

BEFORE THE HEARING EXAMINER FOR MONTGOMERY COUNTY, MARYLAND

Office of Zoning and Administrative Hearings
Stella Werner County Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850

Exhibit 5
CU 25-07

IN THE MATTER OF THE PETITION OF:)	
)	
DAVIS HILL DEVELOPMENT, LLC – IN RE)	Conditional Use Application
MOUNTAIN VALE COMMUNITY SOLAR)	No. CU _____
PROJECT – A SOLAR COLLECTION SYSTEM)	
CONDITIONAL USE IN THE AR ZONE)	
Applicant)	
)	
)	
Soo Lee-Cho, Esq.)	
Bregman, Berbert, Schwartz & Gilday, LLC)	
Attorney for the Applicant)	

STATEMENT OF JUSTIFICATION and SUMMARY OF PROOF

A. Project Overview and Subject Property

The Applicant, Davis Hill Development, LLC (the “Developer”), seeks a Conditional Use to operate a less than 2-megawatt photovoltaic solar collection system on an 11.23-acre portion of property located at 17700 Barnesville Road, Barnesville, in the AR zone (the “Property”).

The Property consists of a total of 109.52 acres of land in the Agricultural Reserve known as Parcel P020 on Tax Map CV62 and is located on the south side of Barnesville Road, between Old Hundred Road and Conoy Road. The proposed solar collection system will be located on an 11.23-acre portion of the Property that is delineated as the “Conditional Use Area” on Conditional Use Site Plan(s) submitted in support of this Application.

B. General Neighborhood

The Conditional Use Area confronts several large lot single-family detached homes located on the north side of Barnesville Road that are also classified in the AR Zone but otherwise is surrounded by agricultural farmland to the west, south and east. The Solar Project (as described

below) will have a negligible impact on the general neighborhood and any visual impacts are mitigated by distance from residences, screening by natural existing foliage that will remain, topography of the Property and the voluntary addition of further new vegetative screening as further detailed herein.

C. Proposal

The Applicant proposes to construct a solar photovoltaic (“PV”) electric generating project that is less than 2-megawatt (AC) in generating capability (the “Solar Project” or “Project”). There is a currently occupied residential dwelling unit located on the far eastern side of the Property that will remain.

As shown on the submitted Conditional Use Site Plan (“Plan”) and supporting materials, the Project is a solar photovoltaic (“PV”) electric generating facility that will use ground-mounted silicon-based panels to generate electricity from solar energy. The Project layout plan consists of linear east-west rows of PV panels mounted facing south at the appropriate angle to maximize the solar collection. The PV panels will be the latest state-of-the-art bi-facial technology that enables the panels to collect energy both from direct sunlight as well as light reflected from the ground and ambient surroundings. Solar PV is proven, safe technology that is presently being used to reliably generate tens of thousands of megawatts of electricity in the U.S. and around the world. As with most solar PV panels, these will generate direct current (“DC”) that will be transformed using standard onsite equipment into alternating current (“AC”) suitable for delivery into the Potomac Edison Company electric distribution system. Potomac Edison Company has granted preliminary interconnection approval to the Project at less than 2 MW(AC). (See **Exhibit A**)

The goals of the Project are supported by the Montgomery County Green Bank (see Letter of Support, attached hereto as **Exhibit B**). The Project intends to work with Green Bank to structure financial options and credit support designed to assist in securing financing for the Project from the commercial lending community.

D. Necessary Findings under Section 59.7.3.1 Conditional Use

Section 59.7.3.1.E sets forth a series of findings that the Hearing Examiner must make to approve a conditional use application. These findings are listed below in *italics*, followed by the Applicant's statement as to how each is satisfied.

1. *To approve a conditional use application, the Hearing Examiner must find that the proposed development:*

a. *Satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended;*

Not applicable.

b. *Satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;*

The Subject Property is in the AR zone, which allows a solar collection system as a conditional use that is less than 2-megawatt (AC). The Project complies with all development standards of the AR zone, as shown on the Development Standards summary excerpt from the Cover Sheet of the Conditional Use Plan Set included in Figure 1 below.

