

**GREGG ROAD COMMUNITY SOLAR  
CONDITIONAL USE NO. CU202404 AND  
PRELIMINARY/FINAL FOREST CONSERVATION PLAN NO.  
F20230320**

Conditional Use request to construct and operate a Solar Collection System in the AR zone;

No. CU202404

Completed: 11-3-2023

MCPB

Item No. 8  
11-16-2023

2425 Reddie Drive  
Floor 14  
Wheaton, MD 20902

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### LOCATION/ADDRESS

4434 Gregg Road, Brookeville MD

### MASTER PLAN

2005 Olney Master Plan

### ZONE

Agricultural Reserve (AR)

### PROPERTY SIZE

Property – 53.95 acres

Conditional Use Area – 12.84 acres

### APPLICANT

Alder Energy Development, LLC

### ACCEPTANCE DATE

July 17, 2023

### REVIEW BASIS

Ch. 59 and 22A

### HEARING EXAMINER PUBLIC HEARING

December 11, 2023

## Summary:

- Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner.
- Staff recommends approval of the associated Preliminary /Forest Conservation Plan with conditions.
- The Site is currently utilized as a commercial tree farm. The proposal allows for a Solar Collection System without detrimentally impacting the existing agricultural operation.
- Staff has not received any public correspondence as of the date of this Staff Report.

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## SECTION 1: RECOMMENDATIONS AND CONDITIONS

### CONDITIONAL USE NO. CU202404

Staff recommends approval of Gregg Road Community Solar, Conditional Use No. CU202404, for a Conditional Use to construct and operate a Solar Collection System in the AR zone, subject to the following conditions:

1. The use is limited to a Solar Collection System that generates no more than two (2) megawatts.
2. Prior to the release of the access permit by the Montgomery County Department of Transportation, the Applicant must provide the following dedications, by deed, as shown on the Conditional Use Plan:
  - a) All land necessary to accommodate thirty-five feet (35) from the existing pavement centerline along the Subject Property frontage for Zion Road; and
  - b) All land necessary to accommodate thirty-five feet (35) from the existing pavement centerline along the Subject Property frontage for Gregg Road.
3. Within one year after planting, the Applicant must submit proof to the Hearing Examiner's office that the area below the solar array has been certified as pollinator-friendly under the Maryland Pollinator-Friendly Designation Program.
4. Before issuance of any building permit or sediment control permit, whichever comes first, the Applicant must enter into a Surety and Maintenance Agreement with the Planning Board in a form approved by the M-NCPPC Office of General Counsel that outlines the responsibilities of the Applicant. The Agreement must include a performance bond or other form of surety, with the following provisions:
  - a) A cost estimate of the materials and facilities, which, upon Staff approval, will establish the surety amount.
  - b) The cost estimate must include landscape screening and fencing, as shown on the approved Conditional Use Site Plan.
  - c) Completion of all improvements covered by the surety will be followed by inspection and potential reduction of the surety, through the one-year warranty period.
  - d) The bond or surety for each item shall be clearly described within the Surety & Maintenance Agreement, including all relevant conditions.

### PRELIMINARY/ FINAL FOREST CONSERVATION PLAN NO. F20230320

1. The Applicant must schedule the required site inspections by M-NCPPC Forest Conservation Inspection Staff per Section 22A.00.01.10 of the Forest Conservation Regulations.

2. The Applicant must comply with all tree protection and tree save measures shown on the approved Final Forest Conservation Plan. Tree save measures not specified on the Final Forest Conservation Plan may be required by the M-NCPPC Forest Conservation Inspection Staff.
3. The Limits of Disturbance (“LOD”) shown on the Final Sediment and Erosion Control Plan must be consistent with the LOD shown on the approved Final Forest Conservation Plan.
4. Before the start of any demolition, clearing, grading, or construction for this development Application, whichever comes first, the Applicant must:
  - a) Record a Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Preliminary/Final Forest Conservation Plan (“FFCP”). The Category I Conservation Easement must be in a form approved by the M-NCPPC Office of the General Counsel and must be recorded in the Montgomery County Land Records by deed.
  - b) Install permanent conservation easement signage along the perimeter of the conservation easements as shown on the FFCP, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
  - c) Execute a five-year Maintenance and Management Agreement (“MMA”) in a form approved by the M-NCPPC Office of the General Counsel. The MMA is required for all forest planting areas, mitigation tree plantings, including variance tree mitigation plantings, and landscape plantings credited toward meeting the requirements of the FFCP. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - d) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department for the 1.5 acres of new forest planting and mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FFCP.
5. The Applicant must install the Afforestation/Reforestation plantings as shown on the approved FFCP, within the first planting season following the release of the first Sediment and Erosion Control Permit from the Montgomery County Department of Permitting Services for the Subject Property, or as directed by the M-NCPPC Forest Conservation Inspection Staff.
6. Impervious surfaces are limited to no more than 10.0 percent within the transition area of the Patuxent River Primary Management Area (“PMA”) of the Subject Property as shown on the Impervious Area Plan dated August 24, 2023.
7. Before the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area (“PMA”) on the Subject Property to no more than 10.0 percent, as shown on the Impervious Area Plan dated August 24, 2023. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.
8. At time of Certified FFCP submittal, the Applicant must show on the FFCP the proposed construction of the SWM drainage pipes beneath Zion Road and modify the necessary worksheet, tables, and figures on the FFCP to account for this work.

## SECTION 2: NEIGHBORHOOD & SITE DESCRIPTION

### VICINITY/NEIGHBORHOOD

The Subject Property is located at 4434 Gregg Road, in the southeast quadrant of the intersection of Zion Road and Gregg Road, in Brookville. The Property is located in “Northern Olney” within the 2005 *Olney Master Plan* (“Master Plan”).

#### Neighborhood

As shown in Figure 1 below, Staff defined a neighborhood for purposes of analyzing this Conditional Use and its possible impacts on the character of the surrounding area. Staff determined the neighborhood based on properties that would be most impacted by the Conditional Use. Since the Solar Collection system is in the northern quadrant of the Property, Staff limited the neighborhood to the abutting and confronting properties and neighborhoods that are accessed from the road network immediately surrounding the Property and zoned AR. The neighborhood as defined is comprised of low-density residential development, agricultural uses and four active Conditional Uses/Special Exceptions. To the east and south are farming operations and other comparable agricultural uses. Immediately to the north, across Gregg Road, are six AR-zoned private residences, at least two of which are farmettes. West of the Property, across Zion Road, is Clover Hill, an individual site designated on the Master Plan of Historic Sites (Resource Number 23/051-000A) and agricultural land.

Two properties to the northeast have Special Exception approval, one at 21515 Zion Road is a Special Exception for a Private Educational Institution (S-2626) and the other at 4513 Gregg Road is a Home Occupation for a photo studio (S-648). There is another property to the south at 21202 Zion Road which has approval for a Conditional Use for a Landscape Contractor (CU201806). Free Rein Solar, Conditional Use No. CU2023-05 was granted approval July 8, 2023 to construct a Solar Collection System at 5011 Riggs Road, the Property surrounding the Clover Hill site. If constructed, the solar array will occupy the area behind the Clover Hill dwelling, northeast of the pond.



