

IN THE MATTER OF THE APPLICATION OF
BIGGS FORD SOLAR CENTER, LLC FOR A
CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY TO CONSTRUCT A
15.0 MW SOLAR PHOTOVOLTAIC GENER-
ATING FACILITY IN FREDERICK COUNTY,
MARYLAND

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9439,
PHASE II

PROPOSED ORDER OF PUBLIC UTILITY LAW JUDGE

Before: Ryan C. McLean
Public Utility Law Judge

Issued: August 27, 2020

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Appearances

Margaret M. Witherup, Esquire, and David W. Beugelmans, Esquire, for Biggs Ford Solar Center, LLC.

Steven M. Talson, Esquire, and Sondra Simpson McLemore, Esquire, for the Department of Natural Resources, Power Plant Research Program.

Kenneth M. Albert, Esquire, and Peter A. Woolson, Esquire, for the Staff of the Public Service Commission of Maryland.

Patrick E. O’Laughlin, Esquire, on behalf of the Maryland Office of People's Counsel.

John S. Mathias, Esquire, and Wendy S. Kearney, Esquire, on behalf of Frederick County, Maryland

I. Executive Summary

1. After Order No. 88644 remanded this case back to the Public Utility Law Judge (“PULJ”) Division, Biggs Ford Solar, LLC (“Biggs Ford” or “the Applicant”) continued its pursuit of a Certificate of Public Convenience and Necessity (“CPCN”) to construct a 15.0 megawatt (“MW”) solar photovoltaic generating facility (“the Project”) in Frederick County, Maryland (“the Application”). In accordance with Order No. 88644, the Applicant sought a floating zone reclassification from Frederick County (“the County”). Biggs Ford’s floating zone reclassification application was unanimously rejected by the Frederick County Council. Since that denial, additional testimony and documents were admitted into the record, a second public comment hearing and another evidentiary hearing were held, and briefs were filed.

2. In comparing Phase I to Phase II of this proceeding, there are significant differences in Biggs Ford’s proposal. The significant differences include the Project’s layout and reduced footprint, the reduction in the number of the solar panels, the increased landscaping buffer, the commitment to plant a pollinator habitat, and mitigation efforts related to the historic Baker Farm complex. Additionally, unlike the first proceeding, the Applicant’s Environmental Review Document (“ERD”) was admitted in the record and PPRP submitted, at the direction of the PULJ, a Project Assessment Report (“PAR”) and supporting testimony, and license conditions.

3. Also since the remand, in *Board of County Commissioners v. Perennial* (“*Perennial*”), the Maryland Court of Appeals affirmed the Commission’s preemption authority over local zoning when siting generating facilities.¹ However, the Court of

¹ 464 Md. 610 (2019).

Appeals specified that the “local government is a significant participant in the process, and local planning and zoning concerns are important in the PSC approval process,” and that zoning laws are “a statutory factor requiring due consideration by the PSC in rendering its ultimate decision.”² In other words, the Commission cannot simply dismiss the position of a local jurisdiction on a CPCN and rely solely on its preemption authority to approve a CPCN.

4. Despite these changes, the County, the Town of Walkersville (“the Town”), and the Department of Natural Resources (“DNR”), Power Plant Resource Program (“PPRP”), and the Commission’s Technical Staff (“Staff”) all remained opposed to the Project.

5. After reviewing the entire record in this case, including testimony, evidence, public and written comments, and briefs, I find that the Applicant has remedied the deficiencies that served as bases to reject the Project as initially proposed in Phase I. I further find that approving Biggs Ford’s CPCN Application and the Project, as amended, to be in the public’s convenience and necessity. I specifically find that the benefits of the Project and its contribution to the State’s Renewable Portfolio Standard (“RPS”) outweigh the Project’s inconsistency with both the County’s and the Town’s Comprehensive Plans (“CP”) and their opposition to the Project. A project’s consistency with the respective jurisdiction’s CP is but one of many factors that must be evaluated pursuant to Public Utilities Article, *Annotated Code of Maryland* (“PUA”) § 7-207. I also find that while the County has a legitimate interest in the preservation of agricultural land, as a result of the

² *Id.* at 645.

amended layout, approximately one-third of the 151-acre parcel will continue to be farmed and there is no evidence that the underlying farmland's prime soils will be negatively impacted by the Project.

6. Furthermore, I again find the County's zoning ordinance, specifically, the Commercial Floating Zone District,³ to be a de facto ban on utility-scale solar facilities. In reviewing the application of the zoning ordinance, to which I gave the required due consideration pursuant to PUA § 7-207(e)(3)(i), it is clear that constructing utility-scale solar facilities in the County is a remote possibility at best. Since the initial Proposed Order was issued, the Planning Commission expressed concerns about the application of the zoning ordinance and the County's new CP, the Livable Frederick Master Plan ("LFMP"), specifically included an initiative to review and amend zoning regulations in order to remove barriers and provide flexibility for green businesses.⁴

7. Based on the facts and circumstances of this case and upon my evaluation of the PUA § 7-207(e) factors, I also find it appropriate to exercise the Commission's authority to preempt the County's zoning ordinance. The exercise of such authority is not undertaken lightly. The mere fact that the Commission has the authority to preempt a jurisdiction's zoning does not mean it should be exercised simply because a project conflicts with a zoning ordinance or the respective local jurisdiction expresses opposition. However, as noted in the Phase I Proposed Order, the acceptance of the County's zoning ordinance would create a dangerous precedent throughout the State, unnecessarily restrict

³ See County Code § 1-19-10.700.

⁴ Applicant Exhibit ("Ex.") 26 - LFMP, at 170. The County introduced excerpts from the LFMP as part of Mr. Horn's Rebuttal Testimony (County Ex. 7, Appendix ("Appx.") A), but the Applicant admitted the entire document and it will be referred to for ease of reference.

the deployment of solar facilities, and make achieving the RPS's increased goal of 14.5% solar renewable energy by 2030 completely unrealistic.⁵

II. Procedural History⁶

8. On April 16, 2018, the Commission issued Order No. 88644 and remanded this matter to the PULJ Division “to provide Biggs Ford the opportunity to initiate a floating zone reclassification from Frederick County within 30 days of the date of this order.”⁷ In response to PPRP's election to not submit a review of the Project and recommended license conditions, the Order stated, “the Commission always appreciates the input from PPRP in cases such as this, and would invite that input on remand, particularly after Biggs Ford goes through the County floating zone reclassification process.”⁸

9. On April 27, 2018, Biggs Ford informed the Commission of its intent to initiate the floating zone reclassification process; however, the Applicant advised it had begun the preliminary steps, but due to the public meeting and notice prerequisites, the actual floating zone application could not be filed within the time period set by the Commission. The Applicant sought an expedited ruling that its efforts satisfied the Commission's directive to “initiate a floating zone reclassification from Frederick County within 30 days.”⁹ PPRP, the County, the Maryland's Office of People's Counsel (“OPC”), and Staff all filed responses.¹⁰

⁵ See Phase I Proposed Order, dated December 5, 2017, at 86.

⁶ See Phase I Proposed Order for the Procedural History prior to Order No. 88644.

⁷ Order No. 88644 at 3.

⁸ *Id.* at 3.

⁹ Maillog (“ML”) 220198 at 2, *quoting* Order No. 88644 at 3.

¹⁰ See MLs 220238, 220258, 220286, and 220300. Only Staff raised a concern asserting the Commission's Order would be satisfied only when the floating zone application was actually filed with the County. See ML 220300 at 2-3.

10. On May 4, 2018, a ruling was issued that found Biggs Ford's efforts satisfied the Commission's intent and directed the Applicant to provide monthly updates on the status of its floating zone application.

11. From June 6, 2018 through March 5, 2019, the Applicant filed monthly updates related to its floating zone application.¹¹ In the final update, Biggs Ford advised that the County Council denied its floating zone application, asserted PPRP could proceed with its review since the County Council's position on the Project was clear, and proposed a new procedural schedule.

12. On March 15, 2019, the remaining parties all filed responses in opposition to setting a procedural schedule based upon the lack of finality of the County's decision, that further proceedings were beyond the scope of Order No. 88644, and/or that *Perennial* was pending before the Maryland Court of Appeals.¹²

13. On March 19, 2019, a ruling was issued directing that a procedural schedule be established and denying requests to further delay the proceeding.

14. On April 3, 2019, the County filed Resolution 19-03, dated April 2, 2019, that set forth the County's findings and the denial of the Applicant's floating zone application.¹³

15. On May 3, 2019, a status conference was held and a procedural schedule was established.

¹¹ Biggs Ford's monthly updates were entered into the record as Applicant Exs. 13-22, respectively.

¹² See MLs 224312, 224313, 224328, and 224331.

¹³ See County Ex. 7, Appx. B.

16. On September 11, 2019, PPRP filed the Direct Testimony of Robert Sadzinski and the State Secretarial Letter, and Staff filed the Direct Testimony of Christopher Lo.¹⁴

17. On September 19, 2019, a second public comment hearing was held at the Hampton Inn and Suites Frederick-Fort Detrick, Frederick, Maryland.

18. On October 17, 2019, the County filed the Rebuttal Testimony of Steve Horn, Director of the County's Planning and Permitting Division.¹⁵

19. On October 18, 2019, Biggs Ford filed the Rebuttal Testimony of Mr. Gilchrist.¹⁶

20. On October 29, 2019, an evidentiary hearing was held. At the conclusion of the hearing, the PULJ determined that additional information from both the Applicant and PPRP was necessary prior to issuing a Proposed Order.

21. On November 14, 2019, a Notice of Modification of Procedural Schedule was issued that directed PPRP to submit a PAR, proposed license conditions, and supporting testimony.

22. On February 10, 2020, PPRP filed the Supplemental Direct Testimony of Mr. Sadzinski, Requested License Conditions, and a PAR, and Biggs Ford filed the Supplemental Testimony of Mr. Gilchrist, an ERD Addendum, and an amended site plan.¹⁷

23. On February 14, 2020, a Notice of Further Procedural Date was issued to permit parties to file testimony in response to the February 10, 2020 filings.

¹⁴ Mr. Sadzinski's Direct Testimony and the State Secretarial Letter were entered into the record as PPRP Exs. 4-5, respectively, and Mr. Lo's Direct Testimony was entered into the record as Staff Ex. 2.

¹⁵ County Ex. 7.

¹⁶ Mr. Gilchrist's Rebuttal Testimony was entered into the record as Applicant Ex. 25.

¹⁷ Mr. Sadzinski's Supplemental Testimony, the PAR, and Requested License Conditions were entered into the administrative record, post-hearing, as PPRP Exs. 6, 7, and 8, respectively, and Mr. Gilchrist's Supplemental Testimony, which included an ERD Addendum and an amended site plan, was admitted into the record, post-hearing, as Applicant Ex. 27.

24. On April 10, 2020, the County filed the Supplemental Testimony of Mr. Horn.¹⁸

25. On April 13, 2020, the Applicant filed a letter in lieu of testimony and indicated it supported the adoption of PPRP's proposed license conditions in place of those proposed by the Applicant during the initial evidentiary hearing.¹⁹ Additionally, Biggs Ford indicated it did not believe further evidentiary or public hearings were required and the matter could simply be briefed.

26. Between April 17 and April 24, 2020, all parties responded to Bench Data Requests and confirmed that they did not believe further public and evidentiary hearings were required.²⁰

27. On April 27, 2020, a Notice of Further Procedural Dates was issued that determined additional hearings were not required and established a briefing schedule.

28. On May 27, 2020, Biggs Ford and Staff filed initial briefs.

29. On May 28, 2020, the County requested the briefing schedule be modified to allow for additional time to file a reply brief citing the length of Biggs Ford's brief, the continued COVID-19 state of emergency, and related extenuating circumstances.²¹ The County's request was granted.

30. On June 29, 2020, Biggs Ford, the County, and Staff filed reply briefs.

¹⁸ Mr. Horn's Supplemental Testimony was admitted into the record, post-hearing, as County Ex. 9.

¹⁹ ML 229703.

²⁰ The responses were admitted into the record, post-hearing, as PULJ Ex. 2 (Biggs Ford), PULJ Ex. 3 (County), PULJ Ex. 4 (OPC), and PULJ Ex. 5 (Staff). PPRP also confirmed that it did not believe further hearings were necessary.

²¹ ML 230441.

III. Summary of the Application and Parties' Positions²²

A. Biggs Ford - The Amended Project²³

31. The Applicant proposed to construct the Project on a privately-owned parcel, approximately 151 acres ("the Site"), for which the Applicant entered a long-term lease option with the owner. The Site, located at 8300 Biggs Ford Road, Walkersville, Maryland, is currently utilized for agricultural purposes. The Project, as amended, would have a limit of disturbance of approximately 100 acres.²⁴

32. The existing farm complex, in the central part of the parcel, will not be impacted by the Project.²⁵ The Site has 2 areas of forest cover consisting of 2 narrow strips in the southwestern and north-central areas of the Site, totaling approximately 1.5 acres.²⁶ The Applicant noted that the trees are not tall and are not located in a priority area, therefore, the trees are considered low priority for retention. Biggs Ford anticipated providing the necessary mitigation for the loss of the forested areas in accordance with the County's Forest Resource Ordinance ("FRO").²⁷

33. The Site is in a rural area surrounded by both agricultural and residential-use land. To the north, the Site is bordered by a large transmission line corridor with a subdivision located beyond; to the south, the Site is bordered by Biggs Ford Road with undeveloped land, a single residence, and a subdivision beyond; Dublin Road lies to the

²² All testimony and exhibits entered into the record during the September 18, 2017 evidentiary hearing are incorporated by reference and are part of the record of this proceeding.

²³ Biggs Ford explained that the changes to the Project did not require any changes to the Environmental Sensitive Design, stormwater, noise, vibration, glare, vegetative stabilization, transportation, fire protection plan, or Spill Prevention, Control, and Countermeasure Plan. Applicant Ex. 27, Attachment ("Attch.") A at 4. The initial ERD, which was not admitted during the first evidentiary hearing, was admitted into the record as Applicant Ex. 12.

²⁴ Applicant Ex. 27, Attch. A at 1.

²⁵ Applicant Ex. 12 at 2 and Applicant Ex. 27, Attch. A.

²⁶ Applicant Ex. 12 at 2.

²⁷ *Id.*

east with agricultural land and a residence beyond; and to the west, a densely populated subdivision, agricultural land, and the Monocacy River.²⁸ The Applicant has proposed the landscaping buffer be extended around the entire boundary of the Project, an increase from the initially proposed 3,800 linear feet to approximately 12,000 linear feet.²⁹ The Project's setbacks have also been increased from a minimum of 50 feet from all property boundaries to a minimum of 300 feet along Biggs Ford Road and Reveille Court.³⁰

34. There are jurisdictional waters of both the United States and the State in the form of an unnamed tributary ("UNT") to the Monocacy River and abutting wetlands along the Site's northern border. Both the United States Army Corps of Engineers ("the Corps") and the Maryland Department of the Environment ("MDE") verified the Applicant's findings. Additionally, there is a "Zone 'AE' FEMA-mapped 100-year floodplain located in the southeastern corner of the Property."³¹ Biggs Ford indicated that a 25-foot setback was planned to avoid the referenced wetlands, as well as a 50-foot setback from the UNT, and neither the wetlands nor the UNT were within the Project's anticipated footprint.³²

35. The Applicant explained that the Project would interconnect to the distribution grid through a direct line tap on the 34.5 kV Monocacy-Carroll circuit on the eastern side of Dublin Road.³³ Energy generated from the Project will be sold into the PJM Interconnection, LLC ("PJM") wholesale market and transmitted to PJM's transmission system via Potomac Edison-FirstEnergy's ("PE") distribution network. Feasibility and System Impact Studies were completed in February 2016 and October 2016, respectively,

²⁸ *Id.*

²⁹ Applicant Ex. 27, Attch. A at 1.

³⁰ *Id.*

³¹ Applicant Ex 12 at 3.

³² *Id.* at 3-4.

³³ *Id.* at 4.

to confirm the Project's ability to interconnect to the referenced circuit.³⁴ The Applicant also executed an Interconnection Service Agreement and Construction Service Agreement on December 15, 2016, and January 9, 2017, respectively, with PJM and PE.³⁵

36. The Project will now consist of approximately 57,000 solar panels with improved efficiency and advanced single-axis tracking technology resulting in fewer rows of panels.³⁶ The panels will have a maximum height of 10 to 12 feet. The Applicant indicated that the Site "will be planted and maintained in low cover grass vegetation in accordance with plans approved by local agencies."³⁷ Additionally, there will be approximately 6 to 10 power centers consisting of inverters, transformers, and associated disconnects.

37. In terms of need, the Applicant explained that the Project will produce emissions-free, renewable energy, and highlighted the State's aggressive regulatory and legislative standards in terms of energy objectives. Biggs Ford indicated that Maryland's RPS requires that 14.5% of Maryland's electricity to be solar by 2030.³⁸ The Applicant claimed the Project's 15.0 MW of solar power will help bring Maryland closer to its renewable energy goal.

38. Biggs Ford estimated that the amended Project would cost between \$16 and \$18 million and create between 50 and 70 design, management, and construction positions, with 3 or 4 permanent jobs once the Project is operational.³⁹ The Applicant noted that significant local resources were being utilized and the tax revenue generated by the Project

³⁴ *Id.*; see Appx. E.

³⁵ Applicant Ex. 12 at 4.

³⁶ Applicant Ex. 27, Attch. A at 3.

³⁷ Applicant Ex. 12 at 5.

³⁸ Applicant Ex. 25 at 9.

³⁹ Applicant Ex. 27, Attch. A at 4 and Applicant Ex. 12 at 15.

would help support both County and State tax-funded programs, while also providing a public benefit in the form of renewable energy.⁴⁰

39. Biggs Ford listed the various approvals and permits that will be required to construct the Project. The Applicant discussed the County's development review process, which includes MDE's Environmental Sensitive Design Stormwater Management requirements, and the County's Site Plan and Improvement Plan requirements.⁴¹ Biggs Ford noted that additional County permits would be required and the Project would need to be compliant with the FRO.

