



April 14, 2016

## TECHNICAL STAFF REPORT

*Planning Board Meeting on May 10, 2016*

**Case No./Petitioner: ZRA – 164 – Dr. Calvin Ball**

**Request:** Amend Section 131.0-Conditional Uses of the Zoning Regulations to allow Commercial Solar Facilities on Agricultural Land Preservation Parcels (ALPP) and require that all Conditional Use petitions for Commercial Solar Facilities on ALPP land be reviewed by the Agricultural Land Preservation Board (ALPB).

Amend Section 106.1-County Preservation Easements to eliminate the use area restrictions for Commercial Solar Facilities on ALPP purchased or dedicated easements, preservation parcels created as part of a cluster subdivision process, and other dedicated easements.

### I. BACKGROUND

As part of the 2013 Comprehensive Zoning process, Section 106.1- County Preservation Easements, was added to the Zoning Regulations. Prior to Comprehensive Zoning in 2013, uses permitted on preservation easements were addressed through an administrative policy and were not included in the Zoning Regulations. The Commercial Solar Facility land use was not addressed by this policy.

Section 106.1 references different types of agricultural preservation easements in the Rural Conservation (RC) and Rural Residential (RR) Zoning Districts. Each type identified in the zoning regulations is explained below.

*ALPP Purchased Easements* are purchased by the County and represent the vast majority of preserved land, totaling almost 15,300 acres. Easements are purchased based on a scoring system that assesses suitability of a parcel for agricultural use. Prior to the addition of Section 106.1 to the Zoning Regulations, the outdoor conditional use area for a preservation easement could not exceed ¼ acre. During Comprehensive Zoning in 2013, the maximum area was changed to a percentage of the parcel size (2%) to accommodate the need for larger operations on large properties that could support them.

*ALPP Dedicated Easements* are dedicated to the County rather than purchased. They consist of density sending parcels or cluster subdivision residue parcels, per the requirements of the Zoning Regulations. Density sending parcels determined to be suitable for farming are dedicated to the County and enter into the ALPP.

Preservation parcels created as part of an on-site cluster development can also be encumbered by an ALPP easement. However, these parcels are typically remnant parcels and are often not suitable for

farming. Those that are not, are dedicated as environmental preservation parcels, referred to in Section 106.1 as “*Other Dedicated Easements.*”

Section 106.1 enumerates permitted uses on preservation easements and are categorized as Matter of Right, Accessory, or Conditional. Matter of Right and Accessory land uses consist mainly of farming and related operations. Conditional Uses consist of agricultural based commercial uses and are separated into two categorizes based upon the amount of land area needed to operate. The first category of Conditional Uses includes Commercial Solar Facilities and is subject to a cumulative maximum land use area as described below:

- For ALPP purchased and dedicated easements, the use area cannot exceed 2% of the easement;
- For preservation parcels created as part of a cluster subdivision, the use area cannot exceed 1 acre;
- For other dedicated easements, the use area cannot exceed 2% of the easement up to 1 acre.

The second category of land uses is not subject to a maximum land area requirement.

Section 131.0.N.52 governs Commercial Solar Facility Conditional Uses in the RC and RR districts that are not on ALPP lands. Further, Section 131.0.N.52.a. explicitly prohibits Commercial Solar Facilities on ALPP land or any parcel encumbered by an environmental preservation easement. Clearly a conflict in the Zoning Regulations exists between this section and the permission granted in section 106.1. This conflict is likely an oversight during the Comprehensive Zoning process, whereby the prohibition in Section 131.0.N.52.a should have been removed once the permission in Section 106.1 was granted.

## **II. DESCRIPTION AND EVALUATION OF PROPOSAL**

The petitioner proposes to eliminate the conditional use provision that prohibits Commercial Solar Facilities on ALPP land and other County easements, thus correcting the oversight that occurred during Comprehensive Zoning. The petitioner also proposes to add a requirement that the Howard County Agricultural Land Preservation Board review any Conditional Use for a Commercial Solar Facility on parcels that are in the ALPP. Furthermore, the petitioner proposes to reclassify the Commercial Solar Facility as a land use that “may require additional land area,” thereby increasing the maximum use area beyond the 2%/one-acre cumulative use caps. The proposed amendment would apply to lots in the RR or RC Zoning Districts that meet the Conditional Use requirements for a Commercial Solar Facility and are encumbered by an ALPP Purchased Easement, ALPP Dedicated Easement, and/or other dedicated easement.

