

**MANDATORY REFERRAL NO. MR2025007 BRIGHTON  
SUBSTATION STATCOM EXPANSION & FOREST  
CONSERVATION PLAN NO. F20250240**

**Description**

Pepco is proposing to expand the existing Brighton Substation, construct a secondary access point off the existing driveway, and install electric transmission equipment necessary to facilitate grid reliability.

COMPLETED: 1/27/2025

PLANNING BOARD HEARING DATE: 2/6/2025

MCPB ITEM NO. 7

## Planning Staff

MAB

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### LOCATION

1300 Brighton Dam Road, Brookeville

### MASTER PLAN, ZONE

2005 *Olny Master Plan*, Rural Cluster (RC)

### PROPERTY SIZE

232 Acres

### APPLICANT

Pepco

### ACCEPTANCE DATE

November 19, 2024

### REVIEW BASIS

Md. Land Use Article, Section 20-301, et seq.

Chapter 22A

### Summary:

- Staff recommends approval of the Mandatory Referral and transmittal of comments to Pepco.
- Staff recommends the Planning Board approve Forest Conservation Plan No. F20250240 with conditions.
- The Planning Board review of a Mandatory Referral is pursuant to the Land Use Article of the Maryland Annotated Code, Sections 20-301 et seq.
- The Application was previously approved for an extension administratively.
- The Property includes an existing Pepco substation which is being expanded by 5 acres to 26 acres total.

## SECTION 1 - RECOMMENDATIONS

Staff recommends Approval of the Mandatory Referral and the transmittal of the following comments to Pepco/Applicant:

1. The Applicant must obtain an approved Stormwater Management Plan from the Department of Permitting Services prior to obtaining a Sediment Control Permit.
2. The Applicant must obtain an approved Fire Department Access Plan from the Department of Permitting Services prior to issuance of any Building Permit.

Staff recommends Approval of the Forest Conservation Plan with the following conditions:

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, the Applicant must:
  - a) Record a Category I or modified Category I Conservation Easement over all areas of forest retention, forest planting and environmental buffers as specified on the approved Final Forest Conservation Plan. The Category I or modified 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 FCP, 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. The MMA includes invasive species management control measures as deemed necessary by the M-NCPPC Forest Conservation Inspection Staff.
  - d) Submit a cost estimate for the reforestation/afforestation and other FCP requirements, which includes but is not limited to trees and shrubs, variance mitigation trees, five years of maintenance including invasive species management controls, permanent easement posts and signage, natural surface trails, split rail

fencing, mulching, staking, tree protection, and tree protection removal credited toward meeting the requirements as shown on the FCP. This cost estimate must be reviewed and approved by the M-NCPPC Planning Department Inspection Staff prior to the submission of financial surety to determine the amount of the financial surety.

- e) Submit financial surety, in a form approved by the M-NCPPC Office of the General Counsel, to the M-NCPPC Planning Department Inspection Supervisor for the 1.52 acres of new forest planting and mitigation trees and maintenance, including invasive species management controls, credited toward meeting the requirements of the FCP.
5. 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, the Applicant must install the Afforestation/Reforestation plantings as shown on the approved FCP.
6. 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, the Applicant must install the variance tree mitigation plantings on the Subject Property as shown on the approved FCP. The variance tree mitigation plantings must be a minimum size of 3 caliper inches totaling 125 caliper inches, as shown on the approved FCP. Adjustments to the planting locations of these trees is permitted with the approval of the M-NCPPC Forest Conservation Inspection Staff.
7. Impervious surfaces are limited to no more than 12.25 percent on the Subject Property, which is within the Patuxent River Primary Management Area (“PMA”) as shown on the Impervious Surface Plan dated January 24, 2025.
8. 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 12.25 percent, as shown on the Impervious Surface Plan dated January 24, 2025. 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

## SECTION 2 - INTRODUCTION

### Review Process

The proposal for the expansion of the existing Brighton Substation was submitted on November 19, 2024. 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 has jurisdiction over mandatory referral projects presented by Montgomery County

government, municipal corporation or special taxing district, and Montgomery County Board of Education/Montgomery County Public Schools, for (i) acquiring or selling land; (ii) locating, constructing or authorizing a road, park, public way or ground, public building or structure, or publicly owned or privately owned public utility; or (iii) changing the use of or widening, narrowing, extending, relocating, vacating or abandoning any of the previously mentioned facilities. The Planning Board, or its Staff pursuant to the adopted Uniform Guidelines, must review such projects and transmit comments on the proposed location, character, grade and extent of the activity.