40. In terms of noise, the Applicant set forth the maximum allowable noise standards, during construction and operation, and the applicable exemptions. Biggs Ford did not believe that the "temporary, daytime occurrence, construction sound" would create an adverse impact.⁴² Once the Project is operational, the only noise would be from the inverters and transformers, and it was anticipated that any noise at the closest residence will be below the permitted level.⁴³

41. The Applicant explained that there would be few lighting requirements for the Project, possibly for security purposes or as required by the County. Biggs Ford indicated that the Federal Aviation Administration ("FAA") issued "Determination of No Hazard to Air Navigation" letters based upon the Applicant's analysis of the Project's boundary points in relation to the Frederick Municipal Airport.⁴⁴ The Applicant also received a similar determination from the Maryland Aviation Administration ("MAA").⁴⁵

⁴⁰ Applicant Ex. 12 at 15.

⁴¹ *Id.* at 19.

⁴² *Id.* at 25-26.

⁴³ *Id.* at 26.

⁴⁴ *Id.* at 27 and Appx. G.

⁴⁵ *Id.*

42. The Applicant also assessed the potential for glare on nearby residences and found the risk to be minimal. Biggs Ford examined all residences within 1,000 feet from the Project for glare and analyzed 16 structures that met the Applicant's criteria.⁴⁶ Biggs Ford noted that its analysis was overly conservative because almost all structures within that distance will be protected by on- or off-site vegetative screening. Biggs Ford utilized the Sandia National Labs Solar Glare Hazard Analysis Tool ("SGHAT") for 15 different observation points in relation to the residential structures and stated "[t]he results of the SGHAT analysis show that no glare is found for any of the subject observation points."⁴⁷ There will also be a minimum six-foot tall chain-link fence surrounding the Project's perimeter for safety and security.⁴⁸

43. Biggs Ford indicated that it would submit Sediment and Erosion Control and Stormwater Management Plans, implement best management practices, and reseed all disturbed areas.⁴⁹ The specific vegetative cover species mix would be subject to the County's approval. The Applicant explained its grounds maintenance plan would include regular vegetation management to control undesirable plant species and maintain necessary access, with mowing possibly occurring bi-monthly or quarterly, as necessary. The Applicant noted PPRP's draft regulation for a Pollinator-Friendly Designation Program and the Applicant intends to develop a comprehensive pollinator habitat plan and detailed the elements of its plan.⁵⁰

⁴⁶ Applicant Ex. 12 at 27.

⁴⁷ *Id.* at 28, and Figures 9-12 at 28-30.

⁴⁸ Applicant Ex. 12. at 30.

⁴⁹ *Id.*

⁵⁰ Applicant Ex. 27 at 2 and Attch. A at 1 and 3-4.

44. In terms of transportation-related impacts, Biggs Ford stated there would be an initial mobilization phase. During the installation of the panels, tractor-trailers will deliver the major material and equipment to a staging area. Traffic would likely consist of construction-related equipment, and State Highways I-70 and US-15 and one County road (Biggs Ford Road) would likely be used.⁵¹ Once the Project is operational, traffic will be limited to mowing and vegetation management, and quarterly to yearly maintenance for the Project's components.

45. The Applicant explained that the Project will be constructed with the necessary fire prevention and controls to safeguard life, property, and public welfare. Biggs Solar stated a fire-protection plan will be developed and the Applicant will coordinate with local emergency responders regarding the referenced plan.⁵²

46. Biggs Ford explained that as a result of the delays, construction was anticipated to begin during the fourth quarter of 2020 and be operational by the third quarter of 2021.⁵³

47. The Applicant provided an explanation as to how it chose the Site. Biggs Ford noted the Site's close proximity to the Monocacy-Carroll 34.5 kV PE distribution circuit and the proximity to distribution infrastructure generally reduces the costs associated with connecting to the grid.⁵⁴ The Site also lacked significant environmental resources that would be impacted by the Project.

48. In terms of economics, the Applicant claimed the Project would have a positive impact on the State. Biggs Ford reiterated the capital investment and jobs, the

⁵¹ Applicant Ex. 12 at 31.

⁵² *Id.*

⁵³ Applicant Ex. 27, Attch. A at 4.

⁵⁴ Applicant Ex. 7 (Mr. Gilchrist's Phase I Direct Testimony) at 31-32.

resulting annual County taxes, the reduction of out-of-state energy imports, and a modest increase in permanent employment needed to maintain the Project.⁵⁵ The Applicant also expressed a preference for hiring local contractors for maintenance activities. Biggs Ford claimed that the Project was not expected to impact property values of adjacent properties based upon an independent appraisal study in January 2016.⁵⁶

49. The Applicant noted that DNR's Wildlife & Heritage Service ("WHS") performed an environmental review of the Site. WHS found "no official State or Federal records for listed plant or animal species at the Property."⁵⁷

50. In relation to historical structures, the Applicant noted the closest historical site is known as the Biggs Ford Site (Survey No. F-8-052), also a National Register listed site (ID No. 75000894), is approximately 400 feet southwest of the Site.⁵⁸ The Maryland Historic Trust ("MHT") reviewed the Project, and pursuant to the MHT's recommendations, Biggs Ford conducted Determinations of Eligibility and an Archaeological Reconnaissance Survey. The Applicant explained that the Biggs Ford Site is "a large, well-preserved, multi-component Native American village site located on the Monocacy River," one of a few large Native American villages on the Monocacy River.⁵⁹ The majority of the archaeological deposits remain intact as the location was only partially excavated. Biggs Ford referenced the MHT's findings in a letter dated April 24, 2017, which found further archeological investigation was not warranted, but MHT also found

⁵⁵ Applicant Ex. 12 at 35.

⁵⁶ *Id.* at 36.

⁵⁷ *Id.* at 40 and Appx. D.

⁵⁸ Applicant Ex. 12 at 40.

⁵⁹ *Id.* at 43, *quoting* the Maryland Archaeological Conservation Lab.

that the structures on the Site were eligible for listing on the National Register of Historic Places (“NRHP”) and recommended mitigation.⁶⁰

51. On December 11, 2019, the Applicant hosted a stakeholder meeting in Walkersville with various agencies and groups. A mitigation plan was subsequently proposed that included removing of all aspects of the Project from 700 linear feet of Biggs Ford Road which will permit the public to view the Baker Farm; protecting the farm complex during construction; conducting surveys on surrounding properties for sites with NRHP eligibility; and documenting the Baker Farm with photographs and architectural drawings.⁶¹

52. The Applicant noted that the Project’s operation would not generate air pollutants; therefore, the federal and State Air Quality Standards are not applicable.⁶² Additionally, the fugitive dust resulting from construction should be less than a normal construction project because excessive earthwork activities are not required.

53. Upon completion, the Project would not require water or sewer utilities and no impacts were anticipated to streams or aquifers.⁶³ During construction and operation of the Project, there would likely be only intermittent water consumption. All waste materials will be removed from the Site to an approved handling facility during construction, and little or no waste materials would be generated once the Project is operational.⁶⁴

54. Biggs Ford indicated that a decommissioning plan would be submitted to PPRP and the Commission to be implemented at the end of the Project’s useful life or its

⁶⁰ Applicant Ex. 27, Attch. A at 5.

⁶¹ *Id.*; see also Applicant Ex. 27, Attch. B – Amended Site Plan

⁶² Applicant Ex. 12 at 46.

⁶³ *Id.* at 47.

⁶⁴ *Id.* at 49.

abandonment. The plan will be developed in accordance with Orsted's Onshore North America's standard decommissioning scope and will include the disassembly and removal of all above-ground structures, removal of all below-ground structures, and restoration of the Site.⁶⁵ The decommissioning plan will ensure all costs will not be borne by the County and/or the State, and will be guaranteed through Biggs Ford's parent company.

B. PPRP

55. Mr. Sadzinski described the amended Project, the Site, the point of interconnection, and the Site's zoning designation. He explained PPRP evaluated the Project's potential impacts to environmental, socioeconomic, and cultural resources, and participated in a field review of the Site on August 30, 2016. Mr. Sadzinski testified the reviewing State agencies recommended the CPCN be denied and cited several bases, including the Site being classified as prime agricultural farmland, the Site's location within a Priority Preservation Area ("PPA"), the Project's inconsistency with the County's CP, and the strong local opposition of both the County and the Town.⁶⁶

56. First, he testified, "Prime farmland is the land with the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops."⁶⁷ Prime farmland is a finite resource that the State has sought to preserve; however, since farmland is generally flat, it is attractive for utility-scale solar projects. If the Project was ultimately constructed, Mr. Sadzinski stated it would remove 150 acres of prime

⁶⁵ Applicant Ex. 27, Attch. A at 4.

⁶⁶ PPRP Ex. 4 at 7.

⁶⁷ *Id.* at 7.

farmland from agricultural use.⁶⁸ The Site is located within the Walkersville PPA and the Project would impede future preservation efforts if the CPCN is granted.

57. Next, Mr. Sadzinski explained the importance of PPAs within Maryland and the requirements for Counties to delineate PPAs to stabilize land base and adopt policies that limits development within those areas. He noted the County's total land area was approximately 425,000 acres, with approximately 250,000 acres consisting of agricultural land, of which 115,000 acres was prime farmland.⁶⁹ The County's Priority Preservation Plan included a goal of placing 100,000 acres under protective easements through land preservation programs by 2020 and that PPAs are a significant tool to achieve the County's goal.⁷⁰

58. The Walkersville PPA surrounds the Town and extends north towards the Town of Woodsboro and allows Walkersville to maintain its identity separately from Frederick City and Woodsboro. Mr. Sadzinski indicated that approximately 30% of the Walkersville PPA is protected and locating the Project within the PPA would remove the land from potential preservation for decades.⁷¹

59. He discussed the County's CP and its purpose. Mr. Sadzinski explained a project could be consistent with the goal of one chapter of the CP but be inconsistent with the goal stated in another chapter. Therefore, PPRP focused on the County's position related to the Project's inconsistencies.⁷²

⁶⁸ *Id.* Mr. Sadzinski's testimony was filed prior to the amendments to the Project when the footprint was approximately 135 acres.

⁶⁹ PPRP Ex. 4 at 8.

⁷⁰ *Id.*

⁷¹ *Id.* at 9.

⁷² *Id.* at 10.

60. Mr. Sadzinski noted the CP included certain goals for the increased use or production of renewable energy, to encourage the use of non-polluting, renewable and recycled resources, and increasing the number of businesses focused on alternative and renewable energies, which makes the Project consistent with or supporting the County's goals. However, Mr. Sadzinski noted the Project presents two major areas of inconsistency with the CP's goals, namely agricultural preservation and the Town's Area of Planning Influence ("API").⁷³ He stated the CP includes a goal for "preserving the County's prime agricultural lands for continued production," and has a policy to "minimize the development in areas of our best agricultural lands to preserve masses of farmland."⁷⁴ Mr. Sadzinski noted that PPAs are designed to preserve land and build critical masses of protected lands on the highest priority properties, and constructing the Project within a PPA was inconsistent with that purpose. He explained the API is an area identified by the Town to promote preservation and to remain undeveloped in order to maintain the existing buffer between the Town and the City of Frederick.⁷⁵

61. Mr. Sadzinski emphasized both the County's and the Town's references to the inconsistencies with the CPs as a basis for opposing the Project enhanced the importance of those issues for PPRP.⁷⁶ The support or opposition of the local jurisdiction related to a proposed project is a substantial factor for the State in forming its recommendation. He set forth the County's and the Town's opposition citing the denial of Biggs Ford's floating zone application, the bases for the denial, and the opposition expressed at the first public

⁷³ *Id.* at 11.

⁷⁴ *Id.* at 11-12, *citing* the 2010 CP – Chapter 5 (agricultural preservation).

⁷⁵ PPRP Ex. 4 at 12.

⁷⁶ *Id.* at 12.

hearing by numerous groups and citizens.⁷⁷ Those issues also raised substantial concerns for PPRP.

62. Mr. Sadzinski explained PPRP was recommending the Project be denied, and cited the overall output from the Project would only contribute 0.9% of the total solar energy generation necessary to meet the State's RPS solar carve-out for 2020 (now 2030) and that amount will be even less as the Project's efficiency declines and the solar carve-out target increases.⁷⁸ While the Project would contribute to the RPS, Mr. Sadzinski testified, "the project's small contribution does not outweigh the substantive issues the reviewing State agencies have identified with this project."⁷⁹

63. While Mr. Sadzinski acknowledged the State had taken a neutral position in a similar CPCN project, he explained that the neutral position was interpreted as a recommendation for approval. He cited Natural Resources Article, *Maryland Annotated Code* ("NR") § 3-306(b), which requires PPRP provide the Commission the results of its study and investigation of a CPCN application with a recommendation the project be granted, denied, or granted with conditions.⁸⁰ In light of the referenced issues, PPRP could not recommend approval of the Project, even with conditions.

64. Mr. Sadzinski stated PPRP consulted with the MHT to determine the Project's impact on any historic properties. He noted Biggs Ford's Phase I archeological survey and evaluation of NRHP eligibility for the structures on the Site. The survey found no archeological sites, but found the Baker Farm (Maryland Inventory of Historic Properties

⁷⁷ *Id.* at 13-14.

⁷⁸ *Id.* at 14-15.

⁷⁹ *Id.* at 15.

⁸⁰ *Id.* at 17.

No. F-8-164) was eligible for listing in the National Register.⁸¹ Mr. Sadzinski indicated that on May 17, 2017, the Applicant provided MHT the site plan and Biggs Ford “suggested that avoidance and minimization were not feasible under the current circumstances, so the applicant asked that mitigation be considered.”⁸² There were preliminary discussions, but those ceased when the Proposed Order was issued recommending denial of the CPCN in Phase I.

65. Mr. Sadzinski stated that on July 9, 2019, MHT issued a letter that noted the Project would completely surround the Baker Farm with solar panels which would “diminish the integrity of the historic property’s setting, association, and feeling,” and would have an adverse effect on the historic property.⁸³ Therefore, MHT recommended a meeting with the Applicant, PPRP, and other stakeholders to develop and evaluate alternatives or modifications to avoid, minimize, or mitigate the Project’s adverse effects.

66. PPRP did not initially include license conditions and recommended the Project be denied. In the event the Commission approves the Project, PPRP recommended it be provided an opportunity to submit license conditions.

67. On cross-examination, Mr. Sadzinski stated he was unaware of anything that would prevent the County from reaching its goal of placing 100,000 acres under protective easement if the Project was constructed.⁸⁴ He confirmed that the Project would not impact the Site’s agricultural soils and that PPRP had not conducted any soil analysis.

⁸¹ *Id.* at 21.

⁸² *Id.*

⁸³ *Id.* at 21-22.

⁸⁴ Transcript (“Tr.”) at 66.

Mr. Sadzinski also acknowledged that PPRP had not analyzed the locations of interconnection capacity to meet the State's 14.5% RPS solar carve-out.⁸⁵

68. In relation to the changes to the Project, Mr. Sadzinski agreed the reduced footprint, increased setbacks, the revised layout, and screening the entire perimeter of the Project were significant.⁸⁶ While these changes addressed some concerns, he still cited the opposition from the neighbors and the Project's location remained as issues.

69. In response to questions from the bench, Mr. Sadzinski confirmed that PPRP's recommendation was independent of the County's position. He explained that while PPRP had not raised an issue with prime farmland designations in other CPCN cases, other counties have more wide-ranging PPAs compared to Frederick's targeted approach. Mr. Sadzinski agreed with the Applicant that the Project was both consistent with parts of the CP and inconsistent with other parts. He also confirmed that the Town's opposition was based solely on comments contained in Resolution 19-03 denying Biggs Ford's floating zone application.⁸⁷

70. Mr. Sadzinski stated that if farmland is not used or is restricted from being used for large-scale solar projects, the State's 14.5% RPS goal will be difficult to meet.⁸⁸ In order to meet that goal, he stated there would need to be a combination of both rooftop and utility-scale solar.

⁸⁵ Tr. at 68-69.

⁸⁶ Tr. at 71-72.

⁸⁷ Tr. at 79-80; *see* County Ex. 7, Appx. B.

⁸⁸ Tr. at 82-83.

C. The County

71. Mr. Horn testified that the 2010 CP was in effect during the time Biggs Ford's floating zone application was being considered by the County, and that the County Council recently adopted a new CP known as the 2019 LFMP. However, he indicated the outcome of Biggs Ford's application would not have been different if it had been evaluated under the LFMP. Mr. Horn cited several reasons in support of his conclusion that the outcome would have been the same: the LFMP did not result in changes to the CP Map relative to the 2010 CP and the Site's zoning remained the same; the property remained outside of a Community Growth Area ("CGA"); there were no changes to the PPA Map; agricultural infrastructure was identified as a County-wide planning component with the stated purpose of supporting the continued and innovative agricultural development, and this component specifically identified PPAs; the LFMP supported maintaining and expanding agricultural preservation; the LFMP supported solar facilities being installed in urban/suburban environments and alluded to building mounted facilities; references to solar projects on farmland were neutral and did not advocate for such projects; and the LFMP continued to support managing new development through containment of growth within and around existing communities, in part to preserve agriculture, rural, and natural resources.⁸⁹

72. In relation to Walkersville, Mr. Horn noted he was not aware of any changes to the Town's CP that would impact its previous determination that the Project was not consistent with the CP. He explained, "Walkersville is unique in that its plan reflects the Town's desire to have an agricultural buffer surrounding it, and it maintains Agricultural zoning on several properties within the municipal boundaries."⁹⁰

⁸⁹ *Id.* at 2-6.

⁹⁰ *Id.* at 6.

