



## AGENDA

Jefferson County Planning Commission

Tuesday, May 05, 2020, 7:00 PM

Planning Commission meetings are held in the Old Charles Town Library Meeting Room located at 200 East Washington Street, at the side entrance on Samuel Street in the City of Charles Town.

**All Citizens that desire to speak must sign-in prior to the Agenda Item being addressed.**

**This meeting will NOT be a LIVE broadcast on our website. Instead, it will be accessible live through ZOOM Meeting. If you wish to participate in Citizen's Communication or public comment for one of the agenda items, please type your name, address, and agenda item # in the chat function at the start of the meeting.**

**\*\*ZOOM Meeting Information:**

Topic: Planning Commission Meeting

Time: May 5, 2020 07:00 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://us02web.zoom.us/j/81297725291>

Meeting ID: 812 9772 5291

Dial by your location

+1 301 715 8592 US

Meeting ID: 812 9772 5291

Find your local number: <https://us02web.zoom.us/u/kbdgpHa7b3>

1. Approval of Meeting Minutes: April 14, 2020.
2. Citizen Communications: If you wish to comment, please sign-in to speak for issues that are not on the agenda or items that are not open for public comment. Items not open for public comment will be so noted.
3. Request for postponement.
4. **Public Hearing:** Application by Michael C. Wilson (File #20-2-PCW), requesting a waiver from Section 20.201A(2) of the 2008 Subdivision Regulations, as amended, which requires all lots in minor residential subdivisions to have motor vehicle access via a 50' access easement, provided that the access easement serves no more than 5 lots. Applicant is requesting to utilize an existing 30' easement (Amnesty Way) to access a proposed two additional lots for a total of 6 lots. The property is designated as Tax District: Shepherdstown (09); Tax Map: 4, Parcel: 5; Zoned: Rural; Size: 22.276 acres. (Resubmission of File # 20-1-PCW)

**There is no public comment for the following items.**

**5. Discussion and Action:**

ZTA19-03 Proposed Solar Energy Facility Text Amendment developed at the direction of the Planning Commission including proposed revisions related to the processing of solar energy facilities. The

proposed text amendment includes revisions to Article 2, Section 2.2, "Definitions"; Article 8, Supplemental Use Requirements (proposed new Section 8.20 Solar Energy Facilities); and Appendix C, Principal Permitted and Conditional Uses Table. The purpose of the meeting is to review the proposed text amendment and to schedule a Public Hearing to receive input on the proposed text amendment.

6. Reports from Legal Counsel
7. Planner's Memo
8. President's Report
9. Actionable Correspondence
10. Non-Actionable Correspondence:
  - Letter from Doug Rockwell regarding Solar Energy

Meeting Minutes  
Jefferson County Planning Commission  
April 14, 2020

The Jefferson County Planning Commission met on April 14, 2020 with the following Commission members present: Mike Shepp, President; Wade Louthan, Secretary; Ralph Lorenzetti, County Commission Liaison; Jack Hefestay, Ron Thomas, Steve Stolipher, and Ray Brunning. Staff members present included: Jennifer Brockman, County Planner; Jonathan Saunders, County Engineer; Nathan Cochran, County Attorney; Rachael Burke, Planning Clerk.

Mr. Donnie Fisher, Vice President and J Ware were absent without prior notification.

Meeting was held via ZOOM Meeting Room and the public was invited to join via the agenda, posted to the County site.

Mr. Mike Shepp called the meeting to order at 7:02 pm.

Ms. Rachael Burke made an announcement in the meeting room chat function about sign-ups for agenda items and citizen communication.

1. Approval of the March 10, 2020 meeting minutes, approved as submitted.
2. Citizen Communications. None.
3. Request for postponement. None.
4. **Public Hearing:** Request by Roger and Sherley Channing for a Final Plat Amendment to lift the Single Family Restriction from Lot 20 of the Mission Ridge Subdivision (PC File #03-03) for the purpose of building an in-law suite above a detached garage. The property is designated as Tax District: Charles Town (02); Tax Map: 21F, Parcel: 20; Zoned: Rural; Size: 5.18 acres.

Ms. Jennifer Brockman provided an overview of the applicant's request to lift Note 11, requiring a single family restriction in the Mission Ridge Subdivision.

Mr. Roger Channing presented his request to be allowed to use the Zoning Ordinance provisions for an in-law suite. He plans to use it for family, due to health issues.

Mr. Michael Shepp opened the Public Hearing and the floor to public comment. No one signed up via chat, within the ZOOM Meeting Room. Mr. Shepp closed the Public Hearing.

Mr. Steve Stolipher made a motion to approve the request as presented. Mr. Jack Hefestay seconded the motion, which carried unanimously.

5. **Public Hearing:** Request by Joshua and Andrea Baddorf (File #06-34) for a Final Plat Amendment to lift the Single Family Restriction from Lot C of the Herpst-Gregory Land Minor Subdivision, recorded 01/03/07 (PB23/PG87). The single family restriction is found in Note 12 on this subdivision plat. The property is designated as Tax District: Harpers Ferry (04); Tax Map: 11, Parcel: 12.2; Zoned: Rural; Size: 5.1 acres.

Ms. Jennifer Brockman provided an overview of the applicant's request.

Mr. Joshua Baddorf spoke about his reason for requesting to use the in-law suite Zoning Ordinance provision. He plans to convert an existing structure on the property into an accessory residence for use by his mother.

Mr. Michael Shepp opened the Public Hearing and the floor to public comment. No one signed up via chat, within the ZOOM Meeting Room. Mr. Shepp closed the Public Hearing.

Mr. Steve Stolipher made a motion to approve the waiver request. Mr. Ray Brunning seconded the motion, which carried unanimously.

6. **Public Hearing:** Request by Rodney & Stacy Smith (File #80-04) for a Final Plat Amendment to vacate the storm drainage easement located on Lot 1C of the Grainlands Subdivision, approved June 10, 1980. The property is designated as Tax District: Kabletown (06); Tax Map: 2; Parcel: 2.2; Zoned: Rural; Size: 5.1 acres.

Ms. Jennifer Brockman reviewed the applicants' request, location and why they are presenting their request to the Planning Commission. During the review of the Plat for the Grainlands Subdivision in 1980, the County Engineer at that time noted that Lot1C was bisected by a substantial swale that would impact the buildability of the lot. The Engineer asked for the area of the swale to be dimensioned on the plat and for building construction to be prohibited in that area. This resulted in the 50' wide storm drainage easement shown on the plat, with a note prohibiting building construction in this area.

Mr. Rodney Smith, property owner, explained the topography of the lot, the design of the drainage in this area and slope/gradient. He also stated there had not been an issue with standing water in this location over the years.

Mr. Mike Shepp opened the Public Hearing. Ms. Deana Thorsell, the applicant's realtor, mentioned that the platted setbacks need to be reduced and was hoping to include that variance in this request.

Mr. Mike Shepp explained that would require a separate variance request and would need to be properly noticed to the correct board. It could not be added during this meeting.

Mr. Steve Stolipher asked if the seller, buyer or realtor (all present) thought that an Engineering analysis should be required. Deana Thorsell, realtor; Rodney Smith, owner and Kelly Tiong, prospective buyer all agreed that it should not be required.

Mr. Mike Shepp closed the Public Hearing.

Mr. Steve Stolipher made a motion to approve the request by the applicant. He wanted it to be noted that we heard from the seller and purchaser, they do not wish to have to do the engineering analysis completed. Motion is to approve the request as applicant submitted. Mr. Jack Hefestay seconded the motion, which carried unanimously.

7. **Public Hearing:** Request by Diana Townsend (File #90-46) for a Final Plat Amendment to change the platted setbacks of 30' front, 15' side and 40' rear to the setbacks required in the Zoning Ordinance in effect at the time the subdivision processed of 25' front, 12' side and 12' rear. This request is related to Duplex Lot 4 found on "Final Plat showing Locust Hill DP1-DP8 & Lots 48-64 and Residue B," (PB12/PG8-8D) and the note on PB12/PG8D. The property is designated as Tax District: Charles Town (02); Tax Map: 13A; Parcel: 70; Zoned: Rural; Size: 0.1947 acres.

Ms. Brockman provided an overview of the request. The Locust Hill Subdivision was approved as a Conditional Use Permit in 1992 for 387 single family residences, 200 townhomes and 60 duplexes (#Z92-7). This was a modification of a previously approved 1989 CUP which included the golf course and a mixture of single family and multi-family

lots. The final plat for this section, Locust Hill DP1-DP8 & Lots 48-64 and Residue B, which includes 8 duplex lots, was approved by the Planning Commission and recorded on March 1, 1994.

Mr. Lorenzetti inquired about the covenants and Ms. Brockman explained if it is also a covenant they will need to take that to the HOA.

Mr. Bill Curtis, contractor, spoke on behalf of Diana Townsend, applicant. He explained that he was hired to get a deck, which was built, permitted properly. He does not believe approval would affect any other residents and he is working with the HOA on her behalf as well.

Mr. Shepp opened the Public Hearing and the floor to public comment. None signed up via Zoom chat. Mr. Shepp closed public comment.

Mr. Wade Louthan made a motion to approve the motion to approve the final plat amendment. Mr. Ray Brunning seconded the motion, which carried unanimously.

8. **Public Hearing:** Subdivision Variance request by Roderick Planes, LLC., for Aspen Greens Phase IIB (File#20-1-PCV) for a variance from Article 6; Section 6.3 of the 1979 Subdivision Ordinance to extend, for an additional two years, the required Final Plat Public Hearing for Phase IIB, previously granted a three-year variance extension, which extended it to 6/10/20. The property is designated as Tax District: Charles Town (02); Tax Map: 4; Parcel: 19. Zoned: Rural; Size: 110 acres.

Ms. Brockman provided an overview of the 1979 Subdivision Ordinance that this project was processed under and the previous variance requests made.

Mr. Fred Gates, surveyor for the project, reminded the Commission that on April 9, 2019, the Planning Commission approved a variance request related to having more than 50 lots on the loop road for this same Phase. As a part of this variance request, the applicant presented to the Planning Commission the significant design issues related to a bridge that is required over the drainage canal that will need to be constructed in order to complete the loop road as proposed. Included in this variance application packet was documentation related to additional delays related to this bridge design and construction due to soils testing that slowed this submission.

Mr. Gladhill, property owner, also indicated that they wanted to ensure the bridge construction was done properly and it caused delays. He is hoping to be back in a couple months with a record plat and asked for the commission's support.

Mr. Mike Shepp opened the Public Hearing and the request for public comment. No one signed up in the ZOOM chat. Mr. Shepp closed the public hearing.

Mr. Steve Stolipher made a motion to approve the variance extension as proposed. Mr. Jack Hefestay seconded the motion, which carried unanimously.

9. **Discussion and Possible Action:** 3<sup>rd</sup> Quarter Report for review and approval to go to County Commission

Ms. Jennifer Brockman reviewed the report and explained that the staff would be glad to review any of the items in further detail. She also stated that the formatting can be changed if the Planning Commission believes that it would make the report more understandable.

Mr. Wade Louthan made a motion to forward this report to the County Commission. Mr. Ray Brunning seconded the motion, which carried unanimously.

**10. Reports from Legal Counsel.** None.

**11. Planners Memo:**

- Ms. Jennifer Brockman reviewed office of Engineering, Planning and Zoning operations at this time due to the COVID-19 restrictions in place. Most staff is working from home, voicemail is being returned in a timely manner, PPC meetings are being held via ZOOM, and project review and relevant research is continuing as staff works at home.
- Status of Greenway's review of the Subdivision Regulations and Solar Panel Committee's Zoning Ordinance Text Amendment, which may be on the May agenda.
- Reminded the Commission that the May meeting was previously changed to 5-5-20 due to the previous Primary Election date. She also stated that the June meeting will need to be changed from 6-9-20 to 6-2-2020 due to the new WV Primary Election date.
  - Mr. Shepp asked for a motion. Mr. Stolipher made a motion to move the June meeting to 6-2-20 and Mr. Hefestay seconded the motion, which was approved unanimously.

**12. President's Report:** Mr. Mike Shepp explained that the Solar Farms committee met and hoped to have a draft of the proposed text amendment for the Planning Commission's review at their May meeting.

**13. Actionable Correspondence:** None.

**14. Non-Actionable Correspondence:** None.

Mr. Shepp closed the meeting at 7:55pm.

Staff Report  
 Jefferson County Planning Commission Meeting  
 May 5, 2020

**Item # 4**

**Public Hearing:** Application by Michael C. Wilson (File #: 20-2-PCW), requesting a waiver from Section 20.201A(2) of the 2008 Subdivision Regulations, as amended, which requires all lots in minor residential subdivisions to have motor vehicle access via a 50' access easement, provided that the access easement serves no more than 5 lots. Applicant is requesting to utilize an existing 30' easement (Amnesty Way) to access a proposed two additional lots for a total of 6 lots. (*Resubmission of File # 20-1-PCW*)

APPLICANT	Michael C. Wilson
OWNER/DEVELOPER	Same
CONSULTANT	N/A
PROPERTY LOCATION	225 Amnesty Way
LEGAL DESCRIPTION & ZONING DISTRICT	Tax District: Shepherdstown (09); Tax Map: 4; Parcels: 5; Size 22.276 acres; Zone: Rural
ADJACENT ZONING DISTRICTS	<i>North:</i> Rural <i>South:</i> Residential Growth <i>East:</i> Rural <i>West:</i> Rural
PROPOSED ACTIVITY	Subdividing 2 additional lots
APPROVALS	<ul style="list-style-type: none"> <li>• Variance to allow two additional lots to use Amnesty Way and a variance for ROW width and from upgrading to County grade standards approved by PC on 9/12/06</li> <li>• Wilson MSD Lot 1, 2, &amp; 3(Residue) Approved 7-10-07 (PB24/PG30)</li> <li>• Similar Variance request (File#20-1-PCW) denied 3-10-20</li> </ul>

Staff Report  
 Jefferson County Planning Commission Meeting  
 May 5, 2020

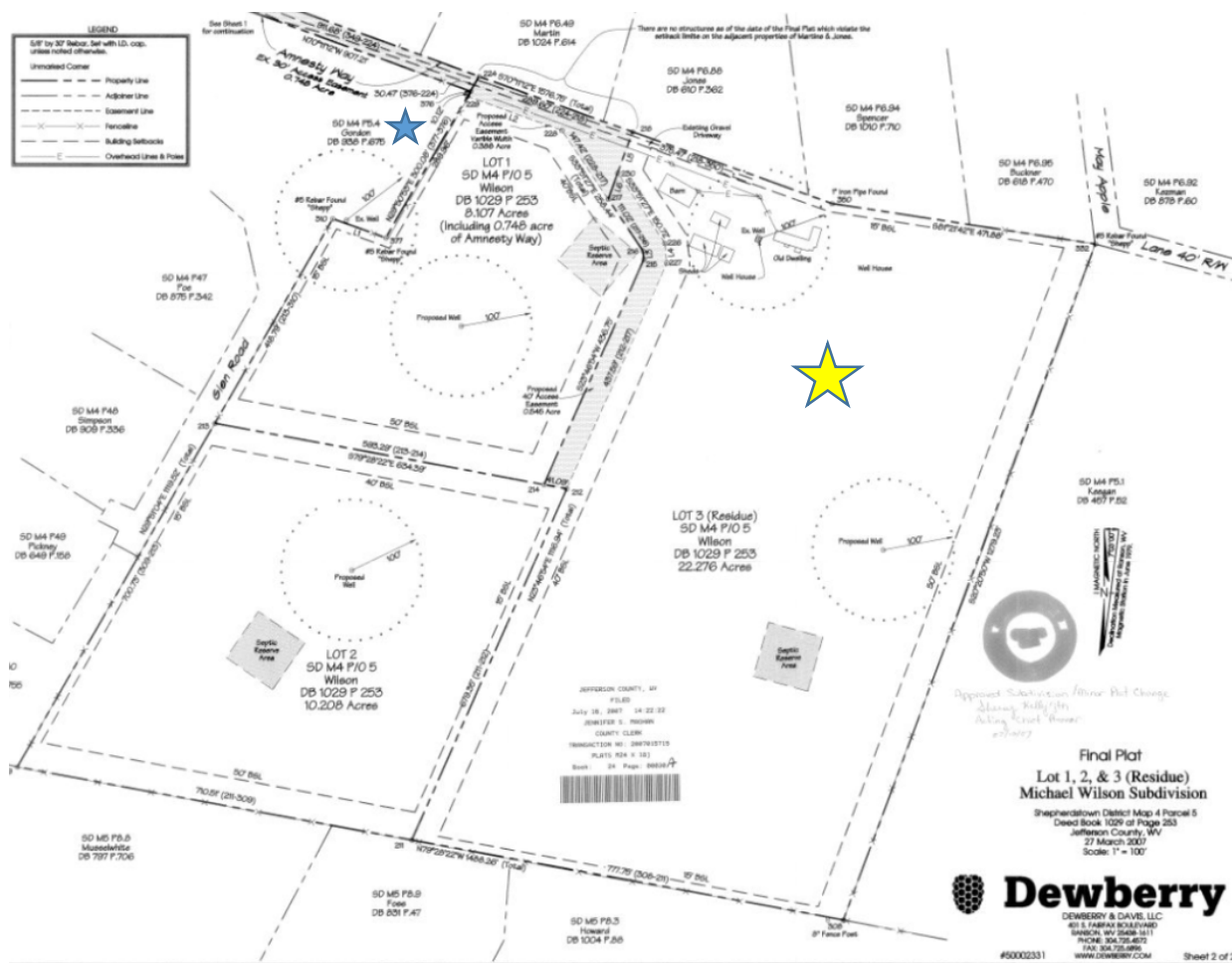
**Summary of the Request:**

The applicant has resubmitted this application requesting a waiver from Section 20.201.A(2) of the 2008 Subdivision Regulations, as amended, which requires all lots in all Minor Residential Subdivisions to have motor vehicle access via a 50' access easement, provided that the access easement serves no more than 5 lots. The request is to allow the creation of two additional single family lots from Wilson MSD Lot 3(Residue) without being required to widen the existing 30' easement though the Minor Subdivision Process.

