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Transcript of Hearing

Date: July 29, 2025

Case: Davis Hill Development (CU25-07)

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Transcript of Hearing
Conducted on July 29, 2025

1 (1 to 4)

1	1	3
1	MONTGOMERY COUNTY OFFICE OF ZONING	A P P E A R A N C E S
2	AND ADMINISTRATIVE HEARINGS	2 ON BEHALF OF APPLICANT, DAVIS HILL DEVELOPMENT:
3	-----x	3 SOO LEE-CHO, ESQUIRE
4	IN THE MATTER OF :	4 BREGMAN, BERBERT, SCHWARTZ & GILDAY, LLC
5	DAVIS HILL DEVELOPMENT : CASE NO. C725-07	5 7315 Wisconsin Ave, Suite 800 West
6	APPLICATION FOR CONDITIONAL USE :	6 Bethesda, MD 20814
7	-----x.	7 (301) 656-2707
8		8
9		9
10		10 ALSO PRESENT:
11	TRANSCRIPT OF PUBLIC HEARING	11 KHANDIKILE SOKONI - Hearing Examiner
12	IN RE: CONDITIONAL USE APPLICATION	12 STEPHEN VASCO - Community Member
13	OF DAVIS HILL DEVELOPMENT	13 TORRY HANNA - Witness
14	Held at	14 GREGG EBERLY - Witness
15	Rockville, Maryland	15 BRAD GLADFELTER - Witness
16	Tuesday, July 29, 2025	16
17	9:42 a.m. (EDT)	17
18		18
19		19
20		20
21		21
22		22
23	Job No.: 594518	23
24	Pages: 1 -78	24
25	Transcribed by: Kathleen Simmons, CET	25
2	2	4
1	Hearing, held at the location of:	C O N T E N T S
2		2 OPENING STATEMENT PAGE
3	Montgomery County Office of Zoning and	3 By Ms. Lee-Cho 12
4	Administrative Hearing.	4 WITNESSES FOR
5	100 Maryland Ave, Room 20	5 APPLICANT: DIRECT CROSS REDIRECT RECROSS
6	Rockville, Maryland 20850	6 Torry Hanna 14 -- -- --
7	240-777-6660	7 Gregg Eberly 44 55 56 --
8		8 Bradley Gladfelter 58 -- -- --
9		9 CLOSING STATEMENT PAGE
10		10 By Ms. Lee-Cho 72
11		11
12		12
13	Pursuant to agreement, before Jamie	13
14	Ogihara, Notary Public in and for the State of	14
15	Maryland.	15
16		16
17		17
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2 (5 to 8)

<p style="text-align: center;">5</p> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">(Retained by the Board.)</p> <table><tr><th>HEARING EXHIBIT</th><th>PAGE</th></tr><tr><td>Exhibit 27 Affidavit of posting</td><td>11</td></tr><tr><td>Exhibit 7b Conditional Use Existing Condition</td><td>16</td></tr><tr><td>Exhibit 9c Detailed look at NRI plan</td><td>16</td></tr><tr><td>Exhibit 15 Staff report w/setback requirements</td><td>19</td></tr><tr><td>Exhibit 16b Conditional Use Site Plan</td><td>20</td></tr><tr><td>Exhibit 5a Potomac Edison Company Interconnection Preliminary Approval</td><td>23</td></tr><tr><td>Exhibit 5 Statement of Justification w/soil map</td><td>26</td></tr><tr><td>Exhibit 26 Staff's Supplemental Report</td><td>34</td></tr><tr><td>Exhibit 28 Lease with financial terms redacted</td><td>42</td></tr><tr><td>Exhibit 5d Compilation of Expert Witness Resumes</td><td>45</td></tr><tr><td>Exhibit 9b NRI FSD Overall Vicinity Map</td><td>45</td></tr><tr><td>Exhibit 18e Detailed forest conservation plan</td><td>46</td></tr><tr><td>Exhibit 17a Site Landscape Plan</td><td>50</td></tr><tr><td>Exhibit 16c Conditional Use Sections & Elevations</td><td>52</td></tr><tr><td>Exhibit 19f Proposed Stormwater Management Plan</td><td>59</td></tr><tr><td>Exhibit 16d Conditional Use Fire Hydrant & Emergency Access Plan</td><td>60</td></tr><tr><td>Exhibit 6 Traffic Statement</td><td>61</td></tr><tr><td>Exhibit 20 Right-of-Way Dedication proposal</td><td>62</td></tr></table>	HEARING EXHIBIT	PAGE	Exhibit 27 Affidavit of posting	11	Exhibit 7b Conditional Use Existing Condition	16	Exhibit 9c Detailed look at NRI plan	16	Exhibit 15 Staff report w/setback requirements	19	Exhibit 16b Conditional Use Site Plan	20	Exhibit 5a Potomac Edison Company Interconnection Preliminary Approval	23	Exhibit 5 Statement of Justification w/soil map	26	Exhibit 26 Staff's Supplemental Report	34	Exhibit 28 Lease with financial terms redacted	42	Exhibit 5d Compilation of Expert Witness Resumes	45	Exhibit 9b NRI FSD Overall Vicinity Map	45	Exhibit 18e Detailed forest conservation plan	46	Exhibit 17a Site Landscape Plan	50	Exhibit 16c Conditional Use Sections & Elevations	52	Exhibit 19f Proposed Stormwater Management Plan	59	Exhibit 16d Conditional Use Fire Hydrant & Emergency Access Plan	60	Exhibit 6 Traffic Statement	61	Exhibit 20 Right-of-Way Dedication proposal	62	<p style="text-align: center;">7</p> <p>1 speaking, of course, you want it off and red, and when</p> <p>2 you press it for green. So, I'd like to introduce the</p> <p>3 -- ID the parties?</p> <p>4 MS. LEE-CHO: Good morning. For the record,</p> <p>5 Soo Lee-Cho with the law firm of Bregman, Berbert,</p> <p>6 Schwartz and Gilday with addresses at 7315 Wisconsin</p> <p>7 Avenue in Bethesda, Maryland. I am the land use</p> <p>8 counsel on behalf of the applicant, Davis Hill</p> <p>9 Development. This is the Mountain Vale Solar</p> <p>10 Community Solar project.</p> <p>11 HEARING EXAMINER: Do we have anyone</p> <p>12 appearing in opposition? And I do know we have people</p> <p>13 online on Zoom. So, in the room, anyone in</p> <p>14 opposition?</p> <p>15 I'll turn to the Zoom. Anyone in opposition</p> <p>16 appearing by Zoom. And for folks on Zoom, please make</p> <p>17 sure you have your name spelled out in full. To</p> <p>18 speak, you need to put on your -- turn on video. We</p> <p>19 need to be able to see you for you to speak. And you</p> <p>20 can unmute yourself and introduce yourself. I guess</p> <p>21 we should confirm, can people on Zoom actually hear</p> <p>22 us?</p> <p>23 MR. VASCO: Yes, we can hear you.</p> <p>24 HEARING EXAMINER: Thank you. Is there</p> <p>25 anyone on Zoom appearing in opposition or wishing to</p>
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<p style="text-align: center;">6</p> <p style="text-align: center;">P R O C E E D I N G S</p> <p>1 HEARING EXAMINER: Are the parties ready?</p> <p>2 MS. LEE-CHO: Yes.</p> <p>3 HEARING EXAMINER: We can go on the record.</p> <p>4 Good morning. This is case CU25-07, the</p> <p>5 application of Davis Hill Development, LLC. This is a</p> <p>6 public hearing regarding the above application, an</p> <p>7 application for a conditional use for a solar</p> <p>8 collection system in the agricultural reserve zone.</p> <p>9 Regarding the conditional use application,</p> <p>10 the applicant has the burden of proving that the</p> <p>11 application meets the general requirements and the</p> <p>12 development standards of Section 59.6 and Sections</p> <p>13 59.7.2.B.2 of the zoning ordinance, as well as any</p> <p>14 other standards set out in the zoning ordinance.</p> <p>15 By way of introduction, my name is Kandikile</p> <p>16 Sokoni, and I am the Hearing Examiner in this case,</p> <p>17 which means that I will listen to the testimony, I</p> <p>18 will review the evidence, and I will render a report</p> <p>19 and decision on the application pursuant to the</p> <p>20 requirements and criteria set forth in the zoning</p> <p>21 ordinance.</p> <p>22 I'd like to identify the parties. Just a</p> <p>23 logistical thing to mention. There's a microphone.</p> <p>24 We have a touch on-off button. When you're not</p>	<p style="text-align: center;">8</p> <p>1 participate in any -- is anyone participating and --</p> <p>2 beyond observing, does anyone on Zoom need to -- wish</p> <p>3 to speak during the hearing?</p> <p>4 MR. VASCO: I just have a question, not</p> <p>5 necessarily against the project.</p> <p>6 HEARING EXAMINER: Okay. Your name, sir?</p> <p>7 MR. VASCO: Stephen Vasco.</p> <p>8 HEARING EXAMINER: And could you kindly</p> <p>9 identify your -- where are you in proximity to this</p> <p>10 project? Are you an abutting or confronting neighbor,</p> <p>11 or where are you located?</p> <p>12 MR. VASCO: I am the son-in-law of Ralph</p> <p>13 Cooley, who has asked me to appear on his behalf. He</p> <p>14 is at 17911 Barnesville Road.</p> <p>15 HEARING EXAMINER: Do we have anyone else on</p> <p>16 Zoom wishing to speak or participate?</p> <p>17 MS. LEE-CHO: I have one question. I didn't</p> <p>18 catch the name of the son-in-law. I believe it --</p> <p>19 Mr. Vasco?</p> <p>20 MR. VASCO: Stephen -- Stephen Vasco.</p> <p>21 MS. LEE-CHO: Could you please spell that</p> <p>22 name, please?</p> <p>23 MR. VASCO: Stephen with the P-H. Last name</p> <p>24 Vasco. V as in Victor A-S-C-O.</p> <p>25 MS. LEE-CHO: Thank you.</p>																																						

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3 (9 to 12)

