

Department of Community Development Staff Report

PROPERTY OWNER(S): Ruther Allen Family LLC, Kettle Wind Family LTD Partnership and Michael & Brenda Morgan

APPLICANT: Sowego Energy Facility, LLC

LOCATION: 11221 & 11223 Bristersburg Road and 2356 Cromwell Road, Catlett

DISTRICT: Cedar Run

PIN(S): 7839-84-9885-000, 7839-63-8827-000 and PIN 7849-11-3813-000

ACREAGE: Total: 522.42 acres; Use Area: +/- 485 acres

ZONING: Rural Agricultural (RA) and Village (V)

LAND USE: Rural and Village of Bristersburg

MEETING DATE: January 13, 2022

REQUEST: COMR-21-016654: An application for a Solar Facility Siting Agreement, pursuant to *Code of Virginia*, § 15.2-2316.6 et seq., related to a proposed 80-megawatt utility scale solar project.

OUTSTANDING ISSUES: Staff has identified several outstanding issues that the Board of Supervisors should consider as a part of evaluating the proposed Solar Siting Agreement.

1. A Utility Scale Solar Facility is considered an Electrical Generating Plant pursuant to Zoning Ordinance Section 3-320.5. Approval of a Special Exception is required to permit the use in the RA District. That process will evaluate the proposal against standards defined in the Zoning Ordinance.
2. The project also proposes an Electrical Substation, which pursuant to the Zoning Ordinance (§ 3-320.5) requires approval of a Special Exception in the RA District. This use also requires a Comprehensive Plan Compliance Review, in accord with *Code of Virginia* Section 15.2-2232, to determine if the proposed location is substantially in accord with the Comprehensive Plan. These two applications can be processed concurrently.

3. The Applicant's "Conceptual Plan with Aerial" shows proposed solar equipment in a portion of the property zoned Village (V). The Zoning Ordinance (§ 3-320.5) does not permit Electrical Generating Plants and Facilities in the Village Zoning District.
4. The Morgan Property (PIN 7849-11-3813-000) is within the Southern Fauquier Agricultural and Forestal District. As such, to ultimately approve the Special Exception, the Board of Supervisors will need to make a finding that the application is not in conflict with the purposes for which the District was created.
5. The application materials include an estimate of the project's revenues which are based on the Applicant constructing an 80-megawatt facility. However, a facility of that size may not be able to be fully achieved due to several factors. Therefore, depending on how large of a facility is ultimately constructed, the actual revenue received may be less than this initial estimate. Please see the last paragraph of the Topic Description portion of this Staff Report for additional information.

Topic Description:

The Applicant has requested that the Board of Supervisors consider a Solar Facility Siting Agreement, pursuant to *Code of Virginia*, § 15.2-2316.6 et seq., related to a proposed 80 megawatt utility scale solar project. Siting agreements allow developers and localities to negotiate development impact mitigation, compensation, and other assistance which may be beneficial to localities for certain solar projects being sited in opportunity zones in Virginia. Siting agreements may include terms and conditions, including:

1. Mitigation of any impacts of such solar facility;
2. Financial compensation to address capital needs set out in the (a) Capital Improvement Plan, (b) current fiscal budget, or (c) an adopted fiscal fund balance policy; or
3. Assistance by the applicant in the deployment of broadband.

It should be noted that if the Board of Supervisors accepts this siting agreement, the Applicant still must obtain necessary zoning approvals (including a Special Exception) before the project may be developed. Additionally, failure of the Applicant and the Board of Supervisors to enter into a siting agreement may be considered as a factor in the land use approval process; however, it cannot be the sole reason for denial. Lastly, approval of a siting agreement by the Board of Supervisors would deem the solar facility to be substantially in accord with the Comprehensive Plan, thus satisfying the requirements of Virginia Code § 15.2-2232 as well as Zoning Ordinance § 5-2001.3.

The Applicant is proposing an 80-megawatt facility which would be located on approximately 485 acres across three individual properties totaling 522.42 acres. The site was selected based on its overall suitability for the development of a utility scale solar facility. Some of the favorable aspects include

the land being conducive for solar construction; the site being traversed by a Dominion transmission line that can accept the project's full output; the site being in a remote part of the County; and the project not impacting significant viewsheds. The Applicant has stated that while the project is sited on agricultural land, it would require minimal grading due to the favorable topography. As a result, the soils would be well preserved and prepared to return to agricultural use. Additionally, the project would allow for regeneration of soils after particularly intensive uses (sod production and timber harvesting).

Concept Plan with Aerial Image



As a part of the proposed Solar Facility Siting Agreement, the Applicant has offered to make annual capital payments to the County following commercial operation of the facility. The payments are proposed to be graduated over the life of the project. In years 1 through 10 the Applicant would contribute \$800 per megawatt; which would increase to \$1,000 per megawatt in years 11 through 20; \$1,200 per megawatt in years 21 through 30; and \$1,400 per megawatt in years 31 through 40. If the

project develops at the proposed 80 megawatts, the sum of the payments would be \$3,520,000; which would be an average of \$88,000 per year.

The agreement specifies that capital payments may be applied, by the County, towards critical infrastructure projects to improve quality of life, including but not limited to expanding educational opportunities, funding to facilitate the purchase of conservation easements through the County Conservation Easement Service District, health care (telehealth) and economic development through significant investments in broadband deployment throughout the County. The payments may also be used for any of the following purposes: (a) to fund the Capital Improvement Program (CIP) of the County (b) to meet needs of the current fiscal budget of the County, (c) supplement or establish any fund for which the County maintains a balance policy; (d) support broadband funding, all as permitted in Virginia Code § 15.2-2316.7.

The Solar Facility Siting Agreement also includes the granting of a conservation easement over the property immediately after the project first generates electricity for which compensation is received by the Applicant. The conservation easement is to allow for the commercial operation and maintenance of the utility scale solar project, but would prohibit any other uses other than agricultural and open space uses. The easement would also prohibit division of the property. Staff has concerns regarding this approach as this is not how a conservation easement typically works; conservation easements are used to conserve a property and not to permit an industrial use. If the intent of a conservation easement is to extinguish development rights on the properties, there may be an alternative mechanism that is more appropriate.