Under the provisions of Section 5.7D3of the Zoning Ordinance, the residue property has the right to process another 2 lots and a residue at this time; however, because there are currently 4 properties, 3 of which were created through the minor process, which access Amnesty Way, the 6<sup>th</sup> division would have to process as a Major Subdivision based on the provisions of Section 20.201 of the Subdivision Regulations if this waiver is not granted.

**Site Background:**

The Michael Wilson property was subdivided through the minor subdivision process in 2007, creating 3 lots. One additional 0.68-acre parcel (Parcel 5.4, blue star below), created in 1972, also accesses the 30' easement known as Amnesty Way. The new lots (Lots 1 and 2, below) created in 2007 have not yet been transferred or constructed on. The lot with the yellow star is proposed to be divided into two lots and a residue. The only legal access to this property is Amnesty Way.



Staff Report  
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 May 5, 2020

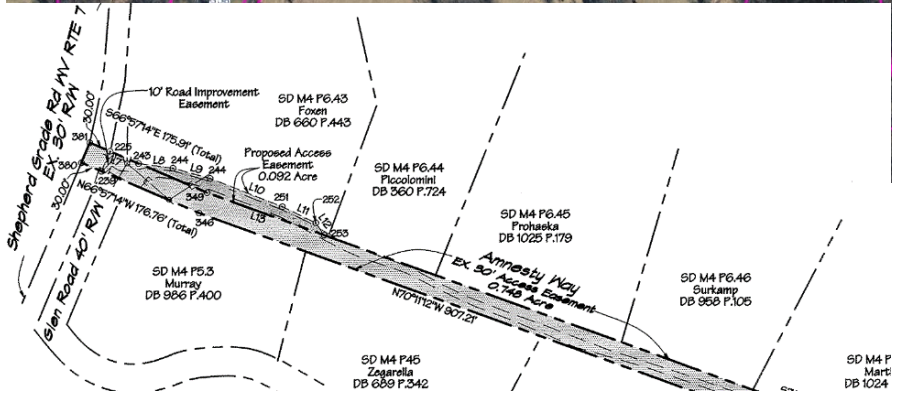
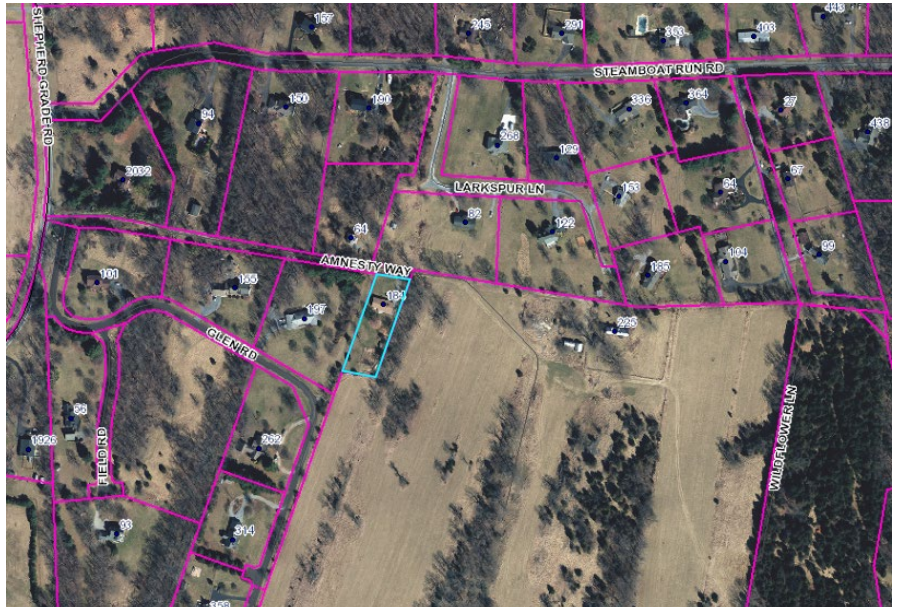
Amnesty Way is a single-lane gravel driveway within a 30' easement that runs behind lots that front on Steamboat Run Road (Steamboat Run Subdivision) and lots that front on Glen Road (Shepherd Wood Subdivision). It serves 4 existing lots which are currently occupied by two houses.

Glen Road intersects with Amnesty Way near the intersection with Shepherd Grade Road. In the area near the intersection with Glen Road, the existing Amnesty Way easement is slightly wider than 30' due to an additional easement area platted in 2007 to reflect the roadway alignment (see graphic).

As a point of comparison, most of Shepherd Grade Road is at two-lane paved road within a 30' state right-of-way. There are no county road standards for Minor Subdivisions, just a minimum access easement width of 50'.

In March 2020, the Planning Commission held a Public Hearing on the same request and received numerous comments from concerned neighbors about the substandard nature of Amnesty Way. At that time, the Planning Commission voted to deny the requested waiver. With this resubmittal, that applicant has submitted information on how he has addressed some of these concerns.

These photos show the current condition of the driveway about midway and as it enters the 40 +/--acre parcel and Parcel 5.4. The applicant reports that some large rocks have been removed and landscaping has been trimmed back. The new gravel area is about the width of a standard driveway – approximately one car width with a few small pull-offs.



Staff Report  
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**Discussion of Subdivision Regulations:**

Properties the size of Lot 3 (residue), in the Rural Zoning District, have the right to process two lots and a residue in accordance with the provisions of Section 5.7D.3 of the Zoning Ordinance and generally process under the Minor Subdivision process found in Section 20.201.A of the Subdivision Regulations. One of the key differences between a Minor Subdivision and a Major Subdivision is that Minor Subdivisions do not require the development of new off-tract infrastructure, the extension of existing off-tract infrastructure, or the creation of common areas and therefore there are no design or construction standards for roads in minor subdivisions. This means that Amnesty Way, which was utilized for the Michael Wilson Minor Subdivision in 2007, has not been constructed to any County standard. A variance was granted to allow Amnesty Way to be created in a 30' easement to serve that Minor Subdivision in 2007.

Roads which serve more than 5 lots are required to be a part of Major Subdivision and are required to be built in accordance with Table 2.2-1 "Roadway Design Standards" of the Subdivision Regulations. The applicant could process the 6<sup>th</sup> lot by processing a Major Subdivision and designing and constructing Amnesty Way in accordance with the County road standards; however, the waiver to allow use of the 30' easement waiver would still be required. This request is to be able to process two additional lots through the Minor Subdivision process with access to the existing 30-foot easement containing Amnesty Way instead of processing a Major Subdivision and widening the easement.

**Waiver Requirements:**

The applicant provided a response to the requirements found in "Division 24.300 Waivers" of the Subdivision Regulations in the waiver application. He also provided additional information in a supplemental letter attached to the application which explains improvements that he made to the roadway since the previous request. Waivers from the minimum standards in these Regulations may be granted by the Planning Commission only when the Planning Commission finds that granting a waiver will be consistent with all of the following criteria:

- (1) that the design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County parks plan, or benefits of a similar nature;
- (2) that the waiver, if granted, will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
- (3) that the waiver, if granted, will be in keeping with the intent and purpose of these Regulations; and
- (4) that the waiver if granted will result in a project of better quality and/or character. Process and procedural waivers shall be reviewed and found consistent with the above criteria prior to approval.

**Staff Recommendation:**

This application includes two separate waiver requests related to Section 20.201A(2) of the Subdivision Regulations:

- 1) To be permitted to process a Minor Subdivision on a 30-foot access easement.
- 2) To be permitted to create the 5<sup>th</sup> and 6<sup>th</sup> lots without processing as a Major Subdivision.

Staff Report  
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May 5, 2020

Staff acknowledges that the applicant is unable to widen the existing easement for Amnesty Way without acquiring property from the adjoining property owners backing to the easement. If the Planning Commission is inclined to approve this waiver request, staff recommends that the applicant be limited to one additional lot, for a maximum of 5 lots on the existing 30-foot access easement.





Jefferson County, West Virginia  
 Department of Engineering, Planning and Zoning  
**Office of Planning and Zoning**  
 116 E. Washington Street, 2<sup>nd</sup> Floor  
 P.O. Box 716  
 Charles Town, West Virginia 25414

File #: \_\_\_\_\_  
 Mtg Date: \_\_\_\_\_  
 Date Rec'd: \_\_\_\_\_  
 Fees Paid: \_\_\_\_\_  
 Staff Int: \_\_\_\_\_  
 List of Adjoiners:

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Phone: (304) 728-3228  
 Fax: (304) 728-8126

**Planning Commission Waiver Request**

Waivers must comply with Division 24.300 of the 2008 Subdivision Regulations, as amended.

**Property Owner Information**

Owner Name: MICHAEL C. WILSON  
 Business Name: \_\_\_\_\_  
 Mailing Address: 620 QUARRY VIEW CT., UNIT 407, REISTERSTOWN, M.D.  
 Phone Number: 301-412-4726 Email: \_\_\_\_\_

**Applicant Contact Information** SAME

Applicant Name: MICHAEL C. WILSON Same as owner:   
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

**Consultant Information**

Name: ED JOHNSON  
 Business Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Phone Number: 304-725-6060 Email: \_\_\_\_\_

**Physical Property Details**

Physical Address: 308 AMNESTY WAY, SHEPERSTOWN WV Vacant Lot:   
 Tax District: SHEPERSTOWN Map No: 4 Parcel No: 5  
 Parcel Size: 22.276 Deed Book: 1029 Page No: 253  
 Zoning District: RURAL PB24; PG 30

On a separate sheet of paper sketch the shape and location of the lot. Show the location of the intended construction or land use and indicate building setbacks, size, and height. Identify existing easements, roads, buildings, structures, or land uses on the property. Sign and date the sketch.

Included  Not applicable (include a vicinity map if a sketch is not applicable)

What Section of the Subdivision Regulations and year of the Regulations are you requesting to Waive?

20.201A (3)

Briefly Describe the Nature of Your Waiver Request: REQUEST IS TO ADD TWO PARCELS TO THE PREVIOUSLY APPROVED THREE PARCELS. THE FORTY TWO ACRES WILL THEN CONSIST OF FIVE ESTATE LOTS WHICH WILL COMPLIMENT NEIGHBORING COMMUNITY HOMES.

Explain how the design of the project will provide public benefit in the form of reduction in County maintenance costs, greater open space, parkland consistent with the County Parks Plan or benefits of a similar nature.

The lots will be located and developed in a way that maintains open space (see plan). County maintenance costs will be minimal due to layout and plans currently being completed.

Explain how the waiver, if granted, will not adversely affect the public health, safety, or welfare or the rights of adjacent property owners or residents.

The waiver will compliment the adjacent properties rights and welfare, while providing for the public health and safety of the community. The positive development of the property will be good for all parties involved.

Explain how the waiver, if granted, will be in keeping with the intent and purpose of this Ordinance.

The 4<sup>th</sup> Acre farm and its ultimate recommended use as ultimately will become a total of five lots. The waiver will allow homes to be built which owners and neighbors will be proud of. Layouts will be in keeping with the intent of the ordinance.

Explain how the waiver, if granted, will result in a project of better quality and/or character.

The waiver will allow the lots to be built will be consistent with the lot layouts and relative consistency with the houses of high quality of homes. Requirements for houses to be built will be similar to the neighboring homes.

By signing this application, I give permission to the Planning and Zoning Staff to conduct a site visit for the purpose of taking photos for the Planning Commission staff report. The information given is correct to the best of my knowledge.

Michael C. Wilson 4-14-20

Property Owner/Applicant Signature

Date

Property Owner/Applicant Signature

Date

Notification Requirements

The subject parcel shall be posted with a minimum of one 28" x 22" placard at least 14 days prior to the public hearing. The placard(s) will be prepared by the Staff and posted by the applicant. Adjacent property owner name and address information shall be provided by the applicant so that notification letters can be mailed by Staff least 14 days prior to the public hearing.

Public Hearing Date

Date Placard Posted

Date Adjoiners Mailed

Planning Commission Determination

Approved

Denied

Date: \_\_\_ / \_\_\_ / \_\_\_

4-22-20

To: Planning Commission  
From: Michael C. Wilson  
Re: Amnesty Way - update

Many improvements to Amnesty Way have taken place during past several weeks. Several large stones were removed to provide pull over space in several locations. All of the road was gravelled from Shepherd Grade Road to beyond the existing farm house.

Landscaping included removing excessive bamboo as permitted by the home owner. He also agreed to remove those plants which become problems during winter storms.

Several dead trees and shrubs were removed from areas near the road.

Some neighbors visited with me and members of the work crew. They expressed their appreciation of the improvements which were done. I believe the improvements were a success for everyone.

Michael C. Wilson



**From:** [Jason Dom](#)  
**To:** [Planning Department](#)  
**Cc:** [Jason Dom](#)  
**Subject:** RE: Public Hearing (File #20-2-PCW)  
**Date:** Tuesday, April 28, 2020 9:35:45 PM

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Planning Department:

Greetings, and thank your service to Jefferson County. Today is one week before May 5th, the date of Public Hearing (File #20-2-PCW).

I am writing for two reasons.

First, in my day job as Vice President, Learning Technology Solutions, American Public Education Inc. (APEI), I help manage our enterprise Zoom account. The Public Notice suggested this meeting may be held online via Zoom. Going online comes with its challenges. In keeping with our university's tradition of great corporate citizenship, I am happy to offer my services, free of charge, to help make sure your Zoom meetings are successful. Reach out and let me know if I can help.

Second, the circumstances that lead to this waiver denial two months ago remain the same. I shot a short video of Farm Road (Amnesty Way) this past weekend. Watch the video [here](#):  
([https://edgecast.apus.edu/00242F/uploads/farmroad/media/index\\_player.html](https://edgecast.apus.edu/00242F/uploads/farmroad/media/index_player.html))

Lastly, my esteemed colleagues, please recall (except for those who recused) the following facts, all touched on during our meeting just a couple of months ago:

- a signed petition against this waiver was presented at the previous meeting in which all property owners adjacent to the road were opposed to the waiver except for 2 (one was unavailable and the second spoke in opposition)
- according to the International fire code (chapter 16.04): Fire apparatus access roads shall have an unobstructed width of not less than 20 feet and an unobstructed vertical clearance of not less than 13 feet 6 inches. The farm road does not meet this criteria.
- all the developments in the area have paved 20' emergency access roads. This waiver would lower the standard for the region and potentially set a precedent to decrease property values and personal safety. ( Cress Creek, Willowdale, Fern Bank, Howard Farm, Shepherd Wood, Steamboat Run, Chandler Dr., Leisure Acres)
- This body has already granted the property owner a waiver to add additional lots, which was not used to build a homestead for his family, et. al.

Stop here and [watch the video](#) if you haven't already (2 minutes).

Sincerely,  
Jason Dom  
President, Shepherd Wood HOA  
304-919-9643





# JEFFERSON COUNTY, WEST VIRGINIA

## Office of Planning and Zoning

116 East Washington Street, 2<sup>nd</sup> Floor

P.O. Box 716

Charles Town, WV25414

[www.jeffersoncountywv.org](http://www.jeffersoncountywv.org)

Email: [planningdepartment@jeffersoncountywv.org](mailto:planningdepartment@jeffersoncountywv.org)  
[zoning@jeffersoncountywv.org](mailto:zoning@jeffersoncountywv.org)

Phone: (304) 728-3228

Fax: (304) 728-8126

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### MEMO

**TO: Planning Commission**

**FROM: Alexandra Beaulieu, Zoning Administrator**

**DATE: May 5, 2020**

**RE: ZTA19-03, Solar Energy Facilities**

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On December 10, 2019, the Planning Commission made a motion to accept into their work plan to consider developing provisions to allow solar energy facilities.

On February 11, 2020, the Planning Commission appointed a subcommittee comprised of Mike Shepp, Wade Louthan, and Ron Thomas. The Planning Commission directed the subcommittee to work with consultants Sam Gulland with Torch Clean Energy, and Paul Raco, local land use consultant, and Staff to draft a text amendment to allow solar energy facilities as a Principal Permitted Use. The Planning Commission specifically directed the committee to develop requirements to address fencing, screening, and decommissioning of solar energy facilities.

The draft amendment before you today is the result of the committee's efforts. The request today is that, in accordance with Article 12 of the Zoning Ordinance and Chapter 8A of the West Virginia Code, the Planning Commission schedule a Public Hearing and make a recommendation to the County Commission as to whether or not the proposed text amendment is consistent with the Comprehensive Plan.

The Office of Engineering has provided input on Stormwater Management and Erosion and Sediment Control standards. As a reference, we have provided the Director of Engineering's memo and research, as well as the proposed amendment to the Stormwater Management Ordinance. Please be advised, an amendment to the Stormwater Management Ordinance is not subject to a Public Hearing before the Planning Commission; however, Staff wanted the Planning Commission to be aware of what was being proposed. An Amendment to the Stormwater Management Ordinance will require action by the County Commission and should be coordinated with the Solar Energy Facilities Zoning Ordinance Text Amendment.

This Zoning Ordinance Text Amendment proposes revisions to Article 2, Section 2.2, Terms Defined; Article 8, Supplement Use Regulations, [creation of new Section 8.20, Solar Energy Facilities]; and Appendix C, Principal Permitted and Conditional Uses Table.

