home.

Our goal in submitting this written statement is not to oppose the facility, but to influence the county to enforce the plans and promises that the developer has communicated, both verbally and in written form (preliminary plans). The issues are the location of the security fence, the location of the access driveway, and the composition of the landscape buffer.

On the plans sent to us, the security fence is sited at a 50 foot setback.

We ask that the county require the security fence to be installed at the 50 foot setback line as indicated on the plans.

On May 24th 2019, Andrew Streit, a representative of Power Factor, visited our property and was agreeable regarding the use of evergreen trees as the majority of the landscape buffer between our land and the solar array security fencing. During the meeting, we also discussed

the location of the access drive and whether it could be located further from the property line; he agreed that it could be moved and indicated that the plans would be adjusted and forwarded. That part never happened.

We request that the county require the access drive for the array to be sited further north on the property.

We request that the county require that the developer use an abundance of evergreen trees for the landscape buffer, as they'll provide screening in winter/fall as well as summer months.

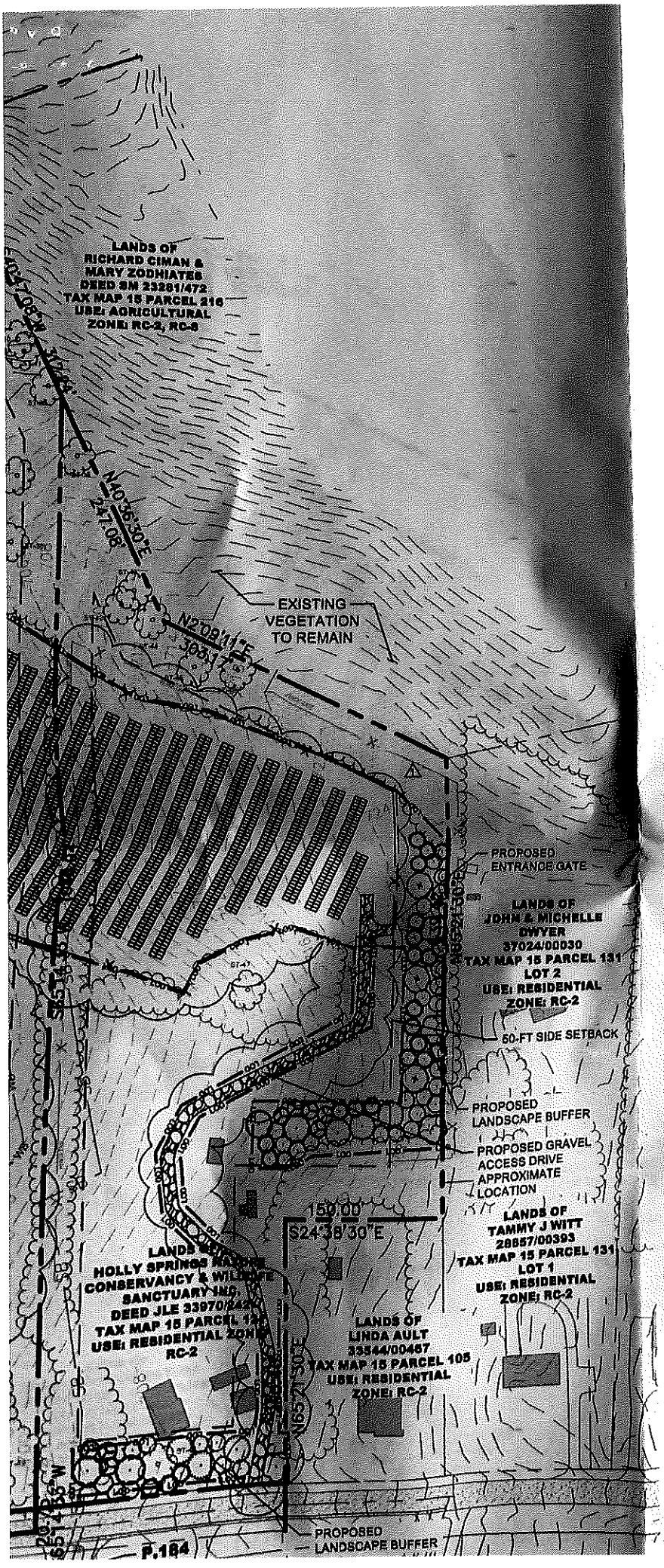
Solar facilities on RC-zoned property is a program that is very new to the County; the effects on property values of surrounding properties aren't yet known. Solar panels are pointed south in the northern hemisphere to capture light in the most efficient way. Our home is directly to the south of the proposed array and glass reflects light. (4F-104.8 requires that that the collectors be designed and located in a way that minimizes glare or reflection onto adjacent properties) Again, we aren't trying to stop the facility on principle or encroach on others' property rights, but we are trying to preserve the value and setting of our own property. If any mistakes are made, or issues are found after the (multi-million-dollar) installation, it's a 25 year mistake, and how can we even begin to correct it.

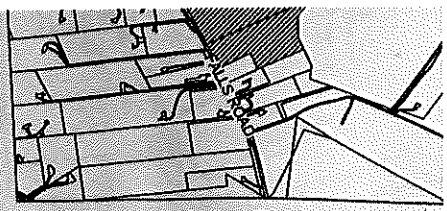
John and Michelle Dwyer

18619 Falls Rd

Hampstead, MD 21074

ENCL: relevent site plan, showing fence located at 50' setback and showing access road far to south of property. Also shows distance to our home from solar array / fencing.





LOCATION MAP

SCALE: 1" = 1000'

SITE PLAN LEGEND

- PROPERTY LINE
- ADJACENT PROPERTY LINE
- PROJECT AREA
- VINYL COATED CHAIN LINK FENCE (7-FT HEIGHT)
- UGE — UNDERGROUND ELECTRIC
- EXISTING TREE LINE
- GRAVEL DRIVE
- SOLAR PANEL
- T — TRANSFORMER PAD (CONCRETE)
- SITE ACCESS GATE
- SHRUB
- EVERGREEN TREE (PINUS NIGRA)
- EVERGREEN TREE (ILEX OPACA)
- EVERGREEN TREE (PICEA ABIES)
- FLOWERING TREE (CERCIS CANADENSIS)
- FLOWERING TREE (AMELANCHIER CANADENS
- SHADE TREE, MAJOR (QUERCUS PALUSTRIS)
- SHADE TREE, MAJOR (ACER RUBRUM)
- SHADE TREE, MAJOR (PLATANUS OCCIDEI

PROPERTY OWNER

HOLLY SPRINGS NATURE CONSERVANCY & WILDLIFE
SANCTUARY, INC.
ATTN: MARY ZODHIATES
4209 BECKLEYSVILLE ROAD
HAMPSTEAD, MD 21704
GRANDSREET@COMCAST.NET

DEVELOPER/APPLICANT

POWERFACTOR COMPANY
ATTN: ANDREW STREIT
1 MACE AVENUE
BALTIMORE, MD 21221
TEL: (443) 559-0174
EMAIL: ANDREW@POWERFACTORCO.COM

CIVIL ENGINEER/ LANDSCAPE ARCHITECT

KIMLEY-HORN AND ASSOCIATES, INC.
ATTN: NICHOLAS J. LEFFNER, P.E.
1801 PORTER STREET, SUITE 401
BALTIMORE, MD 21230
TEL: (443) 743-3470
EMAIL: NICK.LEFFNER@KIMLEY-HORN.COM

John E. Beverungen

From: Renee Hamidi <reneehamidi@gmail.com>
Sent: Wednesday, June 5, 2019 11:27 AM
To: John E. Beverungen
Cc: Kathleen Pieper; Teresa Moore

CAUTION: This message from reneehamidi@gmail.com originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

THE MANOR CONSERVANCY

June 5, 2019

John Beverungen
Administrative Law Judge
205 W. Chesapeake Ave.
Towson MD 21204

Dear Judge Beverungen:

I was at the May 30 hearing for a special exception for a solar array on the property at 18627 Falls Road, Case no. 2019-0183-X. I left at 4, when the lights first flickered, but I understand that the record may still be open and I want to inform you about an issue that may have some bearing on your decision, if you able to consider it.

The property's owner is Holly Springs Nature Conservancy and Wildlife Sanctuary, a non-profit that received a letter of determination from the IRS in 2006. Publicly available information (990 returns filed with the IRS) shows that Holly Springs has accepted 5 conservation easements comprising 110 acres and spends thousands of hours monitoring and enforcing those easements.

Holly Springs owns 4 parcels (over 44 acres) including the two included in the special exception. I am unable to determine on which land Holly Springs has been granted conservation easements. Could you confirm with Holly Springs whether the parcels proposed for the solar array are encumbered by a conservation easement? Baltimore County Zoning Regulations state that "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." (BCZR §4F-104 A.1) If the land is preserved then of course the solar array would not be permitted.

Thank you so much for your help and please let me know if I can provide any other information.

Regards,

Renee Hamidi
Executive director
The Manor Conservancy

John E. Beverungen

From: Teresa Moore <teresa@thevpc.org>
Sent: Tuesday, June 11, 2019 6:22 PM
To: Lawrence Schmidt; John E. Beverungen; Alyssa Moyers; Zachary J. Wilkins; andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com); grandstreet@comcast.net
Cc: Renee Hamidi; Kathleen Pieper
Subject: RE: Case No. 2019-0183-X

CAUTION: This message from teresa@thevpc.org originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Larry,
My concern is that there may be an easement on one of the properties that does not show up on the data layers you mentioned, but it may still be valid to consider it in the case. As you will see from the directory of land trusts, there are many regional and national land trusts that hold environmental easements, and these may not be in the local databases. Holly Springs appears to be a small, locally-oriented conservancy that owns four or five adjacent properties, and since they reportedly hold a conservation easement on five properties, it would seem likely that these two parcels are subject to some kind of easement. Depending on how you ask the question, you might not get the answer about a non-Maryland entity holding the easement, so seemed easiest to me to determine easements they hold, since there are only 5. It does not seem intrusive to me to ask for information on a conservancy's eased properties. All non-profit land conservancy's that I know of readily provide that information, and in fact market that information as evidence of their work. If they hold easements, they really should be recorded and included in the county and state easement tallies and databases.

It's up to Judge Beverungen, but I know the community would appreciate this clarification.
Thanks for your response,
Teresa

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Tuesday, June 11, 2019 5:40 PM
To: Teresa Moore <teresa@thevpc.org>; John Beverungen (jbeverungen@baltimorecountymd.gov) <jbeverungen@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>; Zachary J. Wilkins <zwilkins@sgs-law.com>; andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com) <Nick.Leffner@kimley-horn.com>; grandstreet@comcast.net
Cc: Renee Hamidi <reneehamidi@gmail.com>; Kathleen Pieper <kathie@stoneponyrestoration.com>
Subject: RE: Case No. 2019-0183-X

Teresa: Most respectfully, I don't see it as the obligation of Holly Springs to provide you (and Judge Beverungen unless he requests it) information about the various properties that they own that are not subject of this case. This matter is about the two specific properties (lots of record) on Falls Road that are proposed for the solar facility and not other properties in which they have an interest.

The page from the County data base indicates that the properties under consideration are not encumbered by "an agricultural preservation easement, an environmental preservation easement or a rural legacy easement." These are the easements that (under the County zoning law) would

prohibit consideration of a solar facility. Mr. Leffner testified, under oath, that there were no such easements on this property. We have thus offered that evidence and proof that we meet that requirement of the zoning law.

If the Protestants have specific information to the contrary and believe that there exists such an easement on the property, then please provide proof of that allegation and we will respond and address it. But absent that, I simply do not believe it appropriate that my client disclose information about properties in which they have an interest that have nothing at all to do with this case.

I will also advise, that since my last email correspondence, I received an email from a representative of the owner (who is out of town but was copied on this email chain). That individual confirmed that there is no such easement on the subject properties and corroborated the testimony of Mr. Leffner. As I indicated before, Holly Springs has other properties that are encumbered, but not the two lots here.

I will pass your request along to Holly Springs and if they want to discuss their other properties with you, then they certainly can. But I candidly think that (as a condition of obtaining this zoning approval) your claim that Holly Springs should submit evidence of what properties they own and which are encumbered by easements, is irrelevant and (from a legal standpoint) improper.

I take this position with all due respect to your comments. And if Judge Beverungen requires this information and I will thusly advise my client.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Teresa Moore [mailto:teresa@thevpc.org]
Sent: Tuesday, June 11, 2019 4:28 PM
To: Lawrence Schmidt; John Beverungen (jbeverungen@baltimorecountymd.gov); Alyssa Moyers; Zachary J. Wilkins; andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com); grandstreet@comcast.net
Cc: Renee Hamidi; Kathleen Pieper
Subject: RE: Case No. 2019-0183-X

Dear Judge,
If you look at the land records, five properties/deeds come up for Holly Springs.
On their 990, they state that they hold conservation easements on five properties.
There could be easements held by a national organization, such as The Nature Conservancy, that may not show up in a quick search of My Neighborhood.
Ideally, the Conservancy would identify what properties make up the 5 properties and 110 acres that they hold an easement on and with whom.

The Holly Springs Conservancy is not listed on DNR's Directory of Maryland Land Trusts (https://dnr.maryland.gov/met/Documents/2018-MD-LT-Directory.pdf), and no one in the land trust community is familiar with them, so we just don't know what easements they hold or who with.

I'm sure the owner could easily identify the lands under easement with them as well as the entity holding the easement. Any land trust or conservancy keeps a database on that plus monitoring information. Holly Springs reported over 2000 volunteer hours of monitoring, so presumably they are out on these properties regularly.
It would be nice to clear this up.

Teresa Moore

From: Lawrence Schmidt [mailto:lschmidt@sgs-law.com]
Sent: Tuesday, June 11, 2019 3:43 PM
To: John Beverungen (jbeverungen@baltimorecountymd.gov) <jbeverungen@baltimorecountymd.gov>; Alyssa Moyers <amoyers@sgs-law.com>; Zachary J. Wilkins <zwilkins@sgs-law.com>; andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com) <Nick.Leffner@kimley-horn.com>; grandstreet@comcast.net
Cc: Teresa Moore <teresa@thevpc.org>; Renee Hamidi <reneehamidi@gmail.com>; Kathleen Pieper <kathie@stoneponyrestoration.com>
Subject: FW: Case No. 2019-0183-X

Judge Beverungen: I very quick analysis/research of the issue presented entails reviewing the County GIS Land Preservation database. See attached. It shows that the subject properties are not encumbered with an easement. The adjacent property (owned by individuals affiliated with Holly Springs) is encumbered. Perhaps that is the source of the confusion? Nick Leffner, the engineer who prepared the plan and testified at the hearing has likewise concurred that the attached is accurate. I believe that Holly Springs may have obtained a title report when they purchased the property that also indicated that there was no encumbrance. I do not have that report but will see if it is available through the owner, if necessary. Holly Springs and the principles therein indeed own other land but this property is not among the lands encumbered.

Larry Schmidt

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: Zachary J. Wilkins
Sent: Tuesday, June 11, 2019 2:44 PM
To: Lawrence Schmidt; 'andrew@powerfactorco.com'; Leffner, Nick; grandstreet@comcast.net
Cc: Alyssa Moyers
Subject: RE: Case No. 2019-0183-X

Team:

Please see attached Map from Baltimore County's GIS Land Preservation database showing the location of the Conservation Easement Area.

As you can see from the map, the conservation area encompasses the adjacent parcel, not the parcels at issue in our solar facility case.

-Zack

From: Alyssa Moyers
Sent: Tuesday, June 11, 2019 2:31 PM
To: Zachary J. Wilkins
Subject: FW: Case No. 2019-0183-X

Just thought I would include you on this in case you had researched this issue at all...

From: Lawrence Schmidt
Sent: Tuesday, June 11, 2019 1:54 PM
To: andrew@powerfactorco.com; 'Leffner, Nick' (Nick.Leffner@kimley-horn.com); grandstreet@comcast.net
Cc: Alyssa Moyers
Subject: FW: Case No. 2019-0183-X

Andrew/Nick/Mary: See below from Beverungen. He sent the attachments separately and I will send along. I just got this and haven't researched. Does anyone have any thoughts?

Larry

Lawrence E. Schmidt | Partner
SMITH, GILDEA & SCHMIDT, LLC
600 Washington Avenue | Suite 200 | Towson, MD 21204 | (410) 821-0070
lschmidt@sgs-law.com | www.sgs-law.com

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From: John E. Beverungen [mailto:jbeverungen@baltimorecountymd.gov]
Sent: Tuesday, June 11, 2019 1:20 PM
To: Teresa Moore; Lawrence Schmidt
Cc: Renee Hamidi; Kathleen Pieper
Subject: RE: Case No. 2019-0183-X

Mr. Schmidt,

I am forwarding to your attention an e-mail with attachments sent to my office by Ms. Moore on June 5. As you will see, she and others in the community have raised an issue (as they did at the hearing) concerning whether either of the parcels which comprise the subject property are subject to a conservation easement. Ms. Moore has attached certain IRS records wherein Petitioner states it owns 110 acres of land subject to a conservation easement, and I would appreciate if you would clarify whether or not either of the parcels in this case are subject to any sort of conservation easement as that term might be used or defined under state, county or federal law.

John Beverungen
ALJ

From: Teresa Moore <teresa@thevpc.org>
Sent: Wednesday, June 5, 2019 9:01 AM
To: John E. Beverungen <jbeverungen@baltimorecountymd.gov>
Cc: Renee Hamidi <reneehamidi@gmail.com>; Kathleen Pieper <kathie@stoneponyrestoration.com>
Subject: Case No. 2019-0183-X

CAUTION: This message from teresa@thevpc.org originated from a non Baltimore County Government or non BCPL email system. Hover over any links before clicking and use caution opening attachments.

Dear Judge Beverungen,

I don't know if you are able to consider the information and request in the attached letter, but if you can, it would be much appreciated.
Thank you for your time in reviewing this matter,

Teresa Moore
Executive Director
Valleys Planning Council

CONNECT WITH BALTIMORE COUNTY

www.baltimorecountymd.gov

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Total Control Panel

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From: prvs=058deaa01=jbeverungen@baltimorecountymd.gov

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THE VALLEYS
PLANNING COUNCIL INC

June 5, 2019

John E. Beverungen
Administrative Law Judge
Baltimore County
105 W. Chesapeake Avenue
Towson MD 21204

RE: Case No. 2019-0183-X

Dear Judge Beverungen,

I attended the May 30 hearing before you on the proposed commercial solar array on the Holly Springs Nature Conservancy and Wildlife Sanctuary property at 18627 Falls Road. I understood you to say that the record would be kept open for seven days to allow discussions with neighbors to continue and for possible amendment of the site plan.

Another issue has arisen that I wonder if you would be willing to consider. Baltimore County's solar regulations prevent commercial solar from being located on land "ENCUMBERED BY AN AGRICULTURAL PRESERVATION EASEMENT, AN ENVIRONMENTAL PRESERVATION EASEMENT, OR A RURAL LEGACY EASEMENT."

As a 501c3 organization, Holly Springs NC&WS files a 990 Return with the IRS. In the 990 filed for 2016, it is stated that the conservancy holds 5 conservation easements on 110 acres in 1 state. A review of Maryland Land Records shows that Holly Springs NC&WS owns four properties in Baltimore County:

- 4003 Beckleysville Road 4.61 acres Tax Acct # 1900005413
- 18627 Falls Road 6.11 acres Tax Acct # 0504000210
- 18627 Falls Road 26.39 acres Tax Acct # 0523015126
- Beckleysville Road 7.6236 Tax Acct # 2500012168

In addition, principles of the non-profit corporation, Mary Zodhiates and Richard Ciman, own three additional properties contiguous to those owned by Holly Springs NC&WS:

- 4209 Beckleysville Road 53.593 acres Tax Acct # 2000006312 (under MALPF easement)
- 4001 Upper Beckleysville Road 35.64 acres Tax Acct # 0519007310
- Beckleysville Road 0.91 acres Tax Acct # 2400008760

118 W. Pennsylvania Avenue Towson, Maryland 21204
Mailing Address: P.O. Box 5402 Towson, Maryland 21285-5402
Phone: 410-337-6877 *Fax:* 410-296-5409

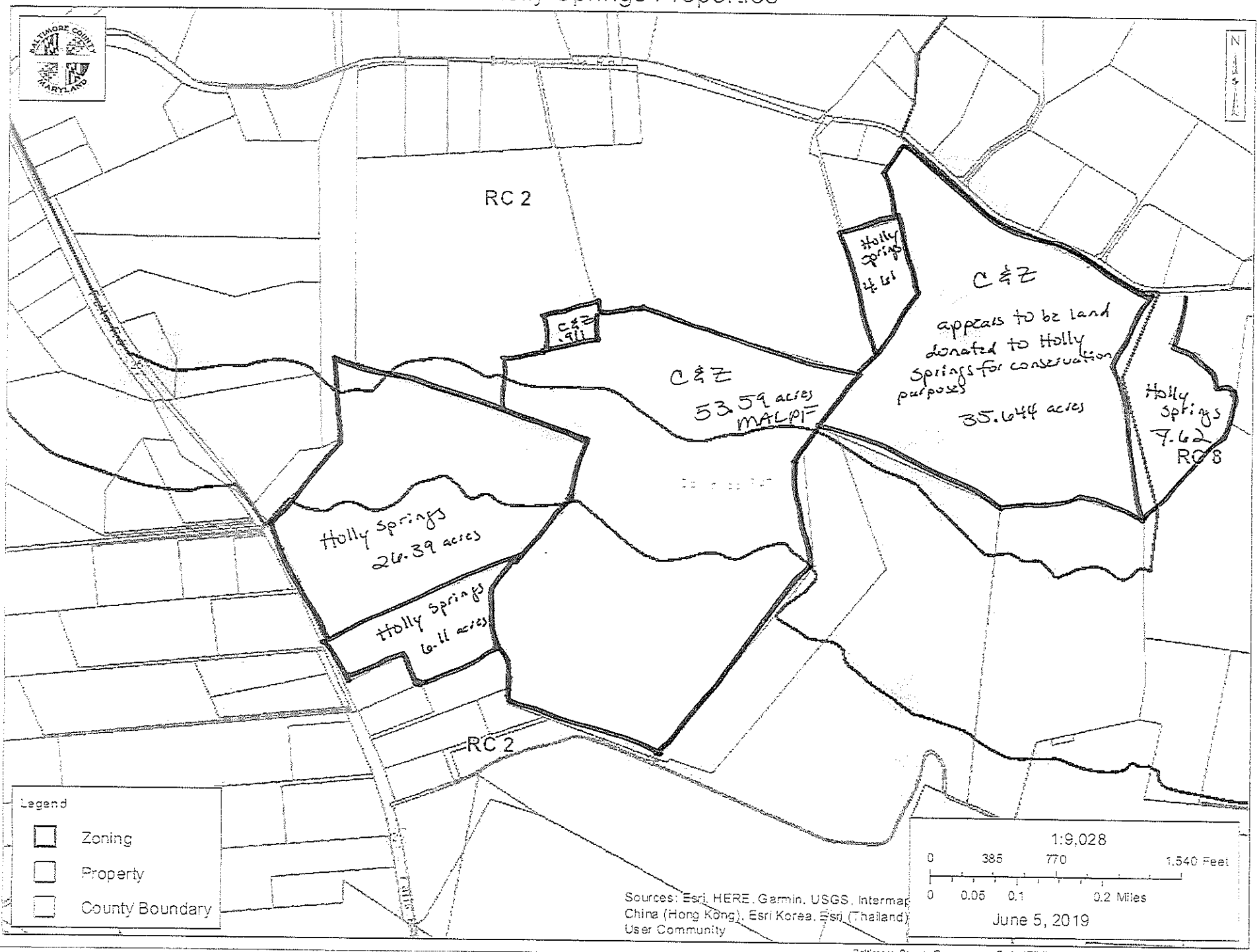
Would it be possible for you to confirm with the petitioners whether or not the parcels proposed for the solar array are part of the 110 acres noted as being "acreage restricted by conservation easements"? Since the total acreage owned by Holly Springs NC&WS appears to be 44.73, it seems possible that some or all of this acreage could comprise a portion of the 110 acres the organization reportedly has placed under easement. If the subject property is under a conservation easement, it would seem a determination of compliance with BCZR §4E-104. A 2 would be needed. I have conferred with Kathie Pieper, president of North County Community Group, and others who share this concern, and we would be grateful for any clarification you might be able to ascertain.

Sincerely,

Teresa Moore

Teresa Moore
Executive Director

Holly Springs Properties



Form **990**

Department of the Treasury
Internal Revenue Service

Return of Organization Exempt From Income Tax

Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except private foundations)

▶ Do not enter social security numbers on this form as it may be made public.

▶ Information about Form 990 and its instructions is at *www.irs.gov/form990*.

OMB No 1545-0047

2016

Open to Public Inspection

A For the 2016 calendar year, or tax year beginning January 1 , 2016, and ending December 31 , 20 16

B Check if applicable	C Name of organization Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.	D Employer identification number
☐ Address change	Doing business as Holly Springs	02-0784705
☐ Name change	Number and street (or P O box if mail is not delivered to street address) / Room/suite	E Telephone number
☐ Initial return	4209 Beckleysville Road	443-291-6040
☐ Final return/terminated	City or town, state or province, country, and ZIP or foreign postal code	
☐ Amended return	Hampstead, MD 21074	G Gross receipts $
☐ Application pending	F Name and address of principal officer Mary Zodhiates	H(a) Is this a group return for subordinates? ☐ Yes ☑ No
		H(b) Are all subordinates included? ☐ Yes ☑ No
		If "No," attach a list (see instructions)
I Tax-exempt status	☑ 501(c)(3) ☐ 501(c) ( ) ◀ (insert no) ☐ 4947(a)(1) or ☐ 527	H(c) Group exemption number ▶ na
J Website: ▶ na		
K Form of organization	☑ Corporation ☐ Trust ☐ Association ☐ Other ▶	L Year of formation 2006 / M State of legal domicile MD

Part I Summary

Activities & Governance	1	Briefly describe the organization's mission or most significant activities: The organization seeks to serve and educate the public about protecting our natural environment and wildlife and works to mitigate the effects of pollution on our air, lands, and waters. The most significant activities are forest and habitat restoration, forest preservation, and sanctuary maintenance.		
	2	Check this box ▶ ☐ if the organization discontinued its operations or disposed of more than 25% of its net assets.		
	3	Number of voting members of the governing body (Part VI, line 1a)	3	3
	4	Number of independent voting members of the governing body (Part VI, line 1b)	4	3
	5	Total number of individuals employed in calendar year 2016 (Part V, line 2a)	5	0
	6	Total number of volunteers (estimate if necessary)	6	70
	7a	Total unrelated business revenue from Part VIII, column (C), line 12	7a	0
	b	Net unrelated business taxable income from Form 990-T, line 34	7b	0

			Prior Year	Current Year
Revenue	8	Contributions and grants (Part VIII, line 1h)	56400	22841
	9	Program service revenue (Part VIII, line 2g)	0	0
	10	Investment income (Part VIII, column (A), lines 3, 4, and 7d)	18	0
	11	Other revenue (Part VIII, column (A), lines 5, 6d, 8c, 9c, 10c, and 11e)	6054	13256
	12	Total revenue—add lines 8 through 11 (must equal Part VIII, column (A), line 12)	62472	36097
Expenses	13	Grants and similar amounts paid (Part IX, column (A), lines 1–3)	0	0
	14	Benefits paid to or for members (Part IX, column (A), line 4)	0	0
	15	Salaries, other compensation, employee benefits (Part IX, column (A), lines 5–10)	0	0
	16a	Professional fundraising fees (Part IX, column (A), line 11e)	0	0
	b	Total fundraising expenses (Part IX, column (D), line 25) ▶		
	17	Other expenses (Part IX, column (A), lines 11a–11d, 11f–24e)	6826	8710
	18	Total expenses. Add lines 13–17 (must equal Part IX, column (A), line 25)	6826	8710
	19	Revenue less expenses. Subtract line 18 from line 12	55647	27387

			Beginning of Current Year	End of Year
Net Assets or Fund Balances	20	Total assets (Part X, line 16)	1063134	1090521
	21	Total liabilities (Part X, line 26)	0	0
	22	Net assets or fund balances. Subtract line 21 from line 20	1063134	109521

Part II Signature Block

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge

Sign Here	Signature of officer	Date
	Type or print name and title Mary Zodhiates member	
Paid Preparer Use Only	Print/Type preparer's name / Preparer's signature	
	Firm's name ▶ / Firm's address ▶	

May the IRS discuss this return with the preparer shown above? (s

For Paperwork Reduction Act Notice, see the separate instructions.

SCANNED DEC 14 2017

RECEIVED NOV 21 2017

Part IV Checklist of Required Schedules

			Yes	No
1	Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? *If "Yes," complete Schedule A*	1	✓	
2	Is the organization required to complete *Schedule B, Schedule of Contributors* (see instructions)?	2		✓
3	Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? *If "Yes," complete Schedule C, Part I*	3		✓
4	Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? *If "Yes," complete Schedule C, Part II*	4		✓
5	Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Revenue Procedure 98-19? *If "Yes," complete Schedule C, Part III*	5		✓
6	Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? *If "Yes," complete Schedule D, Part I*	6		✓
7	Did the organization receive or hold a conservation easement, including easements to preserve open space, the environment, historic land areas, or historic structures? *If "Yes," complete Schedule D, Part II*	7	✓	
8	Did the organization maintain collections of works of art, historical treasures, or other similar assets? *If "Yes," complete Schedule D, Part III*	8		✓
9	Did the organization report an amount in Part X, line 21, for escrow or custodial account liability, serve as a custodian for amounts not listed in Part X; or provide credit counseling, debt management, credit repair, or debt negotiation services? *If "Yes," complete Schedule D, Part IV*	9		✓
10	Did the organization, directly or through a related organization, hold assets in temporarily restricted endowments, permanent endowments, or quasi-endowments? *If "Yes," complete Schedule D, Part V*	10		✓
11	If the organization's answer to any of the following questions is "Yes," then complete Schedule D, Parts VI, VII, VIII, IX, or X as applicable.			
a	Did the organization report an amount for land, buildings, and equipment in Part X, line 10? *If "Yes," complete Schedule D, Part VI*	11a	✓	
b	Did the organization report an amount for investments—other securities in Part X, line 12 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VII*	11b		✓
c	Did the organization report an amount for investments—program related in Part X, line 13 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part VIII*	11c		✓
d	Did the organization report an amount for other assets in Part X, line 15 that is 5% or more of its total assets reported in Part X, line 16? *If "Yes," complete Schedule D, Part IX*	11d		✓
e	Did the organization report an amount for other liabilities in Part X, line 25? *If "Yes," complete Schedule D, Part X*	11e		✓
f	Did the organization's separate or consolidated financial statements for the tax year include a footnote that addresses the organization's liability for uncertain tax positions under FIN 48 (ASC 740)? *If "Yes," complete Schedule D, Part X*	11f		✓
12 a	Did the organization obtain separate, independent audited financial statements for the tax year? *If "Yes," complete Schedule D, Parts XI and XII*	12a		✓
b	Was the organization included in consolidated, independent audited financial statements for the tax year? *If "Yes," and if the organization answered "No" to line 12a, then completing Schedule D, Parts XI and XII is optional*	12b		✓
13	Is the organization a school described in section 170(b)(1)(A)(ii)? *If "Yes," complete Schedule E*	13		✓
14 a	Did the organization maintain an office, employees, or agents outside of the United States?	14a		✓
b	Did the organization have aggregate revenues or expenses of more than $10,000 from grantmaking, fundraising, business, investment, and program service activities outside the United States, or aggregate foreign investments valued at $100,000 or more? *If "Yes," complete Schedule F, Parts I and IV*	14b		✓
15	Did the organization report on Part IX, column (A), line 3, more than $5,000 of grants or other assistance to or for any foreign organization? *If "Yes," complete Schedule F, Parts II and IV*	15		✓
16	Did the organization report on Part IX, column (A), line 3, more than $5,000 of aggregate grants or other assistance to or for foreign individuals? *If "Yes," complete Schedule F, Parts III and IV*	16		✓
17	Did the organization report a total of more than $15,000 of expenses for professional fundraising services on Part IX, column (A), lines 6 and 11e? *If "Yes," complete Schedule G, Part I* (see instructions)	17		✓
18	Did the organization report more than $15,000 total of fundraising event gross income and contributions on Part VIII, lines 1c and 8a? *If "Yes," complete Schedule G, Part II*	18		✓
19	Did the organization report more than $15,000 of gross income from gaming activities on Part VIII, line 9a? *If "Yes," complete Schedule G, Part III*	19		✓

SCHEDULE D (Form 990)

Department of the Treasury
Internal Revenue Service

Supplemental Financial Statements

▶ Complete if the organization answered "Yes" on Form 990, Part IV, line 6, 7, 8, 9, 10, 11a, 11b, 11c, 11d, 11e, 11f, 12a, or 12b.
▶ Attach to Form 990.
▶ Information about Schedule D (Form 990) and its instructions is at *www.irs.gov/form990.*

OMB No. 1545-0047

2016

Open to Public Inspection

Name of the organization

Holly Springs Nature Conservancy & Wildlife Sanctuary, Inc.

Employer identification number

02-0784705

Part I Organizations Maintaining Donor Advised Funds or Other Similar Funds or Accounts. Complete if the organization answered "Yes" on Form 990, Part IV, line 6.

	(a) Donor advised funds	(b) Funds and other accounts
1 Total number at end of year		
2 Aggregate value of contributions to (during year)		
3 Aggregate value of grants from (during year)		
4 Aggregate value at end of year		

5 Did the organization inform all donors and donor advisors in writing that the assets held in donor advised funds are the organization's property, subject to the organization's exclusive legal control? ☐ Yes ☐ No

6 Did the organization inform all grantees, donors, and donor advisors in writing that grant funds can be used only for charitable purposes and not for the benefit of the donor or donor advisor, or for any other purpose conferring impermissible private benefit? ☐ Yes ☐ No

Part II Conservation Easements. Complete if the organization answered "Yes" on Form 990, Part IV, line 7.

1 Purpose(s) of conservation easements held by the organization (check all that apply).

☐ Preservation of land for public use (e.g., recreation or education) ☐ Preservation of a historically important land area
☐ Protection of natural habitat ☐ Preservation of a certified historic structure
☐ Preservation of open space

2 Complete lines 2a through 2d if the organization held a qualified conservation contribution in the form of a conservation easement on the last day of the tax year.

		Held at the End of the Tax Year
a Total number of conservation easements	2a	5
b Total acreage restricted by conservation easements	2b	110
c Number of conservation easements on a certified historic structure included in (a)	2c	0
d Number of conservation easements included in (c) acquired after 8/17/06, and not on a historic structure listed in the National Register	2d	0

3 Number of conservation easements modified, transferred, released, extinguished, or terminated by the organization during the tax year ▶ 0

4 Number of states where property subject to conservation easement is located ▶ 1

5 Does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations, and enforcement of the conservation easements it holds? ☑ Yes ☐ No

6 Staff and volunteer hours devoted to monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ 2500

7 Amount of expenses incurred in monitoring, inspecting, handling of violations, and enforcing conservation easements during the year ▶ $ 0

8 Does each conservation easement reported on line 2(d) above satisfy the requirements of section 170(h)(4)(B)(i) and section 170(h)(4)(B)(ii)? ☐ Yes ☑ No

9 In Part XIII, describe how the organization reports conservation easements in its revenue and expense statement, and balance sheet, and include, if applicable, the text of the footnote to the organization's financial statements that describes the organization's accounting for conservation easements.

Part III Organizations Maintaining Collections of Art, Historical Treasures, or Other Similar Assets. Complete if the organization answered "Yes" on Form 990, Part IV, line 8.

1a If the organization elected, as permitted under SFAS 116 (ASC 958), not to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide, in Part XIII, the text of the footnote to its financial statements that describes these items.

b If the organization elected, as permitted under SFAS 116 (ASC 958), to report in its revenue statement and balance sheet works of art, historical treasures, or other similar assets held for public exhibition, education, or research in furtherance of public service, provide the following amounts relating to these items:

(i) Revenue included on Form 990, Part VIII, line 1 ▶ $

(ii) Assets included in Form 990, Part X ▶ $

2 If the organization received or held works of art, historical treasures, or other similar assets for financial gain, provide the following amounts required to be reported under SFAS 116 (ASC 958) relating to these items:

a Revenue included on Form 990, Part VIII, line 1 ▶ $

b Assets included in Form 990, Part X ▶ $

Wayne & Allene Yelle
18708 Falls Road
Hampstead, MD 21074
Cell # 410-967-2995
Email: wyelle@comcast.net

RE: Power Factor 18627 Falls Road and Adjacent Property
Case # 2019-0183-X

Your honor my name is Allene Yelle. I am here today to speak out against to construction of the Falls Road solar field.

My home at 18708 Falls Road sits directly across the street from the proposed site.

My parents, Alfonso & Alicia Castillo bought the house in 1978. They wanted to raise my two younger brothers and I in the much sought after Hereford Zone. They wanted to live out in the country in a peaceful community where dairy farms, fruit orchards, and corn fields surrounded us.

I was 13 years-old when we moved to our new home. I attended Hereford Junior/Senior High School graduating in 1982. I graduated from Towson State University School of Nursing in 1986 while living at home. I met my husband Wayne in 1987 and married in 1990. We briefly moved to Binghamton, NY where Wayne was from but moved back to Maryland in 1992 after the birth of my daughter. We lived with my parents while Wayne attended the University of Maryland School of Pharmacy. He graduated in 1998 and we bought my parents home in 1999 after they retired from their jobs. My father was a histology lab supervisor at Maryland General Hospital and my mother was a school teacher at Seventh District Elementary School in northern Baltimore County.

I am 54 years-old and have lived in my childhood home for 41 years. Wayne and I plan to retire in 10-12 years, God willing. My daughter, Alyssa who is 27 years-old, married, lives in Columbia, Maryland was planning to buy our home when she starts a family, but has been rethinking that decision given the current circumstances.

There are signs posted across the road from my home proposing the construction of an industrial commercial solar field! How can this be? This is farm country. A Resource Conservation Zoning District (RC). There are signs along this stretch of Falls Road designating it as a scenic byway. (SHOW PICTURE "A")

The property is owned by the Holly Springs Nature Conservancy and Wildlife Sanctuary. I think most people would probably agree that the name of the organization is somewhat misleading considering that they want to erect such an extreme eyesore amidst natural beauty.

We need to stop this destructive construction to the land and view on Falls Road. We need to maintain the bucolic vista that attracted all the home owners to this area in the first place.

Pictures B, C, and D are the views from our home at ground level.
My front yard sits about 10 feet above Falls Road. Our second story windows sit more than 20 feet above Falls Road.

Picture E shows you our view of the field from the second floor of our home. These pictures were taken in February 2019. When the foliage is not present on the trees 6-7 months we will have a direct unobscured view of the solar field.

Please everyone close your eyes-

Now imagine 9.5 acres of industrial commercial solar panels across the street from 18708 Falls Road for the next 25 years.

According to the Existing Conditions Plan prepared for Power Factor Company on May 19, 2019 it names Wayne and Allene Yelle as well as 9 other property owners as being directly affected by the construction of the solar panels field.

I disagree with that assessment that it will only affect 10 home owners. As you can see your honor you have a room full of home owners, concerned citizens, and community leaders that are speaking out regarding the impact the project will have on their property value and extreme altered view of the area.

My daughter and her family's future dreams of living in her childhood home will not come to fruition if the solar fields are permitted to be built.

Baltimore County and its politicians have failed our community by allowing the rezoning of the land.

Your honor, please help us to preserve the peace and tranquility that currently exists and for future generations of Northern Baltimore County residences.

Thank you

A
NORTH
MARYLAND
25
SNOW
EMERGENCY
ROUTE
SCENIC BYWAY
Falls
Road

B

C

D

E

IN THE MATTER OF:

HOLLY SPRINGS NATURE CONSERVANCY AND WILDLIFE SANCTUARY, INC. – LEGAL OWNER/POWER FACTOR, LLC - LESSEE
CASE NUMBER: 19-183-X and CBA-20-004

Hearing Date: October 23, 2019

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204.

PANEL PRESIDING:

JASON S. GARBER, CHAIR

MAUREEN E. MURPHY, BOARD

DEBORAH C. DOPKIN, BOARD

PRESENT ON BEHALF OF THE PARTIES:

LAWRENCE E. SCHMIDT, ESQUIRE
Counsel for Petitioners

MICHAE R. MCCANN, ESQUIRE
Counsel for Protestants

Christine R. Leary
3129 Hiss Avenue
Baltimore, Maryland 21234

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(ON RECORD - 09:06:36 AM)

CHAIR: All right. We are here today on day three of the Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., is the legal owner, Power Factor, LLC, Lessee, 1867 Falls Road, case number 19-183-X set with CBA-20-004. I see we have counsel here. Before we commence and move forward, is there anything that you need to bring to our attention at this time?

MR. SCHMIDT: Good morning, Chairman Garber and members of the panel. Lawrence E. Schmidt and Zachary Wilkins on behalf of Power Factor and Holly Springs, the applicants in this case and in answer to your question, no, I don't think there's any preliminary matters that we would have.

CHAIR: All right. Mr. McCann?

MR. MCCANN: Good morning, everyone. Michael McCann on behalf of the Protestants and we do not have any preliminary issues.

CHAIR: All right. So, where are we then with witnesses?

MR. MCCANN: We are in our case.

CHAIR: Yes.

MR. MCCANN: We will have, I believe, two witnesses.

CHAIR: I'm sorry, who are you calling first?

MR. MCCANN: Ms. Moore, Teresa Moore, from the (inaudible).

CHAIR: Okay and so you have two witnesses today?

MR. MCCANN: Two witnesses.

CHAIR: All right and do you anticipate rebuttal, Mr. Schmidt?

MR. SCHMIDT: Possibly one witness and I'm, quite honestly, I'm going to address that at the end of his case. I might just ask the Board if they want to hear from this witness or not.

CHAIR: Okay.

MR. SCHMIDT: We'll figure that out.

CHAIR: All right.

MR. MCCANN: Okay.

CHAIR: So, with that in mind.

MR. MCCANN: Shall we proceed?

CHAIR: Let's go.

MS. DOPKIN: Ms. Moore, do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MS. MOORE: I do.

MS. DOPKIN: And would you please state your name, spelling both your first and last name for me, and your address and who you are speaking on behalf of.

MS. MOORE: Home address or work address?

MS. DOPKIN: Work address.

MS. MOORE: Okay. Teresa, T-E-R-E-S-A, Moore, M-O-O-

R-E, Valleys Planning Council and I'm the Executive Director there and the street address is 118 West Pennsylvania Avenue here in Towson, 21204.

CHAIR: And I anticipate you are here today on behalf of the --

MS. MOORE: Of the Valleys Planning Council.

CHAIR: Yes. All right.

MS. DOPKIN: Would you remind everybody to silence their phones?

CHAIR: Yes. And before we get started, for everyone who is here, please make sure your phones are turned off so that we cannot hear them. Also, when you testify, please speak loudly and clearly, do not cover the microphone and we'll try to not talk over one another. With that in mind, Mr. McCann?

MR. MCCANN: Thank you, Mr. Garber.

CHAIR: You may begin.

MR. MCCANN: Ms. Moore, first of all, briefly, tell us what the V, Valleys Planning Council is.

MS. MOORE: It's a private non-profit, been operating since the early 1960's. Its primary goal is land use planning and land conservation and it has a hundred and thirty square mile territory, basically the north west quadrant of the County.

MR. MCCANN: Okay and the subject property falls within that territory?

MS. MOORE: It does.

MR. MCCANN: Okay and what do you do on behalf of the VPC as its executive director?

MS. MOORE: I run the organization, you know, run the non-profit, the board meetings, I deal with membership and inquiries, follow planning and policy and regulation changes, sometimes get involved in challenges or, such as this.

MR. MCCANN: Okay.

MS. MOORE: Do studies.

MR. MCCANN: Yeah, (inaudible).

MS. MOORE: Planning, planning related studies.

MR. MCCANN: Okay. In terms of the VPC's non-profit status, you mentioned that, in other words, 501-C-3 under the IRS regulations?

MS. MOORE: Correct.

MR. MCCANN: Just generally, how, are you familiar with the rules pertaining to 501-C-3 organizations?

MS. MOORE: Yes, you pretty much have to be to run, run an organization. We have an independent audit every year that runs through the, you know, sort of a, a drill (inaudible).

MR. MCCANN: Okay and as Mr. Garber suggested, you are here to testify on behalf of Valleys Planning Council?

MS. MOORE: Correct.

MR. MCCANN: And its, and its official position?

MS. MOORE: Yes.

MR. MCCANN: Okay and to that point, I have rule eight papers which I will take responsibility for this. I did not get these from Ms. Moore early enough to make copies, so I have one original.

CHAIR: I don't, I anticipate that it's not going to be too controversial, but we'll see.

MR. SCHMIDT: If I can just take a quick look?

CHAIR: Of course. Take whatever time you need. And just for the record's sake, because we have to say, when you have the opportunity to try to get copies, make sure to --

MR. MCCANN: I will.

CHAIR: Yes.

MR. MCCANN: I will.

CHAIR: And as always, copies for each Board member, plus the original exhibit and a copy for a witness if need be.

MR. SCHMIDT: Okay. Mr. Garber, they look appropriate. I know Ms. Moore has done this before, so I'm assuming, I see that there's the resolution and the affidavit so it does look appropriate.

CHAIR: And what number is this?

MS. MURPHY: Eleven.

MR. MCCANN: Yes.

CHAIR: Protestant's Exhibit 11.

MR. MCCANN: Thank you.

CHAIR: So, Mr. Schmidt, do I anticipate that you will not have an objection for when it is moved for admission?

MR. SCHMIDT: No, no, sir.

CHAIR: All right. So, I guess we can admit it at this time. I anticipate you're going to do that anyway?

MR. MCCANN: Yes.

CHAIR: So, we'll just do that now.

MR. MCCANN: Great.

CHAIR: All right.

MR. MCCANN: Thank you. Exhibit 11. And I'll just have her identify them. Thank you. Just take a look at Protestant's Exhibit 11 and just identify the three documents for the record, if you could.

MS. MOORE: They're the ones.

MR. MCCANN: They are what ones?

MS. MOORE: The ones I prepared.

CHAIR: The, well, I think what he wants you to do is each page, identify just what that is.

MS. MOORE: Okay. The rule eight authorization, the position of the organization and the affidavit.

MR. MCCANN: Those are the three pages?

MS. MOORE: Um hm.

MR. MCCANN: Okay. Great, thank you. I would move eleven into evidence.

CHAIR: Already done.

MR. MCCANN: Great. Thank you very much. Okay. So, Ms. Moore, I, I guess the, the first, the general question is, tell us, if you would, what the VPC's concerns are about this project?

MS. MOORE: Well, the Board voted to oppose the request for the special exception and it was based on sort of the regular concerns that people have expressed in other community solar cases that happen to be on prime and productive soils. But this one, I think, was different because of the special environmental circumstances on the site. And the fact that it was owned by a non-profit, which is a situation we haven't seen yet in this.

MR. MCCANN: Okay. Let me stop you there, before and I'll ask you a little more about that, but, I, I should have asked you in the first instance, number one, you've sat through the hearing in this case?

MS. MOORE: I did.

MR. MCCANN: And you're familiar with the, the plan that is the subject of this case?

MS. MOORE: Um hm.

MR. MCCANN: Yes?

MS. MOORE: Yes.

MR. MCCANN: And you've been involved, it sounds, as you've just indicated, you've been involved in other solar array cases, correct?

MS. MOORE: I have not testified in any but I've been attending the hearings.

MR. MCCANN: Okay. So, getting back to your, your concerns, you mentioned specifically the, the non-profit status of the Petitioner, Holly Springs. Tell us about, what, if any, concerns you have about that organization and its status.

MR. SCHMIDT: Objection. I just, I just don't believe that's a relevant concern under any of the criteria, what the status is of the owner of the property. I anticipated this line of questioning from the comments that were made at the ALJ hearing and there's a question, I think, that the Protestants have raised about whether the owner of the property is appropriate --

CHAIR: Well, based on relevance, --

MR. SCHMIDT: -- but I just, it's a relevance objection, yes, sir. Thank you.

CHAIR: Well, I'm going to overrule it for now, only because I'm not quite sure yet where we're going with it, so please proceed.

MR. MCCANN: Okay.

MR. SCHMIDT: Thank you.

MR. MCCANN: Thank you. Go ahead, Ms. Moore.

MS. MOORE: I'm sorry, now I forgot what the question was.

CHAIR: What is it about the non-profit status of

Petitioner that, because you identified that as a concern for Valleys Planning Council. So, what is it about that status that causes a concern?

MS. MOORE: Well, --

MR. MCCANN: Maybe if I could, Mr. Garber, sorry to interrupt.

CHAIR: Yeah, sorry.

MR. MCCANN: Maybe I should ask again, I'm a little slow this morning, maybe not enough coffee.

CHAIR: That's always applicable to me.

MR. MCCANN: Yeah. The more general question again is what are your concerns and what led you to the concerns, including the non-profit (inaudible)?

MS. MOORE: Well, I first just wanted to see who the organization was because I wasn't familiar with them so I Googled them and generally in the non-profit and land conservation world, you're bumping into each other here in Baltimore County so to find one in the County that I wasn't aware of and that was also within our territory surprised me so, Googled it, did not see a website or anything. But the (inaudible) popped up and that was my only source of information so, you know, looked at their --

CHAIR: Could you explain what that is? I may, some people may know what that is, but just for the record's sake.

MS. DOPKIN: And move the microphone closer.

MS. MOORE: That's the --

CHAIR: Would you move the microphone closer to you? Sorry. Sorry.

MS. MOORE: That's the IRS form that you're required to file annually for your tax return as a non-profit, so, that's available online and that's the only thing that popped up when I searched, so, so that was my, my source of information.

MS. DOPKIN: And what is that form called?

MS. MOORE: It's called a 990. So, it contains their mission and, you know, what their contributions are and who their officers are and that kind of thing. And so, several things jumped out at me about that, that they're very small, they have an educ, a mission to educate and preserve land and habitat. And then something that struck me was that it only had three Board members, and two of them are married and that generally is a flag for a, a non-profit, because it's not, not independent. You generally want to have Board members who have private interests and then the charity interest is separate, you don't want them to be one and the same. And so, generally, there's a fifty-one percent rule that your Board has to be not related. And so, with three Board members and two people married, that doesn't pass that test. So, that, that caught my eye. They didn't have a conflict of interest policy, that's one of the things that you have to check on there and, of

course, to me, that meant you might not pick up about the Board relationships if you don't have a conflict of interest policy. And then I also noticed that one of the properties that Holly Springs owns was donated by an LLC that is managed by one of the Board members. So, it just seemed like there was a lot of concentration there and just something that caught my eye. It also looked like they had low contributions, more, more in rents than contributions. Several years of an unspecified donation of government services. So, I just wondered what the public, you know, public support is for this organization, which is one of the tests for being a charity. So, I did look at the charity data base for this, at the Secretary of State's Office and they weren't listed there. So, if you're not registered with the Secretary of State, you're not eligible to solicit contributions so that was just another, another flag. And then what had really caught my eye is that they had reported that they had held five conservation easements on a hundred and ten acres and most of, well, they, they report quite a bit of volunteer hours, over two, over two thousand and they're all on monitoring and enforcing the conservation easements. So, when I looked at their, what their property holdings are, they only seem to own four properties and yet they report five properties under easement and they're, all of their activities seems to be monitoring and enforcing these easements, so I would assume that this land is under easement

and --

MR. MCCANN: When you say this land, you mean the subject property?

MS. MOORE: Correct. And so, if it's under a conservation easement, it's not eligible for community solar. So, those were some of my questions about the non-profit status.

CHAIR: So, I'm sorry, if it's, if it's under a conservation easement, then what?

MS. MOORE: It's not eligible under our County law for --

CHAIR: Contributions?

MS. MOORE: No, for, to have a community solar.

CHAIR: Oh, sorry.

MR. MCCANN: Not to have a community solar but under the law, to have a solar facility at all in this zone?

MS. MOORE: Well, the, the, the law that allowed this community solar in Baltimore County, the ten per district, you can't have them on land that's under conservation easement.

MR. MCCANN: Okay. Let me stop you there. And I'll mark this as Exhibit 12.

CHAIR: Um hm. Thank you.

MR. MCCANN: And I'm going to show the witness a copy, if that's okay. You want to switch, okay?

CHAIR: Well, since you're going to need to ask

questions about it, yes.

MS. MURPHY: (inaudible).

MR. MCCANN: Okay. Ms. Moore, take a look at a document you've just been handed, which has been marked as Protestant's Exhibit 12 and tell us what that is.

MS. MOORE: That --

MR. SCHMIDT: Excuse me, Ms. Moore, --

CHAIR: Before you start.

MR. SCHMIDT: I'm just going to object to this line of questioning and also to the document as well.

CHAIR: On the same basis?

MR. SCHMIDT: There are several basis, Mr. Garber. Obviously, relevance is, is one. If, if, you've heard testimony from Mr. Leffner that he has, he and his organization have searched the Land Records of the County and determined that there is no conservation easement on this property. Which if there was, indeed, the County zoning regulations says that you can't have a solar facility on a property that has a conservation easement. Our testimony has been there is no conservation easement, it's in effect, trying to prove, prove a negative. But, and I'll, and I'll be quick.

CHAIR: Let's tie it back to this exhibit.

MR. SCHMIDT: Well, --

CHAIR: Because this is just a tax return, as I understand it.

MR. SCHMIDT: Yeah, it's a, it's a tax return from 2017, so it's not current. It, it's not for the year when this project was proposed and --

CHAIR: Well, it was signed on November 15, 2018.

MS. DOPKIN: It's the last available online, by the way.

CHAIR: Right.

MR. SCHMIDT: Okay. Well, I guess my main objection is the relevance as to the tax return of the owner. I think this is a zoning hearing and the criteria that the Board must consider is obviously in the zoning regulations and not the status of the owner and whether the owner has any kind of tax issue with the Internal Revenue Service. So, I'm not sure what the point of, of this exhibit is.

CHAIR: Well, I'm, I'm going to overrule the objection and see where this goes.

MR. MCCANN: Okay. Thank you, Mr. Garber. Again, Ms. Moore, the question was, just identify this document if you would and where you got it from.

MS. MOORE: It is the 990, return of organization exempt from income tax for Holly Springs for the year 2017.

MR. MCCANN: Okay and where did you get it from?

MS. MOORE: I got it online from the charity navigator.

MR. MCCANN: Okay, which is what?

MS. MOORE: It's a site that provides information on charitable organizations. I also looked at it on guide star, there's several organizations that provide this for people who want to check out charities that they're going to make a donation to.

MR. MCCANN: And this information is publicly available?

MS. MOORE: Yes.

MR. MCCANN: Okay and as, I think, Ms. Dopkins was just indicating, this is the, the last available form 990 that is available online?

MS. MOORE: Yes.

MR. MCCANN: Okay. You mentioned that some of the things you just talked about earlier were derived from this 990 and I just, for the Board's benefit and everyone's benefit, I just wanted to have you identify in here, just real quickly, those portions of the form 990 that you spoke about and that raised your concerns. So, if you could just quickly take us through the several things that you mentioned.

MS. MOORE: Well, looking at the first page, I see that their contributions and grants are $11,000.

MR. MCCANN: Identify where we are in the document, page, page and line.

MS. MOORE: Oh, page one, part one, line eight.

MR. MCCANN: Okay.

MS. MOORE: Their net assets, line twenty-two, are about $1.1 million and most of that seems to be land. On page two, part three, the, --

MR. MCCANN: Well, before, before you finish, you mentioned earlier the board, the organization's mission. Is that on this first page?

MS. MOORE: It is. It's also on page two, and that's just about what I was going to say.

MR. MCCANN: Okay.

MS. MOORE: Part three, the organization seeks to educate and to care for our earth and the needy.

MR. MCCANN: Okay and also on page one, sorry to interrupt again. Page one, number six, total number of individuals. I'm sorry, total number of volunteers, line six, says --

MS. MOORE: Yes, they have twenty volunteers. Mentioned, that seems to be mentioned in every year and they also had quite a bit of hours by the three board members. Then, their hours per week are like a, a full-time job and a half. You know, quite a bit of hours, sixty-five hours, I think, among the three per week. So, that actually totals out to more than the volunteer hours reported, but. Again, just another thing that kind of jumps out at you. On the next page, I'm not sure there's anything.

MR. MCCANN: What page are we on?

MS. MOORE: It's not numbered here.

MR. MCCANN: At the top.

CHAIR: At the very top right.

MS. MOORE: Oh, yeah, page three.

MR. MCCANN: What about number seven? Is that the, question seven, see that on page --

MS. MOORE: Oh, yes, I'm sorry. I needed the highlighted version. Did the organization, line seven, part four, did the organization receive or hold a conservation easement, including easements to preserve, preserve open space, the environment, historic land areas or structures and they say yes.

MR. MCCANN: Okay.

MS. MOORE: I don't think anything on page four.

MR. MCCANN: Okay.

MS. MOORE: Nothing on page five. Page six, that's where you see on part six, line two, did any officer, director, trustee or employee have a family relationship and they do mark yes. And then page, number 12-A, under Section B, did the organization have a written conflict of interest policy and no. In fact, it doesn't seem to have any of the policies. About fifteen years ago, the IRS really started cracking down on non-profits reporting and they added a whole lot of policies, not everybody has caught up to that. Then on page seven, I guess you'll see the board members listed, three of them. And

something I read, I got the information, I believe that Marcia Brice lives out of state and then that the other two are the married couple.

MR. MCCANN: Mary and Richard?

MS. MOORE: Um hm.

MR. MCCANN: And what, what if anything, do we know about Mary Zodhiates in terms of her, her employment?

MR. SCHMIDT: Object, objection. What does her employment have to do with this case? Relevancy grounds.

MR. MCCANN: It's part of the same line of questioning. I'm sorry. Part of, part of the same line of questioning. And just relates to the --

CHAIR: Well, I mean, the purpose here is we're trying to see, I'm imagining, part of this is about the conservation easement issue?

MR. MCCANN: That's correct.

CHAIR: Is her employment factor into that?

MR. MCCANN: Not into that, no, but it goes --

CHAIR: Or is it just into the reporting of the hours?

MR. MCCANN: Correct, and if someone is reporting thirty hours of work on behalf of this organization, this non-profit, she also has other employment.

CHAIR: Voice up.

MR. MCCANN: And also has other employment, which I

was asking Ms. Moore about. Is, is that physically possible, I guess, is the question. I'm asking what, if anything, she knows about her other employment.

CHAIR: I mean, I think we're starting to get a little far afield, so, but you can answer this question and just to give you the caution, we're starting to drift.

MR. MCCANN: Okay.

CHAIR: So, I will overrule the objection but with an asterisk.

MR. MCCANN: Okay.

MS. MOORE: Do I have to answer with an asterisk?

CHAIR: Well, preferably not, but, you know, there you go.

MS. MOORE: I believe she's an attorney with a practice in Montgomery County. So, yes, thirty hours a week, it's, it's quite a lot for a board member to be contributing. Like I said, it totals up to sixty-five hours a week.

MR. MCCANN: Page nine, I think you mentioned the --

MS. MOORE: Yeah, page nine, I just noticed that the gross rents are $18,000. I don't know what the rents are for but it seems the rents are more than the contributions, which are $11,000.

MR. MCCANN: Well, hold on. Just tell us where on this page those numbers are on.

CHAIR: 6-A.

MS. MOORE: 6-A, yes, is the gross rents and 1-F is the con, total contributions for the year.

MR. MCCANN: Okay, thank you.

MS. MOORE: Page ten, I would just note that the expenses are, are quite low on G. And like I said, for an organization whose mission is to educate, it just seems like they have a very low profile. They don't have a web site. I don't see any expenses associated with brochures or events. At the community meetings I've been to, no one was aware of them, they don't seem to have a presence in the community. So, those were just things that stood out to me.

MR. MCCANN: Are you aware of any, who the twenty volunteers may be in the community, if any?

MS. MOORE: No.

MR. MCCANN: Okay.

MS. MOORE: Page eleven, I don't see anything I haven't already pointed out. Same with twelve. On Schedule A, I just note that, you know, they do check that they receive a substantial part of their support from the government or the general public and that's sort of what I was questioning, what is this government and general public support.

MR. MCCANN: Where, where are you referring to?

MS. MOORE: I'm sorry, page --

MR. MCCANN: Schedule A?

MS. MOORE: Schedule A, line seven.

MR. MCCANN: Okay.

MS. MOORE: And then you see the public support is spelled out here but again, that's what I had wondered what it was, the, in prior years, they had reported government, you know, donations that they weren't charged for and then you see the, the gifts and grants up there in line one and again, usually the contributions are quite low and the only reason that's important is if you're a public charity, you have to register if you have contributions over $25,000 and at least in one year here, they had that. But you also, if you have $25,000 or less, you have to apply for an exemption and it didn't appear that they had done either.

MR. MCCANN: Okay. Also, on page two of Schedule A, which I think is where you are, line fourteen, you mention, is that --

MS. MOORE: Yes, that's the public support. And that's figured out by whatever these numbers here up in Section A there. On Schedule D, that's the part about the conservation easements and I looked back, I think, to 2012 where they started with two conservation easements and fifty some acres and then for the last few years it's been five easements and a hundred and ten acres.

MR. MCCANN: And what line is that?

MS. MOORE: That is Schedule D, part two, line 2-A and B. And then also in part two, line six, well, line five

says, does the organization have a written policy regarding the periodic monitoring, inspection, handling of violations and enforcements of conservation easement it holds? And they say yes. And then they have three hundred hours recorded of monitoring, inspecting and enforcing conservation easements during the year. And that's three hundred hours but in prior years, it had been over two thousand hours. So, you know, that, when I see that they only own four properties, it just makes you think that this must be under one of the easements they're reporting.

MR. MCCANN: So, there's five easements but you said they only own four properties and how do you --

MS. MOORE: Yes, I haven't been able to figure that out.

MR. MCCANN: How did you determine they own four properties?

MS. MOORE: I looked at the Maryland Land Records. Now, they also own other properties nearby that are not Holly Springs, that are individually owned. They have four of those properties, plus four properties as Holly Springs.

MR. MCCANN: Okay. Anything else in the 990 itself?

MS. MOORE: No, I don't, well, let's see. No, you can just see what their expenses are for, it looks mainly for maintaining the trees on the property. Again, I, I didn't see education expenses there.

MR. MCCANN: So, that's page two of Schedule D?

MS. MOORE: It's the last page of, whatever is here. Is that what it is?

MR. MCCANN: Okay.

MS. MOORE: No, it's Schedule O.

MR. MCCANN: Schedule O, okay. Mr. Garber, I would move 990, I'm sorry, form 990, which is Exhibit 12 into evidence.

CHAIR: Mr. Schmidt, same objection as before?

MR. SCHMIDT: Yes, sir, thank you.

CHAIR: All right. We'll admit it.

MR. MCCANN: Great, thank you. Just a couple more things, Ms. Moore, then I'll let you go. Exhibit 13. Thank you. Take a look at Exhibit 13, if you would, Ms. Moore and tell us what that is.

MS. MOORE: It is a property map showing eight properties, including the two parcels proposed for the solar array and six adjacent properties owned by the, their, the green color coded ones are owned by the Holly Springs Nature Conservancy and the blue scheme is owned by the two married, I'm not sure how to pronounce their last names, Zodhiates, and Richard Seaman.

CHAIR: So, anything in green is owned by Holly Springs?

MS. MOORE: Correct.

CHAIR: Anything in blue is owned by either one or both the couple?

MS. MOORE: Both, yeah.

CHAIR: Okay.

MR. MCCANN: Okay and you mentioned the four properties owned by Holly Springs, those are the four properties on this exhibit, correct?

MS. MOORE: Yes.

MR. MCCANN: Okay.

MS. MOORE: And those are the ones I suspected were under easement, and then there is a property that the couple owns that is also under easement. So, I had wondered if that was the five.

MR. MCCANN: Which one was that?

MS. MOORE: Parcel 0216, fifty-three acres. That's under (inaudible).

MR. MCCANN: Okay. And this was, this map was prepared using My Neighborhood?

MS. MOORE: Yes.

MR. MCCANN: And is that a program or website that you're familiar with and use regularly?

MS. MOORE: Oh, yes, daily.

MR. MCCANN: Okay. Okay, great. Mr. Garber, I would move Exhibit 13 into evidence.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: I, I suspect --

CHAIR: And I would suggest that this, just as to the document itself, you may have an argument as to --

MR. SCHMIDT: Yeah.

CHAIR: -- to it, do you have any problem with the document?

MR. SCHMIDT: No, I believe the document is authentic. So, from that perspective, I don't object.

CHAIR: All right. So, --

MR. MCCANN: Thank you.

CHAIR: -- we'll admit it.

MR. MCCANN: Thank you. Moving along, two this time. Okay. Ms. Moore, take a look at Exhibit 14, if you would. And tell us what that is.

MS. MOORE: It's a deed that verifies that the property is exempt from the County transfer tax.

MR. MCCANN: Okay and is this need for one of the two, the two subject properties, parcel 121?

MS. MOORE: Yes.

MR. MCCANN: Okay. Which is the, I guess the southernmost parcel?

MS. MOORE: The smaller property.

MR. MCCANN: Okay and let me direct your attention to page three, or the affidavit, and ask you what, if any, concern this raised for you.

MS. MOORE: Well, the affidavit in the second half there, it reads that the grantee, number one, is a qualified conservation organization verified by the IRS and that it is a non-profit corporation and then I guess number three is the relevant point, that the grantee intends to use the land conveyed to assist in the preservation of a natural area for the environmental education of the public, to conserve agricultural land and to promote continued agricultural use of the land. Generally, to promote conservation and for the maintenance of a natural area for public use or a sanctuary for wildlife.

MR. MCCANN: Okay and this signature of Mary Zodhiates appears on the next page, is that correct?

MS. MOORE: It does.

MR. MCCANN: Okay. Mr. Garber, I would move Exhibit 14 into evidence.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: And, and I would again object, at least for the purpose that it's, that it's offered. I assume this is an authentic document and it appears to be from the Land Records. But I, I think, first of all, that utilizing the land for solar energy, which --

CHAIR: That's an argument as to --

MR. SCHMIDT: Okay.

CHAIR: -- the merits of it, as to its admissibility

--

MR. SCHMIDT: Is the document authentic? Okay, I --

CHAIR: -- you, what's your position on that?

MR. SCHMIDT: Well, I don't think it's relevant, so I would, I mean, I think this whole line of questioning is irrelevant, so I would object to it. At the very least, on that basis.

CHAIR: Okay. It'll be admitted.

MR. SCHMIDT: Thank you.

MR. MCCANN: Okay. Thank you, Mr. Garber. Okay. Okay. Just to sort of wrap up, Ms. Moore. What, if any, other concerns do you have about the proposed solar project?

MS. MOORE: Well, the other big thing that we thought was different about this project than any of the other community solar projects that we've seen so far, is that it involves two separately deeded properties.

MR. MCCANN: Okay.

MS. MOORE: And so, in several respects, it's double the impact. There is two separate arrays, two entrances, two fenced areas and they have to be connected via this underground electric cable that would go under a stream, which raises other issues. And one of the, the big questions is that state law that allows a community solar pilot program, prohibits projects on adjacent parcels, unless they're on rooftops. So, I would think that would make it ineligible under state law.

MR. MCCANN: Okay. Last exhibit. Thank you.

MS. DOPKIN: Thank you.

MR. MCCANN: Take a look at what you've been handed, Ms. Moore, which is, has been marked Protestant's Exhibit 15 and, and tell us what that is.

MS. MOORE: This is part of the Maryland Code, the Public Utilities Article and Community Solar Energy Generating System Pilot Program.

MR. MCCANN: Okay and if you turn to page four, this is our highlighting, correct? This is our highlighting?

CHAIR: Hold on, make sure, Mr. Schmidt, is your copy highlighted?

MR. SCHMIDT: Yes, sir, it is.

CHAIR: Sorry, go ahead.

MR. MCCANN: And just directing you to page four of this exhibit, which is 7-306.2, is that the provision and highlight on that page on the --

MS. MOORE: Yes, number thirteen on that page, equipment for a community solar energy generating system may not be built on contiguous parcels of land unless the equipment is installed only on building rooftops.

MR. MCCANN: Mr. Garber, I would move fifteen into evidence and --

MR. SCHMIDT: Same objection, Mr. Garber.

CHAIR: It'll be admitted.

MR. MCCANN: And before we let you go, any, anything else you haven't mentioned, Ms. Moore, or is that it?

MS. MOORE: I don't think so.

MR. MCCANN: Okay.

CHAIR: Well, you did indicate there were environmental concerns and so, I don't know if you just exhausted what you meant by the environmental concerns?

MS. MOORE: Well, you know, we've, we've always had concerns about using the prime and productive, cutting down trees and, in this case, the stream crossing for the connection.

CHAIR: I thought it may exhaust that, but the way you specified it earlier in your testimony was you had environmental concerns and then you had the non-profit concerns. Then we started with the non-profit concerns and then we heard just now about this other stuff. And I didn't know if that meant that was, your environmental concerns were satisfied. So, I understand now, the prime productive was the other part of it.

MS. MOORE: Yes.

CHAIR: Okay. Mr. McCann, any questions based on that?

MR. MCCANN: No, that's it. Thank you, Mr. Garber.

CHAIR: Mr. Schmidt? You're not done yet.

MR. MCCANN: Wouldn't that be nice.

CHAIR: Wishful thinking. But no, not quite.

MR. SCHMIDT: Ms. Moore, you're familiar with the relevant zoning regulations that relate to solar facilities in Baltimore County, are you not?

MS. MOORE: I am.

MR. SCHMIDT: Valleys Planning Council was involved fairly aggressively and heavily in the adoption of those current regulations, were they not?

MS. MOORE: They were.

MR. SCHMIDT: Did Valleys --

CHAIR: I'm sorry, I --

MS. MURPHY: Couldn't hear.

MS. MOORE: We were.

CHAIR: Yeah, there you go.

MR. SCHMIDT: Did --

MS. MURPHY: You, you advocated for it?

MS. MOORE: We were on the planning committee and we testified --

CHAIR: When you say we were on the planning committee, were there individuals?

MS. MOORE: I was.

CHAIR: Right. You're distinct from the Valleys Planning Council though.

MS. MOORE: I was as a member, I was appointed as a member of the --

CHAIR: Individually.

MS. MOORE: Invited as a member of the Valleys Planning Council to be --

CHAIR: And I'm sorry, were you appointed individually, that is, as a person, or were you appointed on behalf of your organization?

MS. MOORE: On behalf of the organization.

CHAIR: Okay. So, Valley Planning, Planning Council actually had a seat as part of it?

MS. MOORE: Yes.

CHAIR: Thank you.

MS. MOORE: The legislation called for the County to create a committee to review them after a year, review the regulations and that's the thing I was --

CHAIR: Sorry, --

MS. MOORE: And we were even mentioned in the legislation, Valleys Planning Council.

CHAIR: Okay. Just want to make sure that that was understood. Sorry, Mr. Schmidt.

MR. SCHMIDT: Now, may I continue?

CHAIR: Yeah, I just wanted to clarify what she meant by we, whether, --

MR. SCHMIDT: Thank you.

CHAIR: Yeah.

MR. SCHMIDT: The current, the zoning regulations are

codified in Section 4-F of the Baltimore County zoning regulations, are they not, Ms. Moore?

MS. MOORE: They are.

MR. SCHMIDT: And provisions of 4-F are in, were adopted pursuant to Bill 3717 of the, that was the council bill that adopted the zoning regulations, is it not?

MS. MOORE: Correct.

MR. SCHMIDT: Did Valleys Planning Council support Bill 3717 as adopted?

MS. MOORE: I don't think we had a support position, no.

MR. SCHMIDT: Yeah, you definitely didn't support it.

MS. MOORE: No.

MR. SCHMIDT: No, as a matter of fact, --

CHAIR: I'm sorry, I can't hear you.

MR. SCHMIDT: I said, you definitely didn't support it, isn't that true?

MS. MOORE: We had supported a different bill (inaudible) --

MR. SCHMIDT: That counsel --

MS. MOORE: -- I don't know --

MR. SCHMIDT: That Councilman Koch offered?

MS. MOORE: Yes.

MR. SCHMIDT: Okay. Needless to say, Valleys Planning Council has consistently taken a position of

opposition insofar as solar facilities in, in Valleys Planning Council's area, a hundred and thirty acre, a hundred and thirty square miles or whatever, however you described it, correct?

MS. MOORE: We have had concerns about prioritizing them and so that they wouldn't be incentivized to convert farmland, that's been our --

CHAIR: Well, his question was about supporting or, excuse me, opposing legislation, right? Is that, Mr., Mr. Schmidt, you, --

MR. SCHMIDT: Yes, sir. I, I think the fact of the matter, Ms. Moore, I mean, unless I'm --

MS. MOORE: We're not opposed to solar, that was my, --

MR. SCHMIDT: Well, you've certainly been opposed, is there any community solar project that you've testified in support of on behalf of Valleys Planning Council?

MS. MOORE: I haven't testified in front of any, except this one.

MR. SCHMIDT: Okay. Ms. Moore, with all due respect, I'm going to ask you a question and if you can answer my question, it would make this go a lot easier.

MR. MCCANN: Well, that's for the Board to tell her, you don't need to tell her that.

CHAIR: Mr. McCann, you are correct. Mr. Schmidt, you didn't need to say that, certainly.

MR. SCHMIDT: So, the question is, Ms. Moore, have you testified in support of any solar facility that has come to the Board of Appeals or the Administrative Law Judge pursuant to Bill 3717?

MS. MOORE: No.

MR. SCHMIDT: Okay. Has Valleys Planning Council supported any solar facility, whether you have testified or not testified, that has come before the Board or the ALJ pursuant to Bill 3717?

MS. MOORE: No.

MR. SCHMIDT: Okay. Needless to say, generally, it's the position of Valleys Planning Council to oppose these solar facilities because you believe they're detrimental to agriculture and, and sort of the concept of open area in the, in RC zones of Baltimore County, is that a fair, a fair characterization of your position?

MS. MOORE: Yes.

MR. SCHMIDT: Okay. Now, you met with Mr. Streit on this project, did you not?

MS. MOORE: Um hm.

MR. SCHMIDT: Met with him several times, or had several discussions with him, didn't you?

MS. MOORE: At least two.

MR. SCHMIDT: Did you ever tell him that you thought this could be a model of, of the way solar facilities could be

done in Baltimore County, that this was a good, a good site for such a property because it wasn't being actively being used in agricultural purposes, for those reasons?

MS. MOORE: No.

MR. SCHMIDT: Okay. Did you ever indicate to him that VPC would support this project?

MS. MOORE: No.

MR. SCHMIDT: You never indicated that?

MS. MOORE: No.

MR. SCHMIDT: Okay, okay. Bill 3717, as it's codified in Section 4-F of the zoning regulations, indicates and I'm reading 4-F, Section 104-A-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. I assume, by virtue of your position with Valleys Planning Council, that you are familiar with those types of easements?

MS. MOORE: I am.

MR. SCHMIDT: Okay.

CHAIR: Please keep your voice up, ma'am.

MS. MOORE: I am.

MR. SCHMIDT: Is there any evidence that you have, that the subject property, which is under consideration in this case, is, in fact, encumbered by such an easement? Do you have, have you seen any document, any easement document, either

an agricultural preservation easement, an environmental preservation easement or a rural legacy easement encumbering this property?

MR. MCCANN: I'm going to object.

MR. SCHMIDT: When I say this property, the subject property.

CHAIR: Hold on, before you answer.

MR. MCCANN: I'm going to object because it's two questions. First, he asked are you aware of any evidence supporting, spent some time supporting, if there --

CHAIR: Wait a minute. We don't need to rehash the, --

MR. MCCANN: But number two, the second part --

CHAIR: It's the compound nature of two questions being presented at once.

MR. MCCANN: The second question --

MR. SCHMIDT: I tell you what, I'll strike the question, make it easy.

CHAIR: Yeah. So, hold on. So, let's do this. Let's just take it one question at a time. You may have another objection, but let's hear one question at a time because I'm, I'm sustaining your first objection, the fact that it's compound. So, now, let's hear the next question and see where that takes us.

MR. MCCANN: Thank you.

MR. SCHMIDT: Okay. Ms. Moore, let's make this, make this simple. An agricultural preservation easement would be evidenced by a document, would it not, recorded in the Land Records of Baltimore County?

MS. MOORE: Yes.

MR. SCHMIDT: In order to establish an agricultural preservation easement, doesn't one have to record such an easement in the Land Records of Baltimore County?

MS. MOORE: Yes.

MR. SCHMIDT: Have you reviewed the Land Records of Baltimore County related to the subject property --

MS. MOORE: I have.

MR. SCHMIDT: -- and when I use --

CHAIR: Hold on.

MR. SCHMIDT: -- and when I use the term the subject property, I mean, both of the parcels at issue.

MS. MOORE: Yes.

MR. SCHMIDT: Okay. Have you discovered or seen any agricultural preservation easement recorded in the Land Records of Baltimore County for the subject property?

MS. MOORE: No.

MR. SCHMIDT: Okay. Let me next turn to an environmental preservation easement. An environmental preservation easement, as contemplated under that section, namely 4-F-A-1, would also, would it not, be established by the

recordation of such a document, easement document, in the Land Records of Baltimore County?

MS. MOORE: I believe so.

MR. SCHMIDT: Okay. Have you reviewed the Land Records of Baltimore County as it relates to this property to determine if there is an environmental preservation easement recorded?

MS. MOORE: I did not see any.

MR. SCHMIDT: You did not find one?

MS. MOORE: Correct.

CHAIR: So, I guess, you did review but you did not find?

MS. MOORE: Correct.

MR. SCHMIDT: Okay. And finally, a rural legacy easement, would that, wouldn't that also be established by the recordation of an easement document in the Land Records of Baltimore County?

MS. MOORE: Yes.

MR. SCHMIDT: And did you review the Land Records of Baltimore County as it relates to the subject property to see if there was any rural legacy easement?

MS. MOORE: Yeah, I looked to see if there were easements period.

MR. SCHMIDT: And did you find any?

MS. MOORE: No.

MR. SCHMIDT: Okay. So, pursuant to your review of the Land Records of Baltimore County, there is no, there is either no agricultural preservation easement, environmental preservation easement, or rural legacy easement for the subject property, at least recorded in the Land Records?

MS. MOORE: That's correct.

MR. SCHMIDT: Nothing that you could find?

MS. MOORE: Correct.

MR. SCHMIDT: Okay. In addition to that, in addition to actually looking at the Land Records, is there any other way that you might investigate to determine whether there might be an easement on this property? For example, you've indicated that, and you offered Protestant's exhibit number thirteen, which is taken from My Neighborhood. Does My Neighborhood, if you know, show, is there a link on My Neighborhood to show whether a property has any type of agricultural preservation, rural legacy easement or environmental preservation easement?

MS. MOORE: Yes, there is a layer for that.

MR. SCHMIDT: Okay. Did you check that layer?

MS. MOORE: I did.

MR. SCHMIDT: And did that layer in My Neighborhood indicate if there was a, either an agricultural preservation easement, environmental preservation easement or rural legacy easement for the subject property?

MS. MOORE: No.

MR. SCHMIDT: It indicated there are no such easements, correct?

MS. MOORE: Correct.

MR. SCHMIDT: Okay.

CHAIR: Or it indicated there wasn't, that she didn't find any easements, more accurately.

MR. SCHMIDT: No, it indicates that, no, it doesn't, Mr. Garber. It indicates, let me, --

CHAIR: There's no indication of an easement, that's --

MR. SCHMIDT: There's no indication of an easement.

CHAIR: Right.

MR. SCHMIDT: I'm trying to prove a negative, is what I'm trying to prove.

CHAIR: That's, I'm trying to phrase it in a, where it makes sense.

MR. SCHMIDT: Right.

CHAIR: Did, there was no indication of an easement.

MR. SCHMIDT: Of an easement. As a matter of fact, and unfortunately, like Mr. McCann on his exhibit, I only have one copy of this, but I'll be happy to submit it to the Board. It's from My Neighborhood and it shows, it's a, it's a, and I'll let Ms. Moore describe it because I think she did this. Ms. Moore, maybe I'll ask you, this, help you out, but I'm sure you've seen this before.

MS. MOORE: Yep.

MR. SCHMIDT: Okay. One of the subject properties is shown in blue, is it not?

MS. MOORE: It is.

MR. SCHMIDT: Which always, when you key in an address, it gives you the property in blue?

MS. MOORE: Yes, um hm.

MR. SCHMIDT: Okay and the, and this also indicates in, any type of easements, conservation easements in green, correct?

MS. MOORE: Yes.

MR. SCHMIDT: Okay. So, the property that's behind the subject property, when I say behind it, as one would face the subject property from York Road, there's large acreage that's owned immediately behind the property. Do you know, do you know who owns that property?

MS. MOORE: The, Mary Zodhiates --

MR. SCHMIDT: Zodhiates.

MS. MOORE: -- Zodhiates and Richard Seamen.

MR. SCHMIDT: Okay. Who are the individuals involved in Holly Springs, correct?

MS. MOORE: Correct.

MR. SCHMIDT: And that property is, in fact, encumbered with an easement, is it not?

MS. MOORE: It is, a (inaudible) easement.

MR. SCHMIDT: (inaudible) which is a preser, conservation easement?

MS. MOORE: Um hm.

MR. SCHMIDT: Okay.

MS. MURPHY: Is that going to be an exhibit?

MR. SCHMIDT: It will be. I was going to mark it and I was just checking my exhibit numbers.

CHAIR: Mr. Schmidt, you indicated it was, you know, behind York Road, I think you mean Falls Road.

MR. SCHMIDT: Did I say York Road?

CHAIR: Yeah.

MR. SCHMIDT: I apologize, Falls Road.

MS. MURPHY: Twenty-six.

CHAIR: Yeah, I bring that up only just for the record.

MR. SCHMIDT: Yes, thank you, Mr. Garber. I appreciate you correcting me.

MR. MCCANN: Twenty-six you said?

MS. MURPHY: Twenty-six.

MR. SCHMIDT: Yes. And I'll be happy to provide the Board with additional copies of that. I apologize for only having that one. So, there's nothing that you found in the Land Records, correct, establishing an easement, correct? And there's nothing on My Neighborhood establishing an easement, correct?

MS. MOORE: Correct.

MR. SCHMIDT: Okay. Other than the Land Records and the My Neighborhood website, and you've already explained the form 990, did you check any other source to determine if there's an easement?

CHAIR: On either of these parcels?

MR. SCHMIDT: On either of the subject property, on the subject property as a whole.

MS. MOORE: The only other indication I had was a conversation, I did have a phone call with Mary and she indicated that she didn't use the local land, the local easement programs, because they didn't provide enough protection for cutting trees and that she preferred another entity. And I don't know what that entity was.

MR. SCHMIDT: Okay, okay. Now, let me turn, if I can, to this tax return. You, you indicated a number of issues and identified during your direct examination a number of issues that you had with the tax return. This is a Federal tax return, is it not?

MS. MOORE: Yes.

MR. SCHMIDT: And so, is it fair to say, if you know, since you file these on behalf of Valleys Planning Council I would assume, correct?

MS. MOORE: Yes, um hm.

MR. SCHMIDT: As Valleys Planning Council is often a,

a tax exempt organization as well?

MS. MOORE: Correct.

MR. SCHMIDT: Okay. So, when Holly Springs, in this case, is filing its tax return, a Federal tax return, that would include any property that it might in, own in the United States, correct?

MS. MOORE: Correct. I believe there is a, a notation in there that they operate in one state.

MR. SCHMIDT: Okay and that could be any, all right. But, the tax return itself could cover any land that they own in the United States, could it not?

MS. MOORE: Yes, but they do ask that question in there.

MR. SCHMIDT: Okay and certainly, it would, as you've indicated, it indicates that they operate in the State of Maryland, correct?

MS. MOORE: Yes.

MR. SCHMIDT: Okay. Now, I believe there's twenty-four political jurisdictions in the State of Maryland and Baltimore County, Baltimore City and twenty-two other counties. Did you examine the Land Records of any of those other counties to determine whether Holly Springs may have any other property in other counties that might be under easement?

MS. MOORE: No.

MR. SCHMIDT: Okay. So, it may very well be that

they own property in Carroll County, Harford County, Frederick County or some other County that could be under easement, which would be reported on this tax return?

MR. MCCANN: Objection.

CHAIR: What's the objection?

MR. MCCANN: Speculation.

CHAIR: I'm going to overrule that.

MR. MCCANN: Okay. But I'm not sure if this, well, relevance as well.

CHAIR: Well, if I can, I have familiarity on how the Land Records works, the website. I know you search by County. His question speaks directly to this whole mystery as to the extra prop, or extra conservation easement and that if, presumably, if the property concerns something in a different County, that would explain why we have only identified four parcels in Baltimore County and we don't have a fifth.

MR. MCCANN: Abs, absolutely and she answered that she didn't look so for her now speculate --

CHAIR: So, it could be in Carroll County, the point is made, but it could be Carroll County, it could be Harford County.

MR. MCCANN: But she ans, she said she didn't look.

CHAIR: All right.

MR. MCCANN: And the question --

CHAIR: I'm going to overrule it.

MR. MCCANN: Okay.

CHAIR: You may --

MR. SCHMIDT: I think you answered the question but--

MS. MOORE: I think I did actually spot check a couple of counties but I don't remember what they were.

MR. SCHMIDT: Okay and but, but is it indeed possible that the discrepancy that you determined, a simple explanation could be that Holly Springs owns property elsewhere in the State of Maryland?

MR. MCCANN: Same objection.

MR. SCHMIDT: I mean, isn't that imminently possible?

CHAIR: Overruled. Go ahead.

MS. MOORE: Possible.

MR. SCHMIDT: Ms. Moore, would you agree that the use of solar energy is generally a good thing for the environment at large?

MS. MOORE: Yes.

MR. SCHMIDT: And if we're using solar energy, can't that bring environmental benefits across the board, including to agricultural pursuits and uses? That if agriculture doesn't have to use fossil fuels, that there would be an environmental benefit if, if farmers, for example, could use environmental energy?

MS. MOORE: Yes, I think that would be true.

MR. SCHMIDT: Okay. So, developing a property for

use with solar, for use with solar energy could, indeed, promote conservation, couldn't it, general, of, of the country's natural resources?

MS. MOORE: Well, our position has been that there are tradeoffs, depending on the siting, and that the tradeoffs sometimes don't turn out to be a net benefit for the environment.

MR. SCHMIDT: Right, and we can debate whether there's a net benefit or not and, and whether those trade, how those tradeoffs should be decided. But from a philosophical standpoint, certainly one could argue that one would be a good environmental steward by encouraging solar energy as opposed to fossil fuels, isn't that, isn't that a fair statement?

MS. MOORE: I would agree.

MR. SCHMIDT: So, on some of these purposes of Holly Springs and the language that you've cited talks about preservation and, and essentially, being a good steward of the land, although it, understand that people can have discussions and whether the tradeoffs are worth it, it's fair to say that certainly people of good faith could believe that they are helping the land and preserving land and being good stewards of the environment by encouraging solar use as opposed to fossil fuel use, isn't that fair to say?

MS. MOORE: I don't find that wildlife sanctuaries and nature conservancies are generally feeling that converting

those sites are helping the (inaudible), no.

MR. SCHMIDT: Okay. I will tell you, Ms. Moore, that there are weeks that I, as an attorney, work sixty-five hours a week and I'm sure Mr. McCann, and I think members of the panel do. So, it's possible people can work sixty-five hours a week. I know you mentioned that about Ms. Zodhiates misrepresented how much she worked --

MS. MOORE: Well, I just wanted --

CHAIR: Wait, wait. Hold, Ms. Moore. I don't believe he was done with his question. If we could have one at a time. Sorry, Mr. Schmidt.

MR. SCHMIDT: You're, you're not an attorney?

MS. MOORE: No.

MR. SCHMIDT: Okay.

MS. MOORE: No, but I sometimes work sixty-five hours a week too. I would just find it hard to work an additional thirty hours in my part, in my other pursuit.

MR. SCHMIDT: The Board's indulgence for just a second. Ms. Moore, you offered, as Protestant's exhibit number fifteen, I believe, an extract from the Annotated Code of Maryland, Section 7-306.2 and you highlighted a section that indicates equipment for a community solar generating system may not be built on contiguous parcels of land, unless the equipment is installed only on building rooftops. Do you know if there's a definition of the word equipment in the statute?

MS. MOORE: I don't know.

MR. SCHMIDT: Okay and do you know if, when it, this statute uses the term contiguous parcels of land, if you know, are they referring to property under separate ownership or under the same ownership, if you know?

MS. MOORE: I don't know. I thought that it said separately deeded.

MR. SCHMIDT: Okay. Where does it say that?

MS. MOORE: I'm speaking from memory. I don't know where I read it, so.

MR. SCHMIDT: Okay and would you agree with me, Ms. Moore, that this is a regulation related, this is a State regulation that would be administered by the Public Service Commission of the State of Maryland?

MS. MOORE: I'm not sure if they're the only regulators of it, but it's a State law.

MR. SCHMIDT: Okay. Is it, if you know, is it enforced or does it come under the purview of any agency, department, board, commission, etcetera, of Baltimore County, Maryland? If you know?

MS. MOORE: I don't know.

MR. SCHMIDT: Okay. If you know, is there any provision in State law that might allow a waiver or an exception or an otherwise, an exemption of some type from this provision?

MS. MOORE: The only case where I heard it mentioned was a utility scale does not fall under this but the community solar, as far as I know, does.

MR. SCHMIDT: I don't know if you understood my question. If there were, say, contiguous properties that were separately deeded but under common ownership, is there, and assuming that this, what you've described or at least represented as a prohibition under the highlighted language, is there any way that that can be waived or modified by the PSC?

MS. MOORE: I'm not aware of any.

MR. SCHMIDT: You don't know whether they can or they can't?

MS. MOORE: No.

MR. SCHMIDT: Okay. One way or the other?

MS. MOORE: Correct.

MR. SCHMIDT: Okay. Thank you. I don't have any other questions.

CHAIR: Mr. McCann, re-direct?

MR. MCCANN: Yeah, just a couple, thank you. May I see Petitioner's Exhibit 26 which was the My Neighborhood map, the most recent exhibit? And I just want to confirm for the record, if I could, Ms. Moore, the area indicated in green apparently is a conservation easement on this Exhibit 26. Who owns that property? Holly Springs or the individuals, Mary Zodhiates and Mr. Seaman?

MS. MOORE: The individuals.

MR. MCCANN: Okay. So, the conservation easement is indicated in the form 19, not form 990, are owned by Holly Springs, correct?

MS. MOORE: Correct.

CHAIR: That's correct?

MS. MOORE: Correct.

CHAIR: Thank you.

MR. MCCANN: And did, did the VPC subpoena Mary Zodhiates and Holly Springs --

MS. MOORE: Yes.

MR. MCCANN: Okay and did VPC ask for all easements from Holly Springs and Mary Zodhiates?

MS. MOORE: Yes.

MR. MCCANN: Okay and what is, what is your understanding of what happened with, in connection with that subpoena?

MR. SCHMIDT: Objection. I mean, it's beyond, I, I have no idea where this is going, but it's beyond, it's certainly beyond the scope of, of cross examination. There's a subpoena in your file, I don't know if it was ever served.

CHAIR: I don't think it's beyond the scope of the cross examination because we get to the issue as to what efforts she undertook to exhaust identifying --

MR. SCHMIDT: Okay.

CHAIR: -- the easements. I imagine then the subpoena, that's what that's speaking to because she requested information about the easements as well as the subpoena.

MR. MCCANN: Correct. Correct. That's your understanding of what, may I ask that question again?

CHAIR: Sure. So, overruled for that. Go ahead.

MR. MCCANN: Thank you, Mr. Garber. I'll just rephrase the question maybe rather than have you remember what it was. What is your understanding of what happened with those subpoenas and whether they were served or not?

MS. MOORE: I understand that a process server showed up at the residence and appeared to be people home but no one answered the door.

MR. MCCANN: On multiple occasions?

MS. MOORE: More than once.

MR. MCCANN: Okay and did, did I, on behalf of Valleys Planning Council, ask Mr. Schmidt to accept service of that subpoena?

MR. SCHMIDT: Objection. I mean, that's a, that's inappropriate.

CHAIR: Yeah, I don't, other than you telling this witness that's what you did, doesn't establish the fact that you did what you said to --

MR. MCCANN: Well, Mr., Mr. Schmidt just said that he wasn't even sure if she was served or not. There's a lot of

context there. We had conversations about trying to serve her.

CHAIR: Right, but that's, how are you going to get that in through this witness, that is that you --

MR. MCCANN: Okay. I mean, I can, I can represent to the --

CHAIR: -- I mean, at best, you can say, didn't I tell you that this is what happened.

MS. MOORE: Well, I do believe it took place in front of me in this room.

CHAIR: There's no, there's no, well, there's no question pending at the moment.

MS. MOORE: Okay.

CHAIR: Unless you, well, unless you figure out how to go about doing your business.

MR. MCCANN: I'll leave it at that. I'll leave it at that. I'm sorry, one second. That may be all I have. That is all I have, thank you.

CHAIR: Okay.

MR. SCHMIDT: Just one question, if I may? Ms. Moore, does, does Valleys Planning Council consider Holly Springs to be a threat to it? That it's a competing conservation organization in this area of the County?

MS. MOORE: No, I would expect it to be an ally.

MR. SCHMIDT: Okay, all right. Thank you.

MS. DOPKIN: I have one question. You were, I direct

your attention to the 990. It strikes me looking at this document that the primary assets of the taxpayer here is the land.

MS. MOORE: Yes.

MS. DOPKIN: And that the income annually is minimal.

MS. MOORE: Yes.

MS. DOPKIN: Maybe twenty some thousand, thirty some thousand annually at best.

MS. MOORE: Yes.

MS. DOPKIN: Is my understanding correct?

MS. MOORE: Yes

MS. DOPKIN: Based on this document?

MS. MOORE: That's, and I looked back at, through 2012 and even wondered how they're buying the land. I just, I, it doesn't, I just don't see it, it doesn't follow to my eye, but.

MS. DOPKIN: So, that, that was my only question. Thank you.

CHAIR: Any follow-up based on that?

MR. MCCANN: No, thank you.

MR. SCHMIDT: No, sir.

CHAIR: All right. Thank you very much. Why don't we take a five minute break, Mr. McCann?

MR. MCCANN: Sounds good. We'll be ready.

MS. DOPKIN: Are we pausing?

CHAIR: Yes.

(RECORDING PAUSED - 10:12:38 AM)

(ON RECORD - 10:27:44 AM)

MS. DOPKIN: We're on the record.

CHAIR: We're back on the record. Mr. McCann?

MR. MCCANN: Thank you.

CHAIR: You have another witness you have indicated?

MR. MCCANN: I do.

CHAIR: All right.

MR. MCCANN: I have another witness that will be about the same length as Ms. Moore and then I have a real short one that I'd like to call quickly in light of something --

CHAIR: So, you have two witnesses?

MR. MCCANN: Three, a total of three, I apologize.

CHAIR: Total, right, no, that's fine. I mean, you have two more.

MR. MCCANN: But this came up in light of, yes.

CHAIR: That's fine.

MR. MCCANN: Okay.

MS. DOPKIN: Do you swear and affirm under the penalties of perjury that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MS. HAMIDI: Yes.

MS. DOPKIN: And would you state your name, spelling your first and last names, and your address and if you're here

on behalf of anyone other than yourself, who that is.

MS. HAMIDI: Sure. I'm Renee Hamidi, R-E- --

MS. DOPKIN: Speak up.

MS. HAMIDI: Sorry. My name is Renee Hamidi, R-E-N-E-E, last name H-A-M-I-D-I. My address is 8 Sparks Station Road, Sparks, Maryland 21152 and I'm just representing myself.

CHAIR: All right. You may proceed. Thank you. And once again, of course, keep your voice up if you can and do not cover the microphone and we'll try not to talk over one another's questions and answers. All right. Mr. McCann?

MR. MCCANN: Great. Good morning. I know you just indicated you're here on your own behalf. But let me ask you just by way of background, what is your affiliation with an organization called the Manor Conservancy?

MS. HAMIDI: I'm the executive director of the Manor Conservancy.

CHAIR: Manor?

MS. HAMIDI: Manor.

MR. MCCANN: Manor Conservancy.

CHAIR: And you're the executive director?

MS. HAMIDI: Yes.

CHAIR: But you are not here today in that capacity?

MS. HAMIDI: No.

CHAIR: Is that correct?

MS. HAMIDI: It is correct.

CHAIR: Okay.

MR. MCCANN: Okay and just real quick, what, what is the Manor Conservancy?

MS. HAMIDI: The Manor Conservancy is a local land trust that preserves land in Baltimore and Harford Counties.

MR. MCCANN: And what do you do on behalf of the conservancy as its executive director?

MS. HAMIDI: I do everything. I work on conservation easements, I do a lot of education and outreach. We're a member organization so I work with all the members, solicit donations, everything.

MR. MCCANN: Do you have occasion to review the Land Records in Baltimore County and other jurisdictions in the State?

MS. HAMIDI: I do.

MR. MCCANN: And do you do that on a regular basis?

MS. HAMIDI: I do.

MR. MCCANN: Did you, in connection with this case, did you conduct any search of the Land Records of any of the counties, other than Baltimore County?

MS. HAMIDI: I did.

MR. MCCANN: And what, what did you do in that regard?

MS. HAMIDI: I looked at the Land Records for every county and the city in the State of Maryland.

MR. MCCANN: Okay and for what purpose?

MS. HAMIDI: I was looking for conservation easements that were recorded by Holly Springs because as a land trust, I thought I knew all the other land trusts in Baltimore County and I had not heard of Holly Springs and I knew that whatever easements they held had not been recorded, had not been added onto the total by Baltimore County. Baltimore County likes to advertise how much land they've preserved and I was concerned that those easements had not been added to Baltimore County's total.

MR. MCCANN: Okay.

MS. HAMIDI: I didn't see anything in Baltimore County, so I thought maybe some other county had recorded those easements.

MR. MCCANN: And you didn't find anything?

MS. HAMIDI: I didn't find any, any easements in any of the other counties or the city.

MR. MCCANN: Let me ask you this question. Is, is it necessary, based on your experience, and what you believe the IRS requires, to record an easement that is, in the Land Records, for there to be a conservation easement on the property?

MS. HAMIDI: The IRS requires something called perpetuity for an easement and that requirement is satisfied by recording them in the Land Records. The reasoning is that when

a title search is performed, the easement will be discovered, will be discoverable forever.

MR. MCCANN: Okay. But are there such things as non-perpetual easements? Things that aren't, easements that aren't recorded in Land Records, in your experience?

MR. SCHMIDT: Objection. I, I think at this point, the witness is starting to get into what I would consider expert testimony and expert opinion. I don't know if she's a member of the Bar and she certainly hasn't been qualified, but he's starting to ask her, I believe, questions that would require a legal conclusion about the legal sufficiency of documents that may be recorded in the Land Records of the County or whatever. And IRS regulations as well.

CHAIR: Mr. McCann, do you have any response?

MR. MCCANN: My question is a little different actually. My question is, based on her experience with conservation easements and I can get, get into a little more about that experience, does, --

CHAIR: I think his objection is foundation as how would she know, is what I'm hearing. I mean, one area he, Mr. Schmidt brought up was a legal background to know this. There may be other ways to know it, but I think that that's what his objection primarily is, is foundation and how do you know what you're testifying to, is that --

MR. SCHMIDT: Yes, yes, sir. I think that's a large

part of it, that I, I just don't know, I understand that the witness is the executive director, I don't know if she's a member of the Bar. She may very well be with some expertise in easements and how they're recorded and IRS regulations and all, but I, I just think a foundation needs to be laid.

CHAIR: Mr. McCann?

MR. MCCANN: I'll ask her a couple more questions in that regard. So, tell us, --

CHAIR: So, I guess we'll sus, we'll sustain the objection.

MR. SCHMIDT: Thank you.

CHAIR: But you can ask your questions to lay the foundation. to lay the foundation.

MR. MCCANN: Great, thank you. Tell us maybe a little more specifically about your experience and, and knowledge of conservation easements?

MS. HAMIDI: I have worked on, with landowners and with other organizations to preserve land use and conservation easements.

MR. MCCANN: Okay.

MS. HAMIDI: Start to finish, drawing up a conservation easement and having it recorded once it's been signed.

MR. MCCANN: Okay and you, have you done that often and regularly?

MS. HAMIDI: I would say often and regularly, yes.

MR. MCCANN: Okay. Are you an attorney?

MS. HAMIDI: No.

MR. MCCANN: Okay. What's your professional background or educational background?

MS. HAMIDI: I have a degree in Engineering, I have an M.B.A. and I've been working for the Manor Conservancy for four years.

MR. MCCANN: Okay. I understand that you're not a lawyer and I'm not asking about legal effect, what is your, how is it at all are you familiar with the requirements of IRS regulations, specifically, perpetuity when it comes to conservation easements, how are you familiar with those?

MS. HAMIDI: I've read the regulations, I've attended seminars with the IRS to talk about that specific issue.

MR. MCCANN: Okay and is that, that issue meaning perpetuity of conservation easements?

MS. HAMIDI: Yes.

MR. MCCANN: Is that an issue that you come across and deal with regularly in your position?

MS. HAMIDI: Absolutely.

MR. MCCANN: Okay. So, again, I'll try the question again. I'm not asking you as a lawyer, Mr. Garber, I'm just simply asking, based on your experience.

CHAIR: I, and that's how I would interpret it.

MR. MCCANN: Okay, thank you. What, what is your understanding of whether or not a conservation easement needs to be perpetual? I'm sorry, needs to be recorded, (inaudible) perpetuity, but needs to be recorded for there to be, for the easement to exist?

MR. SCHMIDT: Objection. Mr. Garber, my objection is, and I apologize for delaying the proceedings, but I just have to protect the record. I'm sure you appreciate that.

CHAIR: No, that's okay.

MR. SCHMIDT: First of all, I, I think on a, on a basis of relevancy, I would ask this witness, and I will ask this witness, the same question I asked Ms. Moore. Is there an easement on this property that she has found? That's what the issue in this case is. But over and aside, relevance of this entire testimony, it, it seems to me, I, I don't consider myself a transactional lawyer and, and, and I'm, and members of the panel may very well know this better than I. But I know that in order for deeds to be recorded in the State of Maryland, there's a certification that has to be at the end of the deed that says that the instrument is prepared by a member of the Maryland Bar.

MS. DOPKIN: Or a party.

MR. SCHMIDT: Or a party. And, thank you, Ms. Dopkin. I know at least someone in your family would know this very, very well and you as well, I'm sure. I'm referring to

Mr. Dopkin, who I know that's his expertise and he's well respected.

MS. DOPKIN: Actually, I do that myself but that's okay.

MR. SCHMIDT: Yeah, and, and you too, but I was just referring to Mr. Dopkin as well. And in, in any event, I respect Ms. Hamidi very much, but someone with a degree in Engineering who is not a lawyer to be rendering opinions as to the requirements of deeds and IRS regulations, this may very well be an argument that Mr. McCann may want to put in his brief and cite to some IRS regulation and so on and so forth. But it just seems to me that aside from relevance, this witness is rendering opinions about IRS regulations and requirements for instruments conveying legal interest and real property interest and I just think it's well beyond her scope, with all due respect to Ms. Hamidi, as executive director of the Manor Conservancy. I was surprised when I thought I heard her say I have prepared and recorded such documents. Maybe I misheard that but I don't believe she can do that unless she's a party, as Ms. Dopkin pointed out.

CHAIR: I believe her testimony was she assisted.

MR. SCHMIDT: She assisted, okay. In any event, I think these --

CHAIR: That's my recollection.

MR. SCHMIDT: -- I think these questions are legal

questions about interpretations of IRS or Maryland State law requirements regarding the conveyance of legal interests and it's not, and it is ex, it is in the nature of expert testimony and cannot come from this witness. Thank you.

CHAIR: Mr. McCann, any response?

MR. MCCANN: I don't think she needs to be a lawyer to, to testify --

CHAIR: Let me cut you off there. I would agree with you.

MR. MCCANN: Yeah. I mean, that may go to the weight to which the Board gives it. What is the legal effect of not recording the easement and --

CHAIR: And the three of us up here certainly are well familiar as to why they're recorded and the, and the significance for title searches.

MR. MCCANN: And for perpetuity, is the main --

CHAIR: Well, and then she just added the missing piece as to the seminars that she attended on the perpetuity.

MR. MCCANN: Yeah. So, my point is simply, I don't think she needs a lawyer to at least say what her understanding is based on her experience. And that's really all I'm asking and I'll leave it to the Board (inaudible).

CHAIR: No, I'll overrule the objection. You can continue.

MR. MCCANN: Go ahead, Ms. Hamidi.

MS. HAMIDI: Sorry, you'll have to ask me that question again.

MR. MCCANN: Yeah, I'll, and I'll ask, the question simply is based on your experience, not as an attorney, but on your experience, is it necessary for conservation easement to be recorded in order for the easement to exist? Does it need to be perpetual, in other words?

CHAIR: Well, you're asking for, you're, yeah, you're asking different questions there.

MR. MCCANN: I'm sorry. The first question is, does it need, does a conservation easement need to be recorded in order for it to be recognized as such.

CHAIR: To have a legal effect, is that what you're asking or to have an effect for the land?

MR. MCCANN: Yes, yes.

MS. HAMIDI: I'm not sure.

MR. MCCANN: Okay. Let me ask it a different way. Let me direct, direct you to the form 990, which is Protestant's Exhibit 12 and I don't have an extra copy with me so I may take the exhibit for her.

CHAIR: And this is Exhibit, Protestant's Exhibit 12?

MR. MCCANN: Yeah. Yes. Oh, great, you have it. And are you familiar with the form 990's?

MS. HAMIDI: Yes.

MR. MCCANN: And how is it that you're familiar with

them?

MS. HAMIDI: The Manor Conservancy is a tax exempt organization and we're required to file a 990 every year.

MR. MCCANN: Okay.

MS. HAMIDI: And I help, I give the information to our, an, our accountant and review it when it's complete.

MR. MCCANN: And are you familiar with this particular 990?

MS. HAMIDI: I am.

MR. MCCANN: And all of the 990's that were on, public record on Holly Springs Nature Conservancy?

MS. HAMIDI: Yes.

MR. MCCANN: Okay. Let me just direct your attention real quick to Schedule D. Deals with the conservation easements part two. Are you familiar with, number one, are you familiar with this schedule?

MS. HAMIDI: Yes.

MR. MCCANN: Okay. Are you familiar with part two in particular?

MS. HAMIDI: Yes.

MR. MCCANN: Let me direct your attention to number eight under part two, which says, quote, does each conservation easement recorded on line 2-E above satisfy the requirements of Section 170-4-B-1 and Section 170-H-4-B-2, did I read that correctly?

MS. HAMIDI: Yes.

CHAIR: I'm sorry, what page are you on?

MR. MCCANN: I'm sorry, Schedule B.

CHAIR: Right, which page number?

MR. MCCANN: It's the third --

CHAIR: Or no, or is that the, towards the end?

MR. MCCANN: Toward the end. Third page from the back.

CHAIR: Thank you.

MR. MCCANN: I'm sorry, (inaudible) more specific. That question eight, are you, are you familiar with that question?

MS. HAMIDI: Yes.

MR. MCCANN: And in layman's terms, what, what is that question asking of the filer?

MS. HAMIDI: It's asking the filer if each of the easements that it's recording is holding, satisfy the requirements of the IRS to be an easement.

MR. MCCANN: In other words, --

MS. HAMIDI: To be a conservation easement.

MR. MCCANN: In other words, perpetual?

MS. HAMIDI: One of those, one of those issues is perpetuity.

MR. MCCANN: Okay.

MR. SCHMIDT: Can, --

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Just, this, as I, as I read number eight, do we have a, do we have a section of, do we have 170-H-4-B-i or H-4-B-ii, Mr. McCann?

MR. MCCANN: Do we have it with, with us?

MR. SCHMIDT: Yes. I mean, is, is the witness going to identify --

CHAIR: One seventy what?

MS. DOPKIN: That's the IRS Code.

CHAIR: Right.

MR. SCHMIDT: I mean, she's answering questions about the IRS Code and I just wondered if we had a copy of that Code in front of us.

CHAIR: Okay, got it. Sorry, I was --

MR. SCHMIDT: I'm trying to understand the question.

MR. MCCANN: I don't mind looking for that, I don't think I do.

CHAIR: I was looking for, I was looking at another section under one seventy, that's why I was confused there.

MR. MCCANN: Yeah.

MR. SCHMIDT: Yeah. In other words, I think he asked her a question about line item eight on Schedule D, which refers to two sections of the IRS Code and I was just wondering if we had that, because I frankly don't know what that section says.

MR. MCCANN: We do not, but I just asked her what her understanding of that section is and --

CHAIR: Well, let, let's ask the question how she would have that understanding.

MR. MCCANN: How is it --

CHAIR: Of that specific section.

MR. MCCANN: Okay. How is it that you're familiar with the sections that I just mentioned in line eight of part two of Schedule D of this form 990, how is that?

MS. HAMIDI: I've read those sections, I've reviewed those sections many times, I've attended a couple of seminars with IRS agents to talk specifically about the provisions of those sections and how land trusts need to satisfy them for easements to be valid.

MR. MCCANN: Okay. Before I let you go and, again, as an individual, are there any concerns that you wanted to express (inaudible) talked about today based on what you've heard today or in prior days of the hearing?

MS. HAMIDI: Well, of course, I'm concerned about having what should be agricultural land covered by solar panels. But what really drew my attention to this case, aside from the other, that distinguishes it from the other hearings that I've attended on this community solar installations, are the environmental impacts that I think are unique to this site. That's what I would say.

MR. MCCANN: And what are those impacts that concern you?

MS. HAMIDI: I, I'm not able to locate any information that shows the effects on agricultural land, prime and productive land, after thirty years of being covered by solar panels. And I'm concerned about the impact on the stream of the boring for the electrical line to connect the two, the two facilities.

MR. MCCANN: Okay. Thank you, Ms. Hamidi. I have no other questions.

MR. SCHMIDT: Ms. Hamidi, were, have you been here to the other hearings? Have you been here for the other hearing dates?

MS. HAMIDI: Some, for the other hearing dates for this? Yes.

MR. SCHMIDT: Yes, sir. Yes, ma'am.

MS. HAMIDI: Yes, yes.

MR. SCHMIDT: Okay. Were you here for the testimony of Mr. Koulis?

MS. HAMIDI: Yes.

MR. SCHMIDT: Okay. Did Mr. Koulis, Mr. Koulis is a representative of the County Department Environmental Protection and Sustainability?

MS. HAMIDI: Yes.

MR. SCHMIDT: Okay. You heard his testimony that he

didn't believe that the underground boring would impact the stream or the environmental resources?

MS. HAMIDI: Yes.

MR. SCHMIDT: Do you take issue with his testimony?

MS. HAMIDI: No.

MR. SCHMIDT: Okay.

MS. HAMIDI: I think he's testifying to the best of his knowledge.

MR. SCHMIDT: Okay. You ever been to this property?

MS. HAMIDI: No.

MR. SCHMIDT: Have you ever walked it? Obviously not.

MS. HAMIDI: Obviously not.

MR. SCHMIDT: Don't have any id, any personal firsthand knowledge of the envir, of quote, the environmental resources of this property that you've ever seen with your own eyes?

MS. HAMIDI: No.

MR. SCHMIDT: Okay. Ask you the same thing I asked Ms. Moore. Did you look at the Land Records of Baltimore County and conduct any analysis in an effort to determine if there was recorded in those Land Records any easement, either agricultural, preservation easement, environmental preservation easement, or rural legacy easement for this property?

MS. HAMIDI: Yes.

MR. SCHMIDT: Did you find any?

MS. HAMIDI: No.

MR. SCHMIDT: Okay. So, there's no easement recorded as far as you know?

MS. HAMIDI: That's right.

CHAIR: If I can, Mr. Schmidt, you said this property, and by that you're referring to both parcels?

MR. SCHMIDT: Yes, sir. When I say this property, or the subject property, since they're under a common ownership and control, that's what I mean.

CHAIR: Does that change your answer?

MS. HAMIDI: No, that does not change my answer.

CHAIR: It would, so it would be applicable to both parcels.

MS. HAMIDI: Absolutely.

MR. SCHMIDT: Thank you, Mr. Garber.

CHAIR: Yep.

MR. SCHMIDT: I apologize. I meant both, I mean, --

CHAIR: We all knew what you meant, but for the record's sake.

MR. SCHMIDT: Sure, we've had some argument about merger and all that in the prior hearing.

CHAIR: Yes.

MR. SCHMIDT: How these properties were used in conjection with one another.

CHAIR: Understood.

MR. SCHMIDT: Okay. So, I'm, I'm sorry, in all that back and forth, you didn't find any recorded easements?

MS. HAMIDI: No.

MR. SCHMIDT: Okay. Do, have, have, is the Manor Conservancy, are you party to any, are you, is your organization, I know you're not here on behalf of them, --

MS. HAMIDI: Um hm.

MR. SCHMIDT: -- but since you're the executive director, does, is the Manor Conservancy party to any agricultural preservation, environmental preservation or rural legacy easements?

MS. HAMIDI: Yes.

MR. SCHMIDT: Okay. The easements that you're a party to, are they recorded in the Land Records?

MS. HAMIDI: Yes.

MR. SCHMIDT: Are there any that are not recorded in the Land Records?

MS. HAMIDI: Not that I'm aware of.

MR. SCHMIDT: Okay. Okay. Thank you, ma'am. I don't have any other questions.

CHAIR: Any follow-up there?

MR. MCCANN: No follow-up, thank you.

CHAIR: All right. Thank you very much.

MS. HAMIDI: Thank you.

MR. MCCANN: And our last witness.

