

IN THE MATTER OF	:	BEFORE THE
Indian One, LLC	:	HOWARD COUNTY
c/o SGC Power, LLC	:	BOARD OF APPEALS
Petitioner	:	HEARING EXAMINER
	:	BA Case No. 21-030C

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**DECISION AND ORDER**

On March 7, 2022, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Petition of Indian One, LLC c/o SGC Power, LLC (Petitioner) for a Conditional Use for a Solar Collector Facility, Commercial Ground-Mount, in the RC-DEO (Rural Conservation) (Density Exchange Option) Zoning District, filed pursuant to Section 131.0.N.52 of the Howard County Zoning Regulations.

Petitioner certified to compliance with the notice, posting, and advertising requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Thomas G. Coale, Esquire represented the Petitioner. Robert Vogel (Engineer) and Abe Bennett (Petitioner) testified in support of the Petition. Several neighbors monitored the testimony and asked questions of Petitioners witnesses. No one testified in opposition to the Petition.

Petitioner introduced into evidence the following exhibits:

1. Revised Conditional Use Plan (March, 2022). Sheets 1-3 of 3

### **FINDINGS OF FACT**

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. **Property Identification.** The approximately 6.42-acre Subject Property is located on the west side of Roxbury Mills Road (Md. Rt. 97), approximately 0.5 miles south of the intersection with Md. Rt. 144, directly opposite the Highs Gas Station facility on the east side of Roxbury Mills Road. It is located in the 4th Election District, identified as Tax Map 008, Grid 0022, Parcel 96, Lot Parcel B, known as 14607 Riggs Meadow Drive, Cooksville (the Property). It is part of a larger approximately 37.05-acre property on which is located the Penn Oaks Winery.
2. **Property Description.** The irregularly shaped property is roughly rectangular. The Property was placed within the Agricultural Land Preservation Program (HO-97-04-PPCL(B)) in 1997. A stream and wetland buffers are located central to the proposed Facility but the proposed Solar Collector Facility does not encroach on any of these environmental features. The highest elevation on the Subject Property is approximately 640 feet in the northwest corner and descending to an elevation of 583 feet in the southwest corner.
3. **Vicinal Properties.** To the north and south of the Subject Property are single-family detached dwellings in the RC-DEO (Rural Conservation) (Density Exchange Option) Zoning District. To the west are single-family detached dwellings and farms in the RC-DEO Zoning District. To the east of the Property are single-family detached dwellings and retail in the RC-DEO/BR (Rural Conservation) (Density Exchange Option)(Business: Rural) Zoning District.
4. **Roads.** Roxbury Mills Road (Md. Rt. 97) has two travel lanes within a 75-foot

right-of-way. Riggs Meadow Drive has two travel lanes within a 50-foot right-of-way. The speed limit is 45 miles per hour on Roxbury Mills Road and 25 miles per hour on Riggs Meadow Drive. As of 2018, Roxbury Mills Road had a daily traffic count of 15,740 AADT according to the Baltimore Metropolitan Council. Traffic count data is not available for Riggs Meadow Drive.

5. Water and Sewer Service. The Property is not located within the Metropolitan District or the Planned Service Area for Water and Sewer.

6. General Plan. PlanHOWARD 2030 designates the Property as Rural Resource on the Designated Place Types Map. Roxbury Mills Road is a Minor Arterial and Riggs Meadow Drive is designated a local road on the PlanHOWARD 2030 Functional Road Classification Map.

7. Zoning History. A Farm Winery Permit, FW-11-001, was approved on May 27, 2011, for a Class 1A Farm Winery.

8. The Requested Conditional Use. The Petitioner proposes a 6.42-acre Solar Collector Facility, Commercial Ground-Mount consisting of a 6.27- acre operational area and 0.15-acre for an access road/service area. The facility will utilize single axis tracking design that allows the solar panels to follow the path of the sun. This design reduces the impact of glare and maximizes electricity generation. A 'Type D' or equivalent landscape buffer is proposed along the perimeter of the Conditional Use area and an eight-foot security fence is proposed between the landscaping and the Solar Collector Facility.

The 2 MW DC Facility will utilize single axis track design which allows the solar panels to follow the path of the sun to reduce the impact of glare and maximize electricity generation. The proposed solar panels are approximately 12 feet in height and will be facing east in the a.m., rotating with the sun, to be facing west in the p.m. The Facility will operate



24 hours a day, seven days a week, collecting solar energy passively and converting it into electricity.

