



AGENDA

Jefferson County Planning Commission

Tuesday, February 9, 2021 at 7:00 PM

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 through a live 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.

****Please use the following information to join the ZOOM Meeting****

Join Zoom Meeting: <https://us02web.zoom.us/j/87346784270>

Meeting ID: 873 4678 4270

Dial by your location: + 301 715 8592 US (Germantown)

Find your local number: <https://us02web.zoom.us/u/keiyFa5cho>

1. Approval of Meeting Minutes: January 12, 2021
2. Citizen Communication: If you wish to comment, please sign-in to speak for issues that are on the agenda or items that are not open for public comment. Items not open for public comment are noted below.
3. Request for postponement.
4. **Public Hearing:** Request by applicant to lift the single family restriction (Note #2) from Lot 8 of Smith Mountain Estates to allow for the construction of an accessory dwelling unit for a family member. Owner/Applicant: Joel and Shanna McGaughey. Property Location: Smith Mountain Estates, Lot 8, 2138 Smith Rd. Charles Town, WV. Tax District: Kabletown (06); Tax Map: 20A; Parcel: 8; Size: 10 ac; Zoning District: Rural.
5. **Public Workshop:** Concept Plan for the Shepherdstown Sheetz (Store 160). The project is a Gas Station, Large to consist of a 6,100 sq. ft. Convenience Store with drive-thru, five (5) fueling islands with canopy, car wash, new roadway, upgraded to traffic signal for Martinsburg Pike, open space, stormwater management areas, the construction of associated utilities, plus associated parking spaces and signage. Owner: James W Van Evera III et al. Developer: Bob Franks, Sheetz Inc. Property Location: 7948 Martinsburg Pike, Shepherdstown WV. Tax District: Shepherdstown (09); Tax Map: 8; Parcels: 13, 15.2 and portions of Parcels: 10.2 and 14. Total Project Size: 5.4 acres; Zoning District: Residential-Light Industrial-Commercial. File: 20-10-SP.
6. **Public Hearing:** Request for a waiver from Section 20.201 to allow four (4) lots and a residue lot (total of five lots) to process as a minor subdivision, as opposed to a major subdivision. Property Owner: William Gaestel, White Oaks Farm. Property Location: 2842 Warm Springs Rd., Shenandoah Junction, WV. Tax District: Shepherdstown (09); Map: 21; Parcel: 1. Size: 99.60 acres. Zoning District: Rural. File: 21-1-PCW.

7. **Public Hearing:** Request for a waiver from Appendix B, Section 10.5 to allow the applicant to utilize gravel instead of concrete/asphalt for the proposed drive aisle and parking area; and, to reduce the depth of the gravel from 9” to 6” for the proposed drive aisle and parking areas for RP Performance, Inc. (an automotive repair and service business). Owner/Applicant: Bret de Pedro, RP Performance, Inc. Property Location: Vacant parcel on Summit Point Road across from Hardesty Road. Tax District: Kabletown (06); Map: 16; Parcel: 3. Size: 14.69 acres. Zoning District: Rural. File: 21-2-PCW.
8. **Public Hearing:** Proposed text amendment to the Jefferson County Zoning and Land Development Ordinance, File #ZTA19-03, to allow Solar Energy Facilities to process as a Principal Permitted Use in the following Zoning Districts: General Commercial, Highway Commercial, Light Industrial, Major Industrial, Rural, Residential Growth, Residential-Light Industrial-Commercial, and Industrial Commercial. The text amendment proposes revisions to Article 2 Definitions; Article 8 Supplemental Use Regulations (creation of Section 8.20 Solar Energy Facilities); and Appendix C Principal Permitted and Conditional Uses Table.

There is no public comment for the following items.

9. Planning Commission review and recommendation to the County Commission regarding whether the petition for a Zoning Map Amendment to rezone the subject parcel from Residential Growth to Residential-Light Industrial-Commercial is consistent with the 2035 Comprehensive Plan. Owner/Applicant: Chris Livingston, Dead Rock Contractor Services. Property Location: Vacant parcel located immediately north of the intersection of Shipley Road and US Route 340. Tax District: Harpers Ferry (04); Map: 9; Parcels: 23 and 27. Combined acreage: .88 ac. File: 20-2-Z.
10. Discussion and possible action related to the format of meeting agendas (Shepp).
11. Reports from Legal Counsel
12. Planner’s Memo
 - a. Planning and Zoning Quarterly Report 2nd Quarter FY2020-2021
13. President’s Report
14. Actionable Correspondence
15. Non-Actionable Correspondence

Meeting Minutes
Jefferson County Planning Commission
January 12, 2021

The Jefferson County Planning Commission met on January 12, 2021 at 7:00 p.m. with the following Commission members present: Mike Shepp, President; Donnie Fisher, Vice President; Wade Louthan, Secretary; Steve Stolipher, County Commission Liaison; Ron Thomas, Shane Roper, and Jack Hefestay. J. Ware joined the meeting at 7:06 pm.

Staff members present included Jennifer Brockman, County Planner; Jonathon Saunders, County Engineer; Alexandra Beaulieu, Zoning Administrator; Nathan Cochran, County Attorney; and, William Rhorbaugh, Temporary Legal Counsel.

By order of the President, the Planning Commission meeting was held virtually via ZOOM. Access information was made available on the agenda and packet, which were posted to the County website. Due to technical difficulties, a portion of this meeting was not recorded.

Mr. Shepp called the meeting to order at 7:00 p.m. Mr. Shepp verified that there was a quorum at the start of the meeting. Ms. Beaulieu did a roll call of the members.

1. Election of Officers.

Mr. Shepp opened the nominations for President.

Mr. Stolipher nominated Mike Shepp for President.

Mr. Shepp opened the nominations for Vice President.

Mr. Shepp nominated Donnie Fisher for Vice President.

Mr. Stolipher nominated Wade Louthan for Secretary.

Mr. Shepp called for a motion on the nominations, which carried unanimously.

2. Approval of the Meeting Minutes: December 8, 2020. Approved as submitted.

3. Citizens Communication: Citizens were able to sign up for this item utilizing the chat function in ZOOM. Doug Rockwell and Bob Aitcheson provided comments regarding the solar energy text amendment (ZTA19-03).

4. Request for postponement.

Mr. Shepp acknowledged that the request for Brickstreet Homes, Item #5, had been withdrawn.

5. Public Hearing: Postponed from the 11/10/2020 and 12/08/2020 meetings. Request by applicant, Brickstreet Homes, LLC, for a waiver from Section 20.201A.2 to reduce the required 50' wide access easement to 40' for a proposed two lot (one lot and residue parcel) minor subdivision. Brickstreet Homes, LLC. Property Owner: Shaun Alexander. Property Location: Sites Farm, Lot 1B, 10668 Leetown Rd., Kearneysville. Tax District: Middleway (07); Tax Map: 14; Parcel: 20.4 (Parcel ID: 07001400200004); Size: 4.85 acres; Zoning District: Rural; File: 20-9-PCW.

The applicant had withdrawn his request.

6. Public Workshop: Concept Plan for the Stiles Agriculture Enterprises, Agricultural Event Center, and Farm Vacation Enterprises. The proposal consists of an Agricultural Event Center for up to 800 guests and Farm Vacation Lodging with up to five (5) units (or more, if Ordinance allows) with associated parking and signage. Property Owner: Stanley and Barbara (deceased) Stiles. Property Location: 118 Goshen Arrabon Ln, Charles Town, WV. Tax District: Kabletown (06); Tax Map: 21; Parcel: 4 (Parcel ID: 06002100040000); Size: 17 acres; Zoning District: Rural; File: 20-9-SP.

Mr. Shepp recused himself from this item. Mr. Fisher presided.

Mr. Cochran provided the Commissioners with an overview of the contested ownership information pertaining to the subject application. Mr. Cochran advised the Commission that he did not believe it was their role to interpret property ownership/signatory documents and noted that the most current document of record is requesting that the Commission hear the application. Mr. Fisher requested confirmation that Mr. Stanley Stiles is the property owner of record, and that it was his signature on the notarized document that was recently submitted. Ms. Beaulieu confirmed that document submitted on January 12, 2021 was signed by Mr. Stanley Stiles. Mr. Fisher stated he believed the Commission could proceed with the Public Workshop.

Ms. Brockman informed the Commission that unlike other applications, the Zoning Ordinance does not require a site plan to be submitted after approval of the Concept Plan for Agricultural Special Event Facility. Ms. Brockman noted that the only other application required will be the issuance of a Zoning Certificate and any relevant building permits. Ms. Brockman continued presenting her staff report to the Commission and provided a brief overview of the criteria outlined in the Zoning Ordinance.

Mr. Paul Raco with P.J. Raco Consulting briefly explained the nature of the request and discussed how the Concept Plan met the Zoning Ordinance criteria. Mr. Raco stated he had contacted the WV Department of Health and Human Resources to address their concerns regarding a proposed water supply for the events. Mr. Raco confirmed that he had spoken with Mr. Stiles that day and that Mr. Stiles stated that he wished to continue the Concept Plan application process. Mr. Fisher inquired about the status of the existing minor subdivision of the subject parcel. Mr. Raco stated the lots had not been sold and were currently under the farm use status as a single lot. Mr. Raco noted that should any of the lots be sold, that the Concept Plan would have to be modified accordingly.

Mr. Fisher opened the public workshop.

Joyce Stiles-Rawn and Mary Katherine Stiles-Iager, family members, spoke in opposition to the application expressing concerns regarding the notification process and the safety of the property owner. William Kelly Baty and Doug Rockwell, neighboring property owners, spoke in opposition to the application citing concerns regarding water flow/flooding and traffic safety. Lana Witiak, family member, spoke in support of the application noting that it would promote agricultural tourism, which would keep the existing farm active.

Mr. Fisher closed the public workshop.

Addressing Mr. Louthan's inquiry, Ms. Brockman noted that it appeared that a Traffic Impact Study would not be required, as the WV Division of Highways (DOH) did not provide comment on the application. Mr. Saunders informed the Commission that the DOH would typically evaluate the need for a Traffic Impact Study once they receive their own application.

Bob Aitcheson requested to speak noting that he was unable to provide testimony at the appropriate time. Mr. Fisher allowed Mr. Aitcheson to provide comment. Mr. Aitcheson, neighboring property owner, spoke in opposition to the application citing concern regarding traffic safety and questioned the ownership issues.

Mr. Raco provided a rebuttal, addressing some of the concerns made during public comment. Mr. Raco noted that the DOH had responded to a number of Concept Plan applications that he represented previously. Mr. Raco explained how governing agencies are provided notice in accordance with the Subdivision Regulations. Mr. Raco stated the family issues would be addressed outside of the Planning Commission meeting. Mr. Raco elaborated on how the proposed application

met the criteria of the Zoning Ordinance. Mr. Fisher asked about the notification requirements for a Concept Plan. Mr. Raco stated that the mailing address information for adjacent parcels is obtained from the Jefferson County Assessor's Office. Ms. Brockman confirmed Mr. Raco's statement and added that a sign is posted on the property and a legal ad is run in the newspaper.

Mr. Stolipher made a motion to approve the Concept Plan as presented with the condition that should the WV Division of Highways (DOH) require a traffic study that the applicant will comply. Mr. Louthan seconded the motion. Mr. Fisher called for a vote, which carried seven (7) in support and one (1) recusal (Mr. Shepp).

Mr. Shepp resumed his position as President.

7. Public Hearing: Request for a variance from Section 8.1.d from the 1979 Subdivision Ordinance to reopen and extend the date for bonding and recording of the approved Final Plat for Beallair Phase 4A from January 11, 2021 to April 12, 2021. Applicant/Property Owner: Beallair Subdivision, Route 24, Country Club Road and Beallair Manor Drive. Tax District: Harpers Ferry (04); Tax Map: 10A; Parcel: RESA (Parcel ID: 04010ARESA0000); Size 69+; Zoning District: Residential Growth; File: 20-5-PCV.

Ms. Brockman provided an overview of her staff report to the Commission. Ms. Brockman addressed Mr. Shepp's inquiry regarding the Commission's previous approval of the Final Plat. Ms. Brockman explained that the wording of the previous motion was unclear as to when the 90-day period would commence and/or expire.

Mr. Paul Raco with PJ Raco Consulting explained the nature of the request stating that there are a few unresolved issues that would be addressed within the requested timeframe.

Mr. Shepp stated he would be in favor of approving the request noting that the 90-day period would begin from the date all outstanding issues are addressed.

Mr. Fisher made a motion approve the variance with the clarification that the 90-day period would commence from the date the contingencies [conditions] are addressed. Mr. Stolipher seconded the motion, which carried unanimously.

8. Discussion and Possible Action regarding reconsideration of the Planning Commission's previous recommendation to the County Commission that the draft amendment was consistent with the Comprehensive Plan and also regarding the draft text amendment to the Jefferson County Zoning and Land Development Ordinance, File #ZTA19-03. The text amendment, in accordance with WV Code 8A and Article 12 of the Zoning Ordinance may include revisions to allow Solar Energy Facilities to process as a Principal Permitted Use and/or a Conditional Use in the following zoning districts: General Commercial, Highway Commercial, Light Industrial, Major Industrial, Rural, Residential Growth, Residential-Light Industrial-Commercial, and Industrial Commercial. The text amendment includes proposed revisions to Article 2 Definitions; Article 8 Supplemental Use Regulations (creation of Section 8.20 Solar Energy Facilities); and Appendix C Principal Permitted and Conditional Uses Table.

Mr. Roper recused himself from this item as he was not a member of the Commission during the previous recommendation.

Mr. Cochran briefly outlined the history of the amendment to the Commission and referenced the subsequent litigation that ensued. Mr. Cochran informed the Commission that the litigation resulted in an agreed order that dismissed the case. Mr. Cochran noted that as part of the agreed order, the

amendment would come back to the Planning Commission for further review. Mr. Cochran clarified for the record that the agreed order to dismiss the litigation did not claim that the Planning Commission or the County Commission erred in their actions. Due to the potential for additional litigation, Mr. Cochran advised the Commission to go into executive session to discuss the item further.

Mr. Stolipher motioned to go into executive session at 8:23 pm. Mr. Shepp called for a vote, which carried unanimously.

Mr. Shepp noted for the record that the Commission came out of executive session at 8:51 pm.

Mr. Stolipher motioned to come out of executive session at 8:51 pm. Mr. Shepp called for a vote, which carried unanimously. Mr. Thomas was unable to rejoin the meeting.

Mr. Stolipher made a motion to schedule a public hearing for the solar energy text amendment for the next Planning Commission meeting on February 9, 2021. Mr. Shepp called for a vote, which carried six (6) in support and one (1) recusal (Mr. Roper).

9. Reports from Legal Counsel. None.

10. Planner's Memo

Ms. Brockman provided the Commission an update on the following:

- a) Staff would be reviewing the Greenway Zoning Ordinance and Subdivision Regulation revisions invoices with the County Commission;
- b) The County Commission denied the cemetery text amendment; and,
- c) The County Commission approved the Drive-Through text amendment.

11. President's Report. None.

12. Actionable Correspondence. None.

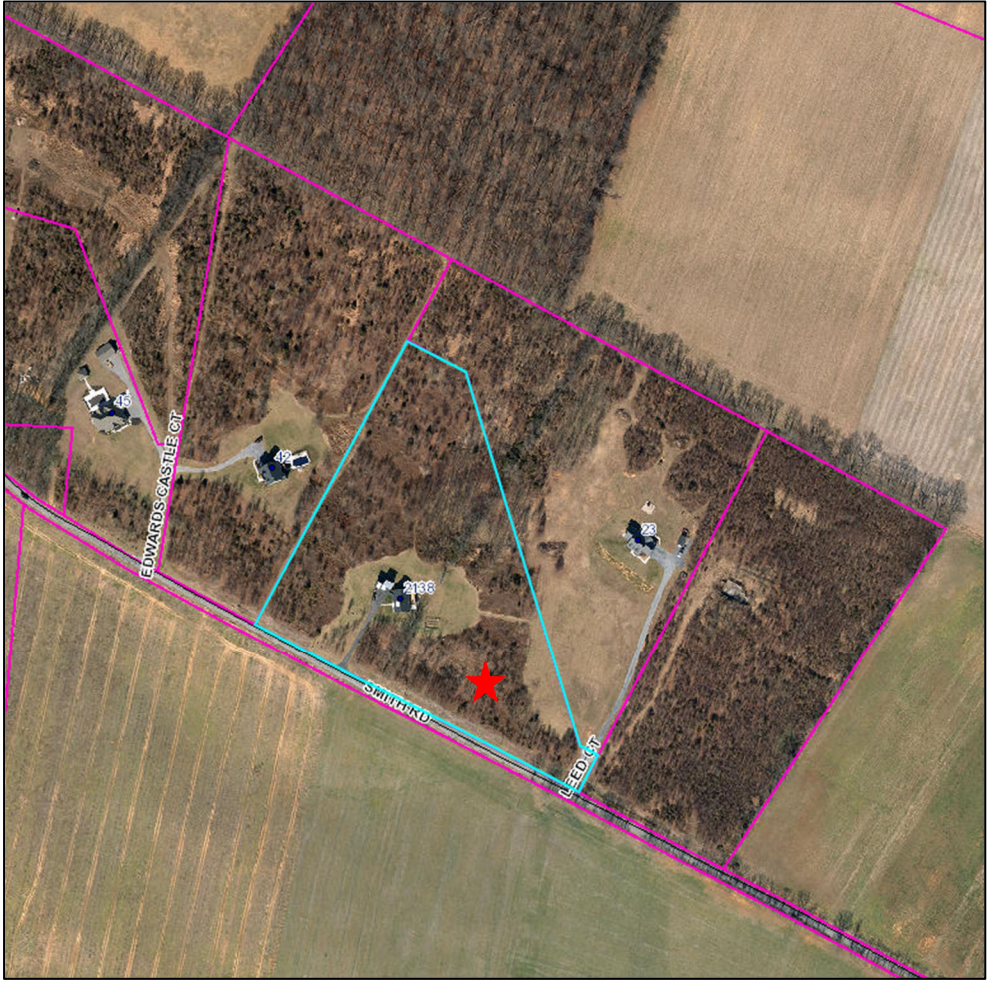
13. Non-Actionable Correspondence. None.

- Email from Steve Stolipher RE: resignation from Planning Commission as a citizen representative – received 01-04-2021
- Letter from Doug Rockwell RE: Zoning Ordinance Text Amendment File # ZTA19-03 – Solar Energy Facilities – Received 01-05-2021
- Email from Doug Rockwell RE Zoning Ordinance Text Amendment File #ZTA19-03 – Solar Energy Facilities – Received 01-05-2021

Mr. Hefestay motioned to adjourn the meeting at 8:55 pm. Mr. Shepp called for a vote, which carried unanimously.

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Joel and Shanna McGaughey

Item #4: Public Hearing: Request by Joel and Shanna McGaughey for a Final Plat Amendment to lift the single family restriction from Lot 8 of Smith Mountain Estates (File 02-06) for the purpose of constructing an accessory dwelling unit for a family member.

Applicant:	Joel and Shanna McGaughey		
Owner/Developer:	Same as above		
Property Location and Legal Information	Smith Mountain Estates, Lot 8; 2138 Smith Rd. Tax District: Kabletown (06); Tax Map: 20A; Parcel: 8; Size: 10 ac; Zoning District: Rural		
			
Surrounding Properties:	North: Rural South: Rural	East: Rural West: Rural	
Approved Activity:	Single Family Residence		
Approvals:	Smith Mountain Estates (File: 02-06) recorded on 09/19/03 in PB 20/PG 38		

Overview of Request

The subject parcel is designated as Lot 8 in Smith Mountain Estates, which was recorded on September 19, 2003 in Plat Book 20, at Page 38. This property is in the Rural Zoning District. At the time the plat was approved, the Subdivision Ordinance required all subdivisions to include a note that restricted each

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lot to a single-family residence only unless otherwise approved by the Planning Commission in accordance with the County prevailing land development laws. This note is no longer required for subdivisions. This note (Note # 2) is the subject of this plat amendment request.

The applicants live on the referenced 10-acre property (Lot 8). The applicants would like to build a detached accessory dwelling unit for their daughter. A dwelling unit is for a family member (blood relative) and is considered an “in-law suite” in the Zoning Ordinance. Detached in-law suites are permitted in the Rural Zoning District in accordance with Section 8.15A of the current Zoning Ordinance on properties of at least 2 acres in size.

Zoning Ordinance Requirements

If the Planning Commission approves this Final Plat Amendment lifting the single family restriction for Lot 8 of Smith Mountain Estates, the applicant may apply for a Zoning Certificate to process under the zoning requirements for In-Law Suites/Accessory Dwelling Units in the Rural Zoning District. Section 8.15A of the Zoning Ordinance has various provisions that must be complied with, including, but not limited to, the requirement that the accessory unit must be secondary in size to the principal dwelling unit, with a maximum size of 1,700 heated square feet, gross floor area.

Plat Amendment Requirements

Section 24.202A of the Jefferson County Subdivision and Land Development Regulations, “Amendment, Modification, and the Vacating of Subdivision Plats”, states that the Planning Commission (or staff, in the case of a minor subdivision plat) may approve an amendment to a subdivision plat in the same manner as the plat was originally approved, provided:

1. All of the property that is affected by the amendment is under the ownership of the applicant;
2. The amendment will not affect the ownership or right of convenient access of persons owning other parts of the subdivision; and
3. The amendment complies with all of the standards of these Regulations, including verification of compliance with the Zoning Ordinance.

Because all plats were approved by action of the Planning Commission under the 1979 Subdivision Ordinance, this amendment was required to be placed on the Planning Commission agenda for a Public Hearing and Planning Commission action. The required 30-day public notice has been advertised in the January 6, 2021 edition of the Spirit of Jefferson newspaper for the February 9, 2021 Planning Commission meeting.

Recommendation

Staff recommends approving the requested Final Plat Amendment to lift the single family restriction (Note #2) for the sole purpose of constructing an accessory dwelling unit on Lot 8 of Smith Mountain Estates. If approved, the applicant will need to apply for a Zoning Certificate for the Accessory Dwelling Unit prior to applying for a Building Permit.

12/8/2020

Joel and Shanna McGaughey
2138 Smith Road
Charles Town WV 25414

Jefferson County, WV Office of Planning and Zoning
116 East Washington Street, PO Box 716
Charles Town WV 25414

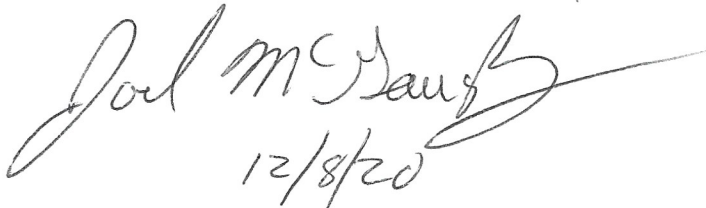
To whom it May Concern:

This letter is a request for a Plat Amendment to have a single-family restriction lifted from our plat (parcel ID 06020A00080000) located at 2138 Smith Road Charles Town WV 25414. We are proposing to build a small care takers house. The purpose of the house is to enable our daughter to help with the care of her grandmother who resides in our home.

It is my understanding that I am to submit this formal request, so a legal ad can be posted 30 days prior to the February Planning Commission meeting. After the ad runs in a local paper, the request will be presented to the Planning Commission at their February meeting.

Please contact me if you have any questions or concerns. My telephone number is (703) 906-0616 or email joel@loudounprinting.com

Thank you



Joel McGaughey
12/8/20

Joel and Shanna McGaughey
Smith road lot 8

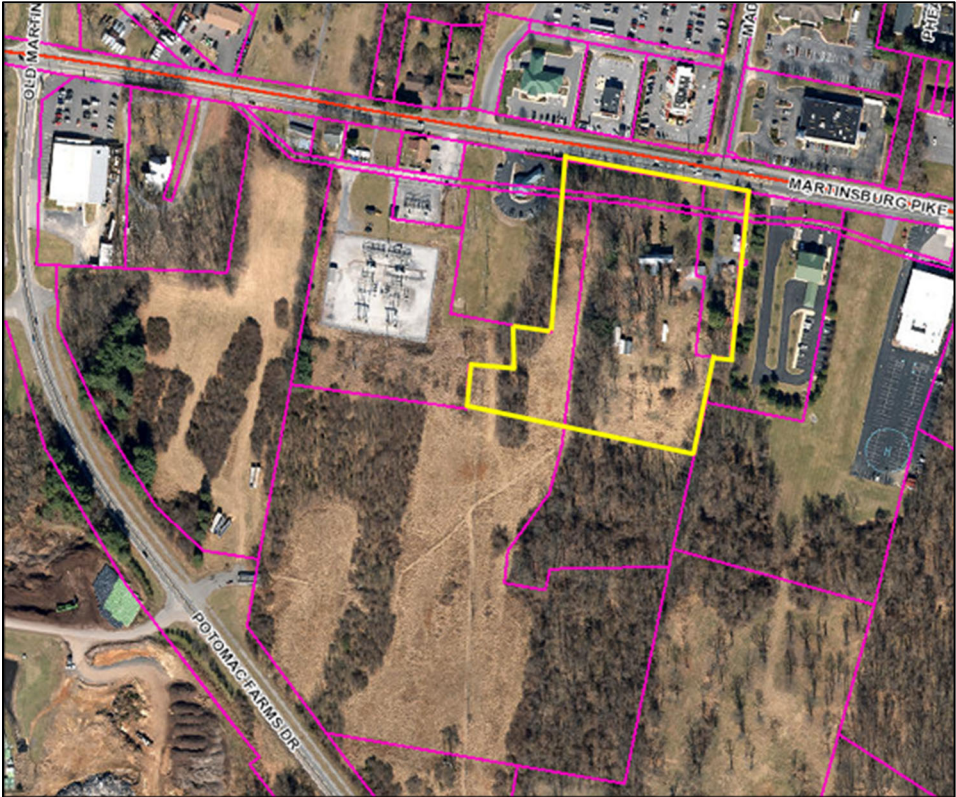
Staff Report

Jefferson County Planning Commission

February 9, 2021

Shepherdstown Sheetz Store 160 (20-10-SP)

Item #5: Public Workshop: A Concept Plan for the Shepherdstown Sheetz Store 160 (a Major Non-Residential Site Development). The proposal is for a Gas Station, Large to consist of a 6,100 sq. ft. Convenience Store with drive-thru, five (5) fueling islands with canopy, car wash, new roadway, upgraded to traffic signal for Martinsburg Pike, open space, stormwater management areas, construction of associated utilities, plus associated parking spaces and signage.

Applicant:	James W Van Evera III Et Al
Owner/Developer:	Bob Franks, Sheetz Inc.
Surveyor/Engineer:	Gordon
Property Location:	7948 Martinsburg Pike, Shepherdstown, WV; on the south side of the intersection of Martinsburg Pike (WV 45) & Maddex Square Dr.
Parcel Information and Zoning District:	<p>Tax Dist. Shepherdstown (09); Tax Map: 8; Parcels: 13, 15.2, parts of Parcels 10.2 & 14. Total Project Size: 5.4 acres (after merger); Zoning District: Residential-Light Industrial-Commercial</p> 
Surrounding Zoning:	<p><i>North:</i> Residential-Light Industrial-Commercial <i>South:</i> Residential Growth <i>East:</i> Residential Growth <i>West:</i> Residential Growth</p>
Proposed Activity:	Gas Station, Large to consist of a 6,100 sq. ft. Convenience Store with drive-thru, five (5) fueling islands with canopy, car wash, new roadway, upgraded to traffic signal for Martinsburg Pike, open space, stormwater management areas, the construction of associated utilities, plus associated parking spaces and signage.
Concept Plan Status:	<p>Submitted: 12/21/2020 Sufficiency Letter, with conditions: 12/30/2020 Resubmitted for Completeness: 01/11/2021 Deemed Complete: 01/19/2021</p>

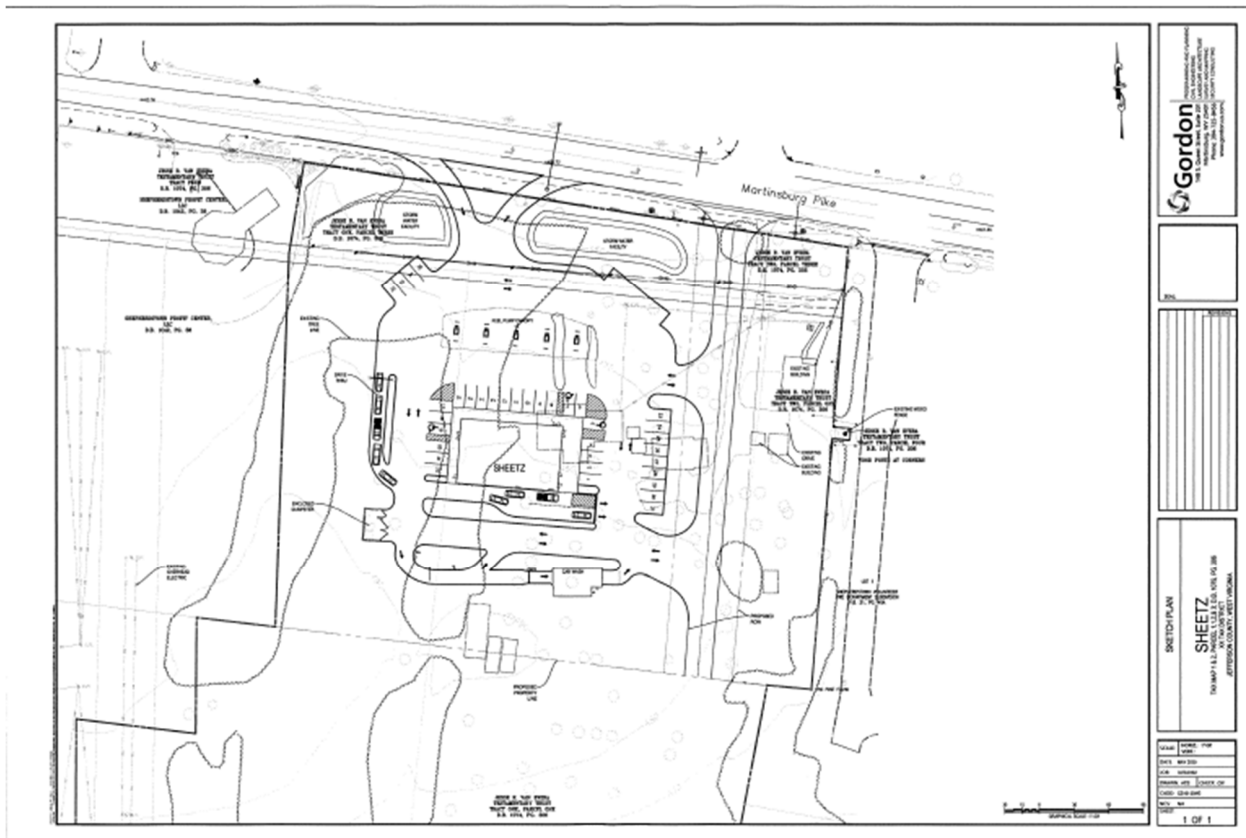
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Previous Approvals:	20-1-Z: Zoning Map Amendment (rezoning) from Residential Growth to Residential-Light Industrial-Commercial (CC approved 12/03/20)
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Introduction and Summary of Request

The applicant is proposing the construction of the Shepherdstown Sheetz Store 160 (a Major Non-Residential Site Development). The proposal consists of a 6,100 sq. ft. Convenience Store with drive-thru, five (5) fueling islands with canopy, car wash, new roadway, upgraded to traffic signal for Martinsburg Pike, open space, stormwater management areas, the construction of associated utilities, plus associated parking spaces and signage. The proposed uses fall under “Gas Station, Large” as defined in Article 2 of the Zoning Ordinance. Per Appendix C, a Gas Station, Large is a Principal Permitted Use in the Residential-Light Industrial-Commercial zoning district.

The property is located across WV 45 from the Maddex Square Shopping Center on the south side of Martinsburg Pike (WV 45). The property will be served by Shepherdstown water and wastewater facilities. It is proposed to have a primary access point from the traffic light at Martinsburg Pike and Maddex Square Drive, with an additional right in/right out from WV 45 on the western side of the property. The access is designed to allow the continuation of a road to the balance of the property zoned Residential Growth which eventually accesses Potomac Farms Drive (Alternate WV45)



Note that in accordance with Section 4.6B of the Zoning Ordinance, all portions of the proposed commercial use will be required to be setback 75 feet from any lot in the Residential Growth district (eastern, western and southern boundaries).

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Shepherdstown Sheetz Store 160 (20-10-SP)

Site Plan Category

The site development associated with this Concept Plan is governed by the Subdivision Regulations. Section 20.204 requires developments that “require the development of new infrastructure or the extension of off-tract infrastructure” process as a Major Site Development and further states that all Major Site Development shall adhere to Full Site Plan requirements. A Concept Plan is the first step in a Major Site Development.

Staff Determination of Application Sufficiency and Concept Plan Completeness Review

In accordance with the current Subdivision Regulations, the Major Site Plan Concept Plan process incorporates a sufficiency and completeness review in a single step. Upon second submission and review of the applicant’s Concept Plan, Staff found the submitted plan “sufficient” (i.e. meeting all requirements of Section 24.119 of the Jefferson County Subdivision and Land Use Regulations). These requirements, as well as the current review status for each requirement for the proposed retail building application, are provided below:

	Description	Status
1. General Location	A map or aerial photograph showing an area of 500 feet around the property. Zoning boundaries shall be located on this document.	Provided
2. Concept Plan	In accordance with the content and formatting guidelines provided in Appendix A, <i>Plan & Plat Standards</i> .	Provided
3. Zoning Information	a) Zoning District in which the proposed development is located. b) Density calculations. c) Site resource map d) Use designation for all adjoin and confronting parcels	Provided
4. Proposal Description	A written description of the proposal with general identification of the number of dwelling units or floor area proposed, commentary, zoning, and development option selected if the development is residential.	Provided in Concept Plan application
5. Traffic Impact Data	a) Average Daily Trip (ADT) figures for the adjoining or accessible State road. b) Trip generation figures c) Nearest key intersection that will serve the proposed project as classified by the current Comprehensive Plan. d) “Highway Problem Areas” according to the current Comprehensive Plan that falls within a one-mile radius of the project.	Provided on Concept Plan and in TIS: <u>ADT</u> WV45 at Quail Lane: 9,272; <u>Trip Generation</u> : AM weekday peak: 570 PM Weekday Peak: 421 Typical weekday: 5,090
6. Traffic Study	A traffic study may be required only at the request and direction of the West Virginia Division of Highways. Any required traffic study or a letter from the West Virginia Division of Highways outlining the proposed improvements shall be received with the first submission of the Site Plan.	A Traffic Impact Study has been completed and reviewed by the WV DOH and HEPMPO and is in the project file

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7. Agency Reviews	The applicant shall distribute the concept plan to all reviewing agencies found in Section 23.203 and 23.204 no later than 7 days after the review.	Letters to required agencies provided. Responses received are below.
D. Department	The Department review shall include the following: 1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the Concept Plan submission and any zoning issues the developer shall address in a Site Plan submittal. 2. Staff opinion as to whether the plan meets the Site Plan criteria of these Regulations. The Department shall review the Concept Plan for modifications that would improve the plan.	Staff determined that the proposed Concept Plan meets the requirements of the Zoning Ordinance and the Subdivision Regulations as a Major Site Plan.
E./F. WVDOH	WVDOH shall submit a letter to the Office of Planning and Zoning indicating issues and data requirements or notice that there are no issues or data requirements. If WVDOH determines that a traffic study is needed, parameters shall be provided. The review shall indicate whether a traffic impact study will be required based on analysis required in Section 24.106.B.5.	A Traffic Impact Study has been completed and submitted to the WVDOH for their review.
G. Public Service	The review shall indicate whether there are existing water and sewer systems in place that can handle the development. If not, the review shall indicate the type or extent of a system that shall be proposed by the developer to best meet the County's needs in that area of the County.	This project is proposed to be served by Shepherdstown public water and sewer with connections along WV 45.
H. Recommended Conditions	All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.	See below

Concept Plan Review

1. External Agency Reviews (attached)

Comments have been received from the following agencies (see attached):

- Jefferson County GIS memo is attached with comments on the road alignment and naming.
- The Jefferson County Historic Landmarks Commission (JCHLC) sent an e-mail (2/1/21) stating that they would like the historic house protected and requesting that the traditional red canopy not be used for the Sheetz.
- The Shepherdstown Water and Sewer Board has indicated that they can serve the property but have not settled on where the interconnection should occur. The applicant needs to submit an application for a water and wastewater connection to the Shepherdstown Water and Sewer Board for their approval.
- WV DOH/HEPMPO comments on TIS are attached.

As of this date, no other agency review comments have been received.

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2. Staff Recommendation related to Concept Plan

The Subdivision Regulations state that unless there are reviews indicating that the development cannot conform to the Zoning Ordinance, be serviced by public services, or provide its own utilities, or other factors that make the development impossible, Planning staff is required to accept or deny the concept plan as complete. Upon accepting the application as complete, Planning staff is required to place it on the next possible Planning Commission agenda as a public workshop, which is advertised at least fourteen (14) days in advance of the meeting and posted on the property.

The Office of Planning and Zoning Staff finds the Concept Plan for the proposed Shepherdstown Sheetz Store 160, south of the intersection of Martinsburg Pike (WV 45) and Maddex Square Road, to be “complete” based on the information provided related to the criteria above; however, the following standards will need to be addressed prior to approval of the Site Plan:

- a. The impacted parcels need to be merged into a single 5.4-acre parcel.
- b. Based on the Subdivision Regulations, as noted above, the site plan will process as a Major Site Development. As a part of a Major Site Plan, the following design requirements shall be addressed on the site plan:

- i. Sidewalks/Bike paths

Section 22.208 of the Sub Regs requires a sidewalk/bike path is required along at least one side of streets in a non-residential site plan. Note: HEPMPO has recently initiated a “Martinsburg Corridor Vision Plan” for this area west of the Corporation of Shepherdstown to review and addresses pedestrian and bike access and safety along WV45. Recommendations from this study should be reflected in the final design of this project.

Sec. 21.204 of the Sub Regs requires all proposed site plans to provide a safe, efficient, and attractive pedestrian environment including access to adjoining properties, providing for continued pedestrian access to adjoining commercial properties. Where the adjoining use is residential, the connections shall be to any street's or stub street's sidewalks. This Section further requires crossings of roads or drives shall be clearly identified and signed to provide safe pedestrian crossings with traffic calming measures encouraged in any locations where pedestrian crossings are proposed.

Therefore, in this case, it is recommended that a sidewalk be along the full width of the property along WV45 and along the road leading to the future subdivision to the south. Coordination with WV DOH related to safe pedestrian crossing of WV 45 should also occur.

- ii. Interconnectivity with adjoining properties

Sec. 21.201 of the Sub Regs states that it is the purpose of these Regulations to encourage connectivity between adjoining uses along arterial and collector roads to reduce the need for traffic to go onto major roads to reach nearby uses. It further requires that the Department of Engineering, Planning, & Zoning review site plans to ensure that, where interconnections can be made or where adjoining properties have provided for interconnections, the site plan makes the connections. Sec. 21.102 states that access shall be to properties on all sides, even if vacant.

Sec. 21.202 states that all site plans shall be reviewed for efficient internal circulation and safety to ensure that it provides for smooth transit across the site for interconnecting traffic, for both automobiles and pedestrians. It also states that connectivity from non-residential areas to

Staff Report

Jefferson County Planning Commission

February 9, 2021

Shepherdstown Sheetz Store 160 (20-10-SP)

adjoining residential areas shall be provided wherever there are stubs in existing development or where logical pedestrian development could be provided to vacant residential property.

- c. WV DOH approval will be required in conjunction with the Site Plan.
- d. Water and sanitary sewer utility permits from the Corporation of Shepherdstown will be required in conjunction with the Site Plan.

3. Planning Commission Direction

The Concept Plan Public Workshop allows for the Planning Commission and the general public to comment on the proposed plan before complete engineering design and cost are incurred. The Subdivision and Land Development Regulations outline the procedure:

1. The applicant makes a short presentation.
2. Staff explains outside agency comments and whether the plan can meet the standards of the Zoning Ordinance.
3. Public comment is solicited.

Following the applicant's presentation, staff's explanation, and the solicitation of public comment, the Planning Commission shall provide direction to the applicant as required under Concept Plan Direction outlined in the Subdivision Regulations. The Planning Commission has the option of providing this direction at the same meeting during which the Concept Plan public workshop takes place, or at a subsequent meeting that occurs within 14 days of the meeting at which the Concept Plan public workshop is closed.

Section 24.121 of the Subdivision and Land Development Regulations outlines the direction to be provided to the applicant during a Major Site Plan Concept Plan review:

“The Planning Commission shall direct the preparation of a Site Plan subject to conditions to be addressed in the site plan application. The purpose of this review is to guide the developer so that when the site plan application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.”

It should be noted that the direction provided to the applicant in the Major Site Plan Concept Plan Public Workshop shall be applicable for a period of two years, with the provision that any amendments to the Subdivision and Land Development Regulations or the Zoning and Land Development Ordinance in the second year shall be applicable.

ATTACHMENTS:

- Jefferson County GIS memo
- Jefferson County Historic Landmarks Commission (JCHLC) e-mail
- Shepherdstown Water and Sewer Board e-mail
- WV DOH/HEPMPO comments on TIS



JEFFERSON COUNTY, WEST VIRGINIA
DEPT OF ENGINEERING, PLANNING, & ZONING
OFFICE OF GIS/ADDRESSING

116 East Washington Street • Mason Building • Suite 201
Charles Town, WV 25414-0208
Telephone: (304) 724-6759 • FAX: (304) 724-8992
gis@jeffersoncountywv.org



From: Todd Fagan – GIS Manager

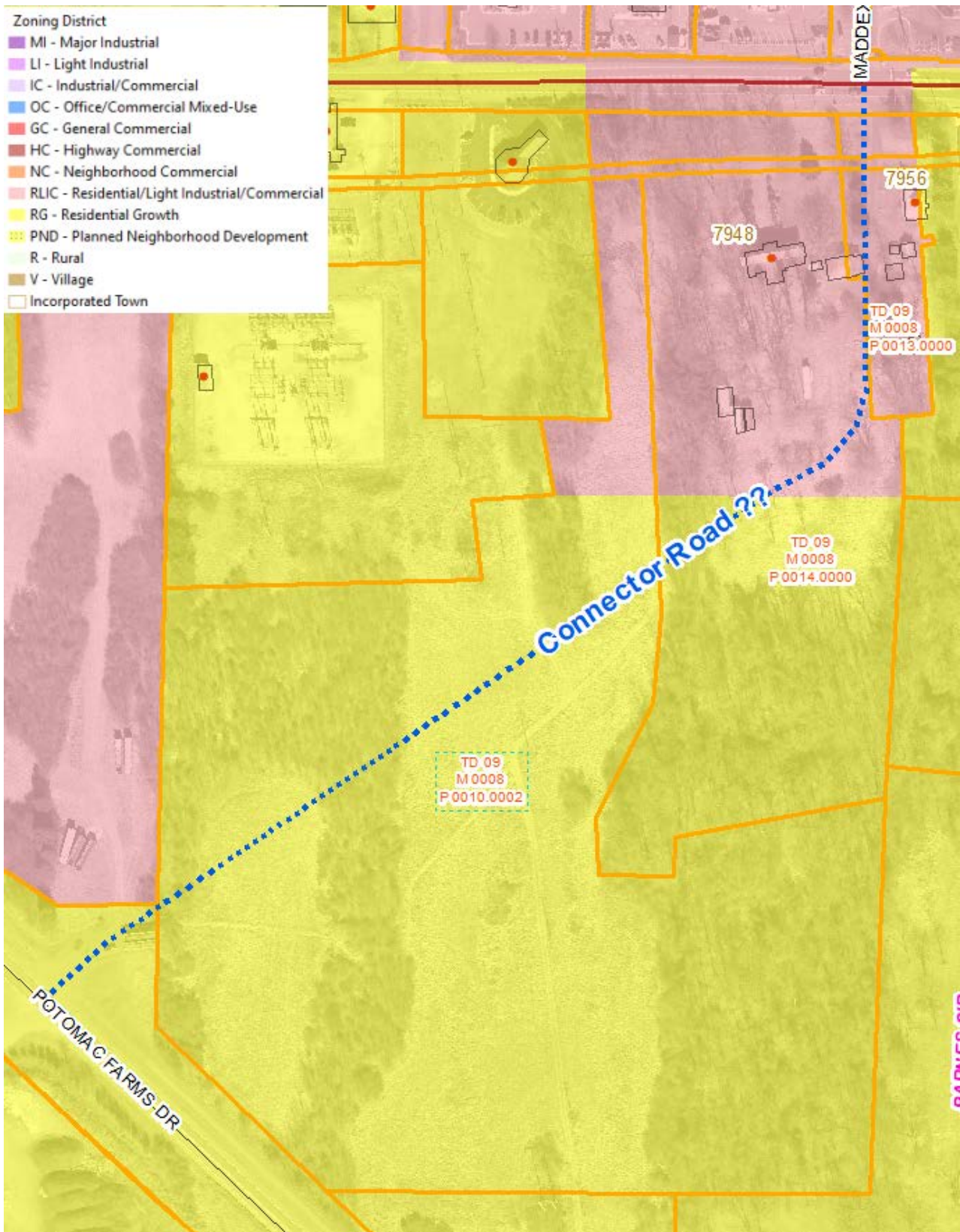
Date: December 28, 2020

Subject: County Addressing Comments on Van Evera \ Sheetz Store 160 Concept Plan

- 1) Please confirm that 2 existing Historic Resources will be demolished, 7948 MARTINSBURG PIKE (Welshans-Russell House) and 7956 MARTINSBURG PIKE (Locust Green Tenant House). We will remove the addresses from the 911 map when appropriate.
- 2) It appears as though a road right-of-way is being built that curves and extends southwest in the direction of Potomac Farms Drive (SR245). Is this roadway ultimately intended to cross the Van Evera property, TD: 09 / Map: 08 / Pcl: 10.2, and connect to the existing stub on Potomac Farms Drive?
 - a. If NO, and it is guaranteed that this Sheetz stub will never extend, then no action is needed regarding a road name.
 - b. However, If YES, and the future plan is to connect, then this section being planned adjacent to the Sheetz Store should be named according to the County's 911 Addressing Ordinance. *See reverse page side for map detail.*
 - i. Currently all affected properties are owned by VAN EVERA JAMES W III ET AL and they would have exclusive rights to reserve a road name for this connector road.
 - ii. Once the new Sheetz parcel is merged, platted, recorded and sold, then coordination on a reserved road name must occur between two owners, Sheetz and Van Evera.
 - iii. An application for Road Name Reservation may be found at <http://www.jeffersoncountywv.org/home/showdocument?id=17394>. Our office will work with the owners/builders on the naming process once a plat has been submitted to Planning & Zoning.
- 3) The Addressing Office needs more detail about future road connection plans in order to provide best advice on road naming and addressing issues that may relate to this road access configuration. At this stage, it appears the new Sheetz can be addressed from Martinsburg Pike, but it may be safe to reserve a road name now, in case it is needed in the future.