CHAIR: You're leaving me in suspense because you haven't announced who our last witness is.

MR. MCCANN: Yeah, I'm going to, she, she's --

CHAIR: You just Vanna White'd her up to (inaudible) --

MR. MCCANN: She will be named.

CHAIR: -- or up to this witness stand.

MS. DOPKIN: Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MS. PIPER: I do.

MS. DOPKIN: And would you state your name and address for the record, spelling your last name?

MS. PIPER: Kathleen, K-A-T-H-L-E-E-N, --

MS. DOPKIN: Thank you.

MS. PIPER: Piper, P-I-P-E-R. And you had indicated before you wanted the business address.

CHAIR: Are you here for an organization?

MS. PIPER: I am here on behalf of the North County Community Group.

CHAIR: Okay.

MS. DOPKIN: Okay. So, the address of that and --

MS. PIPER: The address, the address for that would be P.O. Box 132 in Monkton, Maryland 21111.

CHAIR: And what's the name of the group again, I'm sorry?

MS. PIPER: North County Community Group.

CHAIR: North County Community Group.

MS. PIPER: North, yes.

MS. DOPKIN: Is that incorporated or just?

MS. PIPER: It's an LLC.

CHAIR: And what is your position with the North County Community Group? You can have, you may have a seat.

MS. PIPER: Okay. I am the President.

CHAIR: All right. Mr. McCann?

MS. DOPKIN: Thank you, Ms. Piper.

MR. MCCANN: Okay, thank you. Ms. Piper, what is the North County Community Group? Tell us what it is and what it does.

MS. PIPER: Yeah, the North County Community Group is, is a grassroots organization and we focus on pre, preserving open space, the environmental integrity and the rural culture in north western Baltimore County.

MR. MCCANN: Okay and what are approximately is that?

MS. PIPER: The easiest way to think about it is, is a lot of what surrounds Pretty Boy Reservoir, so it's north of Mt. Carmel, west of York, the P.A. line to the top.

CHAIR: Let's slow that down a bit, because I'm trying to write that down. So, so property that surrounds

Pretty Boy and the boundaries generally are.

MS. PIPER: The boundaries generally are north of Mt. Carmel Road, west of York Road, south of the County line, or, or not the County line, the State line.

CHAIR: The P.A./Maryland State line.

MS. PIPER: Correct. And east of the Carroll County/Baltimore County line. So, it's the very top north western corner of our County.

MR. MCCANN: Okay and what do you do as president, Ms. Piper?

MS. PIPER: As president, I wear an awful lot of hats. In, in, in a rural culture, as we exist in, without the benefits of internet in many cases, I spend an awful lot of time reaching out and connecting people and building networks within the community to disseminate information and understand what their issues are and also, to help guide local legislatures so that they understand the issues of the people up in our area.

MR. MCCANN: Okay and on a personal level, where is it that you live in relationship to the subject properties?

MS. PIPER: I live less than a mile from the subject property, on Beckleysville Road.

MR. MCCANN: Okay and how long have you lived there?

MS. PIPER: Sixteen years.

MR. MCCANN: Okay.

CHAIR: So, just to be clear, are you here also as an individual?

MS. PIPER: Yes.

CHAIR: So, you're testifying in both capacities?

MS. PIPER: Yes.

CHAIR: You personally and as well on behalf of the organization?

MS. PIPER: Yes.

CHAIR: So, what is the, what is your exact address?

MS. PIPER: My home address is 4310 Beckleysville Road, B-E-C-K-L-E-Y-S-V-I-L-L-E, in Hampstead, Maryland 21074.

CHAIR: Thank you.

MS. PIPER: Um hm.

CHAIR: Sorry, Mr. McCann.

MR. MCCANN: Ms. Piper, have you sat through both prior days of the hearing in this case?

MS. PIPER: Yes.

MR. MCCANN: Okay and are you familiar with the plan?

MS. PIPER: Yes.

MR. MCCANN: Okay. The plan meaning the plan accompanying the Petition for Special Exception and the plan accompanying the DRC request that are on appeal?

MS. PIPER: Yes.

MR. MCCANN: Okay. Did you also sit through and participate in any way in the hearing before the Administrative

Law Judge?

MS. PIPER: Yes, I did.

MR. MCCANN: Okay. What is your professional background? What is your education, Ms. Piper, just for the Board's benefit?

MS. PIPER: I have a degree in Biochemical Engineering from Rutgers University. I spent thirty-eight years managing the design and engineering department of Proctor & Gamble, responsible for development of consumer products worldwide. I retired in 2015 and have focused my energy on community work. This position as the North County Community Group is one. Another I sit on the board of directors for the Pretty Boy Watershed Alliance. And I'm also a member of BG&E's Community Advisory Counsel.

MR. MCCANN: What is that counsel?

MS. PIPER: It is a coalition of people like myself from all of BG&E service area. They started this about three years ago and the focus is to provide input to BG&E on issues regarding the people in the community and also in reverse. To help disseminate information that would be important for the community to understand.

MR. MCCANN: Would that include the community solar program?

MS. PIPER: Yes.

MR. MCCANN: Okay. Okay. I have some rule eight

papers. I do have copies of these.

MR. SCHMIDT: Thank you.

CHAIR: Protestant's Exhibit 16.

MR. MCCANN: The original (inaudible).

CHAIR: Thank you.

MS. DOPKIN: Thank you.

MR. SCHMIDT: What was number, number fifteen? I must have missed that Ms. Murphy.

MS. MURPHY: It was the Maryland Code Annotated Public Utilities 7-306.2

MR. SCHMIDT: Thank you, Ms. Murphy.

MS. MURPHY: Sure.

MS. DOPKIN: Gesundheit.

MR. MCCANN: Bless you.

CHAIR: Thank you, thank you.

MR. MCCANN: I'll give Mr. Schmidt a moment to take a look at it, but in the meantime, I'll just have Ms. Piper identify what is this exhibit. Tell us what each of the pages is, just describe what they are.

MS. PIPER: The top page is the resolution on this particular issue that the community group is opposed to granting the special exception. Second page is an affidavit, affidavit confirming board membership and the third, I have the opposite, (inaudible). Oh, the last page is the one that details that the resolution is opposed. The first page details

who the individuals in our organization are that have the authority to be, to speak on behalf of our organization.

CHAIR: Mr. Schmidt, do you have any objection to Protestant's Exhibit 16?

MR. SCHMIDT: No, sir, I don't, I don't believe so.

CHAIR: Okay. So, that would be admitted.

MR. MCCANN: Thank you, Mr. Garber. Okay. Let us start, if we could, a grouping of photographs that we can go through quickly, hopefully. Since I know you, the Board has already seen some photographs. This would be Exhibit 17.

MS. DOPKIN: Thank you.

MR. MCCANN: So, when Ms. Murphy hands you the exhibit, just tell us generally what it is and we'll go through it.

MS. PIPER: Okay.

MS. MURPHY: Do we need to number each page, 17-A, B, C.

MR. MCCANN: Yeah, we probably should, right?

VOICE: (inaudible).

MS. MURPHY: Are they in order?

MS. PIPER: Yes.

MR. MCCANN: Yes.

MS. MURPHY: So, --

MS. DOPKIN: So, it's a cover sheet and then nine --

VOICE: (inaudible).

MS. MURPHY: All right. I have 17-11, eleven pictures. (inaudible) that was correct.

MS. DOPKIN: And the cover sheet.

MS. MURPHY: I said seventeen for the cover sheet, is that okay?

MR. MCCANN: Yes.

CHAIR: Right. Seventeen plus, plus one through eleven.

MS. MURPHY: Plus one through eleven, (inaudible).

MR. MCCANN: I like it, thank you.

CHAIR: Are we all on the same page?

MR. MCCANN: We are.

MS. MURPHY: All right.

CHAIR: All right.

MR. MCCANN: Okay. Ms. Piper, first, just identify generally what Exhibit 17 and 17-1 through 11 are.

MS. PIPER: They are a series of photographs that illustrate walking up Falls Road with the subject property on the right hand side and there's a few photos that show the driving perspective, as opposed to the walking perspective. And then, also some views from adjoining property owners.

MR. MCCANN: Okay and you took all these photographs?

MS. PIPER: No, I took the vast majority. I can point out as I go through them who took what.

MR. MCCANN: Did you prepare the key that is the

first page?

MS. PIPER: Yes, I did.

MR. MCCANN: Okay. So, why don't you go ahead and, I'm sorry, the, the key I know it's on the first page of the exhibit, is sort of self-explanatory but the, the arrows on that key indicate the direction in which you are facing --

MS. PIPER: Um hm.

MR. MCCANN: -- as, as the photographer --

MS. PIPER: Um hm.

MR. MCCANN: -- correct?

MS. PIPER: Yes. The direction and, and kind of just some guidance on focal point along, the longer arrow would be more of a vista view, shorter arrow, close up and the number is within reason, about as close as I could get to where I was likely standing, space limiting where I could put the number in a few cases.

MR. MCCANN: Okay. So, why don't you take us through 17-1 through 11.

MS. PIPER: Okay. Number one is a view of parcel 121 straight on. This is the unoccupied house that has been referred to in testimony. Oh, I should also mention, these photos, especially the first few, were taken in February of 2018 and I took these photos.

CHAIR: When you say these photos, we're talking about one at the moment.

MS. PIPER: One at the moment.

CHAIR: Right. So, I don't want to confuse the record because you said these photos. We know that there are some you did, some you didn't. So, for one you did.

MS. PIPER: One I did and I'll indicate on each one.

CHAIR: Yes, as each, we go through each, right.

MS. PIPER: Okay. The second one I took and it basically illustrates an area with an open view into where the solar panels would be proposed. You can clearly see from Falls Road. It should be noted that this is the view that citizens have at least fifty percent of the year because these are deciduous trees.

MR. MCCANN: And when was that photograph taken, the same time, that is --

MS. PIPER: Pardon?

MR. MCCANN: When was that photograph taken --

MS. PIPER: February.

MR. MCCANN: Okay, two thousand and?

MS. PIPER: February 2018.

MR. MCCANN: Eighteen, okay.

MS. PIPER: Um hm, um hm.

MR. MCCANN: Okay. Photograph three?

MS. PIPER: Photograph three is another view. You can see from the sign and any of you that have been there, Falls Road in this area is extremely hilly and very curvy. So,

it, it's, safety is a concern.

MR. MCCANN: And for each of these, tell us when the picture was taken and if you took it (inaudible) --

MS. PIPER: I took the photograph three in February of 2018. I took photograph four in 2018. This photograph four is a view through one of the more densely treed areas as you're driving up Falls Road. Photograph six I took February 2018. It's a view of --

MS. DOPKIN: What about five?

CHAIR: Hold on, one second. Let's, let's slow it down.

MS. PIPER: Sorry.

CHAIR: Let's go back to five.

MS. PIPER: Yes. Oh, yes, I'm sorry, we're on five. Okay. Five I took, 2018, February. It is a view of the barn that the proposal is to remove in this project plan. Okay. View six, in the second day at the hearing, there was an adjoining neighbor, Wayne Yell, that testified. In view six, I took this photo, February 2018, I am standing on the walkway up to his driveway looking straight out across the street. So, this is the vista that the Yells will see from their house.

MR. MCCANN: Okay.

MS. PIPER: Photograph seven is taken from a driver's perspective. I took this, I took this in September of this year and I'm driving up Falls Road and looking off to the right

and looking at the scenic view, both to the right and in front of me. It's a beautiful section of road. Four, photograph eight was taken by Glen Fowble. Glen testified on day one. This is taken from the back of his mom, Mary Fowble's home. And Mary is here in the audience today, has attended all three hearings. You can see where the tall grass is, that is the property line and the panels would be in that area, fairly close. You can see how close her house is to that left side property line. Number nine is also taken from the back of Mary Fowble's yard. Basically, Glen pivoted more to the left and took a more straight on shot. So, he took that September of this year.

MR. MCCANN: Let me ask you a question about those two photographs, eight and nine.

MS. PIPER: Sure.

MR. MCCANN: I know you said Mr. Fowble took them.

MS. PIPER: Yes.

MR. MCCANN: But have you ever been to this area?

MS. PIPER: Absolutely. I've been on Mary's property many times.

MR. MCCANN: Okay and that, what time of year were, were these photographs taken?

MS. PIPER: These take, they were taken just in September.

MR. MCCANN: Okay.

MS. PIPER: So, you know, it's still summer but close to early fall.

MR. MCCANN: And the, what I'll describe as the meadow area as depicted in, how high would say that, that meadow is in terms of the --

MS. PIPER: It, it varies probably, on average, about two feet tall.

MR. MCCANN: Okay. Some of them look considerably taller, some of the --

MS. PIPER: Yeah, I mean, I'm, I'm giving an, an average.

MR. MCCANN: Okay.

MS. PIPER: It's, it's unkept. It, it has been left to go fallow. All right and --

MR. MCCANN: And in the winter, is that meadow --

MS. PIPER: It damps down. Obviously you lose the structural support in, in the vegetation and with snow and rain and whatnot, it crushes down. So, it, it gets shorter.

MR. MCCANN: Okay. Sorry. Number ten?

MS. PIPER: Number ten is standing on the back of Linda Ault's property, which is the southernmost adjacent neighbor on the same side and this is a clear view of the so called hedge row that has been described in testimony.

MR. MCCANN: When you say this, you mean the trees that are in that picture?

MS. PIPER: Yes, the trees that you can see straight on in front of you. The, the ones to the right that appear to be coming toward you, that's not what I'm referring to as hedge row. Hedge row is the straight on portion.

MR. MCCANN: Okay and I, how thick, if you know, --

MS. PIPER: I don't know.

MR. MCCANN: Okay.

MS. PIPER: You'd have to take an aerial view, but clearly it's dense enough, you're not seeing through it.

MR. MCCANN: Okay.

MS. PIPER: The next photograph, eleven, oh, photograph ten and eleven were taken by Linda Ault. Linda took these in August of 2019.

MR. MCCANN: Okay and have you been to this area where she took these photographs?

MS. PIPER: Yes.

MR. MCCANN: And do, do these photographs, although you didn't take them, do they accurately depict --

MS. PIPER: Yes.

CHAIR: Hold on, can you let him finish his question, please?

MR. MCCANN: Do they, do these two photographs, ten and eleven, although you didn't take them, do they accurately depict what the, what these photographs reflect (inaudible)?

MS. PIPER: Yes, yes. Photograph eleven is just a

closer view of, and you can clearly see trees with a fairly significant diameter in there. These are, these are trees by any stretch of the imagination.

MR. MCCANN: Okay, thank you. Mr. Garber, I would move 17 and 17-1 through 11 into evidence.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: No objection.

CHAIR: Admitted.

MR. MCCANN: Okay, thank you. Okay. Let's shift gears, if we could, Ms. Piper, and move forward. Are you familiar, I know you mentioned you're on the advisory council, but are you familiar with, more specifically, with the process for applying for approval of a solar project in Maryland?

MS. PIPER: Yes.

MR. MCCANN: Okay.

CHAIR: Please make sure you wait to his question is done. Sorry.

MR. MCCANN: How is it that you're familiar with that process?

MS. PIPER: From frequent conversations with BG&E representatives, also attending advisory board meetings where this is explained in detail to other individuals like myself and also, for hosting BG&E to meet with our community group earlier this year to explain the process.

MR. MCCANN: Okay. Are you a, are you also a

frequent visitor of PSC's website?

MS. PIPER: I wouldn't say frequent. But I do go there when necessary.

MR. MCCANN: Okay, okay. And did you undertake any investigation as to whether this Petitioner, that is Holly Springs, has applied for approval of this solar project --

MR. SCHMIDT: Objection.

MR. MCCANN: -- Holly Springs itself?

MR. SCHMIDT: Objection.

CHAIR: Before you answer, what's the objection?

MR. SCHMIDT: The objection is, really multiple. First of all, I don't think the witness has any, I mean, the mere fact that she's on the counsel and went on the website, I know we believe everything that's on the internet but the mere fact that she did that, I don't think this is any kind of probative, probative or appropriate testimony. More importantly, this, this case, I believe, is about the applicant's request for zoning approval under Section 4-F of the County zoning regulations. We had, had a discussion at the earlier hearing, that the applicant may very well be required to obtain other approvals from Baltimore County, for example, of this project before it goes forward and the potential sequencing of, of those approvals. This even goes beyond that in terms of, I assume what the witness is going to talk about, and I don't believe that she has any real knowledge about this

other than looking at a website and, and talking to people at BG&E and I mean that respectfully. But if, if my client is unable to obtain PSC approval, then the project is not going to go forward. And I acknowledge that. But that's not probative and relevant testimony before this Board. You're, you're not here to decide whether the PSC should approve this project or approve this solar facility.

CHAIR: I don't think we could even if we wanted to.

MR. SCHMIDT: Even if you wanted to, I agree, Mr. Garber. You're here to decide this zoning case. So, I don't know what the witness is going to say but whether they've applied, not applied, their application has been accepted, rejected, deferred, whatever it all is, it's not the prop, to me, the proper subject matter of issues before you --

CHAIR: I understand, I understand the objection.

MR. SCHMIDT: Thank you.

CHAIR: Mr. McCann, do you have a response?

MR. MCCANN: I think we've sort of touched upon this issue earlier in the hearing and accepted evidence on, on the same basis. Our argument isn't that this Petition must be denied because the Petitioner is not, as of today, an applicant. That's not our position. Our position is, is that whether or not the Petitioner has applied and whether it has the ability, the capability, whatever term you use, wherewithal, the experience to go through that, this process

and obtain and, and bring this project to fruition, I think has, --

CHAIR: Well, if I can jump in on that?

MR. MCCANN: Go ahead.

CHAIR: How will this witness be able to provide evidence to the Board about the capability of Petitioner as participant in this program and with all the requirements of Baltimore County?

MR. MCCANN: Well, she's not rendering an opinion on, on that subject, Mr. Garber. She's doing, what she would do is introduce public records, again, public records, available at PSC's website --

CHAIR: To say that they're not an applicant?

MR. MCCANN: Correct.

CHAIR: Mr. Schmidt, is there a dispute that they are an applicant or not?

MR. SCHMIDT: I, I frankly, --

CHAIR: Leaving aside whether or not you feel it should be an issue in this case, is there a dispute?

MR. SCHMIDT: Yeah, I mean, I'm going to have to, I, I believe they are an applicant, yeah.

CHAIR: If there's a dispute, it's one thing. If there's not a dispute, then we can probably all move on.

MR. SCHMIDT: No, I believe they are an applicant.

CHAIR: Well, I don't, we, it's not in evidence so it

sounds like there may be a dispute. So, with that in mind, well, we're not going to be able to solve this with --

MR. SCHMIDT: Yeah, I would have to talk to my client about the status of their application.

CHAIR: I was just trying to work through this objection.

MR. SCHMIDT: I don't know precisely sitting here.

CHAIR: I was just trying to work through the objection.

MR. SCHMIDT: Yes, sir.

CHAIR: So, the, so as for now, let's see where this goes, I'll overrule the objection so please continue.

MR. SCHMIDT: Can I, just for the record, Mr. Garber and, again, I, I have to protect the record.

CHAIR: I understand.

MR. SCHMIDT: And I know you understand that. Mr. McCann said that oh, no, he's not, he's not trying the PSC case here, but the reason that this is relevant is that this witness is going to show that my client doesn't have the wherewithal, is what he said, --

CHAIR: I don't think we're at that point yet. You may have an objection when we get to that point.

MR. SCHMIDT: No, but it's as to this testimony. I'll just say this one thing and, and it's in support of my objection, Mr. Garber.

CHAIR: Sorry.

MR. SCHMIDT: As to this question and this line of questioning. The, the County regulations in certain circumstances require an analysis by this Board as to whether an applicant in a particular project is capable of, indeed, accomplishing that process.

CHAIR: Executing on --

MR. SCHMIDT: And, and that is just as one example is a PUD. Part of the requirements for a PUD, and I believe that probably all three of the panel members have heard PUD appeals, but there's a requirement in the County law for planned unit developments that says one of the burdens that the Petitioner has to show is that the Petitioner has to show that it can actually do the PUD. And so, as someone who has represented developers, I've had to put on evidence in PUD cases that the developer is solvent, that the developer has experience, developer has developed properties and has, what I would call, the wherewithal and the ability to do that. My point is, that's not a requirement in the special exception under Section 4-F. If the County Council intended that there be a requirement that you evaluate the wherewithal of my client to do this project, the County Council, when they enacted Bill 3717 could have did the same thing that they did when they attacked, enacted the PUD legislation and said, Board of Appeals, in addition to looking at health, safety, general

welfare and easements and all these other things, you must also make a determination that they have PSC approval or that they're capable of having PSC approval or some other test related to any other requirement that the County Council, in its collective wisdom would have determined is a necessary requirement for this Board to determine. They did not. This testimony has no relevance to what it is you have to decide and I don't know how to say it any plainer. I'll make that objection, it'll be a continuing objection to this whole line so I don't have to pop up and down. Thank you.

CHAIR: All right. Yes. Overruled. We will allow the continuing objection. You may continue, Mr. McCann.

MR. MCCANN: Okay. Ms. Piper, take a look at Exhibit 18 and tell us what that is.

MS. PIPER: This is the most current listing that BG&E publishes on the applications that they have accepted into their community solar pilot program. This doesn't mean that these people are definitely going to be connected, it just means their application has been placed in cue and when they finish the rest of the application process, the determination will be made.

MR. MCCANN: Okay. Where did you obtain this document?

MS. PIPER: From BG&E's website, it's open to the public and anyone can get this.

MR. MCCANN: Okay and it's updated, it sounds like?

MS. PIPER: Yes, this is the most current one, I checked last night.

MR. MCCANN: Okay and just to be clear you, you have some familiarity with the process as you've already talked about. The, the application we're talking about here is not the subscriber organization application or the interconnection application.

MS. PIPER: Correct.

MR. MCCANN: Both of those applications we've discussed earlier in this case, correct?

MS. PIPER: Yes.

MR. MCCANN: What is this application?

MS. PIPER: This application is simple for people who are already subscriber organizations to apply to participate in the program.

MR. MCCANN: Okay and the, I apologize for the small writing, but Power Factor is not among the list of these applicants.

MS. PIPER: Power Factor is on there, Mead Communities is not on there, nor is this address on there.

MR. MCCANN: Okay. Have you been involved in any other solar cases, Ms. Piper?

MS. PIPER: Yes.

MR. MCCANN: How many?

MS. PIPER: I've testified at probably three or four and I've been involved in virtually all of the ones that have come up within district three.

MR. MCCANN: Okay. In any of those other cases that you've been involved in, which we just described, has the Petitioner in those cases been on this application list?

MS. PIPER: Always.

MR. SCHMIDT: Objection.

CHAIR: Hold on.

MR. SCHMIDT: Objection.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: I, I don't know what the relevance is of what other applicants have done.

CHAIR: Mr. McCann, you wish to respond?

MR. MCCANN: Well, I had a lot to say in response to Mr. Schmidt's last objection and I won't respond to everything-

CHAIR: there. But, this goes to, ultimately goes to the special exception standard and impacts, relative impacts. So, in other words, if this case can be distinguished on a number of grounds, one of which is not just wherewithal, we're talking, we're not talking financial wherewithal, we're talking about the ability, capability to, to bring this project to fruition. I believe that's relevant to the special exception standard and, and the relative impact of this project versus another one, where a project, where the Petitioner has gone

through the process, has indicated a willingness to, to do the things necessary. At the end of the day, you know, on the continuum of evidence, it's some evidence that the impacts, and I understand that's the ultimate thing we're looking at in this case, that the impacts may be greater here than, than they would otherwise and are (inaudible) impacts may be greater here than they have been in other cases. So, it's all about relative --

CHAIR: Well, can I jump in on that point?

MR. MCCANN: Yeah.

CHAIR: I mean, how does the identity or, or excuse me, the applicant's, whether an applicant has a pending, excuse me, whether the Petitioner has a pending application to be, participate in this program? How would that matter for purposes of the impacts?

MR. MCCANN: Yeah, it's, that's a good question. That, in combination with the other things that I think we've established in this case and will continue to establish, will show that as a result of what we believe to be an inability, an incapability of bringing this project to fruition, that if it is approved, the impacts would be greater here than they would somewhere else where if someone more capable, someone more and, again, not financial wherewithal, the fact that that's a requirement in the PUD application process doesn't mean that this isn't relevant here, just because it's not spelled out in

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the statute. So, --

CHAIR: Well, again, I'm still kind of lost on the trail of breadcrumbs between one to the other. Because if there are not an applicant to the program and they never become a participant in the program, they can't operate as part of the program.

MR. MCCANN: I understand.

CHAIR: If you can't operate as part of the program, your, are you under the impression that you just put up the solar field anyway?

MR. MCCANN: No, again, with the premise that --

CHAIR: I mean, because you would need to be a participant in the program in order to do, to be able to operate.

MR. MCCANN: I understand that. But it also goes, you know, in a less substantive way, it goes to the credibility of this Petitioner. Beyond the substance of relevance and I think there are, on the continuum, things, you know, of, of what we have on one end of the spectrum, maybe somebody impacts the natural resources or some of the other things that we talked about in this case. May not be on that end of the continuum in terms of relevance, but the ability, capability of this Petitioner and some of the credibility, frankly, credibility --

CHAIR: Well, go, well, what do you mean by the

credibility? What, what specifically --

MR. MCCANN: Well, if, if the applicant, as we'll get into, make certain representations in the, in connection with this process that were not true, that may not be substantively relevant to the special exceptions hearing but credibility is, as you know, --

CHAIR: That's what you're referring to by when you reference credibility?

MR. MCCANN: Yes.

CHAIR: Okay. Mr. Schmidt, do you have any response?

MR. SCHMIDT: I just, I listen to Mr. McCann's answer and with all due respect, I don't know what he's saying. I don't know how the, I mean, the impacts are spelled out in 502.1, you know, traffic and environmental and can you see it and smell it and hear it. And, I mean, those are the impacts that you have to adjudge in every special exception case and Mr. Garber, you, you nailed it. I mean, whether they get approval from the PSC or they don't, I mean, they can't, obviously they have to get that approval. I mean, it's like all these cases. They have, what I would call, other County approvals at, like, that Mr. Koulis described, you know, that there will be a storm water management plan.

CHAIR: Right. Well familiar with that argument.

MR. SCHMIDT: Right, and then there are other approvals in, in this particular case because this is a State

program. They have to get approvals from the State from the PSC. And they got to get approvals from BG&E. And I, and we know all that. But that's what, that's not what this hearing is about and with all due respect to this Board, you don't have any jurisdiction over that. You can't tell BG&E or the PSC, just as they can't tell you in the zoning case and, I mean, it, this puts a ridiculous burden on the Petitioner. I don't know what I'm supposed to be proving in this case. I thought I was supposed to be proving the special exception criteria. Am I supposed to try a PSC application here or a BG&E?

CHAIR: Again, going back to the question I raised earlier, the, yeah, if it's not a dispute whether you're an applicant or not, I, then I'm not really sure why we're going down this road. If there's a dispute as to whether or not you're, you're an applicant, this evidence becomes relevant. There seems to be some uncertainty whether they are or are not for purposes of whether or not this particular --

MR. SCHMIDT: But what's it --

CHAIR: -- hold on, this particular exhibit should be in evidence.

MR. SCHMIDT: Mr. Garber, what's the difference whether they're an applicant or not?

CHAIR: I don't know that yet, but we're talking about the admissibility of this document.

MR. SCHMIDT: And it has no relevance because it

doesn't matter.

MR. MCCANN: Well, I think, I think, if I may, while Mr. Schmidt is saying it's not dispositive, I agree with you, it's, it's not dispositive. I would agree absolutely sitting here today that whether their name is on this list or not, does not mean this Board can grant a special exception.

CHAIR: Right.

MR. MCCANN: But what we're talking about is not determinativeness or, we're talking about relevance and the rather loose standard, frankly, that relevance carries.

CHAIR: I understand, you don't have to explain that.

MR. MCCANN: Yeah.

CHAIR: I understand what --

MR. MCCANN: And collectively, each individual --

CHAIR: -- that is.

MR. MCCANN: -- exhibit may, may not mean anything. But there's a reason why the Board, frankly, was interested in some of the things we talked about in the first two cases. Along these similar lines, there's been a lot of evidence, I would say, falls in the same category in this case. And I think there's a reason why I've asked the questions, I think there's a reason why the Board has asked some very good questions about this Petitioner, its relationship to (inaudible) all those things.

CHAIR: So, now the, the pending objection that

relates to other applicants, why is that relevant? So, leaving aside this, because we pretty much beat that to, to death --

MR. MCCANN: Yeah, and I'll, I'll withdraw that question so we can move on.

CHAIR: Because that I have more skepticism about for sure.

MR. MCCANN: Okay. I'll withdraw that question.

CHAIR: All right.

MR. MCCANN: And I should have done it initially but, it's not --

CHAIR: All right.

MR. MCCANN: Okay. So, before I forget, I'd move this exhibit, which is eighteen.

CHAIR: That was eighteen.

MR. MCCANN: Okay, great.

CHAIR: So, you want to move that into admission?

MR. MCCANN: I do.

CHAIR: And you object?

MR. SCHMIDT: And I, I object, based on all the grounds I said, Mr. Garber.

CHAIR: Yeah, we don't need, right, we don't need to rehash that, it'll be admitted.

MR. MCCANN: Okay.

CHAIR: Next.

MR. MCCANN: This will be nineteen.

MR. SCHMIDT: Okay. So, this is their application?

MR. MCCANN: Correct.

MR. SCHMIDT: I thought we just had a document that said they didn't apply?

CHAIR: Hold on, hold on. Mr. Schmidt, I, I, I understand your frustration.

MR. SCHMIDT: I'm sorry, Mr. Garber.

CHAIR: I understand your frustration. Mr. McCann, could, I have to echo Mr. Schmidt's frustration, perhaps not as passionately.

MR. MCCANN: This is a different app --

CHAIR: If we just went through a whole exercise to determine if they were not an applicant, now we have an application.

MR. MCCANN: Right.

CHAIR: We could have just led with the application.

MR. MCCANN: No, I wouldn't do that to you.

CHAIR: Okay.

MR. MCCANN: I wouldn't do that to you.

CHAIR: Okay.

MR. MCCANN: As Ms. Piper indicated, there's different applications. The application that this Exhibit 18 represents is the application into the program. This is the subscriber organization application.

CHAIR: Thank you, okay.

MR. MCCANN: I mean, there's also an interconnection application as well, I think. Not --

CHAIR: Now I understand.

MR. MCCANN: -- but not only did Ms. Piper indicate that just before, but it's, there's some evidence in this case about that already, so.

CHAIR: Okay.

MR. MCCANN: So, yeah, I --

CHAIR: So, this, this is the application for the, to participate in the program, right?

MR. MCCANN: No, subscriber organization. You have to subscribe --

CHAIR: Subscriber, sorry, so, --

MR. MCCANN: You have to apply as an organization first before you apply --

CHAIR: Yes.

MR. MCCANN: So, I'm just going to ask the witness a couple questions about this, it's public record, and we'll move on.

CHAIR: Yes.

MR. MCCANN: Ms. Piper, just identify what Exhibit 19 is and where you got it from.

MS. PIPER: Um hm. This is Power Factor's application to the Public Service Commission to be recognized as a subscriber organization, which is a precursor to applying

to the BG&E community solar project.

MR. MCCANN: Okay and where did you get this document?

MS. PIPER: From the Public Service Commission website.

MR. MCCANN: Okay. Have you done that on other occasions?

MS. PIPER: Yes.

MR. MCCANN: Okay. Is there anything in this document that you wanted to highlight for the Board while we're here (inaudible)?

MS. PIPER: Yes, I'd like to draw your attention to page five, item eight. Where the Public Service Commission is looking for disclosures of fines or similar actions that have been taken or are pending against the applicant and Power Factor has indicated no such action has been taken yet. In the second hearing, it was clearly demonstrated that they are under an OSHA fine of significance for a safety violation that resulted in an electrocution fatality.

MR. SCHMIDT: And I'm going to object --

MS. PIPER: And --

MR. SCHMIDT: I'm sorry, ma'am.

CHAIR: Hold on one second. That's all right.

MR. SCHMIDT: I'm going to object. I think you've sustained that objection about what happened at a, in St. Louis

or Kansas or some other such place and how that has anything to do with Power Factor in Maryland.

CHAIR: Well, that was as to the substantive evidence. This is a matter for credibility, I assume that's why you're doing this?

MR. MCCANN: Correct.

CHAIR: All right. So, on that basis, we'll overrule the objection. Do you know where you were with your answer?

MS. PIPER: Yeah, I was going to indicate that it's signed by George Lang, who is the owner of Power Factor.

CHAIR: It's signed by who?

MS. PIPER: George Lang and Andrew Streit, who has testified on the second day.

CHAIR: Right. So, where do you see Mr. Lang's signature?

MS. PIPER: Mr. Lang's signature appears on page eight, nine, --

CHAIR: Okay.

MS. PIPER: -- and Andrew's signature appears on page six.

CHAIR: Right.

MR. MCCANN: And the date of those signatures?

MS. PIPER: August 29th, my birthday.

MR. MCCANN: One other question. Number ten on that same page five of this exhibit, I'll paraphrase it, as to the

applicants, list the name of each company or entity which is affiliated with the application. Was any information, was any, was there any information responsive to that question in this application?

MS. PIPER: No.

MR. MCCANN: Okay and anything else in here you wanted to point out before I move it into evidence, Ms. Piper?

MS. PIPER: There's no response to number nine, that has to do with technical and managerial (inaudible). The application requests an attachment with detailed background on that. That's not included. Also, Andrew Streit indicated that Mead would be managing the sub, the subscribers and that they already have low and moderate income and military subscribers signed up. Yet, if you look at page fourteen, it is blank.

MR. MCCANN: Okay. Moving, I would move Exhibit 19 into evidence.

MR. SCHMIDT: Objection. And it, it's not relevant and it's, my client tells me this isn't even related to this application, so.

CHAIR: Well, I will --

MR. SCHMIDT: But who cares.

CHAIR: All right. Well, I will, it will be admitted.

MR. SCHMIDT: So, that's exhibit number twenty, I believe?

CHAIR: Nineteen.

MS. MURPHY: Nineteen.

MR. SCHMIDT: I thought, oh, okay. I'm sorry, nineteen, yes, thank you.

CHAIR: So, the one page document was eighteen.

MR. SCHMIDT: Yes, sir.

CHAIR: The subscriber organization application was nineteen.

MR. MCCANN: And just because Mr. Schmidt made that comment --

CHAIR: Which comment? There were many but.

MR. MCCANN: Yeah.

CHAIR: The fact of the matter is, it's admitted.

MR. MCCANN: I know. I just want to point out on page thirteen, if I (inaudible).

CHAIR: Well, okay, so you have a question, okay.

MR. MCCANN: On page thirteen of Exhibit 19 is, in fact, this,

MS. MURPHY: (inaudible).

MR. MCCANN: Sorry, sorry.

MS. MURPHY: Okay, go ahead.

MR. MCCANN: Is in fact 18, the subject property identified as the facility site on that attachment, at the top?

MS. PIPER: Yes.

CHAIR: Okay, thank you.

MR. MCCANN: Thank you. And then just, --

CHAIR: That's quite all right.

MR. MCCANN: And just, if you could, tell us what Exhibit 20 is and, and where you got it from?

MS. PIPER: Also obtained from the Public Service Commission website. This is the application for Mead Communities to be a subscriber organization. It appears that they've created an amendment to their initial application which adds this project to their listing.

MR. MCCANN: Okay. Anything, before I move it into evidence, Ms. Piper, anything you wanted to point out to the Board (inaudible)?

MS. PIPER: I would comment on page three, at the top. Basically, what you see Mead doing as a subscriber organization is handling what I would, you know, in a layman's term, phrase, is the bookkeeping. They're managing subscriptions and soliciting subscribers. That's the extent of what they are proposing their role would be.

MR. MCCANN: You're talking about the checklist there, (inaudible)?

MS. PIPER: Yes. And also, let me see if I can find it. The last page, which is not numbered, so I guess it would be fifteen, this is an example of an addendum that was not included in the Power Factor application but Mead has included it and they clearly state in the middle of the second

paragraph, that they are not a developer, contractor or owner of the solar project.

MR. MCCANN: Okay.

MS. PIPER: And I will go into more detail on concerns about ownership later. But I did want to point out that Mead is taking that position and making it very plain.

MR. MCCANN: Okay. I would move Exhibit 20 into evidence as well.

CHAIR: I assume the same objection?

MR. SCHMIDT: Yes, sir.

CHAIR: All right. We will admit it.

MR. MCCANN: Okay. This is the part of the questioning, questioning where I ask you what are your concerns, Ms. Piper, so if you could --

CHAIR: Well, if we can, because, are we doing this individually or by organization or is it going to be testimony from both?

MR. MCCANN: I think maybe the easiest thing to do is ask her to attest, testify as to both and if there's any, in her testimony, if, if there's some part of her testimony that applies to her, if she's only testifying on behalf of the organization as to opposed to in her individual capacity --

CHAIR: Or vice versa.

MR. MCCANN: -- that she should so indicate. That's the --

CHAIR: Do you understand that, ma'am?

MS. PIPER: Yes, I do.

CHAIR: All right.

MR. MCCANN: Okay. So, again, the question is, tell the Board if you would, what are your concerns about this project?

MS. PIPER: Well, as a community, we have a number of concerns. I can kind of cut to the chase and indicate that my feelings are one and the same with the community. If, if they're not, I'll point that out, but you can assume that we're one and the same on these issues.

CHAIR: Okay.

MS. PIPER: The very first one is, is the community has significant concerns that Power Factor doesn't have the experience or the expertise to design, build, operate or decommission the proposed facility. Details to that topic would be, first of all, they've supplied no evidence of operational project work that is similar in scope or design. The URL for the gallery of projects that appears in internet search results for them is there, but the link is disabled with a 404 error indicating it was there at one time and they have restricted or removed it from access. Secondly, as the community was seeking to understand just what this would look like and, and feel like in our community, we went one step further and we repeatedly asked for information from Power

Factor, specifically Andrew, this is before any of the hearings ever started, including the ALJ, and we received nothing but vague responses and indirect answers.

MR. SCHMIDT: Objection.

CHAIR: Hold on second.

MR. SCHMIDT: Objection. If this is in the, I, I know, Mr. Garber, that there were some discussions between my client and the witness about settlement and so on and so forth and if that's where this is going, I don't believe that's appropriate.

CHAIR: Mr. McCann?

MR. MCCANN: I, it's the first I'm hearing of any settlement discussions.

CHAIR: Well, the information from, from the answer thus far has been there wasn't a response, so that can't be, if that's accurate, there can't be (inaudible) of settlement discussions if the whole point is that there was nothing responded to. Did I understand that correctly?

MS. PIPER: I'm not sure.

CHAIR: All right. Let's do this. Without going into any settlement discussions you may have had, I don't know if you had any or not, but without going into any, assuming that there weren't, you said you asked for information.

MS. PIPER: Um hm.

CHAIR: What was the response, if any, that you were

given?

MS. PIPER: (inaudible) answers and no direct answer to the questions, even after repeated attempts to clarify and, and really just nail it down. Very vague, not very different than what I heard in the courtroom on the second day.

MR. MCCANN: And were, were any of those discussions that we're, you're talking about, any, were those settlement discussions in an attempt to resolve some --

MS. PIPER: No.

CHAIR: All right.

MR. MCCANN: Just asking (inaudible).

CHAIR: No, that's fine.

MS. PIPER: No, it was not. At that point in the time, the community was seeking to understand what Power Factor was proposing to do, understand what it would look like, how it would impact the community. We were looking for, for information.

MR. MCCANN: Okay and what specifically were you asking about? What, what type of information?

MS. PIPER: We wanted to understand the experience that Power Factor had in doing this sort of a project and what their specific role was. Saying you worked on something is very different than saying something like I worked on, I managed, I was responsible for delivery, it, it carries a very different level of scope and we were looking for that level of

specificity. We, wanted to make sure that somebody else wasn't running the project and they downloaded, you know, hammering the pilings in to Power Factor.

MR. MCCANN: Okay. So, I'm sorry to interrupt. I know, I asked you a couple questions there, but please continue with your concerns.

MS. PIPER: Okay. The second concern is we're con --

CHAIR: This is now number three, I believe.

MS. PIPER: Number three?

CHAIR: Because you had indicated --

MS. PIPER: Well, there's an umbrella concern on this whole expertise and capability and I've got several bullets that, that kind of speak to that.

CHAIR: Okay.

MS. PIPER: So, I do have three concerns. We're not there yet.

CHAIR: Understood, okay.

MS. PIPER: Okay.

CHAIR: So, this is like two for, two --

MS. PIPER: This is 1-B.

CHAIR: 1-B or 1-C or whatever.

MS. PIPER: 1-B.

CHAIR: Okay.

MS. PIPER: Okay. We're concerned that the sales force is overselling the technical capability of Power Factor

Management talent is very heavy in new business development and only junior staff are employed in technical execution roles. They're owned and operated by a licensed home improvement contractor. Andrew Streit presented himself here in the Court as a technical person, who work closely with Nick Leffner in the design of this project. Yet under testimony, Nick testified that there is one inverter and showed its location on the project marked with a T. When Andrew testified, he said there are thirty-five inverters and they're distributed throughout the arrays, none of which are marked on the plan.

MR. SCHMIDT: Mr. Garber, can I be heard, please?

CHAIR: Well, so, I assume you have an objection?

MR. SCHMIDT: I do, Mr. Garber. This is just character assassination, plain and simple. And it's legal argument that Mr., Mr., --

MR. MCCANN: McCann.

MR. SCHMIDT: -- McCann, I'm sorry, Mr. McCann, Mr. McCann may choose to bring up in his memorandum about what witnesses said. I mean, this is just, this has nothing to do with the issues in this case. I mean, I understand the Board gives latitude to people who are objecting, but to come up here and personally insult and assassinate the character of witnesses and their credentials and background and accuse them of, I mean, this is just, in my opinion, totally inappropriate.

CHAIR: I, --

MR. SCHMIDT: I understand you give latitude but.

CHAIR: See, I, I didn't hear any insults. I heard critiques, I don't believe that there's been any line crossed, so. I will overrule the objection. You may continue.

MR. SCHMIDT: Okay.

MS. PIPER: Okay. I did want to mention that no community solar plan in the entire district has more than one inverter. Which is consistent with Nick Leffner's testimony. The third, which is 1-C, the financial responsibility and the accountability to the County is not clear. Throughout the testimony in the last few days, we've heard a complex mix of companies with no defined accountability. Who's responsible if there's a problem that impacts the community? The next is, they were fined nearly $40,000 by OSHA for four serious violations involving a fatality this year.

CHAIR: Well, that evidence we have already, an objection has already been sustained as to that. So, is there another point that's related to that?

MS. PIPER: Yes.

CHAIR: Other than this substantive matter?

MS. PIPER: Yes.

CHAIR: All right.

MS. PIPER: Yes. Only when presented with the evidence did Andrew admit it. Initially, he denied it existed and then presented with the documentation, he suddenly agreed.

They also, as we just discussed before, failed to divulge the fine on the subscriber organization application to the PSC.

MR. MCCANN: Can I ask you before, I'm sorry to interrupt. You mentioned accountability and I, I wanted, I mean, there's a lot of testimony the last two days, I'm not asking you to repeat the testimony but could, could you summarize maybe your point about that, about who is, who is responsible. What is, again, you're commenting on what you know and --

CHAIR: Well, isn't that a matter for the Board to figure out with the testimony? As opposed to the witness to summarize the same for us.

MR. MCCANN: Well, I was thinking this when Mr. Schmidt was talking. I think her concerns, whether she acquired them before the hearing started or she acquired them during the hearing are still concerns, and she should be able to talk about them. I mean, we, we learn about these, these plans during the hearing process. Just like we learn a lot before the hearing starts. So, if there's something she heard about this plan or about this Petition, or during the course of the hearing and that raises a concern, then I think she should be able to speak to that.

CHAIR: Well, isn't that what the witness has already testified to? That is --

MR. MCCANN: Okay.

CHAIR: -- who will be responsible if there's a problem.

MR. MCCANN: The evidence is there. I'll, I'll, I agree.

CHAIR: I mean, is that what you're trying to elicit from her?

MR. MCCANN: I just wanted her to be more specific about that.

CHAIR: Well, then ask that question.

MR. MCCANN: Yeah. Can you be more specific what you mean by accountability?

MS. PIPER: Yeah. And, and it is limited to, I really focused on the testimony that I've heard in this hearing. We've heard everything from the owner to Power Factor to Mead Communities, to Onyx. There was someone else mentioned that I, that I don't recall and, and even with cross examination by members of the Board, it was, it was extremely confusing to get at who's ultimately responsible here and who should be sitting in this courtroom asking for the special exception.

MR. MCCANN: Okay. All right, go ahead. Moving on.

MS. PIPER: Okay and the last one to, to this particular issue, is we had a community, one of many community meetings on May 14th of this year. Power Factor was invited to present their project to the community so that they could

understand and at that meeting, George Lang, who is the owner of Power Factor, told me that he's never done a project like this and his wife thinks he's absolutely crazy for trying.

MR. SCHMIDT: Objection. Hearsay. She's saying what his wife said.

CHAIR: I think he, well, --

MR. SCHMIDT: I think it's double, at least double or --

CHAIR: -- we're not, we're not going to, put it like this, it's not being received for the truth of the matter asserted on that point.

MR. SCHMIDT: What, that it's crazy, he's crazy for doing this project?

CHAIR: Yes, in the, in the, right. So, she is merely what was said --

MR. SCHMIDT: Okay.

CHAIR: -- in connection with what was represented to the community.

MR. MCCANN: (inaudible) agent of the parties, a party.

CHAIR: Yes. So, as to whether or not his wife actually said it, is not really material. So, overruled, you may continue.

MR. MCCANN: Thank you.

CHAIR: Never did a project of, sorry?

MS. PIPER: Make sure I have it absolutely right. A project like this.

CHAIR: Project like this. All right.

MR. MCCANN: Go ahead, Ms. Piper.

MS. PIPER: Do you want me to continue on?

MR. MCCANN: Yes, please.

MS. PIPER: Okay. We have, we have three additional concerns. One of them, probably the most significant (inaudible) are in environmental concerns.

CHAIR: Wait, hold on. Just so I'm clear. You said three additional concerns, environmental being the chief among them.

MS. PIPER: Yes.

CHAIR: Are we now saying?

MS. PIPER: This is two.

CHAIR: Thank you. And so there will be two other concerns that follow the environmental ones?

MS. PIPER: Correct.

CHAIR: Got it, okay.

MS. PIPER: Okay. As I mentioned before, I've been involved in, in quite a number of these, both as testifying and, and also working with a team that led the opposition. This project stood out in a tremendous way for an unprecedented level of detail in the DEPS comments that it received. It even included an initial rejection, which we have never seen. And

this is throughout all of the Baltimore County industrial solar projects. The site, as Teresa mentioned, includes streams, forests, panels on RC-8, multiple entrances and arrays and underground cabling. And, in fact, the underground stream crossing has been part of every submitted plan from the start, whether it was on one parcel or two parcels, it's always been there. Jeff Livingston, I, I believe this is one of the exhibits, I'm not sure where it is, but there's a memo that he wrote to the ALJ dated December 26, 2018.

CHAIR: I believe that's already in evidence.

MS. PIPER: And I, I believe it is too. Required an alternative analysis for the underground stream crossing. I, in fact, shared that with the community on February 19th. It was available easily in the file, and it was also included in, when Judge Beverungen published his opinion on the case, it was one of the attachments to his Order. So, we're very concerned that Power Factor wasn't even aware of the alternative analysis requirement until this hearing. The next item under environmental impact is installing cable beneath a stream on a property classified as a targeted environmental area. This is not like running fiber optic cable under a road. Damage to the root systems that filter water through Baltimore's head water reservoir may take years to fully emerge. And when Jeff Leffner testified, he acknowledged that there is potential for tree damage as a result of boring through the forest buffer.

And Mike Koulis testified that the site would be expected when staffing level permits and to us that sounds like a tactful way of saying never.

MR. MCCANN: You mentioned targeted environmental areas, that's a term of art, correct?

MS. PIPER: Yes. The Department of Natural Resources classifies property that is possible to preserve that represents the best of the best, according to a number of different ecological criteria.

MR. MCCANN: Okay. Well, before you move on, let me just introduce these exhibits (inaudible).

CHAIR: This is twenty-one?

MR. MCCANN: Yes.

CHAIR: And that's twenty-two.

MS. DOPKIN: Thank you.

CHAIR: Thank you. Unbelievable.

MS. DOPKIN: Don't take it personally.

MR. MCCANN: Three strikes and I'm out.

CHAIR: Lack of respect.

MS. DOPKIN: Too much coffee.

CHAIR: All right. Mr. Schmidt, you have twenty-one and twenty-two?

MR. SCHMIDT: Yes, sir, I do have them.

MR. MCCANN: Ms. Piper, tell us what first Exhibit 21 is.

MS. PIPER: Twenty-one is a printout from the website that basically the, the intent here is to provide a definition of a targeted ecological area as defined by the T, Department of Natural Resources.

CHAIR: Yeah, I was about to say. Why don't we do, take a step back. Where'd you, did, did you print this out?

MS. PIPER: Yes, I did.

CHAIR: When I say this, I mean, Exhibit 21?

MS. PIPER: Yes.

CHAIR: And where did you print it out from?

MS. PIPER: I printed it out from the website at the bottom of the page.

CHAIR: Well, which is?

MS. PIPER: Landscaping.org, Maryland map, blah, blah, blah.

CHAIR: Okay and what, the landscape.org Maryland map etcetera.

MS. PIPER: Um hm.

CHAIR: Is that part of a State website or is that a privately run website?

MS. PIPER: It looks like a privately run, run one. The reason that I chose this over the one on DNR is because DNR had a lot of superfluous information that would have showed up and I thought distracted from the clarity of the definition that you see right at the top of this one.

CHAIR: All right. So, you printed this out from this, from this landscape, sorry, --

MS. PIPER: Yes.

CHAIR: -- .org website. Now, getting to the substance of the, of the document and testimony, what was the purpose? Why are you printing this out?

MS. PIPER: I printed it out to define what a targeted ecological area is.

MR. MCCANN: In, in Maryland?

MS. PIPER: In Maryland, yeah.

MR. MCCANN: Is this, is this --

MS. PIPER: This is a Maryland program.

MR. MCCANN: Is Protestant's Exhibit 21 a description of what I'll refer to as (inaudible) is that consistent with what you've seen on Maryland's website, that is, --

MS. PIPER: Yes, absolutely.

CHAIR: Well, I will note, it says source, Maryland Department of Natural Resources.

MR. MCCANN: Oh, it does say that, okay. Thank you.

CHAIR: But I didn't know if this was part of their website, that's the reason for my question.

MR. MCCANN: (inaudible).

MS. PIPER: No, I don't believe it is.

MR. MCCANN: All right.

CHAIR: That is, it's not part of their website.

MS. PIPER: Correct.

CHAIR: Okay.

MR. MCCANN: What about Exhibit 22?

MS. PIPER: Exhibit 22 is from Merlin, which is the Department of Natural Resources slice at the GS, GIS data. Very similar to what you see on My Neighborhood. Although in this particular case, it has a layer to show the Department of Natural Resource focus areas of which a TEA is. You can see the areas shaded in green, superimposed over the tax map. The area shaded in green are targeted ecological areas. The polygon in red are the two subject properties on this project so you can clearly see one hundred percent of it is within the TEA and you can also see that a substantial portion of land well below that is not included in the TEA.

CHAIR: Did you print this out, ma'am?

MS. PIPER: I did.

CHAIR: And when did you, did, when did you do that?

MS. PIPER: When I do --

CHAIR: Approximately, I don't need an exact date.

MS. PIPER: Within the last two days. Both of these were printed within the last two days.

MR. MCCANN: Okay. Thank you. Mr. Garber, I would move twenty-one and twenty-two into evidence.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: I, I would just, I'm sorry, just object

for the record. I'm, I believe the witness said she got them, I'm just looking at the note at the very bottom of the page.

CHAIR: I hate to be a stickler but could you please stand.

MR. SCHMIDT: Oh, I'm sorry. I, I did before, but then I sat back down, I apologize.

CHAIR: Yes.

MR. SCHMIDT: Which the document itself says DNR makes no warranty, express or implied, as to the use or appropriateness of the spacial data. There are no warranties of merchant ability or fitness for any particular purpose or use. The information is from publicly available sources but no representation is made as to the accuracy or completeness of the spacial data. Which it almost seems like the document itself is giving a disclaimer that it's not accurate itself, as I understand it.

MR. MCCANN: I think that's a (inaudible). I think that's a reference, reference to special data, not necessarily this page. This is, this data is just, this page is just a description of TEA's, it's not spacial data.

MR. SCHMIDT: I, I assume then the next exhibit is spa, the spacial data.

MR. MCCANN: Well, that's from Merlin, Merlin itself, and I think that's --

MR. SCHMIDT: Oh, okay.

CHAIR: In other words, just to clarify the point, I'm sorry, Ms. Piper, but the two documents, you got that from two separate websites, correct?

MS. PIPER: Correct.

CHAIR: The first from landscape, which we've already been through several times. And the second came from?

MS. PIPER: That came from Merlin.

CHAIR: Right, what, I mean, specifically, what, where did you go to get, get the information?

MS. PIPER: The Department of Natural Resources.

CHAIR: From their website?

MS. PIPER: Yes. There's an interactive tool called Merlin.

CHAIR: Yes.

MS. PIPER: Accessible through there.

CHAIR: Right, so, with that in mind, I'm going to overrule the objection and it will be admitted.

MR. MCCANN: Okay. Finish your, your points.

MS. PIPER: Okay. Last one under the environmental impact is removing a large section of trees along the common property line will diminish the property's water filtration capability. Because these trees don't fit the Code definition of a forest area or a specimen tree, Mike Koulis decided to call them a hedge row. That is a term that's not defined in forest conservation law. And, and gave options because of

that. Second thing is, no other community solar project in the district has ever required any trees to be removed, whether they were hedges, trees, shrubs, whatever. Nothing, no vegetation. We agree with the ALJ's decision that tree removal should not be allowed. The second, or the third, third concern is that County and State laws limit the size of a solar facility to the amount of acreage that produces no more than two megawatts of A/C. Power Factor has not shown that they developed this project to minimize land use. Andrew Streit testified that no analysis was done to determine minimum panel area required and the plan was designed for standard or average efficiency solar energy panels. And the final comment is that no adjacent property owners support granting this special exception.

MR. MCCANN: And that includes, there's been reference in this case to one of the neighbors, Ms. Ault, who is here, who can speak for herself. Entered into some settlement agreement with the --

MS. PIPER: I believe you're talking about Mr. Dwyer.

MR. MCCANN: Mr. Dwyer.

MS. PIPER: Mr. Dwyer. Mr. Dwyer does not support this project.

CHAIR: Well, let's not hear about what Mr. Dwyer supports or does not support unless Mr. Dwyer is here to indicate otherwise.

MS. PIPER: Right.

MR. MCCANN: All right.

CHAIR: So, I will sustain the objection you would have made.

MR. SCHMIDT: Thank you. Is this twenty-three, I believe, twenty-four?

MR. MCCANN: Twenty-three.

MS. MURPHY: Twenty-three.

MR. SCHMIDT: Twenty-three.

MR. MCCANN: Ms. Piper, you have twenty-three?

MS. MURPHY: Twenty-three.

MR. MCCANN: Yeah, that's what I thought.

CHAIR: Yes. We're on twenty-three.

MR. MCCANN: Yeah. Tell us what this document is.

MS. PIPER: Hold on one second, I need to get it.

MR. MCCANN: Okay.

MS. PIPER: This, the base image is from My Neighborhood and the property, or properties, in red are the two parcels that are under consideration for this project Every other area that is colored in something other than red are people that have agreed to appeal, to support the appeal and have their name published. That they are opposing granting the special exception.

MR. MCCANN: Did you prepare this document?

MS. PIPER: Yes, I did.

MR. MCCANN: Using My Neighborhood?

MS. PIPER: My Neighborhood as the base, yes.

MR. MCCANN: Mr. Garber, I would move Protestant's twenty-three into evidence.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: No objection.

CHAIR: All right, admitted.

MR. MCCANN: And before I close my questioning, Ms. Piper, I just want to make sure that you, you told us about all your concerns with the project?

MS. PIPER: I believe so.

MR. MCCANN: Okay. No other questions. Thank you, Ms. Piper.

CHAIR: All right. Mr. Schmidt?

MR. SCHMIDT: So, Ms. Piper, this project should be denied because the neighbor's oppose it? That's the, that's the legal criteria to determine whether this should be granted or not?

MS. PIPER: No.

MR. SCHMIDT: Oh, it isn't? I thought that was offered, you just offered that as a reason why this should be denied.

MS. PIPER: It's icing on the cake of many reasons that are much more --

MR. SCHMIDT: But it's a reason.

MS. PIPER: -- that are much more significant.

MR. SCHMIDT: Okay, okay. Are you an engineer?

MS. PIPER: Yes.

MR. SCHMIDT: A professional engineer, P.E., licensed in the State of Maryland?

MS. PIPER: Biochemical engineers do not go through P.E. accreditation.

MR. SCHMIDT: Are you a P.E. licensed in the State of Maryland?

MS. PIPER: As I mentioned before, I'm a biochemical engineer and they do not go through that process.

MR. SCHMIDT: Okay. So, the answer to the question is you are not a P.E. licensed in the State of Maryland?

MS. PIPER: Correct.

MR. SCHMIDT: Thank you. Are you a registered landscape architect?

MS. PIPER: No.

MR. SCHMIDT: Do you have any type of certification from the Army Corps of Engineers, Maryland Department of the environment, Department of Environmental Protection and Sustainability from Baltimore County as to any type of environmental credentials?

MS. PIPER: No.

MR. SCHMIDT: Okay. You can't determine wetlands?

MS. PIPER: No.

MR. SCHMIDT: You're not, you don't have any expertise in forest conservation?

MS. PIPER: No.

MR. SCHMIDT: Okay. Does Baltimore, does the County statute, are you familiar with Section 4-F of the Baltimore County zoning regulations?

MS. PIPER: In general, yes.

MR. SCHMIDT: Okay and what, what does that section relate to?

MS. PIPER: That relates to the requirements for a solar facility that participates in the community solar project.

MR. SCHMIDT: Okay. Does that section have any requirements as it relates to required security for any solar facility project as defined and regulated under that section?

MS. PIPER: Yes, it does.

MR. SCHMIDT: Okay. What are those requirements?

MS. PIPER: I don't have the specific wording, but there, there is either a line of credit or something along the lines of a financial security required, that the County requires.

MR. SCHMIDT: And that would be required in every case for an approved solar facility, is that correct?

MS. PIPER: I believe so.

MR. SCHMIDT: So, the, I assume the purpose of that

section, if you know, would be to provide the County and the public at large, protection in the event a project was discontinued, unable to be completed, the County would have financial, the financial ability to restore the property to its current --

MS. PIPER: That's the intent. But the problem with that is, in this --

MR. SCHMIDT: Doesn't work?

MS. PIPER: -- in this par, no, in this particular case, it's not clear who is that person that's responsible.

MR. SCHMIDT: Well, who, who makes that decision?

MS. PIPER: I don't know.

MR. SCHMIDT: Okay.

MS. PIPER: There, actually I've never seen --

MR. SCHMIDT: You ever seen a decommission of an agreement?

MS. PIPER: Can I finish?

MR. SCHMIDT: Yes, ma'am.

CHAIR: Yes, one, please, one at a time. Are you done with your answer, ma'am?

MS. PIPER: No, I'm not.

CHAIR: Okay, please continue.

MS. PIPER: I've never seen a project where it was so confusing who was saying that they were responsible for putting that security together.

MR. SCHMIDT: Okay. Well, is it up to you to make that determination or Baltimore County --

MS. PIPER: Absolutely not, it's Baltimore County.

CHAIR: Well, again, let him finish his question before you start your answer. Mr. Schmidt, were you done with your question?

MR. SCHMIDT: Yeah, and I think she answered the question that it's up to Baltimore County.

CHAIR: Yes.

MR. SCHMIDT: And do you know what agency in Baltimore County handles that?

MS. PIPER: I believe it's the Planning Department.

MR. SCHMIDT: Okay. If I told you it's not the Planning Department, would that surprise you?

MS. PIPER: No.

MR. SCHMIDT: Okay. Does that provision in Article 4-F provide any language related to repair of facilities or re, removal of facilities in the event that's necessary?

MS. PIPER: I believe so.

MR. SCHMIDT: Okay.

MS. PIPER: I, it would be more convenient if I had it in front of me.

MR. SCHMIDT: Okay. Well, you testified that you know a lot about this --

MS. PIPER: That I am, in general, --

CHAIR: Hold on, Ms. Piper, one second. Your answer was understood. You, you would prefer to have it in front of you so you could, so you could use it for reference.

MS. PIPER: Sure.

MR. SCHMIDT: Okay.

CHAIR: Mr. Schmidt, do you have a question that follows from that?

MR. SCHMIDT: No, no, sir, I do not. Ms. Piper, you did have conversations with Andrew Streit about this project, didn't you?

MS. PIPER: Yes, several.

MR. SCHMIDT: Did you ever indicate to him that if certain changes were made to the proposal that you would support it?

MS. PIPER: No.

MR. SCHMIDT: Okay.

MS. PIPER: I would like to comment further on that. Andrew presented the project initially as, that his desire was to create a model solar project and with that goal in mind, we were interested to discuss with him and explore that possibility. However, as discussions continued, we found that if we were in full agreement with what he wanted to do, things were fine.

MR. SCHMIDT: Okay.

MS. PIPER: If there was any opposition, we were told

things like you should be happy we're not putting in a pig farm and we found him very condescending to the community and it was not a good relationship.

MR. SCHMIDT: Okay. The North County Community Group, how many folks are members of that organization?

MS. PIPER: At this point, we're tracking over five hundred people following our community.

MR. SCHMIDT: Following our community, what does that mean?

MS. PIPER: Yeah, it's, it's a virtual community. We have a Facebook presence and we connect through Facebook Next Door, e-mail, there is no internet pervasive in our area. So, we use a wide variety of things.

MR. SCHMIDT: People pay dues?

MS. PIPER: No.

MR. SCHMIDT: How is it funded?

MS. PIPER: It's volunteer. People like myself dedicate their own personal time free of charge --

MR. SCHMIDT: Okay, so --

MS. PIPER: -- because we're passionate about it.

MR. SCHMIDT: Okay. So, those five hundred people, they're not paying dues to your organization?

MS. PIPER: No, but they participate and attend meetings and comment and keep us connected.

MR. SCHMIDT: Okay. Has the North County Community

Group supported any solar facility applications to this point?

MS. PIPER: The, we have only taken positions on ones that have been within our area.

MR. SCHMIDT: Uh huh.

MS. PIPER: And we have not supported any that are proposed to be put on prime and productive farmland.

MR. SCHMIDT: Well, let me ask, if I can, let me ask the question so you can answer it. Have you supported any applications for special exception for any solar facility in Baltimore County? Pretty simple question.

MS. PIPER: None because all of them are --

MR. SCHMIDT: None, okay.

CHAIR: Hold on, let her finish.

MS. PIPER: -- targeting prime, --

CHAIR: None, because all?

MS. PIPER: Because all are targeting our most prime and productive farmland.

MR. SCHMIDT: Needless to say, you don't, you're not a fan of solar facilities in the north County?

MS. PIPER: Why would you say that?

MR. SCHMIDT: Because you haven't supported any--

CHAIR: Well, hold on, hold on. We're not, we're not, you can ask questions, I understand, why you may have done that. However, you're not able to ask Mr. Schmidt questions.

MS. PIPER: Okay. I, can I answer?

CHAIR: You, well, you certainly can answer the question asked of you, yes.

MS. PIPER: Could you repeat your question, Larry?

MR. SCHMIDT: Ma'am, I don't have any other questions. Thank you.

CHAIR: All right. So, that was withdrawn. Mr. McCann, do you have any re-direct?

MR. MCCANN: No, thank you.

CHAIR: All right. Thank you very much, Ms. Piper. And where does that leave us, Mr. McCann?

MR. MCCANN: Unless somebody raises their hand right now, I think we're (inaudible).

CHAIR: All right. So, Protestant's case is now done. That then turns us back, because I'm, am I correct?

MR. MCCANN: That's correct.

CHAIR: Because you just did a double take at me.

MR. MCCANN: I just wanted to make sure.

CHAIR: That's correct. All right. So, we're now back to your case, rebuttal.

MR. SCHMIDT: Yes, sir. Yes, sir.

CHAIR: Mr. Schmidt, do you have anyone you or any evidence you'll be presenting on rebuttal?

MR. SCHMIDT: What I would suggest, if we can, Mr. Garber, I, I would like to talk to my client and see if I'm going to put on any rebuttal. Could we take a lunch break and

then reconvene and I can either present that witness or tell you that we do not have a case? Would that be appropriate?

CHAIR: I, I think that's fine. It's an appropriate time to do that. Mr. McCann, I assume that doesn't present any problem?

MR. MCCANN: No, that's fine.

CHAIR: All right. We can do that. Why don't we come back at, we'll just say 1:00?

MR. SCHMIDT: Sure, 1:00, sure, yeah.

CHAIR: So, that's roughly about forty-eight minutes, according to the clock in this room.

MR. SCHMIDT: Yes, sir. Yes, sir.

CHAIR: All right. So, we're --

(RECORDING PAUSED - 12:08:01 PM)

(ON RECORD - 12:57:40 PM)

CHAIR: All right. Everyone please be seated. And we're back on the record. All right. Everyone have a nice lunch, I'm sure.

MR. SCHMIDT: Yep, never left the room.

CHAIR: That would definitely be a no then for that. All right. So, Mr. Schmidt, where are we with rebuttal?

MR. SCHMIDT: I do have a witness I would like to call right now, if I could?

CHAIR: Yes.

MR. SCHMIDT: Mr. Streit.

MS. DOPKIN: Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best --

MR. STREIT: Yes, I do.

MS. DOPKIN: -- of your knowledge and belief?

CHAIR: What for --

MR. SCHMIDT: Now you can.

MR. STREIT: Yes, I do.

MS. DOPKIN: Okay and is your information still the same as when you testified on September 19th?

MR. STREIT: Yes, ma'am, it is.

CHAIR: I just as a reminder for everyone here. Please turn your cell phones off. When you're testifying here, also remember to speak loudly and clearly, do not cover the microphone and do not talk over one another. And I love the fact that I mumbled speak loudly and clearly. All right. With that, Mr. Schmidt?

MR. SCHMIDT: Mr. Streit, Mr. Streit, you testified previously in this case, correct?

MR. STREIT: I did.

MR. SCHMIDT: And you're employed by Power Factor, which is one of the applicants in this zoning petition?

MR. STREIT: Yes, I am.

MR. SCHMIDT: Okay and I think, as Ms. Dopkin indicated, you're still in the same position with Power Factor

that you were when you testified last time?

MR. STREIT: Yes, I am.

MR. SCHMIDT: Okay. Mr. Streit, there's been testimony offered by the Protestants sort of collectively identifying a lot of different entities and a number of exhibits, and I just wanted to try to maybe clarify and ask you to clarify, if I can, by sort of breaking it down into the categories of the entities that are involved in this project. So, if I can do that to maybe keep as, as simple. I guess the first category would be the owner of the property that's at issue here. And who is the owner of the property?

MR. STREIT: Holly Springs.

MR. SCHMIDT: Okay and in terms of the owner, what, what role is it that they have in this project?

MR. STREIT: They own the land and we've executed a lease option with them.

MR. SCHMIDT: Okay. So, Power Factor has a lease option with Holly Springs to move forward to construct a solar facility on Holly Springs' property?

MR. STREIT: That's correct.

MR. SCHMIDT: And when I say property, I mean the two adjacent parcels.

MR. STREIT: Yes.

MR. SCHMIDT: Okay. So, Holly Springs' role is as the owner and putting up the land?

MR. STREIT: Correct.

MR. SCHMIDT: Is that, is that fair to say? Okay. Okay and then you have, I guess in sort of the second category, you would have sort of the developer of the project, who is that?

MR. STREIT: Power Factor.

MR. SCHMIDT: Okay and when I say developer, in your context, what does that mean? What is, what does Power Factor do as it relates to this project?

MR. STREIT: We shepherd the project from the first touch, which in this case was with the landowner through to commissioning and operations and maintenance.

MR. SCHMIDT: Okay. So, do you build it?

MR. STREIT: We do built it, we're the contractor.

MR. SCHMIDT: Okay. So, you --

CHAIR: Well, one step at a time, we're still in the development part.

MR. SCHMIDT: Yeah, so you're the, you're the developer and as part of that, part of your responsibilities as a developer is to build the, build the facility, correct?

MR. STREIT: Not all developers build solar projects.

MR. SCHMIDT: But in this case?

MR. STREIT: Power Factor is different.

MR. SCHMIDT: Okay.

MR. STREIT: We build.

MR. SCHMIDT: Okay. So, you're the developer and the builder of the project?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and so, you'll shepherd it, you said shepherd it, you mean you supervise getting through the zoning process?

MR. STREIT: Yes, but there are a lot of hurdles for a successful solar project to be built.

MR. SCHMIDT: Okay. Well, we'll, we'll get to that but you're the, you're the guys that's taking, when I say you, Power Factor and you are the ones who have taken the responsibility to get the zoning approvals that are required?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and then you will also, if approved, build the facility, is that correct?

MR. STREIT: That's correct.

MR. SCHMIDT: Will you also, when I say you, I mean Power Factor, will you maintain the facility?

MR. STREIT: We will maintain the facility.

MR. SCHMIDT: So, if there's a repair needed or something goes wrong, it's somebody from Power Factor who goes out there and fixes it?

MR. STREIT: It will be a Power Factor truck.

MR. SCHMIDT: Okay, all right. As the developer, do you also, you said you shepherd it through the zoning process,

is that right?

MR. STREIT: That's correct.

MR. SCHMIDT: There's been a discussion about the PSC, the Public Service Commission, approval. Do you shepherd it through that process as well?

MR. STREIT: Yes.

MR. SCHMIDT: Do you shepherd it through the process or the negotiations with Baltimore Gas and Electric Company in terms of BGE --

MR. STREIT: Yes.

MR. SCHMIDT: -- in terms of making that connection?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Is there anything else, any other process that you shepherd it through, other than zoning and BG&E and PSC, just generally speaking?

MR. STREIT: Building an electrical (inaudible).

MS. DOPKIN: Can't hear you. Please speak into the mic.

MR. STREIT: Building and electrical permits, I'm sorry, would also be us.

MR. SCHMIDT: Okay. Getting, all right, getting any of the permits from Baltimore County?

MR. STREIT: Or, yes, any and all.

CHAIR: And, and State Highway Administration?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. So, any kind of regulatory approval that you would need, you're the company that is on, on the forefront of getting that?

MR. STREIT: Yes, and we work with our engineering partner in order to facilitate this.

MR. SCHMIDT: That's Mr. Leffner's company?

MR. STREIT: Yes.

MR. SCHMIDT: But you hire them as consultants?

MR. STREIT: Yes.

MR. SCHMIDT: Okay, all right. So, you got the owner who's Holly, Holly Springs, you've got the developer, and you've described that as you and what you do, okay? And I think the third entity, or the third entity involved here are sub, what has been called subscribers.

MR. STREIT: Subscriber organization.

MR. SCHMIDT: Okay.

MR. STREIT: Which is in our case Mead Communities.

MR. SCHMIDT: Okay. Now, subscriber organiz, what are subscriber organizations? What do they do? What's, what's their role in this whole, whole --

MR. STREIT: They manage the sale of electricity for community solar projects.

MR. SCHMIDT: Okay. So, they're the ones who are consuming or delivering the electricity, in essence, to the consumer?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and you indicated in this project that's, who is that, who is the subscriber in this, for this--

MR. STREIT: Mead Communities.

MR. SCHMIDT: Okay. Now, there's been a company that's been identified is Corvius (phonetic). Are they part of Mead Comm, Communities?

MR. STREIT: I believe it's the other way around. Mead Communities is a subsidiary of Corvius.

MR. SCHMIDT: Okay. So, Corvius is a company that is a subscriber and Mead Communities is a part of that company or a subsidiary of that company?

MR. STREIT: That's correct.

MR. SCHMIDT: And Mead is the one that's the subscriber for this project?

MR. STREIT: That's correct.

MR. SCHMIDT: So, Mead will be the one who actually makes the arrangements to have individuals, when they were talking about military and so on and so forth, will actually handle that part of it with those consumers, ultimate consumers get involved, correct?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Now, as I understand it, in order for Mead to, to have this role, as a, as a subscriber organization, they have to get approval through, from the PSC,

Public Service Commission, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: Do they have the approval to the best of your knowledge?

MR. STREIT: Yes, they do.

MR. SCHMIDT: Okay. Have they been subscribers in other cases for --

MR. STREIT: Yes, they have.

MR. SCHMIDT: -- electricity? Okay.

CHAIR: Please wait for his question to be done.

MR. STREIT: Sorry.

MR. SCHMIDT: Okay. So, they have been in other cases, okay. And, and Power Factor has, has Power Factor made an application to be a subscriber too?

MR. STREIT: Yes, we have.

MR. SCHMIDT: Okay and why'd you do that if Mead is going to be the subscriber here?

MR. STREIT: A paperwork issue. We wanted to make sure that if needed, Power Factor could be a subscriber organization.

MR. SCHMIDT: For this project?

MR. STREIT: For this project. But also, community solar is very successful in most states it's in. We anticipate that we would like to be a subscriber organization going forward.

MR. SCHMIDT: And have you gotten your subscriber approval?

MR. STREIT: No.

MR. SCHMIDT: Okay. So, but Mead has?

MR. STREIT: Mead has.

MR. SCHMIDT: Okay. So, Mead could be the subscriber for this --

MR. STREIT: Mead is the subscriber organization for this project.

MR. SCHMIDT: -- and is the subscriber for this particular project.

CHAIR: Again, you guys are talking over one another.

MR. SCHMIDT: I'm sorry.

CHAIR: I understand you, you know where Mr. Schmidt is going but please wait till he's finished before you start your answer.

MR. SCHMIDT: Okay. So, again, just to be clear. Let me finish. So, Mead, Mead, which is part of Corvius, is the subscriber for this?

MR. STREIT: Correct.

MR. SCHMIDT: When I say this, I mean, this project on Falls Road.

MR. STREIT: Correct.

MR. SCHMIDT: But you, you, Power Factor, has also applied to the PSC to be a subscriber, but have not yet been

approved?

MR. STREIT: Correct.

MR. SCHMIDT: Okay. I guess the fourth entity is, there is money behind this project, correct?

MR. STREIT: Yes.

MR. SCHMIDT: And you have certain investors who have invested and put up money to pay for obtaining this regulatory approvals and the like, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: Okay, all right. Okay. Now, there was also questions about Power Factor's wherewithal or ability, I think, to, to do this project. You were here and heard that? Okay. Who's the president of Power Factor?

MR. STREIT: George Lang IV.

MR. SCHMIDT: And is Mr. Lang here?

MR. STREIT: Yes, he is.

MR. SCHMIDT: He's the gentleman seated in the front row?

MR. STREIT: Yes, he is.

MR. SCHMIDT: Okay. In order to, to, to build, in order to build a solar facility, in addition to getting your zoning approval and your, and your, your PSC approval, the, the entity, as I understand it, has to have certain licenses or certifications in order to build one of these things. When I say one of these things, I mean a solar facility, is that

correct?

MR. STREIT: That's correct.

MR. SCHMIDT: Okay. In order to get a permit, you have to be a home, Maryland home improvement contractor, is that correct?

MR. STREIT: MHIC, yes.

MR. SCHMIDT: And is Power Factor a, have an MHIC license?

MR. STREIT: Yes, they do.

MR. SCHMIDT: Okay. So, when people say you're an MHIC contractor, it's not because you're building houses, it's because you need that to get certain permits in connection with this construction?

MR. STREIT: That's correct.

MR. SCHMIDT: Okay. I believe, is it, do you also need to be a master electrician or have a master's electric, electrical license in order to build one of these?

MR. STREIT: That is correct.

MR. SCHMIDT: And does Mr. Lang or the company have that certification?

MR. STREIT: George is licensed in six states.

MR. SCHMIDT: Okay. As what?

MR. STREIT: As a master electrician.

MR. SCHMIDT: Okay and insofar as, finally, have you ever heard of the North American Board of Certified Energy

Practitioners, or the NABCEP?

MR. STREIT: NABCEP is the national certification for solar contractors.

MR. SCHMIDT: Okay.

MR. STREIT: It's the, the highest, toughest test you can take.

MR. SCHMIDT: Okay and do you have to, do you have to be a member of that or certified by them in order to be, have a license from them in order to build a solar facility?

MR. STREIT: Yes.

MR. SCHMIDT: And does Power Factor have that?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Has Power Factor ever built sol, any solar facilities?

MR. STREIT: Thousands.

MR. SCHMIDT: Okay. How many megawatts worth of, if you can estimate?

MR. STREIT: Over fifty megawatts.

MR. SCHMIDT: Can you tell us some of the representative projects that Power Factor has done, if you are aware of any?

MR. STREIT: There's over five megawatts a county over, the, was completed last year.

MR. SCHMIDT: What, the county, Harford County?

MR. STREIT: (inaudible).

CHAIR: You can't ask.

MR. SCHMIDT: You can't ask, you can't ask him.

CHAIR: If you don't know the answer, you don't know, that's fine.

MR. STREIT: I do now. Sorry.

MR. SCHMIDT: No, you can't ask.

MR. STREIT: Okay.

MR. SCHMIDT: Did the, did the, did the company do some work at Aberdeen Proving Grounds?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and was that the project that you were thinking about?

MR. STREIT: Yes, it is.

MR. SCHMIDT: Okay. Okay. Now, let me ask you, in terms of the sequencing of this, does the zoning come first or does the PSC approval come first?

MR. STREIT: Zoning comes first.

MR. SCHMIDT: Why is that?

MR. MCCANN: Objection. I'm not sure what, that calls for a legal conclusion, --

MR. SCHMIDT: I'm asking, I'm not asking it --

CHAIR: Hold on, hold on, hold on. I mean, your objection is does it call for a legal conclusion, did I understand that?

MR. MCCANN: I think it does. I don't know how, --

CHAIR: Okay.

MR. MCCANN: -- how he would possibly know that otherwise.

CHAIR: Well, so, are you saying legal conclusion or are you just saying, what you suggested to me was you're saying foundation. So, two different issues.

MR. MCCANN: Yeah.

MR. SCHMIDT: Let me ask it this way. I'm not asking, if there's any, well, let me ask it this way. Mr. Streit, you've been involved in other solar facility applications on behalf of Power Factor?

MR. STREIT: That is correct.

MR. SCHMIDT: In terms of the company's practice and protocol, and if you know whether there's any particular requirement, does the company obtain its zoning approval from the local county first or does it go to the PSC first.

CHAIR: One second, before you answer.

MR. SCHMIDT: How do you do it?

CHAIR: Before you answer, I see Mr. McCann standing, so I assume you have an objection.

MR. MCCANN: Yeah, I'm sorry to belabor this. But,--

CHAIR: No need to apologize.

MR. MCCANN: -- as far as I know, this is their first, Power Factor's first project in Baltimore County and I'm not so sure what it matters what comes first in other

jurisdictions or not. So, I mean, in Tennessee --

CHAIR: That sounds like a great question for cross examination.

MR. MCCANN: Okay, okay. I'll sit down.

CHAIR: Yes. So, I will overrule the objection. You may answer the question.

MR. STREIT: I'm sorry, you're going to have to repeat it. Sorry.

MR. SCHMIDT: And I'm, okay, in the, in the projects that you have done, --

MR. STREIT: Um hm.

MR. SCHMIDT: -- frequently is, is it, is it fair to say that often in whatever jurisdiction you're in, and let's confine ourselves to Maryland because you said you did Aberdeen, for example. You might need local zoning approval from the county that you're located in, is that right?

MR. STREIT: That is correct.

MR. SCHMIDT: And for the community solar program, you will need approval from the Maryland Public Services Commission, PSC, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: And what I'm asking you on behalf of Power Factor and based on your experience and your knowledge in handling these through other projects in the state, do you obtain the zoning approval first or you go to the PSC first?

MR. MCCANN: Objection.

CHAIR: One second.

MR. MCCANN: Objection, again. There's no testimony that they've been through the PSC program. There's never, you know, --

CHAIR: All right.

MR. MCCANN: Regardless of the jurisdiction, I understand --

CHAIR: I will sustain your, your objection. So, lay the foundational question as to the PSC or whatever other regulatory entity you feel you need to (inaudible).

MR. SCHMIDT: Okay. Let me ask it this way, Mr. Streit, just to make it as simple as possible and I, I'm not asking you for a legal conclusion because we can brief this if the law requires other, otherwise. But from a practical standpoint, you may need local zoning approval from the County in which you are proposing a project, is that a fair statement?

MR. STREIT: That is a fair statement.

MR. SCHMIDT: Just like the approval that you're seeking here today from the Board of Appeals, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: And in the State of Maryland, you may need approval or have needed approval, I assume, from some State agency, the Public Service Commission or some other State entity, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: And I assume in other states, there may be entities on the state level of government that are similar to the Maryland Public Service Commission, where the state agency, some state agency approval is required, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: In your experience, Mr. Streit, when you are confronted with needing these multiple approvals from a state agency that has jurisdiction, and from a county agency which has a zoning ordinance, which of those goes first, the zoning approval or the state approval?

MR. STREIT: Zoning does because it would be very difficult to get state approval if you didn't have the project in hand with zoning approvals.

MR. SCHMIDT: Okay. So, in this case, you have sought the Petition, approval of the special exception in this case from Baltimore County?

MR. STREIT: It's the first major hurdle, we have to have this to move on.

MR. SCHMIDT: And then, subsequently, do you anticipate taking whatever steps are necessary through the State Public Service Commission, and whatever is required under law, to obtain your approval there?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and do you have, do you believe that you'll be able to obtain their approval? Is there any reason you don't think you're going to be able to get approval? That you know of?

MR. STREIT: We, we expect to get approval.

MR. SCHMIDT: From the PSC?

MR. STREIT: From the PSC.

MR. SCHMIDT: And I understand the community solar program makes capacity or megawatt availability for, for, for, for each particular year of the program, is that right?

MR. STREIT: That's correct.

MR. SCHMIDT: And is there capacity available for this year or subsequent years, for which you could apply?

MR. STREIT: Years two and three both have open capacity.

MR. SCHMIDT: And is that what you will be applying for from the PSC?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Board's indulgence for just a minute. I wanted to make sure that was it.

CHAIR: That's fine, take your time.

MR. SCHMIDT: And just to make it clear, Mr. Streit, the, the lease that you have with Holly Springs is for what term, how long?

MR. STREIT: Twenty-five years.

MR. SCHMIDT: And Power Factor will be the entity responsible for the maintenance of the facility during that lease term?

MR. STREIT: Yes, we will.

MR. SCHMIDT: Okay. Okay. I have no further questions, thank you.

MR. MCCANN: Is that me?

CHAIR: Yes.

MR. MCCANN: Okay, thank you. Good afternoon, Mr. Streit.

MR. STREIT: Hello.

MR. MCCANN: When you say Power Factor will maintain the facility, what do you mean by that? Do you mean just general maintenance?

MR. STREIT: Yes.

MR. MCCANN: Okay and you said there'd be a PF truck there, so you're not going to subcontract that out, it sounds like.

MR. STREIT: That's correct, we will not.

MR. MCCANN: Okay. Is maintain the same thing as operate? Because that's the term that's used in the, in the statute. Will Power Factor be operating --

MR. STREIT: Operations and maintenance, O&M.

MR. MCCANN: Okay, good. So, that will be Power Factor's responsibility to operate and maintain, correct?

MR. STREIT: That's correct.

MR. MCCANN: Okay and Mr. Schmidt used the term shepherd, it's your testimony that Power Factor will shepherd this project through the zoning process, the PSC process and whatever BG&E process there is, right?

MR. STREIT: That's correct.

MR. MCCANN: Okay and again, I'm not sure what shepherd means but you're not the Petitioner in this zoning case, right? Holly Springs is, right?

MR. SCHMIDT: The Petition indicates both.

MR. MCCANN: It does?

MR. SCHMIDT: Yes.

MR. MCCANN: Okay.

MR. SCHMIDT: And on both the original and the amended it's signed by both Holly Springs and Power Factor.

MR. MCCANN: Okay.

CHAIR: But Power Factor is identified as the lessee.

MR. SCHMIDT: Yeah.

MR. MCCANN: Okay. I stand corrected, thank you. In terms of the PSC process, what, what will Power Factor be doing in terms of shepherdizing through that process? It'll be Mead, Mead will be the subscriber organization, correct?

MR. STREIT: So, we are partnering with a subscriber organization.

MR. MCCANN: Yeah, I'm just talking about the

shepherdization, that's a good word --

MR. STREIT: You want a different word?

MR. MCCANN: No, no, I'll use your word. To the PSC process, you won't be the subscriber organization and you won't be the org, the entity that enters into the interconnection agreement, that'll be Mead, right?

MR. STREIT: Mead will be the subscriber organization, that's correct.

MR. MCCANN: And what about the interconnection agreement, are you familiar with that?

MR. STREIT: I am familiar with it.

MR. MCCANN: Will it be Mead or Power Factor?

MR. STREIT: I believe it will be Mead.

MR. MCCANN: Okay. In fact, you need to be a subscriber organization first, accepted as such, in order to enter into an interconnection agreement, correct?

MR. STREIT: For community solar?

MR. MCCANN: Yes.

MR. STREIT: I don't know if that's true.

MR. MCCANN: Don't know, okay. And then in terms of other shepherdization, if that's the right word, through the PSC process the other aspect of, of course, is this application to the program itself, which, you know, we introduced a chart on that. Will, will Power Factor or Mead be the applicant to the program? It will be Mead, right?

MR. STREIT: It will be Mead Communities.

MR. MCCANN: Okay. So, Mead will, and so, Mead, let me show you Protestant's Exhibit 15. This is the 7- --

CHAIR: Show Mr. Schmidt, please.

MR. MCCANN: This is already in evidence.

MR. SCHMIDT: Okay.

MR. MCCANN: Yeah. It's just the, the statute. If you don't mind, I'll just show the witness my copy, if that's okay.

CHAIR: As long as Mr. Schmidt is fine with it.

MR. SCHMIDT: Sure, that's fine. Unless it's not --

MR. MCCANN: Yeah, just to speed things along. Oh, he's got it? Okay, great.

MR. STREIT: Thank you.

MR. MCCANN: I'm going to direct your attention to the second page of 7-306.2 in this exhibit, Protestant's Exhibit 15, and there's a definition of subscriber organization there. And I'll just read it to you. Subscriber organization means a person that owns or operates a community solar energy generating system. From what I gather, from your testimony prior to this and today, Mead is not going to either op, own or operate the system itself, is that correct?

MR. STREIT: Can I see where, where did you read that?

MR. MCCANN: I'm sorry.

MR. STREIT: Second page?

MR. MCCANN: Second page.

CHAIR: Please point, point it out to Mr. Schmidt first, then the witness.

MR. MCCANN: About a third of the way down, that second page.

MR. SCHMIDT: The definition of subscriber organization?

MR. MCCANN: Correct.

MR. SCHMIDT: Okay.

MS. DOPKIN: Number six.

MR. STREIT: Okay, there we go.

CHAIR: Have you found that, sir?

MR. STREIT: Yes.

CHAIR: All right.

MR. MCCANN: From what I gather, and correct me if I'm wrong, Mead is not going to own this system, that is, the physical system that's going to be --

MR. STREIT: That's correct.

MR. MCCANN: Okay and Mead is, obviously is not going to operate the system. You've already indicated this afternoon that, that Power Factor will operate and maintain the system, correct?

MR. STREIT: The physical system, but is the system here referring to the subscriber organization and accounts?

MR. MCCANN: I don't know. I'm asking you how, tell me how is it that Mead is the subscriber organization when you're the one, when you, meaning Power Factor, is going to own and operate the system?

MR. SCHMIDT: But, --

CHAIR: Hold on.

MR. SCHMIDT: I'm sorry. Mr., to be fair to the witness, read the rest of the provision.

MR. MCCANN: Okay, well, let him read it then.

CHAIR: Hold on, let's do this.

MR. MCCANN: He has it in front of him.

CHAIR: Let's do this. Mr. McCann, would you ask Mr. Streit here to just read what number six says in its entirety or whatever it is you want to have him review?

MR. MCCANN: Yeah, my question simply is Mead going to be the owner or operator of this system, yes or no?

CHAIR: I understood that, --

MR. MCCANN: Yeah.

CHAIR: -- but for purposes of clarity for, to resolve any objection.

MR. MCCANN: Yeah. I'll, I'll, I mean, I'll ask what Mr. Schmidt is hinting and I don't, I'm not hiding anything, it's right there.

MR. SCHMIDT: Right.

MR. MCCANN: Do you, is it your testimony that Mead

is, Mead is a, will be a collective, or is a collective group of subscribers of a community solar energy generating system? Is that what Mead is?

MR. STREIT: Yes.

MR. MCCANN: It is? And how is Mead a collective group of subscribers of a community solar --

MR. STREIT: Mead, Mead Communities?

MR. MCCANN: Whatever entity we've been talking about, Mead, Mead is an existing corporation, right?

MR. STREIT: Mead Communities.

MR. MCCANN: Right and what does Mead do, generally?

MR. STREIT: They are a subscriber organization.

MR. MCCANN: Okay. So, it's your testimony that Mead Communities, the entity you just identified, will be, will meet this part of the definition, that is, it'll be a, it is, or will be, a collective group of subscribers, is that your testimony?

MR. STREIT: Mead Communities has PSC approval to be a subscriber group in the State of Maryland. I'm not an expert on everything.

MR. MCCANN: Okay.

MR. STREIT: And so, I should say, I shouldn't have used the word shepherd. We find experts, Kimoly-Horn is an expert engineering company. Our partners are experts at what they do.

MR. MCCANN: Okay.

MR. STREIT: Almost anything of any substance or size, if it's done well, has a lot of experts working together.

MR. MCCANN: Okay. Thank you. And I'm, I, I thought we had gone over this but I'm going to ask it anyway, just so the record is clear. You said that you've worked on, Power Factor has worked on thousands of solar projects constituting over fifty megawatts. Are you including, well, number one, in those thousands, that doesn't include any ground mounted solar facilities in Baltimore County number one, correct?

MR. STREIT: There may be a couple, not many.

MR. MCCANN: In, in Baltimore County?

MR. STREIT: So, I'm not familiar with each county.

MR. MCCANN: Okay. So, you don't know --

MR. STREIT: But we do have ground mounted projects throughout the State of Maryland.

MR. MCCANN: Okay. When you say ground mounted, you, we're talking about literally on the ground, as in a, mounted on a, on a farm, correct? Since, in a rural area like this, that's what you're including as opposed to on top of a building?

MR. STREIT: Ground mounted.

MR. MCCANN: Okay. Directly onto the ground?

MR. STREIT: Into the ground, the pilings.

MR. MCCANN: You don't know how, how many, if any, of

those are in Baltimore County?

MR. STREIT: I do not.

MR. MCCANN: Okay and would, would it be fair to say that a lot of those thousands are, are residential solar installations?

MR. STREIT: A lot of them.

MR. MCCANN: Okay. Other than the PSC in the State of Maryland, what other state approvals have you had, have you had to go through or has Power Factor had to go through that you're aware of? State approvals.

MR. STREIT: State approvals?

MR. MCCANN: Yeah.

MR. STREIT: Can you ask the question again?

MR. MCCANN: I think your testimony was that in your experience, you go through local zoning approvals before you go to any, go through any state process for approval and I'm just asking, I'm curious if there's a, are there any, what states have an approval process at the state level, for solar facilities?

MR. STREIT: Almost all of them.

MR. MCCANN: They all do?

MR. STREIT: Massachusetts, yeah.

MR. MCCANN: Okay.

MR. STREIT: New Jersey, South Carolina. You're asking what states have approvals for solar?

MR. MCCANN: Yes. Not, not the states in general, but the state entity, there's state, there's a state process, like the Public Services Commission's community solar program.

MR. STREIT: Then every state.

MR. MCCANN: Okay.

MR. STREIT: In the U.S. has that approval.

MR. MCCANN: Okay and you've been through that in a number of states?

MR. STREIT: Yes.

MR. MCCANN: Okay. Are you including in your numbers for ground mounted? I don't think we've established how many of the thousands are ground mounted, but are you including in your estimation of ground mounted as, for instance, carports, you may put solar panels on top of carports?

MR. STREIT: So, in the thousands, yes. We have done megawatts of carports for the U.S. military, which has the most stringent permitting approval in the U.S. Nobody touches (inaudible). So, I would definitely include carports. But we've also done ground mounts and rooftop solar for the naval engineering and army engineering and commercial and municipal customers. The one thing Power Factor has is experience.

MR. MCCANN: In a project like this?

MR. STREIT: Yes.

MR. MCCANN: Give me a project, anywhere in the country, I don't know what the big secret is, but give me one

project in the entire country that's similar to this? Give me one, that's not --

MR. STREIT: Mount Olive, North Carolina, three megawatts A/C.

MR. MCCANN: Okay. On a, on a rural, in a rural area?

MR. STREIT: In a rural area.

MR. MCCANN: Ground mounted?

MR. STREIT: Ground mounted.

MR. MCCANN: And Power Factor did that one?

MR. STREIT: Power Factor did that.

MR. MCCANN: Okay. Give me one more.

MR. STREIT: Another, specific ground mounted, same as this project.

MR. MCCANN: Or similar.

MR. STREIT: Yeah, or similar. 1253, it was 1.2 megawatts so it's half the size, but very similar.

MR. MCCANN: Where was that?

MR. STREIT: That's in North Carolina also.

MR. MCCANN: Okay. On a, on a farm?

MR. STREIT: No, on a military base.

MR. MCCANN: Okay. Okay. I have no other questions. Thank you, Mr. Garber.

MS. DOPKIN: I do. My recollection from our earlier hearing, did you testify that Power Factor, the only ground

mounted rural, rural solar facilities that Power Factor had done was in North Carolina, correct? No others?

CHAIR: Is that a yes? You're no --

MR. STREIT: As far as I know, yes.

CHAIR: Thank you.

MR. STREIT: Sorry.

CHAIR: You have to verbalize. I saw you shaking your head. But obviously, since we are being recorded, we need to get a verbal answer.

MS. DOPKIN: And you also testified at that time that Power Factor will assign its lease to Mead once the facility is built.

MR. STREIT: So, we have a legal team who --

MS. DOPKIN: Did you, or, I mean, is that the case?

MR. STREIT: Did I say that?

MS. DOPKIN: Yeah.

MR. STREIT: Yes, ma'am, I said that.

MS. DOPKIN: And will that still be the case?

MR. STREIT: And at this point I need to say, we have a legal team who will make sure that we structure the, the project so that it meets all the regulations in Maryland.

MS. DOPKIN: But you anticipate that you will assign the lease to --

MR. STREIT: Yes, I think so.

MS. DOPKIN: And you also testified that Mead will

own the facility, yet today you said that Power Factor will own the facility. I'm just trying to figure out who's going to own the facility.

MR. STREIT: Investors will own the facility, that is the fourth part. So, we have, I've gone over --

MS. DOPKIN: So, you, Power Factor won't own it, Mead won't own it, the property won't own it, but a group of investors will own the facility?

MR. STREIT: Yes, ma'am.

MS. DOPKIN: But Power Factor will maintain and operate it?

MR. STREIT: Yes.

MS. DOPKIN: Through what arrangement?

MR. STREIT: A contract.

MS. DOPKIN: What contract?

MR. STREIT: I don't understand the question.

MS. DOPKIN: You said the contract, what contract?

MR. STREIT: A contract.

MS. DOPKIN: A contract. Okay and then Mr. Schmidt just asked you, went and identified a number of players and you said that Mead is a subsidiary of Corvius?

CHAIR: Corvius.

MS. DOPKIN: Who's Corvius? What kind of company? Are they publicly traded? Where are they located, what do they do? I know nothing about Corvius, it's the first time it's

come up in these hearings.

MR. STREIT: Okay.

MR. SCHMIDT: They were on one of the exhibits that the Protestants submitted, the subscriber application --

MS. DOPKIN: It was a cover letter --

CHAIR: Hold on, hold on, everyone.

MS. DOPKIN: Thank you.

MR. SCHMIDT: I'm sorry.

MS. DOPKIN: I read the exhibit.

MR. SCHMIDT: Yes, ma'am.

MS. DOPKIN: Tell me what kind of company Corvius is.

MR. STREIT: Corvius is the nation's largest owner of private military housing. They're a large corporation.

MS. DOPKIN: So, they are a, what kind, I mean, they are a property holding company? I mean, what kind of company is it? Is it a privately owned company?

MR. STREIT: It's a large company. Normally, --

MS. DOPKIN: The letter is not, it says nothing about it, it's just a name on a letterhead. And you said they own Mead, so it's of interest to us if they're the owner and Mead is a, is a wholly owned subsidiary or some, what Corvius is?

MR. STREIT: So, when I heard that Corvius was the nation's largest owner of military housing, that was enough for me. I apologize. I can't give you more information. But I, I am sure it's publicly available.

MS. DOPKIN: You had indicated that you had done another project in Maryland at Aberdeen Proving Ground.

MR. STREIT: Yes, ma'am.

MS. DOPKIN: Which is a Federal installation.

MR. STREIT: Yes, ma'am.

MS. DOPKIN: And that you had done many government installations.

MR. STREIT: Yes, ma'am.

MS. DOPKIN: Have those installations had to go through the same approval processes that a private company would or are they, if you know, under some other regulatory scheme? If you shepherd --

MR. STREIT: DOD does have jurisdiction over the property that it owns so, either we were not involved in or county permits were not needed on Federal sites, but that dependents --

MS. DOPKIN: So, that my next question would be in Maryland, other than on Federal sites, do you have any other installations that you've gotten approved, in Maryland?

MR. STREIT: I'm sure we do, but I can't answer that.

MS. DOPKIN: So, you don't really know or --

MR. STREIT: I don't really know, I'm sorry.

MS. DOPKIN: So, explain to me who will own this facility. You said investors. It's not Corvius, it's not Mead, it's not Power Factor. Who will own the facility?

MR. STREIT: It will be an investment partner of Power Factor's. I believe for this project, I don't want to say anything that isn't one hundred percent accurate, so I will say it is investment partners of Power Factor's and the group that we are working with, we have worked with in the past to finance other projects and they are backed by one of the largest hedge funds in the U.S. So, for me, once we knew that partner was going to work with us on this project, I was like, all right. With the project, I mean, if I tell you the name and the name changes because of how they structure things, I don't want to say something inaccurate.

CHAIR: I think what Ms. Dopkin is asking is from what your understanding is, as of today, what is the information you have?

MR. STREIT: We have a signed --

CHAIR: So, if it's, if it changes eight months from now, or whatever the case may be, we recognize that information is what, is not what you have sitting here today unless you know that they will be changing the name. Does that help?

MR. STREIT: Somewhat.

CHAIR: All right.

MR. STREIT: We have a signed letter of intent to finance this project from Onyx Renewable Partner's subsidiary. And Onyx Renewable Partners is an experienced solar finance company that is backed by a very, very large company. So, for

me, they are the perfect partner. They will be around.

MS. DOPKIN: You also indicated at our last hearing that the bond that is required under our statute would be put up by Mead. Is that still the case?

MR. STREIT: They're the subscriber organization, so I do not think they will be putting up the bond. I believe it will be our investment partner.

MS. DOPKIN: So, the investment partner will own the facility and presumably, they will put up the bond but Power Factor is the permit applicant, is that correct?

MR. STREIT: Yes, ma'am.

MR. SCHMIDT: Can, can I ask a follow-up? Ms. Dopkin, are you still, do you --

CHAIR: Wait until Ms. Dopkin is done, at the moment.

MR. SCHMIDT: I didn't know if she was done or not.

MS. DOPKIN: And is it correct that the property owner, other than receiving rent, will have no involvement in maintaining, owning or operating the facility?

MR. STREIT: That's correct.

MS. DOPKIN: And once Power Factor assigns the lease, its only relationship to the facility is contractual to operate and maintain it?

MR. STREIT: Yes.

MS. DOPKIN: And Mead will not own it, will just be the subscriber partner who handles the individual subscriptions

for cer, for Power? I think I understand now.

CHAIR: Ms. Murphy, do you have any questions?

MS. MURPHY: No.

MR. MCCANN: Well, I have a question in light of that, if I may, Mr. Garber.

CHAIR: Hold on.

MR. SCHMIDT: As I do as well.

CHAIR: So, we went through, so now we're back to Mr. Schmidt, I believe, on this and then, --

MR. SCHMIDT: So, Mr., Mr. Streit, as I understand it, not to make this too complicated, for a project such as this, you need money, you need capital to build it, correct?

MR. STREIT: That is correct.

MR. SCHMIDT: And, and, and what happens is, your company gets that capital from a group of investors, correct?

MR. STREIT: That is correct.

MR. SCHMIDT: Who, then you use that money to buy the equipment and, and pay for the cost of this all happening, correct?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and they have then, some security, what would be called, and I know you're not a lawyer, but some security interest to protect them, they have an interest in the project so that if it all goes south, they just don't lose their money but they have a security interest of some type, is

that correct?

MR. STREIT: Yes.

MR. SCHMIDT: So, when you say that they're owners, they're, they're owners to the extent that they would have a security interest and a claim against the property and the infrastructure and so on and so forth, that they have put to protect themselves, right? As investors?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. But they're, the people from Onyx, or whoever it is, who you said are the group who are investing the money, they're, they're not down here building the thing or monitoring it or anything like that, correct?

MR. STREIT: That's correct.

MR. SCHMIDT: It's all on Power Factor?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and, and there will, there will come a time that the County will require as part of the statute, the decommissioning agreement and security and so on and so forth, and that will be provided to the County in whatever, I think the statute says, in whatever form or type that the County requires, correct?

MR. STREIT: That's correct.

MR. SCHMIDT: And you'll provide that whether it comes from Power Factor or whether it comes from the money, from Onyx, or whether Onyx has to be a participant or whatever,

you'll comply with the County's requirements for the security that's necessary on this?

MR. STREIT: Absolutely.

MR. SCHMIDT: Okay. I, okay.

MS. DOPKIN: Thank you for all of that. But I think that's not what Mr. Streit said when asked directly as to --

MR. SCHMIDT: Well, I think --

CHAIR: Hold on.

MS. DOPKIN: -- who's going to provide the security, either at our last hearing or this afternoon. So, I'm going to go with what he testified to and not what you testified to.

MR. SCHMIDT: Well, Ms. Dopkin, I think he was trying to be extremely precise in answering his questions to you and, and to be honest, I think the questions, with all due respect, were somewhat misleading to the extent that they were asked in a legal scenario as to the relationship of these parties, and he was trying to be very, very accurate.

MS. DOPKIN: Well, I appreciate your spin on that, but I was only relying on what he told us previously. So, I'm not going to get in an argument with you.

MR. SCHMIDT: Yes, ma'am. You're, you're the judge and I will not get in an argument with you. But I felt like Mr. Streit was trying, I was trying to understand, at least from what I understand the project, the way this works.

MR. MCCANN: Could I ask a follow-up, Mr. Garber?

CHAIR: Are you done with your questions, Mr. Schmidt?

MR. SCHMIDT: Yes, I am. Thank you.

CHAIR: All right. Yes, Mr. McCann, back to you.

MR. MCCANN: Thank you. Just, whatever we call the interest that Onyx will have, the security interest, fee simple ownership, whatever us, our, us lawyers may call it, Onyx is not going to have an interest in the property, correct?

MR. STREIT: The lease.

MR. MCCANN: But the lease will be with Power Factor. Onyx, the entity that you now say put up the bond, is, will have no legal interest whatsoever in the property?

MR. SCHMIDT: You mean in the real estate, --

MR. MCCANN: The real property.

MR. SCHMIDT: -- in the real estate? They don't own the real estate.

MR. MCCANN: Right. And they will have, they'll have an interest in this, this piece of equipment that's sitting on the property, correct?

MR. STREIT: I think so.

MR. MCCANN: Okay. Do you know who, who, specifically, we have, we've thrown these terms around, owner, operator, who under the statute must post the security to Baltimore County?

MR. STREIT: The correct entity.

MR. MCCANN: Whatever, whoever that may be. If I were to tell you the Code says an applicant for a building permit for a solar facility will, shall provide a security bond (inaudible) in an amount determined by the County administrative officer. That's Section 4-F-105. Onyx is not going to be the applicant for a building permit, will it? Will not be applying for the building permit to construct this facility, right?

MR. STREIT: No.

MR. MCCANN: Okay. That'll be Power Factor?

MR. STREIT: Yes.

MR. MCCANN: Before I get any more confused, I'm going to stop asking questions. So, thank you.

CHAIR: Any follow-up from that?

MR. SCHMIDT: No, sir.

CHAIR: All right. Just real quick, sir. Do you know the entity Solar Mission One, LLC?

MR. STREIT: I do not.

CHAIR: Do you know the entity Onyx Asset Services Group, LLC?

MR. STREIT: Sounds familiar.

CHAIR: Other than speculating that it may be related to the other Onyx entity.

MR. STREIT: Yeah.

CHAIR: That specific one, do you have any

(inaudible)?

MR. STREIT: No.

CHAIR: All right. What happens, or if you know, I don't know if there is a contract that exists, but when you transfer your interests under the lease, is there any type of provision, or will there be a provision, regarding, I guess whatever financial security for decommissioning or other line of credit or whatever is required, is that going to be part of that transfer? In other words, what is your responsibility if you're going to put up the financial security as the permit, as the permit applicant.

MR. STREIT: Um hm.

CHAIR: What happens when you transfer your interest?

MR. STREIT: I would assume we'd want to protect ourselves as a company so the, the, the bond would transfer too.

CHAIR: I don't want you to guess. So, if you're, you're just thinking it through as to what must, what must happen, that's just going to be a guess. Is there a contract that specifies that? And if there's, if there's not at this time --

MR. STREIT: Not today. No, no, we do not have that today.

CHAIR: Okay and based on past experiences you have with Power Factor.

MR. STREIT: Um hm.

CHAIR: Has something like that come up in the past? That is, the transfer of your lease interest and what happens with the security bond?

MR. STREIT: All of the assets get tied up in a single project entity and get sold. If they are sold and the new owner has to assume all of the liabilities of the assets. So, we --

CHAIR: So, Power Factor does not retain that, is what I'm hearing, based on past experience?

MR. STREIT: We've never sold a project before, so we would retain it on this one.

CHAIR: So, for example, let's take the North Carolina projects we've discussed earlier.

MR. STREIT: Um hm.

CHAIR: Does Power Factor still operate those facilities?

MR. STREIT: I don't think we have operations and maintenance, I know we don't on the military ones. We trained them to run them themselves.

CHAIR: Well, that's a whole separate animal.

MR. STREIT: But for the private one, we do not have the operations and maintenance contract on that one. We built it and did the first term and then the company that owned it used their own operation and maintenance.

CHAIR: So, do I understand out of those other projects, would it be fair to say that your, Power Factor's role is as the project designer and builder?

MR. STREIT: Yes.

CHAIR: Developer?

MR. STREIT: No.

CHAIR: Not the developer. So, just the designer and builder.

MR. STREIT: For that project.

CHAIR: Okay. So, in those other projects, Power Factor would not have ever been an operator?

MR. STREIT: We were for the first term, just for, it was either a two or five year term and we were the operator. Oh, operator as in --

CHAIR: You're operating the facility.

MR. STREIT: Operating the facility. Yes, not the owner.

CHAIR: Right, so you would operate that facility, but then you transfer your operations to another entity, correct?

MR. STREIT: Yes.

CHAIR: All right. So, in those situations, what happens with any type of security or financial --

MR. STREIT: The new entity has to adopt it.

CHAIR: When you say adopt it, you mean, --

MR. STREIT: If there's a bond, they would have to renew the bond in their company name.

CHAIR: Okay. So, Power Factor, for whatever money they would put up toward a security bond or whatever is required by a jurisdiction, they would get that back and a new entity would have to then post --

MR. STREIT: A new bond would be issued.

CHAIR: To satisfy the condition required by that jurisdiction or regulatory --

MR. STREIT: That's correct.

CHAIR: -- entity?

MR. MCCANN: There's no provision like that in County law, is there? In other words, --

MS. DOPKIN: To substitute security, is that what you're saying?

MR. MCCANN: Yes, yes. I mean, it's not in, it's not in this statute. Any subsequent entity that purchased this would not be required, at least according to the statute, to put up a bond, it's the owner or operator that puts it up.

MR. SCHMIDT: I think it may be in the County Code, not as it relates to the solar facility, but requirements --

CHAIR: Well, hold on. Just, I, I, I do appreciate the fact that you're letting us know where to go about looking at it, but Mr. McCann's question --

MR. SCHMIDT: I'm sorry.

CHAIR: -- is directed to Mr. Streit.

MR. SCHMIDT: Oh, I didn't know he was asking a question.

MR. MCCANN: I'm, I'm just going to ask one more question, then I'll, I'll stop.

MR. SCHMIDT: Okay.

MR. MCCANN: So, Power Factor, as the entity that is going to post the bond, can't finance this project itself, it has to get investors?

MR. STREIT: That's correct.

MR. MCCANN: So, if this project fails, all the equipment fails, the property is a mess, --

MR. STREIT: That's not going to happen, never would happen.

MR. MCCANN: Okay. All right. No other questions. Thank you.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: No, sir.

CHAIR: I think, now you're, I thought you were leaning in to tell him something.

VOICE: No, I'm good.

CHAIR: All right. Thank you very much, Mr. Streit.

MR. STREIT: Thank you.

MR. SCHMIDT: No further --

CHAIR: Is there anything further?

MR. SCHMIDT: -- witnesses, Mr. Garber.

CHAIR: Okay. No further evidence?

MR. SCHMIDT: No, sir.

CHAIR: All right. So, we're concluding the evidentiary record in this case. With that in mind, ask if there's anything else to bring up now, we could talk about post-hearing memoranda and when they may be due.

MR. MCCANN: Yeah. Larry and I spoke about that briefly. We didn't reach a specific agreement and, of course, it's up to the Board but we were thinking since I think Larry said Thanksgiving is late in the month, that we do it (inaudible).

CHAIR: Isn't it late in the month every year?

MR. MCCANN: That's true. I always get confused when Thanksgiving is. I still ask my wife, is it on Thursday every year or is it on --

MR. SCHMIDT: But it's the 28th this year.

CHAIR: Yes.

MR. SCHMIDT: I was just looking at my calendar, or looking at a calendar.

CHAIR: No, I figured that's what we'd do.

MR. SCHMIDT: Yeah.

CHAIR: That's okay. So, November 28th is Thanksgiving. So, with respect to that date, are we going to be before, after?

MR. SCHMIDT: Michael, what did, I think you said you had a brief due so.

MR. MCCANN: I have, yeah, I mean, we all have work to do but.

CHAIR: That's true.

MR. MCCANN: I mean, it could be done that Monday.

CHAIR: When you say that Monday, the 25th?

MR. MCCANN: Yes, that would be okay.

CHAIR: That would be, that would work for the Board.

MR. SCHMIDT: That's fine with me.

CHAIR: All right. So, closing memos will be due on the 25th by 3:00, normal practice, etcetera, etcetera. If you have exhibits that you need to attach, please attach them. Don't just refer us to whatever. I mean, what I say about that is, if your, your memo relies on something specifically and heavily, it would be ideal to attach it. This is today.

MS. DOPKIN: These are just the witness lists.

CHAIR: Oh, okay. Okay. Anything further?

MR. SCHMIDT: I don't believe so. Thank you.

MR. MCCANN: Thank you.

CHAIR: Now, the, there are outstanding exhibits that were, copies were not provided to the Board. Each of you have one. Kindly provide those copies sooner rather than later, that would be helpful. Or, or you can attach to your closing memo.

MR. MCCANN: We'll get them over.

MR. SCHMIDT: Yes, sir.

CHAIR: Okay.

MR. MCCANN: Thank you.

MR. SCHMIDT: Thank you, all.

CHAIR: Thank you, everybody, for attending and for your participation. And I know that some of you flew in and some of you had to take off from work and whatnot to be here, so thank you for putting up with it for three days.

MR. MCCANN: Thank you.

MR. SCHMIDT: Thank you, all.

CHAIR: All right?

MR. SCHMIDT: Thank you.

MS. DOPKIN: We are off the record.

(OFF THE RECORD - 01:54:07 PM)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., case numbers 19-183-X and CBA-20-004, heard before the Board of Appeals of Baltimore County, October 23, 2019 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 190 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 10th day of November, 2019.

Christine R. Leary

Christine R. Leary

Transcriber

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BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:

HOLLY SPRINGS NATURE CONSERVANCY AND WILDLIFE SANCTUARY, INC. – LEGAL OWNER/POWER FACTOR, LLC - LESSEE
CASE NUMBER: 19-183-X and CBA-20-004

Hearing Date: September 24, 2019

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204.

PANEL PRESIDING:

JASON S. GARBER, CHAIR

MAUREEN E. MURPHY, BOARD

DEBORAH C. DOPKIN, BOARD

PRESENT ON BEHALF OF THE PARTIES:

LAWRENCE E. SCHMIDT, ESQUIRE
Counsel for Petitioners

MICHAE R. MCCANN, ESQUIRE
Counsel for Protestants

Christine R. Leary
3129 Hiss Avenue
Baltimore, Maryland 21234

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(ON RECORD - 10:08:34 AM)

CHAIR: All right. We are here back on the Holly Springs matter, case number 19-183-X and CBA-20-004. This is day two of this hearing. Is there anything we need to discuss before we get started for today?

MR. MCCANN: No.

MR. SCHMIDT: No, sir.

CHAIR: How about in terms of expectations of what we're doing today?

