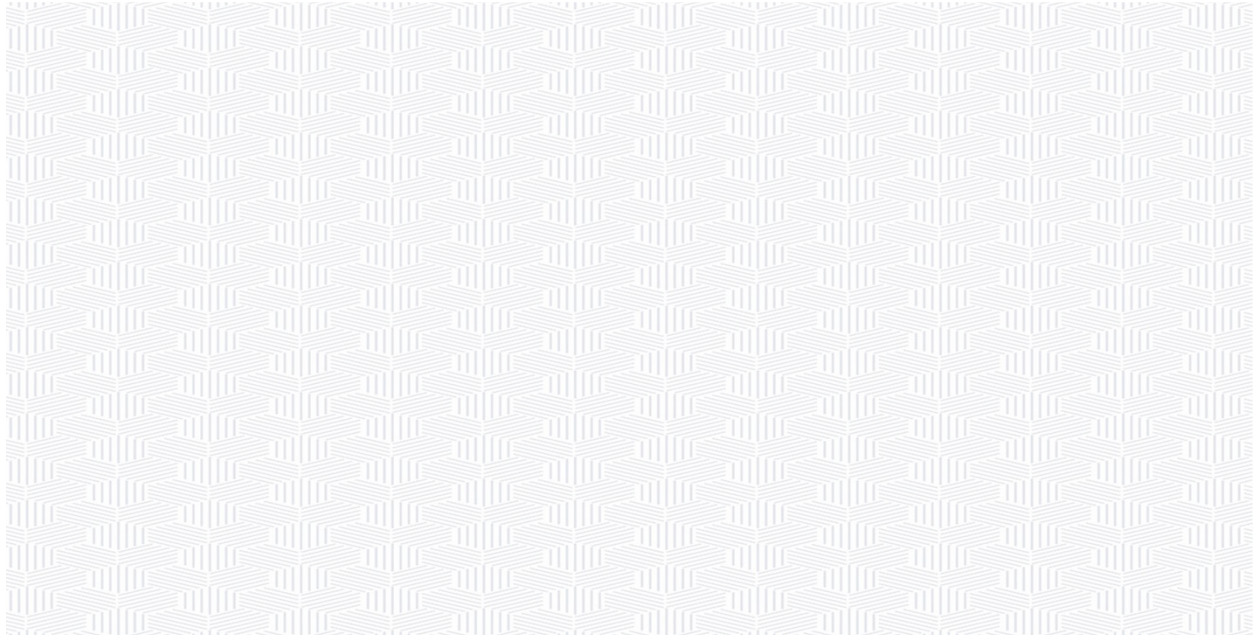


MR2024016 – CHABERTON SOLAR SUGARLOAF



Description

Proposal to construct a Solar Collection System over 2MW in the Agricultural Reserve located at 20597 Darnestown Road, Dickerson, MD. A Forest Conservation Plan has not been submitted pursuant to Chapter 22A the Forest Conservation Law.

No. MR2024016

Completed: August 23, 2024
Amended Reposted: August 27, 2024

MCPB
Item No. 3
September 5, 2024

2425 Reddie Drive
Floor 13
Wheaton, MD 20902

Planning Staff

MAB

Mark Beall, Planner IV, Mark.Beall@montgomeryplanning.org, 301-495-1330

PB

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LOCATION

20597 Darnestown Road, Dickerson, MD 20842

MASTER PLAN

1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan (AROS)*

PROPERTY SIZE

52.46 acres

APPLICANT

Chaberton Energy Holdings, Inc.

ACCEPTANCE DATE

July 1, 2024

REVIEW BASIS

Md. Land Use Article, Section 20-301, et seq. and Chapter 22A

Summary:

- Staff recommends Denial of the Mandatory Referral and transmittal of comments to Public Service Commission (PSC).
- The Applicant is proposing a ground-mounted Solar Collection System over 2 Megawatts (MW) in size, primarily on Class II soils, with no commitment to agrivoltaics in the AR zone.
- The Planning Board review of the location, construction or authorization of a publicly or privately owned utility is through the Mandatory Referral process set forth in the Land Use Articles of the Maryland Annotated Code, Section 20-301 et. Seq.
- The Project falls under the Community Solar Program within the State of Maryland Regulations.
- The Proposed Solar Collection System is in conflict with the AR zone, the 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan* and Thrive Montgomery 2050 (General Plan).
- The Applicant has not filed a Forest Conservation Plan pursuant to Chapter 22A the Forest Conservation Law.

SECTION 1 - RECOMMENDATIONS

Staff recommends denial of the Mandatory Referral and the transmittal of the following comments to the Applicant and the Public Service Commission (PSC) regarding Case No. PSC - 9726:

1. The Application does not comply with the Comprehensive Plan for Montgomery County, Thrive Montgomery 2050.
2. The Application is contrary to the goals of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan*.
3. The Application fails to provide agrivoltaic solar installation, with an approved agricultural activity (by Montgomery County Office of Agriculture) occurring underneath and/or around the solar panels within the Solar Collection Compound on Prime Agricultural Soils in the AR zone.
4. The Application does not comply with the Montgomery County Forest Conservation Law pursuant to Chapter 22A which requires an approved Forest Conservation Plan from the Montgomery County Planning Board, prior to approval of PSC – 9726.
5. The Application conflicts with the intent and requirements of the Agricultural Reserve (AR).

SECTION 2 - INTRODUCTION

Review Process

This proposal for the construction of a new Solar Collection System over 2 MW (megawatts) which is subject to Mandatory Referral. Mandatory Referral review is guided by the Montgomery Planning Mandatory Referral Review Uniform Standards (December 2022), and the authority granted through the Maryland Land Use Article, Section 20-301, et. seq. As set forth in Sections 20-301 and -302, the Montgomery County Planning Board, part of the of The Maryland-National Capital Park and Planning Commission (“Commission”), has exclusive jurisdiction over mandatory referral projects presented by a publicly owned or privately owned public utility, and a public board, body or official may not locate, construct, or authorize a publicly owned or privately owned public utility without going through the Mandatory Referral process. Accordingly, the Planning Board must review such projects and transmit comments on the proposed location, character, grade and extent of the activity.

In this case, the Maryland PSC will be required to issue a Certificate of Public Convenience and Necessity (CPCN) to provide authority for the Applicant to construct a new generating station over 2 Megawatts. Although the PSC may preempt local zoning and land use authority if the PSC determines that applying the regulations results in an effective ban on solar, as outlined below, Planning Staff believe there is more than sufficient capacity within the Agricultural Reserve and within the larger County to contribute significantly to the State’s renewable energy goals.

SECTION 3 – PROJECT DESCRIPTION

Background

The Property is currently being farmed and has an agricultural assessment through the Maryland State Department of Assessments and Taxation (SDAT). The Property contains an existing Forest Conservation Easement approved under 420222350, which was to establish a Forest Conservation Mitigation Bank.

Surrounding Neighborhood

The property is located at 20597 Darnestown Road approximately one mile south of the town limits of Dickerson. The immediately adjacent properties to the north, south, east, and west are all zone AR and are agricultural in nature. The properties abutting to the northeast and southwest consist of single-family houses along with the agricultural uses.