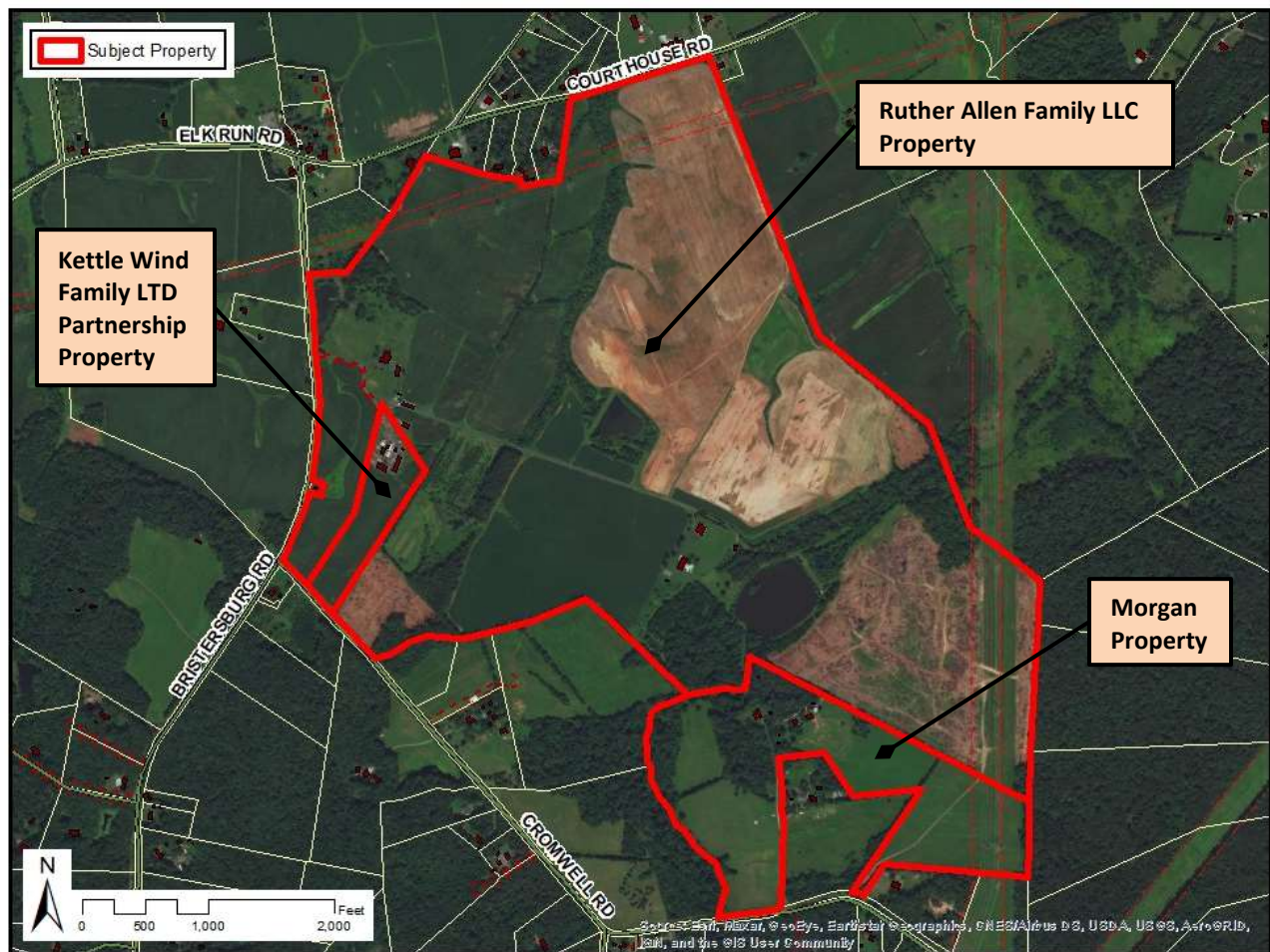
The Applicant has estimated that an 80 megawatt project would generate \$11,763,342 in revenues over the 40 year life of the project, approximately \$294,083 per year. The total would include \$1,942,059 in Real Estate Taxes, \$6,301,282 in Personal Property Taxes, and \$3,520,000 in Capital Payments as outlined in the Solar Facility Siting Agreement. Staff would note the estimated taxes have not been verified by the Commissioner of the Revenue. It should also be mentioned that the estimated 80 megawatt facility may not be able to be fully achieved due to several factors. These include (1) the Concept Plan does not appear to address stormwater management, which could reduce the land available to use for solar panels; (2) the concept plan includes solar equipment in a portion of the property zoned Village (V), and the Zoning Ordinance (§ 3-320.5) does not permit Electrical Generating Plants and Facilities in the Village Zoning District; (3) the Morgan Property (PIN 7849-11-3813-000) is within the Southern Fauquier Agricultural and Forestal District, and an Electrical Generating Plant may be determined to conflict with the purposes for which the District was created; and (4) compliance with the Zoning Ordinance, particularly “Additional Standards for Utility Scale Solar Projects” (§ 5-2003) has not been evaluated at this time, and additional setbacks or buffer areas may be needed or conditioned.

Property Location, Zoning and Land Use:

The project area consists of three individual properties, one owned by Ruther Allen Family LLC (PIN 7839-84-9885-000), one owned Kettle Wind Family LTD Partnership (PIN 7839-63-8827-000) and one owned Michael and Brenda Morgan (PIN 7849-11-3813-000). The properties total 522.42 acres in size and are located near and within the Village of Bristersburg. The project area is generally defined by Courthouse Road (Route 609) to the north, Bristersburg Road (Route 616) to the west and Cromwell Road (Route 639) to the south. An existing electric transmission line and associated easement generally

define the project's eastern limits. Town Run, a tributary to Town Run, and a tributary to Elk Run, as well as their associated floodplain and wetland areas also traverses the center of the project area.