MR. SCHMIDT: Well, I have several witnesses this morning, several of them are going to be pretty quick. I would hope to maybe be finished by lunch time.

CHAIR: I like your optimism. Mr. McCann?

MR. MCCANN: I anticipate two or three witnesses.

CHAIR: Okay.

MR. MCCANN: And they'll be relatively short.

CHAIR: Okay. So, there's the possibility that we could actually conclude the evidentiary record today?

MR. SCHMIDT: Yes, sir.

MR. MCCANN: Yes, sir.

CHAIR: All right. Let's keep a goal, that goal in mind to the extent possible. And Mr. McCann, with the attendance list from the day one, are we making this an exhibit or just part of the file?

MR. MCCANN: Just part of the file is fine, thank

you.

CHAIR: It will, Mr. Schmidt has reviewed it (inaudible). All right. With that in mind.

MR. SCHMIDT: Mr. Garber, just before I begin, a couple of housekeeping items if I can?

CHAIR: Sure.

MR. SCHMIDT: I'm going to give Mr. McCann a copy of a plan, which is mounted on the board, which I would like to offer as the next exhibit. This is sheet one of the development plan, which has previously been submitted. It was Petitioner's exhibit number three. And Ms. Dopkin noted last time that the north arrow on that plan was incorrect and, as you'll notice, the north arrow has been corrected on the plan. The plan is the same except for the north arrow being corrected.

CHAIR: And it was sheets A and B or one and two if I remember correctly, two of them? So, we have, I guess, both of them corrected?

MR. SCHMIDT: Do you have the second, yes, yes.

CHAIR: I see, yes, some nodding of the heads.

MR. SCHMIDT: Yes. And so, I just mark, if I could mark that as the next exhibit?

MS. MURPHY: Okay. So, we're making that's, that's a separate exhibit then?

MR. SCHMIDT: Yes, sir. Yes, ma'am, just because

it's a, again, it's the same thing, it's just the north arrow is corrected.

MR. MCCANN: Yeah, I obviously don't have a problem with replacing or marking as a new exhibit a corrected version, provided that the only correction is the north arrow, because I think that was in response to Ms. Dopkin's concern. I just see other redlines on here that I haven't seen before that are really corrections, appear to me to be, appear to be corrections of other things, so.

CHAIR: Why don't we go and, you know, play the matching game with the exhibit that's up on the board, that will be the actual exhibit.

MR. MCCANN: Okay.

CHAIR: To see if that has the same thing, the same red markings that you see.

MR. MCCANN: Okay.

MR. SCHMIDT: Okay. I tell you what, let's, let's, let's do this because maybe what I'll do, Mr. McCann, just to keep the record clean, is I can call Mr. Leffner and explain any differences between this plan, I believe it's the north arrow, but he is drawing to my attention --

MR. LEFFNER: There's three --

CHAIR: Not yet.

MR. SCHMIDT: You can't testify.

CHAIR: You may have that opportunity shortly.

MR. MCCANN: He has the right to call who he, he wants but, I mean, --

CHAIR: But it, to, you, you are questioning about the other red marks on the map, that's what we need to find out.

MR. MCCANN: They are, they are new.

CHAIR: Yeah.

MR. SCHMIDT: Okay. It, it, --

CHAIR: So, let's do this, just to clean, clean it up, you want to call Mr. Leffner just to ask him what those are?

MR. SCHMIDT: I tell you what. I got a couple of County people here, let me call them first because I promised I'd get them on and off the stand and then I'll call Mr. Leffner.

CHAIR: Do you need --

MR. SCHMIDT: So, I'm not going to mark this right now, no.

CHAIR: You don't need that for now.

MR. SCHMIDT: No.

CHAIR: Okay.

MR. SCHMIDT: But what I would like to do, because I think one of the County witnesses may refer to it, so let me make my next exhibit, if I can, this. This is the same thing as the plan, there are no changes on this document. Ms. Dopkin

had asked if we could give a colorized version of the plan and there is a key on the side of the plan --

CHAIR: If I can, Mr. Schmidt, just to clarify, you said the word plan and you've referred to the word this. Why don't you identify what you're specifically referring to because there are two, there are two documents up on the board there, so what, so what is it that you're referring to as to what you're going to use right now?

MR. SCHMIDT: Okay. This is a document that is called colored site plan exhibit. And what I would represented, represent it to the Board is it is Exhibit 3-D, which if, if you remember, 3-A and 3-B were existing conditions and they were at different scales. Exhibits 3-C and 3-D were proposed conditions and they were at different scales. Exhibit 3-C has notes on it, 3-D was larger and didn't have the notes but they were the same. This is 3-D. It is a colorized version of 3-D and what it shows is in color the various colors show green, which is the forest stand area, which Mr. Leffner has described, in a lighter green, you might not be able to see it, is areas of existing vegetation which are going to be retained, the spec, specimen tree is also shown on the property that Mr. Leffner had talked about and then the landscaping is shown in a sort of a magenta, if that's the correct color, the proposed landscaping and there is a key as to the type of trees or shrubs that are at issue. So, this is a colorized version

of Exhibit 3-D.

CHAIR: Next exhibit?

MS. MURPHY: So, we could make that sixteen?

MR. SCHMIDT: I'm happy to do so.

MS. MURPHY: It would (inaudible).

CHAIR: Do you have a copy?

MR. MCCANN: I do not.

MR. SCHMIDT: I am going to give everybody a copy and I can give Mr. McCann a larger copy and I can give the Board, if would like, smaller copies just to have in front of you. Or a larger copy if you would prefer that, Ms. Dopkin.

MS. DOPKIN: Whatever, I'll take the smaller copy and it doesn't matter.

MS. MURPHY: I'll take both.

MS. DOPKIN: And it doesn't matter, whatever the Board members --

MR. SCHMIDT: There are three --

MS. MURPHY: I appreciate it, thanks.

MR. SCHMIDT: -- of the smaller copies. And would you like one of the larger copies too, Ms. Dopkin? I mean, Ms. Murphy?

MS. MURPHY: Do you mind? So, I can, I can (inaudible).

CHAIR: I'll take both if you have that. Sorry.

MR. SCHMIDT: I can give you another one as well.

CHAIR: Yeah. And this is sixteen. Okay. Now, --

MR. SCHMIDT: And I'll put Mr. Leffner on to give Mr. McCann an opportunity to cross examine him about, about the plan.

MR. MCCANN: Again, I think we should get the County witnesses. I agree, they shouldn't be sitting --

CHAIR: That's fine. We --

MR. MCCANN: But the only part I wanted to mention that this now Exhibit 16 is, according to Mr. Schmidt, a colorized version of 3-D, but 3-D has now changed by virtue of this new, other new exhibit that we received this morning. So, this colorized version has changed as it --

CHAIR: I don't know that it has changed yet.

MR. MCCANN: It has the same changes.

CHAIR: It has the same changes.

MR. MCCANN: Based on my quick review. I just want to point that out. So, I don't want to accept it now without--

MR. SCHMIDT: Tell you what, put, mark it for identification purposes.

CHAIR: Well, that's, I, that's, I was going to say, that's the only thing we can do at this point, if we're going to proceed with the County witnesses first.

MR. MCCANN: Yep, let's do that. Thank you.

CHAIR: So, with that in mind, --

MR. SCHMIDT: And I have one other exhibit that I

would like to give, if I can.

CHAIR: Sure.

MR. SCHMIDT: Ms. Dopkin had asked for a key as it related to the photographs, and what we did, the, the, the development plan, I would just say, which version of the development plan that we, that this is marked on, it, it's actually 3-B, but the, the --

CHAIR: But presumably, whatever changes there were have not changed 3-B.

MR. SCHMIDT: Yes, but the purpose of this is it has a letters and the arrows showing where the pictures are taken. So, that's really the, this is not being presented as for the--

CHAIR: It's understood.

MR. SCHMIDT: -- as to the project or any changes. It's just being presented to show where the camera man was standing.

MR. MCCANN: Okay. Thank you.

MR. SCHMIDT: So, that's, that's all it is.

MR. MCCANN: This is seventeen?

CHAIR: Yes.

MR. SCHMIDT: And you'll see, --

CHAIR: Right?

MS. MURPHY: Yes.

MR. SCHMIDT: -- you'll see a letter and then an arrow coming out of the letter. Some of the pictures are close

together so we tried to keep the, it large enough but it was, it shows what it is and if you would take the photographs which you have, you can then match them up and show where the, the arrow where the camera (inaudible).

MS. MURPHY: Great.

MR. MCCANN: And I don't have a problem with this exhibit, just for, I don't have a problem with this exhibit.

MS. MURPHY: Okay. So, it's seventeen --

MR. MCCANN: No, no objection.

CHAIR: So, we will admit seventeen. Sixteen is still just for identification.

MR. SCHMIDT: That's fine. Okay and with that being said, I'm going to call Jeff Perlow to testify, please.

CHAIR: I should say, before we have testimony, if anybody has a cell phone, please make sure that it does not ring, go off, beep or make any noise during the course of these proceedings. And when you testify, please speak loudly, do not cover the microphone and try to not talk over one another. Ms. Dopkin?

MS. DOPKIN: Mr. Perlow, do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. PERLOW: I do.

MS. DOPKIN: Would you please state your name and

address for the record and spell your last name?

MR. PERLOW: It's Jeffrey Perlow, P-E-R-L-O-W and I'm with the Zoning Review Office of the Department of Permits, Approvals and Inspections and their address is 111 West Chesapeake Avenue, Towson, Maryland 21204.

CHAIR: And what is your title or job?

MR. PERLOW: Planner II.

CHAIR: Planner II.

MR. SCHMIDT: You can be seated, Mr. Perlow. Thank you. So, Mr. Perlow, you're a Planner II in the Zoning Office?

MR. PERLOW: That's correct.

MR. SCHMIDT: Can you tell the Board just generally what you do? Just a very brief description as a Planner II?

MR. PERLOW: We review permits, petitions, site plans, development plans. We deal with counter duty, phone duty.

MS. DOPKIN: Please speak into the microphone.

MR. SCHMIDT: Okay. Mr. Perlow, are you familiar, you're fam, obviously familiar with the Baltimore County zoning regulations?

MR. PERLOW: Yes, that's correct.

MR. SCHMIDT: Deal with them every day?

MR. PERLOW: Yes.

MR. SCHMIDT: Familiar with Article 4-F of the regulations, is that correct?

MR. PERLOW: Yes, I have a copy of it here, if it's needed.

MR. SCHMIDT: Okay and what's that relate to generally, Article 4-F?

MR. PERLOW: Solar facilities (inaudible).

MR. SCHMIDT: Okay. There's a requirement, is, is there not, in the Article 4-F regarding the number of solar facilities that is permitted in a, in any one councilmanic district, is that correct?

MR. PERLOW: That's correct.

MR. SCHMIDT: And does the Zoning Office maintain a list of the number of solar facility applications that have been made to Baltimore County for each district?

MR. PERLOW: Yes, we do, I brought that chart with me as well.

MR. SCHMIDT: Okay. This, I think Mr. McCann referenced on the first day, but it's never really been offered into evidence. Ms. Murphy, I'm going to give you four copies of it and I'll show the witness a copy of the one I have. Mr. Perlow, I have a document that's four pages and it looks like it's dated September the 19th of 2019. Is that the same one you have?

MR. PERLOW: Yes, uh huh.

MR. SCHMIDT: Okay. Is that the, is that the current list that the Zoning Office maintains?

MR. PERLOW: It's the most current, yes.

MR. SCHMIDT: Okay. Now, this case today relates to the application of a company called the Power Factor, called Power Factor --

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Yes.

CHAIR: Can we mark this as Exhibit 18?

MR. SCHMIDT: Yes.

CHAIR: Since we're going to be referring to it?

MR. SCHMIDT: Yes, sir.

CHAIR: Please?

MR. SCHMIDT: Yes, sir. I'll offer it as Exhibit 18, as the witness has identified it.

MS. MURPHY: Any objection?

MR. MCCANN: No objection.

CHAIR: Sorry, before we refer to the list and whatever, let's get it identified for the record. So, you are pointing out the project at issue?

MR. SCHMIDT: Yes, sir. Mr. Perlow, we're here today on case 2019-183-X, which I believe is shown as number eleven on this list, is that correct?

MR. PERLOW: That's correct.

MR. SCHMIDT: You also, I think, brought a copy of Article 4-F or --

MR. PERLOW: Yes, I did.

MR. SCHMIDT: Okay.

MR. PERLOW: I brought seven copies with me.

MR. SCHMIDT: All right. If I can, can I have, keep one for yourself, but if you can give --

MR. PERLOW: And I, I highlighted the, that portion of the law that (inaudible).

MR. SCHMIDT: Okay and this is just a copy of that section of the Baltimore County zoning regulations?

MR. PERLOW: Yeah, this comes right out of the zoning regulations, hard copy book.

MR. SCHMIDT: Mr. Garber, I would offer this then as Petitioner's exhibit number nineteen.

MS. MURPHY: Nineteen.

MR. MCCANN: No objection. Thank you.

MR. SCHMIDT: Now, --

CHAIR: I should mention, my copy has highlighting.

MS. MURPHY: They all (inaudible).

MR. SCHMIDT: And I think Mr. Perlow is going to explain that he highlighted that, it should all be the same. He brought this, I believe.

CHAIR: Yours too, Mr. --

MR. MCCANN: It is.

CHAIR: Okay. Mr. McCann's copy is highlighted as well.

MR. SCHMIDT: Yes.

CHAIR: Sorry.

MR. SCHMIDT: Mr. Perlow, you highlighted that section, did you not?

MR. PERLOW: Prior to today, yes.

MR. SCHMIDT: Okay. Can you explain how the, how the Zoning Office, or how the Zoning Office administers the ten solar facility limitation and also as, as, if, if the current application in today's case is barred or can't be considered by the Board because it was the eleventh one filed? Can you just address those issues? Thank you.

CHAIR: One second. I see Mr. McCann standing. Mr. McCann?

MR. MCCANN: Can we break that up into two questions? I think it's two important questions, so.

CHAIR: So, objection because it's compound. Could you ask an individual question?

MR. SCHMIDT: Sure. Mr. Perlow, why don't you explain how the Zoning Office, if you can, administers the list and determines which projects are the, quote, first ten, end of quote, which would be permitted in each council district?

MR. PERLOW: As each special exception is filed for individual solar facilities, we add their, their name to the chart with the case number and whether any permits have been issued with it and in the case of the Third Councilmanic District, which is probably the one at issue here, there has

been an eleventh special exception filing. We still track that but we have advised, when they file it, that there's no guarantee of getting a building permit and if you look on page four of the handout, you'll see a sample of what we will send to the Administrative Law Judge's office asking them to put that as a restriction in any Order that he might write.

MR. SCHMIDT: Okay.

CHAIR: So, just to be clear, the significance of you identifying the permits, corresponds with your caution to the applicants that you may not get a building permit?

MR. PERLOW: That's correct.

CHAIR: Because, what is the significance of the permit then for purposes of this chart?

MR. PERLOW: Well, it's, in the law itself, it specifies the, the numbers, based on the number of permits, not the number of special exceptions.

CHAIR: Thank you.

MR. SCHMIDT: Is every solar facility in Baltimore County permitted only by special exception?

MR. PERLOW: That's correct.

MR. SCHMIDT: So, if, you can't have a solar facility that would not be on this list?

MR. PERLOW: Well, it does provide for rooftop ones without a special exception and obviously, residential we treat as a Section 400 accessory structure, so, those would be exempt

as well.

MR. SCHMIDT: Okay. So, it would be exempt if you're putting solar on top of a roof?

MR. PERLOW: On top of a roof would be exempt and if they need a variance, let's say, because they want to put it in the front yard of a residence, it would need a hearing, but it wouldn't be subject to the special exception.

MR. SCHMIDT: Okay. Now, this particular solar facility, are you familiar with this one?

MR. PERLOW: No, actually, I didn't review this plan so.

MR. SCHMIDT: All right. Well, you can take a quick look at the plan, but I would just represent to you, Mr. Perlow, that this is something short of two megawatt with solar panels in, in the field, not on a roof or not on an individual residential yard. If that's correct, would that be, would that be subject to this list requirement?

MR. PERLOW: Yes, yes, it would.

MR. SCHMIDT: And just for the record, we're not disputing that we're, we're not accessory and we're not rooftop, we're subject to the list. Mr. Perlow, is this application prevented from going forward before the Board of Appeals for consideration because --

MR. PERLOW: No, it --

MR. SCHMIDT: -- it's the eleventh?

MR. PERLOW: No, we have no authority to stop somebody from filing a Petition.

MR. SCHMIDT: Okay and so, in, in essence, is it fair to say that the Zoning Office looks at the order of permits being issued as opposed to the order of when applications are filed?

MR. PERLOW: That's correct, but we track all of the applications that are filed.

MR. SCHMIDT: Okay and the Zoning Office, at least your, your position would be that the Board could consider this and the applicant would merely need to be one of the first ten to get a building permit in order to actually construct?

MR. PERLOW: Yes, and we act, actually advise them of that in the following appointment, that they may, may possibly not get a building permit.

MR. SCHMIDT: Okay and you also track applications where solar facilities have been with, requests have been withdrawn or they pre-date the adoption of 4-F and I believe that's in the exhibit as well, is that correct?

MR. PERLOW: Yeah, I believe it's page --

CHAIR: Which exhibit?

MR. SCHMIDT: Exhibit number --

CHAIR: Eighteen?

MR. SCHMIDT: -- eighteen, yes, sir. The, the chart.

MR. PERLOW: If you go to page three of the chart,

it'll list the ones that are either withdrawn or predated the retroactive date in the bill. So, you'll see that third column is all the Third Councilmanic District that are no longer applicable to the, the ten maximum total.

MR. SCHMIDT: Okay. Thank you, Mr. Perlow. I don't have any other questions.

MS. MURPHY: And does this chart show the permits that have been issued for solar facilities?

MR. PERLOW: Yes, if you look at the last line from each entry, it'll say no permits as of July 8th, no permits as of July 8th.

MS. MURPHY: So, so far there haven't been any permits issued.

MR. PERLOW: I believe there's one but --

MS. MURPHY: In the Third District?

MR. PERLOW: Yeah, I think there's one in the Third District has been issued.

CHAIR: Well, and that, the question is, your chart seems to reflect no permits in the Third, as of July 8, 2019.

MR. PERLOW: Yeah, I believe --

CHAIR: Are you aware of any that have been issued since July 8th of 2019?

MR. PERLOW: I believe there's one that has been issued after July and I didn't have a chance to update all the --

CHAIR: Okay. Do you know which one, just out of curiosity?

MR. PERLOW: No, --

CHAIR: If you don't, that's fine.

MR. PERLOW: No, I don't know offhand.

CHAIR: Okay.

MR. SCHMIDT: And Mr. Perlow, I think you mentioned this, but the, the part of the law that you highlighted, can you just direct the Board why you highlighted that section and what language you believe is relevant?

MR. PERLOW: Well, the reason why I highlighted two, three and four is to emphasize the ten per council district is not based on the special exception filing, that it's based on the number of building permits that are issued and in the order that they're issued.

MR. SCHMIDT: What, where, specifically, does it say that?

MR. PERLOW: Under three and four, it, it goes into the detail, keep a current accounting of the number of facilities in each councilmanic district under this paragraph and in four, I believe, is where it mentions the permits. No additional permits shall be issued for a solar field in that district unless an existing facility previously approved under authority has been removed pursuant to Section 4-F-107. So, we have remove some, and you can see that list of ones we've

removed.

MR. SCHMIDT: Okay.

MR. PERLOW: So, the list, at one point, was fourteen, now it's down to eleven or twelve.

MR. SCHMIDT: Okay.

MR. PERLOW: So, it does fluctuate.

MR. SCHMIDT: Okay, okay. I don't have any other questions, thank you. And I would just make sure those two exhibits are offered and accepted.

CHAIR: Yes, eighteen and nineteen have been admitted. There was no objection from Mr. McCann.

MR. SCHMIDT: Thank you.

CHAIR: Mr. McCann, cross examination?

MR. MCCANN: Thank you, thank you. Good morning, Mr. Perlow.

MR. PERLOW: Good morning.

MR. MCCANN: Am I correct that your office, the Zoning Review Office, does not have any written policy, written policy, regarding how the County should be counting solar facilities for purposes of Section 4-F-102, is that correct?

MR. PERLOW: That would be correct, because it's in the law. We wouldn't have, no need for a policy.

MR. MCCANN: That was my next question. So, we're guided, you're guided, the Board is guided, by the plain language of the statute?

MR. PERLOW: Yes, that's correct.

MR. MCCANN: Okay and just so we're also clear, your, I know you've been there for a long time, in the Zoning Review Office, but you are not the head of that department or that office, correct?

MR. PERLOW: That's correct.

MR. MCCANN: And you're not here speaking on behalf of that office, you're here as a, as a witness subpoenaed by Mr. Schmidt, correct?

MR. PERLOW: That's correct, yeah.

MR. MCCANN: Okay. Let me ask you about the statute itself, since we are guided by its plain language. 4-F-102-B, let's start with B-2. And I'll just read this since it's only one sentence. No more than ten solar facilities may be located in a councilmanic district, end, end, end quote, correct?

MR. PERLOW: That's correct.

MR. MCCANN: That, that provision says nothing about permits, applications, it just says no more than ten facilities, correct?

MR. PERLOW: That's correct.

MR. MCCANN: And then if we go to the next section, 4-F-102-B-3, that's the section that requires, and I'll paraphrase this, this provision, the Department of Permits, Approvals and Inspections to maintain a record of all permits issued, correct?

MR. PERLOW: That's correct.

MR. MCCANN: And it also requires the Department, the director, I'm sorry, to keep a current accounting of the number of facilities in each district, correct?

MR. PERLOW: That's correct.

MR. MCCANN: So, again, the, the record that's supposed to be kept under 4-F-102-B-3, is it your testimony that this exhibit, developer's Exhibit 18 is that record?

MR. PERLOW: It is not a record of permits issued, no.

MR. MCCANN: It's not.

MR. PERLOW: It's a record of special exceptions that have been filed.

MR. MCCANN: Okay. As you, as you put it initially, applications for special exceptions that have been filed?

MR. PERLOW: Right.

CHAIR: That's, right, I heard what you said but just make sure the microphone caught your answer.

MR. PERLOW: Yes, it's a list of special exceptions that have been filed, but we do also track permits that are issued and if we know about them, we put them on the list.

MR. MCCANN: Right, but you don't track them in some separate record or document?

MR. PERLOW: No, no, it's just tracked here. Both, it actually serves a dual purpose in that regard.

MR. MCCANN: Yeah, I think that that's fair. In other words, this, just to be clear, the developer's Exhibit 18 keeps track of both applications that have been filed.

MR. PERLOW: Right.

MR. MCCANN: For special exceptions, as well as the issuance of any permits.

MR. PERLOW: That's correct.

MR. MCCANN: Associated with special exceptions that have been granted, correct?

MR. PERLOW: That's correct, that's correct.

MR. MCCANN: Okay. So, it seems obvious to me but the, the reason you keep track of the applications filed as opposed to the permits issued is what?

MR. PERLOW: Well, so if it exceeds ten, we can advise them at their Petition filing that there's a possibility they won't get a building permit.

MR. MCCANN: Okay. But again, the limitation on ten in 4-F-102-B-2 is not directed to the number of permits issued, it just says no more than ten solar facilities, correct?

MR. PERLOW: That's correct.

MR. MCCANN: Okay. And I, is it a, I know you didn't say this in response to my question but is it another reason, I mean, to you, does it make sense for your office to continuously receive applications for Petitions for Special Exception, the Petition themselves, well, well beyond ten such

applications?

MR. PERLOW: I, I don't think the law allows us to not accept them. I don't think we have that authority to, to not accept a Petition. Anybody has a right to file a Petition and if we take away that due process right, we could get in trouble for that.

MR. MCCANN: Okay, good point. But at some point, it's a waste of time and energy on, on your --

MR. PERLOW: From a practical standpoint, yes.

MR. MCCANN: Okay and you think the County Council, well, strike that. Okay. I have no other questions. Thank you, Mr. Perlow.

MR. SCHMIDT: Just very briefly. Mr. Perlow, I know Mr. McCann asked you on cross examination you are not the director of PAI?

MR. PERLOW: That's correct.

MR. SCHMIDT: Okay. But you are a Planner II in PAI?

MR. PERLOW: That's correct.

MR. SCHMIDT: And you're a curr, you're a current employee?

MR. PERLOW: That's correct.

MR. SCHMIDT: And does your testimony reflect the position of the office in terms of the way the office is administering Article 4-F?

MR. MCCANN: Objection. Objection. That's not what

he --

CHAIR: Stand up, please.

MR. MCCANN: I'm sorry. Number one, that's not what he said, that's not the capacity in which he's been called. He's been called as a fact witness.

MS. MURPHY: Keep your voice up, please.

MR. MCCANN: Yeah, I think, number one, he said the exact opposite already, that he's not here on behalf of his department, expressing the policy of that department --

CHAIR: Keep your voice up still. Yes, you said he's not, you think his testimony was he's not here on behalf of the office, correct?

MR. MCCANN: Correct.

CHAIR: That he's here as a fact witness.

MR. MCCANN: Yeah, I think he --

CHAIR: Continue.

MR. MCCANN: -- I think he said both of those things.

CHAIR: Right.

MR. MCCANN: Or has acknowledged both of those things so, that's my objection. I'll sit down.

MR. SCHMIDT: Well, I think he's admitted he's not the director of the office and he's, he's not Mr. Malinoff and he's not Mr. Richards, but as I understand it, I was just asking him. I think he's the keeper of the list, as they say. That's his responsibility as the Planner. I didn't call him

because he was walking down the street and I think he might know something about this. He's the guy from the Zoning Office who administers the list and to say it's not the position of the Zoning Office, I mean, he's not my expert witness and he's not an expert, I'm not qualifying him as an expert witness, calling him as a representative of the Department of Planning and that's what his job entails.

CHAIR: In short, the records custodian of the list that's at issue to determine the number of solar facilities that the County keeps.

MR. MCCANN: I agree with that. He is certainly knowledgeable as the custodian of that record. He, as Larry proffers is, the keeper of that record. I don't disagree with that. But whether or not he's here to testify on behalf of -- (PHONE VIBRATES)

CHAIR: That's okay.

MR. MCCANN: I don't think that's me.

CHAIR: Sorry. Go ahead.

MR. MCCANN: But whether he's here to express the, the, the policy of that department, PAI, I think is another matter altogether. He certainly is knowledgeable about the facts he's been asked about today.

CHAIR: Well, certainly, he can testify as to what his understanding is because he has a role as Planner II and he's the keeper of this list and so he may have some

understanding as to what is required in, within the office, is that fair?

MR. MCCANN: May I --

CHAIR: As, as to whether or not he's the one who dictates that policy or as you've already asked, is that in writing, etcetera, etcetera, those are different matters.

MR. MCCANN: Well, I think that's hearsay and I know we allow hearsay in a lot but for him to testify what he believes the police to be, unwritten apparently, I think on an important issue like this, I don't think we should be letting hearsay in about it.

MS. MURPHY: He, he said there was no policy. You asked the question, you said is there a policy? He said there's no policy because we have the law.

CHAIR: Right.

MS. MURPHY: So, and you know what, so we're guided by the law, there is no policy. So, so there really is --

MR. MCCANN: So, maybe we're arguing about nothing.

MS. MURPHY: Yeah.

MR. MCCANN: Yeah, thank you.

MS. MURPHY: Thank you.

CHAIR: So, is that, I guess, objection withdrawn or is it still being asserted?

MR. MCCANN: Well, yeah, I mean, the objection stands because he's asking a question that he's already answered, that

there is no policy as Ms. Murphy has pointed out.

CHAIR: Yes.

MR. MCCANN: So, why ask him is it the policy when he just said it isn't, there is no policy.

MR. MCCANN: I, I didn't mean that policy in terms of a written policy. I just meant it as the practice and protocol of the Zoning Office to do what he's described. So, if I asked the question in art --

CHAIR: So, I will sustain that objection. You can ask that question --

MR. SCHMIDT: Okay.

CHAIR: Thank you.

MR. SCHMIDT: Mr. Perlow, is it the practice and the protocol, I understand you said there's no policy but is it the practice and the protocol to administer 4-F as you've described it here this morning?

MR. PERLOW: Yes.

MR. SCHMIDT: In other words, if I went into one of the other Planner II's in Zoning, would they tell me something different about the way the pol, about 4-F or would they say, oh, go see Jeff Perlow, he's the guy that keeps the list?

MR. PERLOW: No, they would have a copy of this chart.

MR. SCHMIDT: Okay and you all do it the same way?

MR. PERLOW: That's correct.

MR. SCHMIDT: When I say you all, I mean, everybody in the Zoning Office?

MR. PERLOW: That's correct.

MR. SCHMIDT: Okay.

CHAIR: Mr. McCann?

MR. MCCANN: No other questions. Thank you.

CHAIR: Thank you, Mr. Perlow.

MR. SCHMIDT: I'd call Mike Kulis to the stand, please. And Mr. Perlow is excused if he wants to get back to work, unless somebody needs him.

MS. DOPKIN: Do you swear, before you sit down, do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. KULIS: I do.

MS. DOPKIN: Would you state your name and address for the record, spelling your last name, please?

MR. KULIS: My name is Michael S. Kulis, K-U-L-I-S as in Sam. I work for Environmental Protection and Sustainability, the Environmental Impact Review Section, 111 West Chesapeake Avenue, Room 319.

CHAIR: And what is your title, or job?

MR. KULIS: And my title is Natural Resource Specialist II.

CHAIR: You, he's sworn in, correct? All right. You

can have a seat, right? I'm sorry.

MS. DOPKIN: Yes, I'm sorry.

CHAIR: I'm just confirming. All right. So, you're with DEPS, sir, and you're in the Environmental Impact Review Section, Natural Resource Specialist II.

MR. KULIS: Yes, sir, that is correct.

CHAIR: All right. Mr. Schmidt?

MR. SCHMIDT: Mr. Kulis, can you just tell the Board kind of generally what you do as a --

MR. KULIS: Certainly.

MR. SCHMIDT: And, and, I guess, particularly, obviously this is a zoning case, so what your responsibilities would be in terms of participation in a zoning case more particularly. I'm sure you do a bunch of things but as it's really relevant to this case.

MR. KULIS: Okay. So, I happen to be the area reviewer for this project. Our work is assigned by watersheds more so that councilmanic districts. So, my area extends, I have the Jones Falls and part of the Gunpowder, so I go from the City line all the way up to Parkton, over to Reisterstown. So, I appreciate you letting me get back to work because I've got a lot on my desk.

MR. SCHMIDT: Okay. I'm sure you do.

MR. KULIS: I am a qualified professional in the State of Maryland, to implement the forest conservation law. I

am a qualified professional, State of Maryland, for the roadside tree law. I also have Army Corps wetland training, although certification is not required for regulators.

CHAIR: I'm sorry, what was that last part? Wetland training, what did you say?

MR. KULIS: Yes, Army, Army Corps of Engineers wetland training.

CHAIR: Okay.

MR. KULIS: So, again, I'm the area reviewer. I, I have visited the site, as, again, as it pertains to this job, I mean, our, our job is assessing environmental impact and applying the County laws to development projects and that runs the gamut from, from building permits to County highway jobs to solar facilities. To, for this project, we've applied, again, the Environmental Protection Articles, Article 33, so this project has to qualify for both Title 3, which the name is the protection of water quality, streams, wetlands and flood plains. We, kind of euphemism, we call it the forest buffer law.

CHAIR: Forest to buffer law?

MR. KULIS: Forest buffer.

CHAIR: Forest buffer law?

MR. KULIS: Yes. The other title is Title 6, forest conservation, also pertains to this project.

CHAIR: All right. We have Article 33, Titles 3 and

6 you believe apply to this project.

MR. KULIS: Yes.

CHAIR: Have you actually reviewed this project in particular?

MR. KULIS: I, I have reviewed the project. I've reviewed the wetland delineation verification plan and data sheets, forest stand delineations and their data sheets, forest stand assessment data sheets, looked at the plans, spent three hours on site, walking the property.

MR. SCHMIDT: Mr. Kulis, if I can, about those reports that you've indicated. I think, and you weren't here the first day in the hearing, but there was previously submitted in, into evidence a forest stand delineation report and approval letter that you signed. Do you recall that you received a forest stand delineation for this project, reviewed it and approved it?

MR. KULIS: I do recall actually. I asked for revisions before I approved it.

MR. SCHMIDT: Okay. But, --

CHAIR: So, you do recall sign, reviewing and signing off on a forest stand plan?

MR. KULIS: Correct.

CHAIR: And, and you recall it because you recall that there were revisions that you required?

MR. KULIS: Correct.

MR. SCHMIDT: And if I could get Ms. Murphy, if I can approach? Actually, it's an exhibit and I think there's a letter that he signed also. I just want the witness to identify that.

MS. MURPHY: Do you know what it is?

MR. SCHMIDT: (inaudible). And, yes, and Mr. Kulis, just, I'm showing you for the record what is Exhibit, what's been marked in this case as Exhibit 5 and is, and it's entitled up at the top of the page forest stand delineation. Is this, you can just take a quick look at it. I know it's a smaller copy, but is that the forest stand delineation report, or forest stand delineation, I guess, exhibit that you reviewed and ultimately approved? I know it's a smaller version, but--

MR. KULIS: Right. Again, without, without checking revision dates, I mean, I have to say yes, it could be. Without checking the revision dates, I mean, if you had a, if I was looking at a copy of --

MR. SCHMIDT: Would you have it in your file?

MR. KULIS: -- the one in the file, I would say then yeah, I saw it and I approved it.

MR. SCHMIDT: Yeah, okay. Why don't you see if you've got the one in your file?

MR. KULIS: So, we're looking at, that would be the July 1st, 2019 letter?

MR. SCHMIDT: Well, that's what I was going to show

you. You wrote a letter on July the 1st, did you not, where you indicate your approval of the quote, revised forest stand delineation, is that right?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay and that's exhibit number seven for the Board's reference. Give that back to Ms. Murphy. This is the one that we submitted into evidence, Mr. Kulis, not to confuse you. But just so, naturally the sticker is over the top of it, but.

MR. KULIS: Of course. Okay. It says, does say revision date of June the 7th, 2019. So.

MR. SCHMIDT: That's the one you required the revisions on?

MR. KULIS: That, that would be the one that was submitted in response to my first letter.

MR. SCHMIDT: And then you --

MR. KULIS: That would be correct.

MR. SCHMIDT: And then you approved it?

MR. KULIS: Yes, correct.

MR. SCHMIDT: Okay.

CHAIR: Mr. McCann, do you need to see the document--

MR. SCHMIDT: I think I gave him copies of documents when I introduced them.

MR. MCCANN: Yeah.

MR. SCHMIDT: So, I'm referring to five and seven.

MR. MCCANN: I do not.

MR. SCHMIDT: Oh, of the, of the big one?

CHAIR: But the one that he pulled from his file, would you like to take a look at that?

MR. MCCANN: No, as long as it's the same as Exhibit 5, I don't need to (inaudible).

CHAIR: All right.

MR. SCHMIDT: Yeah, and he, he just said it's got the same revision date. And similarly, Mr. Kulis, I think there was also an erodible soils, well, before I get to that. Can you just tell the Board, just in laymen's terms, so they understand, what is a forest stand delineation? What, what are you looking for and what do you use that for?

MR. KULIS: Okay. A forest stand delineations when required as for more of like a timber cruising method of assessing a forest site --

CHAIR: Well, let's go back. You said timber cruising method --

MR. KULIS: Yeah, it's, okay, it's, --

CHAIR: -- so we'll need an explanation of what that is too.

MR. KULIS: All right. Well, well, let me, let me strike that.

CHAIR: Yeah.

MR. KULIS: It's, it's, it's walking the site. There

are, there are two ways that a forest stand can be assessed and the one that was applied for this project, which is the way that Baltimore County does it, is you walk the forest and make notations where the forest changes composition in age or structure, both, changes in, in understory or invasive species. So, the forest was delineated into two stands for this project. One, a younger stand down along the stream had more red maple and a wetter community. Up on the hillside, the forest is a mixed oak forest, much older in age.

CHAIR: I'm sorry, a mixed?

MR. KULIS: Mixed oak forest.

CHAIR: So, the other stand is older and had mixed, and had mixed oaks?

MR. KULIS: Yes. So, this is what we would undertake on any development project in reviewing the forest stand delineation. Breaking it out into the different stands, completing the data sheets, looking at the scores that the data sheets would provide as to what is a good forest, priority forest, what is, what is poor in quality. So, that was done for this project. There are other areas on this plan as noted earlier in lighter green that do not meet the definition of forest. They're hedge rows.

MS. DOPKIN: So, forest is a term of art?

MR. KULIS: Forest is defined in our Code. There are three separate definitions of forest, I believe, going off the

top of my head. One is a forest that has been clear cut but not, the stumps not graded out or pulled. Forest is a community of woody plants, one hundred stems per acre, half of which are two inches in diameter at breast height off the ground or greater.

CHAIR: If I can, are you reading from something?

MR. KULIS: No, I'm going --

CHAIR: Do you know where these definitions are within the Code?

MR. KULIS: Sure.

CHAIR: I mean, because that would be helpful too, because I'm not, we're not going to be able to write down the exact terminology. Even if you know it word, word for word or, you know, we're still going to have to reference it at some point.

MS. DOPKIN: Title 6 --

MR. KULIS: Okay, all right. So, forest conservation is Title 6, that's correct. It may be under definitions and there's also a Baltimore County Forest Conservation Technical Manual that may speak to some of these things.

CHAIR: So, is there any conflict between the definitions provided by the Code, Article 33, Title 6, and the technical manual, in terms of how it's defined, a forest is defined?

MR. KULIS: No, the, it's again, the technical manual

is, is to give further guidance, sometimes the law, by the nature of the law, can't, can't do everything.

CHAIR: So, you applied then one standard in terms of the, in terms of determining the forest stands in this case?

MR. KULIS: So, so I applied Baltimore County's law--

CHAIR: Definition of forest.

MR. KULIS: -- to this project as I would any other project, yes. So, some things are drawn from the technical manual. If it's, if it's not ten thousand square feet in size, then it is not a forest. Again, minimum width of thirty-five feet, which really, that's a pretty core forest with all the light and invasive species, you know, that we have. But a minimum width of thirty-five feet and, again, these things may not be in the law itself. But they come from the technical manual. So, I've relied on that as well and my thirty-two years of experience in environmental protection in reviewing this project.

CHAIR: You said, you identified a hedge row.

MR. KULIS: Correct.

CHAIR: What you called a hedge row. Is that also a term of art? Or a defined term?

MR. KULIS: I don't know if it's a defined term in our forest conservation law. It's, it's kind of a biology standard.

CHAIR: Does, does the identification of the area

around the stream, as depicted on, what is it, sixteen?

MR. KULIS: Which stream, which stream, the intermittent one coming downhill to the larger dark green area?

CHAIR: The one that is outside the green, the forest stand areas.

MR. KULIS: Okay.

CHAIR: That runs more or less north south, is there any significance using the term hedge row in association with the area around that stream?

MR. KULIS: No, this lighter area is culled out along the stream or in, or near the solar arrays were, again, looked at both by the environmental consultant for, for the solar company, as well as then again, by me.

CHAIR: But my question was, the, calling it a hedge row has no significance than to your review of this area in conjunction with this application?

MR. KULIS: It, it has no significance. I mean, it's not forest. The other, the other lighter areas in green are not forest, they don't meet the definition of forest. Either for a minimum width or an area or again, a, a plant density perhaps.

MR. MCCANN: Mr. Garber, would you mind if I interrupt? I know it's unusual, just before we move on to something else, can he identify where he's talking about because I --

CHAIR: You're not sure.

MR. MCCANN: Yeah, I, I, I want to distinguish forest buffer, which we all know is forest and there's plenty of that in the white area on that exhibit and hedge row, which is something else, which I think you're asking about. I don't want the two to be confused.

CHAIR: That's fine.

MR. MCCANN: Yeah.

CHAIR: That's a good idea. Could you go up to Petitioner's Exhibit 16 and identify the forest buffer, right?

MR. SCHMIDT: No.

CHAIR: Is that what you just asked?

MR. SCHMIDT: No, that's, that's, --

MR. MCCANN: Maybe it would be easier just to identify the hedge row. We have other exhibits that identify the forest buffer on that white area on Exhibit 16.

CHAIR: Okay. Identify the hedge row that we're referring to on, on Petitioner's Exhibit 16.

MR. SCHMIDT: Since, since this is my witness and I am going to try to lead him through this in some type of analysis, if I, I, what I really wanted him to do is, first of all, point out the area of the forest, which --

CHAIR: I think we got that, right.

MR. SCHMIDT: Okay. Which he determined from the forest stand delineation.

CHAIR: Right.

MR. SCHMIDT: And that might be the best thing to start with. Mr. Kulis, can you show the area of the forest on that plan, which I think has been established based on the delineation, is that correct?

MR. KULIS: So, on Petitioner's Exhibit 16, and I would actually say that the, and I don't know who you're rendering, but yes, the, the area of dark green, darkest green, is forest.

MR. SCHMIDT: Okay.

MR. KULIS: There's some, what appears to be tree line outside of the dark green, along here.

MR. SCHMIDT: Um hm.

CHAIR: Along the boundary where you just pointed?

MR. KULIS: Yeah, along the boundary, and that's why we, you know, again, have an office review on a light table. But, but yes, certainly this is the area of forest.

MR. SCHMIDT: Okay. So, I just want to make sure, and I, the Board understands, so they submit a forest stand delineation and you go out to the site and that's for the purpose of determining where forest is on the property.

MR. KULIS: Correct.

MR. SCHMIDT: As that term is defined?

MR. KULIS: Correct.

MR. SCHMIDT: Okay and that was done here.

MR. KULIS: Yes.

MR. SCHMIDT: And the forest was determined to be the area that's in green, correct?

MR. KULIS: Yeah, yes, correct.

CHAIR: Dark green.

MR. SCHMIDT: Dark green. Okay and then, is it fair to say that under the County's ordinance, you are not allowed to grade and disturb and put a solar facility within the area of forest unless you get some kind of variance or permission to do that, correct?

MR. KULIS: There's a forest conservation work sheet which, and forest conservation plan, that go along with the development projects.

MR. SCHMIDT: Okay.

MR. KULIS: That would be reviewed. We have not received those yet for this project.

MR. SCHMIDT: Okay.

MR. KULIS: And in certain, depending on the out, the work sheet, the outcome of the work sheet, the zoning and what is proposed for clearing certain clearing may be permitted in certain zones.

MR. SCHMIDT: Okay. Okay. So, all right, but in any event, you've approved the forest stand delineation and it's accurately shown on this exhibit in terms of number sixteen as the green area?

MR. KULIS: Again, the, the only area that I would point out where I would, I would request a revision, would be, and it's not in, along the solar arrays, but along, along here, it, it appears, the tree line actually hangs out a little bit further than your dark green. So, the lighter green tree line hangs out from the dark green forest here.

CHAIR: So, if I can, just describe, there are two solar fields, or solar fields on sixteen that you see. One is on, what did you say, the west and one is on the east. The one that's on the east, you point to the area north of that to show that there is green, which would depict trees, that are outside the boundary depicted on sixteen?

MR. SCHMIDT: And that's an area that's key --

CHAIR: Hold on, Mr. Schmidt, is that correct, sir?

MR. SCHMIDT: Oh, I'm sorry.

CHAIR: Because you keep pointing to an area outside of the --

MR. KULIS: Yes, that is, that is, --

CHAIR: -- marked boundary on sixteen.

MR. KULIS: That is correct, that is correct.

CHAIR: Okay.

MR. SCHMIDT: Okay.

CHAIR: Now that we've established what he was pointing to, Mr. Schmidt, do you have a question?

MR. SCHMIDT: Okay and Mr. Kulis, that's an area

that, according to the key, is an area of existed vegetative area to remain, correct?

MR. KULIS: Correct, correct.

MR. SCHMIDT: Okay. So, the area that you're referring to, just so the record is clear, is there is a redline that is the zone line that goes across the property, just in case somebody is reading the record of this case, and above that, or towards the top of the drawing, is a green, light green area, which is the existed vegetated area to remain, which is immediately adjacent to the forest stand area. And you, you may require an adjustment there?

MR. KULIS: Right, I just want everyone to be clear on this. That, that for the exhibit, whoever keyed this rendering out, they kind of didn't take into account that tree line. Both, both are to remain and but, yes, the, the forest stand area and again, we're also looking at, sometimes it's an aerial interpretation versus what's actually flagged and surveyed in the field. So, sometimes the, the tree line may shift a little bit. But in this case, and, and only in this area, there are, there are other areas on Exhibit 16, the area that you pointed out, along the stream channel, the intermittent stream channel running north/south, that, again, does not meet the definition of forest, but is more of a hedge row.

CHAIR: All right. So, let's, let's take this down,

or back a notch here. Just so I understand, because you refer to, you would, you know, you said things such as, you would revise or you would have revisions. What you're looking at sixteen, you've already done a forest stand delineation.

MR. KULIS: The County, yes, it has been done by the environmental consultant for the solar company. It has been reviewed and approved by the County.

CHAIR: Right.

MR. KULIS: So, I have the master here, yes.

CHAIR: Right, but you, but there are work sheets and other documents to be received.

MR. KULIS: That have not been submitted yet, correct.

CHAIR: So, there's nothing final as to what will be, either considered within the protected area from clearing.

MR. KULIS: That has not be finalized, true. The forest stand delineation has been approved by the County.

MR. SCHMIDT: Well, along, along those lines, Mr. Kulis, I think your advisory comment, the zoning advisory comment, is that if, if the Board, I think what it says, without putting words in your mouth, is that the environmental does not object to the approval of the special exception if it is approved, you will then require as a condition the submission of a forest conservation plan and all the attachments thereto, is that, is that a fair statement? Is

that how it works?

MR. KULIS: Yes, that's fair. There's a development process that this plan will have to, or this project will have to adhere to and part of the development project is the forest stand, forest conservation work sheet, forest conservation plan. All before a grading plan, a grading permit, is --

MR. SCHMIDT: Grading.

MR. KULIS: -- is approved.

MR. SCHMIDT: Just to be fair, Mr. Garber, and to make sure we're all not being confused, I think that's reflected on the comment, which is in evidence, that the department said as a condition of any approval they would want the Board or the ALJ to impose that requirement.

CHAIR: Right, and I, I seized upon the word revision or revised or whatever because he offered revisions previously, prior to the forest stand delineation, but now he's talking about looking at sixteen saying there may be subsequent ones.

MR. SCHMIDT: Sure.

CHAIR: And to distinguish the two processes.

MR. SCHMIDT: Right, and, but Mr. Garber, the area that you've identified is not impacted where your revisions might be requested, is not impacted by the area of the solar panels, correct?

MR. KULIS: Correct.

MR. SCHMIDT: The panels --

CHAIR: You said Mr. Garber, you mean Mr. Kulis?

MR. SCHMIDT: I'm sorry, Mr. Kulis. So, Mr. Kulis, the panels are outside of that area of revision?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay, okay. So, okay, I think we've discussed the forest stand delineation. You also, there's also in evidence previously submitted and it's referenced in your July 1st letter, Mr. Kulis, that there was a report regarding erodible soils and steep slopes, some type of an analysis of that, that was also submitted in this case. Is that correct?

MR. KULIS: July 1st?

MR. SCHMIDT: Yeah, I think it's your letter, talks about both of them in the same sentence.

MR. KULIS: That is, that is correct.

MR. SCHMIDT: Okay and just for the Board's education and ours, what generally, what is that? What's an erodible soils and steep slopes analysis? What, what are you asking them to submit and what have you looked at in review? What kind of is the purpose of that?

MR. KULIS: So, Title 3 of the County Code, the protection order, quality streams, wetlands and flood plains, establishes minimum setbacks for streams and wetlands based on the size of the stream, based on the use of the stream. So, the, the law establishes minimums. In this case, the minimum setback from the stream is a hundred feet. And twenty-five

feet from the edge of a wetland. The law goes on to further state that due to steeper slopes or erodible soils, that those minimum buffers may not be adequate to protect water quality. And there is a steep slope erodible soils analysis. To, to ascertain what an adequate buffer would be from the resources based on the soils, the cover, the land cover, the slope lift, how, how, how far from the crest down to the resource the drainage area.

MR. SCHMIDT: Okay. So, a report on those erodible soils and steep slopes was submitted, and I believe, Ms. Murphy, --

CHAIR: Six.

MR. SCHMIDT: -- that's exhibit number six. That was submitted to you as well, is that correct?

MR. KULIS: That is correct.

MR. SCHMIDT: And that was, was that likewise approved by you?

MR. KULIS: The revision, the revision was approved. I in June had asked for revisions to that. Several days later we received those and approved those in July.

MR. SCHMIDT: And that's reflected, I think, in your same letter of July the 1st, 2019? Okay.

MR. KULIS: Yes.

MR. SCHMIDT: All right. And I, just, Chairman Garber, I just wanted to confirm those. Those are already in

evidence and were submitted last time.

CHAIR: Um hm.

MR. SCHMIDT: I did want to give the witness, I think, a third analysis and I'll give copies to the Board. In addition to the forest stand delineation, which you've discussed, Mr. Kulis, and the erodible soils and steep slopes analysis, which you've discussed, both of which were approved, did you also receive a wetland delineation report?

CHAIR: And, if I can, you're about to hand him what is entitled on top wetland delineation report for Falls Road solar, Baltimore County, Maryland dated April 5th, 2019.

MR. SCHMIDT: Yes.

CHAIR: That we'll mark as Petition Exhibit 20.

MR. SCHMIDT: Right. And is that, as Mr. Garber's described it, is that the report you received?

MR. KULIS: Yes, that is.

MR. SCHMIDT: And was that reviewed by your office as well?

MR. KULIS: Yes, it was.

MR. SCHMIDT: And was that ultimately, and I'm going to give you a letter, which I'll ask Chairwoman Murphy to mark as exhibit number twenty-one, was that likewise reviewed and approved by you by, I think, this letter, Mr. Kulis.

CHAIR: I see Mr. McCann has the letter.

MR. SCHMIDT: Yes. And this, this indicates, this

predates, so this was before the, was revision, this was, this was before the revisions were made --

MR. KULIS: Yes.

MR. SCHMIDT: -- to the other two studies. But was this in response to the wetland delineation report?

MR. KULIS: That is correct. They were all received together, the wetland delineation steep slope erodible soils analysis and forest stand were all received as a packet and reviewed together, both in office review and then an on-site assessment of the documents.

MR. SCHMIDT: Okay. So, to cut to the chase, is it accurate to say that the department has received the forest stand delineation and approved it, has received the erodible soils and steep slopes analysis and approved it, and has received the wetland delineation and approved that?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay.

MR. KULIS: All three have been approved.

MR. SCHMIDT: And with, and saying that, you are nonetheless, as reflected in your advisory comment and your testimony here today, will require additional studies, forest stand, forest conservation studies, etcetera, as part of your ongoing review before any grading permits would be issued?

MR. KULIS: Yes, correct.

MR. SCHMIDT: Okay and the department does not oppose

or you do not oppose the granting of this special exception before those approvals are given?

MR. KULIS: Correct.

MR. SCHMIDT: Okay. Now, let me ask you, if I can, about a specific issue that's been raised in this particular case. You've kind of given us the general overview of the environmental laws and the regulations and things that have been reviewed. There are streams on the property, correct?

MR. KULIS: Yes, correct.

MR. SCHMIDT: And what are the regulations called that protect streams or provide protection for streams, what --

MR. KULIS: Right, that's the one that I had referred to earlier, is Title 3.

MR. SCHMIDT: Okay.

MR. KULIS: Protection of water quality, streams, wetlands and flood plains.

MR. SCHMIDT: Okay and that --

CHAIR: Forest buffer law.

MR. KULIS: The forest buffer law as, yeah, --

MR. SCHMIDT: Yeah, and even though it's called a forest buffer, it's really a buffer to water resource, correct?

MR. KULIS: It's a riparian stream buffer regulation of, that establishes a zone of non-disturbance. So, if left alone, theoretically, a forest should grow there, hence it's called the forest buffer law.

MR. SCHMIDT: Okay. Now, the plans that were submitted show the forest buffers that were determined, based on your analysis and all these reports that were submitted, correct?

MR. KULIS: I'm sorry, could you repeat that?

MR. SCHMIDT: The plans that you've reviewed, that we referenced and you've test, testified, ultimately established a required buffer for the streams on this site, is that correct?

MR. KULIS: Yes, they have.

MR. SCHMIDT: Okay and is it the department's conclusion that the solar facility, the actual panels and the areas of disturbance with the driveways and the panels, are outside and respect those buffers?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. So, this plan is then compliant with the environmental regulations as it relates to the protection of the water resource?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. With that being said, there was a question raised, specifically, Mr. Kulis, which I wanted to ask you about, regarding a connection, an actual utility connection or wire connection, a physical connection, between the two areas of the array. And that is shown, just so that Mr. McCann knows what we're talking about, as a, I think it's labeled UGE, and it's been described as a horizontal or boring

that'll be underground.

MR. MCCANN: Can we, can we just ask non-leading questions?

MR. SCHMIDT: I'm sorry.

MR. MCCANN: It's a critical issue --

CHAIR: I think that he's just drawing his attention in this instance to the specific --

MR. MCCANN: I think he's describing --

CHAIR: -- item that's going to be --

MR. MCCANN: He's describing the boring in that question. So, let's just ask the witness --

MR. SCHMIDT: Okay.

CHAIR: Well, hold on. I think you're just trying to establish the foundation for the purpose of his question. I don't think it's at dispute that that's what it's called, or where it's located on the map. We all have been through that on day one. So, let's, let's hear the question and then you can, --

MR. SCHMIDT: Mr. Kulis, --

CHAIR: -- you can certainly object again.

MR. MCCANN: Okay, thank you.

CHAIR: But let's hear it.

MR. SCHMIDT: Mr. Kulis, what do you call that? I want to call that whatever you would call it. Is it a horizontal boring or do you call it something else?

MR. KULIS: Well, the plan represents an, an underground electric connection between the two solar arrays.

MR. SCHMIDT: All right. So, there is shown on the plan an underground electric connection. Mr. Kulis, would that underground electric connection constitute a disturbance or an infringement on the area of the forest buffer?

MR. KULIS: As shown, no, it would not.

MR. SCHMIDT: Okay. Why not? I mean, it's going, it's going underground but it's going across the forest buffer. How does the department, how do you treat those in terms of forest buffer regulation?

MR. KULIS: Making an underground connection from one solar array to the other provided those sending and receiving areas for that underground connection are within the limit of the solar array disturbance, those solar arrays are outside of the area established as the forest buffer.

MR. SCHMIDT: Okay. So, the connection points are shown, where are the connection points shown? Are they inside or outside of the buffer, where you'll go down from the ground?

MR. KULIS: The connection points are, are shown in, within the solar fields.

CHAIR: So, if I could stop you there. The, what you're measuring for purposes of disturbance or infringement is the connection point, not the course of travel underground. It's only where it goes down and re-emerges, that is for

purposes of its location relative to the forest buffer.

MR. KULIS: And, and again, this, this is a, the, it's the colored site plan exhibit.

MR. SCHMIDT: Number sixteen.

MR. KULIS: Yes.

MR. SCHMIDT: That's what it shows.

MR. KULIS: Exhibit 16 is what it shows.

CHAIR: I'm saying for your review, you look at the connection points.

MR. KULIS: For our review, we will see a grading plan as part of this development project. And that grading plan, we will expect to see and require to see if this is an underground connection, we'll see a limit of disturbance, making sure that there are not those sending and receiving pits within the buffer.

CHAIR: So, you wouldn't, what I'm hearing and correct me if I'm wrong, would you consider to be disturbance or infringement by traveling underneath the stream?

MR. KULIS: No, no, we do not consider that disturbance.

CHAIR: And traveling underneath the forest buffer?

MR. KULIS: Correct.

MR. SCHMIDT: Why, why not, Mr. Kulis? Why isn't that disturbance? It's been alleged in this case that if you go under the stream, you're still disturbing and you're

violating the forest buffer law. Why aren't you if that's your opinion?

MR. KULIS: The forest buffer law, Title 3, speaks to surface water quality, the disturbance of the buffer zone, disturbance of vegetation. By, by directionally boring under the stream from the development sites, it avoids those impacts.

MR. SCHMIDT: Okay. So, as long as you keep, again, where, to make this simple sort of laymen's, as long as you keep where the wires go into the ground, because you're disturbing that area, obviously, but as long as you keep that within the array fields and outside the buffer, you're okay, essentially?

MR. KULIS: Yes, correct.

MR. SCHMIDT: Are there rules and regulations that the department would require in terms of how deep you have to do the underground connection? I mean, or how is that determined?

MR. KULIS: It would be reviewed for, at the very least, a note on the plan, stating the directional boring. Also, the utilities typically require a three foot cover from the lower invert of the stream to, to that utility.

MR. SCHMIDT: So, you got to keep three feet from the, essentially, the bottom part of the stream to where the conn, where the wire is?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. Have you, in your experience, Mr. Kulis, seen other utility type connections under environmental resources? This is an electric line, but sewer lines, water lines, those kinds of things?

MR. KULIS: Yes.

MR. SCHMIDT: Does this happen frequently?

MR. KULIS: Yes, it does.

MR. SCHMIDT: Okay and how is the department, how does the department regulate then, the same way or is it different?

MR. KULIS: It, it, it's applied the same way.

MR. SCHMIDT: Okay. Okay.

MR. KULIS: I mean, there are, again, there are, I guess, management requirements for forest buffers and there are certain uses that are permitted within forest buffers. The, the standards should be avoidance of impacts and if you can't avoid, then you minimize.

MR. SCHMIDT: And that, that kind of gets us into isn't that what an alternatives analysis is for?

MR. KULIS: That's correct.

MR. SCHMIDT: And what's an alternatives analysis?

MR. KULIS: And I believe it was mentioned in our, again, in our earlier zoning comments.

MR. SCHMIDT: Um hm, but what is that, so the Board knows what an alternatives analysis is?

MR. KULIS: So, an alternatives analysis is, again, another document that is prepared with, with alternate designs considered for the project to again meet those avoidance or minimization standards.

MR. SCHMIDT: Okay. Now, if there's no impact to the stream because you're not disturbing on the top, Mr. Kulis, is an alternatives analysis required in this case?

MR. KULIS: In this case, no. That comment was made earlier on because it was not clear if this was an aerial crossing or an underground crossing.

MR. SCHMIDT: Okay. But if it's an underground crossing you wouldn't even need an alternatives analysis because you're not disturbing anything?

MR. KULIS: Correct.

MR. SCHMIDT: Okay.

MR. KULIS: The, the way it's shown here.

MR. SCHMIDT: The way it's shown on these exhibits.

MR. KULIS: If, if, if for some reason --

MR. SCHMIDT: If they move the point --

MR. KULIS: -- right, if for some reason they, the points of, of sending and receiving were moved within the buffer.

MR. SCHMIDT: Right.

MR. KULIS: Then an alternatives analysis would be required.

MR. SCHMIDT: All bets are off because now you're disturbing the buffer if you dig the hole in the buffer.

MR. KULIS: Correct.

MR. SCHMIDT: Okay. To, to keep it simple, okay. So, Mr. Kulis, I know your comments and your review during the course of, of grading permits and grading plans will require additional documents but, and I may have asked you this, but the department has no objection to the approval of this special exception based on the information submitted at, to this point in time?

MR. KULIS: To this point, that's correct.

MR. SCHMIDT: Okay. I think that's all the questions I have of the witness. Thank you.

MS. DOPKIN: Mr. Kulis, while Mr. McCann is --

MR. SCHMIDT: And I just want to make sure those two exhibits were in.

CHAIR: Sorry, good point. Mr. McCann, any objection to Exhibits 20 and 21?

MR. SCHMIDT: That's the wetland and the letter.

CHAIR: Or say any exhibit, any objection to twenty and/or twenty-one?

MR. MCCANN: No objection, thank you.

CHAIR: No objection, so they're both admitted.

MR. SCHMIDT: Thank you.

MS. DOPKIN: Mr. Kulis, I just have a question. When

a utility of any character tunnels under a resource, is there a conduit or, I mean, mechanically, just, I'm trying to envision what they do.

MR. KULIS: I guess there are several different types of installation so. It may require to be sleeved to, again, depending on what the utility is. It may just be a wire or, or a water line or a pipe, so.

CHAIR: Well, let's take it in this context. Where we have electrical, electrical wiring going underneath the stream, what would you expect, I, I realize you are not giving an opinion as to what will be required but what is generally required in those situations?

MR. KULIS: And that's, again, an engineering and electrical term. I would, I would expect, I would expect there to be some sort of protection on the wiring in this case. But, not, nothing else.

MS. DOPKIN: Now, if it were a sewer line, which is a possibility, is there a manhole or anything that is put inside the buffer?

MR. KULIS: Yeah, use, usually most of the public sewer lines are, are larger and, and would, would be an open cut, this type of installation.

MS. DOPKIN: So, you actually can't just tunnel.

MR. KULIS: Yeah, for something like that.

MS. DOPKIN: Okay, thank you. I was just thinking of

the mechanics.

CHAIR: So, I asked this question, I believe, on day one. When you, assuming it to be three feet for the sake of argument, when you go underneath the forest buffer, do you encounter any tree roots of trees within the forest buffer?

MR. KULIS: It may be possible, yes.

CHAIR: And if, when you say it may be possible.

MR. KULIS: Sure.

CHAIR: Assuming that to be the case, is that considered a disturbance or an infringement within the forest buffer?

MR. KULIS: No, it is not.

MS. DOPKIN: Even if it resulted in life threatening injury to the tree?

MR. KULIS: Most of the tree roots are within the top two feet, as --

CHAIR: Doesn't that depend on the tree?

MR. KULIS: -- as far, certainly it does. Certainly it is specie specific but, but most tree roots for collection of water and nutrients are in the top two feet of the strata. And then, you also have to look at area. Tunneling, tunneling under a tree maybe six inches wide is certainly preferred over cutting at least a foot wide all the way through.

MS. DOPKIN: Um hm.

MR. KULIS: So, a six inch bore underneath of the

primary root system is, is a very minimal impact.

CHAIR: Do we know what the projected or expected or proposed width would be for this, we'll call it channel, underneath the stream and buffer?

MR. KULIS: Again, the tunnel under the buffer, I would, Larry I'm sure has solar people here that could speak to the size of that cable. I'm sure that, again, it's, it's, look at aerial arrays overhead. I mean, they're certainly no more than six inches wide.

CHAIR: So, would you --

MS. DOPKIN: And would that show on a grading plan normally?

MR. KULIS: The, the, if we don't have a note, then we'll look at other cross sections would be provided, in, in looking at utility infrastructure.

MS. DOPKIN: Um hm.

MR. KULIS: We look at profile or cross section plans all the time.

CHAIR: Would you have, would it be something that you would require that the width of the tunnel would be the minimum necessary or is it something where you have some leeway or what's the discretion in determining how the width from your, in your job?

MR. KULIS: Well, and, and there is discretion when we talk about avoidance and minimization of impacts for --

CHAIR: Whose discretion?

MR. KULIS: -- for surface, again, for these surface things that I spoke of. The, and --

CHAIR: Who has discretion? You or, or the applicant?

MR. KULIS: Oh, we're the permitting reviewing authority, yes.

CHAIR: Okay. Then you talked about surface, but we're now talking beneath the surface.

MR. KULIS: Correct.

CHAIR: All right. So, with respect to beneath the surface, let's focus on that part.

MR. KULIS: Well, this goes back to certain structures and uses that are permitted within the buffer. So, our, our earlier alternatives analysis discussion was to make sure that if there was an aerial, let's say a cable overhead, where the utility would want to keep that clear and free of trees and shrubs, in this case, they're putting it underground, to, to avoid those impacts.

CHAIR: You, let me ask you, then take it a step further, does that satisfy the avoidance or, or minimization standard?

MR. KULIS: Yes, that, that has, if, if they were, and they are, I think, probably the original plan had shown an aerial connection. So, crossing at the narrowest spot in the

buffer from, or across the buffer, the narrowest portion of the buffer, which this plan is doing, crossing from within the existing, you know, solar array LOD, out to the other solar array LOD, that, that meets the, that they're not disturbing the buffer.

MR. SCHMIDT: And LOD means limit of disturbance.

MR. KULIS: Sorry.

MR. SCHMIDT: That's okay.

CHAIR: All right. Thank you. So, for alternative analysis, do you ever look at a different set up as to how the, well, this is such a rare thing, I think we're going to have two separate pods for the solar field. Would you consider having them individually fed to the, to the utility lines? That is, not joined together. Is that part of your alternative analysis that you consider?

MR. KULIS: That could be, yes, yes, but --

CHAIR: Was that, was that considered in this case?

MR. KULIS: Well, they haven't submitted an alternatives analysis because --

CHAIR: I understand.

MR. KULIS: -- its, again, it's not --

CHAIR: But you said it's not required.

MR. KULIS: -- it's not required.

CHAIR: Okay. Okay.

MR. SCHMIDT: If the, just to be clear, Mr. Kulis, if

the, if the Board's, I didn't want to interrupt the Board.

CHAIR: Go ahead.

MR. SCHMIDT: But, as I understand it, if you would obviously cut across the ground, you would need an alternatives analysis.

MR. KULIS: Right, if you were open trenching, you would need an alternatives analysis.

MR. SCHMIDT: Alternative analysis.

CHAIR: Right.

MR. SCHMIDT: Or if you were going with a wire that was on a pole --

MR. KULIS: If you were going with a wire --

MR. SCHMIDT: -- even across --

CHAIR: One second, one at a time, please.

MR. SCHMIDT: Okay.

CHAIR: I know that you're going to echo what he says based on what I'm already hearing, but --

MR. KULIS: Yes.

CHAIR: So, hold on, let him ask his question.

MR. SCHMIDT: Okay. So, if you, if you would dig a trench to, to, to bury something, you would need an alternatives analysis?

MR. KULIS: Correct.

MR. SCHMIDT: If you would put a wire across, elevated, you would need an alternatives analysis because you

could be trimming trees at some point to make sure the wire didn't get in the trees, correct?

MR. KULIS: That is correct.

MR. SCHMIDT: But if you're going underground and you're starting underground on both sides in the area of the array and not in the area of the buffer, you don't need an alternatives analysis?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay. So, you don't need an alternatives analysis here because that's what they're proposing?

MR. KULIS: Correct.

MR. SCHMIDT: Okay.

MS. DOPKIN: I have one last question. I hope it's the last question.

CHAIR: I don't, so that's good.

MS. DOPKIN: In prior hearings, we've heard allegations that solar panels heat water flowing into the stream. Do you look at that issue or does storm water management? It does affect the resource if it is, in fact, the case.

MR. KULIS: We, we do not look at that. My section is, again, geared to the development review aspect. We've established, in the case of this plan, we've established the adequate stream setback buffers through the application of

Title 3.

CHAIR: Does anyone, then, review Ms., what Ms. Dopkin was just asking? If not your department, or division, or office, does someone else do it? Like storm water management?

MR. KULIS: We have a water quality, a watershed and water quality review section or program that, that does monitoring of, of stream health, stream temperature.

CHAIR: How about prior to permit being issued?

MR. KULIS: They are reviewing all Baltimore County streams. They're not geared toward permit review. They're, they're reviewing all of Baltimore County streams.

CHAIR: Well, Ms. Dopkin's question though is, there has been testimony in other solar cases that water running off the panels is going to be at a temperature higher than rainwater and that the proximity of those panels to another water source, the water running off those panels could feed into that source and then change the water quality. So, her question, and correct me if I'm wrong, if it's not your office that does that, who looks at that, if anyone, prior to any permits?

MR. KULIS: I, I'm not aware of, can't answer that.

CHAIR: Okay. Does that answer your question?

MS. DOPKIN: Sure.

MR. SCHMIDT: But let me, let me ask you though, Mr.,

Mr. Kulis, isn't --

MR. MCCANN: Can I ask questions and then we get back to Larry?

CHAIR: Hold on, hold on. Wait, wait, one second.

MR. MCCANN: Sorry to interrupt.

CHAIR: One second.

MR. SCHMIDT: I'm not finished, I'm just not finished my direct yet.

CHAIR: Not just that, but --

MR. MCCANN: You were.

CHAIR: -- you were also in the middle of your question.

MR. MCCANN: You were finished.

CHAIR: So, Mr. McCann, just one second. Let him finish his question. If you have an objection, certainly --

MR. MCCANN: It's all right, it's all right. He was finished, but that's okay.

MR. SCHMIDT: Mr. Kulis, I mean, --

CHAIR: (inaudible) back up. He has the right to follow up based on what we have just asked.

MR. MCCANN: I'm just asking for the opportunity to ask questions first and then let him follow up, that's all. But it's okay, it's fine.

MR. SCHMIDT: Okay. Mr. Kulis, I mean, you have testified that Environmental Impact Review, which is you, --

MR. KULIS: Correct.

MR. SCHMIDT: -- established the stream buffers, that is, how far, how close to the stream you can have a limit of disturbance, is that correct?

MR. KULIS: That's correct.

MR. SCHMIDT: And, I mean, wouldn't such concerns as the impacts, in any development, in other words, if you develop out, if you would develop anywhere outside the buffer, the, the reason that the buffers are what they are is to make sure that that development is far enough away from the stream to insure that there won't be a detrimental impact on the, on the stream? I mean, isn't that why you have buffers?

MR. KULIS: The, yes, the buffer is established to protect the stream during construction activities.

MR. SCHMIDT: Okay and actually during the use, I suppose, as well, right? I mean, are you going to have a buffer here so that any water that would fall off the panels would have to traverse the buffer to get to the stream, correct?

MR. KULIS: That water is traveling through, sure, yes, a stable area.

MR. SCHMIDT: Right.

MR. KULIS: Before it reaches the buffer.

MR. SCHMIDT: Right.

CHAIR: That, are you done, Mr. Schmidt?

MR. SCHMIDT: Yes.

CHAIR: All right.

MR. SCHMIDT: And I don't think I have any other questions.

CHAIR: Ms. Murphy, you had a question?

MS. MURPHY: Different question. So, in this case and other cases, does your office deal with 33-3-108? Do, do you know that section?

MR. KULIS: Okay, 33-3-108 is plan information.

MS. MURPHY: Yes. Is that something your office handles or your, what you, you handle?

MR. KULIS: Yes, that is, that is part --

CHAIR: Sir, let me Ms. Murphy finish her question before answering.

MS. MURPHY: That's okay, that, that's fine. So, your office does handle 33-3-108?

MR. KULIS: Yes.

MS. MURPHY: The plan information. Do you make sure when the plans come in, the ones that you reviewed in this case, that all of the items listed under C are on the plan or is there a different time when your office would consider it appropriate to see that information? Does that make sense?

CHAIR: You mean, have, has he required it to date?

MS. MURPHY: Yeah, I just --

CHAIR: Or will he require it subsequent to this

process?

MS. MURPHY: So, on the plan that you reviewed, do you make sure that 33-3-108-C-8 one through eighteen are listed on your plans or, or is it your policy, your office policy, to have it, that information on the plan at some point? Can you give me some insight, if you know, if you (inaudible)?

MR. KULIS: We do apply 33-3-108. The plans that we have here before us, or the ones that I've reviewed, are laying the foundation. They're some of the earliest plans in the process. But, but we would make sure that the requirements of the Code are, are met and some things they may not, some things may not pertain and some things may be preliminary.

CHAIR: Can I summarize what you just said? Okay, sorry.

MR. KULIS: So, I'm sorry.

MS. MURPHY: Oh, I'm sorry, I thought you were looking.

MR. KULIS: I was, I was looking, I was looking. So, sometimes things like a non-disturbance note, like number seventeen, may not be on an initial plan in, in a development project, really the ideal way to go about these things and the way they typically go about is to delineate your resources, find out your sensitive areas and tailor your construction activities to the areas that are, you know, least sensitive, where it would be least detrimental. So, not every plan or the

first plan may not have all eighteen items on it.

MS. MURPHY: Okay and so, when you have a forest stand delineation plan or steep slopes plan, do you go back to them or, at some point, say hey, you're missing number whatever, you know, nine or we need this and how does that work?

MR. KULIS: Right, and a forest stand delineation plan is under, it's under a different title. But let's say a wetland delineation plan then. For, for this, for this purpose. I, I would not disapprove a wetland delineation or not, or send it back because they don't have a non-disturbance note on the plan. We don't, we don't know if there are wetlands out there and, until we go out and see it for ourselves.

MS. MURPHY: Okay.

MR. KULIS: So, so it's a continuum. These plans metamorphose over time. We're, there was a first development plan that was submitted for, for zoning review that we could not support based on the level of impact that was proposed. They addressed our comments and concerns, have done the field reviews, we've had a chance to go out and determine that, that they have done that correctly and have come back with a modification to that plan. So, now we're to the point where, where the next step, the next phase. We can, we can, we can move up to that point and then look ahead for the next

submissions of the forest conservation work sheet and the forest conservation plan.

MS. MURPHY: Okay and this 33-3-108 indicates that there's a plan and, and this is why I'm asking this because this has come up in other cases, not necessarily in this case yet, but anticipating that it's going to come up. So, C says, the plan shall contain (inaudible) information, but you're your testimony that some of these things may not apply early on to a wetlands plan, for example, or it may not apply at all.

MR. KULIS: Correct.

MS. MURPHY: Okay and so, if, if, would you agree with, you know, a condition perhaps (inaudible) hypothetically that we, as a Board, say, or, I mean, an ALJ would say that, you know, approval, condition upon 33-3-108 compliance. That's sort of what we've been doing.

MR. KULIS: Yeah.

MS. MURPHY: I wanted to know if that was okay by your office?

MR. KULIS: I would say yes and while I appreciate your concern, you know, and it's, it's, it's, I appreciate it just as a reviewer seeing that okay, that there are certain conditions applied with, you know, let's say an approval, for instance.

MS. MURPHY: But the issue is, is it not too late at that point? Do you consider it, does your office consider it

too late if in an Order we say as a condition of approval go get your 33-3-108-C approval?

MR. KULIS: Correct. I don't, I don't, I don't think that it's, it's too late. Again, I, from, from where I am in the development review process, I still may see a limited exemption development plan, you know, or special exception plan. Certainly a grading plan, a grading permit, environmental agreement, there are still many reviews that this plan has to go through.

MS. DOPKIN: Do you actually see the special exception, say the Administrative Law Judge's Order and any conditions that are attached to that?

MR. KULIS: If there's a special exception plan that goes through PAI to the agencies, yes. A limited exemption or special exception plan, yes. I see that.

CHAIR: I have a question. How do you know af, I realize this is now projecting into the future and it's not happened as of yet, if a solar project is approved and there's an Order from the Board that says, or from the ALJ that says, you must comply with the 33-3-108 plan, how do you know that there is compliance with the 33-3-108 plan?

MR. KULIS: You know, that's again, basically, a check list and I, I would, I wouldn't really, I mean, plan information is important. This, this section is important. But taking the overall law of Title 3, I wouldn't just, I

wouldn't say, oh, it's got to be 108.

CHAIR: No, I'm not following your answer. So, let me, let me back up. Who, if anyone, has the ability to confirm compliance with the 33-3-108-C plan? So, now, let's forecast like two years after that plan is approved and let's assume that there's a zoning relief that orders compliance to that plan. Does anybody over at DEPS go over to confirm compliance with that plan or is it just one of these things where something has to happen for to it get, for it to get noticed?

MR. KULIS: Well, it's, it's compliance with the plan in that that is one section of that law.

CHAIR: Who at DEPS, if anybody, has that responsibility?

MR. KULIS: It's, it's taken as part of the review process. There isn't, say, one person who reviews that to see that, that that is --

CHAIR: I think we're talking about two different things again. I'm saying forecast two years in the future, beyond, after there's already approval. So, you're not reviewing anymore, you, presumably someone's already determined that there is a 33-3-108-C plan --

MR. KULIS: Okay.

CHAIR: -- the checklist is all checked off as necessary, that's all resolved. The question is, then go two years into the future, how do you know, because it, you know,

they're sensitive environmental issues, how do you know that the plan is being followed?

MS. DOPKIN: (inaudible) enforcement?

MR. KULIS: And are you, right, are you --

CHAIR: That's what I'm saying, is like how does that arise?

MR. KULIS: -- referring to a building permit? Are you saying that the project has already been constructed or are you saying that the project has received approval but has not been constructed and two years from now they come in?

CHAIR: No, I'm saying, as Ms. Dopkin alluded to, from an enforcement perspective, how do you know that your plan, your approved plan, is being followed? That is, do you have to wait till something terrible happens or, or is it something that you inspect or how does that happen?

MR. KULIS: Okay. Because those are kind of different things. I mean, 108, 108 is more, again, setting, setting the plan up kind of in the beginning, making sure that everything is there. But yes, down the road, --

CHAIR: After construction is already finished.

MR. KULIS: -- after construction is done, after construction is done, these easements will be established and recorded as, as easements. The, the forest buffer and forest conservation areas will be recorded as easements in the Land Records of Baltimore County, you know, in perpetuity,

theoretically.

MS. DOPKIN: Once, yeah, but lots of people violate easements. The question is --

MR. KULIS: And, and we have an environmental enforcement section.

MS. DOPKIN: That's the, that's --

MR. KULIS: In my, in, within Environmental Impact Review.

MS. DOPKIN: And are they proactive or reactive? Does somebody have to complain or do they periodically look to see if there's --

CHAIR: You inspect, like you inspect bridges every now and again, that's what we're referring to.

MR. KULIS: Right, right. When, when staffing level permits, yes. We have routine inspections.

MS. DOPKIN: Thank you. That's all I wanted, I think that gets to the answer Mr. Garber wants.

CHAIR: Yes, that is.

MR. KULIS: And, and we also respond to complaints as well.

MR. SCHMIDT: I just, I don't know if the Board is done, but I just, again, I just wanted to finish my question, I had a question as a result of your question.

CHAIR: It will help with the, I think it will help with questioning if he finishes there, because you're still

going to be able to cross examine and hopefully this eliminates the need to do re-direct on the same point then, you're going to do re-cross.

MR. MCCANN: That's fine.

CHAIR: Let's just get it out now.

MR. MCCANN: Thank you, Mr. Garber.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Mr. Kulis, you, you mentioned that you see the special exception plan, when a special exception is filed and, in fact, that's why your department issued zoning advisory committee comments because your plan, your department reviews that, correct?

MR. KULIS: Correct.

MR. SCHMIDT: And if a plan goes before a, the DRC and gets an exemption, that doesn't, that does not mean that your department will not touch that project anymore, is that correct?

MR. KULIS: That is correct.

MR. SCHMIDT: You're going to see grading plans, correct?

MR. KULIS: Yes, correct.

MR. SCHMIDT: You're going to see plans that accompany the various environmental easements that are required, the forest buffer easement, the forest conservation easement, there's a whole host of reviews that you have over

and, over and above the development rev, development plan review, is that correct?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay.

MR. KULIS: That, --

MR. SCHMIDT: So, in order to get a permit to actually do construction, DEPRAM has to sign off on the permit application and see all types of plans related to that, correct?

MR. KULIS: That is correct.

MR. SCHMIDT: Okay. So, this notation that if you don't do a development plan, DEPRAM doesn't get to see anything and regulate anything, is that correct?

MR. KULIS: That, you know, that is, that is not true.

MR. SCHMIDT: Okay.

MR. KULIS: That is not true. There are, there are development procedures, but then there's also our review and regardless of the procedure that it goes through, we're still doing the review.

MR. SCHMIDT: Right, okay. That's all the questions I had, thank you.

MR. MCCANN: Okay.

CHAIR: Now, before we start.

MR. MCCANN: Yes.

CHAIR: Do you want to take a break?

MR. MCCANN: No, thank you.

CHAIR: Because we, okay.

MR. MCCANN: I'm going to forget all the questions if we go any longer. So, I'd like to get through it.

CHAIR: No, that's fine.

MR. MCCANN: If you want, if you want to take a break, I'm, I'm fine, no.

CHAIR: I'm actually just offering you as a courtesy.

MR. MCCANN: Okay. No, I appreciate it.

CHAIR: Just because we've been here for almost two hours and there's been a lot that came out.

MR. MCCANN: No, that's okay. I'm sure Mr. Kulis needs to get back to work as well, so.

CHAIR: So, yes. And that's fine, we can proceed.

MR. MCCANN: So, on that latter point, I think the context that you were missing, everybody else in this room understood the context, but maybe you didn't, we're not talking about 33-3-108 in and of itself. There is a provision in the zoning regulations that says, this is what Ms. Murphy was referring to, a, this is the zoning regulations dealing with solar facilities.

MR. KULIS: Okay.

MR. MCCANN: Says a Petitioner shall comply with the plan requirements of Section 33-3-108 of the County Code.

MR. KULIS: Okay.

MR. MCCANN: So, that's, so we're not talking, I think you understood that entire discussion, I think was just about 33-3-108. My, I guess, so you, the point I would like to ask you about is at this point in time, --

MR. KULIS: Yes.

MR. MCCANN: -- number one, we don't have a development plan, correct?

MR. KULIS: Correct.

MR. MCCANN: We have a zoning plan that you've seen.

MR. KULIS: Correct.

MR. MCCANN: You've already acknowledged that there will be additional reviews?

MR. KULIS: Yes.

MR. MCCANN: But at this point in time, based on this zoning plan, as opposed to a development plan under 33-3-108, can you sit here today and assure us that this zoning plan complies with everything in 33-3-108? Can you say that with certainty?

MR. KULIS: No, I can't.

MR. MCCANN: Okay. Next question. You said, Mr. Kulis, you said, you were talking about the six inches, you're not, you're not sure of the size of the boring, which I understand, you're not here to design it. But you said the six inch bore will have minimal impact, certainly in comparison to,

again, without designing, of one foot trench, which I think everybody would concede would be an impact, is that correct? You said something to that effect?

MR. KULIS: Yes.

MR. MCCANN: Okay.

MR. KULIS: (inaudible).

MR. MCCANN: And you even, and I guess in response to Ms. Dopkin's question, you acknowledge that even roots, it's possible, could be disturbed. So, I guess my question is, we're not really talking, you mentioned avoidance of impacts.

MR. KULIS: Um hm.

MR. MCCANN: And then minimization of impacts.

MR. KULIS: Yes.

MR. MCCANN: Really, we're not avoiding impacts. What we're doing is minimizing impacts here and your, and your, you have made the call that there's not enough of those impacts that we're minimizing to warrant an alternatives analysis?

MR. SCHMIDT: Objection. That, I don't think that's what he said.

MR. MCCANN: Well, I'm asking if that's what he said, if that's what he's saying.

CHAIR: Mr. Schmidt, I will overrule the objection. I under, I have a recollection of what his testimony was. He is clarifying his recollection as to what the testimony is.

MR. MCCANN: Yeah, you want me to rephrase the

question?

MR. KULIS: Yeah, yeah.

MR. MCCANN: Okay. So, we, you mentioned again, just so, and I heard this terminology before, avoiding impacts and minimizing impacts.

MR. KULIS: Um hm, okay.

MR. MCCANN: And you've acknowledged, more than once, that there will be impacts but it sounds to me, correct? Correct?

MR. KULIS: I was referring, I believe, if I recall correctly to Ms. Dopkins talking about a tree roots and impacting tree roots, if that's --

MR. MCCANN: Yeah, I'm not referring to that specifically. You said --

MR. KULIS: If that's what I was --

MR. MCCANN: Aside from her question, I just used that as an example. You said that six inch, I wrote it down, a six inch bore will have minimum impact, and you were, that was in the context of discuss, discussing, comparing it to the impacts of a one foot trench. So, here's my question. We're not really avoiding any and all impacts, or disturbance, what we're doing is we're minimizing them and you have made the call that the, the impacts were so minimal, in your opinion, that there is an alternatives, alternatives analysis even necessary, is that a fair characterization?

CHAIR: Mr. Schmidt?

MR. SCHMIDT: I'm just going to object to the question.

MR. MCCANN: Okay.

MR. SCHMIDT: Because I don't think that's a fair characterization of his testimony.

CHAIR: I believe this witness certainly can, so I'm going to overrule it because I believe this witness certainly can answer the question. Whether he agrees with the premise or not, or whatever the case may be.

MR. KULIS: Right, yeah, I, yeah, I kind of disagree with the premise. There are no forest buffer impacts.

MR. MCCANN: You said that technically or literally physically, there's not going to be a specific impact in this forest buffer? You mean that technically?

MR. KULIS: For, for the, for the Baltimore County Code, for forest buffer impacts.

MR. MCCANN: Right.

MR. KULIS: There are, there are no impacts to the forest buffer for this project in water quality standpoint.

MR. MCCANN: Okay. Let me, let me put it this way. Maybe this is a better way to characterize your testimony. For purposes of determining whether an alternative analysis is required, it's your testimony that there are no impacts, is that fair?

MR. KULIS: Correct. Yes, there are no impacts.

MR. MCCANN: Okay. Your testimony is what it is about physical impacts, not legal impacts, but physical impacts. So, is there, and I asked sort of the same question of Mr. Perlow, is there any written policy of your department that tells us that the, what I call the physical impacts associated with directional boring, do not constitute legal impacts for purposes of an alternative analysis, is there any, anything in any policy that addresses that?

MR. KULIS: No written policies.

MR. MCCANN: You have 33-3-112 in front of you, by chance? This is Protestant's Exhibit 2 for the Board's reference.

CHAIR: Protestant's Exhibit 2?

MR. MCCANN: Yes.

CHAIR: Sir, do you need that or do you have reference to pull that up?

MR. KULIS: Okay.

CHAIR: Is that a yes?

MR. KULIS: I, I have it, yes.

MR. MCCANN: Okay and I'm going to --

CHAIR: So, to be clear, he's not looking at the actual exhibit, but he otherwise has a copy of 33-3-112.

MR. MCCANN: Great. Do you guys have it in front of you?

CHAIR: Well, I'm getting it.

MR. MCCANN: Okay.

CHAIR: But just, he's not looking at the actual exhibit, just to be clear.

MR. MCCANN: No, I understand that, thank you.

MS. MURPHY: (inaudible).

MR. MCCANN: I did, yeah.

MR. SCHMIDT: Michael, what, what number is that again?

MR. MCCANN: Looks like this, just, if that's any help.

MS. MURPHY: Oh, I know, well, I see (inaudible).

MR. MCCANN: Our Exhibit 3.

MR. SCHMIDT: I'm sorry. Oh, it's the section --

MR. MCCANN: Well, the first section on the first page of the exhibit is 33-3-111.

MR. SCHMIDT: Yeah, that's this, okay. All right, just want to make sure I have the right one.

CHAIR: Sorry.

MS. MURPHY: I'll just use the exhibit copy, go ahead. Go ahead.

CHAIR: You want --

MS. MURPHY: No, no, I'll use the exhibit copy. Go ahead.

MR. MCCANN: Okay. Okay. So, in the exhibit itself,

and I know Mr. Kulis doesn't have the exhibit, but I want to refer you to 33-3-112.

MR. KULIS: Okay.

MR. MCCANN: Which is the fourth page, for the Board's reference, and Larry's reference, of our exhibit. And it's entitled management requirement for forest buffers.

MR. KULIS: Okay.

MR. MCCANN: And I know you're familiar with this--

MR. KULIS: Yes.

MR. MCCANN: -- section, Mr. Kulis.

MR. KULIS: Yes.

MR. MCCANN: And I asked a similar question of Mr. Leffner. I always look at this section as prohibited practices under Subsection B.

MR. KULIS: Um hm.

MR. MCCANN: And then sort of authorized structures, practices and activities on the next page, for the Board's reference, --

MR. KULIS: Okay.

MR. MCCANN: -- in forest buffers, right? Is that a good way of sort of dividing the section up in terms of looking at impacts?

MR. KULIS: Yes.

MR. MCCANN: Okay. So, in terms of prohibited practices, that is, things you cannot do in the forest buffer

without a variance, right? Prohibited --

MR. KULIS: True.

MR. MCCANN: -- prohibited practices --

MR. KULIS: True.

CHAIR: Hold on, hold on. Just, you're to answer your question, he said that's correct, or true. But that's correct. Ask your next question.

MR. MCCANN: Yeah, I apologize for talking over you. So, Subsection B, prohibited practice would require a variance?

MR. KULIS: Um hm.

MR. MCCANN: And Subsection C, authorized structures, practices and activities require an alternative analysis?

MR. KULIS: Yes.

MR. MCCANN: The standard for which is in there. But in terms of prohibited practices, am I correct, 33-3-112-B-2 identifies those, it says, I'll just read it to you. The following practices and activities are restricted within the forest buffer, etcetera. The existing vegetation within the forest buffer may not be disturbed, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying and grazing. Do you see that language? So, that's one way in which, that's one example of a prohibited practice in the forest buffer, that is, to paraphrase, you can't just throw out the existing vegetation, right?

MR. KULIS: Let me see. Okay, two, two lower case

double I, got it.

MR. MCCANN: Right. And then, another example of a prohibited practice in the forest buffer, one that would require a variance, is under B-2 Subsection little, three little I's, soil disturbance by grading, stripping of topsoil, plowing, cultivating or other practices. So, you can't disturb vegetation and you can't disturb soil under, correct?

MR. KULIS: Okay.

MR. MCCANN: And would you agree with me, at least for purposes of physical impacts as opposed to legal impacts, an underground utility line under this, under a stream such as this, is going to disturb soil and it's going to disturb existing vegetation?

MR. SCHMIDT: Objection and, and that, I just would object to, I know the point Mr. --

CHAIR: What's, what's the objection?

MR. SCHMIDT: The objection is, --

MR. MCCANN: He's, he's telling --

CHAIR: Mr. McCann. I need to hear what his objection is.

MR. SCHMIDT: The, the question is irrelevant. The, the standard is whether the, the, the law is, is violated or whether the law applies and the witness has testified his reasons for his opinion.

CHAIR: As I understood the question, I'm going to

overrule the objection. Mr. McCann, please continue.

MR. MCCANN: Either one of those occurring in, in, on what little you know about this, Mr. Kulis, that is, the underground utility line here, is either existing vegetation or, or soil disturbance taking place. As a matter of fact, maybe not legally speaking, but as a matter of fact, based on what you know?

MR. KULIS: I'm sorry, would you repeat that?

MR. MCCANN: Yeah. So, I'm not asking you about whether your department is going to require an alternative analysis or not, we all know you're not. I'm asking just as, would you agree with me that the underground utility line, as what, what little you know about it at this point, as a matter of fact, is going to involve some disturbance of either or both vegetation and soil?

MR. SCHMIDT: In, in the buffer?

MR. MCCANN: In the buffer, buffer area.

MR. KULIS: No, the, the forest buffer laws, which is what we're reviewing here, speak to disturbance of, of vegetation within the buffer and water quality aspects, surface water quality aspects of the stream.

MR. MCCANN: What about soil disturbance?

MR. KULIS: Soil disturbance within the forest buffer, again, as it pertains to surface disturbance that would impact water quality of the stream.

MR. MCCANN: Okay. So, you're, you're giving us, and I understand why you're doing that, because that's what you do, you're giving us an interpretation or an answer to the question that involves the, the purpose of the law. I'm asking you simply as a matter, as a factual matter, will this underground utility line as you understand it to be, will it involve any, any disturbance of either or both vegetation or soil? It's a rhetorical question, almost. Of course it's going to, right?

MR. KULIS: Okay. Sure, there will be disturbance.

MR. MCCANN: Okay.

MR. KULIS: But not, --

MR. MCCANN: Not enough.

MR. KULIS: Right.

MR. SCHMIDT: No, --

MR. KULIS: It's, I mean, it's --

CHAIR: Well, hold on, hold on, everyone. Mr. Schmidt, let Mr. McCann ask his questions and let the witness answer them. All right. Mr. McCann, proceed.

MR. MCCANN: I guess my, I think my question was, it was not enough. There's just not enough of it for, in your opinion, to warrant or require a variance in the, in the case of these prohibited practices.

MR. SCHMIDT: I, I just have to object, Mr., Mr. Garber. Because the, the question is completely unfair. That's not what the witness is saying.

MR. MCCANN: I'm just asking --

CHAIR: Hold on, Mr. McCann.

MR. SCHMIDT: It's not a question of degree. I will stipulate that three feet under the stream, they're going to put a cable and to the extent that putting a cable in the ground causes, quote, disturbance, if that's what you want to call it, I mean, it's obvious. But the, the witness is not testifying that it's a little disturbance, he's testifying that it's no disturbance --

CHAIR: Okay.

MR. SCHMIDT: -- in the context of the law.

CHAIR: Okay, okay.

MR. SCHMIDT: So, it's an unfair question.

MR. MCCANN: And that, that --

CHAIR: Mr. McCann, I'm overruling the objection. I, I think I have an understanding as to what this witness is testifying to. I understand the purpose of your question. I understand his direct testimony and I understand his testimony on cross. I don't know that we need to belabor the point any further, so.

MR. MCCANN: Other, other than to say, I'm sorry, Mr. Garber, and I understand your, you're overruling the objection, is that is absolutely nothing other than coaching this witness what to say. Mr. Kulis is smart enough, and been doing this long enough, to answer the question for himself. And that's

what, that's what's happened.

CHAIR: Mr. McCann, you heard my ruling.

MR. MCCANN: Thank you.

CHAIR: Thank you.

MR. MCCANN: So, the question is, the follow-up question, if I recall it is, I think is that the, in your opinion, there's just not enough of that, meaning that disturbance, to require or warrant a variance for an alternative analysis?

MR. KULIS: In the context of this law and the way that it is applied in the department and has been for, let's say, fiber optic cable running down the side of the road, there is not disturbance of the buffer in the con --

MR. MCCANN: Okay. In the context --

MR. KULIS: Is not, is not disturbance of the buffer.

MR. MCCANN: In the context of the law, correct?

MR. KULIS: Correct.

MR. MCCANN: You said that before that, you know, I think you even used the term frequently this happens. I mean, we all know there's lots of fiber optic cable all over Towson and elsewhere. But, have you ever, number one, have you ever been involved in, reviewed any solar project, any, that involves an underground utility connection that, that goes to a forest buffer and a stream? Have you been involved in any case like that, anywhere in the County?

MR. KULIS: I have been involved in many solar cases, none to this point.

MR. MCCANN: Okay. What about, all right, I'll move on. The, the next page of Protestant's Exhibit 2, which is, for your reference, Mr. Kulis, is the, the authorized structures, practices and activities. This is Subsection C.

MR. KULIS: Okay.

MR. MCCANN: Of 33-3-112. And again, I apologize, but I'm just going to read or maybe slightly paraphrase this section. It says the following structures, practices and activities are permitted in the forest buffer. Roads, bridges, trails, storm drainage, storm water management devices and practices and utilities approved by the department are authorized within the forest buffer provided that an alternative analysis has clearly demonstrated that no other feasible alternative exists and that minimum disturbance will take place. So, again, I, I think I read that almost verbatim. Those are authorized practices or activities, you just need to get an alternative analysis to make that showing?

MR. KULIS: That's correct.

MR. MCCANN: Okay and there's no, there's no mention in that section of disturbance at all. In fact, it just says these practices or activities are, are allowed you just, you just have to show, you have to make this showing.

MR. KULIS: Um hm.

MR. MCCANN: Correct?

MR. KULIS: Okay. Right, it goes back to avoidance and minimization.

MR. MCCANN: Right.

MR. KULIS: Yes.

MR. MCCANN: Now we're in the minimum, clearly in the minimization world, right? That is, there's going to be this impact, where you just have to show that minimum disturbance will take place and there's no other feasible alternative, correct? Paraphrasing the statute?

MR. KULIS: From the forest buffer regulations, this is not impact.

MR. MCCANN: I understand your, I, believe me, I understand that, Mr. Kulis. I'm just asking you about the language of the, of the Code itself. In fact, if you look a little farther down under C-2, Subsection little three, it says these structures shall be located, designed, constructed and maintained to, I'm using these verbs, provide maximum erosion protection.

MR. KULIS: Um hm.

MR. MCCANN: At the least adverse effects and maintain (inaudible) water quality. Again, this section doesn't deal with, doesn't address where there's no impacts, it addresses where there are impacts, it just requires minimization of them.

MR. KULIS: Yes.

MR. MCCANN: Okay, all right. The other thing I'm having a hard time understanding is the, sort of the chronology of all of this. And I think you said that, I think you were suggesting that the, I don't mean that in a negative way, just that you were indicating that when you, when your office issued the ZAC comments that we've all been talking about.

MR. KULIS: Um hm.

MR. MCCANN: That is Protestant's Exhibit 3-A and 3-B, you didn't, you didn't know at the time, whether the, the connection, utility connection, would, would, you know, how it was supposed to happen, correct?

MR. KULIS: Okay. Correct.

MR. MCCANN: The latest of these ZAC comments is June 3rd. There was a meeting on June 3rd of 2019. Can you confirm for me that as of June 3rd, 2019, your department had received the revised plan from the Petitioner? In other words, you had made the comments that you made in the, and the revisions that you suggested, Mr. Kulis, you had made those suggestions and, way before June 3rd of 2019, correct?

MR. KULIS: Which, I'm sorry, well, the comments were offered by Glen Schaefer, the supervisor of the program.

MR. MCCANN: But let me ask it this way, and I'll try to save time. Would it surprise you that every plan that's been filed since this, that has the two separate arrays on the

two parcels, every one of those shown the utility line to be underground? They all say UGE on them? Would that surprise you? Did you not notice that?

MR. KULIS: I did not notice that.

MR. MCCANN: Okay and they are what they are, but I guess the other question is, is both of these comments themselves, the ZAC comments, Protestant's 3-A and 3-B, both make reference, or characterize this cable as underground. They both say --

MR. KULIS: Okay.

MR. MCCANN: Right?

MR. KULIS: And with these comments, we have to make sure that we have covered our bases.

MR. MCCANN: Yeah, and I'm wondering and I know --

CHAIR: Can, can I stop you just there?

MR. MCCANN: Okay.

CHAIR: Do you have those exhibits in front of you, sir?

MR. KULIS: I do not have the one, the December --

CHAIR: Let's make sure he has both.

MR. KULIS: -- the December 24th, oh, oh, oh, I'm sorry. Well, the full, yeah, I have our comments, yes.

CHAIR: All right. Why don't you take a second to review both, both of those so Mr. McCann can ask his questions about the comments.

MR. MCCANN: That's fine.

CHAIR: Because I'm sure that, just for purposes of the record, we need to make sure that your answers are applicable to the comments, after, and knowing what they say and when it was said and all the other stuff, because his questions are all about timing, so.

MR. KULIS: Okay, okay.

MR. MCCANN: And I think I referred to the wrong exhibit, just for the record. The, the, the first ZAC comment dated December 26, 2018 is Exhibit 5.

CHAIR: Okay. So, --

MR. MCCANN: And the second, the later ones --

CHAIR: I see.

MR. MCCANN: -- are, is, are in June and July of 2019.

CHAIR: So, with that, can we also provide Exhibit 5 then, Protestant's five, to the witness so the witness can review that as well?

MR. MCCANN: I'm sorry. I can give him my copy.

MS. MURPHY: Do you have his or do you want me to give (inaudible)?

MR. KULIS: Which, yeah, so --

MR. MCCANN: Here, I have --

MS. MURPHY: I'll just give (inaudible).

MR. KULIS: Okay, thank you. June 3rd.

CHAIR: And once you've reviewed all of those, just let us know when you're ready.

MR. KULIS: Okay, so five is the December 24. Okay. So, we'll just, 3-A and 3-B, okay and five. Just --

CHAIR: Hold on. There's no question at the moment. Have you reviewed 3-A, 3-B and 5?

MR. KULIS: Yes.

CHAIR: Protestant's Exhibits 3-A, 3-B and 5?

MR. KULIS: Yes.

CHAIR: All right. Now, is there anything that you just read, would it change any of your answers that you gave Mr. McCann?

MR. MCCANN: Maybe I should re-ask the question.

CHAIR: Well, that's, yeah, I was trying to figure out --

MR. MCCANN: And I, with the understanding that these aren't your comments, Mr. Kulis, they're Mr. Schaefer's, right?

MR. KULIS: Okay. Yes.

CHAIR: Is that yes?

MR. KULIS: Yes.

MR. MCCANN: I just want, you know, confirm that in each of these comments, there's, there's a reference to the electric line being underground and a requirement that an alternative analysis is required for such. Am I correct? In each of those ZAC comments?

CHAIR: Why don't you take one at a time? The December 24th versus the subsequent ones. In other words, December 24th, would you agree with me that there was an underground electrical connection that's identified in the ZAC comments?

MR. MCCANN: Yeah.

CHAIR: Right?

MR. MCCANN: Mr. Garber's question --

CHAIR: So, look at Protestant's Exhibit 5, sir.

MR. KULIS: I am.

CHAIR: Do you see any reference to an underground electrical connection within the ZAC comments from December 24, 2018?

MR. KULIS: Gravel road, so on December the twenty, Exhibit 5, the proposed gravel road and underground electric line in the forest buffer will require an alternative analysis.

CHAIR: So, sir, there was a reference to an underground electrical connection in the December 24th, 2018 ZAC comments?

MR. KULIS: Yes.

CHAIR: Okay. If we look at the subsequent one, done in June of 2019, which is 3-A and 3-B, as I believe, if I'm mistaken through my recollection, 3-A is the one that's undated, 3-B is the one that is dated. So, if you look at Exhibits 3-A and 3-B, --

MR. KULIS: Okay.

CHAIR: -- but probably just stick to 3-B, because that's the one that's dated, right, Mr. McCann?

MR. MCCANN: Correct.

CHAIR: All right. So, just look at 3-B then, do you have it?

MR. KULIS: Okay. Yes.

CHAIR: So, in 3-B, does it make a reference, anywhere within the ZAC comments, to an underground electrical connection?

MR. KULIS: It does.

CHAIR: All right. We're all caught up. Mr. McCann?

MR. MCCANN: Thank you, Mr. Garber, appreciate it.

CHAIR: Sure. Just make sure everything is clear.

MR. MCCANN: And I just have a couple more questions then I'm done. I just want, you, you talked at the beginning of your direct examination, Mr. Kulis, about the fact that your department had signed off on or approved the plan subject to some, some things we've talked about. I, I just want to make clear that your department does not comment or your review, the plan, for purposes of the special exception standard for which we're here today?

MR. KULIS: That's correct.

MR. MCCANN: Your, your, your role, your department's role, is limited to reviewing the plans that you have for

compliance with the regulations?

MR. KULIS: Correct.

MR. MCCANN: To, to the extent the plans, wherever they are in the process, show, show compliance or non-compliance, correct?

MR. KULIS: Correct.

MR. MCCANN: And you've already spoken about the things that still need to be done in terms of the process. We still need a forest conservation plan, correct?

MR. KULIS: Correct.

MR. MCCANN: We still need a forest conservation work sheet?

MR. KULIS: Yes, correct.

MR. MCCANN: We, we still need a grading plan, correct?

MR. KULIS: Yes.

MR. MCCANN: And depending on what a development plan may or may not show, there may be additional reviews and comments, correct?

MR. KULIS: Yes.

MR. MCCANN: Okay.

MR. KULIS: Yes, there will be.

MR. MCCANN: We've mentioned Mr. Schaefer's name a couple times, what's his position, Mr. Kulis?

MR. KULIS: Glen Schaefer is the supervisor of

Environmental Impact Review West, so the western half of the County.

MR. MCCANN: Okay. Do you work for him or do you work for another --

MR. KULIS: Yes, I, I work for, well, I work for the citizens of the County, but I report to Glen.

MR. MCCANN: Okay. Finally, I promise, this is the last one. You keep on using this term hedge row and when I see, when I hear that word I think of a hedge in my backyard that's three or four feet high. What is a hedge row of trees? Can it be a full blown tree, fully grown?

MR. KULIS: Yes, certainly. Yes, it can. Yes, it can. If it's less than thirty-five feet wide --

MR. MCCANN: Doesn't constitute a forest.

MR. KULIS: -- and not ten thousand square feet, it's not a forest. So, if it's less than thirty-five feet wide, it's a, it's a hedge row.

MR. MCCANN: It's still a tree.

MR. KULIS: But there are still trees or shrubs in there, yes.

MR. MCCANN: Okay.

MR. KULIS: Correct.

MR. MCCANN: All right. That's it. Thank you very much.

MR. SCHMIDT: One question, Mr. Schaefer. I think

jus in response to a question Mr. McCann asked you --

MS. DOPKIN: Mr. Kulis. Mr. Schaefer is not here.

MR. SCHMIDT: I'm sorry, Mr. Schaefer. It's either an insult to you or him, I guess, Mr. Kulis. Sorry about that.

MR. KULIS: Yeah, I would, if I were him I'd be insulted.

MR. SCHMIDT: Yeah. In answer to, just to follow-up to the one, if there's not a development plan filed in this case, will you still have sufficient information from the information that will be required to review and insure compliance with all the County environmental regulations?

MR. KULIS: Yes.

MR. SCHMIDT: Okay. Thank you. I don't have any other questions.

MS. DOPKIN: I have one, one other question, of course. Once the underground channel is bored out, what happens to the soil that was in that area? Does any, does that, does the grading plan normally address that?

MR. KULIS: The grading plan, to my knowledge, no, does not address that. Well, it's put back, I mean, it's put back in, it's not left as an open hole, I mean, --

MS. DOPKIN: Where, well, you're going to put a cable in there, so.

CHAIR: It'll be displaced.

MS. DOPKIN: It's displaced, where does it go? You

know cemeteries have the same problem and that's all, in my experience, that's usually addressed. But what happens, because this is a long run.

MR. KULIS: Um hm.

MS. DOPKIN: So, it's going to be a pile of dirt. What happens to it?

MR. KULIS: And that pile of dirt will be put back where that receiving pit or, or sending pit, where those two pits are, that dirt will be put back into the, into the hole within that --

MS. DOPKIN: But won't there be more dirt than will fit in the hole? I mean, once it's displaced by the cable, it's got to go somewhere, it's not going to fit back in the hole.

MR. KULIS: Right. Right, and that would be within, kept within the LOD or if it's a large amount, would have to be trucked offsite.

MS. DOPKIN: Does anybody look at that? Just out of curiosity.

MR. KULIS: We have sediment control and grading erosion, sediment control inspectors under the Department of PAI, who actively review construction sites.

MS. DOPKIN: Okay, thank you.

CHAIR: Any follow-up?

MR. MCCANN: No, thank you.

CHAIR: Thank you very much, sir.

MR. KULIS: Thank you.

MS. DOPKIN: Thank you for all your time.

CHAIR: I got good news. You get to go back to work. And if we knew that that was going to be the good news. Mr. Schmidt?

MR. SCHMIDT: Just, Ms. Murphy, if I, could I see the exhibit list? Because I think very quickly I'm just going to have Mr. Leffner testify about the substitute for 3-A, B and C. And I just want to make sure I know where I am. That plan that was on the board, --

MR. KULIS: May I, I don't know if it needs to get sworn back in or, or kind of clarify what I think, and I don't know, it's conjecture on what Glen was referring to --

MS. DOPKIN: No, no.

CHAIR: Yeah, we can't do that right now.

MR. KULIS: Okay, okay.

CHAIR: But I will say before you depart, have you given back all exhibits to Ms. Murphy?

MR. KULIS: I, yes, I believe, double check, please, please (inaudible) --

CHAIR: Because we know where your office is if you have not.

MS. DOPKIN: Now that's a threat.

MR. KULIS: Well, while, if you come over, you can

review some plans for me.

CHAIR: Something tells me sometime we may get the chance to do that up here anyway so.

MR. KULIS: All right.

CHAIR: All right. Thank you, sir.

MR. KULIS: Thank you.

MR. SCHMIDT: I just wanted to make sure I knew what was in.

MS. MURPHY: Okay.

MR. SCHMIDT: Thank you. So, I think, it would just be a couple questions of Mr. Leffner.

CHAIR: Yeah.

MR. SCHMIDT: Okay. Mr. Leffner, can you come back up?

MS. DOPKIN: Mr. Leffner, we're going to make you swear, swear and affirm. Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. LEFFNER: I do.

MS. DOPKIN: Thank you.

MR. SCHMIDT: Mr. Leffner, I'm going to ask you to come back up to the board. Mr. Leffner, at the first day hearing, you identified what was accepted into evidence as Exhibit 3-A, 3-B, 3-C and 3-D, which was the four pages of the site plan. The best way to do this (inaudible).

CHAIR: Yes (inaudible).

MR. SCHMIDT: (inaudible).

MR. LEFFNER: Sorry.

CHAIR: No, it's okay. It was the right idea, just--

MS. DOPKIN: Good idea.

CHAIR: If we could orient it to --

MS. DOPKIN: North at the top.

MS. MURPHY: What happened to the thumbtacks? The thumb (inaudible).

MS. DOPKIN: It's the other side.

MR. SCHMIDT: This exhibit is in evidence, right, Ms. Murphy, number sixteen?

MS. MURPHY: Well, it's not in evidence. You said mark it for i.d.

MR. SCHMIDT: Oh, okay.

MS. MURPHY: Remember?

MR. SCHMIDT: Okay, okay. I'll get to, then I'll get to it.

MS. MURPHY: Okay.

CHAIR: So, --

MR. SCHMIDT: I didn't see it on the list as i.d. only. Did I miss something?

MS. MURPHY: Well, I didn't write that on the side, but I, you, you said that.

MR. SCHMIDT: Okay.

MS. MURPHY: You did say that.

MR. SCHMIDT: (inaudible).

CHAIR: So, this is the revised plan, we're going to mark that, is that twenty-two?

MS. MURPHY: Did we already put this in? Is this one in?

MR. SCHMIDT: No.

MS. DOPKIN: No.

MR. MCCANN: We didn't mark it yet.

MS. MURPHY: Oh, the revised plan, okay.

MR. SCHMIDT: Remember, I didn't mark anything.

CHAIR: Right.

MS. MURPHY: (inaudible) twenty-two.

MR. SCHMIDT: Okay and I'm going to have you --

CHAIR: So, we're talking about Exhibit 22, which is the revised plan in response to the, to the --

MS. MURPHY: Well, it's the corrected plan.

MS. DOPKIN: It's the corrected plan.

CHAIR: -- corrected plan, sorry.

MR. SCHMIDT: Yes.

MS. MURPHY: Corrected 3-A, 3-A or --

MR. SCHMIDT: Yes, if I, if I can. Michael, if, if, let me ask the witness, but just, I want to just (inaudible).

MR. MCCANN: Whatever is quickest. I'm going to probably object and we can get to that quickly. But Larry can

describe it, that's fine.

MR. SCHMIDT: Okay, okay.

CHAIR: Wait, hold on, hold on, hold on. All I want to do is id, identify for the record what we're about to do.

MR. MCCANN: Okay.

CHAIR: So, this is 3-A that's been corrected pursuant to the questions raised by the Board.

MR. SCHMIDT: Yes.

CHAIR: From day one.

MR. SCHMIDT: Yes.

CHAIR: That's what Exhibit 22, excuse me, Petitioner's Exhibit 22 is.

MR. SCHMIDT: Yes.

CHAIR: That was the first thing. Now, how do you want to go about doing it? You're going to ask Mr. Leffner what the changes or what, what the corrections are or what's depicted that's different than 3-A?

MR. SCHMIDT: Yes.

CHAIR: All right.

MR. SCHMIDT: That's exactly what I wanted to do.

CHAIR: That's the stage we have set.

MR. SCHMIDT: Okay. So, Mr. Leffner, on 3-A, which is the top page, which is called sheet one, which is called overall existing conditions plan to accompany special exception, have you changed anything from what was submitted as

3-A to what is now 22-A?

MR. LEFFNER: Yes.

MR. SCHMIDT: What did you change?

MR. LEFFNER: As requested in the last meeting, the north arrow has been corrected.

MR. SCHMIDT: Okay.

MR. LEFFNER: The date included on the plan within the title block has been changed to reflect today's date.

MR. SCHMIDT: So, you changed the north arrow and you changed the date?

MR. LEFFNER: Correct.

MR. SCHMIDT: Anything else?

MR. LEFFNER: There's two revisions shown in red.

MR. SCHMIDT: Are these clarifications or changes to the plan?

MR. LEFFNER: Clar, clarifications.

MR. SCHMIDT: Okay.

MR. LEFFNER: Addressing questions in the last hearing.

MR. SCHMIDT: That the Board had?

MR. LEFFNER: One being located along Falls Road, immediately south of the stream crossing.

MR. SCHMIDT: Is that this redline?

MR. LEFFNER: Within, yeah, in front of, in front of --

CHAIR: Hold on, hold on.

MR. LEFFNER: -- Parcel 121. And it's reflected as a redline. It'll be shown on a later exhibit, but it was made, it'll make more sense when you see the later exhibit, but it was made to show that there's no disturbance proposed within the stream buffer.

CHAIR: Okay.

MR. SCHMIDT: There was a question, I think, from Ms. Dopkin about that.

MR. LEFFNER: Correct.

MR. SCHMIDT: About whether there should have been a line there.

MR. MCCANN: It was my, it was my question, just --

MR. SCHMIDT: Or maybe Mr. McCann's question. I thought it was Ms. Dopkin's.

MR. MCCANN: A question on cross examination.

MR. SCHMIDT: Okay.

MS. DOPKIN: Yes, it was.

CHAIR: All right. So, be that as it may, next, what's, what is the other revision?

MR. LEFFNER: Well, I'm just pointing to that location on the plan.

CHAIR: Yes, understood.

MR. LEFFNER: The second revision was, again, just the project area to clearly show the existing vegetation that's

going to remain as part of the project and that's shown within Parcel 144 on the eastern side of the east array, along the existing vegetation. Again, it'll be shown clearer on a later exhibit.

CHAIR: You're pointing to an area that I believe was Mr. Kulis who testified to, if we divide it between west and east pods, just north of the east pod, is that accurate?

MR. LEFFNER: Correct.

CHAIR: All right. Mr. McCann, did you see the changes pointed out by Mr. Leffner?