**Attachments:**

- Excerpts from Envision Jefferson 2035 Comprehensive Plan RE: Alternative / Renewable Energy (see Page 89 – Alternative Energy; and 94 - Recommendations 8 and 8.a)
- ZTA19-03, Solar Energy Facilities DRAFT
- 04-22-2020, Engineering Memo (for reference only)



<b>Urban Level Development Recommendations (Goal 1)</b>	
<b>1.</b>	Recognize the existing vested rights, development entitlements, and permitted density levels on properties in Jefferson County.
	<b>a.</b> No property’s zoning status will be changed as part of this Plan.
<b>2.</b>	Recognize that the County Commission has the authority to make land use decisions including Zoning Map Amendments based upon the finding of consistency with the Future Land Use Guide and the recommendations of this Plan; the County Commission may determine that petitions or decisions for zoning map amendments are consistent with the Comprehensive Plan if any of the following conditions are met after the entire Plan is taken into consideration:
	<b>a.</b> Economic Well-Being of the County; or
	<b>b.</b> Error or Under Scrutinized Property on the Future Land Use Guide; or
	<b>c.</b> Change in Neighborhood; or
	<b>d.</b> Any Other Circumstance that the Governing Body determines should have been considered when drafting the Future Land Use Guide; and/or
	<b>e.</b> Environmental impacts are considered.
<b>3.</b>	Identify opportunities for small area plans and involve key stakeholders.
<b>4.</b>	In coordination with the Jefferson County Development Authority, utility providers, and other agencies, extend natural gas services and alternative energy sources into Jefferson County and encourage the extension of these services into new subdivisions to provide access to alternatives for heating and cooking uses.
<b>5.</b>	Create urban level land uses within the municipalities, UGBs, PGAs, or Villages through rezoning that is consistent with the Plan recommendations.
	<b>a.</b> Direct new urban level residential developments to locate in preferred areas within the municipalities, UGBs, PGAs, or Villages where water and sewer services are available.
	<b>b.</b> Reduce application fees for urban level development located within the areas desired for urban future growth.
	<b>c.</b> Establish a greater variety of zoning district options (in commercial, residential, and mixed-use zoning categories) that adhere to predictability of land use options and outcomes based on the Plan recommendations.
	<b>d.</b> Consider the utilization of alternatives to use-separated (Euclidean) zoning within the UGB and PGA, such as the SmartCode adopted by the City of Ranson or performance based zoning to achieve the desired land used goals.
	<b>e.</b> Update the County’s zoning regulations in a way that balances flexibility of use for property owners and developers while preserving the quality of life for residents.

## 2.D. Infrastructure

Having adequate and quality infrastructure in Jefferson County is beneficial to residents, businesses, and the County’s economy. Planning for the types of infrastructure needed and its location requires coordination with different entities that provide these services. The planning and coordination of where services are to be located maximizes efficiencies of these systems.

This Plan encourages infrastructure to be located in municipalities, Urban Growth Boundaries, Preferred Growth Areas, and Villages in a cost effective manner. In many places in rural areas, on-site private well and septic systems will be used.

Major Elements within Section 2.D. Infrastructure
Water and sewer
Stormwater
Alternative energy
Natural gas services
High-speed internet and advanced technology communications services

### Water and Sewer Systems

Urban level development, which requires the provision of water and sewer systems, is defined as where more intense levels of residential, commercial, and industrial development activity occur. In West Virginia, by law, water and sewer providers are required to provide water and/or sewer service anywhere in a community so long as a developer pays to provide the initial infrastructure that would support the service(s). As a result, land use planning in West Virginia has to take a pro-active role in defining where urban level amenities and development will occur.

In order to take a pro-active role, it is the recommendation of this Plan to encourage the provision of infrastructure that allows for a higher level of development inside of the following areas: municipalities, Urban Growth Boundaries, Preferred Growth Areas, and Villages. In the rural area, it is anticipated that on-site private well and septic systems are to be utilized. In order for Jefferson County to retain its rural character and agricultural base, the expansion of water and sewer service into rural areas not designated as growth areas should not occur.

In the County’s village areas, development and revitalization is limited by a lack of existing water and sewer infrastructure that would support village-level development. In these areas, minimum lot size requirements tied to well and septic spacing have played a factor in limiting redevelopment or reuse of existing buildings within village centers. If Jefferson County is to reinvigorate its villages, infrastructure improvements would need to be in place to serve the village areas. A specific component of this would be the provision of village scaled water and sewer facilities that would alleviate the need for individual property owners to locate a well and septic tank on small village

development efforts have benefited from a number of public and quasi-public projects and efforts, including, but not limited to:

- Infrastructure improvements that have taken place in recent years (particularly the construction of WV 9 as a four-lane roadway through Jefferson County);
- An increased federal presence within Jefferson County;
- The continued expansion of Shepherd University in Shepherdstown and the relocation of the American Public University System’s headquarters in the Charles Town/Ranson area;
- The increased utilization of telecommuting as a viable employee option by national and regional businesses and federal government offices; and
- The expansion of a business park that has the necessary infrastructure in place for each lot which results in ready-to-build parcels.

Despite those gains, the lack of high paying jobs for Jefferson County’s skilled workforce requires approximately 36% of all employed individuals to commute to employment centers with higher wages located closer to Washington, D.C. or Baltimore, MD.

At the same time and paralleling a national trend, Jefferson County has lost some manufacturing and warehousing facilities. The loss of these employers has resulted in several vacant or underutilized structures, as well as unemployed workers. A number of these vacant facilities are within the Charles Town/Ranson urbanized area, and provide opportunities for redevelopment. Some of these facilities have been reused for other purposes, particularly by American Public University System (APUS) and the City of Ranson. APUS’s efforts have enhanced the economic revitalization process by purchasing and renovating 12 structures in Charles Town and Ranson as well as constructing a multi-story administrative building and related parking with a large array of solar panels. As part of this renovation and redevelopment activity, APUS has utilized several brownfield sites on the Charles Town/Ranson border.

With Jefferson County’s proximity to Washington, D.C. and Baltimore, MD and with the existing economic cluster of federal agencies, the County has the opportunity to attract additional federal facilities.

To support the success of future economic growth, there are a number of proposed improvements to the County’s public infrastructure that are expected to take place in the coming years. These include:

<b>Major Public Infrastructure Projects that are Proposed</b>
The widening and realignment of US 340 from Charles Town to the Virginia line near Berryville
The potential for improving natural gas and alternative energy facilities in the Eastern Panhandle and extending natural gas services into Jefferson County
Improvements to the County’s telecommunications network, particularly wireless technology and any advanced technologies

may not meet current standards, to be upgraded or maintained. Recently, the County adopted a new stand-alone Stormwater Management Ordinance that includes additional standards related to water quality and includes provisions for low impact design stormwater provisions such as rain gardens, bio-swailes, permeable pavers, and permeable asphalt. These new standards help to minimize the impact of sediment and certain identified nutrients as required by the Chesapeake Bay Program.

In addition to land development activities, the following point and non-point source activities impact the water quality in waterways due to stormwater run-off:

<b>Point and non-point source pollution</b>
Over-fertilization and the use of chemicals to maintain lawns by homeowners
Use of salt and chemicals on roads in winter weather by the State Division of Highways
The fertilizers used to grow crops
Industrial emissions
Waste products (rubber, gasoline, and various other fluids) associated with auto use
Animal husbandry activities

The effect of stormwater run-off on the local waterways, particularly the Shenandoah and Potomac Rivers, has a significant impact on our local and regional recreational and heritage tourism, as well as drinking water quality. There are a number of watershed protection groups in the County that are actively seeking to improve the quality of the surface and groundwater within particular watersheds. These groups have made efforts to clean-up the waters and restore aquatic life to Jefferson County waterways. Such efforts have included, river clean ups, water monitoring, septic tank pumping and repair reimbursement programs, fencing of livestock to keep them out of streams, tree plantings, and outreach to residents and businesses to educate them about how to combat pollution. These efforts will ensure that high quality of water in Jefferson County continues.

**Alternative Energy**

It is widely recognized that many of the resources that we rely on to heat, cool, and light homes, power electronics, provide transportation fuel, and other daily needs are finite. Consequently, there has been an increasing need to assess the viability of alternative and renewable energy sources that may assist in maintaining the quality of life of Jefferson County’s residents and businesses. In 2009, West Virginia adopted an Alternative and Renewable Energy Portfolio Standard that requires investor-owned electric utilities (such as Potomac Edison) with more than 30,000 residential customers to supply 25% of retail sales from eligible alternative and renewable energy resources by 2025.

Alternative and renewable energy sources are available, ranging from hydro (water), solar, and wind power to the use of various biofuels (algae, biomass, wood pulp, and other waste products), and plant crops (corn and switchgrass) that might be used to

complement or replace existing power sources. Another alternative energy source that may be applicable for the heating and cooling of buildings is the use of geothermal systems (drawing up groundwater and circulating it through pipes embedded in a building's walls).

There are efforts underway at the local and state level to encourage the conservation of energy and the utilization of alternative energy sources. The most notable of these are the projects that have been incorporated into the expansion of the American Public University System (APUS) in Charles Town and Ranson. These projects include the use of solar collectors that also serve as cover for parked cars, the installation of several electric car charging stations, and the utilization of building improvements and materials that limit the use of energy needed for heating, cooling, and lighting. The improvements undertaken by APUS can serve as a role model to new development in Jefferson County and to the redevelopment of existing structures and sites.

Several large-scale alternative and renewable energy projects have taken place in the County. Concern has been expressed that legislation prohibiting Cooperatives or Communities to create a solar panel system that would feed multiple houses is impacting the expansion and viability of implementing other solar projects in the County. As the cost of improvements decreases and the efficiency of various renewable energy materials improves, the reliance on current energy sources will be reduced as more families and businesses adopt these improvements.

### **Natural Gas Services**

Jefferson County regional economic development officials and businesses identified the need for natural gas services to homes and businesses. At present the only area of the County served by natural gas lines is the former Kodak/3M plant in Middleway; however, the potential exists for the expansion of service capacity in the Eastern Panhandle and the extension of natural gas lines from the Berkeley/Jefferson County line along WV Route 9 to various parts of the County. The extension of natural gas into Jefferson County would aid County economic development efforts while providing an alternative to electricity for residential and commercial purposes.

One of the reasons this improvement is needed is because an increasing number of businesses are using natural gas in their manufacturing process, due to the lower costs and the cleaner emissions that result from its use. Natural gas, in a compressed or liquefied form, can also be used to fuel cars and buses. While natural gas has been primarily used as a fuel source for local and regional bus services in the US, it can also serve as a fuel source for both privately owned and County owned vehicles.

### **High-Speed Internet and Advanced Technology Communication Services**

Over the last two decades, people have increasingly taken for granted the ability to be connected to the world via the internet. Internet uses include a variety of communication and media modes, conducting business, shopping for goods, staying abreast of local, national and world events, and have a plethora of entertainment

	<p>c. Collaborate with local public utility providers to identify and provide incentives that would encourage property owners to transition from well and septic to a centralized system where and when needed to address public health issues.</p>
	<p>d. Find funding mechanisms to defray the costs of providing public utilities in areas where the provision of these utilities is necessary based on declining public health or environmental concerns.</p>
6.	<p>Coordinate with Region 9 and the County’s public service providers to identify and seek additional funding sources that would aid in the construction of needed capital facilities and for the upgrading of existing facilities to meet newer federal standards.</p>
	<p>a. Continue to monitor and participate in planning efforts related to the implementation of the Chesapeake Bay Watershed Improvement Plan.</p>
	<p>b. Assess and evaluate the County’s stormwater planning documents as best management practices in the field evolve.</p>
7.	<p>Identify ways that utility services can be regularly upgraded to meet the highest level of service and technology through coordination with local water, sewer, electric, gas, and telecommunications utility and service providers.</p>
	<p>a. Require all local electric, cable, and other utility providers to bury existing and new lines (serving new development) as a part of the regular maintenance and upgrading of their facilities.</p>
8.	<p>Encourage public entities to utilize alternative and renewable energy sources for a variety of energy needs.</p>
	<p>a. Enable the construction of renewable energy generation facilities by residents and businesses.</p>
	<p>b. Encourage County businesses and service stations to provide electric vehicle recharging stations within Jefferson County as soon as possible and use distinctive signage to guide residents and visitors to the charging stations.</p>
	<p>c. Develop regulations to enable cooperatives or communities to create a solar panel system that would feed multiple houses in the County.</p>
9.	<p>Collaborate with local economic development agencies and Information Technology (IT) providers to ensure that the current and future needs of small businesses within Jefferson County are met.</p>
	<p>a. Ensure that all areas of Jefferson County are served by high speed wireline and/or wireless services and other advanced technologies.</p>
	<p>b. Encourage private sector investment to improve wireless internet service availability in Jefferson County and the Eastern Panhandle.</p>
	<p>c. Ensure that, as next-generation wireless and cellular services are implemented, Jefferson County collaborates with providers, including any necessary regulatory changes, to ensure that providers are able to provide these services at the same time as other communities in the Washington, D.C. and Baltimore, MD Metropolitan Areas.</p>

13.	Explore options to develop and implement a tax credit for those improving and investing in designated historic structures while maintaining the historic character of the structures.
14.	Consider implementation of alternative energy systems as they become more efficient and cost effective in facilities owned and maintained by the County or other public entities.
15.	Create and provide a series of tax credits based on state and federal government programs for homeowners and businesses that implement sustainable improvements for their homes and/or businesses that would result in long-term energy and cost savings.

**Goal #10: Maintain and Enhance Community Services and Infrastructure Capacity for Water, Sanitary Sewer, Storm Sewer, and Other Utilities; and Enable the Provision of Orderly and Efficient Services and Advanced Technologies.**

- Objective #1:** In coordination with public and private service providers serving Jefferson County, create a public service plan for the County that identifies specific standards (based on state and nationally accepted standards for communities), the applicability of enhancements to existing facilities, and potential locations of future infrastructure improvements.
- Objective #2:** Continue to coordinate between county and regional/state agencies in relation to information and activities related to meeting Chesapeake Bay Watershed Implementation Plan (WIP) goals.
- Objective #3:** Create and implement a means to require shared infrastructure between existing and proposed development.
- Objective #4:** Require that new utility facilities and/or extensions are located within Urban Growth Boundaries (UGBs), Preferred Growth Areas (PGAs), or Villages.
- Objective #5:** Identify and implement ways to provide utility services within and immediately adjoining Village areas.
- Objective #6:** Provide mechanisms to ensure that existing utility systems are upgraded to meet the needs of the residents and businesses throughout the County.
- Objective #7:** Private water and wastewater plants shall meet material and design standards set by local publicly owned service providers.
- Objective #8:** Work with appropriate local agencies and regional providers to extend natural gas services into Jefferson County.
- Objective #9:** Encourage the creation of and use of a variety of energy sources (including renewable energy) within Jefferson County in ways that respect the character of the County.
- Objective #10:** Adhere to the regulations included as part of the Jefferson County Stormwater Ordinance.
- Objective #11:** For water and sewer utilities to serve new developments and in areas currently not served by water and sewer where services have been deemed necessary by local or state health officials, allocate costs equitably so that new development or the development being served is responsible for the infrastructure cost, rather than existing ratepayers.

pressing, and tailoring; massage therapy provided by licensed massage practitioner; photographic studios; psychic readers; real estate; self-service laundromat; shoe repair; spas; tanning salons; travel agencies; video rental stores and other similar establishments.

Photovoltaic Technology Materials and devices that absorb sunlight and convert it directly into electricity.

- Plat<sup>23</sup> A scaled, graphic drawing of a land subdivision project prepared according to the provisions of the Subdivision and Land Development Regulations and this Ordinance. A plat depicts the design and layout of a project as well as the location of existing and proposed property boundaries and easements. A plat also includes all terms, conditions and performance requirements established prior to the approval of a subdivision.
- Preliminary Plat<sup>23</sup> A professionally prepared drawing of a proposed subdivision which is not a record plat but which contains detailed information concerning the proposed development, and is prepared according to the provisions of the Subdivision and Land Development Regulations and this Ordinance.
- Preschool<sup>23</sup> Use of a site for the provision of pre-elementary educational services on a scheduled basis to children through kindergarten. If the West Virginia Department of Education establishes requirements for a preschool, the land use shall meet these requirements.
- Preservation of a Historic Site<sup>35</sup> The act or process of applying measures necessary to sustain the existing form, integrity, and materials of a historic property. Work, including preliminary measures to protect and stabilize the property, generally focuses upon the ongoing maintenance and repair of historic materials and features rather than extensive replacement and new construction.
- Primary Public Safety Provider<sup>22</sup> An FCC licensed governmental user that uses wireless telecommunication facilities to provide primary communications for law enforcement, fire, ambulance or related emergency services. Primary Public Service Provider does not include Commercial Wireless Service Providers, or Competitive Local Exchange Carriers (CLEC), who provide telecommunication services on a commercial basis to Primary Public Service Providers, or who deliver emergency calls or messages from its customers to a Public Safety Answering Point (PSAP).
- Principal Permitted Use<sup>23, 31, 32</sup> Any use included on the Principal Permitted and Conditional Uses Table (Appendix C) which is or may be lawfully established in a particular district, approved by the Office of Planning and Zoning without requirement of approval by a board or commission, provided the use conforms with all applicable requirements of this Ordinance. Such use does not include Conditional Uses as defined in this Ordinance.
- Principal Use<sup>23</sup> The primary or predominant use of any site.
- Printing and Publishing<sup>27</sup> A printing operation of an industrial scale, involving a process that is considered printing, imprinting, reproducing, or duplicating images and using printing methods including but not limited to offset printing,

Soil Value	A relative numeric value assigned to soil groups based on the group's potential for agricultural production.
<u>Solar Decommissioning Plan</u>	<u>A plan certified by a West Virginia Licensed Professional Engineer that outlines the removal and proper disposal of the components of the Solar Energy Facilities and property restoration; including, the timeline for the removal at the end of the lease and/or when production of electricity ceases, the estimated cost of the removal, the estimated salvage value of the material, equipment, devices, etc., and the reasonable restoration of the real property upon which such Solar Energy Facilities are located, including soil stabilization an re-vegetation of the ground cover of the property which may be disturbed due to the location, installation, or removal of such facilities. The Plan may also include a list of specific items that are requested to remain on site for the benefit of the property owner.</u>
<u>Solar Energy Facility</u>	<u>A facility that generates electricity from sunlight by utilization of photovoltaic (PV) technology and distributes the generated electrical power. On-site components of the facility may include solar panels and other accessory components including, without limitation, Essential Utility Equipment, transformers, inverters, cabling, electrical lines, substations, and other improvements necessary to support generation, collection, storage, and transmission of electrical power.</u>
Special Event <sup>39</sup>	A gathering of individuals for the common purpose of attending a celebration, ceremony, reception, or similar activity for the benefit of someone other than the property owner. Private parties, gatherings, and similar activities that are not subject to a use agreement between a private individual or group and the property owner are not defined as a special event.
Special Event Facility <sup>39</sup>	A facility where special events are permitted to occur. Special event facilities are subject to a use agreement between a private group or individual and the facility owner. The facility owner may or may not charge a rental fee for the use of the facility. Facilities may operate entirely within a structure, entirely outside of a structure, or both inside and outside a structure.
Special Event Facility, Agricultural <sup>39</sup>	A Special Event Facility located on a parcel which the Assessor's Office has classified as "farm use".
Species, Rare or Endangered	Any species listed with the West Virginia Department of Natural Resources Heritage Program Species List or by the U.S. Department of the Interior, Department of Fish and Wildlife Management.