73. Mr. Horn stated the Site has limited development rights under the County's current zoning designation and cannot be subdivided into lots that are one acre or smaller. He cited several County programs that could provide monetary assistance for agricultural property that result in preservation of farmland, and the Site met the size requirements, has above average soil quality, has development potential, is located within a PPA, and adjoins a block of over 1,000 acres of preserved farmland.⁹¹ Mr. Horn concluded that the Project was not compatible with the County's zoning, the CP of either the Town or County, or the character of the area.⁹²

74. During the evidentiary hearing, Mr. Horn disagreed that the County's zoning ordinance was a de facto ban on utility-scale solar projects and noted such projects were permitted in the industrial zoning districts and as part of the newly created floating zone in the agricultural district.⁹³ He explained the County's PPAs and the uniqueness of Walkersville's municipal boundaries being under permanent agricultural preservation. Mr. Horn also noted the County had solar projects currently underway at the landfill and wastewater treatment plant.

75. Mr. Horn agreed the CP contained an air goal to protect air quality through elimination/reduction of air pollution and that one method to achieve that goal was through "alternative power."⁹⁴ Another section of the CP has a goal entitled "Clean Energy" and Mr. Horn claimed the referenced solar projects demonstrated the County's commitment to alternative energy sources; but he agreed those projects would not make the County carbon neutral and that he did not analyze whether the County would be carbon neutral or energy

⁹¹ *Id.* at 7.

⁹² *Id.*

⁹³ Tr. at 91.

⁹⁴ Tr. at 104-105.

independent without solar development on farmland.⁹⁵ He also confirmed that he had not evaluated whether there were economically feasible industrial sites in the County for utility-scale solar projects.

76. In response to questions from the bench, Mr. Horn explained the LFMP included an Environmental Infrastructure Plan, which set forth various objectives and goals, such as reviewing existing zoning regulations to determine how they could be improved to facilitate green economies.⁹⁶ Mr. Horn was not familiar with viable parcels that could support a utility-scale solar facility in the County. He believed there was an opportunity to aggregate agriculturally-zoned properties; however, he had not looked at specific sites to see if it was possible.⁹⁷

D. Staff

77. Mr. Lo addressed the Project's impact on the reliability and stability of the State's electric system. He described the Project and the required interconnection process, which includes several studies (Feasibility, Impact, and Facilities) performed by PJM, explained Capacity Resource and Capacity Interconnection Rights, and the need for a Wholesale Market Participant Agreement ("WMPA").⁹⁸ Mr. Lo testified that the Project has a generator interconnection queue number of AB1-125 and a projected in-service date of no later than the fourth quarter of 2020.⁹⁹ He stated that the System Impact Study, completed in September 2016, confirmed the Project's ability to interconnect to PE's

⁹⁵ Tr. at 106-108.

⁹⁶ Tr. at 113.

⁹⁷ Tr. at 114-115.

⁹⁸ Staff Ex. 2 at 4-7.

⁹⁹ *Id.* at 8.

system by tapping into PE's Monocacy-Carroll 34.5 kV distribution circuit.¹⁰⁰ An Interconnection Service Agreement is not necessary since the Project will interconnect through distribution-level facilities; however, an Interconnection Agreement between PE and the Applicant is required. The referenced WMPA will need to be filed with the Federal Regulatory Commission ("FERC"), the Project must register with FERC as a generator, and submit monthly status reports during construction and operation.¹⁰¹

78. Mr. Lo indicated that any future sale of electricity to a retail PE customer or to PE for general system supply requires a distribution company Interconnection Agreement. He explained that Biggs Ford must install the minimum required generation interconnection relaying and control facilities, as well as supervisory control and data acquisition ("SCADA") equipment and dedicated communication circuits for SCADA to the PE Transmission System Control Center.¹⁰² The Applicant, rather than PE customers, will be responsible for all interconnection costs, including facilities and network upgrades. Mr. Lo stated that pursuant to the System Impact Study, the estimated cost of the necessary facilities and network upgrades was \$256,100.¹⁰³

79. He testified his review of the System Impact Study indicated the Project would have no adverse impacts on the reliability and stability of Maryland's electric system. Mr. Lo specified, "Prior to operation, the Project will be required to comply with PE's interconnection requirements and complete the requisite facility upgrades and milestones

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 9. (citation omitted)

¹⁰² *Id.*

¹⁰³ *Id.* at 9-10.

specified in the WMPA.”¹⁰⁴ He added the Project’s generation capability will benefit both Maryland and the PJM system.

80. Mr. Lo recommended that if the Commission grants a CPCN, the CPCN should include several conditions. Specifically, the Applicant should be required to file a CPCN amendment with the Commission for any generation capacity in excess of 15 MW; require the signed distribution Interconnection Agreement executed by Biggs Ford with PE be filed with the Commission prior to construction; require the signed WMPA with PJM and PE be filed with the Commission prior to the commencement of construction; that the Applicant, its successors and assigns provide 60 days written notice to the Commission of any non-wholesale electricity sale to a Maryland retail electric customer and comply with regulations regarding such sales; that the Applicant, its successors and assigns provide 30 days written notice to the Commission of any change in ownership of the Project prior to the closing date of any such sale; and the CPCN must be subject to any conditions recommended by the State agencies.¹⁰⁵

E. Biggs Ford’s Rebuttal Testimony

81. Mr. Gilchrist testified that Lincoln Clean Energy, LLC, a subsidiary of Orsted, acquired the development business of Coronal Energy, including Biggs Ford, on May 2, 2019.¹⁰⁶ He also explained the Applicant’s efforts to work with the County since this matter was remanded by the Commission. In addition to applying for floating zone approval from the County, the Applicant made changes to the Project based upon feedback

¹⁰⁴ *Id.* 12-13.

¹⁰⁵ *Id.* at 2-3.

¹⁰⁶ Applicant Ex. 25 at 1.

received from both the County and members of the community. Mr. Gilchrist testified the acreage of the Project was reduced from 135 acres to 97 acres while maintaining the rating of the Project.¹⁰⁷ The Applicant also increased the vegetative screening and the setbacks. He indicated the proposed screening will obscure all equipment from all vantage points outside the property boundary, and the increased setbacks along Biggs Ford Road and Dublin Manor border made the closest solar panel to any residence in Dublin Manor in excess of 500 feet.¹⁰⁸ Additionally, a significant portion of the solar panels were removed from the southeastern quadrant of the Site in order to maintain the view of the Baker Farm from Biggs Ford Road.

82. Mr. Gilchrist recounted the entire floating zone application process. He asserted the County's application of its new zoning ordinance demonstrated the ordinance was a de facto ban on utility-scale solar projects. He cited 5 requirements which he found unreasonable: the project may not exceed the lesser of 10% of the tract or tract's tillable acreage or 75 acres in size; the project may not be located on prime farmland soils; the project may not be located within a PPA; the project may not be located within 2 miles of the centerline of the U.S. Route 15 ("U.S. 15") right-of-way; and the tract or tracts of land may not be contiguous to a community growth boundary as designated by the CP.¹⁰⁹ In the County's denial of the floating zone application, Mr. Gilchrist claimed the County cited the same reasons set forth in his direct testimony.

¹⁰⁷ *Id.* at 2. The size of the Project, as amended, has been described as being either approximately 97 acres or approximately 100 acres by the Applicant and PPRP. I find an approximate three-acre discrepancy to be de minimis.

¹⁰⁸ *Id.* at 3.

¹⁰⁹ *Id.* at 4-5. (citations omitted)

83. However, during the County Council’s consideration of the floating zone application, Mr. Gilchrist asserted the Planning Commission recognized the restrictions imposed by the ordinance. He cited the Planning Commission’s unanimous vote to “recommend that the County Council review the zoning ordinance ... to evaluate whether it is meeting the County’s goal for renewable energy ... and get input with stakeholders,” and quoted Commissioner Hicks (County Planning Commission) when he offered the motion that the County should “hope to avoid a situation where legislation that is intended on its face to promote activity in the area of renewable energy is actually making it impossible for that activity to occur.”¹¹⁰

84. In response to PPRP, Mr. Gilchrist disagreed with Mr. Sadzinski’s bases to deny the Project. First, Mr. Gilchrist addressed the prime farmland designation issue. He explained the Project would preserve and protect the underlying land and will maintain the soil qualities, and he questioned the Site’s designation as prime farmland.

85. Next, Mr. Gilchrist explained the prohibition of locating solar projects in PPAs was unreasonable as the decision to enter into an agricultural preservation easement was an economic decision of the respective property owner. He claimed a CPCN proceeding was not an appropriate forum to attempt to force a private landowner into such an easement.¹¹¹

86. Mr. Gilchrist also found PPRP’s concerns about solar facilities taking up too much farmland to be overstated. In order to meet Maryland’s RPS solar carve-out, he indicated only a very small percentage of farmland was necessary. Based on his calculations, Mr. Gilchrist determined that only 0.72% of the State’s farmland would be

¹¹⁰ *Id.* at 6.

¹¹¹ *Id.* at 8-9.

necessary to meet the 14.5% solar carve-out goal.¹¹² He stated adopting PPRP's argument would not result in a meaningful impact on the preservation of farmland.

87. He similarly disagreed with PPRP's claim that the Project was inconsistent with the County's CP. Mr. Gilchrist claimed the Project was actually consistent with the CP and cited provisions related to the County incorporating renewable energy development on greenfields as a core Community Development Principle and that renewable energy development should not be restricted.¹¹³ While PPRP cited the CP's goal of preserving prime agricultural land, Mr. Gilchrist countered that the Project will actually preserve and protect the underlying farmland, and the purpose of PPAs is to designate areas for landowners to voluntarily enter into agricultural easements, which is not present in this case. The Project's location within the Town's CGA and API would not impact the area's greenway buffer because it would not impede any existing undeveloped land separating the municipalities.¹¹⁴

88. Mr. Gilchrist dismissed PPRP's reliance on the County's and the Town's opposition as a basis for denying the CPCN. He opined the County's zoning ordinance was not reasonably targeted to achieve its stated goal of preserving farmland and, as previously noted, the Project would not interfere with the greenbelt separation between the Town and the City of Frederick.¹¹⁵

89. Finally, he disagreed with Mr. Sadzinski's position that the Project should be rejected because the contribution to the RPS was not enough to outweigh PPRP's concerns. Mr. Gilchrist testified:

¹¹² *Id.* at 9.

¹¹³ *Id.* at 10-11, *citing* Applicant Ex. 6 (Mr. Gilchrist's Rebuttal Testimony in Phase I) at 8-9.

¹¹⁴ *Id.* at 11-12, *citing* Applicant Ex. 6 at 2-3.

¹¹⁵ Applicant Ex. 25 at 12-13.

what Mr. Sadzinski has effectively argued is that at some conceptual square footage *larger* than the current size of the Project the output would be enough to outweigh the other issues he identified. Ironically, this is the exact opposite direction of the preferences expressed in the County's ordinance, which only authorizes small scale facilities.¹¹⁶

As the RPS requirements increase year after year, more renewable resources across the State must be built to meet the increasing goal. He stated utility-scale solar projects must be in economically feasible interconnection points on flat, clear land and the economies of each project are unique to each site.¹¹⁷

90. At the evidentiary hearing, Mr. Gilchrist acknowledged the Project was sited upon prime farmland and was within a PPA. In relation to the CP, he stated the Project was "a mixed bag" and was consistent with some portions the CP.¹¹⁸ Mr. Gilchrist explained the Applicant addressed the local opposition by completely surrounding the Project with vegetative screening to block views from all vantage points of a neighbor or a public road, and the Project's footprint was significantly reduced.¹¹⁹ However, he did not believe the changes in the site plan, which he agreed were substantial and also included increasing setbacks, were provided to the other parties. In relation to the Baker Farm, Mr. Gilchrist indicated that the Applicant's discussions with the MHT were ongoing and he hoped to reach an agreement on a mitigation plan within the next six months.¹²⁰

91. Mr. Gilchrist confirmed that the Applicant's parent company, Coronal Development Services, LLC had changed as Lincoln Clean Energy, an affiliate of Orsted,

¹¹⁶ *Id.* at 13. (emphasis in original)

¹¹⁷ *Id.* at 14.

¹¹⁸ Tr. at 26-27.

¹¹⁹ Tr. at 28.

¹²⁰ Tr. at 30.

purchased Coronal Energy's development platform.¹²¹ However, Biggs Ford did not notify the Commission or the parties of the change in ownership.

92. Mr. Gilchrist stated the Applicant did not appeal the County's April 2, 2019 denial of its floating zone application because Biggs Ford intended to first complete the CPCN process.¹²² He confirmed that the construction of a commercial solar facility on agriculturally-zoned property and within a PPA was inconsistent with the County's CP.¹²³ However, the Project would preserve the agricultural land which was a concern of the neighbors and one-third of the property will continue to be farmed. Mr. Gilchrist highlighted the Applicant intended to incorporate a pollinator habitat in the areas of the solar arrays which could be considered agricultural activity.¹²⁴

93. In response to questions from the bench, Mr. Gilchrist indicated that the prime farmland designation was based on a very general survey and not on specific soil samples.¹²⁵ He also confirmed the Applicant has not tested the soils at the Site.

F. Public Utility Law Judge's Post-Evidentiary Hearing Ruling

94. At the conclusion of the evidentiary hearing, the PULJ determined in light of the changes to the Project (site plan, layout, and screening), which Biggs Ford did not provide to the Parties, and the lack of an environmental review and proposed license conditions from PPRP, additional evidence was required. Accordingly, Biggs Ford was directed to file any information, studies, analysis, and/or testimony that reflect the

¹²¹ Tr. at 32-33.

¹²² Tr. at 36.-37.

¹²³ Tr. at 37.

¹²⁴ Tr. at 39.

¹²⁵ Tr. at 51.

modifications to the Project and its Application, and PPRP was directed to file a PAR, proposed licensing conditions, and supporting testimony on or before February 10, 2020.

G. Supplemental Testimony

1. Biggs Ford

95. Mr. Gilchrist provided an explanation of the ERD Addendum and the Project's revised site plan. He stated the changes reduced the Project's limit of disturbance and extended the vegetative buffer around the entire Project. As previously noted, the Project's limit of disturbance has been reduced from 135 acres to 100 acres and the landscape buffer will now surround the entire Project, approximately 12,000 linear feet.¹²⁶ The Applicant noted improved solar panel technology permitted the Project's production to remain the same while reducing the quantity of solar panels.¹²⁷ The setbacks have been increased along the residential property boundaries and all aspects of the Project along 700 feet of Biggs Ford Road have been removed to maintain the public's view of the Baker Farm.¹²⁸

96. The ERD Addendum explained the Applicant's efforts to investigate the potential cultural resources and the development of a mitigation plan for any potential adverse effects. As part of the referenced December 11, 2019 stakeholder meeting, Biggs Ford amended the site plan and revised the Project layout to restore the public view of the Baker Farm complex, and agreed to protect the farm complex during construction, conduct surveys of surrounding properties to assess potential sites for NRHP eligibility, and to

¹²⁶ Applicant Ex. 27 at Attch. A at Section I.

¹²⁷ *Id.* at Attch. A at Section V.

¹²⁸ Applicant Ex. 27 at 1-2 and Attchs. A and B.

document the interior of the historic farm complex via photographs and architectural drawings.¹²⁹

97. The Applicant claimed, “Frederick County has begun to reflect interest in large-scale solar in their long-term planning, which leads to the conclusion that Biggs Ford is more aligned with the county’s comprehensive planning than when the original ERD was submitted.”¹³⁰ The ERD Addendum noted that the new LFMP “highlights the accomplishments of installing a large solar array adjustment to the Ballenger-McKinney Waste Water Treatment Plant,” which provide power to seven County buildings.¹³¹

98. In relation to decommissioning the Project at the end of its useful life, the Applicant indicated that all parts would be disassembled and removed (both above and below ground), and the Site would be restored consistent with the surrounding areas and reseeded to promote vegetation.¹³²

2. PPRP

99. Mr. Sadzinski confirmed PPRP was still recommending denial of Biggs Ford’s CPCN application. However, at the PULJ’s direction and despite its opposition to the Project, PPRP submitted a PAR and requested license conditions.¹³³

100. He testified the proposed license conditions “were developed based solely on PPRP’s environmental and socioeconomic review of the proposed project, with the exception of four license conditions related to historic preservation that were developed in

¹²⁹ Applicant Ex. 27, Attch. A at Section VI.

¹³⁰ Applicant Ex. 27, Attch. A at Section IV.

¹³¹ *Id.*

¹³² *Id.* at Section V.

¹³³ PPRP Ex. 6 at 2.

consultation with the Maryland Historical Trust.”¹³⁴ Mr. Sadzinski explained several State agencies are typically involved in coordinating license conditions; however, since the State agencies are recommending denial of the CPCN, the Secretaries and Director of those agencies did not review and approve the license conditions submitted by PPRP.

101. Mr. Sadzinski stated that MHT determined the Baker Farm was eligible for the NRHP, and concluded the Project would have adverse effects on the farmstead by diminishing the integrity of its setting.¹³⁵ The farmstead is also located outside of the leased area of the Project. MHT was uncertain if the landowner would continue to use some of the farmstead’s building for agricultural purposes and several of the buildings that make the Baker Farm National Register-eligible are vacant, deteriorating, and may be demolished by neglect.

102. As noted in his Direct Testimony, Mr. Sadzinski reiterated the four reasons PPRP recommended denial of the Project: the Site is located on prime farmland within a County-designated PPA; the Project’s inconsistency with the County’s CP; the Site’s location within a PPA and adjacent to the Town of Walkersville’s CGA; and strong local opposition from both the County and the Town of Walkersville.¹³⁶ Even if PPRP’s proposed license conditions were adopted by the Commission, it would not alleviate the State agencies’ concerns.

¹³⁴ *Id.* at 3.