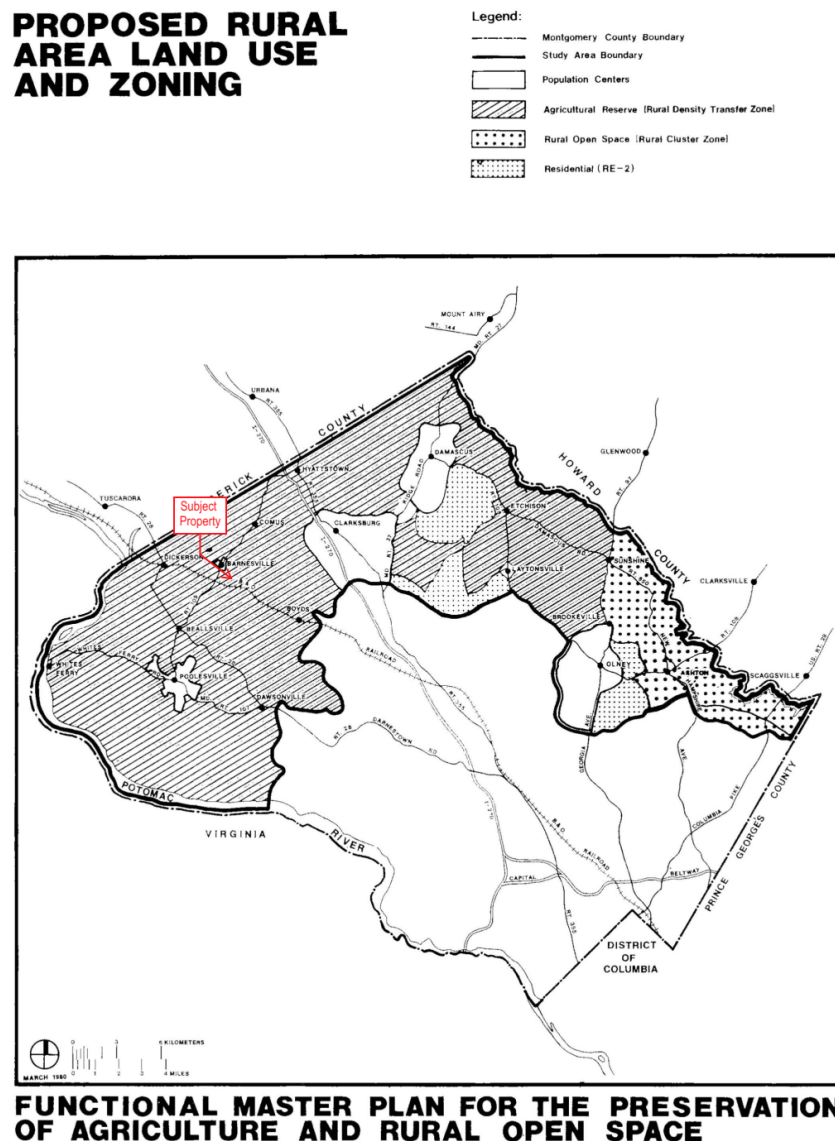
Figure 1. Development Standards Summary from the Conditional Use Plan Set

DEVELOPMENT STANDARDS	
<u>SITE TABULATIONS</u>	
EXISTING ZONING:	AGRICULTURAL RESERVE (AR)
LIMITS OF DISTURBANCE:	6.45 AC.
NET TRACT/CONDITIONAL USE AREA:	11.23 AC.
PROPOSED FENCED AREA:	6.26 AC. (SOLAR COLLECTION SYSTEM)
<u>LOT & DENSITY</u>	
MINIMUM SITE AREA:	25 AC.
MINIMUM LOT AREA:	40,000 S.F.
MAXIMUM LOT COVERAGE:	10% (ALL ROOFED BUILDINGS & STRUCTURES)
PROPOSED LOT COVERAGE:	1.0% +/-36,000 SF.
<u>SETBACKS & HEIGHT</u>	
FRONT SETBACK REQUIRED:	50'
FRONT SETBACK PROPOSED:	50' MIN.
SIDE STREET SETBACK REQUIRED:	50'
SIDE STREET SETBACK PROPOSED:	50' MIN.
SIDE SETBACK REQUIRED:	20'
SIDE SETBACK PROPOSED :	20' MIN.
REAR SETBACK REQUIRED:	35'
REAR SETBACK PROPOSED:	35' MIN.
MAXIMUM HEIGHT:	50'
MAXIMUM HEIGHT PROPOSED:	10' MAX. (SOLAR COLLECTION SYSTEM)

c. *Substantially conforms with the recommendations of the applicable master plan*

The Property is located in an area of the County covered only by the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space in Montgomery County (the “Master Plan”). The Proposed Rural Area Land Use and Zoning Map, excerpted from the Master Plan (see Figure 2 below), has been labeled with the general location of the Property to the east of the Town of Barnesville. There are no specific land use recommendations for the Property other than its inclusion in the Agricultural Reserve (formerly the Rural Density Transfer Zone, now AR Zone) of the County.