MR. MCCANN: I have, yeah, thank you.

CHAIR: All right. Anything else changed?

MR. LEFFNER: No.

MR. SCHMIDT: Mr. Leffner, I think those were, and I may have it wrong (inaudible) Mr. McCann about whether the line down by the stream crossing or the line on the east pod was completed, but you've completed those lines?

MR. LEFFNER: Correct. There was some questions of whether there was stream disturbance, we said that it was project area. It's not necessarily representative of a disturbed area, so we just clarified with the plan, adjusting it so that it's not within the stream buffer and not within those existing vegetative areas.

MR. SCHMIDT: Change any of the array size? Change any of the --

MR. LEFFNER: Did not.

MR. SCHMIDT: -- limits of disturbance, change any, anything?

MR. LEFFNER: Just the project area.

MR. SCHMIDT: Just the clarification of where the area --

MR. LEFFNER: The delineation of where the project is, showing --

CHAIR: One at a time, please.

MR. LEFFNER: -- showing that those areas would be avoided.

MR. SCHMIDT: Okay, okay.

CHAIR: Thank you.

MR. SCHMIDT: All right. So, so that's, that's A, 22-A. Let's go to the second page, 22-B. Same drill, Mr. Leffner. Any, any changes on 22-B?

MR. LEFFNER: The same --

CHAIR: Hold, hold on, let's back up.

MS. MURPHY: Wait a minute.

CHAIR: 22-B is --

MR. SCHMIDT: Which is 3-B.

CHAIR: -- it would be a corrected 3-B.

MR. SCHMIDT: Yes. Come up here and hold this.

CHAIR: Is that correct?

MR. SCHMIDT: Is 22-B 3-B?

CHAIR: No, 22-B is a corrected 3-B?

MR. SCHMIDT: Yes.

CHAIR: Thank you.

MR. SCHMIDT: That's what I just asked him.

CHAIR: Right.

MR. SCHMIDT: Is 22-B the corrected 3-B. And, Mr. Leffner, is 22-B, which is entitled existing conditions plan to accompany special exception sheet 1-A, is 22-B the same as 3-B except you made a couple changes on it?

MR. LEFFNER: The same changes that were made on 22-A --

CHAIR: Answer his question. It is what he just said, 22-B is the same as 3-B with the corrections?

MR. LEFFNER: Correct.

CHAIR: The corrections in this case, the corrections on, on 22-B are? That's a question.

MR. SCHMIDT: Are?

MR. LEFFNER: The same as reflected on 22-A, --

MR. SCHMIDT: Which is?

CHAIR: Please itemize them.

MR. LEFFNER: -- which is the north arrow.

MR. SCHMIDT: Right.

MR. LEFFNER: The date within the title block.

MR. SCHMIDT: Right.

MR. LEFFNER: The limit, the project limits along

Falls Road, just south of the stream, within Parcel 121.

MR. SCHMIDT: Right.

MR. LEFFNER: And the project area adjacent to the existing vegetation on the north side of the east array within Parcel 141.

MR. MCCANN: 144.

MR. LEFFNER: 144.

CHAIR: So, then to your ultimate point, the changes reflected on 22-B are the same changes reflected on 22-A?

MR. LEFFNER: Correct.

CHAIR: All right.

MR. SCHMIDT: Okay. Same drill. I'm going to show you what Ms. Murphy is eventually going to mark as 22-C.

CHAIR: Let me stop you there. Mr. McCann, do you have 22-C?

MR. MCCANN: I do.

CHAIR: Because I knew you had A and B.

MR. MCCANN: I do.

CHAIR: All right, 22-C.

MR. SCHMIDT: Okay. Now, --

CHAIR: What is 22-C, sir?

MR. SCHMIDT: 22-C, is that the same as 3-C, except there are some changes that you're going to describe?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Now, let's describe the changes

on 22-C. The north arrow, did that need changing?

MR. LEFFNER: It did not.

MR. SCHMIDT: Okay. So, you didn't change that. Did you change the date?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. So, the date is changed on 22-C.

MR. LEFFNER: Correct.

MR. SCHMIDT: Did you have the redline down by the stream, by Falls Road, that's shown on 22-A and B?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Did you have the redline, again, kind of connecting the black lines on Parcel 144 that was on 22-A and B?

MR. LEFFNER: Correct.

MR. SCHMIDT: So, you had the same changes that were done on 22-A and B, except the north arrow was okay and that didn't need to be changed this time?

MR. LEFFNER: Correct.

MR. SCHMIDT: Are there any other changes that you made on 22-C that were not made on 22-A or B?

MR. LEFFNER: There's one.

MR. SCHMIDT: And that is?

MR. LEFFNER: And that was the location of landscape plantings along Falls Road north of the stream crossing on Parcel 144. Previously they were shown within the stream

buffer. They've been relocated outside of the stream buffer, adjacent to the existing foundations that are to remain.

MR. SCHMIDT: Okay. So, there were three trees, were there not, that I think it was either Mr. McCann or Ms. Dopkin observed were inside the buffer that you have moved slightly outside the buffer?

MR. LEFFNER: There were, I believe it was two.

MR. SCHMIDT: Two on the one side and one on the other side?

MR. LEFFNER: There was just two trees.

MR. SCHMIDT: Just two.

MR. LEFFNER: To the north of the stream that were relocated.

MR. SCHMIDT: Just two, okay. Just two on the one side that have been moved. Same number of trees?

MR. LEFFNER: Correct.

MR. SCHMIDT: Overall? Same area, same general area?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Moved them a couple of feet?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Moved them a couple of feet so they're outside the line in the forest buffer?

MR. LEFFNER: Correct.

MR. SCHMIDT: Any other changes to 22-C other than what you've described?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Same drill. 22-D same as 3-D. North arrow was correct, you didn't need to change that, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Date has been changed to reflect today's date?

MR. LEFFNER: Correct.

MR. SCHMIDT: The line has been drawn down by Falls Road and the stream crossing?

MR. LEFFNER: Correct.

MR. SCHMIDT: Line has been drawn on the Parcel 144 to connect the black lines and show where the project ends?

MR. LEFFNER: Correct.

MR. SCHMIDT: Just like it was before. Two trees have been moved to the other side of the forest buffer line?

MR. LEFFNER: Correct.

MR. SCHMIDT: So, there are no trees that you're planting in the forest buffer?

MR. LEFFNER: Correct.

MR. SCHMIDT: There were two that were slightly inside, now they're slightly outside?

MR. LEFFNER: Correct.

MR. SCHMIDT: That's it on, any other changes?

MR. LEFFNER: That's it.

CHAIR: So, the changes on 22-C and D match one another?

MR. LEFFNER: Correct.

CHAIR: All right. No other changes then?

MR. LEFFNER: Correct.

CHAIR: All right. Anything else?

MR. SCHMIDT: No other questions. I would offer this as 22-A, B, C and, A, B, C and D.

CHAIR: Mr. McCann, any objection to 22-A through D?

MR. MCCANN: I understand what the Board's ruling might be, but I will object, object just for the record.

CHAIR: It was just entertaining the way you phrased that.

MR. MCCANN: (inaudible) the reason being, of course, that these are changes being made to the plan, midstream, in the middle of a hearing, substantive changes. I don't think they're minor and regardless to whose benefit they inure, they inure to ours because they've taken trees out of the forest buffer. I still think we shouldn't be making changes in the course of a hearing of this nature. So, I would object.

CHAIR: I will overrule the objection, they will be admitted, 22-A through D.

MR. SCHMIDT: Thank you. I guess, Mr. Leffner, because this was only marked for identification only, this being --

CHAIR: Sixteen.

MR. SCHMIDT: -- 16-A, so Mr. Leffner, just so you can identify this, can you tell us what this drawing is and what it depicts?

MR. LEFFNER: Yes. It's marked Exhibit 16.

MR. SCHMIDT: Right.

MR. LEFFNER: And it's called the colored site plan exhibit to accompany the special exception/DRC.

MR. SCHMIDT: Okay. Now, did, did you take this drawing from either 3-A, 3-B, 3-C or 3-D?

MR. LEFFNER: This plan reflects the same as Exhibit 22-A, B, C and D that we just introduced.

MR. SCHMIDT: Okay. So, this, so this has the date of September 24th, has the correct north arrow --

MR. LEFFNER: This is a new exhibit that was prepared at the request of the Board during the last meeting.

MR. SCHMIDT: Right, but, but it has the changes that were reflected on 22-A, B, C and D in terms of the new date, the new north arrow, the trees outside the buffer, the line down by Falls Road and the line up in the Parcel 144?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay, what's --

MR. LEFFNER: They're not shown as a redline revision, as it's a new exhibit that was prepared for this meeting.

MR. SCHMIDT: Okay. But it's entirely consistent with 22-A, B, C and D, in terms of it's got all those changes and updates on it?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and at the request, I think, of the Board, you have colorized this, is that right?

MR. LEFFNER: Correct.

MR. SCHMIDT: And can you tell us what the colors mean?

MR. LEFFNER: Yes.

MR. SCHMIDT: What do they correspond to?

MR. LEFFNER: Yeah, there's a legend provided on the right side of the page that reflects what the color hatching is, I can say in general, the dark green hatched area reflects the forest stand areas that were discussed earlier today that were accepted by Baltimore County. In addition to that, there's a dark green symbol with a critical root zone, which pertains to the specimen trees that were identified on the project.

MR. SCHMIDT: And specimen trees are, in fact, shown in the key?

MR. LEFFNER: Correct.

MR. SCHMIDT: So, you have specimen trees shown on here as well?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and forest area you've described.

MR. LEFFNER: Correct.

MR. SCHMIDT: What else is in color?

MR. LEFFNER: There's blue that identifies, again, there's line types differentiating between stream locations within this project area, as well as the FEMA flood plain locations. Again, the FEMA flood plain being located in the northern part of the property along Compass Run, the blue stream also for Compass Run being located in the northern part of the property, with the tributary out to Falls Road noted in blue also.

MR. SCHMIDT: Okay. It looks like you have some magenta or something. What is that?

MR. LEFFNER: Correct. One additional thing that's located in kind of a cyan or a little bit lighter color blue is forest buffer delineation that was discussed earlier today.

MR. SCHMIDT: Okay. Does that have any lettering or anything?

MR. LEFFNER: It says SB and there's a line type reflected, I believe, in the legend.

MR. SCHMIDT: That's in the key. So, --

MR. LEFFNER: Right.

MR. SCHMIDT: -- if somebody looks at this, they'll be able to figure out what those lines are.

MR. LEFFNER: Correct.

MR. SCHMIDT: Hopefully. Okay. The magenta?

MR. LEFFNER: Right. The magenta areas are shown for land, proposed landscape screening that are proposed as part of the project, so all the tree locations are just identified in red, printed, like a magenta or pink color representing proposed landscaping that would be planted as part of the project, subject to final review and approval by Baltimore County staff.

MR. SCHMIDT: And you have light green in the buffer, what's that?

MR. LEFFNER: Correct. The light color green is the existing vegetation or hedge row areas that we've been discussing that are proposed to just remain as part of the project.

MR. SCHMIDT: Okay and I see in the key, you, it's clearly marked FFP, which is the FEMA flood plain US, which is stream, SB, which is stream buffer. You also have WB for wetland buffer.

MR. LEFFNER: Correct, which is shown in kind of a purple color.

MR. SCHMIDT: Purple. And the wetlands are actually shown in purple too?

MR. LEFFNER: Correct.

MR. SCHMIDT: It may be hard to see from back there, but the key explains all those various colors.

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. SCHMIDT: I would offer this as number sixteen.

CHAIR: Mr. McCann?

MR. MCCANN: Same objection.

CHAIR: Well, let me ask you about that objection, if I can. What is, what, you, you alluded to the fact that it may be more significant or more substantive changes. How so? Did I misunderstand what you said earlier?

MR. MCCANN: I think what I was, as an example, I was just suggesting that removing some trees out, moving the limit of disturbance out of the forest buffer would be something arguably that would inure to our benefit and the fact that's, the fact remains that that and other changes, have been made to a plan in midstream. So, is that what you're referring to?

CHAIR: Well, I'm trying to understand why it has significance for purpose of the hearing. That is, with the changes made, how does that impact this hearing in any way if there are tree, for whatever reason, that were originally depicted on the plans that were introduced the other day and then they're seen as corrections, like oh wait, that shouldn't be there, we, this should be outside.

MR. MCCANN: Well, they're not just trees. The, the main, these are issues that I raised, they were impacts to the forest buffer on either side of the stream that I noted and

that weren't identified by DEPS in the first place and weren't identified by this witness. He said there was no impacts to the forest buffer. So, I identified them in cross examination as impacts of forest buffer and now those impacts are being corrected. And my point about it, I shouldn't have said anything about inuring to our benefit, that was beside the point. My point is, we shouldn't be making changes in this state of the, stage of, of things to a plan.

CHAIR: How are Protestants prejudiced by any change?

MR. MCCANN: Well, that's, I mean, that's a good question. I don't know, it, I mean, eventually maybe one change, no, but dealing with these changes and dealing with, I mean, we have dealt with a lot of things that have been done belatedly. Mr. Kulis' testimony, a lot of things. And I think collectively they inhibit, I can't tell you exactly how much time, extra time we have to spend or how precisely we're prejudiced, but I think, I think we are. It inhibits our ability --

CHAIR: But, you know, of course, --

MR. MCCANN: Yeah.

CHAIR: -- for prejudice, you're going to have to articulate how you're prejudiced by the change made to, you know, by the addition of that line and the movement of the two trees outside the buffer.

MR. MCCANN: Other than saying I haven't had time to

adequately take a look at it and see, you know, what implications it may have other than --

CHAIR: Well, the good news about that is we're coming up on lunch soon.

MR. MCCANN: Okay, yeah.

CHAIR: And I don't mean to be glib about it. But, I mean, I have to say, I'm looking at this and I can, I can envision it so I'm asking you what do you, --

MR. MCCANN: Yeah, I'm just trying to --

CHAIR: -- what do you see the prejudice is with those changes?

MR. MCCANN: I think I've said what I can.

CHAIR: Okay.

MR. MCCANN: If there's anything else I can think of over lunch, but I'm sort of, I'm, number one, protecting the record and I think we're, I'm trying, I'm asking that the Board follow the process that it's always followed and --

CHAIR: Okay. Ms. Dopkin, did you have a question?

MS. DOPKIN: I do.

CHAIR: First to Mr. McCann regarding the admission of the exhibit.

MS. DOPKIN: No.

CHAIR: All right. So, I'll overrule that objection.

MR. MCCANN: Okay, thank you.

CHAIR: If you feel the need that it should be

revisited, then we can do that at a different time. But sitting here in the moment, I have not yet heard a basis for us to, to do, to change the ruling or make this exhibit inadmissible. So, I will then now defer to Ms. Dopkin.

MS. DOPKIN: I'll forego.

MR. SCHMIDT: I have no other questions. So, sixteen and twenty-two are both admitted?

CHAIR: Yes.

MR. SCHMIDT: No other questions.

CHAIR: I mean, to, in an abundance of fairness to Mr. McCann, I am giving him the ability to renew his objections, because he's saying he's seeing it for the first time and it may cause prejudice, and so we'll give him through the lunch break to identify how it impacts his case.

MR. MCCANN: Okay. Thank you, Mr. Garber.

MR. SCHMIDT: Yes.

MS. MURPHY: Did you give the Board copies of 22-A through D?

MR. SCHMIDT: Yes, I --

CHAIR: So, it's conditionally admitted in other words.

MR. SCHMIDT: Yes. No, I did not. Do you want the bigger ones or the smaller ones or both?

MS. MURPHY: Both, please. (inaudible).

MR. SCHMIDT: If I can approach?

MS. MURPHY: Thank you so much.

MR. SCHMIDT: That's, we can probably do this over lunch even. There's a small one, two. My client gave you twenty-two?

MR. MCCANN: He did, yes. Thank you.

MR. SCHMIDT: Okay. How many more do you need?

CHAIR: Thank you.

MS. MURPHY: Just two.

CHAIR: You have yours? Yes, okay.

MS. MURPHY: (inaudible).

MR. SCHMIDT: I gave you the small one.

CHAIR: So, this is twenty-two --

MR. SCHMIDT: Same thing, it's just one of them is small, one of them is big.

CHAIR: All right. So, this is, unless you have your exhibit (inaudible).

MS. MURPHY: (inaudible).

MR. SCHMIDT: Do, do you need bigger ones, more bigger ones?

MS. MURPHY: Ms. Dopkin, do you --

MR. SCHMIDT: Ms. Dopkin, do you want a bigger one?

CHAIR: Thank you.

MS. MURPHY: All right.

MR. SCHMIDT: You got what you need?

MS. MURPHY: We're good.

CHAIR: All right. And then sixteen the same. We already have that, sorry. My bad.

MR. SCHMIDT: I gave you the smaller sixteens before.

CHAIR: Yes, you did. Yes, you did.

MS. MURPHY: Perfect.

CHAIR: All right. Mr. Leffner, you are still on the stand. You said, Mr. Schmidt, there are no more questions.

MR. SCHMIDT: All done.

CHAIR: We're ready for cross. I understand that we may break for lunch now or, I don't know how you feel about --

MR. MCCANN: I don't have any cross.

CHAIR: So, that leaves us with?

MR. SCHMIDT: This witness can step down.

MR. MCCANN: Yeah.

CHAIR: So, then, all right. Then the Exhibit 16-A and 22-A through D are admitted, because now the condition will not be an issue. Thank you, Mr. Leffner.

MR. SCHMIDT: Thank you, sir.

MR. LEFFNER: Thank you.

CHAIR: All right.

MR. MCCANN: I appreciate that opportunity though.

CHAIR: No problem.

MR. SCHMIDT: Mr. Garber, should I call another witness, you going to take a break, what's the Board's pleasure?

CHAIR: I will, I will defer to the parties and the other Board members first.

MS. MURPHY: Break.

CHAIR: Okay, break it is.

MS. DOPKIN: Lunch break.

MS. MURPHY: (inaudible).

CHAIR: So, Mr. Schmidt, your next witness, how long do you expect that witness to be?

MR. SCHMIDT: Well, we would really like to finish today. I know we're going to try to go as quickly as I can. I have a gentleman to testify briefly about the landscape plan and a gentleman to testify briefly about the operation of the facility. That will be it. I don't anticipate them to be long.

MS. MURPHY: Well, we'll need another day. (inaudible).

CHAIR: Yes, I think we're shaping up that way at this point.

MS. MURPHY: Absolutely.

MR. SCHMIDT: Well, I don't know that Mr. McCann has any experts, so, I, I guess we'll just see.

CHAIR: But --

MR. MCCANN: Yeah, we'll go as quickly as possible.

CHAIR: Well, yes, that would be ideal, of course. I'm always in favor of that.

MS. MURPHY: But twenty minutes is always an hour and a half, so.

CHAIR: Right and I realize things slow down sometimes. What do you, do you have a hard stop time today for anybody? If you need today?

MR. MCCANN: I have a childcare issue, but I can take care of that. I can have someone else (inaudible).

CHAIR: I, I meant for your witnesses, for, you know, any witnesses.

MR. MCCANN: Oh, --

CHAIR: I mean, I'm happy you told me about that, for sure, because I'm not looking to have to stay till seven if we can avoid it, of course. And I think I echo, or I think that's the sentiment, if I had to take a guess of the Board members, but do any of your witnesses have a problem with hard stop time and/or a day three?

MR. MCCANN: We're good.

MR. SCHMIDT: Okay.

CHAIR: All right.

MR. MCCANN: We're good.

CHAIR: So be it. Okay. Thank you all. Why don't we come back at, you want to say, what time, like 1:30?

MR. SCHMIDT: One-thirty.

CHAIR: One-thirty, 1:30 it is.

MR. SCHMIDT: We'll be as quick as we can.

CHAIR: Thank you.

(RECORDING PAUSED - 12:40:17 PM)

(ON RECORD - 01:34:05 PM)

MR. SCHMIDT: Ms. Murphy, I just handed that up, that's the next witness.

MS. MURPHY: Okay.

MR. SCHMIDT: Okay?

CHAIR: Okay.

MR. SCHMIDT: Just so you had it.

CHAIR: All right. So, we, are we ready to proceed?

MR. SCHMIDT: Yes, sir.

CHAIR: Mr. McCann?

MR. MCCANN: Yes, sir.

CHAIR: Okay. Mr. Schmidt?

MR. SCHMIDT: I'd call, thank you, I'd call Mr. Kraft, John Kraft, please.

MS. DOPKIN: Mr. Kraft, do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. KRAFT: I do.

MS. DOPKIN: Would you please state your name and address for the record, spelling your last name?

MR. KRAFT: Jonathan Kraft, K-R-A-F-T, and my Kimley-Horne address is 1801 Porter Street, Suite 401, Baltimore,

Maryland 21230.

CHAIR: All right and what is your title, sir?

MR. KRAFT: Landscape architect.

MR. SCHMIDT: Mr. Garber, I've given to Mr., --

CHAIR: Yes, sorry?

MR. SCHMIDT: I've given to Mr. McCann, and also given to Ms. Murphy, copies of Mr. Kraft's resume. Mr. Kraft, --

CHAIR: We'll identify that as Petitioner's Exhibit 23.

MR. SCHMIDT: Yes, and I, I can certainly ask the witness, but I would be offering that as the next exhibit ultimately. You have a copy, Mr. Kraft. Indeed, that's your resume, is it not, sir?

MR. KRAFT: It is.

MR. SCHMIDT: And I see that you were educated, among other places, at Virginia Tech and had a degree in Landscape Architecture?

MR. KRAFT: That is correct.

MR. SCHMIDT: And are you a licensed RLA, or registered landscape architect in the State of Maryland?

MR. KRAFT: I am, correct.

MR. SCHMIDT: Okay and I think your work experience speaks for itself, but you've been working since your graduation in 2001 as a landscape architect or a landscape

designer, is that correct?

MR. KRAFT: That is correct.

MR. SCHMIDT: And have you testified in the past, not necessarily here at the Board of Appeals, but testified before any kind of tribunal where you have been accepted as an expert witness?

MR. KRAFT: Yes.

MR. SCHMIDT: Okay. Where was that, generally, what areas?

MR. KRAFT: Baltimore City.

MR. SCHMIDT: Baltimore City. Okay. Not to belabor the point, I would offer the resume as the next exhibit, Mr. Garber, and offer Mr. Kraft as a landscape architect, as he is licensed as such in the State of Maryland and obviously he's going to be testifying about the landscaping that's proposed here in the landscape plan.

CHAIR: Mr. McCann?

MR. MCCANN: No objection and no voir dire, thank you.

CHAIR: Okay and as to Exhibit 23, I assume the same?

MR. MCCANN: Yes, sir.

CHAIR: Less on the voir dire, more on the lack of objection. All right, very well.

MR. SCHMIDT: Thank you.

CHAIR: So, we will admit Exhibit 23, and we will

admit Mr. Kraft as an expert in landscape, as a, excuse me, an expert in, as a landscape architect.

MR. SCHMIDT: Okay.

CHAIR: Correct?

MR. SCHMIDT: Yeah. Mr. Kraft, now you work at Kimley-Horne, you've indicated, correct?

MR. KRAFT: That is correct.

MR. SCHMIDT: And that's the same place that Mr. Leffner works, the, the engineer, correct?

MR. KRAFT: That is correct.

MR. SCHMIDT: I assume you and he are part of the team that is working on this particular project, this project being the proposed solar facility?

MR. KRAFT: Yes.

MR. SCHMIDT: What, specifically, were you engaged to do as it related to your participation in the project?

MR. KRAFT: I was asked to review the existing site conditions, look at topography, look at existing vegetation, prepare a landscape plan to meet the general requirements of the Baltimore County landscape manual, CMDP, and site conditions.

MR. SCHMIDT: Okay and have you prepared a conceptual landscape plan?

MR. KRAFT: Yes.

MR. SCHMIDT: Okay. Is, has your conceptual

landscape plan been super imposed on Petitioner's exhibit number sixteen, which is the colorized version of the site plan?

MR. KRAFT: Yes, the proposed landscape plan is shown here and is, takes into account the existing vegetation in dark green, the existing vegetation in light green and the proposed vegetation in magenta.

MR. SCHMIDT: Okay. Now, as I understand it, ultimately, you will be required to submit a final landscape plan to Baltimore County for approval, is that correct?

MR. KRAFT: That is correct.

MR. SCHMIDT: And has that plan been approved by Baltimore County?

MR. KRAFT: It has not been submitted and/or approved yet.

MR. SCHMIDT: Okay. Do you know who is the individual at Baltimore County who would approve that plan if it was, when, when it's submitted?

MR. KRAFT: It'll be Mr. Jim Herman.

MR. SCHMIDT: Okay. Although you haven't yet submitted what's called the final landscape to Mr. Herman, final landscape plan to Mr. Herman, have you had any discussions regarding landscaping and landscaping issues surrounding this property with Mr. Herman?

MR. KRAFT: Yes, we met with Mr. Jim Herman, the

Baltimore County landscape plan reviewer, to go over our original concept. At that meeting, he provided some feedback from the County's perspective on additional buffering to be provided and also our entrance drive. You can see it is an S on the parcel to the north, to the north west and that was part of the comments from Baltimore County, to, to make it so that you are not looking straight into the solar array. And then we also incorporated more shrub material to give a layering effect for the screening and just diversified some of the plant material so it wasn't just a green wall, it was more of a diverse landscape edge to the property.

MR. SCHMIDT: Okay. So, and those were all suggestions or recommendations of Mr. Herman?

MR. KRAFT: That is correct.

MR. SCHMIDT: But he hasn't approved the final plan yet?

MR. KRAFT: He's not approved the final plan yet, correct.

MR. SCHMIDT: Okay. Obviously, other than Mr. Herman, I think you mentioned you relied on the CMDP, the comprehensive manual development policy?

MR. KRAFT: That is correct.

MR. SCHMIDT: And also, you're familiar with the County's landscape manual?

MR. KRAFT: That is correct.

MR. SCHMIDT: And you're familiar with the requirements for landscaping under the zoning regulations?

MR. KRAFT: That is correct.

MR. SCHMIDT: Okay. Other than those sources and Mr. Herman, have you had any input from anyone else as you've developed the plan that we see on the board?

MR. KRAFT: Yeah, we, we developed a plan and the goal of the plan is to work with the client, the municipality and other stakeholders. The client had spoken with some of the adjacent property owners and they have requested some evergreen shrubs to be planted along certain portions of the property, a fence to be proposed along a certain portion of the property and we've made all those considerations and implemented them into this conceptual landscape plan that's before the courtroom today.

MR. SCHMIDT: Okay. So, you have had input with at least some of the neighbors regarding the landscape plan?

MR. KRAFT: Correct.

MR. SCHMIDT: And you've accepted their request or recommendations?

MR. KRAFT: Yeah. I mean, the part, the goal of the landscape plan is to provide buffering of the property, so we're more than happy to work with adjacent property owners.

MR. SCHMIDT: Okay. Do you know, well, strike that. Maybe what you can do, Mr. Kraft, is, is approach the board and

I don't know if you want to start at one of the four corners of the property and just for the Board's benefit, maybe kind of work your way around as to the landscaping that's either existing or proposed or a combination of those and what you developed the plan, basically, how it's going to, to function.

MR. KRAFT: Okay. I could do so. Starting here in the north west corner of the property, this is all existing forest stand that was approved by Baltimore County. This is the more densely provided existing forest. So, this acts as our land, meets our landscape requirements, per the Baltimore County landscape manual as a perimeter screening. And so, that continues from the north west corner as we go south and along the south west corner, or heading toward the south west corner, all the dark green is considered existing vegetation and there are stipulations in the landscape manual that that will meet the, the screening or buffering requirement. Once the forest stand starts to terminate and then it's just existing trees, we then use some of the existing trees and start to supplement that with additional understory plantings to act as the buffer. And once that terminates, then that is where we start a more densely planted landscape buffer and there we have a mixture of evergreen, ornamental, shade trees and shrubs. And again, this is a conceptual landscape plan, it's still conceptual in nature but the goal is to provide layers of screening, provide some diversity, provide some different habitats, so it's just not a

green wall. It's actually something that is more appealing to the eye and it still meets the objectives of the manual to screen at varying heights along the, along the property line. That continues from this point here down to the south western corner. Once we get along Falls Road, this is considered a scenic corridor and part of the scenic corridor is looking at what type of scenic corridor it is. So, we were in keeping with how the existing property currently is and then we supplemented the landscaping there with, again, with more understory trees, shrubs and ornamental trees and some shade trees. Again, adding diversity until we get to the entrance. At the entrance, we have that heavily landscaped to prevent views looking into the solar array and that was in part due to our conversations with Baltimore County. Once we pass that entrance, we get back to existing forest and we're back into the forested buffers. So, we did not propose planting there. That is where we moved the one tree that was in the forest buffer that didn't have to be. It was a circle we put there, we thought it looked good along the streetscape, but impacted the forest buffer, so we moved it out. Once we get on the other side of the forest buffer, so now we're heading south, south east, we still have the property frontage. We have an existing specimen tree. We plant complimentary trees and shrubs around that to still provide screening. Then we get to our new proposed entrance. At the new proposed entrance going,

going east, that is where we incorporated the, the board on board fence per conversations with the adjacent property owner. We then come up into, on this exhibit it's shown as some light green, which is existing trees. It just doesn't meet the definition of a forest, but it's still existing densely located trees. And then, once those terminate, we then supplement the perimeter again with additional heavy buffering and landscaping. And we carry that up and then adjacent to this property here, there were conversations about having a lot of evergreen shrubs, so that area is planted heavily with evergreen shrubs.

MR. SCHMIDT: Now, do you know who owns that property? Is that the, I think it's the Dwyers, is that who it is?

MR. KRAFT: It is, yeah, the Dwyer, it is the Dwyer property, that is correct.

MR. SCHMIDT: Okay and that's the ones who asked for evergreen?

MR. KRAFT: Specifically asked the, the client for evergreen shrubs, and so that is what we incorporated.

MR. SCHMIDT: Okay.

MR. KRAFT: And we carry those through and supplement some existing trees that are along that property line so we planted shrubs in addition to the existing trees that give a heavier screening until we get to where the, the perimeter on

the property line is pretty much all existing trees and, and/or forest. And once we get back to this corner, this is all existing forest stand and so, as the parts of the landscape manual, the goal is not to remove forest and trees from a perimeter, but to leave the native existing forest as additional buffer.

MR. SCHMIDT: Okay.

MR. KRAFT: And that carries through, around the property, back to where we began.

MR. SCHMIDT: Okay. There was testimony at the first hearing, Mr. Kraft, you may have not been here, from Mr., Mrs. Fowble's son, who owns property and Ms. Fowble is right there. Can you tell, and he expressed a concern about the screening. There's not a fence proposed there, correct?

MR. KRAFT: That's correct, there is no fence proposed.

MR. SCHMIDT: Okay. Can you tell us a little bit just about the screening there in terms of the, the depth of it, is it just one line of trees or, and also, and if you have to refer to the manual or anything, but in terms of the height and just --

MR. KRAFT: Um hm.

MR. SCHMIDT: -- the kind of species and what that's going to look like on, particularly on that side?

MR. KRAFT: So, in this area, we proposed a myriad,

first, we have twenty-five, approximately a twenty foot wide swath of landscaping that's provided.

CHAIR: Twenty, sorry?

MR. KRAFT: Twenty-five foot wide swath of landscaping provided. You know, the Code says it's a ten foot minimum, we have provided twenty-five foot, twenty-five foot depth to that. We have, as I mentioned before, a myriad of evergreen, ornamental trees. Ever, or, evergreen trees we planted six feet tall at, at installation, ornamental trees will be one inch caliber, to a one and a half inch caliber at installation. Then we have shade trees that'll be between two inches and two and a half inches in caliber.

MR. SCHMIDT: Now, that, those heights and the calibers, is that just something that you designed or is that in the manual or where do you get that requirement or that, that --

MR. KRAFT: That's in the, the landscape manual, it's part of a class A screening.

MR. SCHMIDT: Okay and this is a class A screening?

MR. KRAFT: Yeah, we've provided a class A screening, that is one planting unit, one planting unit per fifteen linear feet.

MR. SCHMIDT: Okay and is a class A screen defined in the landscape manual?

MR. KRAFT: It is.

MR. SCHMIDT: Okay and that means one planting unit every fifteen linear feet?

MR. KRAFT: Fifteen linear feet.

MR. SCHMIDT: Okay and what's the depth that's required, I think you mentioned --

MR. KRAFT: That's a ten foot minimum. We've provided, I believe it was twenty-five foot in that area.

MR. SCHMIDT: Okay. Is, in terms of the depth elsewhere, does it meet the ten foot minimum everywhere along the, where you're proposing landscaping?

MR. KRAFT: Yes.

MR. SCHMIDT: Okay. Is it deeper than that, or, in most places or some places?

MR. KRAFT: In those, in those locations, yes.

MR. SCHMIDT: Okay. All right. So, you, I think you've described that landscaping and I think you described the Dwyer side as well.

MR. KRAFT: Um hm.

MR. SCHMIDT: Along the front, can you talk about what's existing? When I say the front of the property, along Falls Road, is there existing vegetation there and can you talk a little bit about what's there and also maybe the grade, if that enters into it or anything else that's significant.

MR. KRAFT: Yeah, there is existing vegetation on the, the north west corner and, as it goes south, south east,

for a portion of the property. There's also an existing overhead power line. With overhead power lines, you have to choose the right tree and the right places, we call it, it's a, it's a manual in the State of Maryland, working with power lines. So, we're doing more low story ornamental trees along the property frontage and shrubs and then we step up some taller material behind it. Again, here, it's a variety of shrubs, evergreen trees, ornamental trees and shade trees.

MR. SCHMIDT: Okay. There was some discussion in the prior hearing about the, the topping of trees to be, by the power company because of the line.

MR. KRAFT: Yeah.

MR. SCHMIDT: And also, the clearing along Falls Road by State Highway Administration.

MR. KRAFT: Yeah.

MR. SCHMIDT: Can you describe either through the depth of the landscaping or the type of landscaping or however, if, if you've addressed that or how you've addressed it?

MR. KRAFT: Yeah, along Falls Road, we've provided, I believe it was almost a forty-five foot wide buffer of landscape material, which is in excess, excess of what's required. I believe it was thirty feet is what is required. And so, what that does it give us some more depth to plan additional material and also get away from the overhead power lines.

MR. SCHMIDT: Okay.

MR. KRAFT: And so, under, as we're closer to the overhead power lines, we're trying to use a lower material, so there is no tree topping and you get the, the canopy, the benefit of the canopy from a flowering tree and then you get the understory shrubs to provide that layered screening of the property.

MR. SCHMIDT: Okay. Now, Falls Road, you indicated, is a scenic route.

MR. KRAFT: Correct.

MR. SCHMIDT: And it's classified as such.

MR. KRAFT: Correct.

MR. SCHMIDT: What, what does that mean insofar as landscaping and how you approach the landscaping along Falls Road since it's a scenic route?

MR. KRAFT: Yeah, along, in the CMDP, the comprehensive manual for development policies, I believe is what the acronym stands for, there's various types of properties along the scenic route. Ours is considered an enclosed property. The property is majoritally, the majority of the property is enclosed by existing vegetation. So, we kept in keeping with the existing conditions, it's also, doesn't have a vista that is highlighted, so we, we just kept with, in keeping with the enclosed condition, which is part of the CMDP manual, it states if it's a, currently enclosed or is

not proposing to have great vistas, to maintain enclosed.

MR. SCHMIDT: Okay. So, you, you can have like expansive, where there's wide open views into the property or enclosed.

MR. KRAFT: Yeah, correct.

MR. SCHMIDT: And this one is enclosed.

MR. KRAFT: Correct.

MR. SCHMIDT: Because of the existing vegetation?

MR. KRAFT: Correct. And the proposed use.

MR. SCHMIDT: Okay and, and are you keeping that same classification of view?

MR. KRAFT: Correct.

MR. SCHMIDT: Okay and does that, in your opinion, satisfy or meet the requirements of the CMDP as it relates to screening for a scenic view, or for a scenic road?

MR. KRAFT: Yes, yes.

MR. SCHMIDT: Okay. Okay. Board's indulgence for just a minute, Mr. Garber. You've done screening on, I guess, a wide variety of projects in, in your job employment.

MR. KRAFT: Yes.

MR. SCHMIDT: And are you aware if the Board, if the Board can, imposes a condition that a final landscape plan be approved by Mr. Herman, as a condition of approval?

MR. KRAFT: Yes.

MR. SCHMIDT: And that's what we're intending to do

if the Board would approval, we would have to get approval from Mr. Herman as the final plan?

MR. KRAFT: That, that, yes, that is required by the permit process. There will continue to be conversations with Mr. Jim Herman, the Baltimore County landscape plan review and approver. And he will look at every plan in great detail to make sure it's in accordance with all the required manuals and best practices and he will have to sign the plan before any permit can be released.

MR. SCHMIDT: Okay and I know this one is conceptual, as you've described it, and hasn't been approved by him. Do you have an opinion as to whether it meets the criteria for a landscape plan in Baltimore County?

MR. KRAFT: Yeah, this, I mean, it is a conceptual plan to show the intent of the design. The final plan will take, will be in similar fashion and we'll just have some more detail at a later time once we get to that stage.

MR. SCHMIDT: Okay. But this plan does show the species of trees in the key, does it not?

MR. KRAFT: It does, it shows general species.

MR. SCHMIDT: Gives, gives people an idea of evergreen, deciduous, and so on and so forth?

MR. KRAFT: Yeah.

MR. SCHMIDT: Okay, very well. I don't have any other questions of the witness.

CHAIR: Are they all native species?

MR. KRAFT: Yes, we try to use all native.

CHAIR: When you say try, are they all native species?

MR. KRAFT: They, they, they are right now.

MR. SCHMIDT: Yeah.

CHAIR: They are, in the concept plan, they are all native species?

MR. KRAFT: Correct, correct.

MR. SCHMIDT: Unless Mr. Herman tells you to put something else in there.

MR. KRAFT: Or if we're working with a property owner and they want something for some reason that it's not a native species but it's permitted by the County, we could propose that.

CHAIR: Please keep your voice up again.

MR. KRAFT: Okay.

CHAIR: When you answer. You can have a seat. Mr. McCann?

MR. MCCANN: Thank you. Good afternoon, Mr. Kraft. Have you worked on any other solar projects?

MR. KRAFT: Yes.

MR. MCCANN: What other ones have you worked on?

MR. KRAFT: I'm not at liberty to disclose. We have non-disclosure agreements with all of our clients.

MR. MCCANN: You can't even identify the name of the project or where it's located?

MR. KRAFT: No.

MR. MCCANN: Is it in Aberdeen? For a government entity?

MR. KRAFT: I'm not, I'm not --

MR. MCCANN: Okay.

MR. KRAFT: -- not to disclose our projects.

MR. MCCANN: Okay. Well, not other projects, you just can't disclose the one you're not supposed to disclose, right?

MR. KRAFT: But there's other projects, we have non-disclosure agreements with a lot of our clients.

MR. MCCANN: And, and who is the client that you have a non-disclosure agreement with?

MR. KRAFT: I'm not at liberty to disclose, to disclose who that is.

MR. MCCANN: You can't even disclose the client?

MR. KRAFT: I don't have the agreement with me, so I'm not going to disclose anything about the project without having my agreement with me.

MR. MCCANN: Okay. Well, you knew you'd be asked questions today and you didn't, you didn't bring that agreement with you?

MR. KRAFT: No, I did not.

MR. MCCANN: Have you ever worked on a solar project on a, on an agricultural area, a rural area like this?

MR. KRAFT: No, I have not.

MR. MCCANN: Okay. Are you familiar with the zoning regulations pertaining to solar facilities in Baltimore County?

MR. KRAFT: Yes, I am.

MR. MCCANN: Okay. Are you familiar with the, the requirement in those regulations regarding a landscape buffer?

MR. KRAFT: Yes, I am.

MR. MCCANN: What is that requirement, or those requirements?

MR. KRAFT: That requirement was for a landscape buffer around the perimeter of the property.

MR. MCCANN: Okay. Well, to be more specific, and I'll read it to you, I'll let you read it as well and I have some chicken scratch on my, my copy. (inaudible), Larry.

MR. MCCANN: Sure.

MR. MCCANN: I don't think this has been marked but I don't think it's necessary. This is Bill 3717 and if you don't mind, Mr. Kraft, I'm just going to stand next to you and read it to you, ignore my chicken scratch there.

MS. DOPKIN: Keep your voice up, please.

MR. MCCANN: I'm sorry. It says, quote, 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 public street. Did I read that correctly?

MR. KRAFT: Yes.

MR. MCCANN: Okay. I guess my first question is, did you, did you determine and, of course, with the work you've done on this project, did you determine which properties would fall into that requirement? That is the properties that are visible, that have some visibility to any portion of the solar facility? Did you look at that?

MR. KRAFT: Yeah, we looked at the, at the property from a comprehensive perspective and identified properties and the perimeter that needed to be screened.

MR. MCCANN: Okay. So, you couldn't tell us which ones those are? In other words, let me, let me re, rephrase, rephrase, rephrase the question. Did you specifically determine which adjacent properties have a, can see the, any portion of the solar, solar facilities? Did you actually determine that?

MR. KRAFT: We looked at the perimeter of the property and if it was adjacent to a public street or a residentially zoned property, we provided screening.

MR. MCCANN: Okay. So, let me, maybe I can use my exhibit, Ms. Murphy, which is exhibit number one. Thanks. So, this is Protestant's Exhibit 1, it's a copy of your Exhibit 3-C, I think, Larry.

MR. SCHMIDT: Okay.

MR. MCCANN: I'm, I'm just going to use it to be consistent with our markings. I don't think I need to use your twenty-two, I'm just going to use this.

MR. SCHMIDT: I, I think they're, I think they're the same but you can use whatever one you want.

MR. MCCANN: All right. So, Mr. Kraft, what I want you to do if you could, you said you've identified these properties, just --

CHAIR: Lower left corner.

MR. MCCANN: Ah, thank you.

CHAIR: Lower left.

MR. MCCANN: Got it. Do me a favor, if you would, just, I'm going to give you a marker, on all the properties shown on this plan, this is again, is Protestant's Exhibit 1, I want you to just put an X on the property that you believe, based on what you just said, is an adjacent residential use property that can see any portion of the solar facility.

CHAIR: Well, let's make it easy for the Board. You want to put, have a specific color that we could easily see?

MR. MCCANN: I was just going to have him put an X and do it in blue. Or pink has not been used.

MR. SCHMIDT: Blue, blue has got the stream on it already unless you want to use another color.

MR. MCCANN: I'll use pink, thank you.

MR. KRAFT: I believe the zoning code that states that it's an adjacent residential property along the perimeter, correct? Or if there's a public street along the perimeter, correct?

MR. MCCANN: Yeah, well, let's, let's --

CHAIR: You can't ask him questions, he gets to ask you the questions.

MR. KRAFT: Oh, I can't --

CHAIR: So, because you asked him like, you know, is that what it says, so.

MR. KRAFT: Is that okay?

CHAIR: No, you can't, you cannot ask him questions.

MR. KRAFT: Oh, okay.

MR. MCCANN: Okay. The question again is, and I'll re-read the provision of the statute. 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 public street.

MR. KRAFT: Can you read it again?

MR. MCCANN: 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 public street.

MR. SCHMIDT: Michael, can I, can we give him, I mean, I can give him a copy just so he's got it and I know

yours has chicken scratch --

CHAIR: I would prefer that too.

MR. SCHMIDT: -- on it but --

MS. MURPHY: Here you go.

MR. SCHMIDT: -- so he's got it in front of him, just to be fair to him.

CHAIR: I would prefer that too.

MR. SCHMIDT: Thank you.

MS. MURPHY: Six (inaudible).

CHAIR: Can we all agree it's 104-6, right?

MR. MCCANN: Yes, thank you.

CHAIR: Okay, because there was no reference prior to that.

MR. KRAFT: Okay.

MR. MCCANN: This is the first time you looked at this section?

MR. KRAFT: No, it's not. I'm just looking at the wording.

MR. MCCANN: Okay.

MR. KRAFT: That's all.

MR. MCCANN: And my question is, I want, I want you to identify, rather than identify the, where the landscaping buffer shall be provided, I'm asking you to identify the adjacent residential use properties.

MR. KRAFT: Okay.

MR. MCCANN: Residentially used properties that can see any portion of the solar facility and do so by marking an X on that property.

MR. KRAFT: Okay.

MR. MCCANN: Anywhere on that property.

CHAIR: You mean, all places.

MR. MCCANN: All places, an X.

MR. KRAFT: So, --

MR. MCCANN: Or anywhere on that property where, where it can be seen.

CHAIR: Right, but you're not limiting it to one where it can be seen, it's any place, all places that where you can see, right?

MR. MCCANN: I'm just having him identify the property. I think if he were to put X's all along --

CHAIR: No, no, I understand.

MR. MCCANN: Yeah.

CHAIR: Per property.

MR. MCCANN: Per property, yeah.

CHAIR: Not as in all vantage points.

MR. MCCANN: Correct.

CHAIR: Right.

MR. MCCANN: Right, thank you.

MR. KRAFT: Some of these I don't know, like this says agricultural so I don't actually know if these are

residentially used properties.

MR. MCCANN: Well, then how did you prepare your landscape buffer plan if you didn't know that?

MR. KRAFT: Well, we provided a buffer anyways.

CHAIR: Sir, we can't hear you.

MR. KRAFT: We provided a buffer around the prop, or around the property either way but I'm just stating for the record --

MR. MCCANN: Where's, where's there a landscape buffer along, on this, along the properties of, along this, I guess, the western property?

MR. KRAFT: Well, as we stated before on the last map, the buffer is provided due to existing vegetation.

MR. MCCANN: Okay. So, if there's an existing buffer, you don't think you need to provide it under the zoning regulations?

MR. KRAFT: Correct.

MR. MCCANN: Even though it says a landscaping buffer.

MR. KRAFT: Yeah, because a landscaping buffer can be provided by existing vegetation per the landscape manual.

MR. MCCANN: Okay. Go ahead.

MR. KRAFT: Okay.

MR. MCCANN: Continue, you can finish what you're doing. Okay.

MR. KRAFT: And --

MR. MCCANN: Well, again, I'm not asking you where you didn't provide a buffer, I'm asking you --

MR. KRAFT: I'm not saying we didn't provide a buffer --

CHAIR: Hold on, hold on. Mr. McCann, keep your voice up and wait for him to finish his question before you start your answer.

MR. MCCANN: Okay.

CHAIR: Sorry, Mr. McCann, you want to ask that again, just so we catch it?

MR. MCCANN: Yeah, just, just to be clear, because he began to cross something out. I'm not asking you where you believe you need to provide the buffer or not, I'm asking you just to identify the properties, the adjacent residential use properties that are, have a view of the port, well, any portion of the solar facility?

MR. KRAFT: Or plants as used as agricultural on these properties here, so you, you stated that are used as residentially, residential properties, but the use per County records is agricultural.

CHAIR: Sir, he's not asking you to read the description on that exhibit. He's asking prior to seeing that exhibit, did you determine what properties from which you could, you could visually see the proposed solar field?

MR. KRAFT: That are resid, for residential use?

CHAIR: That are for, that have, right, for residential use.

MR. KRAFT: Correct.

CHAIR: Right. So, have you identified those properties on that plan?

MR. KRAFT: Yeah, I've identified these and I know these are all residentially used properties. Per our records, these are agricultural use properties.

CHAIR: I'll leave that to you now to untangle.

MR. MCCANN: Okay, thank you. When you say these, just for the record, you're talking about the properties owned by, I'm just going to say their names, Alexander Maclane, Luis Hopkins, Richard Simmons and Mary (inaudible), these sort of perimeter properties, right?

MR. KRAFT: That is correct. I would say Fowble as well but I, there is a residential residence right next to our property so I did include with the X.

MR. MCCANN: All right. Is there any reason why you didn't identify these properties, other than the fact that this particular exhibit says agricultural on it?

MR. KRAFT: Because they, it says agricultural use.

MR. MCCANN: Any other reason other than that?

MR. KRAFT: And there is not a residence right next to the property line.

MR. MCCANN: Well, it doesn't say, there doesn't have to be a residence next to the property line, does it?

MR. KRAFT: It says it has to a residential use.

MR. MCCANN: Okay. So, sitting here today, you really don't know whether any of these properties that I just read out by name are residentially used or not for certain, you don't know that for certain?

MR. KRAFT: I know that they're agricultural use.

MR. MCCANN: But you don't know --

MR. KRAFT: There might be a residence on it, but the use is agricultural.

MR. MCCANN: Okay, all right.

MR. SCHMIDT: Michael, can I just, just, I'm not objecting but --

CHAIR: Well, hold, if you're not objecting then what, is there a point you need to clarify as in so you understand the nature of the question or --

MR. SCHMIDT: Okay. Yeah, and I was just trying to, obviously the properties that are shown on the plan are the ones that are immediately abutting the property and was that what you were limiting your question to, to the property shown on the plan?

MR. MCCANN: It says --

CHAIR: It says adjacent in the, in the, in the provision that was read by Mr. McCann.

MR. SCHMIDT: Okay, okay. Very well.

CHAIR: And so this witness interpreted it as, you know, in accordance with that.

MR. SCHMIDT: Okay, thank you. I just wasn't sure of that question.

CHAIR: No, that's okay.

MR. SCHMIDT: Thank you.

MR. MCCANN: Okay. Thank you, Mr. Kraft. So, I know you have the bill in front of you. Just to round out this discussion and then I'll move on. The second sentence in that very same requirement in Bill 3717 says screening of State and local scenic routes and scenic views is required in accordance with the Baltimore County landscape manual. I think you've discussed that in your direct examination. And it's your testimony that the stream that you've done along Falls Road complies with the manual?

MR. KRAFT: That is correct.

MR. MCCANN: Okay. Now, with respect to the adjacent properties that you just identified, I, I notice we don't have any photographs or any, any depiction for the Board of what the viewsheds from all these properties look like. Did you, did you take any such photographs? Did you go out to the field, number one, did you do that?

MR. KRAFT: I personally did not take photographs. Our team went out to the field and took photographs.

CHAIR: His question was, did you personally go to the field?

MR. KRAFT: No.

CHAIR: I mean, he actually started with the first question but then he, he did not go to the field.

MR. MCCANN: Okay and you didn't take photographs?

MR. KRAFT: No.

MR. MCCANN: And you didn't, I guess more specifically, you didn't take photographs that would have helped us, helped the Board, have an idea of exactly or, or approximately what the viewshed might be from any of these adjacent residential use properties towards the solar facility, you did not do that?

MR. KRAFT: My team did.

MR. MCCANN: For that purpose? You did, we have photographs in evidence. Let me ask you, did you do that, Mr. Kraft, what I just asked? Did you or did you not do that, personally?

MR. KRAFT: I personally do not take photographs of all my projects..

MR. MCCANN: Okay. But you, so that's a no to my answer, to my question rather. How about other than photographs, and I know landscape architects are capable of this, did you, did you prepare any sort of demonstrative that would help us visualize what the viewshed might be from any of

these re, might be from any of these residential use properties towards the solar facility, you didn't --

MR. KRAFT: I have not at this time, no.

MR. MCCANN: Okay. But as, as my question suggested, that's something that you guys, meaning landscape architects, can do, they can prepare that, those kind of demonstratives, right?

MR. KRAFT: It's, it's possible, yes.

MR. MCCANN: In terms of the people, I don't know if it's more than one or not, that, that you say had asked for certain plan exhibits, I want to make sure who we're talking about that you or your team have had communications with and have specifically asked for planting. Just identify those for the record, and you can refer if you want to Protestant's Exhibit 1.

MR. KRAFT: It was the Dwyer residence.

MR. MCCANN: Okay.

CHAIR: You have to identify the Dwyer residence, since you're pointing to it on the map, where it's located, please.

MR. MCCANN: South portion of the site, is that correct? South of the site?

MR. KRAFT: Yes.

MS. DOPKIN: Is there a parcel number?

MR. KRAFT: Yes. Parcel 131.

MR. MCCANN: Okay. Any others?

MR. KRAFT: And the Ault property.

CHAIR: Ault, A-U-L-T?

MR. KRAFT: Correct.

CHAIR: Parcel number?

MR. KRAFT: Parcel 105.

MR. MCCANN: Okay and I know this isn't the case with respect to Mrs. Ault because she's here today, but am I correct that, did either the Dwyers or the Aults indicate to you personally that they would support the plan, the Board's approval of this special exception, if the plantings you've described were provided?

MR. KRAFT: I did not personally talk with the Dwyer family or the Ault family.

MR. MCCANN: Okay. To your knowledge, did anyone else on your team obtain from either the Dwyers or the Aults, their representation that they would, they, they were in favor of this special exception if the plantings you've talked about were provided?

MR. KRAFT: I do not know.

MR. MCCANN: Do not know, okay. And just so I'm clear, that land, the landscape manual doesn't have any provisions in it specific to solar arrays, does it?

MR. KRAFT: It does not.

MR. MCCANN: Okay and it certainly doesn't have any

provisions specific to solar arrays in rural areas, right?

MR. KRAFT: It does not have provisions for solar.

MR. MCCANN: Okay. No other questions. Thank you.

MS. DOPKIN: I do have a question. Can you, using the exhibit that Mr. McCann put on the board, identify for me which of the adjacent properties is at an elevation higher than the solar fields? Topographically speaking.

MR. MCCANN: You want to use a different marker for that, Ms. Dopkin?

MS. DOPKIN: You want to use a, sure, we'll use yellow, if you don't mind.

MR. MCCANN: Yeah, the yellow one has not been used, great. Thank you.

CHAIR: Although we may be out of colors now.

MS. DOPKIN: Unless you brought yours with you.

MR. MCCANN: We haven't used magenta yet.

MR. KRAFT: Just to clarify the question, there could be a house that's higher than a couple panels, do you want me to highlight that or do you want me to highlight, like what is your relation, that's a very broad question.

MS. DOPKIN: The question is basically, let's start with just the contour lines of where the house is located and where the panels are located. We know the panels, at their highest, will be no more than nine feet.

MR. KRAFT: Um hm.

MS. DOPKIN: And we also know that houses are generally under thirty-five feet if they're a two story, and we have photographs of some of the houses, though not of the Fowble house. So, the answer is topographic line.

MR. KRAFT: Topographic line is below, the topographic line in the solar field is lower than the topographic line around the house?

MS. DOPKIN: Correct.

MR. KRAFT: Okay. The property does go into a valley so.

CHAIR: You have indicated a bunch of yellow lines on there. Can you identify the properties that you have, that you have marked that is, that are responsive to Ms. Dopkin's questions, please?

MR. KRAFT: If the residence, residence, residential use properties around the property that have a house that is higher than any portion of the solar facility, right? That is, correct, the question that was asked? It is Fowble, --

CHAIR: Parcel number?

MR. KRAFT: 160. Yelle.

CHAIR: I'm sorry, what was that?

MR. KRAFT: Yelle, Y-E-L-L-E, 186. Webb, 128. Dixon, 180. Stadter, 180.

CHAIR: What was that name?

MR. KRAFT: Stadter, S-T-A-D-T-E-R. Ault, 105.

Witt, 131. And Dwyer, 131.

CHAIR: Witt 131 and Dwyer 131?

MS. DOPKIN: Yeah.

MR. KRAFT: Yeah.

MS. DOPKIN: And Dixon and Stadter were also both the same parcel number.

CHAIR: That's right, yeah. All right.

MS. DOPKIN: Okay.

CHAIR: Okay.

MS. DOPKIN: And my next ques --

MR. KRAFT: There's, there's a lot, there's a lot one and a lot two.

MS. DOPKIN: Like all of them.

MR. KRAFT: Yeah.

CHAIR: I got it.

MS. DOPKIN: My next question is you said that the planting, the buffer will ultimately be thirty-five feet deep with staggered plantings. So, you also said that the plantings will be fifteen foot on center. I'm trying to visualize if that's just the front row, the, how many rows of planting will there be within a thirty-five foot depth and how are they staggered, because I know if you put them too close together they kill each other as they grow.

MR. KRAFT: So, let me clarify. I think it, it might have been a, I might not have stated it correctly. It is a

twenty-five foot landscape buffer on the side, a forty-five foot landscape buffer along Falls Road and then the twenty-five foot buffer continues on this side and the plantings are at one planting unit per fifteen linear feet. So, if you have thirty linear feet, it would be two planting units. Two planting units. And so, it's a, it's, there's a width but then you use, by using a variety of material, shrubs, which are low and then ornamental trees, evergreen trees and shade trees, you can get the layering and the shrubs can wrap around the base of the other trees to provide a full --

MS. DOPKIN: But that's linear. Is there, that's not necessarily all forty-five feet. What happens, I mean, you don't look like you understand my question. I have a, say you have, along Falls Road you said ultimately a forty-five foot buffer.

MR. KRAFT: Correct.

MS. DOPKIN: Planting.

MR. KRAFT: Correct.

MS. DOPKIN: And you said there is linear plantings and I'm asking you, what is the depth of the plantings, is that one row of planting, two rows of planting? How many, how does that actually configure because if it's one for every fifteen lineal feet and they're just two inch calibers, you're going to see a lot through them at the outset.

MR. KRAFT: Okay. I think I understand what you're

asking. And so, it is a variety of layers, and layers of trees, right? So, when there's twenty-five feet, it's at least two layers, if not three, right? With shrubs, because the plant material is all different sizes. So, if you have a shade tree it's a twenty feet wide canopy and then if you have an ornamental it's between ten and fifteen and if you have a shrub it's between four and six. And so, you can plant the shrubs under the canopy trees and you can get the layering that way. But here, in general, it's about two and a half layers of trees, on average, along the adjacent residential and along Falls Road, it's about three rows of plant material, on average. And it's because we're using a lot of shrub material and then ornamental tree material and evergreen tree material, so you can get that staggered.

MS. DOPKIN: And will the shrubs, what is the height of the shrubs when they are planted and then the height when they reach maturity, anticipated?

MR. KRAFT: So, we have, anticipated? So, at planting, they'll be thirty inches tall.

MS. DOPKIN: To start.

MR. KRAFT: To start, as, that's the landscape manual requirements. We have a variety of shrub material proposed on our conceptual plan. This isn't the final, it's just the conceptual. But their initial idea was that we'd have holly shrubs, laurel shrubs and viburnum and they vary in height, so

some will be three to four feet tall, some will be four to five feet tall and some will be five to seven feet tall.

MS. DOPKIN: Initially or ultimately?

MR. KRAFT: Ultimately, for the shrubs.

MS. DOPKIN: And do the shade trees affect the survival of the low, the shrubs?

MR. KRAFT: They are planted in accordance with standard nursery practices where you have a shade tree trunk and then you come a couple feet off of that and you can have a hedge row of shrubs underneath that are shade tolerant if you're planting --

MS. DOPKIN: Shade tolerant, okay, that was my question.

MR. KRAFT: -- if you're planning them under a, a dense canopy.

CHAIR: How long would it take for those shrubs to reach maturity? I realize you identified three different species.

MR. KRAFT: Um hm.

CHAIR: How long does it take for them to reach maturity?

MR. KRAFT: They could be at their full height within two to three years.

CHAIR: Okay.

MR. KRAFT: Because some of them, right, they're

going in at thirty inches, not going to take them long till they get to full maturity. And then others, viburnum get pretty big pretty quick.

CHAIR: What about ornamental trees? What are, what heights at planting?

MR. KRAFT: So, ornamental heights per the landscape manual are installed per caliber, by caliber.

CHAIR: Right.

MR. KRAFT: So, it's one inch to one and a half inch caliber.

CHAIR: Right.

MR. KRAFT: The height is roughly five to seven feet for ornamental trees.

CHAIR: At planting.

MR. KRAFT: At planting.

CHAIR: And what about maturity?

MR. KRAFT: It all depends. For ornamental, it has to be less, the definition is under thirty.

CHAIR: Okay.

MR. KRAFT: And we have a variety of different trees that grow at different rates.

CHAIR: And, well, how long will it take to reach maturity for whatever species that you have identified for the ornamental trees?

MR. KRAFT: I, on average it would be about five

years.

CHAIR: All right.

MS. DOPKIN: Are these ornamentals deciduous?

MR. KRAFT: The ornamentals are, yes. So, they're service berry and red bud is what we've proposed just from a conceptual standpoint. They're understory trees.

CHAIR: Understory trees?

MR. KRAFT: Yeah, they're used for, you can plant them along forested edges or under shade trees.

CHAIR: All right.

MR. KRAFT: Again, it's all about the layering is what we're after.

CHAIR: So, the shade trees at planting, what would be the height range?

MS. DOPKIN: I think he said five --

MR. KRAFT: Two inch to two and a half inch caliber.

CHAIR: Right. Is there a height range, understanding that it's, it's measured by caliber, I get that.

MR. KRAFT: Yeah.

MR. SCHMIDT: But is there a height range?

MR. KRAFT: It's probably between six and ten feet, depending on the, the selection at the nursery and everything else. There's a lot of different variables.

CHAIR: And at maturity?

MR. KRAFT: At maturity, it would be greater than

thirty feet per definition. The plants that we are proposing would be probably between thirty and fifty feet.

CHAIR: And how long will it take to get to maturity?

MR. KRAFT: They grow about, on average, two feet per year.

MS. DOPKIN: So, ten years minimum?

MR. KRAFT: Yeah, for a shade tree.

CHAIR: So, have you figured out any type of vantage points from these residential properties, residential use properties, which will, the solar fields will remain visible for up to ten years?

MR. KRAFT: So, there, part of the site and part of what the site is nice and that there's actually a lot of existing forest around the property. So, it's not a huge mass of solar panels. We're also retaining trees in the middle of the solar array, which is not the normal for a solar array. Usually you want, usually the rays are all con, contiguous. So, there's a lot of existing vegetation to break up the solar array.

CHAIR: Have you done any type of analysis to determine any vantage point from which the solar field will remain visible to residential use properties for up to ten years?

MR. KRAFT: For up to ten years? I think you'll still see a portion of it from surrounding --

CHAIR: From each or, or is it less than all the ones that you have identified?

MR. KRAFT: It's more so a couple properties over here that are, that are looking down on the property.

CHAIR: The ones across the, across Falls Road?

MR. KRAFT: Yeah.

CHAIR: All right. Now, there's one, I can't see it from here and I don't have it out in front of me, at the edge of the, of the solar pod that faces front, Falls Road, toward the stream there was a property you had marked with pink and or, pink and yellow, yes, that one. I can't see the name from here, obviously.

MR. KRAFT: The name is Webb.

CHAIR: Webb, all right. So, let's take the Webb property. When you look across from the Webb property, you're approximately at the, at the proposed drive, correct?

MR. KRAFT: Correct.

CHAIR: All right and that is the one tree that was moved from within the forest buffer to out, to now outside the forest buffer.

MR. KRAFT: That's correct.

CHAIR: All right. Is there still a gap in the forest buffer area? Because it appears to me when I was looking at sixteen, that there may be a gap at the forest buffer area that could allow visibility up the road.

MR. KRAFT: No, the gap was just adjacent to the right of way line. It was, it was actually existing trees behind that so we are just, essentially, creating a nice (inaudible) of a couple trees along the street frontage. So, when we moved it, it doesn't, it doesn't lead to anything because there's existing trees behind it where the application was.

CHAIR: I'm, I'm saying looking into the solar field.

MR. KRAFT: Oh, yeah, okay. In, in our driveway?

CHAIR: Is it, the, whatever plantings you have in the hooked driveway.

MR. KRAFT: Correct, yeah.

CHAIR: Are those plantings intended to screen the solar field from that vantage point?

MR. KRAFT: Yes.

CHAIR: How long would it take for those plantings to reach their majority? So, where presumably the solar field would not be visible?

MR. KRAFT: So, those are a lot of evergreen trees and so from in this location, it should screen it fairly well from the installation date.

CHAIR: All right. Now, we did talk about shrubs, ornamental, shade trees. You mentioned evergreen trees. Have you included evergreen trees within those, within the discussion of the shrubs, ornamental or shade trees? Well,

probably not shade trees, but the others?

MR. KRAFT: We have, we have evergreen trees proposed as well.

CHAIR: And I know that you, from what I recall, you said that they go in at six feet at planting?

MR. KRAFT: That is correct.

CHAIR: All right. What is there, what about maturity? How, how tall?

MR. KRAFT: It varies based on species. And that's where I was getting to earlier when I said if we don't use native species, so there's some species that can grow pretty fast and, you know, they're just not native to Maryland, but they grow pretty fast and they're used regularly in Maryland. But we, what we did was use native species to Maryland, which are proposed in our conceptual landscape plan, spruce trees, ilex, which is holly and pinus, which is pine. And it was just conceptual in nature. They grow between two and three feet per year.

CHAIR: And at maturity, how tall will they be?

MR. KRAFT: They each vary, but they could be upwards of fifty feet.

CHAIR: Now, is there any concern that an adjacent property that sits in the elevation above the solar field would still be able to see into the solar field site with all these plantings?

MR. KRAFT: Depending where they are on an adjacent property, one might be able to see something in, in the solar field.

CHAIR: Okay. What, if anything, can be done about that?

MR. KRAFT: The, there's the evergreen plantings, I mean, along, let's see (inaudible). We could look at more evergreen trees in front of, in front of those viewsheds to, to block it along the viewshed if that's what the adjacent property owner wanted. There's, there's different ways you could work with viewsheds and screening, whether you frame viewsheds or you screen them, with just evergreen (inaudible).

MS. DOPKIN: But you have not done viewshed studies to date?

MR. KRAFT: Correct.

MS. DOPKIN: When a landscape plan is submitted and approved, is there a requirement for maintenance or replacement of any of the plantings if they die?

MR. KRAFT: Yes.

MS. DOPKIN: And what is that?

MR. KRAFT: There's an initial inspection upon, upon installation where all plant material must be in good health and meet the specifications of the landscape plan. The plan cannot be accepted by myself and/or the County until that initial planting installation has been completed and in

accordance with the plans. Once it has been, it is a one year clock starts ticking and then there's a second inspection and at that second inspection, one hundred percent survivor ability needs to be achieved before it can be expected.

CHAIR: I don't know what that means. In other words, if you find that something has not survived, do you restart the clock and go another year?

MR. KRAFT: No, you, no, you would, you would replace the dead material, if there was any, and then, then you could certify that (inaudible).

CHAIR: So, that you replace it but then no one comes back out to inspect to see if the new stuff had survived?

MR. KRAFT: In Baltimore County, they do not.

CHAIR: All right.

MS. DOPKIN: Is there, well, you wouldn't know. Never mind.

MR. MCCANN: Okay. Can I ask follow-up before --

MR. SCHMIDT: And I have some questions as well.

CHAIR: Well, that worked out well.

MR. SCHMIDT: In view of the Board's questions.

CHAIR: You can have a seat.

MR. MCCANN: Just a couple.

CHAIR: Sure.

MR. MCCANN: I just wanted to make clear, Ms. Dopkin pointed this out for me. Or made me realize about it. The,

this Petitioner's Exhibit 16, the landscaping shown in magenta, lots of, the circles (inaudible). Those are actual plantings. In other words, we could, if we wanted to, we could look at Petitioner's Exhibit 16 and I know this, you said this is a concept plan, which is all we have, but you could literally count that there are two plantings between Falls Road and the solar array at one location, that there's three plantings in another location, correct?

MR. KRAFT: Correct.

MR. MCCANN: Okay. Let me give that back to you. Thank you. And then the other question I had, I guess while I'm up here, you, you indicated that this area of trees in sort of the cut out in the middle of the northern solar array will remain and provide, you believe, additional buffering. You recall that testimony?

MR. KRAFT: Yeah, visual buffering.

MR. MCCANN: Visual buffering. That area, that I'm pointing out to, is within the limit of disturbance, so really there's, there's nothing preventing, if they grow too big, if they interfere with the productivity of the panels, there's nothing prohibiting this Petitioner from the day after this Board issues its decision from taking those trees down, correct?

MR. KRAFT: We've identified those trees to remain.

MR. MCCANN: What does that mean?

MS. DOPKIN: Say again?

MR. KRAFT: We identified those trees to remain.

MR. MCCANN: But what, there's no obligation for you to do that, correct?

MR. KRAFT: At this stage in the plan review process, there is not. It is not priority forest so the County will probably make the forest stand be retained in a, you know, in a perpetual easement. But those trees we had proposed to, to keep.

MR. MCCANN: All right. In other words, they're not, those trees that we're talking about are not in any perpetual easement, correct?

MR. KRAFT: Right now, no, they are not.

MR. MCCANN: They're not in a forest buffer, correct?

MR. KRAFT: Right now they are not, correct.

MR. MCCANN: And they're not priority one forest anyway.

MR. KRAFT: There's (inaudible).

MS. DOPKIN: Mike? Excuse me, Mr. McCann --

MR. MCCANN: They're not priority one trees anyway, correct?

MR. KRAFT: They are not priority one trees.

MR. MCCANN: Okay.

MS. DOPKIN: Thank you.

MR. MCCANN: And then the, the plantings along Falls

Road, even those new plantings are still going to be subject to State of Highway, State Highway Administration maintenance and to BG&E maintenance, correct? Even the ones that you do plant?

MR. SCHMIDT: Objection. Just objection.

CHAIR: What's, well, what's the nature?

MR. SCHMIDT: The nature of the objection is that obviously they have to be within the right of way for both State Highway and BG&E. So, I don't know that it's been --

CHAIR: Well, I think that was --

MR. MCCANN: Yeah, I'm sorry, --

MR. SCHMIDT: -- established that they're entirely within the right of way, I believe some of them are outside the right of way so.

CHAIR: I will sustain the objection but perhaps if you phrase it with if they encroach into the right of way, it will ask the question that you want.

MR. MCCANN: Okay. So, rephrase the question. For those plantings, new and old, that are in the right of way along Falls Road on the, on the east side of the road, those will, those will be subject to State Highway Administration maintenance, correct, obviously?

MR. KRAFT: Our proposed plantings are on private property.

MR. MCCANN: All of them are?

MR. KRAFT: I believe so.

MR. MCCANN: None of them are in the right of way?

CHAIR: Why don't you have him identify the right of way on that plan and we could probably pretty easily determine if that is the case.

MR. KRAFT: This is the State Highway right of way.

MR. MCCANN: The red line?

MR. KRAFT: The red line. This inward red line and our trees are on the private property inward of the right of way line.

CHAIR: So, let me ask the next question. If, if some of your taller trees and whatever then grow into the air space above the ground right of way, right where the power lines are or whatnot, they would have to be cut back, correct?

MR. KRAFT: So, State Highway typically would not trim the top of a tree that goes over their right of way, typically. BG&E, if we propose large trees that were in their BG&E easement, they do have the right to trim them, but we were proposing lower trees adjacent to the BG&E utility right of way.

MS. DOPKIN: And is that BGE easement or right of way on the property or in the highway?

MR. KRAFT: The Baltimore Gas and Electric right of way is on the edge of the property within the property.

MS. DOPKIN: And is it limited to the edge, or do they have a blanket right of way, do you know?

MR. KRAFT: I assume it is limited to the edge, because it is defined.

MS. DOPKIN: That's not their practice, but just curious what it is on this site.

MR. KRAFT: It's defined, it's defined on the plan and it's along the poles, there's just a couple poles.

MR. MCCANN: How wide is the BG&E right of way?

MR. KRAFT: I don't know, I can't speak for certain.

MR. MCCANN: You don't know? So, so a lot of these plantings that are on the private property, that are on this property, may be subject to trimming by BG&E because it, they may be in there, it's right of way?

MR. SCHMIDT: Objection. Just as to the form of the question. When he, when he says a lot of these trees, he assumes, that's the objection.

CHAIR: I'll sustain the objection (inaudible).

MR. MCCANN: How about many? Is it, is it possible that many of the trees on, on the --

CHAIR: Well, let's start with any and then see where that takes us by progression.

MR. MCCANN: Just get right of the M. Is there, are there any trees on the subject property that, well, let's just talk about new plantings first, that are within the BG&E right of way?

MR. KRAFT: The trees that I proposed within the BG&E

right of way are reflected in BG&E's practice of the right tree, the right place, which are the smaller trees, the, the ornamental trees that they permit to plant within their right of way.

MR. MCCANN: So, the question is, will any of the trees, new trees, in, on the subject property be subject to maintenance or trimming by BG&E?

MR. KRAFT: The goal that they would not be subject to trimming because they are not designed to be that big under the power lines, that's why they were specifically specified to be that type of tree.

MR. MCCANN: Okay.

MR. KRAFT: So that they would not grow and encroach onto the BG&E power lines.

CHAIR: Do you know what the height of the lowest line is to the ground?

MR. KRAFT: I do not know.

MR. MCCANN: Thank you. No other questions from me.

MR. SCHMIDT: Thank you, Mr. Garber.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Mr. Kraft, you've, you indicated you're familiar with Section 4-F of the County zoning regulations, which is the section about solar facilities?

MR. KRAFT: Correct.

MR. SCHMIDT: Is there any requirement in Section 4-

F, to the best of your knowledge, that says thou shalt screen or landscape a solar facility so that no property anywhere near the solar facility shall be able to see any solar panel or shall be screened so that not one solar facility, one solar panel is seen? Do you understand my question?

CHAIR: I will stipulate that it does not say that just based on reading 4-F-104, we know what it says.

MR. SCHMIDT: Well, I was asking a question because of the Chairman's questions about will it be visible and I just wanted to make sure that the record is clear.

CHAIR: I need, I need to, the information is so we can assess as to whether or not there is an issue as to visibility and how that's determined. I'm sure it'll be subject to argument for both parties.

MR. SCHMIDT: Yes, sir.

CHAIR: As to whether or not it satisfies the standard.

MR. SCHMIDT: Okay.

CHAIR: If it has to, whether or not there's a complete absence of visibility, the 4-F-104-6 certainly says what it says and we can move on from there.

MR. SCHMIDT: And I would just ask, and I can move it along, Mr. Garber, by just asking the witness or proffering the same thing, that there is no requirement under any County ordinance or law that requires complete invisibility of the

site, which would include not only 4-F, but would include the landscape manual, would include CMDP --

CHAIR: The only reason why I interrupt you there is we actually have 4-F-104 in front of us, so we can actually read what it says and we --

MR. SCHMIDT: Yes, sir.

CHAIR: So, when you ask does it actually say the following, we know it doesn't say the following. The landscape manual, if you want to ask him, what does it say as to visibility, that's a different question.

MR. SCHMIDT: Oh, certainly. Okay, thank you, sir.

CHAIR: Yeah, yeah.

MR. SCHMIDT: Okay. Mr., then let me ask you, Mr. Kraft, does the landscape manual, when it, and you indicated that this is a class A screen which is proposed here?

MR. KRAFT: Correct.

MR. SCHMIDT: Which is defined under the landscape manual, correct?

MR. KRAFT: Correct.

MR. SCHMIDT: And there are different types of landscape screens described in the manual, are they not?

MR. KRAFT: There are, correct.

MR. SCHMIDT: And is the class A sort of the highest level of screening, the most intense in terms of the most planning units and providing the greatest buffer?

MR. KRAFT: Yeah, it's a strict, it's a strict screening at one planting unit per fifteen linear feet.

MR. SCHMIDT: Okay. Is there any requirement in the landscape manual as it relates to solar facilities, which would say solar facilities shall be screened so that not a single panel is view, is visible from the, any adjacent public road or any nearby residence. Is there any requirement of that in the landscape manual?

MR. KRAFT: No.

MR. SCHMIDT: How about in the CMDP?

MR. KRAFT: No.

MR. SCHMIDT: To the contrary, the CMDP doesn't really want you to build a wall of trees, do they, does it?

MR. KRAFT: No.

MR. SCHMIDT: Okay, okay. It's interesting, the, the houses that are around here are generally higher than the, than the landscaping, I mean, than the panels, correct?

MR. KRAFT: That is correct.

MR. SCHMIDT: Because many of these cases that I've seen, people object when the panels are up over a, on top of a hill because they can look up and see them. But here, the panels will be below the, the height of the house, right?

MR. KRAFT: That, that is correct and per our conversation with the Baltimore County landscape reviewer, that is why he likes to see the incorporation of a layered approach

of shrubs and ornamental trees and shade trees to hide the, the foundations of the panels, because that is usually the offensive part of the, of the solar array.

MR. SCHMIDT: Okay and the panels, I think you testified, will be nine feet or so in height, correct?

MR. KRAFT: Correct.

MR. SCHMIDT: And they're fixed as well?

MR. KRAFT: Correct.

MR. SCHMIDT: Okay. Okay. Thank you, sir. I don't have any other questions, thank you.

MS. DOPKIN: Does --

CHAIR: Any, oh, sorry.

MS. DOPKIN: You earlier, I believe what you said earlier was that the, there is nothing specific in the landscape manual directly applicable to solar facilities?

MR. KRAFT: That, that is correct.

MS. DOPKIN: All right. So, they couldn't provide one way or the other about not being visible?

MR. KRAFT: That is correct.

MS. DOPKIN: Thank you.

CHAIR: Mr. McCann, any follow-up?

MR. MCCANN: Just maybe one quick follow-up. Along those lines, did you take a look at the special, special provisions in the RC-8 zoning regulations pertaining to scenic views?

MR. SCHMIDT: I'm just going to object. Beyond the scope of cross, of re-cross, just to move things along.

CHAIR: And I'm sure what you're trying to say --

MR. SCHMIDT: Beyond the scope of re-direct, I guess. I didn't ask him anything, I don't think anybody has asked him about that requirement. I guess we can argue it, but.

CHAIR: I don't know that it is beyond, so I'm going to overrule it. You may continue.

MR. SCHMIDT: Okay. Thank you, Mr. Garber.

MR. MCCANN: The question is just simply did you look at the RC-8 regulations?

MR. KRAFT: No.

MR. MCCANN: Thank you. That's it, thanks.

CHAIR: All right. You are excused. Thank you very much.

MR. KRAFT: Thank you.

CHAIR: So, Exhibit 23 was admitted. That was, I think that's where we were at.

MR. SCHMIDT: I believe that's the resume, the curriculum vitae.

CHAIR: Yes, all right. All right.

MR. SCHMIDT: I would call Andrew Streit, please.

MS. DOPKIN: Would you, do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and

belief?

MR. STREIT: I do.

MS. DOPKIN: Please state your name and address for the record and spell your last name.

MR. STREIT: Andrew Streit, address is 8240 Beachwood Drive, Dundalk, Maryland.

MS. DOPKIN: And spell your last name.

MR. STREIT: Streit, S-T-R-E-I-T.

CHAIR: All right. Mr. Streit, are you testifying today on behalf of some type of company, organization or --

MR. STREIT: Yes.

CHAIR: Okay. What's, and what's the name of that?

MR. STREIT: Power Factor.

CHAIR: And what is your role with Power Factor?

MR. STREIT: I'm the Director of Business Development.

CHAIR: Thank you.

MR. SCHMIDT: I've handed to --

CHAIR: You may have a seat, sir.

MR. STREIT: Thank you.

MR. SCHMIDT: -- Ms. Murphy, if I can approach, Mr. Streit, a copy of your resume. I've given a copy to Mr. McCann, --

CHAIR: Exhibit 24.

MR. SCHMIDT: Thank you, sir. I would offer that

unless Mr. --

MR. MCCANN: No objection.

MR. SCHMIDT: Okay.

CHAIR: No objection, so admitted.

MR. SCHMIDT: Thank you. Mr. Streit, just generally, I think your resume speaks for itself. But you've been involved in the energy business or solar business for some time, is that correct?

MR. STREIT: I have.

MR. SCHMIDT: How long?

MR. STREIT: Twelve years.

MR. SCHMIDT: And you've been with Power Factor for how long?

MR. STREIT: A year and a half.

MR. SCHMIDT: And before that, just generally, a little bit about your background?

MR. STREIT: I've worked in the solar industry for twelve years, I've worked in distribution, installation, development and construction.

MR. SCHMIDT: Okay and Power Factor is the Co-Petitioner in this case, right?

MR. STREIT: That's correct.

MR. SCHMIDT: Okay and Power Factor was one of the entities which signed the zoning petition and amended zoning petition for approval of the solar facility?

MR. STREIT: That's correct.

MR. SCHMIDT: Power Factor will be the company which will install or be one of the companies which will install the, the solar, the solar facility?

MR. STREIT: That's correct.

MR. SCHMIDT: And has entered into a lease with the property owner for the, for this project, correct?

MR. STREIT: We have.

MR. SCHMIDT: What's the term of that lease?

MR. STREIT: Twenty-five years.

MR. SCHMIDT: And after the lease, after the lease expires, what would happen then?

MR. STREIT: We have the option to renew for five more years and then we would decommission the project.

MR. SCHMIDT: Okay and what happens when you decommission the project? How does that work?

MR. STREIT: So, the G-90 steel posts that are driven into the ground, we would remove those. We would take the solar panels away for recycling and we would remove the power electronics.

MR. SCHMIDT: Okay.

MR. STREIT: It would be returned to a, a farm field.

MR. SCHMIDT: Okay. Mr. Streit, let me ask you about just the application in this case. You've been here for the entire hearing?

MR. STREIT: I have.

MR. SCHMIDT: I think Mr. McCann raised some issues initially at the hearing about Power Factor and the State community solar program and whether this project was part of that, etcetera. And if I can, just to kind of move things along, can you tell us as it relates to this project, just a little bit about the process and how this project has come about in terms of your application for participation under the State program?

MR. STREIT: Sure. We were approached by the landowner, who wanted to lease a small portion of her property for additional revenue to meet her mission statements and her non-profit and I knew that community solar was a new program in Maryland so I initially reached out to Valley Planning Council and had an in person meeting with them to find out whether they would be opposed to this project. I also reached out to another lady who is very involved in the community and ask for their recommendations. After having positive initial meetings, I went back to the landowner and said, I think we can make your project work and we signed a lease option to move forward.

MR. SCHMIDT: Okay. Now, how about the State process, the State community solar program? Can you tell us a little bit about that and, and this project's participation in that program?

MR. STREIT: Sure. So, Power Factor is not the

subscriber organization. We're going to operate and maintain the facility for a partner of ours who is registered with the PSC as a subscriber organization. We also have a finance partner who will provide the funding and work in direct partnership with the subscriber organization.

MR. SCHMIDT: Okay and how's, how's the program work? I mean, you talk about subscriber partner, I mean, what does that mean to, can you tell us, you know, how the program works? What, what will happen here and how will it work?

MR. STREIT: So, community solar is for people who want to participate in renewal energy who can't do it on their own facilities. Why I like this particular project is we are partnered with AES, a subscriber organization who is going to provide electricity to low to moderate income families. With the new technology, they hardly ever get to participate and we have a carve out for low to moderate income but it's also going to military housing. And my, my dad was in the Air Force and we hire veterans at Power Factor that, that's important to me. It feels good, it's part of the project.

MR. SCHMIDT: Okay and again, can you, can you tell, how do you get approved on a State level, just by way of background, to be able to, to do this and to make this project work.

MR. STREIT: As a subscriber organization --

CHAIR: Sir, could you just wait till Mr. Schmidt is

done with his question before you answer?

MR. STREIT: I'm sorry, yeah.

MR. SCHMIDT: Okay. Did you understand my question, Mr. Streit?

MR. STREIT: Not exactly.

MR. SCHMIDT: Okay. Then I'll ask again. From, in terms of the State process and part of the community solar program, can you tell the Board just a little bit about the process to be in that program and, and how that works? I understand that you're partnered, but just a little more detail as to how that works.

MR. STREIT: So, the State of Maryland set up a community solar pilot program and each subscriber organization has to submit an application to the PSC, you submit seventeen copies, it shows your financial viability, how you're going to distribute the electricity, how you're, whether you will have contracts in place or you will add contracts afterwards, so it's a fairly in-depth application process so --

MR. SCHMIDT: Okay and that, I'm sorry, go ahead. I didn't mean to cut you off.

MR. STREIT: Our subscriber partner has already participated in that and they're a large organization who has a lot of experience with community solar in Maryland and in other parts of the country.

MR. SCHMIDT: Okay and so, you've partnered with them

and you're actually going to do the, the construction, the physical implementing the solar facility here if this would be approved?

MR. STREIT: We are. We also submitted, another big part of this is getting the electricity to the grids so it can be distributed to communities.

MR. SCHMIDT: Okay.

MR. STREIT: So, we are prepared, the interconnection application and have submitted that to BG&E and have preliminary approval. We don't have the interconnection agreement yet.

MR. SCHMIDT: Okay. The, you mentioned that under this proposal, that there will be both, I think you said, a low income, low income carve out as well as sort of a veteran carve out. Now, just for those of us who are not in the industry, does, does that mean that the power generated on this site will go to a low income home?

MR. STREIT: No.

MR. SCHMIDT: No?

MR. STREIT: It will go directly to BG&E's grid and we will meter it.

MR. SCHMIDT: Okay.

MR. STREIT: And so it, it's, it's virtual.

MR. SCHMIDT: Okay. Ex, explain how that works. In other words, the, the power is produced here, I assume.

MR. STREIT: Um hm.

MR. SCHMIDT: And it's transmitted to the grid, which is in the telephone, or the poles along Falls Road.

MR. STREIT: Power lines.

MR. SCHMIDT: Correct?

MR. STREIT: That's correct.

MR. SCHMIDT: And is that metered so one can tell BG&E can tell how much energy is being fed into the grid?

MR. STREIT: Both BG&E and ourselves will have metering equipment. They will have metering equipment to verify how much we're putting and we have the same to make sure that we're producing what we need to be.

MR. SCHMIDT: Okay. Now, when this metering occurs, how is that expressed? Is it in megawatts or kilo --

MR. STREIT: Kilowatts.

MR. SCHMIDT: In kilowatts, okay. And then, how does that get to the subscribers or how are they credited with that, if you understand my question.

MR. STREIT: Through the program, a community solar participant, agrees to buy X amount of renewable energy.

MR. SCHMIDT: Okay.

MR. STREIT: It's really up to them how much they subscribe to.

MR. SCHMIDT: Okay. So, the, this veteran, for example, can decide that he or she wants to purchase a certain

amount of power through this program?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and then that's attributable and adjusted based on how much power you're feeding into the grid?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Just trying to understand the way all that connects with each other. Sometimes people think it means that the power generated here somehow specifically goes to a house in Dundalk for example, and that's not the case.

MR. STREIT: No.

MR. SCHMIDT: Okay. Tell us about this facility. How big is it, kind of panels that are going to be used, just generally, can you describe, since you're the ones who are building and developing it, can you tell the Board a little bit about it, just describe it.

MR. STREIT: Sure. It's less than ten acres, it's fifty-six hundred GCL mon-crystalline modules.

CHAIR: I'm sorry, what was the number?

MR. STREIT: Fifty-six hundred.

CHAIR: Fifty-six hundred, go on.

MR. STREIT: We initially started with fifty-nine hundred and we reduced three hundred modules in, through iterations of the design.

CHAIR: Sorry, I meant you were saying fifty-six

hundred and then there were things that followed. I didn't know the number, so I cut you off where you were going with it.

MR. STREIT: Oh, sure. GCL is a --

CHAIR: Thank you.

MR. STREIT: -- one of the top five manufacturers of solar panels in the world and we're using a mono-crystalline three seventy watt module.

MR. SCHMIDT: Okay. Mr. Barrett, last time, who was the glare expert, described the type of panels that were being proposed.

MR. STREIT: Um hm.

MR. SCHMIDT: Did he describe that, it's a mouthful, the GCL panel, is that the information that he evaluated as well?

MR. STREIT: He had the specification sheet for the module we're proposing.

MR. SCHMIDT: Okay. You have fifty-six hundred of these?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. How many megawatts are going to be produced here?

MR. STREIT: In direct current, it will be 2.072.

MR. SCHMIDT: How about in alternating current?

MR. STREIT: It will be 1.85.

MR. SCHMIDT: Okay and that's within the two

megawatts maximum that's allowed --

MR. STREIT: Both below.

MR. SCHMIDT: Both, both of those are measured below?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and, and are the panels fixed or are they rotating?

MR. STREIT: It'll be fixed.

MR. SCHMIDT: Okay and how will they be oriented in terms of towards Falls Road or what can you tell us about that?

MR. STREIT: None of the modules will be facing directly towards Falls Road. We orient to a hundred and eighty degrees or true south.

MR. SCHMIDT: True, true south, okay. Okay. Explain this to me, Mr. Streit. Sun shines on the panel. What happens? How does this all work? What's the science of it all? Just briefly.

MR. STREIT: Photons hit a semi-conductor, which agitates an electron, which carries energy to the wires, which will then move direct current to an inverter. An inverter will change that to alternating current, which is what we use on the grid. And then we will take all of the combined energy from the inverters and it will go to a transformer. We will step it up to BG&E voltage, because they move electricity over distances at high voltage and yet then it will go through a re-closer and an air brake and onto the grid.

MR. SCHMIDT: Okay. So, that's sort of the science of the process?

MR. STREIT: That, yeah.

MR. SCHMIDT: Okay.

MR. STREIT: I mean, that's the mechanics.

MR. SCHMIDT: Okay and you're converting, essentially, the energy from the sun into electricity that we can use, that comes into our homes and buildings like this?

MR. STREIT: Yeah.

MR. SCHMIDT: Okay. How long does it take to construct a solar facility like this? How long will be the period of construction?

MR. STREIT: I would say nine, nine, approximately ninety days.

MR. SCHMIDT: Okay.

MR. STREIT: This project, we're not doing a lot of land disturbance and in normal projects, two megawatts or above, you're clearing trees, you're grading, this is less invasive, so.

MR. SCHMIDT: Why, why's that? Why is it less invasive?

MR. STREIT: We chose it to be that way. We wanted this project to be an example of good solar.

MR. SCHMIDT: Okay. In terms of, is this a manned facility?

MR. STREIT: No.

MR. SCHMIDT: Okay. So, you build it and then it operates on its own?

MR. STREIT: We monitor it.

MR. SCHMIDT: How do you monitor it?

MR. STREIT: Electronically.

MR. SCHMIDT: Okay. Are there any kind of visual onsite inspections every year?

MR. STREIT: Twice a year we will visit the site to make sure it's running optimum.

MR. SCHMIDT: Okay and you electronically monitor it so if there's a problem where it's not producing power or there's some reading in your equipment you would what, send some people out, is that how it works?

MR. STREIT: We, we'd dispatch a truck.

MR. SCHMIDT: Okay. The, the panels themselves, do they, do they give off any type of liquids or fluids or emit any type of pollutant or anything like that?

MR. STREIT: No, they're encapsulated in glass and the largest component is silicone.

MR. SCHMIDT: Okay. In terms of, now they're, they're mounted on a pole in the ground?

MR. STREIT: Racks.

MR. SCHMIDT: Racks, okay. And is there any planting that's usually under the, the, the panels?

MR. STREIT: Yes.

MR. SCHMIDT: What, can you describe that?

MR. STREIT: We're hoping to do pollinator friendly plantings so that we, you know, flowering, low ground cover.

MR. SCHMIDT: Okay and --

CHAIR: When you say hoping, what, what do you mean by hoping?

MR. STREIT: It's not finalized yet.

MR. SCHMIDT: The, the type of grass or the type of ground cover?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. So, but it would be of, of that general type?

MR. STREIT: Um hm.

MR. SCHMIDT: Okay.

CHAIR: Is that a yes?

MR. STREIT: Yes.

CHAIR: You have to say --

MR. STREIT: Sorry, yeah.

CHAIR: Thank you.

MR. SCHMIDT: Mr. Streit, how about, how about maintenance? Do you wash the panels?

MR. STREIT: Rain normally keeps the modules clean.

MR. SCHMIDT: Okay. So, there's no detergent or chemicals or anything like that?

MR. STREIT: No.

MR. SCHMIDT: Okay and the panels are, are, are mounted on a pole so there's pervious surface ground below so if water drips off, it would drip off onto the ground?

MR. STREIT: Um hm.

CHAIR: Is that a yes?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and I think Mr. Leffner indicated typically there's a storm water management plan that's developed for a solar facility, is that your experience with solar facilities?

MR. STREIT: That is my experience, yes.

MR. SCHMIDT: And one would be done here as well?

MR. STREIT: Yes.

MR. SCHMIDT: But these panels, obviously there is ground and ground cover under the panels?

MR. STREIT: Correct.

MR. SCHMIDT: Okay. Any kind of noise from this facility? It's going to make a lot of noise people are going to hear?

MR. STREIT: You would have to be onsite to hear the noise.

MR. SCHMIDT: Okay.

MR. STREIT: There is a small hum from the power electronics.

MR. SCHMIDT: Okay. Are you going to be able to hear it offsite?

MR. STREIT: No.

MR. SCHMIDT: Okay. You've seen the glare analysis that Mr. Barrett did.

MR. STREIT: Um hm.

MR. SCHMIDT: Do you expect any glare, or are you familiar with these panels, anything to add to his report based on what he said?

MR. STREIT: It was one, it was a very favorable report.

MR. SCHMIDT: Okay. Any chemical contamination by these panels or by the facility that would get into the ground water or flow into another property or be airborne, cause cancer or any of this kind of stuff?

MR. STREIT: None whatsoever.

MR. SCHMIDT: Okay. You indicated it's unmanned so there's no real traffic that comes to the facility, correct?

MR. STREIT: That's correct.

MR. SCHMIDT: How about fire? Do these things catch fire or, or, or create any kind of hazard like that?

MR. STREIT: Solar panels have been known to catch fire. In the twelve years I've been in the business, I've seen maybe half a dozen fires.

MR. SCHMIDT: Okay and what happens there? Is there

access proposed for the fire department?

MR. STREIT: Yes, we have two access roads.

MR. SCHMIDT: Okay and, I mean, is there any dwellings or buildings that are close enough that would be a hazard from a fire here?

MR. STREIT: No.

MR. SCHMIDT: Okay. Why, why you say that?

MR. STREIT: They don't burn very well. Like I said, the primary, they're made of silicon, which is sand and glass, and neither of those really conduct fire, but it is making electricity and electricity can cause fires.

MR. SCHMIDT: Okay.

MR. STREIT: But this system also has a number of fail safes in it.

MR. SCHMIDT: Like what?

MR. STREIT: It will disconnect if it finds a ground fault, it will turn itself off.

MR. SCHMIDT: Okay. Anything else?

MR. STREIT: I've never seen a ground mounted solar fire. They were all roof top and associated with roof tops.

MR. SCHMIDT: Okay. Is that be, is that because the rooftop itself would be combustible?

MR. STREIT: Yes.

MR. SCHMIDT: A roof could be made of wood or, or similar combustible type material, flammable, not flammable,

but combustible type material?

MR. STREIT: Correct.

MR. SCHMIDT: Okay. You haven't seen any fires with solar facilities such as this, the ground mounted type?

MR. STREIT: No.

MR. SCHMIDT: Okay. Any impact on adjacent properties that might be used agriculturally that you could foresee that would cause any problems with if there were any agricultural uses nearby?

MR. STREIT: None. It might actually be a benefit.

MR. SCHMIDT: How's that?

MR. STREIT: Well, if the land is fallow for twenty-five years, then you're kind of restoring the earth and you won't have any fertilizer runoff.

MR. SCHMIDT: Okay. So, no fertilizer here that's proposed?

MR. STREIT: No.

MR. SCHMIDT: Okay. It's almost an extended period of time crop rotation, to a certain extent?

MR. STREIT: Exactly.

MR. SCHMIDT: Okay, okay. Fair to say that the impact of the facility will largely be vis, visibility?

MR. STREIT: I am biased, I don't see that as an impact.

MR. SCHMIDT: Okay. Why not?

MR. STREIT: I think it's going to look like a vineyard.

MR. SCHMIDT: Okay. How so?

MR. STREIT: Same thing.

CHAIR: Hold on, hold on, hold on. I understand that some people here may have a disagreement with that, but please, everyone hold their comments and outbursts for a second. Mr. Streit, can you please answer the question? How would it look like a vineyard?

MR. STREIT: We are harvesting sunshine, which is what grapes do, and we are going to be in rows and it's beneficial, and so is wine.

CHAIR: You can laugh at that.

MR. SCHMIDT: I think we can all --

MR. MCCANN: We all, we all agree with that.

MR. SCHMIDT: -- we can all agree to that, Mr. Streit.

CHAIR: All right.

MR. SCHMIDT: That's, that's, that's correct. Okay. The Board's indulgence for just a second. I'm just trying to make sure if I'm done.

CHAIR: I'll ask a question while that's going on.

MR. SCHMIDT: Yeah, thank you.

CHAIR: Mr. Streit, you gave a Dundalk address earlier.

MR. STREIT: Yeah, that was my business address, I'm sorry.

CHAIR: That's what I wanted to clarify.

MR. STREIT: I have a personal address.

CHAIR: No, no, you don't need to give your personal address, but it obviously doesn't match what's on top of your, your c.v., which is a South Carolina address.

MR. STREIT: I still live in South Carolina.

CHAIR: So, it gave me, one second, it gave me the question as to what is the Dundalk address. So, that is your business address?

MR. STREIT: Headquarters of Power Factor.

CHAIR: Thank you.

MR. SCHMIDT: But you personally reside in South Carolina?

MR. STREIT: Yes.

MR. SCHMIDT: That's where your home is?

MR. STREIT: Yes.

MR. SCHMIDT: And just to clarify too, because I know you, you mentioned this. The power produced is less than two megawatts, is that correct?

MR. STREIT: A, A/C and that is all the utility and the Public Service Commission cares about.

MR. SCHMIDT: Okay. So, the D/C conversion to A/C is under two megawatts, with the A/C is being proposed?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Because I understand that the, the electricity is being converted from D/C to A/C.

MR. STREIT: Um hm.

CHAIR: That's a yes?

MR. SCHMIDT: Yes.

MR. STREIT: Yes.

MR. SCHMIDT: And it, okay, so that meets the two megawatt maximum?

MR. STREIT: We are below the two megawatt maxim.

MR. SCHMIDT: Okay, very good. Okay. Thank you, sir. I don't think I have any other questions.

CHAIR: Mr. McCann? Oh, sorry.

MS. MURPHY: Who, who is the subscriber partner (inaudible)?

MR. STREIT: Meade Communities, which is a subsidiary for one of the nation's largest military housing.

CHAIR: So you said Mead?

MR. STREIT: M-E-A-D-E, Meade Communities, Inc.

CHAIR: That's the partner organization?

MR. STREIT: Yes.

MS. MURPHY: That's the (inaudible) who's in the program?

MR. STREIT: Yes.

MS. MURPHY: And how come Power Factor is not in the

program?

MR. STREIT: We're a construction company.

MS. MURPHY: I see.

MR. STREIT: Although, we have submitted to be a subscriber organization.

MS. MURPHY: You're just waiting to hear whether you're admitted to the program?

MR. STREIT: Yes.

MS. MURPHY: (inaudible).

CHAIR: So, the decommissioning agreement, who signs off on that?

MR. STREIT: I think it's a County requirement.

CHAIR: Sure, but is it going to be Meade Communities, Inc. or Power Factor or both?

MR. STREIT: Most probably both.

MS. DOPKIN: What about the property owner?

MR. SCHMIDT: Yep.

CHAIR: I think --

MR. SCHMIDT: I, I can just tell you, I've been --

CHAIR: Well, we need to hear from the witness to see what he says about it.

MR. SCHMIDT: Okay.

MS. DOPKIN: If he knows.

MR. SCHMIDT: I don't know if he knows, but, but, I mean, I can tell you this is what the County requires.

MR. STREIT: I do not know for certain.

MS. MURPHY: Okay.

CHAIR: Very well.

MS. DOPKIN: But you're otherwise familiar with the lease?

MR. STREIT: Yes.

MS. DOPKIN: But that, and decommissioning is addressed in the lease?

MR. STREIT: Yes.

CHAIR: Who has to put up the bond between the subscriber, well, I shouldn't say, between Meade, Power Factor and landowner? How is that addressed? Or how will that, or how will that be addressed?

MR. STREIT: How will that be addressed? It will be the subscriber organization.

CHAIR: So, Meade will be the one who puts up the bond.

MR. STREIT: Correct.

CHAIR: So, if there is a problem, correct me if I'm wrong, is Power Factor going to be the entity that's operating the facility?

MR. STREIT: Yes.

CHAIR: All right. So, if there is a problem with Power Factor's operation of the facility, does that trigger any action on behalf of Meade?

MR. STREIT: It could. There won't be.

CHAIR: I recognize and we all project that, that Power Factor may not have any problems, but sometimes things happen. In that case, it would fall then, is your understanding to Meade?

MR. STREIT: And Meade could hire another person to operate the facility.

CHAIR: Okay.

MR. STREIT: And Meade, as the subscriber organization, will have the decommission bond.

CHAIR: Right, okay.

MS. MURPHY: And Meade Communities is a Maryland company?

MR. STREIT: The subsidiary is, I believe.

MS. MURPHY: The subsidiary. What, who is the subsidiary?

MR. STREIT: Meade --

CHAIR: Is Meade the subsidiary or is there a subsidiary to Meade?

MR. STREIT: Meade. I'm unaware of where the parent corporation is incorporated.

MS. MURPHY: But you don't know whether Meade is a Maryland company?

MR. STREIT: I would assume they were incorporated in Maryland. I don't know if it's a requirement to be a

subscriber organization.

MS. MURPHY: If you know, you know, you don't, you don't. Okay.

MR. SCHMIDT: Okay. Mr. Garber, can I, I just would like to mention one thing just for the record, if I, if I may. You can, you can strike it if --

CHAIR: Can you, can you give me an idea as to what it is before you say the actual?

MR. SCHMIDT: Yes. And all I want to say is that --

CHAIR: What does it relate to?

MR. SCHMIDT: It relates to one of the questions that you asked that Baltimore County does not allow bonds. Baltimore County requires letters of credit. And so, --

CHAIR: Sorry, if I misspoke.

MR. SCHMIDT: Yeah, and, and that's, obviously, a different animal because that letter has to show that there's money on deposit, etcetera.

CHAIR: And I believe Mr. McCann will probably cover whatever ground there is when it comes to those issues.

MR. SCHMIDT: Yeah.

MR. MCCANN: Yeah, I was just going to ask --

CHAIR: No matter what happens anyway. So, with that in mind, Mr. McCann, are you ready for cross?

MR. MCCANN: Thank you. Good afternoon, Mr. Streit.

MR. STREIT: Hello.

MR. MCCANN: I, I'm sorry if I missed it in response to Mrs. Murphy's question, why are, why is not Power Factor the subscriber organization on this project as we sit here today? Why is it not?

MR. STREIT: We are a construction company.

MR. MCCANN: So, you can't --

MR. STREIT: We're not a subscriber company.

MR. MCCANN: You can't do it? It's not up, what does that mean?

MR. STREIT: It's a tremendous amount of paperwork to run a community solar project.

MR. MCCANN: Okay. There's lots of companies that are doing that in Baltimore County. You're just, you --

MR. STREIT: There aren't that many.

MR. MCCANN: Okay.

MS. MURPHY: I believe you said they put the application in, Power Factor --

MR. MCCANN: You put an application, so if --

MS. MURPHY: -- he's, they're trying to become a subscriber --

MR. MCCANN: Okay. So, then why are you trying to become one if you don't want to be or you're just a construction company, why are you trying to?

MR. STREIT: We think that community solar is very popular and in the future it's only going to continue to grow.

MR. MCCANN: Okay. Is there, is there a reason why you, you may anticipate that your subscriber organization application may not be accepted?

MR. STREIT: No.

MR. MCCANN: For instance, is there a history of OSHA violations, as an example, that your company has?

MR. STREIT: There's not a history.

MR. MCCANN: Are there OSHA violations outstanding that your company has?

CHAIR: You mean, pending or resolved cases?

MR. MCCANN: Resolved cases in the, in the recent past, very recent past.

MR. SCHMIDT: Objection.

MR. STREIT: Yes.

CHAIR: Hold on, sir, one second.

MR. SCHMIDT: Just objection. What's the, what's the relevance?

CHAIR: Mr. McCann, do you wish to explain?

MR. MCCANN: I think it goes to, to this, this Petitioner, since we don't have the, what I believe, the real Petitioner here. Whether this Petitioner is capable or able to fulfill this special exception, I mean, --

CHAIR: Well, the question really, and correct me if I'm wrong here, Power Factor is not the subscribing organization. They've applied. Your, your question to them

was do you think that there's a reason why you may or may not be accepted with that application.

MR. MCCANN: Yeah.

CHAIR: That application is not, there's not a bearing on this case, does it?

MR. MCCANN: Well, for the same reason I said at the beginning of the hearing, the fact that the application has not been accepted, has been submitted but not accepted is a, among other reasons, is a reason why we believe this whole proceeding is premature and, and not ripe and we don't even know if they, if they can participate in the program as they're apparently attempting to do. So, it just goes, as I said, generally to the ability, if that's the right word, capable --

CHAIR: Are you aware if having OSHA violations is a disqualifying factor, or at least plays into a determination as to whether or not a particular company may become a participating subscriber?

MR. MCCANN: That is our understanding, yes.

CHAIR: Well, I will allow it then. So, we'll overrule for now but obviously we're not going to go too far afield with the violations.

MR. MCCANN: Okay and I'll just ask quickly and I'll move on. Mr. Streit, isn't, when you, when you made the representation earlier that these facilities are safe, in fact, your website says all employees are OSHA certified for good

safety practices so they can be trusted. But isn't it true that just last year, your company was cited by the Department of Labor for safety violations at a job site in which a worker was electrocuted to death?

MR. SCHMIDT: Objection.

MR. MCCANN: Isn't that true?

CHAIR: Hold on.

MR. SCHMIDT: Objection.

CHAIR: Before you answer. Please stand when you object. So, we're asking now about a specific violation.

MR. MCCANN: Violations.

CHAIR: Violations. Are there, has there been a determination made on those violations or are they pending?

MR. MCCANN: They are not pending, fines were issued and they're, they're violations that were found by OSHA.

CHAIR: Okay. I will overrule the objection for now but we're starting to get into, it seems like I see weeds in the immediate future. So, --

MR. SCHMIDT: Can I just, Mr. Garber, note a continuing objection to this line of questioning. I, I was under the understanding and, and acting that this, obviously, is a land use case, a zoning case. This is not a case involving employee, employment violations, --

CHAIR: Yes.

MR. SCHMIDT: -- or OSHA or anything like that and I

think that, obviously, this, this is a zoning case which has criteria that this Board must apply and obviously you, you know what they are and this Petition has been brought primarily by the property owner, which is the practice because it's a land use case and it involves the property owner and Power Factor is a Co-Petitioner because they were constructing (inaudible) was appropriate.

CHAIR: I am allowing limited exploration here --

MR. SCHMIDT: I just --

CHAIR: -- because I, I don't know where it's quite going in full yet.

MR. SCHMIDT: Right, I just don't want to keep --

CHAIR: But, but yes, you can have your continuing objection.

MR. SCHMIDT: Yeah, I just don't want to keep jumping up and down.

CHAIR: No, it's okay.

MR. SCHMIDT: Thank you, sir.

CHAIR: I appreciate it. Mr. McCann?

MR. MCCANN: I think the question on the table was whether there, in fact, were violations that I just mentioned.

MR. STREIT: Were there violations is the question?

MR. MCCANN: Yes.

MR. STREIT: Yes.

MR. MCCANN: Okay. In fact, Power Factor

acknowledged those violations and has a penalty, was, was issued fines and is paying those fines?

MR. STREIT: Yes.

MR. MCCANN: Okay.

MR. SCHMIDT: Thank you.

CHAIR: Thank you. And I inter, I will, (inaudible) documents being passed in front of us, I will assume that this is going to be subject to your continuing objection as well?

MR. SCHMIDT: Yes, sir.

MR. MCCANN: And Ms. Murphy, I forget where we are?

MS. MURPHY: Eight.

MR. MCCANN: Okay. I'm going to show Mr. Streit a copy of what's being marked as Exhibit 8 and just take a look at that two page document, if you would, and my simple question is whether or not you recognize this document or does, does this document reflect --

MR. STREIT: I need my reading glasses.

CHAIR: Hold on.

MR. MCCANN: Sure.

MS. MURPHY: He needs reading glasses.

CHAIR: You do not have your reading glasses to be able to read this? Oh, you have it with you?

MR. STREIT: In that bag.

CHAIR: Okay.

MS. MURPHY: Help yourself.

CHAIR: Yes, we prefer that you're able to read it.

MR. STREIT: Thank you.

CHAIR: If you're going to be asked questions about it.

MR. MCCANN: Whenever you're ready, sir. Are you ready?

MR. STREIT: I'm ready.

MR. MCCANN: Okay. The question with regard to this --

CHAIR: I should ask also before you get started, is, just to be clear, are we suggesting that the incident occurred in Maryland or in Kan, or in Kansas?

MR. STREIT: Kansas.

CHAIR: I was asking Mr. McCann that, but I guess.

MR. MCCANN: That was my understanding. That's the address to the incident.

CHAIR: And I see the inspection information says Office of Wichita, so.

MR. MCCANN: My question simply about this exhibit is whether or not this reflects the violations that we just spoke about, Mr. Streit?

MR. STREIT: Yes, I believe so.

MR. MCCANN: Okay. Are there any other violations other than those reflected in Exhibit 8 that Power Factor has either in the past or pending currently?

MR. STREIT: I don't think so, but I've only worked here a year and a half. I've known George for over a decade --

CHAIR: You're going to have to help us there.

MS. MURPHY: Who's George?

MR. STREIT: George is the owner of Power Factor.

MS. MURPHY: Okay.

MR. STREIT: He takes care of his employees like family and this was a rooftop situation. The employee was off the job site. What he did was not part of our standard procedures and a lot of what we've done since this incident has improved our record as an OSHA compliant and safe company.

CHAIR: Can I jump in and ask, does Power Factor hire contractors or does it have its own employees do the installation and, you know, construction?

MR. STREIT: Own employees.

CHAIR: It has its own employees, okay. Mr. McCann?

MR. MCCANN: Okay. One more question about the document and then I'll move on. The, the actual, the second page of this, and this may be what you're saying, Mr. Streit, but the second page of this exhibit describes the incident as employee installing rails that would have solar panels mounted on them. You said something about a rooftop. Were there, were there solar panels on a roof?

MR. STREIT: They were.

MR. MCCANN: Okay, all right. I would move this into

evidence and then move on from here, to other topics, so Exhibit 8.

CHAIR: I mean, I have to say, I am not really quite sure how this is relevant now that I see that it's an incident that occurred in Kansas on a rooftop installation. I, I'm not really quite sure how that's going to fit in with this case. Can you explain it to me now? Now that I see the whole picture.

MR. MCCANN: Well, I'm not sure where, --

CHAIR: Well, there's a reference to 1 Mace Avenue, Baltimore 21221. Why is that address identified on this report, if you, if you know, Mr. Streit?

MR. STREIT: It's our former headquarters. We just moved to a larger facility.

CHAIR: Understood, okay. Because I'm wondering what the connection here would be, but go ahead.

MR. MCCANN: And that is a connection, if you think one is necessary, Mr. Garber. I don't think it matters where it is, this is a company, just because they happen to do business in another State, if they have a violation, they have a violation. So, the reason for the exhibit itself being into evidence is really no different than what I mentioned earlier, and that is, that there's violations that reflect on this company and its ability to do, to fulfill this special exception and, and do what it's asking this Board to approve.

The ability, the capability, so it goes to that. The exhibit itself is, is simply just to document, that's public record. It comes from OSHA's website itself, Department of Labor and it's self-authenticating. So, I don't, authenticity --

CHAIR: I, I've used these before. I understand. It's not a question of authenticity, believe me. It's a question of, I don't understand what this has to do with this particular Petition for this particular piece of property. Anybody else have any comments or insights on that?

MR. MCCANN: Well, this is the only --

CHAIR: Ms. Murphy? Ms. Dopkin? Nothing? All right. I am going to sustain the prior objection to it and not admit the OSHA record on that. You have the testimony that's in the record already. I don't know that it really does anything for this case.

MR. MCCANN: Okay, thank you. Okay. Mr. Streit, moving on, you mentioned that you've been with the company for a year and a half, I think you said?

MR. STREIT: Um hm.

MR. MCCANN: And your, it sounds to me, just based on your resume, which is extensive, obviously, but certainly your current role is really, is sort of business development and sales. You're not really a, the technical person, are you? Or are you?

MR. STREIT: I'm a technical person.

MR. MCCANN: You are, okay.

MR. STREIT: I am.

MR. MCCANN: Okay. So, you can tell us, and I'll get to these questions in a minute, you can tell us about the panels and a bit about them for instance?

MR. STREIT: I could.

MR. MCCANN: Okay. I'll get to that. The company itself, I know you've only been there for a year and a half, Power Factor was formed back in 2013, does that sound right to you?

MR. STREIT: That's correct.

MR. MCCANN: Okay and I have copies of the Articles of Organization, but it indicates the purpose for which the company was formed was as a, as a full service electrical provider, are you aware of that? As opposed to a solar facility, you're aware of that?

MR. STREIT: Yes.

MR. MCCANN: It's, it's an electric company?

MR. STREIT: Yes.

MR. SCHMIDT: Mr. Garber, we're just moving on to another topic.

MR. MCCANN: We are.

MR. SCHMIDT: But I'd note the same continuing line of objection that I don't know what the relevance of these questions are, to whether there should be a special exception

granted in this case.

CHAIR: I am not sure quite yet where we're going with it. Obviously, much like before, I'll give Mr. McCann some leeway, just so we can see where this is going.

MR. MCCANN: Okay.

CHAIR: But I hope it doesn't go down a road, you know, like the last one where we were, well, we'll just leave it there. All right. You may proceed.

MR. MCCANN: Thank you. I'm just going to mark this, I don't, I think it speaks for itself.

MR. SCHMIDT: Thank you.

CHAIR: I think it's fair to put in the SDAT record. So, I'm assuming you want a continuing objection --

MR. SCHMIDT: Yes, sir.

CHAIR: -- applicable to the document?