The following evaluation of ZRA-164 provides technical recommendations for each proposed text amendment. The Petitioner’s complete proposed amendment text is attached to this Technical Staff Report as Exhibit A (Petitioner’s Proposed Text).

## 1. SECTION 131.0: CONDITIONAL USES

### Section 131.0.N.52.a – Remove

#### Staff recommends approval of the amendment

This section prohibits Commercial Solar Facilities on land that is in the Agricultural Land Preservation Program or encumbered by environmental preservation easements. Due to an oversight, this section was not removed during Comprehensive Zoning in 2013. The proposed amendment would remedy the discrepancy between Section 106.1 and Section 131.0 by removing the prohibition of Commercial Solar Facilities on land in the ALPP or encumbered by environmental preservation easements. DPZ recommends deletion of this section in order to remove the conflict in the regulations.

### Section 131.0.N.52.m – Add new section

#### Staff recommends approval of the amendment

The petitioner proposes to add a requirement that the Howard County ALPB review any Conditional Use for a Commercial Solar Facility on parcels that are in the ALPP. This will provide an opportunity for additional technical review by agricultural preservation experts, which will assist the Hearing Authority in rendering a decision.

DPZ reviewed ZRA 164 with the ALPB on February 17, 2016 and March 28, 2016 and they expressed support for this requirement. Specifically, they discussed a desire to provide input regarding the location and size of proposed facilities so that impacts to farm land with high soil quality and other important agricultural features are minimized. Additional information on these discussions can be found in EXHIBIT B and EXHIBIT C.

DPZ supports the ability of the ALPB to review Commercial Solar Facility Conditional Use proposals to help ensure the proposal is in harmony with the intent of the ALPP.

## 2. SECTION 106.1: COUNTY PRESERVATION EASEMENTS

### Section 106.1.D.1.a.(15) – Remove

### Section 106.1.D.1.b.(3) – Add new section

### Section 106.1.D.2.a.(20) – Remove

### Section 106.1.D.2.b.(5) – Add new section

#### Staff recommends approval of these amendments

Land uses listed in Section 106.1.D.1.a are subject to a cumulative use area maximum equal to 2% of the easement or up to a maximum of one acre on preservation parcels part of a cluster subdivision. Land uses listed in Section 106.1.D.2.a are subject to a cumulative use area maximum equal to 2% of the easement up to a maximum of 1 acre. The Commercial Solar Facility land use is included in these sections.

Land uses listed in Section 106.1.D.1.b and 106.1.D.2.b are not subject to a maximum use area. The proposed amendments remove the Commercial Solar Facility land use from Sections 106.1.D.1.a/106.1.D.2a and adds it to Sections 106.1.D.1.b/106.1.D.2.b. This would eliminate the 2%/one-acre cumulative use area maximum for Commercial Solar Facilities on preservation easements. The existing 75-acre conditional use limitation will serve as the only limiting factor pertaining to use area size for eligible parcels.

In order to maximize exposure to the sun, solar panels are erected parallel to the ground or slightly angled, which cause solar farms/facilities to be very land intensive. Additionally, the establishment of a Commercial Solar Facility and size of that facility depends on numerous factors, including capacity of transmission lines, proximity to a distribution center/substation, and economies of scale, which can limit potential locations. Consequently, even if a particular parcel was able to support a 75 acre solar farm, it is unlikely that every factor would align such that a facility this size could operate. The 2% land area maximum drastically reduces the area of land available for the installation of solar panels and when combined with other factors, can reduce the viability of solar technology on a particular parcel. Recognizing the complex and varied factors involved in siting an economically viable Commercial Solar Facility, DPZ recommends that the 2%/one-acre cumulative use cap restriction be removed.

### **III. GENERAL PLAN**

The Petitioner asserts that ZRA-164 is in harmony with of the following PlanHoward 2030 (General Plan) policies:

#### **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.”

#### **Implementation Action D**

“Implement the County’s 2010 Climate Action Plan (referenced in Chapters 1, 3, and 12), which relates to future energy technology such as wind, solar, geothermal, and other renewable sources.”

**Implementation Action G**

“Explore evolving energy markets, plus options for enabling “smart grid” technologies, which reveal new opportunities to create, store, consume, and invest in energy commodities and related assets.”