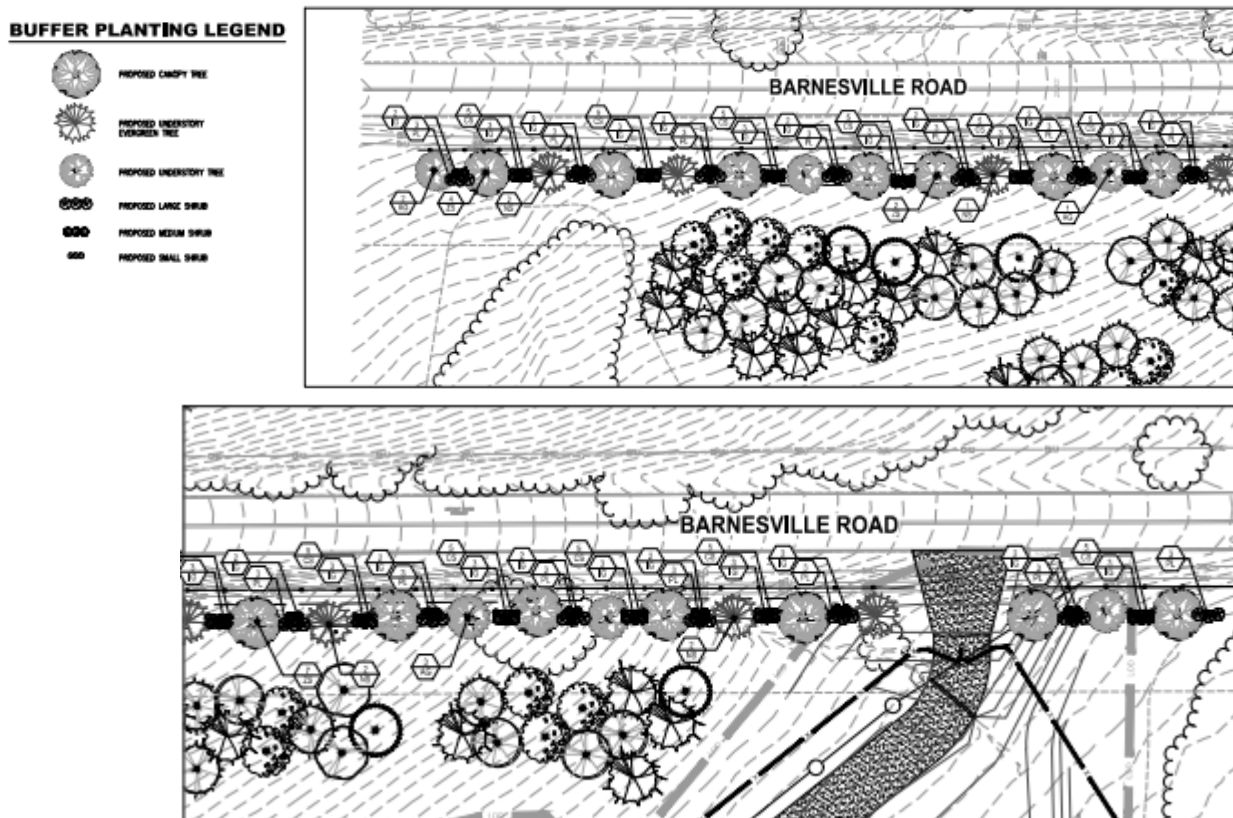
Figure 2. Proposed Rural Area Land Use and Zoning Map from the Master Plan



d. is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

The Project is harmonious with the character of the surrounding neighborhood because any visual, traffic or noise impacts will be de minimis. The Project site will be naturally screened from view along most of the roadway frontage by dense existing foliage that will be supplemented by substantial additional plantings proposed on the Detailed Site Landscape Plan (excerpted below) in support of this Application. Views of the Project will be mitigated by distance, natural existing trees, topography of the Property and Applicant's voluntary addition of further new vegetative screening. The Project will not add any discernable noise to the natural background levels at the Property boundary.

Figure 3. Excerpts of the Detailed Site Landscape Plan



- e. will not, when evaluated in conjunction with the existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity, or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that conforms with the recommendations of a master plan does not alter the nature of an area;*

Not applicable. The Property does not adjoin a Residential Detached zone. It is located in and surrounded by the Agricultural Reserve (AR) Zone where the predominant use is agricultural in nature, as opposed to residential. Nonetheless, a diligent search of County records revealed no conditional uses (or special exceptions) in the immediate vicinity of the Project site.