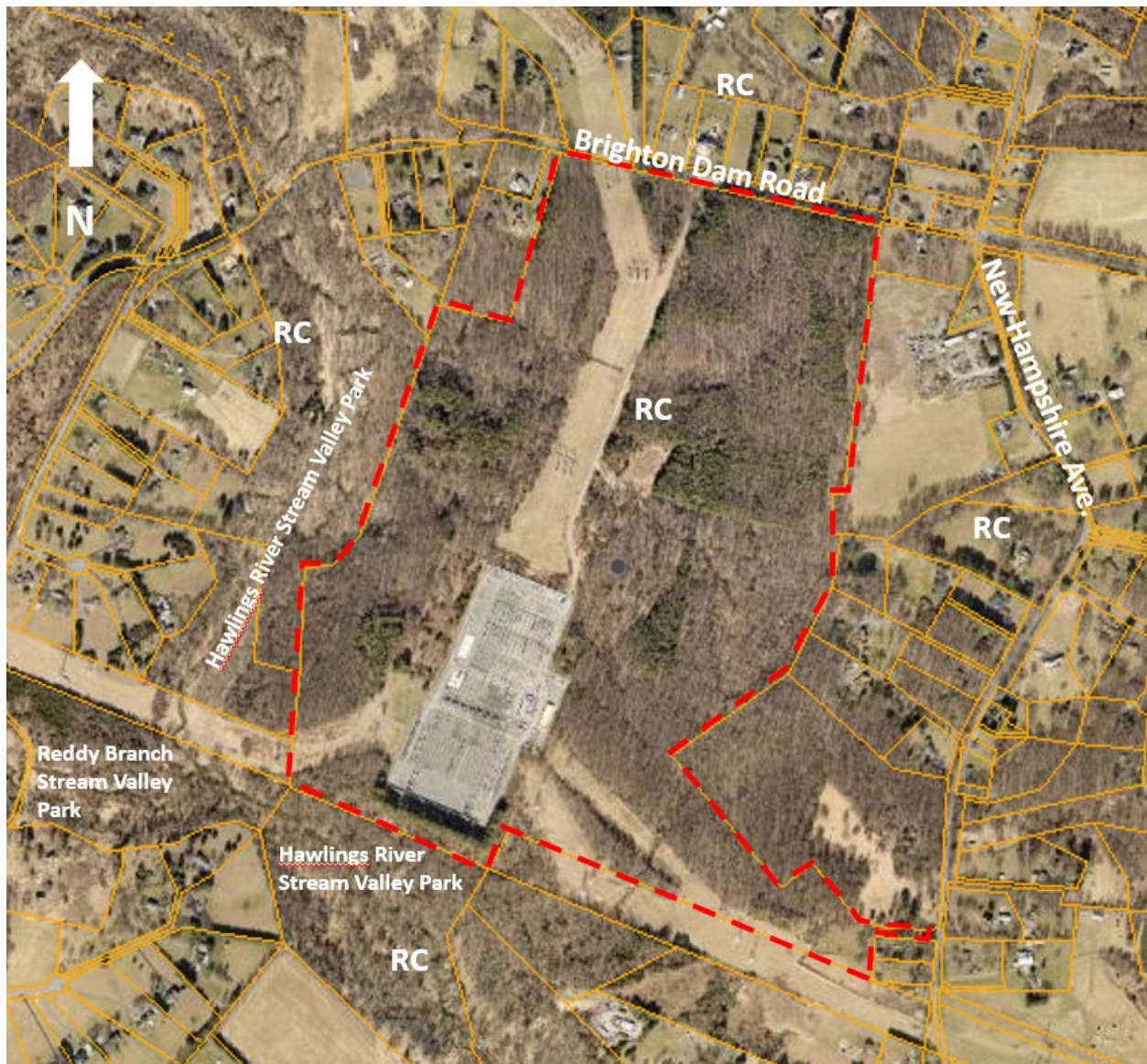
## SECTION 3 – PROJECT DESCRIPTION

### Background

The Brandon Shores Generating Station, owned by Talen Energy located in Baltimore, Maryland, a 1,282-megawatt (MW) Maryland based coal-fired generating station, announced on April 6, 2023, their intention to retire the station by June 1, 2025. As a result of the planned retirement of the Brandon Shores Generating Station, Pennsylvania-New Jersey-Maryland Interconnection (PJM), the regional transmission organization responsible for the movement of wholesale electricity, determined that transmission system upgrades are required to maintain grid reliability before Brandon Shores' deactivation. Given the power plant's critical role in serving the central Maryland region, PJM has directed Exelon's Utilities (Pepco) to construct transmission projects that together will ensure regional grid reliability and will enable the retirement of the Brandon Shores Generating Station.

### Surrounding Neighborhood

The Property is located at 1300 Brighton Dam Road in Brookeville, Maryland. The Property and surrounding areas are all zoned Rural Cluster (RC). The vicinity consists primarily of larger rural properties with low density residential housing.



*Figure 1: Vicinity and Zoning, Site outlined in dashed line*

### Site Description

Pepco owns and operates an aboveground electrical substation in Brookeville, Maryland located at 1300 Brighton Dam Road (“Site”, “Subject Property”). The existing substation is setback approximately 2,264 feet from Brighton Dam Road. It has access from Brighton Dam Road by a 15-foot-wide gravel driveway, which will remain. It is generally surrounded by existing forest which provides a natural buffer from the adjacent stream valley park and nearby residential areas. The existing forest includes several streams with buffer systems and primary management areas, as well as several wetland systems. The project has been designed to mitigate impact to these areas and

maintain the existing forest as much as is feasible. There are 466 specimen trees located in the Property, most of which are concentrated in the southeastern and western areas of forest. Floodplains are located on the west side of the site and along a stream system in the northern portion of the Property. These will not be impacted by the expansion.



*Figure 2: Subject Property*



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## Project Description

The static compensator (STATCOM) building is proposed to be built within this Project to house the additional electrical equipment from the static compensator. It will be an approximately 8,000 sq. ft. prefabricated metal building similar to the existing electrical control house and is not anticipated to be more than 20 feet tall. The new building and expansion area is set back significantly from Brighton Dam Road and will be screened by the ridgeline that surrounds the substation.