The proposed amendments will expand the opportunity for solar technology by potentially allowing Commercial Solar Facilities on 234 ALPP properties and 746 dedicated preservation parcels in Howard County. Additionally, increasing the amount of land area available for solar facilities on a particular parcel increases the economic viability of the facility and profitability to the farmer as an additional income stream. Furthermore, the potential revenue generated from the Commercial Solar Facility on ALPP land could provide an incentive for property owners to participate in land conservation. These outcomes are in harmony with Policy 4.12 and Implementation Actions D & G of the PlanHoward 2030 General Plan. Therefore, DPZ concurs with the petitioner’s assertion.

**IV. AGENCY COMMENTS**

The Howard County Agricultural Land Preservation Board reviewed the Petitioner’s proposal in meetings held on February 17, 2016 and March 28, 2016. A copy of the minutes from the February meeting is attached as EXHIBIT B to this Technical Staff Report. Since the minutes from the March 28, 2016 ALPB meeting were not approved at the time of this report, a summary of the ZRA 164 discussion at that meeting is attached as EXHIBIT C.

Comments from all other applicable agencies have not yet been received. Any substantive comments received from these agencies before the Planning Board Public Hearing will be forwarded to the Planning Board members before the hearing date.

**V. RECOMMENDATION****APPROVAL**

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-164 be **APPROVED**.

Approved by:

  
Valdis Lazdins, Director

4/14/16  
Date

NOTE: The file is available for public review at the Department of Planning and Zoning Public Information Counter.

## **ZRA 164 – Exhibit A**

### **Petitioner’s Proposed Text**

(CAPITALS indicate text to be added; [[brackets indicate text to be deleted]].)

#### SECTION 106.1: - County Preservation Easements

##### D. Conditional Uses

##### 1. ALPP Purchased Easements and ALPP Dedicated Easements

- a. Conditional Uses shall not be allowed on agricultural preservation easements unless they support the primary agricultural purpose of the easement property, or are an ancillary business which supports the economic viability of the farm, and are approved by the hearing authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these regulations. On an ALPP purchased or dedicated easement property, the area devoted to Conditional Uses may not exceed a cumulative use cap equal to 2% of the easement or up to a maximum of 1 acre for preservation parcels created as part of the Cluster Subdivision process.

The following Conditional Uses may be allowed:

- (1) Animal hospitals
- (2) Barber shop, hair salon and similar personal services facilities
- (3) Bottling of spring or well water
- (4) Communication Towers
- (5) Farm tenant house on a parcel of at least 25 acres but less than 50 acres
- (6) Historic building uses
- (7) Home based contractors
- (8) Home occupations
- (9) Kennels and/or pet grooming establishments
- (10) Landscape contractors
- (11) Limited outdoor social assemblies
- (12) Sawmills or bulk firewood processing
- (13) School buses, commercial service

(14) Small wind energy systems, freestanding tower

[[ (15) Solar facilities, commercial ]]

b. In addition, the following Conditional Uses which may require additional land area may be permitted on agricultural preservation easements:

(1) Agribusiness, limited to uses itemized in Section 131.0.N.

(2) Farm winery—class 2

(3) SOLAR FACILITIES, COMMERCIAL

## 2. Other Dedicated Easements

a. Conditional Uses shall not be allowed on other dedicated easements unless they support the primary purpose of the easement property and are approved by the Hearing Authority in accordance with the applicable provisions of Sections 130.0 and 131.0 of these Regulations. On these dedicated easements, the following Conditional Uses which do not require the construction of new principal structures or use of an outdoor area that is more than 2% of the preservation parcel acreage up to a maximum of 1 acre may be allowed:

(1) Animal hospitals

(2) Antique shops, art galleries and craft shops

(3) Barber shop, hair salon and similar personal service facilities

(4) Bottling of spring or well water

(5) Child day care centers and nursery schools, day treatment and care facilities

(6) Communication towers

(7) Country inns

(8) Historic building uses

(9) Farm tenant house on a parcel of at least 25 acres but less than 50 acres

(10) Home based contractors

(11) Home occupations

(12) Kennels and/or pet grooming establishments

(13) Landscape contractors

- (14) Limited outdoor social assemblies
- (15) Museums and libraries
- (16) Retreats
- (17) School buses, commercial service
- (18) Shooting ranges—outdoor rifle, pistol, skeet and trap
- (19) Small wind energy systems, freestanding tower
- [[20) Solar Facilities, commercial]]