9. Technical Staff Report. The TSR concluded that the Conditional Use proposal is in compliance with the Howard County Zoning Regulations (HCZR) for a Solar Collector Facility, Commercial Ground-Mount.

10. Agency Comments.

Department of Planning and Zoning, Development Engineering Division: On September 27, 2021 this Division noted no objection, finding: (1) no adverse engineering impact on adjacent properties and (2) all improvements must comply with current Howard County design criteria including APFO (Adequate Public Facilities Ordinance) requirements and stormwater management.

Health Department: The Health Department has no objection to the solar project in the proposed location. The department noted that the Conditional Use Plan does not show the current location of the two sewage disposal areas on the property or the well locations, but they are not in conflict with the solar location.

Department of Fire and Rescue Services: The Fire Department has no objection to the proposed Conditional Use however the Department will need to approve access width and solar facility details at the time of permit.

Department of Planning and Zoning, Division of Land Development: The Division of Land Development reviewed the Petition and offered advisory comments, which will be evaluated during the Site Development Plan review process, which are incorporated by reference into this Decision. (September 29, 2021)

Resource Conservation Division: The Division reported that the Agricultural Preservation Board (APB) commented "The Board members agreed that Option 1, as shown on the applicant's submission materials, is the preferred location for the CSF. One of the farmer Board members stated that the supplementary information provided by the applicant regarding the history and extent of their vineyard was helpful in determining that the CSF is ancillary to the farming operation".

The Subject Property is adjacent to three additional properties under an Agricultural Preservation easement. The parcel directly adjacent to the west of the Subject Property, the Minford property, is under easement HO-97-04-PPCL(C). The second easement is to the east of the Subject Property across Roxbury Mills Road (Md. Rt. 97), the McCracken property, is under easement HO-96-03-E. The third Agricultural Preservation easement is also located east of the Subject Property across Roxbury Mills Road (Md. Rt. 97), the 2149 LLC property, is under easement HO-97-04-PPCL(B).

11. Agricultural Land Preservation Board (ALPB) Review. In October 2016, the Howard County Council approved legislation to amend the Zoning Regulations to allow Commercial Solar Facilities (Solar Collector Facility, Commercial Ground-Mount) on 75 acres on properties in the ALPP. Council Bill 59-2016 requires the ALPB to provide advisory comments for Conditional Use Petitions for CSFs prior to submission to the County. The ALPB's recommendation is based on whether a proposal meets the following criteria, as set forth in Section 131 of the Howard County Zoning Regulations:

1. "The siting of the CSF on the parcel or parcels is an ancillary business which supports the economic viability of the farm, or
2. The siting of the CSF on the parcel or parcels supports the primary agricultural purpose of the easement property."

In its recently created Commercial Solar Facilities policy, the ALPB developed standards of review to determine if each proposal meets one or both of the aforementioned



criteria. Pursuant to the policy, the Board will apply the following standards to the CSF Conditional Use Petition criteria:

1. In determining if the CSF is ancillary to the primary farming operation, the commercial solar operational area must be a maximum of 16 acres or 20% of the Property's size, whichever is less, up to a maximum of 2 megawatts, and the petitioner must provide substantive proof that the CSF is ancillary to their farming operation. The commercial solar operational area is defined as the entire area of the CSF (including any equipment, spacing, structures or other uses that support the CSF) and any new roads that must be constructed in order to access the CSF, Existing roads being used to access the new facility are not included within the 10% operational area (i.e. existing dirt, gravel, or paved farm lanes).
2. In determining if the siting of the CSF supports the primary agricultural purpose of the Property, the portion not included in the commercial solar operational area must have a soils capability of more than 60% USDA Classes I-III and more than 66% USDA Classes I-IV.
3. In addition, at least one of the following will be required in conjunction with the CSF:
  - a. Pollinator or native grass habitats;
  - b. Livestock grazing, such as sheep;
  - c. Agrivoltaics (i.e. crop production under or directly adjacent to an installation, edible landscape barriers, tree crops);
  - d. Other suitable alternatives, as proposed by the applicant.

