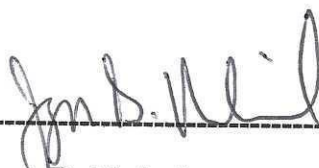


ERRATA

The Decision and Order in SolHarvest Energy LLC, BA Case No. 21-013C, was issued on July 14, 2021 in accordance with law. As a result of a technological error, this Decision and Order failed to transmit to the parties and the appeal period pursuant to this original Order has expired. In order to correct this error, the Decision and Order dated July 14, 2021 is reissued, and any appeal period shall run from August 18, 2021. The reissued Decision and Order is appended hereto.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Joyce B. Nichols

IN THE MATTER OF	:	BEFORE THE
SolHarvest Energy LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 21-013C

.....

DECISION AND ORDER

On July 12, 2021, 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 SolHarvest Energy LLC (Petitioner) for a Conditional Use for a Commercial Ground Mount Solar Collector Facility (CSF) in the RR (Rural Residential) DEO (Density Exchange Option) Zoning District, filed pursuant to Section 131.0.N.52 of the Howard County Zoning Regulations (HCZR).

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. Christopher DeCarlo, Esquire represented the Petitioner. Robert Vogel (Engineer) and John Forgash (SolHarvest) testified in support of the Petition. Andy Sun, Maaza Abdi, and Peter Martin testified in Opposition. All witnesses provided sworn testimony.

FINDINGS OF FACT

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

1. Property Identification. The approximately 114.6-acre subject property is located on the south side of Brighton Damn/Ten Oaks Road, west of its intersection with Heather Glen Way, and east of its intersection with Wexford Park. It is located in the 5th Election District, identified as Tax Map 0034, Grid 0011, Parcel 43, also known as 6160 Ten Oaks Road, Clarksville, Maryland (the Property).

2. Property Description. The Conditional Use area is roughly rectangular in shape and is comprised of 9.91 acres (9.74 acres for the area within the fencing and 0.17 acre for the access road). (The original July, 2021 Conditional Use Plan contained two typos regarding the acreage which have been corrected to comport with the acreage noted *supra*.)

The majority of the Property is a farm, including agricultural buildings and two single family dwellings. The Property was placed within the Agricultural Land Preservation Program (HO-91-04-E) on April 19, 1991 by Susan and Jean Warfield. The highest elevation on the subject property is approximately 470 feet at the northeast corner descending to an elevation of approximately 400 feet in the southwest corner.

3. Vicinal Properties. To the east, west and south of the subject Property are single family detached dwellings in the RR-DEO Zoning District. To the north of the subject Property are single family detached dwellings, a church, and farmland in the RR-DEO Zoning District.

4. Roads. Ten Oaks Road becomes Brighton Damn Road in front of the Property. There are two travel lanes and a turning lane associated with the church to the north. The posted speed is 40 miles per hour on Ten Oaks Road and 35 miles per hour on Brighton Damn Road. As a result of the close proximity of the traffic calming circle at Ten Oaks/Brighton Damn Roads, the actual vehicular speeds may be less than the posted speed of 35 MPH in front of the conditional use area. According to Baltimore Metropolitan Council data, Annual Average Daily Traffic was 12,600 between 2016 and 2018 for this portion of Ten Oaks Road.

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 Low Density on the Designated Place Types Map.

7. Zoning History. The Department of Planning and Zoning (DPZ) does not have a record of any prior Zoning Petitions for the subject Property.

8. The Requested Conditional Use. The proposed 9.91-acre Commercial Ground Mount Solar Collector Facility site is located in the northern quadrant of the 114.6-acre farm along its northern boundary as shown on the Conditional Use Plan (July 2021). Petitioner is requesting approval of a 9.74-acre operational area. 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 10 feet in height and will be facing east in the a.m., rotating

with the sun, to be facing west in the p.m. This design reduces the impact of glare and maximizes electricity generation. The Facility will operate 24 hours a day, seven days a week, collecting solar energy passively and converting it into electricity. Petitioner estimates that there will be minimal visits to the facility for maintenance. It will be a community solar project with the solar power generated being sold to residential subscribers. A Type 'D' landscape buffer is proposed along Brighton Damn/Ten Oaks Road extending well beyond the conditional use area to the east and west on the Property.