MR. SCHMIDT: Yes, sir. Really the whole line of, of questioning. I mean, and I'll be very brief, but for example, in a PUD there's regulations that says the applicant has to show that the developer has the capacity to complete the project. So, there's an affirmative requirement --

CHAIR: Sure.

MR. SCHMIDT: -- that might allow this, but this case isn't a PUD, it's a special exception. There's no requirement that Power Factor is a good company, a bad company, financially solvent, insolvent, it's just got nothing to do with whether

there should be a special exception granted.

CHAIR: Do you have any response, Mr. McCann?

MR. MCCANN: Yeah, I, I don't, I disagree. I think at some point, and I'm not saying that every Petitioner has to come in and demonstrate that it is a good company. I'm not saying that. But at some point in the continuum, you have, and I'm not saying this company is that company either, you have a company that just is incapable of even knowing what a solar panel is and it's going to try to install a panel in this neighborhood next door to my clients that the Board should know about it. I'm not saying we're at that point, but it, I think we're on the continuum of relevance is what I'm saying. And I, I don't think this, you can simply just say, as a matter of law, that a Petitioner's experience in the industry, is what, all I'm getting to, I'm going to ask a couple more questions about what they do and how they, how long they've been doing it, is entirely irrelevant. That has no probative value at all. I just, I find that hard to believe. So, it has relevance. It may not have a lot of relevance in the Board, Board's mind, but it has some.

CHAIR: I will, I think it's fine to go, develop a little more here, but I have skepticism, but go ahead.

MR. MCCANN: Okay. Okay. So, is Exhibit 9 in evidence?

CHAIR: It will be admitted subject --

MR. MCCANN: Okay.

CHAIR: -- to the continuing objection.

MR. SCHMIDT: Yes, thank you, sir.

MR. MCCANN: Okay. So, just a couple, couple questions in that regard. What experience does, if any, does Power Factor have in ground mounted solar arrays?

MR. STREIT: (inaudible) a tremendous amount.

MR. MCCANN: Okay. What do you mean by that? Ground mounted as opposed to roof mounted, government jobs. I'm talking about ground mounted solar arrays. Tell us about if there is lots.

MR. STREIT: So, my relationship with Power Factor predates the forming of Power Factor. George and I have worked together for over ten years. So, my previous company owns a three megawatt project in North Carolina, Power Factor installed and interconnected that one.

MR. MCCANN: Is that ground mounted?

MR. STREIT: It was ground mounted. I'm only going to reference ground mounted projects. We've done --

MR. MCCANN: That's not a Power Factor job though, is it?

CHAIR: He said Power Factor installed it --

MR. STREIT: It was a Power Factor job, but at the time I was the developer.

MR. MCCANN: Got it, okay, got it.

MR. STREIT: So, we hired Power Factor to build it for us.

MR. MCCANN: Okay.

MR. STREIT: Still in operation. Done multiple ground mounted canopies with Power Factor. We've, this past year, we've done 5.78 megawatts of ground mounts. Those are just the ones that I've been involved with. There are other projects that Power Factor as a company has built that, yeah. So, --

MR. MCCANN: Two thou, since 2013?

MR. STREIT: Since 2013, I would say at least tens of megawatts of utility or large commercial ground mounts.

MR. MCCANN: Ten you said? Ten megawatts?

MR. STREIT: Yeah, I would say at least.

MR. MCCANN: How many projects is that, more than five?

MR. STREIT: Considerably more than five.

MR. MCCANN: Okay.

CHAIR: Did you say tens or ten?

MR. STREIT: Ten megawatts.

CHAIR: Ten megawatts, sorry. Okay.

MR. MCCANN: Okay and when I say ground mounted, I mean, mounted on the ground like this as opposed, you said some sort of --

MR. STREIT: (inaudible) they're also ground mounted.

MR. MCCANN: Parking canopies. You, you call those ground mounted? That's what you consider to be ground mounted?

MR. STREIT: I call it a parking canopy. But it's ground mounted.

MR. MCCANN: Well, everything is ground mounted. A rooftop --

MR. STREIT: If you're on a roof --

MR. MCCANN: But it, I'll move on.

CHAIR: Let's all, let's make sure we're talking about the same thing. Sir, when the phrase ground mounted, when you use the phrase ground mounted, what are you referring to?

MR. STREIT: A racking system that goes into the ground.

CHAIR: All right. Does that help?

MR. MCCANN: Yeah, that's fine.

CHAIR: Okay.

MR. MCCANN: I'll, I'll move on, thank you. You mentioned the interconnection agreement that Power Factor has, you said you had preliminary approval of that agreement.

MR. STREIT: Um hm.

CHAIR: Is that a yes?

MR. STREIT: Yes.

MR. MCCANN: And that, in addition to the scriber, subscriber organization acceptance, that's an additional

requirement that's necessary to get to the point of installation here. You need to get an interconnection agreement with BG&E, correct?

MR. STREIT: Yes.

MR. MCCANN: And you said you have preliminary approval of that. What does that mean?

MR. STREIT: That they, that BG&E has reviewed the interconnection application and given us a favorable report without the interconnection upgrade costs and the ISA, the actual contract.

MR. MCCANN: So, you're waiting --

CHAIR: ISA?

MR. STREIT: Interconnection services agreement.

MR. MCCANN: So, you're waiting on those two things, costs and the agreement itself?

MR. STREIT: Yes.

MR. MCCANN: Okay. Do you know whether, you said Meade Communities, I think is the name of the organization --

MR. STREIT: Um hm.

MR. MCCANN: -- that would be the subscriber organization?

CHAIR: Yes?

MR. STREIT: Yes.

MR. MCCANN: Do you know whether, do you know whether they've applied to the Public Service Commission --

MR. STREIT: They have and they've been approved.

CHAIR: Please wait for him to finish his question. But, --

MR. MCCANN: I think I did, but.

CHAIR: All right.

MR. MCCANN: They have, they have applied and been approved, you said. Yes?

MR. STREIT: Yes.

MR. SCHMIDT: Yes. You have to verbalize. The tape doesn't get a nod of the head.

MR. MCCANN: Okay. In terms of the lease you mentioned, the lease is between Power Factor and the property owner or Meade Communities and the property owner?

MR. STREIT: The lease is between Power Factor and the property owner.

MR. MCCANN: Twenty-five years?

MR. STREIT: Yes.

MR. MCCANN: Is there, is there, is there a, a way for Power Factor to get out of the lease? Could it decommission in, in five years, if something happened, under the terms of the lease that you're aware of?

MR. STREIT: There's always a way.

MR. MCCANN: Okay. I didn't want (inaudible), I wasn't asking a legal question, I was just wondering are there any options that you're aware of or contingencies that you're

aware of for Power Factor to get out of that twenty-five year lease?

MR. STREIT: I just don't understand the question, I'm sorry.

MR. MCCANN: Okay.

MS. DOPKIN: Would it be correct to say are there provisions in the lease for early termination?

MR. MCCANN: That's what I was asking.

MR. STREIT: In the interconnection services agreement, BG&E has the right to terminate early.

MS. DOPKIN: But in the lease between Power Factor and the property owner, is there any such provision?

MR. STREIT: Not that I'm aware of.

MS. DOPKIN: Thank you.

MR. MCCANN: And then you have one five year option you said, Power Factor does?

MR. STREIT: Yes.

MR. MCCANN: Okay. So, in thirty years, max, this solar facility, if approved, will be gone, decommissioned and gone?

CHAIR: Keep your voice up, please.

MR. STREIT: This particular one, yes.

MR. MCCANN: Okay and you, have you ever been involved, or has Power Factor rather, been, ever been involved in a decommissioning? It hasn't been around that long, so I

guess not, right?

MR. STREIT: We have removed solar panels. We have not decommissioned a system.

MR. MCCANN: Okay. Has Power Factor ever worked on a ground mounted solar project in a rural area like this?

MR. STREIT: The North Carolina project was in a rural area.

MR. MCCANN: Was that a canopy project?

MR. STREIT: No, it was a ground mounted project.

MR. MCCANN: Okay. In, in Maryland or in Baltimore County it has not, correct?

MR. STREIT: Correct.

MR. MCCANN: Okay. Has Power Factor, to your knowledge, ever been involved in a ground mounted solar facility installation that involved a, a stream crossing and a connection between two, two or more different solar arrays?

MR. SCHMIDT: And again, Mr. Garber, I'm just continuing my objection for anything that doesn't have to do with this project. Thank you.

MS. MURPHY: (inaudible).

CHAIR: I was about to say, this seems like this is like the heart of the matter.

MS. MURPHY: (inaudible).

MR. SCHMIDT: No, I think he, he asked, has Power Factor ever done another stream crossing somewhere else?

MR. MCCANN: Another one, another one.

CHAIR: I understand.

MR. MCCANN: Other than this one.

MR. SCHMIDT: Okay.

CHAIR: No, I, I understood your question. So, I'm going to overrule it.

MR. SCHMIDT: Okay.

MR. MCCANN: Yeah, okay.

CHAIR: You may go.

MR. MCCANN: Okay, thank you, Mr. Garber.

MR. STREIT: We're partnered with a directional boring company, they're sharing our new facility, so I would say we have a lot of experience in directional boring, underground directional boring.

MR. MCCANN: You're partnering with them, you share office space, is that what you're saying?

MR. STREIT: I don't know the exact legal construct. I know that they are sharing our facility.

MR. MCCANN: Okay. But they're not a, whatever company this is, and what's the name of the company, by the way?

MR. STREIT: I don't know it.

MR. MCCANN: You don't know it. Whatever company it is, whatever, whatever name is not a subsidiary, an affiliate, a parent company of Power Factor, correct?

MR. STREIT: We're working with an experienced boring company to do the boring.

MR. MCCANN: I'm not, I'm not asking you that. I'm asking if Power Factor has ever done a, installed a solar facility that involves a stream crossing connecting two or more solar arrays. Power.

MR. STREIT: No.

MR. MCCANN: You mentioned in terms of this site, that the landowner, that's Mary Zoda Hides (phonetic), for lack of a better pronunciation, she approached you, is that right?

MR. SCHMIDT: Objection. That's not the property owner. I think it's Holly Springs Nature Conservancy.

MR. MCCANN: Okay, I'm sorry. I was speaking of the individ, of the principal. Holly Springs Nature Conservancy, that organization contacted you?

MR. STREIT: Yes.

MR. MCCANN: And who, who at that organization contacted you?

MR. STREIT: Mary.

MR. MCCANN: Okay. The person I just mentioned?

MR. STREIT: Yes.

MR. MCCANN: Okay. So, so you did not select this site, or Power Factor did not select this site, right?

MR. STREIT: We did after visiting it.

CHAIR: I think his question is, who is the party

that initiated the first contact?

MR. STREIT: We did not initiate first contact.

CHAIR: Was that your question, Mr. McCann?

MR. MCCANN: Yeah, I think so.

CHAIR: Okay.

MR. MCCANN: Okay. You mentioned something, you used the term carve out and I, I have never heard that term before in the context of the community solar pilot program for low and moderate income folks. I thought that, as opposed to a carve out, that is the purpose of the program, isn't it? (inaudible) purpose?

MR. STREIT: Community solar?

MR. MCCANN: Yeah.

MR. STREIT: No, because everybody would be LMI if that was the purpose of the program.

CHAIR: What was that? Everybody would be?

MR. STREIT: Low to moderate income.

CHAIR: Thank you.

MR. MCCANN: Well, it's one of three categories.

MR. STREIT: It is, one of three.

MR. MCCANN: Okay. So, it's not a carve out, it's just a community pilot program provides low moderate income folks, it's one of three categories that you can, you can obtain subscribers from, right?

MR. STREIT: Correct.

MR. MCCANN: Okay and the same thing with the military, right? Personnel?

MR. STREIT: Military is not --

MR. MCCANN: Don't know? Well, why do you say there's, why do you say you have a carve out for military folks? Where do you get that from?

MR. STREIT: I didn't say carve out.

MR. MCCANN: Okay. So, anybody in the military, just as I could or a member of the Board could, participate in this program if we wanted to, right?

MR. STREIT: Some of the electricity from our community solar project will go to active duty military personnel.

MR. MCCANN: Okay.

MR. STREIT: I do not believe all community solar projects will be able to say that.

MR. MCCANN: And why do you say that?

MR. STREIT: If by random, there's a veteran who signs up for the other nine projects, maybe. We specifically will be sending electricity to active duty military personnel.

MR. MCCANN: Do you have a list of subscribers?

MR. STREIT: I do not, that's why we have a subscriber partner.

MR. MCCANN: And how, but how do you know that active duty military personnel will be the subscribers?

MR. STREIT: Because they told me.

MR. MCCANN: Who's they?

MR. STREIT: Our subscriber partner, Meade Communities.

MR. MCCANN: Meade Communities, and that, okay. All right.

CHAIR: Is there, correct me if I'm wrong, but is there some type of cost benefit for military personnel and active military families to participate and ask for energy produced by solar?

MR. STREIT: I believe that's the goal of the program.

CHAIR: Right. So, that would explain how that they are, how Meade is marketing itself to military families, is that fair?

MR. STREIT: Yes.

MR. MCCANN: Okay. You mentioned a couple things about the panels, Mr. Streit, so I want to talk about those a little bit real quick. You mentioned there's fifty-six hundred of them?

MR. STREIT: Correct.

MR. MCCANN: Do we know the exact dimensions, width, height? Of, of not just the racks, but the panels themselves?

MR. STREIT: Yes.

MR. MCCANN: What, what is the exact width and height

of the, of each of the fifty-six hundred panels?

MR. STREIT: It would be on the spec sheet.

MR. MCCANN: Where's the spec sheet?

MR. STREIT: One of the exhibits, I believe, we submitted.

MR. MCCANN: Not, not in this case.

MR. STREIT: No?

MR. MCCANN: No.

MR. STREIT: Okay. I can't give you exact millimeters but it's about three feet by five feet.

MR. MCCANN: Okay and that's set in stone? In other words, you intend sitting here today to provide sixty, fifty-six hundred panels of that dimension?

MR. STREIT: Yes.

MR. MCCANN: Okay. You've identified the manufacturer, it's 371, is that the model or type of panel?

MR. STREIT: 370 is the number of watts, name plate capacity.

MR. MCCANN: Okay, all right. What's the efficiency rating of those panels?

MR. STREIT: I look at a lot of spec sheets, I would guess somewhere around eighteen percent.

MR. MCCANN: Okay. But you don't know for certain sitting here today?

MR. STREIT: No.

MR. MCCANN: Okay. There are higher efficiency panels than that, correct?

MR. STREIT: Yes.

MR. MCCANN: In fact, there's, they're what are called, I think, in your industry, high efficiency panels, is there such a term?

MR. STREIT: There is.

MR. MCCANN: Yeah, and the efficiency can be much higher than eighteen, it can be twenty-two percent, twenty-two percent in other words would be a high efficiency panel, wouldn't it?

MR. STREIT: I think forty-two percent is the highest efficiency module available.

MR. MCCANN: Okay and, correct me if I'm wrong, it sounds like you'd probably know, various factors can affect efficiency. The design of the panels, right? How they're designed?

MR. STREIT: Yes.

MR. MCCANN: The size of the solar cells?

MR. STREIT: Yes.

MR. MCCANN: Whether the cells are mono-crystalline or multi-crystalline?

MR. STREIT: Yes.

MR. MCCANN: You, your, you suggested that they'll be mono-crystalline, right?

MR. STREIT: I did.

MR. MCCANN: Multi-crystalline are generally speaking higher efficiency, more or higher --

MR. STREIT: Lower.

MR. MCCANN: Lower, okay.

MR. SCHMIDT: Can, Mr., you have to answer yes or no, don't shake your head.

CHAIR: Thank you.

MR. SCHMIDT: I'm sorry, I just saw him shaking his head.

CHAIR: No, it's okay.

MR. MCCANN: And generally, the, the higher the efficiency of the panel the fewer panels necessary, generally speaking?

MR. STREIT: Yes.

MR. MCCANN: And this area, I think we all know, the technology in panels is, is it fair to say, is constantly evolving? Since you've been in, you've been around for twelve years plus you said.

MR. STREIT: Um hm.

MR. MCCANN: You've seen --

CHAIR: That's a yes.

MR. MCCANN: Thanks. You've seen the, the industry change a lot, is that fair?

MR. STREIT: Yes.

MR. MCCANN: You've seen the efficiency of panels change a lot, is that fair?

MR. STREIT: It is incremental about three to five percent annually.

MR. MCCANN: Okay.

MR. STREIT: It's been pretty steady.

CHAIR: Wait a minute. So, we're at eighteen percent, that's three to five percent annually, that we have, in terms of improvement? Was that in the prior year or is that overall?

MR. STREIT: Wattage efficiency, not the eighteen percent refers to the amount of sunshine converted to electricity.

CHAIR: Right. So, it's the wattage, not the conversion, okay.

MR. STREIT: Yes.

CHAIR: Obviously we wouldn't have many years if that was the case. Hence my question.

MR. MCCANN: Just trying to find the right exhibit. But I saw in one of the notes on the plan, maybe it's, this is, Larry, what exhibit is this?

CHAIR: 22 --

MR. SCHMIDT: That's 22-A, A through D.

MR. MCCANN: Okay. (inaudible).

MR. SCHMIDT: I, I, Ms. Murphy had indicated, I

think, she was going to put a sticker or something on each one.

MR. MCCANN: Okay.

MR. SCHMIDT: Ms. Cannington told me, do not write on the exhibits numbers because they get confused as to whether its Board of Appeals or ALJ. But Ms. Murphy will put a sticker on.

CHAIR: I think that's --

MR. SCHMIDT: So, I was duly advised --

CHAIR: (inaudible) advice.

MR. SCHMIDT: I was duly advised and I'm paying attention to what Ms. Cannington told me to do.

CHAIR: Thank you.

MR. MCCANN: Okay and you talked about the megawatts, Mr. Streit, but I'm just looking at the plan itself, and this, I guess, would be 22-A. It says in note, note seven, proposed land use, solar facility, two megawatt max, do you see that? You may want to take a look just to confirm, but I guess, see that?

MR. STREIT: Yep.

MR. MCCANN: Okay. But you, you seem a little more specific about the, the megawatts. You said that these fifty-six hundred panels will generate 1.85 megawatts.

CHAIR: Of A/C.

MR. MCCANN: Of A/C and that's what you look at, right?

MR. STREIT: That's correct.

MR. MCCANN: Okay. But I guess according to the plan, it's a possibility that, it says two megawatt max, and that's what we're, we're, that's the plan we're reviewing, it's possible that in the, the megawatt capacity of the panels that are actually installed, maybe as high as two megawatts, is that safe or fair?

MR. STREIT: Not on this site.

MR. MCCANN: You think it cannot, is, is this site as on the plan is it capable of generating more than 1.85 megawatts?

MR. STREIT: Not as planned and we would have planned, planning is the longest portion of the development, right?

MR. MCCANN: Okay. So, why does the plan say two megawatt max?

MR. STREIT: It's a general note referring to most probably the program.

MR. MCCANN: Okay. Have you, have you or anyone else on behalf of Power Factor conducted an analysis of the minimum number of panels necessary to gen, to generate 1.85 megawatts?

MR. STREIT: No.

MR. MCCANN: Have you or anyone else at Power Factor conducted an analysis of the minimum acreage, the amount of land necessary to generate 1.5, 85 megawatts?

MR. STREIT: We have to be very close to that.

MR. MCCANN: But you have --

MR. STREIT: Three seventy watt module is a high wattage module. This is an efficient design.

MR. MCCANN: But not the highest, but not the highest efficiency?

MR. STREIT: No.

MR. MCCANN: Okay. So, getting back to my question, I know you said we have to be close and that to me sounds more of a guess than an analysis. Did you actually, did you specifically, or anyone else on, at Power Factor conduct any specific analysis of the minimum amount of land or acreage necessary to generate the 1.85 megawatts that you're proposing for this site?

MR. STREIT: No.

MR. MCCANN: Okay. But that's, in my experience, and I've had a couple of these cases now, that's something that can be determined, can it not? In other words, people with your background or technical or mechanical background, as you said, could figure out precisely the minimum number of panels and the minimum acreage or land necessary to generate a specific amount of megawatts, that's possible?

MR. STREIT: Could be done if somebody gave me a criteria. You haven't.

MR. MCCANN: Okay.

MR. STREIT: Or what's the criteria?

MR. MCCANN: Okay. I, I know you didn't select this site, but what, what can you tell us about the natural resources in the area around the site?

MR. SCHMIDT: Objection.

MR. MCCANN: For instance, --

MR. SCHMIDT: Be, just beyond the scope of direct. I didn't call this witness about anything, you know, he's not from, he's not the engineer. I don't know where the questions are going. But I'll just object.

CHAIR: Mr. McCann?

MR. MCCANN: I just want to find out if this gentleman is familiar, I subpoenaed the owner of the property, as Larry has said, we tried to serve her, she was evading service, frankly. She wasn't answering her door, was hiding. I wanted her here, her here to ask these questions. I asked Larry to accept, accept service and she's not here today. She's the, the proprietor of this so called conservancy, so in her absence, I wanted to ask this gentleman what, what he, as the face of this Petitioner, knows about the area and just a couple questions about what he knows of the natural resources.

MR. SCHMIDT: And just, just objection. The, the individual who Mr. McCann attempted to serve --

CHAIR: Well, we're going to do one thing at a time.

MR. SCHMIDT: Okay. But he --

CHAIR: Because right now we're dealing, because I don't want to get sidetracked here. We're now talking about his understanding of the natural resources on the site. Your objection was he's not an expert in this stuff, he's not an engineer, that's what we're dealing with. Mr. McCann?

MR. MCCANN: Just a couple quick --

CHAIR: Hold on. I will overrule that objection. You may ask your questions.

MR. MCCANN: Okay. I'll just ask a couple --

CHAIR: And then, if there's an issue as to the owner, we can deal with that separately.

MR. MCCANN: Okay. For instance, do you know what watershed this property is located in?

MR. STREIT: Pretty Boy.

MR. MCCANN: Okay. What about the stream? What, what use or category of stream is, is it, do you know?

MR. STREIT: I do not.

MR. MCCANN: Okay. Bear with me, I, that might be all I have, I just want to make sure.

CHAIR: And, Mr. McCann, just to follow-up on your last question there.

MR. MCCANN: Yeah.

CHAIR: What use category stream, there are two streams.

MR. MCCANN: Yes, do you know either one? The use or

category of either of the two streams?

MR. STREIT: Work with an engineer so that he can provide that information.

MR. MCCANN: Okay.

CHAIR: Not that I expected his answer to be different, but there are two streams.

MR. MCCANN: Yes.

CHAIR: So, we need to know which one you were talking about or talking about both.

MR. MCCANN: I appreciate that, that clarification.

CHAIR: While you're doing that, I'm going to jump in if that's okay?

MR. MCCANN: Sure.

CHAIR: All right. So, Meade is in charge, Meade as a subscriber, is in charge of getting the subscriptions, correct?

MR. STREIT: Correct.

CHAIR: All right. What happens if they cannot fulfill that role? That is, they don't get enough subscriptions?

MR. STREIT: As far as I know, they already have more than enough.

CHAIR: Okay. Let's say they can't maintain that five years from now, they find out subscriptions wane. What happens then?

MR. STREIT: We would get new subscriptions.

CHAIR: If, for whatever reason, Meade fails at its job, what happens to the solar facility?

MR. STREIT: Solar facilities are only worthwhile when they're generating electricity, regardless of who the owner or subsequent owners are. You want that facility producing electricity because elec, power is money.

CHAIR: But if you don't have subscribers or the, the requisite amount of subscribers, how is it impacted?

MR. STREIT: You would most probably have to sell to BG&E wholesale, but any money is still better than no money.

CHAIR: Okay. Let me ask what your understanding is as to who is responsible for the maintenance of the facility?

MR. STREIT: Power Factor will enter into an operations and maintenance contract with Meade Communities. Ultimately, as the, ultimately, the owner is responsible.

CHAIR: Does Meade have any responsibility?

MR. STREIT: For the operation or maintenance of the system?

CHAIR: Main, maintenance of the facility.

MR. STREIT: I don't think so.

CHAIR: Okay. Who's responsible for the cost of maintaining the facility and access roads?

MR. STREIT: The owner of the facility.

CHAIR: All right. But is your understanding as to

who will be responsible to physically remove the installation once, once there are discontinued operations?

MR. STREIT: The owner of the system.

CHAIR: What is your understanding as to who has to remove the facility after abandonment?

MR. STREIT: After abandonment? It's still the owner of the system or, that's my understanding.

CHAIR: Okay.

MS. DOPKIN: Does the lease address who removes the facility when it's decommissioned?

MR. STREIT: I would have brought it with me today if I had known there was going to be this many questions on the lease, I'm sorry.

MS. DOPKIN: I suspect you'll get your chance.

MR. STREIT: Yes.

MS. DOPKIN: A couple questions based on your earlier testimony. You said there is the possibility of fire, though ordinarily it's on a rooftop installation. My question is, when there is a fire, does it move from panel to panel? Does it jump like from rooftop to rooftop, does it jump from panel to panel?

MR. STREIT: I'd like to clarify. There are tens, if not hundreds of thousands of solar facilities, all across the U.S. and the world, and I've seen less than ten fires in ten years. So, I don't want anybody --

MS. DOPKIN: I understand.

MR. STREIT: -- to think, but they do generate electricity. But I think I've seen more transformer fires from, you know, trees falling, than I've seen solar fires.

MS. DOPKIN: I'm sure that's the case. Can you answer my question?

MR. STREIT: That they can spread.

MS. DOPKIN: Thank you. This particular facility proposes an underground electrical connection and that actually then runs to, I guess, an inverter and then to the BGE pole. What effect on efficiency is there by the length of that run underground and to the pole? Because it does travel some distance.

MR. STREIT: It doesn't, there's a wire calculation for voltage drop. I don't think the distance, because we're running A/C versus direct current, will be that big.

MS. DOPKIN: So, it wouldn't affect the eighteen percent efficiency rating or has it already been factored in?

MR. STREIT: Been converted, so, --

CHAIR: Sorry, go ahead. Were you done with --

MR. STREIT: -- eighteen percent is at the module and we're now almost all the way to the grid. So, it will be factored in.

MS. DOPKIN: You had earlier referred to your relationship with Meade Communities as your subscriber partner

in the program. Is there a partnership agreement?

MR. STREIT: No.

MS. DOPKIN: So, what exactly, what piece of paper controls your relationship with Meade Communities? Is it merely an operating agreement?

MR. STREIT: I, there will be a contract.

MS. DOPKIN: Is there, is there common ownership?

MR. STREIT: There is not common ownership.

MS. DOPKIN: So, it's merely contractual?

MR. STREIT: Yes.

MS. DOPKIN: And is that contract co-terminus with the lease?

MR. STREIT: Can you define co-terminus for me?

MS. DOPKIN: Does it run for the same twenty-five years with a five year extension?

MR. STREIT: Yes.

MS. DOPKIN: You said Meade is your financial partner. Do they lend money to Power Factor?

MR. STREIT: No, Meade is our, our subscriber partner.

MS. DOPKIN: If improvements in technology in the future would give this facility the ability to produce more than 1.85 megawatts of alternating current, are you required to go back to the public service commission to amend the application?

MR. STREIT: I think for the Public Service Commission, once you are allowed into the program, there's no changing it. It's, it's a term of the program and with any changes to interconnection with BG&E, you're starting over. You'll have a new study, if, if you make substantive changes and new technology would have to be dramatically more efficient for us to consider changing the technology. So, and we would be starting over.

MS. DOPKIN: And will Power Factor own the facility?

MR. STREIT: No.

MS. DOPKIN: Who will own the facility?

MR. STREIT: Our financial partner.

MS. DOPKIN: Meade Communities?

MR. STREIT: Is the subscriber organization.

MS. DOPKIN: Who is your financial partner?

MR. STREIT: There's a third party.

CHAIR: Here we go.

MS. DOPKIN: And who is that?

MR. STREIT: There are, it is somebody we have worked for, I don't want to, it is a large renewable energy finance company.

MS. DOPKIN: They have a name?

MR. STREIT: It is Onyx Renewable Group.

MS. DOPKIN: Spell that?

MR. STREIT: O-N-Y-X.

MS. DOPKIN: Onyx.

MR. STREIT: Renewable Group.

MS. DOPKIN: Why are they not part of this hearing if they're going to be the owner?

MR. STREIT: I don't know what, --

MS. MURPHY: (inaudible).

CHAIR: Unfortunately, you're the one on the stand. If you don't know the answer, you don't know the answer. They can't, they can't tell you.

MS. MURPHY: Is Onyx Renewable Group a company?

MR. STREIT: Yes.

MS. MURPHY: Is it a Maryland entity?

MR. STREIT: No.

MS. MURPHY: Do you know where, where it's formed?

MR. STREIT: Yes.

MS. MURPHY: Want to share?

MR. STREIT: I believe it's New York, but most --

CHAIR: They were recently in the news. Onyx.

MS. MURPHY: Who, whoever said that, you have to be quiet.

VOICE: Sorry.

MS. MURPHY: Thank you. So, New York, you say? New York (inaudible)?

MR. STREIT: Yes.

CHAIR: All right. I'm going to move aside from what

I was just about to say. Ms. Dopkin, were you done with your questions?

MS. DOPKIN: Yeah. I'm a little troubled that the owner is not a party to these proceedings.

CHAIR: Well, I want to jump back to one thing. You said that there was a, and I'm sorry, just to build off of Deborah's, Ms. Dopkin's question. You said that there wouldn't be much of a drop in the line as it traveled because it's going to be A/C, but it's not traveling in A/C, it's, it's D/C as it travels.

MR. STREIT: We're doing streaming (inaudible) so the inversion will take place in the field.

CHAIR: Okay. So, there are going to be string inverters, so how many inverters are you, you going to have?

MR. STREIT: Thirty-five.

MS. DOPKIN: How many?

CHAIR: I don't understand why I'm just learning about this now that there will be thirty-five inverters as part of the project. And they're going to be scattered through both pods, presumably, correct?

MR. STREIT: Yes.

CHAIR: All right.

MS. DOPKIN: I have one other question.

CHAIR: I wanted to follow-up on that because that was obviously (inaudible) go ahead.

MS. DOPKIN: My follow-up question is did, in the design of this project, you consider having separate points of connection from the two separate solar fields to the BG&E poles?

MR. STREIT: We did.

MS. DOPKIN: And why didn't you do that?

MR. STREIT: It's the least invasive, the way we have it designed.

MS. DOPKIN: Invasive to?

MR. STREIT: The location.

MS. DOPKIN: But you could have had two separate points of connection? Could you have? Is there any reason that that was not --

MR. STREIT: It is potentially possible. It would be difficult. We would have to have, I believe, two interconnection points so we would double the expense.

MS. DOPKIN: But other than the expense?

MR. STREIT: It would also be more invasive.

MS. DOPKIN: Invasive in terms of?

MR. STREIT: The property. How, how would we get the power from the second array to BG&E?

MS. DOPKIN: That's what I was asking you.

CHAIR: Right.

MR. STREIT: I looked and it was very difficult. I mean, we could run under the access road, but then we still

have to get from Falls Road to our connection point with BG&E.

MS. MURPHY: Which is located where? Where is that connection point?

MR. STREIT: The first, the curved access road.

MS. MURPHY: Okay. So, it's, the connection point is on Falls Road anyway.

MR. STREIT: Well, the power lines are on Falls Road, yes.

MS. MURPHY: So, if you ran it, if you ran the, right, the east array, if you ran that under the driveway access, you could actually connect it to Falls Road, couldn't you?

CHAIR: When she said the, the, if you look at them, if you look at the map, just so we're all on the same page, the existing access road that's being converted to service the east pod, you see what I'm talking about? The south of the map?

MR. STREIT: Um hm.

CHAIR: That's what Ms. Murphy's question is referencing.

MS. MURPHY: Could you connect that array under the service road out to Falls Road and, and do the same thing? And then avoid the underneath the stream?

MR. STREIT: How is that, I mean, you're, that seems more invasive to me.

MS. MURPHY: And how is it more invasive? Because we

don't have your knowledge, so we're asking. We're asking what, how is that more invasive?

MR. STREIT: Because by connecting the two, we only have one interconnection point that runs from the larger of the two arrays to BG&E. But if we have two interconnection points, I've got to somehow run that A/C wire all the way from the top field directly adja, you know, through the smaller lot. It, it's a much longer run, just in linear feet, we're going to add, I don't know, eight hundred or a thousand feet maybe.

MS. MURPHY: Does it come down to costs (inaudible)?

MR. STREIT: I don't know, I'd have to look.

MS. MURPHY: Okay. Well, I thought you said you already looked at this and decided that you couldn't do that.

MR. STREIT: Well, one way, one way electrically and looking at it made sense and the other one was complicated. That is why --

CHAIR: The underground stream one was the less complicated one?

MR. STREIT: Yes. What the, what this doesn't show there are lots of trees on, behind Linda's house, there's lots of trees and --

CHAIR: Who's Linda?

MS. MURPHY: Who is Linda?

MR. STREIT: Linda on the, where the driveway is going to the landowner adjacent to the driveway and also on the

property, on the smaller lot, there are trees and bushes and outbuildings, all of which would have to be negotiated.

CHAIR: But you are putting in this access road?

MR. STREIT: We are, there is an access road, that's the driveway to the farmhouse that goes behind the house. We'll have to improve it and then make it permanent up to the top field.

CHAIR: Okay.

MS. DOPKIN: And could that connection be above ground?

MR. STREIT: It could be. I, --

MS. DOPKIN: So, you wouldn't have to do a whole lot of disturbing of anything on the ground. Am I missing something?

MR. STREIT: Above ground is normally considered more invasive but we could do that. It's typically cheaper for us to run power lines above ground.

MS. DOPKIN: They're not very pretty but.

MR. STREIT: I like electricity as much as I like solar, so whenever I see it, I'm amazed with the engineering. I don't see it as ugly.

MR. MCCANN: Can, can I ask, before I lose my train of thought?

CHAIR: Sure.

MR. MCCANN: Because you guys probably have more

questions but. When you say that this, the way you have it, is the least invasive and less difficult, was your term, than having two connections from the two arrays to Falls Road, is, is the only reason you're saying that is strictly because of the linear feet of the line and it's just more linear feet, I think you, is the way you described it? In other words, and this is the best exhibit, this is sixteen. It shows the colors.

CHAIR: Well, let's not get him confused because I think sixteen is already on the board. It's just underneath everything there.

MR. MCCANN: Yeah.

CHAIR: And then we're going to have two copies of sixteen on there.

MR. MCCANN: Well, this is mine, but yeah.

CHAIR: Right. So, let's bring that out, just so we don't get confused as to where the, which one is an exhibit or anything like that.

MR. MCCANN: So, I think you, what you were saying is the reason it's more invasive or more difficult is because the, in terms of linear feet, this distance is greater than this distance. That is, the distance --

MS. MURPHY: (inaudible) describe this and this?

MR. MCCANN: Yeah, the distance from, between the, the east, or southeasterly array to Falls Road, just pure, in

terms of pure linear feet, is greater than the distance between the two arrays under the stream, is that right? Is that what you were referring to?

MR. STREIT: Partly, yes.

MR. MCCANN: Okay. What was, what, what's the other part of it? I think you men, also mentioned trees in the way, right?

MR. STREIT: Trees and outbuildings, but also two interconnection points.

MR. MCCANN: Okay. Well, put aside --

MR. STREIT: Once we get to Falls Road, how do we get from there to where we are connecting with BG&E?

MR. MCCANN: Okay. I'll get to that in a moment. I'm just talking about the connection between the southeasterly array and Falls Road. I mean, there, as I see, this is a good exhibit to use, Petitioner's Exhibit 16. This is a whole, this is a clear, this is outside the forest buffer, number one. And it's, appears to be a mostly cleared area. There's no trees in here, there's no green, right? You could do a straight line without touching any trees, any outbuildings or the forest buffer, right? Is that correct?

MR. STREIT: Could I?

MR. MCCANN: Could you?

MR. STREIT: Yes.

MR. MCCANN: Yes, okay. And then, in terms of two

connections, I think Ms. Murphy was asking you about the, the BG&E connection. This, there's a power line running all along Falls Road, right?

MR. STREIT: Yes.

MR. MCCANN: Okay. So, the connection that would go from the southeasterly array to Falls Road, would it, could it connect at that point on Falls Road to BG&E's lines? It would have to be connected up here?

MR. STREIT: It would have to be connected up there.

MR. MCCANN: And why is that?

MR. STREIT: Why would you have two connections?

MR. MCCANN: Okay, just asking. Do we, do you know how many specific panels are in each of the two arrays? The specific number?

MR. STREIT: I do not.

MR. MCCANN: How about the, the wattage generated by each of the two arrays? Do you have a breakdown of that 1.85?

MR. STREIT: I do.

MR. MCCANN: You do?

MR. STREIT: But I don't have it in my head right at this second.

MR. MCCANN: Okay.

MR. STREIT: But I looked at it.

MR. MCCANN: Okay and then, lastly you said, you said that you will not be able to hear this solar array onsite, I

mean, offsite. I mean, it's a big site, you may not be able to hear it in the back of the property, but we do have folks that are very close to the panels. Are you telling me that the Fowbles to the north of the, the northern array will not be able to hear that large grouping of panels, which is no more than, I don't know, seventy-five feet or maybe a hundred feet away?

MR. STREIT: Yes.

MR. MCCANN: They won't be able to hear it at all?

MR. STREIT: That's correct.

MR. MCCANN: Okay and I think that's all that I have. Thank you.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Thank you, Mr. Garber. Unfortunately, I, I only have one copy of this and I'll provide more and I thought Mr. Barrett may have testified but I looked through my notes and he didn't. I think that was the spec sheet of Mr. Barrett --

CHAIR: I, I know that it was, it was brought out at one time.

MR. SCHMIDT: Yeah.

CHAIR: I don't --

MR. MCCANN: This is a different one (inaudible).

CHAIR: It was not put into evidence.

MR. MCCANN: (inaudible), right? The ALJ was red, it

had (inaudible). But it's all right, whatever. I'm just --

MR. SCHMIDT: Well, let, let me ask the witness because maybe I've got the wrong one. Mr. Streit, is, is this spec sheet for the panels which are proposed here?

MR. STREIT: Yes, it is.

MR. SCHMIDT: Okay. You're sure about that? I just want to make sure because they're saying it was something else.

MR. STREIT: This is it.

MR. SCHMIDT: Okay and that has dimensions and other information about the panels?

MR. STREIT: It does.

MR. SCHMIDT: Okay. Ms. Murphy, I will submit this one copy and I can maybe make additional copies, but it's the only one I happen to have and I apologize. And I would offer that as the next exhibit.

MS. MURPHY: Twenty-four.

MR. SCHMIDT: Now, Mr. Streit, I, if I can approach the witness? You're somewhat familiar with the zoning regulations, you've become familiar with the zoning regulations as they relate to solar facilities in Baltimore County, correct?

MR. STREIT: Yes.

MR. SCHMIDT: Okay.

MR. STREIT: Somewhat.

MR. SCHMIDT: All right. The, the, the zoning

regulations, do they not, and I'm going, just hand you a copy of the, under Section 4-E-105, have certain provisions --

CHAIR: Just for clarity, you said 4-E, that's what the bill says.

MS. MURPHY: 4-F --

CHAIR: But it's been designated as 4-F in the Code.

MR. SCHMIDT: I'm sorry, 4-F.

CHAIR: Just to clarify.

MR. SCHMIDT: 4-F-105 has certain provisions related to required security, does it not?

MR. STREIT: Yes.

MR. SCHMIDT: And is it Power Factor's intention and do you expect that you will have to comply with the provisions of the Baltimore County zoning ordinance in terms of posting the appropriate security --

MR. STREIT: Absolutely.

MR. SCHMIDT: -- that the County will accept in order for this project to move forward?

MR. STREIT: Absolutely.

MR. SCHMIDT: And are you aware of the fact that that now is a requirement of the submission of a letter of credit in a form acceptable to the County as a required security identified under Section 4-F-105?

MR. STREIT: Yes.

MR. SCHMIDT: Similarly, does not Section 4-F-106

have certain provisions regarding maintenance of solar facilities?

MR. STREIT: Yes.

MR. SCHMIDT: And do you expect and anticipate that Power Factor and this facility will be subject to those maintenance pro, provisions?

MR. STREIT: Yes, we will.

MR. SCHMIDT: And will you abide by the provisions of these maintenance provisions so that the facility is operated in accordance with County law?

MR. STREIT: Absolutely.

MR. SCHMIDT: Okay. Finally, Section 4-F-107, has numerous provisions related to either the abandonment or removal of a solar facility, does it not?

MR. STREIT: It does.

MR. SCHMIDT: And it, and like the other sections that I mentioned regarding security and maintenance, the abandonment and removal, cer, certain obligations on certain entities who are related to the facility, be it the property owner, the owner of the facility, whoever it might be, and you would be obligated to abide by these conditions, correct?

MR. STREIT: We would.

MR. SCHMIDT: So, whoever Baltimore County requires security of and maintenance obligations for and abandonment for, is all part of the decommissioning agreement, is it not,

that you will be required to enter into with Baltimore County before you can obtain a permit and build anything out there?

MR. STREIT: That is correct.

MR. SCHMIDT: Okay. So, these provisions about who's required to do what and when and how, are all set forth, are they not, under the Baltimore County zoning, zoning ordinance, which I would respectfully submit, is what we all have to follow, the Board, the Protestants, and Power Factor and the property owner, correct?

CHAIR: If I can, sir, in short, you agree to comply with the law, that's what Mr. Schmidt's questions are?

MR. STREIT: I do.

CHAIR: I mean, is that a fair way to summarize it?

MR. SCHMIDT: Yes, and it's just, there's, the suggestion of some of the questions on direct examination is that there's going to be all this uncertainty as to what the obligations are and they're spelled out in the ordinance. But, I wanted to make sure, I wanted to get the witness to explain that he's aware of that and that they will abide by the terms of the ordinance. They will be required to do so.

CHAIR: I don't think there's an argument that they would be required to comply with the law from Mr. McCann, that is. Right?

MR. MCCANN: Right.

MR. SCHMIDT: Okay. Okay. Mr., Mr. Streit, let me

ask you, there was, there was a line of questioning that Mr. McCann asked you, and I think the intent of that at the end of the day, well, let me strike that and say, you, you've been a part of the design of this project in determining how big it is and how many acres it'll cover and how it'll be laid out, is that correct?

MR. STREIT: That is correct.

MR. SCHMIDT: You, along with the engineer and the other consultants who put this plan together?

MR. STREIT: That's correct.

MR. SCHMIDT: And your expertise is as to the design of the actual panels and how many panels the, the science of it and Mr. Leffner, obviously, is the civil engineer. There's this inference or suggestion that this site can somehow be shrunk or made smaller to accomplish and have a solar facility as you propose it here. That's the inference that I've heard from these questions. Is this the minimum size that you can use to produce a facility of the, producing the amount of energy that you propose?

MR. STREIT: It is.

MR. MCCANN: Objection.

MR. SCHMIDT: Okay.

CHAIR: Hold on. Mr. McCann, you have an objection?

MR. MCCANN: I guess he can change, I guess he can change his testimony. My point is, he already said no and he's

conducted no analysis in that regard, so.

CHAIR: Well, I asked you what your objection was. Is it that it's inconsistent with your recollection of his testimony?

MR. MCCANN: Well, yeah, I guess that's not an objection, so I'll withdraw --

CHAIR: Well, I mean, it can be, I just don't know if it's going to be a successful one.

MR. MCCANN: That's what, that's what it is.

CHAIR: All right. Well, you're going to have the ability to re-cross. So, you may continue.

MR. SCHMIDT: Mr. McCann didn't ask you about the factors and the analysis that would go into making the facility smaller. I, and, and can you explain why this facility is the size it is, how it's been laid out and how you got to this? Was this some random application you decided to do it this size or I assume there was some type of analysis that went into this?

MR. STREIT: That's correct. We started out with a larger system size and as environmental factors came in, we reduced the system size.

MR. SCHMIDT: Can it be reduced further?

MR. STREIT: NASA makes modules so physically, yes, we could buy modules from the space agency that are more efficient than commercially available modules.

MR. SCHMIDT: Okay. But how, is that practical from a financial or other standpoint?

MR. STREIT: I don't think they actually sell them to the public.

CHAIR: I was about to say, I don't think that they're a market participant, but.

MR. STREIT: Yeah.

MR. SCHMIDT: Yeah.

MR. STREIT: But there are more efficient modules.

CHAIR: You alluded to this earlier where you said that there are modules that are up to forty, forty-two percent of efficiency, correct?

MR. STREIT: Correct.

CHAIR: So, Mr. Schmidt's question, --

MR. SCHMIDT: You probably, you'd probably be compromising national security if you got --

MR. STREIT: To get them, we would.

MR. SCHMIDT: -- to get the more efficient panel.

MR. STREIT: Right.

MR. SCHMIDT: Assuming that that's not an available option for you, Mr. Schmidt's question is designed, is there a way to make it smaller without having to avail yourself of theft of government property or whatever the case may be?

MR. STREIT: I don't think so.

MR. SCHMIDT: Okay. You've designed this, I assume,

Mr. Streit, to be as efficient and to be as least invasive in terms of impacting the environmental resources and the property as possible, have you not?

MR. STREIT: That's correct.

MR. SCHMIDT: I thought that was your testimony.

CHAIR: Well, we can strike Mr. Schmidt's comments.

MR. SCHMIDT: Okay, okay. Strike, I thought that was your testimony. The witness has answered, has answered. Now, let me ask you about these connections. Similarly, I, I know we would all like to re-engineer this project, but you have chosen to have one connection point with BG&E, is that correct?

MR. STREIT: That's correct.

MR. SCHMIDT: Does BG&E have any input into how many connection points that you can have?

MR. STREIT: Yes.

MR. SCHMIDT: Okay. Is it true that BG&E selects where your connection would be and how many points you can have?

MR. STREIT: Yes.

MR. SCHMIDT: Okay and is it also true that if you have multiple connection points, you have to obtain additional authorization from BG&E and additional approvals from BG&E?

MR. STREIT: That's correct.

MR. SCHMIDT: Okay. Did, did that all enter into your consideration of how many connection points that there

would be?

MR. STREIT: Yes, it did.

MR. SCHMIDT: Okay and is that important or why is that important as the person who's building this? I mean, why not have a gazillion connection points?

MR. STREIT: If we're not compliant with the program, we won't build the project.

MR. SCHMIDT: Okay. What do you mean by that?

MR. STREIT: BG&E is an electric utility. They have a very efficient electric system. They're not going to let us do multiple connections.

MR. SCHMIDT: Okay.

MR. STREIT: We've already submitted a design for this system that they have preliminarily approved.

MR. SCHMIDT: Okay. So, BG&E has approved tentatively, at least, this particular layout with one connection point?

MR. STREIT: Correct.

MR. SCHMIDT: Okay. If you also had a connection from the array, which is to the east, adjacent to the Ault property, you would have to cross over portions of the prop, portions of the subject property for, specifically, I'm sorry, I'm trying to remember what parcel number that is.

MR. MCCANN: 121.

MR. SCHMIDT: 123?

MR. MCCANN: 121.

CHAIR: 121.

MR. SCHMIDT: 121, is that correct?

MR. STREIT: Yes.

MR. SCHMIDT: And if you bury that line, you'd have to dig a trench and impact the property that way, correct?

MR. STREIT: Yes.

MR. SCHMIDT: Okay.

CHAIR: Horizontal bore drilling is not available for that?

MR. SCHMIDT: Well, I guess, you could bury the line but then you'd have --

MS. MURPHY: (inaudible) you're not answering, he's--

MR. SCHMIDT: Oh, I'm sorry. I thought Mr., I thought he was asking me. I'm sorry.

CHAIR: But you don't need a dig a trench necessarily. You could do horizontal bore drilling, correct?

MR. STREIT: We could.

CHAIR: Okay.

MR. SCHMIDT: Is the efficiency of the A/C, of the A/C current diminished or compromised the longer the distance that, that you travel?

CHAIR: Well, it is D/C that would travel to the inverter, so that, I think you need to be careful with that question, because I don't know where it's going to pick up to

become A/C, specific to this point. If you're talking about as a general concept, you get what I'm saying? Because we have now testimony that D/C will be running within, inside the project, it'll then be converted to A/C. We just found out that there are thirty-five different points of which it will be converted to A/C. When you're talking about a length, a run, that's the missing part of the question.

MR. SCHMIDT: Okay. Let me, let me strike the question and I'll start over. And maybe I'll ask it a little bit more generically. Mr. Streit, as I indicated when we started my re-direct examination, you had input, you, as the professional at Power Factor, as to the layout of this site as it relates to how many arrays they will and how the connections will be made, correct?

MR. STREIT: Yes.

MR. SCHMIDT: Do you have an opinion, sir, you're your perspective as to whether this is the most appropriate and the best layout from a power standpoint, not, you're not an environmentalist, to connect to the BG&E grid? Is this the best layout that, that could, that is practical on this site?

MR. STREIT: We could clear those trees, --

CHAIR: You have to specify which trees because there, there seem to be a lot --

MR. SCHMIDT: Which, which trees are you talking about? The forest?

MR. STREIT: The most, so this is the best design meeting the needs of the landowner, I believe the community, and the program.

MR. SCHMIDT: Okay. Why? Why do you say that?

MR. STREIT: Because we tried to listen to what other people have said and incorporate it into our plans. We've also kept the landowner's desire to keep trees in the middle of a solar array, nobody does that. We discovered and then classified as wetlands part of lot 144, that was not marked as wetlands prior to our investigation and we incorporated that into the plans and moved the array again. We went to adjacent property owners and we asked them what would make you okay with this project and, you know, regardless of what they say, only one property owner said if you do this, I will not contest. But even the ones that contested the project, we incorporated what they asked for. I mean, I've done lots, a fair amount of solar projects and this one is a minimally impactful beneficial project. I mean, we put a lot into this project.

MR. SCHMIDT: And you believe this is the most efficient and best design?

MR. STREIT: We're close.

MR. SCHMIDT: Okay, okay. All right.

CHAIR: Mr. McCann?

MR. MCCANN: Yes.

CHAIR: I'm sorry, Mr. Schmidt, just to confirm, you

are done, correct?

MR. SCHMIDT: Yes.

CHAIR: Mr. McCann?

MR. MCCANN: Yes, a couple, thank you.

CHAIR: No, no, right, go ahead.

MR. MCCANN: Sorry. You, it's not a big, I mean, you did, if you had to do another connection point, you could just ask BG&E, you sound as if that's an insurmountable hurdle. If you ask BG, do you see any reason why BG&E would say no to you, that you can't have more than one connection, you know what --

MR. STREIT: Two interconnection points, it may well not even be legal. So, I, I cannot say.

MR. MCCANN: Why, what, what do you mean legal?

MR. STREIT: Having two interconnection points on one community solar project.

MR. MCCANN: Okay. So, you get one of the arrays then, right? Wouldn't that be less intrusive, more appropriate design? No? Okay, I'll strike, --

CHAIR: Well, can I jump in on that one? What if it's for two different parcels?

MR. STREIT: I can't give you the exact, I, I can tell you that sometimes that is excluded. You cannot have two adjacent solar facilities, either related or not related, and sometimes, I'm talking about nationally, so I'm mixing up, I would have to go to BG&E but I would say they would not be

happy with two interconnections right next to each other.

MR. MCCANN: Is that why you, to avoid that, is that why you made it two different connections?

MR. STREIT: We have one. We have one interconnection.

MR. MCCANN: In terms of, I didn't want to confuse this issue with NASA rated panel efficiency. I'm, I'm not asking you about that. Obviously, you, you can't, I'm assuming, that's not obtainable. But there is, put aside that, whatever that may be, we're all just assuming it's something greater than what we have here, there are higher efficiency panels that are not NASA rated, NASA rated, that, that could be put on this site, correct? Than what you current have, which I think --

MR. STREIT: Higher rate --

MR. MCCANN: Higher efficiency ratings.

CHAIR: In terms of absorption?

MR. STREIT: Yes.

MR. MCCANN: No other questions, thanks.

CHAIR: All right. Let me jump in here, Mr. Streit, real quick. The property owner, Power Factor has a lease with the property owner, correct?

MR. STREIT: That's correct.

CHAIR: Does Meade have a lease or contract with the property owner?

MR. STREIT: They will have an assignment.

CHAIR: They, Meade will have an assignment from the property owner?

MR. STREIT: Yes.

CHAIR: What, what would be the nature of that assignment?

MR. STREIT: It will assign the lease option.

CHAIR: The lease option, okay.

MR. STREIT: Yes.

CHAIR: The financial partner you have, Onyx.

MR. STREIT: Um hm.

CHAIR: Will, will they have a contract or any type of agreement with the owner?

MR. STREIT: Through their contract with Meade Communities, yes.

CHAIR: And I was going to ask that next, but so, Onyx will have a relationship or some type of contractual agreement with Meade. Onyx, do, do they have a contractual relationship or otherwise with Power Factor?

MR. STREIT: Yes.

CHAIR: And what is the nature of that?

MR. STREIT: Operations and maintenance agreement and a contract to construct.

CHAIR: So, what is the agreement then with Meade?

MR. STREIT: Subscriber organization.

CHAIR: But from Onyx?

MR. STREIT: Subscriber organization.

CHAIR: Okay. The, am I missing any party here that has some interest in the ownership, you know, operations or maintenance of this facility or have we now identified all that have?

MS. DOPKIN: The assignment of the lease between Power Factor and the property owner, you would have to be the person assign, the entity assigning it to Meade? You, as the lessee?

MR. STREIT: Yes, but also, we have to have landowner's consent to assign it to a third party.

MS. DOPKIN: And what is that assignment, what triggers that assignment? What has to happen?

MR. STREIT: We have to have a project we can build.

MS. DOPKIN: It has to be built and operational?

MR. STREIT: No, we have to have a project we can build.

MS. DOPKIN: So, you need an approval?

MR. STREIT: Yes.

MS. DOPKIN: Of not just the zoning, but also from BG&E and the State Public Service Commission?

MR. STREIT: Those are the three typical requirements for a project to be built, yes.

MS. DOPKIN: At which point, Power Factor would

assign the lease to Meade, who would operate the project and maintain it and own it?

MR. STREIT: I could say that we would operate it, because we're the company that's actually going to operate it, but yes.

MS. DOPKIN: So, what does Meade do at that point? Because you had told us you would enter into an agreement between Power Factor and Meade for operation and maintenance.

MR. STREIT: So, Meade is the subscriber organization so they have to manage the subscriptions, which means there will be hundreds of accounts that they will actually organize and maintain on a monthly fashion for the duration of the community solar project. That is their specialty and their expertise. Ours is designing and building and maintaining solar facilities.

MS. DOPKIN: So, to my mind, that means Meade actually interfaces with consumer accounts?

MR. STREIT: Yes, that's a great way of putting it.

MS. DOPKIN: As opposed to provider providing the electricity?

MR. STREIT: Yes.

MS. DOPKIN: That's helpful, thank you.

MS. MURPHY: Once Meade then has the assignment, then Power Factor is really out of it, because you've already constructed the facility, isn't that correct?

MR. STREIT: Well, no, we get the assignment once we have approvals for the projects and then we'll build the project and then we have a contract to keep the project running.

MS. MURPHY: So, you're, you're going to be just the maintenance of that, maintenance --

MR. STREIT: Yeah.

MS. DOPKIN: You're a contractor for Meade at that point?

MR. STREIT: Construction and maintenance.

CHAIR: Yes.

MS. MURPHY: Maintenance, okay. But Meade ends up owning the solar facility.

MR. STREIT: Yes.

MS. MURPHY: (inaudible) Meade owns the solar facility and steps in with the owner and then you would have the lease assignment (inaudible).

MR. STREIT: Yes.

MR. MCCANN: Who's putting up the letter of credit with the County? What entity of all those entities?

MR. SCHMIDT: Whoever the County demands it from.

CHAIR: Mr. Schmidt.

MS. MURPHY: You can't answer the questions.

MR. SCHMIDT: But --

CHAIR: Mr. Schmidt.

MS. MURPHY: You can't answer the question, he's on the stand (inaudible).

CHAIR: Mr. McCann, ask the question to this witness.

MS. MURPHY: (inaudible).

MR. MCCANN: Who will, in other words?

MR. STREIT: Can I say who is ever legally required to do so, is that an appropriate answer?

CHAIR: Well, you can't ask questions. If you're --

MR. STREIT: Sorry.

CHAIR: -- if you don't know the, if you can't identify who that is sitting here today, you can say, I don't know who that is sitting here today or whatever the answer calls for. But you can't ask a question in response. I mean, you understood the question, correct?

MR. STREIT: Yes.

CHAIR: Okay. So, with that question, and your understanding of that question, do you have an answer for Mr. McCann as to that?

MR. STREIT: One of our partners.

CHAIR: Okay and can you identify which partner that would be?

MR. STREIT: No.

CHAIR: Okay and what would that depend on for you to be able to identify that partner? What information would you need to identify who that would be?

MR. STREIT: To see who was legally required to put that forward to make sure we were compliant.

CHAIR: And would that come from the County regulations?

MR. STREIT: Yes.

CHAIR: Would that come from your contracts?

MR. STREIT: Yes.

CHAIR: Would that come from your leases?

MR. STREIT: Yes.

CHAIR: And, and whatever else it follows?

MR. STREIT: Yes.

CHAIR: All right.

MR. MCCANN: Well, what the law says is that an applicant for a building permit shall provide the security. Who would be the applicant for this building permit if it's approved? Power Factor?

MR. STREIT: We're the contractor, I would assume we will be pulling the building and electrical permits.

MR. MCCANN: So, whatever credit Power Factor has will be behind this job, as opposed to Onyx or Meade?

MR. STREIT: No, both. I mean, the owner of the system is going to be, their credit is going to be behind this job --

MR. MCCANN: I'm talking about for purposes of the County's bond requirement, or equivalent financial security,

it'll be Power Factor, because you'll, you'll be the applicant for the building permit, right?

MR. STREIT: You're asking, you asked me who was pulling the building permits.

MR. MCCANN: Yeah, just answer that question. It'll be Power Factor, right?

MR. STREIT: Okay.

MR. MCCANN: Okay. All right.

CHAIR: Any follow-up, Mr. Schmidt?

MR. SCHMIDT: No, sir.

CHAIR: All right. So, with that in mind, thank you, sir, for your time.

MR. STREIT: Thank you.

CHAIR: Mr. Schmidt, was there another Exhibit 25, the spec sheet?

MR. SCHMIDT: Yes, sir, and I can provide additional copies, I thought that was admitted.

CHAIR: That's what I just want to confirm, there was no objection, correct?

MR. MCCANN: No objection.

CHAIR: Right, so it is admitted. All right. With that in mind, where do we stand with Petitioner's case?

MR. SCHMIDT: I, I think that is the Petitioner's case. I, I just, and I, I know, I can't really ask the Board of this question but I just have to say, I guess, for the

record, I'm, I'm very confused by all the questions, particularly by the panel members about these contractual relationships. I, I would submit to the Board that I handle development cases all the time where there are investors and mortgage companies, I mean, even in a residential setting people have a mortgage company, could have a mortgage on their house and do you have to bring the bank in to be part of the Petitioner. I mean, I would just submit that the law establishes the maintenance, the security, the decommissioning agreement, I'd proffer to the Board that I've been involved in these and we're going to do, as Mr. Streit says, whatever the County tells us we're going to do and I don't know how to answer that question otherwise and whether I need to bring in somebody from another entity. It just, I'm, I'm, I'm very confused by why these questions are relevant, I can't object to them because they're coming from the panel but all I can tell the panel, as Mr. Streit indicated, is whatever Baltimore County PAI tells us, and I've been through this with letters of credit and other assurances and decommissioning agreements, Amy Grassi (phonetic) is the one who prepared the prototype, we'll do whatever we're required to do because that's what we have to do to get a permit. And whoever has to sign has to sign, but I don't, I don't understand the relevance of any of that, so I'm, want to say that that's the Petitioner's case but I guess if that's relevant, I'll have to consider whether to produce a

witness along those lines, but.

CHAIR: Well, I mean, I'm not going to comment on, for all that stuff, other than to say that if you believe you need to put on additional evidence, that's up to you. I can't provide any --

MR. SCHMIDT: Well, I don't, I don't have anybody hear from Onyx today, because I had no idea that we were going to talk about whether investors need to be part of the zoning petition. Never heard of it in thirty years.

CHAIR: Mr. McCann?

MR. MCCANN: (inaudible) is the case, the Petitioner's case closed or not?

CHAIR: I mean, Mr. --

MR. SCHMIDT: The Petitioner rests.

MR. MCCANN: Okay.

CHAIR: That would be a yes.

MR. MCCANN: Okay, thank you. So, I'll, I'll do whatever the Board wants to do, we have --

CHAIR: You can wrap up your case in twenty minutes?

MR. MCCANN: No.

CHAIR: I didn't think so.

MR. MCCANN: No.

CHAIR: So, it sounds like we're going to have a day three.

MR. MCCANN: Okay.

CHAIR: Because, even if you had two to three witnesses, I would foresee that that's not going to, you know, by the time we get out of here, I mean, who knows what time that'll be.

MR. MCCANN: Okay.

CHAIR: I've already kept everyone late once.

MR. MCCANN: Okay. I mean, (inaudible) we'll finish our three witnesses in a half day, so.

CHAIR: I believe one of your people want to speak with you.

MR. MCCANN: Could we put one witness on today? It would probably be the quickest of the three? He's just a neighbor, I can, I envision whatever that takes and then it's fifteen minutes.

CHAIR: I, I, I can't envision, I can only go by your representation as to how long that will take.

MS. MURPHY: Last time it was twenty minutes (inaudible).

CHAIR: Do you have a schedule, well, we don't even know the next day, so there may not even be a scheduling conflict or anything. Is there something else that would preclude you from coming back on a day three?

VOICE: I'm actually on, we're on vacation right now. We weren't able to come last Thursday because we both work, I'm a pharmacist, she's a nurse, and we drove home just so I could

give, speak my piece.

CHAIR: Okay. So, I'll just jump in and say I understand the efforts that you guys have undertaken and this is not to sell those efforts short, but obviously, there are things that go beyond our control as to what we could do in terms of scheduling and whatnot. I can say, I don't know how long your vacation is, unless you have a much, much better life than I and can go on vacation for months on end, I would anticipate that the day three would be at a time frame that is not your vacation. It's not going to be sometime this week or even next week.

VOICE: Our work schedules (inaudible).

CHAIR: I understand. Mr. McCann, is there --

MR. MCCANN: No, other, I (inaudible) this gentleman that we wouldn't reschedule unless he was available. So, other than that --

CHAIR: All right. Let's just get it through then today, because if it's going to become a problem later, I, if he, if the gentleman is here today, it's going to be short, let's just get it done.

MR. MCCANN: Okay, great.

CHAIR: Is it going to be one or two?

MR. MCCANN: One.

CHAIR: Okay.

VOICE: Thank you very much.

CHAIR: No problem.

VOICE: Thank you.

MS. DOPKIN: Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. YELLE: I do.

MS. DOPKIN: Please state your name, spelling your last name, and your address.

MR. YELLE: Wayne Yelle, the last name is spelled Y-E-L-L-E. And I live at 8, 18708 Falls Road.

CHAIR: Wait, 818 --

MR. YELLE: 18708 Falls Road.

CHAIR: 18708.

MR. YELLE: I believe, I believe it's parcel 186, I heard somebody mention earlier.

MS. DOPKIN: And what is your zip code?

MR. YELLE: 21074.

MS. DOPKIN: 210 --

MR. YELLE: 74, yes, ma'am.

MS. DOPKIN: 74?

MR. YELLE: Um hm.

CHAIR: All right. We know his, you can have a seat, sir. We know his property has been identified up on one of the maps, I don't know which one it actually was, which exhibit was used for it, but I bel, actually it was Protestant's Exhibit 1.

MR. MCCANN: Okay.

CHAIR: So, if you would have him --

MR. MCCANN: We'll move on.

CHAIR: If you need to have some reference.

MR. MCCANN: Yeah, we'll just --

MS. MURPHY: (inaudible) show him which one is his.

MR. MCCANN: Yeah. On Exhibit 22-A, show us where your property is, if you could? And let the Board see where you're pointing and I'll --

MR. YELLE: I'm, I'm right here.

MR. MCCANN: Okay. So, you're on the west side of Falls Road.

MR. YELLE: West side of Falls Road, across from the western array.

CHAIR: The northern most property across from the western array?

MR. YELLE: Correct.

CHAIR: Okay.

MR. MCCANN: And how long have you lived there?

MR. YELLE: I've lived there and owned the property for twenty years. My wife has lived there for more than forty-one years. We purchased her parents' home in 1999.

MR. MCCANN: Did she grow up there?

MR. YELLE: Yeah, she grew up there. She's lived there since she's been thirteen years old.

MR. MCCANN: Okay.

MR. YELLE: And, and we bought it when I finished pharmacy school in ninety, well, I finished pharmacy school in '98, we bought it in '99.

MR. MCCANN: And how, how many acres, how big is the property?

MR. YELLE: It's 1.23 acres.

MR. MCCANN: Okay and I take it you're familiar with the area?

MR. YELLE: Yes.

MR. MCCANN: And are you familiar with the proposed project that we're here for today?

MR. YELLE: Yes.

MR. MCCANN: Okay and how is it that you're familiar with it?

MR. YELLE: At first we just got a flyer saying did you know this was going on and then attended like community meetings regarding it.

MS. DOPKIN: Please keep your voice up and speak into the microphone.

MR. YELLE: Oh, I'm sorry, forgive me. Yeah.

MR. MCCANN: Okay.

MR. YELLE: Is that better?

MS. DOPKIN: Much.

CHAIR: So, did you know, did you know this was going

on at community meetings?

MR. YELLE: Correct.

CHAIR: All right.

MR. MCCANN: And have you seen the plan itself?

MR. YELLE: Yes.

MR. MCCANN: Okay.

MR. YELLE: I actually have a copy similar to this at home.

MR. MCCANN: Okay, great. So, I'm going to show you photographs real quick, just four photographs that I'll have marked as the next exhibit.

CHAIR: Please provide Mr. Schmidt.

MR. MCCANN: Okay, all right.

MR. SCHMIDT: Thank you.

MR. MCCANN: Yeah.

CHAIR: Thank you.

MS. MURPHY: 10-A, B, C, D.

MR. MCCANN: Ten?

MS. MURPHY: Ten.

CHAIR: 10-A through D, right.

MR. MCCANN: Right. Let me show you what Ms. Murphy is marking as 10-A through D and we'll go through each of these real quick. 10-A, is that a picture of your house?

MR. YELLE: It is, that's my front yard. It faces east, it faces the, the property in question.

MR. MCCANN: Okay and I think the prop, the picture speaks for itself, but describe the topography of your property in relationship, first, I guess, to Falls Road.

MR. YELLE: So, if I were to stand on the edge of Falls Road, I would look down at that property. I sit probably a good ten to twelve feet above Falls Road.

MR. MCCANN: Okay. When you say look, you would look down into the subject property, not your property.

MR. YELLE: Correct.

MR. MCCANN: But you're at Falls Road looking westward, you would look sort of up this hill that we're seeing?

MR. YELLE: If I turned around and looked westward, yes, that's actually the, Falls Road is to my back in this picture.

MR. MCCANN: Okay.

CHAIR: In A, 10-A.

MR. YELLE: This is A, yes.

CHAIR: Right.

MR. MCCANN: Okay and does that picture, sometimes pictures don't, but does that picture do a good, demonstrate the, the slope of the front yard or is it little, as the mind's eye, is it a little steeper than --

MR. YELLE: Actually, actually, the, the picture makes the, makes it look steeper than it actually is. It's,

it's a bit more flat.

MR. MCCANN: Okay and how much, how much of your property is in the front yard as opposed to the backyard?

MR. YELLE: More, there's much more in the front yard.

MR. MCCANN: So, how many feet do you think it is from Falls Road to your house, approximately?

MR. YELLE: Feet, can I do yards?

MR. MCCANN: Sure.

MR. YELLE: I would say from the closest point, because it does, Falls Road does, goes at an angle on, on my property. I'd say with the closest point, it's probably fifty yards, fifty yards to the, to the road.

MR. MCCANN: Okay. Okay, great. Tell us what, what's depicted in 10-B?

MR. YELLE: Okay. So, the next page is, if you could do, if you look at those, those small pine trees in front of my house on A, I'm standing right in between those, those pine trees and I'm looking to the east, okay?

CHAIR: I'm sorry, sir, where are the pine trees on A?

MR. YELLE: See, see those little, those little like Christmas tree looking pine trees in front of the house?

CHAIR: On the right side?

MR. YELLE: Right in front of the house.

CHAIR: Oh, okay.

MR. YELLE: Right in front of the house.

CHAIR: Now I gotcha.

MR. YELLE: There's seven of them altogether.

CHAIR: Like the ones directly in front, got it.

MR. YELLE: Yes. All right. So, I'm standing in between those trees looking to the east and this is in February, I should say, okay? This is in February when there's no foliage on the trees. I can see the field across the road where you see what looks like just a fallow field, that's the field in question. You can't see Falls Road because it sits below the level of both properties actually.

MR. MCCANN: Okay. Let's do this. With respect to photograph 10-B, can you identify by reference to this exhibit, which is --

CHAIR: Why don't you bring out Protestant's Exhibit 1.

MR. MCCANN: Fantastic.

CHAIR: Then mark it 10-A, 10-B, 10-C, 10-D or something to that effect.

MR. MCCANN: Do you have that exhibit, Ms. Murphy? Sorry.

CHAIR: Since we're already marking, since that one has already been marked up.

MS. MURPHY: (inaudible).

MR. MCCANN: I'm running out of colors but I may have --

CHAIR: How about a red pen?

MR. MCCANN: Fantastic.

CHAIR: Does that help?

MR. MCCANN: I have one.

CHAIR: Oh, all right.

MS. MURPHY: Here it is.

MR. MCCANN: Thank you. I got a red pen.

MS. MURPHY: You got it?

MR. MCCANN: Yeah, thank you. Okay. So, real quick, do you understand what Mr. Garber was suggesting? That is, on this exhibit, which is Protestant's Exhibit 1, put, for this photograph 10-B, with an arrow, where you're, the direction in which the photograph is facing or --

CHAIR: Right.

MR. YELLE: Sure.

CHAIR: But basically, where was it taken, like show on the, on there, to the extent you can.

MR. YELLE: Uh huh.

CHAIR: Where it was taken --

MR. MCCANN: With the red X.

CHAIR: -- with, and with the arrow pointing at what you see.

MR. YELLE: Sure. So, where it says Wayne and Alene

here, I'm just going to put, you know, say that's my house. I'm facing this way, okay? In this picture.

CHAIR: And that's about the proximate location you would have taken that 10-B photo?

MR. YELLE: About, yeah.

CHAIR: So, can you write a little B next to it?

MR. YELLE: Sure.

MR. MCCANN: 10, 10-B.

MR. YELLE: 10-B.

CHAIR: Yes, 10-B, sorry.

MR. YELLE: Okay.

MR. MCCANN: Okay, great. What about 10-C?

MR. YELLE: Okay. So, 10-C, this picture is, I'm going to refer back to my house.

CHAIR: 10-A.

MR. YELLE: All right. Do you see how there's five windows on the second floor of my house?

CHAIR: Yes.

MR. YELLE: You see the middle window of the five?

CHAIR: Okay.

MR. YELLE: 10-C is taken from the middle window on the second floor in approximately the same place. I just, I stood down on the patio, in between the pine trees, took the picture, then went upstairs to the second floor of my house and took the, this picture.

CHAIR: Okay. So, it's basically, that, it shoots the same vantage point, just from a, just slightly different location back from the pine trees?

MR. YELLE: And higher up, of course.

CHAIR: And higher up.

MR. YELLE: I'm, I'm now at an elevation, if, if I figure that, I stand on the edge of Falls Road, my yard is ten to twelve feet above, if I go up to my house, it's maybe fourteen above, I go to the second floor of my house, I'm a good twenty feet above that property.

CHAIR: So, I guess you can't really depict that on the, on Protestant's Exhibit 1.

MR. MCCANN: Yeah, right. So what, can you put 10-C right --

MR. YELLE: 10-C right next to it, okay. 10-C second floor house. Okay.

MR. MCCANN: Okay and then what about the last, 10-D?

MR. YELLE: These are essentially the same.

MR. MCCANN: Okay.

MR. YELLE: I, I just went from the second floor of my house, went to the north and went snap, snap, snap, snap. So, these, these are two very similar pictures. I have a video that I can't, I suppose, unless I hand you all my phone, show you but the video depicts it probably better than anything else.

CHAIR: Well, I don't know that you need to, to describe the video. You, you live across the street. You can describe the same thing that's, irrespective of the video. That is, what is it you're trying to, when you, when you took the video, what, what were you intending to show to the Board?

MR. YELLE: So, what, what I, I want to tell you is that, too bad the landscape guy isn't here --

MS. DOPKIN: You can sit down.

CHAIR: Yeah.

MR. YELLE: Too bad the landscape guy isn't here because in February, almost regardless of what they do, even in ten years when there's a thirty foot tree there, I'm, I'm still going to see it, okay? And bless him for saying it looks like a vineyard. But I, I don't think many people would, would feel the same, that it will look like a vineyard. We bought the house from my wife's parents, and my daughter, who has a place in Columbia now, had intended on buying the house from us. When she heard that that was going up, she said, well, I'm not going to buy that house now, Dad, you know. I mean, and, and I think for anybody that has a, I believe it's called shed view of it, yeah, it's going to depreciate the value. Not, not everybody can look at that as something that's appealing, okay? Aesthetically appealing was what the landscape guy used, and isn't that right why everybody on that side of the room is here. It's, it's, it's not aesthetically appealing, okay?

It's, it's going to probably, for the people that live with a view of it, devalue their property, property that, you know, we hope to be able to, you know, pass onto our daughter one day, or somebody else that wants to buy it.

CHAIR: So, there are visual concerns, aesthetic concerns, that tie to property values as well. Is there, are there other concerns that you think factor in to your, well, let me ask. What other concerns would you have in addition to those?

MR. YELLE: People that come visit me.

CHAIR: Okay.

MR. YELLE: That are from out of State. The first thing they say is like cows and cornfields, you know? My kids went to Hereford High School, it's named after a cow, Hereford High, you know, High School. So, yeah, it's a very rural, bucolic scenic area, okay? I, I enjoy living there because of that, okay? It's, it's, it was a great place to raise my kids and I think anybody that even travels out there would know that. I mean, the, the State of Maryland has taken the time to, you know, dedicate it as a, a scenic byway. This is, this is --

CHAIR: Well, you're showing a photo, please show Mr. Schmidt. Are we going to put that into evidence or no?

MR. MCCANN: No, it's okay.

MR. YELLE: It's the only one I have, but you're

welcome to it.

CHAIR: Well, we, I think we're, we are already aware that's a scenic byway.

MR. YELLE: Scenic byway. I mean, they, they took the time to say hey, we're proud of this area, you know, it's beautiful, come see it. And I can appreciate that Mr. Streit would say that, you know, he sees it like a vineyards. There are vineyards around there and the vineyards are very beautiful. If you put a vineyard across the street, I would love that. That would be absolutely beautiful if there was a vineyard across the street. I was find when there was a cornfield, or they had soybeans across the street, because that's what it was the majority of the time we were there, or the time my wife grew up there.

MR. MCCANN: Any other concerns, Mr. Yelle, other than those? Now is your chance, I just want to make sure that we've covered everything.

MR. YELLE: That's it, mostly, is, is it's, I, I don't want to, I don't want to look out my front window and see that, you know. It's, and I, and I don't think a perspective buyer would either.

CHAIR: Thank you.

MR. MCCANN: Okay. Mr. Garber, before --

CHAIR: You move for admission of 10-A through D?

MR. MCCANN: Please, yeah.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: No objection.

CHAIR: So admitted. Are you done with your questioning?

MR. MCCANN: I am, thank you.

CHAIR: Mr. Schmidt, cross exam?

MR. SCHMIDT: You don't want to see it, that's the objection?

MR. YELLE: For the most part. And that I think it'll devalue my property.

MR. SCHMIDT: You're not a real estate appraiser?

MR. YELLE: I am not.

MR. SCHMIDT: You're not a real estate agent?

MR. YELLE: I am not.

MR. SCHMIDT: You don't have your property for sale?

MR. YELLE: Correct.

MR. SCHMIDT: Okay. No other questions.

MR. MCCANN: Nothing else, thank you.

CHAIR: All right. Thank you very much, sir.

MR. YELLE: Thank, thank you so much for letting me go. Thank you.

CHAIR: No problem. Thank you for, well, I guess spending part of your vacation with us.

MR. YELLE: I'll, I'll never forget it, it's been wonderful.

CHAIR: No, I'm sure. I mean, I almost feel like we should pose for photos but no. All right. With that in mind.

MR. MCCANN: Yep, we'll be ready next time.

MR. SCHMIDT: How many other witnesses do we, do we have?

MR. MCCANN: We have two more witnesses and they'll be longer than him but not, you know, an hour, they'll be, and I can keep on going if you want. But I, --

CHAIR: I'm taking my cue.

MR. MCCANN: Okay.

CHAIR: And I am saying that we are going to have a day three.

MR. MCCANN: Okay, sounds good.

CHAIR: Yes. So, we will have to come back. So, we, that closes the evidence for today. But obviously, we'll be rescheduling another day to finalize the evidentiary record, all right?

MR. MCCANN: Okay, great. Thank you.

MR. SCHMIDT: And just, --

MS. DOPKIN: Yes.

MR. SCHMIDT: -- obviously I'll deal, I'll talk to Mr. McCann but we, we may be able to do a half day, it might open up some additional --

MS. MURPHY: Do you have any rebuttal?

MR. SCHMIDT: -- time for us.

MS. MURPHY: Rebuttal?

MR. SCHMIDT: At this, at this point, unless I bring in people from Onyx in New York, I'm not anticipating any.

MS. DOPKIN: All right. Can we go off the record, Mr. Garber?

(OFF THE RECORD - 04:52:34 PM)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., case numbers 19-183-X and CBA-20-004, heard before the Board of Appeals of Baltimore County, September 24, 2019 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 309 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 21st day of October, 2019.

Christine R. Leary

Christine R. Leary

Transcriber

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BALTIMORE COUNTY
BOARD OF APPEALS

IN THE MATTER OF:

HOLLY SPRINGS NATURE CONSERVANCY AND WILDLIFE SANCTUARY, INC. – LEGAL OWNER/POWER FACTOR, LLC - LESSEE
CASE NUMBER: 19-183-X and CBA-20-004

Hearing Date: September 19, 2019

Pursuant to Notice, the above-entitled hearing was held before the Board of Appeals for Baltimore County at the Jefferson Building, Second Floor, Suite 203, 105 West Chesapeake Avenue, Towson, Maryland 21204.

PANEL PRESIDING:

JASON S. GARBER, CHAIR

MAUREEN E. MURPHY, BOARD

DEBORAH C. DOPKIN, BOARD

PRESENT ON BEHALF OF THE PARTIES:

LAWRENCE E. SCHMIDT, ESQUIRE
Counsel for Petitioners

MICHAE R. MCCANN, ESQUIRE
Counsel for Protestants

Christine R. Leary
3129 Hiss Avenue
Baltimore, Maryland 21234

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(ON RECORD - 10:07:34 AM)

CHAIR: All right. We are here today in the matter of Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., Power Factor, LLC, Lessee, 18627 Falls Road, case number 19-183-X, set with the same caption but CBA number 20-004. All right. So, Petition for Special Exception and Application for Limited Exemption. And would counsel please introduce themselves for the record?

MR. SCHMIDT: Good morning, Chairman Garber and members of the panel, I'm Lawrence E. Schmidt, along with Zachary Wilkins, from Smith, Gildea & Schmidt on behalf of the Petitioners in this case.

MR. MCCANN: Good morning, everyone. Michael McCann, on behalf of the Appellants.

CHAIR: All right. So, do we have any preliminary matters to discuss prior to getting started?

MR. MCCANN: I do.

CHAIR: Oh, all right.

MR. MCCANN: And I apologize for having to do but I, I do feel like I need to. I, I believe and I, I guess this would best be characterized as a Motion, but I wanted, I may hear some different information from Larry that may change that. But, --

CHAIR: Change it to not be a Motion?

MR. MCCANN: Well, to, to, yeah, to not be a Mot, an

appropriate Motion to Dismiss.

CHAIR: Oh, all right.

MR. MCCANN: But I believe that the case is premature and in legal terms, I guess, not yet ripe for the following reasons. Number one, as you know, part of this case involves an appeal of the DRC decision and I was about to tell you this morning that, based on my review of the file and my continuous asking of Jon Cook, I didn't even think there was a decision by PAI. I didn't know there was a letter, even though usually there's a DRC meeting and then there's a letter that the director issues. Larry showed me the letter this morning. So, I, I, we now have a letter, which is, which is fine. So with the, the appeal that we filed, based on just our attending the DRC meeting, I was worried about missing the appeal deadline, frankly, waiting for the letter and not finding it so I appealed sort of proactively just to make sure that we were okay. In any event, we have an appeal, in my opinion, a timely appeal. But the, the issue still remains about the effect of this exemption on this process. And I think I've made this argument in other cases and I'll try it again and, and it's this. Number one, the exemption that was granted, let's speak to that, the exemption that the DRC granted as an A-1-6 for minor commercial structures. As you know, Mr. Garber, in a recent case, another solar case, in fact, before you, Green Road, specifically, we raised the issue of, we challenged the

exemption. You, you didn't agree with us, but you said that it should be more appropriately a different exemption, namely, a B-8 exemption.

CHAIR: Um hm.

MR. MCCANN: So, that exemption puts in an entirely different ballpark, in my opinion, because it does not exempt the Developer/Petitioner from the entire development review process as an A-1-6 would. But merely exempts the Developer from the community input meeting and the hearing officer's hearing.

CHAIR: Right.

MR. MCCANN: In other words, everything else, all the other stages in the process still apply.

CHAIR: Right.

MR. MCCANN: And I would, I would submit including a concept plan. I think there needs to be a concept plan, there needs to be a development plan. So, the argument is this. Is I, I, I think it's premature for this Board to proceed when we have a development plan process that has not completed itself and you may say, well, why? Why can't we just look at this use and see whether a special exception is appropriate and I think what the agencies may, may or may not find during their review, it'll, it'll go through concept plan review, it'll go through development re, plan review, both of which will be more, at least the latter, will be more detailed than in some respects

then the plan you have today. So, my, my point is simply this. That the County agencies will have one, if not two, rounds of comments, substantive comments, on the plan itself, that you will not have benefit of and I know there's a distinction between their, the standard and special exception cases and development plan cases, of course there is. But at the end of the day, we're talking about impacts and an impact that the County agency may find during its review of, of the development plan, may, maybe arrived at, that isn't before the Board now, given the agencies' limited comments on this special exception plan. So, I think, my, my point is, the review, the scope of the review, particularly in a case that requires a development plan, affects this Board's hearing of the special exception. You cannot, I think, in, in full, rely upon, when you're deciding this special exception case, the fact that the County agencies signed off on this special exception.

CHAIR: Okay.

MR. MCCANN: Conditionally, conditionally or otherwise. So, I think it's premature for that reason, regardless of, you know, the --

CHAIR: Well, let's say to, just, let's take it back a second to a more fundamental basis. You appealed prior to the issuance of the letter, just because you wanted --

MR. MCCANN: No, afterwards, afterwards. It was after this.

CHAIR: Okay. But you didn't have the letter?

MR. MCCANN: I just didn't know it, I just didn't know it at the time.

CHAIR: There's no problem with the appeal based on that letter, that is, there's not a notice issue, they're like, oh, I didn't know they were going to say this and then, therefore, it's not the, it's not within the scope of your appeal.

MR. MCCANN: Correct.

CHAIR: Do I understand that correctly?

MR. MCCANN: That's correct.

CHAIR: Okay. So, there's no problem there. There's nothing raised in that letter that would, without ruling on any Motion, that would preclude you from, if you had to address anything today, is there anything in that letter that would, that causes such a surprise or some other issue for you, if you had to proceed today?

MR. MCCANN: No, the letters, as you know, are sort of standard.

CHAIR: Yes. I'm, but, you said you saw it for the first time this morning.

MR. MCCANN: Yeah. No, I'm not, that's not the argument I'm making. That I found out for the first time, even though I, I did look in the Board's file, I did ask Jon Cook, but I just didn't see it. Maybe it was there and I didn't see

it. But that's not my argument.

CHAIR: I, I, I'm just making sure that that is not--

MR. MCCANN: No, that's not my argument.

CHAIR: -- at issue. Okay.

MR. MCCANN: No.

CHAIR: Because the matter that you raise is, is different than those fundamental basis --

MR. MCCANN: Yeah.

CHAIR: -- with respect to it, could we pre, could we proceed today in any event. All right.

MR. MCCANN: And could I just add to that --

CHAIR: Yeah.

MR. MCCANN: -- a specific way in which the development plan approval in, inhibits this Board's sitting (inaudible). This case is unusual, among other reasons, because, if I go to the plan, they're, they're, they're seeking to put an underground electric cable, I know you haven't seen this plan yet, but there's two and I don't even need to refer to the plan. There's two groups of solar arrays that are separated by a stream and a forest buffer. And they're seeking to put it, believe it or not, an underground electric cable under that stream. That requires, according to DEPS, (inaudible) analysis, I believe it requires a variance but in many ways they're the same, as you know. And it also requires State and Federal approval. So, that's a big issue that the

County hasn't even reviewed yet in terms of its jurisdiction, that is, the (inaudible) analysis or variance. Also, a big issue for the Federal Army Corps of Engineers and the State authorities, that is, whether or not this entire plan could be moot because neither one of, or any one of those three authorities has said it's okay. So, I think that's, that's a big problem. And it renders, I think, and I can talk to you about what (inaudible) there's definitions of it. I think all the accrued facts have not, all the relevant facts, have not accrued for purposes of this Board proceeding and would essentially be issuing an advisory opinion, that is, not a conditional but really advisory because its saying, you know, assuming the development process plays out the way we think it may, and there are no additional agency comments on a more detailed development plan, assuming the State, Federal and County authorities sign off on this, on the underground electric cable, I think that's advisory in nature as opposed to just conditional, if that makes sense, so.

CHAIR: Okay. But, I mean, it would seem to me that the relief, relief obviously can be, we can get to the relief, conditioned upon the other agencies and other processes resolution of the issues in front of those agencies and departments and what not.

MR. MCCANN: I would make a distinction between the (inaudible) analysis approval and the State and Federal

approval and --

CHAIR: And to be clear, I'm analogizing it to other cases to where that happens. Like, for example, if you need a State Highway Administration permit and that's not lined up, we don't wait for the State Highway Administration to say yay or nay, we say you can go as long as they say you can go. But, or whatever the case may be.

MR. MCCANN: Yeah, I, I, in that respect, may, maybe the (inaudible) analysis and the State and Federal approval are conditional, maybe they are. But in terms of the, the first, my first argument, that is, the agencies review of a development plan and how that may or may not, it may not, but how it may affect this Board's, the evidence before the Board, as well as the deference it gives to the agencies' findings, depending on what they are. That's not conditional. That's, would be my opinion, it would be more advisory than something that would inhibit this Board.

CHAIR: All right.

MS. DOPKIN: I have a question.

MR. MCCANN: Sure.

MS. DOPKIN: What if the reviewing agencies say we can't reach a decision until there's a zoning decision? Which, I mean, they're inter-dependent. So, the argument could be turned around to just the opposite of what you're saying. Why isn't that the case?

MR. MCCANN: Why haven't they done that?

MS. DOPKIN: Why wouldn't they do that? You know, which comes first?

CHAIR: Right.

MR. MCCANN: Chicken or the egg.

MS. DOPKIN: And, you know, --

CHAIR: Well, I can answer that question for you, the chicken and the egg. I can't answer, necessarily, quite yet, the zoning question versus another agency question.

MR. MCCANN: Yeah.

MS. DOPKIN: I'm just saying, --

MR. MCCANN: Yeah.

MS. DOPKIN: -- could, could the argument be made the other way? That when you get before some division review and they say oh, we can't reach a decision because zoning has to weigh in?

MR. MCCANN: Well, I would think in general, that doesn't happen as a practical matter, Ms. Dopkin, because, generally, special exceptions are about uses and uses generally don't involve, like this case does I believe, just, you know, the details of a plan. They're just, can you use this, well, I shouldn't say that all special exception cases involve, (inaudible) gas stations, things like that. But the more, it's more about the use, so I think it's easier to make the, the assumption that the, or follow the path of the special

exception first, like it is sometimes. I, I agree with that. I just think this case is different. Does that makes sense?

MS. DOPKIN: Just curious if you had --

MR. MCCANN: Hadn't thought about that.

MS. DOPKIN: Thank you.

CHAIR: So, let me ask you, is it your position that you could proceed on the special exception but the appeal to the limited exemptions is something that's where the uncertainty is?

MR. MCCANN: No, the uncertainty is --

CHAIR: So, where, where would you find the uncertainty?

MR. MCCANN: -- the uncertainty is in this Board's --

CHAIR: The whole, the entire case.

MR. MCCANN: In this Board's review of the special, I have other reasons that I think in combination with that would make this premature and I can give --

CHAIR: I'm sorry, I was just trying to pick up your last point from Ms. Dopkin but I get it now.

MR. MCCANN: Yeah. Just, so real quick on those.

CHAIR: Yeah.

MR. MCCANN: I think the Board knows by now because you guys have had the solar, solar cases, I know you and Mr. Garber, is that this is about participation in the State's community solar pilot program.

CHAIR: Right.

MR. MCCANN: In this jurisdiction, it's BG&E that's, that's running that program. In order to participate in that program, you have to file an application with PSC, Public Service Commission, to obtain subscriber organization authority and an identification number and then you need to apply to BG&E to get an interconnection agreement in place whereby they approve your connection that there's enough capacity in that connection for this particular plan to connect. And you also, then you have to go back to the PSC and apply and make sure that there's enough capacity in the program and, because there's limits on the, the capacity, megawatt limits. All that, none of those applications have taken place. They're, they're not part of the community solar program. I have --

CHAIR: Well, that seems like something we can get to if we proceed today, right? Or are you saying that that too is a threshold issue?

MR. MCCANN: I, I think it is because it's, it's not an insignificant hurdle. I mean, it's all, this is the first time this has ever come up in any of these cases. They're all --

CHAIR: I seem to think there was one case where that their application lapsed or --

MR. MCCANN: It was withdrawn. I think that had more to do with the cycle, there's like a three year cycle --

CHAIR: Maybe that's what it was.

MR. MCCANN: Yeah. But this is the first case where they're not even authorized to participate in the program.

CHAIR: Well, I mean, would you agree with me that you could proceed to get zoning relief and then subsequently apply? In other words, they can't operate without being part of this program, can they?

MR. MCCANN: Correct, yes.

CHAIR: Right. So, you could get the zoning relief and then subsequently apply.

MR. MCCANN: Yeah, I, I, --

CHAIR: And it goes back to the whole argument as to what needs to go first and, you know, I'm just trying to figure out like is there, is there some type of hurdle that prevents us from going forward, as opposed to your argument would be best practice, you shouldn't go first, they should go first.

MR. MCCANN: Yeah, the second argument, I would agree, is probably more conditional than advisory if those two terms make sense to you.

CHAIR: Um hm.

MR. MCCANN: But the first one, I think, is, is advisory. The other thing I wanted to add, and this is, to this argument is that, as you now, the Bill 3717, allows unlimited number of solar facilities in each district. This is number eleven. It allows ten and this is, this is number --

CHAIR: Well, that seems like a matter of proof.

MR. MCCANN: And I have the proof.

CHAIR: Okay and that be a dispositive issue, but obviously that would require a factual basis.

MR. MCCANN: I mean, I can show you a County document, the County keeps a chart of the cases and the charge, it has all the cases and this is number eleven. It's that simple.

CHAIR: Well, and I don't know if you're gauging it be application, approval or where that would fall, but this is something we may have to, obviously, have --

MR. MCCANN: Yeah.

CHAIR: -- some evidence on, because we obviously can't rule in a vacuum. But we have to receive evidence on it. Right now we're at the threshold stages, are we even beginning --

MR. MCCANN: Yeah, I, I think it's a threshold --

CHAIR: -- to rule along those lines, you would need to present evidence.

MR. MCCANN: I just think it's a threshold issue because the document speaks for itself, it's not, (inaudible).

CHAIR: Right.

MR. MCCANN: Larry's probably aware that they keep a list, he's probably seen the list before. I have a witness who obtained it from, from Jeff Perlow in Zoning Review, he's the

deputy over there and, and to me, the only factual issue beyond that, (inaudible), to me the le, the legal issue, the fact that all of these haven't been completely through the process, that is, all the way up to the Court of Special Appeals, whatever process they're in, there are different phases of the process. Whether that, in and of itself, removes one or more of those from, from, from the eleven. I don't think it does. I think the Bill, I think the County Council didn't contemplate a, a, a race to get a permit. They contemplated you file it, there's so many filed and that's it. So, and there have, there are now eleven that have been filed and, and I think that, that, I think it's prohibitive, but I think that's a little, that's not conditional either. That's, I don't think we can keep on going and, and Beverungen, I know, expressed his concern in his hearings. You can't go (inaudible) thirty solar facilities and the, and the, the Board, ALJ, my client, spent all these resources to fight these cases when they could be moor, so.

CHAIR: Well, and, and it not only, it raises additional issues but we'll reserve those comments to, till I see whatever proof and whatever argument --

MR. MCCANN: Yeah, I mean, I can mark --

CHAIR: -- that is that follows from both sides.

MR. MCCANN: Yeah, I can mark it now just maybe, --

CHAIR: Well, hold on a second.

MS. MURPHY: So, but isn't the issue whether we

should go forward today? That was where you started, right?

CHAIR: Right.

MS. MURPHY: So, isn't the risk really on the Petitioners here? So, because I think, EPS addressed your concern about getting variance approval, the administrative variance approval for the forest buffer and said, there's no guarantee you're getting a variance. So, aren't they, isn't it really, I mean, they may get, if they get the relief today, they then have to go perhaps and get variance approval? I mean, at least that's what they've indicated in their approval letter that says, and they say it a bunch of times, that, so, I mean, it seems to me that, and it kind of, in light of what Ms. Dopkin said, you know, what comes first? The zoning relief, and I have heard agencies say that, you have to get the zoning relief first. We're not even going to touch this, in fact, absent a 33-3-108, you know, criteria, (inaudible) says go get your zoning relief first and then come back and talk to us. So, it seems to me that, that it's, kind of the risk is on them, they have to go perhaps and get that next step, right?

MR. MCCANN: Yeah, I, I, I understand that but, I think, I mean, we're here.

MS. MURPHY: I know.

MR. MCCANN: We're spending time and resources --

MS. MURPHY: I know.

MR. MCCANN: -- that my clients, frankly, don't, you

know, always have to, to litigate these cases, when I don't think we should be litigating it anymore. I think, so that, that, there is some risk, number one, and Ms. Murphy's point, I guess that the piece that, that's missing is still the, the, the aspect that my argument, my primary argument, that this Board I don't think can proceed with special exception approval given the, the unknown nature of the development plan. I mean, it's going to be similar, we know it's going to be similar, the unknown issue of the development plan to be filed, the, the nature of the County's agencies' require, that has nothing to do, the risk is on all of us for that. We're wasting our time, in my opinion, I wouldn't raise it, I hardly ever raise preliminary Motions like this. I think we're wasting our time today if we proceed with all of that, all of this in the air.

CHAIR: Well, let me, so, it seems to me that we have two things going on. The one is, should we even start today and then secondly, if we start today, then we get to the second issue of how many solar facilities are in this district.

MR. MCCANN: I think this would be evidentiary in support of my Motion.

CHAIR: I'm saying, we can't start today, we can't get to that unless we start today. Your first argument is, we shouldn't even start today, right?

MR. MCCANN: Well, that's because it's a, it's, it's a Motion and this, this document would be in support of that

Motion.

CHAIR: Well, let's, let's take it one step at a time and, because I'm assuming, you, you would have to agree with me, that if we agree with you, we can't start today, the second part of your Motion is really moot at the moment and then may only become relevant down the line if we have to restart.

MR. MCCANN: Correct. Whatever you think, I, I think if you take, if you --

CHAIR: I mean, would you, logically, will you agree with that?

MR. MCCANN: Yeah, if, if you take my proffer that there's eleven in the --

CHAIR: Wait, stop. Not even get to that point yet.

MR. MCCANN: Okay.

CHAIR: If we can't start based on the ripeness issue, right? Then if it, if and when it becomes ripe, then you would offer the second part of your Motion saying, well, wait a minute, now that it's ripe, you can't do it for this reason.

MR. MCCANN: I gotcha, I understand.

CHAIR: Right, so, that would not change your evidence, presumably, between now and then. In other words, you know, two or three of them aren't going to say, you know what, we don't want to do this anymore. We're going to withdraw everything and we're going to not do that, right? I

mean, that's the only way your evidence would get --

MR. MCCANN: I, my, maybe I misunderstood. I, I just don't think we need to get a substantive hearing on this plan and get into witnesses in order for me to get this chart into evidence. Maybe it's a second Motion.

CHAIR: And we'll deal with that secondarily? I think we have to get to the point where --

MR. MCCANN: Okay. I'll sit, I'll sit down (inaudible).

CHAIR: -- can we start today with ripeness being the argument. Mr. Schmidt, it is your turn to address that issue.

MR. SCHMIDT: Okay. There, there's a lot to cover but I'll try to follow your direction, Mr. Garber.

CHAIR: And if I, yeah, let's start with the ripeness stuff.

MR. SCHMIDT: Okay.

CHAIR: And we can deal with the sec, well, --

MR. SCHMIDT: Okay.

CHAIR: -- we'll see where that takes us before we get to the second part of the Motion there.

MR. SCHMIDT: All right. Insofar as the ripeness issue, as I understand it, the Protestant's contention is there may be a development plan required for this project and if, indeed, there is a development plan required for this project, that development plan has to be considered and approved before

the underlying zoning relief, the special exception, can be granted. I think that's what I heard.

MS. DOPKIN: Well, it's (inaudible) studies and findings, environmental issues --

MR. SCHMIDT: Well, that's attendant to, that's attendant to what would go into the approval of the development plan.

CHAIR: In other words, what we will review --

MR. SCHMIDT: Right, Ms. Dopkin?

MS. DOPKIN: Essentially.

CHAIR: What, what we review today, --

MR. SCHMIDT: Right.

CHAIR: -- will be the same after that process. Are we reviewing the same thing? Is that, that was what you were trying to get to, right?

MR. MCCANN: Yes. Are we.

CHAIR: What's that?

MR. MCCANN: Are we. And I think (inaudible) we're all guessing, I guess.

CHAIR: Right. But, that's what makes it relevant to us, is what are we approving and then if it gets subsequently changed, then where are we?

MR. MCCANN: And, and there's, as you know, there's deference that the Board gives to agen, County agencies' recommendations and that deference would be, this, undo if we

didn't have their subsequent, their subsequent review (inaudible).

CHAIR: Right. Well, let me give Mr. Schmidt his turn.

MR. SCHMIDT: Okay. Mr. Garber, what --

CHAIR: I, I was just clarifying what you, your, your question as to what you heard.

MR. SCHMIDT: Yeah, I just, I want, I want to make sure I'm addressing the issue that, that you want me to address. So, let me just say it again. My understanding is, Mr. McCann is, is saying that the DRC's action in this case was wrong, that is, the DRC determined that a development plan was not required and Mr. McCann is saying that's wrong and that a development plan will be required. That's sort of the first part of his argument. Then he is saying, so if a development plan is, therefore, required, the review and the consideration and the studies and the other necessary work that is attendant to the review and approval of that development plan, should occur before the zoning case is considered. I think that's what he's saying. If, if, is that what the Board understands, Mr. Garber?

CHAIR: That's, my summary just now would be consistent with what your understanding is.

MR. SCHMIDT: Okay. If that is, indeed, his position, then there is a clear provision of County law which

addresses that, which is Section 32-4-221 of the County Code. Which is a section of the County Code, as you know, Article 32 are the, what are called the subdivision or development regulations. As opposed to the zoning regulations, which is a different set of laws --

CHAIR: Process.

MR. SCHMIDT: -- different process. Zoning on the one side, development/subdivision on the other side. The 32-4-221 contemplates a situation where an applicant would need development plan approval and also some zoning relief, either a special exception, a zoning variance, or a special hearing. And 32-4-221 says that it is the applicant's decision, the applicant has the discretion as to whether to request a combined hearing, whether the applicant asks for, let's say at the initial level, the Administrative Law Judge to approve a development plan and a variance and a special exception along with it. Or if the applicant wants to bifurcate those and take those in a separate order. I would dispute what Mr. McCann would say and I would tell you that in representing developers and property owners and doing this a long time, most developers and property owners want to get the underlying zoning approval in place, a special exception granted, before they commit the resources which are necessary for a development plan review.

CHAIR: Yes, and that's come up in other cases.

MR. SCHMIDT: In many cases, you will --

CHAIR: In other solar cases, at that.

MR. SCHMIDT: Yes. In many cases, you will see an applicant submit for a special exception or for a zoning variance and want to get that issue resolved, particularly a special exception, since it goes to whether the underlying use is allowed and I emphasize the word use, can I even use the property for this purpose before I get to all the various specifics in terms of environmental, public works, recreation and parks, planning department review, which is attendant to a development plan. So, it clearly says under 32-4-221-C, request for a combined hearing, at the time of the development plan, the applicant shall file any request for combined hearings required under 32-4-230 of this article. And if you go to 32-4-230, it says, quite specifically, it's one sentence, I'll read it, if the development plan requires a special exception, variance, special hearing or interpretation of the zoning regulations, the applicant may combine the public hearing required for the development plan with the public hearing required for the zoning case, and I paraphrased the end of that. So, that has always been held to the best of my knowledge that it is the applicant's call as to whether they want to move forward with the zoning case or their development plan case or one first or the other first, but it is up to the applicant and I would represent to the Board that Permits, Approvals and Inspections asks the developer during the

development plan conference, are you going to combine this with the zoning case or are you filing your zoning case first and it is the applicant's call. So, in this case, assuming a development plan would be required, and I would dispute that it would --

CHAIR: Well, can, can I, can I --

MR. SCHMIDT: -- even if it would, we could clearly go --

CHAIR: -- can I stop you there, real quick?

MR. SCHMIDT: -- forward with the zoning case.

CHAIR: If it, how do you get to determine if a development plan is required sitting here today for this case?

MR. SCHMIDT: That's a decision that this Board is going to make in the de novo appeal of the DRC decision.

CHAIR: Right. Sitting here today, doesn't, don't we have to move forward on that issue as to see where it's going to fall with the appeal on the limited exemption?

MR. SCHMIDT: Yes.

CHAIR: Because you can't get to that decision unless we make a first decision on the limited exemption.

MR. SCHMIDT: Yes, but, I'll, I'll say, let me say this, let me answer the question this way. I don't know where to, I don't know where to start. Assuming that a development plan is required, this applicant, Power Factor and Holly Springs, elects to have its zoning case go forward first.

CHAIR: Right.

MR. SCHMIDT: I, I've just made that election, or the client, the applicant has made that election here. I think from a very practical standpoint, Mr. Garber, is the, this is complicated over the fact, Mr. McCann has referenced another case, as I understand it, Green Road or Green --

CHAIR: Yes, Green Road.

MR. SCHMIDT: -- and I don't know if any of this panel was on that case?

CHAIR: I was on the case.

MR. SCHMIDT: Okay. My understanding of that, of the status of that case is that a written decision has not been issued in that case.

CHAIR: It's possible. I'm, I'm not the one who is writing the opinion. I don't recall one way or the other.

MR. SCHMIDT: Have you signed it? Wouldn't you sign it?

CHAIR: I sign lots of things, as you can imagine.

MR. SCHMIDT: Sure.

CHAIR: So, could I, do I recall signing the Green Road opinion? Not specifically.

MR. SCHMIDT: Okay.

CHAIR: It could very well be it's still in process of being written. It could have been issued and I'm just confusing things at the moment. But I'll accept what you say

is that you are not aware if an opinion has been issued in the Green Road case.

MR. SCHMIDT: Right and if an opinion --

CHAIR: Which is, I agree with you, certainly possible, because I don't recall one way or the other.

MR. SCHMIDT: Mr. McCann indicated to me the written decision has not been issued and I think he was counsel in that case.

MR. MCCANN: Correct.

CHAIR: Okay.

MR. SCHMIDT: So, if there's no written decision, then there is no decision of the Board of Appeals since your deliberation is not a decision, as I understand it. And I do certainly understand that the Board of Appeals is likely to try to be consistent in its various decisions.

CHAIR: One would hope.

MR. SCHMIDT: I, I, I get it and I certainly understand that. So, let's assume, arguendo, that this Board, I, I am not conceding this point because I didn't get a chance to argue in the Green case and I don't know what counsel for the applicant argued in that case about what, where they were entitled to, to, what's called an A exemption or not.

CHAIR: Right.

MR. SCHMIDT: So, I, I just don't know anything about that case and since there's no written decision, I can't read

anything about that case either. But, so, my position sitting here today is, is that in this case, we are entitled to an A exemption. Assuming the Board disagrees with that, then where does that leave us? It leaves us with also a zoning case, a special exception, which we want to go forward on. So, the scenario could very well be that this Board could approve the special exception and but say we disagree with the DRC, we think a B exemption is attached, which is apparently what happened in Green from what Mr. McCann has said. And again, I don't know. In which case, where's the applicant? Well, the applicant at that time would be required to file a development plan with Baltimore County.

CHAIR: That's the point I was trying to establish with you earlier.

MR. SCHMIDT: Right.

CHAIR: Is wouldn't, wouldn't we have to go forward today, no matter what, on at least the development issue period? Because if you, I mean, I, whether to do both is, I understand the first part of your argument.

MR. SCHMIDT: Right.

CHAIR: But what, don't we have to go forward on that to determine the second part, that is, when it comes to the development plan?

MR. SCHMIDT: Yes, but I don't --

CHAIR: We can't just rule, we can't just say, well,

let's wait for the development plan process to play out and then have a, you know, we have the appeal pending for that --

MR. SCHMIDT: Sure, sure.

CHAIR: -- and then say, well, you shouldn't have done it that way, you should do it this, this way --

MR. SCHMIDT: Sure.

CHAIR: -- right?

MR. SCHMIDT: I agree. I agree. But in saying that, Mr. Garber, I just also want to say, I want to say this. That no matter what your decision is on the DRC appeal, whether you say it's an A exemption, what's called an A exemption, which is what the, the DRC granted, a B exemption, which is apparently what the Board did in, or it's going to do in Green, or no exemption, which is your third choice. No matter what you do on that, that still leaves us at 32-4-221 and 230, which says the applicant, before they deal with these regulations in Article 32, can choose to have its zoning case litigated. And so, I think my client is entitled to have its special exception case decided by the Board today, because we choose to do that. And again, the logic of it is why would an applicant spend all the resources to have a development plan reviewed and approved and do all kind of environmental assessments and, and the other things that are required for a development plan approval, when it doesn't know if its underlying use is allowed under the special exception (inaudible).

CHAIR: Well, there, that argument is obviously one that's been in many cases, that is where the money gets spent and when it gets spent on both sides of things and --

MR. SCHMIDT: But it's up to the applicant.

CHAIR: Right, but I mean, okay, yes, I understand that.

MR. SCHMIDT: Now, if, if I can, I just didn't want to sit down without hopefully I've, I've addressed that. The other thing I wanted to, to mention is I do have, and I think it would be appropriate, I think it's in your file, but I'm going to ask, I've got the DRC letter. I think you ought to have that as an exhibit.

CHAIR: I think it's appropriate to, to, since Mr. McCann has seen that, to just pass it forward, yeah, whether it's in the file --

MR. SCHMIDT: And mark it as an exhibit.

CHAIR: Yeah.

MR. SCHMIDT: If I, if I can.

CHAIR: Yeah, I think it --

MR. SCHMIDT: It's a County record. I'll give Mr. McCann a letter, a copy.

CHAIR: Since we've already discussed it for the purposes of this, we'll call it Motion.

MR. SCHMIDT: And mark it as Petitioner's exhibit number one, if I may.

MS. MURPHY: Okay.

MR. SCHMIDT: It's the DRC letter. In the interest of full disclosure, I didn't know Mr. McCann didn't have this. I'm going to have, I, I just want to say this. I question whether his appeal is proper if he didn't even know that there was something to appeal. Because, so I'm going to have to take a look at the nature of his appeal and I would reserve the right, possibly in my brief, to question whether there has been a proper appeal of the DRC decision, since he didn't even know there was a decision to appeal from. It's an in, interesting issue, I don't quite, I've ever seen it, where someone has filed an appeal not knowing that a decision has been made. So, it appears that the appeal was timely. The appeal was dated July the 30th, which is --

CHAIR: July 2nd being the date of the letter, that's Petitioner's Exhibit 1.

MR. SCHMIDT: Which is twenty, but if it, I don't know whether it was filed that day, mailed that day, there may, I may very well have an issue with the nature of the appeal. So, I just wanted to say that up front. I, I don't know, because I've never heard of someone filing an appeal from an event that they didn't know occurred, which is what apparently happened here. In any event, the other issue that I wanted to touch upon, if I could, is this whole issue about these ten facilities.

CHAIR: Well, let's resolve the first issue.

MR. SCHMIDT: Okay.

CHAIR: Before we proceed to that.

MR. SCHMIDT: Okay.

CHAIR: Mr. McCann, do you have any response as to the ripeness argument now that you've heard from Mr. Schmidt?

MR. MCCANN: Yeah, just a couple things, thank you. First, I don't dispute Mr. Schmidt's reading of 32-4-221 or 230, but all that simply says is that the applicant to decide what it wants to file. That means nothing in regards to what, to the, what is really the issue of justiciability, that is ripeness. That's not their call. Ultimately, it's still the Board's decision whether if, if a developer decides to combine the two, is it nevertheless ripe to do so. And the reason I, listen, let me just add this, Mr. Garber, before I forget it.

CHAIR: Sure, sorry. I'm terrible with that (inaudible).

MR. MCCANN: So, I understand it's the applicant's call, of course it is. I'm, I'm familiar with that section. I also understand the practical reasons why a developer would want to combine the hearings. But keep in mind, usually what happens it's the development plan in the zoning case that are combined. And when you have them both combined in the same case, in that, in that type of hearing, you have the benefit of all the County agencies on that development plan. There is not

this, and mystery is an overstatement, but in this type of case, we don't know what the County agencies are going to say about the development plan, unlike in the, in the typical case, when I say typical, I mean, ninety-five percent of the time, if not more, there's a development plan case combined with a special exception case, not an appeal of a DRC decision.

CHAIR: Okay.

MR. MCCANN: So, this is an unusual, this is unusual.

CHAIR: So, if I can --

MR. MCCANN: Yeah.

CHAIR: -- just so, do you agree with me that we have to resolve your appeal first, or we have to resolve your appeal first before we can even rule on your Motion because if we don't agree with you, there's a limited exemption. In other words, what's the process for them to undergo? I mean, that, that seems to be the, like really, that is the issue that has to go first, no matter what happens. But then your point about, well, you also don't have the benefit of the County agency responses to the development plan no matter what process plays out, right?

MR. MCCANN: Right.

CHAIR: I'm assuming you will be using that argument to your benefit during the course of your case, am I wrong about that? If you had to proceed, wouldn't you be, you know, rather than relying on what the County agencies have already

said, there's an absence of things that they've said, so we can't use that as a basis for any decision making.

MR. MCCANN: Yeah, that's, I guess that's an argument. I guess it is, yeah.

CHAIR: I'm assuming that's what you would say because I've heard that said in other cases.

MR. MCCANN: Yeah, if, if you, if you disagree that the plan, that the DRC exemption, that it needs to go through the process first. If you disagree with that and we proceed with this case as scheduled, then yeah, that'll, that's an argument I've made in this Motion, I'm not going to keep on saying it but, yeah, that argument would, I think, is, would apply. The other thing I want to say is, is that, Mr. Schmidt said regardless of the, the type of exemption that's granted, we still have this issue of 221 and 230. I, I don't think we have that issue at all and what I would say to the converse is that regardless of the exemption that applies, we have to, that process needs to play out in order for this Board, whether it's, well, actually, what, what I should say is the A-1-6 process has completed itself, I assume, I'm assuming that. That is, we have agency comments, we don't have a development plan, there was no development review process per se, there was no community input meeting. So, I guess, maybe a threshold issue, you're right, Mr. Garber, is if you agree that A-1-6 exemption is appropriate, and if, in fact, I'm assuming, that

that's the process that has already taken place, then we're back to square one.

CHAIR: Right.

MR. MCCANN: But, so I wanted to say that and one last thing, this issue of the notice of appeal, it, it was, I think the appeal was filed on July 16th, so it was timely.

MR. SCHMIDT: July 30th.

MR. MCCANN: It was filed on July 30th?

MR. SCHMIDT: Yeah.

MR. MCCANN: So, yeah, so it was timely.

MR. SCHMIDT: I got your letter.

MR. MCCANN: Yeah, I think --

CHAIR: I think Mr. Schmidt has acknowledged it was timely.

MR. MCCANN: Yeah, but --

MR. SCHMIDT: No, I'm not sure it is. I, the DRC action was the 2nd, this is the 30th, I don't know when this was actually accepted by the County. The appeal is dated --

MR. MCCANN: Oh, I filed it on that day, the records will (inaudible) --

CHAIR: I, I, I had understood you said it may be timely and so I didn't think that you were disputing that. But we'll get to, if there is a dispute with that, we can deal with that separately. Sorry, I thought, I thought you had acknowledged that.