¹³⁵ *Id.*

¹³⁶ *Id.* at 4.

a. Project Description

103. PPRP explained the Project, as amended, has been reduced from approximately 135 acres to approximately 100 acres as the Applicant has proposed to use higher efficiency solar PV panels that allow for a smaller footprint as set forth in the November 19, 2019 site layout plan.¹³⁷ The Site is zoned A – Agricultural District, which does not permit solar farms by right. PPRP cited County Bill 17-07, passed in May 2017, which set forth the zoning districts and criteria for locating solar facilities. In the Agricultural District, solar facilities are only permitted with the approval of a floating zone reclassification. As previously noted, Biggs Ford’s floating zone reclassification application was denied by the County on April 2, 2019.¹³⁸

104. The Project area is bordered by a transmission line corridor to the north, Biggs Ford Road to the south, and Dublin Road to the east, and residential properties and agricultural land beyond in all directions. The 100-acre Project area consists predominately of cleared agricultural fields, with 2 forested areas, totaling approximately 1.5 acres, that will be removed.¹³⁹ The Project will now consist of approximately 55,000-60,000 solar panels and 6 inverter pads,¹⁴⁰ with a single-axis tracking system, transformers, and other necessary equipment to interconnect to the distribution system. The Project will be entirely surrounded by a 25-foot deep landscape buffer.

¹³⁷ PPRP Ex. 7 at 3 and 6 - Figure 2.

¹³⁸ PPRP Ex. 7 at 3; *see* County Ex. 7, Appx. B.

¹³⁹ PPRP Ex. 7 at 4.

¹⁴⁰ *Id.* at 7. The Applicant stated in a December 20, 2019 data response that the total number of panels was 59,052. *Id.* at Appx. A - Applicant’s December 23, 2019 Response to PPRP Question 1. However, in the Amended ERD, the Applicant specified the Project would have 57,000 panels. Applicant Ex. 27, Section V.

b. Environmental Impact Assessment

105. PPRP addressed the pertinent State and local regulations applicable to the Project. First, the Project will add approximately 2.86 acres of impervious surface resulting from the 6 inverter pads, posts for the solar panels, fencing, and aggregate access roads.¹⁴¹ In order to reduce adverse impacts of stormwater runoff, PPRP indicated the Applicant must comply with COMAR 26.17.01-.02 which applies to the preparation, submittal, review, approval, and enforcement of erosion, sediment, and stormwater control plans. As the Project will disturb more than one acre, a National Pollutant Discharge Elimination System General Permit is required to protect water quality and meet both federal and State requirements.¹⁴² Biggs Ford must also include an Erosion and Sediment Control plan to manage stormwater during construction which must be reviewed and approved by the County's Planning & Permitting Division. Additionally, Biggs Ford must obtain site plan approval from the County Planning Commission and will be required to obtain other necessary permits, such as building, grading, and electrical permits.¹⁴³

106. PPRP indicated that at the end of the Project's operating life, the Applicant must be prepared to dismantle and remove all components and restore the land. PPRP included a license condition that requires Biggs Ford provide a decommissioning plan that includes the responsible parties, timeframes, estimated costs for decommissioning, dismantling, and disposing of all components, and how the Site's conditions will be addressed after decommissioning.¹⁴⁴ Additionally, the Applicant must secure a funding mechanism(s) to cover the costs of its decommissioning plan, such as a surety bond, a letter

¹⁴¹ PPRP Ex. 7 at 8.

¹⁴² *Id.* at 8-9.

¹⁴³ *Id.* at 11.

¹⁴⁴ *Id.* at 12.

of credit, or other arrangement which must be in place prior to the commencement of construction. PPRP will consider the Project to be abandoned if there is no output to the grid for a period of 12 consecutive months.¹⁴⁵ PPRP also recommended the Applicant provide an estimate of the decommissioning costs by a third-party consultant to determine the amount of the financial instrument and that the estimate be updated every five years.

c. Biological Resources

107. PPRP indicated that in addition to the referenced 1.5 acres of forest, a stream/wetland area with permanent vegetation is located along the Site's northern boundary. The Project would restrict the types of vegetation on the Site, but only minor permanent effects were anticipated on the soils and future use of the Site as farmland. The Applicant plans to plant and maintain the entire Site in a low-height cover grass and a low maintenance native seed mix will be planted under and around the arrays when possible in order to control erosion and promote stormwater infiltration.¹⁴⁶ PPRP recommended the Biggs Ford's grounds maintenance plan restrict mowing during the nesting season of ground nesting birds and that vegetation not be mowed at any time to a height less than 10 inches.¹⁴⁷ PPRP also recommended use of a native seed mix and an integrated vegetation management ("IVM") approach that will require little, if any, mowing and will provide wildlife and pollinator habitats. PPRP specified the IVM approach should be used to maintain buffers for the wetland, stream, and 100-year floodplain areas on the Site.¹⁴⁸

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 15.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

108. The Forest Conservation Act applies to the Project and Biggs Ford will be required to submit a Forest Stand Delineation and Forest Conservation Plan to the County. As the Project will involve both the removal of existing forest and the development of cleared agricultural land, PPRP recommended both afforestation and reforestation conditions consistent with the County Forest Conservation Ordinance and calculated that Biggs Ford would be required to plant a total of 21.5 acres.¹⁴⁹

109. In terms of wildlife, PPRP did not anticipate significant impacts. However, the Project will significantly change the amount of open space, forage availability, water retention, and runoff, and the removal of forest will reduce the wildlife populations that use the habitat.¹⁵⁰ In order to mitigate potential impacts, PPRP included conditions requiring an approved sediment and erosion control plan, stormwater pollution prevention plan, and spill prevention, containment and counter-measure plans.

110. PPRP specified that the Project could benefit wildlife with little cost. As previously noted, PPRP recommended areas below and between the arrays be planted with native, warm season grasses and low-growing pollinator-friendly plant species to encourage ground-nesting birds and pollinators and included license conditions accordingly.¹⁵¹

111. PPRP found no records of State or federal rare, threatened, or endangered (“RTE”) species on the Site. PPRP noted that prior surveys conducted in the County indicated bats, most of which have a State or federal protected status, may be present in forested areas. Therefore, PPRP recommended that the Applicant remove the forested areas outside of bat pup season (mid-May to the end of July) in order to avoid disturbing bats

¹⁴⁹ *Id.* at 17.

¹⁵⁰ *Id.* at 18-19.

¹⁵¹ *Id.* at 19-20.

during their roost phase.¹⁵² Additionally, in the event bats or other RTE species are discovered prior to or during construction, Biggs Ford must coordinate with the WHS to institute appropriate avoidance and/or mitigation measures.

112. The UNT and wetlands along the northern border of the Site were determined to be jurisdictional waters of both the United States and the State.¹⁵³ However, since those areas, the 100-year floodplains, and the buffers will not be disturbed, the Applicant did not plan on submitting a Joint Wetlands and Waterways Permit Application.

113. The Project will interconnect with the PE-FirstEnergy distribution system by a direct tap line on the 34.5 kV Monocacy-Carroll circuit on the east side of Dublin Road. While the interconnection will require additional equipment and upgrades, PPRP found there would be no significant environmental disturbance beyond minor construction impacts.¹⁵⁴

d. Economic, Demographic, and Fiscal Issues

114. The Project would create between 50 and 70 direct design, management, and construction jobs and it was anticipated that the local labor pools would be relied upon. PPRP found that this would have a positive effect on the local economy from construction worker payrolls and consumption expenditures, local purchases of construction materials and associated multiplier effects.¹⁵⁵ PPRP determined the construction workforce, most of which will be within daily commuting distance, will not impact population and housing, or population-related public services. The County and the State, and surrounding jurisdictions

¹⁵² *Id.* at 21.

¹⁵³ *Id.* at 22.

¹⁵⁴ *Id.* at 25.

¹⁵⁵ *Id.* at 26.

to a lesser extent, will experience fiscal benefits from taxes on wages, consumption expenditures, and supplier sales receipts.¹⁵⁶ This will result in a positive net fiscal benefit for both the County and the State. PPRP described the various tax rates that will apply to the Project and its construction, and estimated that personal property taxes would be between \$123,000 to \$141,000 in the first full year of operation, declining to approximately \$47,000 to \$53,000 in year 30.¹⁵⁷

e. Land Use

115. PPRP described the zoning history related to the Project and Bill 17-07 which established a Commercial Solar Facility Floating Zone that overlays the Agricultural district for siting solar facilities. PPRP noted several constraints to establishing a floating zone overlay: the Site is contiguous to the Walkersville CGA as set forth in the County's 2010 CP; the Site is located within the County PPA; the Site is within 2 miles of U.S. 15; the Site is located on prime farmland soils, and the Project's footprint is greater than 10% of the tract's tillable acreage.¹⁵⁸

116. PPRP indicated that while the Commission has the authority to preempt the County's land use ordinance, PPRP stressed the State's concern related to the Project's location within the PPA and being on prime farmland.¹⁵⁹ PPRP stated, "A PPA is an explicitly delineated area within the County capable of supporting profitable agricultural activities, governed by local policies to stabilize the land base to limit development, and large enough to support the kind of agricultural enterprise that the County is seeking to

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 27.

¹⁵⁸ *Id.* at 29.

¹⁵⁹ *Id.* at 30.

preserve.”¹⁶⁰ PPAs are included in the County’s most recent CP adopted in September 2019. There are 5 separate PPAs in the County, totaling 99,038 acres and the Walkersville PPA includes the highest concentration of prime farmland anywhere in the County. The Walkersville PPA surrounds the Town’s growth area that is intended to accommodate potential annexation by the Town for residential or employment development.¹⁶¹

117. PPRP explained that in 2012, the State had just over 1 million acres of prime farmland which has decreased over the years due to development. The County has approximately 115,500 acres of prime farmland (out of a total of 427,000 acres) and has experienced a loss of farmland due to development. Specific to the Walkersville PPA, in 2010, approximately two-thirds of the 8,831 acres were classified as prime farmland, and now approximately 28% of the PPA is protected by either agricultural easements or the purchase of development rights protection.¹⁶² The Project’s location on prime farmland and within a PPA is concerning to the State as more of Maryland’s agricultural lands are targeted for solar energy production.

118. PPRP was uncertain as to whether the Project would discourage or encourage development of the adjacent land within the Walkersville CGA. PPRP found “no evidence to suggest that land use within surrounding residential subdivisions will be affected by the project provided the applicant establish[es] a robust landscaped buffer to screen the project from adjacent residences.”¹⁶³ PPRP recommended a license condition that requires the

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 31.

¹⁶² *Id.* at 31-32.

¹⁶³ *Id.* at 33.

Applicant to certify to both the Commission and PPRP that the Project was designed in substantial conformity to the County's site plan requirements.

f. Transportation

119. The Site will be accessed by an existing driveway that will require a permit from the County. PPRP indicated that the transportation-related impacts would be limited to the construction period. Construction-related traffic will most likely utilize I-70 and U.S. 15 through Frederick City to Biggs Ford Road.¹⁶⁴ It was anticipated that such traffic would increase at the beginning and end of each weekday with approximately 60 vehicles being added to local roads.¹⁶⁵ Based on its experience, PPRP estimated the Project would require 100 deliveries to transport all of the necessary components to the Site. PPRP determined this amount of traffic would be insignificant relative to existing traffic volumes and would not reduce the level of service on roads located near the Project.

120. PPRP recommended the Applicant obtain any permits required to transport oversized or overweight excavation equipment.¹⁶⁶ Additionally, the tap line's construction will require County permits to cross or occupy a County right-of-way. PPRP also included license conditions that require Biggs Ford to repair any damages to the roads from construction-related traffic.

121. PPRP also reviewed the Project's potential impact on air navigation near the Project. The closest airports are two helipads in Frederick City located at Fort Detrick and Frederick Memorial Hospital, both more than 3.5 miles away, and the Frederick Municipal

¹⁶⁴ *Id.* at 35.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 36.

Airport is approximately 4.3 miles away.¹⁶⁷ PPRP concurred with the FAA's, MAA's, and Frederick Municipal Airport's determination that the Project would not create an obstruction or hazard to air navigation.

g. Visual Impacts

122. PPRP described the Site's terrain and views from neighboring subdivisions, some of which are encumbered by the existing transmission line. Once constructed, the top edge of the solar panels will be approximately 10-12 feet above ground which will create a low visual profile against the horizon.¹⁶⁸ The Project will be secured by a 6-foot chain link fence, and the solar components will be set back 300 feet from Biggs Ford Road and the property lines of the adjoining Dublin Manor subdivision so that the nearest solar panel to any residence in that subdivision will be in excess of 500 feet.¹⁶⁹ Based upon the amended site plan, the Applicant will screen the entire Project to block the views of all solar equipment behind a 25-foot landscape buffer. The vegetation will be 5-6 feet tall at planting and will grow to heights of 40 to 70 feet. PPRP included a recommendation that the vegetative buffer be planted prior to construction and be maintained for the life of the Project.¹⁷⁰

123. Based on the revised site plan, PPRP analyzed the Project's "visual footprint" within one-half mile of the Project after the buffer is initially planted through year 5 when the buffer will be approximately 20-feet high.¹⁷¹ It was estimated that in year 5, the buffer would be opaque. Therefore, during the Project's early years of operation, PPRP

¹⁶⁷ *Id.* at 38.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 39.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

anticipated the topmost parts of the Project (solar array edges, inverters, perimeter fencing) will likely be seen by passing motorists on Biggs Ford Road and Dublin Road, and the visible area could extend to nearby properties and farms until the buffer matures.¹⁷² PPRP concluded that a landscape buffer that meets both the County's site plan requirements and floating zone requirements, and is planted prior to construction will mitigate most views from adjoining public roads and properties.¹⁷³ PPRP also included conditions to address non-compliance issues with the Project's licensing conditions, such as visual-related complaints.

124. PPRP expressed concerns with Biggs Ford's plan to plant the landscape buffer outside of the area that the Applicant intends to lease. PPRP specified, "locating the buffer outside the property line (or leased area) implicitly assigns responsibility for buffer maintenance to the landowner."¹⁷⁴ Unless the leased area is expanded to include the buffers, which would add approximately six acres to the Project area, the landscaping maintenance and landscaping surety agreements would need to include the landowner as a responsible party.¹⁷⁵ In order to avoid such a complication, PPRP recommended a license condition to install the landscape buffer within the leased area.¹⁷⁶

125. Once constructed, the Project will have few lighting requirements. The County addresses outdoor lighting for non-governmental utilities in its zoning ordinance. PPRP, therefore, recommended any lighting comply with the applicable requirements as negotiated during the site plan review process.¹⁷⁷

¹⁷² *Id.* at 40.

¹⁷³ *Id.* at 41.

¹⁷⁴ *Id.* at 42.

¹⁷⁵ *Id.*

¹⁷⁶ In response to a Bench Data Request, the Applicant confirmed the Project's leased area will include the landscape buffer. PULJ Ex. 2, Response to 1-1.

¹⁷⁷ PPRP Ex. 7 at 42.

126. PPRP completed a glare analysis to determine the intensity, time of day, and duration from 10 different observation points and roads nearby the Site. PPRP found no instance of glare upon any observation point or road but included a license condition related to unanticipated solar reflections.¹⁷⁸

h. Cultural and Aesthetic Resources

127. There is one property on the NRHP and four other historic resources recorded in the Maryland Inventory of Historic Properties within one mile of the Site. The MHT noted the Project's proximity to the Biggs Ford archeological site and other prehistoric and historic archeological sites near the Monocacy River and Glade Creek. At the directive of MHT, the Applicant completed a Phase I archeological investigation and determined the Project area has no archeological potential, but the Baker Farm, a mid-19th century farmstead which is not located within the leased area, was NRHP eligible. Based on the Applicant's finding, MHT determined the Project would adversely impact the farmstead by diminishing the integrity of its setting and recommended licensing conditions as mitigation.¹⁷⁹

128. PPRP convened consultations with the Applicant, MHT, and local organizations to resolve MHT's concerns related to the Baker Farm. As a result of the consultations, the Applicant is required to further document the farmstead and establish a farmstead protection zone around the structures within the complex during construction.¹⁸⁰ On December 2, 2019, the County's historic preservation planner determined the Project

¹⁷⁸ *Id.* at 44.

¹⁷⁹ *Id.* at 45.

¹⁸⁰ *Id.*

would adversely impact the surrounding historic resources and cultural landscapes, which include 12 historic properties. Therefore, PPRP included license conditions that require Biggs Ford to undertake an architectural survey of the 12 historic properties referenced by the County, the 4 MHT conditions, and to consult with MHT in the event construction reveals unforeseen archeological relics or sites.¹⁸¹

129. The Site is within the programmatic boundary of the Journey Through Hallowed Ground National Heritage Area (“JTHG NHA”), which encompasses 4 states and spans 180 miles. Specifically, the Site is approximately 1 mile from a U.S. 15 segment of the JTHG National Scenic Byway, the primary touring route from which visitors can explore both the scenic and historically rich landscapes within the NHA.¹⁸² The Maryland Department of Transportation’s Maryland Scenic Byways Resource Protection tool estimated the western half of the Site is within the byway’s 1-mile corridor and 2 scenic viewpoints on U.S. 15 were identified. However, PPRP concluded that the Project’s low vertical profile, the distance from the roadway, and intervening vegetation, the Project will not be visible from the JTHG scenic byway or diminish the intrinsic qualities of the NHA.¹⁸³

i. Public Services and Safety

130. The Project will not require additional public services during either construction or operation under normal conditions. In the event of a fire or an accident, the Walkersville Volunteer Fire Department is approximately one mile from the Project. While

¹⁸¹ *Id.* at 45-46.

¹⁸² *Id.* at 47.

¹⁸³ *Id.* at 48.

the risk of fire is low, there is a risk of electrical shock to responding firefighters. Therefore, PPRP included a license condition that requires that the panel disconnects be mapped and registered with the County Division of Fire and Rescue Services.¹⁸⁴

j. Property Values

131. There is little research related to the impact of utility-scale solar facilities on nearby property values. PPRP pointed out that with the Project's minimal vertical profile and the proposed landscape buffering, the Project will be largely out of sight from nearby properties.¹⁸⁵ Additionally, the Project will not result in significant traffic, emit noise, air, or water pollutants, or generate any hazardous waste, and the decommissioning plan will return the Site to its original state. PPRP concluded, "the proposed facility will have a moderately benign local presence once the facility is operational suggests that property values will be unaffected."¹⁸⁶

k. Noise Impact Assessment

132. In terms of operational noise, PPRP asserted noise from solar facilities is typically low and is primarily associated with the inverters and transformers. Based upon the amended site layout, the distance from the inverter pad to the nearest residential dwelling is approximately 540 feet, and PPRP determined that the sound levels should not exceed the regulatory limits.¹⁸⁷ PPRP included a license condition that requires the Applicant to comply with State's noise regulations.

