

**December 1, 2023****Mr. Andrew S. Johnston**Executive Secretary
Maryland Public Service Commission
William Donald Shaefer Tower
6 St. Paul Street 16th Floor
Baltimore, MD 21202

Subject: Comments for the Public Service Commission (PSC) Public Conference on the Certificate of Public Convenience and Necessity (CPCN) Application Process for Solar Energy Installations

Dear Executive Secretary Johnston:

Thank you for the opportunity to provide comments and concerns on the Certificate of Public Convenience and Necessity application process for solar energy installations.

Montgomery County is highly supportive of Maryland's Renewable Portfolio Standard Program, established pursuant to the 2019 Maryland Clean Energy Jobs Act (House Bill 1158 / Senate Bill 516), and understands that the state intends to produce 50% of its energy from renewable sources, such as wind and solar power, by 2030, and 100% renewable energy by 2040. Specifically, 14.5% is to come from solar generated energy by 2030. Most recently, the Maryland Climate Solutions Now Act of 2022 (Senate Bill 528) set a goal of a 60% reduction in greenhouse gas emissions by 2031, set a goal for the State to achieve net-zero statewide greenhouse gas emissions by 2045, and required certain state agencies, including the Public Service Commission, to consider the long-term impacts of their programs on the climate and affected communities.

Montgomery County takes its responsibility to contribute to the State's solar goals seriously, and the resulting legislation allowing for larger facilities in the AR (Agricultural Reserve) Zone and other zones reflects that commitment.

Between 2018 and 2021, the Montgomery County Council sought to support the renewable energy goals of the County and State of Maryland by allowing larger Solar Collection System facilities in certain zones and refining processes and standards for Solar Collections Systems in Montgomery County.

- Ordinance 18-43 (Zoning Text Amendment 18-01) revised the Solar Collection System use standards to allow larger facilities in certain zones; and generally amended the provisions for Solar Collection Systems.
- Ordinance 19-14 (Zoning Text Amendment 20-01) revised the Solar Collection System use standards to allow larger facilities in the AR Zone; amended provisions for Solar Collection Systems in other zones; and amended provisions for site plan approval in the AR Zone.

In direct response to the State's renewable energy goals, the solar initiatives were discussed and analyzed for two years through a public process, with input from multiple stakeholders, committees, and working groups, which resulted in applicable standards for solar projects in the AR Zone and other zones. Per [Chapter 59 Section 3.7.2](#) of the Montgomery County Zoning Ordinance, Solar Collection Systems are permitted as either a limited use or conditional use in certain zones provided certain criteria are met.

As requested, the Montgomery County Planning Department offers the following testimony for consideration based on the prompts provided from the Public Service Commission in the notice dated November 9, 2023. All but two of the prompts would be addressed by simply applying the county's standards for Solar Collection Systems, which were ultimately derived from decades of land use plans and policy in Montgomery County.

As for the process, pursuant to Sections 20-301, et seq. of the Land Use Article of the Annotated Code of Maryland, a public body must receive Planning Board approval to locate, construct or authorize "a publicly owned or privately owned public utility." The process for review of such projects is known as Mandatory Referral.

There are Uniform Standards and procedures for the Planning Board's review of such projects (see Planning Department website, <https://montgomeryplanning.org/wp-content/uploads/2017/10/Uniform-Standards-for-Mandatory-Referral-Review.pdf>), and the process is an efficient (60-days from application acceptance to public hearing) and established method for the Planning Department and Planning Board to provide the Public Service Commission a comprehensive review of Solar Collection Systems. This would include all relevant community and agency coordination and input, and a comprehensive analysis of applicable land use plans and standards.

- *How the Commission can encourage consistency of the CPCN application with a county's comprehensive plan and zoning laws, and compatibility with existing and planned future land use designations, including any areas designated for environmental or agricultural preservation;*

In 1980, the Montgomery County Council made one of the most significant land-use decisions in county history by approving and adopting the [Preservation of Agriculture and Rural Open Space Functional Master Plan](#), which established the 93,000-acre [Agricultural Reserve](#). Heralded as one of the best examples of farmland policies in the country, the Agricultural Reserve encompasses almost a third of the county's land resources along the county's northern, western, and eastern borders.