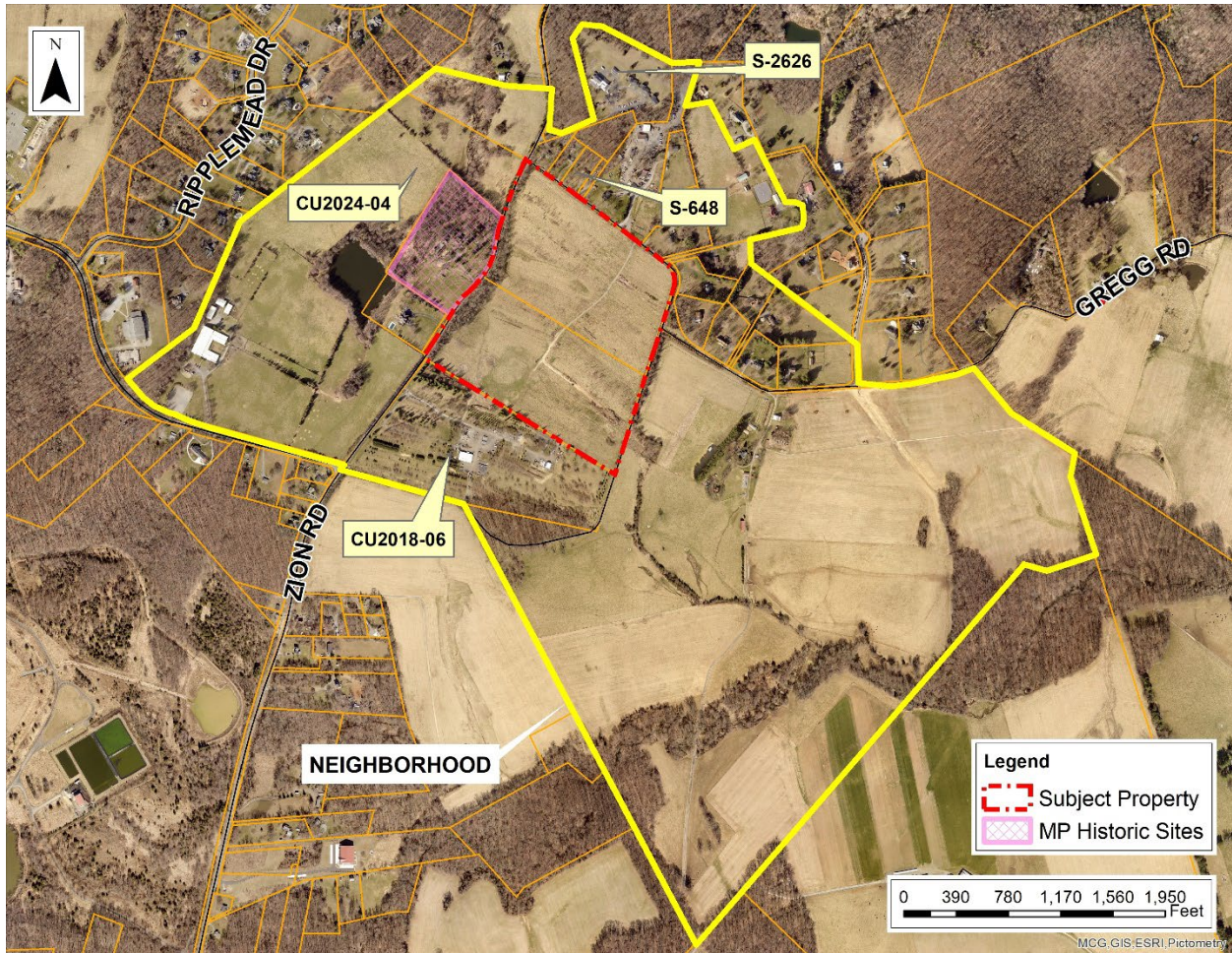


Figure 1: Vicinity Map with Staff-defined neighborhood highlighted yellow

## PROPERTY DESCRIPTION

The Subject Property (outlined in the red dashed line in Figure 1) consists of 53.95 acres of AR zoned land, identified as Parcel P115, formerly two parcels (P115 and P320) which were consolidated via a Deed of Consolidation recorded among the Land Records of Montgomery County in Liber 63574 at Folio 184. The Subject Property has frontage on three roads: Zion Road to the west, Gregg Road to the north and Riggs Road on the southeast (Figure 2).

The Subject Property, along with the property to the south, are operated as a commercial tree farm, specifically Stadler Nurseries tree farm. There are no existing improvements to the Subject Property, except for an existing, private dirt access road which accesses Gregg Road and runs south through the center of the field.