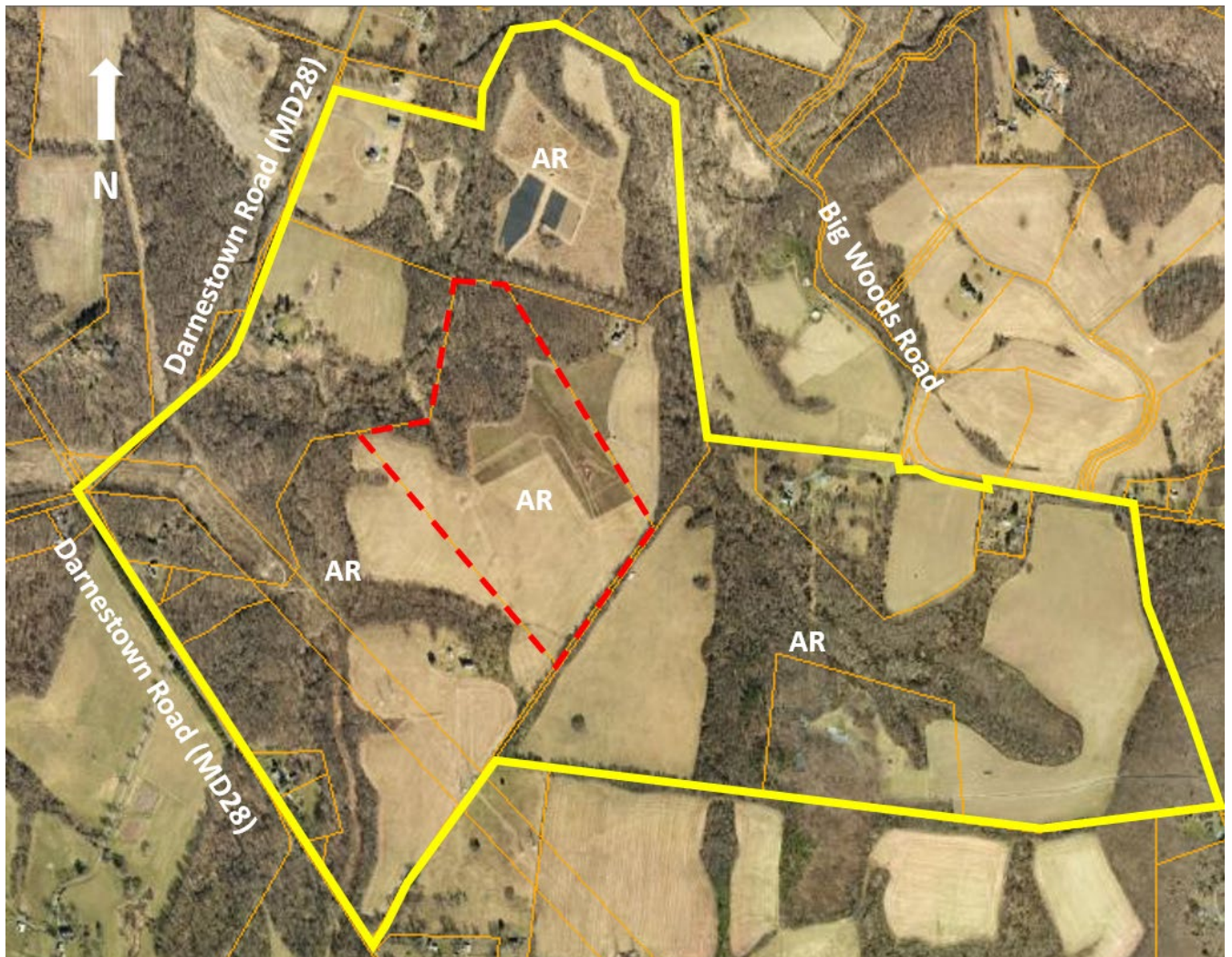


Figure 1: Vicinity and Zoning

Site Description

The Subject Property (outlined in bold red line in Figure 1) is located at 20597 Darnestown Road. The Property is identified by Parcel P127 on Tax Map 11-03023873 on the Tax Map, Zoned AR, containing 52.46 AC (“Property”). The Property is currently being farmed and contains an existing approved Forest Conservation Easement (FCE) along the northeast side. The Forest Conservation Easement is an approved Forest Conservation Mitigation Bank. The proposed project will occur on approximately 19.8 acres of the overall Property. A forested area with a stream is located along the north side of the Property. The property is within the Little Monocacy Watershed (Use I-P). The Property is accessed from an existing driveway on Darnestown Road that is shared with the properties to the northeast and southwest.

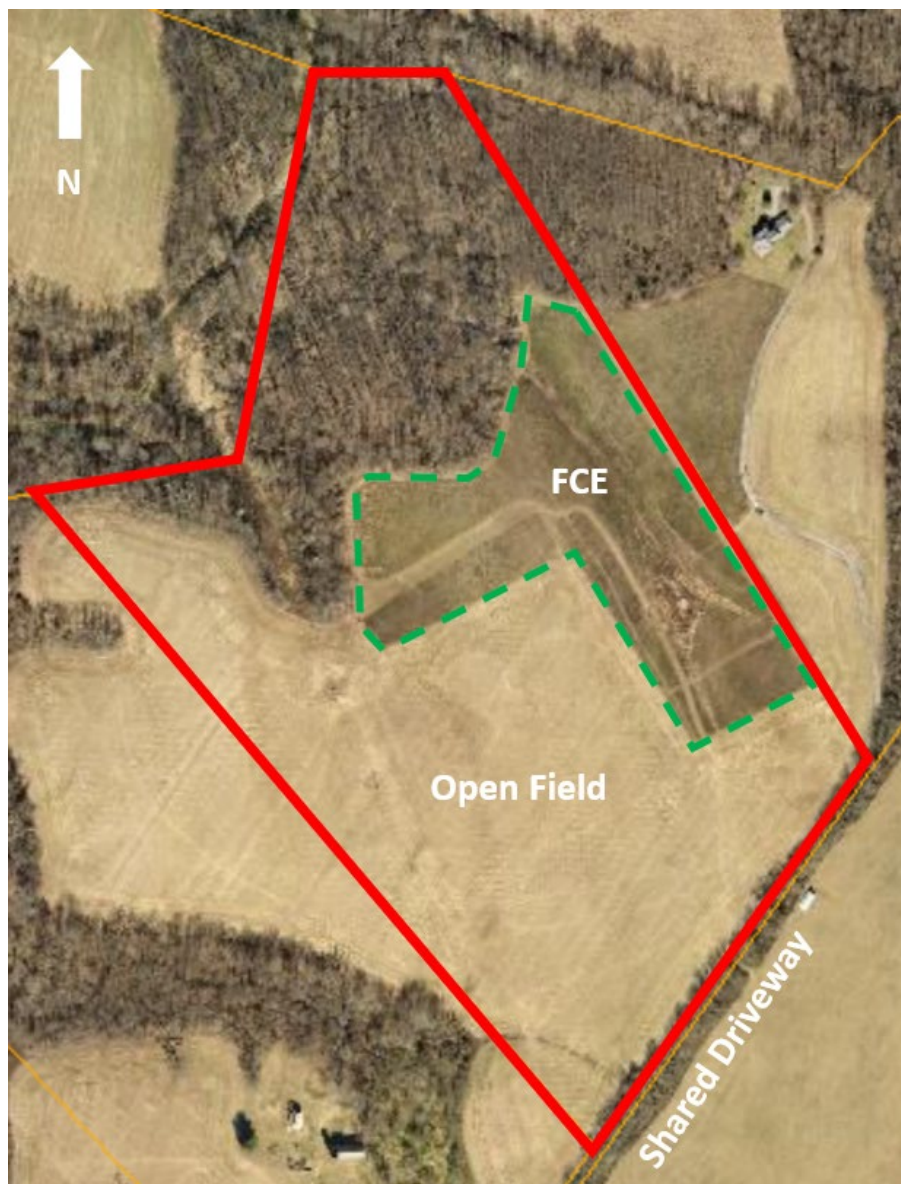


Figure 2: Aerial View of Property

Project Description

The Applicant is proposing a 4 MW Solar Collection System which will be reviewed by the Maryland Public Service Commission. The Project is proposed on 19.8 acres of the 52.46 acres property. Most of the unused portion of the Property consists of a Forest Conservation Easement and a forested area with a stream. A majority of the land used for the proposed Solar Collection System consists of USDA Class II soils which are considered prime soils for agriculture. The project will be encompassed by a chain link fence. The applicant is proposing a fire department access lane from the shared driveway into the fenced area along with a 30,000-gallon underground water tank for fire protection purposes. The proposed solar arrays may tilt to a height of up to 9 feet. The proposed Solar Collection System will be setback a minimum of 50 feet from the closest property lines.