MR. MCCANN: I just wanted to get to this issue of knowledge or scienter, that I need to know that there was a piece of paper dated July 2nd, or did I need to know that there was a DRC decision that was unfavorable that I wanted to appeal and I would submit it's the latter. We knew there was a DRC decision that was unfavorable. We couldn't find the letter. I, Ms. Moore, from the BPC, just handed me a note when she called and said that there was --

CHAIR: Well, well, this, if we're going to get into --

MR. MCCANN: I don't want to get into that. My point is simply is. What I knew or didn't know about the status of a, of a letter, a physical letter, is irrelevant to the issue of whether or not our appeal was timely and whether it was proper. So, we filed it, we filed it timely, end of story, so.

CHAIR: All right. Do you have anything you'd like to say or question? Do you have anything you would like to say or question? Well, it seems to me, at least from what I, maybe I'm hearing this because this is what I, I think. But I thought I heard from both of you, you agree we need to figure out the appeal first. So, that means we have to go forward today no matter what. And if we're going to go forward today, an applicant has the ability to then combine both hearings, we mine as well just do it all at once and then I understand that that means that you have additional arguments to make and what

not, but it seems to me that that's the proper way to handle this and also the most efficient way and also cost effective for both parties, rather than drag this out over multiple hearings, multiple days, wait for, you know, a whole bunch of other things to occur. It just seems to me we're all here today and there's, you know, we all agree as a threshold issue, the appeal issue must be resolved to figure out what the development plan or what is required under the development process in this case. So, with that in mind, we will proceed today. I assume you guys are on board with that?

MS. DOPKIN: Right.

CHAIR: Okay. So, --

MR. MCCANN: On both cases, Mr. Garber?

CHAIR: On both.

MR. MCCANN: Okay.

CHAIR: Now, whatever issues that come up as a result of that determination, obviously, I, I'm assuming that you may use that as part of your, whatever factual or legal basis for some of your arguments down the line, and which obviously that's up to you to do and you certainly can argue that back to us about, you know, those issues, and those facts. Now, with respect to the, before we get to the appeal part, that is the timeliness or whatever the case may be, going back to the number of solar facilities in the district, that issue. Have you set forth your argument on that in its entirety? That is,

look, there's eleven, we have proof here we can show you that there's eleven.

MR. MCCANN: Yeah, it is --

CHAIR: Is that essentially it? And Mr. Schmidt, what would be your statement as to, or your position as to that?

MR. SCHMIDT: Well, I know for a fact that at least one, I haven't seen the list, but I've, I haven't seen the list that Mr. McCann has, but if it's the same list that the zoning office has, which I've seen, I know for a fact that although Power Factor in this application is number eleven on the list, that at least one, and I believe two of the first ten, have been withdrawn.

CHAIR: Well, that sounds like we have a whole bunch of facts that we're going to need to establish on the record.

MR. SCHMIDT: Yeah.

CHAIR: And it doesn't sound like something we're going to be able to resolve --

MR. SCHMIDT: And the reason I know that --

CHAIR: -- by, by either, well, we could maybe establish it through an evidentiary hearing on the Motion, but it sounds like that is something that's going to be an issue no matter what happens during the course of the merits of the case because that's within the, the solar facility regulations as to the number. So, regardless, one way or other, the issue will

be heard and the evidence will be presented, so it seems to me like from the outset, we don't need to resolve that sitting here in the moment, now that I realize that there's a dispute. On, as to what, how are you counting the number of facilities?

MR. MCCANN: Yeah, I, the eleven, the eleven includes (inaudible) those that were withdrawn just --

CHAIR: There's a factual dispute.

MR. MCCANN: Yeah.

CHAIR: As to that. What do the regulations speak to as to how you count, if any, if at all, and you know, evidence that some were withdrawn, obviously, you would have some, I imagine, some effect, perhaps on the, how you count the number of facilities.

MR. SCHMIDT: Can, can I add to the confusion?

CHAIR: Oh, yeah.

MR. SCHMIDT: If I may?

CHAIR: Sure.

MR. SCHMIDT: I will tell you that it is the zoning office's position that the way they count is that they count number one to be the first solar facility to get a permit. Let me just say this, one --

CHAIR: In fairness to Mr. McCann, that does sound like a factual issue that would --

MR. MCCANN: Yeah.

CHAIR: -- you know, you may be able to establish it

in another way, but it does sound like a factual issue and he has no ability to contradict or, or, you know, address it if you've had a, if there's a separate way by which you've determined how the zoning office deals with that, right?

MR. MCCANN: Well, the list, the list would be empty, there'd be no list.

CHAIR: Well, I mean, the point is, if there's a conversation that was had, that here's how we're going to count this, how are you in a position to do anything about that sitting here today because you didn't have that conversation and you didn't know anything more about it.

MR. MCCANN: I agree.

CHAIR: That sounds like something a witness should be presenting and, therefore, you would have the ability to cross examine. So, where, where does that leave us?

MR. SCHMIDT: I'll call Mr. Perlow from the Zoning Office.

CHAIR: Very well.

MR. SCHMIDT: He'll tell you how they do it. I'm not necessarily, to be honest with you, I'm not sure I necessarily agree with them, but that's what they're doing. I mean, I just, I mean, I didn't think it was in dispute. I don't know if Mr. McCann has talked to him or not --

CHAIR: Well, we, we all knew this day was coming.

MR. SCHMIDT: -- but that's what they're saying.

CHAIR: We all knew this day was coming. I mean, we all can count to ten. Now, we have to figure out how the County counts to ten. So, we all knew that this day was coming because enough of us have been on enough cases to realize like, well, that threshold is going to be met sometime shortly. So, we're at that stage to now figure out, are we at that point? How the County is determining whether we're at that point requires evidence. And in fairness to Protestants, they're going to have to have the ability to cross examine and, you know, probe that information. So, with that in mind, obviously, I'm, I don't view that to be a dispositive issue that will stop the matter from proceeding today. I'm assuming Ms. Murphy and Ms. Dopkin agree with that. All right. So, where does that leave us? Do we need to discuss the, the ability to appeal the limited exemption as part of a preliminary matter or is that something that's going to be addressed during the course of the merits of the case?

MR. SCHMIDT: I think it'll be addressed during the merits of the case.

CHAIR: There, very well. So, that we can start today.

MR. SCHMIDT: Yes, yes, sir.

CHAIR: As it turns out, so therefore, we'll take five minutes so everyone can collect themselves and get ready now that you've heard the rulings from, from the Board as to

how the case must proceed or can proceed and with that in mind, we'll get started when we come back.

MR. SCHMIDT: Thank you.

MR. MCCANN: Thank you.

CHAIR: Thank you.

(RECORDING PAUSED - 10:54:04 AM)

(ON RECORD - 11:08:12 AM)

CHAIR: All right. We are back on the record after the rulings on the preliminary matters. Mr. Schmidt, are you ready to proceed?

MR. SCHMIDT: Sure. I'm going to give a very brief opening because I do want to move along, but I think it might be helpful for the Board.

CHAIR: Okay.

MR. SCHMIDT: As you've heard, this is the underlying Petition and request here is filed by Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., who is the actual property owner, and Power Factor, a company which is the --

CHAIR: Right.

MR. SCHMIDT: -- company which is the solar. And I know you've done a lot of these solar cases and you probably heard a lot of the same thing, so I'm going, I'm going to move along. But indeed, this is a similar proposal that the Board has heard under the State community solar program, which limits under the County law to solar facilities under two megawatts.

But just a little bit about the history of this project and the property. The property under consideration is actually two separate lots, but it's actually owned by the same property owner. The lot line runs in a vertical fashion, as I'm indicating on the plan. I'm going to have this plan marked as an exhibit, but it is a four page exhibit and two of the pages show the property in its current configuration today, the ones on the top of the board that are labeled existing conditions plan. There's another one under it, which is just a little bit more of a close up and doesn't have all the notes on it. Then the other two pages, which are labeled, so it's a four page plan, are the proposed conditions after the solar facility is being, would be constructed. As I indicated, it is indeed two separate lots but owned by the same property owner and both proposed for a solar facility is shown. The property in and of itself, or the properties I should say, is about thirty-two and a half acres. The area of the solar facilities is a little bit over nine acres. This property is split zoned RC-8 and RC-2. The zone line is also shown on the plan marked very clearly and almost all of the solar facility is within the RC-2 portion. There are a couple of panels so that parts of five rows of panels are in the RC-8 as shown on the plan. Both the RC-2 and the RC-8 permits this use by special exception and, and that's what we are requesting. These are fixed panels. I know you've seen cases where some of them rotate and some of them are

fixed. These are fixed panels, which would have a southern orientation. The subject property is on Falls Road, which is Maryland Route 25, a State road, which runs along the front of the property and you'll see photographs of the site. Fairly rolling topography and a lot of existing vegetation. This is not an agricultural property at the present time, unlike some of the ones that you have seen, which is planted but has some environmental constraints and is generally wooded. When the case was originally filed, because I know you have the entire file, and I just say this by way of background, the solar facility that was originally requested under, in this particular Petition, was exclusively on the one larger property, actually Parcel 144 as it's known, which is this one as I'm indicating, the one on the left, on the left side. However, the engineer and Mr. Leffner is here, who is the engineer for this project, who sealed the plan, will testify that after the initial Petition was filed, he had a series of meetings, extensive meetings, this kind of goes to what Mr. McCann was talking about before, with the Department of Environmental Protection about the subject property and as a result of those discussions and some of the constraints that were determined because of the environmental constraints, the project was revised and what was done is instead of a, a solar facility on a, a single facility on Parcel 144, the larger piece, what you see today was proposed. So, the Petition was

amended, this was before the case ever got to John Beverungen, the ALJ. It was after we had initially filed, as we were working towards a hearing, we then filed an Amended Petition, which should be in your file, I have a copy of it if it's not, but it should be in the Board's file, an Amended Petition for special exception for the subject property with this proposal. There indeed revised an amended zoning advisory committee comments on this newer, what I would call the revised proposal. The matter went, then went before Administrative Law Judge Beverungen and he heard the case and approved the special exception. I just wanted to mention, and Mr. Leffner can indicate this, and I already explained this to Mr. McCann so hopefully it's not an issue. But sort of as a matter of convenience, we had a plan that was labeled DRC plan and then a plan that was labeled plan to accompany a Petition for Special Exception and they were the same. So, what we did is changed the title block, instead of giving you two of the same plans with a different label, we just made it one just so you don't have as much paperwork. So, we put that in red as it says, plan to accompany special exception/DRC. There has been one other change or two other very small changes. There was some labeling that's been requested about some dimensions of the internal road that comes in here, a driveway which will be improved as the access road to get to the panels, where some dimensions were added, at the Fire Department request. And

then a note also added. But this is the plan, both the DRC plan and the special exception plan that's been requested. Insofar as the special exception, we believe that it meets the requirements of Bill 3717, all the requirements of that bill in terms of what is required for a solar facility which, as you know, Bill 3717 is the bill which enacted Section 4-F of the zoning regulations, which is now the session which governs solar facilities. As you've also heard about this morning, this plan, same plan, went in before the DRC, the Development Review Committee, where I know former County employee, Mr. Rasco, who worked for the County for many years, used to say to me, the DRC approves nothing. They only tell you which process you're to follow. And it's always been a good understanding of what the DRC is. The DRC doesn't approve a plan, it tells you what the process is. In this case, consistent, I believe, and I would represent to the Board, you'll have testimony about this, with what the DRC has been doing in all of these solar projects, they granted what is called an A-6 exemption. An A-6 exemption is an exemption for minor commercial structures. I believe the DRC concluded that the solar panels, which obviously no one lives in, they're not a building, they don't have public utilities running to them in terms of water and heating or any of that kind of stuff, but they're obviously solar panels would fall within the quote, minor commercial structures exemption in Section A. Under Section A, just, and

again, I think there would be testimony about this. But the Board probably knows this, in any event, it's in County law, that does not mean that the developer does not have to comply with County law. It is only the process which is being set by the DRC. The A exemption says that the developer is not required to go through the full subdivision development review process as set forth in Section, Article 32, Title 4 of the Code, it doesn't have, and also, under the B, and so we don't have to go through that full process. There is an A exemption and a B exemption. The B exemption requires a develop, the filing of a development plan but not the hearing officer's hearing or community input meeting. And the DRC has determined that the A exemption is proper. I will tell you, and I can proffer this and Mr. Leffner can testify about this as well, that doesn't mean that the County throws up its hands and doesn't review any of this. You still have to get permits, grading permits for any grading that's done, building permits, State Highway requires an access permit, that's in their ZAC comment here. There will still be further review of this, this notion that somehow if we don't have full process in this, there's not going to be any substantive review is simply wrong. The A just means you don't have to go through the development review, but you still have to comply with all the County environmental regulations and the, and the State Highway regulations and everything else in order to secure a building

permit or a grading permit or any permit, in order to actually put this in place. We believe these are minor commercial structures. We believe there will be review. I don't know what was argued and what was said and what the Board's going to do in the Green case, but we believe it's properly an A exemption. I would say this. If the B, if the Board determines that it's a B exemption, which is what Mr. McCann said they, they're going, the Board is going to do when it issues a written decision in the Green case, then we would be required to file a development plan, not go through the ALJ hearing, the County would require the filing of a development plan, the approval of that plan, if the County approved it, they approve it administratively since there is no ALJ hearing. But that plan may be, as you all know, may be appealed, the approval of that plan. We could arguably, if you grant, if you deny the A and say it's a B, if that's what the Board did in Green and the Board takes the same tract here, then we would file a development plan, obviously, when that would be approved by the County administratively, again, administratively, no hearing, but just approved by the County agencies' stamping it and signing it, I think you've seen those before in other appeals of development plans. We believe that this plan and that plan would be the same. I will tell you, Mr. Leffner will testify and I think it's borne out because the plan was changed before we even got to Beverungen, that the applicant has done a

lot of work already on these issues that will come up if, if they come up, or if it was determined there needed to be a development plan, in terms of the environmental features and so on and so forth, and I think Mr. Leffner would testify that he's optimistic that this plan in this form would be approved as a development plan. If it was simply labeled development plan instead of zoning plan or DRC plan. So, with all that being said, I'll have several witnesses today and I know we're also scheduled for Tuesday. Thank you.

CHAIR: Do you wish to give a statement now?

MR. MCCANN: I do not. But thank you.

CHAIR: Sure. With that in mind, Mr. Schmidt, you want to call your first witness?

MR. SCHMIDT: Sure. I'll call Nick Leffner.

MS. DOPKIN: Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. LEFFNER: I do.

MS. DOPKIN: Would you please state your name and address for the record, spelling your last name?

MR. LEFFNER: My name is Nicholas Leffner, that's L-E-F-F-N-E-R. My business address is 1801 Porter Street, Suite 401, Baltimore, Maryland 21230.

CHAIR: And your employer, sir?

MR. LEFFNER: Kimley-Horn and Associates.

CHAIR: And what is your position there?

MR. LEFFNER: I'm a project manager, civil engineer and I manage a variety of different land development type projects through initial due diligence, through entitlements and permits and into construction for energy systems as well as a variety of (inaudible) uses.

MR. SCHMIDT: Mr. Leffner, you've I think identified yourself as an employee of Kimberly-Horn and Associates, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: That's a civil engineering firm, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And you are a registered professional engineer in the State of Maryland, are you not?

MR. LEFFNER: Correct.

MR. SCHMIDT: I'm going to show you a copy of a document, which I believe is your c.v. and I'll ask that Ms. Murphy mark this as Petitioner's exhibit number two. I've handed her four copies. Is that how many you want when I give you exhibits?

CHAIR: Yes.

MR. SCHMIDT: Okay and give one to Mr. Leffner as well. Mr. Leffner, this generally details your background, education and experience, does it not?

MR. LEFFNER: Correct.

MR. SCHMIDT: Have you testified in previous cases in Baltimore County as an expert witness?

MR. LEFFNER: Yes.

MR. SCHMIDT: Have you been accepted as a civil engineer?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. I would, if we, just, unless Mr. McCann has any voir dire, I would ask that Mr. Leffner be accepted as a professional engineer and he will obviously testify about the subject plan, which is on the board. Mr. Leffner, I neglected to ask you, and I'm going to have this plan marked as well, is this your seal on the plan, Nicholas John Leffner, Professional Engineer in the State of Maryland?

MR. LEFFNER: Yes.

MR. SCHMIDT: And you were the one responsible for the preparation of this plan?

MR. LEFFNER: Correct.

CHAIR: Since we're referring to this plan, please mark that as an exhibit.

MR. SCHMIDT: I will. I'll mark it as Petitioner's exhibit number three. Mr. Garber, do you want me to mark that A, B, C and D for the four pages or just one?

CHAIR: Yes, please.

MR. SCHMIDT: Okay.

CHAIR: I mean, well, let me, let me ask Ms. Murphy--

MS. MURPHY: Yes.

CHAIR: -- what her preference is.

MS. MURPHY: Yes.

CHAIR: But, since we're going to be referring to each individual page, it makes sense.

MR. SCHMIDT: Okay. It actually is labeled in the lower right hand corner, sheet 1 and sheet 1-A. I'll make that 3-A and 3-B. That's the, what I would call, sort of the existing conditions plan. If you see, the, Ms. Murphy, just for you it might be helpful, you see the first page is sort of a further out and a lot of notes. The second page is just, I knew that was going to happen, the second page is just a close up without all the notes, but it's the same existing conditions plan.

MS. MURPHY: Just two pages.

MR. SCHMIDT: That's 3-A and 3-B. And then 3-C and 3-D is going to be the same thing. It's the proposed, and that again is sort of the far away view with the notes, and then the close up.

MS. MURPHY: So, what's the first one titled?

MR. SCHMIDT: Existing conditions, what it looks like today, far away and close, what it's going to look like far away and close, four pages.

MS. MURPHY: Proposed is C and D?

MR. SCHMIDT: Yes.

CHAIR: Right.

MR. SCHMIDT: Existing, proposed.

MS. MURPHY: Okay.

MR. SCHMIDT: C and D and they're ones just kind of an outer view further away and one's a little bit of a, of a close up.

MS. MURPHY: Got it.

MR. SCHMIDT: Okay?

CHAIR: I'm assuming you'll have copies for us as well?

MR. SCHMIDT: Yes, and I'll give you those, would you like the full sized versions of those?

CHAIR: I think that would be helpful.

MR. SCHMIDT: Okay.

CHAIR: Mr. McCann, I'm assuming you, well, I assume you do not have a present copy --

MR. SCHMIDT: I think I can give Mr. McCann one as well.

MR. MCCANN: I don't have one.

MR. SCHMIDT: If you don't mind, I'm going to have Mr. Leffner look at that stack and make sure we're giving everybody the right plan.

MR. MCCANN: Great. And, and I have no voir dire. I may have some cross examination (inaudible) but no voir dire.

CHAIR: So, Mr., Mr. Schmidt, you're tendering Mr. Leffner as an engineering expert?

MR. SCHMIDT: Yes, he's a --

CHAIR: Civil, civil engineering expert?

MR. SCHMIDT: Yeah, he's a professional engineer, obviously, he's going to render opinions about the plan and the zoning and the DRC, the issues in this case.

MR. MCCANN: So, you're offering him in those areas as well, zoning and --

MR. SCHMIDT: Yes, yes.

MR. MCCANN: Okay.

CHAIR: All right and you said there was no voir dire.

MR. MCCANN: No voir dire.

CHAIR: So, we'll accept Mr. Leffner as an expert in civil engineering and see where that takes us.

MR. SCHMIDT: Okay. I'm going to give to Ms. Murphy three, or do you want another one, or do you --

MS. MURPHY: (inaudible).

CHAIR: The one on the board is the actual exhibit.

MR. SCHMIDT: Yes, yes, sir, that's the one I've marked. Do you want a fourth?

MS. MURPHY: No, we'll use that one.

MR. SCHMIDT: Okay. One more question, Ms. Murphy, would you rather have the smaller version or the big one?

MS. MURPHY: I, I'll take the big one.

MR. SCHMIDT: Big one, okay.

MS. MURPHY: (inaudible) small, big?

CHAIR: I'm not going to be able to read it anyway.

MS. DOPKIN: I'd like, I'd like a small set.

MR. SCHMIDT: A small? You may have both, Ms. Dopkin. That's the same thing but on smaller paper.

CHAIR: Well, since you have the copies, I'll take one too then. Just in case.

MR. SCHMIDT: Just a little easier, right, Nick? These are all the eleven by seventeen.

CHAIR: Thank you.

MR. SCHMIDT: This, yeah, okay. Thank you. Do you want two?

MR. MCCANN: Yeah, please. Do you have a big one or not? No?

MR. SCHMIDT: Yeah, didn't I give you a big one?

MR. MCCANN: No, no.

MR. SCHMIDT: Oh, I thought I did.

MR. MCCANN: No. Mr. Garber, just so I don't keep on interrupting, can I just have a continuing objection on this issue of the, us proceeding on the DRC, us proceeding, I guess, maybe in any fashion. I'm, I'm a little concerned about not objecting to the question, you know, admission of a document that proposes to address both the DRC and the special exception

case collectively. I just, I think my Motion is what it is.

CHAIR: I understand what, I understand the purpose of the objection, the continuing nature of the, your request for a continuing objection. We'll, we'll allow that.

MR. MCCANN: Okay.

CHAIR: Now, with respect to Petitioner's Exhibits 1 and 2, let's get, you have no objection to those, that is the July 2nd letter?

MR. MCCANN: No objection.

CHAIR: So, that will be admitted. The c.v. from Mr. Leffner, no objection, correct?

MR. MCCANN: Correct.

CHAIR: That will be admitted. I believe you haven't laid the foundation yet, necessarily, on Exhibit 3. You said you prepared the plan or this plan.

MR. SCHMIDT: Yes.

CHAIR: But, --

MR. SCHMIDT: I'll do that now. Mr. Leffner, did there come a time that you were engaged by Power Factor, one of the applicants in this case?

MR. LEFFNER: Yes.

MR. SCHMIDT: And what were you actually hired to do, Mr. Leffner?

MR. LEFFNER: Prepare a site plan to accompany the initial special exception, yes.

MR. SCHMIDT: Okay and did you also prepare the DRC plan, that plan that went before the DRC?

MR. LEFFNER: Correct.

MR. SCHMIDT: Were, were those two plans, from a substantive standpoint, the same plan, show the same thing?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. So, the DRC and the special exception plan were the same plan?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and we've, I think I explained, but you have, for the purposes of just giving the Board one exhibit, you, you changed the labeling so that both, it shows both the special exception and DRC in the title block?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and --

CHAIR: Mr. Leffner, just please, if you can, keep your voice up so your answers are caught by the microphone.

MR. SCHMIDT: Okay.

CHAIR: Thank you.

MR. SCHMIDT: And Mr. Leffner, was this plan prepared by you or under your supervision and direction?

MR. LEFFNER: It was.

MR. SCHMIDT: Okay and it's sealed by you?

MR. LEFFNER: Correct.

MR. SCHMIDT: I would offer that as Exhibit 3-A

through 3-D.

CHAIR: Mr. McCann?

MR. MCCANN: Just subject to the same objection.

CHAIR: Very well.

MR. MCCANN: Thank you.

CHAIR: Okay. So admitted.

MR. SCHMIDT: Okay. Mr. Leffner, let me, if I can, let me ask you maybe just, and if you want to go up to the board but just keep your voice, can you tell us a little bit about the property, give the Board an overview of the property, its size, where it's located, zoning and some of those features? I'll let you go up to the board if you would like.

MR. LEFFNER: Sure. Yeah, and I think --

CHAIR: And Mr. Leffner, when you answer questions, I would ask that you turn towards the microphones, because if you speak towards the plan that's hanging, obviously, your voice may not be caught.

MR. LEFFNER: Correct.

CHAIR: With that in mind, Mr. Schmidt?

MR. SCHMIDT: I think I asked the witness if he could just generally describe, kind of give an overview of the property and I'd ask him to do that while he's up there at the board.

CHAIR: Do you need a pointer, sir?

MR. LEFFNER: No, I'm okay.

CHAIR: Okay.

MR. LEFFNER: Yeah. The, so generally, I think it was mentioned earlier, Falls Road, which is Maryland Route 25, runs along the southern portion of the property. The site currently sits just off of it. There's the existing Compass Stream, which is a stream that runs through the northern portion of the property. Currently, the land isn't used for any kind of agriculture production. It generally consists of an open meadow or kind of, you know, not frequently maintained open space that's in good condition. As was mentioned earlier, the site is bisected by another unnamed just tributary to Compass Stream, beginning at kind of a storm outfall along Falls Road. There's a small portion that's an existing access road just to the east side of the existing stream to Compass Street, that's used to access the rear portion of the property there, as well as rear portions and adjacent properties owned by the same owner. That stream area bisecting the property does contain trees. It's a forested area along the stream, there's a small pocket of trees on the western portion of the property. On the eastern side, again, the entire northern portion of the property is entirely forested. There's a forest stand along this portion of the property that I'm pointing to along the east side, as well as, again, open meadow space that's in good condition, (inaudible) maintained frequently in the rear. There's a small area of trees, just kind of small

growth, as well as one specimen tree just to the south of where the proposed project is located. As you get closer to Falls Road on the actual 18627 Falls Road property there's an existing old barn and kind of like agricultural type buildings, with one residential unit and a garage located closest to Falls Road. And that project, that property has an existing driveway off of Falls Road. The area on the western side, again, that kind of agricultural, just open space that hasn't really been used for any production from what I understand a long time. Doesn't have an actual driveway entrance that you might see coming into the site, but that there's a break in vegetation along the road where farm equipment or somebody coming into maintain the property currently use today. Right near that break, and I think there's some photos we'll share in a bit, there is an existing barn structure that's in, it's old, kind of in a state of disrepair. It's noted on the proposed plan to be removed. There's also some existing structures, old stone foundations that are proposed to just remain in place and have been avoided. And those are starting to be located down closer to the stream, it's a vegetated area where trees exist. To the left of where that kind of entrance location is off of Falls Road, the grade changes a lot, the kind of, the road is cut in an area there so the proposed topography actually comes up into the property. There's some existing vegetation there and behind, you know, kind of in that existing vegetation are the

overhead BGE utility lines that run on the property's side of Falls Road. And then located to the west, again, there's kind of a break in the existing vegetation, but then it picks back up again as you get closer to Compass Run in the back.

MR. SCHMIDT: Mr. Leffner, how many lots are there when we say the property, how many lots are there actually that make up the property?

MR. LEFFNER: There's two properties.

MR. SCHMIDT: Okay. Can you describe them by maybe tax number or parcel number or whatever?

MR. LEFFNER: Sure, one of the, the tax properties is Parcel 121, which is the address 18627 Falls Road.

MR. SCHMIDT: That's the one with the house on it?

MR. LEFFNER: That has the, that's improved with a house and it's the smaller of the two lots.

MR. SCHMIDT: How big is that property?

MR. LEFFNER: The overall property area is 6.25 acres, approximately.

MR. SCHMIDT: Okay. The house that's on that property, is that occupied?

MR. LEFFNER: It is not, from what I understand.

MR. SCHMIDT: Okay. Have you been on the property?

MR. LEFFNER: I have.

MR. SCHMIDT: Have you walked the property?

MR. LEFFNER: Yes.

MR. SCHMIDT: Have you seen the house?
MR. LEFFNER: Yes.
MR. SCHMIDT: Do you believe in its current condition, could it be occupied?
MR. LEFFNER: I haven't been inside.
MR. SCHMIDT: Okay.
MR. LEFFNER: The outside looks rough.
MR. SCHMIDT: Okay. Does, it doesn't look like, it's not occupied now?
MR. LEFFNER: I don't believe so, no.
MR. SCHMIDT: Doesn't appear to be occupied?
MR. LEFFNER: No.
MR. SCHMIDT: Okay. How about the second parcel? You described the one that's six acres, how big is that, what's that known as?
MR. LEFFNER: So, the second parcel is Parcel 144 and it's twenty-six, approximately twenty-six acres.
MR. SCHMIDT: Okay and --
CHAIR: For what parcel number?
MR. LEFFNER: It's Parcel 144.
CHAIR: I'm sorry, I couldn't hear you?
MR. LEFFNER: 144.
CHAIR: 144. And it's how many acres?
MR. LEFFNER: Twenty-six point three four.
MR. SCHMIDT: Okay and in terms of improvements on

there, you described an old barn on that property?

MR. LEFFNER: Correct.

MR. SCHMIDT: And you also described some foundations or what appear to be foundations?

MR. LEFFNER: Correct.

MR. SCHMIDT: Is there any building on that property that appears to be a house?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. So, the only house is on the smaller parcel?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and what's the zoning of the site? Can you show the Board where the zoning line is, if there is one?

MR. LEFFNER: Sure. Again, the initial parcel, Parcel 121, which is the lot that has the residential unit on it, is entirely within the R-2 zone, the RC-2 zone. The larger of the two lots, Parcel 121, sorry, 144, is generally in the RC-2. And again, because of Compass Creek and the location within the property is generally the RC-8 zone, follows the same alignment in the northern portion of the property.

CHAIR: So, could you take whatever pointer or actually could you use a highlighter?

MR. LEFFNER: Yeah.

CHAIR: And just so we can see it, and draw the

zoning line?

MR. SCHMIDT: The zone line.

CHAIR: Do you need another highlighter? Because that doesn't seem to be standing out too much but --

MR. LEFFNER: Can you see it? You want me to make it, I can make it bigger --

MR. SCHMIDT: You want to make it --

MS. DOPKIN: Here's a pink.

MR. SCHMIDT: Why don't you use a pink one, Mr. Leffner.

CHAIR: Yeah. Yep.

MR. SCHMIDT: Just for the record, the witness is drawing with a pink marker the zone line --

CHAIR: On 3-A.

MR. SCHMIDT: -- on the 3-A, the existing conditions. Mr. Leffner, can you do the same thing, I know it's marked on 3-C, which is the proposed conditions, draw a pink line where the zoning line is as well?

MR. LEFFNER: Um hm.

MR. SCHMIDT: And, and Mr. Leffner, everything to the top left is zoned what, what's the zoning to the top or to the left?

MR. LEFFNER: RC-8.

MR. SCHMIDT: And to the bottom and to the right?

MR. LEFFNER: Is RC-2.

MR. SCHMIDT: Okay. You've kind of given us a general description of the property. I'm going to give the witness, if I can, Mr. Garber, if I can approach?

CHAIR: Yes.

MR. SCHMIDT: And I've given to Mr. McCann, just a copy of two aerial photographs, I'll give one to Ms. Dopkin as well. These are two different aerials, one's just a little closer and I marked them 4-A and 4-B. Did I give you the ones that were marked, Ms. Murphy?

MS. MURPHY: You did.

MR. SCHMIDT: Okay.

CHAIR: Wait, hold on.

MS. DOPKIN: Wait a minute. I now have three aerial photographs.

MR. SCHMIDT: You should, and Mr. Garber has one.

CHAIR: Right.

MR. SCHMIDT: So, you have two of the same and should give one of those to Mr. Garber.

MS. DOPKIN: You'll have to tell me what the distinction is so --

MR. SCHMIDT: This one, if I can approach, this one is further out, as you can see. This is a more close up.

CHAIR: This is the property, okay, I got you.

MR. SCHMIDT: Yes, 4-A and 4-A is the one that is, is farther away. I'm sorry, I marked the one with the exhibit

number to Ms. Murphy.

CHAIR: So, to be clear --

MR. SCHMIDT: And giving the same thing --

CHAIR: -- the one from a further distance out is 4-A?

MR. SCHMIDT: Yes.

CHAIR: The one closer in is 4-B?

MR. SCHMIDT: Yes.

CHAIR: Understood.

MS. MURPHY: Are they the (inaudible)?

MR. SCHMIDT: Yes, yes.

MS. MURPHY: Okay.

MR. SCHMIDT: Same thing, do you need another copy?

MS. MURPHY: No, no, I'll use yours.

MR. SCHMIDT: Okay.

CHAIR: Are you, you good?

MS. DOPKIN: I'm good.

CHAIR: Okay.

MR. SCHMIDT: Let's start with 4-A, which is the one that's sort of --

CHAIR: You may have a seat, sir.

MR. SCHMIDT: -- further out, Mr. Leffner. Can you identify, maybe just point to the board, the two, the two prop, or the property at large, the two lots, where that is on the page?

MR. LEFFNER: Sure, it's, it's the one outlined generally in the blue, what appears to be marker.

CHAIR: All right. So, just to be clear for the record too, because obviously the plans 3-A through, 3-A through D we have Falls Road on the south side of the property, which now looking at 4-A and 4-B, Falls Road is not on the south side of the property, correct?

MR. LEFFNER: South west of the property.

CHAIR: Okay. So, that what's depicted on 3-A through 3-D is oriented different than actual conditions?

MR. LEFFNER: Correct.

CHAIR: All right.

MS. DOPKIN: The north arrow on both is pointing toward the top of the page, that's curious.

CHAIR: Yeah.

MR. LEFFNER: So, the --

CHAIR: (inaudible) all the references before to the south side of the property, to the west side or whatever, that was particular to the way the property is depicted and oriented on 3-A through 3-D and it may not reflect testimony based on, or actual conditions of how the property is located and oriented.

MR. SCHMIDT: Ms. Dopkin, I, I think, oh, okay. Just to add confusion, but if you look at the north arrow in the bottom of 3-A, B, C and D, it's actually pointing sort of right

to left.

MS. DOPKIN: I understand.

MR. SCHMIDT: Okay.

MS. DOPKIN: It just --

MR. LEFFNER: Correct. The --

MS. DOPKIN: They don't line up.

MR. LEFFNER: -- exhibit generally has the same orientation as the vicinity map in the top left, the top right corner of the exhibits on the board.

MR. SCHMIDT: Okay. Mr. Leffner, with those exhibits, can you tell us a little bit about the neighborhood, the area that this property is located? Is it urban, rural, just give us an idea of what is in the area and generally some of the neighboring land uses.

MR. LEFFNER: Sure. It's definitely in a rural area. Falls Road, as you're traveling north along Falls Road, there's a mix of agricultural uses, conservation uses and single family dwellings.

MR. SCHMIDT: Okay and there's no agricultural use active on this property?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Mr. Leffner, this was not the original proposal, I'm sorry, Mr. McCann, I don't mean to be leading, I'm just trying to get through some of these foun, foundational questions.

MR. MCCANN: That's fine.

MR. SCHMIDT: Mr., Mr. Leffner, this was not the original proposal for this development of this site with a solar facility, was it?

MR. LEFFNER: No.

MR. SCHMIDT: Okay and under that original pro, proposal, were both properties utilized for the solar facility?

MR. LEFFNER: No.

MR. SCHMIDT: Which one was utilized?

MR. LEFFNER: Only the larger lot.

MR. SCHMIDT: Okay. Can you tell us how it came to be and what, if any, analysis that you did, which resulted in the original proposal being altered and amended to reflect what's currently being proposed and shown on 3-A through D?

MR. MCCANN: Yeah, I will object to that question, if I may be heard, Mr. Garber? I'm not sure it's relevant. We're here about the impacts associated with this proposal, whether there was a proposal prior to iteration of this plan that I assume he's going to say had more, was more impactful to the natural resources, is frankly irrelevant.

CHAIR: I was kind of curious as to why we're talking about a plan that is not in front of us.

MR. MCCANN: It, it makes, makes them, makes the developer sound like he's doing a good job but other than that, you know.

MR. SCHMIDT: I'll, I'll strike, I'll strike the question. I, that wasn't, wasn't offered for that purpose. Mr. Leffner, let me ask it this way, are there environmental constraints associated with these properties with the two lots?

MR. LEFFNER: There are.

MR. SCHMIDT: I think you've described some of them in terms of the streams, the Compass Run that you've described.

MR. LEFFNER: Correct.

MR. SCHMIDT: And a tributary to the, the Compass Run. What, if any, other environmental constraints or can you tell us generally about the environmental features of this property, particularly as they related to the development of the subject plan?

MR. LEFFNER: Sure.

MR. SCHMIDT: Go ahead.

MR. LEFFNER: Again, kind of Compass Run being the creek that runs along the northern side of the property. Associated with that is FEMA flood plain, so there's a hundred year flood plain generally located in that northern forested area of the site that's shown on the smaller exhibit that was passed out. That forest area being so close to the stream and within the flood plain area, is, has been classified and accepted by the County as a, a specific forest stand within the property --

CHAIR: (inaudible)?

MR. LEFFNER: Forest stand, having a common type of vegetation within it. The forest area on the eastern side of the property, the topography kind of climbs up to a, the top of a hill, being that it's located outside of the forest it too is classified and accepted by Baltimore County as a separate forest stand. Again, still being considered forest, just with a little bit different vegetation type. Within those two large forested areas, around the periphery of the project, there's a variety of different specimen trees, so diameter, they're large enough to be classified as a specimen tree. They too were reviewed in the field and accepted by Baltimore County for their general location. There are a few other isolated specimen trees within the project area that were included and, again, accepted by Baltimore County as part of the forest stand delineation and steep slope analysis.

MR. SCHMIDT: So, you have submitted what is called a forest stand delineation to the County?

MR. LEFFNER: Correct.

MR. SCHMIDT: Can you tell us what is a forest stand delineation?

MR. LEFFNER: Forest stand delineation is a field exercise that's completed, as well as desktop review, to identify environmental features about a property that would be subject to additional environmental review.

MR. SCHMIDT: Okay and is that generally, I mean,

does that relate to the location of trees and forest, I assume?

MR. LEFFNER: Correct, as well as other environmental features.

MR. SCHMIDT: What other kind of environmental features?

MR. LEFFNER: Specific to this site, streams we've mentioned. There are some isolated non-tidal wetlands on the property, flood plain areas of the site, whether there's any threatened or endangered species identified, historic structures that might be identified.

CHAIR: So, if I could slow this down just a second here to make sure I understand. The forest stand delineation, is that required to be done by the County?

MR. LEFFNER: Correct.

CHAIR: Okay and the forest stand delineation is required to be done particular to this property because of the presence of what appears to be forest, right?

MR. LEFFNER: Correct.

CHAIR: All right and as part of that review, you do a field exercise and a desktop review, correct?

MR. LEFFNER: Right.

CHAIR: All right and then when you are done your forest stand delineation, to whom does the delineation report, I guess, go to?

MR. LEFFNER: The report goes to Environmental Impact

Review, Baltimore County.

CHAIR: County Environmental Impact Review. And when they receive and review your forest stand delineation, what, if anything, do they do?

MR. LEFFNER: It can vary based on the project. In this case, they accepted it, had an opportunity to review it, requested a field walk, actually we scheduled.

CHAIR: That is, someone from the County and yourself then go out to the property to then go look around and just confirm what has been reported.

MR. LEFFNER: Correct.

CHAIR: Okay and what happens next?

MR. LEFFNER: If there's any varying opinions or comments made during the field walk, they can be issued and the plans revised. I think in this case, there were some areas specifically along Compass Run very windy stream, little isolated wetland areas, a few of the areas were revised, plans were resubmitted for review and once accepted, a letter issued saying that everything reflected on the forest stand delineation plan was (inaudible).

CHAIR: So, the, the purpose of that review is just to confirm what you have reported, is that correct?

MR. LEFFNER: Correct, yes.

CHAIR: Okay. So, there's no recommendation from them as to what to do or what not to do, is there?

MR. LEFFNER: No.

CHAIR: Just only confirmation?

MR. LEFFNER: Correct.

CHAIR: All right and then they, have you identified the streams, the non-tidal wetlands, flood plain, historic structures and other such things as part of your initial report to them?

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. SCHMIDT: Just going to make sure I have the right one. Mr. Leffner, I'm handing you a document and can you identify that for me?

MR. LEFFNER: Yes, this is the forest stand delineation plan that was prepared for the two separate plots.

MR. SCHMIDT: Okay. So, the plan that you described in answering Mr. Garber's questions about, I'm going to say the plan that depicts environmental constraints and limitations on this property, in a very general and broad standpoint, streams, wetlands, forests, that is the report that you submitted to the County?

MR. LEFFNER: Correct.

MR. SCHMIDT: And then, they came out and came to the property with you?

MR. LEFFNER: Correct.

MR. SCHMIDT: To verify that the information is

correct on this plan?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and was this forest stand delineation plan then approved by Baltimore County or accepted by the County?

MR. LEFFNER: Accepted.

MR. SCHMIDT: Yes, okay. I would offer that as Petitioner's exhibit number five.

CHAIR: Mr. McCann, do you have a copy?

MR. MCCANN: I do.

CHAIR: All right. So, let's go, Petitioner's Exhibit 4-A and 4-B, do you have any objection?

MR. MCCANN: I do not.

CHAIR: That will be admitted. For Petitioner's Exhibit 5, do you have any objection?

MR. MCCANN: I'm worried about preserving my objection at the beginning of the hearing, my Motion but --

CHAIR: Well, again, we have a continuing objection.

MR. MCCANN: Okay.

CHAIR: So, you don't need to --

MR. MCCANN: Subject to that, no objection.

CHAIR: Right.

MR. MCCANN: Thank you.

CHAIR: All right. So, then it would be admitted, understanding, of course, you have a continuing objection, but

admitted otherwise.

MR. MCCANN: Great, thank you very much.

CHAIR: All right.

MR. SCHMIDT: Okay. So, Mr. Leffner, other than the forest stand delineation, which is exhibit number six, is there any other type of plan that you submitted to Environmental Protection for them to review?

CHAIR: I think you said six, it's five.

MR. SCHMIDT: I believe, I'm sorry, number five. My apologies. Well, specifically, this is hard to read. Did you perform a steep slopes and erodible soils analysis?

MR. LEFFNER: We did. We had, it wasn't me personally that performed it but (inaudible).

MR. SCHMIDT: Okay. But it was done under your supervision and direction or at your direction?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and I'm going to show you a copy of, I believe, that document. Let me mark it so Mr. McCann knows what exhibit it is. Was there a steep slopes and erodible soils evaluation done at your request?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and I'm showing you a copy of that and I have pre-marked it and I'll give three copies to Ms. Murphy. And is that the steep slopes and erodible soils analysis?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and was this approved by Baltimore County?

MR. LEFFNER: Accepted.

MR. SCHMIDT: Accepted by Baltimore County Department of Environmental Protection?

MR. LEFFNER: Yep.

MR. SCHMIDT: Okay. Now, Ms. Murphy, I'll give you a fourth copy. Okay. Did the preparation of those two plans, five and six, the forest stand delineation and the steep slopes and erodible soil, what, if anything, did that have to do with how you located the proposed solar facilities here?

MR. LEFFNER: The proposed solar facilities have been located to avoid impact to those identified areas.

MR. SCHMIDT: Okay. Will you be, will the solar facilities be located in an area where, on top of the stream?

MR. LEFFNER: No.

MR. SCHMIDT: On top of a wetland?

MR. LEFFNER: No.

MR. SCHMIDT: On top, within an area, a required buffer of a stream?

MR. LEFFNER: No.

MR. SCHMIDT: Within a required buffer of a wetland?

MR. LEFFNER: No.

MR. SCHMIDT: Within, are you going to have to do

clearing of forested areas in order to construct the solar facility?

MR. LEFFNER: There won't be any disturbances to the forest stand areas established on the approved plans. There will be some clearing to limited vegetated areas, mainly along the access location, to provide access (inaudible) to the back and then some within the array itself. But again, none of those are specimen trees or managed forest areas within the property.

MR. SCHMIDT: What's a specimen tree?

MR. LEFFNER: Specimen tree is anything that, with a caliber of thirty inches.

MR. SCHMIDT: Okay and are any of those, any of that vegetation that is going to be removed, is any of that within an area of the forest stand?

MR. LEFFNER: No.

MR. SCHMIDT: Is any of that within an area of a required buffer or setback?

MR. LEFFNER: No.

MR. SCHMIDT: Is any of that protected under any way through any type of environmental law or regulation that says you can't come in and touch that?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Are you, do you anticipate under the plan that you have prepared, do you need any kind of

environmental variances, either to forest buffers or stream buffers or wetland buffers or any type of buffer variances?

MR. LEFFNER: We don't expect any.

MR. SCHMIDT: Okay. Do you need any relief for variances, exceptions, as it relates to flood plains?

MR. LEFFNER: Not that we expect.

MR. SCHMIDT: Are you building in an area of a flood plain?

MR. LEFFNER: No.

MR. SCHMIDT: Or disturbing in an area of a flood plain?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Are the, will there be any type of environmental variances or exceptions or waivers or any of that, thing of that nature required for this construction as it's proposed on Petitioner's Exhibit 3-A through 3-D that you anticipate?

MR. LEFFNER: Not that we anticipate.

MR. SCHMIDT: Okay.

CHAIR: When you say not that we anticipate, what do you mean by that?

MR. LEFFNER: The, I think it was mentioned earlier that the plan is still subject to final permit, at a County review by a variety of different agencies. So, if there were some minor change that required one, I think the plan would be

to avoid any of those. So, we're proposing to avoid any area if there was something on the forest stand delineation during a subsequent field walk that changed, we would avoid that area also.

MR. SCHMIDT: Okay. You don't anticipate any?

MR. LEFFNER: No, we do not.

MR. SCHMIDT: You've walked the site?

MR. LEFFNER: Correct and the plan has been already accepted by Baltimore County.

MR. SCHMIDT: And Environmental Protection has walked the site?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay, but --

CHAIR: Sitting here today, looking at through 3-A through 3-D, well, 3-C and D, I guess, assuming that is exactly the way it is in terms of when you get to the finish line, so to speak, you, it would be your understanding that there would be no variances needed?

MR. LEFFNER: Correct.

CHAIR: The only time a variance would be needed here is if something has to change during the entire process, which everything unfolds, that would then require maybe some alteration and, therefore, a variance?

MR. LEFFNER: Potentially for an environmental variance.

MR. SCHMIDT: Right.

CHAIR: That's what I'm referring to, right.

MR. SCHMIDT: But you let, you don't have any reason to believe that anything is going to change.

MR. LEFFNER: No.

MR. SCHMIDT: Anything that you're aware of now?

MR. LEFFNER: Nope.

MR. SCHMIDT: Okay.

CHAIR: That's --

MR. SCHMIDT: But with that being said, you still have to get building permits to build this?

MR. LEFFNER: Correct.

MR. SCHMIDT: And the County will evaluate it at that time?

MR. LEFFNER: Correct.

MR. SCHMIDT: So, if the County changes their mind or comes up with something, you know you're subject to their recommendation?

MR. LEFFNER: Correct.

MR. SCHMIDT: But there's nothing that you're aware of at the present time?

MR. LEFFNER: No.

MR. SCHMIDT: You've been to the site.

MR. LEFFNER: Yep.

MR. SCHMIDT: Done all these analysis?

MR. LEFFNER: Yes.

MR. SCHMIDT: Submitted it to the County, they've reviewed it and accepted it.

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay.

CHAIR: Is the hundred year flood plain depicted somewhere, in some exhibit?

MR. LEFFNER: I believe it's, I lost track of the number, but it's on the forest stand delineation plan.

CHAIR: Okay and I know that, obviously are the streams are depicted.

MR. LEFFNER: Yeah, it's a label, I believe it's F.

MR. SCHMIDT: FP?

MR. LEFFNER: Yeah, FP.

CHAIR: I'm sorry?

MR. LEFFNER: I could show you in it, it's along Compass Creek, there's a line type, I believe it's FFP.

CHAIR: Okay and then same with the buffers, are they depicted somewhere?

MR. LEFFNER: Correct. On the steep slope analysis plan, there's a dashed line with dimensions off of the stream that reflects the --

CHAIR: Could you show the Board on Petitioner's Exhibit 6 what you mean? Mr. Schmidt, do you have the exhibit, is that six, for him to show us?

MR. SCHMIDT: Yes, hang on. I'm sorry, there's so many, if I can approach? Ms. Murphy, can I have Exhibit 6? That's it. Showing it to Mr. Leffner.

MR. LEFFNER: Point to it again, it's the thick dashed line.

CHAIR: Are, okay, so what you're, you're doing there, could you actually mark on the exhibit?

MR. LEFFNER: Yeah.

MR. SCHMIDT: Sure, and this one is marked and I'll have him mark it with pink, just so the record is clear. He's going to mark the location of the forest buffer, is that it, Mr. Leffner?

MR. LEFFNER: Um hm, right.

MR. MCCANN: You mean the boundary?

MR. SCHMIDT: Yes, the boundary.

CHAIR: Forest buffer boundary.

MR. SCHMIDT: Forest buffer boundary. I'll show it to Mr. McCann. Okay. Okay.

CHAIR: Now, is any part of the proposed solar facility within the buffer or not?

MR. LEFFNER: It will not be.

MR. SCHMIDT: The answer is no.

MR. LEFFNER: No.

MR. SCHMIDT: No, okay.

CHAIR: Same with the flood plain.

MR. LEFFNER: Correct.

CHAIR: And that would include any access road or other equipment or, or security system, correct?

MR. LEFFNER: Correct.

MS. MURPHY: So, did your, your plan then, was it amended after, and I realize this hasn't come in yet, but the EPS comments from December of 2018 where they indicate that there might need (inaudible) variances and they indicated there won't be approval, you're nodding your head?

MR. LEFFNER: Yes, it was revised since we received that letter.

MS. MURPHY: Okay. So, now, so now, based on that letter, though, you're saying, your testimony is there should be no administrative variances that we need.

MR. LEFFNER: Correct.

MS. MURPHY: Okay, thank you.

CHAIR: So, is that the purpose of why you were asking about that earlier, is to show that some of the ZAC comments would not be applicable to the plan that's presented to this Board?

MR. SCHMIDT: Yes, sir.

MS. MURPHY: I realize the ZAC comments haven't come in but they're in the file so.

MR. SCHMIDT: Yes, and, and if I just can, just for clarity's sake, you'll notice that there are three sets of

comments from the State Highway, from the Office of Planning and also Development Plan Review and you actually have some from January of 2019, which is the, what I'd call the original plan and then over the summer, June/July time frame, there are comments when this plan was submitted.

CHAIR: So, there are two sets of comments --

MR. SCHMIDT: I just wanted to clear up that discrepancy because you'll look at them and --

CHAIR: Right.

MR. SCHMIDT: -- not be able to figure out what's what.

CHAIR: Thank you.

MR. SCHMIDT: I think we're up to Petitioner's Exhibit --

CHAIR: Well, before you go any further, Mr. McCann, any objections to Exhibit 6? Again, recognizing your continuing objection.

MR. MCCANN: Subject to that, no objection. Thank you very much.

CHAIR: Admitted.

MR. SCHMIDT: Board's indulgence. I just wanted to mark these before I gave them to you. And Mr. --

MR. MCCANN: Thank you.

MR. SCHMIDT: -- Coolis (phonetic), you indicated that Environmental Impact Review had reviewed --

MS. MURPHY: Mr. who?

CHAIR: Leffner?

MR. SCHMIDT: What did I say, Mr. Coolis? I'm looking at the name of the signature, I'm sorry. Mr. Leffner, you indicated that Environmental Impact Review had reviewed the steep slopes and erodible soils analysis and the revised forest stand delineation and had accepted it, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And I'm showing you a letter dated July the 1st, 2019. Is that the letter was, your office was received indicating that those reports were, I think it says in the first paragraph, we have determined that the recent revised submission satisfactorily reflect the resources and also address our stated concerns and that's what, by, this letter is by which they accepted those studies?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. I would offer that as exhibit number seven.

CHAIR: Mr. McCann?

MR. MCCANN: No objection, thank you.

CHAIR: So admitted.

MR. SCHMIDT: Okay. Board's indulgence for just, just a second. Okay. Let me ask you, Mr. Leffner, if I can, some questions about the property as, as well, and some of the require, well, let me ask you this. Are you familiar with the

requirements in Section 4-F of the zoning regulations as it relates to solar facilities?

MR. LEFFNER: Yes.

MR. SCHMIDT: Let me ask you some questions arising from those requirements. First of all, does this property, when I say the property, I mean the two lots, is it encumbered by any environmental preservation easement, any agricultural preservation easement or any rural legacy easement?

MR. LEFFNER: No, not to my knowledge.

MR. SCHMIDT: Okay. I know --

CHAIR: Well, if I could stop there. You, I assume you searched to see if it was?

MR. LEFFNER: Correct.

CHAIR: Right? And your search yielded no results that is --

MR. LEFFNER: No results.

CHAIR: -- that none of these are within any of those protected easements?

MR. LEFFNER: Correct.

MR. SCHMIDT: Yes.

CHAIR: All right.

MR. SCHMIDT: The way you said that is if --

MR. LEFFNER: No.

MR. SCHMIDT: -- you have done an analysis.

MR. LEFFNER: Correct.

MR. SCHMIDT: You have found neither an environmental preservation easement, an ag preservation easement or a rural legacy easement, correct?

MR. LEFFNER: No.

MR. SCHMIDT: Is it true, Mr. Leffner, that some of the adjacent properties are so encumbered?

MR. LEFFNER: Yes.

MR. SCHMIDT: But not this property?

MR. LEFFNER: Correct.

MR. SCHMIDT: And you've looked at that issue in the Land Records?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Is this property in any County historic district or do any of the buildings of the property have any historic designation?

MR. LEFFNER: No.

MR. SCHMIDT: Or landmarking?

MR. LEFFNER: No.

MR. SCHMIDT: No? Okay. Does the property have presently any kind of forest conservation easement area?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Will there be one ultimately at the end of this project, if, when permits are issued, will there be an easement dedicated before that?

MR. LEFFNER: Yes.

MR. SCHMIDT: And will the area of the easement be outside of where the solar facilities are proposed?

MR. LEFFNER: Yes.

MR. SCHMIDT: Will that be within the area as shown on your forest stand delineation?

MR. LEFFNER: Yes.

MR. SCHMIDT: So, the area --

CHAIR: Well, which area on your forest stand delineation?

MR. LEFFNER: It, it would be within one of the two forested areas identified on the forest stand delineation.

MR. SCHMIDT: Okay. So, the County will require a forest conservation easement of, on a, on a portion of this property outside of where the solar facilities are?

MR. LEFFNER: Yes.

MR. SCHMIDT: And that will be in that portion of the property where you have determined there are mature forests that warrant conservation?

MR. LEFFNER: Yes.

MR. SCHMIDT: As approved by the County?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay.

CHAIR: Can you show us where that would be?

MR. SCHMIDT: Do you know where they'll be, the forest conservation area will be, generally?

MR. LEFFNER: The, in, in one of the two forest areas.

MR. SCHMIDT: Yeah.

MR. LEFFNER: I think there's stand A and stand B right now defined on the exhibit.

MR. SCHMIDT: Why don't you show me where stand A and stand B is?

MR. MCCANN: Stand one and two.

CHAIR: Do you need Exhibit 5 or do you, what, what is --

MR. LEFFNER: Yeah, I don't have a --

CHAIR: -- what works best for you to be able to do that? I believe it's referred to on here as there's stand one and two.

MR. LEFFNER: Yeah. Would have been sheet two of three on Exhibit 5. It'd be within an area identified as stand one.

CHAIR: So, to be clear, stand one on sheet two of Exhibit 5, that is the area that will be dedicated for forest conservation easements.

MR. LEFFNER: Or a portion of stand two, also identified on that sheet and sheet three.

CHAIR: Okay. You said or.

MR. LEFFNER: Correct.

CHAIR: So, --

MR. SCHMIDT: Who makes that determination as to where the forest conservation areas will be?

MR. LEFFNER: The landowner or applicant can.

MR. SCHMIDT: Okay and is that subject to the approval of Environmental Protection?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay.

CHAIR: Is, so it would be the discretion of the landowner, it's not required by the County?

MR. LEFFNER: The forest conservation is a requirement by Baltimore County to be done, as noted in the approval letter from Environmental Impact Review. The forest conservation plan is required, one just hasn't been prepared at this time because of the ongoing proceedings.

CHAIR: So, do, so I understood your testimony, the landowner will decide though?

MR. LEFFNER: Correct.

CHAIR: As to which one?

MR. LEFFNER: Correct.

CHAIR: But the County is requiring at least one?

MR. LEFFNER: Correct.

CHAIR: Could the County require both?

MR. LEFFNER: Yes. There's forest conservation requirements as far as the total area that would need to be put into a conservation easement and it could move or be located in

either of those stands.

MR. SCHMIDT: And just to maybe make this clear, the, the County will require a certain number of acres to be dedicated into forest conservation, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Once they determine how many acres, then the property owner will have input as to which of those stands, one, the other, both, will be utilized to satisfy the County's acreage requirement?

MR. LEFFNER: Correct.

MR. SCHMIDT: Mr. Garber, does that help as to the --

CHAIR: It does.

MR. SCHMIDT: -- way that process works? Okay. Okay. Let me continue on, if I can, Mr. Leffner. Are the panels setback at least fifty feet from the tract boundary, the overall tract boundary?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and they're set back at least seventy-five feet from the center line of any public road?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. Do the panels exceed a height of twenty feet?

MR. LEFFNER: No.

MR. SCHMIDT: Do you know how tall they typically are?

MR. LEFFNER: It depends on the actual panel selected. Again, when it comes time to building permit, generally they're less than like nine feet.

MR. SCHMIDT: Okay. But that --

CHAIR: Does that include the space, just so I understand what you're measuring.

MR. LEFFNER: Um hm.

CHAIR: Are you talking about the panels themselves, or are you talking about the panel from the top of the, the, we'll just say apex of the panel, down to the, to the ground?

MR. LEFFNER: Yeah, apex down to the ground.

CHAIR: So, that would be, that would therefore include the entirety of the panel and the space underneath the panel?

MR. LEFFNER: Correct.

CHAIR: All right. So, it would be no higher than nine feet?

MR. SCHMIDT: Yes.

MR. LEFFNER: Yes.

MR. SCHMIDT: Yes. Okay. Let me ask you, if I can, Mr. Leffner, have, have you, on your plan, proposed any landscaping or screening of the proposed panels and arrays?

MR. LEFFNER: Yes.

MR. SCHMIDT: May, it might help if you approach the board to answer this next series of questions. And maybe you

flip to Exhibit B and D, which are closer versions. So, if you want to flip those pages over, because I'm going to ask you, if I can, to describe first, Mr. Leffner, I guess, some existing areas of vegetation and then secondly, the landscaping that you're proposing, just so the Board understands the landscaping that's proposed. Okay, starting with the plan on the top, Petitioner's 3-B, does that show any of the proposed landscaping?

MR. LEFFNER: It does not.

MR. SCHMIDT: Okay. Does it --

CHAIR: I'm sorry, it does not?

MR. LEFFNER: It does not.

MR. SCHMIDT: Okay. Does it show any of the areas of existing vegetation?

MR. LEFFNER: It does.

MR. SCHMIDT: Can you describe that for us?

MR. LEFFNER: Yes. Starting again with the incorrect north area, kind of the northern most part of the proposed project area.

CHAIR: We're recognizing that what appears to, to you know, me at least, the north arrow that you're just referenced, does appear to be inaccurate in terms of its orientation.

MR. LEFFNER: Correct.

CHAIR: On 3-B. But 3-D is correct.

MR. LEFFNER: On 3-B, correct.

CHAIR: Okay, sorry. So, go ahead.

MR. LEFFNER: The forested area that's identified on the forest stand delineation, as well along Compass Run in the northern and north east portion of the property, there's an existing forest, existing vegetation along the entire stream that bisects the property. More forested area along Compass Run, as you continue towards the eastern portion of the property, forested area along the south eastern portion of the property. Then there's, it's not a forest stand area but existing vegetation along the entire southern boundary. A pocket as you continue back towards the rear of the existing barn structures, as well as along the southern boundary adjacent to the existing residential structure and garages. Along Falls Road there's existing vegetation.

CHAIR: Is it consistent vegetation or is it intermittent?

MR. LEFFNER: It varies in different areas.

CHAIR: Does it vary by height?

MR. LEFFNER: Varies in height, as well as material.

CHAIR: Does it vary by density?

MR. LEFFNER: It does.

MR. SCHMIDT: We have some photographs --

CHAIR: Okay.

MR. SCHMIDT: -- which I'll show, Mr. Garber.

CHAIR: Well, I'm looking at Petitioner's Exhibit 4-B, which may be a better representation as to what is being described as to where, you know, what is going on and where. Only because it actually depicts some of the forested areas and some of the open meadow and some of the pockets we're referring to. All right, go ahead. Sorry.

MR. LEFFNER: So, along Falls Road there's existing vegetation along the area of the stream buffer, as well as the existing ruins. There's a break as you get to the existing barn structure that's on the property where, again, that access road is used to access the property and again, as the grade begins to get cut down along Falls Road and up into the site, there's existing vegetation along the entire property as you get to the northern corner along Falls Road.

MR. SCHMIDT: So, if the site has forested areas and plantings of varying degrees and heights and thickness around its entire perimeter?

MR. LEFFNER: Small breaks mainly along Falls Road for the access points.

MR. SCHMIDT: Okay.

MR. LEFFNER: As well as the northern portion adjacent to the structure to the north.

MR. SCHMIDT: All right. Now, how about the topography? You described that briefly, is the site higher than the road, when I say the road, Falls Road, lower, can you

describe that?

MR. LEFFNER: Generally, the site is lower than Falls Road. Again, really the, the exception is along Falls Road in the northern portion of the property, Falls Road is cut down so the site is higher than Falls Road.

CHAIR: I'm sorry, hold on. I understood you just said site lower than, generally lower than Falls Road but now you just said --

MR. LEFFNER: Correct.

CHAIR: -- there's an area that's higher than Falls Road.

MR. LEFFNER: Yes, a small portion in the north west corner of the site is higher than Falls Road and then generally it drops off down to the east, to the existing Compass Run and the stream that bisects the property. That area being lower than Falls Road. Where the existing stream bisects the property, as you continue south along Falls Road, the site sits slightly higher as would most of the residential uses in the property, where you would come up to the residential building. Behind that residential building it drops off yet again down towards the stream that bisects the property. So, there's a low laying area as you go east behind the existing residential structure, then about halfway down the lot, as you work towards the east, there's a hill that comes back up again to a high point along the south east corner of the property within that

existing forested area.

MR. SCHMIDT: Okay. Mr. Leffner, I think you've described the existing vegetation and also the, the topography. How about, is there landscaping proposed?

MR. LEFFNER: Yes.

MR. SCHMIDT: And is that shown on any of the plans?

MR. LEFFNER: Yes.

MR. SCHMIDT: Which one?

MR. LEFFNER: Exhibit 3-D.

MR. SCHMIDT: Okay and can you draw the Board's attention to where existing planting is proposed?

MR. LEFFNER: Yes. So, the northern --

CHAIR: Hold on one second. Are you ready? Okay. Okay, go ahead. So, we're on 3-D.

MR. LEFFNER: So, 3-D, on the left side of the page, again, the northern portion of the property adjacent to the existing residential structure to the north, there is a, there is existing vegetation to the east that's being supplemented by landscape buffer plantings. There was the break in existing vegetation that we identified on the last sheet, which is being enhanced with the proposed landscape buffer for its entirety. Until you get to Falls Road. Along Falls Road, the existing vegetation within the right of way and adjacent, immediately adjacent to its proposed to be retained, or remain in place.

CHAIR: The right of way you're referring to is the

BGE right of way?

MR. LEFFNER: Is both Falls Road and BGE right of way.

MR. SCHMIDT: Falls Road right of way by the State Highway Administration.

CHAIR: Right.

MR. LEFFNER: Correct.

MR. SCHMIDT: And BG&E.

CHAIR: Right, okay.

MR. LEFFNER: So, vegetative screening will be provided behind those right of ways within the property. As you continue south along Falls Road, to where the proposed entrance location is, again, generally located where the existing equipment accesses the property for maintenance. There's a proposed access drive that's been kind of shifted in its alignment so that landscape buffer can be provided throughout its entirety, so you kind of drive into the property, you make a left turn and then a right turn so that there's a continuous landscape buffer through the access drive.

MR. SCHMIDT: Instead of having a straight shot.

MR. LEFFNER: Instead of having a straight shot where you can see in.

MR. SCHMIDT: Where you could see down the straight shot.

MR. LEFFNER: Correct.

MR. SCHMIDT: Its turned?

MR. LEFFNER: Yep.

MR. SCHMIDT: Okay. So, it would be landscaping in front of it and behind it?

MR. LEFFNER: And behind it. Based on coordination again, the existing barn structure that's in kind of a state of disrepair that's proposed to be razed through coordination with Planning and the landscape reviewer, we're to replace it with landscaping. So, we've provided even additional landscape planting behind that proposed access drive. South of the proposed access drive, in the area of the existing ruins and where the existing vegetation again starts to pick back up again and exist along Falls Road, there's a few plantings that we propose to supplement the existing vegetation. South of that, as you approach the existing stream channel, the existing vegetation is proposed to be maintained. South of that, the existing vegetation along Falls Road, as mentioned earlier, is a little bit less dense. So, there's a proposed full landscape buffer proposed on the southern property in front of the existing residential unit with only a break proposed where the driveway improvement will be done to the existing driveway to the property. Along the southern boundary, as you work behind the existing residential unit, there's existing vegetation kind of along the property line, which as mentioned, some of it'll be, need to be cleared to make way for the driveway. Currently

proposed is a privacy fence and that was something that came out of the Administrative Law Judge hearing, was to propose a fence in that area in lieu of vegetative screening, though there's no solar panels proposed in the area. Continuing to work back towards the rear of the site, the access drive comes internal to the lot surrounding existing barn structures. To the south of those barn structures, there's a large existing vegetated area that's proposed to remain as well as be supplemented by an additional landscape buffer behind that. Along the southern boundary, there's an adjacent residential unit as well. There's existing vegetation along the property line which is proposed to be supplemented with a buffer along its entirety. The south eastern portion of the property where the previous identified forest stand area is that are potentially to be re, well, to be retained potentially in a conservation easement, those will all be retained along the south east portion of the property and all the vegetation within Compass Run will be maintained.

MR. SCHMIDT: Okay. I'm going to show you some photographs, give a copy of these to Mr. McCann.

MR. MCCANN: Thank you.

MR. SCHMIDT: And also one for all Board members and I pre-marked it number eight. And they are labeled A, B, C consecutively.

CHAIR: Thank you.

MR. SCHMIDT: Mr. Leffner, maybe you can take a copy and if I can ask you to start with A and just tell us kind of what we're looking at, where the property is, anything that you want to remark about in terms of features or landscaping or screening or existing vegetation or anything. So, start with A.

MR. LEFFNER: Sure.

MR. SCHMIDT: What's on A?

MR. LEFFNER: A is a view along Falls Road facing to the south.

MR. SCHMIDT: Okay.

MR. LEFFNER: So, the proposed property is on the left side of that page and the picture is taken generally in the area of where the proposed access drive will be.

CHAIR: Hold on. So, just so I'm clear, there are two access points, correct?

MR. LEFFNER: Correct.

CHAIR: For each, so one per solar field. One is using the existing access and there's a proposed one, is that the driveway?

MR. LEFFNER: Correct.

CHAIR: Right, okay.

MR. LEFFNER: So, there's two.

CHAIR: I want to make sure we're talking about, which one we're talking about when you say that.

MR. LEFFNER: Yeah, and I think that, I don't, I, there was a letter that was mentioned from State Highway, they also issued a letter from the DRC review, kind of identifying what their permit process for the project would be. The southern driveway that exists today to that residential unit will just, there will be an improvement to it but the access will just be an improvement to the existing drive. A new access point will be proposed to the array on the northern portion of the property.

CHAIR: All right. So, the question posed by Mr. Schmidt then and with your answer, you're talking about the existing drive, not the proposed one?

MR. LEFFNER: The pro, the proposed one.

CHAIR: I'm sorry.

MR. LEFFNER: The proposed drive. This is the northern portion of the property, approximately where the pickup truck is in the photograph.

CHAIR: Okay.

MR. LEFFNER: Is at the low point in Falls Road and that's generally where the existing stream that bisects the property is immediately next to where that black truck is, to the left.

CHAIR: Okay.

MR. SCHMIDT: Okay. So, the black truck, the, the, the, the pickup truck in the picture, is at about this location

where the stream comes and meets Falls Road?

MR. LEFFNER: Correct. And you're looking from the left to the right of that (inaudible).

MR. SCHMIDT: Okay. So, the telephone pole, I don't, is the telephone pole shown, okay. Is, and, and this, the pole that's in Petitioner's Exhibit A is, which one of that is these? Okay. So, that's, Mr. Leffner is indicating where the pole is.

CHAIR: Right.

MR. SCHMIDT: That you can see in the photograph, okay?

CHAIR: Okay.

MR. SCHMIDT: Okay. Exhibit B, is this north or south (inaudible) again or looking south?

MR. LEFFNER: Yes. It's a little bit further to the left, to the right of the page. This is where, I'll point to the exhibit on the board. The existing driveway across the street from the proposed entrance location is. In the picture, you can see the zoning sign as well as the back of a sign on the left side of the road. And that's generally where the stream is located.

MR. SCHMIDT: Okay and that vegetation that's by Falls Road on the subject property, or in the right of way, will that be retained?

MR. LEFFNER: Retained.

MR. SCHMIDT: Okay. Okay. C?

MR. LEFFNER: C is again, a little bit further to the south. Where the car is parked is the approximate location of the existing driveway, that's the --

MR. SCHMIDT: At, at the very southern end of our property?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. So, again, just so the Board understands that, where is that? Okay. So, where that car is parked is where Mr. Leffner is pointing. The location of the, the --

CHAIR: Existing.

MR. SCHMIDT: -- existing driveway to the house, parked in the front of that driveway. Okay. D?

MR. LEFFNER: I think, as you can see in this picture, there's a --

CHAIR: Well, this picture is?

MR. SCHMIDT: Which one, C?

MR. LEFFNER: Exhibit number C.

MR. SCHMIDT: Uh huh.

CHAIR: Okay.

MR. LEFFNER: The existing vegetation varies both in height as well as type.

MR. SCHMIDT: Okay. Okay, D?

MR. LEFFNER: D is a picture from generally the same

vantage point but turned around to look back north.

MR. SCHMIDT: Okay.

MR. LEFFNER: So, in this picture, the proposed property area is actually on the right side of the road, which is reflected by the side of the road with the zoning sign.

MR. SCHMIDT: Okay.

CHAIR: Hold on a second. You say that it's from the same vantage point.

MR. LEFFNER: The same --

CHAIR: Sam vantage point as?

MR. LEFFNER: Exhibit C.

CHAIR: Exhibit C has an address that's depicted in the forefront as 18620 and D it's 18616, so I'm assuming the, you know, the mailbox next, you know, in the background there, maybe the one that's 18620, so it's slightly off from C, right?

MR. LEFFNER: Slightly.

CHAIR: Okay. So, now Exhibit D, it's facing north.

MR. LEFFNER: Correct.

CHAIR: The property would be on the right side.

MR. LEFFNER: Correct.

CHAIR: We see the zoning sign. Is that, is that approximately where the stream is again where the zoning sign is?

MR. LEFFNER: Just beyond the yellow left turn sign or the left bend sign, there's an existing overhead pole and

the low point of that road is where the existing stream meets Falls Road.

CHAIR: Okay. So, now we have D oriented, okay.

MR. SCHMIDT: Okay. E, Mr. Leffner?

MR. LEFFNER: E is also looking north along Falls Road, further up the hill, back towards the area of the proposed entrance drive. Again, there's the clearing and the pole that was shown previously on Exhibit A.

MR. SCHMIDT: Okay.

MR. LEFFNER: In this picture, you can see, as mentioned before, the existing vegetation, as well as the topography change where a portion of the property where the existing vegetation is located to the left of the break is actually Falls Road, lower than the existing site where it's been cut in.

CHAIR: Again, maybe I'm alone in this, I, I'm certainly having trouble with the orientation of the plan versus photos versus the map and everything. The clearing that's depicted in E on the right side of the photo, where would that be on the, on 3-D?

MR. LEFFNER: In the location of the proposed access drive.

CHAIR: Okay. So, --

MR. LEFFNER: Generally, from where the, the proposed entrance drive meets Falls Road to beyond where the turn in the

access drive is proposed.

CHAIR: That opening that's, you can see in E, will you be able to see any of the proposed solar panels from Falls Road or from, if you were standing where you took, you took these photos, right?

MR. LEFFNER: I didn't take these photos, but.

CHAIR: Okay. If you were standing at 18700, at that mailbox.

MR. LEFFNER: Yeah.

CHAIR: Looking into the right side where the clearing is, can you see any of the proposed solar panels?

MR. LEFFNER: You may be able to see the solar panels, but the, it'd be buffered by the landscape planting.

CHAIR: Okay. So, if there was no additional plantings, you would be able to see it?

MR. LEFFNER: Correct.

CHAIR: But you're proposing additional plantings to screen it?

MR. LEFFNER: To buffer the screen, yeah.

CHAIR: Okay.

MR. SCHMIDT: All right and additional planting is sort of where that gap is between the existing vegetation in Exhibit E.

MR. LEFFNER: Correct.

MR. SCHMIDT: And you're retaining the existing

vegetation on the subject property or in the right of way that's shown in E on both sides of that gap, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay and as you indicated, you can see the vegetation that's farther away from the photographer on the subject property, even though it's a two dimensional picture, is actually higher at its, the ground slopes up from the property, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Okay. How about F?

MR. LEFFNER: F is looking across the road. So, the property would be behind where the vantage point is.

MS. DOPKIN: Are we looking north or south?

MR. LEFFNER: You're looking south west. And that mailbox, 18620, you can see it again, which is previously shown on Exhibit C. So, it's kind of the view from across the road looking up towards the existing residences.

CHAIR: Got it.

MR. SCHMIDT: Okay. G?

MR. LEFFNER: G, again, is looking west from Falls Road across the street from the project area, up at an existing residence.

MR. SCHMIDT: Okay. H?

MR. LEFFNER: H is looking also south west from Falls Road.

MR. SCHMIDT: Okay. Okay. So, those are all, those photograph --

CHAIR: One second, one second.

MR. SCHMIDT: I'm sorry.

MS. DOPKIN: You said that we're looking south west at 18620 and then you're saying we're looking south west at 18627. So, we've gone from the even side to the odd side? How could that be? The addresses are not consistent.

MR. LEFFNER: I'm not sure what the mailbox, it may be that the mailbox is across the street for the unit to the east of Falls Road.

CHAIR: If I can, if we look at F, you see --

MS. DOPKIN: See the house, same house, okay.

CHAIR: It appears --

MR. SCHMIDT: I think --

MR. LEFFNER: Because this is the mailbox for the subject property --

CHAIR: -- F, in F and H --

MS. DOPKIN: I got it, I got it.

CHAIR: -- Exhibit F, looks like the house in the background on the left side of the page is the same as that depicted in H.

MS. DOPKIN: Okay.

MR. SCHMIDT: And, and I think that's the explanation that the mailbox for the subject house is on the other side of

the street.

MS. DOPKIN: Must be.

MR. SCHMIDT: Because of the, I assume because of the vegetation. The mailman just goes up, only has one side of the street to worry about when he's dropping off mail. Okay. How about I?

MR. LEFFNER: I, on the left side of the photograph, again, this is Falls Road looking to the east into the property. On the left side of the photograph is the existing stream channel that bisects the property, as well as a small break in the landscape where the existing, and a farm access road is that we mentioned earlier. The existing residential unit is just to the right of this photograph.

MR. SCHMIDT: Okay. So, where that posted sign is the old access road.

MR. LEFFNER: Um hm.

MR. SCHMIDT: It's not improved.

MR. LEFFNER: No.

MR. SCHMIDT: It's not a macadam or asphalt road.

MR. LEFFNER: No.

MR. SCHMIDT: It's just a cut in the landscaping.

MR. LEFFNER: A farm road, correct.

MR. SCHMIDT: Farm road. Okay.

CHAIR: Thank you. That was actually my exact question.

MR. SCHMIDT: Okay. J, that appears to be similar to some of the earlier ones from across the street looking into the subject property?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. K?

MR. LEFFNER: K is a picture of the zoning sign that's pictured in J.

MR. SCHMIDT: Okay and that vegetation will be retained?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. L?

MR. LEFFNER: Is the zoning sign on the right hand side, is where there's a, kind of a chain that you can see, is where the existing driveway was.

MR. SCHMIDT: Okay. The unimproved road that we just talked about.

MR. LEFFNER: The, I believe, that's across the other existing driveway to the residential unit.

MR. SCHMIDT: Oh, okay, okay.

CHAIR: Well, hold on. This is where I get confused.

MR. SCHMIDT: Point, point it out, if you can. Oh, it's there, okay.

MR. LEFFNER: Yeah. So, the --

CHAIR: So, the, at the corner of the property at, at Falls Road.

MR. LEFFNER: Yeah.

CHAIR: The, well, south eastern corner, is that right?

MR. LEFFNER: The south western corner.

CHAIR: South western corner, sorry, yes. Right.

MR. SCHMIDT: M, Mr. Leffner?

MR. LEFFNER: M is a photograph of the zoning sign shown in K. It's a separate, this is a, sorry, Exhibit M has the zoning sign that's posted in front of the existing residential structure.

MR. SCHMIDT: Okay.

CHAIR: I'm sorry, it has a zoning sign in front of the residential structure?

MR. LEFFNER: Yeah.

CHAIR: On N?

MR. LEFFNER: N?

CHAIR: You said N or M?

MR. SCHMIDT: M.

MR. LEFFNER: M.

CHAIR: Okay. On M, that's the zoning sign in front of the existing residential structure. I thought you said N. So, what is N?

MR. LEFFNER: N is a photograph of the existing structure.

MR. SCHMIDT: The residential structure?

MR. LEFFNER: Yeah, and the, the barn, the garage.
MS. DOPKIN: On the southern lot or the northern lot?
MR. LEFFNER: South western portion of the property.
MS. DOPKIN: I'm sorry?
MR. LEFFNER: South western.
MS. DOPKIN: South western.
CHAIR: So, this is the residential structure or the garage?
MR. LEFFNER: I believe it's the residential structure.
MS. DOPKIN: And that is on Parcel 121, correct?
MR. LEFFNER: Correct.
CHAIR: And that is proposed to be removed?
MR. SCHMIDT: No.
MR. LEFFNER: To, to remain.
CHAIR: To remain.
MR. SCHMIDT: That's to remain.
CHAIR: Okay.
MR. SCHMIDT: Okay. O?
MR. LEFFNER: O, is a similar photograph to earlier, and that's the existing barn structure that's proposed to be razed.
MR. SCHMIDT: Okay. Why don't you show where that barn is on the plan?
MS. DOPKIN: On Parcel 144?

CHAIR: 144.

MR. LEFFNER: Correct.

MR. SCHMIDT: So, the white structure that you can see is the garage/dwelling on one, on one --

MS. DOPKIN: Twenty-one.

MR. LEFFNER: Twenty-one.

MR. SCHMIDT: -- twenty-one and the barn, which is the brown building, is 1144.

CHAIR: All right. So, I'm sorry, sorry to have you sit down again, where on one, where is that on 3-D? Okay.

MR. LEFFNER: 3-D there's a label that says existing barn structure to be razed.

CHAIR: So, without additional plantings, could you, from Exhibit, looking at Exhibit O, could you see the solar panels from that vantage point?

MR. LEFFNER: Without the landscape buffer, yes.

CHAIR: Okay and so, you propose to have a landscape buffer there to screen the solar facility?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. P?

MR. LEFFNER: P is the similar photograph, just without the barn. The barn is just off the page to the right.

MR. SCHMIDT: Q?

MR. LEFFNER: There's a small break in, I'm trying to see if you can see that, it's a small break just to the side of

the existing barn.

CHAIR: Would the barn be to the right of the, if you're looking at that break? Would the barn be off to the right or left?

MR. LEFFNER: I think it's to the left.

MR. SCHMIDT: It's to the left. And will that area also be screened, where there's that little gap?

MR. LEFFNER: Correct.

MR. SCHMIDT: That's in Q.

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay.

CHAIR: And then the gap will be screened, okay.

MR. SCHMIDT: And then R?

MR. LEFFNER: R is a similar photograph to earlier with the car parked, the property, looking to the south along Falls Road, the property is on the left side of the sheet.

CHAIR: When you say similar photo, are you referring to, is it B?

MR. SCHMIDT: B.

MR. LEFFNER: Trying to flip through. B.

CHAIR: Okay.

MR. LEFFNER: And again, this vegetation is proposed to remain.

CHAIR: Right.

MR. SCHMIDT: S?

MR. LEFFNER: S is a photo into the project area, a portion of the barn is shown on the right side.

MR. SCHMIDT: So, that's where that gap is that you answered Mr. Garber's questions on the north side of the property where, that will be screened?

MR. LEFFNER: Correct.

MR. SCHMIDT: Where additional landscaping is proposed?

MR. LEFFNER: Correct.

MR. SCHMIDT: This is looking in through that?

MR. LEFFNER: In through the break, on the left side of the sheet is the higher portion of the property along Falls Road. You can see the trees in the background that is the area where the topography really drops off once you get to an area just past the barn, towards Compass Creek.

MR. SCHMIDT: Okay. T?

MR. LEFFNER: T is another photograph of the barn.

MR. SCHMIDT: Okay. And so is U?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. I would offer those as Petitioner's exhibit number eight as the witness has described them.

CHAIR: Mr. McCann?

MR. MCCANN: No objection.

CHAIR: And just sort of housekeeping, Exhibit 7, any

objection?

MR. MCCANN: (inaudible).

CHAIR: That can be admitted too. All right. Eight is admitted, A through U.

MR. SCHMIDT: Thank you. Mr. Leffner, let me ask you a couple questions as to the special exception. Based on your expertise as a professional engineer, do you have any opinion as to whether the proposed solar facility will cause detrimental impact to the health, safety or general welfare of the locale at this location as compared elsewhere in the zone?

MR. LEFFNER: No.

MR. SCHMIDT: You don't have an opinion or it won't cause any impact?

MR. LEFFNER: I don't, it will not cause any impact.

MR. SCHMIDT: Okay. Why is that?

MR. LEFFNER: I think the location is setback off of the road, as well as the topography sloping down, won't have any impacts to the environmental features on the property area, and there will be landscape screening provided around the perimeter of the property, outside of areas where existing vegetation is to remain.

MR. SCHMIDT: Okay. Same question as to road impacts or traffic impacts. Will there be any traffic impacts of the proposed solar facility? Will this be a manned or unmanned facility, if you know?

MR. LEFFNER: It will be an unmanned facility.

MR. SCHMIDT: Will it generate any traffic at all?

MR. LEFFNER: Very little beyond routine maintenance and repairs and inspections on sites. Really the only traffic is during construction but it's a short period and then it's unmanned and monitored remotely.

MR. SCHMIDT: Okay. Do you have an opinion as it relates to impacts caused by fire, panic or other danger? Can you address those?

MR. LEFFNER: All of these projects require, again, with the County review approval process. There's also national and locally accepted codes for fire, electrical, security, that the project is required to meet before any building permit would be issued.

MR. SCHMIDT: Okay and are the two access roads, are they required by the County fire department in part?

MR. LEFFNER: Correct, as well as some of those codes mentioned for electrical.

MR. SCHMIDT: Okay. So, that's why you have a driveway or a means of access for emergency vehicles to both sets of the arrays?

MR. LEFFNER: Correct. As well as to the equipment within that.

MR. SCHMIDT: Okay.

CHAIR: Do you, are you aware if there's going to be

any type of security fencing, which would include some type of gate or other, you know, access point off the access point, that will be secured?

MR. LEFFNER: Yes. The entire, both of the arrays will be in, independently surrounded by a site security fence, both of them with an access gate to get access into the facility.

CHAIR: Is there a key or a code that's required to access inside of the, of the fence?

MR. LEFFNER: So, usually there's, it can be a key or a code. Generally, it's a key and then there's always a, a knox box or a fire department box that's typically posted on a mount that the fire department has a, a key that it's able to access the facility.

CHAIR: You said normally. Is that happening here?

MR. LEFFNER: That's what's proposed to be done here, correct.

MR. SCHMIDT: Okay. Will the proposal cause any overcrowding of land or undue concentration of population?

MR. LEFFNER: No, it will be unmanned.

MR. SCHMIDT: Okay. Will it interfere or have any impact on schools, parks, public water, sewer or transportation or other public requirements or conveniences?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. This, is this property served by

public water or public sewer or is it outside the urban renewal demarcation line?

MR. LEFFNER: It's outside of the urban renewal demarcation line.

MR. SCHMIDT: Okay. So, if there is water and sewer for the house, for example, it would be by well and septic?

MR. LEFFNER: Correct.

MR. SCHMIDT: So, public utilities would not be involved?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. You indicated that this will, the panels will be approximately nine feet from the ground to the top of the panel. Will there be interference with air, breezes or casting of shadows on adjacent properties or anything of that nature?

MR. LEFFNER: No, the panels are setback so far that, and separated to meet some of the State's storm water requirements that it's pretty generally wide open.

MR. SCHMIDT: Okay. Okay. Is there any inconsistency, Mr. Leffner, with the, with the RC property zoning classification in terms of the construction of the panel, the uses are permitted by special exception, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. And I think you've addressed the environmental resources and concerns. Do you believe there

will be any environmental impact of the proposal at all?

MR. LEFFNER: No, there's a lot of design, again, review that'll happen subsequent to the, or before any permit issued for grading or for building to address storm water management and runoff coming from the site.

MR. SCHMIDT: Have you looked at storm water runoff in sort of a conceptual standpoint at this point? What can you tell us about that --

MR. LEFFNER: Yeah.

MR. SCHMIDT: -- in terms of your analysis to this point?

MR. LEFFNER: The site layout takes into consideration the State guidelines and requirements for storm water specific to solar facilities. There's specific design guidelines about the spacing between panels, what the ground establishment is to be made out of and generally, it's provided so that any runoff coming off of the panel or an access drive is allowed to be filtered through vegetation, whether it be grasses or plantings and promoted to infiltrate back into the, the local aquifer.

MR. SCHMIDT: And, and will that occur here?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and I, you have existing streams on the property, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And I assume the property already drains to those streams?

MR. LEFFNER: Correct.

MR. SCHMIDT: Will the site be designed so there won't be erosion off site in terms of excess drainage or any of that nature?

MR. LEFFNER: Correct.

MR. SCHMIDT: How's that accomplished, generally?

MR. LEFFNER: Both with land, ground cover, you know, this not being an agricultural use where you actually can get a lot of ground cover during portions of the year and then it may go (inaudible) during other portions of the year, where you can get erosion or a lot of sediment leaving the site. This one not being actively farmed, it's already established with a meadow that is generally what would be re-established on the site to promote pollinator friendly flowers, grasses, they can achieve a little bit higher ground height. Again, being maintained for safety. But it slows runoff down coming off of the site so that there's typically no downstream erosion issues.

MR. SCHMIDT: Okay and it would be designed, further designed to prevent, to be in compliance with the State and County storm water management designs?

MR. LEFFNER: Correct.

MR. SCHMIDT: You have any reason to believe that you

can't make the, you can't meet the storm water management criteria and application?

MR. LEFFNER: No.

MR. SCHMIDT: Okay.

MS. MURPHY: And do you expect other storm water management facilities to be on this site in addition to just the natural ground cover (inaudible)?

MR. LEFFNER: Most of it will be natural ground cover that will located on this site. And again, it's the orientation of the panels and the way that it, the kind of runoff goes from west down into the stream channel. Most of it is just going to be allowed to naturally run into the stream channel. The site entrance locations, sometimes there are improvements that are required there, as far as, you know, a pipe crossing culvert that may be required underneath the road just to promote runoff coming down. That there may be like a rip (inaudible) or some form of engineered erosion protection, that way it insures there's no downstream erosion issues.

CHAIR: At the south --

MR. SCHMIDT: The stream, --

CHAIR: -- at the south end of the site where you have the proposed access road, it's, what appears to me, sits right on the boundary with the adjacent property.

MR. LEFFNER: Correct.

CHAIR: Is there anything there, since you're

removing vegetation, well, let me back that up. I understood, and correct me if I'm wrong, that the topography falls to the south. That is, the ground to the north would be higher than the south, is that correct?

MR. LEFFNER: From the west to the east.

CHAIR: Okay. All right. From the west to the east, so in other words, will you expect drainage to be coming from off that road into the adjacent property?

MR. LEFFNER: No.

CHAIR: Okay and why is that?

MR. LEFFNER: Fall, there's a low point in Falls Road where --

MR. SCHMIDT: Why don't, why don't you show it?

MR. LEFFNER: -- the existing stream is. So, generally the existing stream is located at the low spot of the site, to where this portion of the property on the north side drains from north to south. There's another high point in Falls Road off the sheet to the south, so it generally flows from south to north into the stream. So, this portion of the property would drain down into the stream channel, just as this one would drain to the south.

CHAIR: So, it would drain north? It would not drain to the --

MR. LEFFNER: The existing driveway improvement would drain to the north, correct.

CHAIR: Right, okay. Now, you indicated that there's a spot along Falls Road at the north end of the property, that is higher than Falls Road?

MR. LEFFNER: Correct.

CHAIR: You expect the water from, any rainwater in that general area to fall toward the stream or towards Falls Road?

MR. LEFFNER: Generally towards the stream within the limits of the project area. The existing vegetation on site and the proposed landscape buffer that'd be planted are generally located at the high spot, to where Falls Road has existing runoff. All of the kind of proposed improvements on the site are located that would drain down into the stream.

CHAIR: So, if I can, where the veg, existing vegetation is and the supplemental plantings that are proposed, that sits at more or less a crest?

MR. LEFFNER: Correct.

CHAIR: And that's the breakpoint to where, if it falls in that area, it may fall to Falls Road, but if it's on the other side, that is the property side, further into the property, you expect that to break towards the street?

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. SCHMIDT: I'm sorry, are you done?

CHAIR: Yes.

MR. SCHMIDT: Okay, thank you.

MS. DOPKIN: Following up on Mr. Garber's questions, the panels then would be angled so they capture the southern exposure?

MR. LEFFNER: Correct.

MS. DOPKIN: That was all --

MR. SCHMIDT: Okay. So, I didn't know if you had another question. Mr. Leffner, you've indicated that the property itself is not being farmed at the present time.

MR. LEFFNER: Correct.

MR. SCHMIDT: Are any of the adjacent properties immediately, immediately adjacent properties being farmed to the best of your knowledge?

MR. LEFFNER: Immediately adjacent, no. There's one property that's to the north east of Compass Run that I can't see, that's through the woods for based on the aerial photograph, or yeah, based on aerial photography, there may be an agricultural use, but I haven't visited that because it's so far beyond the wooded area of the site and Compass Run.

MR. SCHMIDT: Will the proposal have any impact on any of the agricultural uses in the vicinity?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Why not?

MR. LEFFNER: Both one, just its proximity that adjacent residential structures essentially surround most of

the sides of the proposed property, as well as the existing Compass Run Creek and conservation easements that are offsite. As well as establishing the property with the ground cover, there will be no type of downstream erosion or anything that would affect a waterway.

MR. SCHMIDT: Okay. Do, do --

MS. DOPKIN: Can you show us on Exhibit 4-B which of the adjoining properties are subject to easements? 4-B is the aerial photograph.

CHAIR: Yeah, 4-A and 4-B. 4-A is the zoomed out version, 4-B is the more close-up. Can you identify on, is it 4-B you want or 4-A?

MR. SCHMIDT: Let me, if I can, I've got an exhibit, Ms. Dopkin, you're a little bit ahead of me, but I can --

MS. DOPKIN: Oh.

MR. SCHMIDT: -- submit it at this time.

MS. DOPKIN: Thank you.

CHAIR: All right and I should ask too, Mr. Schmidt, where are you with your direct examination of Mr. Leffner?

MR. SCHMIDT: I'm getting through it. If you want to take a break, we can certainly do that.

CHAIR: At some point, I think we will. Just, I was trying to figure out --

MR. SCHMIDT: I have one other witness from out of town who I want to get on today. But we can, we could take a

break. I might have another question or two and that might be a good point to take a break.

CHAIR: Well, that's what I was, that's what I'm trying to figure out is --

MR. SCHMIDT: Yeah, kind of get through the 502.1 questions.

CHAIR: And that's, I kind of figured we'd do that.

MR. SCHMIDT: Okay.

CHAIR: But I didn't know how much beyond that you were going to have Mr. Leffner for your direct.

MR. SCHMIDT: Yeah, I have a little, yeah, I have, yeah, I have a little, a little more to do.

CHAIR: If you have more, then that's fine. It's just --

MR. SCHMIDT: But we can take a break after I ask him another question or two.

CHAIR: Okay.

MR. SCHMIDT: But to answer --

CHAIR: Sounds good.

MR. SCHMIDT: -- we're up to nine, right?

MS. MURPHY: Nine, yes.

CHAIR: Yes.

MS. DOPKIN: Yes.

MR. SCHMIDT: Okay. I'll give a copy. I didn't mark all these, Ms. Mr. Leffner, you might be able to use that.

This is a map, and I would just represent to the Board, as it indicates, it's got the County seal on it, it's taken off the County database, and as it indicates, it shows the land preservation easements in the green that the, the parcel that's in the green. And maybe what you can do, Mr. Leffner, is can you identify the two subject properties? Maybe what you can do is take another, a marker, one of the markers, and just outline the subject properties on that exhibit.

MR. LEFFNER: Sure.

MR. SCHMIDT: So, so they can see where the properties are and the adjacent property that is in preservation. In answer to Ms. Dopkin's question. Okay. I'll show that to Mr. McCann. He just outlined the two.

MR. MCCANN: Great, thank you.

MR. SCHMIDT: Ms. Dopkin asked you a question that's the subject property and that's the closest preservation easement, which is the adjacent property. And I'd offer that as exhibit number nine.

CHAIR: Mr. McCann, any objection?

MR. MCCANN: No objection.

CHAIR: So admitted.

MS. MURPHY: (inaudible) looking on the fence, is there any barbed wire at the top?

MR. LEFFNER: No.

MS. MURPHY: Okay and then, how about maintenance of

the facility in terms of grass cutting or anything like that, do you know, it may not be your (inaudible) but if you know, you know --

MR. LEFFNER: I'm not, I'm not sure.

MS. MURPHY: That's not your (inaudible).

MR. SCHMIDT: I've got another witness.

MR. MCCANN: Larry's going to mow the lawn.

MS. MURPHY: That's what I thought, okay.

MR. SCHMIDT: I'm going to mow the lawn. Okay. And I'm not sure if I asked you this, do you have an opinion, Mr. Leffner, if the proposal will be inconsistent with the purpose of the zoning classification or in any other way inconsistent with the spirit and intent of those regulations?

MR. LEFFNER: It won't be inconsistent.

MR. SCHMIDT: Okay.

CHAIR: Why do you believe it will not be inconsistent?

MR. LEFFNER: It's a permitted use by special exception within both zones and I believe we've shown that we meet the conditions of that special exception.

MR. SCHMIDT: Okay. Okay.

CHAIR: I should have asked, since we've now brought out Exhibit 9, do you expect any part of the proposed access road to drain off toward the conservation area?

MR. LEFFNER: Of the, --

MR. SCHMIDT: The, the one to the right, --

MR. LEFFNER: I'm confused.

MR. SCHMIDT: -- Mr. --

CHAIR: The, the proposed one.

MR. SCHMIDT: This one?

CHAIR: Yeah, that. Do you, do you expect that to drain in, where you talked about the front part the one, the, the area that's right off of Falls Road. But the back part, do you expect that to drain toward the conservation area at all, the adjacent one? Do you follow what I'm saying?

MR. LEFFNER: No, correct. Yeah, the conservation area that's shown on the exhibit number nine.

CHAIR: Right.

MR. LEFFNER: Is actually at another high point of the site. So, that conservation area is, you can, the topography, the property line adjacent to that conservation area, the property line drains into our site, for on our site. The property offset within conservation area actually drains to the south east.

MR. SCHMIDT: Is, is it fair to say --

MR. LEFFNER: Into the conservation area.

MR. SCHMIDT: -- Mr. Leffner, you've got the stream sort of in the middle of the property, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And it rises going north, I'm going to

say north bound to Falls Road, goes north, the property rises north bound?

MR. LEFFNER: Correct.

MR. SCHMIDT: And it also rises south bound?

MR. LEFFNER: Correct.

MR. SCHMIDT: And it also continues to rise when you get off site?

MR. LEFFNER: It drops off (inaudible) off site.

MR. SCHMIDT: Oh, it drops off when you get up here?

MR. LEFFNER: Correct.

MR. SCHMIDT: But from our property line, the drainage pattern, which, which way, the water from the northern property line goes north, south, which way?

MR. LEFFNER: South to the middle of the site.

MR. SCHMIDT: So, it goes from here on to the stream?

MR. LEFFNER: Correct.

MR. SCHMIDT: And how about the prop, the, the grade along here, which is along the eastern --

CHAIR: South east.

MR. SCHMIDT: -- property line or the southern property line, that drains which way?

MR. LEFFNER: North to the stream in the middle of the site.

MR. SCHMIDT: Okay. So, everything on our property is going towards the stream?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. So, we don't have any drainage going in any direction towards other people's property?

MR. LEFFNER: No.

MR. SCHMIDT: Okay.

CHAIR: Thank you.

MR. SCHMIDT: And I think with that, that might be a good place to stop, Mr. Garber, if I can.

CHAIR: Very well. How much time do you think you need for a break?

MR. SCHMIDT: Not, not much, I, because I do want to get the other witness on today.

CHAIR: Mr. McCann, your preference for a break?

MR. MCCANN: Now is fine, whatever the Board wants.

CHAIR: Well, I mean, for how long?

MR. MCCANN: Oh, you know, forty-five minutes --

CHAIR: Okay, forty-five minutes. Now, are there any other restrictions this afternoon other than you have the one witness?

MR. SCHMIDT: I, I just have the one witness, other than that I'm good to go.

CHAIR: Mr. McCann?

MR. MCCANN: (inaudible).

CHAIR: So, is it possible, I, I realize we don't know yet, but is it possible to finish with this witness and a

second one today?

MR. SCHMIDT: I hope so. How long do you think you'll be on cross?

MR. MCCANN: (inaudible).

MR. SCHMIDT: Okay.

MR. MCCANN: I mean, not more than a half hour.

MR. SCHMIDT: Okay.

CHAIR: I'm just trying to make --

MR. SCHMIDT: I'm pretty much, I'm close to being done. I want to look at my notes and I'll see what I have.

CHAIR: I want to make sure that we're able to, obviously, get the witness who is from out of town fully done today but I also don't want to cut off midway through and then pick up again the next time around if we can avoid it.

MR. MCCANN: I mentioned, I meant, I meant to say this to Larry but I do have a witness who lives adjacent and cannot be here on Tuesday. So, (inaudible) I was hoping to ask that, I should have asked that (inaudible).

MR. SCHMIDT: Sure, we can go out of order.

MR. MCCANN: He'll be ten minutes.

MR. SCHMIDT: Okay. Okay.

CHAIR: Okay. So, we have a game plan for this afternoon.

MR. MCCANN: Sounds good.

CHAIR: All right. Thank you, all.

MR. MCCANN: Thank you.

MR. SCHMIDT: Thank you.

CHAIR: See everybody twenty before two, I guess, like forty-five-ish.

MS. DOPKIN: Off the record.

(RECORDING PAUSED - 12:54:05 PM)

(ON RECORD - 01:41:57 PM)

CHAIR: Just as a reminder to everyone, before we get started up again, please make sure your cell phones are off or on mute. Now, one thing I would like to try to figure out here, there is some confusion, at least on my end, about some of these exhibits, trying to understand orientation relative to what's depicted on the plans versus the maps versus the photos, where photos are taken because there's no key. Also, the overlays of each individual thing that we've spoken about, that is, where the buffer is in relation to the, the proposed solar field, etcetera, I don't know, either one of you, Ms. Murphy, Ms. Dopkin, do you have anything to say, but.

MS. DOPKIN: I, I do. First of all, I would appreciate it if when we come back Tuesday a lot of your exhibits have the wrong north arrow orientation, if you would bring us corrected exhibits because at times, the Falls Road is referred to as the west boundary or the southern boundary, and it's only one, not the other. And the exhibits are simply incorrect, so I would like them corrected, because it is much

easier for me and not required, but it would be particularly helpful if you could create an eight and a half by eleven, or eleven by seventeen key sheet showing where each of the photographs was taken and from what direction. We often have that in other cases and it really helps us orient to the property without having to go through all these detailed questions. So, that would be helpful as well. And because Mr. Garber brought it up, if you could do a, sort of a, what's the word I want? A colored site plan, just one. We don't need individual copies, but showing, a rendered plan showing the buffers, showing the proposed landscaping, showing the zone line, just --

MR. LEFFNER: Like a key code, a color key code?

CHAIR: Yeah.

MS. DOPKIN: It would be very helpful.

CHAIR: Because jumping through, during your testimony, jumping through like four different exhibits to track what you're saying makes me lose sight as to what you're actually saying. And I'm confused as to, like when I see, I'm looking at one map one way and I'm looking at the plan a different way, and I'm looking at a third map, and I'm trying to piece it all together all at one time, I'm like, wait a minute, where's this and how's this play in? It's confusing and I think we need to make sure --

MS. DOPKIN: We can sort it out but it makes the case

go much better and our understanding come much more quickly, because we're a little slow, to have these things simplified and consistent.

CHAIR: And, and so we are all on the same page as to understanding references as well. I mean, obviously we can't, we don't want to walk out of here with different understandings because there's a confusion over as to what we mean by south east, or something to that effect. Or trying to recreate it later when, after deliberation, you're sitting here looking at a map and you're trying, you see your notes say south east and you're like, I don't know which one they're talking about, that kind of stuff. It would be helpful and probably better for the record that way too. Ms. Murphy, do you have anything to add?

MS. MURPHY: Nope.

CHAIR: All right.

MR. LEFFNER: Would it be helpful if a colored site plan is oriented the same way north --

MS. DOPKIN: Oh, that would be even better but I wasn't going to ask you to do that.

MR. LEFFNER: Okay.

CHAIR: Yeah, I mean, as long as we can --

MS. DOPKIN: Because some of your exhibits are oriented north to south and some are oriented east to west. We can deal with that. Rather not, but we can.

CHAIR: Yes. With that in mind, Mr. Schmidt, do you

want to pick up where we left off?

MR. SCHMIDT: I, I apologize that these exhibits, I, just as a matter of clarity, it looks to me and I, I didn't, I frankly just didn't notice this, but it appears the scale, or the orientation arrow on sheet one, which is 3-A and then 3-B, has the north arrow actually going --

MS. MURPHY: The wrong way.

MR. SCHMIDT: -- easterly.

CHAIR: Right.

MR. SCHMIDT: I think on sheets 3-C and 3-D, --

MS. MURPHY: They're right.

MR. SCHMIDT: -- is correct.

CHAIR: Seem to be correct.

MR. SCHMIDT: Because I would generally say that, that Falls Road runs in a north and south direction.

MS. MURPHY: Right.

MR. SCHMIDT: So, it's, it's two, it's actually the existing condition plan, which has it wrong. The proposed plan, which I guess is the one that I was looking at, has it correct. But we can fix that and give you proper exhibits. I apologize to Mr. McCann if it's confused him as well. I think, I guess, --

CHAIR: Well, it's also when you keep referring to direction.

MR. SCHMIDT: Right.

CHAIR: And we're looking at a map that, we're looking at the plan, which is not oriented as, the way it actually is, the, the actual condition, on top of having the incorrect designation on the, as to its orientation on the bottom and then trying to compare it to other maps that may be oriented correctly, where we're given other descriptions from photographs as to where they were taken, then we're looking back at the plan and then the plan is wrong, so then we got to sit here and figure all that stuff out. It would be just easier to figure out and follow along and we'd all be on the same page if we did it the way, as Ms. Dopkin has suggested.

MR. SCHMIDT: Okay. So, you --

MS. MURPHY: (inaudible) map either. Like orientation (inaudible) same direction as the vicinity map, which has another (inaudible).

MR. SCHMIDT: Okay. So, we will give you a keyed photograph for the photographs, and we will give you corrected orientation, north arrows on Exhibit 3-A, 3-B, 3-C and 3-D. And what else did you want, Ms. Dopkin?

MS. DOPKIN: A rendered plan, even if it's a fairly reduced size, showing each of the elements which you have testified to, it'd be very helpful.

MR. SCHMIDT: You mean, in terms of the location of the forest buffer?

MS. DOPKIN: Forest buffer --

MR. SCHMIDT: The location of the flood plain?

MS. DOPKIN: The proposed landscaping, --

CHAIR: Well, say, for example, you if you take Petitioner's Exhibit 6, which, you know, has the outline for the buffer, where is it depicted on here, where the solar field is proposed? Right, that's the purpose of why I'm bringing this up for sure is it would be ideal if that could be reflected and so I didn't have to ask you the question, would any part of the solar field that's proposed fall within the buffer or how close does it get. Those kind of things.

MS. DOPKIN: It would be illustrative.

CHAIR: Yes.

MS. MURPHY: And usually we get a colored plan that has everything on it (inaudible).

MR. SCHMIDT: Okay, all right. Well, my, my apologies.

MS. MURPHY: We like color.

CHAIR: That's okay.

MR. SCHMIDT: I've been doing this a while and my apologies.

MS. MURPHY: (inaudible).

CHAIR: It's just that, you know, this particular matter has a bit more to it, for whatever reasons, and, you know, these things happen.

MR. SCHMIDT: And we, we will, we will get that

corrected, I can assure you. I apologize.

MS. DOPKIN: Thank you.

CHAIR: All right. So, with that in mind, we can go back to direct. Mr. Schmidt?

MR. SCHMIDT: Yes.

CHAIR: I believe we wrapped up the 502.1 factors.

MR. SCHMIDT: I think so, and I was just going back through my notes so I have a few more questions and I'll try to get through Mr. Leffner. Mr. Leffner, do you know the speed limit on Falls Road at this location?

MR. LEFFNER: The posted speed is forty miles an hour.

MR. SCHMIDT: Okay.

MS. DOPKIN: Can't hear you, please speak into the micro --

MR. LEFFNER: The posted speed limit is forty miles an hour.

MS. DOPKIN: Thank you.

MR. SCHMIDT: Okay and in, in terms of the landscaping, will Baltimore County, if you know, require there to be an approved landscape submitted before permits are issued for this project?

MR. LEFFNER: Yes.

MR. SCHMIDT: And has an approved landscape plan, or has a landscape plan been yet approved by Baltimore County?

MR. LEFFNER: No.

CHAIR: I'm sorry, you got to keep your voice up.

MR. LEFFNER: No.

MR. SCHMIDT: No? Okay. Have, have you all, has your company prepared a landscape plan?

MR. LEFFNER: We have.

MR. SCHMIDT: Okay and is the landscape plan, or the landscaping on the landscape plan, is that reflected on Exhibit 3-D in terms of where it shows all various circles indicating bushes and trees?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. Now, the landscape plan that was prepared, who at Baltimore County, if you know, would approve that?

MR. LEFFNER: Jim Herman is the landscape reviewer.

MR. SCHMIDT: Okay.

MR. LEFFNER: Who we've actually met with previously to get his impact, his feedback on the proposed (inaudible).

MR. SCHMIDT: And you have met with Mr. Herman?

MR. LEFFNER: Yes.

MR. SCHMIDT: And was the landscape plan prepared based on the comments that you received from Mr. Herman?

MR. LEFFNER: Yes.

MR. SCHMIDT: But he's not yet approved the plan?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. Was there anyone else, other than Mr. Herman, who gave you feedback or input into the design of the landscaping for this project?

MR. LEFFNER: Yes.

MR. SCHMIDT: Who?

MR. LEFFNER: During the Administrative Law Judge meetings, two of the adjacent neighbors had given feedback.

MR. SCHMIDT: And who are they?

MR. LEFFNER: One was the property --

MR. SCHMIDT: Why don't you read it right off there if you want.

MR. LEFFNER: Yeah, it was Ms. Linda Ault.

MR. SCHMIDT: Okay.

CHAIR: I'm sorry?

MR. LEFFNER: Ms. Linda Ault, who is on Parcel 105.

CHAIR: Could you, number one, spell the last name, if you can?

MR. LEFFNER: It's A-U-L-T.

CHAIR: A-U-L-T.

MR. SCHMIDT: Okay and is, does her, does her property abut the subject property?

MR. LEFFNER: It does.

MR. SCHMIDT: Where does it abut the pro, subject property?

CHAIR: Thank you.

MR. LEFFNER: On the southern boundary.

MR. SCHMIDT: Okay. Is it immediately next to the proposed access on the southern boundary of the site?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. So, Ms. --

CHAIR: Is this where you propose to have the privacy fence, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And was that privacy fence requested by Ms. Ault?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and landscaping is proposed there as well?

MR. LEFFNER: Along Falls Road?

MR. SCHMIDT: Yes.

MR. LEFFNER: There's just a privacy fence, there's no solar panels adjacent to it.

MR. SCHMIDT: Okay. But you did put a privacy fence along the driveway?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. Now, the nearest solar panels from her house are not immediately adjacent, if that's a fair statement, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Can you tell us, I don't know if you

need a scale or if you can estimate, how far are the closest panels to Ms. Ault's house?

CHAIR: Would you need a ruler, sir?

MR. LEFFNER: Yeah.

CHAIR: Would that be helpful?

MR. LEFFNER: Yeah. Thanks.

MR. SCHMIDT: Maybe you can measure from her house to the northern, or. Okay. Now, to the panels that are in the interior, which would be to the east, how far is that from her house?

MR. LEFFNER: Approximately four hundred --

CHAIR: Oh, sir, we have to hear you.

MR. LEFFNER: Approximately four hundred fifty feet.

MR. SCHMIDT: Four hundred and fifty feet, okay. And those are to the pan, panels that are on the east, far to the east of Falls Road, closest to the southern border?

MR. LEFFNER: Correct.

MR. SCHMIDT: At the top of the page, sort of.

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay.

CHAIR: So, just to be clear, it's about four hundred fifty feet from the, from the Ault property line to the nearest panels?

MR. LEFFNER: To, from the property line, it's --

CHAIR: Was that, that's what I'm asking, where,

where is the starting point, where is the end point?

VOICE: (inaudible).

MR. SCHMIDT: All right, just take, he's got to answer.

MR. LEFFNER: Two hundred eighty feet to the property line.

CHAIR: Two eighty from the property line. Now, you measured from the house.

VOICE: (inaudible).

MS. MURPHY: We can't have everybody talk at once.

CHAIR: Sorry.

MR. SCHMIDT: Yeah.

CHAIR: Let's hit the reset button.

MR. SCHMIDT: Yeah.

MR. LEFFNER: Yeah.

CHAIR: As I understand it, you had four hundred fifty feet. What is that measuring, what are the two points that you're measuring between?

MR. LEFFNER: It's, there's four hundred and thirty feet --

CHAIR: Hold on, from where?

MR. LEFFNER: The back corner of the residence, to the closest panel.

CHAIR: So, four hundred thirty feet approximately from the re, from the Ault residence back corner to the nearest

panel?

MR. LEFFNER: Correct.

CHAIR: Two hundred eighty feet from the property line to the nearest panel?

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. SCHMIDT: And that is to the arrays, how would you describe a location of those arrays? Because there are two separate fields. Which field are you talking about?

MR. LEFFNER: The southern field, which is located on the property behind hers.

MR. SCHMIDT: Okay. Okay. Now, there is another field to the north, assuming Falls Road runs north and south, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And that's closer to Falls Road, that field?

MR. LEFFNER: Correct.

MR. SCHMIDT: How close, I'll ask the same question from, that Mr. Garber did, how close is it to the Ault building and the Ault property line to the closest panel in that field?

MR. LEFFNER: About five hundred and twenty feet.

MR. SCHMIDT: To the house or to the property line?

MR. LEFFNER: To the house.

MR. SCHMIDT: How about to the property line?

MR. LEFFNER: About four hundred and fifty.

MR. SCHMIDT: Okay and there is a proposed privacy fence along her property line and the subject property property line, is there not?

MR. LEFFNER: There is.

MR. SCHMIDT: How high is that prop, is that fence to be?

MR. LEFFNER: I believe it was six feet.

MR. SCHMIDT: Six feet, okay. Now, let me ask you to, so you talked to Ms. Ault --

CHAIR: If I, if I could jump in, it's, the, the privacy fence is going to be six feet and where does it run? From Falls Road, is that where it starts?

MR. LEFFNER: Yeah, there's a portion approximately where the front corner of the house is along Falls Road, to the rear when the proposed driveway improvement turns to go on the other side of the existing (inaudible).

CHAIR: So, where the, where the drive runs parallel to the Ault property off of Falls Road, you will have the privacy fence from the right of way all the way to the turn?

MR. SCHMIDT: No, it cannot be in her front yard under the zoning regulations.

CHAIR: But that's what I'm asking. Well, it's not going to be in her front yard.

MR. SCHMIDT: It can't be adjacent to her front yard.

CHAIR: Okay. So, it starts in the property line, or the house line, I'm sorry.

MR. SCHMIDT: The front building line of the house.

MR. LEFFNER: Correct.

MR. SCHMIDT: How long, how, can you measure that distance of how long that fence will be?

MR. LEFFNER: It's approximately a hundred and twenty-five feet.

CHAIR: Is there any landscaping or other type of plantings proposed for the area from the front of the house to Falls Road alongside the proposed access road?

MR. LEFFNER: On --

CHAIR: There's no fence that's going to be there from the front, from the front line of the house to Falls Road, yes, that, that area, is there any, are there plantings or something else proposed for that?

MR. LEFFNER: The existing vegetation that's along the property line, both, there, there's vegetation on their property --

CHAIR: Sure.

MR. LEFFNER: -- as well as this one. It'll be maintained and there's one or two plantings that would be proposed on the other side of the access drive.

CHAIR: Okay.

MR. SCHMIDT: Okay. Okay. So, based on, I think

you've explained that based on your conversations with Ms. Ault, you have a fence that's now proposed adjacent to the driveway. Okay. Did you talk to any other neighbor, Mr. Leffner? Or get any other input?

MR. LEFFNER: The owner to the rear of Ms. Ault, that's adjacent to the southern boundary of the property as well.

MR. SCHMIDT: Okay. What's their name?

MR. LEFFNER: It's Mr. John and Michelle Dwyer.

MR. SCHMIDT: Okay and that, the Dwyer residence is further back from Falls Road than the Ault residence, is it not?

MR. LEFFNER: Correct.

MR. SCHMIDT: It essentially, it is behind the Ault residence somewhat, is it not?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. What, if anything, do you show in terms of screening or buffering from the Ault residence in towards the property in terms of landscaping, fencing, whatever it might be?