Proposed Fencing and Landscaping. The Conditional Use Plan (July, 2021) shows a Type 'D' landscape buffer along the northern perimeter of the facility extending along the northern boundary of the Property. The landscape buffer shall include a double row of offset evergreen trees planted at intervals of 10 feet on center, and deciduous trees planted at 60 foot intervals. The Howard County Agricultural Preservation Board (APB) and State Agricultural Preservation Advisory Board (APAB) at its September 21, 2020 meeting recommended an advisory comment to eliminate any buffer along the eastern, western, and southern boundaries of the proposed conditional use site so as to maximize the agricultural preservation land area with the optimal solar energy output. In accordance with this recommendation, Petitioners July, 2021 Conditional Use Plan has removed any buffer from the eastern, western and southern boundaries. Sheet 2 of 2 provides details of the 7 feet in height board on board sight tight fence around the entire perimeter of the Facility to be located interior to the Type 'D' buffer (where applicable). All fencing will sit a

minimum of 50 feet from the Property lot lines, erected between the proposed landscaping and equipment. Pollinator habitats will be maintained internal to the fencing.

10. Technical Staff Report. The TSR found that the Petition is in compliance with § 131.0.N.52 and § 131.0.B of the Howard County Zoning Regulations (HCZR).

11. Agency Comments.

Department of Planning and Zoning, Division of Land Development: On April 26, 2021 this Division noted no objection, finding: (1) all development must be in accordance with an approved Site Development Plan (including wetland delineation), an Environmental Concept Plan if required, Forest Conservation and Landscape Manual requirements.

Other Departments: The Department of Recreation and Parks had no comments. The Department of Fire and Rescue Services noted that specific aspects of the solar facility must comply with Fire and Rescue requirements such as aisle spacing, signage, access, and vegetation. The Development Engineering Division, Department of Planning and Zoning found no adverse engineering impact on adjacent properties, all development must comply with current Howard County Design criteria including APFO requirements and stormwater management, and that stormwater management measures may affect the limits of the solar panels. The Bureau of Environmental Health noted that wells, septic system components and sewage disposal areas will be evaluated at Site Development Plan.

12. 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 on a maximum of 75 acres on properties in the ALPP. Council Bill 59-2016 requires the ALPB to provide advisory comments for Conditional Use Petitions for Commercial Solar Facilities prior to submission to the County. The ALPB's recommendation is based on whether a proposal meets the following criteria:

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 equal to or less than 34% of the Property's size. 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 34% 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 50% USDA Classes I-III and more than 66% USDA Classes I-IV.

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.

The Petitioner has provided documentation that his proposal meets the two primary standards. The total requested lease area is 9.91 acres, which is approximately 8% of the property size, below the 34% maximum. Regarding the soils capability of the land not included in the solar operational area, the Petitioner's engineer (Robert Vogel) calculated that 75.8% would be USDA Classes I-III. This percentage exceeds the minimum requirements of the ALPB policy of 60% Classes I-III.

13. Howard County Agricultural Preservation Board (APB) and State Agricultural Preservation Advisory Board (APAB). On September 21, 2020, the APB and the APAB reviewed the Agricultural Land Preservation Program Administrators Report, including an Aerial photo, Preservation Map, Soils Map, APB Commercial Solar Facilities policy, and supplemental documentation and mapping from Vogel Engineering. Rick Warfield, whose family trust owns the Property, there is an existing grain crop (65 acres) and beef cattle (20 acres of pasture). The remaining land is in woods, wetlands and the homesite area. Mr. Warfield intends to continue the agricultural operations with the solar income to diversify income from the farming operations. Mr. Warfield expressed concerns about future shading from the landscape buffer trees as they mature which will