Other standards the ALPB may consider include:

1. If possible, the prescribed landscape buffer should be placed within the 50-foot conditional use setback. Landscaping should only be required alongside public road frontage, and not along sidelines or the Property's interior. When present, existing vegetation should be used as a landscaped buffer (i.e. hedgerows, fencerows, trees, shrubs, etc.).
2. Placement of the commercial solar operational area will minimize impact on existing environmental features (for example: Green Infrastructure Network, streams, wetlands, etc.).
3. In general, the commercial solar operational area should maintain the integrity and spirit of the Agricultural Land Preservation Program and the applicant must demonstrate that they are making a good faith effort regarding the placement of the CSF, with the least impact on soils, slopes and existing agricultural operations.

**AALP Staff Analysis:**

The Petitioner has provided documentation that each of its proposals meets the two primary standards. The total requested lease area is 7.46 acres, which is approximately 20% of the total property acreage 37.05. The CFC is proposed to be 1.5 megawatts. Approximately 100% of the soils capability of the land not included in the solar operational area would be USDA Classes I-III, which exceeds the 60% minimum requirements. Option 1, Petitioner's preference, is comprised of 45% Class II and 54% Class III soils, and Option 2 is comprised of 100% Class I soils. According to the Petitioner, the CSF will directly benefit the farming operations by providing a diverse, steady income stream, and providing pollinator-friendly habitat. ( The proposal was subsequently amended to reduce the area from 7.46 acres to 6.42 acres, approximately 17% of the total acreage.)

12. Howard County Agricultural Preservation Board (APB) and State Agricultural Preservation Advisory Board (APAB):

On July 26, 2021, after testimony and exhibits, the APB and the APAB recommended approval of the Conditional Use of a Commercial Solar Facility. The Board looked carefully at the balance of the property to verify the CSF is ancillary to the primary farming area. All Board members in attendance voted in favor of recommending Option 1, the instant proposal.

### **CONCLUSIONS OF LAW**

1. **General Criteria for Conditional Uses (Section 131.0.B)**

Sections 131.0.B.1-3 requires the Hearing Authority to evaluate whether the proposed Conditional Use will be in harmony with the land uses and policies indicated in the Howard County General Plan for the district in which it is located through the application of three standards; harmony with the General Plan, intensity of use, and atypical adverse impact.



#### **A. Harmony and Intensity of Use**

**Section 131.0.B.1. The proposed Conditional Use plan will be in harmony with the land uses and policies in the Howard County General Plan which can be related to the proposed use.**

The proposed use is in harmony with Policy 4.12 which encourages energy sustainability and renewable energy source:

**Policy 4.12** – Develop an energy plan that prepares for different future energy scenarios, examines options for various kinds of future energy sustainability, promotes conservation and renewable resources, and sets targets to reduce greenhouse gases.

**Section 131.0.B.2. The nature and intensity of the use, the size of the site in relation to the use, and the location of the site with respect to streets giving access to the site are such that the overall intensity and scale of the use(s) are appropriate for the site.**

The proposed 6.42-acre Solar Collator Facility comprises only 17.3% of the 37.05-acre property, which complies with the 20% maximum size limitation of Sec.131.0.N.52.

Additionally, the Facility complies with all required bulk regulations and dimensional Conditional Use criteria. Access is proposed from Roxbury Mills Road (Md. Rt. 97), which is a Minor Arterial but has restrictions for vehicular ingress and egress per Section 16.119(f) and Section 16.120(a) of the Subdivision and Land Development Regulations. Alternative compliance will be needed to allow access from Roxbury Mills Road (MD Rt. 97). If approved, the roadway can accommodate the infrequent number of vehicles associated with the proposed use.

The nature and intensity of the use, the size of the Property in relation to the use, and the location of the site respect to streets giving access to the site are such that the overall intensity and scale of the use is appropriate.



**B. Adverse Impacts (Section 131.0.B.3)**

Unlike HCZR Sections 131.0.B.1 and B.2, which concern the proposed use's harmony or compatibility with the General Plan and the on-site characteristics of the proposed use, compatibility with neighborhood is measured under Section 131.0.B.3's six, off-site "adverse effect" criteria: (a) physical conditions, (b) structures and landscaping, (c) parking areas and loading, (d) access, (e) impact on environmentally sensitive area; and (f) impact on the character and significance of historic sites. These six adverse impact tests gauge the off-site effects of the proposed conditional use.