[[21]]20) Two family dwellings, accessory apartments and multi-plex dwellings

b. In addition, the following Conditional Uses which may require additional land area may be permitted on other dedicated easements:

- (1) Agribusiness, limited to uses itemized in Section 131.0.N.2
- (2) Charitable or philanthropic institutions dedicated to environmental conservation
- (3) Farm Winery—Class 2
- (4) Golf Courses
- (5) SOLAR FACILITIES, COMMERCIAL

## SECTION 131.0: - Conditional Uses

### N. Conditional Uses and Permissible Zoning Districts

#### 52. Solar Facility, Commercial

A Conditional Use may be granted in the RC or RR District for a commercial solar facility, provided that:

- [[a. The land on which the commercial solar facility is proposed may not be in the Agricultural Land Preservation Program and it may not be encumbered by any environmental preservation easements.]]
- [[b]]A. The maximum size of a solar facility shall be 75 acres notwithstanding the size of the parcel. The parcel on which the commercial solar facility is proposed must be a minimum of 10 acres in size.
- [[c]]B. All structures and uses must meet a minimum 50 foot setback from all property lines.



- [[d]]C. No structure or use may be more than 20 feet in height.
- [[e]]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.
- [[f]]E. All security fencing must be located between the landscaping buffer and the commercial solar facility.
- [[g]]F. The systems shall comply with all applicable local, state, and federal laws and provisions.
- [[h]]G. A commercial solar facility that is no longer used shall be removed from the site within one year of the date that the use ceases.
- [[i]]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.
- [[j]]I. 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.
- [[k]]J. 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.
- [[l]]K. Tree removal shall be minimized and reforestation shall be done in accordance with Section 16.1026 of the Howard County Code.
- [[m]]L. The applicant shall demonstrate that the solar facility does not harm the scenic characteristics of the view of or from:
- (1) A public park;
  - (2) A national or state designated scenic byway;
  - (3) A road listed in the Scenic Roads Inventory adopted under Section 16.1403 of the Howard County Code; or

(4) A historic structure as defined in Section 16.601 of the Howard County Code.

M. THE HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD SHALL REVIEW ANY CONDITIONAL USE PETITION WHICH PROPOSES TO A COMMERCIAL SOLAR FACILITY ON PARCELS WHICH ARE IN THE AGRICULTURAL LAND PRESERVATION PROGRAM PRIOR TO APPROVAL BY THE HEARING AUTHORITY.

## EXHIBIT B

### HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD

February 17, 2016

#### Attendance:

Board Members: Lynn Moore, Chair  
Rickey Bauer, Vice Chair  
Jamie Brown  
Howie Feaga  
Ann Jones  
Denny Patrick

Public: John Zirschky

Staff: Valdis Lazdins, Director, Department of Planning and Zoning  
Amy Gowan, Deputy Director, Department of Planning and Zoning  
Joy Levy, Administrator, Agricultural Land Preservation Program  
Beth Burgess, Chief, Resource Conservation Division  
Mitch Ford, Planning Technician, Agricultural Land Preservation Program  
Kim Pruum, Special Assistant, Office of Council Chair Dr. Calvin Ball

Ms. Moore called the meeting to order at 7:10 p.m. and conducted introductions.

#### Discussion Items

##### 1) **SB 236: Amendment to *PlanHoward 2030* to Amend the Growth Tiers**

Ms. Gowan gave a presentation on a current proposal to amend *PlanHoward 2030* by changing the existing Growth Tiers structure for Howard County. In 2012, the Maryland General Assembly passed Senate Bill (SB) 236, which was legislation intended to protect the Chesapeake Bay and its watersheds by limiting the amount of development that could occur on septic systems. The Bill required counties to classify land in one of four Growth Tiers that would determine future growth for an area based on certain characteristics such as utility services, agricultural usage, locally designated growth areas, and natural features. After considering several different Growth Tier mapping proposals, the County Council approved Council Bill 1-2013, which became effective in April 2013.

The Tiers map that was approved in 2013 restricted the development rights of many citizens in the RC (Rural Conservation) zoning district in western Howard County by placing them in Tier IV. This limited the maximum number of lots that could be created on any parcel to four, which is the most that are allowed as a minor subdivision. Those properties in the RR (Rural Residential) zoning district kept their full development potential. Ms. Gowan explained that the current legislation would amend the Tiers map so that Tier III would include all properties in the

RC and RR, except for those that are permanently preserved, which would remain Tier IV. Tier III would also include properties encumbered by the Maryland Agricultural Land Preservation Foundation (MALPF) program, since these easements are not technically in perpetuity.