<p style="text-align: right;">9</p> <p>1 HEARING EXAMINER: I hear no other requests 2 in opposition or to participate, so I turn back to the 3 room. As you can see, it is a virtual hearing; so, we 4 have people on Zoom. And like I stated already, 5 anyone who wishes to participate, you may turn your 6 camera off when -- you're welcome to keep it on. We 7 only need you to have your camera on when you're 8 speaking. And at all other times, if you're not 9 speaking, please make sure you're on mute. 10 We ask everyone to not interrupt anyone 11 speaking, unless you're raising a legal objection to 12 what they're saying. This is because this proceeding 13 is being recorded verbatim by a court reporter. And 14 it is very difficult for the court reporter to 15 understand what people are saying when we have cross 16 talk. The court reporter's transcription will be the 17 only official record of this proceeding. 18 The nature of the proceeding. This is an 19 administrative hearing, which means although we are 20 governed by rules of -- OZAH Rules of Procedure and 21 the Administrative Procedures Act, it is a fairly 22 informal hearing. We do adhere to certain rules, 23 however. Everything you say will be said under oath, 24 and the applicant goes first. They have the burden of 25 making their case in chief. I heard no opposition,</p>	<p style="text-align: right;">11</p> <p>1 HEARING EXAMINER: -- the Affidavit of 2 Posting. Thank you very much. The last exhibit we 3 have on the record is 26. I will enter this Affidavit 4 of Posting into the record as Exhibit 27. Does anyone 5 object to the entry of Exhibit 27 into the record? 6 Hearing none, that is entered into the record as 7 Exhibit 27. 8 (Exhibit 27 was marked for identification and 9 was retained by the Board.) 10 With that, I will turn it over to the 11 applicant to get started with your case in chief. Do 12 you have any opening statement before you call your 13 witnesses? 14 MS. LEE-CHO: Just very briefly. 15 HEARING EXAMINER: Um-hmm. You may proceed. 16 MS. LEE-CHO: Before I make a brief overall 17 -- overview statement, I just wanted to clarify the 18 witnesses that we will be presenting. In the 19 applicant's pre-hearing submission, I had identified 20 two expert witnesses and two lay witnesses. The 21 modification is that we will have three expert 22 witnesses. Mr. Torry Hanna will serve both as the 23 applicant representative and will be introduced as an 24 expert witness in land planning. His resume has been 25 submitted and is in the record, or on the exhibit list</p>
<p style="text-align: right;">10</p> <p>1 but what would normally happen is if there was 2 opposition, then after the applicant goes first with 3 their case in chief, there's an opportunity for 4 cross-examination of all applicant witnesses. If 5 there was opposition, the opposition would then 6 present their case in chief, and you switch spots. 7 The applicant can cross-examine the opposition. 8 However, I do not hear that, and I think we have one 9 person online on Zoom wishing to ask some questions, 10 but not necessarily appearing in opposition. 11 I would like to turn to some preliminaries. 12 There is an exhibit list. There's a copy at the 13 table, and anyone in the audience is welcome to take a 14 copy. For the people who are appearing on Zoom, if 15 you are on the OZAH hearing page, you can access the 16 exhibit list. Do we have -- I'm hoping that you have 17 had an opportunity to review the exhibit list. Is 18 there anything on the list that you think should not 19 be there or do you have anything to add to the list? 20 MS. LEE-CHO: No, I do not. I believe 21 everything that applicant has submitted appears on the 22 exhibit list. 23 HEARING EXAMINER: Thank you. Do you have 24 with you, counsel, the Affidavit of -- yes, the -- 25 MS. LEE-CHO: Affidavit of Posting.</p>	<p style="text-align: right;">12</p> <p>1 as 5e. I have hard copies of his resume if you'd like 2 to see. 3 HEARING EXAMINER: Yes, please. Thank you. 4 MS. LEE-CHO: I also have hard copies of the 5 Forest Conservation Plan Resolution for the record. 6 HEARING EXAMINER: Thank you. 7 MS. LEE-CHO: And that is on the list, on 8 the exhibit list, as Exhibit 24. 9 HEARING EXAMINER: And just to be clear, 10 this is not a new exhibit. You're simply giving me 11 the hard copy of what was already -- 12 MS. LEE-CHO: Hard copies. 13 HEARING EXAMINER: Our electronic file has 14 to match the hard copy file. So, thank you for the 15 hard copies. 16 MS. LEE-CHO: So, with those preliminaries 17 taken care of, just very briefly, this is an 18 application for a solar collection system, otherwise 19 known as a community solar farm, in the AG Reserve 20 Zone. It is a less than 2 megawatt photovoltaic 21 system on an 11.23 acre portion of a 109.52 acre 22 existing farm site located at 17700 Barnesville Road 23 in Barnesville, Maryland. 24 The case is presented pursuant to the 25 current zoning ordinance that was modified by Zoning</p>

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<p>13</p> <p>1 Text Amendment 20-01 in 2021, which facilitated the</p> <p>2 use of a community solar-assist farm in the AR zone</p> <p>3 under a conditional use approval process. As the</p> <p>4 Hearing Examiner is aware, there has been a recent</p> <p>5 state law enacted, SB 931, otherwise known as a</p> <p>6 Renewable Energy Certainty Act. That state law may</p> <p>7 change the zoning ordinance in the future, but at</p> <p>8 present, the current code is applicable to this</p> <p>9 application as it was filed in advance of the</p> <p>10 enactment of that state law. And pursuant to Section</p> <p>11 5 of that Act, any application applied prior to July</p> <p>12 1st of this year is directed to proceed under existing</p> <p>13 local law. So with that, I'd like to introduce my</p> <p>14 first witness, Mr. Torry Hanna.</p> <p>15 MR. HANNA: Hello.</p> <p>16 HEARING EXAMINER: Good morning, Mr. Hanna.</p> <p>17 MR. HANNA: Good morning.</p> <p>18 HEARING EXAMINER: If you could kindly raise</p> <p>19 your right hand, I'll administer the oath right away.</p> <p>20 Whereupon,</p> <p>21 TORRY HANNA</p> <p>22 being first duly sworn or affirmed to testify to the</p> <p>23 truth, the whole truth, and nothing but the truth, was</p> <p>24 examined and testified as follows:</p> <p>25 HEARING EXAMINER: Thank you.</p>	<p>15</p> <p>1 expert in the field of land planning.</p> <p>2 A. If I may, just for the record, I've been</p> <p>3 working in the rural energy industry for 10 years.</p> <p>4 Prior to that, I was on the municipal side. My first</p> <p>5 job out of undergrad was a municipal planner with the</p> <p>6 City of Pittsfield, Massachusetts. Sitting on the</p> <p>7 other side of the table, I've done land use work in</p> <p>8 Brooklyn, New York, for the Brooklyn Navy Development</p> <p>9 Corporation, some waterfront land use issues, some</p> <p>10 renewable energy projects, some housing projects</p> <p>11 there. So, I have over 18 years of experience in the</p> <p>12 industry.</p> <p>13 HEARING EXAMINER: Thank you. I know you</p> <p>14 mentioned you have not been qualified as an expert in</p> <p>15 Montgomery County. Have you appeared before any other</p> <p>16 tribunals outside of Montgomery County?</p> <p>17 THE WITNESS: I have, yep. I've been in</p> <p>18 front of groups in Massachusetts, New York,</p> <p>19 Connecticut, and Pennsylvania.</p> <p>20 HEARING EXAMINER: Thank you very much. On</p> <p>21 the basis of the resume and the testimony, I would</p> <p>22 like to accept your request to have him qualified as</p> <p>23 an expert. You may proceed.</p> <p>24 MS. LEE-CHO: Thank you.</p> <p>25 BY MS. LEE-CHO:</p>
<p>14</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MS. LEE-CHO:</p> <p>3 Q. So, for the record, Mr. Hanna, if you could</p> <p>4 state your name, address, and your position at Davis</p> <p>5 Hill Development?</p> <p>6 A. Yes, I'm Torry Hanna. My address is 1125</p> <p>7 Fowler Road, Whitingham, Vermont, 05361. I am the</p> <p>8 Vice-President of Development at Davis Hill</p> <p>9 Development.</p> <p>10 Q. Great. And can you also briefly describe</p> <p>11 your professional certification background as a land</p> <p>12 planner?</p> <p>13 A. Indeed. So, I've been an AICP, which is a</p> <p>14 planning designation, for 10 years. Been a member of</p> <p>15 the American Planning Association for that long, as</p> <p>16 well.</p> <p>17 Q. Okay. So, Mr. Hanna has not been accepted</p> <p>18 as an expert prior in a Montgomery County case, I do</p> <p>19 not believe.</p> <p>20 A. Correct.</p> <p>21 Q. But based on his certification, I would like</p> <p>22 to have him testify both as an expert and lay witness</p> <p>23 on behalf of the applicant. His resume has been</p> <p>24 submitted, and I do believe that his certification and</p> <p>25 experience in land planning should qualify him as an</p>	<p>16</p> <p>1 Q. Mr. Hanna, can you please begin by letting</p> <p>2 us -- well advise us of your familiarity with the</p> <p>3 general and specific conditions required for solar</p> <p>4 collection systems, particularly the 2014 zoning</p> <p>5 ordinance? Have you had a chance to review Section</p> <p>6 59.3.7.2.B.2?</p> <p>7 A. Yes, absolutely, in great detail. We've</p> <p>8 been working under this Section since we originated</p> <p>9 this site about three years ago. So, we've become</p> <p>10 deeply intimate with the subsections. And the code is</p> <p>11 very similar to other codes that we've worked and</p> <p>12 developed projects of this size and scope under.</p> <p>13 Q. And are you familiar with the general</p> <p>14 conditional use approval requirements under Section</p> <p>15 59.3.7.2.E of the zoning ordinance?</p> <p>16 A. Similarly, we're deeply familiar, and I'm</p> <p>17 deeply familiar with that process.</p> <p>18 Q. Great. So, can you begin by using Exhibit</p> <p>19 7b and 9b, which are the Existing Conditions Plan and</p> <p>20 the approved NRI FSD? And please describe the</p> <p>21 existing use and improvements on the property and</p> <p>22 whether the existing uses will remain.</p> <p>23 (Exhibits 7b and 9c were marked for</p> <p>24 identification and were retained by the Board.)</p> <p>25 THE CLERK: You said 9a?</p>

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<p>17</p> <p>1 MS. LEE-CHO: 7b --</p> <p>2 THE WITNESS: 7b and 9c.</p> <p>3 MS. LEE-CHO: -- and 9c.</p> <p>4 THE CLERK: 7b. Whoops. My bad. There we</p> <p>5 go. All right.</p> <p>6 THE WITNESS: Yes. So, for the record,</p> <p>7 shown is exhibit 7b, the parcel in question, the</p> <p>8 subject parcel is a 109-acre parcel, quite large, on</p> <p>9 the south side of Barnesville Road. Approximately a</p> <p>10 quarter of the parcel all the way to the west falls</p> <p>11 within the town of Barnesville. The balance of the</p> <p>12 acreage falls within the county, and the subject area</p> <p>13 of our project falls exclusively within Montgomery</p> <p>14 County. The parcel is a mix of wooded and active farm</p> <p>15 field. Again, totally, completely south on</p> <p>16 Barnesville Road. The subject area is along the</p> <p>17 western edge of the county, as I mentioned, along the</p> <p>18 eastern edge of the town.</p> <p>19 HEARING EXAMINER: You're also welcome --</p> <p>20 you're welcome to actually walk up to the diagram and</p> <p>21 point things out if you want.</p> <p>22 THE WITNESS: Excellent. I appreciate that.</p> <p>23 Thank you.</p> <p>24 So, the parcel is to the east, a triangular</p> <p>25 parcel that does not have to do with our project area.</p>	<p>19</p> <p>1 screen.</p> <p>2 HEARING EXAMINER: Are you sharing the</p> <p>3 screen? Are you able to see it now?</p> <p>4 MR. VASCO: Now, I am, yes. Thank you very</p> <p>5 much.</p> <p>6 HEARING EXAMINER: You're welcome.</p> <p>7 BY MS. LEE-CHO:</p> <p>8 Q. Mr. Hanna, can you answer what existing uses</p> <p>9 will remain on the site?</p> <p>10 A. So, there is a single-family residence on</p> <p>11 the site. Like I said, most of the site is forested.</p> <p>12 There are some two to three farm fields. All the</p> <p>13 existing uses will remain. We are an additional use.</p> <p>14 Q. And moving on to Exhibit 15, which is the</p> <p>15 Staff Report. And I would ask that Page 6 of the</p> <p>16 Staff Report be shown on the screen.</p> <p>17 (Exhibit 15 was marked for identification and</p> <p>18 was retained by the Board.)</p> <p>19 All right. Mr. Hanna, are you familiar with the</p> <p>20 need to define the surrounding neighborhood when</p> <p>21 assessing potential impacts of a proposed conditional</p> <p>22 use?</p> <p>23 A. Yes, I am very familiar. This is kind of a</p> <p>24 laying groundwork when defining a conditional use</p> <p>25 request. I am familiar with that.</p>
<p>18</p> <p>1 It becomes very skinny along Barnesville Road. Skinny</p> <p>2 is not a technical term. But to the west, the balance</p> <p>3 of the property -- showing the cursor here -- our</p> <p>4 parcel project area is to the northwestern corner.</p> <p>5 Here I described the town line, which runs</p> <p>6 north-south, and our parcel -- our project is right</p> <p>7 there.</p> <p>8 BY MS. LEE-CHO:</p> <p>9 Q. Thank you, Mr. Hanna. Could you identify</p> <p>10 the location of Conoy Road that runs north from</p> <p>11 Barnesville Road, I believe, immediately to the east of</p> <p>12 our site location?</p> <p>13 A. Conoy Road.</p> <p>14 Q. So, would you describe the actual solar</p> <p>15 collection site to be west of Conoy Road along</p> <p>16 Barnesville, but east of the Barnesville -- Town of</p> <p>17 Barnesville boundary?</p> <p>18 A. Precisely. The subject area, the footprint,</p> <p>19 as we'll call it, is to the west of Conoy Road, to the</p> <p>20 east of the Town of Barnesville town line, and then</p> <p>21 south. The footprint, total footprint, is</p> <p>22 approximately 11.23 acres of our project area.</p> <p>23 Q. Thank you.</p> <p>24 MR. VASCO: Sorry to interrupt, but on the</p> <p>25 Zoom call we cannot see what you're seeing on the</p>	<p>20</p> <p>1 Q. And on the screen, you see that we're</p> <p>2 showing Page 6 of the Staff Report --</p> <p>3 A. Yes.</p> <p>4 Q. -- which is the technical staff's -- of Park</p> <p>5 and Planning, their recommendation in terms of what</p> <p>6 the surrounding neighborhood outlined in red. Do you</p> <p>7 -- and our site, outlined in yellow. Do you agree</p> <p>8 with the surrounding neighborhood that has been</p> <p>9 identified by technical staff?</p> <p>10 A. Yes, I absolutely agree. The layout</p> <p>11 description is perfect. This is -- as described in</p> <p>12 the Staff Report, this is a low density community with</p> <p>13 low density residential strewn throughout the project</p> <p>14 area, or the neighborhood as defined in red. By the</p> <p>15 way, there are some farm uses and agricultural uses</p> <p>16 spread out throughout that area that I absolutely</p> <p>17 agree with. And also, the subject property demarcated</p> <p>18 in yellow hatch, perfectly defined. Agreed.</p> <p>19 Q. Now we can move on to Exhibit 16b, which is</p> <p>20 the Conditional Use Site Plan?</p> <p>21 (Exhibit 16b was marked for identification and</p> <p>22 was retained by the Board.)</p> <p>23 Now using this exhibit, Mr. Hanna, can you please</p> <p>24 first identify the location of the proposed solar</p> <p>25 farm, or conditional use area on the subject property,</p>

