



Howard County

Department of Planning and Zoning

Subject: Commercial Solar Facilities Policy

To: DPZ staff, Agricultural Land Preservation Program (ALPP) Easement holders and other interested parties

From: ✓ Valdis Lazdins, Director
Department of Planning and Zoning

Date: April 4, 2017

Purpose: Howard County, Maryland, holds restrictive easements on certain agricultural properties, acquired pursuant to the Agricultural Land Preservation Act (the “Act”). The Howard County Zoning Regulations (HCZR) define a process by which a commercial solar facility (“CSF”) may be allowed on land encumbered by a Howard County Agricultural Land Preservation Easement (“Easement”). This policy outlines the County’s principal considerations and enforcement of ALPP Easements and the Act, with respect to siting a CSF on land encumbered by such an Easement.

Policy: Pursuant to the Act, Installment Purchase Agreements (the “IPA”) are issued to acquire certain Easements. These include payments of principal and tax-exempt interest to the grantor of an ALPP Easement and any successor of the IPA. However, if the income tax rules regulating the tax-exempt status are not followed, the tax-exempt status of the interest could be re-characterized as taxable interest. In consultation with its bond and tax counsel, the County has determined that the land use activities associated with CSFs could create significant federal tax risks, both for the County, as the issuer of the IPA, and the holder of the IPA. Accordingly, the County will not consent to installing a CSF on a property with an ALPP Easement, if the IPA is outstanding. The County will also take necessary actions to enforce its rights under its ALPP Easement and the Act.

For an Easement property without an outstanding IPA (for example, dedicated easements, cash payments, donations, or if the IPA has matured), the County will review a proposal to install a CSF and determine whether to enforce its property rights under the Easement and the Act with regard to the proposal. The County will review such applications on land encumbered by Easements without an outstanding IPA, on a case-by-case basis. It will consider all relevant factors, which could include, but are not limited to: size and location of the proposed CSF; soil quality of land outside the CSF area; impacts to Soil Conservation and Water Quality plans; effects to the agricultural and economic value of the land; and other factors related to the Easement or the Act.

Additional Considerations

- County approval of a CSF on land encumbered by an Easement is separate and independent of CSF conditional use approval by the Hearing Authority under the HCZR. Hearing Authority approval does not require nor guarantee approval by the County under its Easement. A landowner of an Easement property considering a CSF conditional use is encouraged to contact the County prior to any submittals to discuss how the County will consider the proposed CSF under the Easement terms.
- The County cannot provide tax advice to a landowner as to any tax consequences that may result from a CSF on an Easement, including any charitable contribution claimed by the landowner or the tax treatment of the interest paid under the IPA. A landowner proposing to site a CSF on an Easement is encouraged to consult his or her own tax advisor.
- The Agricultural Land Preservation Program Commercial Solar Facilities Policy provides additional information on submitting a CSF request to the Agricultural Land Preservation Board for review according to the HCZR.

Note: This policy is effective as of the date of this memorandum. Nothing in this policy is intended to limit or waive any right of the County under the Act and its Easement with regard to a proposal to site a CSF on an Easement.

For More Information Contact: The Department of Planning and Zoning at (410)-313-2350 or Joy Levy, Agricultural Land Preservation Program Administrator at: jlevy@howardcountymd.gov or 410-313-5407.

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