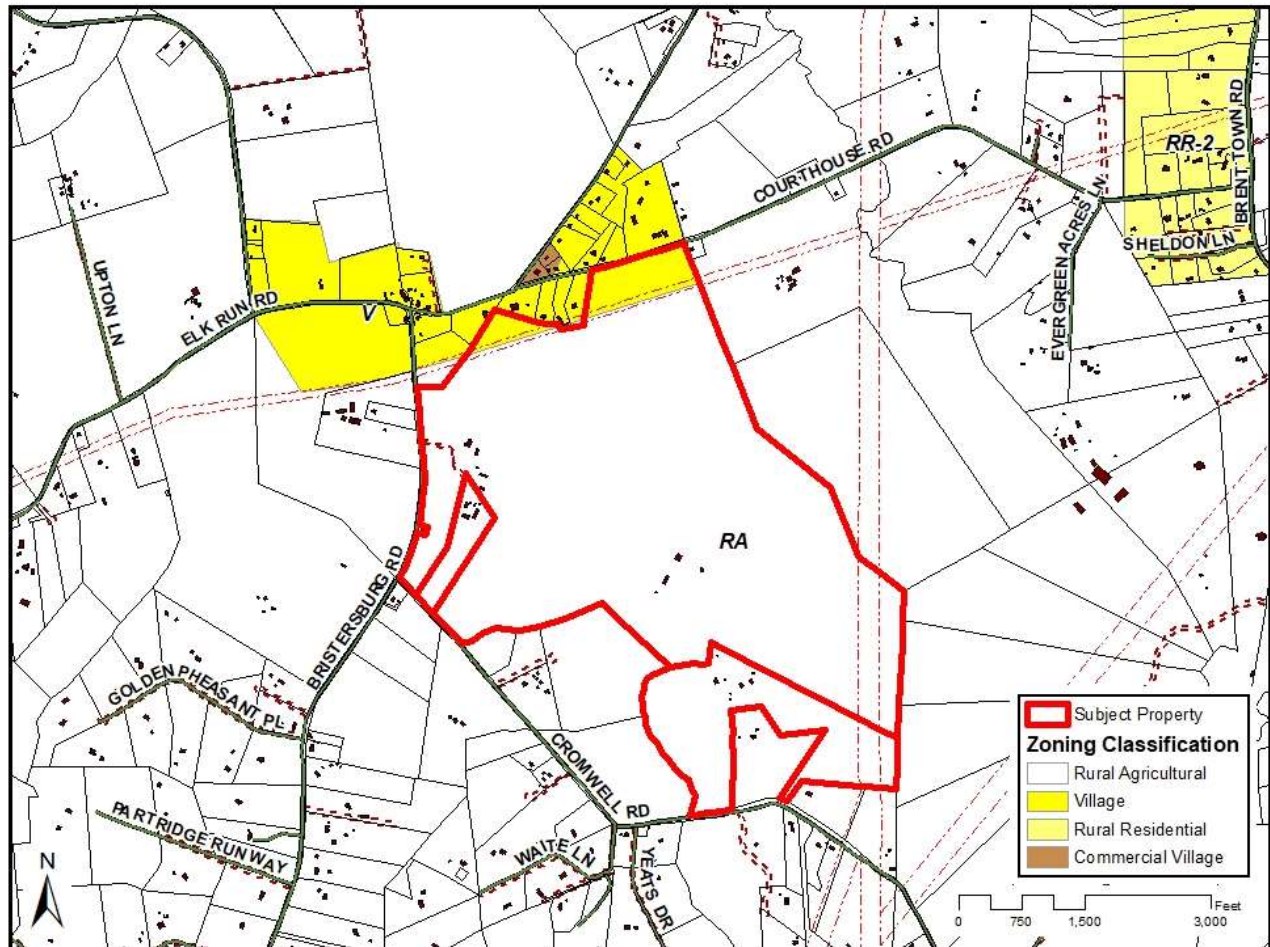
Site Aerial Map



The Ruther Allen Family LLC property is located at 11221 Bristersburg Road and is 440.38 acres. A majority of the property is zoned Rural Agriculture (RA) with approximately 20.7 acres, along Courthouse Road, being zoned Village (V). The property contains two residences, as well as multiple residential and agricultural outbuildings. It has historically been used as a crop farm and is currently being used for crops and sod production. In 2006, staff analyzed the subdivision potential of the property and determined that it had the density for a maximum of 42 lots, including a residue lot. The V zoned portion of property has the density for 28 of the 42 total lots. The RA zoned portion of the property had the density for 14 divisions, with a non-common open space requirement of 366.33 acres. On April 3, 2020, an 11.59-acre parcel (the Kettle Wind Family LTD Partnership property) was subdivided from the property analyzed in 2006. As such, the total number of RA divisions has been reduced, and the subdivision potential would need to be updated to determine how many divisions can occur in the RA portion of the property. Staff should also point out that the estimate for Village lots is simply based on the maximum density allowed per the Zoning Ordinance. Staff believes that when factoring in the shape of the V zoned portions of the property, environmental features, public street frontage requirements, central water requirements and sanitary sewer needs, it may be extremely

difficult to realize the full subdivision potential of the property. If the Board is interested in knowing the actual development potential of the property it could ask the Applicant to update the subdivision potential research and prepare a high level concept plan of how the property could be subdivided. This concept plan could be initially evaluated by staff to determine its compliance with the Zoning Ordinance requirements, what additional approvals would be needed, and ultimately give a better estimate of the property's actual subdivision potential.