Inherent in the assessment of a proposed Conditional Use under these criteria is the recognition that virtually every human activity has the potential for adverse impact. The assessment therefore accepts some level of such impact in light of the beneficial purposes the zoning body determined to be inherent in the use. Thus, the question in the matter before the Hearing Examiner is not whether the proposed use would have adverse effects in an RC-DEO Zoning District but whether there are facts and circumstances showing the particular use proposed at the particular location would have any adverse effects above and beyond those inherently associated with such a special exception [conditional] use irrespective of its location within the zones. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 956 A.2d 166 (2008); *Schultz v. Pritts*, 291 Md. 1, 432 A.2d 1319 (1981); *Mossburg v. Montgomery*, 107 Md. App. 1, 666 A.2d 1253 (1995). For the reasons stated below, and as conditioned, Petitioner has met its burden of presenting sufficient evidence under HCZR Section 131.0.B.3 to establish the proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a Commercial Ground Mounted Solar Collector Facility in a RC-DEO Zoning District.

**Section 131.0.B.3. The impact of adverse effects such as, but not limited to, noise, dust, fumes, odors, intensity of lighting, vibrations, hazards or other physical conditions will be greater at the proposed site than it would generally be elsewhere in the same zoning district or other similar zoning districts.**

Petitioner provided a Glare Study conducted by SGC Power, LLC which concluded that any glare related impacts to residential or motorist receptors are mitigated by the single axis tracking design of the solar panels. The panels track the sun, and any reflective glare will be returned towards the sun. However, the panels are designed to absorb the sunlight. The study concluded that there will be no glare-related impacts to nearby homes, businesses, or roads.

There is no evidence of atypical adverse effects such as noise, dust, fumes, odors, vibrations, increased lighting, hazards or other physical conditions that would be greater at the Subject Property than generally elsewhere.

**Section 131.0.B.3.b. The location, nature and height of structures, walls or fences, and the nature and extent of the existing and/or proposed landscaping on the site are such that the use will not hinder or discourage the development and/or use of adjacent land and structures more at the subject site than it would generally elsewhere in the same zoning district or other similar zoning districts.**

All solar collectors, equipment, and fences comply with the 20-foot height limit and 50-foot setback requirement in Sec 131.0.N.52.

The Petitioner is proposing a 'Type D' landscape buffer consisting of a double row of evergreen trees planted at intervals of 10-feet on center and deciduous trees planted at 60-feet on center around the Solar Collector Facility, except in the southwest corner where credit is being sought for existing vegetation. The Petitioner is proposing partial landscaping on the eastern and western boundary, asserting that the existing topography and vegetation mitigate any visual impact of the solar panels on the adjacent properties.



The location, nature and height of the structures and landscaping will not hinder or discourage the development or use of adjacent land and structures more at the Property than generally elsewhere in the same or similar zoning districts.

**Section 131.0.B.3.c. The number of parking spaces will be appropriate to serve the particular use. Parking areas, loading areas, driveways and refuse areas will be approximately located and buffered or screened from public roads and residential uses to minimize adverse impacts on adjacent properties.**

There is no parking requirement for a Solar Collector Facility, Commercial Ground-Mount in the Zoning Regulations. However, the Petitioner is providing a 20-foot by 60-foot parking pad that can accommodate the infrequent maintenance vehicle trips associated with Solar Collector Facilities. The 'Type D' or equivalent landscape buffer will screen the parking area and driveway from adjacent properties and public rights-of-way. The topography, existing vegetation, proposed fence, and distance mitigate visual impact of the solar panels on adjacent properties to the east, west, and south. No refuse areas are proposed.

**Section 131.0.B.3.d. The ingress and egress drives will provide safe access with adequate sight distance, based on actual conditions, and with adequate acceleration and deceleration lanes where appropriate. For proposed Conditional Use sites which have driveway access that is shared with other residential properties, the proposed Conditional Use will not adversely impact the convenience or safety of shared use of the driveway.**

Precise sight distance measurements can only be determined by a detailed Sight Distance Analysis, which is typically conducted during Site Development Plan review. The estimated site distance on Roxbury Mills Road (Md. Rt. 97) to the north and south is over 500 feet in both directions. According to the American Association of State Highway and

Transportation Official (AASHTO) guidelines, based on an estimated stopping sight distance of 360 feet for a car going 45 miles per hour, the proposed access point on Roxbury Mills Road (Md. Rt. 97) appears to provide safe access with adequate stopping sight distance. The access driveway will not be shared with any other properties.

