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To: "County.Council@montgomerycountymd.gov" <County.Council@montgomerycountymd.gov>

Subject: zta 20-01

Sidney Katz, President

Montgomery County Council

Dear Sid and Members of the Council:

I am writing to urge that you table ZTA 20-01. It needs considerably more thought than it seems to have received. It is apparently well-intended, but is likely to result in unintended consequences, not achieve its apparent objective, and is arguably inconsistent with the applicable master plan and, therefore, contrary to state law. I fear it is an example of good intentions needing time to consider if it is really such a great idea.

As I understand the reasoning in support of this ZTA its objective is admirable: to expand solar power to help the county meet its goal of conversion to non-fossil sources of electricity. Large areas where solar arrays can be erected are limited in the developed areas of the county. The ZTA would allow Solar Energy Collection Systems(SECS) to be erected in the Agricultural Reserve. Solar is now permitted as a limited accessory use in the AR zone. The ZTA would permit arrays for up to 2Mw anywhere in the Reserve as a Limited Use, up to a cumulative maximum of 1800 acres. A 2mw array would occupy about 10-12 acres. The ZTA would allow about 180 of them. The maximum acreage was apparently chosen as a number that seems to be a relatively small percentage of the roughly 100,000 acres in the Reserve, but not large enough to be alarming. 2Mw was chosen as the maximum for an individual array because that is the maximum that state law allows without a Certificate of Public Convenience and Necessity from the Public Service Commission, and can be regulated by local government. If all the acreage were utilized it could provide power for up to 55,000 or 14 percent of the county's 380,000 residences.

The rationale for the exemption from PSC certification is to encourage Community Solar Energy Generating Systems(CSEGS), which must have local subscribers, a utility company must apply for a waiver to construct them, and they must be connected to the grid. PSC's Community Solar Pilot program is a three year program, now in its 3rd year, but likely to be extended. Two systems have been approved in Montgomery County, in Olney and Silver Spring.

Here are my concerns about the ZTA:

1. The ZTA is inconsistent with the findings of the Climate Change Task Force, which provides a roadmap for carbon neutrality and recommendations for achieving it. It would be prudent and legally sound to include a climate change policy element in the county's comprehensive plan, with which actions taken by the county must be consistent.

2. As drafted, the ZTA is overly broad. It does not limit solar arrays to Community Systems, as the planning staff report suggests it does. It would permit a utility to seek a waiver for a series of farms, connect them to the web and serve customers anywhere in its distribution area, including in other states. At best the county might get credit for its contribution but it would not reduce its dependence on nonrenewable energy. Even community systems, once connected to the grid may not serve their subscribers, but at least it is done in the accounting system. This ZTA does not require subscribers; the utility may act alone and the power generated need serve no county residences.

3. There may be better places for solar and other renewable systems. The Climate Action Plan proposed a careful analysis and ranking system before selecting sites. It specifically cautioned against indiscriminate opening of the Reserve for energy production facilities. Before converting Reserve farmland to solar, even with some cropping or livestock shade below the panels, consideration should be given to urban and suburban locations and creation of micro-grids for densely developed areas including parking garages and lots, and other underutilized sites. As state and regional clean energy plans evolve, we may find alternative clean sources are more efficient and environmentally compatible, such as off-shore wind generation, as proposed in Virginia. As for solar "farming," given the many miles of high voltage transmission line corridors in the county, much of it in the Reserve but a lot of it down country and mid-county, close to users, there is ample land for utilities to install solar panels without converting farmland. It would involve no acquisition or rent costs and, thus, keep consumer costs for community power low. It would not be necessary to limit scale to 2mw. There are no trees to cut and lots of space for an understory of clover or turnip greens, to bee or not to bee.

4. The ZTA implies to utilities and the PSC that Montgomery county is not concerned about the impact of solar arrays in the Reserve so long as they do not cumulatively use more than 1,800 acres. If the PSC should approve a single solar facility of more than 2mw—say one occupying 1800 acres in the Reserve--the ZTA would not limit its scale because PSC decisions preempt local law. In fact, it would undercut a county argument that that's too much. I am generally not fond of slippery slope arguments, but it does seem applicable here, as what the ZTA seem to say, is that, "hey, it's only a little bit of the Reserve, so what's the big deal." It's a big deal in two respects:

First, the Reserve is not a vacant place to put inconvenient infrastructure. It is primarily a working agricultural landscape of significant historical, and cultural, economic, and ecological importance. It is an integral component of the county's sustainability strategy.

Second, by making SEGS a limited use in the AR Zone, it reduces public input below what is required before the PSC issues a certificate of Public Convenience and Necessity for a >2mw facility. The

PSC must take into account the master plan and consideration views from county officials and the public. The ZTA limits consideration of impacts site by site, rather than of the cumulative effect on the Reserve.

5. The ZTA, as a major land use action, is not consistent with the AROS Plan, by permitting a use contrary to state law, because it is not an action that: “will further and not be contrary to the following items in the plan:

1. policies;

and . . .

6. land uses (Md. Code. Ann., Land Use Sec. 1-301 (2017)

In effect, it seeks to use a zoning text amendment to change the plan. It preemptively rezones agricultural land to a non-agricultural use without demonstrating there has been a change or mistake in the original AR zoning, merely by applying for the limited use. Under the most charitable interpretation, it circumvents the conditional use process without even establishing the conditions and procedural requirements that would normally be required. As a thought experiment: If someone filed a local map amendment for a ten-acre, let alone an 1800-acre, new Solar Farm Zone on land in the Reserve, what would the appropriate response be?

The 2009 Smart Growth and Sustainable Developments Act (2009 Md. Laws Ch. 180), as amended in 2012 (MD Code Ann., Land Use Sec. 1-417 (2012) amended by 2013 Md. Laws, Ch. 674)) requires “zoning laws” and “other land use provisions” to be consistent with the county’s comprehensive plan. The Court of Appeals has not yet had a case that required it to directly enforce a consistency rule (dodged it by finding plaintiffs lacked taxpayer standing) but this might make an interesting case.

The AR Zoning ordinance is a zoning law that was specifically designed to implement the AROS Plan, which is a component of the county General (comprehensive) plan. Solar panels are permitted as accessory uses, as are other permitted and accessory uses that are instrumental to achieving the purposes of the plan. Solar farms were not permitted because they aren’t farms!

For these reasons, I hope you will table ZTA 20-01 and take time to think about why we established the Agricultural Reserve in the first place, its value to the county, and whether now is the time to start nibbling away at it. And 1800 acres is more than a nibble. It’s hard to swallow.

Royce Hanson