Zoning Map

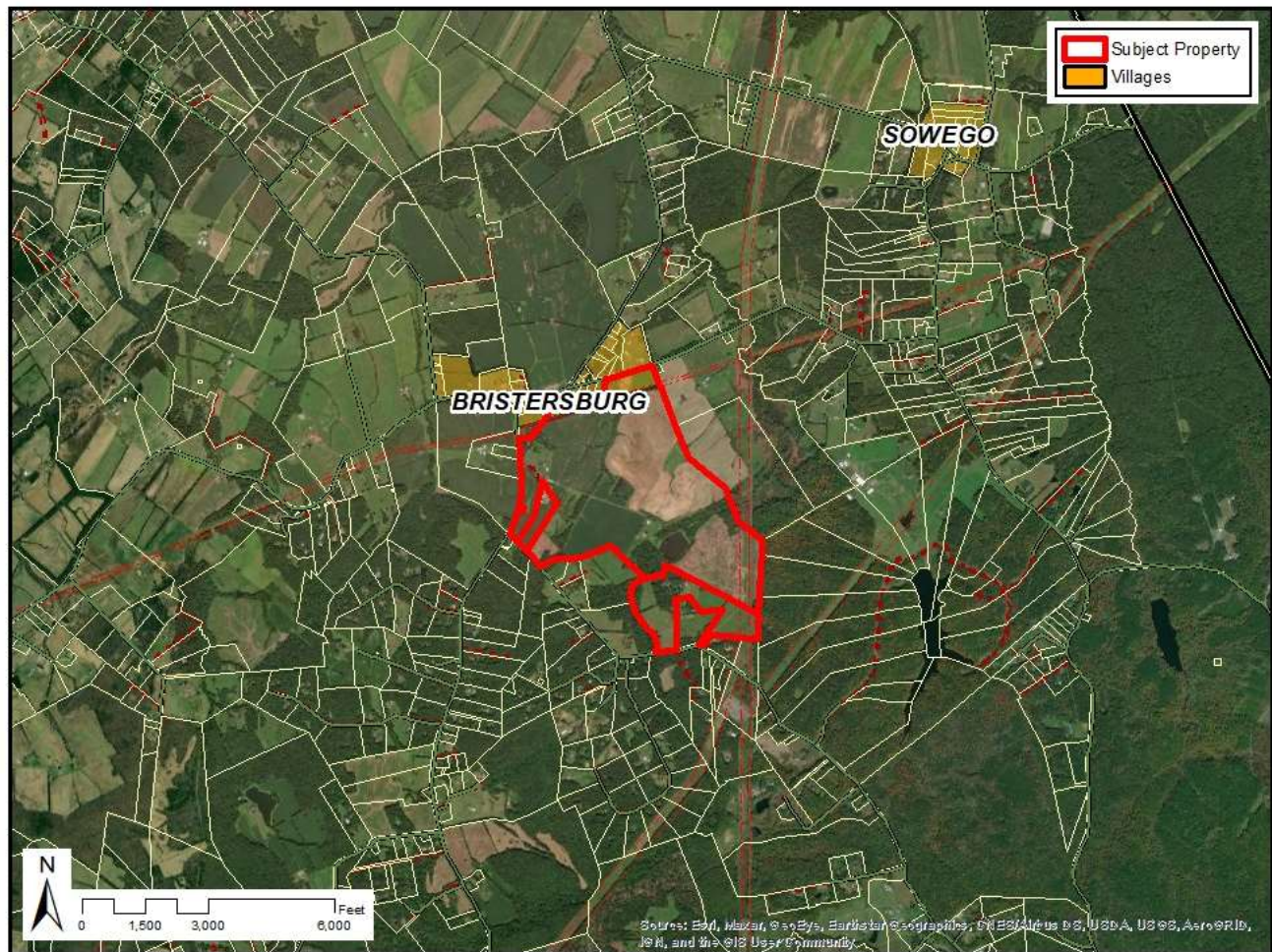


The Kettle Wind Family LTD Partnership is located at 11223 Bristersburg Road and is 11.49 acres. The entire property is zoned RA. The property contains multiple agricultural outbuildings and structures. It also contains a cell tower in the northern portion of the property. The property is being used for agricultural purposes. The subdivision potential of the property has not been analyzed. However, due to the property's shape and minimal road frontage, it is unlikely that the property could be further divided.

The Morgan Property is located at 2356 Cromwell Road and is 70.44 acres. The entire property is zoned RA, and is a part of the Southern Fauquier Agricultural and Forestal District. The property contains a residence, as well as a residential outbuilding. It is being used for residential and agricultural purposes. The subdivision potential of the property was analyzed in 2020. It determined that a

maximum of 5 lots, including a residue lot, could be created from the parent parcel with a non-common open space requirement of 59.877 acres. Staff should mention that estimate is simply based on the maximum density allowed per the Zoning Ordinance; it does not factor in the shape of the property, environmental features, public street frontage, the ability to construct drainfields, etc. As such, it may be difficult to realize the full subdivision potential. If the Board is interested in knowing the actual development potential of the property it could ask the Applicant to prepare a high level concept plan of how the property could be subdivided. This concept plan could be initially evaluated by staff to determine its compliance with the Zoning Ordinance requirements and what additional approvals would be needed.