If you have questions or comments, please respond via phone, fax, or e-mail to:

Jessica Gormont
GIS Analyst – GIS/Addressing Office
Office: 304.724.8986
Fax: 304.724.8992
jgormont@jeffersoncountywv.org





February 1, 2021

Ms. Jennifer Brockman
Jefferson County Planning and Zoning Department
Charles Town, WV 25414

Re: Jefferson County Concept Plan Submittal – Sheetz Store 160

Dear Ms. Brockman

I reviewed the Concept Plan for the Sheetz Store #160, submitted to JCHLC by Gordon Associates Inc Martinsburg, West Virginia dated December 21, 2020. The Concept Plan outlines the site plan and topography for the Sheetz Store with fuel canopy, car wash, drive through and parking situated on Martinsburg Pike Shepherdstown, West Virginia. I noticed that the Corporation of Shepherdstown was not among the reviewing agencies, but the land is within the Urban Growth Boundary for Shepherdstown.

The Welshans-Russel House 1819, which is National Register eligible, known to locals as the stately pink house across the road from the Food Lion, must be demolished to make way for still another gas station and convince store. This building is one of the last remaining historic homes in the immediate area outside of Shepherdstown. History and land use are codependent, so each should receive thoughtful consideration and how they create a sense of place. It's worth considering that this home was built before the C&O Canal (1834) and B&O Railroad (1836). Given the size of the property, it seems like the house could be preserved to coexist with any future development. There is more than enough space on this 5+ acre property to accommodate both a new gas station and the historic home.

The Eastern Panhandle is in a unique position to start dictating the type of development we want in the 21st century. Other states are pledging carbon neutrality in less than 15 years and we continue to perpetuate the status quo. Adding one more gas station seems shortsighted, to say the least. Will the added another “convenience” of a Sheetz store truly benefit the people of the Eastern Panhandle? Will demolishing one of the older houses near Shepherdstown, one of the few homes from before the Civil War, help maintain the historic legacy of the county? It doesn't seem this way and makes me question this presence of this explicit goal in the in Jefferson County's Comprehensive plan.

JCHLC is most concerned about the visual impact of the red fuel canopy fronting on Martinsburg Pike at the entrance to the oldest town in West Virginia. Although design review is not required under the JC Zoning Ordinance, this is a case where any building design should be submitted to the Corporation of Shepherdstown for review. In conclusion, design a building that is sensitive to the historic nature of the area.

If you have any questions or need additional information, please feel free to contact me.

Martin Burke

Martin Burke
Chair, JCHLC

Jennilee Hartman

From: Frank Welch <fwelch@shepherdstown.us>
Sent: Friday, January 29, 2021 10:25 AM
To: Jennifer Brockman
Subject: RE: new Shepherdstown Sheetz Concept Plan

Jennie,

We have plenty of capacity at both the Water and Sewer Plants for that whole area as of now. When Sheetz goes in, we have a 6" water line that may have to be moved and their sewer line will probably have to go across Rt. 45 to United Bank to a manhole. That can all be worked out when they apply for service.

Thanks,



Frank Welch
Public Works Director
Shepherdstown Public Works
409 E. High St.
PO Box 248
Shepherdstown, WV 25443-0248
Email: fwelch@shepherdstown.us
Phone: 304-876-3322
Cell: 304-702-2895
Fax 304-876-9207

From: Jennifer Brockman
Sent: Thursday, January 28, 2021 3:57 PM
To: Frank Welch
Cc: Planning Department
Subject: RE: new Shepherdstown Sheetz Concept Plan

Frank

Did you not receive the Concept Plan referral?

That wouldn't be a formal application, but it would be helpful if you can tell us that you have capacity and/or of a mainline extension is required.

I guess the other aspect to this, thinking long range, is would you have the capacity to serve a residential development behind the Sheetz at some time in the future?

I am attaching the Concept Plan that is going to the PC meeting for the Public Workshop.

If it's premature for you to comment I can say that, but I think the PC is going to want to know if public water and sewer are available.

Thanks

Jennie

Jennifer Brockman
County Planner
304-728-3228

Planning Department

From: Josh Haydo <jhaydo@dewooster.com>
Sent: Wednesday, January 6, 2021 2:08 PM
To: Planning Department
Subject: FW: #3835 Sheetz Shepherdstown Traffic Study (State Project T619-SHE/ET-20)

Follow Up Flag: Follow up
Flag Status: Flagged

ATTN: Jennilee Hartman, Zoning Clerk

Ms. Hartman - we've received WVDOH and HEP-MPO comments on the traffic study for the above-referenced project. See below. Before we proceed with revising the study, can you please advise if the Jefferson County Planning Department intends to provide additional comments on the traffic study?

Thank you,

Joshua A. Haydo, PE, PTOE
Senior Staff Engineer - Traffic



David E. Wooster and
Associates, Inc.
Straightforward & Unwavering



2 East Crafton Avenue
Pittsburgh, PA 15205
Ph 412-921-3303
Cell 571-481-6799

From: Cramer, David E
Sent: Tuesday, January 05, 2021 5:26 PM
To: Josh Haydo <jhaydo@dewooster.com>
Cc: Meadows, Donald R <Donald.R.Meadows@wv.gov>; Clohan, Kenneth L <Kenneth.L.Clohan@wv.gov>; Willis, Trixie A <Trixie.A.Willis@wv.gov>; Mullenax, Matt <mmullenax@washco-md.net>
Subject: FW: #3835 Sheetz Shepherdstown Traffic Study (State Project T619-SHE/ET-20)

The results of Division of Highways (DOH) review of the TIS indicate that certain comments need to be addressed regarding the TIS. The DOH feels, however, that these comments, when addressed, will not result in a change to the current recommendations within the TIS. Consequently, the DOH is agreeable to providing conditional approval of the TIS, with the following stipulations and conditions that the Developer must address:

- A written response is to be provided to the DOH, indicating the manner in which each of the following comments is to be addressed, and assuming the DOH approves the responses, a new, fully revised TIS incorporating those responses also will be provided to the DOH as the final approved TIS:
 - A shared-Use Path exists along the north side of WV 45, and this Development will introduce a new destination along the south side of WV 45. As part of the signal modification that will be required at the intersection of WV 45 with Maddex Square Drive, pedestrian accommodations should be included. Consultant should determine whether the east or west side of the intersection would be best for a pedestrian crossing location, and whether concurrent or exclusive pedestrian phasing is recommended.
 - Although not required as a result of this Development, the TIS indicates there may be a need to extend the WV 45 westbound left-turn lane (LTL) approaching Potomac Farms Drive. Analyses show also that the WV 45 eastbound LTL may need extended due to adjacent through queue blocking access to the turn lane. The TIS

should indicate in the conclusions/recommendations that future extension of these turn lanes might be considered by the DOH, for the reasons stated.

- The TIS narrative indicates that the southbound approach at the intersection of WV 45 with Maddex Square Dr/Sheetz should be modified to provide a shared left/thru and exclusive right lane due to slight offset of northbound and southbound approaches. The site plan (Figure 2) in the appendices appears to show the Sheetz access to be offset in a manner that would indicate the need for the thru movement to be shared with the right turn movement.
 - Please verify the appropriate configuration.
 - What is the reasoning for offsetting the southbound approach from the northbound approach? Figure 2 appears to indicate sufficient space within the Sheetz property to align these approaches without an offset.
 - based on the projected volumes and queuing on the proposed Sheetz approach, consideration should be given to providing two egress lanes approaching WV 45. If this occurred and the lane configuration was a shared left/thru and exclusive right, a right-turn overlap could be provided during the mainline left-turn phase. While the approach LOS and delay would not be expected to improve significantly, the queuing would improve.
- Include a statement or footnote in the Executive Summary and in the narrative of the report to indicate that results within the TIS are based on HCM, and the SYNCHRO reports show the timings utilized. Also, for the HCM reports, ensure that HCM 6th Edition was utilized.
- The site plan is to show the internal connection to the Bank, as well as the revision of the existing Bank approach to become a RI/RO access. The projected queuing along the proposed Sheetz driveway could have an effect on the Bank access, depending on its proposed location.
- Will the residential access be provided at the end of the proposed Sheetz Drive? The site plan is to be labeled to show where the proposed roadway will connect.
- Since the LOS is reduced between the no-build and the build scenario at the intersection of WV 45 and Maddox Square Drive, to what extent was consideration given to mitigation, such as adjustment to the signal timing?
- The effort to anticipate potential development of the remaining 21 acres for inclusion in the TIS is appreciated. As the additional land is proposed for development, the DOH should be provided for review any conceptual or preliminary layout and development scope. The Developer should be aware that if the type and scope of development ultimately occurring on this residual land is expected to result in a higher trip generation or substantially differs from what is included in the current TIS, or if full build-out does not occur by the currently projected timeframe, then an updated/supplemental TIS may be required.
- The Developer should be aware that the proposed left-turn lane approaching the new Sheetz access will be expected to be designed and constructed by the Developer utilizing an appropriate overlay of the existing roadway, for a length that will be determined as part of the review of the Plans, with installation of new pavement markings, rather than eradication and remarking of existing pavement.
- The existing traffic signal that will need to be modified is a mast arm type signal; the DOH needs to know the Developer's proposed construction schedule as soon as possible, in an effort to coordinate the signal project with the store completion.
- Any TIS revision resulting from the comments provided by the HEP MPO should be indicated in the response to the DOH. Provide a copy of submission of the TIS to the County, and any response or comments received from that entity.
- The recommendations of the final approved TIS are to be incorporated into the Developer's Project Plans.

Please review and provide response to each comment. If additional information is needed, please let us know.

David E. Cramer, PE
West Virginia Department of Transportation
Commissioner's Office of Economic Development
1900 Kanawha Blvd., E
Building 5, Room 164
Charleston, WV 25305
304-414-6697

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From: Mullenax, Matt <mmullenax@washco-md.net>

Sent: Friday, December 11, 2020 10:02 AM

To: Josh Haydo <jhaydo@dewooster.com>

Cc: Cramer, David E <David.E.Cramer@wv.gov>; Meadows, Donald R <Donald.R.Meadows@wv.gov>; Clohan, Kenneth L <Kenneth.L.Clohan@wv.gov>; Willis, Trixie A <Trixie.A.Willis@wv.gov>; Kinsey, Chris J <Chris.J.Kinsey@wv.gov>; Donohue, Kevin <kdonohue@washco-md.net>

Subject: [External] HEPMPO Comments - #3835 Sheetz Shepherdstown Traffic Study

Hello Josh, I've reviewed the submitted TIS for the proposed Shepherdstown Sheetz.

Thank you again for providing a digital copy...for those who may also want here's a link to it: https://washcomd-my.sharepoint.com/:b/g/person/mmullenax_washco-md_net/ERBJ68VaZ9NPslYF5zL1KRgBaH1fMXsizbZEGXJKAM0pQ?e=ISf7w9.

Below are our comments provided for your consideration:

- Martinsburg Pike is identified in our Long Range Transportation Plan as Fiscally Constrained Project #B108.0 (pg 132) for intersection improvements through corridor. It is also identified in our Plan as a high crash location in Jefferson County (pg 100).
- Martinsburg Pike is identified in our Regional Bicycle Plan as Project #B2 (pg 58) for improving bicycle signage and shoulder widening. This project was identified as the 2nd highest priority bicycle project in our region.
- Due to corridors identification in both plans, HEPMPO is undertaking a Corridor Vision Plan from Alt 45 to University Drive (expected to be completed June 2021). This Plan will focus on complete streets concepts and guidelines established in WVDOT's Corridor Management Handbook.
- WVDOT installed the current multi-use path along Martinsburg Pike in 2006, along with W11-2 Pedestrian signs, due to pedestrian and bicycle presence. It is reasonable to assume pedestrian traffic crossing Martinsburg Pike to access the current Sheetz location will be diverted to new proposed location.
- No recommendation of adding pedestrian phase, crosswalks and CPS/APS pedestrian signal heads/push buttons at Martinsburg Pike/Maddex Square Drive intersection though pedestrians being observed at 3 of 4 legs. This intersection's signal is being recommended for timing/phasing upgrades so work will already be occurring. Do not believe adding pedestrian phasing will impact intersection operations negatively as all movements/lane groups to operate at LOS C or better under build conditions. MUTCD provides guidance (Section 4E.03) that when insufficient guidance is given to pedestrians on when to begin crossing roadway based on vehicular signal indications pedestrian signal heads are recommended.
- Section 22.208 of Jefferson County Subdivision and Land Development Ordinance states "Sidewalks shall be provided along at least one side of streets in all zone districts." The inclusion of ped signals and crosswalks at Maddex Square Drive intersection will connect non-vehicular customers from existing Martinsburg Pike multi-use path safely to proposed Sheetz sidewalks. These potential pedestrian improvements will also serve and provide safe connection to predicted residential development from the southern parcel.
- On Turning Movements, please update Data Plots to show direction of pedestrian travel through all intersections.
- For pedestrian counts, are bicyclists included there or were none observed? Please separate out bicycle counts if any observed.
- For Warrant 1 it is indicated 85% of speed was > 40mph...was a speed study conducted? Majority of Posted Speed Limit through corridor is 45 mph.

- Also for Warrant 1 it is indicated that there have not been five correctable crashes occurring in 1 year...please provide analysis and data that supports this conclusion.
- Neither Figure 2 of Figure 25 indicate location of proposed LTL connection between Site Entrance and Jefferson Security Bank driveway.
- 2015-2019 crash data and 2017 AADT for Martinsburg Pike (Alt 45 – University Drive) give a crash rate of 491 crashes per 100 MVMT...this is a greater crash rate than WV state average for its road classification type. With this in mind, is the RIRO for proposed Sheetz necessary as it will increase conflict points along corridor versus keeping eastbound traffic proceeding only 220' to Maddex Square Drive signalized intersection?
- Not indicated on site plan but what is expected grade of RIRO into proposed Sheetz? Depending, slope could cause cars to slow significantly compared to mainline traffic who may be distracted looking ahead at traffic signal.

Thank you for the opportunity to review and comment on initial TIS submission. Please let me know if you have any questions.

- Matt

Matthew T. Mullenax, GISP
Executive Director
Hagerstown/Eastern Panhandle Metropolitan Planning Organization
33 West Washington Street, Suite 402
Hagerstown, MD 21740
(240) 313-2080 - O
(304) 707-5166 - M
mmullenax@hepmo.net

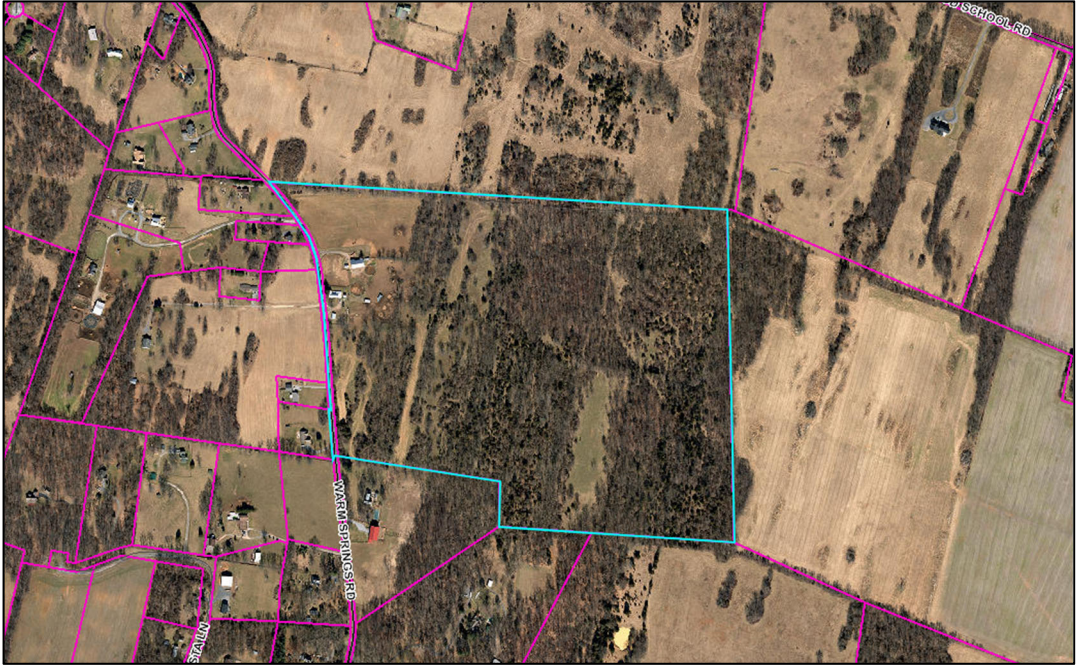
Stay Connected!



Staff Report
 Jefferson County Planning Commission Meeting
 February 9, 2021

Gaestel Waiver Request (File #: 21-1-PCW)

Item # 6: Public Hearing: Request for a waiver from Section 20.201, which only allows for a total of five (5) lots to process as a minor subdivision. Two lots have previously been approved from this parent parcel. The applicant is requesting to create an additional five lots (four lots and a residue parcel) as a minor subdivision as opposed to a processing a major subdivision.

Applicant/Owner	William Gaestel, White Oaks Farm	
Property Location & Information	2842 Warm Springs Rd., Shenandoah Junction, WV Tax District: Shepherdstown (09); Map: 21; Parcel: 1 (Parcel ID: 09002100010000) Size: 99.60 acres. Zoning District: Rural	
		
Adjacent Zoning Districts	<i>North:</i> Rural <i>South:</i> Rural	<i>East:</i> Rural <i>West:</i> Rural
Proposed Activity	Create an additional five lots (four lots and residue parcel)	
Approvals	Stephen Lee Creamer MSD, Lots 1 and 2-Residue; Recorded 11/2/99 (PB17/PG18) Albrite/Casey MSD, Lots 1 and 2-Residue; Recorded 06/14/02 (PB19/PG39)	

Summary of the Request:

The applicant is requesting a waiver from Section 20.201 of the Subdivision Regulations which states that “subdivision of a parent parcel beyond the maximum lots allowed to be created via the minor process after October 5, 1988 shall be classified as a Major Subdivision and processed accordingly, unless a waiver is applied for and approved by the Planning Commission.” It further states that Minor Subdivisions are those that do not require the development of new off-tract infrastructure, the extension of existing off-tract infrastructure, or the creation of common areas, and result in the creation of five (5) residential lots or less, including the parent parcel or residue, from contiguously owned parcels of record.

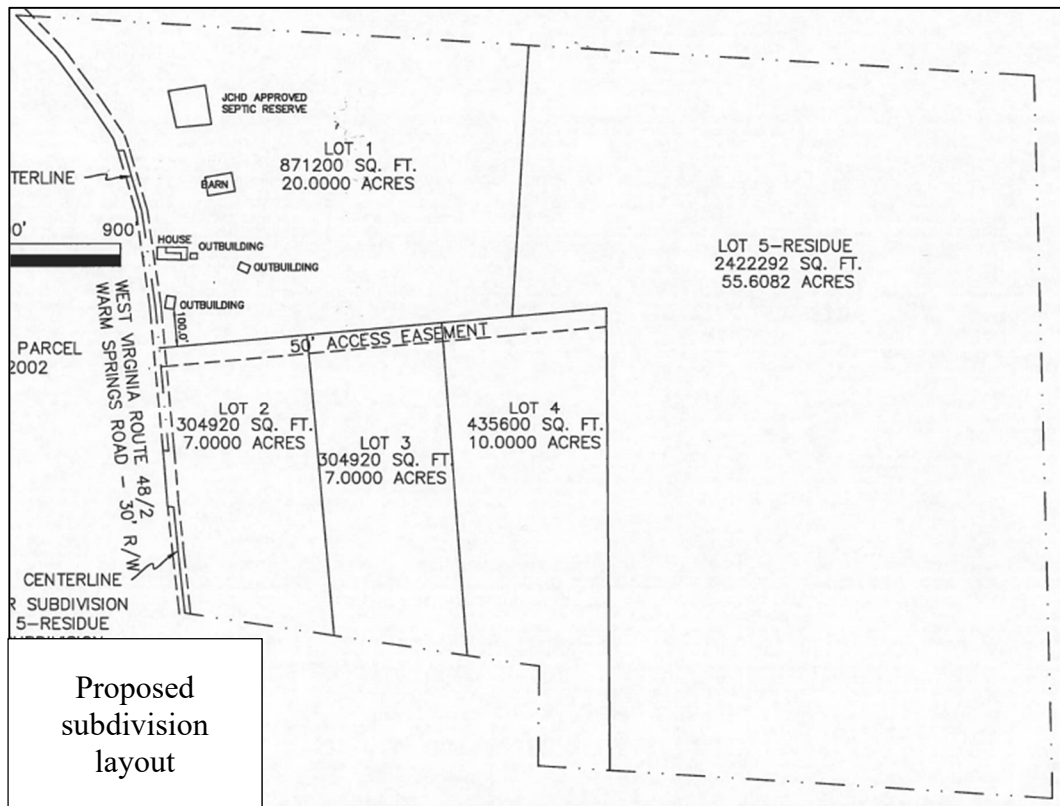
Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

Gaestel Waiver Request (File #: 21-1-PCW)

The subject “parent parcel” consisted of 150 acres as of 10/5/88, the date upon which development rights and process is calculated. Because the “parent parcel” has already divided off two (2) lots and a residue (3 total lots) as a Minor Subdivision since 1988, it only has the right to process two additional lots and a residue under the Minor Subdivision process (for a total of 5 lots). Note that both of the previously subdivided lots are located on the west side of Warm Springs Road and have separate access points. The balance of the property under consideration in this application is located on the east side of Warm Springs Road.

Under Section 5.7D.1 of the Zoning Ordinance (1 lot/15 acres), and based on a “parent parcel” of 150 acres, the applicant had the right to subdivide a total of ten lots, with a minimum lot size of three acres. As two lots have already been subdivided off the parent parcel, the residue lot has the right to divide eight (8) additional lots. To develop the remaining right (8) lots would require processing a Major Residential Subdivision.

The applicant’s request is to be permitted to subdivide the balance of the subject parcel located on the east side of Warm Springs Rd into four lots and a residue parcel. Because this would require processing as a Major Subdivision, the applicant is requesting approval of this waiver to process these lots as a Minor Subdivision. The proposed subdivision lots are proposed to share a new 50’ access easement off of Warm Springs Road.



Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021
Gaestel Waiver Request (File #: 21-1-PCW)

Waiver Requirements:

The applicant provides a response to the requirements found in “Division 24.300 Waivers” of the Subdivision Regulations, which is attached to the application. 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:

Planning and Engineering staff concur that because the proposed subdivision does not require the development of new off-tract infrastructure (other than the required 50' access easement to serve the proposed lots), the extension of existing off-tract infrastructure, and is located on along a WV DOH right-of-way, that it is reasonable to process as a Minor Subdivision. Additionally, the proposed division will not exceed the allowable density for the subject parcel.



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

File #: 21-1-PCW
 Mtg Date: 02-09-21
 Date Rec'd: 01-13-21
 Fees Paid: \$100/chk #287
 Staff Int: AB
 List of Adjoiners:

Email: planningdepartment@jeffersoncountywv.org
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: Whiteoak Farm WV LLC William Gaestel
 Business Name: _____
 Mailing Address: 1602 Kearneysville Pike, Shepherdstown, WV 25443
 Phone Number: (304) 268-9121 Email: wgaestel@live.com

Applicant Contact Information

Applicant Name: Whiteoak Farm WV LLC Same as owner:
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Consultant Information

Name: N/A
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: _____ Vacant Lot:
 Tax District: 09 Shepherdstown Dist Map No: 21 Parcel No: 0001
 Parcel Size: 99.60 Deed Book: 1179-1254 jth Page No: 212 395 jth
 Zoning District: Rural

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?

Requesting a waiver from Section 20.201 (Minor subdivisions) of the Subdivision and Land Development Regulations.

Briefly Describe the Nature of Your Waiver Request:

The request is being made so that we can divide 5 lots off the parent tract as a minor subdivision.

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 design will consist of keeping the existing farm as a 20 acre parcel. It will also allow 55 acres to be retained as farm use.

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.

In keeping with the existing farm and the residual acreage we are continuing with the existing use. The 20 acre farm will utilize current access.

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

No off site infrastructure, common areas or on site infrastructure will be needed, limiting impervious surfaces.

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

The project will be keeping with current use and used for agricultural uses.

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.

[Handwritten Signature]

1/12/20

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.

February 9, 2021
Public Hearing Date

January 26, 2021
Date Placard Posted

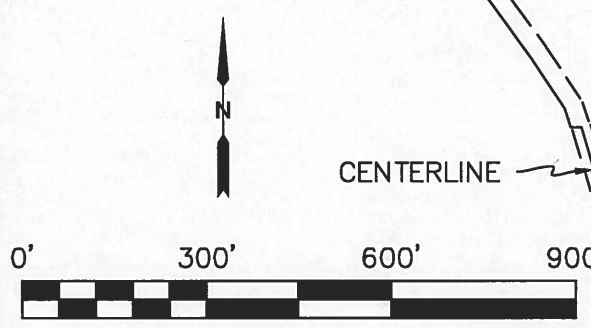
January 26, 2021
Date Adjoiners Mailed

Planning Commission Determination

Approved

Denied

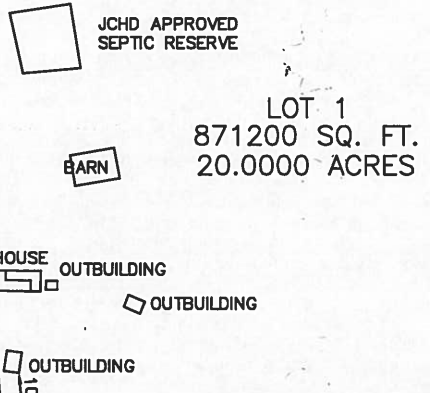
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CENTERLINE

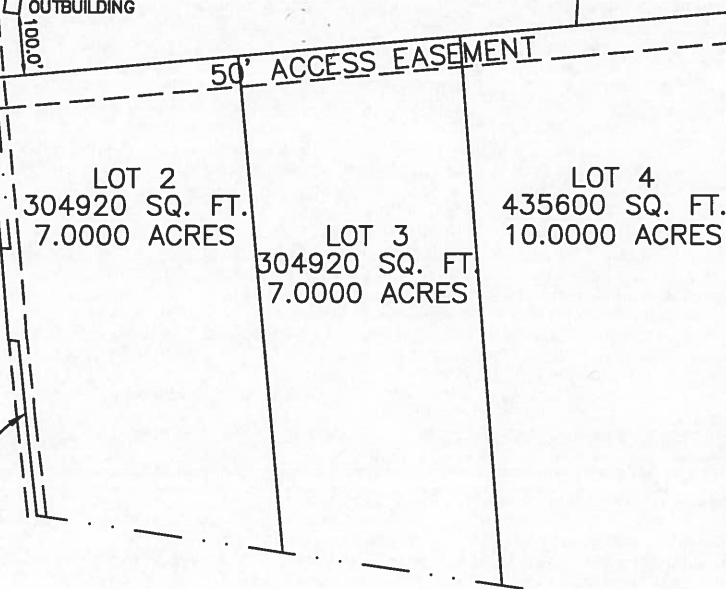
WEST VIRGINIA ROUTE 48/2
WARM SPRINGS ROAD - 30' R/W

CENTERLINE



LOT 1
871200 SQ. FT.
20.0000 ACRES

LOT 5—RESIDUE
2422292 SQ. FT.
55.6082 ACRES



LOT 2
304920 SQ. FT.
7.0000 ACRES

LOT 3
304920 SQ. FT.
7.0000 ACRES

LOT 4
435600 SQ. FT.
10.0000 ACRES

50' ACCESS EASEMENT

LAST SUBDIVISION ON THIS PARCEL
WAS APPROVED JUNE 13, 2002
PLAT BOOK 19 PAGE 39

SKETCH PLAT MINOR SUBDIVISION
LOTS 1-4 & LOT 5—RESIDUE
ALBRITE MINOR SUBDIVISION
SHEPHERDSTOWN DISTRICT
JEFFERSON COUNTY, WEST VIRGINIA
SCALE: 1" = 300' JANUARY 11, 2021

ED JOHNSON AND ASSOCIATES, INC.
LAND SURVEYORS
674 ACORN CIRCLE
HARPERS FERRY, WEST VIRGINIA 25425
(304)725-6060

Thomas and Ann Trumble
2576 Warm Springs Road
Shenandoah Junction, WV 25442

February 2, 2021

Jefferson County Office of Planning and Zoning
116 E. Washington St.
Charles Town, WV 25414

Office Planning and Zoning:

We welcome development on Warm Springs Road that is in the character of rural life. We feel that the three new lots that abut our property are in line with this sentiment. We will miss the large horse farm, but think that lots with a minimum size of seven acres can allow the new residents to have a modified rural lifestyle. If they wish, there is even space for a couple of horses, following many families on this road who have horses.

With the possibility of Rockwool locating here and drawing as much as 500,000 gallons of water a day, water quality and quantity will be a precious commodity. What are the plans to provide water and sewage for the lots now proposed? What are the proposed setbacks between our property line and the future buildings, wells and septic fields?

How many curb cuts will there be on Warm Springs Road? Will the 20 acre lot with the house and barn be developed? Will the back 55 acres be developed? If the intention is to build houses in the future, what will the number of houses be?

Regards,

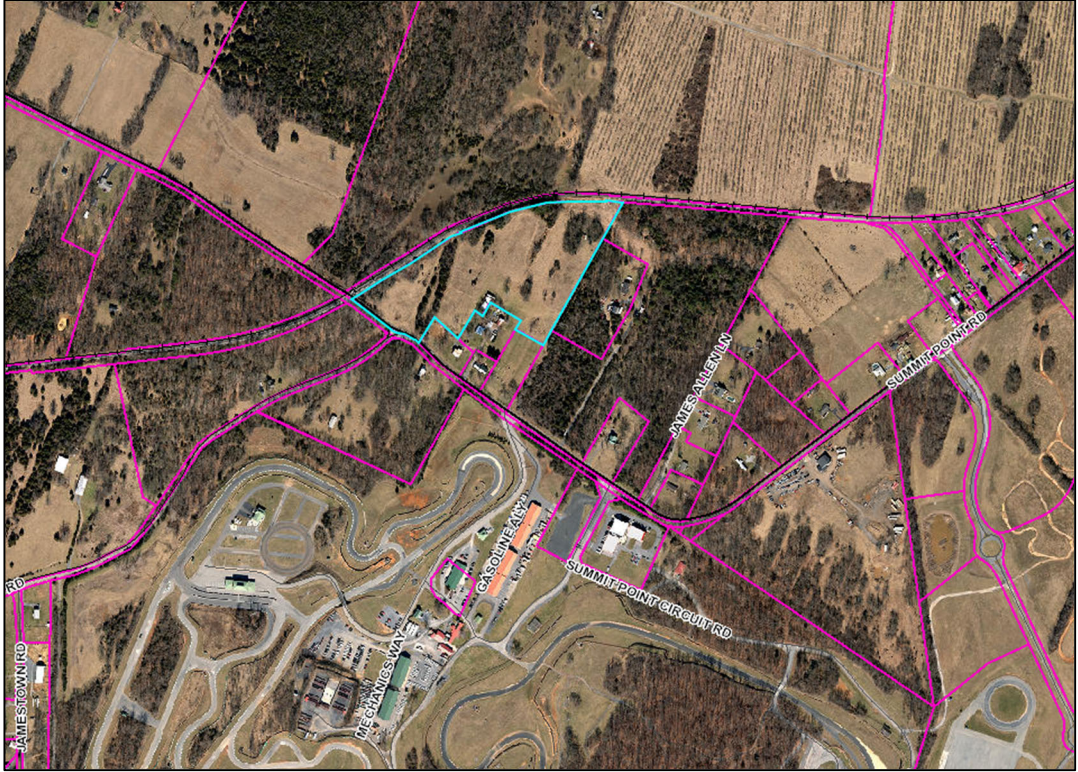
Handwritten signatures of Thomas and Ann Trumble in cursive script.

Thomas and Ann Trumble

Staff Report
 Jefferson County Planning Commission Meeting
 February 9, 2021

RP Performance Waiver Request (File #: 21-2-PCW)

Item # 7: Public Hearing: Request for a waiver from Appendix B, Section 10.5 to allow the applicant to utilize gravel instead of concrete/asphalt for the proposed drive aisle and parking area; and, to reduce the depth of the gravel from 9” to 6” for the proposed drive aisle and parking areas for RP Performance, Inc. (an automotive repair and service business)

Applicant	Bret de Pedro, RP performance, LLC	
Owner/Developer	Same	
Consultant	N/a/	
Property Location & Information	<p>Vacant parcel on Summit Point Rd, across from Hardesty Rd, Summit Point, WV Parcel ID: 06001600030000; Size: 14.69 acres; Zoning District: Rural</p> 	
Adjacent Zoning Districts	<i>North:</i> Rural <i>South:</i> Rural	<i>East:</i> Rural <i>West:</i> Rural
Proposed Activity	An automotive repair and service business	
Approvals	09-24-20: BZA approved a Conditional Use Permit for an Automotive Repair and Service Shop.	

Summary of the Request:

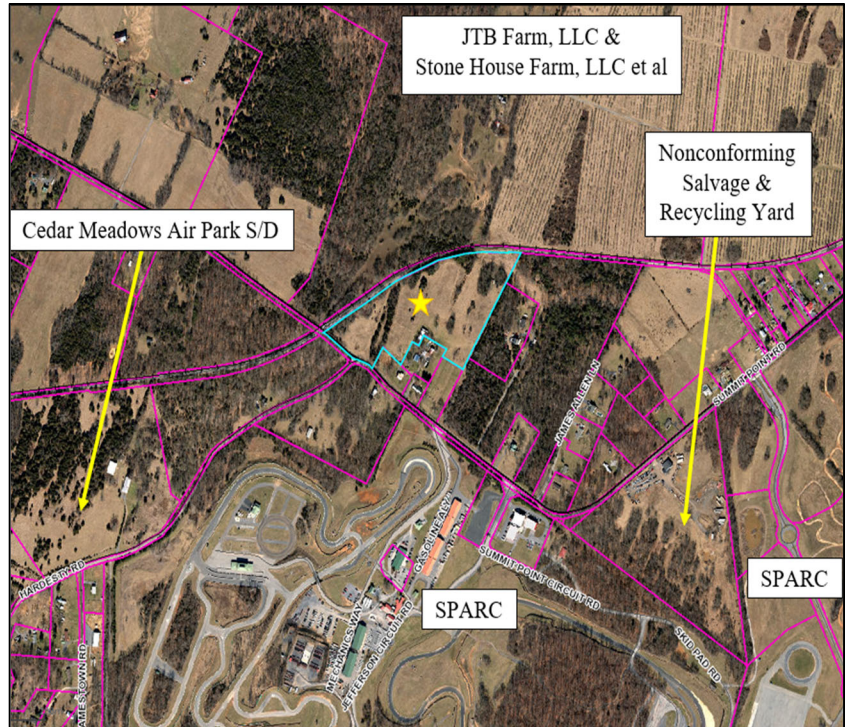
The applicant is requesting a waiver from Appendix B, Section 10.5 to allow the applicant to utilize gravel instead of concrete/asphalt for the proposed drive aisle and parking area; and, to reduce the depth of the gravel from 9” to 6” for the proposed drive aisle and parking areas for RP Performance, Inc. (an automotive repair and service business).

Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

RP Performance Waiver Request (File #: 21-2-PCW)

On September 24, 2020, the Board of Zoning Appeals approved a Conditional Use Permit for an Automotive Repair and Service Shop. The proposal included the construction of a 4,000 square foot building with associated parking and a freestanding business sign. The project proposed to utilize approximately three acres of the existing 14.69-acre parcel.

Article 2 defines Automobile Repair, Sales, and Service as: “The use of a site for the repair and maintenance of automobiles, motorcycles, trucks, trailers, or similar vehicles including but not limited to body, fender, muffler, or upholstery work, oil change and lubrication, painting, and tire service, but excluding dismantling or salvage.”



Waiver Requirements:

The applicant provides a response to the requirements found in “Division 24.300 Waivers” of the Subdivision Regulations, which is attached to the application. 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:

The Site Plan Exception found Section 20.203C of the Subdivision Regulations allows for 6” of gravel for all non-residential agricultural uses or principal permitted uses in the Rural District. The applicant’s proposed use cannot use this provision because it is not permitted in the Rural District, but was approved as a Conditional Use Permit. The proposed request to use gravel for site will need to be evaluated to

Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

RP Performance Waiver Request (File #: 21-2-PCW)

determine the road thickness needed. Attached is a chart that suggests a gravel thickness depending on the number of heavy trucks and type subgrade soil. The Office of Engineering would suggest a geotechnical engineer evaluate the subgrade condition and determine the appropriate gravel thickness. If the Planning Commission is inclined to approve the waiver without any evaluation, staff would recommend the applicant agree to not hold Jefferson County liable for any failures of the road or any maintenance required.

ATTACHMENT:

- Excerpt from Gravel Roads Construction and Maintenance Guide

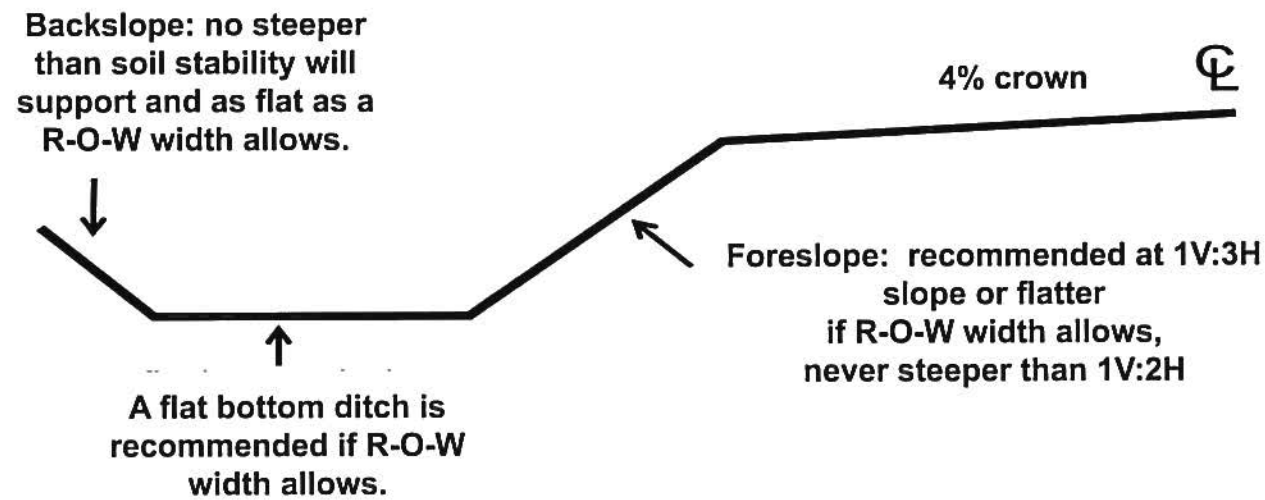


FIGURE 14: A basic example of what the profile of a reshaped gravel road should look like.

Constructing a New Surface Gravel

If base gravel is placed first, it should meet a State specification. An ideal construction method is to build adequate base depth to carry the anticipated loads and then place a layer of surface gravel as a wearing course. The surface layer should be three inches minimum depth in order to have enough material for blade

maintenance. Quite often, only surface gravel is placed after construction or rehabilitation. If analysis and design by an engineer cannot be done, a basic reference to help determine suitable gravel depth taking into consideration the subgrade soil support condition and anticipated truck traffic is shown on page 107.

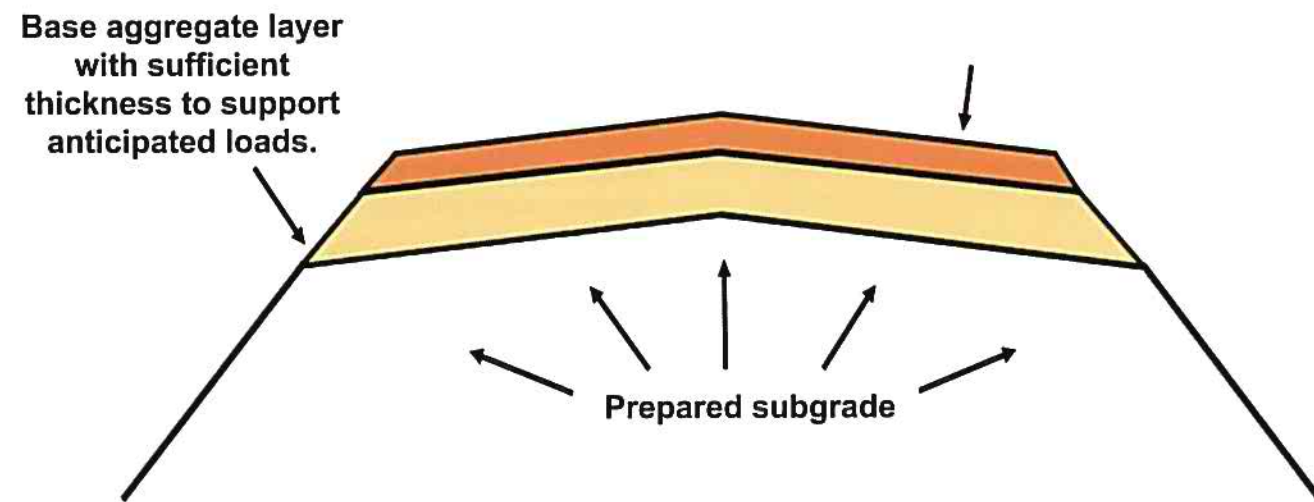


FIGURE 15: Roadway Layers: Example of building base and surface layers on a reconstructed gravel road. This may not be affordable, but will serve very well if significant truck traffic is expected.

Table 3: Thickness Design Guidance for New or Reconstructed Rural Roads. This table is a good guide for determining gravel layer thickness by considering subgrade support condition and projected daily volume of heavy trucks.

Estimated Daily Number of Heavy Trucks	Subgrade Support Condition ¹	Suggested Minimum Gravel Layer Thickness, mm (in.)
0-5	Low	165 (6.5)
	Medium	140 (5.5)
	High	115 (4.5)
5-10	Low	215 (8.5)
	Medium	180 (7.0)
	High	140 (5.5)
10-25	Low	290 (11.5)
	Medium	230 (9.0)
	High	180 (7.0)
25-50	Low	370 (14.5)
	Medium	290 (11.5)
	High	215 (8.5)

Surface gravel should meet a specification for its purpose which is to carry traffic and remain reasonably stable in wet or dry conditions. Many States do not have surface gravel (aggregate) specifications. The agency needs to work with suppliers to get suitable material for surfacing.

It must be acknowledged that gravel surfaces will never perform like pavements. Some loose aggregate, rutting and some corrugation may form in the best gravel when exposed to heavy traffic and prolonged wet or dry conditions. Use the best material that can be obtained to improve gravel road performance.

Table 4: Surface Aggregate Sample Specifications

Annual precipitation	> 20 inches	< 20 inches
Sieve	Percent Passing	
1" (25.0 mm) 100	100	
3/4" (19.0 mm) 100		100
No. 4 (4.75 mm)	45 - 70	50 - 78
No. 8 (2.36 mm) 27-55 37-67	27 - 55	37 - 67
No. 40 (425 mm) 10-28 13-35	28-Oct	13 - 35
No. 200 (75 mm) 3.0-12.0 8.0-15.0	3.0 - 12.0	8.0 - 15.0
Liquid Limit Max	25	30
Plasticity Index	3 - 10	8 - 15



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

File #: 21-2-PCW
 Mtg Date: 02/09/21
 Date Rec'd: 01/15/21
 Fees Paid: 100-
 Staff Int: gt
 List of Adjurers: 2

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

Phone: (304) 728-5228
 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: Bret de Pedro
 Business Name: RP Performance
 Mailing Address: P.O. Box 67 Summit Point, WV 25446
 Phone Number: 304-728-6749 Email: Bret@rpperformanceracing.com

Applicant Contact Information

Applicant Name: _____ Same as owner:
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Consultant Information

Name: _____
 Business Name: _____
 Mailing Address: _____
 Phone Number: _____ Email: _____

Physical Property Details

Physical Address: Summit Point Rd Vacant Lot:
 Tax District: Kabletown Map No: 0016 Parcel No: 19-06-0016-0003-0000
 Parcel Size: 14.69 Deed Book: 4400 1246gt Page No: 62 378gt
 Zoning District: Rural - gt

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?

Appendix B, Section 10.5 of the Jefferson County Subdivision and Land Development Regulation
Section 10.5 Parking Area, Entrance and Internal Driveway Paving.

Briefly Describe the Nature of Your Waiver Request:

a. We would like to use gravel for the driveway and parking area. The costs of using concrete (parking \$67,220 estimate) or asphalt (driveway \$3,600 estimate, parking \$33,600 estimate) would be prohibited to this small business. The cost for concrete/asphalt exceeds the cost of the building and just asphalt is half of the building costs. The small amount of traffic does not warrant the extra expenditure.

b. We would like to reduce the depth of gravel to 6". The proposed driveway has a large amount of bedrock below so we feel that the packed 6" of gravel would be adequate for minimal amount of traffic that will use the driveway.

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.

N/A

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 neighboring properties are at least 500 feet away and upgrade from where the gravel will be placed for entry and parking. Because of the upgrade there will be no displacement of gravel on any adjoining properties.

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

The use of gravel in the entry and parking will last longer than concrete. When it comes to maintenance it can be replenished as needed. Damage and wear to asphalt or concrete can be caused by overloaded vehicles.

The use of concrete can cause damage to the top layer of the earth (topsoil). The use of asphalt and concrete create a hard surface which causes runoff that can lead to erosion and flooding of the ground to each side of the entry and parking area.

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

The use of gravel will be more aesthetically pleasing to an environmental standpoint as our goal was to disturb the environment as little as possible. The use of gravel will lend with the keeping of the project as close to the natural look that we are going with for the building so all will blend in with the present farmland & woods.

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.

1/15/21

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.

02-09-21

Public Hearing Date

01-26-21

Date Placard Posted

01-26-21

Date Adjoiners Mailed

Planning Commission Determination

Approved

Denied

Date: ___/___/___



A. 40'x100' bldg with parking around bldg - Blue
B. Driveway - green
C. Parking - yellow

Bret de Pedro
110 Lower Valley Rd
Strasburg, VA
Bret@rperformance racing.com
1(304)728-6749



JEFFERSON COUNTY, WEST VIRGINIA

Office of Planning and Zoning
116 East Washington Street, 2nd Floor
P.O. Box 716
Charles Town, WV25414

www.jeffersoncountywv.org

Email: planningdepartment@jeffersoncountywv.org

Phone: (304) 728-3228

MEMO

TO: Planning Commission

FROM: Alexandra Beaulieu, Zoning Administrator

DATE: January 7, 2021

RE: ZTA19-03, Solar Energy Facilities – January 12, 2021 Meeting

On June 23, 2020 the Planning Commission made revisions to the draft text amendment based on public input and voted to revise the provisions for a decommissioning plan to include surety requirements and to amend Appendix C to allow solar facilities to process by right in the Residential Growth zoning district. The Planning Commission made a recommendation to send the revised text amendment to the County Commission, with a recommendation that the proposed text amendment was consistent with the Comprehensive Plan.

On October 1, 2020, after a series of workshops and a Public Hearing, the County Commission voted to approve the Planning Commission's recommended draft text amendment ZTA19-03 pertaining to Solar Energy Facilities, with one revision to increase the required setback for solar panels from 100' to 200'.

On December 10, 2020 the County Commission voted to vacate the October 1, 2020 approval of zoning text amendment file #ZTA19-03. The motion included direction to return the text amendment to the Planning Commission for further review and consideration.