decrease optimal production of the solar facility. The Staff Report found compliance with APB policy regarding acreage coverage and soils capability of the land not included in the solar operational area. (Earlier the Board voted to amend their previous policy where the Commercial Solar Facility is ancillary to the primary farming operation, the commercial solar operational area may be a maximum of 16 acres or 20% of the property's size, whichever is less, and the petitioner must provide substantive proof that the Commercial Solar Facility use is ancillary to the farming operation.) The Board was advised that the Property will include a pollinators habitat inside the fence area throughout the lifetime of the Commercial Solar Facility. At the conclusion of its review, the Board issued one advisory comment: (1) Recommend that the buffer requirements for a CSF, as detailed in Section 131, be waived so that only the CSF boundary adjacent to Brighton Damn Road be required. The Board members agreed that buffering the full perimeter would be excessive, given the layout of the land and the position of the proposed CSF. One of the farmer Board members stated that it would be easier to maneuver machinery up to the CSF fence line rather than to landscaping trees.

14. Citizen Concerns. Andy Sun expressed concerns over the preservation of the Tier 2 Carroll Branch watershed and the future viability of financing the construction of the solar facility. Maaza Abdi expressed concerns regarding the view shed, the potential effect of glare, and the protection of the historic homestead on the Property. Peter Martin expressed concern that (1) the Historic Preservation Board had not been afforded the opportunity to

comment on the proposal, (2) regarding the site plan changes deleting the landscape buffer yards on 3 sides of the proposal and the substitution of a sight tight board on board fence for the previously proposed chain link fence, (3) regarding the visibility projections of the viewshed analysis, and (4) that the Forge Solar glare analysis does not comport to industry standards.

BURDEN OF PROOF

The Court of Appeals of Maryland has frequently expressed the applicable standards for judicial review of the grant or denial of a Conditional Use. The Conditional Use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The Conditional Use is a valid zoning mechanism that delegates to an administrative body a limited authority to allow enumerated uses which the legislature has determined to be permissible absent any fact or circumstance negating this presumption. The legislative body has statutorily determined that a Conditional Use is compatible in a particular zoning district absent specific facts adduced to the contrary at a particular location. The duties given the hearing body are to judge whether the neighboring properties in the general neighborhood would be adversely affected and whether the use in the particular case is in harmony with the general purpose and intent of the Zoning Plan.

The Applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the zoning body that the proposed use would be conducted

without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden.

The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the zoning body to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a Conditional Use is arbitrary, capricious, and illegal. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Rockville Fuel & Feed Co. v. Board of Appeals of Gaithersburg, 257 Md. 183, 187-88, 262 A.2d 499, 502 (1970); Montgomery County v. Merlands Club, Inc., 202 Md. 279, 287, 96 A.2d 261, 264 (1953); Anderson v. Sawyer, 23 Md. App. 612, 617, 329 A.2d 716, 720 (1974). These standards dictate that if a requested Conditional Use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied. Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1325 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A.2d 1253 (1995).

The appropriate standard to be used in determining whether a requested Conditional Use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed and the particular location proposed would have any adverse effects above and beyond those inherently associated with such a Conditional Use irrespective of its location within the zone. Turner v. Hammond, 270 Md. 41, 54-55, 310 A.2d 543, 550-51 (1973); Deen v.

Baltimore Gas & Electric Co., 240 Md. 317, 330-31; 214 A.2d 146, 153 (1965); Anderson v. Sawyer, 23 Md. App. 612, 617-18, 329 A.2d 716, 720, 724 (1974). Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319, 1331 (1981). See also Mossberg v. Montgomery County, 107 Md. App. 1, 666 A2d 1253 (1995)

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 impacts.

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 9.91-acre solar facility comprises approximately 8.6% of the 114.6-acre Property which complies with the 20% maximum size limitation of HCZR §131.0.N.52. Additionally, the facility complies with all required bulk regulations and dimensional Conditional Use criteria. The facility will only generate minimal visits by maintenance personnel.