Regional Aerial Map

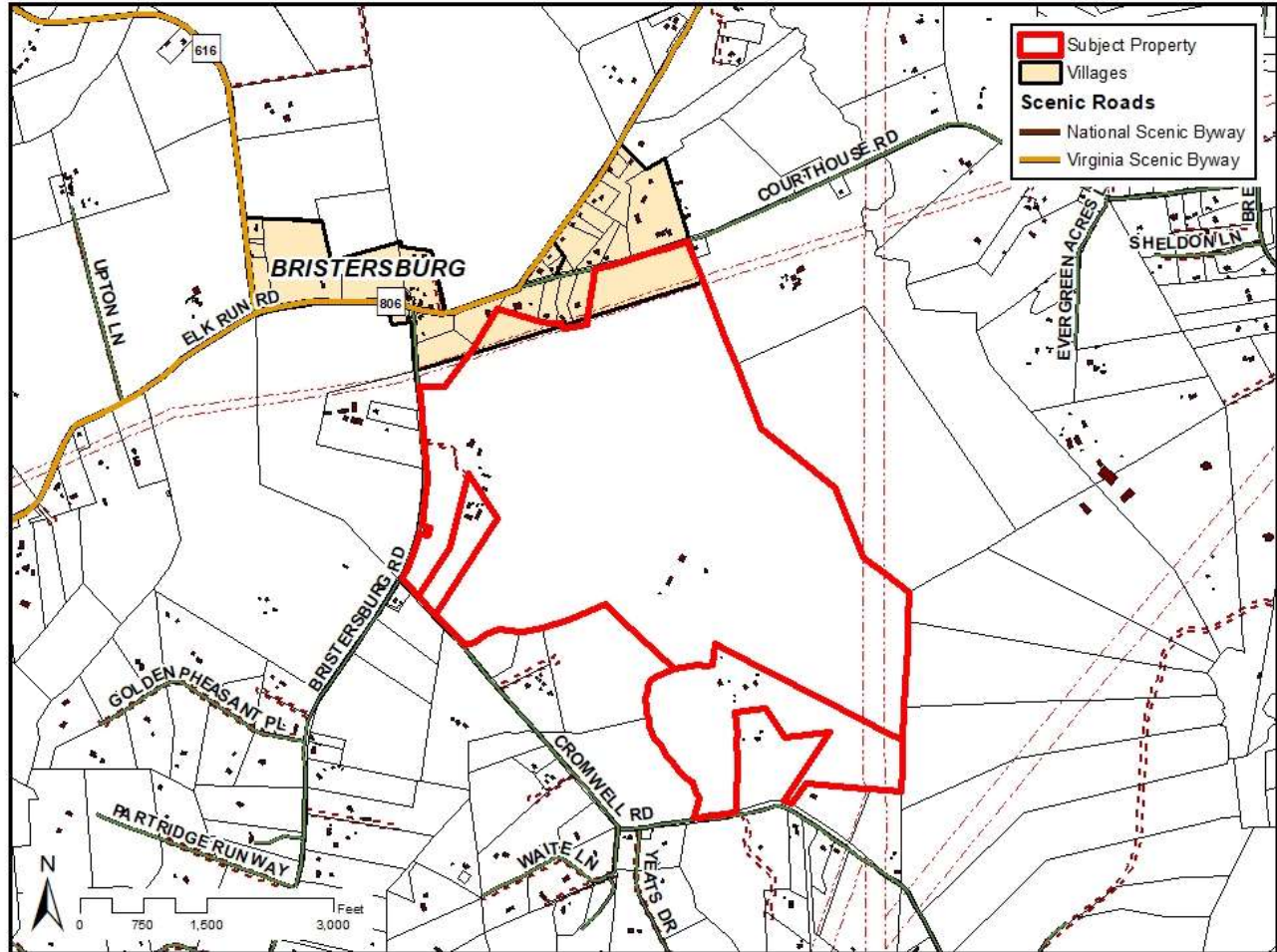


Surrounding Zoning and Current Land Use:

A majority of the surrounding property is zoned Rural Agricultural (RA), and is used for rural residential and agricultural purposes. Several of these properties are under a Purchase of Development Rights (PDR) easement, Open Space easement or County Conservation Easement. Additionally, a majority of the surrounding area (including the subject properties) is within the Elk Run Rural Historic District, with several resources having been identified. Within the Village of Bristersburg, the properties are zoned Village (V) and Commercial Village (CV). This area primarily includes smaller

residential lots. It also includes the Zoar Baptist Church (organized in 1822) and the Mt. Horeb United Methodist Church (founded in 1848). Bristersburg lies within the Elk Run Rural Historic District, and a portion of the Village was listed on the National Register in 2009. See Comprehensive Plan section of this report for additional information.

Land Use Map



Comprehensive Plan:

A majority of the property is an area of the County designated for Rural Land Use. Chapter 8 of the Comprehensive Plan addresses land use in the rural areas of the County. It contains policies and plans to protect and preserve farmland, historic sites and open space. The Rural Land Use Plan is focused on preserving the physical beauty, historical heritage and environmental quality of the County, while growing the rural and agricultural economy to better serve its people and protect its heritage.

The Rural Land Use Plan also offers guidance on alternative energy operations in rural areas. The Plan states that the *“County may permit non-agriculturally related commercial uses by special exception or special permit in the rural lands if the use is agriculturally and rurally compatible in scale and intensity; poses no threat to public health, safety and welfare; contributes to the preservation of historically significant structures or landscapes; and if it helps to preserve farmland and open space*

and continue agricultural operations.” It is recognized that solar panels have been a supplemental source of power for residential and farm operations, and that recent developments in the industry have seen the expansion of utility scale photovoltaic energy generation facilities into rural areas. The Plan suggests that as large scale solar farms become more common, the County may consider regulations to ensure that these operations do not detract from the rural character of the County and from the traditional and emerging farm economy. Additionally, as the industry expands, the County should continue its policy principles of ensuring that these uses do not detract from the basic agricultural character and economy of its rural lands.

A small portion, approximately 20.6 acres, of the Ruther Allen Family, LLC property (PIN 7839-84-9885-000) is within the Village of Bristersburg. Chapter 7 of the Comprehensive Plan addresses land use in the County’s 43 identified Villages. The villages are neighborhoods, workplaces, and destinations that will remain defining features of the County into the future. The overall goals of Chapter 7 are to “*Maintain the unique, visual identity of Fauquier County’s villages and incorporate new development in a way that complements existing communities*” and to “*Conserve, protect and, where possible, restore village cultural resources to maintain unique, livable communities while preserving these assets for future generations.*” New development in and around the villages is to be designed to be visually compatible in terms of street pattern, design, building footprints and setbacks. Additionally, the plan states that economic development within the villages should work to promote, not destroy, the unique character and charm of Fauquier County’s oldest and smallest communities.

Bristersburg is a well-preserved historic village that was listed on the National Register in 2009. It was once an important commercial center in southern Fauquier County, with numerous stores and businesses. The district includes 29 historic resources within a 28 acre area. The historic district contains four dwellings with several associated outbuildings, five commercial buildings, a church and cemetery, and a former school. The earliest surviving structure is a commercial building that is now encapsulated within a later dwelling located at 11120 Elk Run Road. According to local tradition, the core of this two-story, four-bay frame dwelling with Folk Victorian architectural details was constructed ca. 1838 and is made of log. The historic buildings in the district date from the mid-19th to mid-20th centuries and are representative examples of architectural styles and forms popular in the region during that time, including Folk Victorian and Greek Revival styles.