The draft before you today is the version the Planning Commission recommended to the County Commission on June 23, 2020. The amendment includes 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:

- County Commission Meeting Minutes from December 10, 2020 Meeting
- Excerpts from Envision Jefferson 2035 Comprehensive Plan RE: Alternative / Renewable Energy
- ZTA19-03, Solar Energy Facilities DRAFT reflecting revisions made by PC on 06-23-20

SPECIAL SESSION

State of West Virginia, County of Jefferson, to-wit:

At a Special Session of the County Commission of said County and State continued and held via GoTo Webinar on Thursday, December 10, 2020.

PRESENT: Jane Tabb, President
Ralph Lorenzetti, Vice President
Josh Compton, Commissioner
Caleb Hudson, Commissioner
Patricia Noland, Commissioner
Stephanie Grove, County Administrator
Nathan Cochran, Assistant Prosecuting Attorney
William Rohrbaugh, Special Counsel
Jessica Carroll, Administrative Assistant

In Re: Discussion of all aspects of case, issues, and potential for resolution regarding Jefferson County Circuit Court Civil Action #20-C-125 and #20-C-132-137.

President Tabb opened the meeting at 9:37 am and Commissioner Hudson led the Pledge of Allegiance.

Motion by Commissioner Noland to enter into Executive Session to receive legal advice regarding Jefferson County Circuit Court Civil Action #20-C-125 and #20-C-132-137. Motion seconded and unanimously approved.

Motion by Commissioner Noland to come out of Executive Session. Motion seconded and unanimously approved.

Motion by Commissioner Noland to vacate the October 1, 2020 Commission approval of Zoning Text Amendment 19-03 (Solar Energy Facilities Amendment) and return the text amendment to the Jefferson County Planning Commission for further review and consideration, including additional public hearings as required by law and authorize William Rohrbaugh, Esq., to sign the Order and any additional associated documents on behalf of the Commission. Motion seconded and passes on a vote of 3-2 with Commissioner Compton and Hudson opposing.

The special session was adjourned at 10:25 am on a motion by Commissioner Compton. Motion was seconded and unanimously approved.

Jane M. Tabb, President

Respectively Submitted:

Jessica Carroll

Executive Administrative Assistant

Urban Level Development Recommendations (Goal 1)	
1.	Recognize the existing vested rights, development entitlements, and permitted density levels on properties in Jefferson County.
	a. No property’s zoning status will be changed as part of this Plan.
2.	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:
	a. Economic Well-Being of the County; or
	b. Error or Under Scrutinized Property on the Future Land Use Guide; or
	c. Change in Neighborhood; or
	d. Any Other Circumstance that the Governing Body determines should have been considered when drafting the Future Land Use Guide; and/or
	e. Environmental impacts are considered.
3.	Identify opportunities for small area plans and involve key stakeholders.
4.	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.
5.	Create urban level land uses within the municipalities, UGBs, PGAs, or Villages through rezoning that is consistent with the Plan recommendations.
	a. 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. Reduce application fees for urban level development located within the areas desired for urban future growth.
	c. 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.
	d. 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.
	e. 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.

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:

Major Public Infrastructure Projects that are Proposed
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

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

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-swales, 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:

Point and non-point source pollution
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

	<ul style="list-style-type: none"> 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.
	<ul style="list-style-type: none"> 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.
6.	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.
	<ul style="list-style-type: none"> a. Continue to monitor and participate in planning efforts related to the implementation of the Chesapeake Bay Watershed Improvement Plan.
	<ul style="list-style-type: none"> b. Assess and evaluate the County’s stormwater planning documents as best management practices in the field evolve.
7.	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.
	<ul style="list-style-type: none"> 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.
8.	Encourage public entities to utilize alternative and renewable energy sources for a variety of energy needs.
	<ul style="list-style-type: none"> a. Enable the construction of renewable energy generation facilities by residents and businesses.
	<ul style="list-style-type: none"> 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.
	<ul style="list-style-type: none"> c. Develop regulations to enable cooperatives or communities to create a solar panel system that would feed multiple houses in the County.
9.	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.
	<ul style="list-style-type: none"> a. Ensure that all areas of Jefferson County are served by high speed wireline and/or wireless services and other advanced technologies.
	<ul style="list-style-type: none"> b. Encourage private sector investment to improve wireless internet service availability in Jefferson County and the Eastern Panhandle.
	<ul style="list-style-type: none"> 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.

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.

Plat²³ 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 Plat²³ 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.

Preschool²³ 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 Site³⁵ 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 Provider²² 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^{23, 31, 32} 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 Use²³ The primary or predominant use of any site.

Printing and Publishing²⁷ 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 ³⁹	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 ³⁹	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 ³⁹	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 than 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 Crematorium³⁷

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. W.Va. Code §7-1-3kk provides that the County Commission may enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the commission determines to be a public nuisance.
 - i. The County Commission hereby finds and declares that a solar facility that has ceased producing electricity for a period of 12 months is a public nuisance and/or hazard pursuant to West Virginia Code §7-1-3kk and other applicable authority.
 - ii. The County Commission therefore finds that an unused solar facility must be decommissioned and removed from the property on which it is located. This means that all of the solar facility's structures and other associated property must be removed from the premises and the land must be restored to a condition reasonably similar to its original condition prior to the installation of the solar facility.
 - iii. 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. The County Commission finds that, as a condition of approval, a Solar Energy Facility must:
 - i. Develop a decommissioning plan acceptable to the County Engineering Staff in accord with County Solar Decommissioning Guidelines that will provide that all parts of the solar facility be removed from the premises and the land must be restored to a condition reasonably similar to its original condition prior to the installation of the solar facility; and
 - ii. Post surety in an amount that would enable the decommissioning and removal of the solar facility in accord with the County Solar Decommissioning Guidelines in the event that the solar facility has ceased to produce electricity as defined.
- c. The approved Solar Decommissioning Plan shall be submitted as part of the Zoning Certificate Application. Either the Zoning Administrator or the Applicant may request that the Planning Commission approve or disapprove any component of the Solar Decommissioning Plan.
- 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 ¹	OC	R	RG	RLIC	IC	V	Additional Standards
Commercial Uses continued													Sec. 8.9
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>P</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
Agricultural Uses*													
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 ³⁷	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
Accessory Uses													
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
- ¹ The Planning Commission may amend the permitted uses for a development in the PND District per Article 5.
- ² Approval process is per the Salvage Yard Ordinance.

ZTA19-03 – Solar Energy Facilities

Public Comment Received for February 9, 2021 Public Hearing

1. Tiffany Lawrence – Received 01-21-2021 - Page 3
 - Project Fact Sheet – Wild Hill Solar / EDF Renewables
2. Richard Zigler – Received 01-27-2021 - Page 9
3. Robert Aitcheson – Received 02-02-2021 - Page 11
 - Motion to Dismiss
4. Robert Aitcheson – Received 02-02-2021 - Page 21
 - Agreed Order Resolving Civil Actions, Case No. CC-19-2020-C-125
5. Robert Aitcheson – Received 02-02-2021 - Page 25
 - Opposition to Proposed Utility-Scale Solar Facility Text Amendment (originally submitted 09-10-2020 for County Commission Public Hearing; re-submitted for 02-09-2021 Planning Commission Public Hearing).
6. Doug Rockwell – Received 02-02-2021 - Page 73
7. Doug Rockwell – Received 02-02-2021 - Page 75
8. Tim Ross – Received 02-02-2021 - Page 83
9. Nance Briscoe – Received 02-02-2021 - Page 87
10. Christine Marshall – Received 02-02-2021 - Page 89
11. Thomas Moore Lawson, Esq. – 02-02-2021 - Page 115

Alexandra Beaulieu

From: Tiffany Lawrence <tlawrence@orion-strategies.com>
Sent: Thursday, January 21, 2021 12:02 PM
To: Michael Shepp
Cc: Alexandra Beaulieu
Subject: Re: Meeting with Wild Hill Solar-Friday
Attachments: EDF Wild Hill Fact Sheet PREVIEW.pdf

Thanks so much, Mr. Shepp.

Alex,

Will you kindly disseminate the attached project fact sheet to your commissioners from my client, EDF Renewables, who is proposing the Wild Hill Solar project. Please also let me know if any questions are posed.

Many thanks!

Tiffany Lawrence, DEL, MBA

Senior Account Executive

Orion Strategies

NEW Office: [844.982.6050](tel:844.982.6050) (Toll Free) ext. 401

Mobile: [304.676.7316](tel:304.676.7316)

Email: tlawrence@orion-strategies.com

www.orion-strategies.com



From: Michael Shepp <michaelshepp@me.com>
Date: Thursday, January 21, 2021 at 9:48 AM
To: Tiffany Lawrence <tlawrence@orion-strategies.com>
Cc: Alexandra Beaulieu <abeaulieu@jeffersoncountywv.org>
Subject: Re: Meeting with Wild Hill Solar-Friday

Tiffany,

It was nice chatting with you today. Please send your information directly to Alex Beaulieu the Zoning Administrator. She will forward it to all of the Planning Commission members. I am copying her on this email and that will give you her email address.

Mike Shepp
Sent from my iPad



RECEIVED
January 21, 2021
Jefferson County, WV
Office of Planning and Zoning



The project is
expected to generate
\$134 million

in direct, indirect,
and induced economic
impacts in the
Jefferson County area.

Wild Hill Solar is being developed by EDF Renewables.

EDF Renewables is a market leading independent power producer and service provider with 35 years of experience leading the way to a clean energy future with large-scale projects that put the economy, communities, and the environment first.

EDF Renewables has developed 16 gigawatts of renewable energy capacity in North America.



**EDF Renewables
puts the economy,
communities, and the
environment first.**

The project will have a positive economic impact on West Virginia and Jefferson County.

The construction and operation of Wild Hill Solar by EDF Renewables will have a positive economic impact on the West Virginia economy, with the bulk of the impacts centered on Jefferson County.

The project represents an investment of \$125 million. It will produce 92.5 MW of emission-free energy and is expected to generate \$134 million in direct, indirect, and induced economic impacts in the Jefferson County area and provide approximately 167 job-years of employment during its construction period. The facility will also result in approximately \$175,000 in local property tax revenues paid to Jefferson County during the first year of operation.



Solar panels are safe.

Crystalline silicon panels that are manufactured using safe and non-toxic materials are proposed for this project. These modules are over 90% recyclable and comprised of silicon, copper and aluminum, sandwiched between glass and a plastic encapsulant with an aluminum frame. These types of solar panels do not contain toxic materials and are the same type that are commonly installed on rooftops and schools.

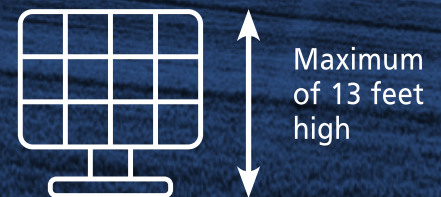
Solar panels do not make noise.

Solar panels do not make noise. Some of the facility components such as inverters and transformers do make a low humming sound, but that equipment is sited with appropriate setbacks from neighboring homes so that the sound observed would be no louder than that of a quiet room.

The Wild Hill project will utilize visual buffering.

EDF Renewables is sensitive to designing a project that is well received by the community and can be well integrated into the neighboring landscape. Features such as visual buffers are typically created by planting vegetation along roadsides and adjacent to residential homes near the project help soften the visual impact of the facility and maintain the rural character of the area.

The panels have an anti-reflective coating and will rotate like a sunflower following the sun throughout the day. The maximum height of the edge of panels on the rack at full rotation will be about 13 feet. The height of most panels is likely to be between 10 to 12 feet from the ground.



The height of most panels is likely to be between 10 to 12 feet from the ground.

Solar facilities result in minimal soil disturbance during construction.

Solar facilities result in minimal soil disturbance relative to other types of development projects. The project has been sited in an agricultural area to reduce the need for land clearing and minimize the need for typical construction processes such as surface grading and soil compaction. Solar panels delivered by trailer trucks will be installed on a low-profile racking system which typically consists of small I-beam posts driven or screwed into the ground, without the need for excavation, concrete, or other foundations.

No new transmission lines will be required to support the facility.

The Wild Hill solar project will interconnect to an existing Potomac-Edison 138kV transmission line that crosses the project area. Cables connecting the arrays, inverters, substation, and switchyard will be trenched.

Construction is anticipated to be completed by third quarter of 2022.

The Project is expected to be operational in third or fourth quarter of 2022 based on completion of permitting in the fourth quarter 2020 into first quarter of 2021. Construction is expected to commence in mid-2021 and conclude in third quarter 2022. The construction phase is estimated to lead to 167 job-years of work and \$12.6 million in employee compensation.

Wildlife protection is an important consideration in the development of projects.

The proposed project site consists of approximately 795 acres of agricultural land. Tree clearing will impact less than 17 acres with trees felled being considered isolated or perimeter trees. This will minimize the impact on wildlife and their habitats. In developing the project, EDFR has consulted with the United States Fish and Wildlife Service and the West Virginia Division of Natural Resources related to impact on threatened and endangered species.

While the facility will be fenced (non-electric) for safety and security, wildlife can generally pass-through solar sites and some renewable energy projects incorporate bee pollinator habitats and accommodate the grazing of small livestock such as sheep.



State law prevents Wild Hill Solar from offering power to our neighbors in Jefferson County.

West Virginia has a regulated market for the delivery of electricity to residential and commercial customers. Potomac Edison has the exclusive right to provide power to Jefferson County residents. As a wholesale power generator, state law and PSC (Public Service Commission) regulations prohibit EDFR from supplying our local neighbors. EDFR will sell the generated electricity directly onto the wholesale market.

The project has an expected life of 30 years.

The expected useful life of the project as initially constructed is 30 years, with panels operating at about 80% of their capacity after 15 to 20 years. This can be extended by regular maintenance and replacement of equipment.

Solar panels are non-toxic and safe, and the land can be used for farming upon decommissioning.

Most solar panels are classified as non-toxic waste. Solar panels undergo a "Toxic Characteristic Leaching Procedure" test mandated by the Federal Resource Conservation and Recovery Act. These tests are used to confirm their lack of toxicity.

Further, there are no anticipated emissions to the ground, air, or water because of the operation of solar panels. As no soil contamination is anticipated, the land can be safely utilized for grazing during operation or farming after site decommissioning.

The decommissioning process at the end of the project's life includes the removal of equipment to a depth below grade, and the restoration and reseeded of any disturbed ground.

The disposal of solar panels must conform to all governmental, environmental, and legal requirements. The Solar Energy Industries Association (SEIA) established a national recycling program connecting US-based recyclers with businesses who have solar panels to recycle. Many components of the crystalline silicon panels can be reused and recycled, namely the metal, glass and wiring components, as well as the silicon cells which can be melted down to reclaim the silicon and various metals by specialty recycling companies.



At the end of the project's life, any disturbed ground will be restored and reseeded.

For more information,
contact us at
1-844-943-0723 or
Landowner@edf-re.com.

wildhillsolar.com

JAN 27 2021

Members of Planning and Zoning,

**JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING**

My name is Richard Zigler. I reside at 1083 Roper North Fork Road, Charles Town, West Virginia. I would like to address the issue of the proposed solar arrays to be located in the southern portion of the county. There is much discussion, both factual and misleading. Some reports have the wrong landowner participants, the size and locations of the projects, and the damage or non-benefits to the community. I am sure the project managers have already addressed many of those issues. I would like to show support for solar arrays.

First of all, the solar arrays will be relegated to the southern part of the county because it is not economically feasible to locate elsewhere. There are limited points of access to where such arrays can attach to "The Grid". The High Lines, that are to be the connection points, are located south of Charles Town. They will not be in the other seventy-five percent of the county as some people suggest. Yes, they will be on what is considered "Prime Agricultural Land", but, with the agri-economics as they are, most farmers cannot afford to remain in the industry. This past year saw prices drop as much as twenty-five percent in mere days or even hours. If farming was as lucrative as some suggest, the idea of solar arrays would be moot, and there would never be a new housing development in this county. Nothing saves farmland better than farmers, if they can make a reasonable profit.

Without active farmers operating the land, it becomes an expensive park that someone has to maintain. Those that want the land to remain actively farmed should have stepped up and purchased the land, or rent at a price that the landowners to pay all taxes, insurance, and maintenance costs in a manner that the individuals involved can live comfortably, and meet their expectations for retirement.

The solar arrays will be commercial ventures, the same as renting a house, for commercial profit, and can be in a Rural District. The arrays are considered passive commercial entities. The land lease will have panels that, at the end of their relative projected profitable life time, will be decommissioned and removed. Currently there are regulations as to decommissioning at other levels of government and, therefore, there is no need to put excessive and costly regulations in place. Remember, the panels and other structures are TEMPORARY structures. They are to be dismantled and removed and the land returned to a state that can support agriculture again. Agriculture occurs in Rural Zones.

The electricity generated will not be sold directly nor exclusively within the county. There can be no more expectations of that as there would be for my grain being processed and sold exclusively in local grocery stores as a manufactured "Corn Flakes" product by Kellogg's brand. Legally, there are also restrictions that are beyond the ability to demand direct sales within our county.

The arrays are community friendly. They provide tax revenue without demands on the county. There will be no added students to our already crowded and overwhelmed school system. They require no Emergency Services. They require no new water or sewer infrastructure. There will be no added traffic to our congested roadways. There will be no pollution of air, land, or water, while providing "Green Space" and habitat for wildlife. They will provide renewable energy for the region.

With all these considerations in mind, solar arrays should be allowed in the Rural District, and with minimal tedious and unfavorable regulations at the front or back end of the projects.

Re: Disqualification of Steve Stolipher & Shane Roper from ANY discussion, consideration lobbying or voting with respect to ZTA 19-03

From: Robert Aitcheson (bob.aitch46@gmail.com)
To: planningdepartment@jeffersoncountywv.org
Bcc: waitcheson@yahoo.com
Date: Tuesday, February 2, 2021, 12:17 PM EST

RECEIVED

FEB 02 2021

**JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING**

On Tue, Feb 2, 2021 at 12:15 PM Robert Aitcheson <bob.aitch46@gmail.com> wrote:

On Tue, Feb 2, 2021 at 12:13 PM Robert Aitcheson <bob.aitch46@gmail.com> wrote:

Comes Now, Robert D. Aitcheson and moves that Steve Stolipher and Shane Roper disqualify themselves or be disqualified from ANY discussion, consideration, lobbying for or vote with respect to ZTA 19-03, the proposed solar text amendment to the Jefferson County Zoning Ordinance set for public hearing on February 9th for the following reasons:

Steve Stolipher has conflicts of interest.

- 1) The Motion for Stolipher's Removal from the Planning Commission, attached hereto as Exhibit A, sets forth in part the factual basis for his disqualification.
- 2) Exhibit B, my email to the County Commission dated September 3, 2020, further elucidates the basis for this motion.
- 3) Exhibit C is a set of documents retrieved from the JCDA, believed to be provided to that body by Stolipher, which further show the extent of his involvement in this solar energy scam & therefore his conflict of interest.
- 4) Stolipher claims to have received an advisory opinion from the Ethics Commission allowing him to participate in this matter as a public official. This could not be true because ALL advisory opinions are required by law to be published. See W Va Code 6B-2-3. There is NO such published advisory opinion in 2018, 2019 or 2020. Moreover, though he has, on at least 2 occasions, publicly stated he would produce the phantom advisory opinion, he has as yet failed & refused to do so.

Shane Roper

- 1) The Bylaws of the Planning Commission, Section 5.2(1), (2) & (3) require that, to avoid even the appearance of impropriety, he disqualify himself or be disqualified from ANY matters relating to ZTA 19-03.
- 2) He has a close familial relationship with Eddie & Todd Hough, ie he is a Nephew, whose property is part of the Wind Hill project now pending before the PSC, Case No.: 20-0845-E-SCS-Plc, a massive proposed solar project in Jefferson County. Among other things, whether that project goes forward depends on the Planning Commission vote in ZTA 19-03.

Please include this motion & exhibits, to be delivered today, on the agenda & in the packet for the February 9th hearing.
Thank you.

Robert D. Aitcheson

MOTION

From: Robert D. Aitcheson

To: County Commission, Jefferson County, WV

Re: Removal Proceedings Against Planning Commission Member Stephen Stolipher

Pursuant to W.Va. Code 6-6-7(b)(1)(A); 8A-2-4(e)&(f) and County Ordinance 2007-1, Section 3 thereof, the County Commission should REVOKE Stephen Stolipher's appointment to the Jefferson County Planning Commission for his wrongful failure to recuse himself from ANY vote, discussion, participation or other activity regarding the proposed solar facility text amendment [ZTA 19-03] because W.Va. Code 8A-2-4(e) & (f) mandates such recusal. Robert D. Aitcheson moves that this Commission INITIATE REMOVAL PROCEEDINGS AND REMOVE MR. STOLIPHER FROM THAT OFFICE, more particularly as follows:

1. W.Va. Code 8A-2-4(e) & (f) require that a Planning Commission member recuse himself or herself from any vote, discussion or other activity "regarding the conflicting issue" if the member is **pecuniarily interested** in the matter. See also, Planning Commission Bylaws, Section 5.2-Recusal.

2. FACTS:

(a) At the time he was acting officially as a Planning Commissioner in ZTA19-03, Mr. Stolipher was a commercial real estate agent with Oakcrest Realty. As such, he is believed to have had contracts pending for the sale or lease of land in Jefferson County, WV with Horus Renewables Corp. of Sacramento, California as prospective purchaser or lessor. At least three of those contracts are believed to have been for Thorn Hill Subdivision (172 acres) at the corner of Route 115 and Kabletown Road, Highland Farm (123 acres) and another separate 100+ acre parcel along Rte. 115 near Charles Town, Jefferson County, WV.

(b) At closing, Mr. Stolipher stood to receive a monetary commission or finder's fee from each such transaction.

(c) The contracts with Horus Renewables Corp. are believed to be for the purpose of establishing solar facilities on said properties and are believed to be dependent upon the actions of the Planning Commission and, subsequently, this Commission on the subject text amendment.

3. Mr. Stolipher was **pecuniarily interested** because he stood to benefit directly and financially in specific, unique transactions dependent upon the actions of the Planning Commission and this County Commission. His wrongful participation in the discussion, vote and any other activity regarding industrial/commercial solar facilities on our rural, agricultural land and his wrongful failure to disqualify and recuse himself has so tainted and poisoned the actions and

EX A p 1 of 2

Motion - page 2 (corrected)

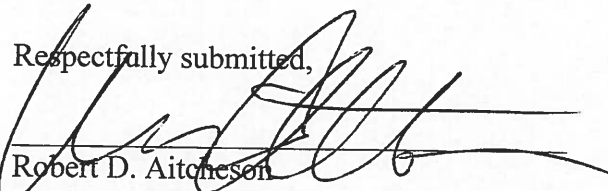
recommendations of the Planning Commission as to bring into serious question the legitimacy of the recommended text amendment. Said proposed text amendment fails to protect the citizens of Jefferson County to the substantial financial benefit of the solar developers and Mr. Stolipher.

4. The proposed text amendment fails to require a conditional use permit which would allow public input for each project application (rather designating the activity as a principal permitted use in the Rural Zoning District); fails to establish standards for a Board of Zoning Appeals review of each such project application; fails to establish adequate bonding requirements for both maintenance and decommissioning **with sufficient financial security** to protect the taxpaying citizens of this county from contamination of ground water and toxic runoff and the cost of disposal of toxic waste materials when government money and tax credits dry up and projects are abandoned by the shell companies of the out-of-state investors; fails to limit the portion (percentage) of any parcel of rural, agricultural land that may be used for installation of solar panels; fails to restrict such projects to non-tillable land and fails to require proximity to an existing transfer station and transmission lines.

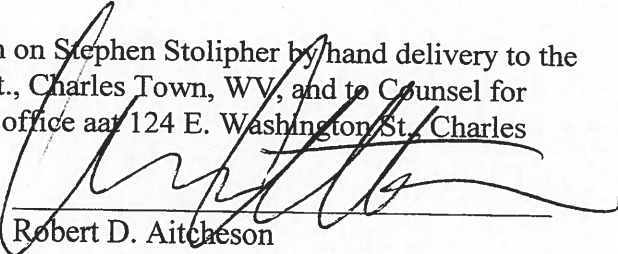
5. Mr. Stolipher has violated his oath of office in that he has failed to discharge his duties as Planning Commission member to act "faithfully...to the best of his skill and judgment" when judged by this objective, Constitutional standard. See West Virginia Constitution, Article IV, Section 5. His aggressive promotion of the foregoing, contrary to the interest of the citizens of this county but to his own substantial monetary benefit, exhibits a stunning and faithless unwillingness to comply with the law which renders him unfit to continue to hold the official position to which this Commission appointed him.

ROBERT D. AITCHESON REQUESTS THAT THIS MOTION BE SET FOR HEARING ON THE AGENDA OF THE NEXT MEETING OF THIS COMMISSION AND THAT MOVANT BE GIVEN SUFFICIENT TIME TO FULLY ADDRESS THE ISSUES ARISING HEREIN.

Respectfully submitted,


Robert D. Aitcheson
Citizen of Jefferson County, WV
Since April, 1979

I have served a true copy of this corrected Motion on Stephen Stolipher by hand delivery to the Planning Commission office, 104 E. Washington St., Charles Town, WV, and to Counsel for said Planning Commission, Nathan Cochran, at his office at 124 E. Washington St., Charles Town, WV, this 28th day of August, 2020.


Robert D. Aitcheson

Ex A p 2 of 2

Supplement to my Motion for the County Commission to Initiate proceedings to Remove Planning Commission Member Stolipher

From: Robert Aitcheson (bob.aitch46@gmail.com)

To: sandy@jeffersoncountywv.org

Bcc: waitcheson@yahoo.com

Date: Thursday, September 3, 2020, 09:45 AM EDT

Sandy,

Thank you for the information yesterday. It was great to talk with you!

Realizing that 3 minutes is not adequate to fully discuss this matter with the Commission, I submit the following supplementation. Please confirm your receipt of this email and that it has been conveyed to the Commissioners.

To the Jefferson County Commission:

1) The W Va Code 8A-2-4(e) & (f) allow persons to serve on the Planning Commission with business regularly before that commission or with regular interaction with commission staff, PROVIDED THAT the member recuses himself or herself from any vote, discussion or other activity regarding "the conflicting issue". While Stanley Dunn is purported to be a lawful petitioner [and this is not in any way conceded] he is also a straw party for the many properties and pending sales Mr Stolipher has lined up once this grossly inadequate industrial/commercial solar text amendment is, he hopes, rammed through this Commission. It's Mr Stolipher's own financial gain that hangs in the balance, not just Mr Dunn's.

2) Facts which form the basis of this Motion are set forth in paragraph 2 thereof. There are several things I should add, however.

a) I have photocopies from Mr Stolipher's website with Oakcrest Realty of his listings of two of the properties that I am reliably informed he, as agent, has under contract to Horus Renewables Corp of Sacramento, CA.

b) In addition, I have spoken with personnel in his Oakcrest office and have reliably confirmed the existence of those contracts.

c) Further, I have just learned from the Jefferson County Development Authority website that Mr Stolipher, apparently trading as Belmont West Properties [according to the Secretary of State's website, the LLC by the same name's charter was last revoked 11/1/16] has listed for sale a large number of contiguous farm properties in Kabletown Magisterial District totaling 1,805 ACRES awaiting the passage of the pending version of the text amendment, undoubtedly with much more substantial monetary rewards to Mr Stolipher. See also the Revised Generation Interconnection System Impact Study Report For PJM Generation Interconnection Request Queue Position AD2-158 "Old Chapel-Millville 138 KJV" 46.5 MW Capacity/ 77.5 MW Energy (February 2020, Revision 2) previously provided to this Commission by Mr Rockwell.

d) As stated in my Motion, Mr Stolipher has aggressively promoted this text amendment, including voting, seconding motions, etc. He has violated his oath of office. This text amendment proposal does nothing to protect the citizens of this County who are taxpayers & those nearby that would become a massive industrial/commercial solar complex on prime agricultural land in this county.

3) I have made two motions to the Planning Commission during the pendency of the matter below, for Mr Stolipher to be recused from participating in matters pertaining to ZTA 19-03. Both Mr Stolipher & the Commission refused these motions.

a) Mr Stolipher says that he secured a letter from the State Ethics Commission that he could participate in ZTA 19-03, yet he's NEVER produced such an alleged letter so the alleged assessment & the purported facts given to the Commission could be determined to be accurate & complete. Moreover, there is no Advisory Opinion on the Commission's website on this subject matter that appears to have been generated by him.

b) More importantly and as confirmed by a staff attorney at the Commission, the Legislature has NEVER given the Ethics Commission jurisdiction for enforcement of W Va Code 8A-2-4(e) & (f). Thus, any alleged letter Mr Stolipher claims to have received from the Ethics Commission bears no relevance to this Motion.

c) Finally, letter or no letter, Mr Stolipher's stunning lack of integrity in failing to disqualify himself voluntarily when he clearly has a substantial financial interest in the subject matter & the outcome, is appalling. His conduct in this matter requires further investigation by this Commission & his removal from the Planning Commission.

Ex B 9/1/20

4) Under County Ordinance 2007-1, there are two methods to initiate removal proceedings against a public official, one by a petition of at least 50 citizens and one by this Commission [see County Ordinance 2007-1, Section 3]. Consistent with this Commission's DUTY to prevent the abuse by a public official of their position for monetary gain, this Commission should IMMEDIATELY initiate an investigation and proceedings for removal of Mr Stolipher.

Respectfully,
Robert D. Aitcheson

Ex B p 2 of 2

Property Report

Occupation Data

Demographics

Labor Force


Consumer Expenditures





Charles Town Properties Site

Charles Town, West Virginia 25414 - View Charles Town Profile

 PDF

 Print

 Share

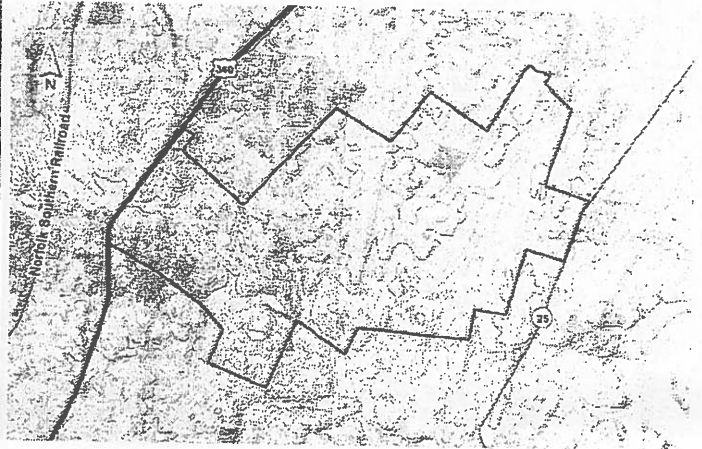
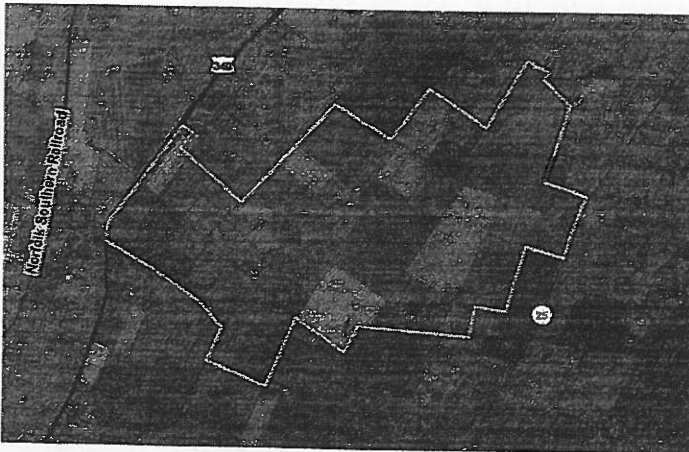
 Documents

 Virtual Tour

 Map View

 Street View

 3D Rotation



Property Details

Street Address: Route 340 and Roper Rd S

City: Charles Town (View City Profile)

County: Jefferson County (View County Profile)

Zip Code: 25414

Type of space: Vacant Land

Min Size: 1 acres

Max Size: 1,805 acres

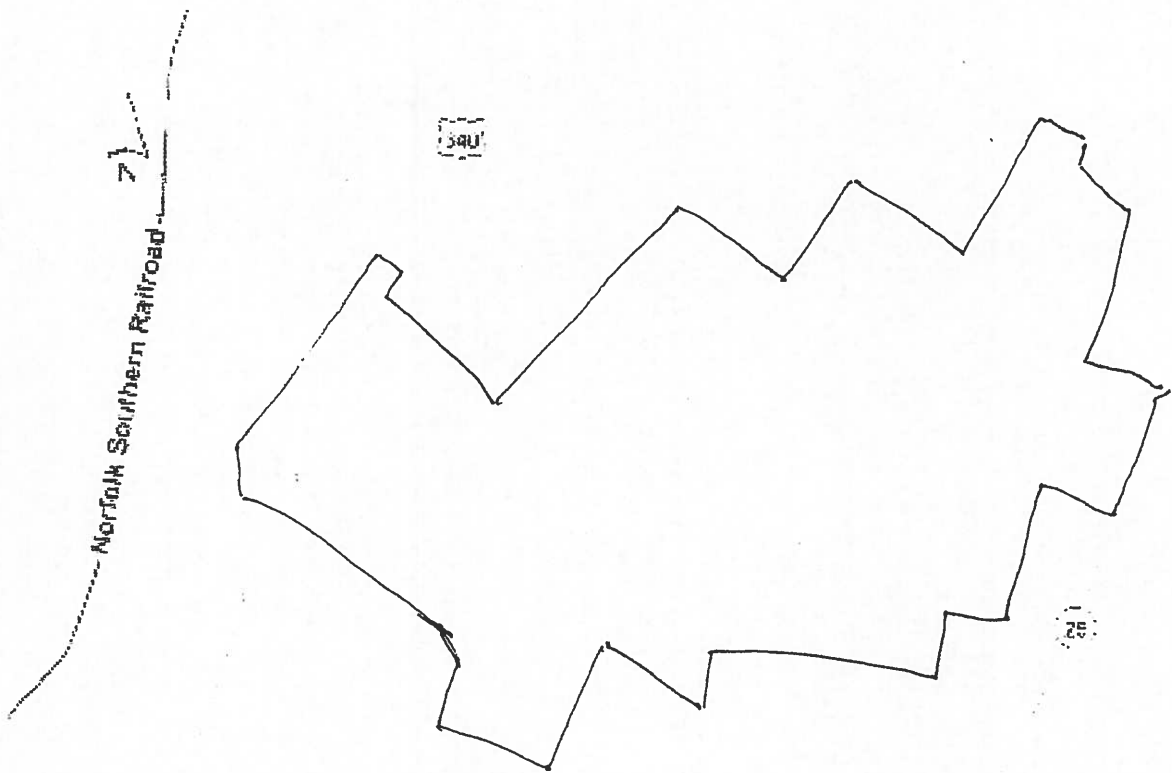
Last Updated: 6/2/2020

Saved

Map

Contact

Exc pt 1 of 5



1. Mickey Reva N & G Warren	06 4000300000000	111.15 acres w/house	} only 100 acres
2. " "	06 4000300010000	79.2 acres w/house	
3. Carl Sarah F Family Partnership	06 110006	115.79 ac	
4. " "	06 1180060001	25.14 ac	
5. Zigler Inc	06 110007	57.28 ac w/house	
6. Stolipker Douglas & Nancy C	06 1100050001	5 ac w/house	
7. Zigler Inc	06 40009	349.90 ac w/house	
8. Hough T Todd & Susan B TR	06 50001	204.58 ac w/house	
9. Rissler Marjories	06 50006	45.12 ac	
10. Rissler William G	06 50005	47.52 ac w/house	
11. Nemeck Michael A & Wilma J	06 500050002	27. ac w/house 2010	
12. Rissler Dorothy D	06 500050001	24 ac	
13. Hough Charles E & Marie S-Life	06 110008	118 ac w/house 2014	
14. Hough Clarence & Donna S	06 1100070001	107.16 ac	
15. Bulls skin LLC	06 110009	133.3/4 ac w/house	
16. Casey Family Land Trust	06 50002	144.72 ac w/house 2002	
17. Boyer James A	06 500070003	32.1/2 ac	
18. Hough T Todd & Susan B	06 500070001	76.4/5 ac	
19. Bulls skin LLC	06 10007	11.07 ac	
20. " "	06 100006	236. ac w/house	
1. Dunn Stanley W Jr & Katherine B	06 100005	366.62 ac w/house 1965	
2. Stolipher Nancy C	06 110005	55 ac	

Exc
P 2 of 5

Land Owners numbered by map.

	District	Map #	Parcel#	Acreage
1. Zigler	2	16	12.8	58
2. Crawford (sold)	2	16	12.9	38.2
3. Rissler	2	16	18	235
4. Zigler	6	4	9	349.9
5. Hough	6	5	1	204.57
6. Metz	6	11	6	115.79
7. Zigler	6	11	7	57.3
8. Metz	6	11	6.1	25.14
9. Mickey	6	4	3	100
10. Stolipher	6	11	2.2	160
11. Stolipher	6	11	5.1	5
12A. Hough	6	11	7.1	95
12B. Hough	6	11	7.1	133
13. Stolipher	6	11	5	112
14. Rissler	6	5	6	45
15. _____				
16. Zigler	6	4	9	1
17. Rissler	6	5	5	30
18. Burns Farm Limited Partnership6		-	-	36

total 1,801

Ex 3 of 5



West Virginia E-Filing Notice

CC-19-2020-C-125

Judge: Debra McLaughlin

To: Nathan P. Cochran
ncochran@jeffersoncountywv.org

NOTICE OF FILING

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA
Robert D. and Wanda C. Aitcheson, as Trustees of The Aitcheson Family Trust, Trustee v. County
Commission of Jefferson County, WV
CC-19-2020-C-125

The following order - case - final was FILED on 12/10/2020 4:55:13 PM

Notice Date: 12/10/2020 4:55:13 PM

Laura Storm
CLERK OF THE CIRCUIT
Jefferson
119 N George Street
CHARLES TOWN, WV 25414

(304) 728-3231
circuitclerk@jeffersoncountywv.org

In the Circuit Court of Jefferson County, West Virginia

Robert D. and Wanda C. Aitcheson, as)
Trustees of The Aitcheson Family Trust,)
Trustee,)
The Fields, LLC,)
Zachary D. and Penny Curry,)
Christopher & Susan Burke,)
Aiman S. Jalil ET AL,)
Plaintiffs,)
)
vs.))
)
County Commission of Jefferson)
County, WV,)
Defendant)
)

Case No. CC-19-2020-C-125

AGREED ORDER RESOLVING CIVIL ACTIONS

ON A PRIOR DAY CAME Robert D. Aitcheson and Wanda C. Aitcheson, as Trustees of The Aitcheson Family Trust Under Agreement Dated February 15, 2012; The Fields, LLC, a West Virginia limited liability company; Zachary D. Curry and Penny L. Curry, husband and wife; Christopher David Burke and Susan Leith Burke, husband and wife; Aiman S. Jalil; Gavin A. Perry; and Douglas S. Rockwell, Plaintiffs/Petitioners (hereinafter collectively referred to as “Petitioners”), by counsel, Kathy M. Santa Barbara, Esquire and The Law Office of Kathy M. Santa Barbara, PLLC, and also came the Jefferson County Commission (“JC Commission”), by counsel, William F. Rohrbaugh, Esquire, and advised the Court that all matters in controversy in these civil actions have been fully and finally resolved, and requested the entry by this Court of an Order. The parties hereto agree as follows:

1. At its meeting on October 1, 2020, the JC Commission adopted a proposed text amendment to the Jefferson County Zoning and Land Development Ordinance (“Zoning Ordinance”) to incorporate provisions to allow solar energy facilities as a Principle Permitted Use in eight (8) of the twelve (12) Jefferson County zoning districts, including the Rural District

(the “Text Amendment”), which Text Amendment was to have become effective on November 16, 2020.

2. The parties hereto agree that the JC Commission’s approval of Text Amendment ZTA19-03 – Solar Energy Facilities shall be vacated, and the JC Commission shall return the Text Amendment to the Jefferson County Planning Commission for further review, consideration and public hearing, if required by law.

3. The parties hereto agree that this civil action shall be dismissed, without prejudice.

4. The JC Commission, at a meeting held on December 10, 2020, did review the within proposed agreed order and thereafter did vote to authorize its counsel, William F. Rohrbaugh, Esquire, to execute the same on its behalf.

In consideration of all of the foregoing, and the parties having agreed to the same, it is accordingly,

ORDERED that the JC Commission’s October 1, 2020 approval of Text Amendment ZTA19-03 – Solar Energy Facilities be, and it hereby is, vacated; and it is further,

ORDERED that the JC Commission shall return said Text Amendment to the Jefferson County Planning Commission for further review, consideration and public hearing, if required by law; and it is further,

ORDERED that this civil action shall be, and it hereby is, dismissed, without prejudice.

There being nothing further to be done in the within civil actions, the Clerk shall retire the same from the active docket of the Court and place the same among causes ended.

Submitted by and agreed to:

/s/ Kathy M. Santa Barbara
Kathy M. Santa Barbara, WVSB #5960
THE LAW OFFICE OF KATHY M.
SANTA BARBARA, PLLC
Counsel for Petitioners/Plaintiffs

Seen and agreed to:

/s/ William F. Rohrbaugh

William F. Rohrbaugh, WVSB #5048
Counsel for Respondent/Defendant

/s/ Debra McLaughlin

Circuit Court Judge
23rd Judicial Circuit

Note: The electronic signature on this order can be verified using the reference code that appears in the upper-left corner of the first page. Visit www.courtswv.gov/e-file/ for more details.

Alexandra Beaulieu

From: Sandra McDonald
Sent: Thursday, September 10, 2020 12:31 PM
To: 'Jane Tabb'; 'Josh Compton'; 'Patsy Noland (patsynol@gmail.com)'; 'Caleb Hudson';
Ralph Lorenzetti; Ralph Lorenzetti
Cc: Jessica Carroll; Alexandra Beaulieu
Subject: Opposition to proposed solar facility
Attachments: Scanned Hunter Building Commission.pdf

Commissioners-

Mr. Aitcheson dropped off a notebook with this in it for each of you. I'll place the notebook in your mailbox in the hallway.

Thanks,

Sandy

-----Original Message-----

From: Helpdesk@jeffersoncountywv.org [mailto:Helpdesk@jeffersoncountywv.org]
Sent: Thursday, September 10, 2020 12:31 PM
To: Sandra McDonald <Sandy@jeffersoncountywv.org>
Subject: Scanned Hunter Building Commission

This is scanned and sent to you from Hunter Building Commission Offices

Attachment File Type: pdf, Multi-Page

multifunction device Location: Hunter House - 1st Floor - Front Offices Area
Device Name: XRX9C934E1DB4F9

Contact Commission Offices
Hunter Building

Included at the request of Robert Aitcheson RE: ZTA19-03

Opposition to Proposed
Utility-Scale Solar Facility
Text Amendment

Robert D. Aitcheson

September 11, 2020

To: Jefferson County Commission
From: Robert D. Aitcheson
Re: Proposed Text Amendment - Utility Scale Solar Facilities [ZTA19-03]

1. Enclosed you will find the following:

Tab 1 - Spotsylvania County Virginia Board of Supervisors Resolution No. 2019-37 with Conditions (23 pages)

Tab 2 - Culpeper County Virginia Utility Scale Solar Facility Development Policy dated October 1, 2019 (16 pages)

Tab 3 Jefferson County Development Authority letter to this Commission dated August 19, 2020, Regarding Large Scale Solar Energy Facilities (3 pages)

2. Spotsylvania County, Virginia

After detailed analysis and lengthy public hearings, and contrary to the recommendations of its Planning Commission, the Board of Supervisors approved by a 6-1 vote a 6,350 acre utility- scale solar facility, the largest on the East Coast. Three parcels of land make up the total acreage, 5,200 acres, 905 acres and 245 acres. Only the Resolution for the 245 acre parcel is enclosed here, but **the conditions for each parcel are the same, regardless of the acreage.**

Please note the very detailed conditions upon which this project was approved, including the bonding, setback and buffer requirements. Bonding is not just to cover decommissioning cost, but compliance in **all** phases of the project. Obviously, a great deal of time and energy went into the fashioning of all these exacting conditions.

In talking with Wanda Parrish, the Spotsylvania County Director of Planning, she indicated that she regrets they did not spend more time on the final buffer and setback requirements. She said they started out with a 400 foot setback all the way around and ended up with a “rolling” setback which varies at different locations around the perimeter. She indicated to me that this arrangement is not optimal.

3. Culpeper County, Virginia

The enclosed policy was approved by the Board of Supervisors, pending the drafting of a local ordinance, which I am informed is in process. Once again, please note the detailed requirements for any applicant seeking to construct a utility-scale facility in Culpeper County.

4. Jefferson County Development Authority

Even though the Commission has already received it, this letter is included here for emphasis. Specifically, the Commission should take note that the **“American Planning Association has prepared a model zoning ordinance in its PAS Memo, Sept. 1/Oct 2019, Planning for Utility-Scale Solar Energy Facilities” that includes reasonable conditions based on the experience of several Virginia jurisdictions**”. (Emphasis added)
The JCDA did the homework that our Planning Commission should have done, rather than ramming through a proposal wholly inadequate to protect the citizens of this County from the shell companies of out-of-state investors and their local minions.

The American Planning Association has made it easy for this Commission to adopt a legitimate, effective ordinance/text amendment with ample protections for the taxpaying citizens of our County. The drafting work is done for you.

5. Conditional Use Permit (CUP) vs. Principal Permitted Use (PPU)

As you know, designating utility-scale solar facilities as a PPU in the Rural Zoning District or **any** zoning district results in (a) the citizens affected by the project having **no input** and (b) the project being totally **unregulated** at the local level.

Moreover, every nearby jurisdiction that has considered this issue has opted to require a CUP or “Special Use Permit” as some jurisdictions call it. Among those counties are:

Virginia

Clarke County
Frederick County
Spotsylvania County
Culpeper County
Loudoun County

Maryland

Howard County
Frederick County
Washington County

There is simply no way to justify trying to re-invent the wheel in this instance at the expense of the taxpaying citizens who would be potentially negatively impacted by such projects. In addition to requiring a CUP, this Commission needs to adopt strict standards to which the Board of Zoning Appeals must adhere in its consideration of any such projects.

6. Bonding

As you can see from the enclosed, the necessary bonding requirements cover much more than decommissioning. Also included are the construction phase, operations, monitoring and maintenance. It is required that the bonds have sufficient, financially sound sureties, such as an A++ rated bonding company insurer, cash, a letter of credit, etc. Also note that the compliance with the bonds is the responsibility of the property owner and lessee, if the property is leased, the developer, all contractors and all successors and assigns. Finally, the sufficiency of the amount of the bonds are to be reviewed periodically, i.e. every 2 ½ to 3 years. These performance bonds are crucial in protecting the citizens of this County and insuring compliance with all conditions.

7. In addition to the failure of the proposed text amendment to adopt the CUP methodology and the failure to require adequate bonding and financial surety, I oppose the document under consideration because it:

fails to establish strict standards of review for the Board of Zoning Appeals in a CUP process, recognizing that the BZA has the authority to grant variances;

fails to limit the portion or percentage of any parcel in the Rural District, in existence as of July 1, 2020, which may be used for such solar panel facilities;

fails, alternatively, to provide a soils analysis basis (as under the former LEESA system) to determine what rural agricultural land may be used for a solar facility;

fails to require proximity to an existing transfer station and transmission lines;

fails to base our ordinance on the model ordinance of the American Planning Association consistent with the recommendations of our own JCDA.