The Agricultural Reserve and its accompanying Master Plan, zoning elements, and the 2020 [Agritourism Study](#) were designed to protect and promote farmland and agriculture. Along with a sustained commitment to agriculture through the county's Office of Agriculture, this combination of tools helps retain more than 500 farms that contribute nearly \$300 million to Montgomery County's annual economy. This is a notable achievement in an area so close to the nation's capital, where development pressure remains perpetual and intense.

Per [Chapter 59 Section 3.7.2](#) of the Montgomery County Zoning Ordinance, Solar Collection Systems are permitted as either a limited use or conditional use in certain zones provided certain criteria are met. For the purposes of this testimony, we will focus on solar projects in the AR Zone, which require a conditional use approval from the Montgomery County Hearing Examiner, subject to demonstrating that the application meets certain criteria.

Per Section 59.3.7.2.B.2., a Solar Collection System may be allowed as a Conditional Use in the AR zone if it exceeds a facility rated at more than 200% of on-site energy use and produces less than 2 megawatts (AC) and is subject to review and approval by the Hearing Examiner.

To ensure that agriculture remains the primary use in the Agricultural Reserve, in addition to coordination with the Montgomery County Office of Agriculture, the Montgomery County Planning Department, the Montgomery County Department of Permitting Services, and the Montgomery County Planning Board, Solar Collection Systems are prohibited on soils classified by the United States Department of Agriculture as either Soil Classification Category I or Category II. The total area of all solar projects cannot exceed 1,800 acres of land.

To regenerate and improve non-prime agricultural soils in the Agricultural Reserve, the area under the solar facility must be actively used for farming or agricultural purposes by either: pollinator-friendly plantings under the Maryland Pollinator-Friendly Designation Program; planted, managed, maintained, and used for grazing farm animals; and/or, planted, managed, maintained, and used for any other agrivoltaic plant material.

To ensure adequate protection of environmentally sensitive features, minimize adverse environmental impacts, and ensure compliance with state and local water quality standards, Solar Collection Systems are prohibited in stream buffers, on wetlands, and on slopes equal to or greater than 15%. In addition, grading and any soil removal must be minimized, scraping topsoil from the site is prohibited, and clearing any tree in or on a floodplain, stream buffer, steep slope, critical habitat, contiguous forest, or historic site, and any champion tree or other exceptionally large tree is prohibited, unless a disturbance is allowed under Forest Conservation Law Section 22A-12(b)(1). Except for pad areas for transformers and electrical equipment, the use of concrete is prohibited.

To ensure adequate screening, removal of trees or landscaping otherwise required or attached as a condition of approval of any plan, application, or permit for the installation or operation of a Solar Collection System is prohibited. Screening that satisfies Section 59.6.5.3.C.8 (Option A) on the sides of the facility within 200 feet of any neighboring house is required; however, a fence may not be required or prohibited.

As stated previously, Montgomery County's Agricultural Reserve is a prized and valuable resource. It is a significant economic driver in terms of commodity farming, food systems, and agritourism, and provides opportunities for diverse communities to access and remain in farming. These standards were developed after a lengthy public process and are intended to promote up to 1,800 acres of Solar Collection Systems on agricultural land in Montgomery County, while also promoting and preserving agriculture as the primary use and industry within the Agricultural Reserve. These standards also ensure conformance with our land use plans including the 2002 [Montgomery County Heritage Area Management Plan](#), [Thrive Montgomery 2050](#), and the 1980 [Preservation of Agriculture and Rural Open Space Functional Master Plan](#).

Thus, to ensure consistency with Montgomery County comprehensive land use plans and zoning laws, we respectfully request that the Public Service Commission incorporate the zoning standards listed above into the CPCN process.

- *How CPCN applicants can best avoid negatively impacting sites with historical, cultural, or environmental significance, including through the consultation of appropriate historical, cultural, or environmental associations;*

We recommend that applicants follow standard noticing for applications in Montgomery County and hold a pre-application meeting for the community. Additionally, we recommend that applications be subject to

Mandatory Referral review. This would ensure that all relevant historical, cultural, environmental, and relevant community associations and community members would be notified and engaged. This would provide an obvious touch point for the applicant to make modifications to their application in response to community input, and it would provide assurances to the community that they have the opportunity to participate in the process.

- *How CPCN applicants can maximize economic benefits to affected counties, including through the offer of community benefits, as well as adequately addressing negative impacts to tourism or land values;*

Agriculture and agritourism are two of the most important economic factors for consideration in the Agricultural Reserve. Agritourism opportunities are taking off in Montgomery County and helping to diversify the economic portfolios of farmers and landowners in the Agricultural Reserve. We strongly suggest that potential applicants consider recommendations of the Agritourism Study and identify certain improvements and public projects and initiatives identified in the Agritourism Study to help support related community benefits and strive to offset negative impacts to tourism and land values. Requiring applicants to go through the Mandatory Referral process, will ensure that these types of benefits are identified.