On this Property, Pepco plans to expand the existing substation, construct a secondary access point off of the existing driveway, and install electric transmission equipment necessary to facilitate grid reliability. Access driveways will be constructed within the proposed substation expansion area, and a new access road will connect the substation expansion to the existing driveway. The project will not change the intended use or current hours of operation of the substation, and it will increase the power reliability for the region with an increased ability to process and transmit power regionally. PJM is requiring that transmission equipment be in service at Pepco's Brighton Substation by 2028.

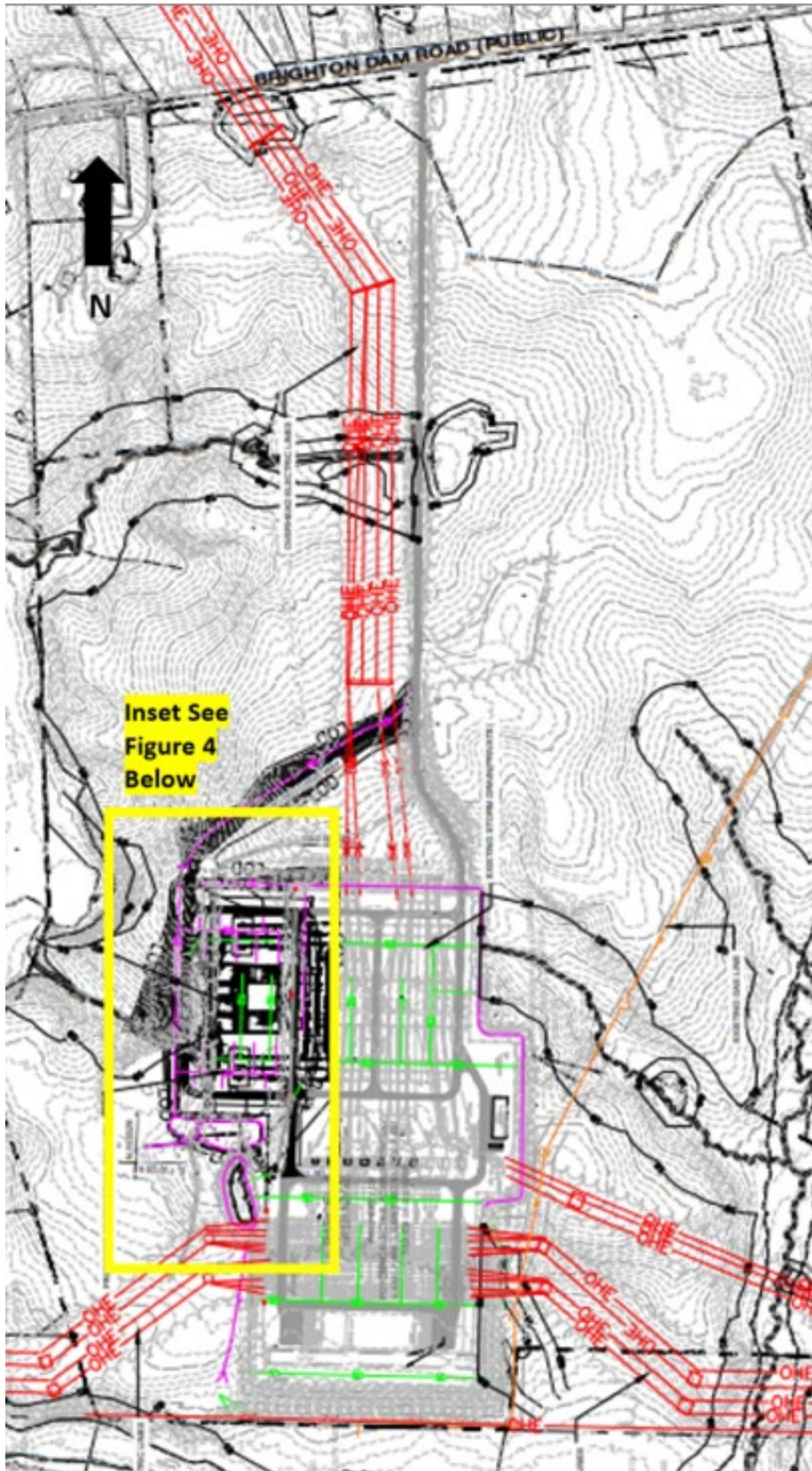


Figure 3: Overall Site (see inset below in Figure 4)