B. Setback Standards to operate a Nature Center and Preserve:

Enclosed structures over 250 square feet that are solely for the purpose of housing animals shall be setback 50 feet.

All structures and motorized trails shall meet commercial setbacks of 25 feet with the exception that accessory structures under 250 square feet that are associated with the maintenance of the land use shall be setback ten feet.

All non-motorized trails and non-amplified outdoor activity areas shall meet a minimum ten foot setback. Motorized vehicles associated with the maintenance of the land use are permitted within the non-motorized trails.

C. Landscaping Standards to operate a Nature Center and Preserve:

In lieu of this Ordinance's landscaping standards, a ten foot woodland preservation buffer shall be required along the perimeter of the land use. This ten foot buffer is not required along the interior property lines of the land use. There shall be no clearing or cutting within the buffer with the exception of removing dead, dying, and/or diseased trees. The woodland preservation buffer may be used for passive recreation such as pedestrian, bike, or equestrian trails provided that:

1. No trees, shrubs, hedges, or walls are removed.
2. Not more that 20% of the width of the buffer is impervious surface.
3. The total width of the buffer area is maintained.

D. Noise Standards to operate a Nature Center and Preserve:

This land use is restricted to the noise standards of Section 8.9A.1 of this Ordinance. The Residential Growth District measurement shall apply when the use is adjacent to a lot that contains a residence, or is zoned Rural or Residential Growth.

**Section 8.19 Crematorium<sup>37</sup>**

A. Crematorium, Livestock

A Livestock Crematorium shall process as a Conditional Use Permit in all zoning districts other than Rural, unless such use is determined by the Zoning Administrator to be accessory to an active agricultural use.

B. Crematorium, Pet

A Pet Crematorium shall process as a Principal Permitted or Conditional Use in zones as designated in Appendix C. In the Rural Zoning District, a Pet Crematorium may process utilizing the Site Plan Exemption for the Rural District.

**Section 8.20 Solar Energy Facilities**

Solar Energy Facilities are permitted as indicated in Appendix C.

A. Application

1. A Pre-Proposal Conference is recommended, pursuant to the Jefferson County Subdivision and Land Development Regulations.

2. A Concept Plan, pursuant to the Minor Site Development Concept Plan standards established in the Jefferson County Subdivision and Land Development Regulations is required; except that after the Planning Commission direction is given, the next steps are Application for a Zoning Certificate and Building Permits, including submission of final Decommissioning Plan. In addition to the Concept Plan requirements outlined in the Subdivision Regulations, the Concept Plan shall also include the following standards:

(a) Property or Properties Location

(b) Access Points;

(c) Anticipated location of all proposed components of the Solar Energy Facility; and

(d) Landscaping, Buffering, Ground Cover Plan, and Fencing.

Each proposed solar panel is not required to be located on the Plan, if compliance with setbacks can be established by what is depicted on the Plan.

If the project is to be completed in phases, the Concept Plan shall reflect phasing of the project.

3. A Zoning Certificate based on an approved Concept Plan is required prior to initiating any use regarding Solar Energy Facilities.

(a) In addition to the standards found in Section 8.20, any Zoning Certificate regarding Solar Energy Facilities shall be issued conditioned on all other State Regulations and approvals being granted, including, but not limited to, the WV Public Service Commission, WVDEP applicable NPDES Permits, Fire Marshal Approval, Building Permits through the Department of Engineering, Planning, and Zoning, and approval of the Stormwater Management Report pursuant to the Jefferson County Stormwater Management Ordinance.

## B. Standards

1. Multiple adjacent properties under the same ownership or lease by the same company shall be considered one property for the purpose of these regulations. Internal boundary lines on adjacent properties under the same ownership or lease by the same company are not subject to the setbacks or buffer requirements provided below.

### 2. Setbacks

#### a. Solar Panels

i. Front, Side, and Rear Setbacks shall be 100 feet from all external/perimeter property lines and from the edge of the State ROW or Easement of any State Road.

ii. Solar panels and accessory components may be located on a common side or rear lot line of contiguous property owned by the same entity.

#### b. Accessory components, excluding solar panels.

i. Front, side, and rear setbacks shall be 25' from all external/perimeter property lines and from the edge of the State ROW or Easement of any State Road.

### 3. Buffering, Landscaping, Security, and Access

a. Solar Panels that are located within 200 feet of any residence, Category 1 Historic Resource, Institution for Human Care, Church, or similar use or structure as determined by the Zoning Administrator, shall provide a 20 foot wide buffer along common property lines. The buffer shall be provided anywhere within the 200 foot radius from

- the structures/uses herein and is not required to be provided along the entire length of the common property line.
- b. The buffer screen may be either vegetative or opaque fencing and may be placed anywhere within the buffer area. No structures, materials, or vehicular parking shall be permitted within the side and rear yard buffers. Existing, natural vegetation may be used in lieu of a planted buffer if documentation is submitted to the Zoning Administrator verifying how the existing natural vegetation complies with the required buffer standard.
  - c. Accessory Components (excluding solar panels) that are located within 200 feet of any residence, Category 1 Historic Resource, Institution for Human Care, Church, or similar use as determined by the Zoning Administrator, shall comply with the commercial provisions of Section 4.11, with the exception that the Zoning Administrator can allow the use of existing, natural vegetation as appropriate to achieve the intent of the required buffering.
  - d. A security fence with secured gates shall be erected around the operating areas of the Solar Energy Facility with a minimum height of 6 feet and a maximum height of 10 feet.
    - i. Arrangements shall be made with the appropriate Fire Department for Access. A letter documenting approval of access from the Fire Department shall be provided with the Zoning Certificate application. The Fire Department shall respond within 15 days of the date of the letter. If no response is provided, the Fire Department shall be deemed by this Ordinance to have approved the access.
    - ii. Upon three business days notice by the Department of Engineering, Planning, and Zoning, access shall be provided to Staff.
4. Stormwater Management
- Stormwater Management shall be required in accordance with the Jefferson County Stormwater Management Ordinance. Solar Energy Facilities may be exempt from providing stormwater management if the conditions for granting exemption under Article I.D.2.h of the Stormwater Management Ordinance are satisfied.
5. Decommissioning Plan
- a. A general outline of the decommissioning of the Solar Energy Facility shall be included with the Concept Plan. This outline shall include a general discussion on the timeline of the lease or operating plan and a general plan for removal of the Solar Energy Facility. A full Solar Decommissioning Plan is not required until submission of the Zoning Certificate application for the Facility.
  - b. A Solar Decommissioning Plan shall be presented to and approved by the Zoning Administrator prior to the issuance of the Zoning Certificate for Solar Energy Facilities. Either the Zoning Administrator or the Applicant may request that the Planning Commission approve or disapprove any component of the Plan.
  - c. Prior to issuance of any Solar Energy Facility Building Permit, an affidavit shall be submitted from the Property Owner which acknowledges that the Solar Energy Facility Decommissioning Plan is the Property Owner's responsibility.
  - d. Staff shall be notified by certified mail at least 60 days in advance of the intended decommissioning of the Solar Energy Facility. Staff will place the notice on the next

regularly scheduled Planning Commission meeting under “non-actionable correspondence”.

- e. Failure of the Lessee or Property Owner to meet and/or comply with the Solar Decommissioning Plan may result in the County pursuing legal action pursuant to Section 3 of this Ordinance, including legal action to have the Solar Energy Facility, or portions thereof as applicable, removed at the Property Owner’s expense. The County may seek to recover its costs, legal fees, and legal expenses incurred to have the facility decommissioned in compliance with the Solar Decommissioning Plan.

### C. General Requirements

1. Design, construction, and installation of the Solar Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM) or other similar certifying organizations and shall comply with the West Virginia Fire and Building Codes, including compliance with the Jefferson County Building Code.
2. Prior to commencing the transmission of electricity, the Solar Energy Facility shall provide documentation evidencing an interconnection agreement or similar agreement with the applicable public utility or approved entity in accordance with applicable law.
3. Generation of electrical power shall be limited to photovoltaic panels, provided that any on-site buildings may utilize integrated photovoltaic building materials.
4. Solvents necessary for the cleaning of the Solar Panels shall be biodegradable.
5. Internal wiring, excluding that which is on or between the Solar Arrays, connected to substations or between Solar Panels, shall be located underground, accept where necessary to mitigate impact to environmental and/or terrain features.
6. Onsite lighting shall be minimum necessary for security and onsite management and maintenance and shall comply with the standards outlined in the Subdivision Regulations.
7. Photovoltaic Panels shall use antireflective glass that is designed to absorb rather than reflect light.
8. Ground Cover comprised of natural vegetation is required. Ground cover that uses native or naturalized perennial vegetation and that provides foraging habitat that is beneficial for songbirds, gamebirds and pollinators is encouraged but not required.
9. Collocation of other agricultural activities such as small market hand-picked crops, grazing and apiary activities are permitted and encouraged.
10. No signage or advertising is permitted on the Solar Energy Facilities other than an identifying sign at the entrance of the Facility that shall be approved by the Zoning Administrator in accordance with Article 10. All other signage must be approved by Special Exception by the Board of Zoning Appeals.
11. Solar Energy Facilities shall comply with Article 8, Section 8.9 of this Ordinance.
12. The Solar Energy Facility Use is not considered abandoned until such time it is Decommissioned.
13. Damaged or unusable panels shall be removed within 60 days from discover of damage; provided, however, longer periods may be approved by the County Engineer due to extenuating circumstances.

Land Use	NC	GC	HC	LI	MI	PND <sup>1</sup>	OC	R	RG	RLIC	IC	V	Additional Standards
<b>Commercial Uses continued</b>													<b>Sec. 8.9</b>
Restaurant	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
Retail Sales Limited	P	P	P	P	NP	P	P	CU	CU	P	P	CU	
Retail Sales and Services, General	NP	P	P	P	NP	P	NP	CU	CU	P	P	CU	
Retail Store, Large	NP	CU	P	CU	NP	CU	NP	CU	CU	CU	CU	CU	
Shipping and Mailing Services	P	P	P	P	CU	P	P	CU	CU	P	P	CU	
<u>Solar Energy Facility</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>NP</u>	<u>P</u>	<u>NP</u>	<u>P</u>	<u>P</u>	<u>NP</u>	<u>Sec. 8.20</u>
Special Event Facility	P	P	P	P	NP	P	P	CU	CU	P	P	CU	Sec. 8.14
Storage, Commercial	NP	P	P	P	CU	P	NP	CU	CU	P	P	CU	
Veterinary Services	P	P	P	P	CU	P	P	P	CU	P	P	CU	
Wireless Telecommunications Facilities	P	P	P	P	P	P	P	P	P	P	P	P	Art. 4B
<b>Agricultural Uses*</b>													
Agricultural Uses, as defined in Article 2	P	P	P	P	P	P	P	P	P	P	P	P	
Agricultural Repair Center	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Agricultural Tourism	P	P	P	P	P	P	P	P	P	P	P	P	
Crematorium, Livestock <sup>37</sup>	CU	CU	CU	CU	CU	CU	CU	P	CU	CU	CU	CU	Sec. 8.19
Farm Brewery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Winery or Distillery	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.5
Farm Market	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.6
Farm Vacation Enterprise	P	P	P	P	P	P	P	P	P	P	P	P	
Farmer's Market	P	P	P	NP	NP	P	NP	P	CU	P	NP	CU	Sec. 8.6
Feed and/or Farm Supply Center	CU	P	P	P	P	P	P	P	CU	P	P	NP	
Horticultural Nurseries and Commercial Greenhouses	P	P	P	P	P	P	P	P	CU	P	P	NP	
Landscaping Business	P	P	P	P	P	P	P	P	CU	P	P	NP	
Rental of Existing Farm Building for Commercial Storage Structure must have existed for 5 years	NP	P	P	P	P	P	P	P	CU	P	P	NP	
Special Event Facility, Agricultural	P	P	P	P	P	P	P	P	P	P	P	P	Sec. 8.14
<b>Accessory Uses</b>													
Accessory Uses	P	P	P	P	P	P	P	P	P	P	P	P	

- NC Neighborhood Commercial
- GC General Commercial
- HC Highway Commercial
- LI Light Industrial
- MI Major Industrial
- PND Planned Neighborhood Development
- OC Office / Commercial Mixed-Use
- R Rural
- RG Residential Growth District
- RLIC Residential-Light Industrial-Commercial District
- IC Industrial-Commercial District
- V Village District

- P Permitted Uses
- NP Not Permitted Uses
- CU Conditional Uses (subject to requirements of district and/or other requirements of this Ordinance)
- \*\* Accessory Use to a planned residential community, if permitted pursuant to Section 5.4 and processed as a CU
- <sup>1</sup> The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.
- <sup>2</sup> Approval process is per the Salvage Yard Ordinance.



The following memo was prepared by the Office of Engineering. The information pertains to their research regarding stormwater management and bonding for solar energy facilities.

The following memo is for informational purposes only.

A redline revision to the Stormwater Management Ordinance does not require action by the Planning Commission. A text amendment to the Stormwater Management Ordinance requires action by the County Commission and should be coordinated with the Solar Energy Facilities Zoning Ordinance Text Amendment (ZTA19-03).

# MEMORANDUM

Jefferson County, West Virginia  
Engineering, Planning & Zoning Department

TO: Mike Shepp, Planning Commission President  
Alex Beaulieu, Zoning Administrator  
Jennie Brockman, County Planner

FROM: Roger Goodwin, P.E., Director & Chief County Engineer  
Jonathan Saunders, P.E, County Engineer  
Joe Kent, Land Development Inspector

DATE: April 22, 2020

SUBJECT: Zoning Ordinance Amendments Project  
Solar Farms - Stormwater Management & Bonding  
**SWM Text Revised Per 4/22/2020 Conference Call**

This memorandum is the Office of Engineering's response to the proposed Zoning Ordinance amendment addressing requirements for solar farms, that we discussed during a conference call on Thursday, April 9<sup>th</sup>. We address the following two issues:

- Stormwater Management and Erosion & Sediment Control requirements; and
- Proposed requirement for a 30-year Decommissioning Bond.

1. Stormwater Management and Sediment & Erosion Control:

- A. It is our understanding that the intent of the proposed amendment to the Zoning Ordinance for Solar Farms is to eliminate the need to process a Site Plan and eliminate the requirement for stormwater management control. However, the intent is to require temporary construction sediment and erosion (S&E) control under the West Virginia Department of Environmental Protection's construction stormwater NPDES permitting requirements.
- B. We researched information on the impact of solar farms on stormwater runoff (pre-development conditions vs. post-development conditions) and best management practices for controlling storm water runoff and erosion. This includes the following attached information:

- “Hydrologic Response of Solar Farms”, in the May 2013 ASCE Journal of Hydrologic Engineering; which looked at all the factors and conditions affecting stormwater runoff.
- “A Rainy Day at a Solar Farm”, Kennedy Jenks consulting; which summarizes stormwater impacts and stormwater management practices in several states.
- “Permitting for Solar Panel Farms – Frequently Asked Questions”, January 2, 2019, Pennsylvania Department of Environmental Protection; which provides conditions for exemption from traditional stormwater management control requirements.

- C. Based on our findings, there can be a significant increase in stormwater runoff from solar farms. However, if solar farms can meet certain conditions as discussed in the study, and as adopted by the state of Pennsylvania, the post-development runoff versus pre-development runoff will be insignificant and no traditional stormwater management control facilities will be needed.

Therefore, we propose similar relatively simple conditions for solar farms, which if met, will exempt solar farms from having to provide traditional stormwater management control. These conditions are outlined in the attached proposed amendment to the Stormwater Management Ordinance, in Article 1, Section D(2)(h). By meeting these conditions, a solar farm will be exempt from providing traditional stormwater management control.