Brighton Damn Road is a Major Collector and can accommodate the infrequent number of vehicles typically 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 with respect to the streets that provide 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 §§ 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 RR-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 § 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 Mount Solar Collector Facility Conditional Use in the RR-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 Forge Solar which concluded that any glare related impacts to residential properties, the historic house on the Property, or motorist receptors are mitigated by the single axis tracking design of the solar panels. Single axis tracking solar panels are designed to create no glare as they move with the sun.

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 site 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.

The proposed solar facility will be more than 50 feet from adjacent residential uses. All solar panels, equipment, and fences comply with the 20-foot height limit and 50-foot setback requirement in HCZR §131.0.N.52. A Type 'D' landscape buffer consisting of a double row of offset evergreen trees planted at 10-foot intervals and deciduous trees planted at 60 feet on center is proposed along the northern perimeter of the operational area, extending further along the northern boundary of the Property on Brighton Damn/Ten Oaks Road to the east and to the west, to screen the solar facility from the public rights-of-way and adjacent properties. The Agricultural Preservation Board reviewed the Conditional Use Plan at the September 21, 2020 meeting and provided the following advisory comment: " Recommend that the buffer requirements for a CSF, as detailed in Section 131, be waived so that only the CSF boundary adjacent to Brighton Dam Road be required. The Board members agreed that buffering the full perimeter would be excessive, given the layout of the land and the position of the proposed CSF. One of the farmer Board members stated that it would be easier to maneuver machinery up to the CSF fence lie rather than to landscaping trees." Based on the Visual Impact Analysis, the Petitioner is not proposing landscaping on the eastern, southern and western boundaries , the existing topography and site distances 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 specific parking requirement for a commercial ground-mount solar collector facility. The Petitioner is providing a 60-foot by 70-foot paved area that can accommodate the infrequent maintenance vehicle trips associated with commercial solar facilities. The Type 'D' landscape buffer will screen the parking area and driveways from the public rights-of-way and adjacent properties. The topography, existing vegetation, proposed sight tight fence, and distance mitigate visual impact of the solar panels on adjacent properties to the east, south, and west. No refuse area is 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 Brighton Damn Road to the east is 300 feet to where the traffic circle begins and over 500 feet to the west. According to the American Association of State Highway and Transportation Official (AASHTO) guidelines, based on an estimated stopping sight distance of 250 feet for a car going 35 miles per hour, the proposed access

point on Brighton Damn Road appears to provide safe access with adequate stopping sight distance.

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.

The only environmentally sensitive area in the vicinity is a stream located to the west of the proposed ground mount solar collector facility. The solar facility does not encroach into this sensitive area. The proposed solar collectors and fence are over 120 feet from the stream and do not encroach into the 100-foot stream buffer. The site is also in Agricultural Preservation. The Agricultural Preservation Board has provided one advisory comment and its Staff Report found consistency with ALPB CSF policy. The proposed use will not have a greater impact on environmentally sensitive areas 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.

The closest historic site (HO-479), known as Persimmon Bottom Farm, is located on the eastern edge of the Property approximately 980 feet from the Commercial Ground Mount Solar Collector Facility. The Visual Impact Analysis demonstrates that the solar facility will not be visible from the historic site due to the slope of the terrain. Therefore, 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 Commercial Solar Facility Use (Section 131.0.N.52)

A Conditional Use may be granted in the RC or RR Zoning District for a Commercial Solar Facility, 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 proposed Solar Facility is 9.91 acres, comprises only 8.6% of the 114.6 acre property, and was placed into the Agricultural Land Preservation Program in 1991, in compliance with § 131.0.N.52.a.

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

All structures and uses are located at least 50 feet from all external property lines, in compliance with § 131.0.N.52.b.

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

The solar panels are approximately 10 feet tall; the fencing is 7 feet in height and no other structure or use exceeds 20 feet in height, in compliance with § 131.0.N.52.c.