**Section 131.0.B.3.e. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere.**

Environmentally sensitive areas in the vicinity consist of a wetland in the center of the Property, a stream located over 500 feet to the east, and a stream located approximately 100 feet southwest of the proposed Solar Collector Facility. The Solar Collector Facility does not encroach into the stream/environmental buffers/setbacks required in the Subdivision and Land Development Regulations, however, any disturbance to environmental features will be confirmed by the Environmental Concept Plan. The Subject Property is also in Agricultural Preservation. The solar panels are unlikely to have any adverse impacts on the stream/wetland areas, and the Agricultural Preservation Board has issued a memo commenting to the Hearing Examiner recommending approval of Option 1 (the instant proposal) based on consistency with ALPB CSF policy. The proposed use will not have a greater potential for adversely impacting environmentally sensitive areas in the vicinity than elsewhere in the zoning district.

**Section 131.0.B.3.f. The proposed use will not have a greater potential for diminishing the Character and significance of historic sites in the vicinity than elsewhere.**

There are several historic sites within the vicinity of the Property. A Viewshed Analysis exhibit was submitted that demonstrated the proposed Solar Collector Facility will not be visible from the closest historic property -- the Powell Log Cabin (HO-102) -- which is located 440 feet south of the proposed Solar Collector Facility. The other historic sites include: Robert's Inn (HO-5), R. Hook House (HO-181), and Walter and Sadie Smith House



(HO-989). These sites are all located more than 1,000 feet from the proposed Solar Facility and screened by vegetation and topography. Therefore, distance and visibility will diminish or eliminate any impact of the proposed use on the historic property, and the proposed use will not have a greater potential for diminishing the character and significance of historic sites in the vicinity than elsewhere.

2. **Specific Criteria for Solar Collector Facility, Commercial Ground-Mount Use (Section 131.0.N.52)**

A Conditional Use may be granted in the B-1, B-2, CE, M-1, M-2, PEC, POR, RC, or RR District for a Solar Collector Facility, Commercial Ground-Mount, provided that:

***a. The parcel on which the commercial ground-mount solar collector facility is proposed must be a minimum of 10 acres in size. The maximum size of a commercial ground-mount solar collector facility shall be 75 acres notwithstanding the size of the parcel. However, on parcels which are in the Agricultural Land Preservation Program, the maximum size shall be 16 acres or 20% of the property, whichever is less.***

***However, a Ground Mount Solar Collector Facility on an Agricultural Preservation Parcel can be increased to a maximum of 34% of the parcel by the Hearing Authority if the hearing authority finds that the use shall not interfere with farming operations or limit future farming production. The hearing authority shall consider the following:***

***(1) a. At least 60% of the acreage outside of the ground mount solar collector facility area is viable for a farm operation, inclusive of farm buildings needed for the farm operation; and***

***b. The remaining soils capability are more than 50% USDA Classes I-III and more than 66% USDA Classes I-IV or;***

***(2) The additional acreage above the allowable 20% for the CSF is unsuitable for farming.***

The parcel was placed into the Agricultural Land Preservation Program in 1997. The proposed 6.42-acre solar facility comprises only 17.3% of the 37.05-acre

property. Therefore, the proposed use meets this criterion, in compliance with Section 131.0.N.52.a.

- b. *All structures and uses must meet a minimum 50-foot setback from all property lines.***

All solar collectors and equipment meet or exceed the required 50-foot setback from all external property lines, however, some portions of the 8-foot fence are located along the 50-foot setback, all in compliance with Section 131.0.N.52.b.

- c. *No structure or use may be more than 20 feet in height.***

The solar panels are approximately 12 feet tall; the fencing is 8 feet in height and no other structure or use exceeds 20 feet in height, in compliance with Section 131.0.N.52.c.