We believe all stormwater management requirements should be contained in the Stormwater Management Ordinance, not spread out across numerous unrelated ordinances. It is the logical place for these requirements and keeps the ordinances user friendly. Therefore, we recommend that the Zoning Ordinance reference the Stormwater Management Ordinance for solar farm requirements and that the conditions granting an exception be placed in the Stormwater Management Ordinance. Jonathan Saunders, county engineer, drafted language for the reference in the Zoning Ordinance (see attached).

In Summary, the ASCE hydrologic study indicates that stormwater runoff from solar farms can be significant. However, the hydrologic study, and stormwater management practices adopted by the by other jurisdictions, indicate that solar farms can be exempt from providing traditional stormwater management facilities if the conditions proposed in the Jefferson County Stormwater Ordinance are

satisfied. These proposed conditions require low-impact methods for reducing post-construction runoff volumes and velocities.

If the Planning Commission agrees, then staff will prepare a county commission agenda item request for this purpose; and coordinate simultaneous approval of it with approval of the Zoning Ordinance amendment related to solar farm utilities.

2. 30-Year Decommissioning Bond:

With regard to the proposed requirement for a 30-year decommissioning bond, we offer the following comments:

- A. West Virginia State Code, Chapter 8A, Article 6-1, Bond Requirements, addresses bonding requirements for land development projects. It says:

*ARTICLE 6. METHODS OF SECURITY.*

***§8A-6-1. Bond requirements.***

*(a) If a bond is used as an acceptable method of security for infrastructure construction, then it shall meet the following requirements:*

- (1) Be in an amount to cover the infrastructure construction, as determined by the governing body;*
- (2) Be payable to the governing body;*
- (3) Have adequate surety and be satisfactory to the governing body;*
- (4) Specify the time for the completion of the infrastructure construction; and*
- (5) Specify the date and/or condition for when the bond will be released.*

*(b) The money from the bond shall only be used by the governing body to which the bond is payable, for the completion of the infrastructure construction, when the infrastructure construction is not completed as approved at the issuance of the bond.*

In accordance with state code, the County Commission has a bonding policy which requires that the developer enter into an agreement with the County Commission to complete the site improvements (infrastructure) as required under a preliminary plat or site plan approval. The developer is required to post a bond/surety in the amount of 115% of the estimated cost to complete all the site improvements. The developer gets a limited amount of time to complete the site improvements. Upon satisfactory completion of all the site improvements, the bond is released. Upon release of the bond/surety, there are no further obligations between the County Commission and the developer.

The purpose of the bond authorized under Chapter 8A, Article 6-1, is for completion of site improvements. The proposed 30-year decommissioning bond is for the post-construction purpose of ensuring that the site is properly decommissioned upon cessation of operation of the solar farm. Which could extend as far out as 30-years.

It is our belief that the county does not have the authority under Chapter 8A, Article 6-1, to require a bond for the purpose of ensuring the proper decommissioning of a solar farm post-construction; which would typically occur decades later. However, we will defer to the Planning Commission's attorney for guidance on this matter.

B. We also discussed the need for a 30-year decommissioning bond and how difficult it will be to manage over a 30-year time period. We believe that holding and tracking a bond for 30 years will be difficult and impractical. Instead, we propose another option based on these two ownership scenarios:

- Solar Farm Utility owns the land; and
- Solar Farm Utility leases the land.

In the first scenario, the ordinance could require that, upon cessation of operations, the solar farm be decommissioned by fully dismantling and removing all the equipment and facilities from the site and disposing of it in a legal manner. If the utility fails to do so, it will be in violation of the ordinance and the county pursues enforcement under the ordinance, which could involve seeking an injunction and order in circuit court to enforce proper decommissioning and possibly imposing fines on the utility. You could borrow language from the Property Safety Enforcement Ordinance on how the enforcement process will work.

Whenever there is a violation of county land development ordinances and building codes, the county has always held the property owner to be the one in violation; not the developer or builder/contractor. In the second scenario, it seems the intent of the 30-year decommissioning bond is to protect the owner from the utility failing to properly decommission the solar farm upon cessation of operations and/or termination of the lease. If the utility abandoned the solar farm facility in place, this again would be a violation of the ordinance. However, the owner will be responsible for seeing that the utility properly decommissions the solar farm. If not, then the county will pursue enforcement under the ordinance, which could

involve seeking an injunction and order in circuit court to enforce proper decommissioning by the property owner and possibly imposing fines.

Therefore, under the second scenario, it seems to us that the property owner needs to enter into a lease agreement that includes terms and conditions for the proper decommissioning of the solar farm. The property owner should be the one to require and hold a decommissioning bond or form of surety from the utility to ensure there is incentive for the utility to properly decommission the solar farm; which will be by demolishing it and disposing of it in a legal manner. It seems to us that in this scenario, it is a contractual civil matter between the property owner and the solar farm utility.

In summary, we believe that it will be difficult for the County Commission and staff to manage and track a bond over a 30-year time period. Putting language in the ordinance giving the county the ability to enforce decommissioning is an alternative to requiring a decommissioning bond. If the solar farm utility leases the property, then the property owner can enter into a lease agreement with the utility that requires the utility post a bond/surety with the property owner as incentive for proper decommissioning. In addition, we are not sure the county has the authority to require a decommissioning bond anyway. However, the property owner could require a bond/surety in the lease agreement. We will defer to the Planning Commission's attorney for guidance on this matter.

# **Jefferson County, WV**

**Stormwater Management Ordinance  
Department of Engineering**

AUGUST, 2013

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**ARTICLE I GENERAL PROVISIONS**

**A. STATUTORY AUTHORITY**

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- (1) Short Title
  - (a) This Ordinance and Ordinances supplemental or amendatory thereto shall be known and may be cited as the “Stormwater Management Ordinance of Jefferson County” and hereinafter referred to as the “Ordinance.”
  - (b) EFFECTIVE DATE:
- (2) The provisions of this Ordinance are enacted pursuant to West Virginia Code:
  - Chapter 7, County Commissions and Officers, Article 1, “County Commissions Generally”
  - Chapter 8A, Land Use Planning, Article 4, “Subdivision and Land Development Ordinance”
  - Chapter 8A, Land Use Planning, Article 5, “Subdivision or Land Development”
  - Chapter 22, Environmental Resources, Article 11, “Water Pollution Control Act”
  - Chapter 22, Environmental Resources, Article 12, “Ground Water Protection Act”
- (3) The provisions of this Ordinance are also enacted pursuant to the Chesapeake Bay Restoration Act of 2000.

**B. PURPOSE AND OBJECTIVES**

---

This Ordinance has the following purpose:

- (1) Protect, maintain, and enhance the environment of Jefferson County and the public health, safety, and general welfare of the citizens of Jefferson County by controlling discharges of pollutants to Jefferson County’s stormwater system, and maintain and improve the quality of the receiving waters into which all stormwater flows, including, without limitation, lakes, rivers, streams, ponds, wetlands, and groundwater of the community
- (2) Enable Jefferson County to comply with the West Virginia Department of Environmental Protection (WVDEP)-administered National Pollutant Discharge Elimination System (NPDES) stormwater permit program and applicable regulations (40 CFR, §122.26) for stormwater discharges
- (3) Enable Jefferson County to comply with the Environmental Protection Agency’s (EPA) Total Maximum Daily Loads (TMDLs) Water Quality Standards established for the Potomac River Basin
- (4) Enable Jefferson County to comply with the West Virginia Water Pollution Control Act, West Virginia Code, Chapter 22, Article 11

- (5) Allow Jefferson County to exercise the powers granted in West Virginia Code §8A-4, Article 4, "Subdivision and Land Development", Article 5, "Subdivision or Land Development," and §22, Article 12, "Ground Water Protection Act," which provide, among other powers that counties have with respect to stormwater systems and stormwater management programs, the power by ordinance or resolution, as the case may require, and by appropriate action based thereon to do the following:
  - (a) Establish standards for setback requirements, Lot sizes, streets, sidewalks, walkways, parking, easements, rights-of-way, drainage, utilities, infrastructure, curbs, gutters, street lights, fire hydrants, stormwater management, and water and wastewater facilities
  - (b) Adopt any rules and regulations deemed necessary to accomplish the purposes of this Ordinance, including the adoption of a system of fees for services and permits
  - (c) Establish standards to regulate the quantity of stormwater discharged and to regulate stormwater contaminants that may be necessary to protect water quality
  - (d) Establish standards for flood-prone or subsidence areas
  - (e) Review and approve plans and plats for stormwater management in proposed residential and nonresidential subdivisions as applicable under Subsection D below
  - (f) Issue permits for stormwater discharges, or for the construction, alteration, extension, or repair of stormwater facilities
  - (g) Suspend or revoke permits when it is determined that the permittee has violated any applicable ordinance, resolution, or condition of the permit
  - (h) Ensure that required improvements are installed and not avoided by a series of minor subdivisions or land developments
  - (i) Define control measures for drainage, erosion, and sediment

**C. ADMINISTERING ENTITY**

---

- (1) Pursuant to West Virginia Code §7, Article 1, "County Commissions Generally," any county commission in the State of West Virginia is hereby authorized and empowered to own, acquire, construct, equip, operate, and maintain within the respective county a stormwater system, stormwater works, and stormwater management program as defined herein.
- (2) Jefferson County is the entity responsible for administering the provisions of this Ordinance.

**D. APPLICABILITY**

---

- (1) This Ordinance shall be applicable to all activities as defined herein. A Stormwater Management Plan for any new development or redevelopment shall be required as described below. In addition to Stormwater Quantity and Quality Control Plans, stormwater Runoff conveyance systems, Erosion and Sediment Control Plans, and stormwater management facilities' maintenance requirements must be included in all Stormwater Management Plans. Stormwater management quantity and quality control shall be applicable as follows:
  - (a) Quantity control criteria for newly developed impervious surfaces and/or changes in land cover shall apply to
    - (i) Minor Site Developments, as defined by the Jefferson County Subdivision and Land Development Regulations, requiring a Limited Site Plan, and
    - (ii) Rural Site Plans, and
    - (iii) Any Site Development requiring a Full Site Plan, and
    - (iv) Any Major residential or commercial subdivision requiring a Preliminary Plat.
  - (b) In addition to the quantity control requirements noted above, Quality control criteria for newly developed impervious surfaces shall apply to
    - (i) Rural Site Plans involving the Development of 5,000 square feet or more of impervious surface or resulting in more than one acre of land disturbance, and
    - (ii) Any Site Development requiring a Full Site Plan, and
    - (iii) Any Major residential or commercial subdivision requiring a Preliminary Plat.
- (2) The following activities are exempt from this Ordinance:
  - (a) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources
  - (b) Projects that do not require Site Plans or Preliminary Plat Plans. This includes Minor Subdivisions as defined under the Subdivision and Land Development Ordinance.
  - (c) The construction of single-family or duplex residential structures or additions or modifications to existing single-family or duplex residential structures

- (i) However, despite the exemption, minimal Erosion and Sediment control measures shall be required and include the following:
1. Installation and maintenance of a stone construction entrance during the entire construction phase to reduce the transport of sediment from the site by vehicles and equipment leaving the site, and
  2. Installation of a Silt Fence during the entire construction phase to control erosion and sediment runoff from the Site, and
  3. All disturbed areas on the Site shall be stabilized, within seven days of final grading or becoming inactive for more than 30 days, with permanent vegetation or protective ground cover suitable for the time of year.
- (ii) The Erosion and Sediment control measures shall be constructed and installed according to the details and specifications as established by the Chief County Engineer.
- (iii) The minimal stone construction entrance and Silt Fence shall be in place at the time of the footer inspection. Failure to meet minimal requirements will result in a failed footer inspection under the building code.

The final grading and stabilization of the Site shall be complete at the time of final inspection. Failure to meet this requirement will result in a failed final inspection and withholding of the Use and Occupancy Certificate issued under the building code.

- (d) Any logging or Agricultural Activity that is consistent with an approved farm conservation plan or a timber management plan prepared or approved by the Eastern Panhandle Conservation District.
- (e) Repairs to any Stormwater Management Facility.
- (f) Subdivision Plats or Site Plans approved before the adoption date of this Ordinance. However, any and all Subdivision Plats and Site Plans approved prior to the adoption of this Ordinance shall still be required to meet the stormwater management requirements in effect at the time of their approval and under which they were approved.
- (g) Any vested development that has an active application or submittal at the time of adoption of this ordinance and meets at least one of the following criteria, is exempt from this ordinance.
- An approved master planned development with a current CIS that has submitted at least the first phase of a multi-phased master planned development, or
  - Any site plan within an approved non-residential subdivision that has existing central water quantity control structures shall be required to

provide stormwater management controls under the regulations, conditions and terms in effect at the time of the original approval.

However, if, after the adoption of this ordinance, there is any physical expansion to said exclusion listed above, this ordinance shall apply to the expanded area only.

(h) Solar Farms, provided all of the following conditions are met:

- Earth disturbance and grading activities shall be minimized and natural vegetal cover shall be preserved and/or restored.
- Vegetal cover shall have 90% or better uniform coverage and shall not be subject to chemical fertilization and herbicides/pesticides. A meadow condition is preferable, particularly for slopes between 5 and 10%. Mowed areas should be kept to a minimum of 4”.

Individual Photo Voltaic (PV) modules within an array shall be arranged in a fashion that allows the passage of runoff underneath each module. The PV modules shall be arranged to allow the growth of vegetation beneath the PV modules and between the rows of PV arrays.

If the width of the vegetative strip between rows of PV arrays is not a minimum of twelve feet (i.e. there is inadequate vegetated spacing between modules), then stormwater BMPs such as infiltration trenches (min. 12” wide by 12” deep) or infiltration berms shall be installed down gradient between each row.

- Ground-mounted solar PV modules shall be supported with structures/foundations occupying a maximum of 5% of the total project area. (not the parcel area, but that area within the boundary of the 100’ setback/buffer surrounding the solar farm equipment) This area shall be delineated, and dimensioned on the Concept Plan, along with a note of the total area and a calculation of the percent of impervious area occupied by the support structures/foundation.
- Solar PV modules shall be situated on mild slopes (10% max). If greater than 10% slopes are proposed, then stormwater BMPs such as infiltration trenches (min. 12” wide by 12” deep) or infiltration berms shall be installed down gradient between each row of PV arrays, in addition to providing the minimum 12-foot spacing between the rows of PV arrays.
- The lowest vertical clearance of the solar PV array shall be at an elevation of 10 feet or less from the ground, but is also at an adequate height to promote vegetative growth below the PV array.
- No erosion or transport of sediments shall be allowed. An Erosion and Sediment Control Plan shall be submitted as part of the Stormwater Report. Permanent Erosion and Sediment Control shall be provided to address the potential for erosion at the drip edge of solar panels. In addition, the West Virginia Department of Environmental Protection’s

temporary construction stormwater NPDES permit shall be submitted along with the Stormwater Report.

The developer shall submit documentation in the form of a Stormwater Report, which demonstrates all of the above conditions are satisfied, to the Jefferson County Engineer for review and approval. At the time of submission, the developer shall pay a non-refundable review fee in accordance with the established fee schedule. The Stormwater Report shall be prepared, signed, and sealed, by a professional engineer registered to practice in the State of West Virginia. The Stormwater Report shall be approved prior to the issuance of the building permit.

If all the above conditions cannot be met, then the project shall fall under the jurisdiction of this Ordinance and stormwater quantity and quality control shall be provided.

For the life of the project, the Jefferson County Engineering staff shall have the authority to visit the site, with 72-hours' notice, to determine if the above conditions are being maintained.

Failure to perpetually maintain and meet the conditions for this exemption shall be a violation of this Ordinance and enforceable under the law.

- (3) Compatibility with Other Permits and Ordinance Requirements
  - (a) Compliance with the requirements herein does not create exclusion to permitting requirements from the WVDEP, the U.S. Army Corps of Engineers, or any other agency or reviewing body that has jurisdiction over the proposed project area.
  - (b) Whenever this Ordinance imposes a conflicting restriction regarding stormwater regulation, the provisions of the more restrictive ordinance shall control.

**E. SEVERABILITY**

If any section, clause, sentence, part, or provision hereof shall be held to be invalid, or unconstitutional, by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, clauses, sentences, parts, or provisions of this Ordinance.

**F. INCORPORATION BY REFERENCE**

- (1) For the purposes of this Ordinance, Jefferson County has adopted by reference the following published standards:
  - (a) *West Virginia Stormwater Management and Design Guidance Manual (2012)*

- (c) *West Virginia Erosion and Sediment Control Best Management Practice Manual (2006)*
  - (d) *West Virginia Erosion and Sediment Control Handbook for Developing Areas*
  - (e) *Virginia Stormwater Best Management Practices Clearinghouse*
  - (f) *Maryland Stormwater Design Manual*
  - (g) *Pennsylvania Stormwater Best Management Practices Manual*
- (2) All Stormwater Management Plans shall be consistent with the regulations and design standards established in the listed published standards.

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# Hydrologic Response of Solar Farms

Lauren M. Cook, S.M.ASCE<sup>1</sup>; and Richard H. McCuen, M.ASCE<sup>2</sup>

**Abstract:** Because of the benefits of solar energy, the number of solar farms is increasing; however, their hydrologic impacts have not been studied. The goal of this study was to determine the hydrologic effects of solar farms and examine whether or not storm-water management is needed to control runoff volumes and rates. A model of a solar farm was used to simulate runoff for two conditions: the pre- and postpaneled conditions. Using sensitivity analyses, modeling showed that the solar panels themselves did not have a significant effect on the runoff volumes, peaks, or times to peak. However, if the ground cover under the panels is gravel or bare ground, owing to design decisions or lack of maintenance, the peak discharge may increase significantly with storm-water management needed. In addition, the kinetic energy of the flow that drains from the panels was found to be greater than that of the rainfall, which could cause erosion at the base of the panels. Thus, it is recommended that the grass beneath the panels be well maintained or that a buffer strip be placed after the most downgradient row of panels. This study, along with design recommendations, can be used as a guide for the future design of solar farms. DOI: 10.1061/(ASCE)HE.1943-5584.0000530. © 2013 American Society of Civil Engineers.