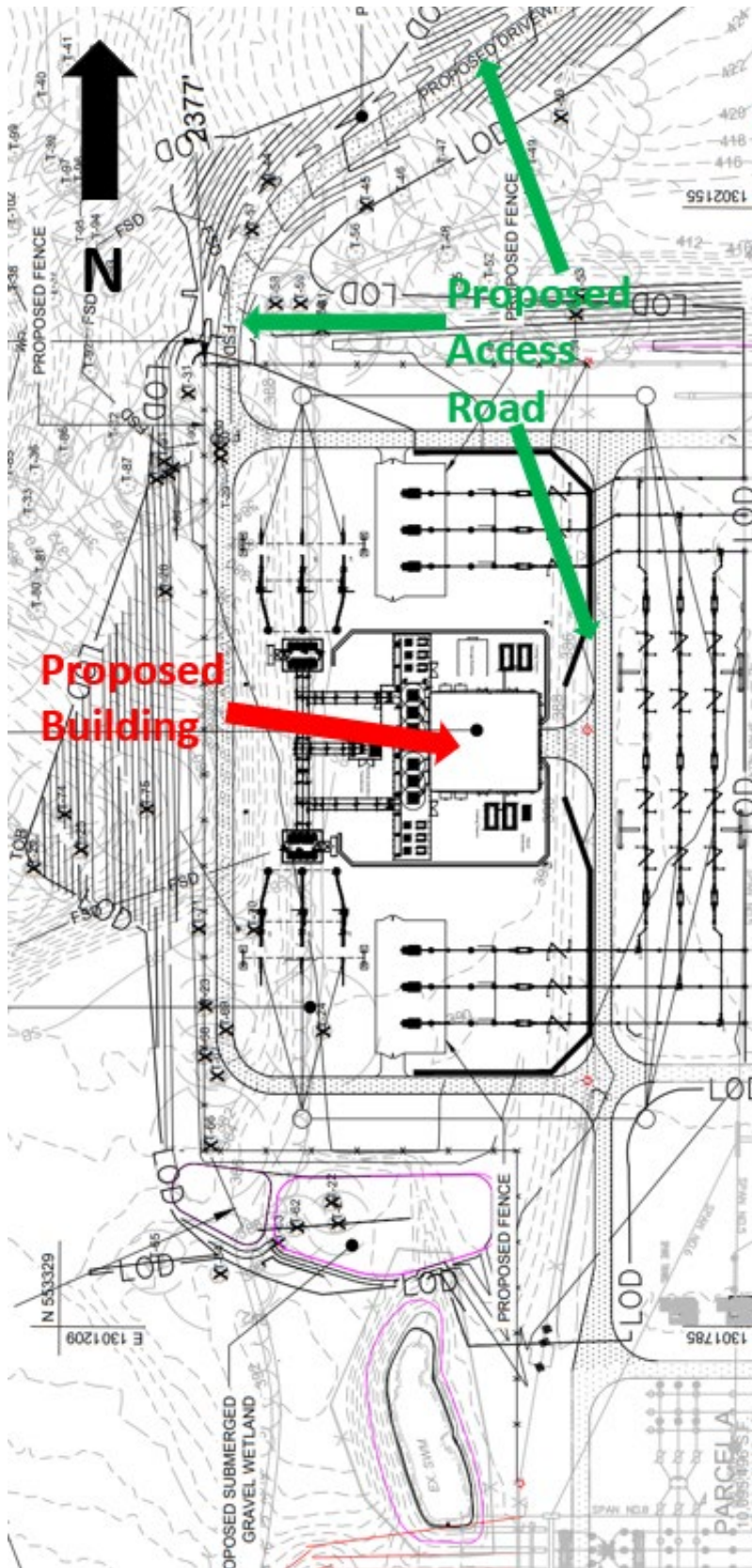


Figure 4: Proposed Expansion

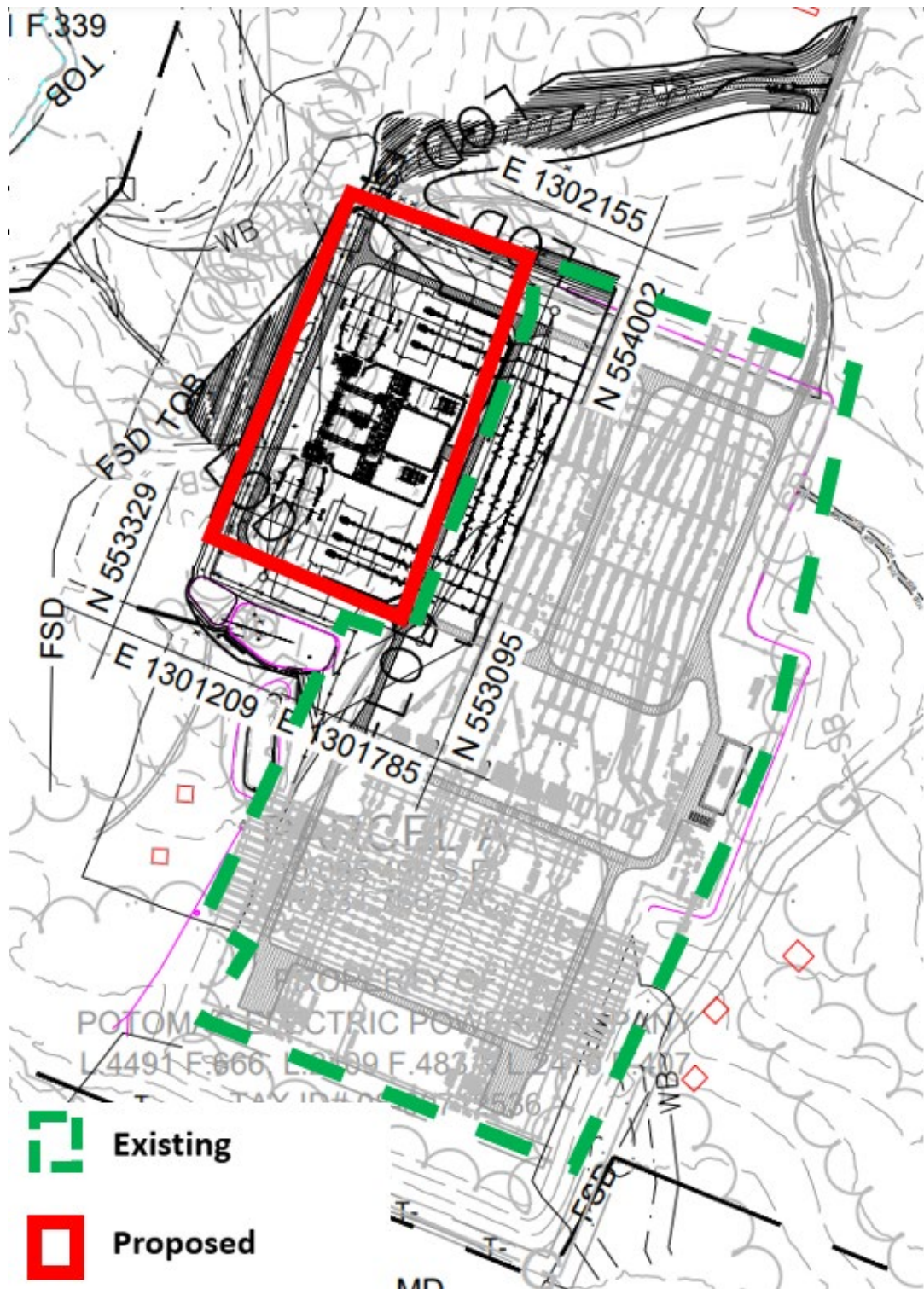


Figure 5: Overall Site- existing and proposed

## TRANSPORTATION

Currently, access to the substation is from Brighton Dam Road and this will remain as the only access point. New driveways will be constructed within the proposed expansion area, but all the proposed paving and driveways are, internal to the Site, and will not connect to any County or State roadways.

## ENVIRONMENT

Forest Conservation plan approval and stormwater management and environmental protection requirements, if applicable, are satisfied before approval of the plat. The Property is subject to Chapter 22A, the Forest Conservation Law. As discussed below, the Application was reviewed concurrently with Final Forest Conservation Plan No. F20250240 (FFCP). As discussed in the findings below for the FFCP, the Subject Property has no afforestation/reforestation requirement. All Forest Conservation Law, Chapter 22A requirements are satisfied.

As discussed below, the Application was reviewed concurrently with Final Forest Conservation Plan No. F20250240, which satisfies all 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. Please refer to Section 6 below for the analysis and findings for the Final Forest Conservation Plan.

## SECTION 4 – 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, the Montgomery County Planning Board has jurisdiction over mandatory referral projects presented by Montgomery County government, municipal corporation or special taxing district, and Montgomery County Board of Education/Montgomery County Public Schools, for (i) acquiring or selling land; (ii) locating, constructing or authorizing a road, park, public way or ground, public building or structure, or publicly owned or privately owned public utility; or (iii) changing the use of or widening, narrowing, extending, relocating, vacating or abandoning any of the previously mentioned facilities. The Planning Board, or its Staff pursuant to the adopted Uniform Guidelines, 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, or its Staff, 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;***

The Site is subject to the 2005 *Olney Master Plan*. The primary goals of the Plan are to protect environmental resources, maintain stream and drinking water quality, and preserve rural-suburban residential opportunities. The proposed Project aligns with the development of housing opportunities and planned growth of the community by establishing increased reliability in the electric supply chain