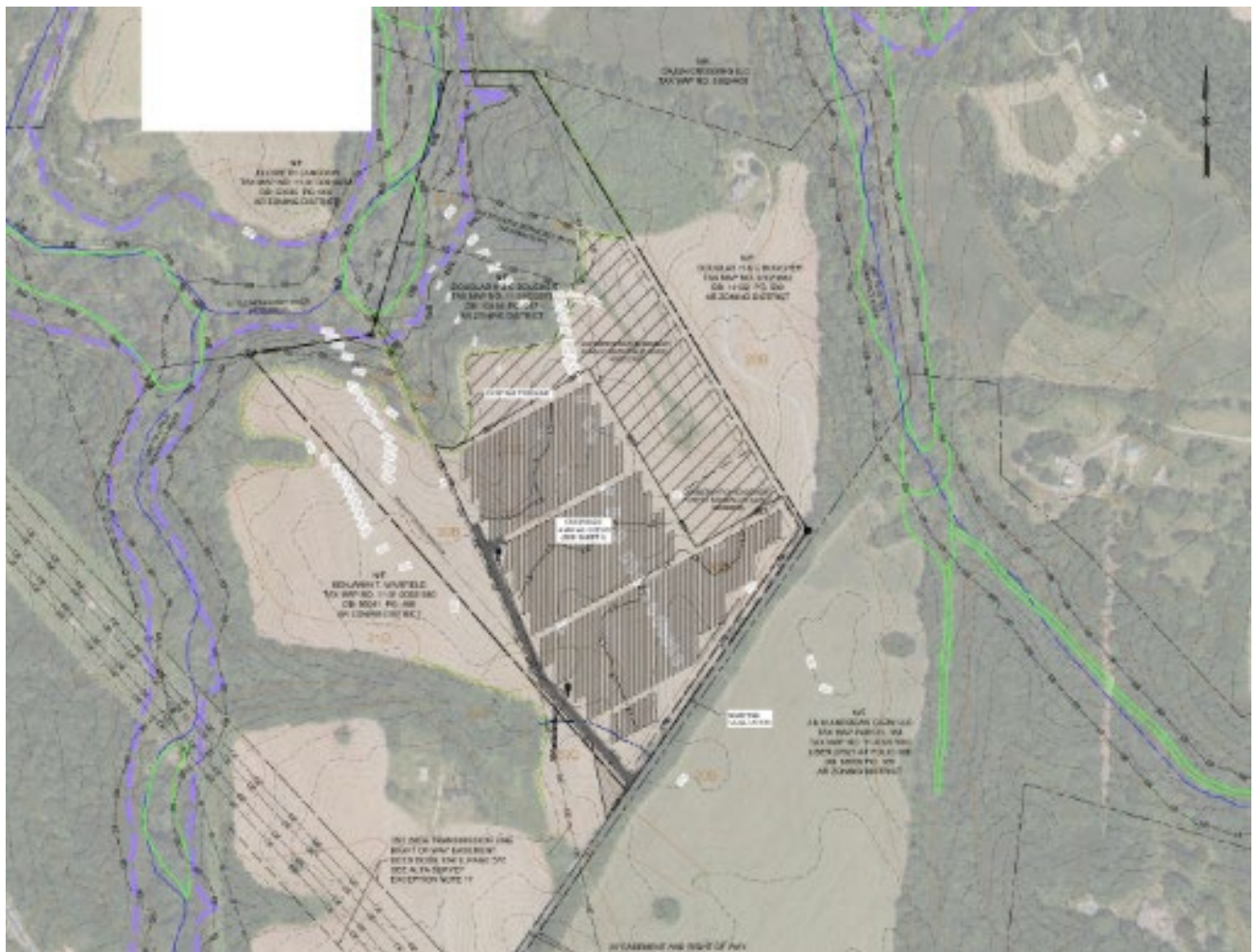


Figure 3: Overall Proposed Site

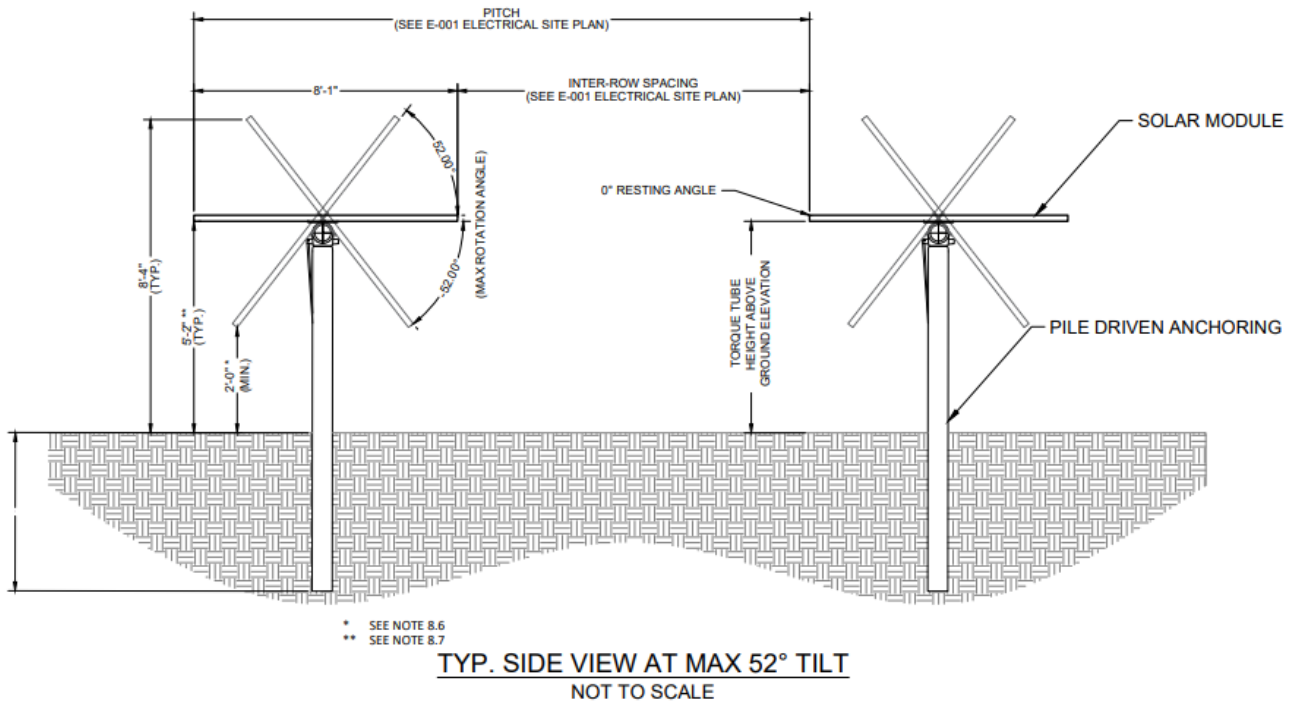


Figure 5: Solar Array Elevation

Public Service Commission Certificate of Public Convenience and Necessity Process