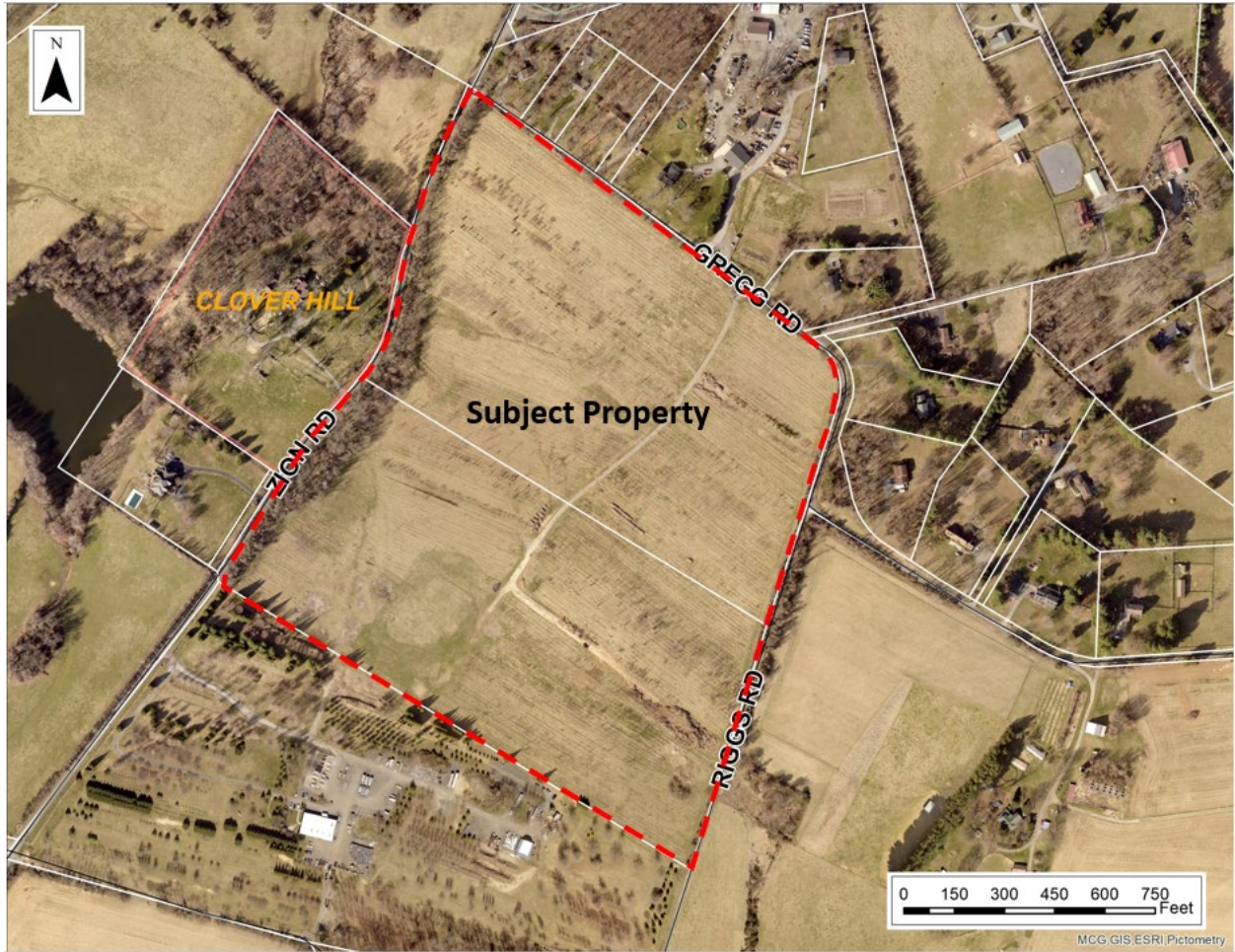
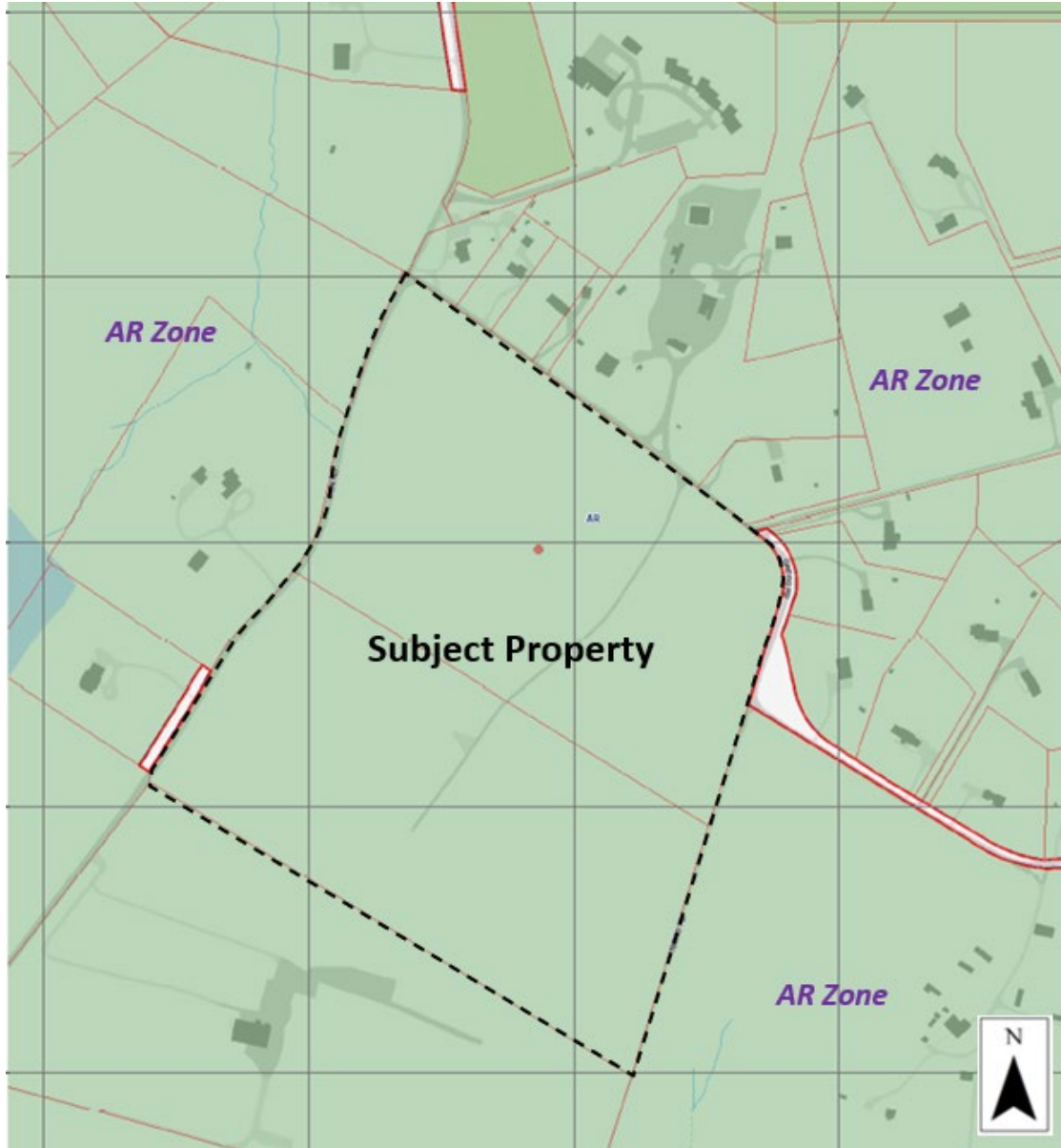


Figure 2: Subject Property





*Figure 3: Existing Zoning*

The Property is within the Hawlings River watershed, which is classified by the State of Maryland as Use IV-P watershed and contains 600 linear foot perennial stream runs along the western property, parallel to Zion Road. There are also wetlands in the same area, which area incorporated into to the stream buffer. No steep slopes or floodplains area present on the Property. The Property slopes slightly from the northeast and southeast toward the west. The Property is not within a Special Protection Area; however, the Property is within the Patuxent River Watershed Primary Management Area (PMA).

## SECTION 3: PROJECT DESCRIPTION

### PROPOSAL

#### CONDITIONAL USE

Gregg Road Community Solar, Conditional Use No. CU 202404, was submitted on July 17, 2023, by Alder Energy Development, LLC, to allow for the construction of a freestanding Solar Collection System capable of generating no more than 2 megawatts of electricity, on 12.84 acres of the overall 53.95-acre Property (“Site”) in the AR zone (Attachment A).

The Application will consist of solar arrays, associated mechanical, fencing around the compound, associated screening installation of a new driveway to access the Site from Zion Road. No habitable buildings will be erected as part of this Application. Once constructed, there will be no on-site personnel and no traffic other than for the occasional maintenance of the facility.

The proposed improvements are limited to the fixed solar panels (which have a surface dimension of approximately 4 feet by 8 feet supported by horizontally crossmembers which are attached to support legs and anchored with ground screws. In addition to the solar panels, a concrete pad inside the fenced area will house electrical cabinets containing recombiners, inverters, transformers and switchgear needed to convert direct current (DC) electricity to alternating current (AC). This conversion to AC power is necessary in order to return electricity to the electrical grid because the solar panels produce DC power. All infrastructure will be constructed on Class III and Class IV soils. The perimeter of the Site, along Zion Road and Gregg Road will be landscaped to screen the panels, per Section 59.6.5.3.C.8 (option A), as described in this Staff Report. A seven-foot-tall agricultural field fence will surround the solar array, driveway, and switch gear.

The Applicant will also be dedicating 3.57 acres of land to public right-of-way for Zion Road and Gregg Road.