- d. *A type 'D' landscaping buffer must be provided around the perimeter of the proposed commercial solar facility unless the Hearing Authority determines that an alternative buffer is sufficient.***

A Type 'D' buffer consisting of a double row of offset evergreen trees planted at 10-foot on center intervals and deciduous trees planted at 60 feet on center along the perimeter of the Conditional Use area is shown on the Revised Conditional Use Plan (Petitioner Exhibit 1), except in the southwest corner where credit is sought for existing dense vegetation. The landscaping has been revised to provide for more columnar, instead of spreading, tree canopy landscaping at the request of the Penn Oaks Winery. The areas of existing vegetation will be supplemented with additional landscaping. The proposed landscaping buffer is in compliance with Section 131.0.N.52.d.

- e. *All security fencing must be located between the landscaping buffer and the commercial solar facility.***

An 8-foot galvanized livestock security fence is provided between the



landscape buffer and the Solar Collector Facility. Since the fence exceeds 6-feet it is required to meet setback requirements and complies with the 50-foot setback area, all in compliance with Section 131.0.N.52.e.

- f. ***The systems shall comply with all applicable local state, and federal laws and provisions.***

The Petitioner states the systems will comply with all applicable local, state, and federal laws and provisions.

- g. ***A commercial ground-mount solar collector facility that is no longer used shall be removed from the site within 6 months of the date that the use ceases. The property owner shall secure this obligation by maintaining a bond, escrow, or other form of security, in an amount equal to the estimated future cost of removal, that is acceptable to the director of finance.***

Petitioner stated that it shall remove the Solar Collector Facility, Commercial Ground-Mount, from the Property within six months of the date that the use ceases, in compliance with Section 131.0.N.52.g.

- h. ***The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the commercial solar facility. The applicant shall provide the Hearing Authority with details regarding maintenance and access for the site.***

The Petitioner agrees to comply with this criterion, in compliance with Section 131.0.N.52.h.

- i. ***The applicant shall agree to register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.***

The Petitioner agrees to comply with this criterion, in compliance with Section 131.0.N.52.i.

- j. ***Tree removal shall be minimized, and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.***

Petitioner agrees to comply with Section 16.1206 of Howard County Code, which will be reviewed at Site Development Plan, in compliance with Section 131.0.N.52.k. Please note that this criterion improperly references a nonexistent section of the Howard County Code. Section 16.1206 is the correct reference.

**k. Scenic Views**

**(1) *The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:***

- A. *A public park.***
- B. *A national or state designated scenic byway.***
- C. *A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or***
- D. *A historic structure as defined in Section 16.601 of the Howard County Code.***

**(2) *Visual Impact Analysis Required to Demonstrate Minimal Impact to or from Scenic Views***

- A. *The Conditional Use petition shall include a visual impact analysis mapping all viewshed impacts and any proposed mitigation. This analysis shall include mapped visual impact assessments of all important or critical viewpoints or elevations from which the solar facility can be seen from a fixed vantage point. For purposes of this subsection, a viewshed is a topographically defined area including all critical observation points from which the solar facility is viewed.***
- B. *If the visual impact assessment as mapped particularly interferes with and compromises critical observation points within the viewshed that warrant viewshed protection, the petitioner shall mitigate the view through additional landscaping or other forms of mitigation, including reconfiguration of the solar panels, or as may be required by the Hearing Authority.***
- C. *Fencing along road frontage or the perimeters of the commercial solar facility site where the fencing would be visible shall be constructed of a material and design consistent with the character of the roadway or areas.***
- D. *The petition shall include a landscape plan.***

The proposed Solar Collector Facility is not visible from a national or state



designated scenic byway, public park, or scenic road. The Petitioner has submitted the required visual impact assessment (Viewshed Analysis) demonstrating that the proposed Solar Collector Facility will not be visible from the closest historic property—the Powell Log Cabin, HO-102—which is located 440 feet to the south of the subject Property. This Petition complies with Section 131.0.N.52.k.