A Solar Collection System of this size must go through a multi-step quasi-judicial process which commences and concludes with the Maryland Public Service Commission and is presided over by a law judge. The Applicant must notify the local jurisdiction when they are submitting a project to go through the PSC process. The local jurisdiction and notified parties have the right to petition to be established as an intervenor (party of record) in the PSC process, which several parties have done. See Figure 6 and Figure 7 for a general description of the PSC process and typical procedural schedule. The PSC law judge has established a procedural schedule for this case that must be adhered to. The intervenors have until September 26, 2024, to submit evidence and testimony for the PSC to consider. The Evidentiary Hearing is scheduled for October 16, 2024, at 10:00 a.m. An official Order (decision) from the PSC will be issued subsequent to the Evidentiary Hearing. The PSC process is governed by state law under Public Utilities Article § 7-207, Certificate of Public Convenience and Necessity:

Final action by Commission required:

(e) The Commission shall take final action on an application for a certificate of public convenience and necessity only after due consideration of:

- (1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located;
- (2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

- (i) the stability and reliability of the electric system;

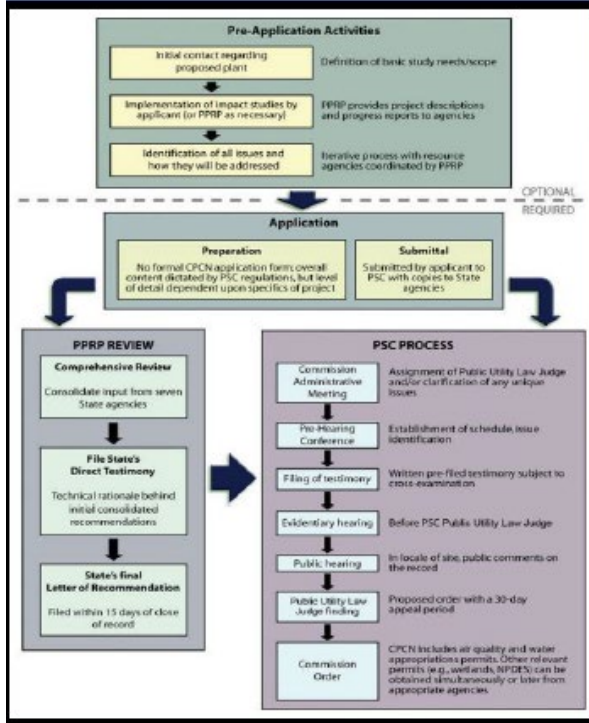
- (ii) economics;
 - (iii) esthetics;
 - (iv) historic sites;
 - (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
 - (vi) when applicable, air quality and water pollution; and
 - (vii) the availability of means for the required timely disposal of wastes produced by any generating station;
- (3) the effect of climate change on the generating station, overhead transmission line, or qualified generator lead line based on the best available scientific information recognized by the Intergovernmental Panel on Climate Change; and
- (4) for a generating station:
- (i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located;
 - (ii) the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located;
 - (iii) the impact of the generating station on the quantity of annual and long-term statewide greenhouse gas emissions, measured in the manner specified in [§ 2-1202 of the Environment Article](#) and based on the best available scientific information recognized by the Intergovernmental Panel on Climate Change; and
 - (iv) the consistency of the application with the State's climate commitments for reducing statewide greenhouse gas emissions, including those specified in Title 2, Subtitle 12 of the Environment Article.

* * *

Local permits

- (h) (1) A county or municipal corporation has the authority to approve or deny any local permit required under a certificate of public convenience and necessity issued under this section.
- (2) A county or municipal corporation shall approve or deny any local permits required under a certificate of public convenience and necessity issued under this section:
- (i) within a reasonable time; and
 - (ii) to the extent local laws are not preempted by State law, in accordance with local laws.
- (3) A county or municipal corporation may not condition the approval of a local permit required under a certificate of public convenience and necessity issued under this section on receipt of any of the following approvals for any aspect of a generating station, an overhead transmission line, or a qualified lead line proposed to be constructed under the certificate:
- (i) a conditional use approval;
 - (ii) a special exception approval; or
 - (iii) a floating zone approval.

CPCN Process



- 1) Application filed with the PSC (starts the process) Includes: Applicant's ERD and written testimony
- 2) PPRP intervenes on behalf of the state agencies
- 3) Determination if the application is deemed complete
- 4) PSC conducts a Prehearing Conference
- 5) Establishes procedural schedule
- 6) Discovery (Data Requests)
- 7) Public Hearing #1
- 8) PPRP files our PAR, Recommended Conditions and testimony
- 9) Public Hearing #2
- 10) Evidentiary Hearing
- 11) PSC issues Proposed Order
- 12) Proposed Order becomes final 30 days later (or agreed upon time) absent an appeal

