

ZTA 20-01 Work Group
Report from Agricultural Reserve Stakeholders
1/6/21

Introduction: This report is submitted on behalf of Doug Lechliden, Randy Stabler, Lauren Greenberger, and Caroline Taylor, representing the stakeholders of the Agricultural Reserve. We have attended all 5 work sessions, supplementing with separate work meetings, interviews, and research. Research included but was not limited to [Montgomery County Zoning Code](#), the [Master Plan for Preservation of Agriculture and Open Space \(AROS\)](#), [Maryland's Smart and Sustainable Growth Act of 2009](#), correspondence in the hearing record, documents in the work group [Google drive](#), [white papers on solar siting](#) and zoning provisions for solar collection facilities in neighboring jurisdictions.

This report will make the case for conditional use being the only legal path for siting solar in the Ag Reserve. As such, all items of agreement in the associated Joint Report of the whole work group were, for our stakeholder group, predicated on solar siting in the Agricultural Reserve as [a conditional use](#).

Background

The key to the Reserve's success was originally attributed to the environment in which many farmers sold development rights and granted easements in perpetuity to restrict the land for agricultural uses. In return, the County gave its promise to protect the land for agriculture. That promise has been tested through the years as it is now with this proposed zoning change. Today, we are a national model for farmland preservation and our farming and forestry practices protect watersheds, sequester carbon, and help clean the air. In addition to the Reserve's importance as a source of local food and fiber, its economic value, and its contribution to environmental quality, tourism, magnificent vistas, historic farmsteads and villages are an unmatched cultural and recreational resource.

Unfortunately, so much land so close is hard for folks with little understanding of farming to resist tinkering with it. The watchwords have been: adhere to the master plan, do no harm, and think before acting. Over 40 years, we have had to address notions from offices distant from the combine that would make our job more challenging.

Today's threat, like the others before it, is made with the good intention of finding a better use for farms than farming. But like sprawling development, the Outer Beltway, and huge private institutional facilities, it is not consistent with the AROS Master Plan and the purpose clause of the Agricultural Reserve Zone. Both designate agriculture as the primary land use in the Reserve.

The Potential Harm of the ZTA as Written

First - Contrary to the defined purpose of the Ag Reserve, this text amendment would make the solar installations it contemplates the primary land use. This ZTA would be a de facto

zoning change. It would be made without going through the Master Plan amendment or rezoning process. It would be an abuse of process that would make a major land use change without full public scrutiny. We believe it is inconsistent with the Master Plan's policies, the purpose of the AR Zone, the basic concept of the Reserve, and the promise of the County to protect it for agriculture.

Second - The solar installations contemplated by this ZTA are industrial in character. They are not accessory uses. 150 or more of them encompassing 1800 acres, randomly scattered across the Reserve will negatively impact agriculture. Be sure of that.

Third - If commercial solar facilities are to be allowed in the Agricultural Reserve, they must be conditional uses, like other utilities and installations that are not accessory to individual farms, such as cellular towers; broadcast towers; above-ground pipelines; and, notably, public utility structures. That would provide appropriate scrutiny before the independent hearing examiner to ensure master plan consistency and compatibility with the nearby uses. It is relevant to note that, although none of our neighboring counties have master plan-protected agricultural zones; most have chosen to require the conditional use process, or something similarly rigorous, when reviewing applications for commercial solar installations.

Using the conditional use review process provides the only mechanism to legally evaluate and approve commercial solar projects within the framework of the [1980 AROS Master Plan and the legislative intent of the AR Zone](#). This is the viable path forward.

Fourth - the ZTA has been promoted as providing for community solar systems because community systems have local subscribers and, thus, the power they generate would be credited to helping meet Montgomery County's affordable green energy goals. If adopted, it must require that any installations be community systems with county residents as subscribers. Otherwise, the ZTA is a bait and switch, serving no local purpose other than barely affecting the mix of power sources of the regional grid.

Fifth - there is no scientific or sound policy basis for permitting 1800 undesignated acres of the Reserve for 2MW solar systems. If they are to be allowed, an evaluation should occur after the first 5 years of implementation.

Sixth - It is vital to protect the Reserve's forests, slopes, and its better soils for farming and to protect water and air quality. We have specific suggestions to that end.

Finally - we support solar energy as an *accessory use on farms*. We favor increasing the allowable energy production of accessory solar from 120 to 200 percent of on-site use. That could supplement farm income as opposed to presenting further challenges to farm businesses and will encourage all farms to become energy self-sufficient.

Recommendations:

1. Any non-accessory solar collection system producing more than 200% of on-site use must be a conditional use.

- a. By definition, it is neither the primary use of the land, namely, agricultural production, nor accessory to a farm or home, or even designed primarily to serve residents of the Reserve.
- b. The amount of land required to generate 2MW (approximately 12-14 ac.) requires specific attention to the impact of the specific project on neighboring properties, rather than general regulations appropriate for limited uses.

2. Large-scale solar collection systems in the Reserve must specifically be for Community Systems only with subscribers that live in the County.