- f. will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*

- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage; ...*

The Project requires no water, sanitary sewer or other public infrastructure connections, other than the Potomac Edison Company (“PEC”) electrical interconnection. PEC has studied and approved the Project electrical interconnection at the location of PEC’s existing circuits on the south side of Barnesville Road along the Property’s frontage. The Emergency Access Plans prepared and submitted in support of this application have been coordinated to comply with Fire Department Access review requirements. The Project will place no additional impact on schools or other public services.

A Traffic Statement has been prepared and submitted in support of this Application. The trips anticipated to be generated by the proposed solar facility during the construction stages are

approximately 15 trips per day. The trips anticipated to be generated by the solar facility upon completion are approximately 1 to 2 trips per day. The proposed solar facility will have access to Barnesville Road via a proposed 20-foot wide access drive to be located west of Old Hundred Road.

Given the location of the site, it is anticipated that the solar facility traffic will be primarily destined to/from the I-270 corridor to the east, which can be accessed by traveling to/from the east along Barnesville Road or to/from the west via Old Hundred Road north. Given the very low trip generation for the solar facility during construction and upon completion, no measurable traffic impacts will result along Barnesville Road and Old Hundred Road. Accordingly, the Traffic Statement concludes that the addition of the site traffic to be generated by the proposed solar facility will have no adverse impact on the traffic operations within the existing roadway network in the vicinity of the Project.

The Project's stormwater management strategy reflected on the Stormwater Concept Plan that has been submitted to Montgomery County Department of Permitting Services in conjunction with this Application, proposes limiting grading and impervious area. It keeps consistent with existing drainage patterns by proposing a culvert below the proposed access road to allow water from the existing drainage swale to continue across the site. It then proposes a micro bioretention facility that will capture and treat a majority of the access road impervious area and equipment pads. It then will then have a riprap outfall to further slow-down 10-yr flow rates before it will dissipate across the existing slopes before flowing into the existing stream southeast of the solar facility.

- g. will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect along or the combination of an inherent and a non-inherent adverse effect in any of the following categories:*
 - i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;*
 - ii. traffic, noise, odors, dust, illumination, or a lack of parking; or*
 - iii. the health, safety, or welfare of neighboring residents, visitors, or employees.*

Inherent adverse effects are those necessarily associated with the use type. Consistent with previous solar collection system conditional use cases and while limited and/or temporary in impact, Applicant believes the following may be deemed to be inherent adverse effects necessarily associated with a solar collection system conditional use:

- access road
- construction noise (temporary)
- traffic for construction (temporary) and routine maintenance

There are no non-inherent adverse effects associated with the present application, either physical or operational.

2. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential neighborhood.*

Not applicable.

3. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require conditional use approval.*

The Project not only satisfies all specific requirements of the proposed conditional use (as further detailed below) but is compatible with the character of the surrounding neighborhood because any visual, traffic or noise impacts will be de minimis. The Project site will be naturally screened from view along most of the roadway frontage by dense existing foliage that will be supplemented by substantial additional plantings proposed on the Detailed Site Landscape Plan (see Figure 3 above) in support of this Application. Views of the Project will be mitigated by distance, natural existing trees, topography of the Property and Applicant's voluntary addition of further new vegetative screening. The Project will not add any discernable noise to the natural background levels at the Property boundary.

E. Compliance with Section 3.7.2.B.2 of the Zoning Ordinance, Solar Collection System in the AR Zone

Where a solar collection system is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.2.B.2, and the following standards:

a. The Solar Collection System is prohibited:

- i. on soils classified by the United States Department of Agriculture as either Soil Classification Category I or Category II;*
- ii. in a stream buffer;*
- iii. on wetlands; or*
- iv. on slopes equal to or greater than 15%.*

The solar array field has been carefully sited on the Property to be located only on non-prime agricultural soils falling under Category 3 or Category 4 soil classifications (see Figure 4 below), and in a manner that avoids stream buffers, wetlands and areas with slopes equal to or greater than 15% as required (see Figure 5 below).