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<p>21</p> <p>1 and then proceed to describe the project proposal?</p> <p>2 A. Sure. As seen on screen and shown on the</p> <p>3 exhibit, the solar collection system is located mostly</p> <p>4 to the western part of the parcel, the 109-acre</p> <p>5 parcel. The limit of disturbance, the footprint as</p> <p>6 we'll call it, is 11.23 acres. It is east of the Town</p> <p>7 of Barnesville line, so exclusively within the County</p> <p>8 of Montgomery jurisdiction, west of Conoy Road. The</p> <p>9 project is a -- what's referred to as a community</p> <p>10 solar project. What that refers to is that</p> <p>11 individuals within the community, within the utility</p> <p>12 district, can participate in the project. They can</p> <p>13 buy solar energy collected, not on their own site, but</p> <p>14 credited through a bill process.</p> <p>15 As you can see, the project location is accessed</p> <p>16 by an access road, which we are proposing to construct</p> <p>17 off of Barnesville Road to the kind of eastern part of</p> <p>18 the footprint. We've avoided any forested areas.</p> <p>19 We're proposing to remove no vegetation. We can</p> <p>20 discuss this a little bit later in the hearing. The</p> <p>21 solar panels are oriented in north-south rows.</p> <p>22 They're on what's called a single axis tracker system</p> <p>23 where the panels will be facing the east and slightly</p> <p>24 oscillate slowly to the west for sunset, to track the</p> <p>25 sun's movement. And what that does is offers a higher</p>	<p>23</p> <p>1 (Exhibit 5a was marked for identification and</p> <p>2 was retained by the Board.)</p> <p>3 A. Yes, it is. We included that in submittal.</p> <p>4 Q. While we have you up there, could you just</p> <p>5 kind of give an overview description of how the site</p> <p>6 slopes from Barnesville Road?</p> <p>7 A. Yeah. There's a slight natural slope in the</p> <p>8 grade of the parcel that, to the south, actually</p> <p>9 slopes down. So, there's a natural grade downward</p> <p>10 from Barnesville Road, from north to south.</p> <p>11 Q. Thank you. Now I'd like to have Mr. Hanna</p> <p>12 walk through the specific conditional use requirements</p> <p>13 and he will touch upon the general. Go ahead.</p> <p>14 HEARING EXAMINER: Before we move away from</p> <p>15 that, since you mentioned -- Mr. Hanna mentioned, you</p> <p>16 mentioned Exhibit 5a, could you just -- it is combined</p> <p>17 with a series of emails. I just want to understand</p> <p>18 what that exchange was about.</p> <p>19 THE WITNESS: Sure.</p> <p>20 HEARING EXAMINER: I think the first page,</p> <p>21 if you go to Exhibit 5a, the first document is titled:</p> <p>22 Interconnection Preliminary Approval. That page</p> <p>23 itself is not dated. So, I just want to try to</p> <p>24 understand the sequence and the emails that are</p> <p>25 attached to that.</p>
<p>22</p> <p>1 production. We're showing the spacing of the solar</p> <p>2 panel rows and also, the avoidance of a wetland</p> <p>3 feature that's significantly to the south of the</p> <p>4 project footprint.</p> <p>5 Q. And can you just briefly describe the method</p> <p>6 of interconnection?</p> <p>7 A. Yes. And I can describe that we found this</p> <p>8 parcel after looking at quite a few parcels within the</p> <p>9 county because of its interconnectability, its ability</p> <p>10 to interconnect to a feeder line and an electric</p> <p>11 feeder line that runs to a very specific substation</p> <p>12 that has capacity. So, prior to pursuing any land use</p> <p>13 approvals, we engaged with Potomac Edison, the local</p> <p>14 utility company, to seek connection, seek approval to</p> <p>15 connect to the electric line which runs along</p> <p>16 Barnesville Road. It's a three-phase line, which</p> <p>17 means 13,000 volts, basically, 13 kilovolts. We've</p> <p>18 applied -- we had applied a few years back to Potomac</p> <p>19 Edison and were granted approval to connect. So, that</p> <p>20 groundwork allowed us to then pursue land studies --</p> <p>21 or start land studies, I should say -- and pursue land</p> <p>22 use approvals. So, that was kind of the foundational</p> <p>23 approval we sought.</p> <p>24 Q. And just to note, is that approval</p> <p>25 identified on the exhibit list as Exhibit 5a?</p>	<p>24</p> <p>1 THE WITNESS: Yes. So, the process of</p> <p>2 interconnecting with the utility includes</p> <p>3 interconnection application. There's a fee that</p> <p>4 project developers like us will pay. The utility will</p> <p>5 study the location, the size of the asset that we're</p> <p>6 proposing. And the result of that study will be a</p> <p>7 preliminary approval. What comes with that is system</p> <p>8 upgrade costs that the utility will charge the</p> <p>9 developer to connect at that location, at that size.</p> <p>10 So, we were granted this preliminary approval back in</p> <p>11 2023.</p> <p>12 BY MS. LEE-CHO:</p> <p>13 Q. And recent emails are 2025. Do you want to</p> <p>14 explain that process?</p> <p>15 A. Sure. Recently, we asked the utility to</p> <p>16 provide acknowledgment that our approval is still</p> <p>17 valid and that we can move the project forward to</p> <p>18 interconnection. The next step would be the granting</p> <p>19 a land use approval from the jurisdictional body, and</p> <p>20 then the payment of system upgrade costs that I</p> <p>21 mentioned. It's approximately \$1.2 million in this</p> <p>22 case. So, with the granting of land use approvals, we</p> <p>23 will pay those funds. The utility will begin their</p> <p>24 design of our system's interconnection, which is along</p> <p>25 Barnesville Road, as I mentioned, and actually</p>

<p style="text-align: right;">25</p> <p>1 implement those system upgrades as we construct the 2 project. 3 Following that, the last steps are witness 4 testing to make sure the system functions properly, 5 safely, all the safety apparatus is working. 6 Following witness tests, you get permission to operate 7 from the utility. 8 Q. Thank you. 9 MS. LEE-CHO: So, may we proceed to the 10 specific requirements? 11 HEARING EXAMINER: Yes, please. 12 MS. LEE-CHO: We will proceed with the 13 specific requirements as applicable to Mr. Hanna's 14 testimony. For the most part, I just wanted to let 15 the Hearing Examiner know that for the general 16 approval requirements, applicant intends to rest on 17 the staff report predominantly, with some additional 18 testimony provided by witnesses today. 19 BY MS. LEE-CHO: 20 Q. So, moving on to the specific conditional 21 use requirements of Section 59.3.7.2 of the zoning 22 ordinance, Mr. Hanna, can you begin by first -- let's 23 see. Under Section 59.3.7.2.A, solar collection 24 systems are prohibited on certain soils and 25 environmental sensitive areas. How does the project</p>	<p style="text-align: right;">27</p> <p>1 Category 3 and 4 are the lowest productive soil 2 types, not only in the county here, but elsewhere. 3 And I think we know that the intent of the ordinance 4 is to place solar on the lower productive types of 5 soil. So, we thoughtfully placed it here. There are 6 other environmental restrictions that we'll get into, 7 including the avoidance of wetlands, the avoidance of 8 cutting down any trees or vegetation. So, all that 9 funnels into this project location, this area. But 10 acknowledging and working within the code to 11 specifically locate on Category 3 or 4 soils was part 12 of the reason we decided to do that. 13 Q. Great, thank you. And under Sections 14 59.3.7.2.B.2.B and C, scraping topsoil from the site 15 is prohibited, and grading or soil removal must be 16 minimized. Does the project comply with these 17 requirements? 18 A. We absolutely comply with both requirements. 19 Q. Under Section 59.3.7.2.B.2.D, the project 20 must comply with the State's net metering program 21 under Maryland Code Section 7-306 and COMAR 20.50.10 22 and COMAR 20.62. How does the project comply? 23 A. We absolutely comply with that Section. And 24 we recently provided in a supplemental report to staff 25 in late July, the project has received a number of</p>
<p style="text-align: right;">26</p> <p>1 comply with this requirement? And for this question, 2 I'd like to go back to Exhibit 5, which is the Staff 3 Report. And on Page 9 of -- no. Page 5 is -- Exhibit 4 5 is actually the Statement of Justification. I 5 apologize. And on Page 9 of that, there is a map, a 6 soil map, identified as Figure 4. 7 (Exhibit 5 was marked for identification and was 8 retained by the Board.) 9 A. Yes. So, referencing Exhibit 5, Page 9, 10 this is an image of the category of soil type within 11 the county. And actually, this is a map that 12 encompasses the whole nation. Our company utilizes a 13 GIS-based methodology, a mapping tool that allows us 14 to find sites that would be suitable for soil, for 15 solar, including soil types that are allowed within 16 any specific jurisdiction. So, we are very intimate 17 with the soil classifications across the entire 18 county. But when finding the electric feeder line and 19 the substation that I mentioned earlier, this parcel 20 showed a significant area within the county 21 jurisdiction, not the town, that had soil types that 22 were allowed under the ordinance. The footprint on 23 which we sited the solar -- and we thoughtfully sited 24 this -- it's entirely within the Category 3, one of 25 the two allowable soil types.</p>	<p style="text-align: right;">28</p> <p>1 approvals, the first being a project generation number 2 from Potomac Edison. That's the approval from the 3 local utility. We've also received and applied to the 4 Maryland Public Service Commission subscriber 5 organization. That's a specific designation that 6 allows us to sell these solar credits to folks within 7 Potomac Edison. So, we have a subscriber organization 8 ID from the Maryland PSC, as well. Our project 9 complies to the size standards and the generation type 10 as required under that specific code. So, yes, we do 11 comply. 12 Q. Great. Thank you. 13 MS. LEE-CHO: Any questions in this regard? 14 HEARING EXAMINER: No. 15 BY MS. LEE-CHO: 16 Q. Moving on. Section 59.3.7.2.B.2(e) provides 17 that the area under the solar facility must be 18 actively used for farming or agricultural purposes as 19 allowed by the Code. How will the project comply? 20 A. We will comply under the first allowable 21 method. The Code allows for three options to meet 22 this Section. We've selected the first one, under 23 which we will plant pollinator-friendly seed mix. 24 That seed mix will attract flora and fauna which 25 supports pollinator species. That, we believe, is the</p>