- d. A Type 'D' landscaping buffer must be provided around the perimeter of the proposed commercial ground-mount solar collector 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 intervals and deciduous trees planted at 60 feet on center along the north perimeter of the conditional use area is shown on the Conditional Use Plan (July, 2021). This Plan also shows the deletion of the Type 'D' buffer along the eastern, western and southern perimeter in accordance with the Agricultural Preservation Board advisory comment. The Visual Impact Analysis demonstrates that the proposed fencing and topography is sufficient to preserve the viewshed of residential properties and the historic site from the solar facility without additional landscape buffer.

The proposed landscaping buffer is in compliance with § 131.0.N.62.d.

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

A 7-foot board on board sight tight security fence is provided along the entire perimeter of the solar facility, between the landscape buffer and the Commercial Ground Mount Solar Collector Facility where shown on the Conditional Use Plan. 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 § 131.0.N.52.e.

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

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

- g. **A commercial solar facility that is no longer used shall be removed from the site within six 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.**

The Petition states that the Petitioner shall comply with § 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 testified as to the maintenance of the Property and access to the site and agrees to comply with this criterion, in compliance with

§ 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 these criteria, in compliance with

§ 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 § 16.1026 of Howard County Code, which will be reviewed at Site Development Plan, in compliance with

§ 131.0.N.52.j.

- 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 ground-mount solar collector facility site where the fencing would be visible shall be constructed of a material and design consistent with the character of the roadway or area.

D. The petition shall include a landscape plan.

The historic farmhouse (HO-479), known as Persimmon Bottom Farm, is located on the eastern edge of the Property, approximately 980 feet from the proposed Commercial Ground Mount Solar Collector Facility. The Visual Impact Analysis demonstrates that the slope of the topography, the fence, and existing vegetation completely screen view of the solar facility from residential properties and the historic site. The solar facility is not visible from a national or state designated scenic byway, public park, or scenic road. The Petitioner is providing a Type 'D' landscape buffer along Brighton Damn Road that will screen the solar collector facility from Brighton Damn Road and properties on the northern side of Brighton Damn Road.

I. The Howard County Agricultural Land 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 Land 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 Property was placed in the Howard County Agricultural Preservation Program (ALPP) in 1991. The Conditional Use Plan was reviewed by the Agricultural Preservation Board (APB) on September 21, 2020. The ALPP

Administrator's staff report is described, *supra*. DPZ concurs with the APB advisory comments. The Petition is in compliance with § 131.0.N.52.I.

- m. **Subject to Section 106 of these regulations, the property on which an approved commercial ground-mount solar collector 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 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 anti-reflective coating. The Petitioner submitted a glare study conducted by Forge Solar, which analyzed potential glare on thirty-six adjacent properties and simulated potential glare along the adjoining Brighton Dam and Ten Oaks Road. The study determined that no glare will be visible from adjacent properties or 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 18th day of August, 2021, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of SolHarvest Energy LLC for a Commercial Ground Mount Solar Collector Facility in an RR-DEO (Rural Residential)(Density Exchange Option) Zoning District, be and is hereby **GRANTED;**

Provided, however, that:

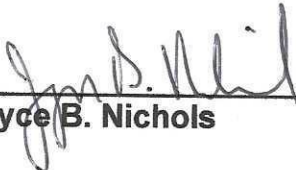
1. The Commercial Ground Mount Solar Collector Facility conditional use shall be conducted in conformance with the Petition as submitted and as shown on the Conditional Use Plan dated July, 2021, and not to any other activities, uses, or structures on the Property.
2. Petitioner shall comply with all 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 commercial solar 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 and shall provide a bond or other surety as determined by the Howard County Director of Finance to cover the cost of future removal.
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 commercial solar facility.

7. The Petitioner shall register all solar collectors with the Department of Fire and Rescue Services. The registration shall include a map of the solar facility noting the Rescue Services. The registration shall include a map of the solar facility noting the location of the solar collectors and the panel disconnect.
8. Tree removal shall be minimized, and reforestation shall be done in accordance with § 16.1026 of the Howard County Code.
9. All required landscaping shall be provided within 6 months of installation of the solar panels.

The Approved Conditional Use Plan is Conditional Use Plan (July, 2021)

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.