Additionally, sections of the Comprehensive Plan contain guiding principles, policies, goals and objectives which are intended, either explicitly or implicitly, to guide the siting of solar facilities in Fauquier County. Each relevant section is listed below followed by a staff analysis in *italics*.

Chapter 1: Introduction and Vision

Guiding Principle A: The County’s natural and cultural heritage are intrinsic to the County’s character.

Policy 1: Preserve the County’s cultural, ecological and environmental resources to ensure the continued quality of life within the County for its residents and visitors.

Sensitive environmental areas will be avoided; the Zoning Ordinance (§5-2003.9) requires all 100-year floodplains, wetlands and steep slopes to be protected from clearing, grading, filling or construction, except as required for essential infrastructure such as road or utility crossings. The

Zoning Ordinance (§5-2000.3.h) also requires, as a part of the Special Exception application, the Applicant to submit the location of any existing historic or cultural site, scenic highway, or public facility within one mile of the project boundary. Both of these requirements will be further evaluated during the Special Exception and Site Plan processes.

Policy 2: Identify and protect productive agricultural and silvicultural lands.

The property has historically been used for agricultural purposes and is currently being use for crop and sod production. Additionally, a portion of the property was recently timbered. Based on an analysis of aerial imagery, it appears that almost all of the productive agricultural lands on the property will be utilized for the solar facility throughout the life of the project.

Policy 3: Promote the identification, evaluation, registration and protection of heritage/historic resources, as well as the business opportunities presented by their rehabilitation and reuse.

This will be further evaluated during the Special Exception and Site Plan processes. As mentioned above, the Bristersburg Historic District was listed in the National Register of Historic Places in 2009. It includes 29 historic resources within a 28 acre area.

Policy 5: Safeguard the environment with water and air quality and natural resource management.

As mentioned previously, the Zoning Ordinance requires the project to be located away from streams, wetlands, sensitive ecological features, and outside of the floodplain. Furthermore, the facility would be primarily placed within existing sod fields and generally will not require significant clearing of intact woodlands. Potential impacts to water and air quality would be further considered as part of the Special Exception and Site Plan processes.

Guiding Principle C: A strong and diverse local economy is necessary for the sustained vitality of the County.

Policy 1: Encourage and support the growth of existing businesses and investment of new businesses in the County and promote opportunities for Fauquier County residents to work in the County.

This will be further evaluated during the Special Exception and Site Plan processes.

Policy 2: Continue to promote a vibrant and robust farming and agricultural sector of the economy.

As mentioned above, the facility will remove almost all of the property's productive agricultural area for at least the projected 40 year life span of the project.

Chapter 2A - Natural Resources

GOAL 1: Seek to realize benefits beyond responsible natural resource stewardship.

Objective 1.5: Promote and encourage the retention and enhancement of the County's diverse scenic resources.

Both Elk Run Road (Route 806) and Bristersburg Road (Route 616) have been designated as Virginia Scenic Byways. Any potential impacts to these scenic resources will be further evaluated as a part of the Special Exception and Site Plan processes.

GOAL 3: Encourage the retention and restoration of the County’s terrestrial resources so that these resources and habitats are sustained and not degraded.

Objective 3.3: Promote the preservation of agricultural and forested areas through the use of Agricultural and Forest Districts, easements and other voluntary means.

The Ruther Allen Family LLC (PIN 7839-84-9885-000) and Kettle Wind Family LTD Partnership (PIN 7839-63-8827-000) properties are not within an agricultural or forestal district nor subject to any type of conservation easement. However, the Michael and Brenda Morgan property (PIN 7849-11-3813-000) is within the Southern Fauquier Agricultural and Forestal District. Additionally, there are several nearby properties under conservation easements and/or within the Southern Fauquier Agricultural and Forestal District. (Please see map at the end of this report.) Any of the subject parcels could potentially be placed in a conservation easement and receive tax benefits associated with doing so. The application will not promote the preservation of agricultural areas and will likely eliminate the ability to actively farm the land for the lifespan of the project.

Objective 3.4: Encourage the retention and sustainability of the County’s natural biological diversity.

A majority of the area to be covered by solar panels is currently used for crop and sod production, which offers little in the way of supporting biological diversity. However, historically a large proportion of the property contained woodlands, which have been harvested.

Chapter 8: Rural Land Use Plan

Goal 2: Preserve the rural character of the majority of Fauquier County.

Objective 2.1: Encourage land uses that are intrinsic to the character of Fauquier’s Rural Lands.

Action 2.1.4: Focus on the protection of prime agricultural soils, the creation of large contiguous blocks of preserved farmland, key open space resources such as stream valleys, steep wooded slopes and other sensitive environmental areas as a distinct priority in the implementation of open space protection policies.

Almost all of the property which is to be developed with the proposed solar facility contains prime agricultural soils, as classified by the Zoning Ordinance. This area will be removed from agricultural production for the life span of the project. (Please see map at the end of this report.)

The property has three distinct drainage corridors, one of which has steep wooded slopes. These areas are not proposed to contain any of the solar panels. Sensitive environmental areas will be avoided; the Zoning Ordinance (§ 5-2003.9) requires all 100-year floodplains, wetlands and steep slopes to be

protected from clearing, grading, filling or construction, except as required for essential infrastructure such as road or utility crossings.

Goal 3: Ensure that Fauquier County has a thriving rural economy.

Objective 3.5: Ensure that businesses located in the rural lands do not adversely impact the intrinsic character of the area.

Action 3.5.1: Ensure that permanent structures supporting a rural business or tourism enterprise are significantly set back from property boundaries, are appropriately sized, do not obstruct views of significant natural features from adjacent properties or public roads, and minimize light and noise pollution.

The Zoning Ordinance requires equipment to be set back a minimum of 100 feet from the project boundary and 150 feet from any existing residential dwelling. Additionally, a viewshed analysis is required to be submitted as a part of the Special Exception application. These two requirements will be evaluated as a part of the Special Exception process, should an application be filed.

Action 3.5.4: Explore additional standards for locating alternative energy generating facilities to ensure preservation of environmental, cultural, and scenic resources and maintaining prime agricultural lands for agriculture.