<p style="text-align: right;">29</p> <p>1 strongest way to comply to this Section of the code. 2 It will help the soil actually regenerate and 3 repopulate natural nitrogen levels over the two and a 4 half decades that our solar array will sit there and 5 collect energy. 6 So, we had considered at an early stage and 7 presented to staff at a pre-development meeting a dual 8 use layout where we would bring in sheep for sheep 9 grazing. Our project requires managing the vegetation 10 so it doesn't grow up over the 25-year period. So, 11 instead of mowing that down, we proposed sheep would 12 graze. Staff was excited about that. We then 13 presented at a public meeting where some local 14 residents didn't think that sheep grazing was a good 15 idea. So, we kind of pulled back and decided to not 16 go that route. So, we've selected pollinator-friendly 17 seed mix instead. 18 Q. Thank you. 19 HEARING EXAMINER: And can I take you back 20 just to the, you know -- there's no scraping of 21 topsoil and then there's -- 22 THE WITNESS: Correct. 23 HEARING EXAMINER: -- grading will be 24 minimized. For us laypeople, could you just 25 distinguish what's the difference between scraping and</p>	<p style="text-align: right;">31</p> <p>1 fire department for review. But this goes back to the 2 selection, the thoughtful selection of this parcel and 3 this 11 acres within the 109-acre parcel. This is a 4 naturally flat area. 5 Q. But to the extent that you're saying no 6 grading, is your testimony focused on where the solar 7 panels are? Because I would imagine that some grading 8 might be necessary to implement the access road. 9 A. Yes, exactly. It's specific to where our 10 location is. The grading that will happen is only 11 specific to the access road. 12 Q. And have the engineers been directed to 13 minimize the grading, only as needed for the access 14 road? 15 A. From Day 1, we were reviewing the code with 16 our engineer to be thoughtful on this Section. 17 Q. Thank you. Under Section 59.3.7.2.B.2(f), 18 applicant must provide evidence that the local utility 19 company will allow the solar collection system. 20 You've already testified relative to the PEPCO 21 interconnection preliminary approval letter. Is it 22 your testimony that you meet this Section of the code 23 with that letter? 24 A. Yes, we have met this Section as referenced 25 in the interconnection letter, Exhibit 5a.</p>
<p style="text-align: right;">30</p> <p>1 grading? And I'm also thinking, you know, you will be 2 putting in a road. So, I'm trying to understand how 3 you're avoiding scraping. And if you could just 4 explain that to us. 5 THE WITNESS: Great question. Figure it 6 this way. We're only bringing in extra soil for the 7 purpose of that access road. Scraping refers to 8 literally taking topsoil off with a blade, with a 9 bulldozer and removing that from the site. Topsoil is 10 so important to our natural environment. It is 11 created over decades and decades of rainfall and, you 12 know, detritus matter. So, that's scraping. We will 13 not be doing that. 14 And then grading, moving dirt to meet 15 certain slope requirements, we are not proposing to 16 grade. We'll only be bringing in clean soil for the 17 purpose of that access road design. 18 Is that helpful? 19 HEARING EXAMINER: Yes. Thank you. 20 BY MS. LEE-CHO: 21 Q. Just to further clarify, to the extent that 22 any grading might be necessary, has that been 23 minimized to the access road and meeting fire code 24 requirements? 25 A. Absolutely, in close coordination with the</p>	<p style="text-align: right;">32</p> <p>1 Q. And under Section 59.3.7.2.B.2(g), applicant 2 must provide evidence that the application was 3 submitted to the Office of Agriculture of the County. 4 Has the project complied? 5 A. Yes. The project has fully complied. The 6 letter from the Office of AG to meet -- and notes that 7 we've met all code requirements -- can be seen in 8 Exhibit 15a, for the record. Staff report, 9 Attachment C. 10 Q. Attachment C. 11 A. For the record. 12 Q. For the next two Sections, I'd like to defer 13 to our landscape architect, which is 59.3.7.2.B.2(h) 14 and (i) -- it relates to trees and landscaping -- and 15 move on. 16 Under Section 59.3.7.2.B.2(j), the use of 17 concrete is prohibited, except for the transformer and 18 electrical equipment pad areas. Does the project 19 comply? 20 A. The project does comply. The only concrete 21 contemplated is for the pad on which our equipment 22 sits, correct. 23 Q. And under Section 59.3.7.2.B.2(k), screening 24 on the sides of the facility within 200 feet of any 25 neighboring house is required. Is this requirement</p>

<p>33</p> <p>1 applicable?</p> <p>2 A. This requirement is not applicable. There</p> <p>3 are no residences within 200 feet of the project area.</p> <p>4 Q. Despite that testimony, are there -- is</p> <p>5 there screening that is proposed?</p> <p>6 A. Yes. We have proposed a very thoughtful and</p> <p>7 intentional screening plan, landscape plan, along</p> <p>8 Barnesville Road. And our engineer, Gregg, will</p> <p>9 elaborate on that. But we believe it's a very</p> <p>10 thoughtful design designed by him, by Gregg, a</p> <p>11 Maryland licensed landscape architect.</p> <p>12 Q. And then under Section 59.3.7.2.B.2(l), the</p> <p>13 Hearing Examiner's decision must consider the</p> <p>14 recommendations of the Office of Agriculture. You</p> <p>15 previously testified that a letter of approval or</p> <p>16 acknowledgment was submitted by the Office of</p> <p>17 Agriculture. Were there any recommendations provided?</p> <p>18 A. We have satisfied this requirement and the</p> <p>19 letter is on file.</p> <p>20 Q. But were there any specific recommendations?</p> <p>21 A. No. No specific recommendations.</p> <p>22 Q. Under Section 59.3.7.2.B.2(m), the applicant</p> <p>23 must provide a calculation of the total acreage used</p> <p>24 for the solar collection system, including any</p> <p>25 required setbacks in all acreage within the fence or</p>	<p>35</p> <p>1 collection projects under this use category on the</p> <p>2 east side of the county, not in the general area of</p> <p>3 this subject application. So, we're distributed</p> <p>4 within the county, so to speak.</p> <p>5 Q. Now, moving into the general conditional use</p> <p>6 requirements, and specifically I'd like Mr. Hanna to</p> <p>7 opine in terms of the project's compliance with</p> <p>8 Section 59.7.3.1.E.1(c), which requires a finding that</p> <p>9 the application substantially conforms with the</p> <p>10 recommendations of the applicable master plan.</p> <p>11 Mr. Hanna, can you please speak to the project's</p> <p>12 compliance to both the County's General Master Plan as</p> <p>13 well as the Rural Rustic Roads Master Plan?</p> <p>14 A. Yes. We believe, we absolutely believe our</p> <p>15 project complies under the two master plans, both in</p> <p>16 the intent and the vision articulated. The project</p> <p>17 location was carefully, carefully selected. I went</p> <p>18 into some detail on our use of GIS mapping tools to</p> <p>19 find this location within the larger 109-acre parcel,</p> <p>20 but also within the County. Distributed generation,</p> <p>21 which is what we refer to Community Solar as, is by</p> <p>22 its very nature small scale generation of renewable</p> <p>23 assets. The County bylaws requires that we're under</p> <p>24 two megawatts, but that's really the point of</p> <p>25 distributed generation. It's to avoid large</p>
<p>34</p> <p>1 shrubbed area. Has the project complied?</p> <p>2 A. Yes, the project has complied. As</p> <p>3 referenced in the Staff Report and the Statement Of</p> <p>4 Justification, the total acreage impact is 11.23</p> <p>5 acres, as shown. I mean, we really have worked hard</p> <p>6 to minimize the footprint of this asset. And this</p> <p>7 type of solar project is relatively small, as required</p> <p>8 by the code, but also to participate in the Maryland</p> <p>9 Community Solar Program. So, we worked really hard to</p> <p>10 minimize our total footprint.</p> <p>11 Q. Great. And then finally, under Section</p> <p>12 59.3.7.2.B.2(n), total land area in the AR zone for</p> <p>13 solar collection system must not exceed 1,800 acres of</p> <p>14 land under the current zoning ordinance. Does the</p> <p>15 project comply?</p> <p>16 A. The project does comply. We're well under</p> <p>17 the 1,800 acre limitation.</p> <p>18 Q. Okay. And are you aware of the Supplemental</p> <p>19 Staff Report that was provided in Exhibit 26? It just</p> <p>20 identifies that other locations in the county.</p> <p>21 (Exhibit 26 was marked for identification and</p> <p>22 was retained by the Board.)</p> <p>23 A. Yes. I am familiar with this. We're the</p> <p>24 third project. Yeah. Just for the record, the</p> <p>25 Hearing Examiner's approved two previous solar</p>	<p>36</p> <p>1 generators, large fossil fuel generating stations,</p> <p>2 centralized generation. So, in that way, we believe</p> <p>3 that distributed generation, our project, really</p> <p>4 complies with the master plan vision.</p> <p>5 Additionally, in connection with the master plan,</p> <p>6 we're going to be supporting economic development.</p> <p>7 The project will be selling lower cost renewable clean</p> <p>8 electricity to low income residents. Forty percent of</p> <p>9 our project will go there. These are individuals who</p> <p>10 have fixed incomes and the cost of electricity</p> <p>11 continues to rise. So, there's a delta there that</p> <p>12 we're trying to assist with.</p> <p>13 We'll also be contributing a significant tax to</p> <p>14 the county long term for this project. The soil at</p> <p>15 this location will rest for two and a half decades.</p> <p>16 It's been mono cropped. Our particular field has been</p> <p>17 mono cropped for soy for many years. So, solar, in a</p> <p>18 way, is a conservation tool to let the soil rest and</p> <p>19 protect land from other pressures of development, like</p> <p>20 single-family homes, subdivisions. So, we believe</p> <p>21 that this project connects to the rural nature</p> <p>22 articulated in the master plan.</p> <p>23 Related to the Rustic Roads Master Plan, as</p> <p>24 required, and part of this process we presented to the</p> <p>25 Rustic Roads Committee, the project, there was a</p>