¹⁸⁴ *Id.* at 49-50.

¹⁸⁵ *Id.* at 50.

¹⁸⁶ *Id.* at 51.

¹⁸⁷ *Id.* at 54.

1. Electromagnetic Field Impact Assessment

133. PPRP addressed electromagnetic fields (“EMF”) and the potential impacts to human health from exposure to EMF. PPRP cited the International Commission on Non-Ionizing Radiation Protection (“ICNIRP”), which did not find a causal relationship between EMF and an increased risk of cancer or other long-term effects in its 2010 Guidelines.¹⁸⁸ Solar facilities do produce magnetic fields, however, such fields are significantly below the minimum thresholds established by the ICNIRP and PPRP found the typical magnetic fields to be comparable to those produced by common household appliances at a distance of only three feet.¹⁸⁹

134. PPRP cited an evaluation of EMF levels at a 3 MW solar project in Oregon and the strength of the EMF fields generated by that project as an example. That evaluation found the magnetic fields to be significantly below the minimum thresholds at 10 feet from the modules. In this case, the closest residential dwelling is approximately 540 feet away from the closest inverter pad therefore, PPRP stated the EMF levels were not anticipated to pose a health risk to nearby residents.¹⁹⁰

3. The County

135. Mr. Horn asserted the proposed revisions to the Project were not significant and neither alleviated nor eliminated the County’s concerns. He testified, “The primary revision to the project was the elimination of a few solar panels that would be located close to Biggs Ford Road,” which he found to be a minor adjustment.¹⁹¹ Mr. Horn explained the

¹⁸⁸ *Id.* at 56.

¹⁸⁹ *Id.* at 57-58.

¹⁹⁰ *Id.* at 59.

¹⁹¹ County Ex. 9 at 1.

Applicant's changes failed to address the County's primary concerns, namely the Project's location in a PPA and the Site's composition of prime soils.¹⁹² He indicated the removal of 151 acres from agricultural use was inconsistent with both the County's and the Town's CPs.

136. Mr. Horn also disagreed with Biggs Ford's assertion the Project, as amended, was more aligned with the County's CP than when the Application was initially filed. He acknowledged the County's goal of increasing renewable energy sources, but the County was "also devoted to preserving its agricultural heritage and resources."¹⁹³ Given both the Site's location and soil characteristics, he testified the land "is most valuable to the County and its citizens being utilized actively as agricultural land."¹⁹⁴ Mr. Horn also cited two large solar projects that will be located at County facilities and provide power to several County buildings.

137. In response to PPRP's Supplemental filings, Mr. Horn agreed with PPRP's recommendation and that the State Secretaries' recommendation and underlying reasoning should be followed. He also found that PPRP's proposed license conditions did not remedy the County's and the Town's objections. Referencing the County's and the Town's objections, Mr. Horn testified, "The proposed license conditions submitted by the State fail to address those concerns, and also unfairly attempt to shift the burden from the State Agencies to the County for the majority of activities related to regulatory compliance."¹⁹⁵ Mr. Horn cited the Governor's Task Force on Renewable Energy Development and Siting

¹⁹² *Id.*

¹⁹³ *Id.* at 2.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

(“Task Force”), the Interim Task Force Report, and the recommendations therein as State-level guidance for siting solar facilities to support his position.¹⁹⁶

138. Mr. Horn concluded the amended Project was still not compatible with the Site’s current zoning, the County’s and the Town’s CPs, or the character of the area. He stated the County has invested over \$118 million in agricultural land preservation, in addition to the State’s over \$84 million investment in the County for the same purpose.¹⁹⁷ Those investments advanced the County’s goal to permanently preserve 100,000 acres by 2040 and retain a total agricultural land base of at least 200,000 acres.¹⁹⁸

H. Responses to Bench Data Requests

139. After the submission of supplemental testimony and documentation, bench data requests were issued to all parties. First, Biggs Ford confirmed that the Project’s leased area will include the landscape buffer.¹⁹⁹ The Applicant also specified that the only change to the Project, as presented during the second public comment hearing, was the equipment setback from residential parcels on the southwest corner of the Project were increased from 100 feet to 300 feet.²⁰⁰

140. Next, the County provided information related to the two County-owned solar facilities. The Ballenger-McKinney Wastewater Treatment Plant project is a 1.1 MW AC facility located on approximately 4.04 acres, and the Reichs Ford Road Landfill project is a 2.0 MW AC facility located on approximately 14 acres.²⁰¹

¹⁹⁶ *Id.* at 3-4. Mr. Horn incorporated the Interim Task Force Report by reference.

¹⁹⁷ County Ex. 9 at 4.

¹⁹⁸ *Id.* at 4-5.

¹⁹⁹ PULJ Ex. 2.

²⁰⁰ *Id.*

²⁰¹ PULJ Ex. 3.

141. All parties also indicated the record was complete and further evidentiary hearings or public comment hearings were not necessary.²⁰² After reviewing the supplemental filings, responses to bench data requests, and the record as a whole, the PULJ agreed and found further hearings were unnecessary.

I. Public and Written Comments

142. The second public hearing was well attended, and comments were made both in support of and in opposition to the Project, with a majority of the individuals being opposed. Individuals cited the four bases relied upon by PPRP in support of denying the Project. Many individuals noted their support for renewable energy but objected to the Project's location in a residential area. There were concerns expressed about the negative impacts on nearby property values, ruining the existing views/esthetics, and some questioned whether the proposed landscape buffer would be maintained or whether the Project would become an eyesore like similar projects in the County. An individual noted the need to preserve agricultural property, especially prime farmland, and suggested solar panels be placed on commercial buildings and industrial complexes. Other concerns included the Site's proximity to Walkersville, that the Project would create a heat island, and that the County's zoning regulations should be respected. Finally, an individual noted the potential for stray voltage from the Project negatively impacting nearby properties, namely dairy farms, which could result in economic damages.

143. Those in favor of the Project explained it would limit further development and prevent the land from being broken up in numerous residential lots. The individuals asserted they attempted to work with the County regarding the Project. In relation to the

²⁰² PULJ Exs. 4 and 5.

claim the Project was inconsistent with the CP, an individual claimed the CP was an inconsistent document. The intent of the Project is to preserve the farmland as developers have approached the owner about selling the property.

144. One set of written comments was received from a couple who live on the southwest corner of the Site.²⁰³ The letter included an appraisal that indicated the Project would have a negative effect on their property value, and they also expressed potential health concerns and the maintenance of the Project.

J. Briefs

1. Biggs Ford

145. The Applicant addressed the enhanced record since the Commission remanded this matter to the PULJ Division and set forth the benefits under PUA § 7-207(e)(2) which it claimed were effectively uncontested.²⁰⁴ Biggs Ford claimed the Project's benefits were "effectively uncontested" and have been enhanced by PPRP's submittal of its PAR and license conditions. The Applicant also touted its efforts to address issues raised by the County and claimed the Project was consistent with the new LFMP, which contains goals for the County to become a net exporter of clean energy and the need for zoning reform.²⁰⁵

146. First, the Applicant argued the Commission should give little weight to the County's denial of Biggs Ford's floating zone application because it confirmed Bill No. 17-07 operates as a de facto ban on utility-scale solar facilities.²⁰⁶ Biggs Ford asserted the record demonstrated its GIS analysis found only one potentially viable parcel based on

²⁰³ ML 226957. The appraisal, dated January 22, 2016, was officially filed with the Commission (ML 216872) and was previously admitted into the administrative record as PULJ Ex. 1 during Phase I.

²⁰⁴ Applicant's Brief at 8. The Applicant also included its initial brief from Phase I as Attch. A.

²⁰⁵ Applicant's Brief at 8.

²⁰⁶ *Id.* at 9.

the application of Bill 17-07 and pointed to 5 specific requirements in Bill No. 17-07 that significantly limit potential utility-scale solar sites: the size limitation of the lesser of 10% of the tract or the tract's tillable acreage or 75 acres in size; the prohibition of locating such a project on prime farmland; the prohibition of locating such a project within a PPA; the prohibition of siting a project within 2 miles of the U.S. Route 15 centerline; and the site may not be contiguous to a community growth boundary.²⁰⁷ In this case, the County found the Project could not meet four of Bill No. 17-07 requirements, specifically, it exceeded both the 15 acre and 10% thresholds; the Site was comprised of 100% prime farmland soils; it was located within a PPA; and the Site adjoins the Walkersville CGA.²⁰⁸

147. Biggs Ford highlighted Mr. Sadzinski's testimony that banning utility-scale solar projects in an entire county would impact the deployment of renewable generation in Maryland,²⁰⁹ and noted the RPS's increased goal of 14.5% solar by 2030. Biggs Ford concluded that little to no weight should be given to the denial of its floating zone application.

148. Next, the Applicant highlighted its good faith efforts to resolve issues with both the County and the community. In order to address concerns related to the size of the Project and the views from roads and neighboring residences, Biggs Ford amended the Project to reduce the footprint from 135 to 100 acres, placed the arrays closer together, extended the vegetative screening from 3,800 linear feet to 12,000 linear feet to screen all of the Project's equipment at every vantage point outside the Project's boundary, and increased the setbacks so that the nearest solar panel to any residence is in excess of

²⁰⁷ *Id.* at 9-10, *citing* Attch. A (Phase I Brief) at 39-41 and 47-49.

²⁰⁸ Applicant's Brief at 11, *citing* Applicant Ex. 25 at 5.

²⁰⁹ Applicant's Brief at 11, *citing* Tr. at 67-68.

500 feet.²¹⁰ The revised layout also included removing all equipment along 700 feet along Biggs Ford Road to restore the public's view of the Baker Farm.²¹¹

149. Biggs Ford claimed PPRP's proposed conditions supported the issuance of a CPCN. The Applicant indicated the initial Proposed Order found deficiencies in the license conditions it submitted due to PPRP's election to not submit any conditions, which deficiencies were addressed by PPRP's submittal, and Biggs Ford's acceptance of, license conditions in this proceeding.²¹² Biggs Ford asserted that PPRP's license conditions corrected the deficiencies noted in Phase I. Whereas the County's review authority was excluded in Biggs Ford's proposed conditions, PPRP specifically included various conditions that require the County's review, including a requirement to submit a Forest Conservation Plan, comply with County site plan requirements, satisfy permitting requirements for the use of County roads, and provide a financial guarantee for the maintenance of the proposed landscape buffer.²¹³

150. Biggs Ford also noted the initial Proposed Order concluded that Biggs Ford's proposed conditions would mitigate potential adverse impacts on historical resources. After the issuance of the Proposed Order, Biggs Ford continued to work with the stakeholders culminating in the MHT-specific license conditions in this case, which included requirements to undertake additional documentation of the Baker Farm and establish a farmstead protection zone around the structures during construction and to conduct an architectural survey of 12 nearby historic properties.²¹⁴ PPRP also concluded the Project

²¹⁰ Applicant's Brief at 13, *citing* Applicant Ex. 25 at 3.

²¹¹ Applicant's Brief at 13, *citing* Applicant Ex. 27 at 1.

²¹² Applicant's Brief at 16-17.

²¹³ *Id.* at 16-17, *citing* PPRP Ex. 8.

²¹⁴ Applicant's Brief at 18-19, *citing* PPRP Ex. 7 at 45-46.

was outside of the Heart of the Civil War Heritage Area, was outside of the JTHG Scenic Byway, and would not diminish the JTHG NHA.²¹⁵

151. Biggs Ford asserted that PPRP's PAR demonstrated the Project's additional benefits. The Applicant highlighted improved water quality and economic benefits, and confirmed the findings in the Phase I Proposed Order related to mitigating esthetic impacts (property values, landscape buffer, and lack of glare).²¹⁶ These factors, combined with the findings in the Phase I Proposed Order and the record in Phase II, weigh in favor of granting a CPCN according to Biggs Ford.

152. PPRP's PAR addressed the potential EMF-related impacts from the Project, a factor that was not addressed in Phase I. PPRP found the Project, as proposed, was not anticipated to create a health risk to nearby residents.

153. Next, the Applicant claimed the Project's location on both prime farmland and within a PPA do not require that the CPCN be denied. Biggs Ford asserted both PPRP and the County claimed in Phase I that the Application should be denied due to the lack of a zoning decision, but in Phase II they focused on the Project being sited on farmland. The Applicant asserted the basis for that argument was unjustified. Biggs Ford claimed that even if RPS's solar-carve out goal was met solely by farmland, an unrealistic assumption according to the Applicant, only 1.61% of the State's farmland would be required to meet the 14.5% goal.²¹⁷

154. The Applicant cited 30 projects have been granted CPCNs by the Commission to construct solar generating facilities on farmland that were much larger than the Project in

²¹⁵ Applicant's Brief at 19, *citing* PPRP Ex. 7 at 46-48.

²¹⁶ Applicant's Brief at 19-21.

²¹⁷ *Id.* at 22-23, *citing* Applicant Ex. 25 at 9.

this proceeding.²¹⁸ Biggs Ford dismissed PPRP's and the County's reliance upon prime farmland and the PPA designation, both of which are prohibitions in Bill No. 17-07, which the Phase I Proposed Order found to not be in the public interest.²¹⁹

155. Biggs Ford also dismissed the prime farmland designation as a database of soil surveys as informational only and the designation was not designed to impose development restrictions. The Applicant noted neither the County nor PPRP verified the accuracy of the USDA NRCS soil survey or verified that an actual soil survey had been completed. Biggs Ford highlighted that if the Site actually was high quality soils, the Project would not impact the soil quality, to which PPRP agreed.²²⁰ Moreover, the Applicant claimed CPCNs have been previously approved on prime farmland without any restrictions.²²¹

156. The Applicant similarly discounted the Project's location within a PPA. Biggs Ford indicated the Agricultural Stewardship Act of 2006 ("ASA") "requires counties to designate PPAs within their comprehensive plans to remain eligible in the State's Agricultural Land Preservation Program," but the ASA does impose binding requirements, aside from agricultural preservation easements, on areas designated as PPAs.²²² In this case, the Site is not encumbered by such an easement. The entry into an agricultural preservation easement is voluntary and the Applicant claimed the CPCN process was not

²¹⁸ See Applicant's Brief at 23, fn. 75 for a list of the referenced cases.

²¹⁹ Applicant's Brief at 23.

²²⁰ *Id.* at 24, citing Applicant Ex. 25 at 7 and Tr. at 66.

²²¹ Applicant's Brief at 25, citing *In the Matter of the Application of Mason Dixon Solar Center, LLC for a Certificate of Public Convenience and Necessity to Construct a 18.4 MW Solar Photovoltaic Generating Facility in Washington County, Maryland* ("Mason Dixon"), Case No. 9426. The Order does not specifically reference prime farmland, but Mason Dixon's ERD (p. 22-23 and 35) noted there was prime farmland on portions of that site.

²²² Applicant's Brief at 25.

appropriate to attempt to force an owner into such an agreement. Biggs Ford noted the Commission has previously approved solar CPCNs sited within PPAs.²²³

157. In relation to the CP, Biggs Ford stressed the County's commitment to renewable energy and the need for zoning reform to allow for green development.²²⁴ While agricultural preservation remained as a commitment within the LFMP, the Applicant argued the commitments to renewable energy production and climate change, which Biggs Ford claimed were unachievable without farmland, outweighed the agricultural preservation commitment. As previously noted, the Project will preserve the underlying farmland, will not impact soil quality, and may revert back to agricultural use at the end of the Project's life.

158. The Applicant also claimed the greenbelt buffer that separates Walkersville from the City of Frederick (south of Walkersville) and the Town of Woodsboro (north of Walkersville), would not be impacted because the Project is located to the west of Walkersville.²²⁵ Instead, the Applicant claimed the Project would maintain that buffer and prohibit future development at least for the life of the Project.

2. Staff

159. Staff opposed the CPCN and cited four bases: the Project violated the County's CP; it was incompatible with existing lawful uses; it violated the requirements of

²²³ *Id.* at 26, citing *In the Matter of the Application of Longview Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 15.0 MW Solar Photovoltaic Generating Facility in Worcester County, Maryland (LS-Seabeach Solar Farm)*, Case No. 9405, Order No. 87556 (May 7, 2016). The Order does not reference that this project was approved to be constructed in a preservation priority area, but PPRP's ERD (pg. 18) specifically noted the site's location within a PPA.

²²⁴ *Id.* at 28.

²²⁵ *Id.* at 31.

the County's rezoning ordinance; and it violated the land use policies of both the County and the Town. In support of its position, Staff relied upon PPRP's testimony which cited the Site's prime agricultural farmland classification, its location within a PPA thereby making the Project inconsistent with County's CP, and strong local opposition.²²⁶ Staff also relied upon the local opposition to support its claim that the Project violated both the County's and the Town's land use policies.²²⁷

160. Staff acknowledged that the Project, if constructed, would help Maryland achieve its RPS goals and reduce greenhouse gas emissions; however, Staff highlighted that the Commission must give due consideration to the Project's consistency with the applicable CPs. Staff asserted that the RPS does not have a higher priority than the statutory requirement to give due consideration of a CPCN's consistency with comprehensive plans and zoning.²²⁸ Additionally, Staff cited Executive Order 01.01.2019.09 ("Executive Order"), signed by Governor Hogan on September 6, 2019, which set goals for the reduction of greenhouse gases and to expand renewable energy capabilities while carefully considering both counties' and municipalities' efforts to site renewable projects through comprehensive plans and zoning ordinances.²²⁹

161. In the event the Commission granted the Applicant a CPCN, Staff recommended its proposed license conditions be imposed on the Project.

²²⁶ Staff's Brief at 8, *citing* PPRP Ex. 4 at 7.

²²⁷ Staff's Brief at 9-10, *citing* PPRP Ex. 4 at 14.

²²⁸ Staff's Brief at 16-17.