**CE Database subject headings:** Hydrology; Land use; Solar power; Floods; Surface water; Runoff; Stormwater management.

**Author keywords:** Hydrology; Land use change; Solar energy; Flooding; Surface water runoff; Storm-water management.

## Introduction

Storm-water management practices are generally implemented to reverse the effects of land-cover changes that cause increases in volumes and rates of runoff. This is a concern posed for new types of land-cover change such as the solar farm. Solar energy is a renewable energy source that is expected to increase in importance in the near future. Because solar farms require considerable land, it is necessary to understand the design of solar farms and their potential effect on erosion rates and storm runoff, especially the impact on offsite properties and receiving streams. These farms can vary in size from 8 ha (20 acres) in residential areas to 250 ha (600 acres) in areas where land is abundant.

The solar panels are impervious to rain water; however, they are mounted on metal rods and placed over pervious land. In some cases, the area below the panel is paved or covered with gravel. Service roads are generally located between rows of panels. Although some panels are stationary, others are designed to move so that the angle of the panel varies with the angle of the sun. The angle can range, depending on the latitude, from 22° during the summer months to 74° during the winter months. In addition, the angle and direction can also change throughout the day. The issue posed is whether or not these rows of impervious panels will change the runoff characteristics of the site, specifically increase runoff volumes or peak discharge rates. If the increases are hydrologically significant, storm-water management facilities may be needed. Additionally, it is possible that the velocity of water

draining from the edge of the panels is sufficient to cause erosion of the soil below the panels, especially where the maintenance roadways are bare ground.

The outcome of this study provides guidance for assessing the hydrologic effects of solar farms, which is important to those who plan, design, and install arrays of solar panels. Those who design solar farms may need to provide for storm-water management. This study investigated the hydrologic effects of solar farms, assessed whether or not storm-water management might be needed, and if the velocity of the runoff from the panels could be sufficient to cause erosion of the soil below the panels.

## Model Development

Solar farms are generally designed to maximize the amount of energy produced per unit of land area, while still allowing space for maintenance. The hydrologic response of solar farms is not usually considered in design. Typically, the panels will be arrayed in long rows with separations between the rows to allow for maintenance vehicles. To model a typical layout, a unit width of one panel was assumed, with the length of the downgradient strip depending on the size of the farm. For example, a solar farm with 30 rows of 200 panels each could be modeled as a strip of 30 panels with space between the panels for maintenance vehicles. Rainwater that drains from the upper panel onto the ground will flow over the land under the 29 panels on the downgradient strip. Depending on the land cover, infiltration losses would be expected as the runoff flows to the bottom of the slope.

To determine the effects that the solar panels have on runoff characteristics, a model of a solar farm was developed. Runoff in the form of sheet flow without the addition of the solar panels served as the prepaneled condition. The paneled condition assumed a downgradient series of cells with one solar panel per ground cell. Each cell was separated into three sections: wet, dry, and spacer.

The dry section is that portion directly underneath the solar panel, unexposed directly to the rainfall. As the angle of the panel from the horizontal increases, more of the rain will fall directly onto

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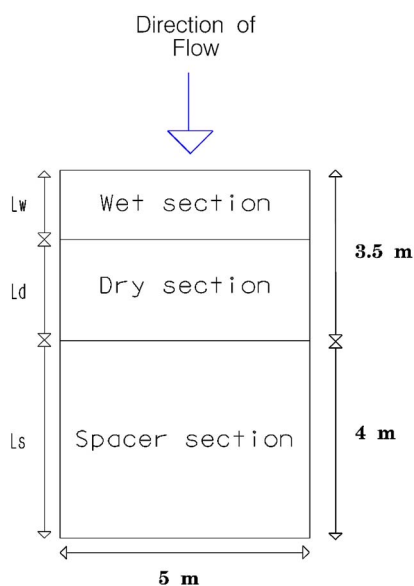
Note. This manuscript was submitted on August 12, 2010; approved on October 20, 2011; published online on October 24, 2011. Discussion period open until October 1, 2013; separate discussions must be submitted for individual papers. This paper is part of the *Journal of Hydrologic Engineering*, Vol. 18, No. 5, May 1, 2013. © ASCE, ISSN 1084-0699/2013/5-536-541/\$25.00.

the ground; this section of the cell is referred to as the wet section. The spacer section is the area between the rows of panels used by maintenance vehicles. Fig. 1 is an image of two solar panels and the spacer section allotted for maintenance vehicles. Fig. 2 is a schematic of the wet, dry, and spacer sections with their respective dimensions. In Fig. 1, tracks from the vehicles are visible on what is modeled within as the spacer section. When the solar panel is horizontal, then the length longitudinal to the direction that runoff will occur is the length of the dry and wet sections combined. Runoff from a dry section drains onto the downgradient spacer section. Runoff from the spacer section flows to the wet section of the next downgradient cell. Water that drains from a solar panel falls directly onto the spacer section of that cell.

The length of the spacer section is constant. During a storm event, the loss rate was assumed constant for the 24-h storm because a wet antecedent condition was assumed. The lengths of the wet and dry sections changed depending on the angle of the solar panel. The total length of the wet and dry sections was set



**Fig. 1.** Maintenance or “spacer” section between two rows of solar panels (photo by John E. Showler, reprinted with permission)



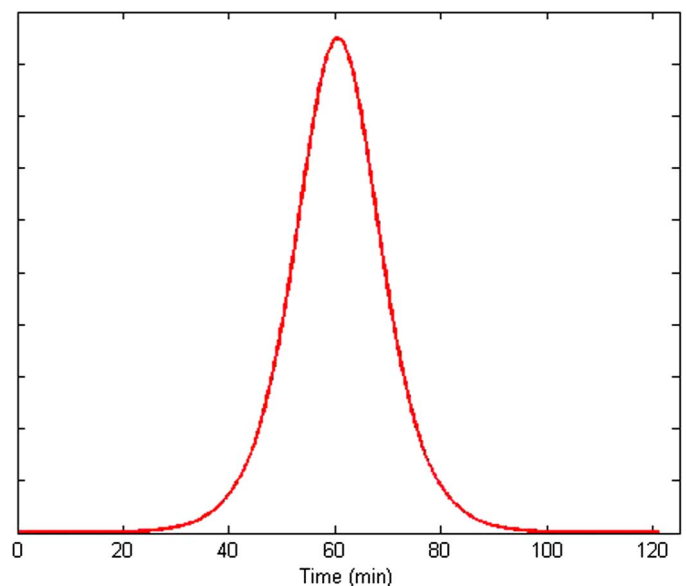
**Fig. 2.** Wet, dry, and spacer sections of a single cell with lengths  $L_w$ ,  $L_d$ , and  $L_s$  with the solar panel covering the dry section

equal to the length of one horizontal solar panel, which was assumed to be 3.5 m. When a solar panel is horizontal, the dry section length would equal 3.5 m and the wet section length would be zero. In the paneled condition, the dry section does not receive direct rainfall because the rain first falls onto the solar panel then drains onto the spacer section. However, the dry section does infiltrate some of the runoff that comes from the upgradient wet section. The wet section was modeled similar to the spacer section with rain falling directly onto the section and assuming a constant loss rate.

For the presolar panel condition, the spacer and wet sections are modeled the same as in the paneled condition; however, the cell does not include a dry section. In the prepaneled condition, rain falls directly onto the entire cell. When modeling the prepaneled condition, all cells receive rainfall at the same rate and are subject to losses. All other conditions were assumed to remain the same such that the prepaneled and paneled conditions can be compared.

Rainfall was modeled after a natural resources conservation service (NRCS) Type II Storm (McCuen 2005) because it is an accurate representation of actual storms of varying characteristics that are imbedded in intensity-duration-frequency (IDF) curves. For each duration of interest, a dimensionless hyetograph was developed using a time increment of 12 s over the duration of the storm (see Fig. 3). The depth of rainfall that corresponds to each storm magnitude was then multiplied by the dimensionless hyetograph. For a 2-h storm duration, depths of 40.6, 76.2, and 101.6 mm were used for the 2-, 25-, and 100-year events. The 2- and 6-h duration hyetographs were developed using the center portion of the 24-h storm, with the rainfall depths established with the Baltimore IDF curve. The corresponding depths for a 6-h duration were 53.3, 106.7, and 132.1 mm, respectively. These magnitudes were chosen to give a range of storm conditions.

During each time increment, the depth of rain is multiplied by the cell area to determine the volume of rain added to each section of each cell. This volume becomes the storage in each cell. Depending on the soil group, a constant volume of losses was subtracted from the storage. The runoff velocity from a solar panel was calculated using Manning’s equation, with the hydraulic radius for sheet flow assumed to equal the depth of the storage on the panel (Bedient and Huber 2002). Similar assumptions were made to compute the velocities in each section of the surface sections.



**Fig. 3.** Dimensionless hyetograph of 2-h Type II storm

Runoff from one section to the next and then to the next downgradient cell was routed using the continuity of mass. The routing coefficient depended on the depth of flow in storage and the velocity of runoff. Flow was routed from the wet section to the dry section to the spacer section, with flow from the spacer section draining to the wet section of the next cell. Flow from the most downgradient cell was assumed to be the outflow. Discharge rates and volumes from the most downgradient cell were used for comparisons between the prepaneled and paneled conditions.

## Alternative Model Scenarios

To assess the effects of the different variables, a section of 30 cells, each with a solar panel, was assumed for the base model. Each cell was separated individually into wet, dry, and spacer sections. The area had a total ground length of 225 m with a ground slope of 1% and width of 5 m, which was the width of an average solar panel. The roughness coefficient (Engman 1986) for the silicon solar panel was assumed to be that of glass, 0.01. Roughness coefficients of 0.15 for grass and 0.02 for bare ground were also assumed. Loss rates of 0.5715 cm/h (0.225 in./h) and 0.254 cm/h (0.1 in./h) for B and C soils, respectively, were assumed.

The prepaneled condition using the 2-h, 25-year rainfall was assumed for the base condition, with each cell assumed to have a good grass cover condition. All other analyses were made assuming a paneled condition. For most scenarios, the runoff volumes and peak discharge rates from the paneled model were not significantly greater than those for the prepaneled condition. Over a total length of 225 m with 30 solar panels, the runoff increased by 0.26 m<sup>3</sup>, which was a difference of only 0.35%. The slight increase in runoff volume reflects the slightly higher velocities for the paneled condition. The peak discharge increased by 0.0013 m<sup>3</sup>, a change of only 0.31%. The time to peak was delayed by one time increment, i.e., 12 s. Inclusion of the panels did not have a significant hydrologic impact.

### Storm Magnitude

The effect of storm magnitude was investigated by changing the magnitude from a 25-year storm to a 2-year storm. For the 2-year storm, the rainfall and runoff volumes decreased by approximately 50%. However, the runoff from the paneled watershed condition increased compared to the prepaneled condition by approximately the same volume as for the 25-year analysis, 0.26 m<sup>3</sup>. This increase represents only a 0.78% increase in volume. The peak discharge and the time to peak did not change significantly. These results reflect runoff from a good grass cover condition and indicated that the general conclusion of very minimal impacts was the same for different storm magnitudes.

### Ground Slope

The effect of the downgradient ground slope of the solar farm was also examined. The angle of the solar panels would influence the velocity of flows from the panels. As the ground slope was increased, the velocity of flow over the ground surface would be closer to that on the panels. This could cause an overall increase in discharge rates. The ground slope was changed from 1 to 5%, with all other conditions remaining the same as the base conditions.

With the steeper incline, the volume of losses decreased from that for the 1% slope, which is to be expected because the faster velocity of the runoff would provide less opportunity for infiltration. However, between the prepaneled and paneled conditions, the increase in runoff volume was less than 1%. The peak discharge

and the time to peak did not change. Therefore, the greater ground slope did not significantly influence the response of the solar farm.

### Soil Type

The effect of soil type on the runoff was also examined. The soil group was changed from B soil to C soil by varying the loss rate. As expected, owing to the higher loss rate for the C soil, the depths of runoff increased by approximately 7.5% with the C soil when compared with the volume for B soils. However, the runoff volume for the C soil condition only increased by 0.17% from the prepaneled condition to the paneled condition. In comparison with the B soil, a difference of 0.35% in volume resulted between the two conditions. Therefore, the soil group influenced the actual volumes and rates, but not the relative effect of the paneled condition when compared to the prepaneled condition.

### Panel Angle

Because runoff velocities increase with slope, the effect of the angle of the solar panel on the hydrologic response was examined. Analyses were made for angles of 30° and 70° to test an average range from winter to summer. The hydrologic response for these angles was compared to that of the base condition angle of 45°. The other site conditions remained the same. The analyses showed that the angle of the panel had only a slight effect on runoff volumes and discharge rates. The lower angle of 30° was associated with an increased runoff volume, whereas the runoff volume decreased for the steeper angle of 70° when compared with the base condition of 45°. However, the differences (~0.5%) were very slight. Nevertheless, these results indicate that, when the solar panel was closer to horizontal, i.e., at a lower angle, a larger difference in runoff volume occurred between the prepaneled and paneled conditions. These differences in the response result are from differences in loss rates.

The peak discharge was also lower at the lower angle. At an angle of 30°, the peak discharge was slightly lower than at the higher angle of 70°. For the 2-h storm duration, the time to peak of the 30° angle was 2 min delayed from the time to peak of when the panel was positioned at a 70° angle, which reflects the longer travel times across the solar panels.

### Storm Duration

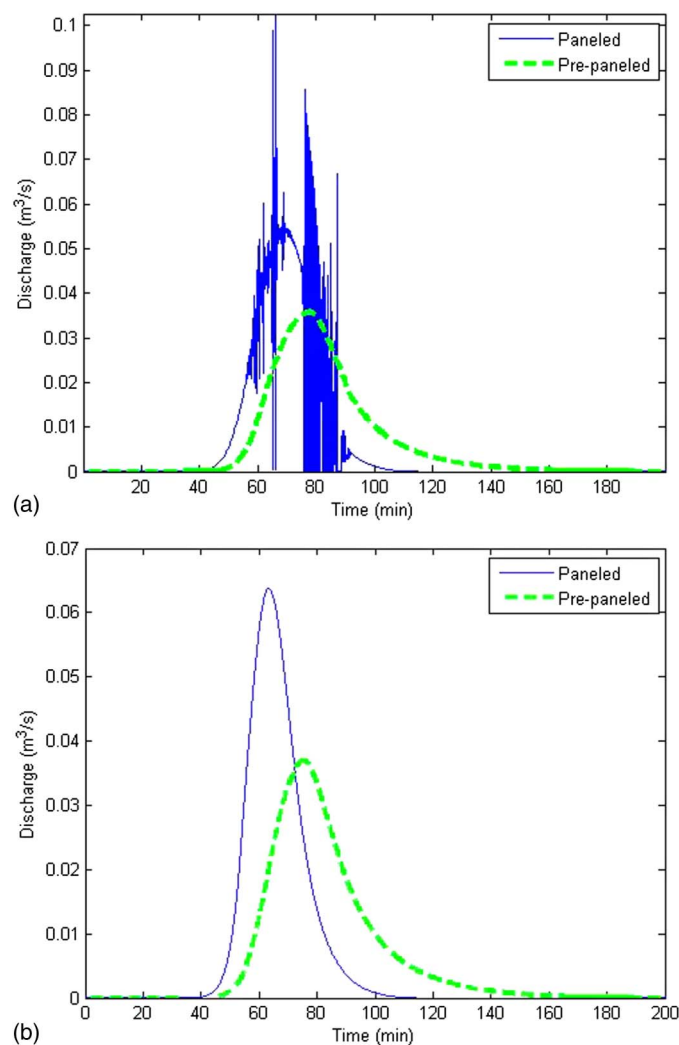
To assess the effect of storm duration, analyses were made for 6-h storms, testing magnitudes for 2-, 25-, and 100-year return periods, with the results compared with those for the 2-h rainfall events. The longer storm duration was tested to determine whether a longer duration storm would produce a different ratio of increase in runoff between the prepaneled and paneled conditions. When compared to runoff volumes from the 2-h storm, those for the 6-h storm were 34% greater in both the paneled and prepaneled cases. However, when comparing the prepaneled to the paneled condition, the increase in the runoff volume with the 6-h storm was less than 1% regardless of the return period. The peak discharge and the time-to-peak did not differ significantly between the two conditions. The trends in the hydrologic response of the solar farm did not vary with storm duration.

### Ground Cover

The ground cover under the panels was assumed to be a native grass that received little maintenance. For some solar farms, the area beneath the panel is covered in gravel or partially paved because the panels prevent the grass from receiving sunlight. Depending on the

volume of traffic, the spacer cell could be grass, patches of grass, or bare ground. Thus, it was necessary to determine whether or not these alternative ground-cover conditions would affect the runoff characteristics. This was accomplished by changing the Manning's  $n$  for the ground beneath the panels. The value of  $n$  under the panels, i.e., the dry section, was set to 0.015 for gravel, with the value for the spacer or maintenance section set to 0.02, i.e., bare ground. These can be compared to the base condition of a native grass ( $n = 0.15$ ). A good cover should promote losses and delay the runoff.