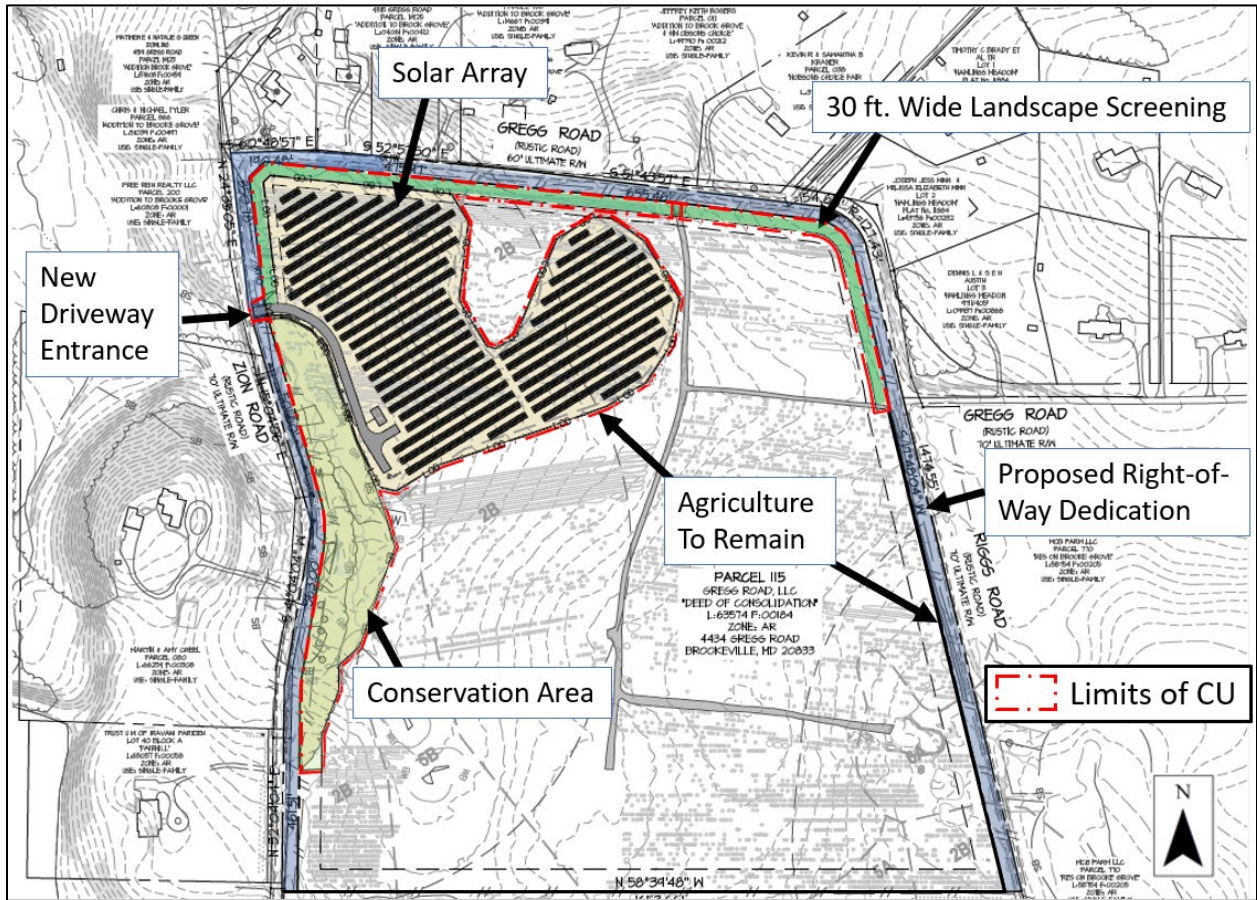


Figure 4: Conditional Use (Composite)



Figure 5: Google Street View of the Subject Property from Gregg Road (left) and Zion Road (Right)

## FOREST CONSERVATION

The Application is subject to the Montgomery County Forest Conservation Law (Chapter 22A of the County Code) under Section 22A-4(b), a person required by law to obtain approval of a special exception or a conditional use, or a sediment control permit on a tract of land 40,000 square feet or larger, and who is not otherwise required to obtain an approval under subsection (a). A Preliminary/Final Forest Conservation Plan (“FFCP”) No. F20230320 was submitted for concurrent review with this Application (Attachment B). The FFCP satisfies all of the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and complies with the Montgomery County Planning Department’s Environmental Guidelines. Please refer to the FFCP analysis in Section 5 of this report.

## SECTION 4: COMMUNITY CORRESPONDENCE

As of the date of this Staff Report, Staff has not received any letters of correspondence from the community.

The Applicant held a voluntary pre-submittal community meeting on March 21, 2023 via zoom. According to the Applicant’s meeting minutes, no community attended the meeting (Attachment C).

## SECTION 5: ANALYSIS AND FINDINGS

### CONDITIONAL USE NO. CU202404

#### USE STANDARDS - SECTION 3.7.2.B.2, SOLAR COLLECTION SYSTEM

- 1. Per Section 3.7.2.B.2, a Solar Collection System may be allowed as a Conditional Use in the AR zone if it exceeds a facility rated at more than 200% of on-site energy use and is less than 2 megawatts (AC). Where a Solar Collection System is allowed as a conditional use in the AR zone, it may be permitted by the Hearing Examiner under Section 7.3.1. Conditional Use and the following standards:**
  - a. The Solar Collection System is prohibited:**
    - i. on soils classified by the United States Department of Agriculture as either Soil Classification Category I or Category II;**



The proposed Solar Collection System will be located on 2C and 6A soils, which are classified as Category III and IV according to the USDA soils map.

***ii. in a stream buffer;***

The proposed Solar Collection System will not be located within any Stream Buffers.

***iii. on wetlands; or***

The proposed Solar Collection System will not be located in wetlands or their buffer.

***iv. on slopes equal to or greater than 15%.***

The proposed Solar Collection System is being located on a flat portion of the property that does not contain slope equal or greater than 15 percent.

***b. Scraping topsoil from the site is prohibited.***

The Applicant is not scraping any topsoil from the Property.

***c. Grading and any soil removal are minimized.***

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

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

The Conditional Use will comply with requirements of the State's net metering program and all applicable codes and regulations.

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

***(i) designated pollinator-friendly under the Maryland Pollinator-Friendly Designation Program;***

***(ii) planted, managed, maintained, and used for grazing farm animals;***  
***or***

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

According to the Statement of Justification (Attachment D), the Applicant is pursuing from the Maryland Department of Natural Resources, certification that the portions of the Property under the solar array will be pollinator-friendly under the Maryland Pollinator-Friendly Designation Program. The Applicant has provided the proposed planting schedule (Attachment E), identifying the most likely meadow mix that will be used under the panels.

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

The Applicant has provided a letter from PEPCO, dated November 9, 2021, authorizing connection to the utility grid (Attachment F).

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

The Office of Agriculture (OAG) provided a letter to Staff, dated July 19, 2023, supporting this Application (Attachment G). The Applicant forwarded the final documents to the OAG after addressing final comments from Staff, including the revised driveway location.

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

There will be no trees or landscaping removed that were otherwise required as condition of any previous approvals.

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

A Preliminary/Final Forest Conservation Plan has been prepared in compliance with County Code Section 22A-12(b)(1) and submitted to M-NCPPC for review and approval concurrently with this Application. No trees being removed are within a flood plain, stream buffer, steep slope, critical habitat, contiguous forest, or historic site. The existing forest is to be retained.