Figure 4. Property Soil Types with Proposed Solar Array Overlay

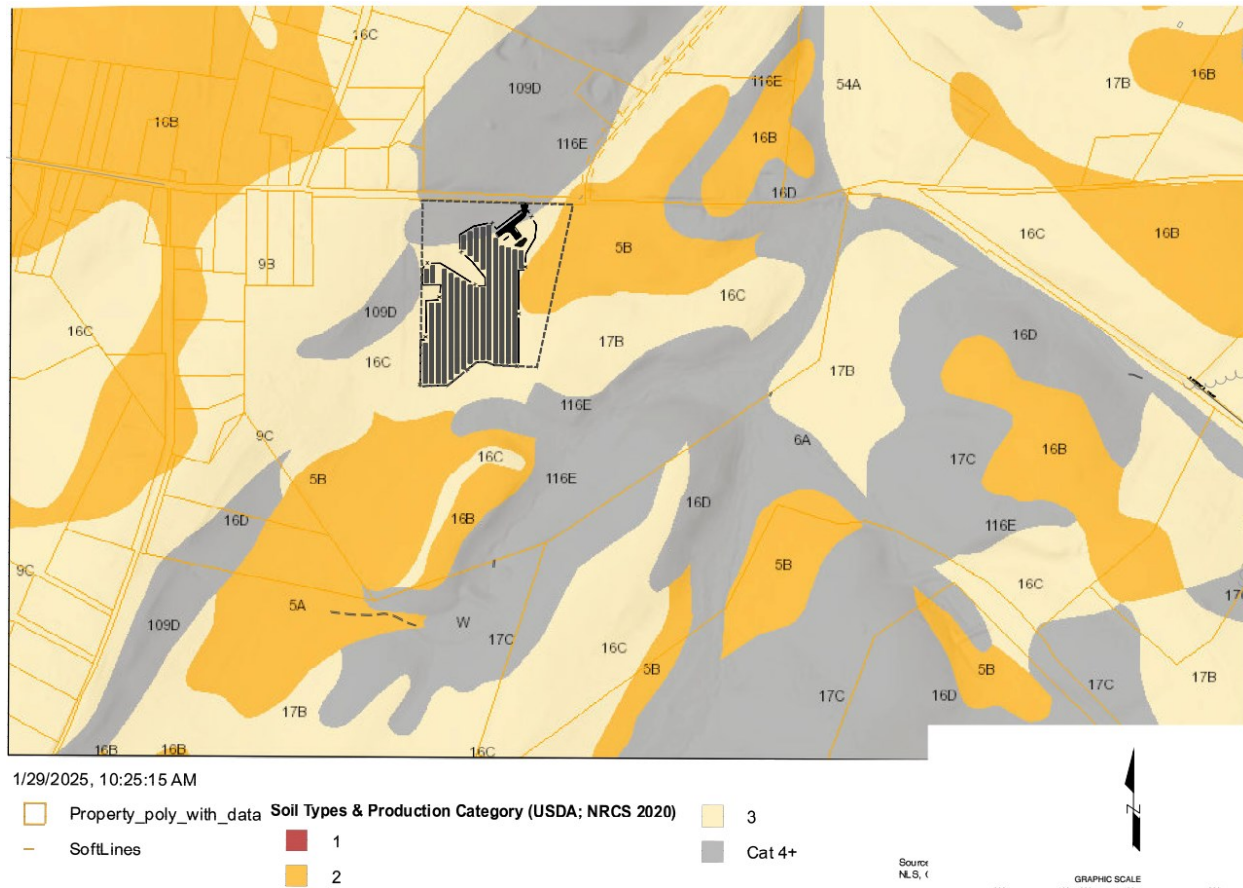
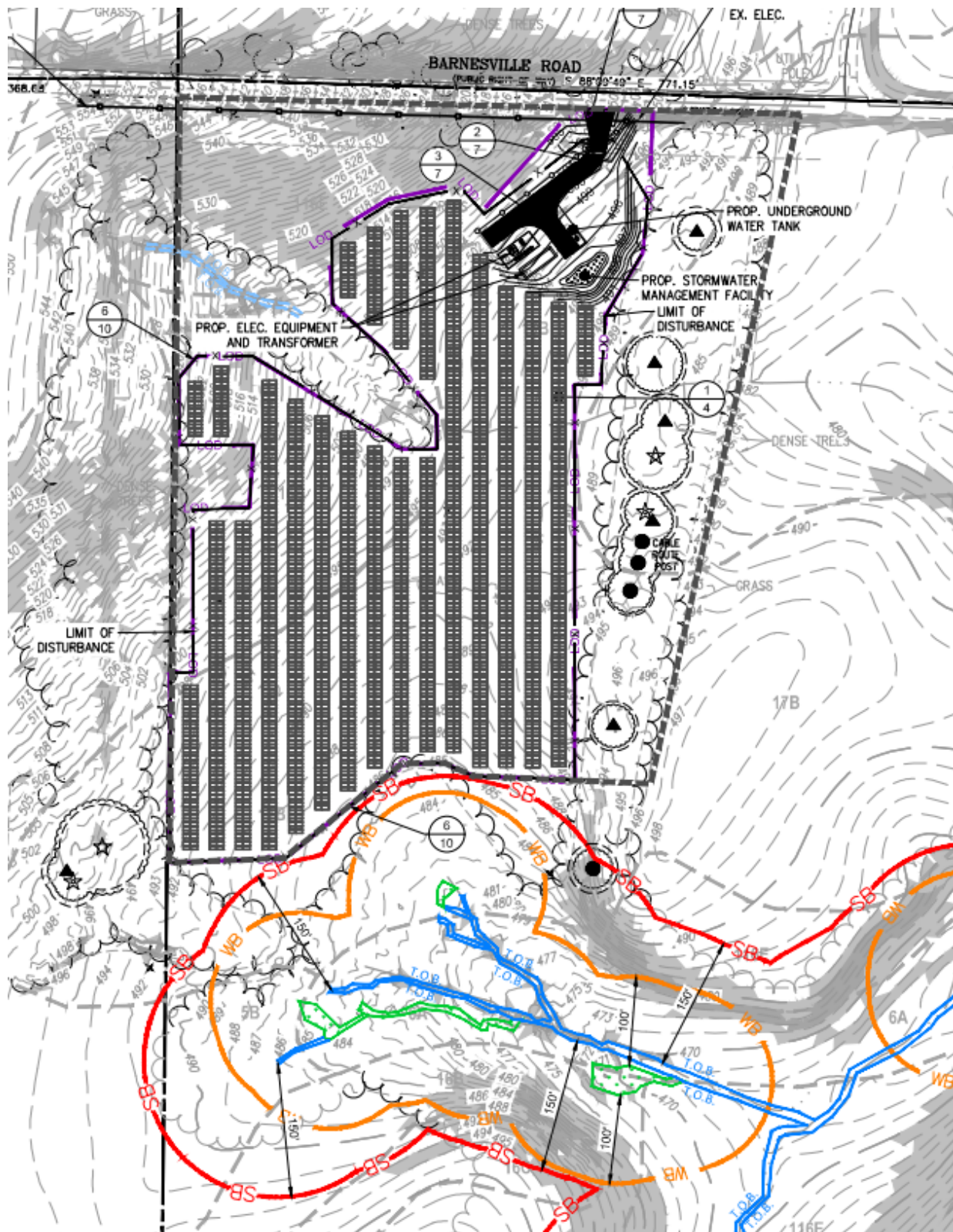