On October 8, 2020, the Board of Supervisors adopted a Zoning Ordinance Text Amendment to Articles 5 and 15 which developed standards and definitions for Solar Facilities and allows Utility Scale Solar Facilities as a Special Use. These standards will be evaluated should a future Special Exception application be filed.

Action 3.5.5: Require a decommissioning plan for utility scale energy projects that provides information on the project's life space, cost to decommission the facility, the manner in which the facility will be decommissioned and the site restored, and the methods by which funds will be available for decommissioning and restoration.

The Zoning Ordinance (§ 5-2003.22) requires a decommissioning plan to be submitted with the Site Plan application. It also requires the full estimate of decommissioning to be guaranteed by escrow at a federally insured financial institution, irrevocable letter of credit or surety bond prior to a building permit being issued.

Action 3.5.6: Encourage low maintenance ground cover and activities on alternative energy generating facilities, such as bee pollinating plantings, native plantings, beekeeping and sheep grazing, that provide other ecological benefits.

The Zoning Ordinance (§ 5-2003.13) requires the use of non-invasive plant species, pollinator-friendly and wildlife-friendly native plants, shrubs and trees to be used in the required buffers.

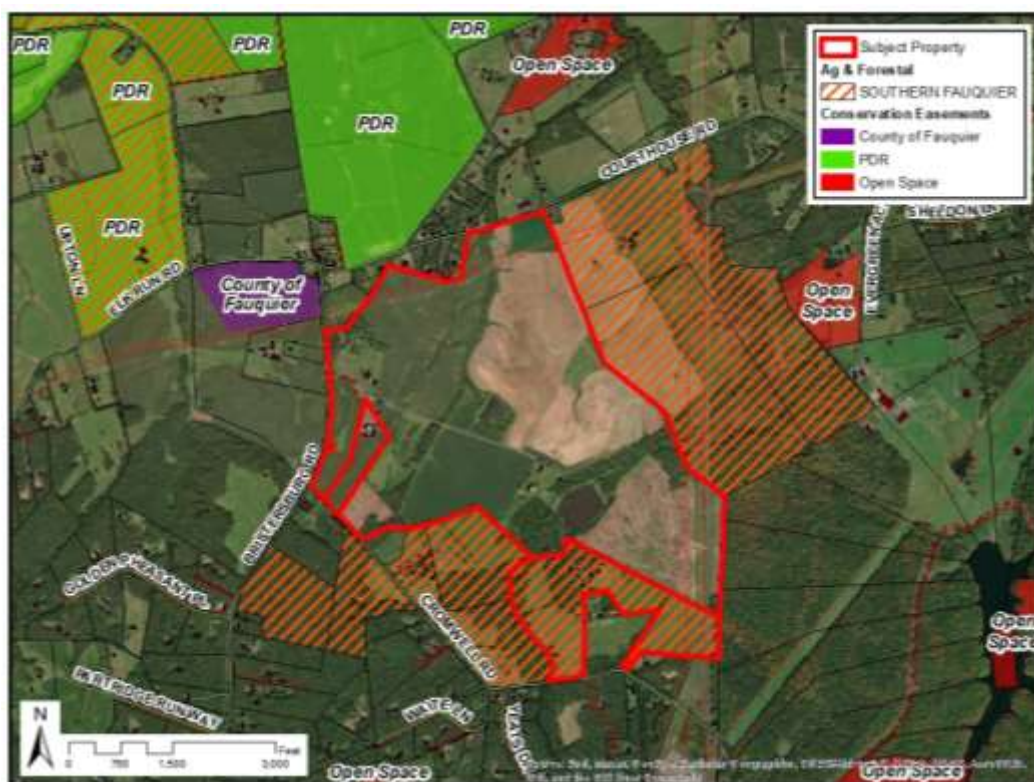
The maps below have been attached as background material for the Board of Supervisors' reference as a part of its consideration of the proposed Solar Facility Siting Agreement.

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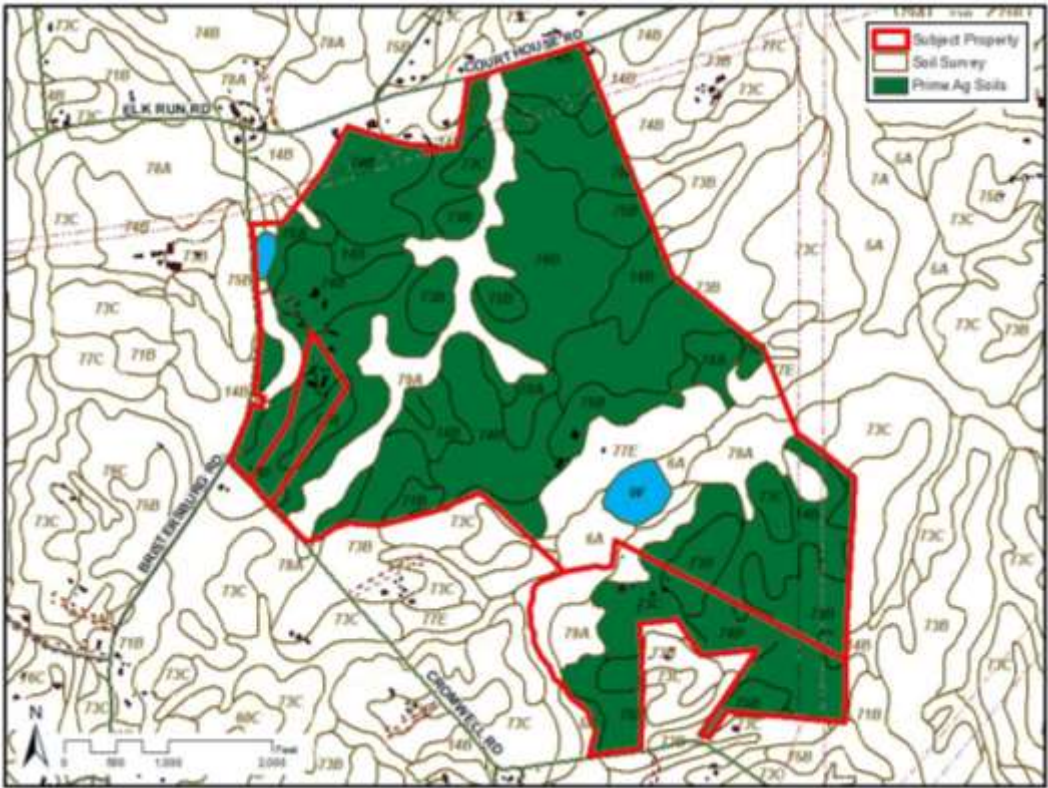
Recent Aerial Map