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

The use of concrete is limited to a transformer and electrical equipment pads (30 ft. x 40 ft.), adjacent to the fire access turnaround.

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

Along the northern Property line, where the solar facility is within 200 feet of a neighboring house, landscape screening has been provided that satisfies Section 59.6.5.3.C.8 (Option A), along the perimeter of the Property. The solar array and associated fenced area are more than 200 feet from any neighboring house along the remaining perimeter of the Property; therefore, no screening is required. However, as shown on Figure 6, the Applicant is providing the same landscaping along the rest of the perimeter to provide a visual buffer between the panels and abutting rustic roads. The existing forested stream, wetlands, and associated buffer area, south of the new driveway enhance, are being placed in a Category I Conservation Easement. The Conservation Easement will ensure the environmental buffers are protected and the existing forest will act as natural screening.

Trees and scrub currently line the majority of Zion and Gregg Roads, which will remain. The proposed 30-foot-wide area of screening, made up of canopy trees, evergreen trees, shrubs, and understory planting will enhance the existing vegetation, which will adequately screen the view of the solar panels.

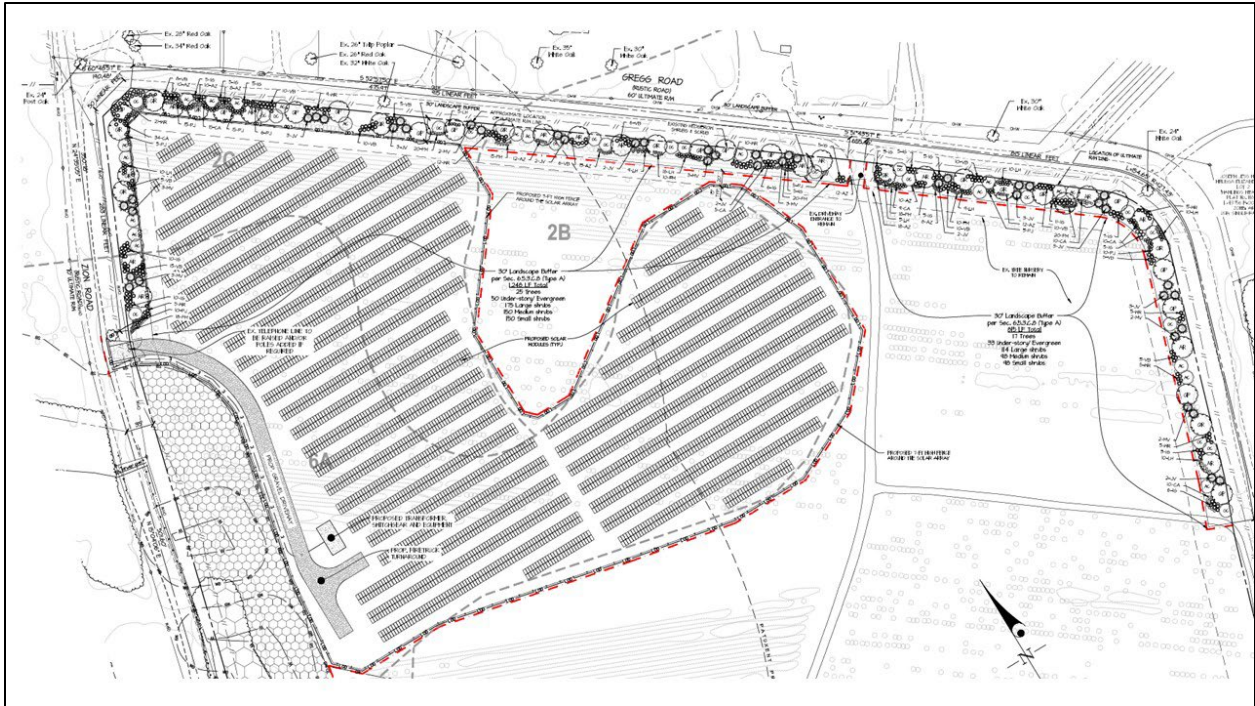


Figure 6: Landscape Plan

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

Staff received a letter from the OAG, dated July 19, 2023, in support of this Application.

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

The Solar Collection System will occupy 12.84 acres total, including the Forest Conservation Easement. The fenced area is 8.77 acres. The landscape buffer area is 1.33 acres and the BRL area that is already accounted for within the landscape buffer area overlap, is 0.22 acres. The Forest Conservation Area will incur an additional 2.53 acres.

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



This is the second Conditional Use application for a Solar Collection System in the AR zone; Currently, only 4.92 acres<sup>1</sup> of AR zoned land are approved for Community Solar: therefore, the county is well under the 1,800 acres of land.

GENERAL CONDITIONAL USE FINDINGS - SECTION 59.7.3.1.E.

**2. Per Section 59.7.3.1.E., to approve a conditional use application, the Hearing Examiner must find that the proposed development:**

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

The Subject Property is not subject to any active approvals. Special Exception S-1386, for an accessory dwelling unit was abandoned on September 2, 2022.

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

**i. Use Standards for Solar Collection System- Section 59.3.7.2.B.2**

The proposed Solar Collection System satisfies the use standard in Section 59.3.7.2.B.2., as described above.

**ii. Development Standards**

The Subject Property is in the AR zone, which allows a Solar Collection System as a Conditional Use. The Project complies with all development standards of the AR zone, as shown on the Development Standards Table below.

*Table 1: Conditional Use Development and Parking Standards (Agricultural Reserve- AR)*

<b>Development Standard Section 59.4.2.1.F</b>	<b>Permitted/ Required</b>	<b>Proposed</b>
<b>Minimum Lot Area</b>	40,000 SF 25 acres (Site)	50.38 acres (Site) 53.95 acres (GTA)
<b>Minimum Lot Width at Front Building Line</b>	125 feet	1,200 feet+/-

<sup>1</sup> Free Rein Solar Farm Conditional Use No. CU23-05 was granted by the Hearing Examiner on June 8, 2023, but has not been constructed yet.

<b>Minimum Lot Width at Front Lot Line</b>	25 feet	1,200 feet +/-
<b>Maximum Density</b>	1 dwelling/25 acres	N/A
<b>Maximum Building Lot Coverage</b>	10%	0%
<b>Minimum Front Setback</b>	50 feet	50 feet
<b>Side Street Setback</b>	50 feet	50 feet
<b>Minimum Side Setback</b>	20 feet	N/A
<b>Minimum Sum of Side Setbacks</b>	N/A	N/A
<b>Minimum Rear Setback</b>	35 feet	700 feet +/-
<b>Maximum Height</b>	50 feet	N/A
<b>Vehicle Parking Requirement (Section 59.6.2.4.B)</b>	N/A	N/A
Note**Parcel P115 is an unrecorded parcel. Recordation of a plat is not required for the proposed use. The dimensions in this table are taken from the boundary of the Subject Property.		

iii. **General Requirements**

**(1) Access**

Access to the Site is proposed with new 20-foot-wide driveway from Zion Road with a commercial driveway apron. The driveway will provide adequate site access for maintenance and emergency vehicles.