For the smoother surfaces, the velocity of the runoff increased and the losses decreased, which resulted in increasing runoff volumes. This occurred both when the ground cover under the panels was changed to gravel and when the cover in the spacer section was changed to bare ground. Owing to the higher velocities of the flow, runoff rates from the cells increased significantly such that it was necessary to reduce the computational time increment. Fig. 4(a) shows the hydrograph from a 30-panel area with a time increment of 12 s. With a time increment of 12 s, the water in each cell is discharged at the end of every time increment, which results in no attenuation of the flow; thus, the undulations shown in Fig. 4(a) result. The time increment was reduced to 3 s for the 2-h storm, which resulted in watershed smoothing and a rational hydrograph shape [Fig. 4(b)]. The results showed that the storm runoff



**Fig. 4.** Hydrograph with time increment of (a) 12 s; (b) 3 s with Manning's  $n$  for bare ground

increased by 7% from the grass-covered scenario to the scenario with gravel under the panel. The peak discharge increased by 73% for the gravel ground cover when compared with the grass cover without the panels. The time to peak was 10 min less with the gravel than with the grass, which reflects the effect of differences in surface roughness and the resulting velocities.

If maintenance vehicles used the spacer section regularly and the grass cover was not adequately maintained, the soil in the spacer section would be compacted and potentially the runoff volumes and rates would increase. Grass that is not maintained has the potential to become patchy and turn to bare ground. The grass under the panel may not get enough sunlight and die. Fig. 1 shows the result of the maintenance trucks frequently driving in the spacer section, which diminished the grass cover.

The effect of the lack of solar farm maintenance on runoff characteristics was modeled by changing the Manning's  $n$  to a value of 0.02 for bare ground. In this scenario, the roughness coefficient for the ground under the panels, i.e., the dry section, as well as in the spacer cell was changed from grass covered to bare ground ( $n = 0.02$ ). The effects were nearly identical to that of the gravel. The runoff volume increased by 7% from the grass-covered to the bare-ground condition. The peak discharge increased by 72% when compared with the grass-covered condition. The runoff for the bare-ground condition also resulted in an earlier time to peak by approximately 10 min. Two other conditions were also modeled, showing similar results. In the first scenario, gravel was placed directly under the panel, and healthy grass was placed in the spacer section, which mimics a possible design decision. Under these conditions, the peak discharge increased by 42%, and the volume of runoff increased by 4%, which suggests that storm-water management would be necessary if gravel is placed anywhere.

Fig. 5 shows two solar panels from a solar farm in New Jersey. The bare ground between the panels can cause increased runoff rates and reductions in time of concentration, both of which could necessitate storm-water management. The final condition modeled involved the assumption of healthy grass beneath the panels and bare ground in the spacer section, which would simulate the condition of unmaintained grass resulting from vehicles that drive over the spacer section. Because the spacer section is 53% of the cell, the change in land cover to bare ground would reduce losses and decrease runoff travel times, which would cause runoff to amass as it



**Fig. 5.** Site showing the initiation of bare ground below the panels, which increases the potential for erosion (photo by John Showler, reprinted with permission)

moves downgradient. With the spacer section as bare ground, the peak discharge increased by 100%, which reflected the increases in volume and decrease in timing. These results illustrate the need for maintenance of the grass below and between the panels.

## Design Suggestions

With well-maintained grass underneath the panels, the solar panels themselves do not have much effect on total volumes of the runoff or peak discharge rates. Although the panels are impervious, the rainwater that drains from the panels appears as runoff over the downgradient cells. Some of the runoff infiltrates. If the grass cover of a solar farm is not maintained, it can deteriorate either because of a lack of sunlight or maintenance vehicle traffic. In this case, the runoff characteristics can change significantly with both runoff rates and volumes increasing by significant amounts. In addition, if gravel or pavement is placed underneath the panels, this can also contribute to a significant increase in the hydrologic response.

If bare ground is foreseen to be a problem or gravel is to be placed under the panels to prevent erosion, it is necessary to counteract the excess runoff using some form of storm-water management. A simple practice that can be implemented is a buffer strip (Dabney et al. 2006) at the downgradient end of the solar farm. The buffer strip length must be sufficient to return the runoff characteristics with the panels to those of runoff experienced before the gravel and panels were installed. Alternatively, a detention basin can be installed.

A buffer strip was modeled along with the panels. For approximately every 200 m of panels, or 29 cells, the buffer must be 5 cells long (or 35 m) to reduce the runoff volume to that which occurred before the panels were added. Even if a gravel base is not placed under the panels, the inclusion of a buffer strip may be a good practice when grass maintenance is not a top funding priority. Fig. 6 shows the peak discharge from the graveled surface versus the length of the buffer needed to keep the discharge to prepaneled peak rate.

Water draining from a solar panel can increase the potential for erosion of the spacer section. If the spacer section is bare ground, the high kinetic energy of water draining from the panel can cause soil detachment and transport (Garde and Raju 1977; Beuselinck et al. 2002). The amount and risk of erosion was modeled using the velocity of water coming off a solar panel compared with the velocity and intensity of the rainwater. The velocity of panel

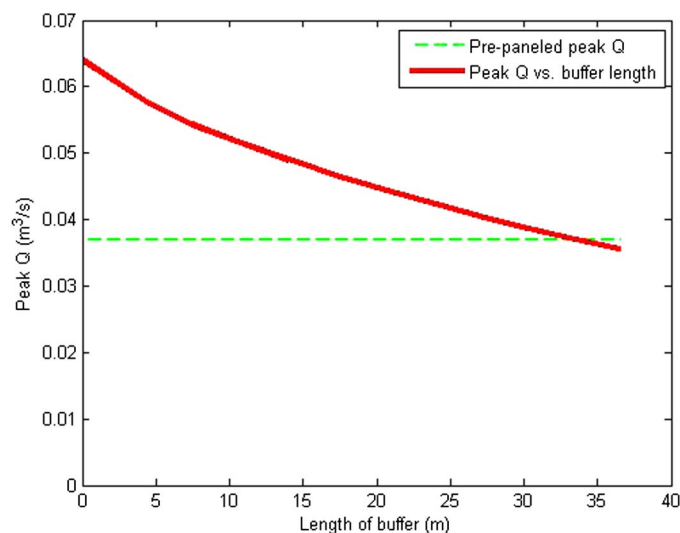


Fig. 6. Peak discharge over gravel compared with buffer length

runoff was calculated using Manning's equation, and the velocity of falling rainwater was calculated using the following:

$$V_t = 120 d_r^{0.35} \quad (1)$$

where  $d_r$  = diameter of a raindrop, assumed to be 1 mm. The relationship between kinetic energy and rainfall intensity is

$$K_e = 916 + 330 \log_{10} i \quad (2)$$

where  $i$  = rainfall intensity (in./h) and  $K_e$  = kinetic energy (ft-tons per ac-in. of rain) of rain falling onto the wet section and the panel, as well as the water flowing off of the end of the panel (Wischmeier and Smith 1978). The kinetic energy (Salles et al. 2002) of the rainfall was greater than that coming off the panel, but the area under the panel (i.e., the product of the length, width, and cosine of the panel angle) is greater than the area under the edge of the panel where the water drains from the panel onto the ground. Thus, dividing the kinetic energy by the respective areas gives a more accurate representation of the kinetic energy experienced by the soil. The energy of the water draining from the panel onto the ground can be nearly 10 times greater than the rain itself falling onto the ground area. If the solar panel runoff falls onto an unsealed soil, considerable detachment can result (Motha et al. 2004). Thus, because of the increased kinetic energy, it is possible that the soil is much more prone to erosion with the panels than without. Where panels are installed, methods of erosion control should be included in the design.

## Conclusions

Solar farms are the energy generators of the future; thus, it is important to determine the environmental and hydrologic effects of these farms, both existing and proposed. A model was created to simulate storm-water runoff over a land surface without panels and then with solar panels added. Various sensitivity analyses were conducted including changing the storm duration and volume, soil type, ground slope, panel angle, and ground cover to determine the effect that each of these factors would have on the volumes and peak discharge rates of the runoff.

The addition of solar panels over a grassy field does not have much of an effect on the volume of runoff, the peak discharge, nor the time to peak. With each analysis, the runoff volume increased slightly but not enough to require storm-water management facilities. However, when the land-cover type was changed under the panels, the hydrologic response changed significantly. When gravel or pavement was placed under the panels, with the spacer section left as patchy grass or bare ground, the volume of the runoff increased significantly and the peak discharge increased by approximately 100%. This was also the result when the entire cell was assumed to be bare ground.

The potential for erosion of the soil at the base of the solar panels was also studied. It was determined that the kinetic energy of the water draining from the solar panel could be as much as 10 times greater than that of rainfall. Thus, because the energy of the water draining from the panels is much higher, it is very possible that soil below the base of the solar panel could erode owing to the concentrated flow of water off the panel, especially if there is bare ground in the spacer section of the cell. If necessary, erosion control methods should be used.

Bare ground beneath the panels and in the spacer section is a realistic possibility (see Figs. 1 and 5). Thus, a good, well-maintained grass cover beneath the panels and in the spacer section is highly recommended. If gravel, pavement, or bare ground is

deemed unavoidable below the panels or in the spacer section, it may necessary to add a buffer section to control the excess runoff volume and ensure adequate losses. If these simple measures are taken, solar farms will not have an adverse hydrologic impact from excess runoff or contribute eroded soil particles to receiving streams and waterways.

## Acknowledgments

The authors appreciate the photographs (Figs. 1 and 5) of Ortho Clinical Diagnostics, 1001 Route 202, North Raritan, New Jersey, 08869, provided by John E. Showler, Environmental Scientist, New Jersey Department of Agriculture. The extensive comments of reviewers resulted in an improved paper.

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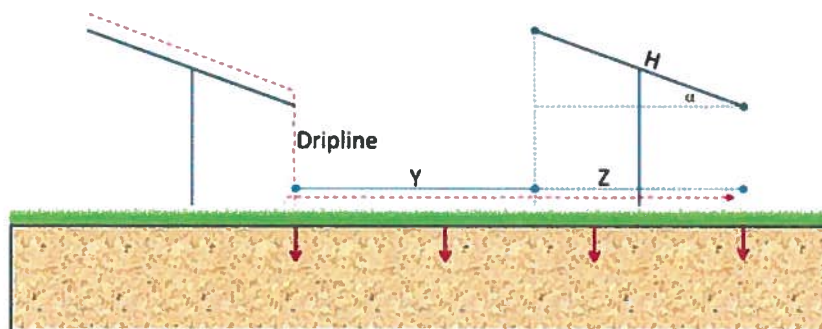
## A Rainy Day at a Solar Farm

BY KENNEDY JENKS

Elevated ground-mount solar photovoltaic (PV) facilities present a unique situation for stormwater management because they usually involve an impervious surface elevated above a pervious vegetated surface. In this blog post, we will discuss the unique hydrologic processes at these solar PV facilities and the associated stormwater permitting requirements in various states across the country.

### Hydrologic Processes at Solar PV Facilities

Stormwater runoff from solar PV facilities is generated primarily from rain that falls on access roads, inverter pads, and solar PV panels themselves. Water that falls on solar PV panels runs down the panel to the dripline, and eventually falls to the underlying surface, potentially causing localized erosion and/or scour. The primary factors that influence the potential for erosion and/or scour are shown on Figure 1. Some of the water falling on solar PV panels will infiltrate and some may run-off downslope and eventually to a collection basin or off site. [1]



---> Water flow path

**Y = Pervious length between panels in adjacent rows**

**Z = Average horizontal distance below panel**

**H = Length of panel**

**$\alpha$  = angle of solar panel from horizontal**

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There is some debate as to whether the solar PV panels themselves have a significant effect on runoff volumes, peak runoff or times to peak runoff. A 2011 study published by the American Society of Civil Engineers [2] found that solar PV panels themselves do not have a significant effect on these key stormwater characteristics. The study notes, however, that if the ground cover under the panels is gravel or bare ground, resulting from design decisions or lack of maintenance, the peak discharge may increase significantly. In addition, the study found that the kinetic energy of the sheetflow from the panels was greater than that of the rainfall, which could cause erosion at the base of the panels.

For more detailed information, the reader is directed to the Minnesota Pollution Control Agency's calculator ([link](#)) with detailed instructions for project proponents to estimate the hydrologic impacts of installing solar PV panels [1].

## Approaches to Stormwater Permitting at Solar PV Facilities

Based on a brief internet search conducted in July 2017, the following state stormwater regulatory agencies have developed guidance or specific requirements for stormwater management at solar PV facilities. Most agencies do not count panels as impervious cover, reasoning that runoff can flow beneath the panel and infiltrate into the ground the same as it did before the panel was installed above it.

### Maryland

Maryland's Department of the Environment guidance states that for the purposes of issuing a stormwater permit for a solar project, calculations relating to the impervious surface of the project must include only the foundation or base supporting the solar PV panel [3].

Maryland guidance further suggests that developers consider the following factors [4]:

- Vegetated area receiving runoff must be equal to or greater in length than the disconnected surface (e.g., width of the row of solar PV panels)
- Runoff must sheetflow onto and across vegetated areas to maintain the disconnection
- Disconnections should be located on gradual slopes ( $\leq 5\%$ ) to maintain sheetflow. Level spreaders, terraces, or berms may be used to maintain sheetflow conditions if the average slope is steeper than 5%. However, installations on slopes greater than 10% will require an engineered plan that ensures adequate treatment and the safe and non-erosive conveyance of runoff to the property line or downstream stormwater management practice.
- Construction vehicles and equipment should avoid areas used for disconnection during installation of the solar PV panels.
- Groundcover vegetation must be maintained in good condition in those areas receiving disconnected runoff. Areas receiving runoff should be protected from future compaction.

### New Jersey

The New Jersey Department of Environmental Protection exempts solar PV panels in calculations of impervious cover for the purposes of stormwater permitting. [5]

### Massachusetts

The Massachusetts Department of Environmental Protection has indicated that solar PV panels should not be considered

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## Pennsylvania

The Pennsylvania Department of Environmental Protection considers solar PV panels to be pervious cover and does not require additional Post Construction Stormwater BMPs, provided the following guidelines are followed [7]:

- Earth disturbance and grading activities must be minimized and natural vegetal cover must be preserved and/or restored.
- Vegetal cover must have 90% or better uniform coverage and must not be subject to chemical fertilization and herbicides/pesticides. A meadow condition is preferable, particularly for slopes between 5 and 10%. Mowed areas, where approvable, should be kept to a minimum of 4”.
- Individual PV panels within an array must be arranged in a fashion that allows the passage of runoff between each module. If the width of the module exceeds 3 feet (i.e. there is inadequate spacing between modules), then BMPs such as infiltration trenches (min. 12” wide by 12” deep) or infiltration berms must be installed downgradient between each row. The panels must be arranged to allow the growth of vegetation beneath and between arrays.
- Ground-mounted solar PV panels must be supported with structures/foundations occupying a maximum of 5% of the total project area.
- Solar PV panels must be situated on mild slopes (10% max). If larger than 10% slopes are proposed, then BMPs such as infiltration trenches (min. 12” wide by 12” deep) or infiltration berms shall be installed downgradient between each row.
- The lowest vertical clearance of the solar PV array must be at an elevation of 10 feet or less from the ground, but is also at an adequate height to promote vegetative growth below the array.

## North Carolina

North Carolina allows solar PV panels to be considered pervious if they are configured to promote sheetflow of stormwater from the panels and natural infiltration of stormwater into the ground beneath the panels. Other structures associated with the solar PV facility such as buildings, entrance roads, transformers, and footings are still considered impervious. [9]

## Minnesota

The Minnesota Pollution Control Agency (MPCA) allows for the use of a volume credit for solar PV facilities that are vegetated beneath and between panels. This excludes sites that have rock bases [8]. The water quality volume calculation may be completed using the disconnected impervious credit method shown in the Solar Panel Calculator on the MPCA's webpage ([link](#)). The disconnected impervious credit method uses an Excel spreadsheet to calculate 1) the total water volume required credited and 2) the remaining water quality volume to be treated. Depending on site-specific conditions, solar PV facilities can expect a 50% – 85% reduction of required water quality volume. The remainder of the required water quality volume must be treated on site. [8]

## Conclusions

Irrespective of state-specific permitting approaches, elevated ground-mount solar PV arrays may have the potential to alter the volume, velocity, and discharge pattern of stormwater runoff at a site during and after construction. According to MPCA, sites can expect a 15 – 50% increase in volume due to the installation of solar PV panels. Additionally, a solar PV

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is also at an adequate height to promote vegetative growth below the array.

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## Conclusions

Irrespective of state-specific permitting approaches, elevated ground-mount solar PV arrays may have the potential to alter the volume, velocity, and discharge pattern of stormwater runoff at a site during and after construction. According to MPCA, sites can expect a 15 – 50% increase in volume due to the installation of solar PV panels. Additionally, a solar PV development site stripped of vegetation may result in erosive stormwater flows. Project proponents are advised to carefully consider the impacts of this additional runoff on their operations and overall compliance with environmental regulations.

KJ's Stormwater Community of Practice has assisted a number of solar industry clients with the complex world of stormwater management. We are well versed in state-specific requirements and guidance for permitting, and proficient in the development of hydrologic and hydraulic models that can be used to design effective stormwater management strategies. We also have experience in erosion and sedimentation controls during solar PV construction activities and in site-stabilization/restoration after construction activities are completed. Contact us for more information on how we can help you handle a rainy day at your solar PV facility.

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## **Chapter 102 Permitting for Solar Panel Farms**

### **Frequently Asked Questions (FAQ) January 2, 2019**

#### **Background**

With renewed interest in development of clean, renewable energy in Pennsylvania, the development of solar photovoltaic installations is increasing in the state. This FAQ document was developed to clarify the Department of Environmental Protection's (DEP's) interpretations concerning applicability and implementation of National Pollution Discharge Elimination System (NPDES) permits for stormwater discharges associated with construction activities, including erosion and sediment control (E&S) and post-construction stormwater management (PCSM) for solar panel farms. This document refers to a solar panel farm as a large-scale application of solar panels to generate electricity.