8. Conclusion

Notwithstanding the vigorous and partisan advocacy of certain of the Planning Commission and staff, it should be readily apparent that inadequate consideration has been given by the Planning Commission to this proposal. It should be obvious to even a casual observer that there is a lot more thought and work to be done before a text amendment can be adopted by this Commission. Rather than taking the chance on sending it back to the Planning Commission and getting another shoddy work product, you should instruct legal counsel to prepare an ordinance similar to the American Planning Association's model zoning ordinance in its PAS Memo, Sept./Oct. 2019, "Planning for Utility-Scale Solar Energy Facilities" for consideration by this Commission in lieu of what has been presented.



Robert D. Atcheson

County of Spotsylvania

Founded 1721



Board of Supervisors
GREG BENTON
KEVIN W. MARSHALL
TIMOTHY J. McLAUGHLIN
DAVID ROSS
GARY F. SKINNER
PAUL D. TRAMPE
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Service, Integrity, Pride

At a meeting of the Spotsylvania County Board of Supervisors held on April 11, 2019, on a motion by Mr. Benton and passed 6 to 1 with Mr. Ross opposed, the Board adopted the following resolution:

RESOLUTION NO. 2019-37

Special Use Permit SUP18-0002

RiverOak Timberland Investments, LLC ("Owner") (Sustainable Property Holdings, LLC ("Applicant") - sPower Solar Energy Facility Site B):

WHEREAS, the Owner, through the Applicant, requests Special Use Permit approval to develop a 30 MW solar energy facility on an Agricultural 3 (A-3) zoned and unaddressed property constituting a site of approximately 245 acres. The property is located in western Spotsylvania County approximately 650 feet south of the intersection of W. Catharpin Road and Post Oak Road. The property is located outside of the Primary Development Boundary. The property is identified for Rural Residential development on the Future Land Use Map of the Comprehensive Plan. Tax Parcel 28-A-58. Livingston Voting District; and

WHEREAS, staff has reviewed the subject application and recommends approval as stated in the staff report and the executive summary; and

WHEREAS, the Spotsylvania County Planning Commission held a public hearing on December 19, 2018, duly advertised in a local newspaper for a period of two weeks, and interested citizens were given an opportunity to be heard; and

WHEREAS, the Spotsylvania County Planning Commission voted to postpone the subject case to January 2, 2019 to provide an opportunity for the Applicant to supply four plans recommended by staff for incorporation as conditions and to allow the Planning Commissioners additional time to review the application and consider public hearing input, with a vote of 5-2; and

WHEREAS, the Spotsylvania County Planning Commission voted to integrate condition comments and changes from SUP18-0001 into the subject case's conditions, as applicable, with a vote of 5-2; and

WHEREAS, on January 2, 2019, the Spotsylvania County Planning Commission voted to postpone the vote on the subject case to January 16, 2019 to allow staff time to address comments from the Planning Commission, with a vote of 5-2; and

WHEREAS, the Spotsylvania County Planning Commission recommended approval with a vote of 4-3; and

WHEREAS, the Spotsylvania County Board of Supervisors held a public hearing on February 26, 2019, duly advertised in a local newspaper for a period of two weeks, and interested citizens were given an opportunity to be heard; and

WHEREAS, the Spotsylvania County Board of Supervisors considered the Special Use Permit request in accordance with Sec. 23-4.5.7, Standards of Review, and finds that the application with the recommended conditions satisfies the following standards:

1. That the proposed use is in accord with the comprehensive plan and other official plans adopted by the county;
2. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
3. That the proposed use will not hinder or discourage the appropriate development and use of adjacent land and buildings or impair the value thereof;
4. That the proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use;
5. That the proposed use will not be detrimental to the public welfare or injurious to property or improvements within the neighborhood;
6. That the proposed use is appropriately located with respect to transportation facilities, water supply, wastewater treatment, fire and police protection, waste disposal, and similar facilities;
7. That the proposed use will not cause undue traffic congestion or create a traffic hazard; and
8. That the proposed use will have no unduly adverse impact on environmental or natural resources.

WHEREAS, general welfare and good zoning practice are served by approval of the Special Use Permit application;

NOW, THEREFORE, BE IT RESOLVED that the Spotsylvania County Board of Supervisors does hereby approve SUP18-0002 Sustainable Property Holdings, LLC - sPower Solar Energy Facility Site B with the conditions listed below:

A. General:

1. The solar energy facility ("Facility") to be developed on current Tax Parcel 28-A-58 ("Property") pursuant to special use permit SUP18-0002 ("Special Use Permit"), shall be developed in conformance with the Generalized Development Plan titled "Generalized Development Plans Spotsylvania Solar Energy Center B Special Use Permit—SUP 18-0002 Livingston Magisterial District Spotsylvania County, VA", as last revised November 20, 2018 ("GDP") which is attached hereto and incorporated herein by reference. To the extent that the conditions herein are contrary to the GDP, the conditions herein shall supersede the GDP and control. SUP18-0002, along with SUP18-0001 and SUP18-0003, constitute the Spotsylvania Solar Energy Center ("Project"). The verbs "shall" and "must" as used throughout this Special Use Permit denote a mandatory act or requirement.
2. The Facility shall not be designed, constructed, or operated in any configuration or makeup of panels intended to allow the Project to generate greater than five hundred megawatts (500 MW) of power.
3. This Special Use Permit is issued to the owners of the Property and shall run with the land unless and until this Special Use Permit is revoked, lapses, expires, or is voided. The applicant acting on behalf of the owners of the Property in applying for this Special Use Permit is Sustainable Property Holdings, LLC. These conditions shall bind the applicant, any and all owners, occupants, and users of the Property, jointly and severally, which shall also be referred to at times collectively as the "Operator".
4. The Operator shall secure and at all times maintain public liability insurance for personal injuries, death, and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in the minimum amounts set forth below, and shall include the County as co-insured:
 - a. Commercial General Liability covering personal injuries, death and property damage: \$2,000,000 per occurrence/ \$6,000,000 aggregate;
 - b. Automobile Coverage: \$1,000,000 per occurrence;
 - c. Excess Liability: \$5,000,000;
 - d. Workers Compensation and Employers Liability Insurance in accordance with applicable statutory amounts.
5. The Operator's Commercial General liability insurance policy and excess liability policy shall specifically include the County and its officers, boards, employees, volunteers, attorneys, agents, and consultants as additional insureds.
6. The Operator's insurance policies shall be issued by an insurance company licensed to do business in the State and with an AM Best's rating of at least A.
7. The Operator shall provide the Zoning Administrator Certificates of Insurance annually, and the amounts of required insurance shall be reviewed every two years for adequacy of coverage by the County's carrier. As determined solely by the County's insurance carrier, insurance premiums or coverage shall be increased when necessary to protect the County.

8. The Operator's insurance policies shall contain an endorsement obligating the insurance company to furnish the County with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
9. The Operator's insurance renewal or replacement policies or certificates shall be delivered to the Zoning Administrator at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
10. Prior to the issuance of a land-disturbing permit, the holder of the Special Use Permit shall deliver to the Zoning Administrator a copy of each of the policies or certificates representing the insurance in the required amounts.
11. Access to the Property and the Facility for inspections or monitoring by the County, including its employees, agents and representatives, shall be provided to any of these parties within twenty-four (24) hours of the date and time written notice is provided to the Operator.
12. The Operator shall fully comply with all state and federal laws and regulations that apply to the construction or maintenance of the Project or use of the Property.
13. The storage on the Property of power generated by the Facility is prohibited.
14. Any batteries stored or utilized on the Property during the operation of the Facility shall be for the operation of vehicles or maintenance equipment on the Property, for backup support during power outages to ensure the safety, security, and continued monitoring of the Facility and shall not be used to store power for transmission to the power grid. Any batteries stored on the Property shall be stored indoors on an impervious surface and any batteries stored or utilized on the Property shall be removed from the Property and disposed of safely at the first sign of damage, leakage, or corrosion.
15. The use of biosolids on the Property is prohibited.
16. Photovoltaic panels manufactured using the GenX chemical are prohibited on the Property.
17. Photovoltaic panels containing Cadmium Telluride, also referred to as "Cad Tel", shall not be used on the Property in an amount which would cause the total number of panels containing Cadmium Telluride used in the Project to exceed thirty percent (30%) of the total panels used in the Project.
18. Inverters and solar panels, measured from the grade of the ground on which the structures sit to their highest possible point, shall not exceed a height of fifteen (15) feet.
19. After construction is complete and the Facility begins operating, lighting on the Property not included in or expressly exempted from the Spotsylvania County ordinances shall be located, screened or shielded so that adjacent residential lots and adjacent roads are not directly illuminated and shall not exceed 0.5 footcandles at the Property boundary.
20. Soil testing shall be performed in accordance with the "Proposed Soil Testing and Remediation Plan Operations Phase", dated December 13, 2018, incorporated by reference herein and attached hereto as "Exhibit A", and shall:

- a. Include sampling designed in accordance with the Environmental Protection Agency's "Guidance on Choosing a Sampling Design for Environmental Data Collection for Use in Developing a Quality Assurance Project Plan" Chapter 7.
 - b. Include the collection of samples at a frequency of at least 1 sample per 100 acres.
 - c. Include samples collected over a variety of site conditions. Samples shall:
 - 1. Be mapped to display the site's location and differentiate panels within proximity based on the panel's manufacturer and model.
 - 2. Include one sample collected from each side of each onsite stream or river at its most upstream and most downstream locations.
 - 3. Be analyzed for Cadmium Telluride and all metals identified in the "Guidance for Developing Ecological Soil Screening Levels (Eco-SSLs)" Attachment 1-4, Table 1.1.
 - 4. Be analyzed for type, acidity, and nutrient levels, including Nitrogen, Phosphorus, Potassium, Magnesium, Sulfur, and Calcium.
 - d. Include test reports provided to the Zoning Administrator prior to the issuance of a land-disturbing permit and every five (5) years thereafter which are accompanied by an executive summary of the results.
 - e. Include a test report provided to the Zoning Administrator prior to and immediately following decommissioning.
 - f. Include, as determined solely by the County, additional studies warranted by abnormal results, as determined solely by the County, to be performed by the Operator, at the Operator's cost, including but not limited to an Environmental Site Assessment, conducted in accordance with the applicable American Society for Testing and Materials, now known as ASTM International, standards and subsequent tests, as deemed necessary by the County or the Virginia Department of Environmental Quality ("VDEQ"). Results of all required testing shall be shared with the County free of charge and without demand therefor.
 - g. Comply with the conditions, which shall supersede and control, to the extent the "Proposed Soil Testing and Remediation Plan Operations Phase", dated December 13, 2018 is contrary to the conditions herein, as determined solely by the County.
21. A sealed dry-waste container shall be maintained at the Facility for the disposal of any damaged solar panels.
22. When the Facility reaches the end of its operational life, or its use is otherwise discontinued or substantially reduced, the Operator shall decommission it according to the following requirements, as well as those found in the Spotsylvania County Code of Ordinances, Section 23-4.5.7, all of which requirements supersede the decommissioning plan submitted by the Operator, and shall bear all costs of decommissioning. To the extent these conditions are more restrictive or intense than

those in Section 23-4.5.7, as determined solely by the County, these conditions shall control:

- a. The decommissioning of the Facility must include the complete removal of the Facility, including, but not limited to, all of the facilities and structures above and below ground on the Property related in any way to the collection, conduction, or storage of solar energy and their appurtenances, installed at any time during the construction or operation of the Facility. This must include, at least, the removal from the Property of all of the following: solar panels, panel trackers, anchors, supports, footers, mounts, inverters, inverter buildings, electrical conductors, electrical cables, substation components, internal fencing, structures, and all other equipment and structures on the Property unless otherwise limited herein.
- b. The decommissioning must also include at least the following: the Facility will be disconnected from the utility power grid; solar panels must be disconnected from the on-site electrical system; all work must be undertaken with conventional construction equipment; all materials must be disposed of safely; solar panels must be removed from their support frames and packaged in a manner that ensures that they sustain no damage during their disconnection and removal from the Property; all hazardous materials must be removed and disposed of or recycled in accordance with all applicable laws and regulations; all concrete must be removed and recycled offsite by a recycling facility or used onsite as fill material as part of a stabilization or regrading plan which meets all applicable laws and regulations as determined solely by the Zoning Administrator or Erosion and Sediment Control/Virginia Stormwater Management Program Administrator ("Program Administrator"), as applicable; and grading must be minimized to the maximum extent possible under all applicable laws and regulations as determined solely by the Program Administrator or Zoning Administrator, as applicable. To the extent possible, all solar panels and equipment must be delivered to a designated recycling facility for recycling and material re-use; all electrical interconnection, transmission, and distribution lines and cables must be recycled offsite at a recycling facility; all steel and metal including, but not limited to, support posts and internal fencing must be recycled offsite by a recycling facility; and electrical and electronic devices including, but not limited to, inverters, transformers, panels, support structure, lighting fixtures, and their respective shelters must be recycled offsite by a recycling facility.
- c. After removal of the above, the ground must be restored to the original topography prior to the beginning of the decommissioning. In other words, holes, ditches, ruts, and the like created by removing underground conduit, support footers, or any other decommissioning activity must be filled in to restore the topography of the Property and allow for stabilization.
- d. At the outset of the decommissioning, the Operator shall produce to the Zoning Administrator an inventory of all the materials on the Property which will be removed or are otherwise subject to the provisions herein. At the completion of the decommissioning, the Operator shall produce to the Zoning Administrator a report detailing compliance with all of the requirements

herein including, but not limited to, details of the removal and disposition of materials required herein, including an explanation of why any material was not recycled. This detailed report must explain how each requirement related to the decommissioning set out herein has been met and must be certified by a third party engineer licensed in Virginia.

- e. The decommissioning of the Facility may include, at the discretion of the person depicted in the land records of Spotsylvania County as of the date of completion of decommissioning as the Property owner, the removal of perimeter fencing. All fencing internal to the perimeter fencing must be removed as set out above. The decommissioning must not include the following: removal of stream crossings, de-compacting or removing gravel roads or paths established for the operation of the Facility, or removal of permanent stormwater management features.
- f. Further, the Property must be restored to the agricultural condition of the Property as of the date of approval of this Special Use Permit with the additional requirement that the Property must be stabilized so as to adequately control, prevent, and minimize, any and all erosion and sediment runoff. Stabilization must be completed according to all standards established under applicable laws and regulations as determined by the Program Administrator or Zoning Administrator, as applicable. Prior to stabilization, all soils compacted by decommissioning work or by construction or operation of the Facility, except gravel roads and paths established for the operation of the Facility, shall be de-compacted, scarified, and restored six (6) inches in depth.
- g. All onsite decommissioning work must be performed only between the hours of 7:00 a.m. and 5:00 p.m. on Monday through Friday.
- h. County staff shall be granted access to the Property on twenty-four (24) hour prior notice to monitor all decommissioning work.
- i. The Zoning Administrator must be provided a monthly report detailing the decommissioning work performed and progress toward completion.
- j. The Operator, throughout its operation until the decommissioning is complete, shall guarantee the decommissioning and stabilization of the Property. The Operator shall provide and maintain for the County's benefit surety for performance of the decommissioning equal to the estimated cost of decommissioning the Facility on the Property as set forth herein. Such surety must be irrevocable and must be maintained in full as set forth herein until the Facility decommissioning has been completed as required herein. The highest total estimated cost must be calculated by the Operator and include, at least, the following delineated by line item:
 - i. Total cost related to complying with all the decommissioning work required by this Special Use Permit.
 - ii. Costs related to creating, maintaining, and re-stabilizing all construction entrances identified on the Property, with a separate line item for each such construction entrance.
 - iii. Costs for mobilization.
 - iv. Costs for removal and disposal of all materials set forth above line itemed by category of facility. For example, "cost to remove conduit,"

- “cost to remove panels,” “cost to remove panel support structure”
“cost to remove inverters,” etc. Such costs must not be reduced by any
estimated credits or setoffs for recycling, reuse, or otherwise.
- v. Costs to de-compact, scarify, and restore all soils required herein.
 - vi. Costs to stabilize land disturbed by the decommissioning work and as
otherwise required herein.
 - vii. Costs to meet the recycling requirements herein excluding any
anticipated credits or setoff generated by the recycling.
 - viii. Costs of trucking, hauling, and equipment use.
 - ix. Costs for soil testing pursuant to Condition A.20.e set out herein.
 - x. Costs of all labor and estimated man-hours to perform the
decommissioning work required herein.
 - xi. Costs must assume an increase in labor and equipment costs of two
percent (2%) a year every year until the completion of
decommissioning and must assume commencement of
decommissioning after year thirty (30) of operation.
 - xii. Costs for contingencies and for weather delay.
 - xiii. Costs for insurance.
 - xiv. Costs associated with transportation traffic planning, traffic mitigation,
and road restoration on all roads utilized for decommissioning within
Spotsylvania County for the duration of the impact of
decommissioning on Spotsylvania County roadways.
 - xv. The certification of a third party engineer licensed in Virginia
affirming that the Operator’s highest total cost estimate is accurate.
- k. The highest total estimated cost may be reduced by any estimated funds
generated from resale or recycling of the removed materials, so long as such
funds are of a type that the County or any third party would generate in the
event the Operator fails or refuses to decommission the Facility. Each
reduction shall be listed as a separate line item in the estimated cost. Any
reductions shall be certified by a third-party engineer licensed in Virginia that
they are accurate.
- l. Prior to the issuance of a land-disturbing permit to construct the Facility and
in no case later than three (3) months after approval of this Special Use
Permit, the Operator shall produce to the County an estimate of the above
costs by line item. The amount of the estimated costs on which the surety
shall be based shall be no less than the Ten Thousand Nine Hundred Fifty-
Seven Dollars (\$10,957.00) per disturbed acre of land already estimated in the
“Project Decommissioning and Site Restoration Cost Estimate” attached
hereto as “Exhibit G” as provided by the applicant, as reduced by any
applicable recycling credits allowed for herein. The estimate shall be signed
and sealed by a third party engineer licensed in Virginia and shall include a
statement by the engineer that “The total estimated cost provides for the
complete decommissioning of the Facility and stabilization of the Property as
defined and required in SUP18-0002.”

- m. The Operator must provide surety to guarantee that the decommissioning work can be performed by the County if not performed by the Operator as required herein. Surety must be provided by a cash bond deposited with the County, by an irrevocable letter of credit provided for the County's benefit, or by a surety bond listing the County as the obligee. Cash bond shall be in the form of a cashier's check or certified check deposited with the County which has cleared all issuing institutions. Any interest accruing on such funds shall be added to the total amount and retained by the County for decommissioning. This deposit shall be accompanied by a letter agreement, acceptable to, and issued by, the Zoning Administrator, confirming that the cash deposit is to be held by the County to guarantee the performance of the decommissioning work required herein and should the Facility be abandoned, or should the decommissioning work not be diligently undertaken or performed according to the requirements herein, or should this Special Use Permit be revoked, lapse, expire, or be voided, all as determined solely by the County, the County may expend the deposited funds to undertake the decommissioning work required herein without more after providing written notice to the person identified as owner of the Property in the land records of Spotsylvania County as of the date of the notice. Within six (6) months of the completion of the decommissioning work required herein by a person or entity other than the County or a contractor engaged by the County, as confirmed by the Zoning Administrator, the cash bond and accrued interest, less any amounts expended by the County as allowed for herein, shall be released to the person identified as owner of the Property in the land records of Spotsylvania County as of the date of the completed decommissioning or as otherwise directed by that owner of the Property.
- n. An irrevocable letter of credit shall mean an instrument provided by a lending institution guaranteeing payment to the County within seventy-two (72) hours of the County's written notice to the institution that the Facility has been abandoned or the decommissioning work has not been diligently undertaken or performed according to the requirements herein and demand to the institution for the funds, without more. This letter of credit shall have no expiration date or required renewal and shall remain in effect for the benefit of the County and shall under no circumstances be withdrawn before the decommissioning work required herein is completed or the amount guaranteed has been fully drawn by the County. The letter of credit shall require that the County be notified six (6) months prior to any cancellation or alteration of the letter of credit. Should the County receive notice that the letter of credit will be cancelled or otherwise become unavailable or decrease, or should this Special Use Permit be revoked, lapse, expire, or be voided, the County may, without more, and without notice to the Operator, immediately draw down the entirety of the letter of credit and convert the surety to a cash bond to be deposited with the County and subject to the terms herein; this shall be specifically reflected in the language of the irrevocable letter of credit. The County may expend the guaranteed funds without more to undertake the decommissioning work required herein after providing written notice to the

person identified as owner of the Property in the land records of Spotsylvania County as of the date of the notice. Within six (6) months following the completion of the decommissioning work required herein by a person or entity other than the County or a contractor engaged by the County, as confirmed by the Zoning Administrator, the letter of credit shall be released by the County.

- o. A surety bond shall mean a bond issued by a company with an AM Best rating of A++, that is Trcasury listed, and that is licensed to do business in the Commonwealth of Virginia. The surety bond shall list the County as an obligee and shall remain in effect for the benefit of the County and shall under no circumstances be withdrawn or cancelled before the decommissioning work required herein is completed or the amount guaranteed has been fully paid to the County. The surety bond shall require that the County be notified six (6) months prior to any cancellation or alteration of the bond. Should the County receive notice that the surety bond will be cancelled or otherwise become unavailable or decrease below the limits required herein, or should this Special Use Permit be revoked, lapse, expire, or be voided, the County may, without more, and without notice to the Operator, immediately file a claim, which the Oprcator shall not contest, for the entirety of the amount of the bond, the guarantor shall pay the amounts guaranteed and the County shall convert the surety to a cash bond to be deposited with the County and subject to the terms herein; this shall be specifically reflected in the language of the surety bond. The County may expend the guaranteed funds without more to undertake the decommissioning work required herein after providing written notice to the person identified as owner of the Property in the land records of Spotsylvania County as of the date of the notice. Within six (6) months following the completion of the decommissioning work required herein by a person or entity other than the County or a contractor engaged by the County, as confirmed by the Zoning Administrator, the surety bond shall be released by the County.
- p. The amount of the surety required shall escalate as follows. Beginning on the date on which the first land disturbing permit is issued for the Project (referred to in this subsection as the "Surety Date"), and for the next five (5) years, no surety shall be required. Beginning on the fifth anniversary of the Surety Date, and thereafter for years six (6) through ten (10) after the Surety Date, the Operator shall provide and maintain surety in an amount equal to 20% of the most recently estimated decommissioning costs. Beginning on the tenth anniversary of the Surety Date, and thereafter for years eleven (11) through fifteen (15) after the Surety Date, the Operator shall provide and maintain surety in an amount equal to 40% of the most recently estimated decommissioning costs. Beginning on the fifteenth anniversary of the Surety Date, and thereafter for years sixteen (16) through twenty (20) after the Surety Date, the Operator shall provide and maintain surety in an amount equal to 60% of the most recently estimated decommissioning costs. Beginning on the twentieth anniversary of the Surety Date, and for years twenty-one (21) through twenty-five (25) after the Surety Date, the Operator shall provide and

maintain surety in an amount equal to 80% of the most recently estimated decommissioning costs. Beginning on the twenty-fifth anniversary of the Surety Date, and for every year thereafter, the Operator shall provide surety in an amount equal to 100% of the estimated decommissioning costs. This escalation allowed herein shall not be interpreted to reduce the Operator's liability for decommissioning costs as set forth herein.

- q. The estimated costs and surety to meet the above requirements shall be reviewed by the Zoning Administrator who shall determine if the estimates adequately reflect the decommissioning costs and that the surety will guarantee performance. Should the Zoning Administrator determine that estimated costs and surety are insufficient, the Zoning Administrator shall determine adequate surety and communicate the deficiencies to the Operator who shall then provide the adequate surety prior to the issuance of any land-disturbing permit.
- r. Should this Special Use Permit be revoked, lapse, expire, or be voided, the County may immediately draw down all of the surety funds and convert them into a cash bond for the purposes of decommissioning as set forth hereunder. In such a case, no contractual agreement shall be required for the cash bond. This shall be reflected in the surety provided.
- s. The costs of decommissioning and any amount of required surety for decommissioning shall be reviewed by the Zoning Administrator every thirty (30) months on the anniversary of the date this Special Use Permit is approved and an updated decommissioning plan shall be submitted to the County prior to that date. The decommissioning surety shall be adjusted by the Operator, if necessary, to reflect the then current decommissioning cost as determined by the Zoning Administrator. When determining the amount of the total estimated decommissioning costs for the surety escalation in paragraph A.22.p, the Operator shall use the amount established by the Zoning Administrator's most recent review. The decommissioning requirements set out herein shall not be amended, reduced, or otherwise changed through any decommissioning plan required to be submitted herein, or any approval thereof, without first amending this Special Use Permit. The Zoning Administrator shall not approve any decommissioning plan, but shall only use it to determine the adequacy of the surety.
- t. Should the funds guaranteed for the decommissioning work as of the Decommissioning Commencement Date, as defined hereafter in paragraph A.22.x, for any reason not be sufficient for the County to complete the decommissioning work as allowed for herein, the Operator, which includes all owners, occupants, and users of the Property, jointly and severally, remain liable to the County for the difference between the guaranteed funds and the amounts required to decommission the Property and shall pay the difference to the County upon demand. The County shall not be liable to any party in any way for the funds drawn pursuant to the conditions set out herein and expended in relation to decommissioning.
- u. Should the Facility be abandoned, or should this Special Use Permit be revoked, lapse, expire, or be voided, or should the decommissioning work not

be diligently undertaken or performed according to the requirements herein as determined solely by the County and should the County draw down funds for the purpose of performing the decommissioning work herein and mobilize its contractors to perform the decommissioning work or otherwise incur liability to its contractors for the performance of the decommissioning work, the Operator shall have no right to perform the decommissioning work required herein unless specifically authorized by the County in a writing that confirms that the County has incurred no liability to any contractors to perform the work or that any such liability is transferrable as deemed acceptable by the County.

- v. The Operator shall immediately, upon written demand by the County or any person or entity authorized to act on behalf of the County, without more, grant or release to the County, or any person or entity authorized to act on behalf of the County, under terms deemed acceptable solely by the County, all necessary real property rights, personal property rights, either or both, as determined solely by the County, other than fee simple ownership or a leasehold interest of the real property, so that the County or any person or entity authorized to act on behalf of the County may undertake any decommissioning work required herein that has not otherwise been performed as required herein. This shall include, but not be limited to, releasing any interest in the personal property, facilities, fixtures, and structures which are to be removed and recycled, disposed or otherwise demolished.
- w. The amount of surety guaranteed herein shall not be reduced for any reason except as allowed for herein.
- x. Decommissioning shall begin immediately after the Facility has, for a period of three (3) months, ceased operating as a solar energy facility collecting and storing energy and then transferring and distributing it to the electrical grid (the "Decommissioning Commencement Date") and shall be diligently pursued, as determined solely by the County, and completed within one (1) year from the Decommissioning Commencement Date, providing a one-year decommissioning period. Prior to its expiration, the County may extend this one year decommissioning period by six (6) months if the County finds, in its sole discretion, that the Operator commenced decommissioning the Facility immediately after the Decommissioning Commencement Date, diligently and continuously worked to decommission the Facility throughout the decommissioning period, and is reasonably expected to complete decommissioning within the additional six-month period. This provision does not in any way limit the County's authority under Section 23-4.5.7.
- y. Periods during which the Facility is not operational for maintenance, repair, or due to catastrophic events beyond the Operator's control, during which the Operator works diligently to return the Facility to full operating status, shall not trigger the decommissioning requirement herein. The Operator must provide written notice and evidence of the above to the Zoning Administrator during the period in which the Facility is not fully operational. Such notice shall identify the last day on which the Facility was fully operational. Failure of the Operator to provide such written notice or evidence precludes it from

contesting the County's reasonable determination of the last day on which the Facility was fully operational. Regardless of the efforts of the Operator to return the Facility to full operational status, if the Property does not operate as a solar energy facility collecting and storing energy and then transferring and distributing it to the electrical grid after the catastrophic event, for a period of two (2) years, as determined by the County in its sole discretion, the Special Use Permit shall be void and the Operator shall commence decommissioning no later than the 730th day after the last day the Facility was fully operational.

- z. Any change of ownership, lessee, or party responsible for decommissioning of the Facility, or change in any part of the contact information, shall be reported to the Zoning Administrator within sixty (60) days of the change(s).
23. Prior to the issuance of a land-disturbing permit, the Operator shall request an informal review of the Facility by the Department of Defense's Siting Clearinghouse.

B. Construction:

1. The Operator shall comply with the "Spotsylvania Solar Energy Center Traffic Mitigation Plan" dated December 13, 2019, attached hereto as "Exhibit B" and incorporated by reference herein. To the extent that the "Spotsylvania Solar Energy Center Traffic Mitigation Plan" dated December 13, 2019 is contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
2. The Operator shall shuttle at least twenty percent (20%) of the workforce to and from the site during construction. Employees ride-sharing with a minimum of three (3) employees per vehicle may contribute to this requirement. Compliance with this requirement shall be demonstrated through the Operator's monthly provision to the Zoning Administrator of a transportation log which provides the following information: License Plate Number, Vehicle type (Oversize Load, heavy delivery, delivery, shuttle, employee vehicle carrying three (3) or more persons, employee vehicle carrying less than three (3) persons, or guest, which is someone not related to the Project or its construction), Entry time, and Exit time. "Oversize Load" shall be defined as any vehicle that requires a Hauling Permit from the Virginia Department Motor Vehicles.
3. No less than seventy percent (70%) of material deliveries shall occur between the hours of 9:00 a.m. and 2:45 p.m. from August 1 through May 31 during construction of the Facility. Compliance with this requirement shall be demonstrated through the Operator's monthly provision to the Zoning Administrator of a transportation log which provides the following information: License Plate Number, Vehicle type (Oversize Load (as defined in paragraph B.2), heavy delivery, delivery, shuttle, employee vehicle carrying three (3) or more persons, employee vehicle carrying less than three (3) persons, or guest, which is someone not related to the Project or its construction), Entry time, and Exit time.

4. The Operator shall fully fund any temporary or permanent signage as requested or required by the County Transportation Planner or the Virginia Department of Transportation (“VDOT”).
5. If required by the National Park Service, the Operator shall acquire and provide to the Zoning Administrator an approved permit from the National Park Service for commercial use of the intersection of Brock Road and Orange Plank Road and any other haul routes over affected National Park Service roads.
6. The Operator shall document the condition of all haul routes, including public and private roads, by video recordings which shall at a minimum record the full width of the roadway plus a five-(5) foot buffer. The videos shall be recorded prior to the issuance of a land-disturbing permit on a clear day and be organized by road segment.
7. Construction and operational traffic shall only use the access points to the Property identified on the GDP.
8. All construction activity on the Property shall be limited to the following:
 - a. All clearing, grading, and construction of the Property shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday and between 8:00 a.m. and 6:00 p.m. Saturday and Sunday. The act of replacing a broken panel on an already established array, even if located within the 400 acres of then currently disturbed land area, and the repair work required to be undertaken within twenty-four (24) hours as set out in Sections C.1.c, C.2.c, and C.3.c herein, shall be exempt from this provision;
 - b. Pile driving within 500 feet of any residential property boundary shall cease no later than 5:00 p.m. Monday through Saturday. Pile driving anywhere on the Property is prohibited on Sundays. These prohibitions shall not apply to the use of an auger; and
 - c. Oversize Load deliveries are prohibited on Orange Plank Road, West Catharpin Road, and Post Oak Road during prime school bus traffic between the hours of 6:10 a.m. and 8:40 a.m. and 2:45 p.m. and 4:30 p.m., or any amendment thereof due to inclement weather, during the Spotsylvania County Public Schools instructional year.
9. The Operator shall designate at least one public liaison and publicize a toll-free phone number and email address for communication with the liaison during construction. At a minimum, the information shall be published on the Operator’s website and provided to the County’s Public Information Officer for publication on the County’s website and other social media. The liaison shall act as a point of contact between citizens and construction crews. The liaison shall be available in person and by phone during active construction hours and shall respond to any questions related to the Facility or Property. The liaison role shall commence prior to issuance of a land-disturbing permit and remain a minimum of six (6) months following issuance of the final Certificate of Occupancy for the Facility. The liaison shall prepare a monthly report detailing the complaint, complaint date, resolution, and resolution date. The report shall be provided to the Zoning Administrator on the first business day of each

month throughout the construction period and an additional six (6) months following issuance of the final Certificate of Occupancy for the Facility.

10. Advance notice shall be mailed by first class mail to properties within 1,000 feet of a pile driving location no less than seven (7) days prior to the start of such activities and shall include the estimated start date, estimated end date, and the liaison's contact information. The notice and a list of recipient addresses shall also be mailed to the Zoning Administrator no less than seven (7) days prior to the start of such activities.
11. The following noise-reducing practices shall be followed to reduce construction noise:
 - a) Trucks and engine-powered equipment shall include mufflers and engine shrouds no less effective than those originally installed by the manufacturer;
 - b) Trucks and engine-powered equipment shall be maintained in proper tune according to manufacturers' specifications; and
 - c) The use of noise-producing signals, including horns, whistles, alarms, and bells shall be for safety warning purposes only.
12. Construction staging areas, parking areas, portable sanitation facilities, and solid waste collection areas shall be set back a minimum of 500 feet from any residential property boundary, and the area shall be shielded from view, and shall employ sound dampening shrouds, barriers, fencing, and/or berms to reduce noise impacts.
13. The Operator shall participate in a Joint Construction Traffic Reaction Team, which shall also include County Staff and should include VDOT, the Spotsylvania County Sheriff's Office, and the Virginia State Police to identify and expeditiously resolve or mitigate traffic issues that arise during the construction phase of the Facility. The Operator shall assist in resolving and implementing solutions to traffic issues.
14. Prior to issuance of a land disturbing permit, the Operator shall secure a VDOT Land Use Permit and post surety for the estimated cost of repairs to public roads based on an estimate reviewed and approved by the County's Transportation Planner and VDOT.
15. Any pavement damage to roads, including shoulders and aprons, attributable to construction of the Facility shall be repaired by the Operator within 120 days of issuance of the final Certificate of Occupancy for the Facility at the Operator's expense or within forty-eight (48) hours after receiving notice from the County's Transportation Planner that the damage has made a road unsafe.
16. Wildlife corridors shall be established through the preservation of on-site resource protection areas ("RPA") and the supplementation of raised wildlife-compatible fencing in order to establish a minimum of three (3) passages, each of which shall cross the entirety of the site to allow small wildlife unimpeded passage through the Facility, including:
 - a. Raised wildlife-compatible fencing shall be used to connect the two disconnected segments of Plentiful Creek RPA on GDP page EX 2-1.

C. Erosion and Sediment Control:

Unless specifically defined in this Section C, all terms and abbreviations used herein shall be as defined in Spotsylvania County Code of Ordinances, Chapters 6A, 8, and 19A.

1. Stormwater Conveyance Channels and Sediment Basins

- a. Stormwater conveyance channels ("SCC") and diversion ditches shall be designed for permanent stormwater control and shall utilize check dams or weirs to control sediment transport. Rock check dams shall be installed in SCC immediately following construction and the establishment of final grade. Check dams shall be installed per the Virginia Erosion and Sediment Control Handbook ("VESCH") or per VDOT detail EC-4 standards and details as applicable. Check dams should be evaluated for sediment accumulation after each runoff-producing storm event and remediated as necessary to maintain function.
- b. SCC, vegetated swales, or diversion dikes shall be installed to divert overland sheet flow or shallow concentrated flow to a stabilized outlet or a sediment trapping facility during construction. When used at the top of a slope, the structure shall protect exposed slopes by diverting storm run-off away from the slopes to a stabilized outlet or sediment trapping device. When used at the base of a slope, the SCC shall protect downslope areas by diverting sediment-laden runoff to a sediment-trapping facility or stabilized outlet.
- c. Sediment basins shall be equipped with measuring devices to accurately determine the sediment capacity of the basin. Sediment shall be removed from basins when accumulation reaches twenty-five percent (25%) of the required wet storage volume for each individual basin. In no case shall sediment cleanout levels be higher than one (1) foot below the bottom of the de-watering device. Remediation crews shall remove sediment or be able to correct any Erosion and Sediment Control ("ESC") issues within twenty-four (24) hours. The daily presence of these crews shall be indicated in the monitoring report. When Sediment Basins or traps are cleaned the intended use and location of the removed material shall be indicated in the monitoring report.
- d. ESC measures shall be installed as a first step in any land disturbing activity area and shall be made functional before upslope land disturbance takes place. Unless subject to stricter standards set out herein, all ESC measures shall at a minimum comply with VESCH and VDOT standards and details as applicable. Unless subject to stricter standards set out herein, the overall ESC plan shall comply with VESCH minimum standards.

2. Monitoring and Reporting

- a. The Operator shall have one Responsible Land Disturber ("RLD") and at least one VDEQ Certified Erosion Control Inspector ("ECI") per land-disturbing activity area. These land-disturbing activity areas shall not exceed 400 acres in aggregate within the Project at any one time. Once land is stabilized, it shall not count towards the 400 acres of disturbed land. Stabilization and whether an area is fully stabilized shall be determined solely by the Program

Administrator. The RLD and ECI shall both be required to be knowledgeable of environmental permit compliance requirements, be experienced in ESC and Stormwater Management Best Management Practice installation, operation, and maintenance requirements. The RLD will also keep a daily log of activity documenting all Facility activities, including, but not limited to, construction, environmental permit compliance and corrective measures implemented, site visitors (i.e. non-Project staff), waterbody and wetland crossings, and ESC installation and maintenance activities.

- b. The RLD shall provide e-reporting to a central File Transfer Protocol (“FTP”) site to which the Program Administrator shall be granted access. Reports will be submitted no later than next day following any inspections and shall include the inspection report for each disturbed area of development. Site inspections and reports shall be conducted and reported at a minimum as required by the Virginia Stormwater Management Program (“VSMP”) permit. Any corrective actions done in the field shall be e-mailed to the Program Administrator within twenty-four (24) hours of completion.
 - c. Post-rainfall event inspections shall be required for any runoff-producing event (equal to or greater than one quarter (0.25) inches of rain within a twenty-four (24)-hour time period) and shall be maintained on site and logged in an e-report uploaded to a central FTP server to which the Program Administrator shall be granted access. An ECI shall evaluate erosion control measures and sediment basins to determine if maintenance is required. Any remediation that is required shall be performed immediately and reported to the Program Administrator within twenty-four (24) hours.
 - d. Water quality testing shall occur through the use of a stream gauge, which collects data on rainfall, turbidity and sediment loads, and pollutant loads. These gauges shall be placed at each intake and discharge point on the site, as determined by the Program Administrator. The testing shall be reported in a monthly Water Quality Discharge Report which shall provide a summary of marginal increases or decreases of the measurements.
3. Site Stabilization Conditions
- a. Windrows, filter socks, or slope breaks shall be constructed interior to array fields using soil, organic material, or mulch to reduce runoff velocity and sediment. These devices shall be a minimum six (6) inches in height above final grading. These devices shall be installed parallel to slope with a maximum spacing of 200 feet, or as needed based on slope and drainage area. These devices shall be maintained during site stabilization process and may remain during operation.
 - b. Sediment barriers such as silt fences, mulch berms, or brush barriers shall be used to temporarily intercept and detain small amounts of sediment from disturbed areas of limited extent and to decrease the velocity of sheet flows. Temporary sediment barriers shall be installed at the base of slopes adjacent to road crossings until disturbed vegetation has been reestablished.

- c. Sediment barriers shall be inspected daily by the Operator in accordance with Virginia Erosion and Sediment Control Program (“VESCP”) and VSMP guidelines to identify any damage incurred during construction and after each runoff-producing rainfall as defined in C.2.c herein. The inspection reports shall be emailed to the Program Administrator within twenty-four (24) hours of a qualifying rainfall event. Sediment barriers that are not functioning properly must be cleaned and restored to good working condition or replaced immediately.
- d. All disturbed soils shall be seeded and temporarily stabilized within seven (7) days after final grade is reached on any portion of the Property. Seed mixes used for permanent stabilization shall provide self-propagating, low maintenance groundcover that will minimize erosion and sedimentation while providing wildlife and pollinator habitat benefits.
- e. Drill seeding shall be used as the primary mechanism for installation of seed. In areas where access is limited, hydroseed or spraying of seed is an approved method of application. In areas that are drill seeded, mulch shall not be at a depth which inhibits germination, as field-determined. All seeding installation, bed preparations, seed mixes, lime, fertilizer, and mulch shall meet VESCH minimum standards and specifications for permanent and/or temporary seeding as applicable.
- f. Slopes at a grade of thirty-three percent (33% (3:1)) or steeper shall be stabilized with steep-slope soil stabilization blankets or erosion-control fabric, such as bonded fiber blankets or jute thatching. The blanket shall be nontoxic to vegetation and to the germination of seed and shall be entwined and anchored to the slope.

D. Burning and Fire, Rescue, and Emergency Management:

1. The Operator shall follow the policies and procedures contained in the “Emergency Response Plan – Construction”, dated November 19, 2018, attached hereto as “Exhibit C” and incorporated herein by reference, throughout the course of the Facility’s construction. To the extent the “Emergency Response Plan – Construction”, dated November 19, 2018 is contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
2. The burning of timber waste shall be limited to no more than fifty percent (50%) of the timber waste produced by the construction of the Facility to include, but not be limited to, all clearing and grading of the Property. This shall be evidenced by a report submitted every thirty (30) days to the Zoning Administrator detailing the amount of timber waste burned and the amount of timber waste mulched or disposed of offsite over the previous thirty (30) days. The burning of any other matter shall be prohibited.
3. The burning of timber waste shall be done only if via open pit incineration using incinerator 2018 model T-300-Trench burner or newer, in accordance with the manufacturer’s recommendations, a copy of which shall be provided to the Fire

- Marshal. Open pit incineration shall be done in accordance with the above-referenced Emergency Management Plan - Construction, except that any open pit incineration shall be set back a minimum of 2,000 feet from any boundary line of the Property. Trenches shall be maintained at depths in accordance with the trench burner specifications and such specifications shall be provided by the Operator to the Fire Marshal. The Operator shall be required to demonstrate sufficient access to proposed trench pit locations for Fire, Rescue, and Emergency Management ("FREM") vehicles prior to the County issuance of any burning permit. Sufficient access shall be determined by an inspection from the Fire Marshal or designee.
4. The Operator shall follow the policies and procedures contained in the "Emergency Response Plan – Operations", prepared by sPower dated November 19, 2018 attached hereto as "Exhibit D" and incorporated herein by reference. To the extent the "Emergency Response Plan – Operations", prepared by sPower and dated November 19, 2018 is contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
 5. The Operator shall follow the policies and procedures contained in the "Site Specific Safety Plan – Construction", dated November 19, 2018 attached hereto as "Exhibit F" and incorporated herein by reference. To the extent the "Site Specific Safety Plan – Construction", dated November 19, 2018 is contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
 6. The Operator shall install signage within the Facility and provide to the Fire Chief a Wayfinding Map that shows each road segment within the Facility with a designated name and/or identifier and each array with an individual identifier prior to the approval of any site plan or land disturbing permit.
 7. All roads within the Property shall be designed, planned, and constructed for adequate FREM access as determined by the Fire Chief based on all applicable standards and regulations at the time of site plan review. All roads within the Property shall be constructed pursuant to the International Code Council Section 503 for adequate FREM access. Road aggregate material shall be placed in accordance with the requirements of the applicable specifications governing the type of material or construction being used and shall be compacted at optimum moisture, within \pm two (2) percentage points of optimum per Appendix C of VDOT's Road & Bridge Specifications.
 8. All internal crossings shall be permanent and be designed to a minimum of FAST Act standards for EV2 and EV3 class vehicles, with a rating defined as H-20 per the VDOT IIM-S&B-86.1 guidance document.
 9. As each portion of the Facility becomes operational the Operator shall install and maintain video cameras throughout said portion, and, upon completion, the entire Facility shall be covered by comprehensive remote surveillance. The cameras shall be monitored twenty-four (24) hours a day by the Operator for potential security, hazard, and general maintenance concerns. These camera feeds shall be recorded and recordings shall be retained a minimum of six (6) months and shall be made available

upon request in cases of emergency as determined by the County Fire Marshal or the County Sheriff.

10. Two (2) 50,000-gallon water tanks shall be located on the Property and those tanks shall provide off-site access for FIRE use in an emergency at a location approved by the Fire Chief. The tanks shall remain at least fifty-percent (50%) full at all times in order to serve potential FIRE needs.
11. A minimum twenty-(20) foot-wide fire break shall be maintained around the perimeter of the Property and within the Property between the arrays, inverters, and generators and the Property boundary. Portions of the fire break that are vegetative shall be mowed and maintained to a height of four (4) inches or less. Fire breaks may include surface materials, such as gravel, provided they are devoid of all combustible materials.
12. All timber waste, which is not burned, shall be mulched and utilized onsite or disposed of offsite. The storage of mulched timber waste ("Mulch") on site shall be limited in accordance with the following:
 - a. Mulch storage shall be set back a minimum of 500 feet from the Property boundary.
 - b. Mulch storage shall not be located within any RPA.
 - c. Stored Mulch shall be kept in piles or rows which shall not exceed ten (10) feet in height, fifteen (15) feet in width, and 150 feet in length.
 - d. Stored Mulch shall not be compacted.
 - e. Piles and rows of stored Mulch must be separated by a minimum of ten (10) feet from any other Mulch pile or row.
 - f. Piles and rows of stored Mulch shall be regularly wetted to maintain a minimum fifty percent (50%) moisture content.
 - g. Piles and rows of stored Mulch shall be turned or reassembled at least once every ninety (90) days.
 - h. Piles and rows of stored Mulch shall be monitored weekly by taking an internal temperature reading at the center of the pile; if Mulch is stored in a row then internal readings shall be taken every twenty (20) linear feet.
 - i. Piles and rows of stored Mulch shall be immediately wetted and turned or reassembled when the internal temperature reading reaches a minimum 160 degrees Fahrenheit.
 - j. Piles and rows of stored Mulch shall be immediately turned or reassembled when the internal temperature reaches a minimum 140 degrees Fahrenheit.

E. Landscaping, Maintenance, Setbacks, and Buffers:

1. The Operator shall follow the Invasive Species Management Plan which is attached hereto as "Exhibit E" and is incorporated by reference herein. To the extent the Invasive Species Management Plan is contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
2. Inverters and generators shall be set back a minimum of 400 feet from the boundary of the Property.