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<p>37</p> <p>1 healthy discussion about our project ins and outs. 2 Many questions were asked. No formal recommendations 3 were provided by the committee. However, there was a 4 long discussion of an aesthetic fence that we had 5 proposed. We called it a farm fence. We thought that 6 it would add to the beautification of our landscaping 7 plan. The committee didn't seem to really like it; 8 so, we actually pulled that out of our final plan. 9 So, we listened to what they had to say, and made some 10 changes. 11 But we really believe, as related to both the 12 Master Plan and the Rustic Roads Master Plan, that our 13 landscaping plan is incredibly thoughtful, designed by 14 -- you'll hear from Gregg in a moment, a Maryland 15 licensed landscape architect -- really thoughtful, to 16 minimize the aesthetic impact of this solar project, 17 which, you know, visual impact is one of the main 18 concerns when it comes to solar, even small solar like 19 ours. So, in those ways we feel like we comply. 20 Q. And while I have you, and unless there are 21 additional questions that the Hearing Examiner -- 22 would you like to -- 23 HEARING EXAMINER: I just was wondering 24 whether you've had an opportunity to review some of 25 the concerns that, you know, residents have raised?</p>	<p>39</p> <p>1 scale projects, but they're concerned about the visual 2 impact. So, we've really, I think, stood up and tried 3 to make a concerted plan to address that visual 4 impact. 5 BY MS. LEE-CHO: 6 Q. And in that regard, would you say that the 7 Text Amendment that put this use -- allowed this use 8 as a conditional use in the zoning ordinance, in your 9 opinion, as you evaluate the specific requirements, 10 would you say that those considerations were taken 11 into account as far as the specific requirements of 12 screening and landscaping? 13 A. Yes. Yes. 14 Q. That was the intent of the Legislature in 15 making those requirements? Is that your opinion? 16 A. We believe the bylaw was thoughtfully 17 drafted with these concerns in mind, visual as well as 18 environmental protection. And we believe it's very 19 well written. We've looked at a lot of bylaws and 20 pursued land use permits, special and conditional use 21 permits, in many states. And we believe this one is 22 really well crafted and the intention is -- 23 Q. And so, while I have you, I wanted to ask 24 you about the decommissioning process. 25 A. Yes.</p>
<p>38</p> <p>1 There's some -- a couple of letters that came in in 2 the last week. Have you had a chance to review those? 3 And how would you address those concerns? You 4 acknowledge the visual being the biggest impact that 5 people are concerned about? 6 THE WITNESS: Yes. 7 HEARING EXAMINER: But that and other 8 concerns raised in those letters. 9 THE WITNESS: Yes. For the record, I have, 10 and we have reviewed as a project team, those concern 11 letters, the three that came in. You'll read through 12 them and hear a lot of the visual concerns. So, I 13 would address them similarly with -- we really have 14 thought hard about the landscaping and screening plan, 15 which we're not required to do because of the fact 16 that we're not within 200 feet of a residence. But we 17 want to do. We want to try to protect the visual 18 impact of passersbyers on Barnesville Road to our 19 project, our great community project. So, I think 20 that's -- those are the -- I think that was the 21 summary of the concerns, and we really are hopeful 22 that our thoughtful plan addresses those. And that's 23 not, frankly, a Montgomery County only concern, the 24 visual impact of these community solar projects. I 25 think people across the nation like these smaller</p>	<p>40</p> <p>1 Q. You know, at the end of life of the system, 2 if you could walk us through what would happen? 3 A. Sure. We'll be posting a decommissioning 4 bond with the County. The bond sets aside 125 percent 5 of the cost to remove the system in its entirety, 6 including the concrete pad. So, it's a protection 7 mechanism. But we are required under agreement with 8 the landowner to remove the system and all its 9 apparatus at the end of its 25-year life. So, the 10 land will go back to what it was. And we have a leave 11 no trace policy. The decommissioning plan is just an 12 extra protection on that. So, there's actual cash set 13 aside that could remove the system, if needed. This 14 is important to us. 15 HEARING EXAMINER: Thank you. You 16 referenced your agreement with the property owner. Is 17 that something we have in the -- do we have -- is that 18 in the record, the lease? 19 MS. LEE-CHO: It is not. 20 HEARING EXAMINER: Is that something that 21 could be provided? 22 MS. LEE-CHO: It would need to be -- the 23 financial terms would need to be redacted, but I don't 24 see any reason why it couldn't be provided. 25 HEARING EXAMINER: That would be a helpful</p>

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<p>41</p> <p>1 thing to have. I agree, any proprietary or financial 2 terms absolutely can be redacted, but that would be a 3 helpful thing to have in the record. 4 MS. LEE-CHO: Sure. 5 THE WITNESS: Yeah, no problem at all. I 6 think that's a helpful supplemental document to show 7 the care we've taken with the landowner and the 8 thoughtful siting, and the location. And so, I think 9 that would be really great. 10 BY MS. LEE-CHO: 11 Q. And just to clarify, because it was my 12 understanding that the decommissioning bond is 13 actually with the State, not the County. Can you 14 clarify? 15 A. Yes. Thank you for that clarification. 16 That is correct. 17 HEARING EXAMINER: It is with the State? 18 THE WITNESS: Yes. Yeah. 19 And also, just for the record, this is 20 company policy that we act on for all our projects. 21 That decommissioning commitment is important to us. 22 So, we've committed to it in the agreement with the 23 landowner. But it's important to have this safety 24 mechanism as a secondary tool that the community has 25 to call upon.</p>	<p>43</p> <p>1 something about it in the record, too? 2 MS. LEE-CHO: I don't. 3 THE WITNESS: And we haven't -- we haven't 4 submitted this yet. Hopefully, you know, following 5 land use approvals and pursuing our building permit, 6 we will get after that process and do that, yeah. 7 HEARING EXAMINER: Thank you. 8 THE WITNESS: No problem. 9 MS. LEE-CHO: All right. So, I am done with 10 Mr. Hanna. 11 Our next witness is Mr. Gregg Eberly. 12 HEARING EXAMINER: And while your next 13 witness gets settled, I'll do a two-minute break just 14 to grab my water. 15 MS. LEE-CHO: Okay. 16 (Off the record from 10:37 a.m. to 10:39 a.m.) 17 HEARING EXAMINER: I'm ready when you are. 18 Back on the record. 19 So, if you could kindly introduce your -- 20 are we back on the record? 21 THE REPORTER: Yes. 22 HEARING EXAMINER: Thank you. If you could 23 introduce your next witness and I'll administer the 24 oath. 25 MS. LEE-CHO: Yes. My next witness is</p>
<p>42</p> <p>1 HEARING EXAMINER: Thank you. In a past 2 life, I had some experience with these in New York 3 State, and that was an important part of the whole 4 process. I raised the question with staff, and so, 5 I'm happy to hear that this has been thought about and 6 addressed. 7 But I think it would be helpful to have the 8 agreement with the property owner. And in that 9 regard, we then -- we will -- I'll address this at the 10 end of the hearing. We do have -- we usually keep the 11 record open for 10 business days. So, within that 10 12 business days, if that could be provided with -- 13 THE WITNESS: Sure. 14 HEARING EXAMINER: -- all financial terms 15 redacted, as necessary. So, that will now be added as 16 Exhibit 28. 17 THE WITNESS: Excellent. 18 (Exhibit 28 was marked for identification and 19 was retained by the Board.) 20 MS. LEE-CHO: I have nothing further for 21 Mr. Hanna, unless there are additional follow-up 22 questions. 23 HEARING EXAMINER: Real quick. On the 24 decommissioning bond that you said is with the State, 25 where is that addressed in the record? Do we have</p>	<p>44</p> <p>1 Mr. Gregg Eberly. I will be introducing him as an 2 expert witness in the field of landscape architecture 3 and forest conservation law. 4 Mr. Eberly, can you please state your name? 5 HEARING EXAMINER: Let me just -- I'll give 6 you the oath first. 7 MR. EBERLY: Okay. 8 HEARING EXAMINER: Could you please raise 9 your right hand, sir? 10 Whereupon, 11 GREGG EBERLY 12 being first duly sworn or affirmed to testify to the 13 truth, the whole truth, and nothing but the truth, was 14 examined and testified as follows: 15 HEARING EXAMINER: Thank you. 16 DIRECT EXAMINATION 17 BY MS. LEE-CHO: 18 Q. Mr. Eberly, please state your name and your 19 employment business address. 20 MR. HANNA: Sure. I'm Gregg D. Eberly. I 21 work for Bowman Consulting at 13461 Sunrise Valley 22 Drive, Suite 500, Herndon, Virginia, 20171, and I am a 23 licensed landscape architect in the State of Maryland 24 and also an ISA Certified Arborist. 25 Q. Great.</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 HEARING EXAMINER: Thank you.</p> <p>2 MS. LEE-CHO: Mr. Eberly's resume is on the</p> <p>3 exhibit list as Exhibit 5d.</p> <p>4 (Exhibit 5d was marked for identification and</p> <p>5 was retained by the Board.)</p> <p>6 Q. He has qualified previously before the</p> <p>7 Hearing Examiner. I will ask him to identify which</p> <p>8 case that he was accepted as an expert witness.</p> <p>9 A. Free Rein Solar Farm, and I believe the date</p> <p>10 was April of 2023.</p> <p>11 Q. And the case number for the Hearing</p> <p>12 Examiner's reference?</p> <p>13 A. CU2023-05.</p> <p>14 HEARING EXAMINER: Thank you very much. And</p> <p>15 the prior qualification is accepted, and you're</p> <p>16 qualified as a -- I confirm your qualification as an</p> <p>17 expert in this case.</p> <p>18 MS. LEE-CHO: Thank you.</p> <p>19 Q. Mr. Eberly, using the NRI FSD, which is on</p> <p>20 the exhibit list as Exhibit 9b, please describe the</p> <p>21 property and notable features, such as size, shape,</p> <p>22 topography and environmental features.</p> <p>23 (Exhibit 9b was marked for identification and</p> <p>24 was retained by the Board.)</p> <p>25 A. Sure. We're looking here at Exhibit 9b, as</p>	<p style="text-align: right;">47</p> <p>1 and wetland buffers. In addition to the steep slopes,</p> <p>2 wetland and stream buffers, there's also a number of</p> <p>3 significant and specimen trees on the western portion</p> <p>4 of the site, as well as the south, or -- I'm sorry --</p> <p>5 the eastern portion of the site, as well as the</p> <p>6 southwestern portion of the site. All of these</p> <p>7 environmental -- significant environmental areas are</p> <p>8 going to be avoided with the proposed project.</p> <p>9 Q. Great. Thank you. Then in terms of the</p> <p>10 Final Forest Conservation Plan that was approved by</p> <p>11 the Planning Board in conjunction with this NRI FSD</p> <p>12 that you've described, can you please walk us</p> <p>13 through --</p> <p>14 A. Sure.</p> <p>15 Q. -- the Forest Conservation Plan?</p> <p>16 A. Yeah, I'm sorry. Can we go to Exhibit 18e,</p> <p>17 please? It will show us a good view of the detailed</p> <p>18 plan for the Forest Conservation Plan. The forest</p> <p>19 conservation requirements are based upon the net tract</p> <p>20 area of the property. So, the entire -- for the</p> <p>21 entire 109-acre piece, the net tract area is</p> <p>22 essentially the 109-acre project area. And you</p> <p>23 subtract the amount of land that's to remain in</p> <p>24 agricultural use, which is 98.28 acres, which gives</p> <p>25 you a balance and the net tract area of 11.23 acres,</p>
<p style="text-align: right;">46</p> <p>1 you stated. This is the Natural Resources Inventory</p> <p>2 and Forest Stand Delineation for the entire 109-acre</p> <p>3 property that was approved. The case number is</p> <p>4 420-242-090. This plan was approved on September 13th</p> <p>5 of 2024.</p> <p>6 If we could go to Exhibit 9c then? Now do we</p> <p>7 want to go to Exhibit 9c? It's a more detailed look</p> <p>8 at the plan.</p> <p>9 (Exhibit 9c was marked for identification and</p> <p>10 was retained by the Board.)</p> <p>11 So, the property and the associated footprint</p> <p>12 area that Mr. Hanna had alluded to before is located</p> <p>13 within the Little Monocacy River Watershed, and is</p> <p>14 further classified by the State of Maryland as an IBP</p> <p>15 watershed. There's a number of significant sensitive</p> <p>16 environmental features on the site, including Category</p> <p>17 2 soils, which we've already talked about. There's</p> <p>18 also steep slopes of 15 percent or greater on the site</p> <p>19 that are shown on the plan in the areas that are</p> <p>20 hatched in gray. There's also streams, wetlands and</p> <p>21 their associated environmental buffers. I can point</p> <p>22 out some of these areas here. As you can see, this is</p> <p>23 our project area. It's the 11.23 acres that Mr. Hanna</p> <p>24 had talked about before. Down in the southwestern</p> <p>25 corner of the site, as you can see, there are stream</p>	<p style="text-align: right;">48</p> <p>1 which is the acreage that Mr. Hanna had mentioned</p> <p>2 previously.</p> <p>3 Within that 11.23 acres of net tract area,</p> <p>4 there's 2.25 acres of existing forest. All 2.25 acres</p> <p>5 of the existing forest are to remain in conservation.</p> <p>6 In addition to the net tract area, based upon the land</p> <p>7 use category, which is ARA Agricultural Resource Area,</p> <p>8 and the forest conservation worksheets, afforestation</p> <p>9 and reforestation threshold numbers, which are 20</p> <p>10 percent and 55 percent respectively, the applicant</p> <p>11 doesn't have an additional planting requirement on the</p> <p>12 site. The 2.25 acres of forest within the net tract</p> <p>13 area will be placed into a Category 1 easement. So,</p> <p>14 the Final Forest Conservation Plan that we're looking</p> <p>15 at on the screen, it meets all applicable requirements</p> <p>16 of Chapter 22A of Montgomery County Code.</p> <p>17 Q. Can you just show us on the plan where those</p> <p>18 Category 1 easements --</p> <p>19 A. Sure.</p> <p>20 Q. -- the 2.25 acres --</p> <p>21 A. Yep.</p> <p>22 Q. -- and how they're identified on that plan?</p> <p>23 A. Sure. The Category 1 easement, the proposed</p> <p>24 easement, and the existing forested areas are these</p> <p>25 areas that are hatched here and here. That's your</p>