²²⁹ *Id.* at 17-18.

K. Reply Briefs

1. Biggs Ford

162. The Applicant dismissed Staff's opposition, based solely on the County's position, as being inconsistent with *Perennial*, PUA § 7-207(e)'s "due consideration" standard, case law, and Commission precedent. Biggs Ford indicated that due consideration requires the Commission to consider all relevant facts and to exercise reasonable judgment.²³⁰ In addition to the PUA § 7-207(e) factors, the Applicant claimed the Commission must then consider compliance with the RPS and the targets for electricity from solar generators.²³¹

163. Biggs Ford argued that PUA § 7-207(e)(3) does not require deference to local zoning and CPs or elevate those items above the State's renewable energy and greenhouse gas reduction requirements.²³² The Applicant emphasized that in *Perennial*, the Court of Appeals "explicitly recognized that a primary purpose of the Commission retained authority over solar facility siting via the CPCN process is to ensure compliance with the RPS,"²³³ and that the CPCN process gives the Commission the discretion to weigh all the factors when siting a generation station. Biggs Ford asserted the Commission should give no weight to Staff's deference to the County, but that all statutory factors should be evaluated.

²³⁰ Applicant's Reply Brief at 2-3, citing *Accokeek, Mattawoman, Piscataway Creeks Communities Council, Inc. v. Public Serv. Comm'n*, 227 Md. App. 265, 288 (2016), *aff'd*, 451 Md. 1 (2016).

²³¹ Applicant's Reply Brief at 3, citing *In the Matter of the Application of Dominion Cove Point LNG, LP for a Certificate of Public Convenience and Necessity to Construct a Generating Station with a Name-Plate Capacity of 130 MW at the Dominion Cove Point Liquefied Natural Gas Terminal in Calvert County, Maryland*, Case No. 9318, Order No. 86372 at 63 (2014) and *In the Matter of the Application of Dan's Mountain Wind Force, LLC for a Certificate of Public Convenience and Necessity to Construct a 59.5 MW Wind Energy Generating Facility in Allegany, County, Maryland*, Case No. 9413, Order No. 88260 at 2 (2017).

²³² Applicant's Reply Brief at 3.

²³³ *Id.* at 4. (emphasis in original)

164. The Applicant further disagreed with Staff's claim the Project was not consistent with or "violated" the County's CP. Biggs Ford claimed comprehensive plans are non-binding guidance documents and cannot be "violated," and, similarly, the County's zoning ordinance cannot be violated due to preemption.²³⁴

165. Next, Biggs Ford criticized Staff's and PPRP's contention that the Project should be rejected because of the relatively small contribution to the RPS. The Applicant argued the Commission has never considered a Project's nameplate capacity as a basis for denial and many projects with smaller nameplate capacities have been approved.²³⁵ Any attempt to impose a minimum requirement for solar projects was unreasonable according to the Applicant, and Staff's and PPRP's positions actually incentivize larger projects, the opposite of the smaller projects permitted by the County's zoning ordinance.²³⁶ As the RPS increases each year, Biggs Ford asserted more resources will be required to meet the RPS's goals.

166. The Applicant also dismissed Staff's reliance on the Executive Order as irrelevant. Biggs Ford explained the Executive Order "is a prospective, non-binding

²³⁴ *Id.* at 4-5.

²³⁵ Applicant's Reply Brief at 5, citing *In the Matter of the Application of Spectrum Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 5.6 MW Solar Photovoltaic Generating Facility in Prince George's County, Maryland*, Case No. 9608, Order No. 89520 (March 2, 2020); *In the Matter of the Application of Sol Phoenix Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 2.5 MW Solar Photovoltaic Generating Facility in Prince George's County, Maryland* ("Sol Phoenix"), Case No. 9446, Order No. 88462 (November 9, 2017); *In the Matter of the Application of Kieffer Funk, LLC for a Certificate of Public Convenience and Necessity to Construct a 11.80 MW Solar Photovoltaic Generating Facility in Washington County, Maryland*, Case No. 9495, Order No. 89347 (November 14, 2019); *In the Matter of the Application of Citizens UB Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 9.9 MW Solar Photovoltaic Generating Facility in the Town of Union Bridge and Carroll County, Maryland*, ("CUB Solar") Case No. 9483, Order 89548 (April 27, 2020); *In the Matter of the Application of Brick Kiln Road Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 5.4 MW Solar Photovoltaic Generating Facility in Wicomico County, Maryland*, ("Brick Kiln"), Case No. 9454, Order No. 88562 (February 6, 2018), and *In the Matter of the Application of Chesapeake Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 9.0 MW Solar Photovoltaic Generating Facility in Cecil County, Maryland*, Case No. 9451, Order No. 88634 (April 6, 2018).

²³⁶ Applicant's Reply Brief at 6.

directive to a Task Force, and does not ban solar facilities on farmland,” and directed the Task Force to consider local zoning and land use policies, but there were no binding policies related to siting factors.²³⁷ The Applicant claimed, “As the EO simply created a Task Force aimed at legislative action in the future, what matters are the Task Force reports and any follow-on actions that result from them.”²³⁸ The Task Force’s Report did not result in legislation prohibiting the siting of solar facilities on farmland or alter the Commission’s preemption authority; therefore, Biggs Ford concluded that Staff’s reliance on the Executive Order as a basis for denial should be rejected.

2. The County

167. The County argued the initial Proposed Order could not be reconsidered unless the original decision was based upon “the result of fraud, mistake or inadvertence, or a new or different factual situation exists that justifies reaching a different conclusion.”²³⁹ The County further asserted that the Proposed Order could only be altered if there was new credible evidence in the record that would justify reversal, and the minor changes to the Project do not justify a different conclusion.

168. The County set forth the positions of all parties in opposition to the Project, and claimed that “[t]he opinions and recommendations of the entities and agencies having the greater expertise in assessing the needs, applying the policies and statutory structure in the State of Maryland and in Frederick County are of greater probative value and are to be given greater weight by the decision maker.”²⁴⁰ First, the County noted PPRP’s opposition

²³⁷ *Id.* at 7.

²³⁸ *Id.*

²³⁹ County’s Reply Brief at 2, *citing Cinque v. Montgomery County Planning Bd.*, 173 Md. App. 349 (2007).

²⁴⁰ County’s Brief at 3.

based upon both the County's and Town's opposition, the Site being located within a PPA and being 100% prime farmland, and the inconsistency with the CP, as well as the small contribution to the RPS. The County highlighted PPRP's continued opposition in Phase II and the PAR and license conditions would not have been submitted "but for the unusual direction issued by Order of the PULJ."²⁴¹

169. Next, the County explained Staff's opposition which included violating the County's and the Town's land use policies, PPRP's opposition, and the Governor's Task Force's Interim Report.²⁴² OPC's letter in opposition to the Project, dated October 4, 2017, was also referenced by the County.²⁴³

170. The County summarized its opposition, focusing on the significant role of agriculture in the County as reflected in the LFMP and Mr. Horn's testimony.²⁴⁴ The County claimed if the Project received a CPCN, it would remove 151 acres of prime soil farmland that lies within a PPA and which adjoins a block over 1,000 acres that are protected by agricultural preservation programs.²⁴⁵

171. The County also addressed the modifications to the Project, which it found to be insufficient to address the County's concerns. The County indicated there was no evidence to support the Applicant's claim that the prime soils would continue to be viable for agricultural uses 35 years after the panels are removed.²⁴⁶ Additionally, the Project, if

²⁴¹ *Id.* at 4.

²⁴² *Id.* at 4-5.

²⁴³ *Id.* at 4, *citing* ML 217228. OPC's opposition in Phase I was based upon the lack of PPRP's PAR. There is no indication of OPC's support or opposition for the Project in Phase II.

²⁴⁴ County's Reply Brief at 5. The County also cited a recording of the Planning Commission's discussions of Biggs Ford's rezoning application and a statement made by Ms. Sharon Suarez, a member of the County's Planning Commission, prior to voting to deny the application. *Id.* at 5-6. The recording was not entered into the record or referenced in any testimony; therefore, it was not considered in this decision.

²⁴⁵ County's Reply Brief at 6.

²⁴⁶ *Id.* at 7.

constructed, will negatively impact the PPA “and the opportunity to enlarge the adjoining block of over 1,000 acres of farmland already protected by preservation easements will be lost.”²⁴⁷ Furthermore, PPRP’s license conditions do not mitigate the opposition of the County, the Town, the Farm Bureau, or the Agricultural Business Counsel.

172. Finally, the County claimed there is no evidence the Project will provide substantial benefits to the State, the County, or County residents, and the Project will only provide a minimal contribution to the RPS.²⁴⁸

3. Staff

173. Staff continued to rely upon the Commission’s requirement to give due consideration to both the County’s and Town’s land use policies. Staff argued that the Project’s location within a PPA will remove prime farmland from agricultural use and violates the County’s preservation policies.²⁴⁹ Staff also cited the County’s decision denying Biggs Ford’s rezoning application in which the County determined that the Project was inconsistent with the CP and incompatible with existing uses on nearby properties. Staff similarly cited PPRP’s position was based upon the Project violating the County’s CP and the opposition of the County’s and Town’s residents.

174. Staff cited the Executive Order which states “the State must work aggressively to diversify, expand, and sustain its clean and renewable energy capabilities while balancing, enhancing, and safeguarding Maryland’s cultural heritage, economy, environment, natural resources, and view-sheds.”²⁵⁰ Staff asserted the Executive Order

²⁴⁷ *Id.*, citing County Ex. 7 at 7.

²⁴⁸ County’s Reply Brief at 8-9.

²⁴⁹ Staff’s Reply Brief at 1-2.

²⁵⁰ *Id.* at 5, *quoting* Executive Order. (emphasis in original)

reinforced the requirement that the Commission give due consideration to the County's land use policies. In support of its position, Staff indicated that *Perennial* reinforced the need to give due consideration to the local government's input.

175. In relation to Bill 17-07, Staff claimed the zoning ordinance did not ban utility-scale solar projects as alleged by the Applicant and the Phase I Proposed Order. Staff relied upon Mr. Horn's testimony that utility-scale solar projects are permitted in industrial-zoned districts and in the agricultural zone pursuant to the floating zone.²⁵¹ Staff also pointed to the County's solar projects as evidence of its commitment to renewable energy.

176. According to Staff, the Project, as amended, did not alter its violation of the County's or the Town's land use policies. Staff disagreed with the Applicant's assertion that PPRP's PAR justified issuing a CPCN. Staff concluded that despite the Applicant's efforts to correct the alleged deficiencies, the Project continues to violate both the County's and the Town's land use policies.²⁵²

IV. Applicable Law

177. This application was filed pursuant PUA § 7-207. Pursuant to PUA § 7-207(e), the Commission shall take action on an application for a CPCN only after due consideration of the following factors:

- (1) the recommendation of the governing body of each county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located;

²⁵¹ Staff's Reply Brief at 8, *citing* Tr. at 91-92.

²⁵² Staff's Reply Brief at 10.

(2) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

- (i) the stability and reliability of the electric system;
- (ii) economics;
- (iii) esthetics;
- (iv) historic sites;
- (v) aviation safety as determined by the Maryland Aviation Administration and the administrator of the Federal Aviation Administration;
- (vi) when applicable, air quality and water pollution; and
- (vii) the availability of means for the required timely disposal of wastes produced by any generating station; and

(3) for a generating station:

- (i) the consistency of the application with the comprehensive plan and zoning of each county or municipal corporation where any portion of the generating station is proposed to be located; and
- (ii) the efforts to resolve any issues presented by a county or municipal corporation where any portion of the generating station is proposed to be located.

178. In order to obtain a CPCN, the burden is on the applicant to demonstrate that the Project meets the public convenience and necessity.²⁵³

179. NR § 3-306(b), entitled “Secretary to prepare study and recommendation,” states, in pertinent part,

the Secretary shall require the Department of Natural Resources to complete any additional study and investigation concerning the application, and the Secretary of the Environment shall require the Department of the Environment to study and investigate the necessity for dredging and filling at the proposed plant site and water appropriation or use. The Secretary and the Secretary of the Environment jointly shall forward the results of the study and investigation, together with a recommendation that the certificate

²⁵³ *In Re Potomac Edison Co. dba Allegheny Power*, 97 Md. P.S.C. 239, 243 (2006).

be granted, denied, or granted with any condition deemed necessary, to the chairman of the Commission.

V. Analysis

A. Amended Project and New Information

180. The County claimed that the authority to reconsider the Phase I Proposed Order was limited, and that absence fraud, mistake or inadvertence, or a new or different factual situation did not justify reaching a different conclusion.²⁵⁴ This proceeding has never been treated as a reconsideration of the initial Proposed Order. COMAR 20.07.02.08A addresses petitions for rehearing as requests to either reopen a cause after final submission or for rehearing after a final order has been issued. In its remand, the Commission did not render a decision on the merits of the Project and stated, “the Commission always appreciates the input from PPRP in cases such as this, and would invite that input on remand, particularly after Biggs Ford goes through the County floating zone reclassification process.”²⁵⁵ Thus, it is clear the Commission anticipated, or at least hoped, that additional evidence would be submitted in the event Biggs Ford elected to continue to pursue a CPCN.

181. Even assuming the County was correct, the record established in Phase II demonstrates a significantly different factual situation than what was presented in Phase I. First, Biggs Ford made substantial changes to the Project despite the County’s classification of such changes as minor. The Project’s footprint was reduced from 135 acres to 100 acres,

²⁵⁴ County Reply Brief at 2. (citation omitted) The County also claimed the Phase I Proposed Order “is presumed to be correct”; however, the Commission did not actually make a decision on the findings and conclusions in the Proposed Order.

²⁵⁵ Order No. 88644 at 3.

the number of panels was reduced from 61,000 to 57,000, and the entire perimeter of the Project will now be surrounded by a 25-foot wide landscape buffer, an increase from approximately 3,800 linear feet to approximately 12,000 linear feet.²⁵⁶ Biggs Ford also agreed to plant a pollinator habitat on the Site as reflected in PPRP's license conditions,²⁵⁷ which PPRP has previously found to be beneficial in reviews of other solar projects.²⁵⁸ Mr. Horn also agreed and indicated that he understood the importance of pollinators.²⁵⁹

182. Additionally, the Applicant specified that the remainder of the Site, approximately 50 acres, will continue to be farmed.²⁶⁰ As a result of the changed layout, the setbacks from residential properties have been increased to 300 feet from residential properties along Biggs Ford Road and Reveille Court, with the distance from the closest solar panel to a residence exceeding 500 feet, and the Baker Farm will now be visible to the public due to the removal of all aspects of the Project from approximately 700 feet of Biggs Ford Road.²⁶¹

183. Next, PPRP completed its review of the Project and submitted a PAR and license conditions, two significant pieces of evidence that were not presented in Phase I. The PAR demonstrated the potential benefits from the Project, including improved water quality of runoff leaving the Site, and positive impacts on the local economy from design, management, and construction jobs, and tax revenues for the County.²⁶² PPRP concluded that the Project would provide the County a net fiscal benefit.²⁶³

²⁵⁶ Applicant Ex. 27, Attch. A.

²⁵⁷ PPRP Ex. 8 - Condition No. 14.

²⁵⁸ *See Mason Dixon*, Order No. 88166 at 26-27 and Appx. A, para. 10 at 3-4, and *Sol Phoenix*, Order No. 88462 at 21-22 and Appx. A, para. 12 at 4-5.

²⁵⁹ Tr. at 117 and 121.

²⁶⁰ Tr. at 39.

²⁶¹ Applicant Ex. 25 at 3 and Applicant Ex. 27 at 1 and Appx. A at 1.

²⁶² PPRP Ex. 7 at 23-24, and 26.

²⁶³ *Id.* at 26.

184. PPRP's license conditions are an improvement upon the Applicant's proposed license conditions submitted in Phase I. However, the mere submission of license conditions does not, in and of themselves, justify granting a CPCN as the Applicant suggested. It must also be noted that the license conditions were based solely on PPRP's environmental and socioeconomic review of the Project, with the addition of the MHT-related conditions. Mr. Sadzinski specified that since the reviewing State agencies (Agriculture, Commerce, Environment, Planning, Transportation and the Maryland Energy Administration) recommended denial of the Project, the license conditions were neither reviewed nor approved by those agencies.²⁶⁴ However, many of PPRP's license conditions are very similar to those submitted in previous solar CPCN cases.

185. The County appears to introduce a new standard, as no authority was cited, by claiming "[t]he opinions and recommendations of the entities and agencies having the greater expertise in assessing the needs, applying the policies, and statutory structure in the State of Maryland and in Frederick County are of greater probative value and are to be given greater weight by the decision maker."²⁶⁵ To the contrary, the Court of Appeals has stated, "This Court has observed that an expert's opinion is of no greater probative value than the soundness of his reasons given therefor will warrant."²⁶⁶ While the Commission gives significant weight to the County's position in CPCN proceedings, as well as PPRP's and Staff's positions, and complies with the due consideration standard in PUA 7-207(e),

²⁶⁴ PPRP Ex. 6 at 3.

²⁶⁵ County's Reply Brief at 3.

²⁶⁶ *A. H. Smith Sand & Gravel Co. v. Dep't of Water Res.*, 270 Md. 652, 667 (1974)(denying the Department's appeal and finding the trial judge did not err in modifying its order based upon A. H. Smith Sand & Gravel Co.'s expert who had additional information which the Department did not have at the time it made its determination).

there is no indication that the Commission has found the opinions of governmental entities to be more probative in CPCN proceedings.

186. The County's claim the PULJ's directive to PPRP to submit a PAR was unusual is both incorrect and irrelevant. While this case has been somewhat unusual compared to other CPCN proceedings and it was unusual for PPRP to submit a PAR, the PULJ's directive effectively sought PPRP's compliance with NR § 3-306(b). That statute specifically requires the submission of PPRP's review, along with recommendations to grant, deny, or to grant with conditions, a point which Mr. Sadzinski specifically noted in his testimony.²⁶⁷

187. In this proceeding, the PAR had not been completed at the time of the evidentiary hearing. PPRP sought an opportunity in a subsequent proceeding to provide license conditions in the event a CPCN was granted. In such a scenario, the CPCN would have been granted based entirely on the Applicant's ERD and ERD Addendum. Unless PPRP was in total agreement with every aspect of the Applicant's filings, it would not have been reasonable to allow PPRP to complete and submit its PAR *after* the issuance of a CPCN and potentially relitigate issues that were already addressed in the Applicant's filings.