Figure 6: PSC Process

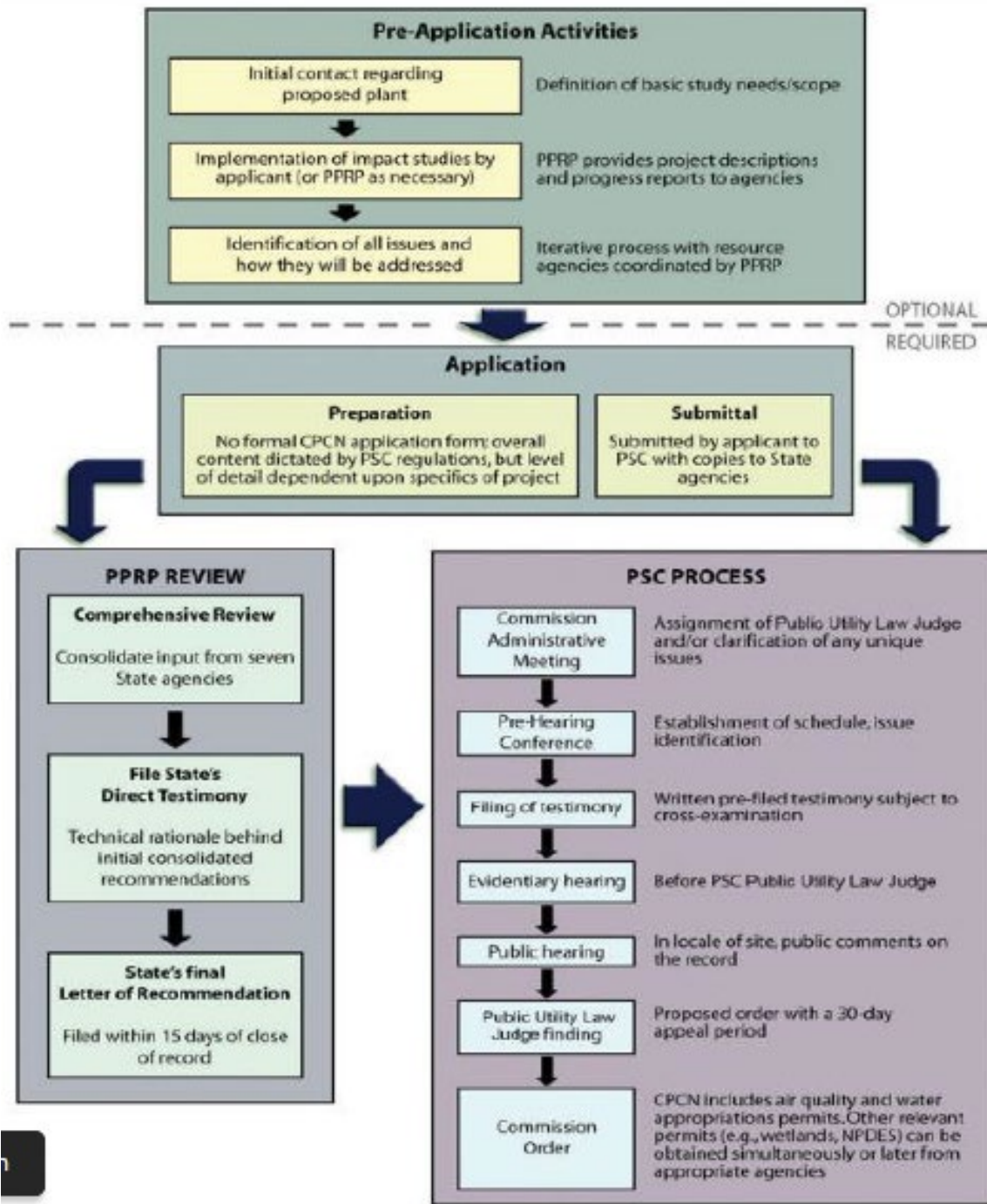


Figure 7: PSC Flowchart

Planning Board Mandatory Referral Process

The Land Use Article of the Maryland Annotated Code, Section 20-301 et. Seq. requires the Planning Board review of the location, construction or authorization of a publicly or privately owned utility is through the Mandatory Referral process. Additionally, the Mandatory Referral process already has a process established to coordinate and obtain input from residents, civic organizations, and county agencies for Planning Staff to produce a staff report. This report and any other information and testimony provided will be considered by the Planning Board at a public hearing, and the Planning Board will then transmit comments to the Applicant, the PSC, and the County Council and County Executive as the Governing Body of Montgomery County. All the evidence must be submitted by September 26, 2024.

To date, Planning Staff has received over 140 emails and letters from citizens, civic organizations and farming organizations in opposition of this Application. Once the Mandatory Referral has been processed through the Planning Board, Planning Staff will send the Staff Report and Planning Board recommendations to the County Council and County Executive who will take the information into consideration when providing their recommendations and comments as the Governing Body of Montgomery County to the PSC. The PSC will take all evidence presented into account when deciding Case No. PSC- 9726

Montgomery County Zoning Ordinance

Solar Collection Systems are regulated through Chapter 59, the Montgomery County Zoning Ordinance. The definition and use standards for a Solar Collection System are located in Section 59.3.7.2.

Section 3.7.2. Solar Collection System

A. Defined

Solar Collection System means an arrangement of panels or other solar energy devices that provide for the collection, inversion, storage, and distribution of solar energy for electricity generation, space heating, space cooling, or water heating. A Solar Collection System includes freestanding or mounted devices. Solar Collection Systems are facilities that comply with the requirements of the State's net metering program under Maryland Code §7-306, COMAR 20.50.10, and COMAR 20.62, including Community Solar Energy Generating Systems, Aggregate Net Energy Metering Systems, and projects limited to a percentage of on-site energy use. A Solar Collection System larger than 2 megawatts (AC) is prohibited in the Agricultural Reserve Zone.

B. Use Standards

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;

- ii. in a stream buffer;
 - iii. on wetlands; or
 - iv. on slopes equal to or greater than 15%.
- b. Scraping topsoil from the site is prohibited.
- c. Grading and any soil removal are minimized.
- 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.
- 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.
- f. The applicant must provide evidence that the local utility company will allow the Solar Collection System to be connected to the utility grid.
- g. The applicant must provide evidence that the application was submitted to the Office of Agriculture.
- 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.
- 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).
- j. Except for pad areas for transformers and electrical equipment, the use of concrete is prohibited.
- 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.
- l. The Hearing Examiner's decision must consider the recommendations of the Office of Agriculture.
- 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.
- 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.

SECTION 4 - COMMUNITY OUTREACH

After staff accepted the Mandatory Referral for review, Montgomery Planning notified local civic and homeowners' associations and other interested parties of this proposal. As of the date of this report, Staff and the Planning Board Chair have received over 140 emails and letters contesting this application and one letter in support of the application. The primary concerns of the opposition include not conforming to the Master Plan, being located on Class II soils in the AR zone, not providing agrivoltaics, and exceeding the 2MW cap.

SECTION 5 – MANDATORY REFERRAL ANALYSIS

Mandatory Referral review is guided by the Montgomery Planning Mandatory Referral Review Uniform Standards (December 2022), and the authority granted through the Maryland Land Use Article, Section 20-301, et. seq. As set forth in Sections 20-301 and -302, and stated above, the Montgomery County Planning Board has jurisdiction over mandatory referral projects that include locating, constructing or authorizing a road, park, public way or ground, public building or structure, or publicly or privately owned utility, which includes this Project. The Planning Board must review such projects and transmit comments on the proposed location, character, grade and extent of the activity.

As described in the Uniform Standards, the Planning Board considers all relevant land use and planning aspects of the proposal including, but not limited to, the following:

- 1. Whether the proposal is consistent with the County’s General Plan, functional plans such as the master plan of highways, environmental guidelines, the approved and adopted area master plan or sector plan, and other public plans, guidance documents, or programs for the area;***

Thrive Montgomery 2050

As proposed, the Project is not in substantial conformance with Thrive Montgomery 2050 (General Plan).

The General Plan recommends maintaining agriculture as the primary land use in the Agricultura Reserve, through policies, regulations, easements, and incentives that maintain a critical mass of farmland (page 74).

The General Plan also recommends maximizing benefits of the Agricultural Reserve through policies designed to ensure the continued viability of farming as an economically productive and sustainable activity, discourage sprawl, facilitate a broad range of outdoor recreation and tourism activities (page 74).

As proposed, the Project will further fragment farmland and encourages sprawling style of solar development, taking up large areas of greenfield and precluding agriculture or any other agricultural, recreation, and/or tourism related activity from occurring on the Property.

1980 Preservation of Agriculture and Rural Open Space Functional (AROS) Master Plan

As proposed, the Project is not in substantial conformance with the 1980 AROS Master Plan.

In 1980, the Montgomery County Council made one of the most significant land-use decisions in county history by approving and adopting the Preservation of Agriculture and Rural Open

Space Functional Master Plan, which established the 93,000-acre Agricultural Reserve. Heralded as one of the best examples of farmland policies in the country, the Agricultural Reserve encompasses almost a third of the county's land resources along the county's northern, western, and eastern borders.

The Agricultural Reserve and its accompanying Master Plan, zoning elements, and the 2020 *Agritourism Study* were designed to protect and promote farmland and agriculture. Along with a sustained commitment to agriculture through the county's Office of Agriculture, this combination of tools helps retain more than 500 farms that contribute nearly \$300 million to Montgomery County's annual economy. This is a notable achievement in an area so close to the nation's capital, where development pressure remains perpetual and intense.