**(2) Parking, Queuing and Loading**

No parking, queuing, or loading are required for the Solar Collection System use. The use generates very few vehicular trips. Maintenance of the Site will occur 3 to 5 times per year and adequate space is available with only occasional use by maintenance and/or construction vehicles to be parked on the driveway or in the field.

**(3) Lighting**

No lighting is being provided as part of this Application. Due to the nature of solar collection system as a primary use on the Site, lighting is not required or necessary. Any maintenance requiring illumination can be accommodated on a temporary (mobile) basis or maintenance can be accommodated during the daytime.

**(4) Screening**

A previously discussed, the Applicant is providing screening as required by the specific conditional use standards for the Solar Collection Systems.

**(5) Signage**

No signage is proposed with this Application.

**c) substantially conforms with the recommendations of the applicable master plan;**

2005 Olney Master Plan

The Property lies within the area covered by the 2005 *Olney Master Plan* (“Master Plan”). It is in the “Northern Olney” plan neighborhood and within the Hawlings River watershed, itself a subwatershed of the Patuxent River. The Master Plan does not include any specific recommendations for the Property other than the continuation of its existing AR Zone (formerly known as RDT). Very broadly, the Master Plan supports agricultural preservation, watershed protection, and maintaining rural character in Northern Olney.

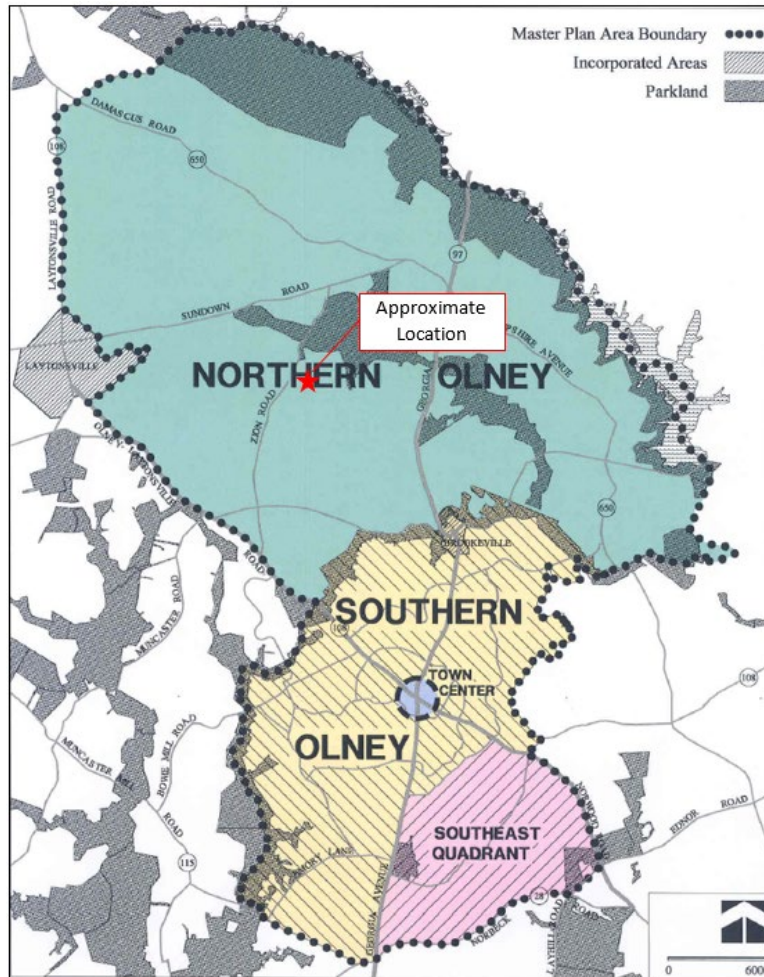


Figure 7: Master Plan Neighborhood Map (pg. 6)

The Master Plan recommends minimizing negative impacts of conditional uses, especially with respect to nonresidential character, such as parking lot visibility; the size, height, and scale of buildings; and intrusive lighting. Excessive imperviousness levels are also discouraged. The Application conforms to this Master Plan guidance because it creates only a small amount of imperviousness, and the solar array will only be minimally visible from surrounding properties.

As discussed below, the Master Plan provides numerous recommendations aimed at protecting the regional drinking water supply in the Triadelphia and Howard T. Duckett reservoirs, the latter of which is downstream from the Hawlings River.

The Master Plan also supports strategies to reduce air pollution. While this section of the Master Plan generally refers to new developments that may increase automobile, foot, and bike traffic, it is worth noting that the proposed use is part of a much larger effort to replace greenhouse gas emitting power generation facilities with a non-polluting source.

Most of the property will be retained for its current use, which is primarily a commercial tree farm. The solar array will be located on the less productive soils on the property and, with appropriate screening, should not detract from the rural character of the area. The proposed forest retention and planting and the additional screening should help protect the character of the two rustic roads adjacent to the solar array. The Application substantially conforms with the recommendations of the Master Plan and the RRFMP Update.

#### 1993 Patuxent River Watershed Functional Master Plan

The Property is within the Patuxent River Primary Management Area (“PMA”), which was limited by the 1993 *Functional Master Plan for the Patuxent River Watershed* to 10 percent imperviousness.

#### *Impervious Areas:*

Due to proximity to tributary streams, the Property is located within the Patuxent River Primary Management Area (“PMA”). The PMA on the Property is the land area within ½ mile (660 feet) of the streams on and near the property. The 660-foot-wide PMA consists of the stream valley buffer and the transition area. There are specific requirements outlined in the Environmental Guidelines for properties located within the PMA. The stream valley buffer is delineated based on the stream buffer calculations outlined in the Environmental Guidelines. The remaining area within the 660-foot-wide PMA is the transition area. To protect the water quality within the Patuxent watershed, the Environmental Guidelines establish impervious limits and states the following:



Patuxent River Primary Management Area (PMA): Overall imperviousness within the PMA transition area of a development site should not exceed 10 percent. If a higher imperviousness is desirable in the transition area to maintain community character, achieve compatibility and/or accomplish master plan goals, imperviousness may be averaged over the entire site (i.e., not to exceed 10 percent on the entire site, p. 25).

There is currently no existing development within the PMA transition area. The new construction to accommodate the proposed use will add 0.43 acres of impervious surfaces which equates to 1.5 percent imperviousness within the transition area.

The Application is below the 10 percent threshold recommended by the Environmental Guidelines. Impervious surfaces are limited to no more than 10.0 percent of the Subject Property as shown on the Impervious Area Plan dated, August 24, 2023. Prior to the start of any clearing, grading, or demolition on the Subject Property, the owner of the Subject Property must enter into an agreement with the Planning Board to limit impervious surfaces within the transition area of the Patuxent River Primary Management Area (“PMA”) on the Subject Property to no more than 10.0 percent, as shown on the Impervious Area Plan dated, August 24, 2023. The agreement must be in a form approved by the M-NCPPC Office of the General Counsel and recorded by deed in the Montgomery County Office of Land Records.

Accordingly, the proposed use substantially conforms to the recommendations of the 1993 *Functional Master Plan for the Patuxent River Watershed*.

#### 2023 Rustic Roads Functional Master Plan Update

The Subject Property fronts Zion Road and Gregg Road, both identified as rustic roads in in *2023 Rustic Roads Functional Master Plan Update*. The Application has been reviewed by the Rustic Roads Advisory Committee (Attachment H), which based on the proposed layout and screening, determined that the use generally conforms to the rural character of both roads.