Ms. Gowan continued the presentation by explaining the Impact Data Chart. The Chart analyzed how many additional lots could be created if all of the current Tier IV properties over 21.25 acres that are available for additional development were changed to Tier III. The 21.25 acre figure is the minimum amount of acreage needed to create a major subdivision, which is anything 5 lots or greater. There are 53 Tier IV parcels totaling 2,330 acres that would currently yield 204 lots. If Tier IV were to be lifted, the potential units would increase to 498, representing a net increase of 294 units of added capacity. This analysis does not include any site development constraints, nor does it include any properties under MALPF easements that could potentially terminate. Ms. Gowan stated that the proposed legislation is meant to keep development decisions on a local level, and provide relief from additional development restriction from the state. She concluded by saying that the current measures in place to monitor and control growth in the West, such as the Adequate Public Facilities Ordinance and the Housing Allocation Chart, would continue to serve that purpose.

After Ms. Gowan completed the presentation, Mr. Feaga stated his concern about the administration making the decision to exclude the MALPF properties from Tier IV. He noted that the draft version of the legislation that he presented to the Farm Bureau did not include the MALPF exclusion provision. Mr. Lazdins explained that there was some lag time between the initial draft proposal and what County Executive Kittleman wants to now include. Mr. Lazdins stated that the Executive believes that if a property owner is able to successfully petition to be released from the terms of the MALFP easement, they should have the opportunity to develop their land.

Mr. Bauer and Ms. Jones had questions about whether the various State agencies know about the proposal and what their reactions have been. Mr. Bauer opined that this will encourage MALPF property owners to try and terminate their easements. Ms. Jones stated that the County and the State are supposed to be working together to further the goals of the MALPF program and this sends the completely wrong message, not only in the County but statewide.

The Board members expressed their concern and frustration over the proposed amendment. They were particularly displeased with the MALPF provision, but also concerned about how the proposed change might have a larger effect on the County's ag preservation program and the farming community. Ms. Moore stated that by reversing the Tiers, the proposal would undermine the entire program by furthering the placement of residential communities adjacent to working farms. She noted how challenging the recent conflicts over permitted uses on farmland have been for the agricultural community.

Mr. Bauer stated that most farmers try to make long term plans for their operations, while the county continues to change its stance on how the West should develop. He noted the challenges this presents to the farming community. He contrasted this to other counties that have developed policies to support ag preservation and stuck to them. Ms. Moore followed on this point, by questioning the premise of the preservation program itself if the County can't maintain a consistent position on developing rural land in Western Howard County. Mr. Brown commented that the inconsistency in zoning under the proposed amendment could be viewed as

discrimination towards the farmers in the ALPP, and that all preservation farmers should be Tier III, if the MALPF properties will be.

There was an extensive conversation with Mr. Zirschky about the two parcels his family is attempting to preserve, and the circumstances that have created a situation where the County cannot acquire easements on either property based on lack of development potential. Ms. Levy attempted to explain that it is the combination of the Tiers restrictions and the number of subdivisions that have already occurred that has resulted in our inability to move forward.

There was discussion about the MALPF termination process and how this would affect future requests. Ms. Moore opined that the County has never had a strong policy that protects agriculture. There was agreement that the Tiers brought that to us, but now it's going to be taken away unless the MALPF properties can be added back in.

Ms. Jones stated her concern that it's not just the potential disparity in development potential that concerns her, but also the uses that are allowed on different properties. She gave as an example a dairy farm that wants to expand to produce ice cream and is told they needed a separate septic system to accommodate the new use. Since the purpose behind SB236 was to restrict septic systems in Tier IV areas, an ALPP farm in Tier IV could be prohibited from diversifying to stay viable, while a farm in Tier III would have no such restriction.

Ms. Jones read the language that defines Tier III, stating that if MALPF farms become Tier III, they will be considered land that is, "not planned for sewer service, not dominated by agriculture or forest, and planned for large lot subdivision." She stated her strong objection that this language should apply to MALPF easement properties.

Mr. Bauer stated his opinion that it's naïve to think that the perpetuity clause in the ALPP easements will never be challenged, particularly if the legislation passes as currently proposed.