Solar Potential within the Agricultural Reserve and County

Montgomery County is committed to contributing to the State's renewable energy goals. Based on solar legislation that was introduced this past year, and the anticipated legislation for the next legislative session in Maryland, Planning Staff has been conducting research and producing information via Geographic Information Systems, to better support and add clarity to the discussion around solar production in Montgomery County. Montgomery County is much more developed, and considering the population of over 1 million people, Montgomery County has a relatively small area of land designated for agricultural use. With the anticipated legislation so narrowly focused on our agricultural lands instead of rooftop, parking lot, and developed areas, the State is potentially missing out on greater solar production in Montgomery County.

Thus, Planning Staff has produced the following two figures that represent data synthesized over the past few months. The first figure represents the conceptual megawatt production potential within the Agricultural Reserve and the County as a whole, with the focus on the Agricultural Reserve. The second figure represents the conceptual megawatt production potential in the County as a whole, taking into account proximity to transmission lines.

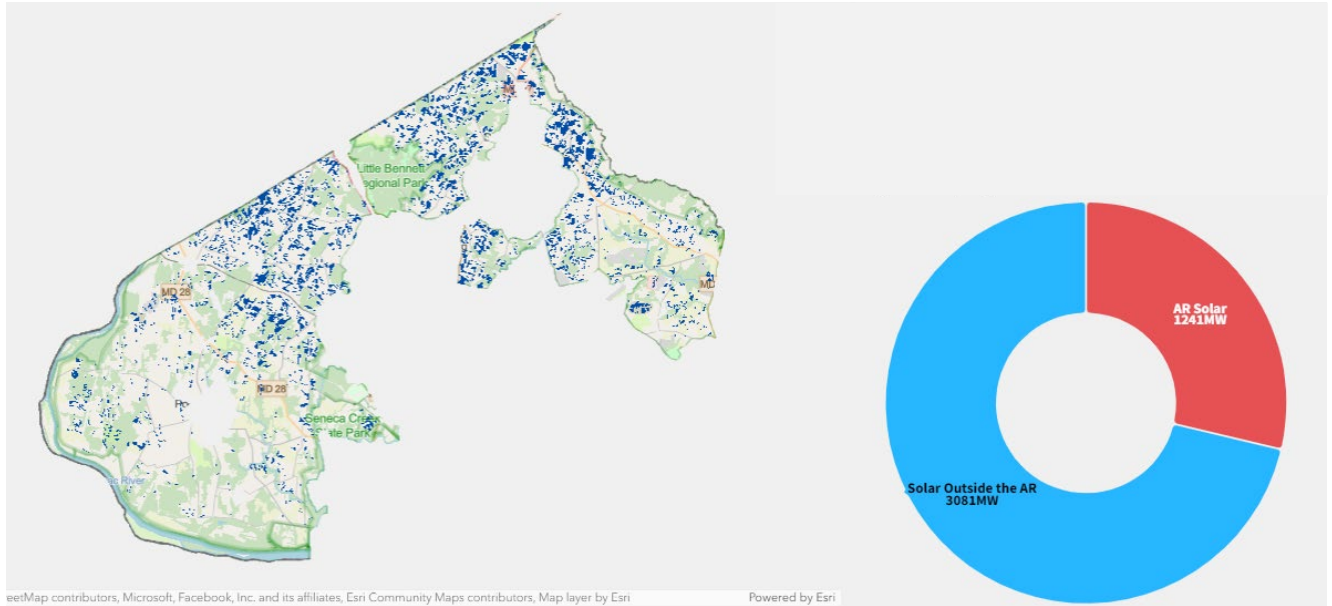


Figure 8: Solar capacity outside of AR zone vs in AR zone.

Without taking into account proximity to transmission lines and accounting for exclusions such as: wetlands; floodplains; 150-foot stream valley buffers; Forest Conservation Easements; Parkland; buffers from houses, roads, railroads, and property lines; and the prohibition on Class I and II soils in the AR zone, Montgomery County has the potential to produce approximately 1,241 MWs of solar energy in the AR zone and approximately 3,081 MWs of solar energy across the rest of the County for a total theoretical yield of approximately 4,322 MWs of solar in the County.

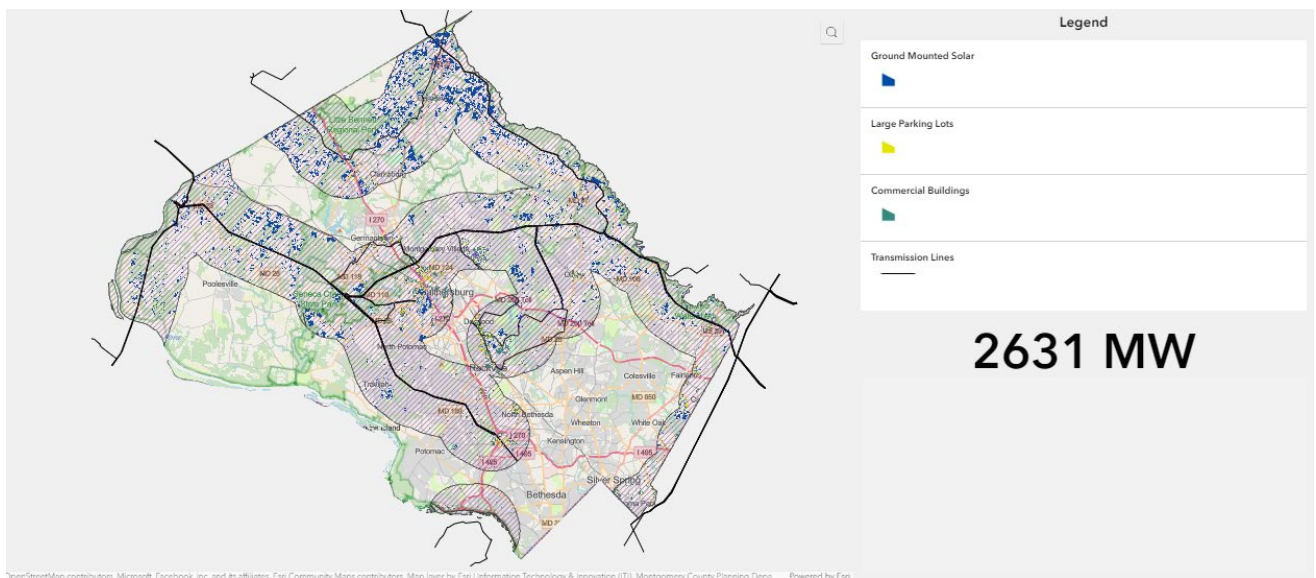


Figure 9: Solar Capacity within 2 miles of transmission lines.

When taking into account a 2-mile proximity of potential solar projects to transmission lines, Montgomery County has the potential to produce approximately 2,631 MWs of solar energy through a combination of ground mounted, parking lot, and rooftop solar projects.

As they exist today, Montgomery County land use and zoning controls allow for a significant amount of solar production in the County, and do not result in an effective ban on solar in Montgomery County. The General Plan, Master Plan, and Zoning Ordinance land use controls appropriately allow solar production in the Agricultural Reserve to meet renewable energy goals, while preserving and protecting the most productive soils for the primary use in the Agricultural Reserve, agriculture.

Further explanation of the methodology and information contained within the figures will be provided as an addendum and/or in the presentation at the public hearing for this Mandatory Referral.