The *Rustic Roads Functional Master Plan Update* (“RRFMP Update”) was approved by County Council in July 2023. Although the approved plan still needs to be approved and adopted by Montgomery County and the full Commission, guidance from the RRFMP Update has been used to evaluate the Application. The Property lies at the intersection of two rustic roads: Zion Road and Gregg Road; the solar array is proposed near this intersection.

Zion Road was designated rustic in the 1996 *Rustic Roads Functional Master Plan*, and the description of the road was brought over to the RRFMP Update largely unchanged. One of the significant features of Zion Road is that it is a “pleasant road blending into adjacent land.” The proposed forest retention and planting areas will help maintain this notion for

drivers approaching from the south, while an existing hedgerow and proposed 30-foot landscaping buffer should provide adequate screening along Zion Road north of the forest planting area.

The section of Gregg Road adjacent to the solar array was designated rustic in the RRFMP Update. One of Gregg Road's significant features is that it is a "tree-lined farm road." An existing hedgerow with frequent mature trees currently shields the view of the Property from Gregg Road, and the proposed 30-foot planting buffer should contribute further to the tree-lined view of Gregg Road.

- d) is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan; The proposal is harmonious with, and will not alter the character of, the surrounding neighborhood.***

The Project is harmonious with and will not alter the character of the surrounding neighborhood with a minimal amount of noise, traffic, and visual impacts. The project will be visually screened from the adjacent roads and residences by existing vegetation and the required screening along Zion Road and Gregg Road. The proposed driveway will be constructed of gravel, which is rural in nature. Additionally, the driveway curves behind the proposed forest conservation easement before terminating into the fire turnaround. The mechanical pad and switch gear have been intentionally located on the interior of the Property near the fire turnaround, for safety reasons and to limit the visual impacts on the surrounding property.

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

The Property is zoned AR and is not located in a Residential Detached zone. This Application does not adversely affect or alter the predominantly low-density residential and agricultural uses in the area.

- f) will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:***
- i. if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police***

***and fire protection, water, sanitary sewer, public roads, and storm drainage, or***

- ii. ***if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and***

A Preliminary Plan of Subdivision is not required, and Staff has determined that there are adequate public services and facilities to serve the proposed use as described below.

**(1) *Transportation***

*Master-Planned Roadways, and Bikeways and Pedestrian Facilities*

The Subject Property fronts Zion Road and Gregg Road, both identified as rustic roads in in 2023 *Rustic Roads Functional Master Plan Update*. No bike, pedestrian or vehicular improvements are requested or planned as both roads should be retained as much as possible in their existing rustic condition.

*Local Area Transportation Review*

As detailed in the Applicant's Transportation Exemption Statement (Attachment I), the proposed solar field does not propose any net new person or vehicular trips. New trips will be infrequent, amounting to occasional maintenance of the infrastructure as well as mowing and monthly landscape care. All trips are expected to occur outside peak travel hours. As a result, the Application is exempt from additional LATR review.

**(2) *Other Public Facilities***

Other utilities, public facilities and services, such as electric, telecommunications, police stations, firehouses and health services are currently operating within the standards set by the Growth and Infrastructure Policy in effect at the time that the Application was submitted.

This Application does not propose occupancy of the Site and therefore requires neither water supply nor wastewater disposal systems.

The Application received approval of a Stormwater Management Concept Plan from the MCDPS, dated June 29, 2023, per Chapter 19 of the County Code. The Stormwater Management Concept demonstrates that stormwater will be managed on-site (Attachment J).

The Application has been reviewed by the MCDPS, Fire Access and Water Supply Sections, which determined that the Property has adequate access for fire and rescue vehicles from Zion Road, as shown on their approved Fire Department Access Plan dated October 8, 2023 (Attachment K).

Transportation access is safe and adequate for the proposed use. This Application is consistent with the 2018 *Master Plan of Highways and Transitways*, the 2018 *Bicycle Master Plan*, 2021 *Complete Streets Design Guide*, 2023 *Pedestrian Master Plan*, 2023 *Rustic Roads Functional Master Plan Update*, and the 2005 *Olney Master Plan*.

**g) will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:**

- i. ***the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. ***traffic, noise, odors, dust, illumination, or a lack of parking; or the health, safety, or welfare of neighboring residents, residents, visitors, or employees.***

This finding requires consideration of the inherent and non-inherent adverse effects of the proposed use on nearby properties and the general neighborhood. Section 1.4.2 of the Zoning Ordinance defines inherent adverse effects as “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Inherent adverse effects, alone, are not a sufficient basis for denial of a conditional use.

Non-inherent adverse effects are defined as “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” Non-inherent adverse effects are a sufficient basis to deny a conditional use, alone or in combination with inherent effects, if the adverse effect causes “undue” harm to the surrounding neighborhood. When analyzing whether impacts are inherent or non-inherent, Staff examines the size, scale, scope, light, noise, traffic, and environmental effects of the proposed use. The physical and operational characteristics inherent with a Solar Collection System are:

- ground mount solar arrays
- access road
- temporary construction noise
- visual impacts (arrays & fence)



- solar array compound that may be enclosed within the fence and landscape screening
- limited vehicle trips for construction and maintenance.

The Solar Collection System will not be detrimental to surrounding properties and Staff has identified no non-inherent adverse effects associated with this Application.

The proposed use will not cause undue harm to the neighborhood as a result of non-inherent adverse effects alone or the combination of inherent and non-inherent adverse effects.

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

The Subject Property is not in a Residential Detached zone.

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

The proposed use is compatible with the nearby properties and the staff recommends approval with conditions.

- 5. In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.**

The proposed use of a Solar Collection System is not considered an agricultural conditional use, so this section does not pertain to this Application.

- 6. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use to serve the population in the general neighborhood, considering the present availability of identical or similar uses to that neighborhood:**

- a) **Filling Station;**
- b) **Light Vehicle Sales and Rental (Outdoor);**
- c) **Swimming Pool (Community); and**
- d) **the following Recreation and Entertainment Facility use: swimming pool, commercial.**

This section does not pertain to this Application.

- 7. The following conditional uses may only be approved when the Hearing Examiner finds from a preponderance of the evidence of record that a need exists for the proposed use due to an insufficient number of similar uses presently serving existing population concentrations in the County, and the uses at the location proposed will not result in a multiplicity or saturation of similar uses in the same general neighborhood:**

- e) Funeral Home; Undertaker;**
- f) Hotel, Motel;**
- g) Shooting Range (Outdoor);**
- h) Drive-Thru**
- i) Landfill, Incinerator, or Transfer Station; and**
- j) a Public Use Helipad, Heliport or a Public Use Helistop.**

This section does not pertain to this Application.

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## PRELIMINARY/FINAL FOREST CONSERVATION PLAN NO. F20230320

### FOREST CONSERVATION

#### Natural Resource Inventory/Forest Stand Delineation Plan

The Natural Resource Inventory/Forest Stand Delineation (“NRI/FSD”) 420212590 for this Property was approved on October 15, 2021. The NRI/FSD identifies the environmental features and forest resources on the Subject Property. The Subject Property is located within the Rocky Gorge Dam watershed (watershed number 02131107), classified as a Use Class IV-P by the State of Maryland. The Subject Property contains 1.53 acres of forest located adjacent to Zion Road. The Subject Property also contains a perennial stream with 2.77 acres of associated stream buffer and four wetlands.