- *How CPCN applicants can adequately address negative aesthetic impacts, including through mitigation of any glare caused by the project, as well as the use of landscape buffers and fencing;*

As mentioned above, the county's zoning standards, Section 59-3.7.2, provide criteria for review of solar facilities that includes aesthetic impacts. Specifically, removal of trees or landscaping is prohibited if required as a condition of the approval. In addition, certain systems may have setback requirements and use panels or shingles that are textured glass or have an anti-reflective coating. In general, this can be addressed by following the county's established standards for landscaping and fencing.

- *How CPCN applicants can adequately address any adverse impacts related to construction, including noise impacts, traffic disruptions, and soil erosion;*

Impacts related to construction activities, including soil erosion control, should be addressed and enforced by the Department of Permitting Services. Soil erosion prevention will further be addressed by applying the standards identified in the zoning ordinance and listed above.

- *How the Commission can ensure full mitigation of any harms, including how to ensure an adequate decommissioning plan;*

This can be addressed by following the established standards of the county's zoning ordinance, which include requirements for decommissioning. Specifically, Section 59-3.7.2.B.1.b.ii.f provides that a system must be removed within 12 months of the date the use is discontinued or abandoned.

- *Whether any process improvements for the filing and consideration of solar CPCN applications should be implemented, including what information should be included in an application, and the appropriate timeline for application adjudication;*

Using the Mandatory Referral process set forth in the Land Use Article will allow for needed coordination and input from the community at large as well as related government agencies. This process has a 60-day timeline, with some ability to extend this if the applicant needs more time to address concerns. It also sets forth the requirements for application materials. These include statement of justification, location map, transportation map, site plan of existing and proposed uses of property, utilities and right-of-way map, forest conservation

plan, and landscape and lighting plans, just to name a few. In addition, adhering to the established standards of the county's zoning ordinance, which allows for solar projects in the AR Zone, will also greatly improve the process.

- *How to ensure adequate opportunity for stakeholder input, including specifically how to ensure county feedback on any CPCN application;*

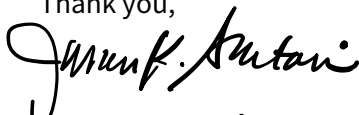
As stated previously, this can be addressed by requiring applicants to follow Montgomery County's standard noticing and pre-application processes, and the Mandatory Referral application and process. This would ensure that all relevant community Homeowners Associations, community members, and relevant stakeholders would be notified and engaged. This would provide an obvious touch point for the applicant to make modifications to their application in response to community input, and it would provide assurances to the community that they have opportunity for public participation in the process, and a comprehensive analysis of applicable land use plans and standards.

- *Other concerns regarding utility company approvals of solar projects and connections to the grid;*

The Montgomery Planning Department has heard from more than one potential solar project applicant that utility approvals for projects and grid connections remains elusive in Montgomery County. While we have only approved two solar projects in the Agricultural Reserve to date, both projects had no problem meeting any of the required standards discussed above. In fact, solar projects are generally simple projects to review compared to other mixed-use, commercial, residential, and other Conditional Use applications we typically review. Montgomery Planning is very excited to work on solar projects and assist with meeting local and state renewable and sustainable energy goals. Before further changes to process and standards for solar projects at the state level, we urge the legislature to coordinate better responsiveness and infrastructure with utility companies to allow additional connections and capacity to the utility grid. We believe that is the real obstacle to implementing our collective solar goals.

In conclusion, while Montgomery County will continue to aggressively strive to assist the State in meeting our collective renewable energy goals and we will continue to promote solar projects in our precious Agricultural Reserve, we respectfully request that the Public Service Commission mutually support our longstanding 1980 *Preservation of Agriculture and Rural Open Space Functional Master Plan*, our 2002 *Montgomery County Heritage Area Management Plan*, our General Plan, *Thrive Montgomery 2050*, and the 2020 *Agritourism Study*, by adhering to the standards identified in [Chapter 59 Section 3.7.2](#) of the Montgomery County Zoning Ordinance and incorporating the Mandatory Referral process into the PSC process.

Thank you,



Jason K. Sartori

Planning Director