2. *Whether the proposal is consistent with the intent and the requirements of the zone in which it is located;*

The Property is zoned Agricultural Reserve (AR) and the proposed project is not consistent with the intent or requirements of the AR zone. The intent of the requirements in the AR zone, is to preserve farming and other agricultural uses. A Solar Collection System producing over 200% of what is consumed onsite, requires a conditional use. Section 59.3.7.2.B.2 prohibits a Solar Collection System over 2 MW and the proposed systems is 4MW in size. Section 59.3.7.2.B.2.a.i states a Solar Collection System is prohibited in USDA Soil Classification Category I or Category II and the proposed project is primarily in Category II soils. Class II soils are productive soils for farming and this Application will be removing productive soils from the Ag Reserve.

Per Chapter 59 Section 3.7.2 of the Montgomery County Zoning Ordinance, Solar Collection Systems are permitted as either a limited use or conditional use in certain zones provided certain criteria are met. For the purposes of this testimony, we will focus on solar projects in the AR Zone, which require a conditional use approval from the Montgomery County Hearing Examiner, subject to demonstrating that the application meets certain criteria. In particular, Section 59.3.7.2.B.2., requires that a Solar Collection System exceed a facility rated at more than 200% of on-site energy and produce less than 2 megawatts.

To ensure that agriculture remains the primary use in the Agricultural Reserve, in addition to coordination with the Montgomery County Office of Agriculture, the Montgomery County Planning Department, the Montgomery County Department of Permitting Services, and the Montgomery County Planning Board, Solar Collection Systems are prohibited on soils classified by the United States Department of Agriculture as either Soil Classification Category I or Category II. The total area of all solar projects in the Agricultural Preserve cannot exceed 1,800 acres of land. Currently there are 20.37 acres of approved solar projects.

Pursuant to Section 59.3.7.2.B.2.e to regenerate and improve non-prime agricultural soils in the Agricultural Reserve, the area under the solar facility must be actively used for farming or agricultural purposes by either: pollinator-friendly plantings under the Maryland Pollinator-Friendly Designation Program; planted, managed, maintained, and used for grazing farm animals; and/or, planted, managed, maintained, and used for any other agrivoltaics plant material.

As stated previously, Montgomery County's Agricultural Reserve is a prized and valuable resource. It is a significant economic driver in terms of commodity farming, food systems, and agritourism, and provides opportunities for diverse communities to access and remain in farming. These standards were developed after a lengthy public process and are intended to promote up to 1,800 acres of Solar Collection Systems on agricultural land in Montgomery County, while also promoting and preserving agriculture as the primary use and industry within the Agricultural Reserve.

3. *Whether the nature of the proposed site and development, including its size, shape, scale, height, arrangement, design of structure, massing, setback(s), site layout, and location(s) of parking is compatible with the surrounding neighborhood and properties;*

The surrounding properties are all agricultural uses with some low-density housing. The Project will meet the required setbacks for the use in the Zoning Ordinance. Parking is not required so there will not be any actual parking. Fire department access is still not approved at the time this report was completed, the Applicant is proposing fire department access into and along the southwest property line of the site. The 4-Megawatt size proposed is double what would be allowed through the conditional use for a Solar Collection System. The solar arrays will tilt to a height of around 9 feet which will not be seen from Darnestown Road.

Additionally, Staff looked at noise and lighting for compatibility:

Noise

The Application is for an unmanned Solar Collection System. The system will generate very little to no noise when in operation with maybe some humming from some of the electrical equipment.

Lighting

The Applicant is not proposing any lighting with this Application.

4. *Whether the locations of buildings and structures, the open spaces, the landscaping, recreation facilities, and the pedestrian and vehicular circulation systems are adequate, safe, and efficient;*

The proposed Solar Collection System will be located away from Darnestown Road. The fenced area will be abutting an approved Forest Bank (The FCE shown previously) along the northeast and northwest sides of the Property. The Applicant has provided a Fire Department Access Plan, but this plan has not been approved at this time. The Fire Department Access Plan will need to be approved prior to any permits being issued. The Project will access Darnestown Road from an existing driveway that is shared with the properties to the northeast and southwest.

- 5. Whether the proposal has an approved NRI/FSD and a preliminary SWM concept plan, and meets the requirements of the Forest Conservation Law (Chapter 22A of the County Code). Forest Conservation Plan, if applicable, must be approved by the Planning Board, either before or at the time of the Board's mandatory referral review and action on the project. Unlike the mandatory referral review by the Board, the conditions of the Forest Conservation Plan are binding on all county projects and require a Resolution of Approval.**

At the time of this report, the Applicant has not demonstrated compliance with the Forest Conservation Law.

The Applicant submitted the NRI/FSD on July 11, 2024 and resubmitted revised plans with the Application officially accepted on August 9, 2024. To comply with the Forest Conservation Law, Chapter 22A, after approval of the NRI/FSD, the Applicant is required to submit a Forest Conservation Plan for review and approval by the Planning Board. Solar projects proceeding through the PSC CPCN process must comply with Forest Conservation Law.

- 6. Whether a Preliminary or a Final Water Quality Plan has been reviewed by the Planning Board if the project is located in a Special Protection Area. In addition, for a Water Quality Plan for a project on public property, the Board must determine if the plan meets the standards of Article V. WATER QUALITY REVIEW IN SPECIAL PROTECTION AREAS, of the County Code (pursuant to Section 19-65(d)(4));**

This Property is not in a Special Protection Area and does not require a water quality plan.

- 7. Whether or not the site would be needed for park use if the proposal is for disposition of a surplus school.**

This Property is not a surplus school site

- 8. Whether alternatives or mitigation measures have been considered for the project if the proposal is inconsistent with the General Plan or other plans and policies for the area, or has discernible negative impacts on the surrounding properties or neighborhood, the transportation network, the environment, historic resources (including burial sites) or other resources.**

As stated previously, the Project is not in substantial conformance with Thrive Montgomery 2050 and the AROS Master Plan. Staff has requested the Applicant explore integrating agrivoltaics with the solar application prior to filing the application with the PSC. Although the Applicant indicated in their Statement of Justification and email that they would engage in exploring agrivoltaics with the Office of Agriculture, no meetings or discussions have occurred between the Office of Agriculture and the Applicant as of the date of this report.

TRANSPORTATION VEHICULAR ACCESS

The Subject Property has no frontage on any State or County roadway. Vehicular access to the Site will be provided through an existing driveway from Darnestown Road, which is classified as a two-lane Country Connector under the Master Plan of Highways and Transitways. The master planned right-of-way for Darnestown Road is 120 feet. No dedication is necessary as part of this Application. Darnestown Road provides the Subject Property with access to Martinsburg Road and Dickerson Road to the north, both classified as Country Connectors under the Master Plan of Highways and Transitways, and to West Hunter Road and Beallsville Road to the south. The first is classified as a Rustic Road and the latter is classified as part Rustic Road and part Country Connector.