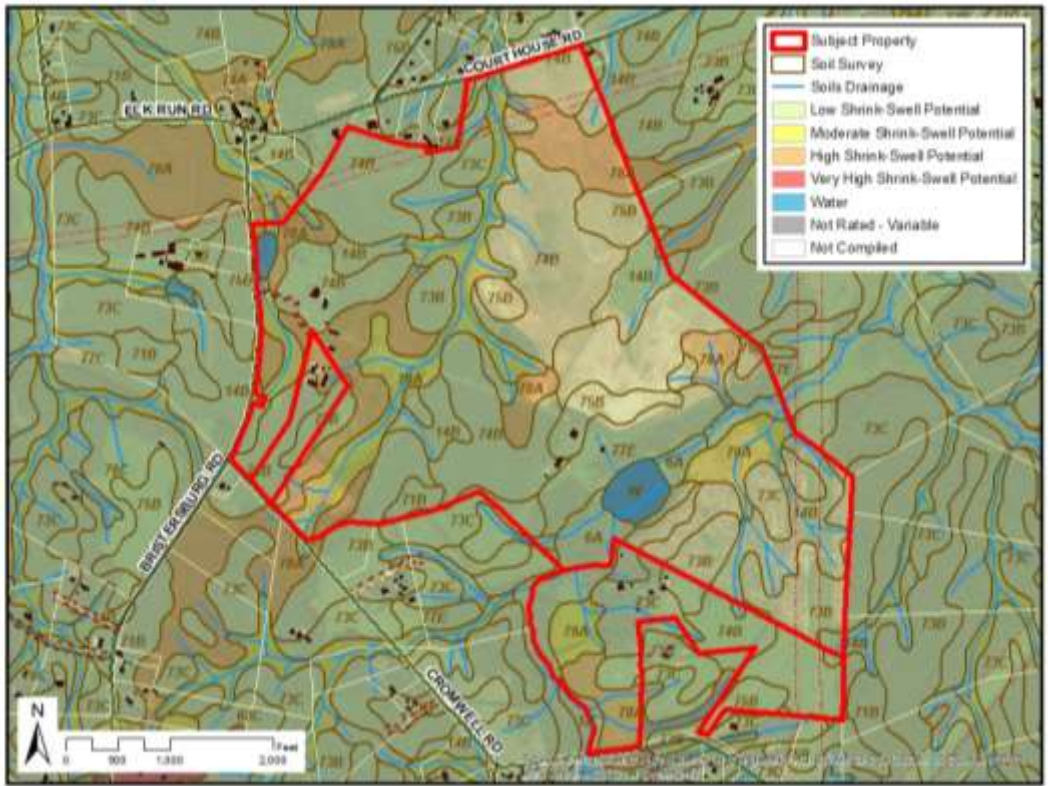
Conservation Map



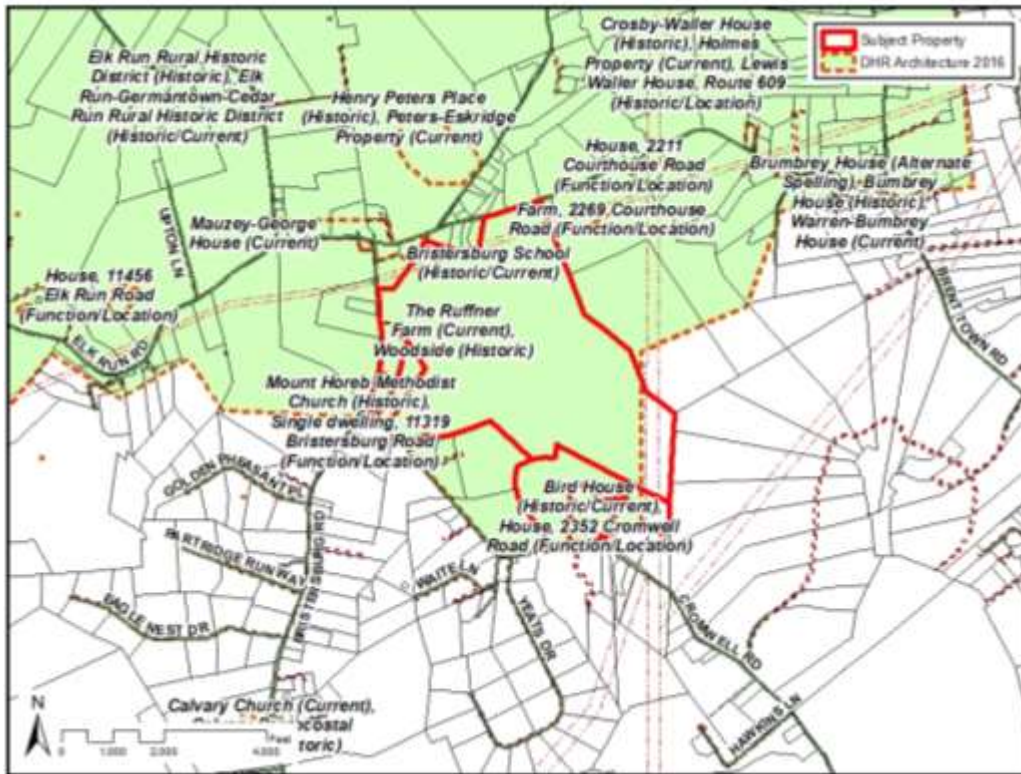
Prime Agricultural Soils Map



Soils Map



Historic Resources Map



Environmental Features Map