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13 (49 to 52)

<p>49</p> <p>1 2.25 acres of forest areas to remain in preservation.</p> <p>2 Q. And that, for lack of a better description,</p> <p>3 the finger --</p> <p>4 A. Um-hmm.</p> <p>5 Q. -- portion of the Category 1 easement, is</p> <p>6 that currently mature vegetation?</p> <p>7 A. It is.</p> <p>8 Q. And in your opinion, the rows of solar</p> <p>9 panels to the south of that Category 1 easement, will</p> <p>10 they be visible? How much of that will be visible</p> <p>11 from Barnesville Road?</p> <p>12 A. Little to none.</p> <p>13 Q. Okay.</p> <p>14 A. Little to none from Barnesville Road. I</p> <p>15 mean, it's existing mature forest. It's 50-foot</p> <p>16 minimum in height. So, if you're sitting up on the</p> <p>17 road, you will not -- you will not -- there will not</p> <p>18 be views into the reapportion of the property.</p> <p>19 HEARING EXAMINER: And could you just --</p> <p>20 just so when I go back to review the transcript --</p> <p>21 THE WITNESS: Uh-huh.</p> <p>22 HEARING EXAMINER: -- the references to those</p> <p>23 easements, what's the key? I know in the bottom --</p> <p>24 THE WITNESS: Oh. The proposed Category 1</p> <p>25 easement. So, it's the remaining easement in</p>	<p>51</p> <p>1 northern portion of the site, north of the proposed</p> <p>2 solar array. Yeah. This proposed buffer consists of</p> <p>3 a mix of predominantly native evergreen trees and</p> <p>4 shrubs in this location up here, just north of the</p> <p>5 solar array. You know, the intent is to provide as</p> <p>6 much screening as possible from Barnesville Road into</p> <p>7 the site, mitigating any visual impact there may be</p> <p>8 from Barnesville Road and adjacent properties. Like</p> <p>9 Mr. Hanna had mentioned before, we are not required to</p> <p>10 provide screening per Montgomery County Code. What</p> <p>11 we've done is above and beyond the County code</p> <p>12 requirements. And we believe, you know, as Mr. Hanna</p> <p>13 alluded to, we've, you know -- we really looked hard</p> <p>14 into the design of this buffer and tried to mitigate</p> <p>15 any visual impact that there may be from the road.</p> <p>16 HEARING EXAMINER: And in terms of the</p> <p>17 screening, I mean, these will be planted. About how</p> <p>18 long does it take for them to get to --</p> <p>19 THE WITNESS: So, we can -- let's jump to</p> <p>20 the next exhibit. There's a section of the proposed</p> <p>21 buffering with the solar array. I think it's a good</p> <p>22 illustrative of how it will look when we plant it.</p> <p>23 And then I can touch on what the ultimate heights of</p> <p>24 the trees should be.</p> <p>25 Q. I think 6 -- do you want to do 16c or --</p>
<p>50</p> <p>1 perpetuity.</p> <p>2 HEARING EXAMINER: Thank you.</p> <p>3 BY MS. LEE-CHO:</p> <p>4 Q. And you've already testified that there is</p> <p>5 no forest removal. But --</p> <p>6 A. Right.</p> <p>7 Q. -- also, can you -- are there any tree --</p> <p>8 individual trees being removed that would require a</p> <p>9 tree variance?</p> <p>10 A. No, there are not. All of the existing</p> <p>11 significant and specimen trees on the property and,</p> <p>12 you know, directly adjacent to the project area are</p> <p>13 being preserved. So, there is not a variance</p> <p>14 required.</p> <p>15 Q. Now, if we could get into the landscape plan</p> <p>16 because you've testified that one portion of the</p> <p>17 Category 1 easement area will significantly screen</p> <p>18 from view, the solar array. What are the additional</p> <p>19 plantings that are proposed along Barnesville Road to</p> <p>20 further screen those panels closer to the road?</p> <p>21 A. Sure. If we could jump to exhibit 17a,</p> <p>22 please?</p> <p>23 (Exhibit 17a was marked for identification and</p> <p>24 was retained by the Board.)</p> <p>25 So, we are proposing a landscape buffer on the</p>	<p>52</p> <p>1 A. Sorry. 16c, please. Yes.</p> <p>2 (Exhibit 16c was marked for identification and</p> <p>3 was retained by the Board.)</p> <p>4 So this, this is a section of the proposed</p> <p>5 improvements.</p> <p>6 Q. And when you say section, can you just sort</p> <p>7 of orient the viewer --</p> <p>8 A. Sure.</p> <p>9 Q. -- to what you're talking about?</p> <p>10 A. Sure. This is a section of the proposed</p> <p>11 improvements and existing conditions. This area, this</p> <p>12 right here is Barnesville Road with the car sitting on</p> <p>13 it. If you're sitting in the car, you're looking down</p> <p>14 into the solar site, as Mr. Hanna had previously</p> <p>15 spoken about. There's a change in grade of</p> <p>16 approximately 15 to 20 feet from where the car sits</p> <p>17 down into where the solar arrays are located. At the</p> <p>18 day of planting, the evergreen, native evergreens,</p> <p>19 will be planted at a height of 8 to 10 feet. And this</p> <p>20 Section is representative of that. So, as you can</p> <p>21 see, if you're sitting in a car here, this tree is</p> <p>22 planted at 10 feet at installation. I mean, most of</p> <p>23 the visual impacts will be mitigated from Barnesville</p> <p>24 Road on Day 1, at the time of plant installation.</p> <p>25 Now, the species that we've chosen, like I said,</p>

<p>53</p> <p>1 are predominantly evergreen. They consist of Virginia 2 pine, loblolly pine, eastern red cedar -- I think I'm 3 missing one or two -- and evergreen shrubs, such as 4 lexilis (phonetic), clobberosius (phonetic), inkberry 5 holly, prunus laurocerasus. All of these are -- it's 6 a mix of native species. 7 And I guess the last point I want to make is, 8 even though the trees are planted at 8 to 10 feet at 9 installation, I mean, over the course of the project's 10 lifetime, the species that we've chosen should grow to 11 a height anywhere between 30 to 50 feet. So, you 12 know, as, you know, as time passes, the views into the 13 site will be even, you know, mitigated even more 14 during the lifetime of the project, which is 25 years, 15 as Torry had mentioned. 16 Q. And just can you on the lower half of the 17 screen show where the section is crossing -- 18 A. Sure. 19 Q. -- along the -- 20 A. Yeah. This section crosses right here. So, 21 a car sitting up here on Barnesville Road, just 22 looking down into the proposed solar array field, this 23 really from here to here relates directly to there. 24 Just, you know, to the car. Yeah, you can look -- 25 literally draw a line down from -- and that's where</p>	<p>55</p> <p>1 site, and any champion tree or other exceptionally 2 large tree must be left undisturbed. 3 How does the project comply? 4 A. The project complies. We are not removing 5 any vegetation, significant or specimen trees on the 6 project. 7 MS. LEE-CHO: I don't have anything further 8 for Mr. Eberly, unless there are follow-up questions. 9 HEARING EXAMINER: Nothing. Thank you. 10 THE WITNESS: Thank you. 11 MR. VASCO: Hearing Examiner, do you want us 12 to ask questions as Mr. Eberly is there, or do you 13 want to wait until the end of the presentation? 14 HEARING EXAMINER: Did you -- 15 MS. LEE-CHO: It's fine if we want him to 16 take questions. 17 HEARING EXAMINER: You may raise your 18 questions now. That's fine. 19 MR. VASCO: Thank you. 20 CROSS-EXAMINATION 21 BY MR. VASCO: 22 Q. Mr. Eberly, you had said that the screen on 23 the northwest part of the proposed site will be 24 deciduous -- I'm sorry -- would be evergreen trees; is 25 that correct?</p>
<p>54</p> <p>1 you're looking. 2 HEARING EXAMINER: Thank you. That's very 3 helpful. 4 Q. The site's been oriented like turned 5 counter-counterclockwise one, you know, 90 degrees. 6 So, it's a little bit disorienting, I think. 7 A. Yeah. North is up here where Barnesville 8 Road is. 9 Q. All right. Now, going back to a couple of 10 the specific conditional use requirements under 11 Section 59.3.7.2.B.2 of the zoning ordinance, I'd like 12 you to opine or answer the following. Under Section 13 59.3.7.2.B.2(h), which prohibits the removal of trees 14 or landscaping otherwise required or attached as a 15 conditional approval of any plan, application or 16 permit for the installation or operation of a solar 17 collection system, how does the project comply? 18 A. It complies. We are not removing any 19 vegetation as part of the proposed project 20 improvements. 21 Q. And under Section 59.3.7.2.B.2(i), unless a 22 disturbance is allowed pursuant to Section 23 22A-12(b)(1) of the County's Forestry Regulations, any 24 tree in or on a flood plain, stream buffer, steep 25 slope, critical habitat, contiguous forest or historic</p>	<p>56</p> <p>1 A. It's predominantly evergreen. There are 2 some large deciduous species proposed, as well, up 3 along -- directly adjacent to the street, but 4 predominantly evergreen trees and shrubs, correct. 5 Q. My question is as speaking as Mr. Cooley. 6 My property is approximately 20 feet above Barnesville 7 Road. Do you anticipate that I would be able to see 8 the array from my property? 9 A. I do not anticipate you'll be able to see 10 the array from your property simply because of the 11 height changes, but also the existing vegetation that 12 also, you know, that's there already. You know, 13 without doing a section and a study, I can't tell you 14 that for certain. But, yes, I believe that the views 15 will be blocked from your property. 16 MS. LEE-CHO: May I follow on? 17 HEARING EXAMINER: Yes. 18 REDIRECT EXAMINATION 19 BY MS. LEE-CHO: 20 Q. I would presume that depending on one's 21 vantage point, if you're on the second floor of a 22 house, you might be able to see the solar array. I 23 don't think that -- is it your testimony that you're 24 not going to see the solar array at all, or is that 25 substantially mitigated?</p>