Figure 5. Excerpt of Conditional Use Site Plan



b. Scraping topsoil from the site is prohibited.

No scraping of topsoil from the site will occur as a result of the Project.

c. Grading and any soil removal are minimized.

Grading and soil removal will be minimized as required. The installation of the solar supports, panels, fencing and electrical equipment can proceed on the naturally existing soils and topography of the Project site.

d. The solar collection system is compliant with the requirements of the State's net metering program under Maryland Code §7-306, COMAR 20.50.10, and COMAR 20.62.

The Project is compliance with requirements of the State's net metering program and all applicable codes and regulations.

e. The area under the solar facility must be actively used for farming or agricultural purposes by satisfying one or more of the following requirements:

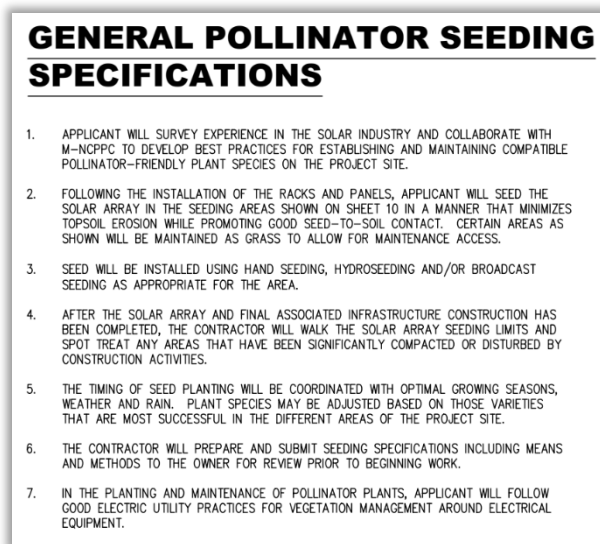
i. designated pollinator-friendly under the Maryland Pollinator-Friendly Designation Program;

ii. planted, managed, maintained, and used for grazing farm animals; or

iii. planted, managed, maintained, and used for any other agrivoltaic plant material.