B. Preemption

188. If it was not clear before, *Perennial* solidified the Commission's authority to preempt the respective local zoning authority when siting generation facilities. The Court

²⁶⁷ See PPRP Ex. 4 at 17. NR § 3-306(b) does not require PPRP to submit license conditions when recommending a project be denied; however, PPRP did not object to the PULJ's request at the close of the evidentiary hearing.

of Appeals stated, “While our review of the comprehensive nature of PU § 7-207 leads us to our conclusion that the General Assembly has acted with such a force in this field that local zoning authority over generating systems is impliedly preempted, our conclusion is further bolstered” by secondary factors including PUA § 7-207 addressing all regulatory matters associated with siting generating stations, the statute does not provide the local jurisdiction concurrent legislative authority or require compliance with planning and zoning ordinances, and the statute gives the Commission the final approval authority and specifies the role of the local government.²⁶⁸ The Court of Appeals also noted the Commission’s responsibility to ensure compliance with the RPS, “including the specific targets for the share of electricity coming from solar electric generation.”²⁶⁹ Despite the Commission’s preemption authority, it must still give due consideration to, and has given significant weight, to the respective jurisdiction’s recommendation, CP, and zoning in past proceedings.

C. Public and Written Comments

189. Many of the comments from the first phase of this proceeding, both for and against, were raised again during the second comment hearing, including concerns related to esthetics, impacts on property values, the need to preserve the County’s prime farmland and respect the County’s zoning regulations, and the maintenance of the landscaping buffer. The Project, as amended, and PPRP’s proposed license conditions addressed many of the concerns related to esthetics and the landscaping buffer. The Applicant has significantly increased the proposed landscape buffer which will mitigate the visual impacts from

²⁶⁸ 464 Md. at 633-634, *citing Allied Vending, Inc. v. City of Bowie*, 332 Md. 279, 299-300 (1993).

²⁶⁹ 464 Md. at 623-624.

surrounding residences, especially when the landscaping buffer matures, and PPRP estimated that in year 5 the landscape buffer could be opaque.²⁷⁰ While the viewshed will obviously change from open farmland to the trees and bushes contained in the landscape buffer, the Project itself should be blocked entirely from surrounding views. Additionally, PPRP's proposed license conditions address the maintenance and replacement of the landscape buffer.²⁷¹

190. In relation to property values, similar to the first proceeding, the record contains no evidence to support the claim that property values will be impacted. The appraisal that was resubmitted at the second public hearing has the same issues, *i.e.*, lack of analysis and based on speculation, that were noted in the initial Proposed Order.²⁷² Similarly, I find no evidence to support the assertions the Project would create a heat island or that stray voltage could damage nearby farms.

191. An individual noted the need to preserve agricultural property, especially prime farmland. In Phase I, the preservation of agricultural land and the development of parcels in and around PPAs was found to be both a reasonable and legitimate interest of the County.²⁷³ The record on this particular point in this Phase is consistent with that finding.

192. The issue of whether the Project preserves or uses valuable farmland is debatable. Those in favor of the Project note the land will continue to be prime farmland but will not be used as such for the life of the Project, which could extend for decades, whereas those against view the Project as entirely removing 100 acres of farmland. It must be highlighted that as a direct result of the Project's amended layout, approximately

²⁷⁰ PPRP Ex. 7 at 39-40.

²⁷¹ See PPRP Ex. 8, Conditions Nos. 21-23.

²⁷² See Phase I Proposed Order at 76-78.

²⁷³ Phase I Proposed Order at 75; see Section V.D.9.A.

one-third of the Site will remain agricultural and continue to be farmed, and there is no evidence to suggest the soils will be negatively impacted by the Project.

193. The comments in favor of the Project cited the inconsistency of the CP, the preservation of farmland, and the potential for development of the land if the Project is not approved and constructed. As Mr. Horn noted, there is an art to determining the consistency of a CP and that a particular development could be consistent with some elements of a CP and inconsistent with others.²⁷⁴ The Project's consistency/inconsistency of the CP is discussed below, but I do not find the CP as a document to be inconsistent.

D. PUA § 7-207 Factors

1. PUA § 7-207(e)(1) - Recommendation of the County and the Town

a. The County

194. In the first phase of this proceeding, the PULJ found “the County has a reasonable and legitimate interest in the preservation of its agricultural land and in the development of parcels in and around preservation areas,” and gave the County's opposition to the initially proposed Project significant weight.²⁷⁵ Just as in Phase I, the County remains adamantly opposed to the Project.

195. Subsequent to the Commission's remand, both the County's Planning Commission and the County Council unanimously rejected Biggs Ford's floating zone application. Resolution 19-03 documented the County Council's findings that the application was inconsistent with both the County's and the Town's CP, that the Project

²⁷⁴ Tr. at 103-104.

²⁷⁵ Phase I Proposed Order at 75.

was not compatible with both the existing and proposed development in the area, and the Project failed to meet four separate criteria in Bill No. 17-07: the Site's location adjacent to the Town's Community Growth boundary; the Site's location within the Walkersville PPA; the Site consisted of 100% prime farmland soils; and the size of the Project exceeded the requirement that it be the lesser of 10% of the property's tillable acreage or 75 acres.²⁷⁶

196. To the extent that the County's opposition is based upon the preservation of agricultural land and in the development of parcels in and around preservation areas, I give significant weight as those are legitimate interests, independent of Bill No. 17-07. However, to the extent the County's opposition is based on Bill No. 17-07, as discussed further below, I give no weight because the County's floating zone ordinance continues to function as a de facto ban on utility-scale solar projects.

197. It must also be stressed that one of the County's main objections to the Project is its location within the Walkersville PPA. While preservation is certainly important, the County is effectively denying the Project because the Site "would fit nicely into the agricultural preservation inventory which already contains nearby preserved prime agricultural parcels," and that "the opportunity to enlarge the adjoining block of over 1,000 acres of farmland already protected by preservation easement will be lost if the CPCN is approved."²⁷⁷ Currently, there is no such opportunity as the owner has no desire to voluntarily place his land into agricultural preservation, but there could be such an opportunity in the future at the end of the Project's useful life. Furthermore, how a parcel would fit into the County's agricultural preservation inventory is not relevant to this proceeding. There is no evidence the Project would impact the County's preservation

²⁷⁶ County Ex. 7, Appx. B at 8.

²⁷⁷ County Ex. 9 at 2 and County Reply Brief at 7, *citing* County Ex. 7 at 7.

goals, and as Biggs Ford noted the County seems to be using this proceeding to indirectly pressure the owner into placing his land into agricultural preservation.

198. The effective ban on such projects has become even more evident in this Phase. First, the Planning Commission intimated that Bill No. 17-07 may impose restrictions on the development of renewable energy even though it was designed to support such development.²⁷⁸ Second, Commissioner Hicks specifically commented about the zoning ordinance actually making the development of renewable energy impossible.²⁷⁹ Third, the recently enacted LFMP included an initiative, entitled “The Energy Economy,” to “Support growth opportunities in industries created by emerging and innovative energy technologies that are designed to make communities more efficient, resilient, and sustainable.”²⁸⁰ This initiative included 12 Supporting Initiatives, including No. 7, which stated, “Review and amend zoning regulations to remove barriers or provide flexibility for green businesses.”²⁸¹ Mr. Horn testified that one of the goals and objectives of the County’s Environmental Infrastructure Plan was “to look at existing zoning regulations and how they may be improved to facilitate these green economies ... we want to be sure we’re looking at existing rules and regulations to make sure we continue to facilitate, if they can locate in Frederick County.”²⁸² Mr. Horn also acknowledged that Supporting Initiative No. 7 could have been in response to Commissioner Hicks’ statement.²⁸³ Based on the Planning Commission’s unanimous vote to review the zoning ordinance, Commissioner Hicks’ statement, and the LFMP, it appears that there has been some

²⁷⁸ Applicant Ex. 25 at 6.

²⁷⁹ *Id.*

²⁸⁰ Applicant Ex. 26 at 170.

²⁸¹ *Id.*

²⁸² Tr. at 112-113.

²⁸³ Tr. at 113-114.

recognition by certain elements within the County that Bill No. 17-07's requirements are possibly over restrictive.

b. The Town

199. The Town expressed its opposition indirectly. The only indication of the Town's position is a reference to Resolution 19-03, which stated that on October 24, 2018, the Town voted to oppose the floating zone application based upon the Site being prime farmland; the Project was not compatible with the Town's Agricultural/Rural designation in the Town's CP; the Site was within the Town's growth limits and would impact the Town's residents; and the Project does not take into account the realignment of Dublin Road.²⁸⁴

200. In the Phase I Proposed Order, it was determined that PUA § 7-207(e)(1) was not applicable to the Town's recommendation because no portion of the Project was within the Town's jurisdictional boundaries.²⁸⁵ However, in this Phase the record is more developed in light of the testimony and information provided by both PPRP and the County.

201. It is uncontested that the Project lies within the Town's growth area which was cited as one of the bases for its opposition. To discount the Town's ultimate recommendation requires ignoring the Town's CP, which includes the growth area that extends the CP beyond the Town's jurisdictional limits. I find it unreasonable and inconsistent to disregard the Town's recommendation on one hand because the Project is not within the Town's jurisdictional boundaries (PUA § 7-207(e)(1)), but then give due consideration to the Town's CP pursuant to PUA § 7-207(e)(3)(i). Accordingly, I find it

²⁸⁴ County Ex. 7, Appx. B at 7.

²⁸⁵ See Phase I Proposed Order at 66.

appropriate to give the Town's recommendation due consideration as it relates to concerns related to prime farmland, the CP, and the growth area.²⁸⁶

202. It is unclear whether the Project would impact, positively or negatively, future development within the Town's growth area. However, PPRP opined that any such development may be more dependent on other factors, including market and economic factors.²⁸⁷ I also agree with Biggs Ford that the buffer created by the PPA, which overlays the Town's growth element area, between the Town and the City of Frederick will not be impacted as the Project is located to the west of the Town and the City of Frederick lies to the southwest.²⁸⁸ Additionally and as previously noted, the Commission has approved similar solar projects on prime farmland and farmland must continue to be part of the equation to meet the RPS's goals on renewable energy.

203. The Town's concerns related to the realignment of Dublin Road are not supported by the record. The same document PPRP relied upon, Resolution 19-03, noted there were no programmed improvements to either Dublin Road or Biggs Ford Road in the current Fiscal Year 2019-2024 County Capital Improvements Program.²⁸⁹ Mr. Horn also confirmed that there are currently no funds in place for the realignment of Dublin Road.²⁹⁰ It is not reasonable to rely upon a planned road realignment for which there are no allocated funds and no timetable for completion as a basis to oppose the Project.

204. There is similarly no evidence to support the Town's claim that residents, particularly those in the Creekside Park development, would be impacted. Other than a

²⁸⁶ See also Section V.D.9.c.

²⁸⁷ PPRP Ex. 7 at 33.

²⁸⁸ See Applicant Ex. 26 at 62.

²⁸⁹ County Ex. 7, Appx. B at 4.

²⁹⁰ Tr. at 111.

brief reference in Resolution 19-03, the only references to that development are included in PPRP's PAR, which notes the Creekside Park development is located across Biggs Ford Road from the Site's southeast corner.²⁹¹ Mere references to the location of a housing development do not equate to potential negative impacts on the Town's residents, especially in light of the increased setbacks set forth in the amended proposal and the removal of all aspects of the Project along that portion of Biggs Ford Road. PPRP also specified that there was no evidence nearby residential subdivisions would be impacted given the landscaping buffer.²⁹²

2. PUA § 7-207(e)(2)(i) – Stability and Reliability of the Electric System

205. It is undisputed that the Project would not adversely impact the stability and reliability of the electric system. Staff specifically noted the System Impact Study confirmed the Project's ability to interconnect with the grid and the completion of any specified upgrades will ensure no adverse impacts to the distribution system.²⁹³ Therefore, I find that the Project could be built and operated without negatively impacting the stability and reliability of the system.

3. PUA § 7-207(e)(2)(ii) – Economics

206. The record demonstrates the positive economic impacts (tax revenue, job creation, use of local contractors, etc.), that will stem from the Project's construction and operation.²⁹⁴ These benefits were not contested.

²⁹¹ PPRP Ex. 7 at 4 and 27.

²⁹² *Id.* at 33.

²⁹³ Staff Ex. 2 at 11-12.

²⁹⁴ Applicant Ex. 12 at 15 and Applicant Ex. 27, Atch. A at 4, and PPRP Ex. 7 at 26-27.

207. As in Phase I, concerns were expressed during the second public hearing that the Project will negatively impact neighboring property values.²⁹⁵ I found both the Applicant's appraisal and an appraisal submitted by a citizen, the latter of which was resubmitted in Phase II, had deficiencies and no new information related to those appraisals was submitted.

208. However, as part of PPRP's review, it noted that despite the public's perception of such a project, the little research that does exist has found "utility scale solar photovoltaic energy systems that are not visible from surrounding properties will have no impact on their market values."²⁹⁶ Biggs Ford has now proposed to completely encircle the Project with a 25-foot wide landscape buffer and the setbacks from residential properties have been increased. Based on these two factors and PPRP's statement, I find that there is no evidence to find that property values will be negatively impacted by the Project as there should not be impacts from noise, once the landscape buffer matures the Project will not be visible, and no odors or pollution will be emitted once the Project is operational.

209. Another individual claimed the potential for economic damages from stray voltage should be considered. As previously noted, there is no evidence to substantiate that assertion.²⁹⁷

210. Therefore, I find the construction and operation of the Project would have a positive economic impact to the County and the State.

²⁹⁵ See Phase I Proposed Order at 76, *citing* Applicant Ex. 12 at 36 and Applicant Ex. 7, Attch. E, and PULJ Ex. 1.

²⁹⁶ PPRP Ex. 7 at 50.

²⁹⁷ See Tr. at 84-85.

4. PUA § 7-207(e)(2)(iii) – Esthetics

211. In Phase I, it was determined that the Applicant's proposed vegetative screening, consisting of approximately 3,800 linear feet, would mitigate views of the Project from both nearby residences and public roads if properly maintained.²⁹⁸ Based on the amendments to the Project, the amount of vegetative screening has more than tripled to 12,000 linear feet and will now surround the entire perimeter of the Project. The revised layout of the Project will now use 35 less acres, approximately 4,000 less solar panels and further increased setbacks from residential properties.

212. According to PPRP, five years after planting, if the landscape buffer approaches opaqueness, the Project would not be visible from nearby properties.²⁹⁹ While acknowledging the landscaping may create a visual contrast, PPRP concluded that if the landscaping buffering met the County's Site Plan review requirements, the landscaping requirements of the Solar Facility-Commercial Floating Zone, and the landscape is planted prior to construction, it will likely mitigate most views of the Project.³⁰⁰

213. In light of the three-fold plus increase to the landscape buffer, the increased setbacks, reduction in both the Project's acreage and the number of solar panels, PPRP's license conditions related to complaint resolution, landscape buffer maintenance and surety agreements, and that the buffer be planted within the Project's leased area, I again find that the proposed screening, if properly maintained, would likely screen the perimeter fence, equipment, and panels from view after several years of growth.

²⁹⁸ Phase I Proposed Order at 79.

²⁹⁹ PPRP Ex. 7 at 40.

³⁰⁰ *Id.* at 41.

5. PUA § 7-207(e)(2)(iv) – Historic Sites

214. It was previously determined that the license conditions proposed by the Applicant would mitigate any potential adverse impacts to historical resources.³⁰¹ In this Phase, based on further discussions with the respective stakeholders, the Applicant has agreed to further mitigation by ensuring the public will be able to view the Baker Farm complex by removing all aspects of the Project from a large section of Biggs Ford Road, documenting the interior of the farm complex structures, protecting the complex during construction, and agreeing to survey surrounding properties.³⁰² PPRP included MHT-specific license conditions to address those issues.³⁰³

215. Based upon the additional conditions and the Applicant's mitigation efforts, I find that PPRP's license conditions and the new layout of the Project will mitigate any potential adverse impacts to nearby historical resources.

6. PUA § 7-207(e)(2)(v) – Aviation Safety

216. The record contains undisputed evidence that the Project will not impact aviation safety. Based upon the Applicant's analysis, both the FAA and MAA confirmed the Project would not create an obstruction or a hazard,³⁰⁴ and PPRP concurred with those findings.³⁰⁵ Accordingly, I find aviation safety would not be impacted by the construction and operation of the Project.

³⁰¹ Phase I Proposed Order at 80.

³⁰² Biggs Ford Ex. 27, Attch. A at 5.

³⁰³ PPRP Ex. 8, Condition Nos. 25-28.

³⁰⁴ Applicant Ex. 12, Appx. G.

³⁰⁵ PPRP Ex. 7 at 38.

7. PUA § 7-207(e)(2)(vi) – Air and Water Pollution

217. There is no evidence that the Project would create either air or water pollution. The record indicates that the Project, if constructed, would create emissions-free renewable energy.³⁰⁶ The lack of pollution created by solar generating facilities and the associated contribution to the State’s RPS have both previously been found by PPRP and Staff to be benefits of similar projects.³⁰⁷ Therefore, I find the Project will not create either air or water pollution.

8. PUA § 7-207(e)(2)(vii) – Disposal of Wastes

218. There is no evidence that indicates either the construction or operation of the Project would create hazardous wastes.³⁰⁸ The Applicant expressly indicated that any waste would be disposed of in an appropriate manner.³⁰⁹ Therefore, I find that any wastes will be appropriately disposed of based upon the Applicant’s testimony and ERD.