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<p>57</p> <p>1 A. It's substantially mitigated, just like you 2 said. I mean, it depends what the vantage point is, 3 but substantially mitigated. 4 Q. Thank you. 5 HEARING EXAMINER: Does that answer your 6 question? Did you have anything further? 7 MR. VASCO: No. That answers my question. 8 Thank you. 9 HEARING EXAMINER: You're welcome. 10 MS. LEE-CHO: I have nothing further for 11 this witness. 12 THE WITNESS: Thank you. 13 MS. LEE-CHO: Mr. Brad Glatfelter. I will 14 be offering Mr. Gladfelter as an expert in civil 15 engineering. 16 HEARING EXAMINER: Good morning. 17 MR. GLADFELTER: Good morning. 18 HEARING EXAMINER: If you would kindly raise 19 your right hand. 20 Whereupon, 21 BRADLEY GLADFELTER 22 being first duly sworn or affirmed to testify to the 23 truth, the whole truth, and nothing but the truth, was 24 examined and testified as follows: 25 HEARING EXAMINER: Thank you.</p>	<p>59</p> <p>1 HEARING EXAMINER: Request granted on the 2 basis of your resume and your prior qualification. 3 BY MS. LEE-CHO: 4 Q. Using Exhibit 19, which is the Stormwater 5 Concept Plan, please describe how the project will 6 comply with the county stormwater management 7 requirements? 8 A. Which ones -- Exhibit -- 9 Q. Nineteen? 10 A. You can go to proposed plan F. Let's go to 11 F. Yeah, that'll do. 12 (Exhibit 19f was marked for identification and 13 was retained by the Board.) 14 So, what we are doing to meet the state and the 15 county stormwater requirements is proposing a 16 microbial retention, which is the -- it's pointed out 17 there. Yeah, that's fine. It's pointed out right 18 here. The facility is about 400 square feet, or so, 19 and it provides an ESD volume of 700 or 817 cubic 20 feet. The minimum required to meet the state 21 regulations and county requirements is 700 cubic feet. 22 This receives drainage or runoff from the proposed 23 impervious areas as well as some of the other upland 24 flow of the existing pervious areas. So, this meets 25 the ESD requirements as required by the State.</p>
<p>58</p> <p>1 DIRECT EXAMINATION 2 BY MS. LEE-CHO: 3 Q. Can you please state your name and place of 4 employment? 5 A. Bradley Glatfelter, Bowman Consulting. 6 Q. And what is your profession? 7 A. I'm a professional engineer licensed in 8 Maryland and among other states. 9 Q. Have you ever qualified as an expert witness 10 in the field of civil engineering before the Hearing 11 Examiner? 12 A. Yes. 13 MR. HANNA: Yeah. We weren't in here 14 though, because it was COVID. So, it was a little 15 different memory. 16 THE WITNESS: Yes. 17 Q. So, can you also cite to the case in which 18 you were accepted as an expert witness? 19 A. Yeah, it was the Free Range Solar Farm off 20 of Rigby Road. It's a forest conservation plan 21 CU2023-05. 22 MS. LEE-CHO: Mr. Gladfelter's resume is in 23 the record, or in the exhibit list, with Exhibit 5d. 24 And I would offer him as an expert witness in the 25 field of civil engineering.</p>	<p>60</p> <p>1 Q. And has this plan been approved by the 2 Department of Permitting Services? 3 A. It has. 4 Q. And what is indicative of that approval on 5 this plan? 6 A. There's a stamp at the top of the plans with 7 the approval number. 8 HEARING EXAMINER: Thank you. 9 MS. LEE-CHO: Are there any questions 10 related to the stormwater management? 11 HEARING EXAMINER: No. 12 MS. LEE-CHO: Thank you. That's it. 13 Moving on to the Fire Department Access And 14 Water Supply Plan, which is Exhibit 16d. 15 (Exhibit 16d was marked for identification and 16 was retained by the Board.) 17 BY MS. LEE-CHO: 18 Q. Using Exhibit 16d, please describe how the 19 project will comply with the county's fire department 20 access and water supply requirements? 21 A. We are proposing an entrance off of 22 Barnesville Road with two 60-foot kind of what we call 23 hammerhead turns for access, and then an underground 24 storage vault or tank for on site water supply, as 25 there is not a fire hydrant in the immediate vicinity.</p>

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16 (61 to 64)

<p>61</p> <p>1 This has been coordinated with Dr. LeBeau (phonetic) 2 with the Fire Marshal's office, or with DPS, and it 3 has been approved with the resident. 4 HEARING EXAMINER: All right. 5 MS. LEE-CHO: Are there any questions 6 regarding the Fire Access Plan? 7 HEARING EXAMINER: No. 8 BY MS. LEE-CHO: 9 Q. Was there a trip generation analysis? And 10 this is -- I guess this isn't technically civil 11 engineering, but it was -- 12 A. Yes, it is. 13 Q. -- the traffic. Okay. Was there a trip 14 generation analysis done for the proposed community 15 solar project? 16 A. There was. 17 Q. And was there an LATR exemption letter 18 prepared? 19 A. There was. 20 Q. All right. Can you just very briefly walk 21 us through the analysis and conclusion of that letter? 22 A. Sure. 23 Q. And that's in Exhibit 6. 24 (Exhibit 6 was marked for identification and was 25 retained by the Board.)</p>	<p>63</p> <p>1 A. All right. So, this one, you'll have to 2 bear with me a little bit, because it's not totally 3 straightforward. But, basically, as a rustic road, 4 there's an expectation of a 70-foot right-of-way. We 5 are dedicating as much as we can to meet that need. 6 So, you'll see a dedication of varying lengths of 7 right-of-way here. Some of it is greater than 35 8 feet, which would be kind of the 50 percent mark of 9 the 70 foot, such as down here, which it's 40 10 additional feet of dedication there, because 30 feet 11 had previously been dedicated by the owner across the 12 road. So, we made it whole. We made it the 70 feet, 13 you know, meeting the expectation. So then, as you 14 work down the right-of-way and down the road, we go 15 back to the 35 feet, kind of to the center line, or as 16 close to the center line as we can get. You'll see 17 that the center line, which is based upon historic 18 records, is a little bit outside of our 35 feet 19 dedication, but we can't dedicate property we don't 20 own. So, we've dedicated as much as we can in order 21 to meet the intent of the rustic road right-of-way 22 section of 70 feet. 23 Q. All right. And has this concept of 24 dedication been accepted by the County Department of 25 Transportation and DPS?</p>
<p>62</p> <p>1 A. Using county provided metrics, there's an 2 average annual daily traffic of about 3,500 vehicles 3 per day right now on Barnesville Road, which is a 4 rustic road, and also, I believe, a collector. And we 5 calculated that during construction, which would be 6 the peak traffic generating time, there would be about 7 15 additional vehicles per day -- or traffic per day 8 on Barnesville Road added. And during normal 9 operations, we're only really seeing one to two trips 10 per day. That's based upon projects that we've worked 11 on in the past. Not only the project that I 12 referenced, but there's a couple other in Montgomery 13 County done in the past, and is representative of 14 standard industry expectations. 15 Q. All right. 16 MS. LEE-CHO: Are there any questions 17 regarding the trip generation issue? 18 HEARING EXAMINER: No. 19 Q. And then, finally, if we could talk a little 20 bit about the dedication of the right-of-way that is 21 going to occur in conjunction with the implementation 22 of this project along Barnesville Road. Exhibit 20, 23 please? 24 (Exhibit 20 was marked for identification and 25 was retained by the Board.)</p>	<p>64</p> <p>1 A. It has. 2 Q. And this property will not be platted, you 3 know, as a record plat. So, in what form will this 4 dedication occur? 5 A. It'll be sent in and recorded as a dedicated 6 plat. 7 Q. No, it won't be. But will it not be in a 8 deed of dedication conveyed to the county? 9 A. Yes. 10 Q. So, that there is no record plat being -- 11 that will be -- need to be processed to implement this 12 project, will there? 13 A. No. The deed will be recorded. Apologies. 14 The deed will be recorded with the County. 15 Q. Thank you. All right. 16 MS. LEE-CHO: Any questions from the Hearing 17 Examiner? 18 HEARING EXAMINER: I may wait for the end. 19 I did want to hear a bit about -- and I don't know if 20 this is where I would ask. One of my notes was, I 21 want to make sure I'm clear on your setbacks, you 22 know, any setback requirements. 23 MS. LEE-CHO: Sure. 24 HEARING EXAMINER: Especially, because 25 sometimes, you know, setback requirements may be</p>

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17 (65 to 68)

<p>65</p> <p>1 cited, you know, relative to buildings. And so, I 2 just want to make sure we're clear on whatever -- what 3 are the applicable provisions on setbacks and what are 4 the setback requirements? 5 MS. LEE-CHO: If we could go to Exhibit 15, 6 which is the Staff Report, and go to Page 17. The 7 setbacks are set forth on a table on Page 17. 8 BY MS. LEE-CHO: 9 Q. Could you please walk us through the 10 setbacks? 11 A. All right. 12 Q. Page 17? 13 A. Yes. It's the outline in Table 1. So, this 14 outlines all of your typical setback requirements. 15 The minimum front setback of 50 feet, we provided 16 greater than 50 feet, which is how we met the intent. 17 The side setback, 20 feet, we have far greater than 18 that from any of the adjacent side owners. And rear, 19 likewise, is 35 feet, and we're 900 feet away from 20 that. 21 HEARING EXAMINER: Do you agree that solar 22 panels are not buildings? They're just -- they're 23 structures, right? So, are we applying the setback 24 requirements for buildings or for structures? 25 THE WITNESS: They are not buildings, yes.</p>	<p>67</p> <p>1 property line. So, if you can indicate where the 2 property line is being measured to? 3 A. Yeah. So, the property is over 100 acres, 4 102 acres. The property line is this dark line along 5 the outside here. 6 Q. Actually, that on the right, is that a 7 property line? 8 A. No. We can't be -- aren't even seeing it 9 entirely. 10 Q. Okay. 11 A. So, it would continue this way down off the 12 page there. 13 HEARING EXAMINER: So, the property line 14 extends out. We're not even seeing the end of it on 15 this -- 16 THE WITNESS: That's right. Yeah. It's -- 17 Q. So, just on the west side, can you identify 18 clearly the property line on the west? 19 A. The property line is here. It has the 20 descriptive metes and bounds along it based upon the 21 plat of property. And then you'll see your setback 22 would be measured from the property line. So, we 23 would typically show an offset of the 50 feet, the 20 24 feet, and you'll see that it's not evidenced on here, 25 but our site is far away from those, you know,</p>
<p>66</p> <p>1 HEARING EXAMINER: So, any building setbacks 2 don't apply. Is that -- 3 MS. LEE-CHO: Well, can I see that table? 4 THE WITNESS: I mean, the setbacks are -- 5 they're kind of universal. I mean, we're not -- with 6 a setback, you can't build unless it's like a fence or 7 maybe some sheds and things of that nature in 8 setbacks. 9 BY MS. LEE-CHO: 10 Q. Would you say that the setbacks were 11 measured to -- well, why don't we use a plan and you 12 can show to what points these measurements were taken. 13 What's the best plan to do? 14 HEARING EXAMINER: And I should apologize in 15 advance. Usually, when I have any unsettled 16 questions, I try to raise them ahead of time. So, I 17 just want to make sure I have some clarity in my mind. 18 Q. What sheet are you looking at? 19 A. I'm looking at the conditional use permit 20 sheet. I'm sorry, it's Exhibit 16b. 21 Q. I don't think -- is that the right one? 22 Okay. 23 A. Yeah. 24 Q. 16b, gotcha. So, if you could use 16b, and 25 because it could be confusing, the LOD line is not the</p>	<p>68</p> <p>1 required setback lines. 2 Q. So, what is that line that is most 3 immediately adjacent to the panel on the west? That 4 line, yes. That line right there. 5 A. I believe that's the differentiator between 6 the county and the town. This guy right here? 7 Q. Yeah. 8 UNIDENTIFIED SPEAKER: Is that right? 9 THE WITNESS: Yeah, that's the -- that's not 10 -- that's a demarcation between county and the Town of 11 Barnesville. 12 BY MS. LEE-CHO: 13 Q. And what is the dashed line then to the west 14 of that? 15 A. That's the area of the CUP. So, we said the 16 area of the CUP is about 11 acres of the application, 17 right? And inside of that, then we said are limits of 18 construction. Because I'm going to use another word 19 here in a moment, but our limits of construction is 20 about 6 acres in total here. But our regulated limits 21 of disturbance, which is based upon the verbiage and 22 guidance from the county and the state applicable 23 specifically to solar cases, it doesn't constitute 24 regulated disturbance or impervious area as really the 25 panels, only where you put the panel into the ground</p>