and increasing the opportunity for residents to have access to consistent electricity. The proposed work does not impact the preservation of character, as it will be an expansion of an existing substation that is screened from the surrounding community by existing forested areas. This project would maintain the rural character and increase the power reliability of the region. The proposed expansion is part of the PJM system being able to accommodate additional power demands as well as accepting additional power from the State of Maryland Community Solar Program. By accommodating for additional solar power, the proposed expansion contributes towards *Thrive Montgomery 2050* goals for environmental sustainability and resilience.

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

The Property has been a substation for many decades and the zone is Rural Cluster (RC) and allows for these uses through the Mandatory Referral process.

<b>Section 59.4.3.4.B</b>	<b>Required</b>	<b>Proposed</b>
<b>Lot Coverage</b>	N/A	<1%
<b>Front Setback</b>	N/A	2,000+ ft.
<b>Rear Setback</b>	N/A	200+ ft.
<b>Side Setback</b>	N/A	500+ ft. & 700+ ft.
<b>Max. Height</b>	N/A	20 ft.

***3. whether the nature of the proposed site and development, including but not limited to its size, shape, scale, height, arrangement, design of structure(s), massing, setback(s), site layout, and location(s) of parking is compatible with the surrounding neighborhood and properties;***

The existing substation and proposed expansion cannot be seen from Brighton Dam Road as it is surrounded by dense forest. The substation is over 2,000 feet away from the front property line, over 200 feet away from the rear property line, over 500 feet

from the western property line and over 700 feet from the eastern property line. The existing and proposed buildings and structures are no more than twenty (20) feet tall. The Property sits substantially lower in elevation than Brighton Dam Road and the facility cannot be seen from the road. Therefore, the project will continue to be compatible with the surrounding neighborhood.

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

The Property is a Pepco substation, so the public will not have access to the Property. There are also no open space requirements with this Application per standard method development in the RC zone. The Applicant is working with the Department of Permitting Services Fire Department Access Section for Fire Department Access and circulation along with a cistern for fire protection and will obtain approval before beginning any construction.