***I. The Howard County Agricultural Preservation Board shall review any Conditional Use petition which proposes to build a new commercial ground mount solar collector facility on parcels which are in the Agricultural Land Preservation Program prior to approval by the Hearing Authority, using a two-step review process, in the following manner:***

***(1) Prior to scheduling and convening a presubmission community meeting pursuant to Howard County Zoning Regulations Section 131.0.f.1, the petitioner shall submit a proposed concept plan for a commercial ground mount solar collector facility on a parcel or parcels in the Agricultural Land Preservation Program to the Howard County Agricultural Preservation Board for advisory review as to whether the siting of the commercial ground mount solar collector facility on the parcel or parcels supports the primary agricultural purpose of the easement property or is an ancillary business which supports the economic viability of the farm.***

***(a) Preliminary Review- the Agricultural Preservation Board shall conduct a preliminary review of a concept plan to review the placement of the proposed facility and the remaining soil capability. The materials submitted for the preliminary review shall include, at a minimum, a letter signed by the property owner requesting the commercial ground-mount solar collector facility, a concept plan depicting proposed locations for the facility and a soil classification analysis, consistent with the provisions of the agricultural preservation board's commercial solar facilities policy. The concept plan should show at least two potential placements of the facility on the property to allow the Agricultural Preservation Board an opportunity to advise on the best placement of the solar facility to minimize negative impacts on the farming operation.***

***(b) Final Review- the materials submitted for final review shall include, at a minimum, a copy of the Agricultural Land Preservation Program easement, a***

**copy of the Howard County Soil Conservation and Water Quality Plan, and a copy of the proposed final concept plan.**

**(2) The Board's advisory review shall be in writing.**

**(3) The petitioner shall make the Board's advisory review available at the presubmission community meeting.**

**(4) The Department of Planning and Zoning's Technical Staff Report on the petition shall include an evaluation of and a recommendation on the Board's advisory review of the petition and shall include as attachments the Board's advisory review and a copy of the Agricultural Preservation Easement.**

The Subject Property was placed into the Agricultural Land Preservation Program in 1997. The Agricultural Preservation board (APB) conducted the Preliminary Review of the Conditional Use Plan on June 28, 2021, and the Final Review on July 26, 2021. Included in this record are the Agricultural Land Preservation Program (ALPP) Administrator's Staff Report to the Board; the June 28, 2021 and July 26, 2021, APB meeting minutes; and a copy of the Agricultural Preservation Easement.

The APB evaluated the proposal in accordance with the APB Commercial Solar Facility Policy, which includes the following standards:

**(1) In determining if the CSF is ancillary to the primary farming operation, the commercial solar operational area must be a maximum of 16 acres or 20% of the Property's size, whichever is less, up to a maximum of 2 megawatts, and the petitioner must provide substantive proof that the CSF use is ancillary to their farming operation. The commercial solar operational area is defined as the entire area of the CSF (including any equipment, spacing, structures or other uses that support the CSF) and any new roads that must be constructed in order to access the CSF. Existing roads being used to access the new facility are not included within the operational area (i.e. existing dirt, gravel or paved farm lanes).**

The Petitioner presented two sites to the APB for consideration and



advisory comments. The APB preferred Option #1, which showed a total requested Solar Collector Facility area of 7.46-acre comprising 20.0% of the 37.05-acre easement. The proposed area has since been reduced to 6.42 acres or 17% of the easement. The Solar Collector Facility will generate a maximum of 1.5 megawatts of power.

***(2) In determining if the siting of the CSF supports the primary agricultural purpose of the Property, the portion not included in the commercial solar operational area must have a soils capability of more than 60% USDA Classes I-III and more than 66% USDA Classes I-IV.***

The Property only contains USDA Class I-III soils. All land (100%) not included in the solar operational area is USDA Class I-III soils.

***(3) In addition, at least one of the following will be required in conjunction with the CSF:***

- a. Pollinator or native grass habitats;***
- b. Livestock grazing, such as sheep;***
- c. Agrivoltaics (i.e. crop production under or directly adjacent to an installation, edible landscape barriers, tree crops);***
- d. Other suitable alternatives, as proposed by the applicant.***

The APB determined that the Solar Collector Facility will directly benefit the farming operation by providing a diverse, steady income stream, and a pollinator-friendly habitat.

***Other standards the ALPB may consider include:***

- 1. If possible, the prescribed landscape buffer should be placed within the 50-foot conditional use setback. Landscaping should only be required alongside public road frontage, and not along sidelines or the Property's interior. When present, existing vegetation should be used as a landscaped buffer (i.e. hedgerows, fencerows, trees, shrubs, etc.).***
- 2. Placement of the commercial solar operational area will minimize impact on existing environmental features (for example: Green Infrastructure Network, streams, wetlands, etc.).***
- 3. In general, the commercial solar operational area should maintain the integrity and spirit of the***

***Agricultural Land Preservation Program and the applicant must demonstrate that they are making a good faith effort regarding the placement of the CSF, with the least impact on soils, slopes and existing agricultural operations***

The APB agreed that Option #1, the revised Conditional Use Site Plan (Petitioners Exhibit 1) is the preferred location for the CSF. DPZ concurs with the APB comments.