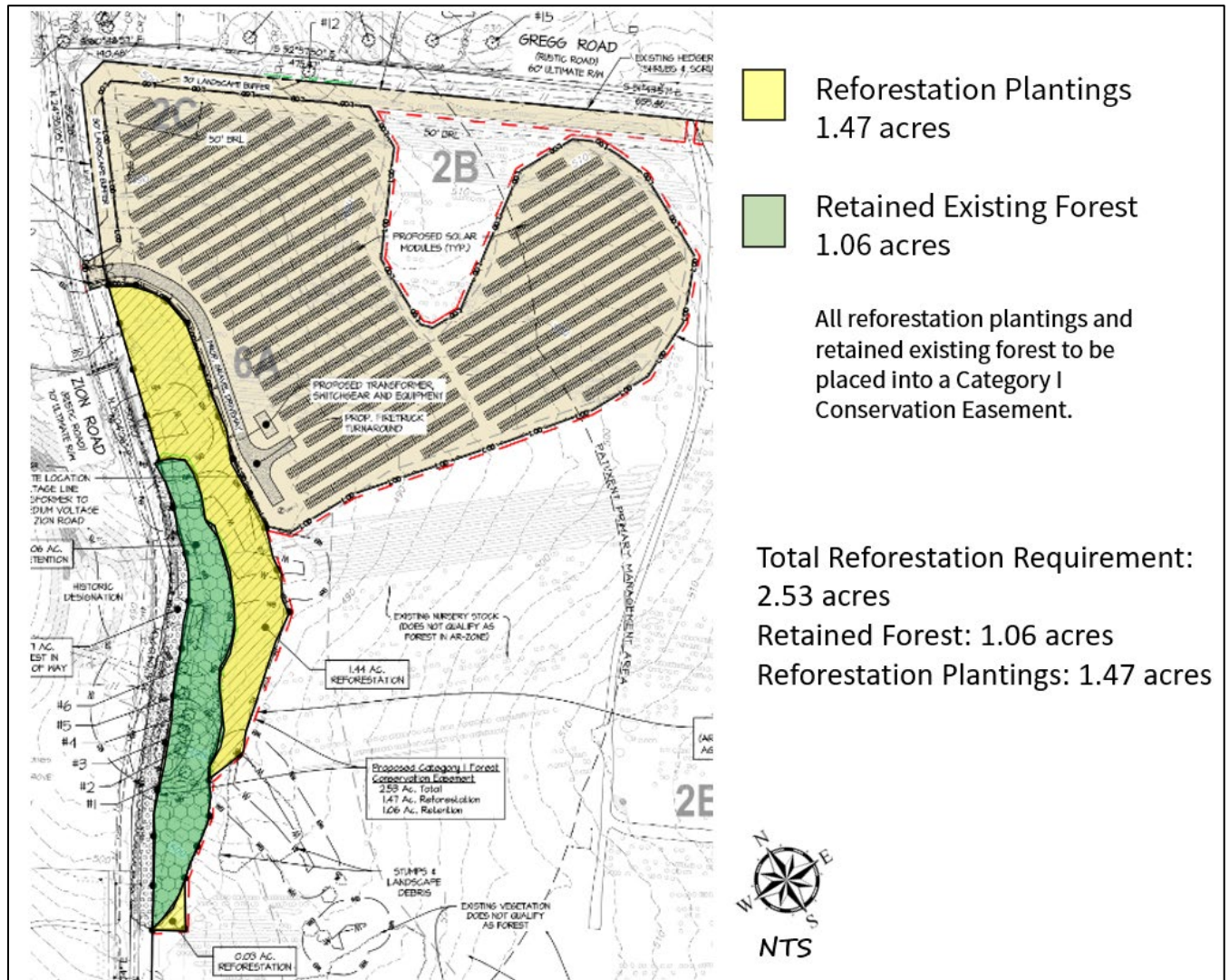
#### Forest Conservation Plan

The Applicant has submitted a Preliminary/Final Forest Conservation Plan No. F20230320 (“FFCP”) for concurrent review with the Conditional Use Plan No. CU2024040 for the installation of a community solar array of no greater than 2.0 megawatts. The Application satisfies the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s approved Environmental Guidelines.

The Subject Property is zoned AR and is assigned a Land Use Category of Agricultural Resource Area (“ARA”) as defined in Section 22A-3 of the Montgomery County Forest Conservation Law (“FCL”) and in

the Land Use Table of the Trees Technical Manual. This results in an afforestation threshold of 20% and a conservation threshold of 55% of the Net Tract Area.

The Net Tract Area for forest conservation purposes includes the 53.95-acre Total Tract Area minus both 3.57 acres of land dedication for rights-of-way and 37.74 acres to remain in agricultural production, for a total net tract area of 12.64 acres. The Subject Property has a total of 1.53 acres of forest, but 0.47 acres are deducted since this acreage of forest is within the dedicated right-of-way for Zion Road. This results in a net total of forest on the Subject Property of 1.06 acres. The Applicant proposes to retain the 1.06 acres of forest. This results in a total afforestation/reforestation requirement of 1.47 acres both within the same watershed/Priority Area and outside of the same watershed/Priority Area. The Applicant proposes to meet the planting requirement by reforesting 1.47 acres of unforested stream valley buffer as required under Sec. 22A-12(e)(1)(B) of the Forest Conservation Law (Figure 8).



## SECTION 6: CONCLUSION

The proposed conditional use complies with the findings require for approval of a Solar Collection System, subject to the recommended conditions of approval. The proposed use is consistent with the goals and recommendations of the 2005 *Olney Master Plan* and will not alter the residential character of the surrounding neighborhood, and will not result in any unacceptable noise, traffic, or environmental impacts on surrounding properties. The Application meets all Conditional Use findings per Section 7.3.1.E of the Zoning Ordinance. Staff recommends approval of the Conditional Use with conditions and transmittal of comments to the Hearing Examiner and approval of the associated Forest Conservation Plan.

The Preliminary/Final Forest Conservation Plan satisfies all the applicable requirements of the Forest Conservation Law, Montgomery County Code, Chapter 22A and is in compliance with the Montgomery County Planning Department’s Environmental Guidelines. Therefore, Staff recommends approval of the Preliminary/Final Forest Conservation Plan No. F20230420 with the conditions as cited in this Staff Report.

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### ATTACHMENTS

- Attachment A: Gregg Road Community Solar, Conditional Use No. CU 202404
- Attachment B: Preliminary/Final Forest Conservation Plan No. F20230320
- Attachment C: Affidavit regarding noticing and minutes from Community Meeting
- Attachment D: Statement of Justification
- Attachment E: Proposed meadow planting schedule
- Attachment F: PEPCO Confirmation letter
- Attachment G: Office of Agriculture recommendation letter
- Attachment H: Rustic Roads Advisory Committee Correspondence
- Attachment I: Transportation Exemption Statement
- Attachment J: MCDPS, Stormwater Management Approval letter
- Attachment K: MCDPS, Fire Access and Water Supply Sections