Nothing in this document affects regulatory requirements. The interpretations herein are not an adjudication or a regulation. There is no intent on the part of DEP to give the interpretations in this document that weight or deference. This document provides a framework within which DEP and delegated county conservation districts (CCDs) will exercise administrative discretion in the future. DEP reserves the discretion to deviate from the interpretations in this document if circumstances warrant.

For additional information on solar energy use the following link:

<http://www.dep.pa.gov/Citizens/Energy/Renewables/Pages/Solar.aspx>

#### **FAQ #1: Is NPDES permit coverage required for the development of a solar panel farm?**

If the earth disturbance associated with the construction of a solar panel farm will be at least 1 acre, NPDES permit coverage is required (see 25 Pa. Code § 102.5(a)).

#### **FAQ #2: What earth disturbance is associated with development of a solar panel farm?**

Earth disturbance activities necessary to construct solar panel farms will vary depending on the topography, slopes, and soils of the proposed location of the solar panel farm, the layout of the solar arrays, and whether the arrays are fixed panel or dual tracking. In some instances, significant grading, including clearing and grubbing, of the site may be necessary. In other cases, minimal disturbance may be necessary to excavate the site to provide level ground for the installation of

the solar modules. The total earth disturbance of the project would be the cumulative impacts of the earth disturbances associated with the installation of the support/mounting structures for each module, as well as any associated access roads and support building(s).

### **FAQ #3: What E&S BMPs are necessary for the installation of a solar panel farm?**

A person proposing earth disturbance for the development of a solar panel farm must utilize appropriate E&S best management practices (BMPs) applicable to the size and scope of the proposed project. Acceptable E&S BMPs can be found in the *Erosion and Sediment Pollution Control Program Manual*, Department of Environmental Protection, No. 363-213-008. Persons proposing solar panel farms should minimize the extent and duration of the earth disturbance activity, maximize protection of the existing drainage features and vegetation, avoid soil compaction, and utilize any other measures or controls to prevent or minimize the generation of increased stormwater runoff.

### **FAQ #4: What are the PCSM requirements for a fixed-panel unit?**

Many projects use mounting structures where the solar modules are mounted at a fixed inclination calculated to provide the optimum annual output profile. The modules are normally oriented towards the Equator, at a tilt angle slightly less than the latitude of the site. In some cases, depending on local climatic and topographical conditions or electricity pricing regimes, different tilt angles can be used, or the arrays might be offset from the normal East-West axis to favor morning or evening output.

All construction projects need to have some consideration of the impact that their project will have on stormwater runoff. With some solar panel farm projects these impacts will be minimal and may not require a detailed stormwater analysis to be completed. If the following conditions are met, then the project area of a fixed photovoltaic solar panel farm project can be considered pervious cover, a detailed stormwater analysis is not needed, and PCSM BMPs are not necessary:

1. Projects where earth disturbance and grading activities are minimized and where natural vegetative cover is preserved and/or restored. The utilization of low impact construction techniques must be used. Refer to BMP 5.6.1: Minimize Total Disturbed Area – Grading, BMP 5.6.2: Minimize Soil Compaction in Disturbed Areas, and BMP 5.6.3: Re-Vegetate and Re-forest Disturbed Areas, Using Native Species from the *PA Stormwater Best Management Practices Manual*, Department of Environmental Protection, No. 363-0300-002, (December 30, 2006).
2. The vegetative cover must have a minimum uniform 90% perennial vegetative cover with a density capable of resisting accelerated erosion and sedimentation. The 90% standard exceeds the 70% standard as in 25 Pa. Code § 102.22(a)(i), as the vegetation may be typically the primary and only BMP used for solar panel farms.
  - (a) A meadow condition is preferable especially for projects located on slopes between 5-10%.
  - (b) If areas under the solar panels must be mowed, then the vegetative cover should not be cut to less than 4 inches in height.

(c) Vegetated areas will not be subject to chemical fertilization or herbicide/pesticides application, except for those applications necessary to establish the vegetative cover and in accordance with an approved E&S Plan.

3. The individual photovoltaic panels within an “array” are arranged in a fashion that:
  - (a) Allows the passage of runoff between each module, thereby minimizing the creation of concentrated runoff.
  - (b) Allows for the growth of vegetation beneath the panel and between “arrays.”
4. Ground mounted solar panels that are supported with structures/foundations require little earth disturbance for their installation/construction. Unless evidence is provided to the contrary, it will be assumed that for these ground mounted solar panels themselves (not including access drive, etc.) will disturb 5% of the total project area.
5. Solar panels must be situated on slopes of 10% or less.
6. The lowest vertical clearance of the solar “array” should be 10 feet or less from the surface of the ground but must be of adequate height to promote vegetative growth below the “array.” Limiting the height of the solar “array” will minimize the potential for accelerate erosion to occur along the drip line of the solar “array”.

Meeting these conditions will minimize the potential for accelerated erosion (by creating a stable flow condition under and around the solar panels) and provide for an uninterrupted hydrologic cycle (by creating pervious cover under the solar panels).

**FAQ #5: What if I cannot meet the conditions outlined above as part of my project for PCSM planning?**

If you cannot meet all the conditions listed above to have the project treated as pervious cover, the person proposing the earth disturbance activity will need to complete an analysis of how the proposed solar panel farm project will impact the amount and quality of stormwater runoff from the site, to determine the need for PCSM BMPs. The goal of stormwater management is to replicate the pre-development stormwater runoff condition after the construction project is finished. Post-development runoff conditions will dictate how much of a stormwater analysis must be provided for the project.

**FAQ #6: Is there a difference for the PCSM requirements for a tracked-panel unit?**

To maximize the intensity of incoming direct radiation, solar panels should be orientated normal to the sun's rays. To achieve this, arrays can be designed using two-axis trackers, capable of tracking the sun in its daily orbit across the sky, and as its elevation changes throughout the year. These arrays need to be spaced out to reduce inter-shading as the sun moves and the array orientations change, so they may need more land area. They also require more complex mechanisms to maintain the array surface at the required angle. This increase land area may result in additional earth disturbance for the project. However, the same PCSM requirements

addressed for fixed panel units as outlined in FAQ #4, Items 1-6 would need to be addressed for tracked panel units as well. If the project area meets all 6 conditions as outlined in FAQ #4, then the project area of a tracked, two-axis photovoltaic solar panel farm would be considered pervious cover and will not require any additional PCSM BMPs.

**FAQ #7: What if I proposed the use of gravel rather than vegetative cover under the solar panels?**

The use of gravel under the solar panels is permissible; however, the use of gravel would not be considered pervious cover. PCSM is required for the use of the gravel under the solar panels, and the person proposing the project will need to provide a stormwater analysis in accordance with 25 Pa. Code §§ 102.8(g)(2) & 102.8(g)(3).

When calculating the stormwater analysis, projects that are utilizing a minimum of a 6-inch layer of clean, washed and uniformly graded gravel may utilize the void space as storage for stormwater purposes if the project site (e.g., slopes exceeding 10% are not applicable) and the underlying soil conditions allow for it. Sand layers (or another filter media, as approved by DEP) may be introduced into the stormwater design to help address water quality issues.

**FAQ #8: What are the PCSM requirements for roadways and support buildings associated with the development of the solar panel farm?**

All impervious areas associated with roadways and support buildings will need to follow normal protocols when performing the PCSM stormwater analysis.

**FAQ #9: Are there any additional requirements if I need to re-grade the entire area?**

Projects that are unable to minimize earth disturbance or grading activities should employ soil/landscape restoration and soil amendments in accordance with the recommendations of the *PA Stormwater BMP Manual*, BMP 6.7.1: Landscape Restoration and BMP 6.7.3: Soil Amendment and Restoration.

**FAQ #10: If the width of my solar panels modules will exceed 3 feet are additional BMPs or design considerations necessary?**

Yes, if the solar panels are too large, then an adequate vegetative cover may not be able to be established and maintained. Additional BMPs such as infiltration trenches or infiltration berms should be installed downgradient between each row (even if the conditions in FAQ #4 are met). See *PA Stormwater BMP Manual*, BMP 6.4.4: Infiltration Trench and BMP 6.4.10: Infiltration Berm and Retentive Grading for additional guidance.

**FAQ #11: If the placement of the support structure/foundations result in these structures occupying more than 5% of the total project area, how is the PCSM stormwater analysis addressed?**

Since greater than 5% of the total project area is occupied by the support structure/foundations, the impervious area is increased and the project cannot be treated as pervious cover. You will need to provide an analysis of the impact this will have on the amount and quality of stormwater runoff from the site. Additional drainage conveyances and PCSM BMPs will need to be used to address stormwater issues.

**FAQ #12: The slope of my solar panel farm project is greater than 10%, are additional BMPs or design considerations necessary?**

Yes, where the slope exceeds 10% additional BMPs such as infiltration trenches or infiltration berms should be installed downgradient between each row. See *PA Stormwater BMP Manual*, BMP 6.4.4: Infiltration Trench and BMP 6.4.10: Infiltration Berm and Retentive Grading for additional guidance.

**FAQ #13: The elevation of my solar panels will be greater than 10 feet in height, are additional BMPs and design consideration necessary?**

Yes, if the height of the solar panels exceeds 10 feet maximum additional controls are necessary to prevent and minimize accelerated erosion and scour along the drip line or provide some type of energy dissipation controls.

**FAQ #14: Can agricultural crops be grown underneath the solar panels?**

Yes, “agrivoltaics,” the co-development of the same area of land for both solar photovoltaic power and conventional agriculture, may be used provided that:

1. Only shade tolerant crops may be used.
2. Crops must be no tilled in. Moldboard Plowing is not permitted.
3. A written erosion and sediment control plan must be developed for agricultural plowing or tilling activities or a portion of the overall farm conservation plan must identify BMPs used, in accordance with the requirements of Chapter 102.4(a) for the field(s) where the solar panel farm is located.
4. Any cutting or mowing of the agricultural crop is limited to a height of no less than 4 inches minimum.
5. Application of chemical fertilization or herbicides/pesticides is limited to the agronomic needs to the crop(s).

6. Additional BMPs may be used depending on site conditions, slopes and soil types.
7. The height of the solar panels from the ground will likely exceed 10 feet to allow for farm machinery to access the area, if so additional controls to address erosion and scour along the dripline and provide energy dissipation may be necessary.



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## Planner's Memorandum Planning Commission Meeting May 5, 2020

### 1) Greenway Ordinance/Regulation Amendment Update

- a) Status Update – PC Committee and staff has continued working with Greenway on the proposed reorganization of the Subdivision Regulations and Zoning Ordinance. Committee and staff met with Greenway staff via ZOOM on April 3, 2020 and received a complete reorganized version of the Subdivision Regulations. Staff completed their review of the proposed reorganization on April 28, 2020 and returned this first review to Greenway. Once these edits have been completed and the Committee deems it complete, a joint work session with the County Commission and a Public Hearing will be scheduled.

### 2) Status of Zoning Ordinance Text Amendments

- a) ZTA19-03: Planning Commission Committee on Solar Farms met on April 22, 2020 via ZOOM to discuss the potential Zoning Ordinance Text Amendment to allow Solar Farms in the Rural District. This draft has been referred to the Planning Commission for the purpose of scheduling a Public Hearing.

### 3) Upcoming PC meetings

- a) Next Regular meeting: **June 2, 2020**

**\*\* Note change in meeting date due to revised WV Primary Election date \*\***



## CITIZENS' PROPOSAL FOR SOLAR FACILITY AMENDMENT

### Definitions

#### Decommission

Decommission means the removal and proper disposal of a solar facility and all parts, equipment, devices, and fencing placed on the real property on which the site is located. Decommission includes the reasonable restoration of the real estate upon which such solar facility is located, including soil stabilization and revegetation of the ground cover of the real property.

#### Eligible Site

Eligible Site means any site that has been previously used in electric generating, industrial, manufacturing, or mining operations, including, but not limited to, brownfields, closed landfills or hazardous waste sites. In the event there is no available site, an eligible site may include any suitable site approval by the Secretary of the Department of Commerce in accordance with West Virginia Code §24-2-1o.

#### Solar Facility

Solar Facility means infrastructure located on an eligible site that generates electricity solely through solar photovoltaic methods or other solar methods and distributes the generated electricity.

Add the following sentence to Section 4.7 Essential Utility Equipment  
“Solar facility, however, shall comply and conform to the regulations of Article 4C.”

### **Article 4C: Solar Facility**

#### **Section 4C.1: Purpose and Intent**

The purpose of this Article is to balance the needs of the residents of Jefferson County for essential utilities and the community's desire to preserve the County's rural, historic and agricultural character.

The State of West Virginia has enacted the Renewable Energy Facilities Program, which includes solar facility, described therein as renewable electric generating facility. To enhance the ability of solar facilities in this County to market generated electricity to any electric distribution company, whether operating in this State or not, certain definitions in W.V. Code 24-2-1o have been adopted.

#### **Section 4C.2: Regulations and Requirements**

A solar facility is permitted in all zoning districts where an eligible site is located. The Department may issue a Zoning Certificate for a solar facility consistent with the following terms and conditions:

##### **a. Use Agreement**

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Before a Zoning Certificate shall issue the facility's owner or operator shall provide documentation evidencing an interconnection or similar agreement with the applicable public utility to purchase or otherwise acquire the electricity to be produced.

**b. Parcel Size**

The maximum size of a solar facility shall be 75 acres notwithstanding the size of the parcel of land on which it is located. The parcel of land on which the facility is proposed must be a minimum of 10 acres.

**c. Safety**

The solar facility shall register with the local fire department a map of the facility showing the location of the solar collectors and the panel disconnects. Internal wiring, excluding that which is on a solar array, shall be located underground.

**d. Glare**

A solar collector or combination of solar collectors shall be designated and located to avoid glare or reflection onto adjacent properties and roadways and shall not interfere with traffic or create a safety hazard. Accordingly at the time of filing of the application a glint and glare analysis of the proposed solar facility shall be submitted identifying the angle and height of reflection and impact thereof on adjacent properties and roadways.

**e. Lighting**

Security lighting, if any, is to be designed and installed to be fully shielded so as to prevent glare or light trespass. The light therefrom shall not exceed .50 foot candle measured at the property line; the height of the lighting shall not exceed 14'.

**f. Setback**

All structures and uses must be a minimum of 200 feet from all property lines.

**g. Height**

No solar collection panel shall exceed 6 feet in height when installed. All other structures shall not be more than 20 feet in height.

**h. Landscape Buffer**

Appearance and visual impact shall be minimize by a landscape buffer of evergreen trees around the solar facility and may be located within the setback limits. The trees shall be 6 feet in height when planted and likely to reach a height of at least 20 feet at maturity. The trees shall be planted every 15 linear feet.

**i. Fencing**

An opaque security fence must be located between the landscape buffer and the solar facility, and be six (6) to eight (8) feet in height.

**j. Property Maintenance**

The premises shall be maintained at all times in a clean and orderly condition including the

replacement of trees in the landscape buffer. The responsibility for compliance herewith shall be on all parties to any lease or ownership interest in the solar facility. Damage or unuseable panels or arrays shall be removed from the site timely.

**k. Noise**

Except for initial construction or decommissioning activities, maintenance, or emergency conditions, noise generated by the solar facility shall not exceed sixty (60) dBA as measured at the property line. Excepting in cases of emergency construction, decommissioning, maintenance and repairs shall only occur between the hours of 7am and 7pm Monday thru Saturday.

**l. Drainage**

Drainage shall be designed and constructed to avoid offsite impacts and shall meet the standards in the Jefferson County Stormwater Management Ordinance.

**m. Flood Plain**

No solar facility nor part thereof shall be placed, constructed or built in a flood plain area.

**n. Site Plan**

For the purposes of any site plan, design, or requirements of any Jefferson County Ordinances a solar facility shall be an industrial development.

**Section 4C.3: Decommission and Abandonment**

- a. The Planning Commission shall be notified by certified mail at least 30 days prior to the intended decommissioning of a solar facility.
- b. The solar facility shall be considered abandoned if, for a continuous period of six months, (1) it stops generating electricity or (2) is disconnected from the electrical grid. Abandonment shall not include any period in which the owner or operator of the facility is actively conducting maintenance, repairs, refurbishment, alterations or upgrade of the facility.
- c. In the event of abandonment the owner of the real property on which the solar facility is located shall timely begin the decommissioning process and shall complete the same within one year of the abandonment.

**Section 4C.4: Decommission Bond**

Prior to issuance of a Zoning Certificate, each owner of real property on which a solar facility is to be located shall enter into a written agreement to decommission the solar facility upon the terms and conditions that if the party to such agreement with the County defaults in the obligation to decommission said solar facility in the time frame set out in said agreement, the County has the right to enter the real property without further consent of the titled owner and to engage in decommissioning. In addition the said owner or owners shall provide financial

assurance of such performance to the County in the form of certified funds, cash escrow, bond or letter of credit in an amount based upon an estimate by a professional engineer licensed in West Virginia, who is employed by the owner and approved by the County, of the projected cost of decommissioning plus an allowance for administrative costs related to owner's default and an annual inflation factor.

#### **SECTION 4C.5 Waiver**

The Zoning Administrator shall have the authority to modify or waive the requirements of Sections 4C.2 .e, 4C.2.g, 4C.2.h, and 4C.2.i. The Zoning Administrator shall have the authority to waive the glare analysis in 4C.2.d. In reaching any decision, the Zoning Administrator should consider the site location, size, topography; uses on adjoining property; views from a national or state park or historic site or structure and alternative methods of fencing, lighting, and screening.