#### TRANSPORTATION VEHICULAR ACCESS

Access to the Site is currently from a gravel driveway off Brighton Dam Road and this will remain unchanged with the proposed expansion. Some changes to the internal circulation are proposed but none of the new driveways will directly connect to any roads in the public transportation network. The Property is only accessed by Pepco employees or contractors servicing the equipment, there is no public access.

#### LOCAL AREA TRANSPORTATION REVIEW

This Project is exempt from a traffic impact study as it generates less than 50 new peak hour person trips. The proposed expansion will not increase the number of peak hour trips. The substation is unmanned and is therefore not a significant traffic generator<sup>1</sup>. Maintenance is expected to generate one trip per month or less and those trips are expected to take place outside of peak travel hours.

#### PEDESTRIAN AND BICYCLE FACILITIES

There are currently no pedestrian or bicycle facilities on Brighton Dam Road and there is nothing proposed for this portion of the roadway in the 2018 *Bicycle Master Plan*. Brighton Dam Road is classified as a Country Connector in the Master Plan of Highways and Transitways and the 2024 Complete Streets Design Guidelines calls for a sidewalk on country connectors. However, in section 49-33 of the Streets and Roads Code, sidewalk construction is exempted for “any sidewalk if the site is located in an environmentally sensitive area with limits on the

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<sup>1</sup> Note that this Application was received November 19, 2024, and is subject to the 2020-2024 Growth and Infrastructure Policy which established a threshold for Transportation Impact Studies at 50 person trips.

amount of impervious surface allowed if the Planning Board and Department of Transportation find that a sidewalk is not expected to be necessary for pedestrian movement.”

#### PUBLIC TRANSIT SERVICE

There is currently no transit service along this portion of Brighton Dam Road and no additional service or facilities are included in any master plans.

#### PARKING

As this station is unmanned parking requirements are exceptionally low. There is available areas to park the occasional vehicle for routine maintenance on-site on the existing and proposed driveways.

- 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.***

#### ENVIRONMENTAL GUIDELINES

The Natural Resource Inventory/Forest Stand Delineation (NRI/FSD) No. 420242500 for the Property was approved on September 9, 2024. The NRI/FSD identifies the environmental features and forest resources on the Property. The Subject Property is approximately 231.76 acres of land, with 171.36 acres of forest, located within the Rock Gorge Dam watershed, a Use IV watershed. There are multiple stream systems on-site. There are stream valley buffers (SVB) for the stream onsite and extending offsite. There is approximately 43.10 acres of forested SVB onsite.

#### STREAM VALLEY BUFFER IMPACTS

The Applicant provided a detailed assessment of proposed alternative site designs and, in conjunction with Staff, selected the best alternative while still achieving the necessary upgrades to the substation.

The proposed site development plans will result in unavoidable impact to the stream valley buffer.



The grading and disturbance within the buffer will include temporary impacts on 23,993 square feet of the Property required for grading and tie-in slopes and will also require permanent impacts to 20,918 square feet where the proposed site improvements will be constructed. As further discussed below, the impacts to forested stream valley buffer require a variance and, if approved, related mitigation. The need for these impacts is based on the required site improvements that are necessary to ensure the viability and function of the existing substation. Temporary buffer impacts will be restored in place. Permanent buffer impacts will be mitigated with 2:1 reforestation on the site. The buffer restoration and mitigation plantings are shown on the Forest Conservation Plan.

#### PATUXENT RIVER PRIMARY MANAGEMENT AREA

The Subject Property is in the Rocky Gorge Dam watershed and subject to the Patuxent Primary Management Area (PMA) guidelines to protect water quality. The PMA guidelines seek to restrict uses with high impervious levels near all tributaries of the Patuxent.

Due to the stream locations within the Property, the Patuxent River Primary Management Area (PMA) applies to the Property. The purpose of the PMA guidelines is to provide strategies to protect, preserve, and restore the Patuxent River and its drinking water supply reservoirs. The Environmental Guidelines state that the “*preservation of prime and viable agricultural land is a goal of the Patuxent watershed primary management area as it is throughout upper Montgomery County. It is hoped that the designation of the Patuxent PMA will help achieve the delicate balance between development and agriculture while ensuring water quality*” (p. 52).

Properties that are submitted to the M-NCPPC for review are subject to PMA requirements as set forth in the Environmental Guidelines.

#### IMPERVIOUS AREA LIMITS

The 660-foot-wide PMA consists of the stream valley buffer and the transition area. 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. The development proposed on the Subject Property is within the transition area, which is subject to a requirement in the *Environmental Guidelines* that imperviousness should not exceed ten percent.

The Guidelines further state that overall imperviousness within the transition area of each new project development site should not exceed 10 percent; however, 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 development, not to exceed 10 percent on the entire site.

The Property 21 acres is currently developed with the Brighton Substation, the existing substation is approximately 9.62% impervious surface composed of 16% pavement, 33% compacted stone and 51% uncompacted stone.

The new construction to accommodate the proposed use will add 6.08 acres of impervious surfaces bringing the overall imperviousness on the property to 12.25% which is over the 10% limit set forth in the Environmental Guidelines.

The Applicant in a letter submitted on January 10, 2025 (Attachment C) is requesting the Planning Board waive the portion of the Environmental Guidelines pertaining to the Impervious Cap in the PMA.