MR. LEFFNER: One, the access drive and the fence as part of the Administrative Law Judge process was moved further away from their property to be more generally in line with the alignment of the solar panels as opposed to following the direction of the property line in the area.

MR. SCHMIDT: So, you moved the driveway and the security fencing further away from the Ault, from the Dwyer property line?

MR. LEFFNER: Correct. Previously it was, you know, parallel to the property line. It's been moved away and made parallel to the orientation of the solar panels.

MR. SCHMIDT: Okay. Is there any existing vegetation in that area?

MR. LEFFNER: There is.

MR. SCHMIDT: And will that be retained?

MR. LEFFNER: It, it will be.

MR. SCHMIDT: Will there any, will there be any additional vegetation proposed?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and, in your opinion, will that screen the panels and the driveway from view from the Dwyer residence?

MR. LEFFNER: Yeah, it'll provide buffering.

MR. SCHMIDT: Okay.

MR. MCCANN: Can you tell us what the distance is from the access road at its closest point to the Dwyer property line and then to their residence?

MR. SCHMIDT: That was my next question.

CHAIR: Sorry.

MR. SCHMIDT: That's all right.

MR. LEFFNER: It's approximately fifty feet.
MR. SCHMIDT: That's --
CHAIR: What, what is fifty feet?
MR. LEFFNER: From the corner of the proposed access drive to the closest point of the shared property line.
MR. SCHMIDT: Now, how about to the panels, not the driveway, that's to the driveway. How far is the closest panel?
MR. LEFFNER: Eighty feet.
MR. SCHMIDT: Okay.
CHAIR: Panel to property line is eighty feet?
MR. LEFFNER: Correct.
CHAIR: Now, what about to the house from the access drive?
MR. LEFFNER: From the access drive.
CHAIR: To the house.
MR. LEFFNER: To the house is a hundred and thirty feet.
MR. SCHMIDT: And how about to the panel?
CHAIR: And then panel to the house?
MR. LEFFNER: A hundred and sixty.
MR. SCHMIDT: Okay.
CHAIR: All right. And so, there is no privacy fence to be there, at the Dwyer property line, correct?
MR. LEFFNER: No.

CHAIR: That's correct?

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. SCHMIDT: But there is existing vegetation there?

MR. LEFFNER: Correct.

MR. SCHMIDT: Which will be maintained?

MR. LEFFNER: And a site security fence.

MR. SCHMIDT: And a site, and a security fence?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay.

CHAIR: And just to be clear, the site security fence is going to be on the, again, because I'm trying to orient myself with the map, the north side of the access road or the south side?

MR. LEFFNER: It'll be on the south side of the access road.

CHAIR: So, the fence will be closer to the Dwyer property line?

MR. LEFFNER: Than the access road.

CHAIR: All right. So, that we know that that is fifty feet to the property line, that is from the closest point in the access road. With, factoring in the fence, how close is that to the property line?

MR. LEFFNER: I would say forty feet. Typically there's a ten foot separation provided.

CHAIR: So, fence to property line is forty feet. All right.

MS. DOPKIN: It doesn't look like it on the drawing. It shows a fifty foot setback.

MR. LEFFNER: Yeah, I think if you said fifty feet, we're maintaining the entire fifty foot structure setback to the actual fence line on that southern boundary. So, it would be fifty feet, the fence would be provided just inside of the fifty foot setback.

CHAIR: So, to be clear, the fence would be at fifty feet to the property line, the access road at its southern most point closest to the Dwyer property line would have to be just over that?

MR. LEFFNER: Yeah.

CHAIR: So, your estimate of forty feet is wrong.

MR. SCHMIDT: Yes.

MR. LEFFNER: Fifty.

CHAIR: Because it has to be at least fifty.

MR. SCHMIDT: You have to say yes or no.

MR. LEFFNER: Yes.

CHAIR: Thank you. That makes it easier to understand.

MS. DOPKIN: What color will the fence be, do you know?

MR. LEFFNER: So, the County preference and kind of

direction for these types of projects has been a black vinyl coated chain link fence. And as mentioned earlier, code requirements for the fence height, generally it's a seven foot high fence in lieu of having barbed wire on it.

MR. SCHMIDT: And you are not proposing barbed wire.

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay.

CHAIR: All right.

MR. SCHMIDT: And --

CHAIR: You may have a seat, if you like.

MR. SCHMIDT: -- Mr., Mr. Leffner, you had a landscape architect, did you not, in your office prepare the landscape plan?

MR. LEFFNER: Correct.

MR. SCHMIDT: And you supervised his work?

MR. LEFFNER: Correct.

MR. SCHMIDT: But he would be available if we need further detail about the landscape plan?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. To the best of your frame, does the landscape plan comply with County requirements as it relates to landscaping for a solar facility, to the best of your knowledge?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay.

CHAIR: Hold on, I need to ask. Is that being offered as an opinion as an expert, which is in engineering, because now we're talking about landscape architect plans.

MR. SCHMIDT: I, I think as an engineer, he can render an opinion. If we need additional testimony, I'll, can call the landscape architect. But as the, as the project manager, as he's indicated at the beginning when he did the various environmental studies, it was a team of people and he's the leader of that team.

CHAIR: And that's understood.

MR. SCHMIDT: And a professional engineer.

CHAIR: Right.

MR. SCHMIDT: So, I think he can render an opinion that he believes this project is comp, in compliance with the County's landscaping requirements.

CHAIR: Okay.

MR. SCHMIDT: And that's what it's being offered for.

CHAIR: I, I just want to make sure that I understood.

MR. SCHMIDT: And based on the cross examination, I can call the landscape architect if further detail is needed.

CHAIR: Well, I guess we'll cross that bridge at some point.

MR. SCHMIDT: We certainly will. Thank you. Okay. If I haven't already, I just wanted to make sure, Ms. Murphy,

that I think all nine of the exhibits, hopefully, that I have submitted have been accepted. The last one was the County exhibit, which showed, taken from the County GIS system, which showed the adjacent property and the, and, and the conservation easement that's got a key which is sort of self-labeling.

MS. MURPHY: Thank you.

CHAIR: Mr., Mr. McCann, Exhibit 9?

MR. MCCANN: Yes.

CHAIR: Do you have any objection?

MR. MCCANN: That is the --

CHAIR: This one, the conservation.

MR. MCCANN: No objection.

CHAIR: That will be admitted. I believe we already covered one through eight anyway.

MR. SCHMIDT: Yes. Just, just trying to make sure.

CHAIR: Yeah, no, no.

MR. SCHMIDT: Okay.

CHAIR: Glad you did.

MR. SCHMIDT: Mr. Leffner, in addition to the special exception, there was also somewhat of a conditional zoning variance that was requested in this case, is that right?

MR. LEFFNER: Correct.

MR. SCHMIDT: Can you explain to the Board what that variance was requested for and just explain the nature of that request.

MR. LEFFNER: Yeah, as previously noted, the solar facilities have a fifty foot setback from property lines. As a proposed project, and its sizing as proposed to span a property line, the variance was requested to have a zero foot setback along that property line but again --

CHAIR: Hold on, what property line?

MR. LEFFNER: The internal property line.

CHAIR: Okay.

MR. LEFFNER: That is common to the two lots owned by the same property owner.

MR. SCHMIDT: Okay. Now, there is no variance requested as to what I would call the tract boundary, which is the external or exterior property line to properties owned by other individuals, correct?

MR. LEFFNER: Correct, no variance was requested.

MR. SCHMIDT: The variance relates to the property line between these two lots that are under common ownership that are both part of this Petition.

MR. LEFFNER: Correct.

MR. SCHMIDT: Is that correct? Okay.

MS. MURPHY: So, that's part of the Petition, because we don't have that on our notice, we just have special exception.

MR. SCHMIDT: It is in the revised amended zoning variance Petition, which I can give you a copy of if you don't

have it.

MS. MURPHY: No, no, if you, if you say so. It might just be our notice. I'm just highlighting that our notice doesn't say that.

CHAIR: Mr. McCann, were you under a different impression?

MR. MCCANN: I was under the impression that the special exception Petition was amended, yes.

MS. MURPHY: That's fine.

MS. DOPKIN: Does the ALJ --

MR. SCHMIDT: Do, do you want a copy of it?

MS. DOPKIN: -- decision address the internal --

MR. SCHMIDT: The, the ALJ did not address it at all in his decision and if I just can be heard, I don't want to lose track.

CHAIR: Yes.

MR. SCHMIDT: But since the Board is asking about it, it would be our pos, pos, position that this is akin to the case which is called BG&E versus Friends of the Ridge, which was a somewhat similar case and about an electrical substation in Baltimore County that was on multiple properties owned by BG&E and the Court of Appeals held that the property line, essentially, was extinguished for zoning purposes, zoning purposes, when you had multiple tracts on which a single project was requested. But out of an abundance of caution, we

asked and said if needed or if required a zoning variance was requested from that internal property line.

MS. MURPHY: So, you're still looking for that to, you're still --

MR. SCHMIDT: I'm --

CHAIR: You're dotting I's, crossing T's.

MR. SCHMIDT: If I can be, yes. It's a belts and suspenders. In my opinion, for reasons that will be set forth in my memorandum unless you want to hear it right now, I believe that this property line for zoning purposes, is extinguished for the principals set forth in Friends of the Ridge versus BG&E.

MS. MURPHY: (inaudible).

MR. SCHMIDT: Yes.

MS. MURPHY: Two lots merged.

MR. SCHMIDT: Yes, yes.

CHAIR: For pur, zoning purposes only.

MR. SCHMIDT: For zoning purposes only, which is what the holding in that case and other cases which have followed says. But if this Board determines that that does not apply in this case for some reason, I was going to have the witness explain why the variance is justified if you deem that an internal variance is required. I'm still getting some blank stares. I'm not sure I'm, I'm understanding. So, Mr. Leffner, with all that, can you tell us what the variance is and if you

believe it should be approved.

MR. MCCANN: Yeah, and just for the record, Mr. Garber, sorry to interrupt.

MR. SCHMIDT: Sure.

MR. MCCANN: But I'm stopping you right, I think your question was directed to when the Amended Petition was filed. It was filed after the, or shortly before the ALJ's opinion but after the hearing.

MR. SCHMIDT: No, no, no, no.

MR. MCCANN: No?

MR. SCHMIDT: It was filed well before then. No, it was --

MR. MCCANN: I have a date of, filing date of --

CHAIR: All right, let's make it easy. You said you have a copy of the Amended Petition, you, correct?

MR. SCHMIDT: It was filed on December the 7th of 2018.

MR. MCCANN: That's the original. The original.

CHAIR: Hold on, hold on. I think you were about to offer that into evidence, is that right?

MR. SCHMIDT: I can if the Board would like it.

CHAIR: I didn't know if you were prepared to, which is, you may not have to because that's probably in our file, but your, I thought you were ready to, that's why I thought it would be easier if you just did it that way.

MR. SCHMIDT: I'm sorry. It, it, it was, it was filed on May the, I'm, I apologize. The original Petition was filed on December the 7th of 2018. The Amended Petition was filed on May the 10th of 2019. The ALJ's hearing was on May the 30th of 2019.

CHAIR: But (inaudible) addressed in the opinion and order of the ALJ.

MR. SCHMIDT: The ALJ, for whatever reason, did not say whether there was a variance needed or if a variance was not needed. He just granted the Petition for special exception.

CHAIR: Mr. McCann?

MR. MCCANN: The ALJ's opinion is dated June 20th, 2019, I have it right here.

CHAIR: I think he was, I think Mr. Schmidt was only indicating when the hearing was, as May 30th.

MR. SCHMIDT: Right, right.

CHAIR: Not the, not the opinion and order.

MR. SCHMIDT: Yeah.

MR. MCCANN: Okay. I understood, because I didn't know the date of the hearing because I wasn't involved at that point, that the, the Petition was amended, the filing date of the Amended Petition was May 17th, 2019 and Larry's telling me that's before the hearing before the ALJ (inaudible).

MR. SCHMIDT: Yes.

CHAIR: I think whether it's May 10th, as originally stated, or May 17th, it would still come --

MR. SCHMIDT: Still be --

MS. DOPKIN: Still be before the hearing.

CHAIR: -- May 30th.

MR. MCCANN: Okay, I'm, I'm sorry, I just --

CHAIR: No, that's okay.

MR. SCHMIDT: And just, just to be clear, what happened was the original Petition, and I just, just trying to make sure we're all on the same page, the original Petition involved only the one parcel. It was filed. We received feedback from Environmental Protection that there were numerous environmental constraints. Mr. Leffner had to, essentially, re-engineer the project to respect those environmental constraints. The steep slopes, the forest, --

CHAIR: Um hm.

MR. SCHMIDT: -- the things he's talked about. In order to have a project that was viable, we refiled this plan.

CHAIR: Um hm.

MR. SCHMIDT: Incorporating in the plan the second parcel and filed an Amended Petition. When you look at the first Petition, it involves only Parcel --

CHAIR: 144.

MR. SCHMIDT: -- 144. When you look at the Amended Petition, and it says Amended at the top, it says Parcel 144

and Parcel 127, I believe it is.

CHAIR: 121, right?

MR. SCHMIDT: Or 121, excuse me.

MR. LEFFNER: Correct.

MR. SCHMIDT: Because we filed the Amended Petition for Special Exception now incorporating both parcels, we also added --

CHAIR: Filed the Amended, yeah.

MR. SCHMIDT: -- a variance because we had an internal lot line. In my opinion, for reasons that I'll fully set forth and brief, a variance is not needed. I, I would submit that Friends of the Ridge and BG&E, which is a very close, almost identical circumstance, is dispositive that there is a merger here and that these lots and internal lot line just, there's no variance required. That's what that case said. B, and it's interesting because that was an electric substation so it was a utility kind of use, even somewhat similar to this.

CHAIR: Um hm.

MR. SCHMIDT: And BG&E had actually three different properties and was expanding their substation onto the second and third lot that they owned and had facilities that were within these internal lot lines, setbacks and the lot lines and the, the Appellate Court said there has been a merger in this circumstance and there is no variance required. And that would

be my pos, position.

CHAIR: Right, but in, as, in the alternative, as backup plan B, whatever, you ask for zoning variance for the internal setback issue.

MR. SCHMIDT: Right, and I would argue that the properties are unique and that a practical difficulty would be suffered and Mr. Leffner could testify about that.

CHAIR: Well, I would say that if that is the relief that you are requesting from us, you probably should put that into the record.

MR. SCHMIDT: Right, so Mr. Leffner, can you discuss --

CHAIR: Unless, unless you're going to agree to that otherwise.

MR. MCCANN: No, I don't agree but I do agree that it was, it was part of, it's properly, properly before the Board.

MR. SCHMIDT: Properly, yeah.

CHAIR: Okay.

MR. SCHMIDT: The, the timing was okay, Michael.

MR. MCCANN: Correct, yes, yes.

MR. SCHMIDT: Okay. Thank you. So, Mr. Leffner, can you tell the Board why the property is unique and why you believe there would be practical difficulty just for the record?

MR. LEFFNER: Correct. I think already mentioned are

the environmental constraints on the site. The stream that's bisecting the property, as well as the forested areas, to be protected. In addition to that, again, the revision in the site plan and design was really specific to wetlands and protecting those.

CHAIR: Well, if I can, let's take it back a second and, and, and please, Ms. Dopkin, Ms. Murphy, if I'm going too far afield, rein me back in. What, where is, where is the variance going to be had on 121 or 144?

MR. LEFFNER: Both.

CHAIR: So, it's requested for both, okay. So, looking at it, I think, correct me if I'm wrong here, but don't we have to look at each property then, for each property's uniqueness since there's a Petition for a variance for both properties? So, let's start with one and then we can move into the other. Why would 144 be unique?

MR. LEFFNER: 144 would be unique because of the, 144, the larger project area.

CHAIR: Yes.

MR. LEFFNER: It, the variance request does not pertain to the northern array area, again, it's two separate parts.

CHAIR: And it's understood, it's, it's, it applies to the second solar field that is bisected by the property line?

MR. LEFFNER: Correct.

CHAIR: Right, and it's understood that it's the second property, or excuse me, the second solar field is really where the setback variance is being requested?

MR. LEFFNER: Correct.

CHAIR: So, starting with that, why is it unique, 144?

MR. SCHMIDT: And Mr. Leffner, are there any unique factors, environmental, shape, size, anything associated with 144?

MR. LEFFNER: Yes.

MR. SCHMIDT: What are they?

MR. LEFFNER: The shape of the property and the existing --

MR. SCHMIDT: Go ahead.

MR. LEFFNER: -- environmental features within the property.

MS. DOPKIN: Which, which environmental features?

MR. LEFFNER: The one is the stream located on the portion of the property where it's the widest and there's the most room.

CHAIR: Hold on, we're going to have to, because there are two streams --

MR. LEFFNER: Can I point to it?

CHAIR: So, where is the widest (inaudible)?

MR. LEFFNER: So, Compass Run --

CHAIR: So, would it be the stream at the north end of the property, is what you're referring to?

MR. LEFFNER: Correct.

CHAIR: You can't, that's unique because the way that stream runs through that, through 144?

MR. LEFFNER: Correct. So, there's the stream that runs through 144.

CHAIR: Right.

MR. LEFFNER: Associated with that stream is the forested stream buffer and flood plain that are generated by offsite areas that are (inaudible).

CHAIR: Hold, hold on, hold on, sir. Forested buffer and flood plain.

MR. LEFFNER: Flood plain.

CHAIR: All right.

MR. LEFFNER: As well as wetlands and the stream.

CHAIR: All right. Have you delineated, or depicted, on any map in front of us, well, we have the forest buffer, correct? That was, I think, Exhibit 5, is that right? Or where was the, the buffer?

MR. SCHMIDT: The forest stand delineation.

CHAIR: Forest stand delineation, that was depicted in Exhibit 5.

MR. LEFFNER: Correct.

CHAIR: All right. The flood plain, where is that depicted?

MR. LEFFNER: Same exhibit.

CHAIR: Same. And the wetlands?

MR. LEFFNER: Same exhibit.

CHAIR: Okay. They all, they all can be found in Exhibit 5?

MR. LEFFNER: Correct.

CHAIR: All right and the boundaries for those properties, or the boundaries for those conditions are depicted, not just identified, they're also depicted in terms of their boundaries?

MR. LEFFNER: Correct.

CHAIR: Okay.

MS. DOPKIN: What are the slopes? Slopes?

MR. LEFFNER: In that area or --

MS. DOPKIN: Yes.

CHAIR: Hold on, you said that area, so for purposes of the record --

MR. SCHMIDT: On that, on that property.

MR. LEFFNER: On, on the property or --

CHAIR: You're talking about the (inaudible) or north ends?

MR. LEFFNER: -- specific to the stream area?

CHAIR: Sorry.

MS. DOPKIN: On the RC-8 portion of Parcel 144 to the north and east.

MR. LEFFNER: North and east?

MS. DOPKIN: South and east. Thank you.

MR. LEFFNER: So, the slopes on 144 within the R-8 boundary vary wildly. On the south eastern portion, if it's okay, could I, could I just turn this?

CHAIR: I was about to say --

MR. LEFFNER: Would that help?

CHAIR: -- why don't we, why don't we --

MS. DOPKIN: Anyway, just --

CHAIR: -- turn the map, or turn the plan.

MS. DOPKIN: -- finish --

CHAIR: So its orient, orientation --

MS. DOPKIN: North to south.

CHAIR: To make it easier for everybody to now follow along. All right. Now, back to Ms. Dopkin's question.

MR. LEFFNER: So, the slopes in this area along Compass Creek, which is the actual stream that's located in the north area of 144, are very flat. It's a very wide flood plain area that's consistent of streams and wetland pockets where, essentially, the stream is in sized in one area, but because of the flood plain, it's just a very wide, low flat area along Compass Creek. Along the southern property boundary, or the south east property boundary, it's steeply sloped. There's

areas of steep slopes within the forest buffer, which become more gradual as you get closer to the proposed project site area. And the proposed project is located along the ridge, more or less setback the fifty feet from the ridge area.

CHAIR: The project, you said along the ridge, the, the second solar field, the east, eastern solar field.

MR. LEFFNER: Correct.

CHAIR: Where is the ridge? Okay. So, that runs to the east of the property, but is that east of the solar, the second solar field?

MR. LEFFNER: Yes.

CHAIR: All right.

MR. LEFFNER: The, the limits of the solar field are shown in the area I'm tracing with my finger.

CHAIR: Okay. I see it now.

MS. DOPKIN: And would the severity of those slopes prohibit using that area of the property for the solar arrays?

MR. LEFFNER: No.

MS. DOPKIN: To this, the area --

MR. LEFFNER: This area?

MS. DOPKIN: Yes.

MR. LEFFNER: Not within the project area. The steep slopes within the stream, is a combination of the forested stream buffer and the steep slopes that were prevented. There's forested area on site, the forest stand, the goal of

the project to prevent any impacts to those environmental features, there's no proposed tree clearing on the backside of the site, including vegetation that is not necessarily protected by any easement or forest stand requirement. It could be clear. The goal of both the project and the landowner who will remain the landowner, as this will be a ground lease, would prefer not to clear those trees. We could, but it would still require the variance. And the existing stream that bisects the property, as well as the existing wetland area, --

CHAIR: As its (inaudible) related wetland area, it's --

MR. LEFFNER: Correct.

CHAIR: Because we're not talking about two different wetland areas.

MR. LEFFNER: Correct. The wetland, the isolated wetland area within the central portion of the project area. Limit the developable area and the intent of the project to not have any disturbances within the forested stream buffer or existing vegetation on the site. The project was limited to just proposing panels, within current open spaces of the site. So, hardship, limiting the property area on this site without the variance would, one, you'd remove another fifty feet setback between it. By losing the fifty feet, you would have to have a separate access road to the area, there'd be efficiencies lost, so by removing what would effectively be a

one hundred foot portion between the two property lines which, again, have common ownership, with fifty feet on its property, more area would be required because you would lose efficiency and the system design and the system would have to become bigger by not having it more consolidated in one location, because you would effectively have three portions of an array as opposed to two.

CHAIR: And how much acreage do you lose, I know you talked about fifty feet on both sides, but take out 121 from the equation. How much acreage do you lose if you don't include 121 and you get the fifty feet setback?

MR. LEFFNER: If you, the use was not allowed on this project?

CHAIR: Don't count 121, yeah, don't count 121 in, so subtract that already and subtract the additional fifty feet for the setback. How much acreage are you losing from the proposed solar facility? Because I understood that it, the total is approximately nine acres. So, you would lose, so if we subtract 1, 121 from 144, and then the additional fifty feet, what is that number?

MR. SCHMIDT: You doing the calculation?

MR. LEFFNER: Correct. It would be approximately a quarter acre.

CHAIR: You would lose approximately a quarter acre?

MR. LEFFNER: Correct.

CHAIR: Now, that's just, just for the, that's just where the, the field is located, correct?

MR. LEFFNER: Correct.

CHAIR: I think what Mr. Garber was asking you is if you had to maintain the entire fifty feet, what would, what would be the acreage of, of this entire strip.

CHAIR: No, no. What I was asking is, if, the second solar field is subdivided between the two properties, we all agree on that. Take out 121, so you're more or less cutting it in half, correct? The second solar field?

MR. LEFFNER: Correct.

CHAIR: Take out the 121 and take out the fifty feet setback from 121.

MR. SCHMIDT: Right, which is this.

CHAIR: It has to be more than a quarter acre.

MR. SCHMIDT: Yeah.

MS. DOPKIN: It's not.

MR. MCCANN: Just the panels, you're asking, Mr. Garber, what --

MS. DOPKIN: It's not.

CHAIR: No?

MS. DOPKIN: This distance, you're talking about roughly this, from here to here (inaudible).

(EVERYONE TALKING AT THE SAME TIME)

MS. MURPHY: Sir, Larry, Larry, Mr. Schmidt.

MR. SCHMIDT: I'm sorry.

MS. MURPHY: Would you make sure that they're (inaudible) witness under oath, please.

MR. SCHMIDT: Yes, please.

MS. DOPKIN: Here's the question.

MS. MURPHY: It's not a, it's not a meeting. We're not up here all talking together.

MR. SCHMIDT: I'm sorry.

MS. DOPKIN: Mr. Leffner?

MR. LEFFNER: Yes.

MS. DOPKIN: The question that Mr. Garber was asking is, what is the acreage, what would the acreage of the solar array be on Parcel 144 were there a fifty foot buffer required from the common property line? Not what you would take away in acreage, but what would remain just on that parcel in acreage in solar panels.

MR. SCHMIDT: Ms., Ms. Dopkin, can I just, so you're talking about the solar panel as shown on, on the plan.

MS. DOPKIN: If you go to your, right --

MR. SCHMIDT: And you're talking about the area of the panel --

MS. DOPKIN: -- that would remain.

MR. SCHMIDT: -- that would remain. Do you understand that, Mr. Leffner?

MS. DOPKIN: And I don't think you can calculate that

easily standing there.

MR. LEFFNER: I think, would agree, unless include this within that area or just this?

CHAIR: Yes, you would count that, and you would count that, and let me just get, cut to the chase really. I'm trying to figure out what the effect is if you, I understand that if you, you need to use 144 and 121 to get to the maximum possible space that could be used to, to produce two megawatts of power, just under two megawatts of power, you're asking for a variance between two properties and you're saying it's because uniqueness precludes you from doing that within the rest of 144, which requires the use of 121. What is the impact on 144 if you did not use 121, that will help determine why you would need 121 to fulfill your project intent. And if you don't have an exact number, that's fine. I just kind of trying to understand how it would impact your project otherwise.

MR. LEFFNER: You would lose, it's a little over a quarter of an acre within this area.

CHAIR: Yes, I got that.

MR. LEFFNER: There's 6.46 acres within the project area on that property.

CHAIR: So, okay, then that's the, then that's the answer. So, you would reduce the proposed field by a third, roughly?

MR. LEFFNER: On that property.

CHAIR: The total project is about nine acres. You're reducing it by about a third if you subtract 121.

MR. SCHMIDT: Yes.

CHAIR: And the fifty foot buffer.

MR. LEFFNER: Correct.

MR. SCHMIDT: Yes.

CHAIR: That's what I wanted to find out, so.

MR. SCHMIDT: I think, I think what you're saying, if I can, Mr. Garber, just, I'm just trying to make sure I understand, if I have any other questions. If you would total up this.

CHAIR: Yes.

MR. SCHMIDT: And then, when I say this, --

CHAIR: The first solar field.

MR. SCHMIDT: The solar field --

CHAIR: West (inaudible).

MR. SCHMIDT: -- that's closest to Falls Road, and you would then add to its acreage, the acreage of the second solar field, not counting the --

CHAIR: Within 144.

MR. SCHMIDT: Within 144, not counting 121, and not counting fifty feet into 144, then you would have about six total acres of solar facility.

CHAIR: That's what my question was --

MR. LEFFNER: And I'd like to clarify though, that's

not solar production because that's project area. We've defined the project area as an area including portions of existing vegetation to remain, open space areas. So, currently, there are only panels proposed within that setback off of the property line. You would lose only panels, so there'd be a higher, a bigger percentage of production loss and land area loss.

CHAIR: Yes, but we can't calculate that at all.

MR. LEFFNER: Correct.

CHAIR: Because we don't, right. So, but we can extrapolate, to some degree, if it's from nine, and you're losing a third.

MR. LEFFNER: Yeah.

CHAIR: There's going to be a corresponding drop in the amount of power you can generate because you now have a two-thirds size of the project.

MR. LEFFNER: Correct.

MR. SCHMIDT: And, and conversing, Mr. Leffner, if you would look at Parcel 121, that parcel in and of itself is not prop, that would only have something over two acres of solar panels on it. Two, two plus, if you did the same exercise on the other side of the property line.

MR. LEFFNER: Correct.

MR. SCHMIDT: Which in and of itself, can, can you have a solar facility on two acres? I mean, can you have a,

how, how would that work here?

MR. LEFFNER: It would, you can put solar panels within it, but it would, I, I would assume, I think on the other side of the project, the applicant could confirm, but I would assume the project wouldn't be viable at that point.

MR. SCHMIDT: Right.

MR. LEFFNER: I'll also note that the current plan with the variance proposed, the special exception for solar uses, you can permit up to a two megawatt project, is already smaller than that as proposed. So, the project would probably become --

MS. DOPKIN: I'm sorry, what did you say?

MR. LEFFNER: -- non-viable if you lost more area.

MS. DOPKIN: Up to --

MR. LEFFNER: Two megawatts of production is what the special exception, is the maximum you're allowed to make.

MR. SCHMIDT: Is the max --

MR. MCCANN: What was the whole sentence, I'm sorry, could you say the whole sentence again, if you don't mind me interrupting?

CHAIR: All right, let's start again.

MR. MCCANN: I'm sorry.

CHAIR: Mr. Schmidt, what was your question to Mr. Leffner?

MR. SCHMIDT: Okay. So, so I think that you said,

Mr. Leffner, is --

CHAIR: Well, hold on. Just ask him the question, let him answer so Mr. McCann and Ms. Dopkin can hear.

MR. SCHMIDT: Okay. So, the question, the question, I think I asked is, if you did the same analysis to Parcel 121, that is, you didn't count any of the solar facility on Parcel 144, and also took into account a required fifty foot setback, how much area would you have for solar facility on Parcel 121, approximately?

MR. LEFFNER: There'd be a little over two acres.

MR. SCHMIDT: Right. And then I think I, the, the next question was, in your opinion, is a two acre available area sufficient to have a viable community solar program solar facility?

MR. MCCANN: I'm going to object, I'm going to object to that question.

CHAIR: Okay. Basis?

MR. MCCANN: Because he hasn't been qualified to tell the Board what amount or acreage of panels can or cannot generate two megawatts. And we're making the assumption, by the way, which is clearly a false assumption, that these two panel arrays generate two megawatts. That hasn't been established --

CHAIR: Well, we're not there yet. But I'm --

MS. DOPKIN: We're not there yet.

CHAIR: -- I, we're trying to figure out the uniqueness of the property. Your question, excuse me, your objection is a valid one in terms of like why are you raising it now.

MR. MCCANN: Yeah.

CHAIR: So, Mr. Schmidt, what is your, what is your response to the objection?

MR. SCHMIDT: I, --

CHAIR: Does, does this witness have the ability to opine as to the sufficiency of, of Parcel 121 by itself, or property 121 by itself, in terms of what it can generate and be (inaudible) --

MR. SCHMIDT: I think as an expert, I think as an expert witness, he can rely on the expertise of others and obviously there is another witness that we will have who, I believe, would opine that you can't have a viable solar project on two acres.

CHAIR: A viable solar project to, to match the intent of the project.

MR. SCHMIDT: Yes.

CHAIR: Because obviously you do that for rooves on houses.

MR. SCHMIDT: Yes, and, and obviously that's, that's the obvious answer.

CHAIR: Right.

MR. SCHMIDT: I mean, I don't dispute that.

CHAIR: But, so, sir, have you, have you done other solar projects?

MR. LEFFNER: Yes.

CHAIR: Have you talked to other, you know, solar affiliated people that would tell you the size of the projects that are needed to match the intent for power production?

MR. LEFFNER: Yes.

CHAIR: So, you, okay. Well, we've established the basis then that he could at least provide some opinion.

MR. SCHMIDT: And Mr. Leffner, what is your opinion in terms of the viability of a two acre community solar project based on your experience and knowledge in working with other solar projects of this nature?

MR. MCCANN: Objection. Same objection. What, what does viable mean? Are we talking about (inaudible).

CHAIR: That is, I, I, I understand viable to mean that will, will a developer go forward with that project because is it profitable enough based on the cost that you're going to invest into it --

MR. MCCANN: (inaudible).

CHAIR: I, I think we established at least some foundation that he's at least spoken to other personnel in the solar industry to determine what size is needed and up to what capacity for purposes of this program.

MR. MCCANN: No developer would ever say, no, no developer would ever say it's viable to, to have (inaudible).

CHAIR: So, if we're all in agreement on that point, we don't, I guess we can bypass it, right? Is that fair?

MR. MCCANN: I, yeah, I'm sorry, I'm confusing things. I just --

CHAIR: I mean, we're all agreeing that if we, if the project was confined to two acres, we wouldn't be here, is basically the point.

MR. MCCANN: No, I'm, I'm saying, well, if, no, I'm not saying that. I'm just saying no developer, for all I know, you could put two megawatts in two acres.

CHAIR: Okay.

MR. MCCANN: So, that's, you know, that's a problem in this case.

CHAIR: Well, I'm sure that that will be something you'll be bringing out on cross examination, so I will overrule it for now because you're going to be able to do that during cross examination. Sir, what is your answer?

MR. LEFFNER: To whether?

MR. SCHMIDT: You can have it one two acres.

MR. LEFFNER: A two acre solar project is viable.

CHAIR: Well, this project, with the intent of this project, can it be done in two acres on that, on property 121?

MR. LEFFNER: No.

CHAIR: All right. That is your understanding, understood. Okay. Next?

MR. SCHMIDT: Okay and just to be, clarified, you've, I think you've, you've discussed Parcel 144 and the uniqueness, just very briefly, how about Parcel 121? How is that unique, if at all, given whatever factors you would discuss?

MR. LEFFNER: I think similar to the larger lot, smaller parcel, it's long length but narrowness prevents the narrowness of the lot in the orientation that the panels would need to be proposed in. Having an entire fifty foot setback in addition to the property line further narrows the project. Additionally, the environmental constraints within that property, specifically a specimen tree, which has been proposed to be maintained, is located in the central portion of that project, so it would require additional environmental variances for removals or impacts to environmental features.

MR. SCHMIDT: Any other factors?

MR. LEFFNER: And as proposed, there was an additional setback provided on the southern property boundary to meet neighborhood input, so it would further restrict both the variance standpoint --

CHAIR: I understand. You'd be restricted on three sides because you need a further setback and also the specimen tree precludes you from developing further to the west.

MR. LEFFNER: Correct.

CHAIR: All right.

MR. SCHMIDT: Thank you, Mr. Leffner. Okay. Let me move on. I think this is the last subject that I can take, or discuss. Mr. Leffner, the developer requested an exemption from the development, full development review process in this case, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And an exemption was granted by the DRC, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: And do you know what exemption that was? What section of the Code or the description of the exemption that was granted?

MR. LEFFNER: The exemption granted was an A-6 exemption for a limited development plan based on the construction of a minor commercial structure.

MR. SCHMIDT: Okay. So, it was a, it was what has been called an A exemption?

MR. LEFFNER: Correct.

MR. SCHMIDT: Under, and is that under 32-4-106 of the Code?

MR. LEFFNER: I believe so.

MR. SCHMIDT: Okay and that, the specific exemption is because of a, I think because that section reads minor commercial structures, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Okay. In your opinion, sir, well, first of all, just as a matter of practice, if you know, how has Baltimore County, when I say Baltimore County, the Development Review Committee and Department of Permits, Approvals and Inspections, what exemption have they routinely given out in these type of cases, if you know? In other cases that you may have worked on.

MR. LEFFNER: It, it, based on my experience, the same exemption that was granted for this project.

MR. SCHMIDT: Okay. Do, do you, do you concur that that exemption is proper here?

MR. LEFFNER: I do.

MR. SCHMIDT: Are these, are these minor commercial structures, the improvements that are proposed on this site?

MR. LEFFNER: Yes.

MR. SCHMIDT: Will these sites have water running to them?

MR. LEFFNER: No.

MR. SCHMIDT: Are they habitable?

MR. LEFFNER: No.

MR. SCHMIDT: You indicated before they're nine feet tall, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: They're not intended for commercial

activity to occur therein, they're not an office building?

MR. LEFFNER: No.

MR. SCHMIDT: They're not a retail store?

MR. LEFFNER: No.

MR. SCHMIDT: They're not a dwelling?

MR. LEFFNER: Correct.

MR. SCHMIDT: They're solar panels?

MR. LEFFNER: Correct.

MR. SCHMIDT: Why do you believe they're minor commercial structures?

MR. LEFFNER: You know, you think of the construction type of these type of facilities, it's common to a common guardrail. There's posts driven at a specific length between the two of them. Instead of a guardrail connecting the two of them, it's actually a top post or a racking panel and then the panels are just set on top of it. So, you know, I think structurally wise, yes, they're more complicated than that. However, it's, you know, the same type of situation as a common guardrail.

MR. SCHMIDT: Would you classify these as a building?

MR. LEFFNER: No.

MR. SCHMIDT: Would you classify them as a dwelling?

MR. LEFFNER: No.

MR. SCHMIDT: Okay. But they are structures?

MR. LEFFNER: Correct.

MR. SCHMIDT: They are human made?

MR. LEFFNER: It is a structure, it'll require a building permit, but I consider it more of a structure than it would be.

MR. SCHMIDT: If an A exemption is granted, will there be further review by Baltimore County before the facility can be actually constructed?

MR. LEFFNER: Yes.

MR. SCHMIDT: What will be the nature of that review?

MR. LEFFNER: It'll be review, meaning that all of the engineering, planning, zoning components of the project, including the landscape code requirements, have been met prior to issuance of a grading permit, which would then be also required for a building permit, as well as the State access review for an access permit along Falls Road.

MR. SCHMIDT: Will the County Department of the Environment still enforce all of the environmental regulations over which it has jurisdiction as it relates to this site?

MR. MCCANN: Objection.

MR. LEFFNER: Yes.

MR. MCCANN: Objection.

CHAIR: Hold on.

MR. MCCANN: Calls for speculation whether the County would enforce all the environmental (inaudible).

CHAIR: Is the County charged with a duty to enforce

all the environmental regulations that would be applicable to the site? Would that be a better question?

MR. MCCANN: That, that's fine, thank you.

CHAIR: Is the County charged with a duty to enforce all the environmental regulations applicable to the site?

MR. LEFFNER: Yes.

CHAIR: As to the actual enforcement, I understand that was the nature of your objection.

MR. MCCANN: Thank you.

MR. SCHMIDT: Will a storm water management plan or storm water management proposal be approved if an A exemption is granted?

MR. LEFFNER: Yes.

MR. SCHMIDT: Will a landscape plan still require to be approved if, if an A exemption --

CHAIR: Hold on, Mr. Schmidt.

MR. MCCANN: I'm sorry --

MR. SCHMIDT: Oh, I'm sorry.

CHAIR: I'm going to steal your thunder. You're saying will it be approved. I understand that if, the, really the question is, if it is approved, will the requirements have to be followed.

MR. MCCANN: Yeah, that's what I thought --

CHAIR: That's how I, I received the information.

MR. SCHMIDT: Okay.

CHAIR: Even if the question was imprecise.

MR. SCHMIDT: If an A exemp, if an exemption pursuant to Baltimore County Code, Section 32-4-106(A)(6) is granted, will there still be a requirement for Baltimore County, whether they fulfill their statutory obligation or not, to approve a storm water management plan?

MR. LEFFNER: A exemption being granted will require a subsequent storm water management approval by the County prior to release of any permits.

MR. SCHMIDT: Similarly, will a landscape plan need to be approved by Baltimore County?

MR. LEFFNER: Yes.

MR. SCHMIDT: Similarly, will an access permit still need to be granted by State Highway Administration for the new proposed access point onto Falls Road?

MR. LEFFNER: Yes.

MR. SCHMIDT: So, is it safe to say that, strike that. Will a grading permit, if there is disturbance over five thousand square feet in area still be required?

MR. LEFFNER: Yes.

MR. SCHMIDT: Will a building permit be required for the construction of the solar panels and any related equipment?

MR. LEFFNER: Yes.

MR. SCHMIDT: So, is it fair to say that Baltimore County will still review this project substantively for

compliance with its laws and regulations, even if an A exemption is granted?

MR. LEFFNER: Yes.

MR. SCHMIDT: Thank you. Board's indulgence for just a second. I don't have any other questions.

CHAIR: Mr. McCann, are you ready for cross?

MR. MCCANN: Go ahead.

CHAIR: Ms. Murphy has a question though, first.

MS. MURPHY: Is the, is the term minor commercial structure defined in the Code?

MR. LEFFNER: I don't believe so, no.

MS. DOPKIN: In the Code or in the zoning regulations, is there a definition of structure?

MR. LEFFNER: I believe there's a definition of structure. I'm not sure.

MS. MURPHY: How do you define minor commercial structure if it's not defined?

MR. LEFFNER: Myself?

MS. MURPHY: Yes, as an expert. You're rendering an opinion that this, that this solar facility --

MR. LEFFNER: Yeah.

MS. MURPHY: -- meets the minor commercial structure, how do you define it?

MR. LEFFNER: Yeah, I think in this case, similar to the County being charged with a duty of enforcing our

approvals, us reaching out to the County asking their staff how they would interpret this proposed use on this specific proposed property, understanding they, their recommendation was that it would be a minor commercial structure, therefore, we applied for the associated limited exemption plan.

MS. MURPHY: Well, you applied for it and then they granted it.

MR. LEFFNER: Correct.

MS. MURPHY: So, why did you think it met minor commercial structure (inaudible)?

MR. LEFFNER: As, we couldn't find a definition specific to minor commercial structure or specific to solar panels, we called for their interpretation for how a solar project would be defined based on their Code.

MS. MURPHY: Based on their Code, --

MR. LEFFNER: Baltimore County's.

MS. MURPHY: Okay.

MR. MCCANN: Me? Is that me?

MS. MURPHY: Go ahead.

MR. MCCANN: Thank you very much. Good afternoon, Mr. Leffner. First of all, I noticed in your resume you didn't have the date when you were first professionally registered as an engineer in the State of Maryland. When, what date was that?

MR. LEFFNER: I believe it was June 10th, 2013.

MR. MCCANN: Okay. Is that, strike that. What

other, you mentioned you've been, you've worked on other solar projects. What other solar projects have you worked on?

MR. LEFFNER: A variety of different solar projects, both from a community scale size up to utility scale, twenty megawatts and larger.

MR. MCCANN: Okay and tell me about, was that on behalf of the same company, that is, Kimley-Horn?

MR. LEFFNER: Yes.

MR. MCCANN: Okay and you say a variety, how many is that?

MR. LEFFNER: Ten.

MR. MCCANN: Ten since, since when? Over what period of time?

MR. LEFFNER: Since two thousand and, I'd say over the last five years.

MR. MCCANN: Okay. When you say you've worked on them, do you mean that you engaged in the same work that you did on this case, that is, you were the person who signed the plans and was responsible for?

MR. LEFFNER: Correct.

MR. MCCANN: So, ten projects?

MR. LEFFNER: Correct.

MR. MCCANN: And you call, you'd call each of those ten projects utility scale?

MR. LEFFNER: Not each of them being utility scale.

They range in size, so some of those projects have been much smaller. The two megawatt community scale level projects, up to larger twenty megawatt larger, in that jurisdiction was defined as a utility scale use. And those projects have varied from due diligence, entitlement work, all the way through construction, same as I mentioned before. But played the exact same role in those projects, managing the, the entitlement process up through construction.

MR. MCCANN: Okay. How many of those were community solar programs, two megawatts or less?

MR. LEFFNER: I'd say three or four of them. With the recent State pilot program, there's been much more projects at the community scale wise coming out, just because it's being accepted by local land use, as well as incentives from the State.

MR. MCCANN: Okay. So three or four of what we'll say community scale.

MR. LEFFNER: Correct.

MR. MCCANN: Two megawatts or less, and the balance are all larger scale projects?

MR. LEFFNER: And, and in the middle. I, you know, ten megawatts, twenty megawatts and larger.

MR. MCCANN: Okay and all, were all ten projects ground mounted solar arrays?

MR. LEFFNER: Yes. They've been a variety though of

fixed tilt, as this project is, and the tracker systems that were mentioned previously.

MR. MCCANN: Okay.

MR. LEFFNER: The single access, where they kind of follow the sun.

MR. MCCANN: Right. We'll get back to that in a moment, but how many of those ten were in Baltimore County?

MR. LEFFNER: No project has been submitted into the entitlement process yet in Baltimore County.

CHAIR: Into the what process?

MR. MCCANN: What does that --

MR. LEFFNER: So, we've, we've completed up front due diligence and common to your list of ten projects being allowed within a councilmanic district, some of them have not actually begun the process of engaging the County because of the filling up of ten spots. So, I've, we've done up front due diligence, preliminary site plans in Baltimore County, none have come before the County Boards.

MR. MCCANN: You haven't filed them yet because those ten have already been filed in Baltimore County?

MR. LEFFNER: Correct.

MR. MCCANN: You're waiting for something else to happen?

MR. LEFFNER: Correct.

MR. MCCANN: Why did you file this one if ten were

already filed?

MR. LEFFNER: The applicant chose to move forward with this project.

MR. MCCANN: Okay and how many of those are you working on? That is unfiled, this is beyond the ten I take, right?

MR. LEFFNER: Yeah.

MR. MCCANN: Beyond the ten that you're talking about, the ten projects you've worked on, you've prepared other, you said done at least due diligence on some other projects, how many of those have you done, worked on in Baltimore County?

MR. LEFFNER: One.

CHAIR: I'm sorry?

MR. LEFFNER: One. In Baltimore County and many more in other jurisdictions, in excess of ten.

CHAIR: I'm sorry, is that one that was filed or one that is not filed?

MR. LEFFNER: One that is not filed.

CHAIR: Okay.

MR. MCCANN: Yeah, all these are not filed, right?

MR. LEFFNER: Correct. And there are others in other jurisdictions, not Baltimore County, which have been filed.

MR. MCCANN: Okay. Of the ten that you have filed, and you said they're all ground mounted, right?

MR. LEFFNER: Correct.

MR. MCCANN: Are, are all or any of the ten on ag, on agriculturally zoned property or any --

MR. LEFFNER: Yes.

MR. MCCANN: Exist on, any of them on existing farms?

MR. LEFFNER: Not in Baltimore County, but in the State of Maryland.

MR. MCCANN: Okay and I take it you have not worked, the, the projects you've worked on, have any, have you seen any of them through fruition? That is, through construction?

MR. LEFFNER: Yes.

MR. MCCANN: How many?

MR. LEFFNER: Two.

MR. MCCANN: Of the ten, two (inaudible)?

MR. LEFFNER: Correct, and are operational.

MR. MCCANN: Okay. So, you have not, and were you involved in the construction at all or just did some, did another contractor take that over?

MR. LEFFNER: A contractor constructed the facility. Again, we're just an engineering group, so we provided construction administration, visits on site, to understand where progress was, we meet with jurisdictional reviewers and then at the completion of the project, being brought in to perform at a post-construction related support.

MR. MCCANN: Did you personally do that on those two

projects? That is, construction work, what I'll call general construction work? Or did somebody else --

MR. LEFFNER: We are not a contractor.

CHAIR: Construction administration.

MR. LEFFNER: Yes.

CHAIR: That's what he's asking.

MR. LEFFNER: Yes.

MR. MCCANN: You personally or someone else in your firm?

MR. LEFFNER: I did.

MR. MCCANN: And what two projects were those, by the way?

MR. LEFFNER: Two that I can't talk about but they were located generally in the Harford County area.

MR. MCCANN: Okay. Why is it that you can't talk about them?

MR. LEFFNER: There is a non-disclosure for me with a client, not being able to talk about projects.

CHAIR: If there's a non-disclosure, I mean, it is what it is.

MR. MCCANN: That's a contractual (inaudible) it's not a privilege of any sort that this Board would recognize, which is the contract (inaudible).

CHAIR: Well, I mean, I would say this. I'm, I'm,--

MR. MCCANN: You're not inclined to, I understand.

CHAIR: I am not inclined to have him get into --

MR. SCHMIDT: What's the relevance?

CHAIR: -- professional --

MR. LEFFNER: Yeah.

MR. SCHMIDT: Yeah, what's the relevance anyway?

MR. MCCANN: It's his experience. It's his experience.

MR. SCHMIDT: Well, he's got experience, he said.

MR. LEFFNER: Yeah.

MR. SCHMIDT: Whether, no matter who it is, he's got experience.

CHAIR: Not to mention, we can at least inquire as to other projects where there may not be non-disclosures, you know, that could at least shed light on the experience questions.

MR. MCCANN: Well, this --

CHAIR: I understand you would feel you're in a difficult position as a result.

MR. MCCANN: Well, this experience was related to construction management and there's only two of those and both of those you can't talk about so that's the problem I have. But I understand.

MR. LEFFNER: So, I guess, construction management, again, we're not a contractor, I'm a civil design engineer, licensed as a professional engineer. We take projects up

through design and then we certify that they were constructed in general compliance with our design. So, --

CHAIR: The construction man, administration services you provide, you would be, and I'm talking in a general sense, not specific sense, in a general sense, why don't you describe what the construction administration services consist of in a general sense?

MR. LEFFNER: The most common form is for any type of sediment control practice or site security fencing that's supposed to be installed on the facility. We go and not to inspect anything during construction, but just to provide general observation to our client, who would be the applicant or owner of the project, to let them know if things within their job site that may not be completed based on the design plan at that time, so that they don't run into an issue when they're trying to close the project, without having to go back in and do rework.

CHAIR: Are you there to answer questions from contractors, if need be?

MR. LEFFNER: Yes.

CHAIR: Are you there to inspect or review work if, if, if asked by the client or the relevant contractor?

MR. LEFFNER: Review, we don't provide inspection services. I don't, personally.

MR. MCCANN: It's your understanding that you cannot

even disclose the name of this project according to your disclosure, non-disclosure?

MR. LEFFNER: I believe so. I'll share, both of the projects were --

CHAIR: Sir, sir, --

MR. LEFFNER: -- of the similar size to this.

CHAIR: Sir, there's not a question pending.

MR. LEFFNER: Yeah.

CHAIR: There's not a question pending. If you have a non-disclosure agreement, I'm assuming an attorney came up with that non-disclosure agreement, it would be my position that you cannot do anything about that non-disclosure agreement sitting here in the moment.

MR. MCCANN: Okay. Can you tell us the, can --

CHAIR: If you feel that you could go about it in a different way, without trying to --

MR. MCCANN: Yeah, I won't belabor it, thank you.

CHAIR: Okay.

MR. MCCANN: One last question on it though, can you tell us the addresses of the two projects?

MR. LEFFNER: I don't feel comfortable sharing them.

MR. MCCANN: Because of the non-disclosure?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. I'll move on, thank you. Were you involved in the finding of the location of this project?

That is, finding this property?

MR. LEFFNER: No.

MR. MCCANN: You weren't involved in the siting in any way?

MR. LEFFNER: No.

MR. MCCANN: Okay So, when this project came to you, the site had already been selected?

MR. LEFFNER: Correct.

MR. MCCANN: Did, were you asked to look at any other properties in the vicinity that may, that were owned by the same property owner? That is Holly Springs.

MR. LEFFNER: No.

MR. MCCANN: No?

MR. LEFFNER: No.

MR. MCCANN: Did you look at any alternative sites?

MR. LEFFNER: No. The only alternative site was the addition of the second lot when the first lot was found to be not viable based on the environmental constraints.

MR. MCCANN: Yeah, well, I had a question about that. Why is it that you filed this, this first plan? Did you not know about the environmental constraints?

MR. LEFFNER: The initial environmental constraints were based on available records as far as forest buffers, wetland locations. I believe the initial plan was filed sometime in December or January, which is one I became engaged

on the project. Weather conditions at that time weren't conducive of doing field work for a lot of environmental work. So, the initial plan applied for was based on the best available information that we could have at the time and, again, I think the initial application tied into the timing of --

MR. MCCANN: Right, well, so this first plan we're talking about, --

MR. LEFFNER: Correct.

MR. MCCANN: -- the one that was filed in December of 2018, right?

MR. LEFFNER: Correct.

MR. MCCANN: Did you, at the time you filed that, did you or did you not know about all the environmental resources in the vicinity, all in or in the vicinity of this (inaudible)?

MR. LEFFNER: We had mapped all known of it, all known resources.

MR. MCCANN: Well, you hadn't been out to the site?

MR. LEFFNER: As noted, had been.

MR. MCCANN: You had been?

MR. LEFFNER: Correct.

MR. MCCANN: So, what didn't you know? Why, why, you knew all that and yet you submitted a new plan anyway.

MR. LEFFNER: Yeah. I'd say it was a wet winter, it had snowed so there was snow cover during one of the site

visits. There was an additional site visit after the snow had melted, but there was still a wet portion, which was later defined by a wetland scientist who had attended a site visit as a wetland delineation when site conditions were conducive of doing field work. Does that clarify it?

MR. MCCANN: Not really. But that's okay.

MR. LEFFNER: Okay.

MR. MCCANN: Let me just ask, I'm going to ask it a different way. So, you're, you're suggesting that the, the second or revised plan was filed because of new things that you found out about the environmental resources on site and on the vicinity?

CHAIR: Please keep your voice up.

MR. LEFFNER: Potential wetland that had been confirmed as a wetland.

MR. MCCANN: That was the main thing?

MR. LEFFNER: Yeah.

MR. MCCANN: Okay. And by the way, you mentioned a couple of the submittals. You mentioned the steep slopes, (inaudible) analysis, which is Petitioner's exhibit number six. You mentioned a forest stand delineation, which is Petitioner's exhibit number five. Am I correct that you, personally, were not involved, I, I understand you, you signed this plan in this case, but you, you personally weren't involved in the preparation or the oversight of either of those submittals,

correct?

MR. LEFFNER: I was involved and I did provide oversight because they were contracted through me.

MR. MCCANN: Okay.

MR. LEFFNER: I provide oversight, the field work, I attended a site visit with, there are forest stand delineation, steep slope analysis plans in Baltimore County require specific certifications which I am not an expert in preparing the plan, but I attended the site visits to understand the constraints that they were mapping on the project area. I attended field walks with the County staff who was reviewing the project to confirm the locations and then followed up once again to understand those (inaudible).

MR. MCCANN: Well, my, my, --

MR. LEFFNER: So, was involved.

MR. MCCANN: Okay. I didn't want, I didn't ask you if you were just involved, I asked if you had oversight and it sounds like you did not have direct oversight because you weren't, you're not qualified to sign, to sign (inaudible)?

MR. LEFFNER: Correct, I did not provide direction.

MR. MCCANN: Okay.

MR. LEFFNER: In the sense of I don't have the certifications but again, --

MR. MCCANN: Okay, I gotcha.

MR. LEFFNER: -- our team members, if there are

specific questions of them, we could have them come before the Board for you to ask.

MR. MCCANN: And isn't it, isn't it correct that both of these plans, at least the steep slopes and erodible soils analysis plan and the forest stand delineation plan were prepared by, you mentioned, you said a contractor. They're prepared by GTA, right?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. Which is not affiliated you're your company?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. What about the wetland delineation? Did GTA prepare that as well?

MR. LEFFNER: Correct.

MR. MCCANN: That's not in evidence yet, we haven't seen (inaudible), right?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. What I wanted to do, I thought it would benefit everybody actually, is to take a copy of this plan, this would be, Larry, sheet two, so is that 3-C?

MR. SCHMIDT: Is that existing conditions? That is, yes, that is 3-C.

MR. MCCANN: 3-C.

MR. SCHMIDT: 3-C.

MR. MCCANN: So, real quick, --

CHAIR: Wait, existing? Existing is not C.

MR. SCHMIDT: No, no, that's proposed. It's got the panels on it, I'm sorry, Mr. Garber, it's got the panels on it.

MR. LEFFNER: Yeah.

CHAIR: Right, you said existing. It can't be existing, that's proposed.

MR. SCHMIDT: Proposed, 3-C.

CHAIR: Okay.

MR. MCCANN: 3-C.

MR. SCHMIDT: Yeah, C and D are proposed.

CHAIR: Right, right.

MR. SCHMIDT: (inaudible) B.

CHAIR: Right.

MS. DOPKIN: Mr. McCann, would you please orient that north to south.

MR. MCCANN: Okay.

MS. DOPKIN: For those of us, other way, other way.

MR. LEFFNER: Upside down.

MR. MCCANN: I was (inaudible).

MS. DOPKIN: Makes my life easier. Thank you.

CHAIR: Makes mine too, easier, thank you.

MR. MCCANN: All right. What I'm going to ask you to do, if you could, Mr. Leffner, is, I got some markers. I want you to just draw, draw some of the natural resources and let's start with the, the stream itself, which we've been talking

about Compass Run, the two, the two aspects of the stream. So, roughly, if you would, let's use blue for the stream, delineate, you know, the approximate location of the two parts of the stream. Here you go. And this, I'll have this marked when it's done. Okay, thank you. And that's in blue, right, the stream?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. In green, could you do the forest buffer, please? The forest buffer is not designated by FB, but rather --

MR. LEFFNER: SB.

MR. MCCANN: -- S, as in stream buffer, correct? Okay. Okay, great. And just a word about the, or a couple questions about the forest buffer. Thanks. (inaudible) while we're on it and that is, would you agree with me that, a couple things, that the, the forest buffer, or SB, which you've delineated in green, is in substantial or in many places rather, co-extensive with the limit of disturbance? In other words, and I'll have you mark the limit of disturbance in a second. But for instance, on the west side of the, the southern right panel of arrays, the forest buffer, or SB, is coextensive with the limit of disturbance, correct?

MR. LEFFNER: Offset, but in the general location of, yes.

CHAIR: Offset but in the --

MR. LEFFNER: So, they are not --

CHAIR: -- general location, yes.

MR. LEFFNER: They are not coexisting. The proposed limited disturbance is outside of the forest stream buffer, as well as the fence off of the line of disturbance.

MR. MCCANN: Okay.

MR. LEFFNER: The line types at this scale, yes, they look like they're on top of one another, but they are not, they are offset, there was no disturbance within the forest and stream buffer.

CHAIR: There's no disturbance?

MR. LEFFNER: Within the forest and stream buffer limits.

CHAIR: Thank you.

MR. LEFFNER: In green.

MR. MCCANN: Okay. But for purposes of this plan, the lines are one and the same?

MR. LEFFNER: They appear to be, but they are not.

MR. MCCANN: Okay and when you say offset, what do they offset, a foot, six inches, two inches?

MR. LEFFNER: Generally, two feet is what we try to hold, correct.

MR. MCCANN: Okay. That's a general rule?

MR. LEFFNER: Yes.

MR. MCCANN: Okay and then the same thing with the, I

guess, the southern end, eastern part of the northern array panel, the forest buffer depicted in green again is, I'll use the term coextensive or in the area of the, the limit of disturbance, right?

MR. LEFFNER: Yes.

MR. MCCANN: Okay and then --

MR. LEFFNER: With the exception when it comes away to maintain existing vegetation. So, --

MS. DOPKIN: Can't hear you, say again.

MR. LEFFNER: There's portions of the site, there, it, it's generally in the same location, areas where the existing vegetation outside the stream buffer, there's been an effort to protect all that too, so some of it is further away from the forested buffer than immediately adjacent --

MR. MCCANN: You're, you're talking about this point on the eastern --

MR. LEFFNER: Correct.

CHAIR: Sorry, sorry. You trailed off with your answer and I couldn't hear it so I'm sure the microphone didn't catch it.

MR. LEFFNER: Yeah.

CHAIR: Go ahead.

MR. SCHMIDT: Keep your voice up, Mr. Leffner.

MR. LEFFNER: There, there's portions of the limited disturbance and fencing that are further away from the forested

stream buffer in the area on the north eastern portion of the northern array.

CHAIR: Um hm.

MR. MCCANN: Okay and then the, as the plan, this, the marking you just completed depicts, the forest buffer actually extends because it, it must, westward, actually on the other side of Falls Road, right?

MR. LEFFNER: Correct.

MR. MCCANN: Okay and then generally, generally, forest buffer is a minimum of one hundred feet.

MR. LEFFNER: Correct.

MR. MCCANN: Okay and in this case, it, it exceeds that minimum in certain places because of the existence of other resources. For instance, on the, the southern, south of Compass Run, just north of the southern solar array, there's an area of wetlands, correct, right in this general area?

MR. LEFFNER: Just south of the tributary that bisects the site.

MR. MCCANN: Right.

MR. LEFFNER: Immediately south is a (inaudible).

MR. MCCANN: So that extends the forest buffer?

MR. LEFFNER: Correct.

MR. MCCANN: Sort of. Otherwise the forest buffer sort of falls in the stream, right?

MR. LEFFNER: Generally.

MR. MCCANN: As it usually does. Okay, all right. Real quick, how about the, could you mark the, the wetlands in purple on the same exhibit, please?

MR. LEFFNER: Do you want me to mark all of the wetlands back in Compass Run? They're very --

CHAIR: I'm not the one asking the question.

MR. LEFFNER: They're, there are a lot.

CHAIR: Mr., Mr. McCann is asking the question. Mr. McCann, would you like this witness to mark every wetland that's been delineated or, I mean, I could say this. I'm looking at Exhibit 6, I see various circles on Exhibit 6. Are the circles I see on Exhibit 6 the wetlands? In other words, I need you to look at Exhibit 6. Well, we'll look at the actual exhibit, although I suspect they're the same.

MR. LEFFNER: Yes, the circle and oblong structures shown along Compass Run, that also have an offset or a wetland buffer around them are the wetland areas.

CHAIR: Well, please show Mr. Schmidt and Mr. McCann. Well, hold on. Mr. Schmidt needs to see it too.

MR. SCHMIDT: I'll come up, I'll come up.

MR. MCCANN: Why don't you just show me, why don't we do this? Well, exclusive of the, the wetlands and it's WB on the plan, right? Wetland buffer?

MR. LEFFNER: Wetland buffer and then NW is the non-tidal wetlands.

MR. MCCANN: Why don't you --

CHAIR: I'm sorry, I couldn't hear you.

MR. LEFFNER: The NW on the plan is the non-tidal wetland delineation. The WB is the wetland buffer associated with that wetland.

MR. MCCANN: Why don't we do this? Just on the southern part of Compass Run, why don't you, why don't you just in purple, delineate the wetland buffer? I think that would be easier.

CHAIR: Mr. McCann, correct me if I'm wrong, but isn't this your copy of 3-C?

MR. MCCANN: It is.

CHAIR: Because we're going to have to make this an exhibit.

MR. MCCANN: We are.

CHAIR: Okay.

MR. MCCANN: Can you do it in a, in a solid line just to make it clearer?

MR. LEFFNER: Well, I have a solid as the wetland area, so I had done a dash just to identify that it's a buffer.

MR. MCCANN: Good, very well, very well.

CHAIR: So, solid would be the wetlands, the dash line in purple would be the, the wetland buffer?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. Did you complete it all the way?

Okay, great. And lastly, (inaudible) could you in orange represent or delineate the flood plain? And tell us while you're doing that, if you would, how it's --

MR. LEFFNER: Again, on the southern side of, --

MR. MCCANN: On the southern side of Compass Run, that is, Compass Run that runs.

MR. SCHMIDT: Mr. Leffner, why don't you put that up in your key? And why don't you put the green and the blue up in your key too, if I may, Mr. McCann.

MR. MCCANN: Sure.

MR. SCHMIDT: Just so --

MR. MCCANN: That's, that's a good idea.

MR. SCHMIDT: I'm just full of them.

MR. MCCANN: What'd you say, you're full of what?

MR. SCHMIDT: Full of good ideas.

MR. MCCANN: Good ideas. Okay, great. That's it. You mentioned, and I won't have you mark it, but you mentioned that there's two forest stands on, on site and those are depicted in, in other exhibits, specifically, in forest stand delineation plan. But I saw in those plans, and correct me if I'm wrong, that the forest stands that you have identified are what are known as priority forest?

MR. LEFFNER: Correct.

MR. MCCANN: And priority forest are, according to the County's forest conservation manual, are the forest that

have the highest priority for retention?

MR. LEFFNER: Correct.

MR. MCCANN: Okay and --

CHAIR: I'm sorry, again, Mr. McCann, do you both need to still be up at the board?

MR. MCCANN: No, we're just hanging out at the board (inaudible).

CHAIR: Well, because I would rather your voice be picked up for sure by the microphones. So, priority forests, obviously, the highest priority for conservations is what the question was?

MR. MCCANN: For retention.

MS. DOPKIN: Retention.

CHAIR: Retention.

MR. LEFFNER: Retention.

CHAIR: And his answer was yes.

MR. MCCANN: Okay.

CHAIR: Okay.

MR. MCCANN: Next question is, and there's a definition of priority forest, is there not, in, in the regulations?

MR. LEFFNER: Priorities there are.

MR. MCCANN: Yeah. And priority forest is, is deemed priority because of various factors, including slopes, the slope percentages, the, the type of soils and the forest

buffer, whether the forest stand includes forest buffer, things of that nature? That's what, that's what makes it priority forest?

MR. LEFFNER: The priority ranking is based on classifications, to take into consideration those, yes.

MR. MCCANN: Those things, okay, great. And then in, also with respect to forest stand delineation, it's already in evidence, but I saw the, your characterization or your consultant's or contractor's characterization of those four stands as being in, in generally good condition, right?

MR. LEFFNER: Correct.

MR. MCCANN: Good being a designation?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. Okay. In terms of the first forest buffer specifically, and I think I heard you testify more than once that there will not be any impacts to the forest buffer called for in this project.

MR. LEFFNER: Correct.

MR. MCCANN: Is that your testimony?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. Well, ask you about a couple areas. For instance, first and foremost, we have the, what I refer to at the beginning, beginning of today as the underground electrical line. It's depicted on the plan, this plan that I'll mark shortly as UGE and it runs between and

through the forest buffer and I, assumedly under the, that, that part of Compass Run that divides the site?

MR. LEFFNER: Correct.

MR. MCCANN: And that, that is an impact on the forest buffer, is it not?

MR. LEFFNER: It would be directionally bored, which is a, it would not require any open cutting within the forest buffer, nor the stream bed itself, which is typical of any utility extension project if they elect to do a (inaudible) or a horizontal directional drill. We propose a horizontal directional drill, which we've done on similar projects that are energy, solar based projects to where equipment is used to bore underneath the stream to prevent any disturbances to the stream bed or forest buffer.

CHAIR: Well, does that compromise any type of root system for the trees within the forest buffer?

MR. LEFFNER: There are requirements for the depth of the horizontal drill, but I don't know the exact requirements on, but there are requirements for the depth below them to prevent (inaudible).

CHAIR: What if, what if, for the sake of argument, the horizontal bore drill runs across some root system for the trees above, even if there is some type of depth that's required, what happens then?

MR. LEFFNER: I'm not sure. I, as I say, though

there may be some disturbances within the root system, I would relate it back to my experience with the critical root zones and specimen trees within the site, that there are, there is an amount of disturbances within a tree's root system that the tree can accommodate and --

CHAIR: Withstand.

MR. LEFFNER: -- that doesn't affect the health, that, that it's able to withstand, so though the site requirements, I'm not sure of, but I know that there is specific depth requirements that the horizontal drill can be done to prevent impacts to those areas.

CHAIR: Well, again, assuming that it impacts the root system and damages a tree within the buffer, what happens next?

MR. LEFFNER: There could be enforcement taken by the County.

MR. MCCANN: You would need to get a variance.

MR. LEFFNER: Or the State.

MR. MCCANN: You'll, you'll need to get a variance, correct?

CHAIR: Well, I was asking him the question.

MR. MCCANN: I'm sorry.

MR. LEFFNER: Yeah, I think it's very, there's a lot of things that could happen.

CHAIR: Okay.

MR. LEFFNER: Yes, there could be a damage and nothing would happen. It could kill the tree, to which then, yes, there could be damages owed or a variance required for it so just, there's a lot of what ifs, so I can't really answer that directly.

CHAIR: How would that be detected if it's so far in, within the site?

MS. DOPKIN: Does someone inspect?

CHAIR: That's a better question.

MR. LEFFNER: Does someone inspect?

MS. DOPKIN: The --

MR. LEFFNER: The trees?

MS. DOPKIN: Yes, to see if there's been --

CHAIR: Encroachment or some problem created within the buffer. Someone swings an excavator arm and hits a tree trunk.

MR. LEFFNER: I'm not exactly, I can't answer you a hundred percent. I believe so, during again, the County's enforcement (inaudible) uphold the duty during enforcement of inspection of the project. Because there will be inspections by the County during construction and I can't answer for the applicant, but they may be able to, often times a third party is also hired.

MS. DOPKIN: What is the distance that you will be boring underground from one panel array to the other?

MR. LEFFNER: It'll, I don't know the exact length. It will be likely greater than two hundred feet. Because as Mr. McCann mentioned, there's approximately a one hundred foot buffer to either side of the stream so it'll be in excess of two hundred feet because there'd be no disturbances within the stream buffer.

MR. MCCANN: When you say no disturbance, you literally mean no disturbance?

MR. LEFFNER: Correct.

MR. MCCANN: I used the term in --

MR. LEFFNER: Correct. If there's like --

CHAIR: Hold on, hold on, one at a time.

MR. MCCANN: I'll let you finish in a second. I used the term impacts when I first started talking about this and when we're looking at the County regulations on forest buffer, it's not impact, it's disturbance.

MR. LEFFNER: Um hm.

MR. MCCANN: The, the regulations prohibit any disturbance, correct?

MR. LEFFNER: Correct.

MR. MCCANN: And it's your opinion, your opinion that this boring, I think as you called it, underneath the forest buffer and underneath the stream, does not constitute disturbance under the County regulations, is that your testimony?

MR. LEFFNER: That's my experience, yes.

MR. MCCANN: Larry, --

MR. LEFFNER: Well, no, yes, I relate it very much too if AT&T comes and they're going to put a new phone line in your neighborhood and they need to go under a road, they don't open cut the road, the bore underneath the road and they pull your utility line under the road.

CHAIR: There's a difference because in a road, there's no tree.

MR. LEFFNER: Correct.

CHAIR: Trees, roots, I mean, depending on the tree, could grow out and they could also go down.

MR. LEFFNER: Um hm, correct.

CHAIR: That, so there's a fundamental difference between the analogy you're using and what's going on here. Would there have to be identification of the tree type, you know, tree species to know or to have some type of understanding as to how, what to expect when you are to be doing a horizontal bore?

MR. LEFFNER: I'm not sure whether it's a requirement, but typically the final electrical design for the project, each of these panels, and again, I don't design the electrical panels, but I reviewed enough of the plans to understand generally how they operate. The panels that are producing power, the power from each of the panels collected in

cabling, most of that cabling then goes underground, that that exact location of the directional bore is typically done to avoid impacts to potential tree because --

CHAIR: Oh, no, and that's understood.

MR. LEFFNER: Yeah. So, located wise, is there, you know, a root depth taken to find out how deep the root, no, probably not. But it's hey, similar to some of the photographs that were shared, we have an opening between this area, let's do it under there, that way --

CHAIR: Okay.

MR. LEFFNER: -- there's the least likelihood to do it.

MR. MCCANN: What about the stream itself, under the stream, the aquifer that exists or the ground water that exists, would there be any disturbance, in your opinion, under the County regulations of that area?

MR. LEFFNER: Not beyond the disturbances from the directional bore that is done (inaudible).

MR. MCCANN: Have you ever done a directional bore yourself?

MR. LEFFNER: No.

MR. MCCANN: Just to be clear, and I'll, I'll show the regulations if you need to see them, well, I'll give them to you.

CHAIR: Hold on. Show Mr. Schmidt first.

MR. MCCANN: This is 33-3-111.

CHAIR: Sorry, 33-3-111. While we're in this lull, we will make the drawn up plan as Protestant's one. Mr. McCann?

MR. MCCANN: That'd be great, thank you.

CHAIR: And then what you're handing forward, is that going to be Protestant's two, though I should note --

MR. MCCANN: It is.

CHAIR: -- it is County Code.

MR. MCCANN: It is and I have copies for you.

CHAIR: Thank you. Is this for me?

MR. MCCANN: That's for you.

CHAIR: Or is that for Ms. Dopkin then?

MR. MCCANN: That's, no, that's for you.

CHAIR: That's fine. I'll wait.

MR. MCCANN: Is that --

MR. SCHMIDT: I'm sorry, what, what section of, is there a specific section?

MR. MCCANN: There is, I'm, I'm getting there.

MR. SCHMIDT: Okay, I'm sorry.

MR. MCCANN: I'm sorry they're not stapled but.

CHAIR: So, let, let's, with the housekeeping, any objection to Protestant's Exhibit 1, Mr. Schmidt?

MR. SCHMIDT: Well, I don't know what it is, I mean, --

CHAIR: Protestant's Exhibit 1 being the, the map drawn --

MR. SCHMIDT: Oh, Protestant's exhibit number one, I do not object to that.

CHAIR: Okay, that will be admitted. We're still on Protestant's Exhibit 2, we haven't laid the foundation yet, we don't know what we're doing, but it is part of the County Code. Mr. McCann, your foundation or whatever you want to do with it, then we'll get back to Mr. Schmidt as to what he thinks about whether or not it should be in evidence.

MR. MCCANN: Okay.

CHAIR: All right.

MR. MCCANN: Great.

MR. SCHMIDT: Fine.

MR. MCCANN: I'll, I'll give a copy to the witness, if I could?

CHAIR: Yeah.

MR. MCCANN: And ask him first of all, does he recognize these pages, which is, which have been marked as Exhibit 2, as Sections 33-3-111 and 33-3-112 of the Baltimore County Code. Do you recognize it as such?

MR. LEFFNER: Yes.

MR. MCCANN: Okay. So, let's, let's go to 33-3-112, which were the last two pages and generally, and the Board's probably familiar with this, but under B, there are prohibitive

practices for which you need a variance, right?

MR. LEFFNER: Correct.

MR. MCCANN: And then under C, which is the last page of this exhibit, there are authorized structures, practices and activities for which an (inaudible) analysis is required, correct?

MR. LEFFNER: Correct.

MR. MCCANN: B, variance, C, (inaudible) analysis.

MR. LEFFNER: Correct.

MR. MCCANN: Let's just deal with B first. If you go to B-2 it says the following practices and activities are restricted within the forest buffer, talks about, again my language, disturbance, the existing vegetation may not be disturbed, including disturbance by tree removal, shrub removal, clearing, mowing, burning, spraying and grazing. Next subsection, soil disturbance may not take place within the forest buffer by grading, stripping of topsoil, plowing, cultivating or other practices. Is it your testimony that, still, having read this now, that this directional boring that you're speaking about doesn't constitute disturbance as, as those two sections, subsections provide, including soil disturbance, by the way.

MR. SCHMIDT: I'm going to object. It doesn't say you can't, I mean, if there was a prohibition against directional boring, it, it would say there shall be no

directional boring. This is a common construction technique and --

MR. MCCANN: We don't, there's no testimony about that --

CHAIR: And that sounds like a perfect argument for a legal memoranda at the conclusion of this case for both of you.

MR. MCCANN: Yeah.

MR. SCHMIDT: Okay.

MR. MCCANN: There's no testimony to support that statement. But it says soil disturbance or other practices.

CHAIR: We're not, yeah, in other words, --

MR. MCCANN: And my question simply, I'll ask the question again, it's just simply --

CHAIR: Thank you.

MR. MCCANN: -- is it still your opinion, having read this, that the directional boring that you're speaking about undertaking at this site through the forest buffer or under the forest buffer and under the stream, does not constitute disturbance as I've just, I've just talked about.

MR. LEFFNER: Yes, based on my understanding of talking to both the certified, the people who have the certification to prepare the forest stand buffer, that it would not be considered a disturbance.

MR. MCCANN: Okay and that --

CHAIR: And please keep your voice up. It would not

be considered a disturbance.

MR. LEFFNER: A disturbance.

CHAIR: Thank you.

MR. MCCANN: And just for purposes of completeness, the next page, authorized structures, practices and activities for which, as we, as we mentioned, require (inaudible) analysis, is it your testimony that this directional boring would not constitute one of those practices or activities, specifically utilities, under 2-i, do you see that?

MR. LEFFNER: Yes.

MR. MCCANN: It would not constitute a utility?

MR. LEFFNER: The electric line would be considered a utility.

MR. MCCANN: It would?

MR. LEFFNER: A utility.

MR. MCCANN: So, you'd need an (inaudible) analysis for that?

MR. LEFFNER: For the crossing?

MR. MCCANN: For the directional boring to the forest buffer and under the, the stream.

MR. LEFFNER: In the past, one has not been required.

CHAIR: I'm sorry?

MR. LEFFNER: From my understanding, a directional bore underneath the stream crossing, based on my experience, an alternatives analysis had not been required.

MR. MCCANN: Well, that's not my question. My question is simply, is it your testimony, (inaudible), that the directional boring would not constitute one of these authorized structures, practices and activities? Would not constitute one of those? In other words, for example, it is not a utility, is that your testimony?

MR. LEFFNER: The electric line is a utility --

MR. MCCANN: It is?

MR. LEFFNER: Yes.

MR. MCCANN: Okay. So, therefore, it is, it would require an alternatives analysis?

MR. LEFFNER: I, again, based on my experience and my understanding, it would not.

MR. MCCANN: Okay. Well, that's the exact opposition position the County has taken, correct? The County has required an alternatives analysis from you?

MR. LEFFNER: They have not.

MR. MCCANN: Okay, okay. This will be ---

CHAIR: So, with respect to Petitioner's Exhibit 2, or Protestant's Exhibit 2, my fault, Mr. Schmidt, do you have an objection? I will note it is part of the County Code, so whether or not it's in evidence, we still would consider it.

MR. MCCANN: Not this, Larry, the last one.

MR. SCHMIDT: I'm sorry, this, --

CHAIR: Yes.

MR. SCHMIDT: -- this sections of the County Code? I have no objection.

CHAIR: They'll be admitted.

MR. MCCANN: And this would be Protestant's three. Let me show you a copy of Exhibit 3, Mr. Leffner, if I could. Do you recognize this two page document as the, as DEPS ZAC comments on this project? Most recent comments, that is.

CHAIR: Have you seen Protestant's Exhibit 3 before?

MR. LEFFNER: No.

CHAIR: Looking at Protestant's Exhibit 3, can you identify what it is?

MR. LEFFNER: Yes.

MR. MCCANN: Does it appear to be the most recent ZAC comments of DEPS?

MR. LEFFNER: It's dated --

MR. MCCANN: June.

MR. LEFFNER: -- June 3rd.

MR. MCCANN: Which is after your revised plan was submitted, correct?

CHAIR: Well, if I can, it's not dated June 3rd. It actually says, at least my copy here says, date leave blank. And then, --

MR. LEFFNER: Correct.

CHAIR: -- it says, it says zoning advisory committee meeting of June 3rd 2019. Then if you flip to page two, it has

a date identified at the top as May 31st, 2019.

MR. MCCANN: Yeah.

CHAIR: So.

MR. MCCANN: That clears everything up.

CHAIR: Right.

MR. MCCANN: My, my question is simply this, take a look, if you would, at the second page, first paragraph where it says, the sentence beginning regardless, the underground electric cable currently proposed in the forest buffer easement and under the stream will require EPS review and approval of an alternatives analysis and must be included in the project's limit of disturbance. Furthermore, depending on the type of crossing method, Federal, State and Federal authorization may be required and must be obtained prior to EPS approval of any grading permit to accomplish this crossing. Did I read that correctly, first of all?

MR. LEFFNER: Yes.

MR. MCCANN: Okay and is that the first time you've heard this from the County?

MR. LEFFNER: Yes.

MR. MCCANN: Okay.

MR. LEFFNER: And I have heard otherwise.

MR. MCCANN: From whom?

MR. LEFFNER: Regarding this project. Both, --

MR. MCCANN: Not from, someone other than Mr.

Schmidt?

MR. LEFFNER: Correct.

MR. MCCANN: Have you heard from anybody, anybody in DEPS told you that you do not need an alternative analysis?

MR. LEFFNER: That, nobody at DEPS has said we don't need an alternatives analysis.

MR. MCCANN: No one has said that to you?

MR. LEFFNER: No. We haven't reviewed this piece with DEPS having not received this letter.

MR. MCCANN: Okay. I'll introduce --

MR. LEFFNER: I would, I do, you know, with this, I think, one --

CHAIR: What, what is this?

MR. LEFFNER: The letter that we just received from DEPS that has the varying dates on it, whether the --

CHAIR: Protestant's Exhibit 3.

MR. LEFFNER: Correct. Is for this letter, having not seen it, whether it was complete, knowing that the leave blank in the date was done or whether this was just a draft copy that was provided --

MR. MCCANN: Well, we can read it.

MR. LEFFNER: And then also whether their understanding, again, the general location of the utility crossing is shown but whether the understanding of it being a directional bore underneath the stream, whether it was

understood or conveyed to them.

MR. MCCANN: Well, I'll move to strike that. I mean, I didn't ask a question. He's surmising, he's speculating about the, the import of this letter and that --

MR. LEFFNER: Did you --

CHAIR: Well, hold on, hold on. We're not going to get into an argument about that. His testimony is what it is, the letter says what it says. Mr. Schmidt has something to say about it as well.

MR. SCHMIDT: Yeah, just say, I object. I have not seen this before, despite repeated requests that I have made of DEPS for a revised zoning advisory committee comment. So, I question the authenticity of this, I don't question Mr. McCann's integrity, but I note that the, the first page says date leave blank. The zoning advisory committee meeting says of June 3rd, 2019, if you go to the second page in the title block up at the beginning, at the very top, it says May 31st, 2019. So I don't know if this is a compilation of reports that DEPS may have done or whatever. I have not seen it.

MR. MCCANN: Well, --

CHAIR: Hold on, Mr. McCann.

MR. SCHMIDT: And I, I, I, I frankly cannot say that I believe it's authentic or, I don't know if it's authentic or not.

CHAIR: Well, right now the question that was pending

to this witness about the documents is was he familiar that, that the ZAC comments would, you know, have the alternative analysis being part of the stream crossing, that is underneath the stream. Mr. McCann? And so, I think that's a permissible question because he said he had no idea. I mean, he's never seen this.

MR. SCHMIDT: Right.

CHAIR: And everything. So, --

MR. MCCANN: Well, I'll tell you where I got it, I got it from DEPS files. I don't call DEPS and tell them to send me their documents, that, I don't, they don't afford me that luxury. I go look --

CHAIR: I'm assuming if you call, they won't necessarily do it either.

MR. MCCANN: Yeah, my office is close, but I walk over.

CHAIR: That's okay.

MR. MCCANN: They're nice guys, but they won't e-mail me stuff.

CHAIR: Sure.

MR. MCCANN: I go over and look at the file and I've seen it in the file every time I've been there. I checked as recently as last week.

CHAIR: Right.

MR. MCCANN: So, it's there, it's part of the file,

number one, well, that's it.

CHAIR: So, to your objection, I will overrule it. We will allow it to come in. We heard, we heard what the testimony was and we heard that this witness never saw it. As to whether or not this is what it proports to me, that is, is this the final ZAC comment or is this a draft, it's what Mr. McCann found in the file. I don't know if I can, that helps shed any more light on it but I, I assume that you'll be able to find that out and figure out some more and we'll hear more about it on another day or something.

MR. SCHMIDT: But how is it authenticated?

CHAIR: He got it from the file.

MR. MCCANN: Like any public record.

MR. SCHMIDT: Okay.

CHAIR: I mean, for, for it to not be authenticated, we'd have to, there'd have to be some circumstances to show or suggest that somebody else typed this up and decided to put it in the file for Mr. McCann to then go find and bring to this Board.

MR. SCHMIDT: Well, well, how do we know, since one page is dated May 31st, the other page doesn't have a date, and then there's a third date of June the 3rd, that this is actually not notations and not the official, this is being, this is being presented as the position of the Department of Environmental Protection and Sustainability. I don't know if

it is or not, is all I'm saying.

CHAIR: That, I don't think we're there yet. I think the question is, have you, to this witness, have you seen this before and this (inaudible) are you familiar with the fact that they've at least opined in whatever this may be that there needs to be an alternative analysis and his answer was I have not seen it before and I had never heard that before. So, I don't know that we're even at that finish line to say that this is the official position or whatever.

MR. SCHMIDT: Okay.

MR. MCCANN: It's some evidence of it and I think it is the position, but that's, I would agree. This has nothing to do with the, the missed typo is not the first typo you've ever seen in a County document. And then this date is not the first misdate you've ever seen in a County document. That doesn't go to its authenticity, obviously, it has nothing to do with authenticity, because it has a mistaken date on it. Maybe it's not mistaken, I don't know.

CHAIR: And I'm, and I'm sure that some of these other arguments we can hash out at a later date.

MS. DOPKIN: (inaudible) resolved.

CHAIR: So, we can have this on another day.

MR. SCHMIDT: Okay. Some, somebody will subpoena DEPS in and we'll ask them.

MR. MCCANN: (inaudible).

CHAIR: Sorry?

MR. MCCANN: Mike, Mike Colis is subpoenaed for Tuesday.

CHAIR: Okay. So, then it sounds like we're going to resolve it one way or the other.

MR. MCCANN: Yep.

CHAIR: But even still, even if it wasn't, the fact that this exists and this witness has not seen it, that's what the purpose is, was for this witness to receive Protestant's Exhibit 3. So, by itself, it's not problematic. As to whether or not it constitutes the official position is still not solved.

MR. MCCANN: Okay. I'll move on. I'm sure everybody is happy about that. Let me ask you another question, though, Mr. Leffner, about forest buffer impacts. Another impact that I noticed is probably best seen on your closer version of the proposed conditions. So, that would be Petitioner's 3-D. I'm going to pull this out.

MS. DOPKIN: Can you orient it north to south, please?

MR. MCCANN: Oops, sorry.

MS. DOPKIN: Don't mean to be a nuisance, but.

CHAIR: We should indicate, there's a standing Order now that any time we do this, we try to orient it in a north/south direction to reflect the actual condition.

MR. MCCANN: Or we could all turn our heads. Mr. Leffner, I want to direct your attention to Petitioner's Exhibit 3-D, specifically, that area of forest buffer at the southern entrance or just north of the southern entrance, where it appears that the forest buffer is within the limit of disturbance. Could you come up to this exhibit and confirm that?

MR. LEFFNER: The limited disturbance is shown within the stream buffer here.

MR. MCCANN: Yes.

MR. LEFFNER: With the final County approved plan, there would be no disturbance here. It's shown as an offset because of the proximity to the proposed trees, all this is --

CHAIR: It's shown as an offset because (inaudible).

MR. LEFFNER: It's tree planting, so we included it within the LOD because the LOD is reported as a sight area, but similar with the existing forest buffer on site. They may say, would you plant trees, and you're allowed to plant trees within a forest buffer.

MR. MCCANN: Well, number one, you can't, can't plant trees in a forest buffer. You can't even plant trees in a forest buffer, correct?

MR. LEFFNER: You can re-forest the forest buffer.

MR. MCCANN: That's not what you're doing. But, regardless, this plan, --

MR. LEFFNER: Yeah.

MR. MCCANN: -- shows the forest buffer, shows the limit of disturbance into the forest buffer? Not co-extensive, in, in --

MR. LEFFNER: Correct. It should not be in the stream buffer.

MR. MCCANN: So, this, this is a mistake?

MR. LEFFNER: Just as there's no improvements shown in the stream buffer within that (inaudible).

MR. MCCANN: Well, it's not the same as over here. These two lines are co-extensive, these are not co-extensive.

MR. LEFFNER: Correct, they should be.

MR. MCCANN: So, this, this is, this is a mistake?

MR. LEFFNER: Correct.

MR. MCCANN: Okay and by mistake, by, just to be specific, the fact that this plan shows --

MR. LEFFNER: No improvements in the forest buffer, but the LOD extends into it. The LOD should not extend into the forest buffer.

MR. MCCANN: (inaudible).

CHAIR: Hold on, hold on, hold on.

MR. LEFFNER: Does that make sense?

CHAIR: One at a time. I also can't hear either one of you. So, please direct your, your testimony and your question this, toward the Board, toward the microphones and

please start again, Mr. McCann, with your question.

MR. MCCANN: Just the question was simply, I wanted to make sure the record was clear, that this plan, Petitioner's Exhibit 3, is mistaken when it shows the limit of disturbance to be within the forest buffer, correct?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. Same thing on the other side of the stream, that is, farther north, just south of the northern entrance to the northern solar array. There are plantings depicted in the forest buffer, correct? Do you see that?

MR. LEFFNER: There's two that we've shown that may be, may be preferred by the County and if allowed, we would be happy proposing to put two trees in the forest buffer.

MR. MCCANN: Okay. Is, is that a mistake or is that --

MR. LEFFNER: No, that was us proposing to just plant a tree within the forest buffer.

MR. MCCANN: Okay and you need a, is it your testimony you don't need, that you can plant a tree in the forest buffer without an alternatives analysis or variance?

MR. LEFFNER: I'm not sure whether an alternatives analysis or a variance are required.

MR. MCCANN: Okay.

CHAIR: I'm going to interrupt everything here to go back to Protestant's Exhibit 3. I will note in our, in our

file, there is what appears to be a similar letter, bear with me. But with an actual date on it. And so, it has July 3rd, 2019 as the date where it says leave blank. It still has the May 31st date on page two and still references the June 3rd, 2019 zoning committee meeting. I would just success that both Mr. McCann and Mr. Schmidt come here and take a look to see if you guys think that this is the same thing, as I did at my first glance.

MR. SCHMIDT: So, so we have yet another document from Environmental Protection with now slightly different than Protestant's exhibit number three.

CHAIR: You want to take a look to make sure you think it's the same or so, or, same in content, similar, I mean, I can't say it's exact same because there's actually a date where it says leave blank, but.

MR. MCCANN: The language is the same regardless.

CHAIR: The content would seem to be the same. Even if there are some differences with the dates or whatever.

MR. SCHMIDT: I'm just trying to read it. For example, in the second paragraph, in your file, there are four lines on page one. On the second paragraph of the one McCann gave us, there are three lines. Whether the wording, I'm trying to read the wording, --

MR. MCCANN: Everything got moved up, it looks like, same wording. I, I would suggest this, if I could. Is we mark

this second letter and between now and Tuesday, Larry and I speak to DEPS and we figure out is this their position or not, it's that simple.

CHAIR: Well, one is, one is, there's a stamp on page one of what I just handed to, to both of you.

MR. MCCANN: Okay.

CHAIR: But, why don't we turn to the stamp to see who has marked it received.

MR. SCHMIDT: Office of Administrative Hearings. So, this, this must have been submitted, I suspect, by DEPS to the Administrative Law Judge after he heard the case and after he rendered a decision.

CHAIR: Well, suffice it to say, the content you read is the same, the content and questions relating to that content is the same in both letters.

MR. MCCANN: Correct.

MR. SCHMIDT: Right. And I'll tell you, I'll make it really simple. The last line of, of the letter says EPS respectfully requests that the requirements above be made conditions of any zoning relief. And I will stipulate that if the Board grants this, you can make this conditional on this and we'll deal, we'll deal with DEPS. That, that's the easiest way to do it.

CHAIR: So, let's do this. How much more of your cross examination do you think you have to go?

MR. MCCANN: If Mr. Schmidt wanted to call his other witness, I'm okay with that. I can stop now. I (inaudible).

CHAIR: How much longer do you have with this witness?

MR. MCCANN: Oh, I mean, I, I have, you know, twenty minutes, half hour.

CHAIR: Oh.

MR. MCCANN: Yeah.

CHAIR: All right. Well, there are two problems because you have a witness.

MR. MCCANN: Yeah.

CHAIR: And Mr. Schmidt has a witness.

MR. MCCANN: Yep.

CHAIR: So, I don't know how we're going to accommodate that and how long you think your witness is going to be?

MR. SCHMIDT: I, I don't think long. I, I don't. I, I think about fifteen minutes on direct.

CHAIR: Okay and for your witness, you, you estimate about ten minutes total?

MR. MCCANN: Yeah, (inaudible).

MS. MURPHY: (inaudible).

MR. SCHMIDT: I'm just going to submit his report and tell you what he did.

MS. MURPHY: Okay.

MR. MCCANN: Glare ex, he's the glare?

MR. SCHMIDT: Um hm.

MR. MCCANN: Yeah, I don't think that will take long. I'm okay with that, if that's --

CHAIR: Where, where does that leave us with this witness at the moment?

MR. SCHMIDT: If you want to have him step down for the moment, that's okay with me.

CHAIR: Well, I'm going to leave it to the two of you to figure that part out.

MR. SCHMIDT: It's okay with me.

MR. MCCANN: Oh, I'm fine with that. This gentleman has to --

CHAIR: All right. You are not excused, you may step down, but you are not excused. In the intervening time, if we can go, I'm going to step off the bench to have this letter that we found within the file photocopied and made exhibit to, to the, to this proceeding, but I'll be right back. So, we'll take a two minute, --

MS. MURPHY: But you're still under oath.

MR. LEFFNER: Correct.

MS. MURPHY: Which means you can't talk to anybody.

MR. SCHMIDT: We didn't talk to him at lunch.

MS. MURPHY: Okay. (inaudible) but just don't.

CHAIR: All right? So, I'm going to have this

photocopied, with copies to both counsel.

MR. SCHMIDT: Thank you.

CHAIR: And to the Board and to the file.

MR. MCCANN: Great, thank you.

MS. DOPKIN: I'm going to wait here.

CHAIR: Yes, no, that's fine. I mean, literally just so I can get this photocopied.

MS. DOPKIN: We're pausing.

(RECORDING PAUSED - 03:40:45 PM)

(ON RECORD - 03:42:41 PM)

CHAIR: So, I'm going to put the original, what's been now identified as the July 3rd, 2019 ZAC comments from Jeff Livingston at DEPS back into the file from where I found it. I'm going to hand to Ms. Murphy the first copy, which we will, it would seem to me, labeled 3-A, because it ties into Exhibit 3 from Protestant's, does that make sense?

MS. MURPHY: 3-A is going to be the Protestant's copy.

CHAIR: Oh, you want, I'm sorry, yes. Yes, 3-A.

MS. MURPHY: (inaudible).

CHAIR: Yes, that's fine.

MS. MURPHY: (inaudible).

CHAIR: So, 3-A and 3-B will be the one from our file.

MS. MURPHY: Yes.

CHAIR: So, this to Mr. Schmidt.

MR. SCHMIDT: Thank you.

CHAIR: Copy to Mr. McCann.

MR. MCCANN: Okay, thank you.

CHAIR: So, 3-B. And one for you, Ms. Dopkin, one for you, Ms. Murphy and I have an extra one if we need it for a witness. All right. So, we're now back.

MR. SCHMIDT: I would call Steve Barrett as my next witness.

MS. DOPKIN: Mr. Barrett, do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. BARRETT: Yes, I do.

MS. DOPKIN: And would you spell your name and give us your address for the record?

MR. BARRETT: Sure. My name is Stephen Barrett, B as in boy-A-double R-E-double T. My address is 1596 Main Street, Concord, Massachusetts 01742.

CHAIR: How do you spell Stephen?

MR. BARRETT: P-H-E-N.

CHAIR: And what is your title?

MR. BARRETT: I am principal and owner of Barrett Energy Resources Group.

CHAIR: Barrett?

MR. SCHMIDT: Energy Resources Group.

CHAIR: Energy Resources Group.

MR. BARRETT: Yes.

MR. MCCANN: I would be okay with a proffer, by the way.

CHAIR: I didn't know what his role was going to be but.

MR. MCCANN: I think it's glare, so.

MR. SCHMIDT: I have, I have given the Board a copy of, of Mr. Barrett's c.v. Mr. Barrett, is this your c.v., what I've marked as Exhibit --

CHAIR: Hold on. This is Petitioner's Exhibit 10.

MR. SCHMIDT: Petitioner's exhibit number ten.

CHAIR: Yes.

MR. BARRETT: This is my c.v., yes.

MR. SCHMIDT: Does it accurately represent your education and background?

MR. BARRETT: Yes, it does.

MR. SCHMIDT: Have, do you have expertise in the analysis of glare caused by solar facilities?

MR. BARRETT: I do, yes.

MR. SCHMIDT: Have you testified before this Board of Appeals on that subject matter regarding a solar facility in Baltimore County?

MR. BARRETT: Yes, I have.

MR. SCHMIDT: Were you accepted by this Board as an expert witness?

MR. BARRETT: I was accepted, yes.

MS. MURPHY: (inaudible).

CHAIR: What are you tendering him as an expert in? Sorry.

MS. MURPHY: Go ahead, (inaudible).

MR. SCHMIDT: It was the application of SGC Power for a project located on Frye Road off Hanover Pike.

MS. MURPHY: Right, right.

MR. SCHMIDT: In Baltimore County, Maryland.

CHAIR: And what's the area of expertise?

MR. SCHMIDT: Mr. Barrett is an energy specialist but the expertise, more specifically in this case, relates to a glare analysis of the visual impacts of a solar facility in terms of glare on surrounding properties. So, he's a glare expert, essentially, what he does.

CHAIR: Okay. We'll just call it glare expert. Mr. McCann, you said no voir dire?

MR. MCCANN: No voir dire, thank you.

CHAIR: And you had no objection to Petitioner's Exhibit 10?

MR. MCCANN: No.

CHAIR: So, that will be admitted. He will be received as a glare expert who, as I understand it, there was a

glare report to follow.

MR. SCHMIDT: Yes, and I'm going to give that to the Board as Petitioner's exhibit number eleven. And I'm going to give a copy to Mr. Barrett. And Mr. Barrett, the report or the paperwork that I just handed you, is this your written analysis of the glare study that you did for the subject proposal?

MR. BARRETT: Yes, it is my written analysis.

MR. SCHMIDT: And have you been to the site before?

MR. BARRETT: Yes, I have been to the site.

MR. SCHMIDT: Okay. If you can, and we're going to, just because of the hour, not, I don't want you to miss anything, but if you can tell the Board, maybe start at the beginning, what were you charged to do, what was your method, methodology in terms of how you did your analysis and then you can get to your conclusions and study results.

MR. BARRETT: Sure. I was charged to take a look at glare and whether or not glare could be a potential significant impact on nearby sensitive receptors. And so, I do this type of work quite often and --

CHAIR: Nearby sensitive receptors such as neighbors?

MR. BARRETT: Yes, --

CHAIR: Passing traffic?

MR. BARRETT: Yes. I mean, it depends on the land use for this particular site and many sites that I work on, I'm looking at residential receptors as well as motor vehicles

trav, traveling on nearby roads.

MR. SCHMIDT: Okay. Go ahead.

MR. BARRETT: So, to, to, to conduct this, this analysis, typically I got through kind of a twostep process. The first step is using a glare model, which was developed by the Department of Energy, specifically to look at potential glare from solar (inaudible) systems and it was used, it was developed at the request of the Federal Aviation Administration, because there was a lot of interest by airports and by city, state governments who run airports, to develop solar on airport property where land is under-utilized, not available for other land uses. So, there's a real interest in doing that. However, the FAA was concerned about potential impacts on aviation and the, one of the primary ones being potential glare.

MR. SCHMIDT: And I understand, Mr. Barrett, you were actually part of that study and part of that work group, correct?

MR. BARRETT: Right, I, I developed the FAA's solar guide in 2010, which is their primary reference document about solared airports. And then I also led a research team with, which developed and collective reflectivity data from solar panels that were available for manufacturers around 2012, 2013 at that point.

MR. SCHMIDT: Okay.

MR. BARRETT: So, anyway, so, the, the first step is to run this glare model, it's called a solar glare hazard analysis tool, or SGHAT, S-G-H-A-T, and again, this is initially a model that is required by the FAA to be used to assess potential solar projects at airports. However, since the FAA developed it with the FA, with the, the Department of Energy, it has been used for analyzing lots of other sensitive receptors, such as residences, motor vehicles, etcetera. So, the first step in my analysis was to use this solar glare hazard analysis tool. I'll review briefly that, but then the second step is that because the tool was developed for airports, which are typically very flat and wide open areas with no trees, because that would interfere with airports and air, air traffic, the model actually does not incorporate terrain in it. So, if, if you had a mountain in between the sun and, and a receptor, it would not pick that up. It would, it would just record that there could be glare. It also does not factor in vegetation. So, the second step in my analysis is to do a line of sight analysis, which I used Google Earth to perform. So, basically, reviewing those, those two steps, the first step I selected seventeen sensitive receptors in the project area. Because there's no development really to the east of the site or north or south, or most of the activity and the potential receptors are all associated with Falls Road, I identified those receptors along Falls Road. I selected

fourteen residences along the road and I selected three different points where motor vehicles travel, one kind of towards the north of the site, one central to the site and one to the south. The reason why I picked those was because of the density of the residential receptors. I thought that they, they, they would also kind of pick up any potential flags that might happen in other areas along the roadway, so I --

MR. SCHMIDT: I'm sorry, Mr. Barrett. Are those receptors shown on any page of your report that the Board could look at as to the locations of the receptors that you chose?

CHAIR: For example, page five?

MR. BARRETT: Yes, page five, figure five, shows where those receptors are. And in general, normally, I, I do maybe ten receptors on a site, just as a rule of thumb. That seems to be enough to cover. What I tried to do in this analysis was pick up all of the residences because I thought that maybe there might be residences, again, close to, to Falls Road, not further to the west, because I wanted to be comprehensive in that. So, as you'll see in, in the analysis, when I ran the, the solar glare hazard analysis tool, I did pick up, the model picked up glare on ten of the seventeen receptors. And again, the, the results that are produced on based on the design of the solar projects of the location, the footprint, the tilt angle is very important in the calculations that the model does and then where the, the receptors are

located and then the model automatically is programmed in the sun's path throughout the year, so it, it basically runs every single day the, the sun's path and one minute intervals and it identifies whether or not there may be glare. So, this is the result again, the initial screening, and then the, the problem is that it doesn't take into account vegetation and terrain. So, there's information in this report that describes when the glare can occur. I think that the most relevant to this discussion is that because the receptors are to the west of the solar project site, that the glare will tend to occur, if there were glare, when the sun is rising in the east, so in the morning and it would occur typically between the months of March and September. And that's because of the location of the receptors, fairly close to west, due west of the project. Some of the, the locations which are slightly south, and I'm referring, I refer the Board to figure six on page seven, which identifies yellow highlighted receptors where the glare was, was identified and also, it may be hard to read on this figure but associated with, with each of those is just a summary of the time of day, the months and the potential duration of glare during a single day.

MR. SCHMIDT: So, Mr. Barrett, just so it's clear, on that figure six on page seven, for example, at receptor number two, just to pick one out, there is a possibility of some glare from March to September at around 7:00 in the morning for

fifteen minutes?

MR. BARRETT: Yeah. On that one actually it says March, September.

MR. SCHMIDT: Oh, so it just says two months.

MR. BARRETT: So, it's actually, you know, you could experience some glare from that location in the month of March. Then it would not be seen through the, the spring and the summer and then it could again, be seen in September again. But yes, fifteen minutes would be the maximum that might be seen during a single day in March or in September. So, it's fifteen minutes or less. And there's much more data behind this, you know, I could tell you the specific days it was predicted but all of that is kind of in the attachments to the, to the report. So, anyway, so that's kind of a summary of the, of the glare results, but again, because it was developed for airports, it doesn't incorporate topography and vegetation. So, then I conducted a line of sight analysis, again, using Google Earth. There's a tool on Google Earth where you can basically draw a line between two different points. So, for the ten receptors where the model picked up glare, my interest in doing the second level of analysis was to validate those. Okay, can, can someone actually still see the site. You, you can't get glare off the facility if you can't actually see the solar panels, because the glare that you're seeing is coming directly from the surface of the solar panels. So, --

CHAIR: I had a question.

MR. BARRETT: Yes?

CHAIR: If I may? Compare table one to table two, the glare results, I don't know what you call SGHAT glare results, table one.

MR. BARRETT: Yes.

CHAIR: To table two, line sight analysis, I mean, you show on table one numbers two through ten that yes, there would be glare based on that model.

MR. BARRETT: Yes.

CHAIR: And table two we show numbers two through ten, there, I understand why they're identified, but we have a new entry into the competition here, number thirteen which registered a no under the model.

MR. BARRETT: Thirteen. That's a mistake.

CHAIR: Which one is?

MR. BARRETT: Table one, thirteen should say yes.

CHAIR: Okay.

MR. BARRETT: And that's why it was subject to table two review and then the conclusion there, so.

CHAIR: I knew one of them had to be.

MR. BARRETT: I apologize for that.

CHAIR: That's okay. And I will note that your figure six has thirteen in yellow, indicating it tested positive for the model.

MR. BARRETT: Okay. So, you saw a discrepancy and you caught it and you're correct.

CHAIR: All right.

MR. BARRETT: Yes. So, amend table one to identify thirteen res, residents as being yes rather than as it states now no. So, yeah, I mean, to cut to the case as far as the second level of analysis, it is summarized in table two. Based on the line of sight analysis using Google Earth, you can draw this, this cross sectional view between receptors, say residents at two and the solar panels' location. In the report for the modeling also identifies the area of the solar panel, where the glare is coming from. So, if you refer to figure seven on page eight, you'll see that the arrows go to a particular areas of the solar project. So that, you know, we can very accurately identify where an individual receptor should be looking, where should we conduct the line of sight? Should we conduct it to the northern part of the solar project or the southern part of the solar project? The modeling report tells us where we should direct that and those locations to conduct the line of sight analysis and we're using Google Earth, are shown in figure seven on page eight. So, once I did that, it told me two things. The first thing it told me was that receptor two has actually kind of a, a point of terrain, a high point that obstructs the view between the residents there and the solar project. So, I developed kind of two levels of

evaluation from the line of site. The first is if, if there is a terrain obstruction, an actual point of land, say on that hill, between your viewpoint and the solar project, then to, my interpretation of that is that there's a terrain obstruction and it's not possible to see the solar project, it's not possible to see glare. The second level is whether or not there's existing vegetation between the viewpoint and the solar project and for, so that where table two lists ten receptors where the model picked up glare and we needed to do this second level of screening analysis and --

CHAIR: Can I, can I jump I on this?

MR. BARRETT: Yeah.

CHAIR: The line of sight analysis, in case I may have missed this, it, are you accounting for additional plantings or no, because you're just basing it off of present conditions from Google Earth?

MR. BARRETT: Under table two is just existing vegetation. And so, my conclusions presented in table two are just based on existing vegetation. So, I concluded that the other receptors, the other nine receptors, where the model picked up glare, that there is existing vegetation in between the viewpoints and the solar project, that would obstruct the view.

CHAIR: Because I note on figure eight, you have the proposed drive for the western most or solar field, the one

that's, that runs along Falls Road.

MR. BARRETT: Yes.

CHAIR: And I look at Petitioner's Exhibit O, which reflects roughly about where number five is on figure eight and you have a number five looking toward the other solar field, where as Petitioner's Exhibit O looks towards the one that, that's along Falls Road.

MR. BARRETT: Yeah.

CHAIR: And Mr. Leffner indicated that you could see the solar field, Petitioner's Exhibit O, so, you can't see it from five, that is the secondary field, the one on, eastern on. You can't see that one as, as noted in table two and figure eight. Did you look at, to see from five whether or not you could see the one that runs along Falls Road?

MR. BARRETT: Yes, and actually, in, in the attachment where the glare modeling results are shown, it does indicate that from receptor five, the glare could potentially be seen through that view.

CHAIR: Okay.

MR. BARRETT: So, that's a perceptive look. That would be where additional planting and vegetation in addition to the existing vegetation would be necessary.

CHAIR: Which is what Mr. Leffner testified to.

MR. BARRETT: Yes, yeah.

CHAIR: Okay.

MR. BARRETT: So, anyway, so, beyond that particular location, all of the other locations identified and, and I had focused the line of sight, the, so the way the, the two arrays are oriented, some of the northern ones along Falls Road, that being receptors two, three and four, and five, can see the, I guess, I would call it, the western array, the one closest to Falls Road. Those can see that potential glare from there. All of the others to the south do not have any view of glare from array next to Falls Road. All of the receptors where glare was identified would see glare from the other array. So, when I did my analysis, I just foc, I, I cumulated them and focused on all the, the potential glare on the eastern array.

CHAIR: Got it.

MR. BARRETT: So, that's where that, that mistake came about. But anyway, yeah, get, getting back to figure nine on page ten, that's where I show where the proposed plantings are included. Plantings associated with the, what I call array one, which is the western most array adjacent to Falls Road, has plantings in between that area that would, where there was a potential view from receptor five onto array one, the one closest to Falls Road. There are proposed plantings that would mit, mitigate any potential glare. For all of the other sites, I've identified that glare would be obstructed by existing vegetation. There are some additional plantings which would enhance the protection from glare and then the final note that

I would make is that while some of the trees are, most of the trees out there are deciduous, they would lose their leaves in the wintertime. While in the wintertime, some of these viewpoints could potentially see the solar project I winter, there's no glare predicted in the wintertime because the glare is predicted between March and September. In some cases, just March and September in some cases, periods, months between March and September.

CHAIR: And that's what I was going to ask about the month of March, because the month of March you, you may not have, well, not may, you won't have full foliage to --

MR. BARRETT: Yeah, that's when leaves, my understanding is, leaves are just starting to come out in March so there might be a period there where you might be able to see something.

CHAIR: So, they'll be confined to that, whatever time frame that is, until the leaves take kind of are in --

MR. BARRETT: Yeah, that's right.

CHAIR: -- they're in full.

MR. BARRETT: And the, and the trees themselves, I know it's not, you know, a thick forest between Falls Road and the site, some areas where the, the trees are more dense. It still might pro, provide some mitigation or prevent some of the glare from --

CHAIR: Is there anything that can be done to help

mitigate even further in March, in the month of March?

MR. BARRETT: The standard mitigation is just to incorporate evergreen shrubs that don't lose, lose their leaves.

CHAIR: Right.

MR. BARRETT: And that's typically what would be done.

MR. SCHMIDT: So, Mr. Barrett, it's kind of a take away, obviously, the site is not going to be invisible and when I say the site, the panels will not be invisible, but do you see any, I know you deal with the FAA and dangers to aircraft and so on and so forth, are there any, do you perceive or anticipate glare to the extent if visible at all, that it would cause any public hazard or cause any public nuisance on another property owner or anything of that nature?

MR. BARRETT: No, I don't see any problem with that at all.

MR. SCHMIDT: Okay, why not?

MR. BARRETT: Because the FAA model is, you know, very conservative as far as trying to predict glare. So, I think we've very accurately predicted using the model where glare could potentially occur and when you overlay the topography and the existing vegetation, the potential for glare is limited significantly. So, I think the characteristics of the site between the topography and the vegetation, the

existing vegetation enhanced with the additional plantings will greatly limit the amount of glare that could be seen.

MR. SCHMIDT: And won't cause a public hazard to traffic, people aren't going to be blinded when they're driving up and down Falls Road?

MR. BARRETT: That's right. I mean, one thing in particular relative to the roadway, because it's oriented north and south, the, the potential glare that could be seen is to the periphery. Really once you get into the project area. So, the, the orientation where glare is more of a concern from anything for motorists would be if you're driving east and west and the glare is coming directly in your line of sight close to the road. But here, you're kind of driving either north or south, you're driving and the, the solar project may be up ahead and with this terrain, you're not even seeing it very close until you get, until you get close to the site. And then, even if there were a glint of glare, it would almost be like off on the side, not in your field of view.

MR. SCHMIDT: Okay and can you talk a little bit about the panels themselves, their design, their material? Do they reflect glare a lot or what, how's that work?

MR. BARRETT: Well, I mean, solar (inaudible) is designed to absorb light, to produce electricity, so the technological goal is to minimize any reflection so they are designed with a black backing to absorb the light. The solar

panel surface is smooth glass, which is really the reason why we need to look at some of these things, because you could potentially some, see some glare. But it's nothing like a lot of other surfaces out there that we're exposed to, you know, if it, it might be windshield glass from windshields in parking lots, other kind of surfaces, either manmade or ponds, comp ponds can reflect more light than solar panels. So, to put it into context, it's a very limited potential effect.

MR. SCHMIDT: Okay. Okay. Thank you, Mr. Barrett. I would offer Exhibit 10 and 11 if I have not. I don't have any other questions.

CHAIR: Mr. McCann, any objections to ten and eleven?

MR. MCCANN: No, thank you.

CHAIR: So, they will both be admitted. And I'm sorry, is that it for your direct?

MR. SCHMIDT: That's it.

CHAIR: All right. Mr. McCann, you're on cross.

MR. MCCANN: Okay. Good afternoon, Mr. Barrett.

MR. BARRETT: How you doing?

MR. MCCANN: Good, thank you. What, you, you were talking at the end there about your, about the panels. But what can you tell us about the panels (inaudible)?

MR. BARRETT: I have reviewed the cut sheet of what type of panels are proposed. I would say that they're kind of very standard, solar, (inaudible) modules. They have some type

of anti-reflective coating including on them. That seems to be industry standard now, again, just because the objective is to produce more electricity and so now it's more common just to include the anti-reflective coating. So, I would say that they're, you know, typical of what I see for other projects.

MR. MCCANN: And what's a cut sheet?

MR. BARRETT: Cut sheet is just a two page description of the solar module that's put out by the solar manufacturer to inform the performance of the particular module.

MR. MCCANN: Okay.

MR. BARRETT: So, it's, it's a very kind of technical engineering sheet. But, so if some it is relevant to what I do, not much of it, a lot of it's relevant to kind of designers.

MR. MCCANN: Okay. So, that the, the Petitioner in this case has already selected the type or manufacture of the panels, do we know what they are?

MR. BARRETT: My understanding is they provided what the, the module is at this point.

MR. MCCANN: What is it, what manufacturer (inaudible)?

MR. BARRETT: Oh, I don't know off the top of my head. I can, I can look.

CHAIR: Would that be identified in your report?

MR. BARRETT: It's not in my report, it's actually, I received it from the hearing information that was submitted as part of the record, so, I did have it.

CHAIR: So, you don't need to know the manufacturer or model for purposes, excuse me, for purposes of your report, correct?

MR. BARRETT: I do need to know the general characteristics really, if it has anti-reflective coating on it or not. There are some other characteristics of the solar module that might be included. So, I, it is helpful, it's not, I don't need to, it's not like on the model I select, the particular type of module, I just need to kind of generally know the characteristics.

MR. MCCANN: So, what manufacture, can you tell us without --

MR. BARRETT: It might, it might take me a minute, so.

MR. MCCANN: We'll go back to it.

MR. BARRETT: Okay.

MR. MCCANN: Try to remember.

MR. BARRETT: I'll multi-task.