3. No structure, improvement, or equipment, including but not limited to, solar arrays and supporting structures, shall be located within 425 feet of any real property improvement that complies with all legal requirements for residential occupancy ("Residential Structure"). This shall not apply to construction or maintenance equipment, which is temporary in nature, during the periods when it is actively being used during construction or maintenance activities. This setback shall not apply along any boundary shared between the Property and another property owned by the Operator.
4. No structure, improvement, or equipment, including but not limited to, solar arrays and supporting structures, shall be located within 425 feet of the center point of any lot that is the subject of a residential site plan application or is part of an approved residential site plan as of the date the Facility's site plan application is deemed complete by the Department of Planning. This shall not apply to construction or maintenance equipment, which is temporary in nature, during the periods when it is actively being used during construction or maintenance activities. This setback shall not apply along any boundary shared between the Property and another property owned by the Operator.
5. The minimum setback of any structure, improvement, or equipment, including but not limited to, inverters, generators, and solar arrays and supporting structures, from any VDOT right-of-way shall be one hundred (100) feet. This shall not apply to construction and maintenance equipment which is temporary in nature during the periods when it is actively being used during construction or maintenance activities.
6. These setback requirements do not apply to fencing, berms, landscaping, plantings, access roads, bridges, and above-ground utility poles.
7. Fencing shall be to the interior of all berms and re-vegetated buffers with plantings required in the document attached hereto as "Exhibit H."
8. No trees shall be removed from any one hundred-(100) foot setback area or one hundred-(100) foot preserved buffer as shown on Exhibit H except for the removal of non-native species (which is anything not included in the native species list in the County's Design Standards Manual ("DSM")), hand-clearing for safety or the removal of dead or dying trees, or any clearing necessary for ingress/egress or infrastructure connectivity.
9. The shared boundaries between the Property and abutting parcels and between the Property and any VDOT right-of-way shall be screened with berms with plantings, preserved vegetation, re-vegetated areas with plantings, and vegetated areas left to regrow as applicable according to Exhibit H.
10. Plantings required in Exhibit H shall comply with the GDP's Landscape Plan except that to the extent the GDP's Landscape Plan is contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
11. Only earth, which is defined as soil, shall be used to create any berm on the Property.
12. Re-vegetated buffers with plantings and berms with plantings required in Exhibit H shall be installed with each phase of the Facility's development during site grading and prior to the driving of pilings within 1,000 feet of the required buffers and berms.

13. A landscaped buffer consisting of a row of compact evergreen trees with a minimum height of six (6) feet every ten (10) feet shall be required between the Operator's Entrance 4 and the adjacent parcel 28A-1-21A.
14. At site plan, a Landscape Architect, licensed and certified in accordance with Virginia Code Title 54.1, shall design all buffers and berms so that they minimize visibility, maximize survivability and stability, and minimize losses from deer or other wildlife consumption.
15. Plant and tree species shall be installed as early as possible following establishment of erosion and stormwater management controls, and shall be selected based upon their ability to provide the desired screening after two (2) years of growth.
16. The Operator shall use a variety of native plants and native evergreen trees, selected from the County's DSM, which are drought tolerant, environmentally friendly, and compatible with local wildlife.
17. If, in the sole discretion of the Director of Planning, supplemental plantings are needed to effectuate the intent of these conditions to provide adequate screening, the Operator shall engage a Landscape Architect, licensed and certified in accordance with Virginia Code Title 54.1, to design such supplemental plantings consistent with the requirements herein.
18. Understory vegetation and seeding shall conform with the County-approved seed list.
19. The landscaping bond as required by Article 6 of the DSM shall be in effect for three (3) years after the planting of landscaping. Because the landscaping is to be done in phases, this bond will not be fully released until the last phase of the landscaping is completed and three (3) years has elapsed from that date.
20. Operator shall be responsible for maintaining all planted trees and shrubs. Operator shall have an Arborist certified by the International Society of Arboriculture inspect all plantings biennially in August to determine which, if any, trees and shrubs require replacement. Operator shall replace such trees and shrubs as indicated by the Arborist and shall submit to the Zoning Administrator by December 31st of that year a report of the Arborist's findings and the replacement plantings installed, if any.

F. Biological:

1. A minimum of a four (4)-person landscaping team with necessary equipment, supplemented by additional staffing and equipment as needed during high-growth rate periods, shall minimize uncontrolled and/or undesired growth.
2. The Operator shall follow the requirements of Exhibit E as applicable to these provisions in F. To the extent the relevant portions of Exhibit E are contrary to the conditions herein, as determined solely by the County, the conditions herein shall supersede and control.
3. Herbicide use shall be limited to non-residual herbicides that break down in the soil within fourteen (14) days.
4. Herbicides and fertilizers shall be applied following manufacturers specifications and shall not be applied during rain, when wind speed exceeds ten (10) miles per hour, or within fifty (50) feet of any surface water body.

5. Fertilizers shall not contain phosphorus, except that fertilizers applied during construction in order to establish vegetative growth may contain phosphorus if determined necessary to support the growth. Fertilizer composition as regulated by Sec. 10.1-104.2 of the Code of Virginia shall be based upon soil testing. All fertilizers shall be applied by a Virginia Department of Agriculture and Consumer Sciences Certified Fertilizer Applicator and fertilizer shall only be applied at rates, times, and by methods that are consistent with standards and criteria for nutrient management promulgated pursuant to Sec. 10.1-104.2 of the Code of Virginia.
6. Pesticides shall be limited to biorational pesticides and shall be applied by a licensed pest control professional.
7. Only biodegradable soap and water may be used for cleaning of solar panels during operation of the Facility.
8. The Operator shall ensure employees are trained to identify the Loggerhead shrike and the Northern long-eared bat, and be instructed to contact the Virginia Department of Game and Inland Fisheries should either species be identified.
9. The Operator shall not plant and shall remove invasive species identified in Virginia Department of Conservation and Recreation's ("VDCR") "Virginia Invasive Plant Species List" and VDEQ's invasive seed in the "Frequently Asked Questions (FAQ) Native vs. Invasive Plant Species for Erosion and Sediment Control" dated April 2017.
10. Seed mixtures shall be developed and identified on the Landscape Plan of the Site Plan based on guidance from VDEQ related to invasive species and utilizing VDCR's Virginia Solar Site Native Plant Finder.
11. The Operator shall spread pollinator supportive seed mixture within a minimum of fifty percent (50%) of new landscape buffers and adopt best management practices to increase pollinator activity during operation of the facility in order to achieve a minimum score of 145 points on VDCR's "Virginia Solar Site Pollinator/Bird Habitat Scorecard" dated March 2018.
12. Rumble Strip Locations shall be in place during construction to reduce the introduction of invasive seeds.

G. Water:

1. The Operator shall only utilize public water during the construction and operations phases of the Facility. No on-site groundwater shall be used during the construction or operation of the Facility. Wells shall only be accessed to perform water testing.
2. Any connection by the Operator to the public water system for bulk use (greater than a single ¾" meter) shall be controlled by the Spotsylvania County Utilities Department ("Utilities Department") in a manner that will not negatively impact the existing distribution system. Said connection shall include a pressure sustaining function and flow control function, with the setting of those functions at the discretion and direct control of the Utilities Department. The County does not guarantee any volume of bulk withdrawal available to the Operator.
3. For the Project, bulk withdrawal from the 531-foot pressure zone as determined by the Utilities Department shall be limited to between the hours of 10 p.m. and 4 a.m.

- with a maximum aggregate volume usage of 69,000 gallons per day from October to April and 56,000 gallons per day from May to September.
4. For the Project, bulk withdrawal from an upgraded public water system shall be limited to between the hours of 10 p.m. and 4 a.m. with a maximum aggregate volume usage of 166,000 gallons per day from October to April and 153,000 gallons per day from May to September. Upgraded public water system referenced above shall be defined as increasing the water transmission main size within the 531-foot pressure zone from twelve (12) inches to sixteen (16) inches from the existing Lake Bottom Booster Station to the main 12-inch loop feed within the Fawn Lake Subdivision. This will include all appurtenances (i.e., fire hydrants, pressure reduction valves, etc.) as required by the Utilities Department.

BE IT FINALLY RESOLVED that the Spotsylvania County Board of Supervisors' approval and adoption of any conditions does not relieve the Applicant and/or subsequent owners from compliance with the provisions of any applicable Spotsylvania County Ordinances, rules, regulations, or adopted standards. To the extent anything in this Special Use Permit is less restrictive than the County's Ordinances, or its rules, regulations, or adopted standards, the lessened restriction shall be superseded and the County's Ordinances, or its rules, regulations, or adopted standards shall control and be applicable to the approved use, but the superseded condition shall not be deemed unlawful, unenforceable, or otherwise rendered void so as to void the Special Use Permit as set out below. The Spotsylvania County Board of Supervisors' decision to approve this Special Use Permit is predicated on the Spotsylvania County Board of Supervisors' understanding that the above conditions the Spotsylvania County Board of Supervisors hereby imposes upon this Special Use Permit are valid, lawful, and shall apply to the approved use for the life of the use; therefore, these conditions, independently and in the aggregate, are not severable from the Spotsylvania County Board of Supervisors' action to approve this Special Use Permit. Should any condition imposed by this Special Use Permit be found to be unlawful, unenforceable, or otherwise rendered void, this Special Use Permit shall be void and the use shall be deemed unlawful.

(SEAL)

A COPY TESTE:



Aimee R. Mann
Deputy Clerk to the Board of Supervisors



302 N. Main Street
Culpeper, Virginia 22701

UTILITY SCALE SOLAR FACILITY DEVELOPMENT POLICY

WHEREAS, the Code of Virginia (1950), as amended, at Title 67, Section 67-103. Role of Local Governments in Achieving Objectives of the Commonwealth Energy Policy, addresses the regulatory arrangement in the Commonwealth of Virginia as to renewable energy; and

WHEREAS, the General Assembly of the Commonwealth of Virginia has enacted statutes that limit a locality's ability to establish ordinances regarding renewable energy facilities by requiring such ordinances to:

1. Be consistent with the provisions of the Commonwealth Energy Policy pursuant to subsection C of §67-102;
2. Provide reasonable criteria to be addressed in the siting of any renewable energy facility that generates electricity from wind and solar resources. The criteria shall provide for the protection of the locality in a manner consistent with the goals of the commonwealth to promote the generation of energy from wind and solar resources; and
3. Include provisions establishing reasonable requirements upon the siting of any renewable energy facility, including provisions limiting noise, requiring buffer areas and setbacks, insuring limits on mass grading and addressing generation facility decommissioning; and

WHEREAS, Culpeper County will require those requesting to establish utility scale solar energy generation facilities in the A-1 (Agricultural) and RA (Rural Area) Zoning Districts to obtain a conditional use permit, pursuant to Article 17 of the Culpeper County Zoning Ordinance; and

WHEREAS, in accordance with Article 17 of Appendix A of the Culpeper County Code, any solar energy generation facilities found to: 1) Adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use; 2) Be detrimental to the public welfare or injurious to the property or improvements in the neighborhood; or 3) Be in conflict with the purposes of the Comprehensive Plan of the County of Culpeper, will be not be approved under any circumstance; and

WHEREAS, Culpeper County expressly intends to limit "utility scale solar sprawl" in order to preserve farmland, protect historic resources and insure development is compatible with neighboring properties by limiting both the overall number of acres dedicated to this land use in the County and by limiting the size of individual projects;

NOW THEREFORE BE IT RESOLVED that the Board of Supervisors will review renewable energy facility use permit applications on a case-by-case, individual basis in consideration of the factors and criteria set forth in the application submittal. The County reserves the right to collect reasonable building permit fees, plan review fees and other associated fees as needed to properly administer the goals established in this policy; and

BE IT FURTHER RESOLVED that the attached Draft Example Conditions for Renewable Energy Facility Use Permits and the stipulations outlined below shall be used as a guideline in the consideration of all applications for such facilities.

UTILITY SCALE SOLAR FACILITIES – GENERAL GUIDELINES

1. Culpeper County seeks to establish “draft” or “example” conditions for renewable energy facility use permits as an addendum (SEE EXHIBIT A) to this policy to help guide the County’s review of and the applicant’s submission of any future applications for renewable energy generation facilities. The County shall consider the economic impact of any conditions considered, attendant to the conditional use permit, to be imposed upon the Solar Energy Generation Facility.
2. Studies* reflect that the operation of Solar generation facilities, post-construction, do not pose any identified noise, toxicity, or EMF/Radiation concerns. Thus, each of these factors would unlikely be considered as the sole reason for denial of a conditional use permit.
3. Culpeper County seeks to ensure that any utility scale renewable energy generation facility is consistent with and furthers the goals as found in the most current Comprehensive Plan. Furthermore, Culpeper desires to balance this land use with the various and valuable existing and planned land uses and resources throughout the County and to that end, the following elements, at a minimum, should be considered, studied, researched, and vetted with each and every application for a renewable energy facility:
 - A. Culpeper County desires to protect the County’s historic properties and resources as identified by balancing those interests with the interests of the solar generation facilities.
 - i. Setbacks and buffering should be considered when an application is adjacent to such resource.
 - ii. Certain property, because of its historic value, should be discouraged from this land use entirely.
 - B. Culpeper County desires to protect and enhance its agricultural and rural heritage and resources.
 - i. Among other things size and scale of a renewable energy generation facility should strongly be considered in order to maintain the County’s rural viewshed and character.
 - ii. Siting of a facility on prime agricultural soils is discouraged. Non-agricultural producing lands or land which is of lower agricultural value should be explored first, e.g. State Land Evaluation and Advisory Council

¹ *For example, based upon “Health and Safety Impacts of Solar Photovoltaics” produced by the NCClean Energy Center, NC State University, which also cites numerous additional studies and sources.

(SLEAC) and soils classification may be considered in determining agricultural value.

- iii. In order to protect the integrity of agricultural soils, mass grading of sites shall be limited to fifty (50) acres at a time.
- iv. Facilities on or adjacent to agricultural and forestal district properties shall take into account the impact upon such districts, if any.
- v. A plan should be developed with any proposal to minimize any negative visual impact to the greatest extent possible.

C. Culpeper County desires to protect and enhance its economic and employment producers.

D. Culpeper County desires to protect its interests at the Culpeper Regional Airport. Any application for a utility scale solar facility shall include the data necessary to perform an analysis using the Solar Glare Hazardous Analysis Tool (SGHAT) available from the Federal Aviation Administration.

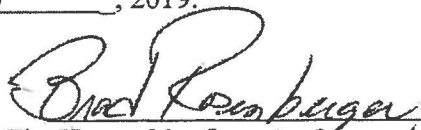
E. All solar panels will be designed to minimize the reflection of light.

4. The applicant shall provide information demonstrating the local economic benefits of the project or a cost/benefit analysis. Prior to the issuance of a land disturbance permit, the Applicant may also enter into a written agreement with the County providing for payments to the County in addition to real estate taxes.
5. The applicant must provide written comments from the relevant electric company regarding the capacity of the transmission lines as part of any use permit application. An applicant can satisfy this requirement by submitting proof of application for interconnection to the electricity system.
6. Adequate bonding shall be required for all phases of all projects, including but not limited to: an Erosion and Sediment Control Bond, Stormwater Management Bond, Construction and Performance Bond, Landscaping Bond, Decommissioning Bond, and Liability Insurance.
7. The applicant shall provide a decommissioning plan, which will be required to be updated every three (3) years to insure (i) that the real property will be returned to its original condition upon closure of any facility, or at the end of its useful life, and (ii) that decommissioned equipment and panels are disposed of appropriately and in an environmentally sound manner. Favor will be given to decommissioning plans that provide for recycling of equipment and panels. In any event, decommissioning shall be guaranteed by cash, commercial surety, letter of credit, performance bond, etc. subject to the approval of the County Attorney and in accordance with any adopted County policy. Favor shall be afforded to surety in the form of cash and letter of credit. Moreover, final reporting at the conclusion of decommissioning will be required before any guarantee is released. Decommissioning surety shall be in place and adequate for the complete decommissioning of the project from its onset until it is decommissioned.

8. Noise, traffic, parking and other impacts are identified with regard to the construction and decommissioning attendant to these projects. Applications for utility scale solar facilities shall address mitigation of impacts not only upon completion of the facility, but also these and other identified impacts occurring during construction and at the time of decommissioning. A traffic and parking plan must be provided with any conditional use permit application. Stormwater management must be specifically addressed as part of any application, at all stages of construction, operation, and decommissioning. During construction, mass grading of an approved site shall be limited to fifty (50) acres disturbed at any given time.
9. Site Plan, Building Permit, Plan Review, and other associated fees will be collected based upon the County fee schedule. Reductions of such fees will not be negotiated.
10. No facility shall be located on a property designated by the Virginia Department of Historic Resources (DHR) as included within a historic battlefield boundary, pursuant to the federal Civil War Sites Advisory Commission *Report on the Nation's Civil War Battlefields* as updated by the National Park Service (SEE EXHIBIT B). Any facility adjacent to designated battlefield lands which were placed in an historic conservation easement prior to application being filed for such facility will be discouraged. Any facility adjacent to a significant historic resource shall have a vegetative buffer pursuant to Article 33-9(c)(4) of the Culpeper County Zoning Ordinance. Screening of historically significant properties and the viewshed for those properties is desired. The County may require screening of any use, or portion thereof, upon determination that the use would otherwise have a direct negative visual impact. Visual impact on property designated as historic by its inclusion in the Comprehensive Plan or as defined by 9VAC15-60-10 (Definitions) of the Code of Virginia as a "Historic Resource" shall be minimized to the greatest extent possible.
11. The cumulative impact of previously approved or permitted sites shall be considered. Specifically, it is intended that approximately 2,400 total acres or 240 megawatts of production serve as an upper target for utility scale solar development, which is representative of the County's footprint on the electrical grid.
 - A. The Culpeper County Comprehensive Plan emphasizes the County's commitment to the preservation of agriculture as its primary industry. The limitation of utility scale solar development furthers this goal. A limit of 2,400 acres equates to one percent (1%) of the total land mass of Culpeper County.
 - B. Based upon the population projections of the 2015 Culpeper County Comprehensive Plan, the residential consumption of power by 2040 would be approximately 162 MW. It is recognized that solar power produced in Culpeper County will not necessarily be consumed in Culpeper County, nevertheless, the County's own energy needs are a reasonable basis for the limitation of 240 MW of utility scale solar development.

12. The scope or scale of utility scale solar projects will have a direct correlation to numerous factors of concern. These include potential land disturbance, the ability to effectively screen and landscape a project, the traffic and other impacts during the construction process, the ease of decommissioning and other factors. In light of this, any single utility scale solar application should be limited to no more than 300 acres of actual panel installation.
13. Applicants for utility scale solar developments should provide preliminary information as to the phasing of the project, identifying watersheds and specifying the phasing of land disturbance activity in order to comply with the fifty (50) acre limitation in numbers 3 and 7, above. This information should also include proposed Virginia native species of grasses and other plantings which are non-invasive. Invasive non-native species will not be permitted.
14. Use permit conditions for any utility scale solar development shall include provisions to insure that adequate erosion control, stormwater management and building code inspections are insured, potentially through third parties, the cost of which shall be fully covered by the developer of the project. The cost of plan review by third parties shall also be addressed.
15. Applications that include evidence of project viability will be viewed more favorably than those absent such evidence. The following are helpful in determining a project's viability and are encouraged to be included in the applicant's submittal to the County.
 - A. Written comments from the relevant electric company regarding the capacity of the transmission lines or other electrical infrastructure as part of any use permit application, e.g., submitting proof of application for interconnection to the electrical system;
 - B. Offtake agreement, power purchase agreement, or other communication or document that identifies a clear path to an off taker or purchaser of the electricity generated from the project; and,
 - C. Further, preference will be given to projects and agreements that provide for the local use of the electricity being generated.

This Policy is adopted effective October 1, 2019.

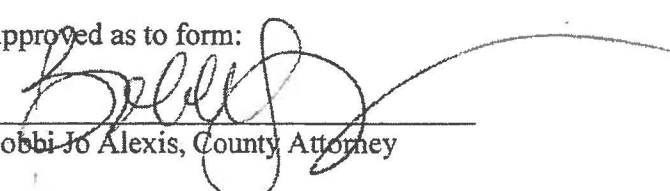

The Honorable Brad Rosenberger
Chairman, Culpeper County Board of Supervisors

ATTEST:



John C. Egertson, Clerk to the Board

Approved as to form:



Bobbi Jo Alexis, County Attorney

Draft Example Conditions for Renewable Energy Facility Use Permits

The following stipulations are suggested as a condition of approval for any utility scale solar facility. These conditions are not all inclusive, as additional conditions may be deemed necessary in order to mitigate impacts based upon specific site conditions. Likewise, the conditions below may need to be modified, or even deleted based upon specific site conditions. Final conditions set for any use permit will be at the sole discretion of the Culpeper County Board of Supervisors.

1. **Use Permit is nontransferable.** This permit shall be granted solely for the subject property for operation of a utility scale solar facility. This conditional use permit shall be binding on any successors, assignees, current or future lessee, sub-lessee, or owner of the renewable energy facility. The permit shall not be assignable to a third party absent the written consent of the Board of Supervisors of Culpeper County. It is important that successors-in-interest be on written notice of the Permit and its terms and conditions.
2. **Access.** Access for inspections shall be accommodated for staff and/or other appropriate County officials with a 24-hour notice to the applicant.
3. **Maintenance of site features.** All site features, including landscaping, fencing, etc. shall be properly maintained throughout the life of the permit. Maintenance of such features may be guaranteed by a surety agreement and a surety acceptable to the Culpeper Attorney as required by the Board of Supervisors. If any structures at the facility site have been determined to be unsafe under the Uniform Statewide Building Code (USBC) by the County's Building Official, said structure shall be required to be repaired by the facility owner, site owner, or operator to meet federal, state, and local safety standards, or to be removed by the owners or operator. The owners or operator must complete the repair, or removal of the structure, as may be lawfully authorized under the USBC.
4. **Submission of site plan.** A site plan in accordance with Article 20 of Appendix A of the Culpeper County Code shall be submitted prior to issuance of any building permits. The County may choose to contract with a third-party plan reviewer to help with this site plan review process. All fees associated with any third-party plan review shall be paid by the applicant or its successors-in-interest.
5. **Decommissioning of facility.** Either at the end of its lifespan or in the event of inactivity for more than two consecutive years, this facility must be decommissioned. All solar panels and pilings shall not be anchored with concrete footings for ease of removal after the useful life of the facility. The decommissioning plan shall include the removal of all surface and subsurface features. The plan shall be updated every three (3) years as necessary.
 - a. **Notice of inactivity-** The applicant or owner shall be responsible for notifying the Zoning Administrator within 30 days of the facility becoming inactive or after it no longer produces electric power for transmission by a public utility. Notification shall be provided in writing.

- b. Except for an event of force majeure, if the Facility remains inactive for more than twelve (12) consecutive months, the Permit may be subject to revocation; provided, however, that, if after such 12-month period, Applicant or its financing provider is diligently working to restore the Facility to operation, then, so long as the restoration process remains active, the Permit shall not be revoked in the instance of a force majeure.
 - c. Decommissioning process- Upon completion of the facility's lifespan or following revocation of the special use permit, the facility shall be decommissioned and the site shall be returned to the condition which existed prior to construction of the facility, including removal of all equipment and debris.
 - d. Trenches or other borings or excavations made in association with the facility shall be filled and compacted.
 - e. All wetland protections, natural vegetation, erosion control, and stormwater features shall remain in place.
 - f. The Applicant or owner shall provide a decommissioning plan to staff and obtain all required permits prior to conducting decommissioning activities.
 - g. All decommissioning activities shall be completed within nine (9) months of providing notice of inactivity.
 - h. If the facility is not removed within the specified time herein, the County may cause the removal of the facility, with costs being borne by the project owner, the property owner, or both.
 - i. Components of the Facility removed from the site as a part of decommissioning shall be handled and disposed of in compliance with all applicable legal requirements (local, state, and federal law and regulations). Applicant shall emphasize the feasible and cost-effective re-use or recycling of components, including any "extended producer responsibility" programs offered by vendors of the particular component, over landfill disposal.
 - j. In no event, shall any hardware, parts, structures, or any portions of the project that are damaged, replaced, and/or decommissioned be brought to or disposed of in a landfill or solid waste transfer station in Culpeper County.
 - k. A surety agreement for decommissioning and surety in a form acceptable to the County Attorney shall be submitted prior to the issuance of a construction permit. The surety amount shall be reviewed every 3 years and adjusted according to inflation. The surety agreement and guarantee may also specify that the land owner is responsible for decommissioning in the event that the applicant/project owner fails to perform.
6. **Surety for Decommissioning.** Prior to the issuance of any building permit for the Property, the Applicant shall enter into a surety agreement for decommissioning and post surety in a form acceptable to the County Administrator and the County Attorney in an amount determined appropriate by the Board of Supervisors based on the size and scope of the permitted project.
- a. The surety amount shall be reviewed and adjusted by an independent professional engineer. The independent professional engineer shall be selected and compensated by the Applicant, but selection of the independent professional engineer is conditioned upon and subject to approval by the County Administrator and/or his designee.
 - b. The amount of the requisite surety, thereafter, shall be set in an amount equal to a reasonable estimate of the projected gross cost of decommissioning the Facility.

- c. Every three (3) years, an independent professional engineer shall review the surety amount and shall determine whether it should be revised, according to inflation and other relevant cost variables to ensure that the posted surety will cover the projected gross cost. Again, the independent professional engineer shall be selected and compensated by the Applicant, but selection of the independent professional engineer is conditioned upon and subject to approval by the County Administrator and/or his designee.
 - d. The surety document and/or funds shall be released, but only after the decommissioning is complete and the Applicant has submitted a report to the County Administrator and/or his designee demonstrating compliance with all decommissioning requirements to the satisfaction of the County Administrator and/or his designee.
7. **Fire & EMS coordination and training.** The applicant will work proactively with the Director of Emergency Services to develop an Emergency Response Plan which will include an agreed-upon set of procedures and protocols for managing risk of fire and for responding in the event of an emergency at the facility (i) at the time of and during construction, (ii) post-construction and during the course of regular operations, and, (iii) at decommissioning.

The applicant at a minimum will provide:

- a. Emergency communications direction as well as emergency phone numbers and key points of contact.
 - b. Special training for fire and emergency services personnel and a tour of the site to ensure upfront awareness of the site and equipment as well as points of ingress/egress.
 - c. Designated shut off procedure and location for equipment shut off.
 - d. Maps outlining the location of key equipment such as the location of lockboxes, inverters, transformers, system/electrical cut-off switches and points of ingress/egress at the facility.
 - e. The Emergency Response Plan shall be submitted and reviewed in conjunction with the Permit application material and adopted as part of the Permit approval documentation.
8. **Noise.** All construction activities shall be limited to the hours of 8:00 a.m. to 6:00 p.m., Monday-Saturday and will be prohibited on Sundays. This condition shall apply to noise generated during the construction of the facility and to its ongoing operation and maintenance and any replacement of equipment or decommissioning of the facility.
9. **Entrance requirements.** The following conditions shall apply to the property entrances:
- a. The applicant shall obtain all required permits from VDOT and complete all required improvements to the property entrances prior to issuance of a building permit.
 - b. In the event that there is damage to the adjoining properties as a result of ingress/egress of construction vehicles, the applicant shall remedy all damage in full prior to issuance of a certificate of occupancy.
 - c. Access roads are to be marked with identifying signage.
10. **Landscaping Plan.** The intent of any landscaping plan is to provide buffering, screening of adjacent uses such as residential dwellings, public facilities and or resources, historic properties and resources, and public transportation corridors, etc. The following conditions shall govern the installation of landscaping in accordance with the approved plan:

- a. A Preliminary Landscaping Plan shall be submitted, reviewed and approved in conjunction with the Permit review and approval.
 - b. All landscaping shown on the approved landscaping plan shall be installed and shall be in good condition prior to issuance of a Certificate of Occupancy and prior to beginning production of electric power.
 - c. In the event that the applicant requires a minor deviation from the approved landscaping plan or site plan, such deviation shall be provided on a revised plan sheet for review and approval by the County Administrator and/or his designee.
 - d. In areas where there is not at least 50' of a native timber buffer remaining on the project parcel, a minimum of a double row of evergreens will be planted within any required setback and/or buffer area. All native timber buffers are subject to review and approval by the County. The use of native timber and natural screening is preferable. Such evergreens shall be planted, at a minimum, on fifteen (15) foot centers, with rows offset. The evergreens installed shall have an anticipated mature height of thirty (30) to forty (40) feet. The composition of this landscape buffer may be a mixture of evergreens and/or deciduous trees as deemed appropriate by the Board of Supervisors. These evergreens shall be planted during the appropriate time of year, subsequent to the completion of construction. (This requirement may be reduced or waived if agreed to, in writing, by the owner of the adjacent residence, including residences across a public right of way.) The composition and layout above is suggested as a typical planting arrangement, however the County reserves the right to modify this depending on the circumstances.
 - e. Evergreen plantings shall have a minimum beginning planting height of 6 feet. Any deciduous tree shall have a minimum caliper of two to two and one-half inches measured six inches above final grade at the time of planting.
 - f. All landscaping will be reviewed by the County following installation, at one-year completion, and as necessary after this to ensure the landscaping is being maintained.
 - g. A surety agreement for landscape maintenance in a form acceptable to the County Attorney shall be submitted and approved prior to the issuance of any building permits. The amount of the surety shall be determined by an independent landscape architect selected and compensated by the Applicant but approved by the County Administrator and/or his designee. The amount of the surety shall be equal to a reasonable estimate of the amount needed to establish, and following establishment, to maintain the landscaping required by the approved landscaping plan for two (2) years after initial installation. Once the landscaping has been successfully established, the surety amount will be reduced to that needed for two (2) years of maintenance thereafter. The surety will be released only after decommissioning is complete.
 - h. The County reserves the right to impose conditions on the site plan approval which specify species of landscaping, for example pollinator species.
 - i. The use of herbicides and pesticides shall be limited or prohibited.
11. **Signage.** No signage of any type may be placed on the facility other than notices, warnings, and identification information required by law. During construction only, limited signage may be permitted to identify the companies performing the construction and to provide notice to the general public.

12. **Security/Fencing.** The facility should be enclosed by security fencing not less than six (6) feet in height. Type of fencing shall be in keeping with the area character as much as possible. For example, board fencing may be a more suitable security fencing which more closely matches area character and/or improves aesthetics. However, any fencing desired shall be required to meet the standards of the National Electric Code and other applicable safety regulations. To the extent possible, all required fencing shall be placed behind planned perimeter landscaping.
13. **Lighting.** Lighting shall be the minimum necessary for safety and/or security purposes and shall use shielded fixtures to minimize off-site glare. Any desired lighting shall comply with Article 32 of the Zoning Ordinance. The full site plan shall include a photometric plan that depicts the location, type, power and predicted lighting levels of each permanent fixture.
14. **Structures.** Any proposed structures shall be of a neutral color so as to reduce visual obtrusiveness. Any supporting electrical and mechanical equipment such as racking for the panels, inverters, etc. must be of a neutral color that is identical to, or closely compatible with, the color of the supporting structure so as to make related equipment more visually unobtrusive.
 - a. The storage of power generated by the facility is prohibited. No batteries shall be used in conjunction with the facility to store power for electrical transmission.
15. **Acquiring Permits.** Zoning and Building permits must be obtained within 24 months of obtaining this conditional use permit, otherwise the conditional use permit shall be null and void.
16. **Setbacks/Buffers.** A minimum setback of one hundred and fifty (150) feet shall be maintained from any above ground equipment to the nearest property line. This requirement may be reduced or waived if agreed to in writing by the owner of the adjoining property. This area may include the requirement to maintain any existing vegetation and/or fencing that is in place and may require supplementary landscaping. These setback requirements shall not apply to any interior property lines that may exist.
17. **Annual Notice of Activity.** The County will require as practical for the owner of an approved facility to provide an annual statement of activity to the County Administrator and/or his designee. This will help ensure that the facility is still actively producing electricity for the power grid.
18. **Violation of Conditions.** A Notice of Violation shall be sent to the owner of the facility and the landowner if there is evidence that suggests the use is not in conformance with any of the adopted conditions of approval. If violations remain after notice of violation is received, any continued violation of any of the conditions of approval shall be grounds for revocation of the conditional use permit.
19. **Construction Traffic Management Plan.** The Applicant shall submit a proposed construction traffic management plan to the County Administrator and/or his designee for review and approval as part of the full site plan. The construction traffic management plan shall:

- a. Provide vehicle and trip estimates, propose steps to manage traffic safely and minimize inconvenience to the travelling public.
- b. Provide procedures for communication with area residents about construction and anticipated traffic conditions.
- c. Prohibit any personnel associated with the Facility, while working on the construction of the Facility, from parking their vehicles at locations other than the Facility. Provide onsite parking for all associated construction related activities. Offsite parking and use of shuttles from offsite parking areas may be utilized if approved in advance by the County Administrator and/or his designee.
- d. Provide for truck deliveries to be avoided during the periods that school buses are scheduled to use the roads in the vicinity of the Facility.

20. Maximum Height of Facility. Except for the collection yard and substation, the solar panels (when at their highest point during operations) and other structures comprising the Facility shall not exceed a height of 12 feet from the ground surface at the location of the particular structure. The County Administrator and/or his designee may approve minor deviations from this limitation as part of the review of the full site plan to account for low-lying areas in which structures higher than twelve (12) feet merely provide a uniform height across an adjacent group of structures and does not materially affect the apparent height of the Facility from off-site locations.

21. Erosion and Sediment Control Plan. The Applicant shall submit prior to the issuance of any land disturbance permits a proposed erosion and sediment control plan in accordance with Chapter 8 of the Culpeper County Code. The erosion and sediment control plan shall:

- a. Adhere to the Virginia Erosion and Sedimentation Control Regulations and the Virginia Erosion and Sedimentation Control Handbook (a/k/a the "Green Book").
- b. Provide that no topsoil will be removed from the Facility but instead will be used on site to establish ground cover.
- c. Incorporate riparian buffers of at least 50 feet from the top-of-bank of all stream segments.
- d. Incorporate a protocol developed in coordination with the County Administrator and/or his designee, the Culpeper County Soil and Water Conservation District, and the Virginia Department of Environmental Quality ("DEQ") that specifies the phased construction of designated units of land so that the total area of disturbed land at any one time is appropriately limited given the nature of the construction activities, the size of the Project, the topography and water resources of and in the Project Area, and the erosion and sediment controls to be employed. The protocol will be designed to ensure that ground cover is expeditiously established, and appropriate site stabilization achieved throughout construction.
- e. Include sufficient surety to guarantee that funding is available to implement and maintain all required erosion and sediment control measures.
- f. Provide for Applicant funding, for the period of construction, and as needed a third-party erosion and sediment control inspector, to be selected and directed by the County Administrator and/or his designee.
- g. Final phasing plan shall be fully determined with the submission of the full site plan. No land disturbing activity associated with any phase of the project shall disturb more than 50 acres at a time. Each phase shall be fully stabilized prior to a permit will be issued for the next land disturbance phase.

22. Stormwater Management Program Permit. Prior to the start of construction of the Facility, Applicant shall apply for and obtain from the DEQ a Virginia Stormwater Management Program Permit ("VSMP Permit"), including a proposed Stormwater Pollution Prevention Plan ("SWPPP"), for the construction of the Facility.

23. Vegetation Management Plan. The Applicant shall submit a proposed vegetation management plan for ground cover within the fence lines of the Facility to the County Administrator and/or his designee for review and approval as part of the full site plan, which shall:

Describe in detail the design of the ground cover, which will consist primarily of native grasses and associated low-growing species.

- a. Include a general plan and schedule for managing the growth of the vegetation over the operational life of the Facility so as to maintain a neat and clean appearance.
- b. Include measures to prevent and control noxious weeds and invasive species.
- c. Emphasize mowing and other mechanical means as the primary method of managing vegetation growth.
- d. Identify any class of herbicide to be used and provide that use of any such herbicide will be in accordance with its approved label.
- e. Demonstrate that the quantity of herbicides expected to be used annually for the Facility will be less than the amounts that generally were used on the agricultural fields hosting the Facility during the 12 months prior to the start of construction.
- f. Provide that only biodegradable soap and water, and no other chemicals, may be used to clean the surface of solar panels.
- g. Provide for the review by the County Administrator and/or his designee of any proposed significant changes to the vegetation management plan during the operational life of the Facility.

24. Protection of Soils. In addition to using only biodegradable soap and water to clean solar panels and the above limitations on herbicides, Applicant shall take the following steps to ensure the protection of soils from the operation of the Facility:

- a. Promptly make an oral report to the County Administrator and/or his designee of (1) any breakage or loss of integrity of any component that has the potential to result in hazardous materials reaching the ground surface; and (2) any spillage of fluid other than water to the ground surface, such as the leakage from an inverter or transformer cooling oil. Within 7 days following the incident, Applicant shall provide a written, follow-up report to the County Administrator and/or his designee that describes in detail the incident, the area affected, and the measures taken by Applicant to respond to and/or remediate the situation.
- b. Take representative soil samples from the Project Area prior to land disturbance activities for the project, then once during the first year of operation to establish a baseline of constituents important for agricultural productivity and compare the results to paired samples of those constituents from the same locations taken at the start of decommissioning. Any significant difference that may adversely affect agricultural productivity and that is reasonably attributable to the operation of the Facility shall be addressed as part of Applicant's obligation to return the area to substantially the condition that existed prior to construction.
- c. A sealed dry-waste container shall be maintained at the Facility for the disposal of any damaged solar panels.

25. Local Contractor and Job Fairs. No later than ninety (90) days prior to the start of construction of the Facility, the Applicant shall hold at least two (2) contractor and job fairs, one on a weekday evening and one on a Saturday, in Culpeper County. The purpose of the contractor and job fairs shall be to attract qualified construction sub-contractors with operations in Culpeper County and individual job applicants who reside in Culpeper County for the construction or operation of the Facility. The contractor and job fairs shall be advertised in the local newspaper at least two (2) weeks in advance.

26. Emphasis on Local Employment. The Applicant shall, in any request for proposals for the employment of non-specialized services such as but not limited to, landscaping and grounds maintenance, road construction, and similar non-technical services, ensure that its contractors include a requirement to use best commercial efforts to attract and retain companies based in Culpeper County or the Town of Culpeper, or persons residing in either jurisdiction.

27. Road Repair. The Applicant shall repair expeditiously any damage to public roads or related infrastructure caused by the construction traffic for the Facility as required or determined by the County or VDOT, which shall be contemplated and covered by the surety/bonding and the liability insurance policy.

28. Permit Duration. This Permit shall be valid for a specified length of time from the start of commercial operations of the Facility, which shall be the date on which the Facility first delivers non-test energy to the high-voltage transmission system, -- or until hereunder this Permit lawfully terminated or terminated as a matter of ordinance or other law prior to the natural expiration date, whichever is sooner. At the end of the specified amount of time -- unless hereunder this Permit decommissioning is lawfully permitted to be required sooner, the Facility shall be deemed to have reached the end of its lifespan and decommissioning shall begin.

29. Reconstruction.

- a. This Permit authorizes only the initial construction, operation and decommissioning of the Facility and does not authorize the reconstruction or substantial change in location of the major land-disturbing components of the Facility, such as the collection yard, pilings, racking, roads, buried collection lines, and fencing. Any such reconstruction may be authorized only pursuant to the County's requirements at the time applicable to new projects.
- b. This condition does not apply to routine maintenance, repair and replacement of components and does not preclude the wholesale replacement of operating components of the Project not involving significant land disturbance, such as the replacement of operating components of the collection yard, solar panels, inverters, and pyranometers. Any equipment replacement program that will result in significant truck traffic potentially disruptive to neighbors shall be undertaken only after approval by the County Administrator and/or his designee of a traffic management plan and shall be limited to the hours of 8:00 a.m. to 6:00 p.m., Monday through Saturday.

30. Panel Specifications and Composition. At the time of construction, the Applicant shall provide to the County Administrator, with a copy to the County Attorney, a written panel specification disclosure document that includes the composition, toxicological information, and the physical and chemical properties of all of the solar panels being utilized for the Project.

31. Corporate Structure, Associations, and Information.

- a. The Applicant upon issuance of the Permit, shall provide written contact information/relational charts to the County Administrator, with a copy to the County Attorney, regarding its business structure and its affiliations, including but not limited to its affiliations, members, parent company, and subsidiaries.
- b. Applicant and all successors-in-interest, including current and future owners, lessees, sub-lessees, and permitted assignees shall provide the County Administrator, with a copy to the County Attorney, written notice of changes of ownership within thirty (30) days thereof.

32. Substantial upgrades and/or changes in design and/or operation. Any substantial upgrades or changes made to the design or operation of the solar facility and/or the Project that are planned shall be disclosed to the County Administrator and/or his designee at least (ninety) 90 days before the intended implementation of the upgrades or changes – except as provided herein. Any substantial upgrades and/or changes resulting solely from a bona fide emergency and force majeure shall be disclosed no later than (sixty) 60 days thereafter.

33. Additional Measures to Mitigate Construction Impact. The Applicant shall implement the following additional measures during construction:

- a. Maintain all construction-related vehicles in good working order.
- b. Provide notice to owners or tenants of homes located on properties adjacent to areas where construction activity will take place when such activity will occur.
- c. Designate a specific individual and provide that individual's name and contact information to the County Administrator and/or his designee, to which questions, complaints, or concerns during construction may be directed.
- d. Prior to the initiation of construction, mail a notice of construction activity to all property owners whose properties are adjacent to areas on which the Facility will be constructed or who reside along all roads from the nearest primary road to those points that have been identified to the County Administrator and/or his designee as points at which workers, materials, and supplies will be delivered. The notice shall summarize upcoming construction activities, describe the areas in which construction will occur, including the main routes of delivery, and provide the name and contact information of the Facility representative to whom any complaints, concerns, or comments may be addressed.
- e. Provide adequate portable sanitation facilities that are located in a manner that facilitates ease of disposal but that are not within one hundred and fifty (150) feet of any property boundary of a parcel on which a home is located and whose owner is not participating in the Facility.
- f. Prohibit any personnel associated with the construction of the Facility from overnight lodging at the Facility.

34. Operator's Commercial General Liability Coverage. The Applicant shall secure and maintain at all times public liability insurance for personal injuries, death, and property damage, including damage to public roads, and umbrella insurance coverage for the duration of the Permit in a minimum amount as established by the Board of Supervisors.

- a. The Operator shall provide the County Administrator and/or his designee Certificates of Insurance annually, and the amounts of required insurance shall be reviewed every two years for adequacy.

Exhibit B

CIVIL WAR BATTLEFIELD BOUNDARY AREAS CULPEPER COUNTY, VA



RAPPAHANNOCK
COUNTY

FAUQUIER
COUNTY

Legend

- Town of Culpeper
- Battlefield Boundary Area

MADISON
COUNTY

ORANGE
COUNTY

STAFFORD
COUNTY

SPOTSYLVANIA
COUNTY

PREPARED BY
CULPEPER COUNTY PLANNING DEPARTMENT

DATE: 10-1-2019



Jefferson County Development Authority

August 19, 2020

The Honorable Commissioner Jane Tabb, President
The Honorable Commissioner Josh Compton
The Honorable Commissioner Caleb Hudson
The Honorable Commissioner Ralph Lorenzetti
The Honorable Commissioner Patsy Noland
Jefferson County Commission
P. O. Box 250
Charles Town, West Virginia 25414

Dear Jefferson County Commissioners:

By majority vote with one abstention at its regular board meeting on August 18, 2020, the Jefferson County Development Authority (JCDA) voted to respectfully submit the following recommendations regarding the proposed amendments to the County Zoning Code to Allow Solar Energy Facilities as Principal Permitted Use.

The JCDA supports the appropriate development and use of alternative energy in Jefferson County. Alternative energy, including solar energy, can help strengthen and enhance the overall economic well-being of businesses, create well-paying jobs, and maintain the high quality of life of residents in our county.

The County Planning staff has assured us that the proposed zoning amendment specifically addresses large-scale solar facilities as a principal land use and, as such, would have no effect on small- or medium-scale solar facilities including residential rooftop solar systems.

Issues and Recommendations

Issue 1: Potential impact of large-scale solar energy facilities such as solar farms.

Envision 2035, Appendix D, Goals & Objectives, Goal 10, Objective 9 states: "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."

Recommendation. In keeping with this **Envision 2035** requirement to encourage a variety of energy sources in ways that respect the character of the county, the JCDA recommends that the County Commission should update the zoning code to authorize large-scale solar energy facilities while also establishing guardrails to reduce any potentially negative effects of these facilities on the view shed, storm water runoff, and other environmental matters in Jefferson County. Specifically, the JCDA recommends that the County Commission should take the following actions:

304-728-3255 • jcda.net • 1948 Wiltshire Road, Suite #4, Kearneysville, WV 25430

- a. Establish that large-scale solar energy facilities would be permitted only as a conditional use in appropriate zoning categories rather than as a permitted use.
- b. Develop conditions for approval of such solar energy facilities with input from the public. The American Planning Association has prepared a model zoning ordinance in its PAS Memo, "Planning for Utility-Scale Solar Energy Facilities" that includes reasonable conditions, based on experience in several Virginia jurisdictions.
- c. Consider limiting the size of individual large-scale solar energy facilities and also limiting the overall amount of land throughout the county used for such facilities. The County should consider best practices used in other states and counties on this topic.
- d. Place reasonable restrictions on the nature of the solar panels (or other energy-producing technology that could be used) at these facilities to protect the view shed and control storm water runoff.
- e. Ensure that the zoning code will require that owners of large-scale solar energy facilities, and landowners who lease land for these facilities, must use best practices for controlling and mitigating storm water caused by the facilities.
- f. Establish clear requirements and procedures for the county's monitoring and enforcement of any large-scale solar energy facilities that are built in this county. For example, ensure the landowner or renter follows the zoning requirements for setbacks, screening, and so forth. In addition, the County Commission should identify the county office that will be responsible for monitoring these facilities and ensure that the responsible office receives adequate funding to perform this function.
- g. Identify potential negative impacts of large-scale solar energy facilities on the county's public safety response capabilities and indicate the specific actions the County Commission will take to mitigate the negative impacts.

Issue 2: Educate county residents and businesses on placing solar energy facilities on their property.

It is important that county residents and businesses have clear information on the benefits and potential challenges with placing large-scale solar energy production facilities on their property and on leasing their property to others for this purpose.

Recommendation.

The JCDA recommends that if the proposed zoning amendment is adopted, the County Commission should establish educational programs to help landowners determine whether to lease their land for solar farms. The education programs should include such topics as:

- a. How to determine whether a parcel of land is better suited for this purpose rather than an agricultural purpose;
- b. Landowners' potential liability for leasing land to an energy producer. This might include, for example, the landowners' liability for administering a "decommissioning plan" of the solar farm on their property including in the case of when the solar producer does not follow the decommissioning requirements or storm water requirements.

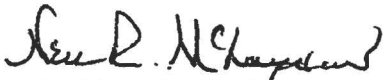
The JCDA is eager to collaborate with the County Commission to increase the availability and production of alternative energy in the county, as outlined in the Envision 2035 document. To this end, the JCDA

Jefferson County Commission
August 19, 2020
Page 3

will examine opportunities and challenges with the development of small and medium-size alternative energy facilities in Jefferson County (such as rooftop solar installations and cooperative arrangements where a group of landowners jointly generate solar energy to serve multiple houses). In addition, the JCDA also supports legislative proposals to authorize Power Purchase Agreements (PPA) which are necessary for the development of smaller facilities and more efficient rooftop systems. The availability of PPAs in West Virginia and in this county would be very helpful in expanding the renewable energy industry and would produce many well-paying jobs for county residents. Please see the JCDA's letter to state legislators in support of PPA, as attached.

As a next step, JCDA is planning to facilitate a public dialogue to inform the public about renewable energy options and to gain resident input on the types of alternative energy production that could be appropriate in Jefferson County.

Sincerely,



Neil R. McLaughlin, President

Attachment:

Correspondence dated January 20, 2020, from the JCDA to State Legislators in Support of S.B. 611, a proposal to authorize power purchase agreements in West Virginia.