*“Talen Energy announced their intention to retire the Brandon Shores Generation Station, a coal-fired generation station in Baltimore, Maryland, by June 1, 2025. As a result of the planned retirement of the coal-fired Brandon Shores Generating Station, PJM, the regional transmission organization responsible for the movement of wholesale electricity, determined that transmission system upgrades are required to maintain grid reliability before Brandon Shores’ deactivation. Given the power plant’s critical role in serving the central Maryland region. PJM has directed Exelon’s Utilities (i.e., PECO, BGE, and PEPCO) to implement transmission projects that together will ensure regional grid reliability. In Montgomery County specifically, Pepco is charged with expanding the Brighton Substation to accommodate the size of the new transmission equipment being installed.”*

The Environmental Guidelines note that flexibility shall be shown in the application of these guidelines on a site-by-site basis to best achieve environmental and other planning objectives for the site.” (p. 2). Further, the Environmental Guidelines provide that “[t]he Planning Board at their discretion may approve, waive, or amend staff recommendations.” (p. 2).

Based upon the Applicant’s need to provide reliable power to the citizens of Montgomery County and the region at large, Staff supports the grant of flexibility from the 10% impervious limit in this case. As provided in the Environmental Guidelines, allowing the Applicant to exceed the requirement by 2.25% would further planning objectives for the site while still preserving 125.49 acres of forest, which includes 39.37 acres of forested stream valley buffer. The amount of imperviousness is the minimum need to achieve the goals and objectives of the regional power grid. Denying the waiver would have direct negative impacts on the public interest, as it is necessary to ensure regional grid reliability.

## FOREST CONSERVATION

The Application meets the requirements of Chapter 22A of the Montgomery County Forest Conservation Law. As required by Chapter 22A, a Final Forest Conservation Plan No.

F20250240 (FFCP) was submitted for concurrent review with Mandatory Referral No. MR2025007.

The total Net Tract Area for Forest Conservation purposes is 226.83 acres, which is equal to the total tract area, 231.76 acres, minus 4.93 acres of deductions for Gas Line Easements. The Property is zoned RC and but is considered Institutional Development Area (IDA) as defined by Chapter 22A, because of the use.

The IDA land use category has a 15% afforestation threshold and 20% reforestation threshold which set the requirements of the forest conservation worksheet.

There is 171.36 acres of existing forest within the Net Tract Area and the applicant is proposing to count 45.87 acres as cleared. This results in no additional afforestation/reforestation requirement. All the forest being retained for this project will be placed into long-term protective easements. The easements are split into two types: the standard Category I Conservation easement (70.56 acres) and a modified Category I Conservation (54.93 acres). The modified Conservation Easement is being placed over areas that may require future expansions necessary for the operations of the substation. All of the forest in the modified easements is above the break-even point in the worksheet and would not incur removal penalties if need in the future.

#### *Forest Conservation Variance*

Section 22A-12(b)(3) of Montgomery County Forest Conservation Law provides criteria that identify certain individual trees as high priority for retention and protection (“Protected Trees”). Any impact to these trees, including removal of the subject tree or disturbance within the tree’s critical root zone (“CRZ”) requires a variance under Section 22A-12(b)(3) (“Variance”). Otherwise, such resources must be left in an undisturbed condition. An applicant for a variance must provide certain written information in support of the required findings in accordance with Section 22A-21 of the County Forest Conservation Law. The law requires no impact to trees that: measure 30 inches or greater DBH; are part of an historic site or designated with an historic structure; are designated as a national, State, or County champion trees; are at least 75 percent of the diameter of the current State champion tree of that species; or trees, shrubs, or plants that are designated as Federal or State rare, threatened, or endangered species. Section 22A-12(b)(3) also provides that a Variance is required when an Application proposes to impact “any forest in a floodplain or stream buffer, except if the activity occurring within the floodplain or stream buffer is permitted under the environmental guidelines.”

#### *Variance Request*

This Forest Conservation Plan variance request is for fourteen (14) specimen trees to be removed and impacts to five (5) others. The trees identified in this variance request for

removal or CRZ impacts are shown on the Forest Conservation Plan. The trees to be removed are either located within the limits of disturbance or the LOD impacts to their critical root zone are too large to expect tree survival.

	Species	DBH (inches)	Condition (Good unless otherwise noted)
21	White Pine	32.5	Fair, leaning, weak, root heaving
22	White pine	30	
23	White pine	30	
24	Sycamore	30	Fair, heavy vine cover
25	Sycamore	32	
26	Sycamore	36	Fair, bent trunk
28	Sycamore	37	Fair, co-dominant trunks
29	Sycamore	30.5	
30	Sycamore	33	
31	Sycamore	44.5	Co-dominant stems, weak attachment
44	Sycamore	39	
45	Sycamore	45.5	Fair, some dieback in canopy
47	Sycamore	35.5	Poor, notable dieback

50	Sycamore	44	
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*Table 4: Variance Trees to be Removed*

	Species	DBH (inches)	Condition (Good unless otherwise noted)
27	Sycamore	30	
32	Sycamore	35.5	Co-dominant stems, weak attachment
46	Sycamore	38	
48	Sycamore	34	Four trunks at bh
49	Red Mpale	34	Fair

*Table 5: Variance Trees to be Impacted*

In addition to individual trees under 22A-12(b)(3)(C) the applicant is requesting 44,911 square feet of disturbance to forest protected under 22A-12(b)(3)(D) “Any forest in a floodplain or stream buffer, except if the activity occurring within the floodplain or stream buffer is permitted under the environmental guidelines.”