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18 (69 to 72)

<p>69</p> <p>1 and any new impervious area. So, our actual regular 2 limits of disturbances is about 7,000 square feet in 3 the all total of 102 acres.</p> <p>4 Q. Does that sort of answer your question? 5 HEARING EXAMINER: Yes. Thank you. 6 THE WITNESS: Yep.</p> <p>7 Q. And then in terms of the chain link fence 8 that's required to be just around the panels 9 themselves, is that a state requirement?</p> <p>10 A. Yes, for safety.</p> <p>11 MS. LEE-CHO: I have nothing further. I 12 think we're done, unless there are other questions.</p> <p>13 HEARING EXAMINER: I have none. Anyone on 14 the Zoom that had any questions? Hearing none --</p> <p>15 MR. VASCO: Yes, I do.</p> <p>16 HEARING EXAMINER: Oh.</p> <p>17 MR. VASCO: This is Stephen Vasco. Is there 18 a proposed time line for construction? In other 19 words, when do you -- when do you anticipate beginning 20 construction?</p> <p>21 MS. LEE-CHO: Okay. I might have to bring 22 Mr. Hanna back up for that question.</p> <p>23 HEARING EXAMINER: Sure. Do we -- are you 24 -- are you -- are there any other questions for this 25 witness?</p>	<p>71</p> <p>1 post-construction, as well, yes.</p> <p>2 MR. VASCO: Thank you.</p> <p>3 MR. HANNA: Yep.</p> <p>4 MR. VASCO: Since this is a community solar 5 project, does Davis Hill have any intention of 6 allowing people that are abutting the property to have 7 a reduced rate for electricity?</p> <p>8 MR. HANNA: Absolutely. And we would 9 encourage folks to participate. Absolutely. Great 10 question.</p> <p>11 MR. VASCO: Has anybody done any studies at 12 any other of the sites that you've done in Montgomery 13 County to see how the construction of a solar array 14 impacts property values of neighboring properties?</p> <p>15 MR. HANNA: Within the county, specifically, 16 I don't believe so. The National Renewable Energy 17 Lab, NREL, has done a study on the effect of ground 18 mounted solar on property values. The study concluded 19 that there is no impact, positive or negative, on 20 property values. However, a Montgomery County 21 specific one, I don't believe exists.</p> <p>22 MR. VASCO: Thank you. Madam Examiner, 23 that's all the questions that I have.</p> <p>24 HEARING EXAMINER: Thank you.</p> <p>25 MS. LEE-CHO: All right, thank you. That</p>
<p>70</p> <p>1 MS. LEE-CHO: No.</p> <p>2 HEARING EXAMINER: Okay. Thank you very 3 much. And then we may bring Mr. Hanna back up. 4 (Pause.)</p> <p>5 I think there was a question about the time 6 line for construction.</p> <p>7 MR. HANNA: Yes. So, following approval 8 from land use, we would pursue a building permit 9 application and electrical application. Once that is 10 approved, we would commence construction. So, we're 11 targeting fall time, October.</p> <p>12 MS. LEE-CHO: Of 2026. Oh, no.</p> <p>13 MR. HANNA: 2025.</p> <p>14 MS. LEE-CHO: 2025, okay.</p> <p>15 MR. HANNA: Yep.</p> <p>16 MR. VASCO: Will there be any inspections by 17 either in the county or the state on your construction 18 to make sure you're adhering to stormwater management 19 and landscape designs?</p> <p>20 MR. HANNA: There absolutely will be 21 inspections during the construction process and at its 22 conclusion. An additional entity to do inspections 23 that wasn't mentioned would be the utility itself. I 24 mentioned that a little bit earlier, but the utility 25 will be doing inspections during construction and</p>	<p>72</p> <p>1 exhausts our witnesses. I would just make a brief 2 closing statement --</p> <p>3 HEARING EXAMINER: Sure.</p> <p>4 MS. LEE-CHO: -- and then deal with 5 follow-up with the Hearing Examiner.</p> <p>6 As testified by the witnesses today, the 7 Hearing Examiner heard that this is an application 8 that has met all of the requirements of the zoning 9 ordinance, is compliant with the legislation that was 10 enacted by the County Council in 2021 to facilitate 11 this size of community solar projects within the AR 12 zone to allow for it with regard to -- in compliance 13 with provisions that contemplated issues that have 14 been raised by the community about visual impacts. 15 And so, there are screening provisions that were 16 contemplated. Despite the fact that this particular 17 project, because it is located quite insular to the 18 actual property, the property is quite large, it is 19 not near its boundary to the west or to the east. It 20 is along Barnesville Road. But to the south and west 21 and east, there really are no other homes near this 22 solar facility from which it needs to provide a 23 significant buffering or landscape screening. But in 24 sensitivity to those who are concerned about the drive 25 by views along Barnesville Road, significant landscape</p>

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<p>73</p> <p>1 has been proposed by the applicant. This is despite 2 the fact that the property itself, you heard in 3 testimony, slopes 18 to 20 feet to the south, such 4 that, you know, we believe that even those who are 5 passing by on Barnesville Road, you know, initially, 6 but definitely over time due to the vegetation that 7 will be planted as it matures, will be not visible 8 ultimately. There will be some visual impacts, no 9 doubt, especially with a new access drive being 10 implemented. If someone looks for the solar array, 11 will they find it? Yes. But to the extent that in 12 compliance with the law that was enacted by the county 13 to facilitate this use in this zone of the county, 14 this application has met and gone above and beyond all 15 of the necessary requirements and have addressed all 16 necessary concerns. So, with that, I would submit for 17 the Hearing Examiner's approval of this application. 18 HEARING EXAMINER: Thank you. You know, I 19 don't want to lose sight of this. I'm just thinking 20 of all -- whatever community concerns we did have that 21 we did receive. There was one, I believe, that 22 mentioned a concern around the drive, like, you know, 23 their driveway being directly opposite the access. 24 MS. LEE-CHO: That was a comment that was 25 received very early on to a previous site layout which</p>	<p>75</p> <p>1 be nice to have in the record. 2 MS. LEE-CHO: Okay. 3 HEARING EXAMINER: So -- 4 MS. LEE-CHO: So, 10 business days, just so 5 that I have a date certain? 6 HEARING EXAMINER: Yes. I'll give that to 7 you in a minute. 8 MS. LEE-CHO: Would that be August 12th? 9 HEARING EXAMINER: Just give me one second. 10 Correct. 11 MS. LEE-CHO: And will that be the close of 12 business? 13 HEARING EXAMINER: That will be the close of 14 business on August 12th. 15 MS. LEE-CHO: 5:00 p.m.? 16 HEARING EXAMINER: Correct. And, of course, 17 we'll require that in both electronic and -- I'll 18 consider it timely as long as we get the electronic 19 copy by close of business on the 12th. But just like 20 with every other record, we'll need both the 21 electronic and the hard copy. 22 MS. LEE-CHO: Understood. Just so -- for 23 our edification, the time for the decision, the report 24 would be counted from August 12th? 25 HEARING EXAMINER: Correct.</p>
<p>74</p> <p>1 had the driveway located on -- 2 MR. HANNA: The western. 3 MS. LEE-CHO: -- the western. So, the 4 western edge of the conditional use area. It was the 5 property owner across -- immediately across 6 Barnesville Road. Due to -- not because of that 7 comment necessarily, but due to other slope issues and 8 just looking at the site more closely, the design team 9 relocated that access point to where you're seeing it 10 now. So, with respect to that particular property 11 owner's comment, I think that has been rendered moot 12 as a result of the relocation of the access point. 13 HEARING EXAMINER: Thank you. I have no 14 further questions. So, I believe -- so, we will hold 15 the record open for 10 business days for receipt of 16 the transcript. And within that 10 business days, if 17 we could kindly receive the lease redacted as you see 18 appropriate. I will also make sure that that gets 19 posted. Usually people would have had the opportunity 20 to look at all the exhibits. So, this is one that 21 will get posted as soon as possible. I think it's 22 helpful; it's not critical. Because we already had 23 the testimony on it, and because we don't have any 24 opposition, I will not be holding it open for any 25 further written comment. But I would just -- it would</p>	<p>76</p> <p>1 MS. LEE-CHO: So, is it a 30 day? 2 HEARING EXAMINER: Thirty day. The Hearing 3 Examiner's decision is due 30 days from the close of 4 the record. So, 30 days from August 12th. 5 MS. LEE-CHO: Thank you for that. 6 HEARING EXAMINER: You're welcome. 7 With that -- and all exhibits that were 8 previously posted online, as well as the ones that we 9 introduced into the record today, all those exhibits 10 are officially part of the record, as well as the 11 exhibit that will be submitted within the 10 business 12 days, and the transcript. Other than that, the record 13 is closed to anything else, and this hearing is 14 closed. 15 (Off the record at 11:23 a.m.) 16 17 18 19 20 21 22 23 24 25</p>


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CERTIFICATE OF COURT REPORTER - NOTARY PUBLIC

I, Jamie Ogihara, the officer before whom
the foregoing proceedings were taken, do hereby
certify that any witness(es) in the foregoing
proceedings were fully sworn; that the proceedings
were recorded by me and thereafter reduced to
typewriting by a qualified transcriptionist; that said
digital audio recording of said proceedings are a true
and accurate record to the best of my knowledge,
skills, and ability; and that I am neither counsel
for, related to, nor employed by any of the parties to
this case and have no interest, financial or
otherwise, in its outcome.


JAMIE OGIHARA, NOTARY PUBLIC
FOR THE STATE OF MARYLAND

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CERTIFICATE OF TRANSCRIBER

I, Kathleen Simmons, do hereby certify
that this transcript was prepared from the digital
audio recording of the foregoing proceeding; that said
transcript is a true and accurate record of the
proceedings to the best of my knowledge, skills, and
ability; and that I am neither counsel for, related
to, nor employed by any of the parties to the case and
have no interest, financial or otherwise, in its
outcome.


KATHLEEN SIMMONS, CET
AAERT NO. 1720
DATE August 3, 2025.

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