RECEIVED
February 2, 2021
Jefferson County, WV
Office of Planning & Zoning

February 2, 2021

Planning Commissioners:

Consider the following additions to Section 8.20A.2:

- e. intended earthwork that would alter the natural topography;
- f. compatibility of the project with the surrounding area in terms of land use and visual appearance;
- g. impact on wildlife population and endangered species;
- h. proposed construction entrance locations.

This is the same or similar information which the developer is required to file with the PSC.

Thanks,
Doug Rockwell

RECEIVED

FEB 02 2021

IDEAS for
Will and Nathan

JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

I

A solar energy facility may locate in the following zoning districts:

1) As a Principal Permitted Use in those parts of the Major Industrial, Light Industrial, Industrial/Commercial, General Commercial, Highway Commercial, Residential/Light Industrial/Commercial, Residential Growth and Rural Districts within the Urban Growth Boundary and Preferred Growth Areas as shown on the Future Land Use Guide of the Envision Jefferson 2035 Comprehensive Plan.

2) As a Conditional Use in the Rural District outside of the Urban Growth Boundary on any parcel of land which existed before July 1, 2020 and is within 500 feet of an existing electric transmission line with a capacity of at least 138 K.V. The conditional use shall be subject to review and approval by the Board of Zoning Appeals in accordance with Section 6.3 of this Ordinance.

II

- One of the highest priorities of the Plan is to preserve agricultural activity, rural landscape and heritage. (p. 36)

- Non-agricultural/non-residential related rural CUP's shall only be proposed on a small portion of a rural property to help preserve farmland and open spaces and continued agricultural operations. (p. 74) See p. 37 also.

- It is important that viable existing farmland be protected. (p. 34).

- A non-agriculturally related commercial use is allowed in the Rural District by CUP if (1) the use is agriculturally and rurally compatible in scale and intensity, (2) poses no threat to public health, safety and welfare and (3) the use helps preserve farmland and open spaces and continued agricultural operations. (Goal 8-5.b p. 77)

Suggestion:

Site Size - Rural District

A solar energy facility in the Rural District outside of the Urban Growth Boundary may only be located on a tract or parcel of land which existed before July

Submitted by Doug Rockwell RE: 2TA 19-03

1, 2020 and shall occupy no more than ^{50%}~~33-1/3%~~ of the said tract or parcel notwithstanding the size of the parcel of land. Transfer or assignment of development rights between parcels or tracts of land is prohibited unless the parcels or tracts are owned by the same individual or entity and have a shared boundary.

III

Transferable

The zoning certificate or permit shall be granted solely for the subject property for operation of a solar energy facility and shall terminate when the facility is decommissioned. The certificate or permit shall not be assigned to a third party absent the written consent of the County Commission of Jefferson County.

Height

Inverters and solar panels, measured from the grade of the ground on which the structures sit to their highest possible point, shall not exceed a height of ten (10) feet.

Panel Specifications

At the time of construction, the Applicant shall provide to the Zoning Administrator, a written panel specification disclosure that includes the composition, toxicological information and the physical and chemical properties of the solar panels being utilized for the facility.

Setback

A solar energy facility, including fencing, must be a minimum of 200 feet from all property lines and State Road rights of way.

Landscape Buffer

Appearance and visual impact shall be minimized by a buffer and greenspace, including evergreen trees around the solar energy facility. The trees shall be 6 feet in height when planted and likely to reach a height of 20 feet in maturity. The trees shall be planted every 15 linear feet.

Agricultural and Rural Economy Recommendations (Goal 8)	
1.	Support West Virginia's and Jefferson County's "Right to Farm" policies which protect the rights of existing and future farms and farmers by developing zoning standards, other legislation, and educational programs designed to reduce potential conflicts arising from the proximity of agriculture to residential development (State Code § 19-19; Section 4.5 of the County's Zoning Ordinance).
	a. Identify and utilize a wider variety of funding sources that could serve to expand the County's farmland protection program.
	b. Create an educational pamphlet informing developers, realtors, and potential homeowners of the offsite impacts of living adjacent to farming activities.
2.	Enact Zoning Ordinance provisions to reduce the intensity of residential development in the Rural zone, other than by clustering, thereby protecting and increasing the investment potential and attractiveness of the agricultural lands for families, entrepreneurs, and businesses.
	a. Decrease the problems of rural traffic volume and the need for additional costly public infrastructure services in rural areas while conserving areas of the Rural zone for agricultural uses and the rural economy through support for rural cluster development vs large subdivisions of new home growth.
3.	Support the rural economy by amending the Subdivision Regulations to establish rural business site plan standards to include:
	a. performance criteria, including compatible size, scale, use, intensity, traffic capacity limits, employee limits, site design standards (i.e. buffering, siting), and standards that protect public health, safety, and welfare; and
	b. the adaptive reuse of existing historic and agricultural structures.
4.	Collaborate with the County's agricultural community to assess the current land use regulations and determine what opportunities for agriculture might currently exist and what additional opportunities might be able to succeed in Jefferson County.
5.	Amend the Zoning and Land Development Ordinance to permit additional non-residential rurally compatible uses.
	a. Incorporate into the zoning provisions innovative agricultural uses including the creation of standards which permit flexibility in the sale of farm products and related auxiliary products.
	b. Amend local land use regulations to permit non-agriculturally related commercial uses by the Conditional Use Permit (CUP) process in the Rural zone if the use is agriculturally and rurally compatible in <u>scale</u> and <u>intensity</u> , poses no threat to public health, safety, and <u>welfare</u> , and <u>if the use helps to preserve farmland and open space and continue agricultural operations</u> .



	<p>c. Require that <u>new</u> non-rural commercial uses that are not compatible with the dominant agricultural land use pattern <u>locate only</u> in the Urban Growth Boundaries (UGBs) and Preferred Growth Areas (PGAs) as identified by the future land use recommendations of this Plan.</p>
<p>6.</p>	<p>Coordinate with local businesses and the Jefferson County Development Authority (JCDA) to brand and market Jefferson County farms and products by identifying and linking potential partnerships and matching suppliers with potential local and regional markets.</p>
	<p>a. Conduct market research on high-value agricultural products, ancillary farm businesses, and other rural economic uses such as farm agri-tourism, retreats, and country inns;</p>
	<p>b. Develop and expand, in conjunction with the Jefferson County Convention and Visitors Bureau, brand identification of Jefferson County farm products;</p>
	<p>c. Provide more alternatives to promote rural tourism and rural land uses.</p>
<p>7.</p>	<p>Work with Jefferson County's agricultural community to effectively distribute local agricultural products and encourage the growth of the market for local products.</p>
	<p>a. Facilitate the establishment of year round marketing outlets to support the farm community, such as farmers' markets or a product distribution center;</p>
	<p>b. Encourage the expansion of off-site farmers' markets to provide marketplaces for farmers and artisans to sell their goods within a variety of Jefferson County commercial venues;</p>
	<p>c. Promote products to Jefferson County based businesses.</p>
<p>8.</p>	<p>Coordinate with key agricultural and rural stakeholders to identify ways to expand marketing and value added production activities for farmers and artisans on their properties in rural areas of Jefferson County.</p>
	<p>a. Amend existing regulations in order to identify and facilitate ways to allow the sale of items grown, processed, crafted, or manufactured in Jefferson County on farms other than the farm where the product originated.</p>
	<p>b. Develop a streamlined process for such uses when there are minimal impacts to surrounding neighbors.</p>
	<p>c. Expand and improve high speed Information Technology (IT) connections in rural areas of Jefferson County with local internet or advanced technologies providers to enable residents to run businesses from home or to telecommute.</p>
<p>9.</p>	<p>Collaborate with the local artisan community and Jefferson Arts Council to review and amend the local land use regulations to promote and enhance the viability and livelihood of artisans in the rural areas of Jefferson County.</p>
	<p>a. Encourage local non-profit organizations and local and regional economic development agencies to create a regular forum where all County artisans, businesses, and members of the non-profit and arts communities can meet to network and collaborate.</p>

Urban Level Development Recommendations (Goal 1)	
1.	Recognize the existing vested rights, development entitlements, and permitted density levels on properties in Jefferson County.
	a. No property's zoning status will be changed as part of this Plan.
2.	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:
	a. Economic Well-Being of the County; or
	b. Error or Under Scrutinized Property on the Future Land Use Guide; or
	c. Change in Neighborhood; or
	d. Any Other Circumstance that the Governing Body determines should have been considered when drafting the Future Land Use Guide; and/or
	e. Environmental impacts are considered.
3.	Identify opportunities for small area plans and involve key stakeholders.
4.	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.
5.	Create urban level land uses within the municipalities, UGBs, PGAs, or Villages through rezoning that is consistent with the Plan recommendations.
	a. 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. Reduce application fees for urban level development located within the areas desired for urban future growth.
	c. 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.
	d. 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.
	e. 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.



Jefferson County Development Authority

August 19, 2020

The Honorable Commissioner Jane Tabb, President
The Honorable Commissioner Josh Compton
The Honorable Commissioner Caleb Hudson
The Honorable Commissioner Ralph Lorenzetti
The Honorable Commissioner Patsy Noland
Jefferson County Commission
P. O. Box 250
Charles Town, West Virginia 25414

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The County Planning staff has assured us that the proposed zoning amendment specifically addresses large-scale solar facilities as a principal land use and, as such, would have no effect on small- or medium-scale solar facilities including residential rooftop solar systems.

Issues and Recommendations

Issue 1: Potential impact of large-scale solar energy facilities such as solar farms.

Envision 2035, Appendix D, Goals & Objectives, Goal 10, Objective 9 states: "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."

Recommendation. In keeping with this **Envision 2035** requirement to encourage a variety of energy sources in ways that respect the character of the county, the JCDA recommends that the County Commission should update the zoning code to authorize large-scale solar energy facilities while also establishing guardrails to reduce any potentially negative effects of these facilities on the view shed, storm water runoff, and other environmental matters in Jefferson County. Specifically, the JCDA recommends that the County Commission should take the following actions:

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- d. Place reasonable restrictions on the nature of the solar panels (or other energy-producing technology that could be used) at these facilities to protect the view shed and control storm water runoff.
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Issue 2: Educate county residents and businesses on placing solar energy facilities on their property.

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Recommendation.

The JCDA recommends that if the proposed zoning amendment is adopted, the County Commission should establish educational programs to help landowners determine whether to lease their land for solar farms. The education programs should include such topics as:

- a. How to determine whether a parcel of land is better suited for this purpose rather than an agricultural purpose;
- b. Landowners' potential liability for leasing land to an energy producer. This might include, for example, the landowners' liability for administering a "decommission plan" of the solar farm on their property including in the case of when the solar producer does not follow the decommissioning requirements or storm water requirements.

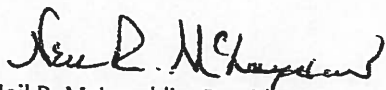
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Jefferson County Commission
August 19, 2020
Page 3

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As a next step, JCDA is planning to facilitate a public dialogue to inform the public about renewable energy options and to gain resident input on the types of alternative energy production that could be appropriate in Jefferson County.

Sincerely,



Neil R. McLaughlin, President

Attachment:

Correspondence dated January 20, 2020, from the JCDA to State Legislators in Support of S.B. 611, a proposal to authorize power purchase agreements in West Virginia.

Planning Department

From: tim ross <trxccl@gmail.com>
Sent: Tuesday, February 2, 2021 4:02 PM
To: Planning Department
Subject: Comments for the February 9, 2021 PC hearing
Attachments: TROSS comments zta19-03 comments.docx

Categories: Planning Commission

Dear Alex, Attached are my comments for the Planning Commission to consider. Thank you very much for distributing them to the PC. Also, I hope that since this is the same amendment as before, that the PC will be provided the comments that had been sent in to them last year.

Sincerely,
Tim Ross

Comments from Tim Ross on a proposed text amendment to the Jefferson County Zoning and Land Development Ordinance, File #ZTA19-03 to allow Solar Energy Facilities to process as a Principal Permitted Use etc.

I believe that this Ordinance should not be allowed as a Principal Use. It also should not be allowed in Rural zones. The proposed land use is not for a renewable energy source as described in the Jefferson County Comprehensive Plan, but for Solar Exempt Wholesale Generators (EWG) and thus violates the Jefferson County Comprehensive Plan. These EWG are by name and design a commercial, industrial installation that by logic should only be in areas zoned; light or major industrial, Industrial Commercial, or perhaps in those Residential - Light Industrial Commercial areas. In the amendment before you, you will see quotes from the 2035 Comprehensive Plan that explains exactly what the plan means by the term solar facilities. I refer you to pages 83-87 of your packet. The plan provides examples as in the parking shelters at APUS, calls on public buildings to utilize solar, and for legislation to make it easier for homeowners to establish community/neighborhood sized solar facilities. These examples are what the community is expecting by the Plan. Not for EWG that are meant to sell the electricity generated unknown on the wholesale market. Yes, the energy generated can end up in our powerlines, but we would still pay retail rates.

It appears this amendment is trying to get around the Comprehensive Plan by changing the intent of what the plan clearly means for alternative energy by calling an EWG a Solar Energy Facility. Furthermore, the definition of a Solar Energy Facility in the amendment contains references to "Essential Utility Equipment." An EWG is not an "Essential Utility." A renewable Energy Facility is already described by state code, which you should read. Even though paragraph 3a seems to be quoting that state code, an EWG is not a Solar Energy Facility as described by code:

https://www.wvlegislature.gov/Bill_Status/bills_text.cfm?billdoc=SB583%20SUB1%20ENR.htm&yr=2020&sesstype=RS&i=583

You should also familiarize yourself with the following code:

<https://www.wvlegislature.gov/wvcode/ChapterEntire.cfm?chap=24&art=2§ion=10#2>

Please pay particular attention to paragraph "n." Paragraph "n" is the only paragraph in the code that applies to Solar EWGs. There is no way that solar panels at the APUS parking lot are the same thing as an 800 acre EWG. The PC might wish to engage an attorney with experience with the WV Public Service Commission (PSC) rather to explain the nuances of the code and PSC regulations.

Some other questions that each planning commission member should consider asking:

Is Mr. Dunn still interested in submitting this amendment? Does Mr. Dunn have a contract for installing an EWG on his property? If not, why did Mr. Dunn sponsor this amendment? If Mr. Dunn does not positively state he wants the amendment to continue and has no reason for it to, then the amendment should be withdrawn from consideration because an amendment needs a Jefferson County resident as a sponsor. I don't see anything in the packet that contains any statement by anyone requesting this amendment.

As of February 2, 2020, the only application extant for an EWG in Jefferson County is that submitted by EDF (DBA Wild Hill) to the PSC. Mr. Dunn's land is not part of that application. It appears that EDF is awaiting the approval of this zoning amendment so they can move forward on their EWG if the PSC

approves it. EDF and the landowners associated with their EWG application are the entities that will most immediately profit from this zoning amendment.

Each member of the Planning Commission should publicly state that neither they, nor a company they or family members are associated with, will profit in any way from the passing of this amendment, and/or the creation of an EWG on Mr. Dunn's property, or on any project under review by the PSC. Any member who cannot answer in the negative should recuse themselves from any discussion or approval of this amendment.

This amendment as written was previously approved by the Planning Commission and the Jefferson County Commission and became the genesis of a legal complaint that led to an injunction against the amendment. It was finally vacated by the JCC in a settlement. It would be arrogant and fool hardy to once again approve it in its current form. I encourage you all to ask yourselves and each other as to how and why this amendment was basically judged to be indefensible by the JCC? Logically, a part of this questioning should lead you to find a way that it wouldn't be judged illegal.

If you have paid attention to the hearings and workshops where EDF and Torch Energy participated you heard both companies say that there are only three locations in Jefferson County where EWGs could be sited. If this is so, then why was the original amendment changed from conditional use in Rural to allow EWGs to be sited by right in over 80 percent of the County?

Perhaps there are only three possible locations for EWG in this county at this time, but the amendment you are considering is for all time, and the only people that are down-playing the extent EWGs could cover are those whose livelihood comes from developing them.

If you do believe that EWGs meet the criteria spelled out in the Comprehensive Plan and feel you must approve them then they should only be approved under Conditional Use. Our County, with prime soils and farmland, is too precious to be given up for all time to what amounts to be a cookie cutter process with limited public input. I believe that our country needs to embrace renewable energy and our farmers need to be able to diversify their income. I also believe that there has to be a better way to combine the two industries rather than resorting to an either/or solution. Thank you for considering my comments. I will watch the hearing with much interest.

Planning Department
PlanningDepartment@jeffersoncountywv.org
Alexandra Beaulieu
Zoning Administrator
Jefferson County – West Virginia

RECEIVED
February 2, 2021
Jefferson County, WV
Office of Planning & Zoning

Zoning Ordinance Text Amendment concerning comments of the Solar Amendment to be discussed via the JCPlanning Commission then onto the Jefferson County Commissioners. I understand written comments that are received before 5:00 PM Feb 2, 2021 will be included in the agenda packet for the hearing on Feb 9, 2021.

Thank you for the opportunity to submit my comments. I understand the solar amendment had been vacated and a re-write by the JC Planning Commission is expected to be provided to the Jefferson County Commission for vote.

Consideration of the following should be discussed and included for the good of the County, the residents, and businesses regarding solar. Missing information creates misnomers, confusion and distrust of elected and appointed officials charged with leadership for and of our county and state.

1. DEFINITIONS: there are blatant differences - residential solar, commercial solar, solar energy system, solar energy facility, solar farm and exempt/non-exempt wholesale generator(s). Fulfilling an honest definition list is imperative so as to avoid guessing and misrepresentation.

The JC Ordinance does not define the following clearly:

2. Amendment vocabulary that is mis-leading and/or ambiguous. For example “shall” is not either or. It is “must”. Probable, possible, expectation, most likely, and other ambiguous vocabulary.
3. BOND is understood to be provided by a commercial business to cover expenses via promissory contract recorded with the county clerk. However, in the amendment a BOND does not outline the ability of transfer, reinstatement or even a release when the initial business is no longer in place and/or another business steps in. The Bond needs to be included at all phases for a commercial business.
4. Decommission of a solar business identified specifically as an EXEMPT WHOLSALE GENERATOR must be contracted, not to be assumed the original business will be in place at the end of a 20-30-40 year lifetime contract.
5. Notification must include ALL landowners by owner name and street address at ALL easement boundaries, the entire perimeter (no matter the shape) of a project, e.g. solar, to be considered for installation. (notification to “neighbor” is meaningless) Public participation must be transparent.
6. Conditional Use Permit is imperative for the protection of the county, landowners and businesses. Yes, the nick-name “solar farm” is passed around, however the harvested crop is actually a business for exempt wholesale electricity sold to states outside of West Virginia. Jefferson County must realize the tax income at the onset does not provide longevity for the county or the use of the harvested electricity for its own residents. The vacated amendment assumes a solar facility to be a temporary commercial business. Temporary must be defined in a conditional use permit.
7. The vacated amendment states BUFFERING “solar panels that are located within 200 feet of any residence” residence is a structure not an easement boundary line separating the business

perimeter from the owner's structure. Measuring from the solar panel(s) to the owner's structure (their home) is NOT acceptable. Measuring from the boundary line toward the panel(s) is expected. (layman's example, a gas station perimeter is located x feet from a neighboring property line. The gas pump position is not measured from any residence or structure beyond the gas station's footprint perimeter.)

Thank you for including my comments for consideration & dialog when re-writing the amendment. I expect the original amendment will have significant changes and I do not expect the re-submitted vacated amendment to be acceptable.

Respectfully,

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Planning Department

From: Christine Marshall <balmertmarshall@icloud.com>
Sent: Tuesday, February 2, 2021 3:08 PM
To: Planning Department
Subject: February 2 2021 Public Comment ZTA 19-03 Solar Energy Facilities
Attachments: Untitled 7 1.pdf; ATT00001.htm

Categories: Planning Commission

February 2, 2021

Public Comment on Zoning Text Amendment, ZTA 19-03, to the Jefferson County Zoning and Land Development Ordinance to allow Solar Energy Facilities.

Dear Planning Commissioners,

Thank you for providing the opportunity to comment on the proposed Jefferson County Zoning and Land Development Ordinance text amendment, ZTA 19-03 Solar Energy Facilities (SEF).

I encourage the Planning Commission (PC) to work with the public and independent third party consultants to develop detailed plans on the development of ordinances that allow SEF that are conducive to preserving and enhancing the quality of life for the various communities in Jefferson County (JC); rural, farming, residential growth, business etc. In addition, a thorough examination of the expected long term financial outcome and impact of siting SEF in JC (tax revenue, decommissioning liability and funding, jobs, Power Purchase Agreements, etc.), is critical. Effects on county government, neighboring communities, residential and rural property values, the preservation of farming, scenic and historic landscapes should be evaluated to arrive at a model plan that benefits all citizens of the county as well as the solar energy facility owner.

Possible improvements to the draft text amendment are as follows:

Ordinance p. 39 - Definition of Solar Energy Facility. Please make a distinction and create separate definitions for SEF that are utility scale operations (that sell energy to the wholesale market and provide electricity to customers outside of JC) and small scale systems that provide electricity for the home or facility locally (APUS, hotels, residential homes, etc.).

Ordinance p. 39 - The PC and Jefferson County Commission (JCC) should have in place very detailed plans regarding decommissioning for utility scale SEF. The Decommissioning Plan requirements should also have a funding mechanism in place for future removal and disposal of all equipment and restoration of land to its former condition. The Decommissioning Plan should not make any assumptions that the salvage value will exceed removal and disposal costs. Costs should be evaluated by an independent third party. This will ensure that future taxpayers will not be left to pay for site restoration on thousands of acres in JC.

Ordinance p. 137 - Appendix C - Development of SEF should process under the Conditional Use Permit process in all proposed permitted Zoning Districts, which should include concept and site plans that can be modified specifically to the unique location of the project. This is especially important when considering stormwater management plans, adjacent properties and primary land use in a proposed location.

Ordinance p. 107-111 - Section 8.20.B.2 - Setbacks - a. Solar Panels - I. Front, Side and Rear. Please increase the setback to 200 feet from property lines and add a vegetative buffer between property lines, roads, rights of ways and the fencing that surrounds the SEF primary structures.

Section 8.20.B.3 - Buffering Landscaping, Security and Access. a.&b. - Please require the addition of a 50 foot wide vegetative buffer screen along all property lines. d. Security Fences - please require fences of a minimum height to exclude deer or 8 feet. Please also consider wildlife migration and create corridors to allow for the passage of animals on large tracts of land. For example an 800 acre SEF may be fenced into 8 separate 100 acre parcels or 4, 200 acre parcels and so on. This would allow deer and other wildlife to pass through the site safely and without driving all of the animals to neighboring properties. Consider consulting with the US Fish and Wildlife Service for advise.

Section 8.20.B.4 - Stormwater Management - Stormwater Management Plans (SMP) should be site specific and included in the Site Plan. SEF should not be exempt from providing SMPs.

Section 8.20.B.5 - Decommissioning Plan - a.i. - Please provide more sensitive triggers for initiating the decommissioning process than "ceased producing electricity for a period of 12 months". Consider adding a measure of electricity produced (percentage) as an end of electricity production. . b.i. - Please develop a specific County Solar Decommissioning Ordinance for utility scale SEF before passing this zoning text amendment and allow the public to review and make Public Comment on this document first. b.ii. - If the JCC or PC does not have the legal authority to require a Decommissioning Bond of utility scale SEF owners, the JCC must reach out to the WV State Legislature to create state law that permits the county government to require Decommissioning Bonds.

Attached is a document that explores in detail aspects to cover when developing utility scale SEF within a county. Contained there in are examples of Ordinances and Zoning requirements. I believe some of these components could be added to Jefferson County's own Zoning Ordinance document.

Thank you for considering my comments.

Christine Marshall
Jefferson County, WV



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PAS MEMO — SEPTEMBER/OCTOBER 2019

Planning for Utility-Scale Solar Energy Facilities

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By Darren Coffey, AICP

Solar photovoltaics (PV) are the fastest-growing energy source in the world due to the decreasing cost per kilowatt-hour — 60 percent to date since 2010, according to the U.S. Department of Energy (U.S. DOE n.d.) — and the comparative speed in constructing a facility. Solar currently generates 0.4 percent of global electricity, but some University of Oxford researchers estimate its share could increase to 20 percent by 2027 (Hawken 2017). Utility-scale solar installations are the most cost-effective solar PV option (Hawken 2017).



Transitioning from coal plants to solar significantly decreases carbon dioxide emissions and eliminates sulfur, nitrous oxides, and mercury emissions. As the U.S. Department of Energy states, "As the cleanest domestic energy source available, solar supports broader national priorities, including national security, economic growth, climate change mitigation, and job creation" (U.S. DOE n.d.). As a result, there is growing demand for solar energy from companies (e.g., the "RE100 (http://there100.org/)," 100 global corporations committed to sourcing 100 percent renewable electricity by 2050) and governments (e.g., the Virginia Energy Plan (https://www.dmme.virginia.gov/DE/VirginiaEnergyPlan.shtml) commits the state to 16 percent renewable energy by 2022).

Federal and state tax incentives have accelerated the energy industry's efforts to bring facilities online as quickly as possible. This has created a new challenge for local governments, as many are ill-prepared to consider this new and unique land-use option. Localities are struggling with how to evaluate utility-scale solar facility applications, how to update their land-use regulations, and how to achieve positive benefits for hosting these clean energy facilities.

As a land-use application, utility-scale solar facilities are processed as any other land-use permit. Localities use the tools available: the existing comprehensive (general) plan and zoning ordinance. In many cases, however, plans and ordinances do not address this type of use. Planners will need to amend these documents to bring some structure, consistency, and transparency to the evaluation process for utility-scale solar facilities.

Unlike many land uses, these solar installations will occupy vast tracts of land for one or more generations; they require tremendous local resources to monitor during construction (and presumably decommissioning); they can have significant impacts on the community depending on their location, buffers, installation techniques, and other factors (Figure 1); and they are not readily adaptable for another industrial or commercial use, hence the need for decommissioning.



Figure 1. Utility-scale solar facilities are large-scale uses that can have significant land-use impacts on communities. Photo by Flickr user U.S. Department of Energy/Michael Faria.

While solar energy aligns with sustainability goals held by an increasing number of communities, solar industries must bring an overall value to the locality beyond the clean energy label. Localities must consider the other elements of sustainability and make deliberate decisions regarding impacts and benefits to the social fabric, natural environment, and local economy. How should a locality properly evaluate the overall impacts of a large-scale clean energy land use on the community?

This *PAS Memo* examines utility-scale solar facility uses and related land-use issues. It defines and classifies these facilities, analyzes their land-use impacts, and makes recommendations for how to evaluate and mitigate those impacts. While public officials tend to focus on the economics of these facilities and their overall fiscal impact to the community, the emphasis for planners is on the direct land-use considerations that should be carefully evaluated (e.g., zoning, neighbors, viewsheds, and environmental impacts). Specific recommendations and sample language for addressing utility-scale solar in comprehensive plans and zoning ordinances are provided at the end of the article.

The Utility-Scale Solar Backdrop

In contrast to solar energy systems generating power for on-site consumption, utility-scale solar, or a solar farm, is an energy generation facility that supplies power to the grid. These facilities are generally more than two acres in size and have capacities in excess of one megawatt; today's utility-scale solar facilities may encompass hundreds or even thousands of acres. A solar site may also include a substation and a switchyard, and it may require generator lead lines (*gen-tie* lines) to *interconnect* to the grid (Figure 2).



Figure 2. Components of a solar farm: solar panels (left), substation (center), and high-voltage transmission lines (right). Photos courtesy Berkley Group (left, right) and Pixabay (center).

From 2008 to 2019, U.S. solar photovoltaic (PV) installations have grown from generating 1.2 gigawatts (GW) to 30 GW (SEIA 2019). The top 10 states generating energy from solar PV are shown in Figure 3. For many of these initial projects, local planning staff independently compiled information through research, used model ordinances, and relied on professional networks to cobble together local processes and permit conditions to better address the adverse impacts associated with utility-scale solar.

However, each individual project brings unique challenges related to size, siting, compatibility with surrounding uses, mitigating impacts through setbacks and buffers, land disturbance processes and permits, financial securities, and other factors. This has proven to be a significant and ongoing challenge to local planning staff, planning commissions, and governing bodies.

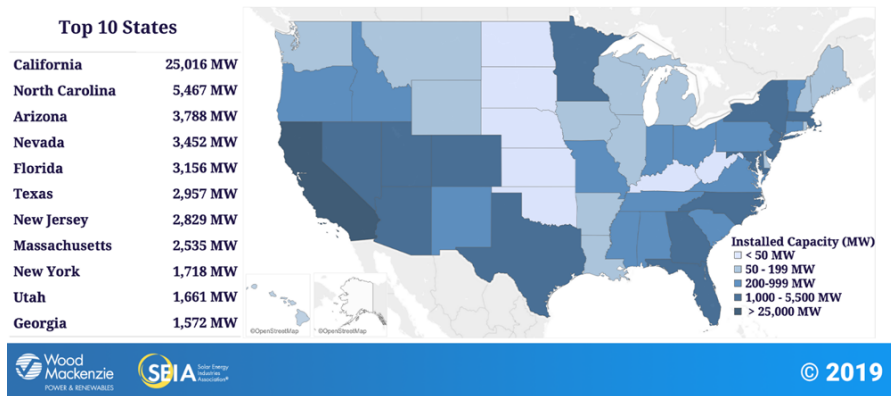


Figure 3. Utility solar capacity in the United States in 2019. Courtesy Solar Energy Industry Association.

Some localities have adopted zoning regulations to address utility-scale solar facilities based on model solar ordinance templates created by state or other agencies for solar energy facilities. However, these ordinances may not be sufficient to properly mitigate the adverse impacts of these facilities on communities. Many of these initial models released in the early 2010s aimed to promote clean energy and have failed to incorporate lessons learned from actual facility development. In addition, the solar industry has been changing at a rapid pace, particularly regarding the increasing scale of facilities. Planners should therefore revisit any existing zoning regulations for utility-scale solar facilities to ensure their relevance and effectiveness.

Rapid growth of utility-scale solar facilities has emerged for rural communities, particularly those that have significant electrical grid infrastructure. Many rural counties have thousands of acres of agricultural and forested properties in various levels of production. Land prices tend to be much more cost-effective in rural localities, and areas located close to high-voltage electric transmission lines offer significant cost savings to the industry. Figure 4 shows the extent of existing electric transmission lines in one rural Virginia county.

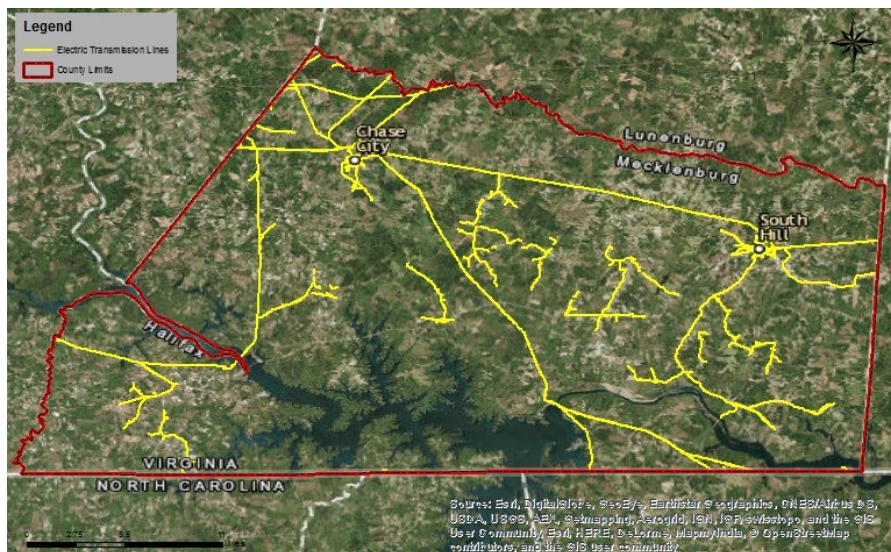


Figure 4. Electric transmission lines in Mecklenburg County, Virginia. Courtesy Berkley Group.

Federal and state tax incentives have further accelerated the pace of utility-scale solar developments, along with decreasing solar panel production costs. These factors all combine to create land-use development pressure that, absent effective and relevant land-use regulatory and planning tools, creates an environment where it is difficult to properly evaluate and make informed decisions for the community's benefit.

Solar Facility Land-Use Impacts

As with any land-use application, there are numerous potential impacts that need to be evaluated with solar facility uses. All solar facilities are not created equal, and land-use regulations should reflect those differences in scale and impact accordingly.

Utility-scale solar energy facilities involve large tracts of land involving hundreds, if not thousands, of acres. On these large tracts, the solar panels often cover more than half of the land area. The solar facility use is often pitched as "temporary" by developers, but it has a significant duration — typically projected by applicants as up to 40 years.

Establishing such a solar facility use may take an existing agricultural or forestry operation out of production, and resuming such operations in the future will be a challenge. Utility-scale solar can take up valuable future residential, commercial, or industrial growth land when located near cities, towns, or other identified growth areas. If a solar facility is close to a major road or cultural asset, it could affect the viewshed and attractiveness of the area. Because of its size, a utility-scale solar facility can change the character of these areas and their suitability for future development. There may be other locally specific potential impacts. In short, utility-scale solar facility proposals must be carefully evaluated regarding the size and scale of the use; the conversion of agricultural, forestry, or residential land to an industrial-scale use; and the potential environmental, social, and economic impacts on nearby properties and the area in general.

To emphasize the potential impact of utility-scale solar facilities, consider the example of one 1,408-acre (2.2-square-mile) Virginia town with a 946-acre solar facility surrounding its north and east sides. The solar project area is equal to approximately 67 percent of the town's area. A proposed 332.5-acre solar facility west of town increases the solar acres to 1,278.5, nearly the size of the town. Due to its proximity to multiple high-voltage electrical transmission lines, other utility-scale solar facilities are also proposed for this area, which would effectively lock in the town's surrounding land-use pattern for the next generation or more.

The following considerations are some of the important land-use impacts that utility-scale solar may have on nearby communities.

CHANGE IN USE/FUTURE LAND USE

A primary impact of utility-scale solar facilities is the removal of forest or agricultural land from active use. An argument often made by the solar industry is that this preserves the land for future agricultural use, and applicants typically state that the land will be restored to its previous condition. This is easiest when the land was initially used for grazing, but it is still not without its challenges, particularly over large acreages. Land with significant topography, active agricultural land, or forests is more challenging to restore.

It is important that planners consider whether the industrial nature of a utility-scale solar use is compatible with the locality's vision. Equally as important are imposing conditions that will enforce the assertions made by applicants regarding the future restoration of the site and denying applications where those conditions are not feasible.

Agricultural/Forestry Use. Agricultural and forested areas are typical sites for utility-scale solar facility uses. However, the use of prime agricultural land (as identified by the USDA or by state agencies) and ecologically sensitive lands (e.g., riparian buffers, critical habitats, hardwood forests) for these facilities should be scrutinized.

For a solar facility, the site will need to be graded in places and revegetated to stabilize the soil. That vegetation typically needs to be managed (e.g., by mowing, herbicide use, or sheep grazing) over a long period of time. This prolonged vegetation management can change the natural characteristics of the soil, making restoration of the site for future agricultural use more difficult. While native plants, pollinator plants, and grazing options exist and are continually being explored, there are logistical issues with all of them, from soil quality impacts to compatibility of animals with the solar equipment.

A deforested site can be reforested in the future, but over an additional extended length of time, and this may be delayed or the land left unforested at the request of the landowner at the time of decommissioning. Clearcutting forest in anticipation of a utility-scale solar application should be avoided but is not uncommon. This practice potentially undermines

the credibility of the application, eliminates what could have been natural buffers and screening, and eliminates other landowner options to monetize the forest asset (such as for carbon or nutrient credits).

For decommissioning, the industry usually stipulates removal of anything within 36 inches below the ground surface. Unless all equipment is specified for complete removal and this is properly enforced during decommissioning, future agricultural operations would be planting crops over anything left in the ground below that depth, such as metal poles, concrete footers, or wires.

Residential Use. While replacing agricultural uses with residential uses is a more typical land-use planning concern, in some areas this is anticipated and desired over time. "People have to live somewhere," and this should be near existing infrastructure typical of cities, towns, and villages rather than sprawled out over the countryside. This makes land lying within designated growth areas or otherwise located near existing population centers a logical location for future residential use. Designated growth areas can be important land-use strategies to accommodate future growth in a region. Permitting a utility-scale use on such land ties it up for 20–40 years (a generation or two), which may be appropriate in some areas, but not others.

Industrially Zoned Land. Solar facilities can be a good use of brownfields or other previously disturbed land. A challenge in many rural areas, however, is that industrially zoned land is limited, and both public officials and comprehensive plan policies place a premium on industries that create and retain well-paying jobs. While utility-scale solar facilities are not necessarily incompatible with other commercial and industrial uses, the amount of space they require make them an inefficient use of industrially zoned land, for which the "highest and best use" often entails high-quality jobs and an array of taxes paid to the locality (personal property, real estate, machinery and tool, and other taxes).

LOCATION

The location of utility-scale solar facilities is the single most important factor in evaluating an application because of the large amount of land required and the extended period that land is dedicated to this singular use, as discussed above.

Solar facilities can be appropriately located in areas where they are difficult to detect, the prior use of the land has been marginal, and there is no designated future use specified (i.e., not in growth areas, not on prime farmland, and not near recreational or historic areas). Proposed facilities adjacent to corporate boundaries, public rights-of-way, or recreational or cultural resources are likely to be more controversial than facilities that are well placed away from existing homes, have natural buffers, and don't change the character of the area from the view of local residents and other stakeholders.

CONCENTRATION OF USES

A concentration of solar facilities is another primary concern. The large scale of this land use, particularly when solar facilities are concentrated, also significantly exacerbates adverse impacts to the community in terms of land consumption, use pattern disruptions, and environmental impacts (e.g., stormwater, erosion, habitat). Any large-scale homogenous land use should be carefully examined — whether it is rooftops, impervious surface, or solar panels. Such concentrated land uses change the character of the area and alter the natural and historic development pattern of a community.

The attraction of solar facilities to areas near population centers is a response to the same forces that attract other uses — the infrastructure is already there (electrical grid, water and sewer, and roads). One solar facility in a given geographic area may be an acceptable use of the land, but when multiple facilities are attracted to the same geography for the same reasons, this tips the land-use balance toward too much of a single use. The willingness of landowners to cooperate with energy companies is understandable, but that does not automatically translate into good planning for the community. The short- and medium-term gains for individual landowners can have a lasting negative impact on the larger community.

VISUAL IMPACTS

The visual impact of utility-scale solar facilities can be significantly minimized with effective screening and buffering, but this is more challenging in historic or scenic landscapes. Solar facilities adjacent to scenic byways or historic corridors may negatively impact the rural aesthetic along these transportation routes. Buffering or screening may also be appropriate along main arterials or any public right-of-way, regardless of special scenic or historic designation.

The location of large solar facilities also needs to account for views from public rights-of-way (Figure 5). Scenic or historic areas should be avoided, while other sites should be effectively screened from view with substantial vegetative or other types of buffers. Berms, for example, can provide a very effective screen, particularly if combined with appropriate vegetation.



Figure 5. This scenic vista would be impacted by a solar facility proposed for the far knoll. Photo courtesy Berkley Group.

DECOMMISSIONING

The proper decommissioning and removal of equipment and other improvements when the facility is no longer operational presents significant challenges to localities.

Decommissioning can cost millions in today's dollars. The industry strongly asserts that there is a significant salvage value to the solar arrays, but there may or may not be a market to salvage the equipment when removed. Further, the feasibility of realizing salvage value may depend on who removes the equipment — the operator, the tenant, or the landowner (who may not be the same parties as during construction) — as well as when it is removed.

Providing for adequate security to ensure that financial resources are available to remove the equipment is a significant challenge. Cash escrow is the most reliable security for a locality but is the most expensive for the industry and potentially a financial deal breaker. Insurance bonds or letters of credit seem to be the most acceptable forms of security but can be difficult to enforce as a practical matter. The impact of inflation over decades is difficult to calculate; therefore, the posted financial security to ensure a proper decommissioning should be reevaluated periodically — usually every five years or so. The worst possible outcome for a community (and a farmer or landowner) would be an abandoned utility-scale solar facility with no resources available to pay for its removal.

Additional Solar Facility Impacts

In addition to the land-use impacts previously discussed, there are a number of significant environmental and economic impacts associated with utility-scale solar facilities that should be addressed as part of the land-use application process.

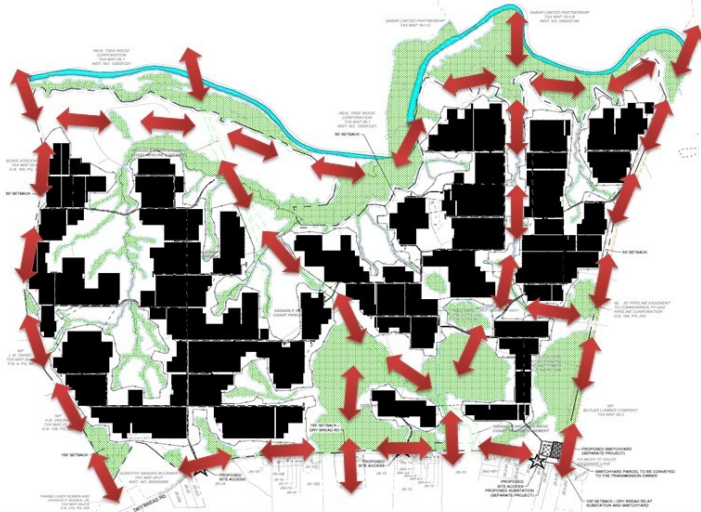
ENVIRONMENTAL IMPACTS

While solar energy is a renewable, green resource, its generation is not without environmental impacts. Though utility-scale solar facilities do not generate the air or water pollution typical of other large-scale fossil-fuel power production facilities, impacts on wildlife habitat and stormwater management can be significant due to the large scale of these uses and the resulting extent of land disturbance. The location of sites, the arrangement of panels within the site, and the ongoing management of the site are important in the mitigation of such impacts.

Wildlife Corridors. In addition to mitigating the visual impact of utility-scale solar facilities, substantial buffers can act as wildlife corridors along project perimeters. The arrangement of panels within a project site is also important to maintain areas conducive to wildlife travel through the site. Existing trees, wetlands, or other vegetation that link open areas should be preserved as wildlife cover. Such sensitivity to the land's environmental features also breaks up the panel bay groups and will make the eventual restoration of the land to its previous

state that much easier and more effective. A perimeter fence is a barrier to wildlife movement, while fencing around but not in between solar panel bays creates open areas through which animals can continue to travel (Figure 6).

Conceptual Site Plan Wildlife Corridors



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Figure 6. A conceptual site plan for a 1,491-acre utility-scale solar facility showing wildlife corridors throughout the site. Courtesy Dominion Energy.

Stormwater, Erosion, and Sediment Control. The site disturbance required for utility-scale solar facilities is significant due to the size of the facilities and the infrastructure needed to operate them. These projects require the submission of both stormwater (SWP) and erosion/sediment control (ESC) plans to comply with federal and state environmental regulations.

Depending on the site orientation and the panels to be used, significant grading may be required for panel placement, roads, and other support infrastructure. The plan review and submission processes are no different with these facilities than for any other land-disturbing activity. However, such large-scale grading project plans are more complex than those for other uses due primarily to the scale of utility solar. Additionally, the impervious nature of the panels themselves creates stormwater runoff that must be properly controlled, managed, and maintained.

Due to this complexity, it is recommended that an independent third party review all SWP and ESC plans in addition to the normal review procedures. Many review agencies (local, regional, or state) are under-resourced or not familiar with large-scale grading projects or appropriate and effective mitigation measures. It is in a locality's best interest to have the applicant's engineering and site plans reviewed by a licensed third party prior to and in addition to the formal plan review process. Most localities have engineering firms on call that can perform such reviews on behalf of the jurisdiction prior to formal plan review submittal and approval. This extra step, typically paid for by the applicant, helps to ensure the proper design of these environmental protections (Figure 7).



Figure 7. Example of compliance (left) and noncompliance (right) with erosion and sediment control requirements. Photos courtesy Berkley Group.

The successful implementation of these plans and ongoing maintenance of the mitigation measures is also critical and should be addressed in each proposal through sufficient performance security requirements and long-term maintenance provisions.

Cultural, Environmental, and Recreational Resources. Every proposed site should undergo an evaluation to identify any architectural, archaeological, or other cultural resources on or near proposed facilities. Additionally, sites located near recreational, historic, or environmental resources should be avoided. Tourism is recognized as a key sector for economic growth in many regions, and any utility-scale solar facilities that might be visible from a scenic byway, historic site, recreational amenity, or similar resources could have negative consequences for those tourist attractions.

ECONOMIC IMPACTS

This *PAS Memo* focuses on the land-use impacts of utility-scale solar facilities, but planners should also be aware of economic considerations surrounding these uses for local governments and communities.

Financial Incentives. Federal and state tax incentives benefit the energy industry at the expense of localities. The initial intent of industry-targeted tax credits was to act as an economic catalyst to encourage the development of green energy. An unintended consequence has been to benefit the solar industry by saving it tax costs at the expense of localities, which don't receive the benefit of the full taxable rate they would normally receive.

Employment. Jobs during construction (and decommissioning) can be numerous, but utility-scale solar facilities have minimal operational requirements otherwise. Very large facilities may employ one or two full-time-equivalent employees. During the construction phase there are typically hundreds of employees who need local housing, food, and entertainment.

Fiscal Impact. The positive fiscal impact to landowners who lease or sell property for utility-scale solar facilities is clear. However, the fiscal impact of utility-scale solar facilities to the community as a whole is less clear and, in the case of many localities, may be negligible compared with their overall budget due to tax credits, low long-term job creation, and other factors.

Property values. The impact of utility-scale solar facilities is typically negligible on neighboring property values. This can be a significant concern of adjacent residents, but negative impacts to property values are rarely demonstrated and are usually directly addressed by applicants as part of their project submittal.

Solar Facilities in Local Policy and Regulatory Documents

The two foundational land-use tools for most communities are their comprehensive (general) plans and zoning ordinances. These two land-use documents are equally critical in the evaluation of utility-scale solar facilities. A community's plan should discuss green energy, and its zoning ordinance should properly enable and regulate green energy uses.

THE COMPREHENSIVE PLAN

The comprehensive plan establishes the vision for a community and should discuss public facilities and utilities. However, solar facilities are not directly addressed in many comprehensive plans.

If solar energy facilities are desired in a community, they should be discussed in the comprehensive plan in terms of green infrastructure, environment, and economic development goals. Specific direction should be given in terms of policy objectives such as appropriate locations and conditions. If a community does not desire such large-scale land uses because of their impacts on agriculture or forestry or other concerns, then that should be directly addressed in the plan.

Some states, such as Virginia, require a plan review of public facilities — including utility-scale solar facilities — for substantial conformance with the local comprehensive plan (see *Code of Virginia §15.2-2232* (<https://law.lis.virginia.gov/vacode/title15.2/chapter22/section15.2-2232/>)). This typically requires a review by the planning commission of public utility facility proposals, whether publicly or privately owned, to determine if their general or approximate locations, characters, and extents are substantially in accord with the comprehensive plan.