*Unwarranted Hardship Basis*

Per Section 22A-21, a variance may only be granted if the Planning Board finds that leaving the requested trees or forest in a SVB in an undisturbed state would result in unwarranted hardship, denying the Applicant reasonable and significant use of its property. In this case, there several special conditions peculiar to the Property which would cause unwarranted hardship, absent of a variance for removal of specimen trees and forested SVB.

The existing and proposed use is an electrical substation, which creates unique project demands. The historic use of the property has allowed the surrounding forest lands to age without disturbances often present on other properties with more typical land uses. Firewood cutting, clearing for agriculture, or development have not occurred on this lot, and this has resulted in a dense population of specimen trees being present.

Further the project type, being a required expansion of an existing substation, is unique to the property and directs the project location and dimensions.

Denial of the variance application would create a hardship for the applicant because there are no other alternatives to the is project that would allow them to meet the goal of expanding the substation site to maintain the safety and integrity of the electrical supply grid for the service area.

Therefore, the Applicant has a sufficient unwarranted hardship to justify a variance request.

Section 22A-21 of the County Forest Conservation Law sets forth the findings that must be made by the Planning Board or Planning Director, as appropriate, for a variance to be granted.

### ***Variance Findings***

The following determinations are based on the required findings for granting of the requested variance:

***1. Will not confer on the applicant a special privilege that would be denied to other applicants.***

Granting the variance will not confer a special privilege on the Applicant as the removal and impacts of the trees/forest is due to the location of the trees and necessary site design requirements unique to a substation upgrade. Therefore, granting of this variance is not a special privilege that would be denied to other applicants.

***2. Is not based on conditions or circumstances which are the result of the actions by the applicant.***

The requested variance is not based on conditions or circumstances which are the result of actions by the Applicant. The requested variance is based upon the existing site conditions and necessary design requirements of this specific use. The Applicant, in conjunction with Staff, has explored alternatives to determine that the proposal meets the objectives of the project while minimizing the impact on Protected Trees and SVB to be extent practicable.

***3. Is not based on a condition relating to land or building use, either permitted or non-conforming, on a neighboring property.***

The requested variance is a result of the existing conditions and not as a result of land or building use on a neighboring property.

***4. Will not violate State water quality standards or cause measurable degradation in water quality.***

The variance will not violate State water quality standards or cause measurable degradation in water quality. The FCP proposes to provide mitigation for the removal of Protected Trees in the form of tree planting on the Property. These trees will replace any water quality functions that may be lost by the removed trees.

### *Mitigation for Trees/forest Subject to the Variance Provisions*

There are fourteen (14) trees to be removed in this variance request resulting in 499.5 inches of DBH removed. The Applicant proposes mitigation at a rate that approximates the form and function of the trees removed. These trees will be replaced at a ratio of approximately 1-inch caliper for every four inches removed using trees that are a minimum of three caliper inches in size. This results in a total mitigation of 125 inches with the installation of 42 three-inch caliper trees. Although these trees will not be as large as the trees lost, they will provide some immediate benefit and ultimately replace the canopy lost by the removal of these trees. These mitigation trees must be overstory trees native to the region. There is some disturbance within the critical root zones of two other variance; however, these trees will not be removed, it will receive adequate tree protection measures, the roots will regenerate, and the functions it currently provides will continue. Therefore, no mitigation is recommended for trees impacted but retained.

As noted above the 44,911 square feet of forest being removed in a SVB is being mitigated for at a ratio of 2:1 onsite as shown on the FCP.

### *Recommendation on the Variance*

Staff recommends the Planning Board approve the variance request.

### **STORMWATER MANAGEMENT**

The Applicant is currently working with Department of Permitting Services, Water Resources Section to get an approved Stormwater Management Concept Plan. The Applicant will be required to obtain a Stormwater approval prior to obtaining a Sediment Control permit.

- 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 any additional applicable standards for Special Protection areas, including the standards of Article V. WATER QUALITY REVIEW IN SPECIAL PROTECTION AREAS, of the County Code (pursuant to Section 19-65(d)(4));***

The Property is not in a Special Protection Area; therefore, this section is not applicable.

- 7. whether or not the site would be needed for park use if the proposal is for disposition of a surplus school or other publicly-owned property.***

The Property is not a surplus school site; therefore, this section is not applicable.

- 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 neighborhood, the transportation network, the environment, historic resources (including burial sites) or other resources.***

No alternatives or mitigation measures are necessary because, as discussed above in Finding #1, the Project is consistent with the General Plan or other plans and policies for the area. In addition, it will not have any discernible negative impacts on the surrounding properties or neighborhood, the transportation network, the environment, historic resources (including burial sites) or other resources.

## SECTION 5 - 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. Forest Conservation Plan noticing requirements have all been met. As of the date of this report, Staff has not received any community correspondence.

## SECTION 6 - CONCLUSION

Staff recommends Approval of the Mandatory Referral and the transmittal of comments to Pepco. Staff also recommends approval of the Forest Conservation Plan with conditions.

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### Attachments

- Attachment A: Mandatory Referral Plans
- Attachment B: Forest Conservation Plans
- Attachment C: Imperviousness Letter and Plan
- Attachment D: Email from PWPA
- Attachment E: Agency Letters