Mr. Lazdins encouraged the Board to attend the Planning Board meeting tomorrow night. He summarized the Board's main concerns to confirm that he could capture the essence of their input when he reports back to the Administration.

## **2) ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities**

Ms. Gowan introduced the next discussion item by giving an overview of Zoning Regulation Amendment (ZRA) 164 for the Conditional Use of Commercial Solar Facilities on ALPP land. In early December 2015, Council President Ball filed the ZRA with the County Council. Typically, the Department of Planning and Zoning (DPZ) will seek input from other agencies or departments that have technical expertise on the ZRA subject matter to assist DPZ in drafting a Technical Staff Report for submission to the Planning Board. Since it has the potential to significantly impact ALPP properties, DPZ staff wanted to give the ALPB an opportunity to review and comment on the proposed legislation. Ms. Gowan explained that the proposed ZRA would eliminate the current 2% maximum coverage restriction for commercial solar facilities, as is currently provided for in the Conditional Uses subsection of Section 106.1.

Ms. Pruim elaborated on the proposal by stating that the ZRA would expand the Conditional Use that was previously passed in Comprehensive Zoning. Specifically, the ZRA amendment would increase the size from the current maximum of 2% coverage of the property, to up to 75 acres of the parcel. In addition, Ms. Pruim highlighted the newly added Section M of the ZRA, which states that the Board “shall review any conditional use petition which proposes a commercial solar facility on parcels which are in the ALPP prior to approval by the Hearing Authority.”

Mr. Feaga stated that this program would be good for unproductive tracts of land. However, he voiced concern over the distance from the property to the nearest transmission lines. In order to connect to the closest substation to operate the solar facility, the new construction of transmission lines could exceed as much as \$1,000,000 per mile. Ms. Pruim stated that Council Chair Ball is cognizant of this issue, and recognizes that various criteria must be considered to determine how viable any particular site is.

Mr. Bauer commented that a percentage of the parcel would be a more appropriate constraint, rather than a flat acreage amount. He took issue with the idea of pristine farmland being used for solar production. The Board agreed that this was an important concern, and that land with superior agricultural soils should be prioritized for agricultural production, and not the construction of a solar facility.

Ms. Pruim addressed this concern by stating that Council Chair Ball’s Office has taken a global approach in researching practices of intercropping underneath solar panels. Although it can be done, she conceded that its success depends on a variety of factors (i.e. sun, shade, etc.). Ms. Moore found this statement to be idealistic from her experience in the farming industry. Ms. Burgess added that certain livestock could graze amongst the solar panels (i.e. turkeys, chickens, lambs, etc.).

Ms. Jones commented on the ZRA proposal by saying that there are two things to think about when considering a commercial solar facility: 1) the amount the County paid for the easement originally, which was partially determined by the percentage of prime and productive soils, and 2) the types of uses tangential to farming that are appropriate on preservation ground, and where should they be located to minimize conflict.

Ms. Moore asked whether the Board would have the opportunity to create criteria. Ms. Pruim stated that is how the ZRA is drafted, and that Dr. Ball is open to their comments. Ms. Levy asked for clarification as to whether the Board would be reviewing each application on a case by case basis. Ms. Pruim confirmed that the Board would offer recommendations on each application. Ms. Moore asked how much weight the recommendations would have. Mr. Lazdins answered by saying that the Board’s recommendations would be included with DPZ’s written testimony, so that their opinions would be heard before the Hearing Examiner made a final decision.

Ms. Moore asked whether their specific criteria could be included in the legislation. Ms. Pruim said that Dr. Ball wanted to keep things broad, but is open to other approaches. Board members expressed a variety of opinions as to how to proceed.

Ms. Jones commented that having bonds in place for full removal of the equipment is important if the solar company was to ever go bankrupt. Ms. Pruim stated that the ZRA draft addressed this issue under Section G.

Towards the end of the discussion, Ms. Moore summarized by stating that it would be worthwhile for the Board to create a policy that would outline specific criteria that would allow for a thorough evaluation of each application. Mr. Lazdins agreed that having criteria that evaluates environmental conditions (i.e. soils, topography, etc.) would further the goals of the Board and the ALPP. The Board agreed that they will move forward on drafting an official list of criteria during upcoming Board meetings.