Most comprehensive plans discuss the types of industry desired by the community, the importance of agricultural operations, and any cultural, recreational, historic, or scenic rural landscape features. An emphasis on tourism, job growth, and natural and scenic resource protection may not be consistent with the use pattern associated with utility-scale solar facilities. If a plan is silent on the solar issue, this may act as a barrier to approving this use. Plans should make clear whether utility-scale solar is desired and, if so, under what circumstances.

This plan review process should precede any other land-use application submittal, though it may be performed concurrently with other zoning approvals. Planners and other public officials should keep in mind that even if a facility is found to be substantially in accord with a comprehensive plan, that does not mean the land-use application must be approved. Use permits are discretionary. If a particular application does not sufficiently mitigate the adverse impacts of the proposed land use, then it can and should be denied regardless of its conformance with the comprehensive plan.

Similarly, in Virginia, a utility-scale solar facility receiving use permit approval without a comprehensive plan review may not be in compliance with state code. The permit approval process is a two-step process, with the comprehensive plan review preferably preceding the consideration of a use permit application.

THE ZONING ORDINANCE

While a community's comprehensive plan is its policy guide, the zoning ordinance is the regulatory document that implements that policy. Plans are advisory in nature, although often upheld in court decisions, whereas ordinance regulations are mandatory. In addition to comprehensive plan amendments, the zoning ordinance should specifically set forth the process and requirements necessary for the evaluation of a utility-scale solar application.

In zoning regulations, uses may be permitted either by right (with or without designated performance measures such as use and design standards) or as conditional or special uses, which require discretionary review and approval. Solar facilities generating power for on-site use are typically regulated as by-right uses depending on their size and location.

Utility-scale solar facilities, however, should in most cases be conditionally permitted regardless of the zoning district and are most appropriate on brownfield sites, in remote areas, or in agriculturally zoned areas. This is particularly true for more populated areas due to the more compact nature of land uses. There are, however, areas throughout the country where utility-scale solar might be permitted by right under strict design standards that are compatible with community objectives.

To better mitigate the potential adverse impacts of utility-scale solar facilities, required application documents should include the following:

- Concept plan
- Site plan
- Construction plan
- Maintenance plan
- Erosion and sediment control and stormwater plans

Performance measures should address these issues:

- Setbacks and screening

- Plan review process
- Construction/deconstruction mitigation and associated financial securities
- Signage
- Nuisance issues (glare, noise)

The [model specific planning and zoning recommendations below](#) outline comprehensive plan and zoning ordinance amendments, the application process, and conditions for consideration during the permitting process.

The Virginia Experience

The recommendations presented in this *PAS Memo* are derived from research and the author's direct experience with the described planning, ordinance amendment, and application and regulatory processes in the following three Virginia localities, all rural counties in the southern or eastern parts of the state.

MECKLENBURG COUNTY

When Mecklenburg County began seeing interest in utility-scale solar facilities, the county's long-range plan did not address solar facilities, and the zoning ordinance was based on an inadequate and outdated state model that did not adequately regulate this land use.

The town of Chase City is located near the confluence of several high-voltage utility lines, and all proposed facilities were located near or within the town's corporate limits. The county approved the first utility-scale solar facility application in the jurisdiction without any conditions or much consideration. When the second application for a much larger facility (more than 900 acres) came in soon after, with significant interest from other potential applicants as well, the county commissioned the author's consulting firm, The Berkley Group, to undertake a land-use and industry study regarding utility-scale solar facilities.

As Mecklenburg officials continued with the approval process on the second utility-scale solar facility under existing regulations, they received the results of the industry study and began considering a series of amendments to the comprehensive plan and zoning ordinance. Though county officials were particularly worried about the potential concentration of facilities around Chase City, town officials expressed formal support for the proposed land use. Other Mecklenburg communities expressed more concern and wanted the facilities to be located a significant distance away from their corporate boundaries. These discussions led to standards limiting the concentration of facilities, encouraging proximity to the electrical grid, and establishing distances from corporate boundaries where future solar facilities could not be located.

Since the adoption of the new regulations, numerous other utility-scale solar applications have been submitted and while some have been denied, most have been approved. Solar industry representatives' concerns that the new regulations were an attempt to prevent this land use have therefore not been realized; these are simply the land-use tools that public officials wanted and needed to appropriately evaluate solar facility applications. Many of the examples and best practices recommended in this article, including the model language provided at the end of the article, are a result of the utility-scale solar study commissioned by the county (Berkley Group 2017) and the subsequent policies and regulations it adopted.

SUSSEX COUNTY

Sussex County is located east and north of Mecklenburg, and the interest in utility-scale solar projects there has been no less immediate or profound. The announcement of the new Amazon headquarters in Arlington, Virginia, along with the company's interest in offsetting its operational energy use with green energy sources furthered interest in this rural county more than 100 miles south of Arlington.

As in Mecklenburg County, local regulations did not address utility-scale solar uses, so public officials asked for assistance from The Berkley Group to develop policies and regulations appropriate for their community. Sussex County officials outlined an aggressive timeline for considering new regulations regarding solar facilities and, within one month of initiation, swiftly adopted amended regulations for solar energy facilities.

The same metrics and policy issues examined and adopted for Mecklenburg County were used for the initial discussion in Sussex at a joint work session between the board of supervisors (the governing body) and the planning commission. Public officials tailored the proposed standards and regulations to the county context based on geography, cultural priorities, and other concerns. They then set a joint public hearing for their next scheduled meeting to solicit public comment.

Under Virginia law, land-use matters may be considered at a joint public hearing with a recommendation from the planning commission going to the governing body and that body taking action thereafter. This is not a typical or recommended practice for local governments since it tends to limit debate, transparency, and good governance, but due to the intense interest from the solar industry, coupled with the lack of land-use regulations addressing the proposed utility-scale solar uses, county officials utilized that expedited process.

No citizens and only two industry officials spoke at the public hearing, and after two hours of questions, discussion, and some negotiation of proposed standards, the new regulations were adopted the same evening.

Since the new regulations have been put into place, no new solar applications have been received, but informal discussions with public officials and staff suggest that interest from the industry remains strong.

GREENSVILLE COUNTY

Greensville County, like Mecklenburg, lies on the Virginia-North Carolina boundary. The county has processed four solar energy applications to date (three were approved and one was denied) and continues to process additional applications. Concurrently, the county is in the process of evaluating its land-use policies and regulations, which were amended in late 2016 at the behest of solar energy interests.

The reality of the land-use approval process has proved more challenging than the theory of the facilities when considered a few years ago. As with other localities experiencing interest from the solar energy industry, the issues of scale, concentration, buffers/setbacks, and other land-use considerations have been debated at each public hearing for each application. Neighbors and families have been divided, and lifelong relationships have been severed or strained. The board of supervisors has found it difficult in the face of their friends, neighbors, and existing corporate citizens to deny applications that otherwise might not have been approved.

County officials have agreed that they do want to amend their existing policies and regulations to be more specific and less open to interpretation by applicants and citizens. One of their primary challenges has been dedicating the time to discuss proposed changes to their comprehensive plan and zoning ordinance. A joint work session between the board of supervisors and planning commission is being scheduled and should lead to subsequent public hearings and actions by those respective bodies to enact new regulations for future utility-scale solar applicants.

Action Steps for Planners

There are four primary actions that planners can pursue with their planning commissions and governing bodies to ensure that their communities are ready for utility-scale solar.

REVIEW AND AMEND THE PLAN

The first, and most important, step from a planning viewpoint is to review and amend the comprehensive plan to align with how a community wants to regulate utility-scale solar uses. Some communities don't want them at all, and many cities and towns don't have the land for them. Larger municipalities and counties around the country may have to deal with this land use at some point, if they haven't already. Local governments should get their planning houses in order by amending plans before the land-use applications arrive.

REVIEW AND AMEND LAND-USE ORDINANCES

Once the plan is updated, the next step is to review and amend land-use ordinances (namely the zoning ordinance) accordingly. These ordinances are vital land-use tools that need to be up to date and on point to effectively regulate large and complex solar facilities. If local governments do not create regulations for utility-scale solar facilities, applications for these projects will occupy excessive staff time, energy, and talents, resulting in much less efficient and more open-ended results.

EVALUATE EACH APPLICATION BASED ON ITS OWN MERITS

This should go without saying, but it is important, particularly from a legal perspective, that each project application is evaluated based on its own merits. All planners have probably seen a project denied due to the politics at play with regard to other projects: "That one shouldn't have been approved so we're going to deny this one." "The next one is better so this one needs to be denied."

The focus of each application should be on the potential adverse impacts of the project on the community and what can be done successfully to mitigate those impacts. Whether the applicant is a public utility or a private company, the issues and complexities of the project are the same. The bottom line should never be who the applicant is; rather, it should be whether the project's adverse impacts can be properly mitigated so that the impact to the community is positive.

LEARN FROM OTHERS

Mecklenburg County's revised solar energy policies and regulations began with emails and phone calls to planning colleagues to see how they had handled utility-scale solar projects in their jurisdictions. The primary resources used were internet research, other planners, and old-fashioned planner ingenuity and creativity.

While it is the author's hope and intent that this article offers valuable information on this topic, nothing beats the tried and true formula of "learn from and lean on your colleagues."

Conclusion

The solar energy market is having major impacts on land use across the country, and federal and state tax incentives have contributed to a flood of applications in recent years. While the benefits of clean energy are often touted, the impacts of utility-scale solar facilities on a community can be significant. Applicants often say that a particular project will "only" take up some small percentage of agricultural, forestry, or other land-use category — but the impact of these uses extends beyond simply replacing an existing (or future) land use. Fiscal benefit to a community is also often cited as an incentive, but this alone is not a compelling reason to approve (or disapprove) a land-use application.

The scale and duration of utility-scale solar facilities complicate everything from the land disturbance permitting process through surety requirements. If not done properly, these uses can change the character of an area, altering the future of communities for generations.

Local officials need to weigh these land-use decisions within the context of their comprehensive plan and carefully consider each individual application in terms of the impact that it will have in that area of the community, not only by itself but also if combined with additional sites. The concentration of solar facilities is a major consideration in addition to their individual locations. A solar facility located by itself in a rural area, close to major transmission lines, not prominently visible from public rights-of-way or adjacent properties, and not located in growth areas, on prime farmland, or near cultural, historic, or recreational sites may be an acceptable land use with a beneficial impact on the community.

Properly evaluating and, to the extent possible, mitigating the impacts of these facilities by carefully controlling their location, scale, size, and other site-specific impacts is key to ensuring that utility-scale solar facilities can help meet broader sustainability goals without compromising a community's vision and land-use future.

Specific Planning and Zoning Recommendations for Utility-Scale Solar

This guidance and sample ordinance language for utility-scale solar facilities is drawn from actual comprehensive plan and zoning ordinance amendments as well as conditional (special) use permit conditions. These examples are from Virginia and should be tailored to localities within the context of each state's enabling legislation regarding land use.

The Comprehensive (General) Plan

The following topics should be addressed for comprehensive plan amendments:

- Identification of major electrical facility infrastructure (i.e., transmission lines, transfer stations, generation facilities, etc.)

- Identification of growth area boundaries around each city, town, or appropriate population center
- Additional public review and comment opportunities for land-use applications within a growth area boundary, within a specified distance from an identified growth area boundary, or within a specified distance from identified population centers (e.g., city or town limits)
- Recommended parameters for utility-scale solar facilities, such as:
 - maximum acreage or density (e.g., not more than two facilities within a two-mile radius) to mitigate the impacts related to the scale of these facilities
 - maximum percent usage (i.e., "under panel" or impervious surface) of assembled property to mitigate impacts to habitat, soil erosion, and stormwater runoff
 - location adjacent or close to existing electric transmission lines
 - location outside of growth areas or town boundary or a specified distance from an identified growth boundary
 - location on brownfields or near existing industrial uses (but not within growth boundaries)
 - avoidance of or minimization of impact to prime farmland as defined by the USDA
 - avoidance of or minimization of impact to the viewshed of any scenic, cultural, or recreational resources (i.e., large solar facilities may not be seen from surrounding points that are in line-of-sight with a resource location)
- Identification of general conditions to mitigate negative effects, including the following:
 - Concept plan compliance
 - Buffers and screening (e.g., berms, vegetation, etc.)
 - Third-party plan review (for erosion and sediment controls, stormwater management, grading)
 - Setbacks
 - Landscaping maintenance
 - Decommissioning plan and security

The Zoning Ordinance

In addition to, or separate from, comprehensive plan amendments, the zoning ordinance should be amended to more specifically set forth the process and requirements necessary for a thorough land-use evaluation of an application.

RECOMMENDED APPLICATION PROCESS

Pre-Application Meeting

The process of requiring applicants to meet with staff prior to the submission of an application often results in a better, more complete application and a smoother process once an application is submitted. This meeting allows the potential applicant and staff to sit down to discuss the location, scale, and nature of the proposed use and what will be expected during that process. The pre-application meeting is one of the most effective tools planners can use to ensure a more efficient, substantive process.

Comprehensive Plan Review

As discussed in the article, a comprehensive plan review for public utility facilities, if required, can occur prior to or as part of the land-use application process. Any application not including the review would be subject to such review in compliance if required by state code. If the plan review is not done concurrently with the land-use application, then it should be conducted prior to the receipt of the application.

An application not substantially in accord with the comprehensive plan should not be recommended for approval, regardless of the conditions placed on the use. Depending on the location, scale, and extent of the project, it is difficult to sufficiently mitigate the adverse impacts of a project that does not conform with the plan.

Land-Use Application

If the comprehensive plan review is completed and the project is found to be in compliance with the comprehensive plan, then the use permit process can proceed once a complete application is submitted. Application completion consists of the submission of all requirements set forth in the zoning ordinance and is at the discretion of the zoning administrator if there is any question as to what is required or when it is required.

Applications should contain all required elements at the time of submittal and no components should be outstanding at the time of submittal.

SAMPLE ORDINANCE LANGUAGE

The following sample ordinance language addresses requirements for applications, public notice, development standards, decommissioning, site plan review, and other process elements.

1. Application requirements. Each applicant requesting a use permit shall submit the following:

- a. A complete application form.
- b. Documents demonstrating the ownership of the subject parcel(s).
- c. Proof that the applicant has authorization to act upon the owner's behalf.
- d. Identification of the intended utility company who will interconnect to the facility.
- e. List of all adjacent property owners, their tax map numbers, and addresses.
- f. A description of the current use and physical characteristics of the subject parcels.
- g. A description of the existing uses of adjacent properties and the identification of any solar facilities — existing or proposed — within a five-mile radius of the proposed location.
- h. Aerial imagery which shows the proposed location of the solar energy facility, fenced areas and driveways with the closest distance to all adjacent property lines, and nearby dwellings, along with main points of ingress/egress.
- i. Concept plan.

The facility shall be constructed and operated in substantial compliance with the approved concept plan, with allowances for changes required by any federal or state agency. The project shall be limited to the phases and conditions set forth in the concept plan that constitutes part of this application, notwithstanding any other state or federal requirements. No additional phasing or reduction in facility size shall be permitted, and no extensions beyond the initial period shall be granted without amending the use permit. The concept plan shall include the subject parcels; the proposed location of the solar panels and related facilities; the location of proposed fencing, driveways, internal roads, and structures; the closest distance to adjacent property lines and dwellings; the location of proposed setbacks; the location and nature of proposed buffers, including vegetative and constructed buffers and berms; the location of points of ingress/egress; any proposed construction phases.

- j. A detailed decommissioning plan (see item 5 below).
- k. A reliable and detailed estimate of the costs of decommissioning, including provisions for inflation (see item 5 below).
- l. A proposed method of providing appropriate escrow, surety, or security for the cost of the decommissioning plan (see item 5 below).
- m. Traffic study modelling the construction and decommissioning processes. Staff will review the study in cooperation with the state department of transportation or other official transportation authority.
- n. An estimated construction schedule.
- o. [x number of] hard copy sets (11"× 17" or larger), one reduced copy (8½"× 11"), and one electronic copy of site plans, including elevations and landscape plans as required. Site plans shall meet the requirements of this ordinance.
- p. The locality may require additional information deemed necessary to assess compliance with this section based on the specific characteristics of the property or other project elements as determined on a case by case basis.
- q. Application fee to cover any additional review costs, advertising, or other required staff time.

2. Public notice.

- a. Use permits shall follow the public notice requirements as set forth in the zoning ordinance or by state code as applicable.
- b. Neighborhood meeting: A public meeting shall be held prior to the public hearing with the planning commission to give the community an opportunity to hear from

the applicant and ask questions regarding the proposed project.

- i. The applicant shall inform the zoning administrator and adjacent property owners in writing of the date, time, and location of the meeting, at least seven but no more than 14 days in advance of the meeting date.
- ii. The date, time, and location of the meeting shall be advertised in the newspaper of record by the applicant, at least seven but no more than 14 days in advance of the meeting date.
- iii. The meeting shall be held within the community, at a location open to the general public with adequate parking and seating facilities which may accommodate persons with disabilities.
- iv. The meeting shall give members of the public the opportunity to review application materials, ask questions of the applicant, and make comments regarding the proposal.
- v. The applicant shall provide to the zoning administrator a summary of any input received from members of the public at the meeting.

3. Minimum development standards.

- a. No solar facility shall be located within a reasonable radius of an existing or permitted solar facility, airport, or municipal boundary.
- b. The minimum setback from property lines shall be a reasonable distance (e.g., at least 100 feet) and correlated with the buffer requirement.
- c. The facilities, including fencing, shall be significantly screened from the ground-level view of adjacent properties by a buffer zone of a reasonable distance extending from the property line that shall be landscaped with plant materials consisting of an evergreen and deciduous mix (as approved by staff), except to the extent that existing vegetation or natural landforms on the site provide such screening as determined by the zoning administrator. In the event that existing vegetation or landforms providing the screening are disturbed, new plantings shall be provided which accomplish the same. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method.
- d. The design of support buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the facilities to the natural setting and surrounding structures.
- e. Maximum height of primary structures and accessory buildings shall be a reasonable height as measured from the finished grade at the base of the structure to its highest point, including appurtenances (e.g., 15 feet). The board of supervisors may approve a greater height based upon the demonstration of a significant need where the impacts of increased height are mitigated.
- f. All solar facilities must meet or exceed the standards and regulations of the Federal Aviation Administration (FAA), State Corporation Commission (SCC) or equivalent, and any other agency of the local, state, or federal government with the authority to regulate such facilities that are in force at the time of the application.
- g. To ensure the structural integrity of the solar facility, the owner shall ensure that it is designed and maintained in compliance with standards contained in applicable local, state, and federal building codes and regulations that were in force at the time of the permit approval.
- h. The facilities shall be enclosed by security fencing on the interior of the buffer area (not to be seen by other properties) of a reasonable height. A performance bond reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the security fencing shall result in revocation of the use permit and the facility's decommissioning.
- i. Ground cover on the site shall be native vegetation and maintained in accordance with established performance measures or permit conditions.
- j. Lighting shall use fixtures as approved by the municipality to minimize off-site glare and shall be the minimum necessary for safety and security purposes. Any exceptions shall be enumerated on the concept plan and approved by the zoning administrator.
- k. No facility shall produce glare that would constitute a nuisance to the public.
 - l. Any equipment or situations on the project site that are determined to be unsafe must be corrected within 30 days of citation of the unsafe condition.
- m. Any other condition added by the planning commission or governing body as part of a permit approval.

4. Coordination of local emergency services. Applicants for new solar energy facilities shall coordinate with emergency services staff to provide materials, education and/or training to the departments serving the property with emergency services in how to

safely respond to on-site emergencies.

5. Decommissioning. The following requirements shall be met:

- a. Utility-scale solar facilities which have reached the end of their useful life or have not been in active and continuous service for a reasonable period of time shall be removed at the owner's or operator's expense, except if the project is being repowered or a force majeure event has or is occurring requiring longer repairs; however, the municipality may require evidentiary support that a longer repair period is necessary.
- b. Decommissioning shall include removal of all solar electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and any other associated facilities, so that any agricultural ground upon which the facility or system was located is again tillable and suitable for agricultural uses. The site shall be graded and reseeded to restore it to as natural a condition as possible, unless the land owner requests in writing that the access roads or other land surface areas not be restored, and this request is approved by the governing body (other conditions might be more beneficial or desirable at that time).
- c. The site shall be regraded and reseeded to as natural condition as possible within a reasonable timeframe after equipment removal.
- d. The owner or operator shall notify the zoning administrator by certified mail, return receipt requested, of the proposed date of discontinued operations and plans for removal.
- e. Decommissioning shall be performed in compliance with the approved decommissioning plan. The governing body may approve any appropriate amendments to or modifications of the decommissioning plan.
- f. Hazardous material from the property shall be disposed of in accordance with federal and state law.
- g. The applicant shall provide a reliable and detailed cost estimate for the decommissioning of the facility prepared by a professional engineer or contractor who has expertise in the removal of solar facilities. The decommissioning cost estimate shall explicitly detail the cost and shall include a mechanism for calculating increased removal costs due to inflation and without any reduction for salvage value. This cost estimate shall be recalculated every five (5) years and the surety shall be updated in kind.
- h. The decommissioning cost shall be guaranteed by cash escrow at a federally insured financial institution approved by the municipality before any building permits are issued. The governing body may approve alternative methods of surety or security, such as a performance bond, letter of credit, or other surety approved by the municipality, to secure the financial ability of the owner or operator to decommission the facility.
- i. If the owner or operator of the solar facility fails to remove the installation in accordance with the requirements of this permit or within the proposed date of decommissioning, the municipality may collect the surety and staff or a hired third party may enter the property to physically remove the installation.

6. Site plan requirements. In addition to the site plan requirements set forth in the zoning ordinance, a construction management plan shall be submitted that includes:

- Traffic control plan (subject to state and local approval, as appropriate)
- Delivery and parking areas
- Delivery routes
- Permits (state/local)

Additionally, a construction/deconstruction mitigation plan shall also be submitted including:

- Hours of operation
- Noise mitigation (e.g., construction hours)
- Smoke and burn mitigation (if necessary)
- Dust mitigation
- Road monitoring and maintenance

7. The building permit must be obtained within [18 months] of obtaining the use permit and commencement of the operation shall begin within [one year] from building permit issuance.

8. All solar panels and devices are considered primary structures and subject to the requirements for such, along with the established setbacks and other requirements for solar facilities.

9. Site maintenance.

- a. Native grasses shall be used to stabilize the site for the duration of the facility's use.
- b. Weed control or mowing shall be performed routinely and a performance bond reflecting the costs of such maintenance for a period of [six (6) months] shall be posted and maintained. Failure to maintain the site may result in revocation of the use permit and the facility's decommissioning.
- c. Anti-reflection coatings. Exterior surfaces of the collectors and related equipment shall have a nonreflective finish and solar panels shall be designed and installed to limit glare to a degree that no after image would occur towards vehicular traffic and any adjacent building.
- d. Repair of panels. Panels shall be repaired or replaced when either nonfunctional or in visible disrepair.

10. Signage shall identify the facility owner, provide a 24-hour emergency contact phone number, and conform to the requirements set forth in the Zoning Ordinance.

11. At all times, the solar facility shall comply with any local noise ordinance.

12. The solar facility shall not obtain a building permit until evidence is given to the municipality that an electric utility company has a signed interconnection agreement with the permittee.

13. All documentation submitted by the applicant in support of this permit request becomes a part of the conditions. Conditions imposed by the governing body shall control over any inconsistent provision in any documentation provided by the applicant.

14. If any one or more of the conditions is declared void for any reason, such decision shall not affect the remaining portion of the permit, which shall remain in full force and effect, and for this purpose, the provisions of this are hereby declared to be severable.

15. Any infraction of the above-mentioned conditions, or any zoning ordinance regulations, may lead to a stop order and revocation of the permit.

16. The administrator/manager, building official, or zoning administrator, or any other parties designated by those public officials, shall be allowed to enter the property at any reasonable time, and with proper notice, to check for compliance with the provisions of this permit.

Example of Recommended Use Permit Conditions (In Virginia: Conditional Uses, Special Uses, Special Exceptions)

Conditions ([approved/revised] at the Planning Commission meeting on [date])

If the Board determines that the application furthers the comprehensive plan's goals and objectives and that it meets the criteria set forth in the zoning ordinance, then the Planning Commission recommended the following conditions to mitigate the adverse effects of this utility-scale solar generation facility with any Board recommendation for permit approval.

1. The Applicant will develop the Solar Facility in substantial accord with the Conceptual Site Plan dated _____ included with the application as determined by the Zoning Administrator. Significant deviations or additions, including any enclosed building structures, to the Site Plan will require review and approval by the Planning Commission and Board of Supervisors.

2. Site Plan Requirements. In addition to all State site plan requirements and site plan requirements of the Zoning Administrator, the Applicant shall provide the following plans for review and approval for the Solar Facility prior to the issuance of a building permit:

- a. *Construction Management Plan.* The Applicant shall prepare a Construction Management Plan for each applicable site plan for the Solar Facility, and each plan shall address the following:
 - i. Traffic control methods (in coordination with the Department of Transportation prior to initiation of construction), including lane closures, signage, and flagging procedures.

- ii. Site access planning directing employee and delivery traffic to minimize conflicts with local traffic.
 - iii. Fencing. The Applicant shall install temporary security fencing prior to the commencement of construction activities occurring on the Solar Facility.
 - iv. Lighting. During construction of the Solar Facility, any temporary construction lighting shall be positioned downward, inward, and shielded to eliminate glare from all adjacent properties. Emergency and safety lighting shall be exempt from this construction lighting condition.
- b. *Construction Mitigation Plan.* The Applicant shall prepare a Construction Mitigation Plan for each applicable site plan for the Solar Facility to the satisfaction of the Zoning Administrator. Each plan shall address, at a minimum, the effective mitigation of dust, burning operations, hours of construction activity, access and road improvements, and handling of general construction complaints.
- c. *Grading plan.* The Solar Facility shall be constructed in compliance with the County-approved grading plan as determined and approved by the Zoning Administrator or his designee prior to the commencement of any construction activities and a bond or other security will be posted for the grading operations. The grading plan shall:
- i. Clearly show existing and proposed contours;
 - ii. Note the locations and amount of topsoil to be removed (if any) and the percent of the site to be graded;
 - iii. Limit grading to the greatest extent practicable by avoiding steep slopes and laying out arrays parallel to landforms;
 - iv. Require an earthwork balance to be achieved on-site with no import or export of soil;
 - v. Require topsoil to first be stripped and stockpiled on-site to be used to increase the fertility of areas intended to be seeded in areas proposed to be permanent access roads which will receive gravel or in any areas where more than a few inches of cut are required;
 - vi. Take advantage of natural flow patterns in drainage design and keep the amount of impervious surface as low as possible to reduce stormwater storage needs.
- d. *Erosion and Sediment Control Plan.* The County will have a third-party review with corrections completed prior to submittal for Department of Environmental Quality (DEQ) review and approval. The owner or operator shall construct, maintain, and operate the project in compliance with the approved plan. An E&S bond (or other security) will be posted for the construction portion of the project.
- e. *Stormwater Management Plan.* The County will have a third-party review with corrections completed prior to submittal for DEQ review and approval. The owner or operator shall construct, maintain, and operate the project in compliance with the approved plan. A stormwater control bond (or other security) will be posted for the project for both construction and post construction as applicable and determined by the Zoning Administrator.
- f. *Solar Facility Screening and Vegetation Plan.* The owner or operator shall construct, maintain, and operate the facility in compliance with the approved plan. A separate security shall be posted for the ongoing maintenance of the project's vegetative buffers in an amount deemed sufficient by the Zoning Administrator.
- g. The Applicant will compensate the County in obtaining an independent third-party review of any site plans or construction plans or part thereof.
- h. The design, installation, maintenance, and repair of the Solar Facility shall be in accordance with the most current National Electrical Code (NFPA 70) available (2017 version or later as applicable).

3. Operations.

- a. *Permanent Security Fence.* The Applicant shall install a permanent security fence, consisting of chain link, 2-inch square mesh, 6 feet in height, surmounted by three strands of barbed wire, around the Solar Facility prior to the commencement of operations of the Solar Facility. Failure to maintain the fence in a good and functional condition will result in revocation of the permit.
- b. *Lighting.* Any on-site lighting provided for the operational phase of the Solar Facility shall be dark-sky compliant, shielded away from adjacent properties, and positioned downward to minimize light spillage onto adjacent properties.
- c. *Noise.* Daytime noise will be under 67 dBA during the day with no noise emissions at night.
- d. *Ingress/Egress.* Permanent access roads and parking areas will be stabilized with

gravel, asphalt, or concrete to minimize dust and impacts to adjacent properties.

4. Buffers.

a. *Setbacks.*

- i. A minimum 150-foot setback, which includes a 50-foot planted buffer as described below, shall be maintained from a principal Solar Facility structure to the street line (edge of right-of-way) where the Property abuts any public rights-of-way.
- ii. A minimum 150-foot setback, which includes a 50-foot planted buffer as described below, shall be maintained from a principal Solar Facility structure to any adjoining property line which is a perimeter boundary line for the project area.

b. *Screening.* A minimum 50-foot vegetative buffer (consisting of existing trees and vegetation) shall be maintained. If there is no existing vegetation or if the existing vegetation is inadequate to serve as a buffer as determined by the Zoning Administrator, a triple row of trees and shrubs will be planted on approximately 10-foot centers in the 25 feet immediately adjacent to the security fence. New plantings of trees and shrubs shall be approximately 6 feet in height at time of planting. In addition, pine seedlings will be installed in the remaining 25 feet of the 50-foot buffer. Ancillary project facilities may be included in the buffer as described in the application where such facilities do not interfere with the effectiveness of the buffer as determined by the Zoning Administrator.

c. *Wildlife corridors.* The Applicant shall identify an access corridor for wildlife to navigate through the Solar Facility. The proposed wildlife corridor shall be shown on the site plan submitted to the County. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.

5. *Height of Structures.* Solar facility structures shall not exceed 15 feet, however, towers constructed for electrical lines may exceed the maximum permitted height as provided in the zoning district regulations, provided that no structure shall exceed the height of 25 feet above ground level, unless required by applicable code to interconnect into existing electric infrastructure or necessitated by applicable code to cross certain structures (e.g. pipelines).

6. *Inspections.* The Applicant will allow designated County representatives or employees access to the facility at any time for inspection purposes as set forth in their application.

7. *Training.* The Applicant shall arrange a training session with the Fire Department to familiarize personnel with issues unique to a solar facility before operations begin.

8. *Compliance.* The Solar Facility shall be designed, constructed, and tested to meet relevant local, state, and federal standards as applicable.

9. Decommissioning.

a. *Decommissioning Plan.* The Applicant shall submit a decommissioning plan to the County for approval in conjunction with the building permit. The purpose of the decommissioning plan is to specify the procedure by which the Applicant or its successor would remove the Solar Facility after the end of its useful life and to restore the property for agricultural uses.

b. *Decommissioning Cost Estimate.* The decommissioning plan shall include a decommissioning cost estimate prepared by a State licensed professional engineer.

- i. The cost estimate shall provide the gross estimated cost to decommission the Solar Facility in accordance with the decommissioning plan and these conditions. The decommissioning cost estimate shall not include any estimates or offsets for the resale or salvage values of the Solar Facility equipment and materials.
- ii. The Applicant, or its successor, shall reimburse the County for an independent review and analysis by a licensed engineer of the initial decommissioning cost estimate.
- iii. The Applicant, or its successor, will update the decommissioning cost estimate every 5 years and reimburse the County for an independent review and analysis by a licensed engineer of each decommissioning cost estimate revision.

c. *Security.*

- i. Prior to the County's approval of the building permit, the Applicant shall provide decommissioning security in one of the two following alternatives:
 1. Letter of Credit for Full Decommissioning Cost: A letter of credit issued by a financial institution that has (i) a credit Rating from one or both of S&P and Moody's of at least A from S&P or A2 from Moody's and (ii) a

capital surplus of at least \$10,000,000,000; or (iii) other credit rating and capitalization reasonably acceptable to the County, in the full amount of the decommissioning estimate; or

2. Tiered Security:

- a. 10 percent of the decommissioning cost estimate to be deposited in a cash escrow at a financial institution reasonably acceptable to the County; and
 - b. 10 percent of the decommissioning cost estimate in the form of a letter of credit issued by a financial institution that has (i) a credit rating from one or both of S&P and Moody's of at least A from S&P or A2 from Moody's and (ii) a capital surplus of at least \$10,000,000,000, or (iii) other credit rating and capitalization reasonably acceptable to the County, with the amount of the letter of credit increasing by an additional 10 percent each year in years 2-9 after commencement of operation of the Solar Facility; and
 - c. The Owner, not the Applicant, will provide its guaranty of the decommissioning obligations. The guaranty will be in a form reasonably acceptable to the County. The Owner, or its successor, should have a minimum credit rating of (i) Baa3 or higher by Moody's or (ii) BBB- or higher by S&P; and
 - d. In the tenth year after operation, the Applicant will have increased the value of the letter of credit to 100 percent of the decommissioning cost estimate. At such time, the Applicant may be entitled to a return of the 10 percent cash escrow.
- ii. Upon the receipt of the first revised decommissioning cost estimate (following the 5th anniversary), any increase or decrease in the decommissioning security shall be funded by the Applicant or refunded to Applicant (if permissible by the form of security) within 90 days and will be similarly trued up for every subsequent five-year updated decommissioning cost estimate.
 - iii. The security must be received prior to the approval of the building permit and must stay in force for the duration of the life span of the Solar Facility and until all decommissioning is completed. If the County receives notice or reasonably believes that any form of security has been revoked or the County receives notice that any security may be revoked, the County may revoke the special use permit and shall be entitled to take all action to obtain the rights to the form of security.
- d. *Applicant/Property Owner Obligation.* Within 6 months after the cessation of use of the Solar Facility for electrical power generation or transmission, the Applicant or its successor, at its sole cost and expense, shall decommission the Solar Facility in accordance with the decommissioning plan approved by the County. If the Applicant or its successor fails to decommission the Solar Facility within 6 months, the property owners shall commence decommissioning activities in accordance with the decommissioning plan. Following the completion of decommissioning of the entire Solar Facility arising out of a default by the Applicant or its successor, any remaining security funds held by the County shall be distributed to the property owners in a proportion of the security funds and the property owner's acreage ownership of the Solar Facility.
- e. *Applicant/Property Owner Default; Decommissioning by the County.*
- i. If the Applicant, its successor, or the property owners fail to decommission the Solar Facility within 6 months, the County shall have the right, but not the obligation, to commence decommissioning activities and shall have access to the property, access to the full amount of the decommissioning security, and the rights to the Solar Facility equipment and materials on the property.
 - ii. If applicable, any excess decommissioning security funds shall be returned to the current owner of the property after the County has completed the decommissioning activities.
 - iii. Prior to the issuance of any permits, the Applicant and the property owners shall deliver a legal instrument to the County granting the County (1) the right to access the property, and (2) an interest in the Solar Facility equipment and materials to complete the decommissioning upon the Applicant's and property owner's default. Such instrument(s) shall bind the Applicant and property owners and their successors, heirs, and assigns. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.

- f. *Equipment/Building Removal.* All physical improvements, materials, and equipment related to solar energy generation, both surface and subsurface components, shall be removed in their entirety. The soil grade will also be restored following disturbance caused in the removal process. Perimeter fencing will be removed and recycled or reused. Where the current or future landowner prefers to retain the fencing, these portions of fence will be left in place.
- g. *Infrastructure Removal.* All access roads will be removed, including any geotextile material beneath the roads and granular material. The exception to removal of the access roads and associated culverts or their related material would be upon written request from the current or future landowner to leave all or a portion of these facilities in place for use by that landowner. Access roads will be removed within areas that were previously used for agricultural purposes and topsoil will be redistributed to provide substantially similar growing media as was present within the areas prior to site disturbance.
- h. *Partial Decommissioning.* If decommissioning is triggered for a portion, but not the entire Solar Facility, then the Applicant or its successor will commence and complete decommissioning, in accordance with the decommissioning plan, for the applicable portion of the Solar Facility; the remaining portion of the Solar Facility would continue to be subject to the decommissioning plan. Any reference to decommissioning the Solar Facility shall include the obligation to decommission all or a portion of the Solar Facility whichever is applicable with respect to a particular situation.

10. Power Purchase Agreement. At the time of the Applicant's site plan submission, the Applicant shall have executed a power purchase agreement with a third-party providing for the sale of a minimum of 80% of the Solar Facility's anticipated generation capacity for not less than 10 years from commencement of operation. Upon the County's request, the Applicant shall provide the County and legal counsel with a redacted version of the executed power purchase agreement.

ABOUT THE AUTHOR

Darren K. Coffey, AICP, is co-owner and chief executive officer of The Berkley Group, a local government consulting firm in Virginia. Prior to forming The Berkley Group, he worked as a land-use planner for various localities in North Carolina and Virginia. The Berkley Group began working on utility-scale solar planning issues in early 2017 as that industry began to take off in Virginia. Coffey has bachelor of science degrees in economics and geography from James Madison University and a master of arts in geography from Rutgers University, and he attained AICP certification in 2000. He may be reached at darren@bgllc.net (<mailto:darren@bgllc.net>).

The author would like to thank Denise Nelson, PE, CFM, ENV SP, Berkley Group Environmental Engineer, for her contributions to this article.

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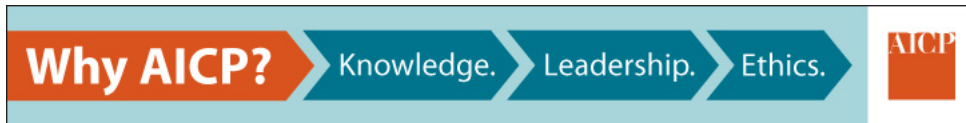
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Planning Department

From: Thomas Moore Lawson, Esq. <tlawson@LSPLC.COM>
Sent: Tuesday, February 2, 2021 3:44 PM
To: Alexandra Beaulieu; Planning Department
Subject: Solar Energy Facilities Text Amendment
Attachments: Proposed Solar Ordinance RL.pdf; SOLAR PANEL ELEVATIONS.pdf

Ms. Beaulieu,

Attached please find a redline of the proposed Solar Energy Facilities text amendment which is scheduled to be heard by the members of the Planning Commission at its upcoming meeting on February 9, 2021 as well as viewshed exhibits. Please distribute these to the members of the Planning Commission for their consideration.

Thank you.

Thomas Moore Lawson, Esquire
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February 2, 2021

Jefferson County, WV

Office of Planning & Zoning

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 leased 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 leased by the same company are not subject to the setbacks or buffer requirements provided below.

2. Setbacks

(a) Solar Panels and Accessory Components

- ~~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.~~
- i. Solar panels and accessory components may be located on a common side or rear lot line of contiguous property owned by the same entity.
- ii. Setback for solar panels to be determined by the type of buffer provided.
- iii. Unscreened Buffer – 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.
- iv. Residential Solar Buffer – 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-v. Community Solar Buffer – Front, Side, and Rear Setbacks shall be 55 feet from all external/perimeter property lines and from the edge of the State ROW or Easement of any State Road.

(b) Accessory components, ~~excluding solar panels.~~

- i. Accessory components may be located on a common side or rear lot line of contiguous property owned by the same entity.
- ii. Accessory components may be located within a buffer.
- ~~i.iii.~~ Front, side and rear setbacks shall be 25² feet 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~~ Buffer Determination

(a) A buffer is required for all solar panels.

(b) Residential Solar Buffer is required for solar panels that are within 200 feet of the following structures/uses:

- i. Residential structure, distance measured from corner of structure;
- ii. Solar Panels that are located within 200 feet of any residence, Category 1 Historic Resource, distance measured from property line; ;

~~iii. Institution for Human Care, Church, or structure with similar use or structure as determined by the Zoning Administrator, distance measured from corner of structure. 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.~~

~~(c) Unscreened Solar Buffer is permitted under the following conditions:~~

~~i. Solar panels are further than 200 feet from structure/uses defined under 3(b);~~

~~ii. Solar panels are 100 feet or more from external/perimeter property line and from the edge of the State ROW or Easement of any State Road.~~

~~(d) Community Solar Buffer is permitted under the following conditions:~~

~~i. Solar panels are further than 200 feet from structures/uses defined under 3(b);~~

~~ii. Solar panels are 55 feet to 100 feet from external/perimeter property line and from the edge of the State ROW or Easement of any State Road.~~

~~(a) 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.~~

~~(b) 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.~~

~~(c) 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. Buffer Requirements

(a) Buffers consist of up to four zones, each with a different function.

i. Zone 1 (Conservation) is intended to allow for the conservation of existing forest, hedge rows and vegetation. Area will not be cleared/mowed and will be allowed to naturalize. When this area is used for field crops it will be seeded with grass to initiate the naturalization process.

ii. Zone 2 (Enhanced Sustainability) area to be seeded with native or naturalized perennial species. Maintaining existing forested area within Zone 2 will be an acceptable alternative to new sustainable/pollinator planting.

iii. Zone 3 (Screening) is new tree and shrub planting to screen the solar panels. The plant quantity will be calculated based on 4 trees and 10 shrubs every 100 feet. Trees and shrubs may be clustered and should be placed to enhance screening from adjacent properties. This area shall be mowed for a minimum of two years, but may be allowed to naturalize after this period. Maintaining existing forested area within the third layer will be an acceptable alternative to the tree and shrub planting. Trees shall be a minimum of 4 feet tall at planting. Shrubs shall be a minimum of two gallon pot size.

iv. Zone 4 (Security) is fence and maintained turf. Fence must be placed along the exterior edge of this zone within 15 feet of managed turf located on the interior of Zone 4.

(b) Unscreened Solar Buffer – 100 feet

i. Width of buffer may be increased by Owner.

ii. Zone 1 – 85 feet minimum

iii. Zone 2 – N/A

iv. Zone 3 – N/A

v. Zone 4 – 15 feet

(c) Residential Solar Buffer – 100 feet minimum

i. Width of buffer may be increased by Owner.

ii. Zone 1 – 50 feet

iii. Zone 2 – 15 feet

iv. Zone 3 – 20 feet

v. Zone 4 – 15 feet

(d) Community Solar Buffer – 55 feet minimum

i. Width of buffer may be increased by Owner.

ii. Zone 1 – 20 feet

iii. Zone 2 – 10 feet

iv. Zone 3 – 10 feet

v. Zone 4 – 15 feet

(e) Stormwater management facilities may be located within a buffer.

5. Fencing and Access

(a) Site access is permitted to be constructed through a buffer.

(b) 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.

(c) 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.

(d) Upon three business days' notice by the Department of Engineering, Planning, and Zoning, access shall be provided to Staff.

4.6. Stormwater Management

(a) Stormwater management facilities may be located within a buffer.

(b) 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.

5.7.Decommissioning Plan

- (a) W.Va. Code §7-1-3kk provides that the County Commission may enact ordinances, issue orders, and take other appropriate and necessary actions for the elimination of hazards to public health and safety and to abate or cause to be abated anything which the Ceommission determines to be a public nuisance.
 - i. The County Commission hereby finds and declares that a solar facility that has ceased producing electricity for a period of 12 months is a public nuisance and/or hazard pursuant to West Virginia Code §7-1-3kk and other applicable authority.
 - ii. The County Commission therefore finds that an unused solar facility must be decommissioned and removed from the property on which it is located. This means that all of the solar facility’s structures and other associated property must be removed from the premises and the land must be restored to a condition reasonably similar to its original condition prior to the installation of the solar facility.
 - iii. 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) The County Commission finds that, as a condition of approval, a Solar Energy Facility must:
 - i. Develop a decommissioning plan acceptable to the County Engineering Staff in accord with County Solar Decommissioning Guidelines that will provide that all parts of the solar facility be removed from the premises and the land must be restored to a condition reasonably similar to its original condition prior to the installation of the solar facility; and
 - ii. Post surety in an amount that would enable the decommissioning and removal of the solar facility in accord with the County Solar Decommissioning Guidelines in the event that the solar facility has ceased to produce electricity as defined.
- (c) The approved Solar Decommissioning Plan shall be submitted as part of the Zoning Certificate Application. Either the Zoning Administrator or the Applicant may request that the Planning Commission approve or disapprove any component of the Solar Decommissioning Plan.
- (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

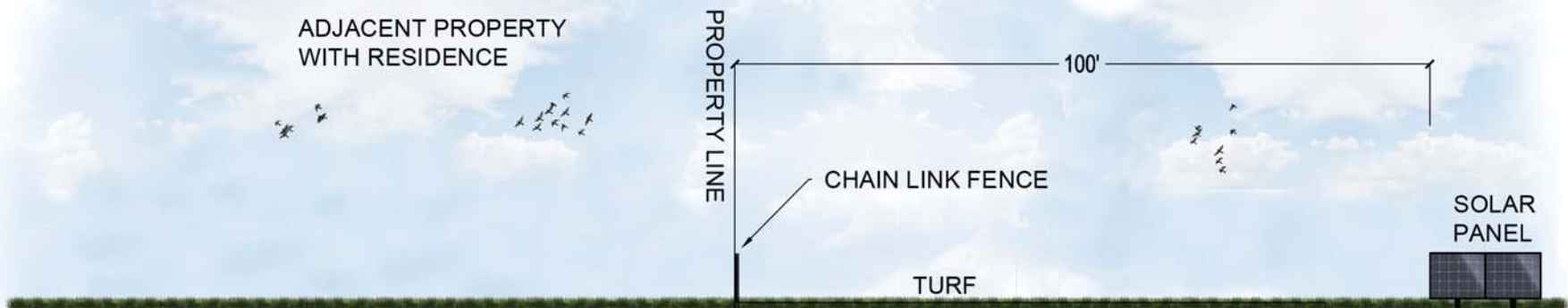
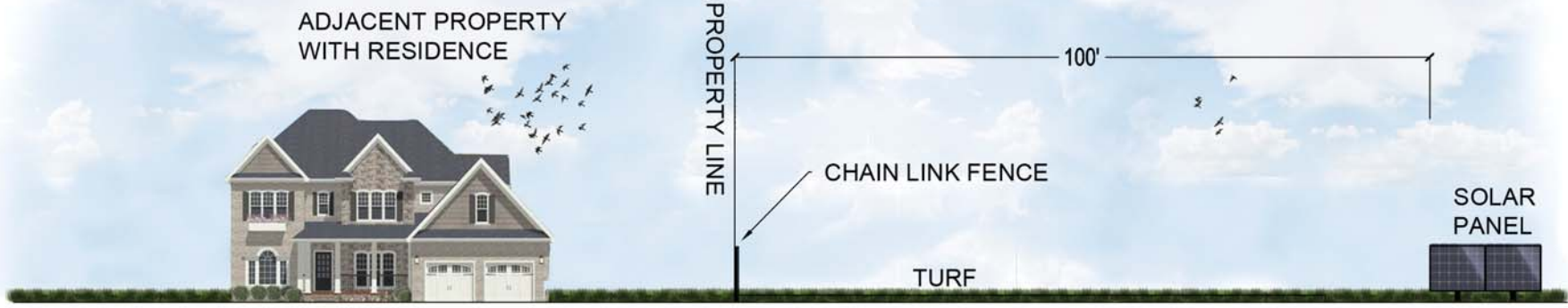
1. Design, construction, and installation of the Solar Energy Facility shall conform to applicable industry standards, including those of the American National Standards Institute (ANSI), Underwriters Laboratories (UL), the American Society for Testing and Materials (ASTM) or other similar certifying 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~~ except where necessary to mitigate impact to environmental and/or terrain features.
6. Onsite lighting shall be the 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.