9. PUA § 7-207(e)(3)(i) – Consistency with the County’s Comprehensive Plan and Zoning

a. The County’s Comprehensive Plan

219. In the initial phase, the PULJ found that Biggs Ford selected a single provision to support its contention that the Project was consistent with the CP.³¹⁰ Ultimately, it was determined that the Project was inconsistent with the CP based upon its “location near

³⁰⁶ Applicant Ex. 12 at 47 and PPRP Ex. 7 at 50.

³⁰⁷ See for example *Brick Kiln*, Case No. 9454, Order No. 88562 (January 15, 2018) at 15 and 22, and *CUB Solar*, Case No. 9483, Proposed Order (February 13, 2020) at 16, 27, and 31, *aff’d* by Order No. 89548 (April 27, 2020).

³⁰⁸ PPRP Ex. 7 at 50.

³⁰⁹ Applicant Ex. 12 at 49

³¹⁰ Phase I Proposed Order at 82.

preservation areas and the potential adverse impact the Project's construction and operation could have on the surrounding communities.”³¹¹

220. The Land Use Article, *Annotated Code of Maryland*, (“LUA”) § 1-101(l)(1-2) defines “plan” as:

the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps that constitute the guide for an area's future development,” and “includes a general plan, master plan, comprehensive plan, functional plan, or community plan adopted in accordance with Subtitle 4 of this title and Title 3 of this article.

CPs are considered to be guides and are not mandatory unless specified in an ordinance.³¹²

There is no indication that a local ordinance mandates compliance, specifically Bill No. 17-07, and the County has not made such an argument in this proceeding.

221. The LFMP includes a lengthy discussion related to determining consistency of CPs. The LFMP cited “universal concepts” such as “1) clearly identifying what is supposed to be consistent with what; 2) identifying shared characteristics and looking for conflict, support, or neutrality; and 3) applying principles of logical coherence and reasonableness.”³¹³ Mr. Horn’s testimony was consistent with the LFMP’s discussion on consistency, as the LFMP stated, “consistency may not be binary. Sometimes development may possess both consistent and inconsistent aspects relative to the comprehensive plan. This may make the issue of consistency a question of degree.”³¹⁴ Mr. Horn acknowledged

³¹¹ *Id.* at 83.

³¹² *Richmarr Holly Hills, Inc. v. Am. PCS, L.P.*, 117 Md. App. 607, 640 (1997).

³¹³ Applicant Ex. 26 at 18.

³¹⁴ *Id.*; see Tr. at 103-104.

that a proposed use could be consistent with some provision(s) of a comprehensive plan and inconsistent with others, and that a consistency determination was art.³¹⁵

222. Both Biggs Ford and the County found support for their respective positions in the LFMP. The Applicant pointed to the LFMP's goals of becoming a net exporter of clean energy and the need to reform zoning ordinances to facilitate clean energy development.³¹⁶ While Biggs Ford acknowledged the LFMP retained commitments related to agricultural preservation, the Applicant argued those commitments are outweighed by County's renewable energy goals which cannot be met without solar facilities on farmland.³¹⁷ Moreover, Biggs Ford claims the Project will continue to preserve the Site's underlying farmland and will not impact the soil quality, and PPRP agreed depending on what is ultimately planted on the Site.³¹⁸

223. The County cited the importance of agriculture in the new LFMP and the Project's inconsistency with both the LFMP and the County's agricultural preservation goals. Despite the proposed changes to the Project, the County continued to argue the Project was inconsistent with the CP as "the entire 151+/- acres will be removed from agricultural use and placed into commercial use."³¹⁹ The County acknowledged its support of renewable energy sources and noted two County solar projects, but stressed it is "also devoted to preserving its agricultural heritage and resources" and highlighted the millions of dollars invested in agricultural land preservation.³²⁰

³¹⁵ Tr. at 103-104.

³¹⁶ Applicant's Brief at 8.

³¹⁷ *Id.* at 28.

³¹⁸ Tr. at 81-82.

³¹⁹ County Ex. 9 at 1-2.

³²⁰ *Id.* at 2 and 4-5.

224. While the both the Project and the CP have changed since Phase I, after reviewing the record, I once again find that the Project is not consistent with the LFMP. The Applicant has understandably focused on the LFMP's renewable energy goals and there is more support for the Project in the LFMP than the CP in effect during Phase I. However, I find that the renewable energy goals do not outweigh the County's commitments to both agriculture and preservation. Whether or not the LFMP's renewable energy goals are theoretically achievable without utility-scale solar projects being constructed on farmland is not the issue. The LFMP is a guide and the goals therein are not mandated requirements.

225. It must be noted that the Project's potential adverse impacts to the surrounding communities, which served as a basis to find the Project was inconsistent with the CP in Phase I, have been remedied.³²¹ Namely, the significant reduction in size of the Project, the changed layout (reduction of panels, increased setbacks, removal of equipment along Biggs Ford Road), and the landscaping buffer around the entire perimeter sufficiently addressed concerns related to the impact from the Project's construction and operation.

226. Additionally, while the County's interests in the preservation of farmland are legitimate, I find the County's concerns are somewhat overstated. The Site lies within a PPA, but the "opportunity" to place the land under protective easement only exists if a property owner is interested in placing such a restriction on their property. Furthermore, the Project could eventually be placed into the agricultural preservation program at the conclusion of its useful life.

³²¹ See Phase I Proposed Order at 83.

227. Moreover, it is abundantly clear that utility-scale solar projects are a necessary component in meeting the RPS's goals. Farmland will likely remain an attractive location for such projects for the same reasons the Applicant selected the Site in the proceeding. The record demonstrates that the amount of farmland necessary to meet the 14.5% solar carve out is minimal, with estimates ranging between 0.72% and 1.62%, which PPRP found to be reasonable.³²² While preservation is certainly important, there must be a balance if the State has any hope of achieving its renewable energy goals and there is no evidence to indicate that if the Project was ultimately constructed that the County would be unable to meet its 100,000 acre preservation goal.

228. Finally, in relation to the Site's designation as "prime farmland," there was some discussion related to the accuracy of that designation, but no party conducted any soil samples of the Site and there is insufficient evidence to question the designation. In order to effectively challenge that designation, the burden was on the Applicant to demonstrate the designation was incorrect and simply citing other parties' failure to conduct any further survey as evidence that the designation was incorrect is woefully insufficient.

229. There was also no evidence to support the County's assertion that the Site's prime soils will lie fallow if the Project is constructed.³²³ Both the Applicant and PPRP indicated that the underlying soil would not be impacted by the Project, especially with the planned pollinator habitat. Therefore, while the record supports the "prime farmland" designation, I find the Project will not impact the soil, thereby not impacting that designation, based on the record.

³²² Applicant Ex. 25 at 9 and Tr. at 82.

³²³ See County's Reply Brief 7.

b. The County's Zoning

230. It is undisputed that the Project is not permitted under the current zoning absent the approval of a floating zone application. In Phase I, it was noted the County had legitimate interests in preserving prime farmland and to maintain preservation areas by restricting both the size and location of solar projects.³²⁴ However, it was also determined that the application of Bill 17-07 acted as a de facto ban on utility-scale solar projects in the County.³²⁵ That finding was subsequently supported, at least implicitly, with both the Planning Commission's unanimous vote to review the zoning ordinance and Commissioner Hicks' statement that the requirements of the floating zone could make utility-scale solar projects impossible³²⁶ and the LFMP's inclusion of the need to "review and amend zoning regulations to remove barriers or provide flexibility for green businesses" as a supporting initiative for the County's Energy Economy.³²⁷

231. Furthermore, despite the continued assertions of the potential to aggregate agricultural-zoned parcels or industrial-zoned parcels as locations for utility-scale solar projects, the County once again acknowledged it had not investigated if there were any feasible sites that could be developed in accordance with Bill No. 17-07.³²⁸ The Applicant's analysis only revealed one *potential* site in the County that would meet the floating zone requirements.

232. In the Phase I Proposed Order, it was also determined that Bill No. 17-07's intent was contrary to the State's RPS goals. There has been no evidence produced in this

³²⁴ Phase I Proposed Order at 83-84.

³²⁵ *Id.* at 84.

³²⁶ See Applicant Ex. 25 at 6.

³²⁷ Applicant Ex. 26 at 170.

³²⁸ Tr. at 109, 114-115; see also Phase I Proposed Order at 85, *citing* Phase I Tr. at 85.

proceeding that would alter that finding. If a CPCN was denied based upon the County's zoning ordinance, other jurisdictions could easily follow suit and pass similar zoning ordinances that effectively ban utility-scale solar projects. Moreover, PPRP acknowledged a County-wide prohibition of using farmland for utility-scale solar would negatively impact the levels of renewable energy deployments in Maryland, thereby increasing the difficulties in meeting the 14.5% solar carve out.³²⁹

233. Finally, in addition to verifying the Commission's preemption authority, the *Perennial* decision specifically highlighted the Commission's duty to ensure compliance with the RPS.³³⁰ In order to meet the 14.5% solar carve out by 2030, large solar facilities must continue to be part of the equation in order to meet the RPS's goal as rooftop solar installations alone are not sufficient. Allowing a jurisdiction to effectively ban utility-scale solar facilities through zoning ordinances would be both unreasonable and counter-productive.

234. Consistent with the Phase I Proposed Order, I find that the Project is not consistent with the County's zoning. However, I give no weight to this factor as Bill No. 17-07 is effectively a de facto ban on utility-scale solar projects which is not in the overall public interest. In light of the facts and circumstances of this case, especially my finding related to the application of Bill No. 17-07, I find it appropriate to exercise the Commission's preemption authority over the County's zoning ordinance.

³²⁹ Tr. at 67-68 and 82-83.

³³⁰ 464 Md. at 623.

c. The Town's Comprehensive Plan

235. LUA § 3-102(a)(3) requires municipalities that exercise zoning authority to include a municipal growth element in their CPs. The Town's growth area, the API, is encompassed in the Walkersville PPA and accommodates for the potential future annexation by the Town.³³¹ Therefore, as the Project is sited within the growth area, PUA § 7-207(e)(3)(i) requires due consideration of the Project's consistency with the Town's CP.

236. The arguments that the Project was inconsistent focused on the Project being located within the Town's agricultural buffer and growth limits, and the Project was not consistent with the designation of Agricultural/Rural in the Town's CP. Mr. Horn noted that 100 acres of solar panels within the buffer was contrary to the Town's goal of maintaining a green buffer, and while a portion of the Site will continue to be farmed, he believed the Town's goal was "to have permanent preserved farmland on its borders."³³² Biggs Ford countered that the Project would actually maintain the buffer and preserve the underlying agricultural land for the life of the Project.³³³

237. The record weighs towards finding that the Project is not consistent with the Town's CP given the scale of the Project, *i.e.*, 100 acres, 57,000 solar panels, and being constructed on farmland. The Town's CP does not anticipate such a large, non-agricultural use in its growth area. However, like the County's CP, there are aspects of the Project that are consistent with the Town's CP, namely that 50 acres of the Site will continue to be farmed, and the 100 acres comprising the Project will not be developed for decades and

³³¹ Applicant Ex. 26 at 62.

³³² Tr. at 116 and 121.

³³³ Applicant's Brief at 31-32.

would not hinder the Town's future annexation efforts. Additionally, if the Town's goal is to have permanently preserved land around its borders, rejecting the Project based on that goal is not appropriate as a property owner's election to enter into an agricultural preservation easement is entirely voluntary and beyond the Town's control.³³⁴ I also agree with the Applicant that the Project would not impact the greenway buffer between the Town and the City of Frederick.

10. PUA § 7-207(e)(3)(ii) – Efforts to Resolve Issues Presented by the County and the Town

238. Unlike Phase I, there is substantial evidence in this proceeding that the Applicant attempted to resolve issues presented by the County. Specifically, the footprint of the Project was reduced by approximately 25% (135 acres to approximately 100 acres), the landscape buffer significantly increased from 3,800 linear feet to approximately 12,000 linear feet to completely surround the perimeter of the Project, the altered layout of the Project increased setbacks from residential properties and made the Baker Farm visible from the road, and the agreement to plant a pollinator habitat on the Site. I find these proposed changes represent the Applicant's significant efforts to address issues raised in Phase I.

239. Aside from abandoning the Project entirely, I find there is nothing the Applicant could do to resolve the issues and concerns presented by the County as the Project cannot meet the requirements of the County's Commercial Floating Zone District. While *some* of the County's concerns are reasonable, the restrictions created by the

³³⁴ See Tr. at 122.

County's zoning ordinance make the construction of any utility-scale solar project in the County extremely unlikely.

240. The record does not contain any direct efforts by the Applicant to resolve issues raised by the Town, although the Town was included in the discussions on how to mitigate impacts on the Baker Farm complex and other historic points of interests.³³⁵ This could be a result of the Town's election not to participate in the proceedings, that its opposition was only set forth in Resolution 19-03, and/or the Applicant's belief that addressing the County's concerns also addresses the Town's concerns. Given the similarities of issues raised by both the County and the Town and the efforts by Biggs Ford to address those issues, I find the Applicant's efforts to address issues raised by the County also addressed, in part, the Town's concerns. In relation the Town's concerns on the Project's impacts on residents and the Applicant's failure to take into account the realignment of Dublin Road, as previously noted, there is no evidence to support those concerns.³³⁶

E. Other Considerations

1. Electro-magnetic Field

241. PPRP specified the EMF levels were projected to fall well below the threshold human health standards at a distance of three feet and should not pose a potential health risk to nearby residents.³³⁷ Based on PPRP's testimony, I find that no health risks will be posed by the Project to nearby residential properties from EMF.

³³⁵ See Applicant Ex. 27, Attch. A at 5.

³³⁶ See Section V.D.1.(b).

³³⁷ PPRP Ex. 7 at 59

2. The Project's RPS Contribution

242. PPRP highlighted the Project's minimal contribution to the State's RPS, which will further decline over the life of the Project, was insufficient to overcome the Project's issues.³³⁸ I find PPRP's justification to be puzzling at best. As highlighted by the Applicant, there have been numerous solar projects approved by the Commission with much smaller nameplate capacities than Biggs Ford's 15.0 MW, most recently in Case No. 9483, which approved an 8.172 MW solar facility in the Town of Union Bridge and Carroll County.³³⁹ In that case, PPRP noted one of the reasons the project was viable was its contribution to the RPS even though the project's nameplate capacity was approximately 45% less than Biggs Ford's proposal in this proceeding.³⁴⁰ This appears to be the first time that PPRP has highlighted a project's contribution to the RPS as justification for its position even though PPRP has routinely supported much smaller projects.

243. As the Applicant aptly pointed out, PPRP implied that if the Project was larger and had a greater contribution to the RPS it could outweigh the negative aspects, even though projects larger than this one could not be constructed in the County due to the lack of viable sites, as well as the resistance from the County to utility-scale solar projects.³⁴¹ Additionally, projects with larger nameplate capacities would require even larger tracts of land which would work against efforts to preserve agricultural land. In light of the lofty goal of having 14.5% of the State's electricity be generated by solar facilities by 2030,

³³⁸ PPRP Ex. 4 at 14-15; *see also* PPRP Ex. 5.

³³⁹ Order No. 89548; *see also* Applicant's Reply Brief at 5, fn. 8.

³⁴⁰ Case No. 9483, Proposed Order at 16. *See also Sol Phoenix*, Case No. 9446, Order No. 88462 (October 18, 2017) at 18-19, which had a 2.5 MW nameplate capacity and PPRP found that project to be viable, again citing the contribution to the RPS among other factors.

³⁴¹ Applicant's Reply Brief at 6.

which PPRP acknowledged cannot be met by rooftop solar installations alone, a project's contribution to the RPS should not be discounted due to the size of output.

3. Executive Order 01.01.2019.09 and the Task Force's Interim Draft Report

244. Staff and the County cited both the Executive Order and the Task Force it created in their briefs in support of their arguments. The Executive Order created a Task Force “[t]o encourage the responsible siting of clean and renewable energy projects in Maryland, study and make consensus-based recommendations,” and on December 1, 2019, the Task Force submitted an Interim Report with numerous recommendations.³⁴² While the importance of the Executive Order and the Interim Report is not questioned, neither the Executive Order nor the Task Force's Interim Report and recommendations therein are relevant to this matter. The Task Force's recommendations have not altered the statutory authority that applies to Biggs Ford's CPCN Application and cannot serve as a basis to deny the Project.

245. Biggs Ford also claimed the Task Force's Interim Report was not in the record. However, Mr. Horn's testimony specifically incorporated the Task Force's Interim Report by reference,³⁴³ a common practice in Commission proceedings for witnesses to include citations to documents rather than attaching the document(s) to their testimony. Therefore, I find the Applicant was on notice that the Interim Report was part of the record.

³⁴² Executive Order at 3.

³⁴³ County Ex. 7 at 4.

VI. Conclusion

246. Based on my review of the entire record of this proceeding and for the reasons set forth herein, I find the Project to be in the public convenience and necessity as the benefits of it outweigh any potential adverse impacts, subject to the conditions provided by PPRP and Staff, which are attached hereto as Appendices A and B and made a part hereof.

247. Accordingly, I hereby grant the Application and the Applicant's request for a Certificate of Public Convenience and Necessity.

IT IS, THEREFORE, this 27th day of August, in the year Two Thousand Twenty,

ORDERED: (1) That the Application filed by Biggs Ford Solar, LLC, as amended, for a Certificate of Public Convenience and Necessity to construct a 15.0 MW solar photovoltaic generating facility in Frederick County, Maryland is hereby granted, in accordance with the findings and decision rendered herein.

(2) That this Proposed Order will become a final order of the Commission on September 27, 2020, unless before that date an appeal is noted with the Commission by any party to this proceeding as provided in Section 3-113(d)(2) of the Public Utilities Article, or the Commission modifies or reverses the Proposed Order or initiates further proceedings in this matter as provided in Section 3-114(c)(2) of the Public Utilities Article.

/s/ Ryan C. McLean
Ryan C. McLean
Chief Public Utility Law Judge
Public Service Commission of Maryland