### **3) Alternate Funding for the Storm Water Management Fee**

Per Mr. Feaga's request, the proposed elimination of the Storm Water Management Fee was added to the meeting agenda. Mr. Feaga opened the discussion by stating that in lieu of the Fee, the transfer tax used in funding the ALPP has been proposed as a replacement for meeting State requirements for storm water management. Mr. Feaga opined that this proposed replacement of funds is not fair to the ag community since the farmers have been practicing good storm water management activities for a long period of time.

Mr. Feaga stated that the commercial sector in the County is complaining because of the financial burden they have incurred due to this fee. It was the general consensus of the Board that agriculture is contributing a much higher percentage of their individual profits toward this goal than the 20% annually that the commercial sector claims they are responsible for.

Ms. Pruim stated that Howard County faces two questions to think about when confronted with the proposed elimination of the Fee: 1) can the County meet MS4 Permit requirements without the contribution of private property owners, and 2) what incentives are there to help encourage storm water management stewardship by the general public.

The Board generally agreed that the current Fee structure should remain in place, and that commercial owners should be mandated to pay the amount like everyone else. They supported this viewpoint by claiming that farmers have been on the forefront of storm water and nutrient management long before other parties became involved.

Ms. Levy spoke of the financial situation of the ALPP, and how it related to the sourcing of the alternate funding for the Fee. Specifically, Ms. Levy mentioned that the bulk of the program's installment purchase agreements that were acquired in the early 1990s will start to become due in 2019. The disbursement for these payments is expected to last until 2024 or 2025. Once the majority of these obligations are paid off, ALPP funding will become more flexible for other purposes. However, at this time, she stated that diverting the funding should be done carefully, if at all.

### **4) Application of Neonicotinoids on Howard County Park Property**

Ms. Levy described the policy written by the Howard County Department of Recreation and Parks which prohibits the application of the insecticide known as neonicotinoids, commonly referred to as neonics, on Howard County park property. Currently, agricultural operations that

lease county park land are exempt. The Board members stated that they thought this policy is already in place and questioned whether it is being proposed as legislation. Mr. Brown cited that if the neonicotinoids prohibition were to become a bill, it would be a major concern for the agricultural community, because what starts as a prohibition on county property expands to include all property.

Ms. Moore commented on the neonicotinoids situation by noting the resistance factor that certain pesticides have on a species. She stated that having a broader range of choices of different pesticides helps to mitigate species resistance. Moreover, Ms. Moore expressed concern about the manner of application, which is handheld spraying at the individual's discretion. This method leads to a lack of calibration and moderation of the insecticide. Ms. Moore also commented that there are already significant regulations passed by the Environmental Protection Agency enforcing pollinator protection measures in the agricultural industry. Therefore, any additional regulation related to neonicotinoids is unnecessary.

Mr. Feaga moved to adjourn the meeting, which was seconded by Ms. Jones and carried unanimously. The meeting adjourned at 9:49 pm.

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Joy Levy, Executive Secretary  
Agricultural Land Preservation Board



## EXHIBIT C

### HOWARD COUNTY AGRICULTURAL LAND PRESERVATION BOARD

#### SUMMARY OF MARCH 28, 2016 DISCUSSION REGARDING ZRA 164 (SOLAR)

##### **ZRA 164: Zoning Regulations Amendment, Conditional Uses, Commercial Solar Facilities**

Ms. Gowan updated the Board on the status of the proposed Zoning Regulations Amendment (ZRA) by explaining the Department's process of evaluation and recommendation of the ZRA to the Planning Board. She announced that the proposed ZRA will be presented to the Planning Board on April 28, 2016. Current zoning regulations do not allow commercial solar on ALPP property. Fundamentally, the proposal would eliminate this restriction, and allow properties to participate in this endeavor on up to 75 acres of ALPP land.

Mr. Feaga commented that the Board would like to review proposals for new solar operations on ALPP property early on in the process, if the proposed ZRA shall pass. By doing this, the Board would be able to provide guidance on the placement of the solar facility directly to the farmer.

Ms. Gowan spoke in-depth about the procedure for these matters. When a property in the ALPP wishes to create a solar operation, a conditional use petition would be received by the Department. After staff review, the request would be sent to the Board for their review and recommendation. Using a set of criteria to evaluate the property, the Board would recommend either approval or rejection to the Department. The Board has the option to develop the set of criteria to include certain mechanisms and conditions that could evaluate the factors of location and size of the facility. Once a recommendation has been made by the Board, the response will be incorporated into the DPZ staff report. In compliance with the zoning regulations, the Board's recommendations would be given additional weight in the report. At large, the Board's review would merely be a recommendation, and would not stop the placement of the operation if it were to eventually be approved by the Hearing Authority. In the end, the Hearing Authority would have the final say on any incoming requests for commercial solar facilities on ALPP land.