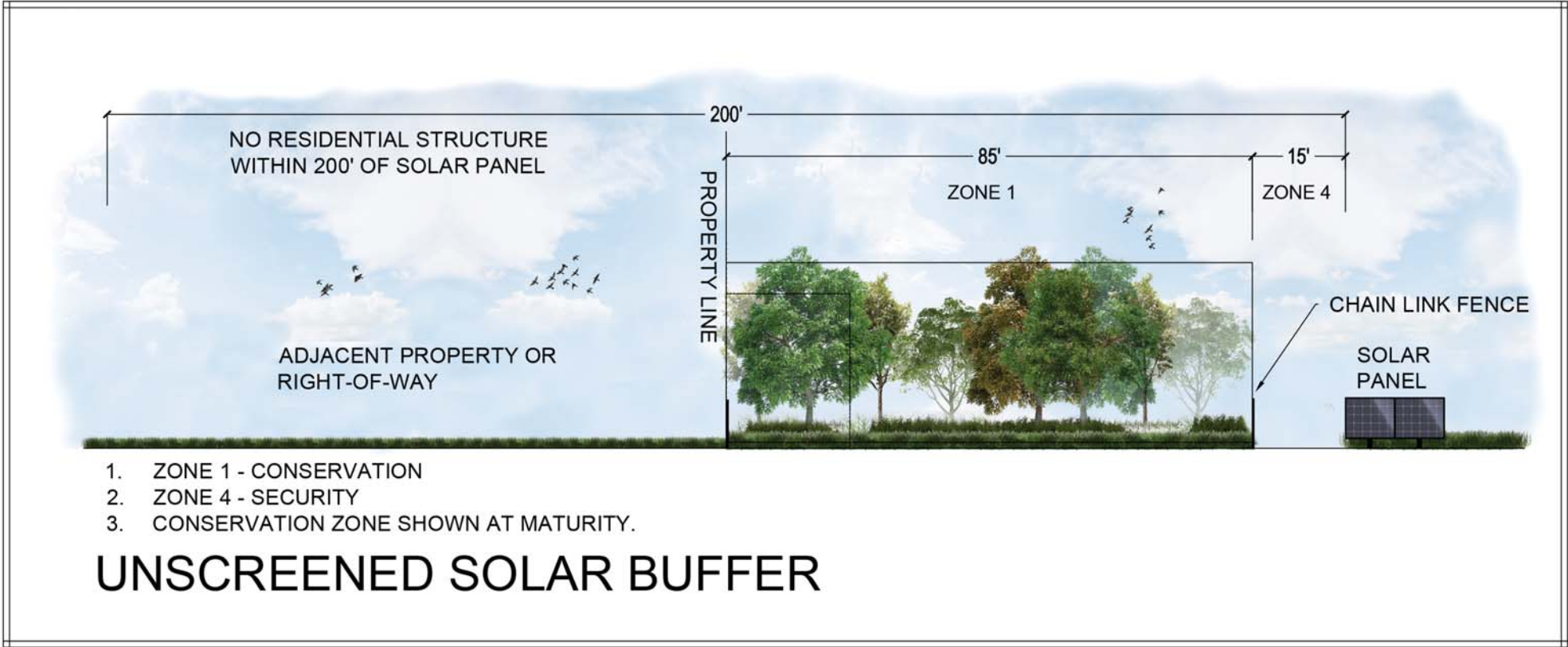
| 12. The Solar Energy Facility Use is not considered abandoned until such time as it is Decommissioned.

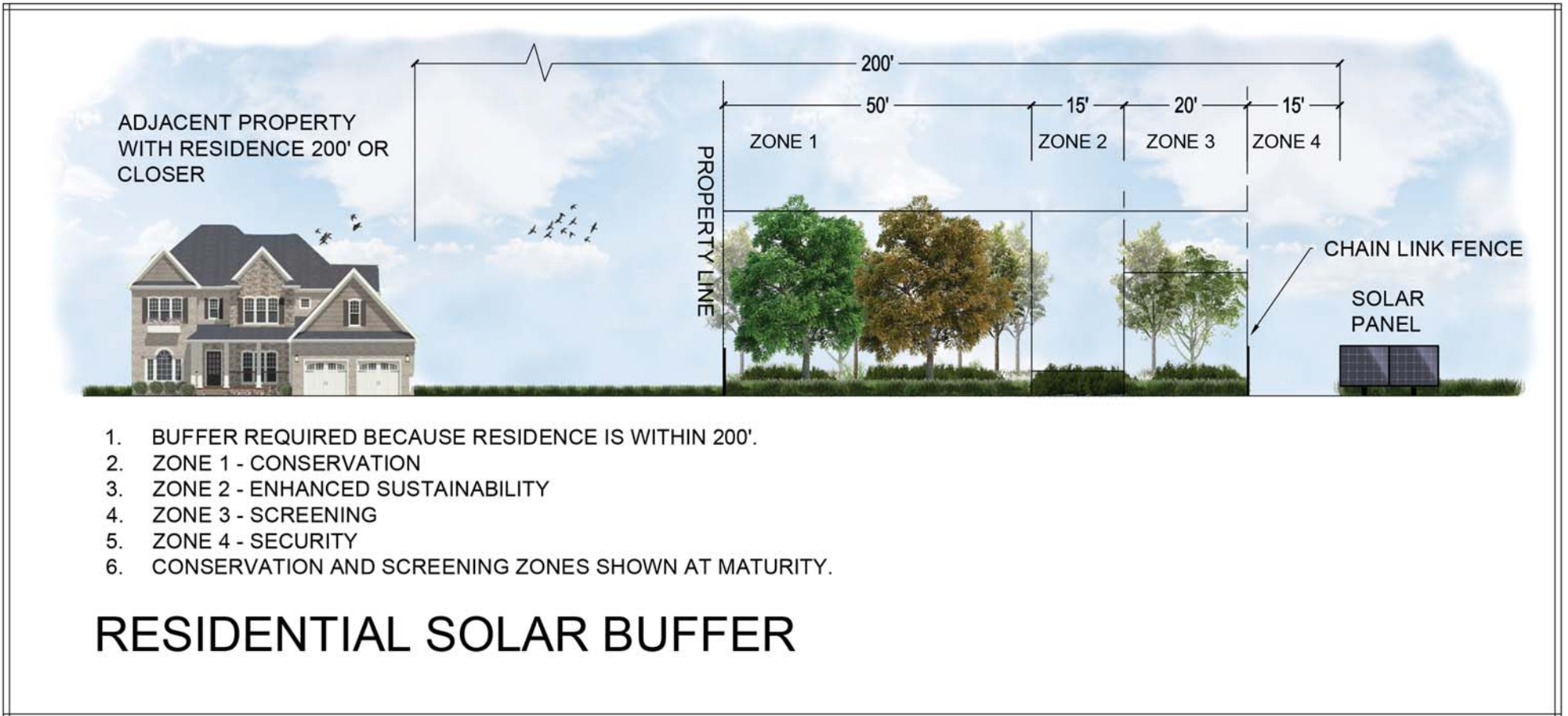
| 13. Damaged or unusable panels shall be removed within 60 days from discovery of damage; provided, however, longer periods may be approved by the County Engineer due to extenuating circumstances.

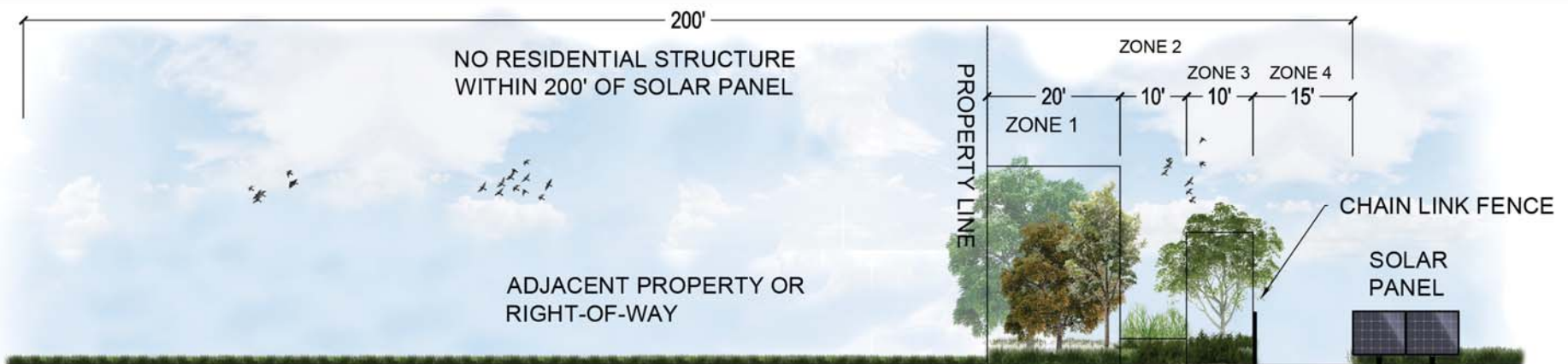


1. 100' SETBACK PERMITTED WITH OR WITHOUT ADJACENT RESIDENTIAL DWELLING

SOLAR PANEL WITH 100' SETBACK







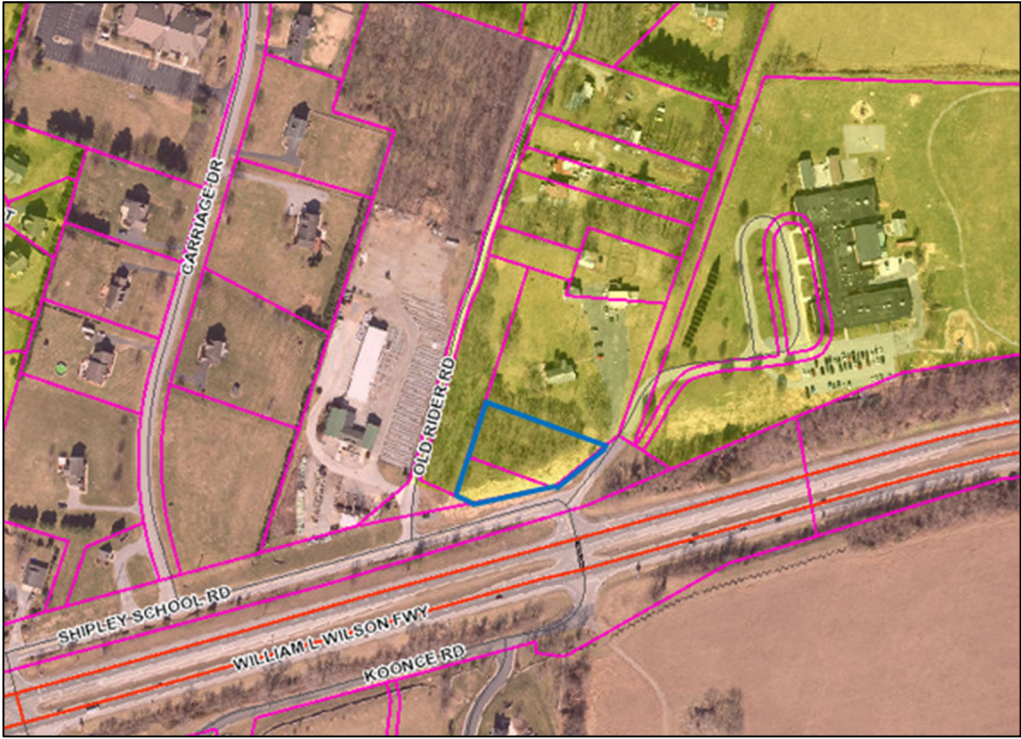
1. COMMUNITY SOLAR BUFFER ONLY PERMITTED WHEN NO RESIDENTIAL CATEGORY 1 HISTORIC RESOURCES, INSTITUTION FOR HUMAN CARE, OR CHURCHES ARE WITHIN 200' OF SOLAR PANELS.
2. ZONE 1 - CONSERVATION
3. ZONE 2 - ENHANCED SUSTAINABILITY
4. ZONE 3 - SCREENING
5. ZONE 4 - SECURITY
6. CONSERVATION AND SCREENING ZONES SHOWN AT MATURITY.

COMMUNITY SOLAR BUFFER

Staff Report
 Jefferson County Planning Commission Meeting
 February 9, 2021

Livingston (Dead Rock Contractor Services, LLC) Rezoning Request (20-2-Z)

Item # 9 Planning Commission review and recommendation to the County Commission regarding whether the petition for a Zoning Map Amendment by property owner Chris Livingston, Dead Rock Contractor Services, LLC, to rezone the subject parcel from Residential Growth to Residential-Light Industrial-Commercial, is consistent with the *2035 Envision Jefferson Comprehensive Plan*.

Owner:	Chris Livingston, Dead Rock Contractor Services, LLC
Property Location:	ShIPLEY School Road, between ShIPLEY School and Meadows Farm Nursery
Legal Description:	<p>District: Harper's Ferry (04), Map: 9, Parcels: 23 and 27; DB1252/PG320; Proposed Area to rezone: 0.86 ac; Zoned: Residential Growth</p> 
Surrounding Properties:	<p style="text-align: center;"><i>North and East:</i> Residential Growth <i>South and West:</i> Residential-Light Industrial- Commercial</p>
Current Use:	Vacant
Proposed Request	To rezone from Residential Growth (RG) to Residential-Light Industrial-Commercial (RLIC)
Planning Commission Responsibility:	To advise the County Commission whether the requested Zoning Map Amendment is consistent with the <i>Envision Jefferson 2035 Comprehensive Plan</i> .
Staff Finding:	Staff finds that the request is <u>not consistent</u> with the <i>Envision Jefferson 2035 Comprehensive Plan</i> .

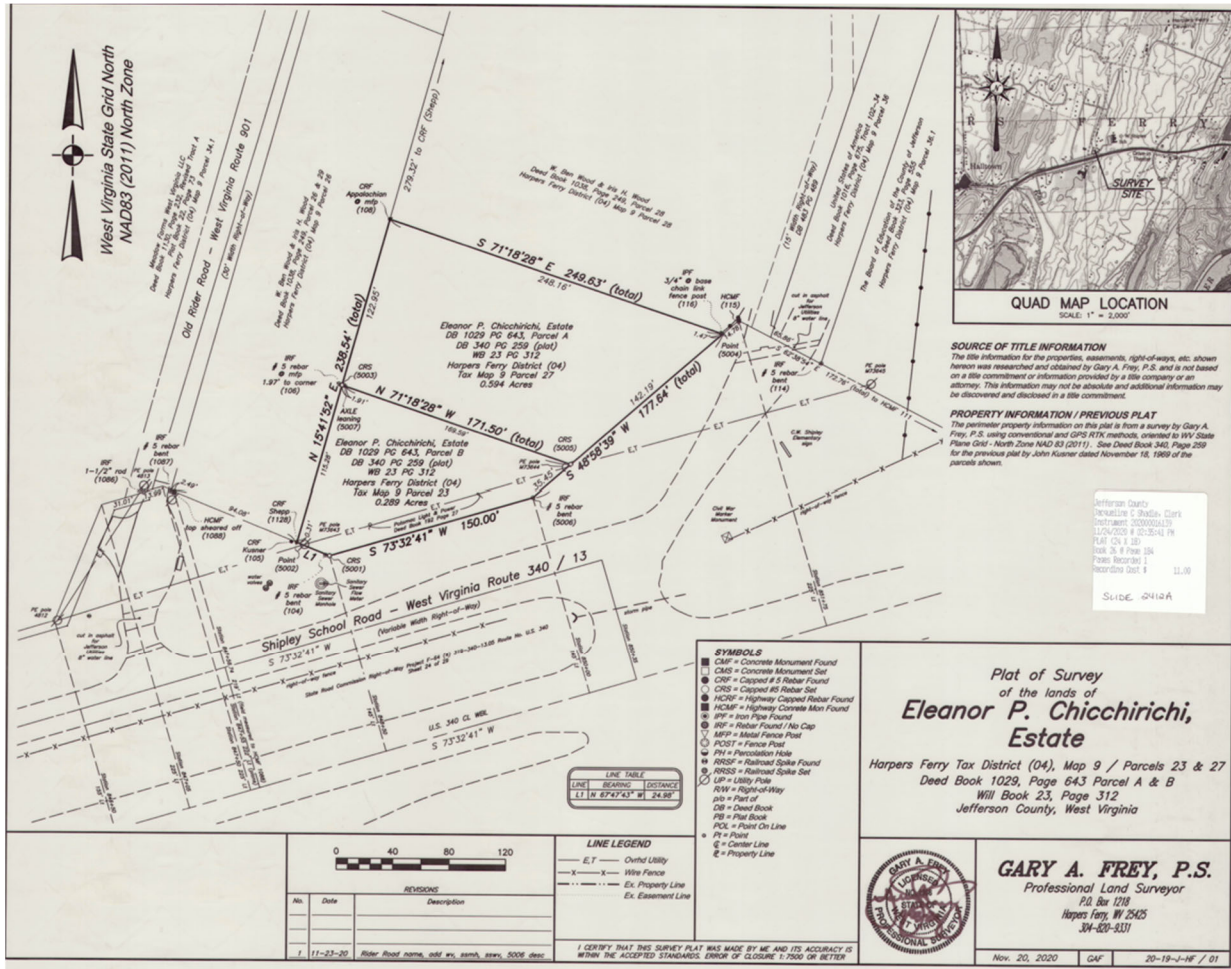
Applicant's Request

The applicant's request involves two lots totaling 0.86 acres. The lots will be required to be merged prior to the issues of any non-residential building permits. The request is to rezone these two lots from Residential Growth (RG) to Residential-Light Industrial-Commercial (RLIC). The proposed area to be rezoned is located west of Shipley School and east of Meadows Farms Nursery.

Staff Report
 Jefferson County Planning Commission Meeting
 February 9, 2021

Livingston (Dead Rock Contractor Services, LLC) Rezoning Request (20-2-Z)

Existing Conditions



Neighboring Uses

The majority of the property in the vicinity of these two properties on the north side of US 340 are zoned and used for residential purposes. The subject parcels are in close proximity to the following nonresidential land uses:

North of US 340 and Shipley School Road

- Meadows Farm Nursery
- Shipley School

South of Martinsburg Pike

- Customs and Border Patrol
- Harper’s Ferry National Historic Park Schoolhouse Ridge South

Shipley School Road is a frontage road paralleling US 340 along its northern edge. US 340 is identified in the 2035 *Envision Jefferson Plan* as a Principal Arterial. Principle Arterials are defined as highways that provide higher speed travel and mobility for long distance trips to and through communities and to minor arterials and collector routes. Access may be limited by medians and, in this case, access across the median near Shipley Elementary does not have a traffic light. A Traffic Light has been installed since the Plan was adopted at the entrance to Customs and Border Patrol across from Carriage Park Subdivision. Within Jefferson County, the only roadways that are designated as Principal Arterials are WV 9 and US 340.

Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

Livingston (Dead Rock Contractor Services, LLC) Rezoning Request (20-2-Z)

Scope of this Assessment

This staff report focuses on whether or not the Zoning Map Amendment application is consistent with the *Envision Jefferson 2035 Comprehensive Plan (2035 Plan)* and provides a Staff recommendation based on review of the various plan sections and elements. Staff’s professional recommendation is that the request is **not consistent** with the *2035 Plan* because it is not located within any County-designated Preferred Growth Area (PGA) and its designation on the Future Land Use Guide as Future Low Density Residential.

It should be noted that Staff have no statutory authority to make decisions in this regard. The County Commission, with the recommendation of the Planning Commission, has the authority to approve or deny a zoning map amendment.

Zoning Map Amendment Public Hearing Process

Article 12 of the Zoning Ordinance requires that the “procedure for amendment [by petition] shall be as dictated in Section 8A-7-9 et seq of the West Virginia State Code as amended.” Regarding amendments by petition, State statute provides that, “Before amending the zoning ordinance, the governing body with the advice of the planning commission must find that the amendment is consistent with the adopted comprehensive plan.” [See WVC 8A-7-9(c)].

Relevant *Envision Jefferson 2035 Comprehensive Plan* Elements and Commentary

The *Envision Jefferson 2035 Comprehensive Plan* consists of both goals and recommendations in text format as well as a Future Land Use Guide, both of which are relevant to this analysis. Page number references throughout this report relate to the *Envision Jefferson 2035 Comprehensive Plan*.

A. Land Use and Growth Management Element: US 340 East Preferred Growth Area (PGA)

One of the key concepts that the Land Use and Growth Management Element of the *2035 Plan* addresses is how to better influence the location of new development within Jefferson County. As the cost of providing services and utilities increases, many communities similar to Jefferson County have come to the realization that it is more sensible to identify specific areas that can handle development and growth, and to focus infrastructure and community service investments in these areas. In Jefferson County, there are four area types that are identified as part of *Envision Jefferson 2035 Plan* (pp.16-17): Urban Growth Boundaries (UGB) and Preferred Growth Areas (PGA) are the areas of Jefferson County where urban scale development is to be targeted; and Rural/Agricultural Areas and Villages, are where limited development is possible, but not intended for urban-scale development.

In light of this request, it should be noted that the *2035 Plan* identified a PGA along US 340 East which includes a series of nodes (outlined in red) of development at key intersections along this stretch of US 340, which does not include the area where this property (outlined in blue) is located.



Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

Livingston (Dead Rock Contractor Services, LLC) Rezoning Request (20-2-Z)

B. Future Land Use Guide/Map

While property included in this Zoning Map Amendment petition is not included within a Preferred Growth Area, the Future Land Use Guide does reflect the highly residential nature of this neighborhood and recommends this property as Future Low Density Residential (pp. 215 & 221).

Appendix G of the *Envision Jefferson 2035 Comprehensive Plan* provides a detailed explanation of the Land Use Map Classifications utilized on the Existing Land Use Map and Future Land Use Guide, which are intended to provide guidance to the Planning and County Commissions when considering owner-initiated zoning map amendments (rezoning requests) (p. 235).



Appendix G states that the intent of the Low Density Residential land use category is to reflect land occupied by a single family residential development, with a density of one unit per acre to 2.99 units per acre. Lots in this category may be served by either on-site well and septic systems or a public water and sewer system as the number of units per acre increases (p.235). Residential development on lots adjoin an existing elementary school is considered a compatible land use. The current Residential Growth zoning supports the proposed future land use of Low Density Residential.

C. Urban Land Development Recommendations (Goal 1)

While this property is not included within a portion of the County where urban scale development is to be targeted, the County Commission incorporated a recommendation within the Urban Land Development Recommendations portion of the *2035 Plan* that may be relevant to this request.

The second recommendation under the Urban Level Development section of the Plan states the following:

“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:

- a. Economic Well-Being of the County; or
- b. Error or Under Scrutinized Property on the Future Land Use Guide; or
- c. Change in Neighborhood; or

Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

Livingston (Dead Rock Contractor Services, LLC) Rezoning Request (20-2-Z)

- d. Any Other Circumstance that the Governing Body determines should have been considered when drafting the Future Land Use Guide; and/or
- e. Environmental impacts are considered.”

While sub-items “b” through “e” may not apply, the County Commission may want to consider whether allowing a commercial development in this location by an existing elementary school contributes to the economic well-being of the County.

Note that this recommendation does not give the Planning Commission the authority to use these conditions as a part of their recommendation regarding consistency with the *2035 Plan*, the County Commission may determine to use this in their consideration.

Proposed Zoning District – Residential-Light Industrial-Commercial (RLIC)

This petition is requesting that this property be rezoned to Residential-Light Industrial-Commercial (RLIC). The purpose of the Residential-Light Industrial-Commercial (RLIC) District (Section 5.8) is to “to guide high intensity growth into the designated growth area” (complete description attached). While this is a wide variety of residential and commercial use permitted in the RLIC zoning district, there is not a mandatory mix of uses that was recommended in the *Envision Jefferson 2035 Plan*.

It should be noted that under the Urban Level Development Recommendations, Recommendation #14 states that the County should “require all commercial/industrial zoning map amendment requests to utilize new zoning categories adopted on June 1, 2014 (or later) and discourage the use of the existing Residential-Light Industrial-Commercial (RLIC) District as a zoning category for zoning map amendment requests”. (p.33)

It also states that as shown on the Future Land Use Guide, any rezoning to the Residential-Light Industrial-Commercial (RLIC) or a new zone that permits these uses shall have a mandatory mix of these uses (emphasis added). No new zoning category has been created that contains a mandatory mix of these uses since the *Plan* was adopted in 2015. The only zoning category that has a mandatory mix is the Planned Neighborhood Development District.

Staff Recommendation

Staff finds the proposed RLIC rezoning is **not consistent** with the *Envision Jefferson 2035 Comprehensive Plan*. It is not located within a Preferred Growth Area and is not designated as future commercial on the Future Land Use Guide.

Planning Commission Action

Article 12 of the Zoning Ordinance and the relevant sections of WV State Code requires the County Commission to refer rezoning petitions to the Planning Commission for their review and recommendation as to whether the amendment is consistent with the adopted *Comprehensive Plan*. Such recommendation is required to be sent to the County Commission prior to the County Commission’s public hearing which shall be held within 60 days of the date the petition is presented.

The petition was presented to the County Commission on January 7, 2021 and the required Public Hearing has been scheduled on February 18, 2021 at 7:00 pm. Therefore, the Planning Commission is required to review this application and make a recommendation to the County Commission prior to this meeting.

Attachments:

- Section 5.8 Residential-Light Industrial-Commercial (RLIC) District

Staff Report
Jefferson County Planning Commission Meeting
February 9, 2021

Livingston (Dead Rock Contractor Services, LLC) Rezoning Request (20-2-Z)

ATTACHMENTS:

Section 5.8 Residential-Light Industrial-Commercial (R-LI-C) District *(as amended 12/17/20)*

The purpose of this district is to guide high intensity growth into the designated growth area. Light industrial uses are defined in Section 2.2. All other perceived light industrial uses shall be referred to the Jefferson County Development Authority for a recommendation on whether a use is a light industrial or heavy industrial use. The final decision on use classification shall be made by the Zoning Administrator.

A. Principal Permitted and Conditional Uses

1. Uses that are permitted, conditional, and not permitted in this district shall be as indicated in Appendix C, Principal Permitted and Conditional Uses Table.
2. Uses shown as conditional uses (CU) for this district in Appendix C, Principal Permitted and Conditional Uses Table shall be subject to review and approval by the Board of Zoning Appeals in accordance with Section 6.3 of this Ordinance.

B. Standards

1. Industrial uses permitted in this district shall be of types that require daily water use of no more than 0.25 gallons per gross square feet of floor space.
2. Light industrial and commercial uses are subject to the standards for such uses in Article 8 of this Ordinance.
3. Impervious surface coverage shall not exceed eighty (80) percent of the gross land area

C. Site Development Standards

1. All sections of this Ordinance applying to the Residential Growth District with the exception of Section 5.4A will apply to residential uses in this District.
2. Setbacks, height, and other site development standards shall be as indicated in Appendix A, Residential Site Development Standards, and Appendix B, Non-Residential Site Development Standards, except as provided elsewhere in this Ordinance. All commercial or industrial uses must be in compliance the requirements for such use in Article 8. In addition, a site plan, if required, must demonstrate that traffic patterns created by Commercial or Light Industrial uses (1) will not use adjacent residential roads for through traffic and (2) will connect to principal and major arterial highways as directly as feasible considering access restrictions.
3. Proposed uses in this zone are exempt from the distance requirements in Sections 4.6A-B if part of a master planned community. This provision shall only apply to the internal use of land under the same ownership.



JEFFERSON COUNTY, WEST VIRGINIA

Departments of Planning and Zoning

116 East Washington Street, P.O. Box 338
Charles Town, WV 25414

File Number: 20-2-7

Staff Initials: AP

Application Fee: \$ 1050.00

www.jeffersoncountywv.org/government/departments/planning-and-zoning-department.html

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

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

Zoning Map Amendment (Rezoning)

Pursuant to Article 12, a Zoning Map Amendment is a procedure to amend the official Zoning Map of the County by changing the zoning designation of a property. In order for a proposed amendment to be approved, the County Commission, with the advice of the Planning Commission, must find that the amendment is consistent with the adopted Comprehensive Plan, or if it is inconsistent, must make findings in accordance with the requirements of 8A-7-8 et seq of the WV State Code. All Amendments to the Zoning Map require a Public Hearing to be held by the Planning Commission for the purpose of making a recommendation to the County Commission. Subsequently, all recommended map amendments require a Public Hearing before the County Commission prior to a final determination.

Property owner information

Name: Dead Rock Contractor Services LLC
Mailing Address: 15 Burberry Lane, Charles Town WV 25414
Phone Number: 540-450-7555 Email: DeadRockCS@gmail.com

Applicant contact information

Name: Chris Livingston
Mailing Address: 15 Burberry Lane, Charles Town WV 25414
Phone Number: 540-450-7555 Email: DeadRockCS@gmail.com

Applicant representative

Name: Same as above
Mailing Address: _____
Phone Number: _____ Email: _____

Physical property details

Physical Address: 0 Shipley School Road
City: Harpers Ferry State: WV Zip Code: 25425
Tax District: 04 Map No: 9 Parcel No: 23 & 27
Parcel Size: A & B Deed Book: ~~1029~~ 1252 (AB) Page No: ~~643~~ 320 (AB)

Current Zoning District (please check one)

Residential Growth (RG)	Industrial Commercial (IC)	Rural (R)	Residential-Light Industrial-Commercial (RLIC)	Village (V)	Neighborhood Commercial (NC)	General Commercial (GC)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/Commercial Mixed-Use (O/C)	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

RECEIVED

DEC 28 2020

Place Received Date Stamp Here
JEFFERSON COUNTY PLANNING
ZONING & ENGINEERING

Proposed Zoning District (please check one)

Residential Growth (RG)	Industrial Commercial (IC)	Rural (R)	Residential- Light Industrial- Commercial (RLIC)	Village (V)	Neighborhood Commercial (NC)
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Commercial (GC)	Highway Commercial (HC)	Light Industrial (LI)	Major Industrial (MI)	Planned Neighborhood Development (PND)	Office/ Commercial Mixed-Use (O/C)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

For a Zoning Map Amendment request, the "burden of proof" is on the applicant to show why the proposed zoning is more appropriate than the existing zoning. Accordingly, please explain how the following factors support your proposal.

Describe your proposed use (and/or project) and describe why the Zoning Map Amendment is necessary for the proposed use (and/or project) described.

We would like to use the property for a contractors office with storage. We propose to install a garage / storage building with an office space. We would park company vehicles outside of the building in a designated parking area. We do not want to live on the property or have a residence on the property. There are other commercial properties in the same area With similar proposed buildings For example Meadows Farms Nursery.

Describe how the Zoning Map Amendment will be consistent with the objectives and policies of the Comprehensive Plan.

Our use would not be any different than Meadows Farm Nursery or other commercial properties in the area. Our facility would not increase traffic on Shipley School Road which is rated for commercial traffic.

Discuss any change(s) of transportation characteristics (i.e., type and frequency of traffic, adequacy of existing transportation routes), and neighborhood characteristics from when the original ordinance was adopted.

The property is not in a neighborhood and the road is a commercial grade road. We use light trucks and cargo vans so there would not be any heavy industrial vehicles causing undo wear and tear to the road.

Do you request that the Planning and Zoning Staff present the petition to the Planning Commission for the purpose of setting the public hearing date?

Yes, I request that the Planning and Zoning Staff present the petition

No, I prefer to present the petition


Plat or Sketch Plan (provide as an attachment to this application)

The plat or sketch must be pursuant to Zoning Ordinance, Section 7.4 (b). The sketch plan shall include the entire original parcel as it appeared on the date this ordinance took effect. The property proposed for development shall be drawn to a reasonable scale (eg. 1" = 50', 1" = 100', or 1" = 200'). The sketch plan shall show, in simple form, the proposed layout of lots, parking areas, recreational areas, streets, building areas, and other features in relation to each other and to the tract boundaries. Contour lines should be superimposed on the sketch plan. Natural features such as woods, watercourses, prominent rock outcroppings, sinkholes and quarries shall be delineated.

Is Plat or Sketch Plan attached?

Yes No

Original signature of all property owners is required. The information given is correct to the best of my knowledge (Please attach additional signature page if needed).

 David R. ... Services 12/28/20

Signature of Property Owner

Date

Signature of Property Owner

Date

The Planning Commission is required to set a public hearing on the proposed Zoning Map Amendment within 60 days of the date upon which a complete petition is presented to the Planning Commission at a Planning Commission Meeting. A complete petition, and related fees, shall be submitted to Departments of Planning and Zoning for placement on the Planning Commission agenda at least two (2) weeks prior to the meeting date at which the petition will be presented. Upon request, Planning and Zoning staff can present the petition to the Planning Commission on behalf of the applicant for purpose of setting the public hearing date. At the conclusion of the Planning Commission's Public Hearing, or at the next regular Planning Commission meeting, the Planning Commission shall make a recommendation to the County Commission regarding approval or disapproval of the requested Map Amendment. This recommendation shall be forwarded to the County Commission within four (4) weeks of final Planning Commission action.

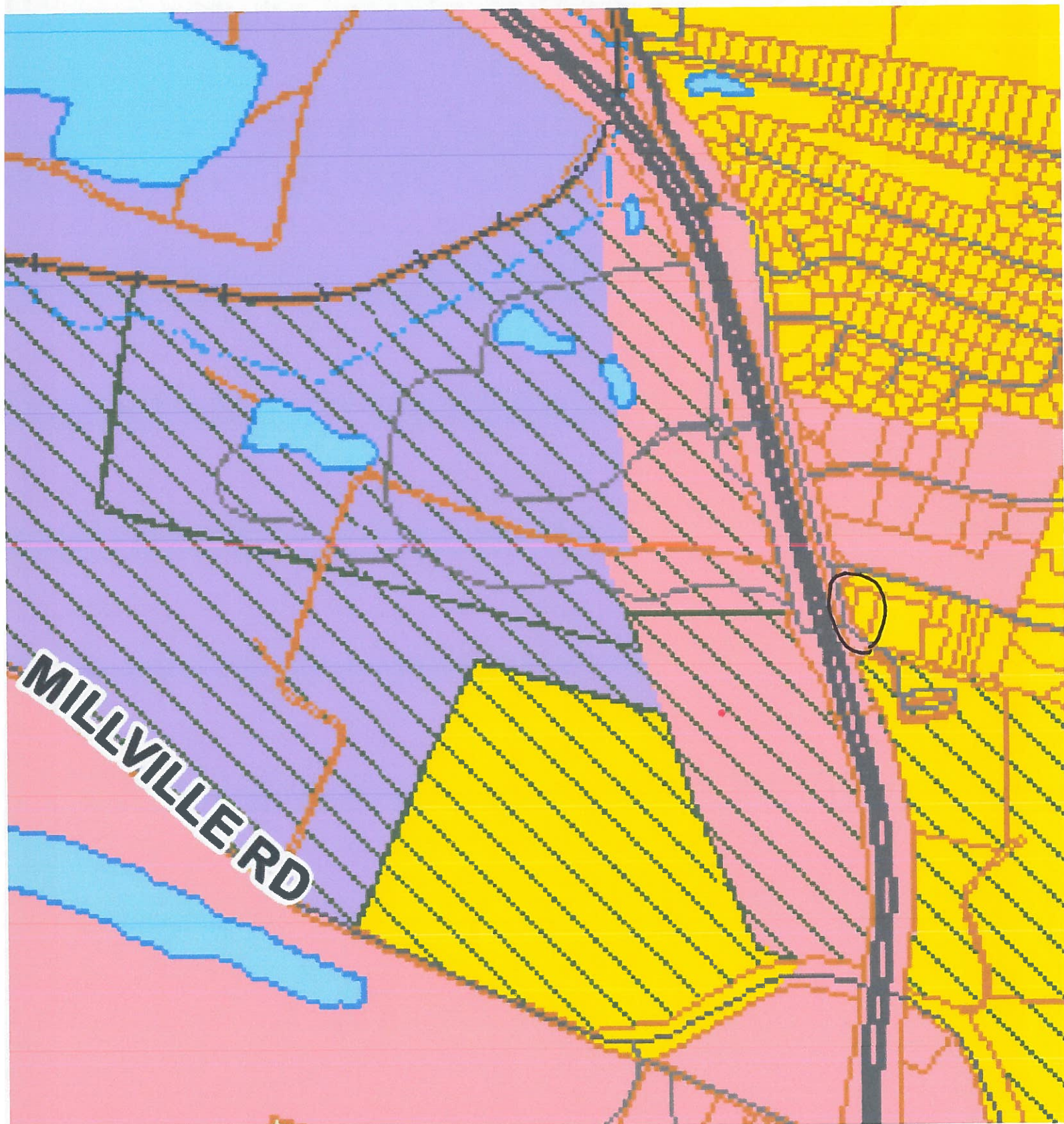
The Planning Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of _____ for and _____ against, this day of _____, _____, _____.

Recommended Not Recommended

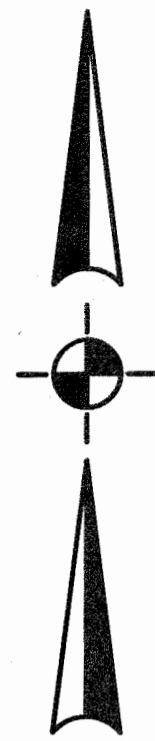
The County Commission finds this request consistent/inconsistent with the Comprehensive Plan by a vote of _____ for and _____ against, this day of _____, _____, _____.

Approved Disapproved

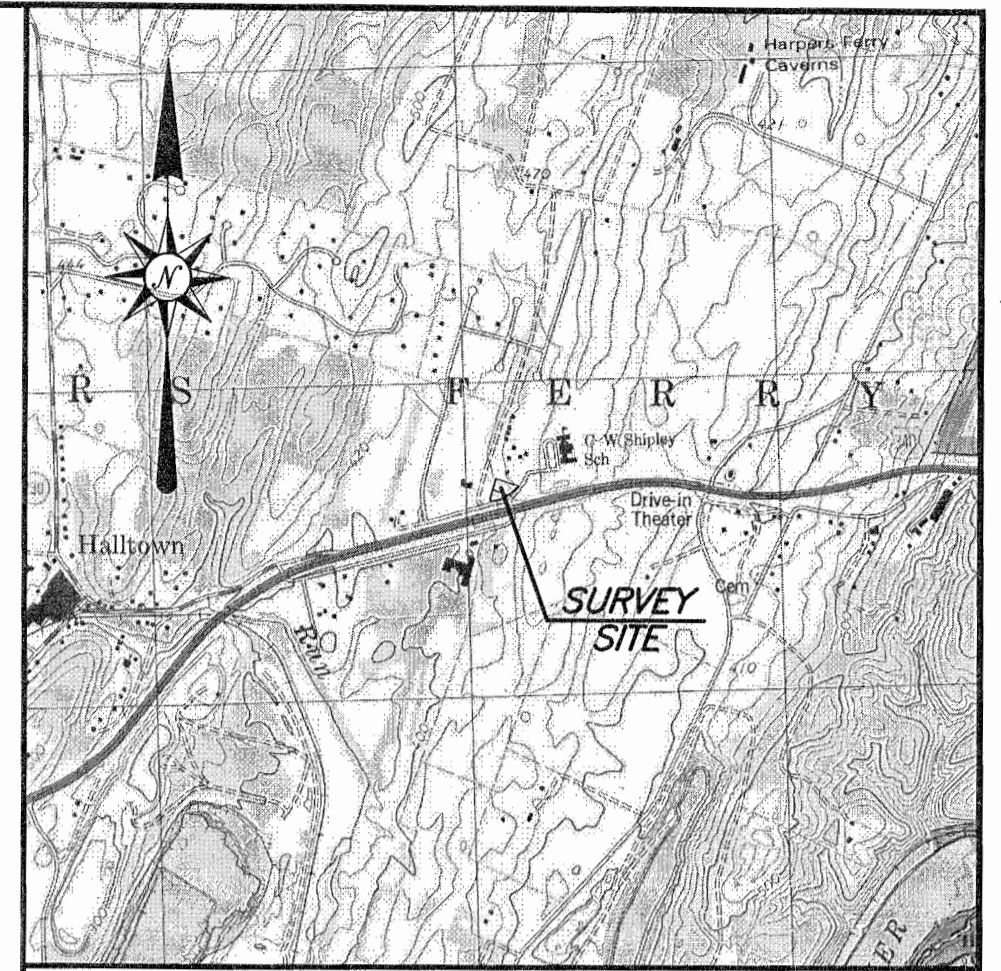
Final Determination/Other Comments



MILLVILLE RD



West Virginia State Grid North
NAD83 (2011) North Zone



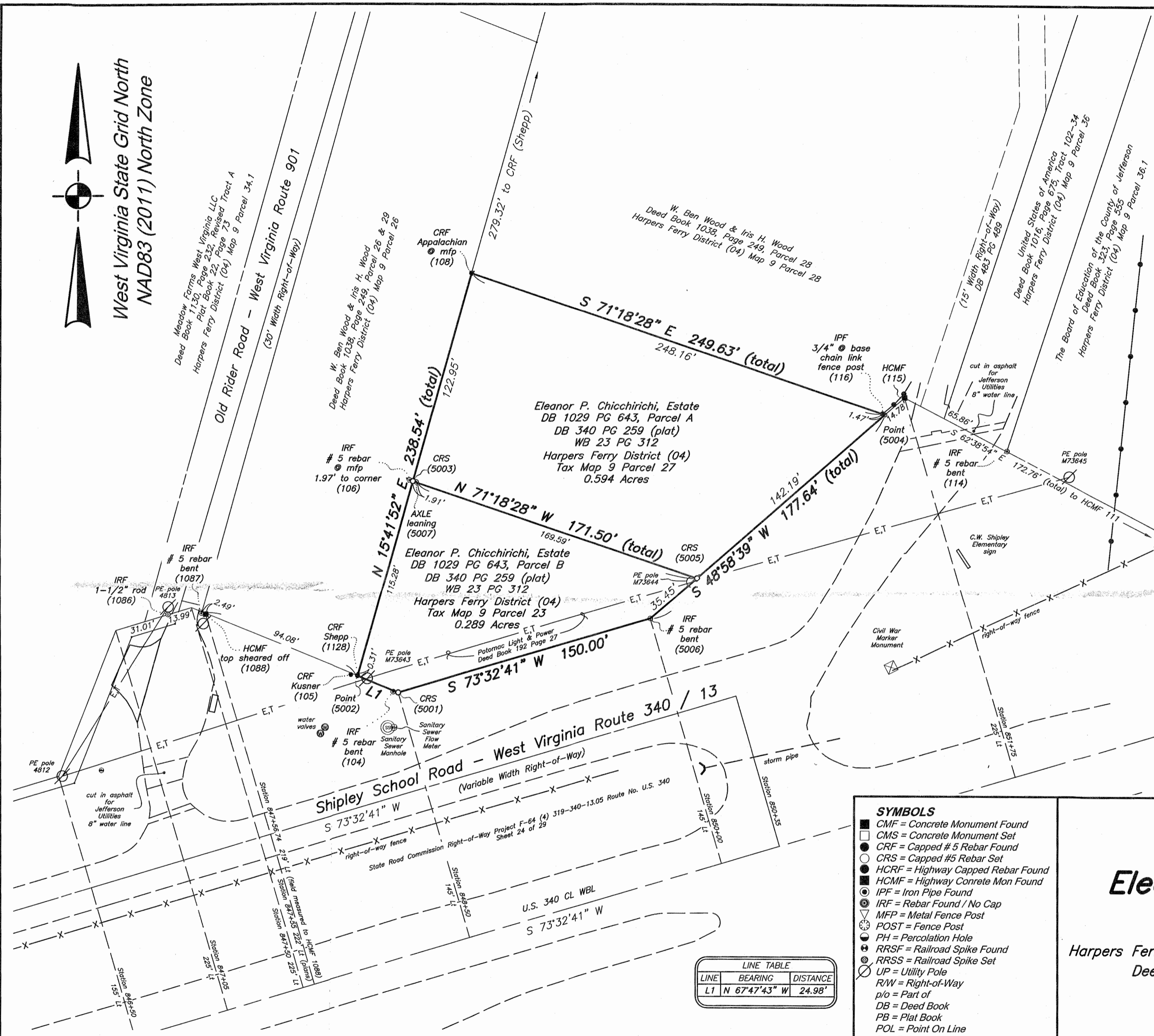
QUAD MAP LOCATION
SCALE: 1" = 2,000'

SOURCE OF TITLE INFORMATION

The title information for the properties, easements, right-of-ways, etc. shown hereon was researched and obtained by Gary A. Frey, P.S. and is not based on a title commitment or information provided by a title company or an attorney. This information may not be absolute and additional information may be discovered and disclosed in a title commitment.

PROPERTY INFORMATION / PREVIOUS PLAT

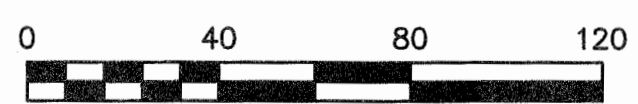
The perimeter property information on this plat is from a survey by Gary A. Frey, P.S. using conventional and GPS RTK methods, oriented to WV State Plane Grid - North Zone NAD 83 (2011). See Deed Book 340, Page 259 for the previous plat by John Kusner dated November 18, 1969 of the parcels shown.



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N 67°47'43" W	24.98'

- SYMBOLS**
- CMF = Concrete Monument Found
 - CMS = Concrete Monument Set
 - CRF = Capped #5 Rebar Found
 - CRS = Capped #5 Rebar Set
 - HCRF = Highway Capped Rebar Found
 - HCMF = Highway Concrete Mon Found
 - IPF = Iron Pipe Found
 - IRF = Rebar Found / No Cap
 - MFP = Metal Fence Post
 - ⊙ POST = Fence Post
 - PH = Percolation Hole
 - RRSF = Railroad Spike Found
 - RRSS = Railroad Spike Set
 - UP = Utility Pole
 - R/W = Right-of-Way
 - p/o = Part of
 - DB = Deed Book
 - PB = Plat Book
 - POL = Point On Line
 - Pt = Point
 - ⊙ = Center Line
 - ℙ = Property Line

- LINE LEGEND**
- E,T — Ovrhd Utility
 - - - - - Wire Fence
 - · - · - Ex. Property Line
 - · - · - Ex. Easement Line

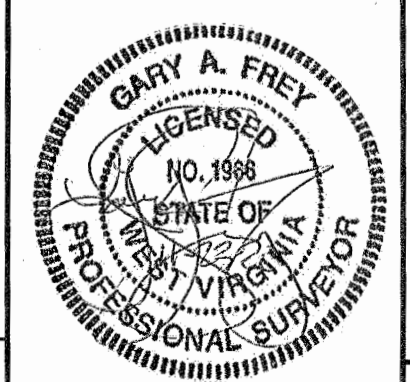


REVISIONS		
No.	Date	Description
1	11-23-20	Rider Road name, add wv, ssmh, sswv, 5006 desc

I CERTIFY THAT THIS SURVEY PLAT WAS MADE BY ME AND ITS ACCURACY IS WITHIN THE ACCEPTED STANDARDS. ERROR OF CLOSURE 1:7500 OR BETTER

Plat of Survey
of the lands of
**Eleanor P. Chicchirichi,
Estate**

Harpers Ferry Tax District (04), Map 9 / Parcels 23 & 27
Deed Book 1029, Page 643 Parcel A & B
Will Book 23, Page 312
Jefferson County, West Virginia



GARY A. FREY, P.S.
Professional Land Surveyor
P.O. Box 1218
Harpers Ferry, WV 25425
304-820-9331