- a. The only rationale for using land in the Reserve is to help meet the County's clean energy goals.
- b. The proposal was put forward as an opportunity to provide affordable clean energy to Montgomery County residents who would otherwise not have access to it (such as families living in multi-family housing) through the mechanism of community solar projects. Commercial solar installations that simply feed the grid and serve populations outside of the County would be entirely contrary to the intent of this bill.

3. Exclude siting solar facilities on Class I and II soils. Although the vast majority of agricultural production occurs on Class II and III soils in the AR, we offer here a compromise: allow solar installations on Class III and above soils, thus making available a significant swath of acreage in the AR to site community solar projects.

4. Existing tree stands must be protected. The removal of trees in excess of one acre to install solar installations should be prohibited without exception. The applicant shall submit a Forest Conservation Plan that is consistent with all ordinance requirements. Whenever possible, the Forest Conservation Plan, should be designed to contribute to the maximum extent practical to improving the water quality of the impacted watershed. Setback and Height Restrictions of the project should comply with all setback and height requirements of the Agriculture Reserve zone.

5. All solar projects must be co-located with some form of agricultural production. As long as Class I and II soils are excluded, planting of crops, livestock grazing or the installation of pollinator habitats are acceptable. These would be subject to review and recommendation by the Office of Agriculture giving preference to projects with actual agricultural production.

6. The siting of solar projects should minimize the effect on cultural and natural resources, or significant scenic view sheds.

7. The Office of Agriculture, with appropriate resources, will:

- a. help to establish conditions for the review and approval of the proposed projects, and
- b. review and provide recommendations to the Hearing Examiner for each project application within the same timeframe provided to the Planning Board to prepare and remit their recommendations.

8. Office of Agriculture will review and provide recommendations on applications with slopes greater than 8% to ensure soil erosion is minimized.

9. Once an application is approved, the legal legislative intent of the AR zoning plan must be respected: (a) Applicant must provide approved USDA-NRCS Soil Conservation and Nutrient management plans. (b) A written viable agriculture plan approved by the County Office of Agriculture and USDA-NRCS must be submitted and approved in order to move forward.

10. Each project will require a decommissioning and restoration plan which will be updated every five (5) years, over the life of the project. A bond will be established to cover the cost of removal of the solar installations at the end of the project.

11. Energy technology is rapidly evolving. There is no scientific justification for preempting 1800 acres of the Reserve for solar installations, which could result in as many as 150 projects. In light of these conditions, **after five years or the installation of 25 community solar projects, whichever comes first, the program should be evaluated by the Office of Agriculture with recommendations to be presented to the County Council for continuation or modification.**

**Example of neighboring jurisdiction requirements for solar siting:
Sample Use Standards Mirror Prince George's County's Requirements:**

Where a Solar Collection System- SCS is allowed as a conditional use, it must satisfy the following standards:

1. In the Agricultural Reserve zone:

a) Siting Preferences Site selection and placement on the site are important for SCS projects. Project locations should be selected in locations that do not result in loss of Class I, II, and III soils, affect cultural and natural resources, or impact significant scenic view sheds. The remainder of these guidelines set forth the specific standards that the Hearing Examiner will utilize to meet these goals.

b) Location Restrictions

a. The Hearing Examiner's siting preference hierarchy is as follows, listed from most suitable to least suitable in descending order:

- i. Locations on disturbed land such as brownfields, reclaimed surface mines, abandoned rubble fills, and closed landfills.
- ii. Locations in industrial and commercial zoning districts.
- iii. Locations in residential zoning districts other than AR.
- iv. Proposals in the AR zone are subject to the following additional guidelines:

1. The least productive agricultural soils classified as class IV through VIII (as determined by USDA-NRCS Soil Survey) should be considered first if buildable.
The Legal Legislative intent of the zone build concept must be followed:
(a) Applicant must provide approved USDA-NRCS Soil Conservation and Nutrient management plan. A written viable agriculture plan approved by The County Office of Agriculture and USDA-NRCS must be submitted. The Hearing Examiner strongly discourages installing SCS on soils with classification of I, II, and III as determined by USDA-NRCS Soil Survey, as these are the most productive soils. If proposed, such projects will provide mitigation for the loss of productive soils, to County Land Preservation, as administered by the County Office of Agriculture.
2. Woodland Conservation: The Hearing Examiner discourages the clearing of woodlands for the installation of SCS. The applicant shall submit a Forest Conservation Plan that is consistent with all ordinance requirements. Whenever possible, the Forest Conservation Plan, should be designed to contribute to the maximum extent practical to improving the water quality of the impacted watershed. Setback and Height Restrictions of SCS should comply with all setback and height requirements of the Agriculture Reserve zone.

c) Decommissioning and Restoration: The Hearing Examiner supports the PSC's practice of requiring a decommissioning and restoration plan which will be updated every five (5) years, over the life of the project.

Respectfully Submitted,

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Chairman, Montgomery County Agricultural Advisory Committee*
- Randy Stabler - Brookville
*Managing Partner, Pleasant Valley Farm
Board member, Montgomery Agricultural Producers*
- Lauren Greenberger - Barnesville
President, Sugarloaf Citizens' Association
- Caroline Taylor - Poolesville
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