Ms. Levy clarified to the Board that their role in the review process would not be similar to forest conservation and wetland mitigation requests that take place on ALPP property. In this case, the Board would only be able to give a recommendation to the Department. Reasons for this authoritative difference are due to the zoning component of the Conditional Use.

Ms. Cable added that a few years ago, the state passed *HB 861/SB 259: Agricultural Easements – Renewable Energy Generation Facilities* that supported alternative energy on up to five acres of property in the MALPF program. She noted that the state regulations for alternative energy uses would be a good resource for the Board to use in developing their own criteria, and that they would be available for public comment by April 1, 2016.

Mr. Feaga mentioned that the Board's process for approving requests for tenant houses could serve as a similar reference in drafting a set of criteria. For instance, the criteria could specify

size, shape, and location of an incoming request, as well as its impact on the surrounding farmland. Ms. Cable expounded that the state's criteria is based on similar characteristics, along with site access to the generating facility.

Ms. Burgess noted that it would be helpful to know the potential yield that is granted from the amount of acreage used for a solar facility. In regards to the MALPF limitation, Ms. Cable shared that MDA has found that five acres is insufficient for a standalone solar operation. Mr. Zantzinger of Community Energy Solar, LLC agreed with Ms. Cable that five acres does not warrant a worthwhile solar operation. For now and the foreseeable future, a five acre facility generates the equivalent of 1 megawatt. As a result of this minimal production, most solar companies would not invest in constructing such a facility. On average, most companies will construct a solar facility on approximately 10 to 20 acres. The facility size is dependent on a variety of factors including the type of technology being used, the existing electrical infrastructure, and the site itself.

Mr. Zantzinger spoke in detail about his industry and the science of solar technology. Mr. Brown inquired about the state of solar in Howard County, and whether or not companies are finding the location to be beneficial. Mr. Zantzinger asserted that Maryland currently has a market for solar electricity, proving the need for more solar establishments. By and large, the sustainable nature of solar energy complements the state's goals and mandates for renewable energy.

Ms. Cable commented that the potential loss of agricultural tax assessment is another thing to consider when constructing commercial solar facilities on active farms. Mr. Brown believed that there should be a balance between agriculture and solar operations on the parcel. Both agreed that this becomes an even greater issue with smaller farms where space becomes limited.

Ms. O'Brien asked the Board if they would be interested in providing additional criteria concerning the acreage limitation outlined in the proposal. She suggested that the Board could specify a certain percentage amount that could be used in tandem with the current 75 acre maximum. Presently, the language does not have a percentage limitation, so in theory, a 75 acre farm could be used to construct a 75 acre solar facility.

Mr. Brown remarked that the proposed 75 acre maximum quantified in the ZRA is excessive. This becomes an even greater concern when numerous parcels in preservation are less than 75 acres. Mr. Feaga doubted the ability to even have a 75 acre solar farm, due to the lack of electrical infrastructure needed to support the generated wattage. Mr. Zantzinger agreed with Mr. Feaga's skepticism by stating it is very challenging for all requirements to be met when constructing solar facilities of that size. He reiterated that solar is largely based on the current electrical infrastructure, as well as the energy capacity that can be managed from the output.

Mr. Feaga expressed to the Board that he likes the idea of the farmer having the opportunity to earn a profit from solar generation, but at the same time dislikes the idea of tillable ground being covered with solar panels. He cited the similarity between constructing solar panels and constructing homes on farms; where both instances negate agricultural purpose and result in covered ground regardless. He supported the notion of granting the Board more power when it comes to the placement of solar panels, so that agricultural expertise would be a primary consideration.

Ms. Voss of Chanceland Farm voiced to the Board that she has been considering a solar facility on her property in West Friendship. The proposed site would be a rectangular strip in between a circular horse track and Interstate 70. Depending on setback restrictions from the interstate highway, the solar facility could be anywhere from 8 to 17 acres on her 191 acre farm. She explained that the soliciting company would still be interested in constructing the facility on only 8 acres if that were to be the case.

Moving forward, members of the Board still have the option to testify at the Planning Board meeting to voice their concerns for the proposal.