The area under the solar array facility will be actively used for farming or agricultural purposes as required. Planting notes have been included on the Landscape Notes & Details plan sheets (excerpt below) providing detailed pollinator seeding specifications. As the broader solar industry continues to gather experience with the desired plant species that are best suited to thrive in solar PV arrays in different amounts of shading, climates and soil conditions, the Applicant is committed to working with the County to establish and maintain "best practices" in these respects (see Figure 6 below).

Figure 6. Pollinator Seed Mix



f. The applicant must provide evidence that the local utility company will allow the Solar Collection System to be connected to the utility grid.

Applicant has received written documentation from Potomac Edison Company (“PEC”) approving the interconnection of the Project to PEC’s local electric distribution line located adjacent to the Project site on Barnesville Road. (See **Exhibit A**) The approval is conditioned upon the Project’s compliance with equipment and operational standards that are typical for this type of PV facility and that the Project agrees to meet. This approval follows an engineering study performed by PEC.

g. The applicant must provide evidence that the application was submitted to the Office of Agriculture.

The Project has been coordinating with and has provided a copy of all plans and supporting materials to the Office of Agriculture, concurrent with the submission of this Application.

h. Removal of trees or landscaping otherwise required or attached as a condition of approval of any plan, application, or permit for the installation or operation of a Solar Collection System is prohibited.

The Project is in compliance. There are no trees or landscaping that are otherwise required as a condition of approval of any plan, application or permit being removed to accommodate installation/operation of the Project.

i. Any tree in or on a floodplain, stream buffer, steep slope, critical habitat, contiguous forest, or historic site, and any champion tree or other exceptionally large tree is left undisturbed unless a disturbance is allowed under Section 22A-12(b)(1).

The Project is in compliance. A Final Forest Conservation Plan has been prepared in compliance with County Code Section 22A-12(b)(1) and submitted to M-NCPPC for review and approval concurrently with this application.

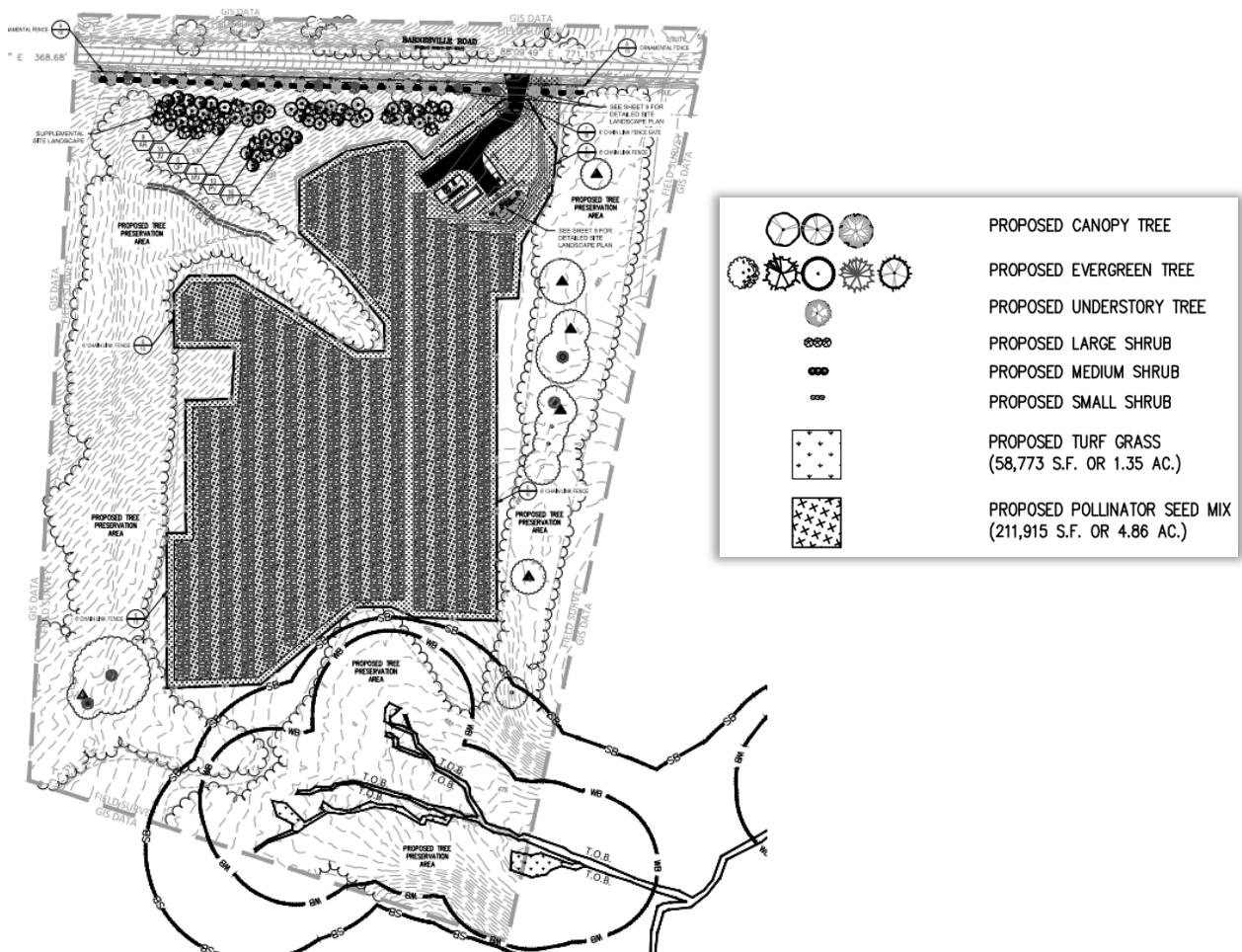
j. Except for pad areas for transformers and electrical equipment, the use of concrete is prohibited.