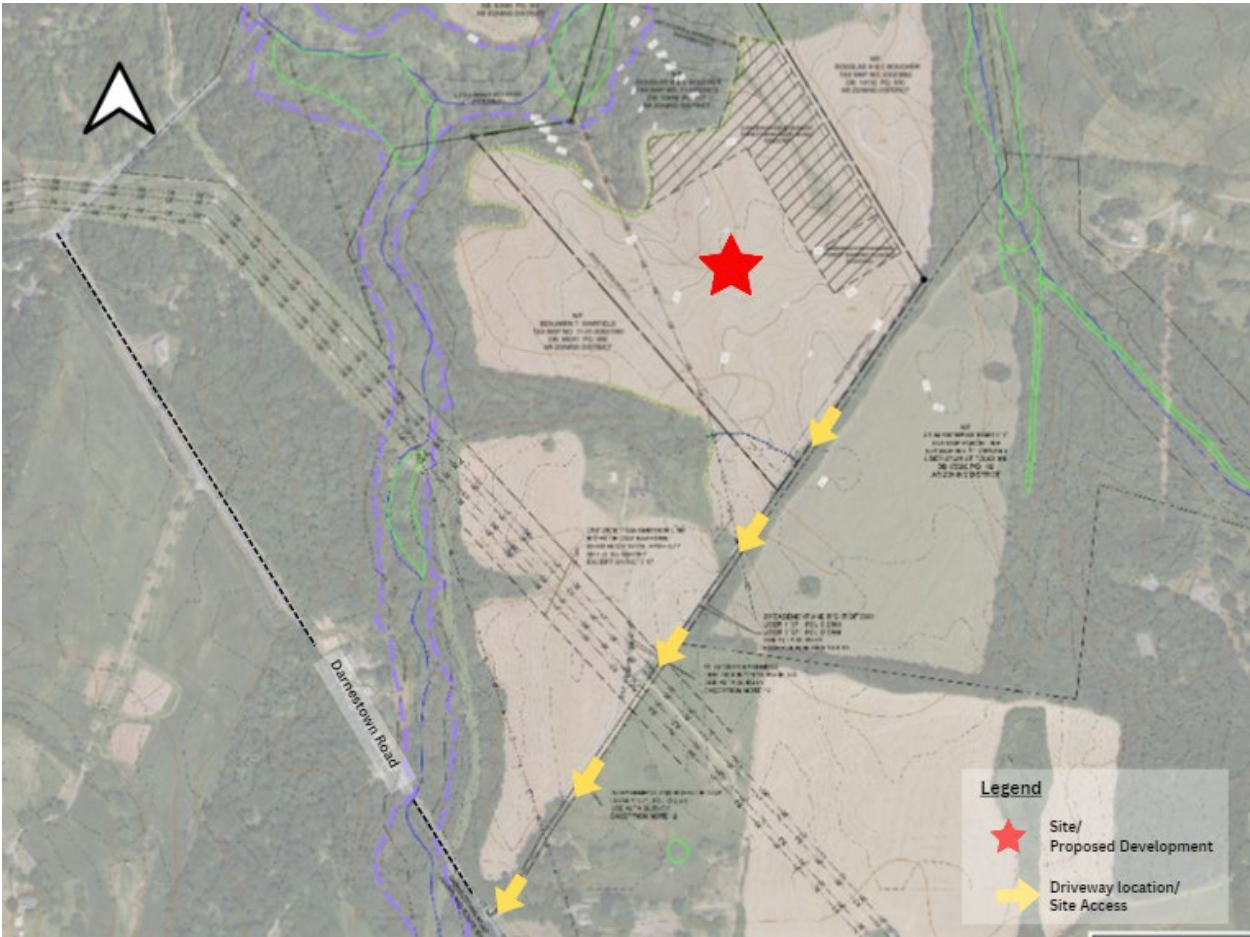


Figure 10: Access to the Proposed Development.

LOCAL AREA TRANSPORTATION REVIEW

The Transportation Exemption Statement (“TES”) submitted by the Applicant on May 6, 2024, specified that the Proposed Development will not have daily operational personnel on-site. Therefore, the Proposed Development is not expected to generate any net new trips during the morning and evening peak hours. Periodically, maintenance personnel will access the Site to provide routine or corrective maintenance, which will average less than one net new trips per day.

The Subject Property is located in the Rural West Policy Area, which is categorized as a Green Policy Area under the *2020-2024 Growth and Infrastructure Policy* (“the GIP”). As mentioned before, the submitted TES by the Applicant states that the Proposed Development will not generate any net new peak hour trips, as there will be no personnel operating the facilities. The Proposed Development falls under the 50-person threshold to trigger a transportation impact study. Therefore, this Application is not subject to additional Local Area Transportation Review (“LATR”) and is exempt from completing further transportation adequacy analysis.

PEDESTRIAN AND BICYCLE FACILITIES

There are no existing pedestrian or bicycle facilities within the vicinity of the Subject Property. The closest pedestrian facility is the existing C&O Canal Towpath northwest of the Subject Property, adjacent to the CSX Transportation Railroad. The C&O Canal Towpath extends all the way south to other parts of the County and north to Frederick County. There are no bicycle or pedestrian facilities to access the C&O Canal Towpath from the Subject Property.

The 2018 *Bicycle Master Plan* recommends bikeable shoulders along Darnestown Road. The proposed bikeable shoulders will connect to existing bicycle facilities along Darnestown Road intersection with Turkey Foot Road. According to the *2024 Complete Streets Design Guide*, the recommended bikeable shoulders should be 10-foot-wide. The *2018 Bicycle Master Plan* also recommends an off-street trail that will cross through the Subject Property from Dickerson Road to Schaeffer Road. The master planned trail will connect to master planned bikeable shoulders along Dickerson Road to the northwest of the Proposed Development.

PUBLIC TRANSIT SERVICE

There is no Ride-On or public bus service near the Subject Property. The closest bus stop is located along the Whites Ferry Road and Sugarland Road intersection approximately 7.1 miles away from the Proposed Development. The nearest access to public transit service is through the existing MARC stations around the Subject Property. The Dickerson MARC station is approximately 1.8 miles north of the Site, and the Barnesville MARC station is approximately 4.5 miles northeast.

PARKING

The Proposed Development is not expected to provide any parking spaces. There is no expected daily vehicular access to the Site. No personnel will be operating the Proposed Development. Therefore, there are no parking facilities being provided as part of this Application.

Environment

ENVIRONMENTAL GUIDELINES

As stated previously, the Applicant submitted the NRI/FSD on July 11, 2024, and resubmitted revised plans with the Application officially accepted on August 9, 2024. To comply with the Forest Conservation Law, Chapter 22A, after approval of the NRI/FSD, the Applicant is required to submit a Forest Conservation Plan for review and approval by the Planning Board. Solar projects proceeding through the PSC CPCN process must comply with the Forest Conservation Law.

FOREST CONSERVATION

The Application is subject to Chapter 22A, and the Application is not in compliance with the Forest Conservation Law. The Applicant must file for a Forest Conservation Plan once the NRI/FSD has been approved.

STORMWATER MANAGEMENT

The Applicant has applied for the Stormwater Management Concept Plan (#293586).

SECTION 6 - CONCLUSION

Staff recommends denial of the Subject Application and requests approval for the transmittal of comments to the Applicant and the Public Service Commission (PSC). Staff is recommending denial because the Applicant is placing the Solar Collection System on Class II soils which are prime soils best for crop production, food production and other farming activities. Staff is also recommending denial because:

1. The Application does not comply with the Comprehensive Plan for Montgomery County, Thrive Montgomery 2050.
2. The Application is contrary to the goals of the 1980 *Preservation of Agriculture & Rural Open Space Functional Master Plan*.
3. The Application fails to provide agrivoltaic solar installation, with an approved agricultural activity (by Montgomery County Office of Agriculture) occurring underneath and/or around the solar panels within the Solar Collection Compound on Prime Agricultural Soils in the AR zone.

4. The Application does not comply with the Montgomery County Forest Conservation Law pursuant to Chapter 22A which requires an approved Forest Conservation Plan from the Montgomery County Planning Board, prior to approval of PSC – 9726.
5. The Application conflicts with the intent and requirements of the Agricultural Reserve (AR).

SECTION 7 - ATTACHMENTS

Attachment A: Mandatory Referral Plans

Attachment B: Community emails and letters