MR. MCCANN: Okay. I will as well. So, you think this is the type or man, the manufacturer that will be used. It's your understanding?

MR. BARRETT: Yeah, I mean, I would say if, if they

were to change modules from the characteristics that I've input into the model, I wouldn't expect it to, to change. But --

MR. MCCANN: Well, it depends on, depends on what it is.

MR. BARRETT: Depends on what it is but, again, this is kind of what I've seen, what they, the cut sheet that they provided to me from kind of a glare perspective.

MR. MCCANN: Yeah.

MR. BARRETT: Is typical.

MR. MCCANN: Okay.

MR. BARRETT: So, I think a lot of other panels could fit that.

MR. MCCANN: Do you know how many panels are being proposed for this project?

MR. BARRETT: Not off the top of my head. I probably could take a look at it on the, --

MR. MCCANN: On the plan?

MR. BARRETT: Yeah.

MR. MCCANN: Okay. Do you know what size panels they are?

MR. BARRETT: I don't know off the top of my head. It's not particularly relevant for the, the work I do. What I do is I outline the boundary of the project based on the site plan and then the model just, it doesn't, it's not detailed enough to identify the spacing in between the panels, rows or

anything like that. It's just taking a broad look at the footprint.

MR. MCCANN: Okay.

MR. BARRETT: And that's to give kind of a conservative estimate. You know, I have been in situations where I developed, run the model for someone and they said, you know, oh, you know, this has a negative effect in some way so we'd look at ways to look at the, at the design more closely.

MR. MCCANN: Okay. What about the direction in which the panels would be faced, do you know that?

MR. BARRETT: Yeah, they're south facing, a hundred and eighty degrees on the, on the --

MR. MCCANN: Straight up?

MR. BARRETT: What's that?

MR. MCCANN: Straight up like that?

MR. BARRETT: No, no, that's, they're, they're facing to the south, they're tilted twenty-five degrees.

MR. MCCANN: Oh.

MR. BARRETT: And again, that's a typical design for a fixed tilt.

MR. MCCANN: Doesn't it depend on the topography?

MR. BARRETT: No, not necessarily. Normally, to maximize electricity production, you want it to be facing south.

MR. MCCANN: Okay.

MR. BARRETT: In the northern hemisphere. If you're in the southern hemisphere, you want it facing north. And then the, the amount of tilt angle is dependent on generally rule of thumb is your degree of latitude. But also, say in northern areas, if, if you have snow you might tilt them more than, than the latitude. So, --

MR. MCCANN: Okay.

MR. BARRETT: -- twenty-five degrees is what they're proposing.

MR. MCCANN: Okay. The, this line of sight analysis that you did using Google Earth, is that a tool that's standard in your industry, (inaudible)?

MR. BARRETT: Yeah, yeah.

MR. MCCANN: And that analysis, I think as depicted on page eight, figure seven of your report, reflects that there is a line of sight, at least from one location, on thirteen of the prop, the properties that are either on the same side of the street or across the street. In other words, at those thirteen locations, I'm sorry, not thirteen, nine locations on figure seven, page eight, someone, if someone was standing there, they could see the, the panels, under existing vegetation, correct? Isn't that what that tells us?

MR. BARRETT: No, that, figure seven is just showing where I conducted the line of sight from the receptor to a particular part of the solar array based on where the model

results were.

MR. MCCANN: Yeah, well, maybe, maybe that's not the right figure. But your point is, and you, you, I guess it's reflected on page nine, table two, that there are three, six, nine, three through thirteen, with the exception of, I guess, eleven and twelve, there are all those locations, the receptor number locations. From those locations, you can see either or both of these solar arrays, correct?

MR. BARRETT: I'm saying that there's existing vegetation in between the receptors and the solar array.

MR. MCCANN: So, you can't see them at all from these locations?

MR. BARRETT: I mean, the, there's existing vegetation in between. I'm not saying that you wouldn't see the solar panels at all.

MR. MCCANN: All, all I'm asking --

MR. BARRETT: But the existing vegetation would affect the, the ability to see glare --

MR. MCCANN: I'm not there yet. I'm just, my simple question is, according to table two on page nine, from those locations, three, four, five, six, seven, eight, nine, ten and thirteen, someone standing in those locations, I, I, I assume they're approximate, approximate, someone can see either or both of the panels, arrays, right?

MR. BARRETT: I mean, I'm, I'm, I'm, my, my review is

based on glare, so it's not like the view of the solar panels.

MR. MCCANN: Itself.

MR. BARRETT: I'm, I'm evaluating whether or not they might likely see glare.

MR. MCCANN: Oh, oh, I thought in, in order to be a receptor, you had to have visual, sort of visual contact with the source of the glare.

MR. BARRETT: Yes, but when there's vegetation in between, it may be possible to see the project or it may not, depending on the view of the veg, through the vegetation.

MR. MCCANN: Okay.

MR. BARRETT: But the presence of vegetation limits the ability to see glare, so I'm not really ruling on whether or not they can actually see the project. It really depends on the extent of the vegetation, you know, I would need to go out there. I've done it kind of a desktop review on glare.

MR. MCCANN: Okay.

MR. BARRETT: Not a visual view of the project.

MR. MCCANN: Why is, why if you can't see the source of the glare, how can you see, how can you see the glare? Is it reflecting off the sky or something? You follow my question?

MR. BARRETT: No, not really.

MR. MCCANN: I'm wondering how you can see, let's assume, and you're not saying you can't see from these

locations, you can't see the panels at all, you're not saying that, right?

MR. BARRETT: I'm not, I'm not saying that at all.

MR. MCCANN: You're just saying that --

MR. BARRETT: I'm just talking about glare.

MR. MCCANN: Glare, right. But if you can't, if you can't see, it's possible to have glare without seeing the source of the glare, is that possible? If so, how, how do you --

CHAIR: Well, hold on. If I could understand your question, make sure, maybe this is where the mix up is. When you say see the source of the glare, that is, where it's readily identifiable to be a solar panel or just there is a source of glare, do you follow what I'm getting at?

MR. MCCANN: Yes.

CHAIR: Right. So, whether or not you can see the physical source being a solar panel, that was the first nat, that was the first part of your question. He said, I'm not making any opinions --

MR. MCCANN: Right.

CHAIR: -- as to whether or not you could actually see the solar panels, but whether or not you could see glare, irrespective of whether you could identify it comes from a solar panel, that's where you're at with your question.

MR. MCCANN: Yeah. Maybe I'm, but you're seeing

glare from the direction of the source of the glare?

MR. BARRETT: Yes.

MR. MCCANN: You're not seeing it reflected off the sky or --

MR. BARRETT: That's right.

MR. MCCANN: -- seeing glare over here, okay.

MR. BARRETT: Right, yeah, it's not coming from the sky, it's not coming from somewhere else.

MR. MCCANN: All right.

MR. BARRETT: It's coming, would be coming from the solar project.

MR. MCCANN: Okay. So, for these, for these, from these nine locations, someone is either going to see the glare or the panels and you're not making a distinction.

MR. BARRETT: Or the trees and not see the glare. The tree might be in the way, I just, from this review, I know that there's existing vegetation between.

MR. MCCANN: Right.

MR. BARRETT: But I'm not saying that vegetation fully obscures the view of the solar project. You might still see the solar project or you might not, it depends on the characterization of the vegetation. I haven't, you know, I haven't done a site analysis of that.

MR. MCCANN: Because you can see glare through vegetation I guess is the point, right?

MR. BARRETT: Yeah, it depends on how thick the vegetation is, the characteristics of it. But the fact that there is vegetation is more of a, kind of a binary evaluation. If there's no vegetation, then you're seeing the solar project straight on. If there's vegetation, that's going to provide some type of visual impediment to seeing the glare.

MR. MCCANN: Okay. But again, you didn't do a site analysis, you didn't look at the particular plantings that are here, you just based it off, it was all the model based?

MR. BARRETT: Yeah, I mean, it's really, it can be really challenging to get access to sites and stuff like that. So, this is primarily, you know, just to characterize the conditions based on a desktop review.

MR. MCCANN: Okay and then when you say glare unlikely, to me that's, that's a probability, right? Once out of every x times, is that what you mean by unlikely?

MR. BARRETT: No, I think it depends on the, as we're talking about, kind of the characteristics of the vegetation. So, I'm, I'm saying from my review, I can see that there's quite a bit of vegetation in between but I haven't, I haven't done, kind of taken the next step to evaluate exactly what types of trees, how tall they are, etcetera. I just know that there's vegetation in between that's going to mitigate the glare in some way.

MR. MCCANN: Okay. Mitigate. I, because I thought

what you just said was you may or may not see the glare at all whereas what I heard you say earlier on direct examination, according to figure six, you'll see it, you just won't see it that often. That's, to me, that's a probability, you follow me? In other words, which, which is it? Are you saying you're, you're not going to, it's, glare is not likely because there may be something in the way or are you saying you're going to see glare, you're just not going to see it that often, the probability of you seeing it, actually looking in that direction or being in the location to be able to see it during the months that it's even possible is unlikely. Which is it? Do you follow my question?

MR. BARRETT: I would say that because there's vegetate, what, what I've identified as there being vegetation in between the view, I'm saying that glare is unlikely but the, I have, I don't have a full degree of certainty because I haven't looked at all the vegetation in between from the site.

MR. MCCANN: Okay. So, figure six on page seven, when you, when you identify when there is glare, --

MR. BARRETT: Yep.

MR. MCCANN: -- at each of these, at each of these receptors.

MR. BARRETT: Yep.

MR. MCCANN: That's without vegetation?

MR. BARRETT: That's without vegetation, exactly.

MR. MCCANN: Okay and (inaudible) add in existing vegetation, is that simply a button you push on the model and it adds in? I mean, there are various degrees of vegetation.

MR. BARRETT: Well, it would be nice if it were that way, but the model doesn't actually incorporate vegetation so that's why I do this line of site analysis using Google Earth. They're the same platform, so the model does use Google Earth for all of its geo referencing. If, when I identify where the project site is and I mark it out, it brings up the coordinates, it uses the same elevations. So, the platforms for the two analysis are the same, they're Google Earth. But I can't integrate them, so I have to do the, the glare modeling first and then in a separate, you know, computer or whatever, I have to do, bring up Google Earth separately and do this line of sight analysis.

MR. MCCANN: What about the, the proposed landscaping we talked about today but, or the plan rather, the landscape plan that was talked about today that we haven't seen yet, have you seen that plan?

MR. BARRETT: I have, yeah. What I would say is I think, and it says in the report, I've showed where those locations are proposed. I think other than receptor five that was brought up by the chairman where there's that view through the access road, you could see that because there's no vegetation now, there, I guess there continues to be some

access through there, there's going to be plantings proposed and that'll be important, I guess you could say, for insuring that vegetation blocks any view. In all of the other areas, I've identified that there's already existing vegetation so the landscaping just further buffers the amount of vegetation and will help to mitigate any potential (inaudible).

MR. MCCANN: And how do add that? How do you layer that in? In other words, you take the plan itself, I take it, (inaudible) take that plan and, and overlay it somehow in all of this or do you just type in a long green rectangle box that, that is landscaping and, therefore, you can't see it? Which, which of those two or somewhere in between did you, did you (inaudible)?

MR. BARRETT: I think it's more of a qual, qualified analysis on kind of the, the, the thickness of vegetation that, that you're looking at. So, if you have a single tree, then the potential for glare coming through that tree is more than having kind of stacked a number of trees back.

MR. MCCANN: And you put that information into the model?

MR. BARRETT: No, I do that as part of the line of sight analysis, the screening part.

MR. MCCANN: The number of trees?

MR. BARRETT: More, more the, the density. So, I don't think it's as, you know, scientific as you're kind of

getting at.

MR. MCCANN: Okay.

MR. BARRETT: It's more of a qualif, qualification.

MR. MCCANN: Okay. So, there's some room for error.

MR. BARRETT: Yeah, it's a, it's a kind of a screening level analysis. Again, I think the key is if, if there's, is there glare or not using the glare model. We can exclude certain receptors, particularly to the north and the south.

MR. MCCANN: Okay.

MR. BARRETT: So, then we can focus on, okay, what's, what's the view from those receptors where there's potentially glare. And then, factoring in both existing and proposed vegetation. So, how, how are we addressing those receptors where the, the modeling suggests that there could be glare based on, you know, flat topography, no vegetation. How do we look at the, the reality of the conditions out there?

MR. MCCANN: All right.

MR. BARRETT: So, you factor in both the existing vegetation and, and proposed vegetation, helps to reduce the at risk of glare.

MR. MCCANN: Okay and I think just one last question on your, before your conclusion on page ten you say, this is the last sentence before the conclusion. The locations of the plantings, this is the proposed plantings, I take it. Will

further mitigate any potential glare on the residential receptors two, three, four, eight, nine and ten. Is, is that not the case for the other members, that is, five, six and thirteen? In other words, will the proposed plantings not provide any further mitigation for potential glare?

MR. BARRETT: Yeah, I mean, I think five should be added to that list after the, the chairman mentioned. But so the other receptors in that area, six, again if the, at receptor six, which is a motor vehicle positioned traveling on Falls Road, if you're driving north in a car from that perspective, you're not going to see glare off of that, what I call the array one of the western panel close or array closest to the road, because the modeling said there would be no glare viewed. The glare would be viewed to, from the eastern array and so it would be off on the periphery. So, there isn't really any need to, to, to buffer that. But anyway, yeah, there, I, I don't think it was appropriate to add six to the list. I don't have seven there because the glare comes primarily from the central part, central to southern part of that array to the eastern array. So, again, I wasn't concluding that, that that landscape buffer that's proposed near array two to the south west corner was really going to provide any benefit to receptor seven, but there is existing vegetation. So I tried to identify the ones in that paragraph that were actually the ones that would receive additional

benefit.

MR. MCCANN: From proposed landscaping?

MR. BARRETT: From proposed landscaping yes.

MR. MCCANN: Okay, all right. Thank you, Mr. Barrett.

MR. BARRETT: Okay, thanks.

MR. SCHMIDT: Mr. Barrett, just very quickly. And I think you distinguished visibility, which you really didn't analyze, from glare.

MR. BARRETT: Right.

MR. SCHMIDT: Which you did analyze, correct?

MR. BARRETT: Yes, that is correct.

MR. SCHMIDT: And so, one might be able to see a panel but not, that doesn't need, mean that there would be glare, which I assume, would be sort of the reflection that one would get in their eyes?

MR. BARRETT: Right. I mean, most simply, project, or receptor sites more to the north and to the south, they may be able to see the project site, but they're definitely not going to see glare based on the sun's path. So, that's like the most obvious. Some of these other locations, again, the existing vegetation and proposed vegetation is certainly going to mitigate the glare. That doesn't mean that they might not see the solar projects, particularly in wintertime, as an example.

MR. SCHMIDT: Right. But your study was to make sure that it wasn't producing what I would call an inappropriate level that would be detrimental to traffic or a nuisance to an adjacent property owner, is that correct?

MR. BARRETT: That's correct, yeah.

MR. SCHMIDT: And you didn't, I mean, based on your study, can you say that there, it's not going to be any glare impact on traffic that's going to, that's going to cause, make this a dangerous road to people travel because of glare?

MR. BARRETT: Right. Yeah, certainly, with motor vehicle traffic and I know that, you know, it's forty miles an hour on that road, but people probably drive faster commuting, they're not even really from a glare perspective, they're not going to be affected again because if there was any even potential observation of glare, it would be out on the periphery when you're passing by the project, not in a driver's central point of view. That's what's most concerning and then for residences, we provided information on what the time period could be, it's very limited, both monthly and, and daily, and then the vegetation both existing and proposed is going to mitigate that.

MR. SCHMIDT: Yeah, very well. Thank you.

CHAIR: Anything further?

MR. MCCANN: No, thank you.

CHAIR: Thank you very much, Mr. Barrett.

MR. BARRETT: Thanks.

CHAIR: The copy of the report you have in your hand, that's not the actual exhibit, is it?

MR. SCHMIDT: No, I don't believe, I believe Ms. Murphy has four, don't you?

MS. MURPHY: I do.

CHAIR: Before he gets on a plane.

MS. MURPHY: Yes, eleven.

CHAIR: Excellent.

MR. MCCANN: Were you able to find the manufacturer, by the way, Mr. Barrett?

MR. BARRETT: I was working (inaudible).

MS. MURPHY: He has to go back up there then.

MR. MCCANN: (inaudible).

CHAIR: All right. Well, we still do have something else for Mr. Barrett.

MR. BARRETT: I'll, I was doing that.

CHAIR: Thank you for reminding us.

MR. BARRETT: I will get it for you.

MS. MURPHY: (inaudible).

CHAIR: Your Exhibit 1.

MR. MCCANN: Yes.

CHAIR: You took it from your copy from three through, 3-A through D, actually C or D. You don't have a C or D.

MR. MCCANN: It was C.

MS. MURPHY: Thank you.

MR. MCCANN: Yes, the larger, the closer up of the proposed conditions.

CHAIR: Yes.

MR. BARRETT: Okay. Should I wait?

CHAIR: Mr. Schmidt, are you ready?

MR. SCHMIDT: Yes, go ahead. I was just trying to find it.

CHAIR: So, the question is, sir, what, what manufacturer, model, whatever product identification you can provide in response to Mr. McCann's questions.

MR. BARRETT: Yeah, I mean, I used information that was included in the ALJ hearing exhibits. The cut sheet, which identifies some of the information on the actual solar module. The manufacturer is called GCL and it lists the GCL M6-72 as the model, it's a three hundred and seventy watt panel.

MR. MCCANN: Great. Thank you, sir, appreciate it.

CHAIR: Thank you.

MR. BARRETT: Sure.

CHAIR: I assume we had no questions?

MR. SCHMIDT: No.

CHAIR: We're good?

MR. MCCANN: We're good, thank you.

CHAIR: Thank you, Mr. Barrett. Now you are excused.

MR. SCHMIDT: Thank you.

CHAIR: All right. Now, I know that we still, the remainder of Mr. Leffner to go. However, Mr. McCann, you also have a witness with problems for Tuesday.

MR. MCCANN: Yeah. (inaudible). He took off work today, he couldn't get off Tuesday.

CHAIR: No, no, I, understood. We're going to jump to your witness now before we get back to Mr. Leffner. And I believe Mr. Schmidt said he was okay with that.

MR. SCHMIDT: I, I have no objection.

MS. DOPKIN: Do you swear and affirm under the penalties of perjury, that the testimony you are about to give is true and correct to the best of your knowledge and belief?

MR. FOWBLE: I do.

MS. DOPKIN: Please state your name, spelling your last, spelling it all, and your address for the record.

MR. FOWBLE: First name is Glen, G-L-E-N, Fowble, F-O-W-B-L-E.

CHAIR: F-O-W-B-L-E.

MR. FOWBLE: Yes.

CHAIR: And what is your address, sir?

MR. FOWBLE: 3306 Baker Schoolhouse Road.

CHAIR: Baker Schoolhouse Road.

MR. FOWBLE: In Freeland, Maryland 21053.

CHAIR: 21053. All right. Mr. McCann? You may have

a seat, sir.

MR. FOWBLE: Thank you.

MR. MCCANN: Okay. I want to, I want --

CHAIR: Is this a fact witness?

MR. MCCANN: It is.

CHAIR: Okay.

MR. MCCANN: Just a neighbor. Sir, can you tell us where the property, the property address that you just identified on Baker Schoolhouse Road, can you tell us where that is in relationship to the subject property?

MR. FOWBLE: That is not related to the subject property there, but I do own a piece of property that is adjacent to this property.

MR. MCCANN: Okay. So, in addition to the Baker Schoolhouse property, where you live, right?

MR. FOWBLE: Correct.

MR. MCCANN: You own another piece of property that's adjacent to the subject property?

MR. FOWBLE: Correct.

MR. MCCANN: And could you maybe --

CHAIR: Well, let's start with this. What's the address of the property that you own that's adjacent?

MR. FOWBLE: It's 178, can I look at my, because I got three properties here.

CHAIR: Sorry?

MR. FOWBLE: It's 18728 Falls Road, Hampstead, Maryland 21074.

CHAIR: 18728 Falls Road, Hampstead, okay.

MR. FOWBLE: Yes.

CHAIR: Now, Mr. McCann is going to ask you, is there some map somewhere or some photos somewhere that you could point to your property to show its position relative to the subject property?

MR. MCCANN: Yeah, first of all, that property that you just identified, how big is that property?

MR. FOWBLE: It's six and a half acres.

MR. MCCANN: Okay and is that improved with a house or you just own it?

MR. FOWBLE: There's no house on that.

MR. MCCANN: What do you do with that property?

MR. FOWBLE: I just maintain that. It was left to me by my grandfather.

MR. MCCANN: Okay. Is it a farm, is it used as a farm?

MR. FOWBLE: It is not a farm.

MR. MCCANN: Okay and I do not believe that property is depicted on this plan, is that correct?

MR. FOWBLE: No, it is not. It is right next door to my mother's property, who is right adjacent to the facility planned.

MR. MCCANN: So, let's iden, let's identify her, your mother's property.

MR. FOWBLE: I'm identifying the ones that you asked about.

CHAIR: No problem.

MR. MCCANN: Yeah, no, I'm taking you the roundabout way. So, Petitioner's Exhibit 3-D, is your mother's property located on this plan?

MR. FOWBLE: Yes, it is. It's right here.

MR. MCCANN: Which is to the north --

CHAIR: Okay. So, is it marked on 3-D? Because I, as you can imagine, I cannot see that from here.

MR. MCCANN: It is.

MR. FOWBLE: It is.

MR. MCCANN: Am I correct it reads lands of Mary R. Fowble?

MR. FOWBLE: Mary R. Fowble.

MR. MCCANN: Fowble, I'm sorry.

MR. FOWBLE: Mary Ruth Fowble.

CHAIR: Mary R., all right, so it says Mary R. Fowble and, Mary R. Fowble and it's at the northern end of the property immediately adjacent to the property?

MR. FOWBLE: Correct.

MR. MCCANN: Correct.

CHAIR: And then your property is next to it on the--

MR. FOWBLE: Right here.

CHAIR: -- away, going away from the subject property?

MR. FOWBLE: Correct.

MR. MCCANN: So, it's on, thank you, Ms. --

MS. DOPKIN: 4-B.

MR. MCCANN: 4-B. So, if you look, take a look at 4-B, that's, that is developer's 4-B, is your property located on there?

MR. FOWBLE: Where's Falls Road at here? Yes, my property is right there.

CHAIR: All right, show Mr. Schmidt.

MR. FOWBLE: This is my mother's property here, this is mine.

CHAIR: Now you have to show the Board.

MR. SCHMIDT: Okay.

MR. FOWBLE: This is my mother's property that we're showing up there on the drawing, this is my property here.

CHAIR: Right, so the skinny, smaller parcel would be your mom's property and the one next to it is yours?

MR. FOWBLE: Correct.

CHAIR: Understood.

MR. MCCANN: And how many acres is that property?

MR. FOWBLE: Her property?

MR. MCCANN: No, the one next to your mom's?

MR. FOWBLE: Oh, six and a half acres.

MR. MCCANN: That, that's the six and half, okay.

MR. FOWBLE: That's six and a half. She owns about 1.1.

MR. MCCANN: Okay.

MS. DOPKIN: Is there a pond on that property?

MR. FOWBLE: There is a pond on my property.

MS. DOPKIN: Okay. Now I see it.

CHAIR: Good eye.

MR. MCCANN: Wow.

MR. FOWBLE: And Falls Road does split part of my property but it's a very slim on the, I guess it would be the west side. I'm getting confused with these drawings going north west or whatever, but if you see that, it's like a little sliver there on the other side of Falls Road.

CHAIR: Looks to be like a triangular type shape.

MR. FOWBLE: Yeah, yeah.

CHAIR: Of sorts. Really (inaudible).

MR. FOWBLE: Correct.

CHAIR: That is also part of your property?

MR. FOWBLE: Yes, sir.

CHAIR: All right.

MR. MCCANN: How long have you owned that property, that is the six acre or so property?

MR. FOWBLE: Just about ten years.

MR. MCCANN: Okay and you acquired that from your?

MR. FOWBLE: Grandfather.

MR. MCCANN: Grandfather. And how long has your mother lived at her property?

MR. FOWBLE: Since about 1970.

MR. MCCANN: And did you ever live on that property?

MR. FOWBLE: Yes, I did, till 1989.

MR. MCCANN: Did you grow up there?

MR. FOWBLE: Yes, I did.

MR. MCCANN: Okay. From what age to what age?

MR. FOWBLE: From about two to about twenty-two.

MR. MCCANN: Okay. So, you were next to this site for twenty plus, twenty years or so?

MR. FOWBLE: That is correct.

MR. MCCANN: Okay. Do you, do you or does your family own any other properties around here, other than ones we've already talked about?

MR. FOWBLE: I own another piece of property off Middletown Road, but not close to this property.

MR. MCCANN: Not near here, okay. And you've, are you familiar with the plan? Have you seen the plan, Mr. Fowble?

MR. FOWBLE: I have just seen the plan, yes.

MR. MCCANN: Okay. You participated in the, the hearing before the Administrative Law Judge?

MR. FOWBLE: Yes, I did.

MR. MCCANN: You attended that hearing?

MR. FOWBLE: Yes, I did.

MR. MCCANN: And are you, you believe you're familiar with what's being proposed in this case?

MR. FOWBLE: I think so.

MR. MCCANN: Okay. Have you attended any other meetings other than that hearing regarding this case?

MR. FOWBLE: Just the community meetings, that's been it.

MR. MCCANN: Okay. Why don't you tell us what, if any, concerns that you have about the project?

MR. FOWBLE: There's a lot of concerns that we have right now as the community is soaking this all in.

CHAIR: If I may?

MR. FOWBLE: Yes.

CHAIR: You said we. Who are you referring to?

MR. FOWBLE: We, I'm referring to, as a community. If you're asking me just personally, and I'll answer that just personally.

MR. MCCANN: Yes.

CHAIR: Well, you're here, you're here, as I understand it, as a witness on behalf of yourself.

MR. FOWBLE: Correct.

CHAIR: And not an organization or anything else.

MR. FOWBLE: And, and my mother, so.

CHAIR: Okay, well, that we'll deal with but I just need to know who you're talking about for we, but it's for him individually and he's reflecting the same concerns from his mother. Mr. Schmidt, I don't know if you --

MR. SCHMIDT: I object, I mean, I'll object, I mean, I mean, he's not an attorney, he's not here in a representative capacity for his mother. I, I don't know whether his mother supports this or doesn't support it. There have been families where people disagree about things. And unless he can comply with the Board's rules in terms of any community organization, I suspect he can testify as an individual and that's what I would agree to.

CHAIR: Well, I, we've already, we've already cleared the fact that he's not here for, as a, on behalf of any organization. I assume his mother, is she here?

MR. MCCANN: She is here, she --

CHAIR: I thought that might be her and I saw her raise her hand. So, did you --

MR. MCCANN: I just, maybe I'll ask him this, --

CHAIR: We'll deal with that separately, but let's just deal with this witness individually.

MR. MCCANN: Why don't we do it like that? Go ahead, just tell us what your concerns are.

MR. FOWBLE: My primarily concern and I have, I do

have a couple, but is, would be like with the property values of this going in and the aftereffects of what this is going to cause. Like I said, from property values to the environmental to just the neighbors in that area. I haven't heard it said here today but (inaudible), or 25 Falls Road, is a rural scenic bypass that was dictated by the State, I believe, with what time and what year I do not recall.

CHAIR: It's a scenic road, sir?

MR. FOWBLE: Yes, it is.

CHAIR: Okay.

MR. FOWBLE: It is very well signs going up that road periodically you can see that. Plus we've all, and I say we, like I (inaudible) there is that my grandfather just gave me this piece of property, that I'm afraid it's going to not be worth the value that it is today. Once this gets, you know, put in, and I don't have nothing to back that up, but I'm going by, you know, people just driving by, you know, and saying hey, what's the zoning signs for, what, what are we putting in? And then when we find out that, hey, when I tell them that this is what's being proposed, it's like that's detrimental to what we, we have up there, you know. My mom has lived on that property for, since 1970 and, you know, it's seventy-five years old, not to, sorry, Mom. But, it's seventy-five years old, you know, and I hear about tree planting and, and six foot high fences but nine foot high solar panels, it's not setting in with me

too well that, you know, if she's got a good twenty years left in her life, which I hope she does, I don't know where these trees are going to be at in twenty years, you know? Are they going to be planted the size of my thumb or are they going to be planted six inches in diameter, two foot in diameter. I do know I did have a discussion with Power Factor, one, of the gentlemen's that was there and, not face to face, but it was over the phone. He did meet with my mother, but those concerns, evidently, never to got, depicted on this, this plan. I did hear representation here today of the other two on the south side, I guess, we talk about, the, the road going, put in. But as far as my mother's property, it's open and that is a problem. There's no, there's no, there's no --

MR. MCCANN: What do you mean by that?

MR. FOWBLE: -- vegetation between her property line and where this is being put. None at all.

CHAIR: Well, I will just, if I can, jump in real quick, sir. We haven't heard the entirety of Mr. Leffner's testimony as of yet.

MR. FOWBLE: Correct.

CHAIR: There's still more to come and that may still be part of the, made part of the record.

MR. FOWBLE: Right.

CHAIR: As to what's going to happen on, on the border, on the north end of the subject property so, therefore,

the one between --

MR. FOWBLE: Right.

CHAIR: -- your mother's property and the subject property.

MR. FOWBLE: Yeah. I, I do believe that my mother's property is probably the closest adjacent property owner, because it butts right up to it. It is less than twenty feet from the side of her house to the property line.

MR. MCCANN: Well, I have some photographs depicting that.

MR. FOWBLE: Sure.

MR. MCCANN: Let me, let's do the photographs first, then I'll ask you some follow-up.

CHAIR: All right. We have one, two, three, four photos, that's Protestant's Exhibit 4, at least that's what I have.

MR. MCCANN: I'm going to, Ms. Murphy is going to give you a copy of the exhibit itself. Go ahead. I mean, I can, I can show him mine. I'll show him mine. Why don't we, go ahead, you have a copy of 4-A through D, there, is that right, Ms. Murphy?

MS. MURPHY: 4-A through D, right.

MR. MCCANN: 4-A through D so, number one, did you take these photographs?

MR. FOWBLE: Yes, I did.

MR. MCCANN: And when did you take them?

MR. FOWBLE: Just last week.

MR. MCCANN: Okay. So, let's start, thank you. Let's start with 4-A and tell us what this depicts, what, what view are we --

MR. FOWBLE: This view here is the south side of her house at her bedroom window, taken not out of the window but from the ground facing like towards the back of the property. The high grass that you see is mowed and then it's high grass right there, that is the property line. And if you look real careful, you'll look down in there, you'll see a stake, a metal stake, it's blue.

MR. MCCANN: Um hm.

CHAIR: It's about center way of the property, or center way of the photo.

MR. FOWBLE: There's, there's one there and there's also one down here. So, that is depicting of the property line.

CHAIR: Okay.

MR. FOWBLE: And in fact, you want me to show what that's in reference to on the (inaudible)?

MR. MCCANN: Yeah, why don't you do that? Why don't you show us roughly where that blue stake might be on the, on the plan. It's going to be hard to show but.

MR. FOWBLE: Okay. So, it's roughly, the one at the

back, right here at the bottom corner, is roughly around in here.

MR. MCCANN: Okay and I'll describe that for the record, if I could?

CHAIR: Well, I think that's a good idea.

MR. MCCANN: Yeah.

CHAIR: Or at least mark it, one of the two.

MR. MCCANN: Why don't we mark it on my, on our exhibit, let's do this.

CHAIR: I would use a color other than black ink.

MR. MCCANN: Yes.

CHAIR: Do you need a blue pen or a red pen?

MR. MCCANN: How about a pink one?

MS. DOPKIN: For you.

CHAIR: Have you used pink on there yet?

MR. MCCANN: We have not.

MS. DOPKIN: No, he hasn't.

MR. SCHMIDT: Yes, you have.

MR. MCCANN: We used the orange.

MR. SCHMIDT: Oh, you used orange.

MR. MCCANN: No pink yet. I'm going to have him put an x, approximate location --

CHAIR: Well, I was going to say, why don't you use the red pen for that?

MR. MCCANN: Okay.

CHAIR: Because it's only going to be a small stake rather than something gigantic.

MR. MCCANN: Right, thank you. Okay. So, with the red pen --

CHAIR: Recognizing it's an, an estimate as to the location of the stake that's depicted in 4-A.

MR. MCCANN: Right. Draw on this one right here.

MR. FOWBLE: Oh.

MR. MCCANN: This would be Petitioner's exhibit --

CHAIR: One.

MR. MCCANN: Protestant's Exhibit 1.

CHAIR: You can go, sir.

MR. MCCANN: Go ahead.

MR. FOWBLE: So, it would be in this general area, right here. So, that (inaudible).

MR. MCCANN: Okay. Great. All right, thank you.

CHAIR: So, the x will denote where the stake is that's depicted in the center of the photo, at the grass line on 4-A.

MR. FOWBLE: Yeah.

MR. MCCANN: Great, okay. And then tell us about photograph 4-B.

MR. FOWBLE: Okay. 4-B was looking out of a back window at her house.

CHAIR: If I can, do we need to keep standing here,

if we could all still --

MR. MCCANN: Probably here, no, we don't need to.

CHAIR: All right. Let's have, the witness have a seat.

MR. FOWBLE: Yes, the picture on 4-B is coming off the back window, or it's actually three or four windows up there. I took that from the most northernest window coming off the back of her house. Which would be looking south east over top of where this proposed, I guess, solar field number one would be.

MR. MCCANN: Okay. What about the next picture? That looks like sort of the same view only closer, right?

MR. FOWBLE: Correct.

MR. MCCANN: And then the last photograph, what is that? That is 4-D.

MR. FOWBLE: That is coming right off the side of her house, because it was getting a little late that evening. It would be coming off the same side as 4-A.

MR. MCCANN: Facing due south?

MR. FOWBLE: Due south.

MR. MCCANN: Due south.

MR. FOWBLE: Right.

MR. MCCANN: Okay and describe the topography of your mom's property in relationship to the subject property.

MR. FOWBLE: There's a little bit of a hill between

her house and the property line there. It's very, if you look at 4-A, it's very slight. It might be about a three to four foot fall. Actually it's a rise that goes up and then it, we're into the field. So, if you look at that 4-A to the right, you'll see it kind of goes up.

MR. MCCANN: Before you get to the property line?

MR. FOWBLE: Right before you get to the property line.

MR. MCCANN: But the property, the subject property, where the proposed arrays would be, where is that in relationship to your mom's property, is it below or above it?

MR. FOWBLE: It's just slight, the, the front half towards Falls Road would be just slightly above and as it drops off towards the back, it is actually lower.

MR. MCCANN: Okay and I think you've seen this before, but I want to direct your attention to, as Mr. Leffner hasn't gotten to it yet, there are plantings proposed along the northern border of the subject property and where your mom's house is. Do you see those plantings there?

MR. FOWBLE: I do.

MR. MCCANN: Have you seen those before?

MR. FOWBLE: I have only seen --

MR. MCCANN: (inaudible) plants?

MR. FOWBLE: Yes, I have.

MR. MCCANN: And what, what's your feeling about

those? Why, why won't those --

MR. FOWBLE: I'm concerned that those plantings are not going to be sufficient enough to, to block the view at all.

MR. MCCANN: In terms of their size?

MR. FOWBLE: In terms of their size. We have, we don't know what's been proposed, we're just hearing there's, there's plantings. We don't know if they're three foot or if they're ten foot, twenty foot, we don't have the faintest idea. And I'm using the word we, it's my mother and I, again.

MR. MCCANN: Well, you can, we can look at that plan and see how many there are there. What, what size would they need to be for you to see, see no part of the solar array?

MR. FOWBLE: The bigger, the better.

MR. MCCANN: But how big?

MR. FOWBLE: Twenty feet, twenty feet.

MR. MCCANN: And dense?

MR. FOWBLE: And dense.

MR. MCCANN: And why do you say twenty feet, just --

MR. FOWBLE: Well, now that I'm hearing that the, the solar panel erection is already going to be at nine, I mean, in the wintertime, we're going to see it no matter what, you know, if we're putting in hardwoods or whatever they're going to install. You're going to still see, the same as the people, the residents across the street of Falls Road is going to be able to look straight over and they sit higher.

MR. MCCANN: Right.

MR. FOWBLE: On the other side. My other concern is too, that the State does come up through there and they maintain that road and we only own, the State owns, I think it's a fifty foot right of way up through there from the center road, twenty-five each way. So, there's times they come up through along Falls Road and they'll take and they'll cut those trees back, okay? And there's also, there's power lines going up Falls Road on that side. The tree companies will come in and they top those trees. Sometimes they kill those trees. So, that's another concern that I have, you know. Once this is already said and done, nobody cares about what's already taken place. But it has to be maintained and the State automatically does that. Where it's thick, they keep it, the, the brush and stuff, because it is on a hill, it's in a bad spot, for the traffic, it's in a bad spot. Over the years, there's been multiple accidents right there at her driveway because of the blind spot in that road.

MR. MCCANN: Okay. The plantings in the right of way that you're talking about, that the State cuts, those are along Falls Road, correct?

MR. FOWBLE: They are.

MR. MCCANN: And how, how much of an area have you seen them maintain?

MR. FOWBLE: I've seen them cut it back two, three

foot, back on the hill.

MR. MCCANN: Yeah.

MR. FOWBLE: To maintain that because they don't want the, the shrubbery or the, the undergrowth to start growing out towards Falls Road. I've watched them come in on that power line specifically on that one, and watch them cut the tree line straight in half. Just take it down through and just cut it straight in half. BG&E has got to there, whatever has to be done, and they just wipe it out.

MR. MCCANN: In terms of the height?

MR. FOWBLE: Yes.

MR. MCCANN: Could you explain maybe a little better why you think the property values will go down? Why is that? Why do you think that?

MR. FOWBLE: In conversation with some people that lives in the area and, and that's tried to, you know, or moved up there, they've moved up there for the reasons that --

MR. SCHMIDT: Objection.

MR. MCCANN: Tell us about your --

MR. FOWBLE: About my --

MR. MCCANN: Your opinion.

MR. FOWBLE: Okay. My opinion is, is that it's going to be hard for me to sell, you know, my six and a half acres or my mother's property, you know, when this thing gets done. I, I just think it puts a real detrimental on the area. Nobody,

we're, I, I took over my grandfather's property because I wanted to, to preserve it and say hey, this is what it's all going to be and I thought that's what we would do with my, my brother and I would do with my mother's. But I think I'm going to have a hard time selling her property off, you know, in due time just because this thing is erected right alongside of her. You know, I, that's why I'm saying nobody has told me what the property value is going to do, I just got this feeling that it's going to be detrimental to, to the neighborhood.

MR. MCCANN: Would you want to live next to --

MR. FOWBLE: No, I would not.

MR. MCCANN: You, you know what I was asking, I take it? You wouldn't want to live next to this solar array?

MR. FOWBLE: That is correct, I would not.

MR. MCCANN: Or within the distance where your mom's house is to it?

MR. FOWBLE: That is correct.

MR. MCCANN: Okay. What do you know about the prior use of the subject property? I, it's been testified today that it's presently not used for farming. What about prior to the current owner?

MR. FOWBLE: From the time that I grew up there, till I moved out in '89 and until just around '15 or so, the property was being farmed.

CHAIR: I'm sorry, the property was farmed until

2015?

MR. FOWBLE: Two thousand fifteen. It was still being farmed.

MR. MCCANN: Is that when it was sold to the current owner?

MR. FOWBLE: I do believe so.

MR. MCCANN: Okay and when you say farmed, what do you mean by that?

MR. FOWBLE: It, they planted soybeans and corn, because I did know the farmer and also knew the landowner prior.

MR. MCCANN: And that was for many, many years you knew him?

MR. FOWBLE: Many years. Over, over forty years, yeah.

CHAIR: You also indicated before you had environmental concerns? Have you testified to what those concerns are yet?

MR. FOWBLE: No, I have not.

CHAIR: Okay.

MR. MCCANN: Why don't you go ahead and talk about that?

MR. FOWBLE: Environmentally is, I do know that that stream, Compass Run, comes through my property up on the other side of Falls Road and down and runs through my mother's

property and then down through this proposed area here.

CHAIR: So, if I could back you up there.

MR. FOWBLE: Um hm.

CHAIR: The stream at Compass Run, that goes, flows, it flows from your property, down through your mother's property down into the subject property?

MR. FOWBLE: That is correct.

CHAIR: Okay. That was, that was just clarifying that. Sorry, Mr. McCann.

MR. MCCANN: Thank you.

CHAIR: Go ahead.

MR. MCCANN: Thank you. So, go ahead, what's your concerns?

MR. FOWBLE: Yeah, that it, my concern about that is, that is a tributary right into the northern part of George's Run, of Pretty Boy Reservoir.

CHAIR: Okay. Feeds into Pretty Boy Reservoir?

MR. FOWBLE: That is correct.

MR. MCCANN: To the south?

MR. FOWBLE: Yes.

MR. MCCANN: To the south east?

MR. FOWBLE: Yes.

MR. MCCANN: How, how, how far do you think the subject property is from Pretty Boy?

MR. FOWBLE: It's less, as, as there, about three-

quarters of a mile.

MR. MCCANN: Okay and what was the name of the, the stream that you mentioned?

MR. FOWBLE: Compass Run.

MR. MCCANN: No, the, what's the largest tributary that you mentioned, you said George's or something?

MR. FOWBLE: It's called George's Run, which is a main tributary, it crosses Falls Road, just down south, but it's all that area comes in, it flows right into the head water of George's Run and Pretty Boy Reservoir.

MR. MCCANN: So, what's your concern about that? Why do you think --

MR. FOWBLE: Primarily because it is a flood plain and I don't know what these solar panel fields or whatever it's going to do, how they produce, how much runoff we get, you know, where, where does it all go. I do know that the topography of that ground does flow directly in from both hillsides through Compass Run and through the smaller tributary that's coming down through, off of Falls Road. It is all spring fed off of there from the adjacent hillsides.

MR. MCCANN: So, you heard the description by Mr. Leffner this morning of how the water will run down towards the stream (inaudible) area of the two arrays, --

MR. FOWBLE: That is correct.

MR. MCCANN: That's consistent, that is consistent

with your observation?

MR. FOWBLE: I would agree with that.

MR. MCCANN: Okay. Any other concerns, environmental or, or otherwise, that you haven't already talked to us about?

MR. FOWBLE: Not that I'm aware of. It's primarily the, the, the trees and stuff that's already there. I am concerned what the impact would be, I guess, to the wildlife that's there. But we now are understanding, we again, I am understanding that they're going to erect a fence around both solar fields. You know, I am a hunter, I am a, a natural guy up there that likes to see the, the woods and streams and everything else, but when you start putting nine and a half acres under a fence, or a fence around it, these animals got to go somewhere. They're either going to go more out on Falls Road, these people move up there for that reason. You know, and, and I like to see the animals on all the properties. You know, even though I am a hunter, I just think it's being detrimental to the area.

MR. MCCANN: Okay. Thank you. I have no other questions.

MR. SCHMIDT: So, Mr. Fowble, you'd like to shoot and kill the animals --

CHAIR: Hold on, hold on, hold on, hold on, hold on. Mr. McCann?

MR. MCCANN: I just want to move the photographs into

evidence.

CHAIR: Any objection to 4-A through 4-D?

MR. SCHMIDT: No objection.

CHAIR: Okay, so admitted. Next, Mr. Schmidt, cross examination?

MR. SCHMIDT: So, Mr. Fowble, you want to hunt the animals but you want to protect them as well?

MR. FOWBLE: Conservationist does both, sir. We, we, we control both the population and we do both things. That's because, as you well know, insurance companies, they, they go after these things and I'm just using the --

MR. SCHMIDT: Go after what things, the animals?

MR. FOWBLE: No, they go after them, they try to keep the populations under control. They talk to the States, they talk to the Counties, or whatever it has to be about regulating hunting seasons or whatever. But as of conservationists as far as preserving the right to hunt in this State, I don't want to see things getting impacted and it becomes with large buildings, you know, we're living in a rural area up there. You know, and that impact of, all of a sudden we got this solar industrial farm, just going to move in, I'm concerned about what do we do, you know? Do we, does the population start to expand up there of these animals, the deer or whatever, you know, we can't hunt the property, evidently.

MR. SCHMIDT: Well, do you hunt the property now?

MR. FOWBLE: For forty years I hunted that property.

MR. SCHMIDT: Do you have the owner's permission to hunt that property?

MR. FOWBLE: Not now, we do not.

MR. SCHMIDT: Have you hunted in the --

MR. FOWBLE: We hunted with the prior use of the other landowners, yes, we did.

MR. SCHMIDT: Okay. But you haven't hunted it since it's been owned by the present owner?

MR. FOWBLE: No, that's trespassing, we can't do that, sir.

MR. SCHMIDT: Okay. Okay. I think you said, I don't have nothing to back that up, that's a quote, and that's about the property value. So, this is just your opinion, you don't have any analysis that you've done or real estate, you're not a real estate agent?

MR. FOWBLE: That is correct, I am not.

MR. SCHMIDT: You're not an appraiser?

MR. FOWBLE: No, I am not.

MR. SCHMIDT: If they turned it into a pig farm, that might have more of a detrimental impact than if it was a solar facility, might it?

MR. FOWBLE: From up there, I'm just saying that right now, I'm totally against the solar facility.

MR. SCHMIDT: Facility, I got that. That much I got,

okay. On Protestant's, on the photographs that you submitted, you have those in front of you?

MR. FOWBLE: No, I do not.

MR. SCHMIDT: Maybe Ms. Murphy can give you those. If she's got, if she's gone one. Just so I'm oriented, 4-A, the one on top, there's some clothes lines, that's on your mother's, it looks like clothes lines, --

MR. FOWBLE: That is correct.

MR. SCHMIDT: -- in your mother's backyard?

MR. FOWBLE: Yes.

MR. SCHMIDT: The trees that are, the fairly tall trees look like they're as tall as the house back there?

MR. FOWBLE: That is correct.

MR. SCHMIDT: What, whose property are those on?

MR. FOWBLE: That property line runs straight down through and across the Compass Run. If you look on that plot plan there or proposed plan, you can see her property runs across Compass Run down there.

MR. SCHMIDT: I understand. But are those trees that we're looking at in 4-A on your mom's property or the subject property?

MR. FOWBLE: Right where the blue stake is to the left of that would be my mother's property, to the right would be on the facility property.

MR. SCHMIDT: Okay, subject property?

MR. FOWBLE: Right.

MR. SCHMIDT: And you understand that, that there's going to be additional landscaping along the property line?

MR. FOWBLE: That is what I'm hearing is being proposed.

MR. SCHMIDT: Okay. Are you familiar with the County's landscape manual?

MR. FOWBLE: No, I am not.

MR. SCHMIDT: Do you know if that manual requires that trees be of a certain height, caliber and density in terms of landscaping --

MR. FOWBLE: No, I do not.

MR. SCHMIDT: -- you're not familiar with that? Okay. Did you have any conversations with anybody from Power Factor about this prop, about your concerns?

MR. FOWBLE: Yes, I did.

MR. SCHMIDT: Did they offer to put a privacy fence along a common boundary?

MR. FOWBLE: They offered some suggestions and I, they asked me for my suggestions and I, that's where we left it.

MR. SCHMIDT: Okay. If there was a privacy fence that was constructed along your mother's property line, along, sort of along her backyard, would that be a good thing or a bad thing?

MR. FOWBLE: It would be a bad thing.

MR. SCHMIDT: Okay. So, you don't want a privacy fence?

MR. FOWBLE: I don't want anything there.

MR. SCHMIDT: Okay.

CHAIR: Well, not suggesting that it's going to happen or whatever, his question is, if there's approval and it can move forward, would you like to see a privacy fence is, is really the purpose of his question.

MR. FOWBLE: I would rather not see the privacy fence. I'd rather see the trees and stuff put up, but it's my understanding that there's going to be a, I guess, security fence still around the whole facility, or around each facility. Which that would still be noticeable from my mother's property.

CHAIR: And that's, so, if I can backup. What Mr. Schmidt is asking you is, should the project move forward so that you don't see the fence, so that you don't see some of the things on the subject property site, would you, would you, on behalf of your mother, prefer to see a privacy fence or just the open land as it, whatever happens with the plantings, whatever fence --

MR. FOWBLE: I would rather not see a fence, I'd rather see the, the plantings or that be the case.

MR. SCHMIDT: Okay. So, you don't want to, you, you or your mom don't want a fence along her side property line no

matter what, as I understand it?

MR. FOWBLE: That is correct.

MR. SCHMIDT: Okay, okay. Okay. But you don't objection, you don't object to the landscaping that's being proposed along the property line?

MR. FOWBLE: I do not object to that because that's the only alternative that we have. What else could be put there to, to blind it, that would be nothing but to plant some kind of trees. I don't know of anything else that would, that would suit.

MR. SCHMIDT: Okay. Okay. You don't live on your property?

MR. FOWBLE: No, I do not.

MR. SCHMIDT: Is there any type of dwelling on that property that you rent or lease?

MR. FOWBLE: No, there is not.

MR. SCHMIDT: And how long have you owned the property?

MR. FOWBLE: Ten years.

MR. SCHMIDT: Okay.

MR. FOWBLE: My grandfather owned it for about seventy some prior to that.

MR. SCHMIDT: Okay. Do you have any plans to build a house there and to move there?

MR. FOWBLE: Not at this present time, no.

MR. SCHMIDT: Okay. You indicated before that you wanted to preserve your property, I think, is that correct?

MR. FOWBLE: Well, yes, right now, I'd like to keep it the way it is.

MR. SCHMIDT: Okay. Is your property, have you committed to put it in any type of agricultural preservation program or rural legacy program?

MR. FOWBLE: No, I have not.

MR. SCHMIDT: So, there's no restrictions on how you could use your property?

MR. FOWBLE: Not at this time, no. Not that I'm aware of.

MR. SCHMIDT: Okay. Why haven't you done that if you're interested in preservation?

MR. FOWBLE: Because when you do preservation, usually there's a certain amount of acreage that you got to have in order for that to become effective in Baltimore County or you have to be next door or adjacent to somebody that has to have it already in preservation. I am not in either one of those cases. So, that's kind of why I've been holding off to see, I do have other people that's interested, other neighbors and stuff, but I don't know where that's impacted that now because of this solar facility.

MR. SCHMIDT: Okay. But you haven't explored that option about putting it in preservation?

MR. FOWBLE: I, I do know that I'm not qualified to put it in preservation through Baltimore County.

MR. SCHMIDT: Okay. How about a State program?

MR. FOWBLE: That I don't, I'm not aware of.

MR. SCHMIDT: In terms of the environmental impacts, sir, I know you're, you're con, you said you were concerned about the stream, the tributary and Compass Run. Do you know if these panels cause any environmental impact in terms of do they give off any kind of chemical, do they leach into the ground water, do they do anything that would cause any contamination? Do you have any idea?

MR. FOWBLE: No, I do not. I'm not a subject expert in the panels.

MR. SCHMIDT: Okay. So, you don't know what, if anything, they might do in terms of cause, causing environmental degradation?

MR. FOWBLE: No, I do not.

MR. SCHMIDT: Okay. I don't have any other questions, thank you.

CHAIR: Mr. McCann?

MR. MCCANN: No other questions, thank you.

CHAIR: Thank you very much, sir.

MR. FOWBLE: Thank you.

CHAIR: All right. So, we still have Mr. Leffner's testimony that remains open. I understood from what you said

previously, that you have about maybe twenty, thirty minutes to go?

MR. SCHMIDT: I think it's Mr. McCann.

CHAIR: Or sorry, other way around. Twenty, thirty minutes to go?

MR. MCCANN: That's --

CHAIR: Or was I wrong about that?

MR. MCCANN: No, that's probably about right.

CHAIR: Okay. Would you have re-direct?

MR. SCHMIDT: Depending on what he asks. Not, not, I don't know, not, not much but, I mean, I haven't heard all the cross.

CHAIR: Well, it's ten after five now. I'm assuming that, you know, Ms. Dopkin and, and Ms. Murphy have other things to do.

MR. SCHMIDT: Sure.

CHAIR: Besides sit here. But if it was something that could have been done briefly, obviously, we'd prefer to get a witness done. Ms. Murphy, do you have any input? Ms. Dopkin, do you have any input as to what you would prefer? All right. So, I'll leave it to the parties. What do you prefer?

MR. MCCANN: I'll, I'll do whatever the Board wants. I know I'm passing the buck, but I'll, I'll, I'll keep going if you want. I know it's late, later than we usually go, but I'm fine with it.

MR. SCHMIDT: I'm fine with continuing and finishing him up. That's, that's okay with me, but I'll leave it up to the Board.

CHAIR: Would you prefer to recess or would you prefer to (inaudible).

MS. MURPHY: (inaudible).

CHAIR: Okay. We'll take a break for five minutes and then we'll be back and we'll finish up with Mr. Leffner then.

MR. SCHMIDT: Okay. Very good, thank you.

(RECORDING PAUSED - 05:07:49 PM)

(ON RECORD - 05:14:48 PM)

CHAIR: All right, Mr. Leffner. You're back on the stand now that we've gone through those other two witnesses and Mr. McCann, you were still on cross.

MR. MCCANN: Great, thank you. Mr. Leffner, during your involvement with this project, do you recall either you or anyone else at your firm working on any alternatives, other than the two we sort of talked about today, that is, the original plan that had both panel arrays on Lot 14, Parcel 144 and then, of course, the current iteration? Do you recall working on any other alternative plans other than those two during your time on the project? By that --

MR. LEFFNER: No, I think the only discussion was retention of the on-site vegetation that isn't necessarily

required by Code, but was a preference of the landowner. So, there were conversations about whether they wanted to do some limited clearing on their site and their answer was, you know, no, they wanted to stay true to keeping vegetation.

MR. MCCANN: Okay. Maybe more specifically, dealing with this underground utility line itself, did you ever consider an alternative where you did not have two array panels and you did not have them connected by a, an underground line? Any other, any alternatives like that that you looked at?

MR. LEFFNER: Not necessarily. They were connected under an underground line, I think there's a note on the plan that's reflecting again of ongoing approval processes that will be required of the project, part of that is BGE inter connection. So, where, where is the energy going back into the grid. There's an overhead pole, you know, generally where the location is going to be. We've reflected it on the plan. If they were to come back and say we want two, which generally isn't the case, maybe. But typically, there's just one location that would be allowed and that's reflected on the plan.

MR. MCCANN: And the reason we're, you're doing two is because of the stream?

MR. LEFFNER: Correct.

CHAIR: Hold on. Reason you're doing two is?

MR. LEFFNER: Two arrays is --

MR. MCCANN: Two arrays.

CHAIR: Right.

MR. LEFFNER: -- that we're connecting together because they'll be required, based on our, you know, typical BGE process is a single connection point back into there, so the two of them would need to be connected to one another.

MR. MCCANN: Right. But the reason you're doing two arrays is because there's a stream?

MR. LEFFNER: Correct.

MR. MCCANN: Okay. You could do one array, couldn't you? It's possible, right? Possible?

MR. LEFFNER: Not in the intent with the project. Similar to earlier, regarding the two acre parcel --

MR. MCCANN: Right, (inaudible) --

MR. LEFFNER: I don't believe that the project would happen with its current intent if it was only one of these.

MR. MCCANN: Its current intent being having two arrays with the stream crossing it, right?

MR. LEFFNER: There's a lot more than just two arrays.

MR. MCCANN: Okay. Well, I'll move on, I'll move on.

MR. LEFFNER: Yeah.

MR. MCCANN: Next exhibit, this will be five, right? (inaudible).

CHAIR: Thank you. This is --

MR. SCHMIDT: Just before we get too far, I'm going, I'm going to object because this is, as to the first project that it, we are not moving forward on.

CHAIR: I don't know why we are having this exhibit, but I'm sure Mr. McCann will, will identify why in short time and at which time your objection may be reissued but, for the moment, it's premature. So, you may proceed with your question but I think you already have a sneak preview as what's to come.

MR. MCCANN: Yes, I'll --

CHAIR: Go ahead.

MR. MCCANN: -- proceed cautiously. Mr. Leffner, take a look at that exhibit, a copy rather, of what is Protestant's Exhibit 5 and tell me if you recognize that document?

MR. LEFFNER: It does not --

MR. MCCANN: I'm sorry?

MR. LEFFNER: I don't believe I've seen this before.

MR. MCCANN: You haven't seen this one either?

MR. LEFFNER: Hm hm. No, I think throughout the whole process, we had a difficult time getting any correspondence back from ZAC, including all the comment letters. So, we only, we never received a complete (inaudible). There's portions of it, though they were requested numerous times.

MR. MCCANN: What was requested numerous times?

CHAIR: I, I couldn't hear the question.

MS. DOPKIN: I can't --

MR. MCCANN: What was requested numerous times?

MR. LEFFNER: The entire ZAC, the entire ZAC package, comment letters.

MR. MCCANN: How do you go about requesting that, by the way? What do you, what do you mean, you requested it?

MS. DOPKIN: Speak up, please. If I can't hear you, it can't hear you.

MR. MCCANN: Okay. What do you mean by that when you said you requested the entire ZAC file, what do you mean by that?

MR. LEFFNER: Calling the County's planning office to obtain all the feedback and comments, back regarding the ZAC case so, Environmental Protection, Sustainability we didn't receive, I think we received multiple letters from Planning and Zoning, had meetings with them, we had feedback with the planning reviewer, Environmental Protection and Sustainability, I don't think I ever received a copy of this letter.

MR. MCCANN: Okay. Don't you think that's important receiving a copy of the ZAC comments from DEPS? You never got, you never, you never got a copy of the ZAC comments from DEPS?

MR. LEFFNER: I, I, yes, yes, it's important. We received a package, we were told it was the entire package and I do not believe this was part of that package.

MR. MCCANN: Okay.

CHAIR: Can I, just, I mean, maybe I misunderstood something. I understood there was a prior iteration of this plan and that plan had changed in light of the environmental constraints presented. The environmental constraints, presumably, would have been identified, to some degree, by DEPS, so am I wrong to conclude that there had to be some communication between DEPS and Petitioner along the way that prompted the change from first plan to the plan in front of us? I see Mr. Schmidt standing. Are you aware of that one way or the other?

MR. LEFFNER: Yes, there was feedback from the County, which resulted in a change of the plan.

CHAIR: Was that from DEPS?

MR. LEFFNER: It was not because of this letter from DEPS.

MR. SCHMIDT: But it was from DEPS.

MR. LEFFNER: There was a separate letter that I, this DEPS letter I don't think I've ever received.

CHAIR: Okay. Well, then there's --

MR. LEFFNER: There's a DEPS letter from DPR that talked about an access crossing. We're not reviewing the old letters but we removed the access crossing, had done the environmental delineation so the project could (inaudible), not specifically in response to this letter.

CHAIR: Okay, okay. I just wanted to make --

MR. LEFFNER: Does that explain it?

CHAIR: -- sure I was understanding where, where the environmental feedback come from if not from DEPS.

MR. SCHMIDT: And, and I think the witness said before that they had meetings with DEPS as well, but I think what he's saying is --

CHAIR: No, I get it now.

MR. SCHMIDT: -- this particular letter --

CHAIR: This particular, yes.

MR. SCHMIDT: -- is not what he got.

CHAIR: Understood, yeah.

MR. SCHMIDT: He's just trying to be very precise.

CHAIR: No, no, that's fine.

MR. SCHMIDT: But it's not because of this letter.

CHAIR: I understand that now, okay.

MR. LEFFNER: Correct.

MR. SCHMIDT: But they had feedback at meetings, they talked to people from DEPS.

MR. LEFFNER: Yeah, yeah, I remember going to, I don't remember the exact date --

MS. DOPKIN: Were you at the hearing before --

MR. LEFFNER: Yeah.

MS. DOPKIN: -- the Administrative Law Judge?

MR. LEFFNER: Yes.

MR. SCHMIDT: But that was on the, that was on the current proposal.

MR. LEFFNER: Correct.

CHAIR: One second, Mr. Schmidt. Ms. Dopkin is asking the question to the witness.

MR. SCHMIDT: I'm sorry. I'm just trying to make sure --

MS. DOPKIN: And were these not considered by the Administrative Law Judge?

MR. SCHMIDT: When you say these, this comment? No, it was not because --

MR. MCCANN: Well, hold on. How can you say that?

CHAIR: Mr. McCann, Mr. McCann, --

MS. DOPKIN: Wait a minute.

CHAIR: -- the question is being posed by Ms. Dopkin.

MS. DOPKIN: It is attached to his decision.

MR. SCHMIDT: This, this particular one?

MS. DOPKIN: That's my understanding.

MR. SCHMIDT: I'm going to have to take a look and see his decision. So, I'm trying to figure out, it is attached to the copy of the decision the Board provided to me. And it is referenced as a condition in his decision, so there's a little bit of a disconnect on this information and that's what I'm trying to understand.

CHAIR: Mr. Schmidt, the copy that's within the

Board's file does reflect that the opinion and order below has attached to it this exact --

MR. SCHMIDT: Yes, I'm sorry --

CHAIR: -- comments on Protestant's Exhibit 5. In addition to other comments that are not presently at issue yet. But there were others that were attached.

MR. SCHMIDT: Yes.

MS. DOPKIN: And it's an express condition, so. That's why I ask.

MR. SCHMIDT: I stand corrected. It, it was.

MS. DOPKIN: Okay.

CHAIR: So, with that in mind, let's start with this. Is it, are we now, when it comes to the objection to Protestant's Exhibit 5, have we resolved that objection?

MR. SCHMIDT: No.

CHAIR: Okay. When it comes to the question posed then to this witness, have you ever seen this document before, Mr. Leffner, have you ever seen the document, Protestant's Exhibit 5, before?

MR. LEFFNER: I don't recall seeing it.

CHAIR: Okay. So, we're back to where we were. Mr. McCann, it's now up to you, your question.

MR. MCCANN: I really don't have any other questions maybe other than this. Is it your testimony, Mr. Leffner, that in the meetings that you apparently had with DEPS, all the in

person meetings, all the communications by phone, no one at DEPS ever told you that you needed an alternatives analysis for this underground utility line?

MR. LEFFNER: No.

MR. MCCANN: Is it, that's your testimony that no one ever --

MR. LEFFNER: Yeah, we asked and each time we asked, the letter was being worked on, so we were never given any direction (inaudible) --

CHAIR: Have you ever been asked, or ever been informed that you need to do an alternative analysis by anyone at DEPS?

MR. LEFFNER: Not for this project.

MR. MCCANN: Did you ask if we needed an alternative --

MR. LEFFNER: No, we asked for the status of (inaudible).

MR. MCCANN: Okay. Okay. I would move the, the exhibit into evidence and then I'll move on.

CHAIR: Mr. Schmidt, you had an objection previously.

MR. SCHMIDT: I think you, I think you've ruled on it, Mr., Mr. Garber.

CHAIR: No, I have, I have not ruled on it yet because you, this, I asked if the objection was resolved, you said it was not.

MR. SCHMIDT: Yes, that, that's correct, it's not resolved.

CHAIR: What is your objection?

MR. SCHMIDT: All, all that I can, can tell you in an effort to be as transparent with the Board as possible, is that on February the 22nd of 2019, I received, I, Lawrence Schmidt, received certain Zoning Advisory Committee comments from various reviewing agencies of Baltimore County. Those included a comment from the Bureau of Development Plans Review dated January the 17th of 2019, a comment from the Department of Planning, dated January the 10th of 2019 and a comment from the Maryland Department of Transportation dated December the 20th of 2018. Those were the three comments that Baltimore County sent to me as the comments that were being submitted in this case. Baltimore County, the Zoning Advisory Committee, did not send to me, and apparently did not send to Mr. Leffner, the comment from the Department of Environment, Environmental Protection and Sustainability. But those comments are all dated Jan, again, January 17th, January the 10th and December the 20th of 2018. As I've indicated before and as I think Mr. Leffner has testified, it was after those comments that were issued that the applicant revised its plan and, and filed with Baltimore County a revised plan and an Amended Petition for Zoning Variance, which to me, make those comments that I just referenced, that I received in February of 2019, moot, because

they deal with a plan that has, that was at that time withdrawn and replaced with another plan. I subsequently received from Baltimore County additional comments, written comments, which I viewed as being replacing the ZAC comments that I received.

CHAIR: But let me just cut to the chase on this.

MR. SCHMIDT: So, I will cut to the chase.

CHAIR: No, no, --

MR. SCHMIDT: So, what I'm saying is --

CHAIR: -- Protestant's Exhibit 5, what is the basis for the objection?

MR. SCHMIDT: The basis for the objection is that that comment was about a prior plan that is not being considered by you. It was --

CHAIR: Well, except for one thing. It was attached to the opinion and order by the ALJ.

MR. SCHMIDT: Okay, then, well, if that, even if that's the case, Mr. Garber, this is a de novo hearing. So, what relevance does it have in terms of what Mr. Beverungen did? You're not affirming Mr. Beverungen's decision, you're hearing this case anew. If he incorrectly attached a Zoning Advisory Committee comment related to a prior plan, I don't know whether that was an error by him, by his staff when he said attach ZAC comments to my Order or whatever it is. But it's meaningless in terms of this hearing today because --

CHAIR: So, your objection is relevance?

MR. LEFFNER: It's relevance.

CHAIR: Okay. Overruled. We will accept and admit the, Protestant's Exhibit 5. Obviously, Mr. Schmidt, you well know that you can certainly argue as to its impact and weight in this case.

MR. SCHMIDT: But what, if I can just ask, Mr. Garber, for the record of this case, and I'm, sir, with all due respect, what is the relevance of a Zoning Advisory Committee comment which is commenting about a plan that is not under consideration by you?

CHAIR: Well, I believe, well, I, I don't need to answer that question necessarily, just quite yet, but Mr. McCann, do you wish to respond to Mr. Schmidt?

MR. MCCANN: Yeah, I, I can, I can respond. I think it's relevant because of, we've, number one, the plan with respect to this issue, that is, the underground electric line, has not changed. An alternatives analysis was required under the old plan, an alternatives analysis was required under the new plan. The reason I introduced it was to --

CHAIR: Well, if I can, to your point, there are now two ZAC comments from DEPS indicating the same thing.

MR. MCCANN: Yes.

CHAIR: One from December of '18, one from July of '19.

MR. MCCANN: Correct.

CHAIR: And Mr. Schmidt has represented, and this witness has testified, that neither of which has been received by Petitioner and, and specifically, neither have been seen by Mr. Leffner. Now, that does not necessarily mean that that's not the, that doesn't, that doesn't have some effect. So, for that reason, it is relevant, one way or the other, now you could argue that December 18 comment by itself may be meaningless as it's not referencing the plan at issue. But if it is referencing the same line, it is referencing the same, you know, underground connection that is, same thing with the, in the July letter and Petitioner is saying, well, we have no idea about this, I think it's consistent to say that at some point, you would think that that would have been brought up to somebody or somebody would have learned that there is some concern by DEPS on this point. And it has been illustrated twice in ZAC comments.

MR. SCHMIDT: So, so what? It, it still doesn't make it relevant, Mr. Garber.

CHAIR: That sounds like something you're saying it doesn't make a difference if they say there should be an alternative analysis or not because here's our plan, whatever, we don't need to do one. That, if that is your position, that sounds like something we can reduce to a memorandum. Is, in terms of its admissibility here today, it certainly would go to, relevant, it would be relevant to Protestants and it would

also speak to the question earlier about what is the official position of DEPS when apparently it's been made consistent from December of '18 and July of '19, and we could even investigate that further when the representative from DEPS shows up pursuant to the subpoena issued by Mr. McCann come Tuesday.

MR. SCHMIDT: But I think I said, Mr. Garber, and if you look at the end of DEPS' comment, and I think the one dated July the 3rd that was in your file is, is apparently the legitimate one, it says DEPS respectfully requests that the requirements of above be made conditions of any zoning relief. And I have indicated that if this Board wishes and determines that that's appropriate, that the Petitioner will accept that. So, DEPS is not saying you should deny the Petition because there's an underground connection under the stream. DEPS is saying if you're going to approve the plan, as a condition of your approval, you should require us to ask for an alternatives analysis and we are acceptable, we are agreeable to that condition if that is required. So, since we are agreeable to that position, and since DEPS is not asking that the plan and the proposal be denied on this basis, what is the relevance?

CHAIR: You're arguing the merits of, or the weight of what this should carry in this case. You're just, with your argument, acknowledge is has relevance because it would be a condition if nothing else, from your perspective. So, as to whether or not it's dispositive, that is, can we go forward or

not go forward, I don't believe that that's the ruling from here, the ruling from here is it's admitted because there is relevance, it's --

MR. SCHMIDT: But I'm not talking about the one from 2018. That's the one I objected to, that's the old one.

CHAIR: Okay.

MR. SCHMIDT: It isn't relevant, the new one is. I admit the new one is.

CHAIR: All right.

MR. SCHMIDT: The new one is relevant because it's about the plan that's before you.

CHAIR: And Mr. McCann has offered to show that this has been a consistent point being made by DEPS to the --

MR. SCHMIDT: He has, oh, I'm sorry.

CHAIR: -- extent, to the extent that Petitioner does not, does not, you know, whether they had it or not, okay, that is something you're certainly going to argue. But it would have relevance to Protestants, it is admitted.

MR. SCHMIDT: Very well. Thank you, sir.

CHAIR: You can take that position up in, in your memo as to its weight.

MR. SCHMIDT: Thank you, sir. Thank you for allowing me to be heard.

MR. MCCANN: Thank you. I'm going to move on to another topic. Mr. Leffner, I wanted to ask you about, we

talked about the forest buffer. What I wanted to just to have you identify for us, and I don't think it will take that long, the, the forest that's on site that will be removed, put, put aside the forest buffer. We all know the forest buffer is in this area here and putting aside the underground utility, putting aside the mistake, as you put it, I think, acknowledged on the southern entrance. Just in terms of elsewhere, outside of the forest buffer, what other forest or trees will be removed? If you could identify by, maybe by location, not by tree obviously, but by location?

MR. LEFFNER: Yeah, I think as stated earlier, and I think also admitted with the other testimony, --

MR. SCHMIDT: Keep your voice up, please.

MR. LEFFNER: -- there is existing vegetation along Falls Road that we're proposing to maintain but that's not necessarily that it'll remain forever. It just is located within the SHA right of way, and potentially BGE right of way So, there may be clearing, but it would be because of their right of way and clearing within it, we're proposing to maintain all of that vegetation.

MR. MCCANN: Okay.

MR. LEFFNER: The proposed clearing on the site, is limited to the access location.

MR. MCCANN: Okay. You mean, the, the northern access?

MR. LEFFNER: Correct.

MR. MCCANN: Okay.

MR. LEFFNER: It's in that location where there's the existing break, but just around the locations of the existing entrances.

MR. MCCANN: Okay.

MR. LEFFNER: There's vegetation which then becomes trees. I think it was apparent in the photographs that there are shrubs and other smaller plantings that may have limited clearing to support the proposed entrance locations.

MR. MCCANN: Okay.

CHAIR: What about where the access road will be to the eastern array?

MR. LEFFNER: This one? Correct, there also. So, here's limited vegetation along the property line, including low growth that would probably be cleared in order to construct the privacy fence, it would be within our property, but there may be some low vegetation there.

CHAIR: Well, it, I believe Mr. McCann's question was focusing on forest and trees, so let's dispense with the plants on the ground that, you know, the low, the low level plants that are going to be cleared. His concern or his question focused on the trees. So, where would, where on the plan, anywhere, where, are there trees to be removed?

MR. LEFFNER: To the first point, forests, the forest

stand areas, areas that meet the classification of a forest based on the County and the DNR Code requirements, no forest is going to be cleared. Trees, --

MR. MCCANN: No forest in the forest stands, cleared.

MR. LEFFNER: Correct.

MR. MCCANN: Okay.

MR. LEFFNER: Trees, specimen size trees, which are protected, as identified in the letter, do not impact the critical root zone, no specimen tree will be removed as part of this project.

MR. MCCANN: Okay.

MR. LEFFNER: Individual trees, depending on the caliber and size of the tree, not every single tree is surveyed on this property, which may be required if it were in another portion, in the critical area or some other more environmentally restricted piece of property. In general, the only vegetative clearing or smaller tree clearing that would be done is within the array area along the property line. Again, if we're granted the variance setback relief --

CHAIR: So, within, within the array area, --

MS. DOPKIN: Or along the common property line. Along the common property line?

MR. LEFFNER: Correct.

CHAIR: And we don't have a count sitting here today?

MR. LEFFNER: No. Again, not of it, specimen tree or

(inaudible) --

CHAIR: Right.

MR. LEFFNER: -- it's not within a forest stand area.

CHAIR: Has, has it been determined if any of the trees within the common, or within the, where the property line is, for the eastern array, have there been determined that, that there are any specimen trees within that range that would otherwise then cause you to change something more within your, within the plan? Has it, are there specimen trees within the eastern array as proposed?

MR. LEFFNER: No.

CHAIR: No specimen trees within that at all? So, the trees you're talking about being removed, they're not specimen trees there?

MR. LEFFNER: Correct.

CHAIR: All right and that's been confirmed?

MR. LEFFNER: Correct.

CHAIR: Okay.

MR. LEFFNER: Yes.

MR. MCCANN: Thank you. Thank you, Mr. Garber. I thought it might be easier to look at 3-A instead of my exhibit, because 3-A is the existing conditions. So, the forest that you're talking about, and we, and I'm not talking, I'm not calling a forest stand, I'm just talking forest, is this line of trees, this, that's shown more clearly on the

existing conditions, that goes right through the center of the panels along the property line, correct?

MR. LEFFNER: Correct.

MR. MCCANN: That's going, that, those trees are going to be removed?

MR. LEFFNER: Correct.

MR. MCCANN: And those trees, according to your forest stand delineation, are in good condition?

MR. LEFFNER: No.

MR. MCCANN: They're not?

MR. LEFFNER: No.

MR. MCCANN: Okay.

MR. LEFFNER: That's not part of the forest stand delineation.

MR. MCCANN: I'm not, --

MR. LEFFNER: Does that make, --

MR. MCCANN: Yeah, well, it's for steep slopes (inaudible).

MR. LEFFNER: (inaudible). There is ground cover and vegetative cover on site, which yes, is in good condition. But again, there's a specific requirement for being established as a forest, which we are not --

CHAIR: You used the phrase ground cover.

MR. LEFFNER: Yep.

CHAIR: Does that include trees?

MR. LEFFNER: No.

CHAIR: You used vegetative cover, does that include trees?

MR. LEFFNER: Yes, small trees.

CHAIR: Okay. That includes small trees. That's where the miscommunication here may be. So, you're looking for Exhibits 5 and 6, right?

MR. MCCANN: Yeah, yeah, I have a blowup of the, of the steep slopes and erodible soils analysis and I just wanted to show you that for that line of trees, it shows --

MR. LEFFNER: Hedge row, good.

MR. MCCANN: It says good, correct?

MR. LEFFNER: It says hedge row (inaudible).

MR. MCCANN: I'm not asking you about hedge, well, no, you can call it whatever you want --

CHAIR: Hold on, one at a time. What does it say, Mr. Leffner?

MR. LEFFNER: The label along the common property line on Exhibit, --

MR. MCCANN: It's a copy of the, a large copy of the soils, I mean, the --

MR. LEFFNER: It just says hedge row good. Good condition, classification depending on the vegetative, the amount of cover within it, a hedge row, meaning that it is not a classified forest stand area, it's not a specimen tree area,

not necessarily some of the other ones, just for reference, open field, grass, good.

CHAIR: Where is says hedge row good, your prior definition of vegetation, vegetative cover, that you said includes small trees, is it your understanding that where it says hedge row good, that would include the small trees that you have been using within the vegetative cover?

MR. LEFFNER: Correct.

CHAIR: Okay. So, there will be, there will be trees located within that hedge row good description and area.

MR. LEFFNER: Correct.

MR. MCCANN: Wasn't asked about what you called them, you can call them whatever you want. Hedge row, forest stand, forest, whatever you want to call them, what, we'll have pictures of them?

MR. LEFFNER: Yeah.

MR. MCCANN: Whatever line of trees that is, whatever line of plantings that is, they're in good condition.

MR. LEFFNER: Correct.

MR. MCCANN: And they will be removed, correct?

MR. LEFFNER: Correct. Or --

CHAIR: Is that correct, sir?

MR. LEFFNER: Correct.

CHAIR: Okay, thank you.

MR. MCCANN: I mean, in fact, the panels are going to

go right through them.

MR. LEFFNER: Correct.

MR. MCCANN: The panels are going to be. What about any, anywhere else that we missed, other than the entrance road, the --

MR. LEFFNER: Generally the area between the panels.

MR. MCCANN: Right.

MR. LEFFNER: Again, around the access improvement, just again --

MR. MCCANN: Anywhere else?

MR. LEFFNER: Hedge row, not forest, the main, the second access drive that goes back beyond, again, construction of the fence, the (inaudible), the gravel access path to the rear, or the south eastern array area and a section down along that drive aisle, which again, was because of the accepted condition during the ALJ hearing to shift that access drive away from the adjacent property.

MR. MCCANN: Okay. So, aside from the, the two access points on Falls Road, there is also tree removal going to be taking place in the southern portion of the site, correct?

MR. LEFFNER: Correct.

MR. MCCANN: Okay and keep on calling it hedge row, is it, how tall are those trees that are in there?

MR. LEFFNER: They vary.

MR. MCCANN: Okay. Six feet, I think I have a hedge of being six feet tall.

MR. LEFFNER: No, it's a mix of, --

MR. MCCANN: It's a forest. Anybody would walk up to that and call it a forest.

MR. LEFFNER: They, you have to say there's a row of plants on a property line (inaudible).

MR. MCCANN: Okay, all right.

MR. LEFFNER: I think if you looked at the rear portion of the property, when there's dense forest, trees of large caliber, they're old, fully dense, lots of undergrowth, there's other forest stand areas, again, the two different forest stand, different forest stand areas, older growth forest. This is a --

MR. MCCANN: Okay. I'm not asking --

MR. LEFFNER: -- (inaudible) between two areas.

MR. MCCANN: -- I'm not asking for a comparison. That's all right, I'm, I'm moving on. What about topping of trees? Will there be any topping other than clearing of trees?

MR. LEFFNER: Clearing?

MR. MCCANN: Will there be any topping of trees? I heard that term used before.

MR. LEFFNER: Oh, that's what I tried to cover at the beginning. Along Falls Road, I think, you know, I just want to make sure that there may be topping, whether this project

happens or not because of BGE, SHA requirements, topping the tree locations. The forest stand buffer area is a protected area, again, we mentioned enforcement earlier. Any impacts to that area, so there would be no topping permitted or it would be enforced.

CHAIR: Well, you wouldn't have topping back there anyway from BGE or, or otherwise.

MR. LEFFNER: Correct, because it's onsite and there's no utilities within it.

MR. MCCANN: Okay. Well,--

MR. LEFFNER: So, I think, there's, I don't know of any proposed topping to be done and any of these protected areas, there would not be allowed to be any topping or enforcement could take place.

MR. MCCANN: Or outside protected areas. Anywhere, any tree topping outside of the protected areas? Aside from that on Falls Road?

MR. LEFFNER: Not that I know of.

MR. MCCANN: Okay. The reason I ask about all of that is being with the understanding that this is a de novo hearing, one of the conditions in the Administrative Law Judge's Order of June 20th, 2019 was as follows, quote. Other than the limited clearing at the site access location described by Petitioners, no trees shall be cut or removed from the subject property in connection with the construction and

operation of the proposed solar facility, end quote. And it sounds to me, based on what you've told us just now, that it's not your intention, the Petitioner's intention, to abide by that condition?

MR. SCHMIDT: Objection to the form of the question, since the condition no longer exists in view of this appeal.

CHAIR: I believe Mr. McCann's question is his knowledge, familiarity with the facts that would maybe have supported that condition not, as to whether or not that condition is being applied --

MR. MCCANN: Yeah, I understand you're not bound by this condition, I understand.

CHAIR: Right.

MR. MCCANN: I'm just asking --

CHAIR: But you're asking him what's a, are you aware of what are the factual support that went into this, that is, that would support the question about topping.

MR. MCCANN: Yes.

CHAIR: Do you understand?

MR. LEFFNER: No.

CHAIR: Okay. You want to try again?

MR. MCCANN: Well, I don't want to characterize it as a condition, but this requirement that I just read to you, or this, is it the developer's, Petitioner's intention, not to abide by what I just read to you? (inaudible) what you told us

this afternoon, sounds like it is.

MR. LEFFNER: I, I think the, essentially, four areas we just covered, the access locations, which were just included in the statements you made, the other two being one where the gravel drive was shifted away from homes, the second being within the array area along the hedge row, I think the plan which was included and reviewed as part of that decision showed both of those locations and it may not have been interpreted correctly. So, the gravel access drive was specifically moved into the location of a vegetative area to, saying, we're going to need to remove plants if we relocate this access drive and I don't believe it was captured --

CHAIR: If I can, --

MR. LEFFNER: -- in that statement.

CHAIR: This is where, is the language that's being used --

MR. LEFFNER: Correct.

CHAIR: -- is where it, there may be miscommunication. You just said plants.

MR. LEFFNER: Correct.

CHAIR: He's talking about trees.

MR. LEFFNER: Correct.

MR. MCCANN: Cut or removed. Is it, is it your testimony that the Judge didn't know that there was trees along the border between the two parcels in the area of the arrays?

MR. LEFFNER: I don't know what he knew (inaudible).

MR. MCCANN: Okay. You don't know what (inaudible), okay.

MR. LEFFNER: The plan that was presented to him showed clearing both along the property line and alone that access drive.

MR. MCCANN: Okay. What can you tell us about the panels, Mr. Leffner, in terms of their manufacturer, their type, their size, their efficiency? Is there anything you can tell us?

MR. SCHMIDT: Objection. I do have another witness who's from the company that that might be better asked of.

MR. MCCANN: Okay, very well. Someone who knows about that?

MR. SCHMIDT: Yes, sir.

CHAIR: So, as I understand, question withdrawn.

MR. MCCANN: Question withdrawn. Did you undertake, you're familiar with that, part of this property that goes through RC-8 zone?

MR. LEFFNER: Correct.

MR. MCCANN: Okay and we talked about that, in, including an area of panels?

MR. LEFFNER: Correct.

MR. MCCANN: And a disturbed area. Did you, did you undertake any analysis or investigation of the requirements in

the RC-8 zone for, or any, any, any analysis of the requirements under the RC-8 zone?

MR. LEFFNER: Yes.

MR. MCCANN: You did? What did you do in that regard?

MR. LEFFNER: Reviewed the zoning code for the requirement, identifying the use would be permitted via special exception.

MR. MCCANN: Well, let me ask, I'm sorry, let me be more, I'm, I wasn't trying to be vague. Are you aware that Mr. Schmidt, on behalf of your client, submitted a letter to the Department of Planning, directed to the requirement in the RC-8 zone that the director of Planning certified that the proposed development is consistent with the spirit and intent of those regulations?

MR. LEFFNER: I was aware he (inaudible).

MR. MCCANN: Yeah, and they're, in fact, the RC-8, would you agree with me, has a lot of provisions in it about protection of natural resources, protection of scenic views, protecting of surrounding uses, there's a lot, it's a very protective RC zone, is it not?

MR. LEFFNER: It's more protective than the RC-2.

MR. MCCANN: Did you participate in the drafting of this letter with Mr. Schmidt dated --

MR. LEFFNER: I did not.

MR. MCCANN: Is it your opinion that the development in the RC-8 is consistent with the spirit and intent and of, of the RC-8 regulations?

MR. LEFFNER: It is.

MR. MCCANN: Okay and, and why is it?

MR. LEFFNER: Sorry?

CHAIR: He said, why, why is --

MR. MCCANN: Why is it, why is it --

CHAIR: -- your opinion that it's consistent, why is that your opinion?

MR. LEFFNER: Oh, it's permitted, the special exception is permitted use within the zone. I think it meets the spirit and intent one, because there's no environmental impacts proposed within that portion of the zone. The RC-8 is currently open space, there's no tree clearing required, there's no forest buffer variance being provided, it's essentially just being meant to (inaudible). The RC-8 zoning, you can see, (inaudible) it has additional environmental impacts that justification of why having it in an RC-8 versus the RC-2, as we discussed earlier, there's more area available within the RC-2 zone, but that would require impacts detrimental to the environment by clearing forest areas as you mentioned earlier. So, the portion proposed in RC-8 is that so environmental areas within both the RC-8 and the RC-2 zone can actually be preserved.

MR. MCCANN: Can I ask you a question? You didn't mention this when I was asking you about the forest clearing. The, within the limit of disturbance, I'm looking at our exhibit again, which is Pet, Protestant's --

CHAIR: One.

MR. MCCANN: -- Protestant's, one. There are some trees located on the, along the border of, --

CHAIR: The northern border --

MR. MCCANN: Yeah.

CHAIR: All right.

MR. MCCANN: Yeah, and there's some trees there that are within the limit of the disturbance, in, in the general area of the landscape that's being proposed as well as beyond. Are those trees going to be removed or not?

MR. LEFFNER: No.

MR. MCCANN: Okay. Anything else from consistency with the RC-8 regulations, other than what you've already said?

MR. LEFFNER: Not necessarily.

MR. MCCANN: Okay. I'm just going to introduce some of these into evidence (inaudible).

MR. SCHMIDT: Okay.

MR. MCCANN: And then here is the Planning Office's memo.

MR. SCHMIDT: June 25th?

MR. MCCANN: Yes. So, those will be the next two

exhibits in that order, okay? That may be all I have.

MS. MURPHY: Two different exhibits?

MR. MCCANN: The letter (inaudible).

MS. MURPHY: Six and seven?

MR. MCCANN: Yeah, Larry's letter first, Larry's letter is six.

CHAIR: Wait, is this same, okay.

MR. MCCANN: Same (inaudible), so this would be seven and (inaudible).

CHAIR: Thank you. So, six would be the letter that's dated February 14, 2019, correct?

MR. MCCANN: Correct.

CHAIR: And then we have as Protestant's Exhibit 7, ZAC comments from Director of Permits, Approvals and Inspections dated 6/25/19. Everyone on the same page?

MR. MCCANN: We are.

CHAIR: All right.

MR. MCCANN: And I would just, since they're a matter of public record, I would just move those into evidence. I'm not going to ask the witness any questions about them.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Yes, sir?

CHAIR: Any objection?

MR. SCHMIDT: No.

CHAIR: Six and seven will be admitted.

MR. MCCANN: Real quick, Mr. Leffner. I know there's another witness but do you at least know how many panels are in each of the arrays?

MR. LEFFNER: I don't.

MR. MCCANN: And I think you already said as much, that you didn't consider, one of the alternatives that was not considered was, well, you considered two alternatives. One thing that you did not consider was an alternative plan that avoided the stream crossing altogether and just have one array. You did not, you did not either prepare a plan like that or analyze it or pursue it in any way, correct?

MR. SCHMIDT: Objection. Asked and answered. He testified that the initial plan that was filed had one array. They divided it into two and he's answered that question several times.

CHAIR: Mr. McCann, any, any response? What was your question?

MR. MCCANN: I'll move on.

CHAIR: All right.

MR. MCCANN: Thank you. The, the plantings, we talked about the landscaping already and I'm, I'm just going to read to you from 3717, the bill, Larry. And one of the requirements in the law is 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 public street.

MR. LEFFNER: Correct.

MR. MCCANN: Have you pre, have you complied with that provision in the fullest? That is, have you provided landscaping buffering at every location on the perimeter of these two parcels that is visible from a, or any portion of the solar facility, as visible from an adjacent residentially used property or a public street?

MR. LEFFNER: Well, the combination of being proposed buffering as well as maintenance of the existing forest areas, I believe we have.

MR. MCCANN: It says a landscaping buffer.

MR. LEFFNER: Correct.

MR. MCCANN: Are you calling the existing, the existing plantings a landscaping buffer?

MR. LEFFNER: Yes.

MR. MCCANN: Is there any buffer, for instance, on this, on this portion, just as an example, on the southern portion of the site, we, where the entrance road is?

MR. LEFFNER: Yes.

MR. MCCANN: There's, there's landscaping there?

MR. LEFFNER: No. But there is beyond it with the forest buffer that --

MR. MCCANN: Well, there's trees on her property, right?

MR. SCHMIDT: No, he's talking about the other side, I'm sorry.

CHAIR: Okay, Mr. Schmidt.

MR. LEFFNER: On the other side of the --

MR. MCCANN: On the other side of the road?

MR. LEFFNER: The, one, there's a board on board fence to help with screening but then the protected forest buffer extends the entire length to Falls Road.

MR. MCCANN: All right.

MR. LEFFNER: So, there's effectively a, a wall of existing trees that bisect the property between that adjacent owner and the property.

MR. MCCANN: Okay. So, --

MR. LEFFNER: (inaudible).

MR. MCCANN: -- so when it says around the perimeter of any portion of the solar facility, you're, that's what, you believe that's --

CHAIR: Please keep your voice up. What was the question?

MR. MCCANN: I'll withdraw the question.

CHAIR: All right.

MR. MCCANN: Sorry, Mr. Garber.

CHAIR: No, that's okay.

MR. MCCANN: And then, I wrote it as quickly as I could when you were talking about it, but could you again, sort

of tell us why it is that the variance standard is met for this fifty foot setback that's required on, on both sides of the parcel boundaries --

MR. SCHMIDT: Object --

MR. MCCANN: -- (inaudible) --

MR. SCHMIDT: I'm sorry, objection. Asked and answered. If Mr. McCann didn't write it down, then that's not another reason to ask it again.

CHAIR: We can dispense with the, with the comments. But Mr. McCann, what's your question about the variance standard?

MR. MCCANN: I, I just want to ask him to articulate for us what the, why he believes the variance standard is met for, for the fifty, the requirement that there be a fifty foot setback on either side of the parcel boundaries.

CHAIR: Do you mean the, the factors, the Cromwell factors, is that what you're referring to?

MR. MCCANN: Yes.

CHAIR: Okay.

MR. SCHMIDT: Objection. He's asked and answered that.

CHAIR: I don't believe that he has been asked and answered that in its entirety. We talked briefly about uniqueness when it came to Property 144. We discussed it a little bit with 121, and that's as far as we got. So, can you

answer the question, sir?

MR. LEFFNER: Yeah, I think --

MR. MCCANN: Go ahead.

MR. LEFFNER: One, for the variance setback to either side of it having common ownership, knowing the, typically the fifty foot building restrictions form an adjacent use, or adjacent property owner.

MR. MCCANN: Okay.

MR. LEFFNER: Having an ownership on both sides, why the variance would be required because of the unique shape and size of the projects. We talked about, again, the southern project area --

MS. DOPKIN: Excuse me, you said unique shape and size of the project?

MR. LEFFNER: Property area.

MS. DOPKIN: Property.

CHAIR: When you say the property area, are you referring to both properties?

MR. LEFFNER: Properties in both, specific to the southern property now.

CHAIR: Specific to the, all right, you have to, all right. I'm now confused.

MR. LEFFNER: I think all together there's two properties that have, are supporting a common project included with the initial application. Because from the zoning

standpoint, the use has essentially been merged, we don't know whether the variance is required. If the variance is to be required, having common ownership on both lots between one another, the fifty foot setback would not be providing any relief because of the common ownership. Specific to the southern property, the unique shape and size of the southern property being long and narrow, the array, as discussed earlier, having the entire fifty foot side yard setback with an internal to just that southern project, would have a large impact to the developable area within the project, specifically by not impacting any environmental resources. Environmental resources include the wetland and buffer area, the forested stream buffer, the specimen tree, which was identified to be maintained, forest stand areas and the current proposed plan was revised to provide additional setback based on coordination with the adjacent owner with the understanding that this variance relief would be either not required or given. So, even a further setback is provided from the southern boundary, which would not otherwise have been required.

MR. MCCANN: How is that not a self-fulfilling standard? That is, we can't build a big enough solar array because of other environmental restrictions. If that was the case, then the standard would always be that, wouldn't it? No, that's not a question.

CHAIR: Well, technically, that was a question. I

heard the voice inflection at the end.

MR. MCCANN: So, I shouldn't have put a question mark at the end.

CHAIR: Yeah.

MR. MCCANN: So, you're saying that the, the variance standard is, is supported, at least in part, by the fact that there are these other environmental restrictions that prohibit the arrays from being put in those areas, is that part of what you're saying?

MR. LEFFNER: The property has environmental features within in, which is unique to this property.

MS. DOPKIN: On the southern property.

MR. LEFFNER: Southern property.

MS. DOPKIN: Parcel 121.

MR. LEFFNER: Correct. By not getting the variance relief, based on the direction earlier, and not including the project area within the adjacent property, --

CHAIR: I'm not following the whole environmental issues on 121.

MS. DOPKIN: You said there's a specimen tree on 121. What other environmental factors?

MR. LEFFNER: The forested stream buffer.

CHAIR: Part of that goes through 121, but it's also throughout 144.

MR. LEFFNER: Correct.

CHAIR: Okay. So, it's not particular to 121 because it's also present on 144.

MR. LEFFNER: Correct.

CHAIR: But the combined, if the two are, if the two are combined for this use, that's the experience of both.

MR. LEFFNER: Correct.

CHAIR: All right.

MR. LEFFNER: Yes, for just this project area. The forested stream buffer, specimen tree, forest stand areas, narrow width of the lot, and existing vegetation, again, shading, system impacts, there's offset areas that are unique to this project area. That losing this, not considering the remaining portion of the project if it were to be (inaudible) or combined, would essentially warrant this not feasible from my understanding, as the project is proposed in its current form.

MR. MCCANN: Getting back to the developer's intent.

MR. LEFFNER: Correct. And I think questions on a single project, splitting project, size of the project, he'd be able to answer.

MR. MCCANN: Okay. You're taking as a given in that entire analysis that this is what the developer intends and wants to do. And that's, never mind. I have no other questions, I'll move on.

CHAIR: No other questions.

MR. MCCANN: No other questions.

CHAIR: So, you're done with your cross?

MR. MCCANN: I'm done, I'm done with my cross.

CHAIR: Mr. Schmidt?

MR. SCHMIDT: Thank you. Before I get started, I don't know if these are in the file. There's been a lot of discussion, Mr. McCann just put in what I would call the new Zoning Advisory Committee comment, which was issued by the Office of Planning dated June the 25th of 2019, which I believe relates to the current plan which is on the board. I, certainly I'll leave it for argument, but I believe that that essentially was a comment that replaced the earlier zoning advisory committee comment that the Office of Planning had opined on the older plan. But I would like to submit, the other, what, the other, what I would call new advis, Zoning Advisory Committee comments that were submitted by the other agencies. The first is a comment from Vishnu Dasai (phonetic), dated June the 19th of 2019.

CHAIR: And this is Petitioner's number twelve.

MR. SCHMIDT: Petitioner's number thirteen would be the revised Zoning Advisory Committee comment dated June the 24th of 2019 from the Maryland Department of Transportation and State Highway Administration.

MR. MCCANN: Thank you.

MS. MURPHY: Thirteen?

CHAIR: Thirteen.

MR. SCHMIDT: So, those are the three zoning, Zoning Advisory comments that were replaced, or I'm sorry, that were issued by County or State agencies and were issued as a result of those agencies reviewing the current plan on the board, not the prior plan.

CHAIR: So, when you say the three, you're, you're including Protestant's Exhibit 7?

MR. SCHMIDT: Yes.

CHAIR: Okay and then Pet, and Petitioner's twelve and thirteen?

MR. SCHMIDT: Yes.

CHAIR: Mr. McCann, do you have any objection to twelve and thirteen?

MR. MCCANN: I do not.

CHAIR: All right. They are admitted.

MR. SCHMIDT: I would also like to submit as exhibit number fourteen, the Zoning Advisory Committee comments that were actually issued in this case back in February of 2019 and those are the comments, just so the record is full, that were issued by the three agencies which I've identified, which then issued amended comments later in the summer of 2019.

CHAIR: These are the comments that have been replaced by seven, or by Protestant's seven and Petitioner's twelve and thirteen?

MR. SCHMIDT: Yes.

CHAIR: That's my understanding?

MR. SCHMIDT: That is correct.

CHAIR: All right and Mr. McCann, any objection?

MR. MCCANN: No objection.

CHAIR: So admitted.

MR. SCHMIDT: And finally, I would like to submit, this is from Baltimore County, a copy of an e-mail from the Department of Planning, which I'll ask you to mark as fifteen.

CHAIR: Though I think I said fifteen earlier when I meant fourteen. This is fifteen.

MR. SCHMIDT: The next one, which is actually from Mr. Wiley, which indicates that notwithstanding the changes to the plan as it had been revised as was indicated by the witness, Mr. Leffner, where there changes to the plan as a result of the neighbors requesting certain modifications in the ALJ's hearing, for example, the relocation of the driveway, the installation of the fence, that Mr. Wiley indicates he spoke to Lloyd, who I would represent would be Lloyd Moxley, who is his supervisor, and indicates that the plan was amended and approved at the hearing and the Department of Planning did not believe any additional comments were necessary or reviewed by them, that they accepted the most current version of the plan, which is Petitioner's Exhibits 3-A through D, and that there was no additional comment from them forthcoming, as they've

indicated in Mr. Wiley's e-mail.

CHAIR: Any objection, Mr. McCann?

MR. MCCANN: No objection.

CHAIR: So admitted.

MR. SCHMIDT: Okay.

CHAIR: Well, as to this witness though, do we have any re-direct?

MR. SCHMIDT: I do. Mr. Leffner, the plan, does it not, shows the connection between the proposed arrays, and when I say proposed arrays, I mean both of them, to the BG&E line which exists on our side, when I side our, the Petitioner's side of Falls Road, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: Where is that connection proposed? Can you, can you show, point it out on the board?

MR. LEFFNER: Currently, the proposed location is shown here.

MR. SCHMIDT: Okay.

CHAIR: When you say here, you have to describe.

MR. LEFFNER: To the north of the proposed access drive, to the array closest to Falls Road. Again, there's a note too on the plan, that BGE is ultimately responsible for the design of that interconnection, so the design could change.

MR. SCHMIDT: That was my next question. Who is it that has the sole and exclusive jurisdiction of the power

lines, which run up and down Falls Road? Which, which entity?

MR. LEFFNER: BG&E.

MR. SCHMIDT: Okay and does BG&E tell us where to connect or to make multiple connections or is that a decision of the applicant?

MR. LEFFNER: BG&E.

MR. SCHMIDT: Okay and at this point in time, is the site that you have identified, the location and the only location where BG&E has authorized a connection?

MR. LEFFNER: I'm not aware. The applicant has done the interconnection submission.

MR. SCHMIDT: Okay.

MR. LEFFNER: We've not been part of that.

MR. SCHMIDT: I can ask --

MR. LEFFNER: We just understand that's where it's been requested.

MR. SCHMIDT: I can ask Mr. Street that question. Very well, thank you. When we were before the Administrative Law Judge, Mr. Leffner, you testified, did you not?

MR. LEFFNER: Yes.

MR. SCHMIDT: And as part of your testimony, you presented a copy or a site plan, a four page site plan, to the Administrative Law Judge, did you not?

MR. LEFFNER: Yes.

MR. SCHMIDT: And that site plan, sir, is identical

to the site plan which has been offered in this case, as Petitioner's Exhibit 3-A through 3-D, with the exception of the small changes in red ink, which you've already described, and the fact that the driveway was relocated at the request of the neighbors on the adjacent property, and that was submitted then to Judge Beverungen, is that correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: The locations of the array fields as they were shown on the plan that was submitted to Judge Beverungen, have they remained exactly the same as they are shown on this plan?

MR. LEFFNER: Yes.

MR. SCHMIDT: Is the landscaping which is shown on this plan in the exact same location as was submitted to Judge Beverungen?

MR. LEFFNER: Yes.

MR. SCHMIDT: I assume you, or there was testimony offered to Judge Beverungen, that the construction of the array fields would require certain grading and removal of vegetation in order to, in fact, accommodate the solar arrays, correct?

MR. LEFFNER: Correct.

MR. SCHMIDT: So, would you think, having submitted a plan showing grading and construction of improvements in this area, that Judge Beverungen intended that if there were any trees, bushes, ground cover, etcetera, which existed in this

area, it would, by necessity, be, have to be removed because arrays were going to be planted here?

MR. LEFFNER: Yes.

MR. SCHMIDT: Would you further likewise assume that Judge Beverungen, seeing that there is going to be a driveway proposed on the site, actually driveways at two locations, would have also likewise assumed that if you're going to put macadam down for a driveway and there is a tree, a plant, grass or other natural material there, that that would, by necessity have to be removed in order to accommodate the driveway?

MR. MCCANN: Objection.

MR. LEFFNER: Yes.

MR. MCCANN: Objection.

CHAIR: Stand up, please.

MR. MCCANN: I'm sorry. We're, we're, he's asking the witness to make assumptions about what Judge, Judge Beverungen (inaudible). I should have objected earlier. I just wanted to let it go and get on with it, but.

CHAIR: I would have to agree. You can't really --

MR. MCCANN: It's argument.

CHAIR: He really can't get to what Judge Beverungen may have assumed, may have known, whatever, other than what's set forth in the opinion and order. I understand that --

MR. SCHMIDT: Mr. Garber, Mr. McCann asked the same questions and I objected and my objection was overruled and I

objected because he read a section of Judge Beverungen's Order, which says there will be no tree removal and what did he mean by that and aren't you, in fact, removing trees where the driveway is going to be and where the arrays are going to be? So, I think it's fair in cross examination for me to say that obviously is this plan shows disturbance and the construction of the facility and/or the driveway, that that was not the intent of that restriction to require existing trees to remain there. That's the sole purpose of my question.

CHAIR: I didn't interpret Mr. McCann's question nor the answer in the same manner I'm interpreting your question to Mr. Leffner. That is, get into the mind of Judge Beverungen. I understood the question to be, at the time to Mr. Leffner, to be one of the factual support, is he aware of anything that would, that would go to why, why there's an assumption of the tree topping? That is, did you hear something, are you aware of anything planned by Petitioner, as opposed to what Judge Beverungen is thinking, are you aware of any topping being required by Petitioner? That's how I understood it. Not as in, why did Judge Beverungen decide this way. You're asking him now to, to, to testify to why Judge Beverungen made his decision. So, there's a slight difference between the two things, so on that basis, I'm going to sustain the objection but if you feel the need to ask additional questions relating to that, certainly with the understanding of the, that ruling,

could you, you could rephrase some of your questions perhaps,--

MR. SCHMIDT: Yes, sir.

CHAIR: -- to meet that, go beyond trying to assess what Judge Beverungen was thinking.

MR. SCHMIDT: Yes, sir, thank you. Mr. Leffner, let me ask it this way. You're familiar with Judge Beverungen's decision, are you not?

MR. LEFFNER: Yes.

MR. SCHMIDT: There is a, a condition or restriction has been called, attached to Judge Beverungen's decision. There were several restrictions or conditions, were there not?

MR. LEFFNER: Correct.

MR. SCHMIDT: I'd like to draw your attention, if I can, to restriction number five in Judge Beverungen's decision. Can you read restriction number --

CHAIR: Well, before you do that. Mr. McCann, do you have that in front of you?

MR. MCCANN: I do.

CHAIR: All right.

MR. SCHMIDT: I'd like to draw your attention to what I believe you were asked about during direct examination, which is restriction number five. Since that's one sentence, can you read that into the record?

MR. LEFFNER: Other than the limited clearing at the site access location described by Petitioners, no trees shall

be cut or removed from the subject property in connection with the construction and operation of the proposed solar facility.

MR. SCHMIDT: Okay. So, as I read that, and as you just read that, that would permit, under that restriction, would it not, the removal of, or the quote, limited clearing, end of quote, around the construction of the access points to this property, would it not?

MR. LEFFNER: I believe so.

MR. SCHMIDT: Okay. Let me ask it this way. If there are trees, however one would define them, not plants, not bushes, but a tree, within the area of the solar array, within where the panels are constructed, will they have to be removed in order to construct this project?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay. Thank you. With that being said, you have, through the submissions to the Department of Environmental Protection, have you not, sir, identified the areas of what is classified as forest on this property, is that correct?

MR. LEFFNER: Yes.

MR. SCHMIDT: Will any of the area classified as forest on this property be removed or disturbed as a result of this proposed project?

MR. LEFFNER: No.

MS. MURPHY: He testified like three times about

that.

CHAIR: I would agree, he did testify that there would be no --

MS. MURPHY: (inaudible).

CHAIR: Yes, I have the same recollection.

MR. SCHMIDT: Mr. Leffner, if I can, you've indicated that you've been involved in numerous projects during your years as an engineer. A variety of projects, both solar and otherwise, I think your resume indicates that, does it not?

MR. LEFFNER: Yes.

MR. SCHMIDT: Have you ever seen in your experience the construction of a utility line, either a power line, a water line, a sewer line, go under a stream or under a road or under some other underground over which the top of it is either a stream or a road or some other feature that would prohibit that connection from going across the land on the surface?

MR. LEFFNER: Yes.

MR. SCHMIDT: Is it a fairly common construction technique to install a line, such as shown on this plan, under a stream?

MR. LEFFNER: It is.

MR. SCHMIDT: In your opinion as a civil engineer, is that count, does that constitute disturbance of that stream?

MR. LEFFNER: Not to the stream.

MR. SCHMIDT: Okay. Does it constitute disturbance

or grading of the property? Is it, of the surface of the property?

MR. LEFFNER: Grading where the two edges of the boring would be done, yes.

MR. SCHMIDT: Yes.

MR. LEFFNER: But within it, there's no surface grading clearing.

MR. SCHMIDT: Okay. So, there will be within the area of the forest, of the stream and of the forest buffer created by the stream, no disturbance in that area, is that correct?

MR. LEFFNER: Just below grade.

MR. SCHMIDT: Below grade.

MR. LEFFNER: Yeah, pushing of dirt, --

MR. SCHMIDT: Does the County or the State or any other regulatory authority have standards and requirements that you keep a certain depth or a certain measurement to insure the safety of the stream?

MR. LEFFNER: I understand, yes.

MR. SCHMIDT: They, they do?

MR. LEFFNER: Yes.

MR. SCHMIDT: Okay and this is something that's done frequently going under a stream?

MR. LEFFNER: Yes.

MR. SCHMIDT: As a matter of fact, I've seen sewer

lines under streams, is that common?

MR. LEFFNER: Yes, sewer lines, water lines, utility lines, gas mains. I think much more difficult boring than this (inaudible) common place to support larger utility projects.

MR. SCHMIDT: Okay. Okay. Board's indulgence for just a moment, please. Thank you.

CHAIR: Um hm.

MR. SCHMIDT: No other questions of the witness.

CHAIR: All right. Anything further, Mr. McCann?

MR. MCCANN: No.

MS. DOPKIN: I have some questions.

CHAIR: Ms. Dopkin has questions.

MS. DOPKIN: Mr. Leffner, perhaps I didn't detect it on your plan, but normally we see indications of other equipment necessary to convert whatever energy is created. Are there variance --

CHAIR: The inverter?

MS. DOPKIN: That. Is there, does your plan show that equipment?

MR. LEFFNER: It does.

CHAIR: That's a yes, it does?

MR. LEFFNER: It does, correct.

MS. DOPKIN: Would you point it out to me on, just the location? Thank you.

CHAIR: It would be on the western array by Falls

Road?

MR. LEFFNER: Correct, the western array by Falls Road. There will be other electrical equipment as described earlier with the panels, other connection points underneath panels, to one another, but based on the preliminary electrical design we received, that would be the location of it.

CHAIR: Is it depicted by a box?

MR. LEFFNER: It is, with a T.

CHAIR: Or a square.

MR. LEFFNER: With a T, and it's actually labeled as a transformer pad. We don't know the ex, actual type of equipment that would be required, so we just call it a pad.

MS. DOPKIN: Does your plan indicate, that tiny little box, okay, the wattage that is expected to be produced here?

MR. LEFFNER: It does not.

MS. DOPKIN: And do you know what that --

MR. LEFFNER: It does not, it just states that it would be less than the two megawatt allowed with the special exception within the (inaudible).

MS. DOPKIN: Would Parcel 121, by itself, is it an adequate size to support the solar facility?

MR. LEFFNER: You'd have to ask the applicant, again, based on the community solar standards and the goal, having the two megawatt cap, that's typically, the goal is to produce two

megawatts to make it, you know, the project both beneficial to the applicant, but also to the utility provider, who has a limited number of projects which they're allowed to accept within, especially Baltimore County, the Councilmanic district, so, they would, to meet their renewable energy goals, typically the interconnection too has power expectations of projects. Does that make sense?

MS. DOPKIN: I asked if it's big enough.

MR. LEFFNER: It's big enough to support a project, but not in its current intent, as I understand the applicant.

CHAIR: Is it big enough --

MR. LEFFNER: (inaudible).

CHAIR: -- to support a two megawatt project?

MR. LEFFNER: On just the one parcel?

CHAIR: On just 121?

MR. LEFFNER: Not as I understand it. The electrical design, I, I'm not responsible for the electrical design, by any means. Similar to that was mentioned during the glare analysis, where there's, as I understand, coded panels, uncoded panels, panels have different wattages, they have different efficiencies, there's angle as it relates to the sun, so there's a lot that goes into production and sizing. I think as it is right now, if it was on one project, it would not support the, the development.

MR. SCHMIDT: It's on one project, one property?

MR. LEFFNER: One property. Would not, yeah --

CHAIR: Understood --

MR. LEFFNER: -- it would not have the same, it would not be the same project, it would be half of what is proposed.

MS. DOPKIN: When you submitted the revised plan that in, relocated the panels to two arrays.

MR. LEFFNER: Correct.

MS. DOPKIN: Why did you not amend your zoning description to comprehend the entire, is it twenty-five acres, I think? You have two zoning descriptions and as you testified and Mr. Schmidt indicated that for zoning purposes, there's a merger so in zoning terminology, it would be one property.

MR. LEFFNER: Yeah.

MR. MCCANN: Do, is there a reason you didn't revise the description to coincide with the changes to the use on your plan?

MR. SCHMIDT: Ms. Dopkin, can I answer that? Because it's a legal determination.

MS. DOPKIN: No, I asked the witness.

MR. SCHMIDT: But it's a legal determination.

CHAIR: We will hear from the witness. Do you have an answer to that question?

MS. DOPKIN: It's a zoning, question of zoning expertise.

MR. LEFFNER: Yeah, so --

MS. DOPKIN: And he was admitted as an expert.

MR. LEFFNER: We didn't update the zoning property description because we, though we asked for a (inaudible).

MS. DOPKIN: I can't hear you.

MS. MURPHY: We can't --

MR. LEFFNER: Though technically there's a merger between the two properties, we wanted to make it clear that there's no proposed consolidation of the two property areas. So, --

MS. DOPKIN: But a zoning description does not, of itself, --

MR. LEFFNER: It, correct, we just described each of the properties independently and to clarify, the initial application for just the one parcel area --

MS. DOPKIN: No, I understand. I'm asking when it changed.

MR. LEFFNER: It did include two array areas, so.

CHAIR: But that, but that was all located within 144.

MS. DOPKIN: All in one property --

MR. LEFFNER: Correct.

CHAIR: Right.

MR. LEFFNER: Bifurcated by the stream, still two separate arrays, still an underground utility connection between the two of them.

MS. DOPKIN: All right. But --

MR. LEFFNER: And then the --

MS. DOPKIN: -- moving on. You also indicated that the arrays will be the subject of a lease.

MR. LEFFNER: Correct.

MS. DOPKIN: And my question is, at the expiration of the lease, is it your understanding that the panels could be removed? Or might be removed? Or typically would be removed?

MR. LEFFNER: They could be.

MS. DOPKIN: Okay.

MR. LEFFNER: I guess I'd ask the applicant. In my experience, it goes every which way.

MS. DOPKIN: Okay.

MR. LEFFNER: Often times, duration of a lease, they may be replaced because of deficiencies or --

MS. DOPKIN: Or they could be removed or the lease could --

MR. LEFFNER: -- so, they could be removed, could be extended, yeah, there's a lot of options.

MS. DOPKIN: All right. That's just sort of, at the end of the lease, how would the merger be reversed, if you're not combining the properties? What is the process by which you would reverse the zoning merger so the lots can be used separately?

MR. LEFFNER: I think, one, a sale of one portion of

the property because then there would not be common ownership showing a merger across the two sites.

MS. DOPKIN: That's not a process issue. I'm saying under what Baltimore County process? What is the procedure, from a zoning perspective.

MR. LEFFNER: Yeah.

MS. DOPKIN: To reverse a zoning merger.

MR. LEFFNER: I'm not sure.

MS. DOPKIN: Those are all my questions, I believe.

CHAIR: Ms. Murphy?

MS. MURPHY: Nope.

CHAIR: I have no questions.

MS. MURPHY: No.

CHAIR: Anyone else?

MS. MURPHY: No.

CHAIR: All right.

MS. DOPKIN: All right.

CHAIR: Thank you very much, Mr. Leffner. Now, right, --

MS. MURPHY: (inaudible) whatever you have up there.

CHAIR: The exhibits up there need to come down and be handed down to Ms. Murphy. We will see everyone on Tuesday, which is day two for this. Is there anything we need to discuss before we go off the record?

MR. MCCANN: I don't think so, no.

CHAIR: No now? Okay.

MS. DOPKIN: We are off the record.

CHAIR: We are, the record will be, we're going off the record for today.

(OFF THE RECORD - 06:26:04 PM)

CERTIFICATE OF TRANSCRIBER

I hereby certify that the hearing in the matter of Holly Springs Nature Conservancy and Wildlife Sanctuary, Inc., case numbers 19-183-X and CBA-20-004, heard before the Board of Appeals of Baltimore County, September 19, 2019 were recorded by means of audiotape.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 378 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness thereof, I have affixed my signature this 18th day of October, 2019.

Christine R. Leary

Christine R. Leary

Transcriber

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