- m. Subject to Section 106 of these regulations, the property on which an approved commercial solar facility is located is eligible to be a sending parcel provided that one density right is retained for the conditional use until the commercial solar facility is removed.***

This criterion does not apply as the Property is not a density sending parcel.

- n. Regulations for solar collector facility, commercial ground-mount.***

***A solar collector or combination of solar collectors shall be designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard. The petitioner or applicant shall provide to the Department of Planning and Zoning a glare study or other certification or assurance acceptable to the department that the solar collectors are designed, manufactured, and will be installed:***

- a. To eliminate glare;***
- b. To ensure that glare will not be reflected onto nearby buildings or roadways; or***
- c. With anti-reflective coatings or light-trapping technologies.***

The Solar Collector Facility will utilize single axis tracking design, which allows the panels to move with the sun and be synchronized to reduce glare on surrounding properties. Also, the panels will have an antireflective coating to further reduce the possibility of light reflection. The Petitioner submitted a Glare Study conducted by SGC Power, LLC, which analyzed potential glare on 26 nearby properties and two (2) neighboring business: Penn Oaks Winery and High's Gas



Station. The Study also simulated potential glare along the adjoining Roxbury Mills Road, Millers Mill Road, Riggs Meadow Drive and Meadow Tree Court. The Study determined that no glare will be visible from adjacent properties and roadways at any time of year.

- o. For ground mount solar collector facilities on agriculture preservation parcels, the area used for the ground-mount solar collectors must also be used for pollinator or native grass habitats, grazing for livestock such as sheep, crop production under or directly adjacent to the installation such as edible landscape barriers or tree crops, or other agricultural or ecologically enhancing alternative that the applicant proposes and the Hearing Authority finds to be harmonious with the purposes of the Agricultural Land Preservation Program.***

The Petitioner proposes to include pollinator habitats inside the fenced area.

**ORDER**

Based upon the foregoing, it is this 9<sup>th</sup> day of March 2022, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Indian One, LLC c/o SGC Power, LLC for a Solar Collector Facility, Commercial Ground-Mount, in an RC-DEO (Rural Conservation: Density Exchange Option) Zoning District, Tax Map 008, Grid 022, Parcel 96, Lot Parcel B, identified as 14607 Riggs Meadow Drive, Cooksville, Maryland, be and is hereby **GRANTED;**

**Provided, however, that:**

1. The Solar Collector Facility, Commercial Ground-Mount Conditional Use shall be conducted in conformance with the Petition as submitted and as shown on the Revised Conditional Use Plan dated March, 2022, and not to any other activities uses, or structures on the Property.
2. Petitioner shall comply with all conditional use standards.
3. The Site Development Plan, or its equivalent, shall include a note containing all conditions of approval.
3. Petitioner shall comply with all federal, state, and local laws and regulations.
4. The systems shall comply with all applicable local, state, and federal laws and provisions.
5. Any Solar Collector Facility that is no longer used shall be removed by the property owner from the site within six months of the date that the use ceases.
6. The premises shall be maintained at all times in a clean and orderly condition, including the care or replacement of plant materials required in the landscaping plan. The responsibility for compliance with this provision shall be with all parties having a lease or ownership interest in the Solar Collector Facility. The Petitioner

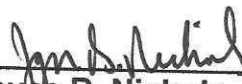


shall provide the Hearing Authority with details regarding maintenance and access for the Subject Property.

7. The Petitioner shall register all solar collectors with the Department of Fire and Rescue Services. This registration shall include a map of the Solar Collector Facility noting the Rescue Services and the location of the solar collectors and the panel disconnect.
8. Tree removal shall be minimized, and reforestation shall be done in accordance with Section 16.1206 of the Howard County Code.
9. All required landscaping shall be provided within 6 months of installation of the solar panels.

**HOWARD COUNTY BOARD OF APPEALS**

**HEARING EXAMINER**

  
\_\_\_\_\_  
Joyce B. Nichols

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.