The Project is in compliance. The use of concrete is limited to only pad areas for transformers and electrical equipment.

k. Screening that satisfies Section 59.6.5.3.C.8 (Option A) on the sides of the facility within 200 feet of any neighboring house is required; however, a fence may not be required or prohibited.

Screening in compliance with Section 59.6.5.3.C.8 is not applicable in this case as the Project site is not located within 200 feet of any neighboring house. Nevertheless, the Project is proposing to provide a landscape screen consisting of a mix of plantings and shrubs along the adjacent roadway frontage on the north side of the array field that is intended to further mitigate any perceived visual impacts of the Project. An excerpt of the Project's Site Landscape Plan with planting legend is provided below in Figure 7.

Figure 7. Site Landscape Plan with Proposed Screening Along Frontage



l. The Hearing Examiner's decision must consider the recommendations of the Office of Agriculture.

Acknowledged.

m. The applicant must include a calculation of the total acreage used for the Solar Collection System, including any required setbacks and all acreage within the fenced or shrubbed area.

The Project is in compliance. The development standards can be found on the Cover Sheet of the Conditional Use Plan (see also Figure 1 herein).

n. The land area approved for the Conditional Use, in addition to all other Conditional Use approvals for solar facilities in the AR zone, will not exceed 1,800 acres of land.

The Project is in compliance.

F. Community Outreach

The Applicant conducted a pre-submission community meeting on the evening of October 10, 2024 via the Zoom web-based platform to facilitate participation. The meeting was well-attended, lasted more than an hour, and included a robust question and answer session. Additional details regarding the pre-submission community meeting, including minutes, are attached hereto as **Exhibit C**.

G. Summary of Proof and Time Estimate

The Applicant intends to present the following expert witnesses:

- Gregg D. Eberly, PLA, ISA TRAQ, ASCA TPAQ, CBLP, Certified Land Planner and Registered Landscape Architect, will testify regarding the existing conditions on the Subject Property and in the surrounding neighborhood, the Site Plan, substantial compliance with the Master Plan, consistency with the Code, compatibility with the surrounding area as well as compliance with forest conservation requirements.
- Brad Glatfelter, PE, Professional Civil Engineer, will testify as needed regarding technical matters such as utility connections and compliance with stormwater management.

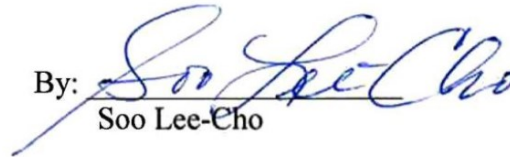
Resumes for the expert witnesses identified above are attached. (See **Exhibit D**). The Applicant reserves the right to call additional expert witnesses if deemed necessary. The Applicant estimates that presentation of its case in chief will require approximately 2-3 hours.

This submission is intended to satisfy the requirements of the Code and the Rules of Procedure for Zoning Cases. If amended or supplemental information becomes necessary to

support the present application, the Applicant will make a supplemental submission in a timely fashion.

Respectfully submitted,

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