



WASHINGTON COUNTY PLANNING COMMISSION  
ORDINANCE TEXT AMENDMENT APPLICATION

FOR PLANNING COMMISSION USE ONLY

Rezoning No. RZ-21-001

Date Filed: \_\_\_\_\_

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FEB - 8 2021

Washington County  
Dept. of Planning & Zoning

Calvert Energy LLC

Applicant

12921 Buckeye Drive, Gaithersburg, MD 20878

Address

Brian Quinlan

Primary Contact

12921 Buckeye Drive, Gaithersburg, MD 20878

Address

☐ Property Owner

☐ Contract Purchaser

☐ Attorney

☐ Consultant

☒ Other: Developer

301-208-0153

Phone Number

brian@calvertenergy.com

E-mail Address

☐ Adequate Public Facilities Ordinance

☐ Forest Conservation Ordinance

☐ Subdivision Ordinance

☐ Solid Waste Plan

☐ Water and Sewer Plan

☒ Zoning Ordinance

☐ Other \_\_\_\_\_

Section No. 4.26 Solar Energy Generating Systems

Please provide the proposed text on a separate sheet of paper as follows: strike-through should be used for deletions [deletions], unchanged wording in regular type, and new wording should be underlined [new wording].

**Tyaliyah Hutton-Scott**  
NOTARY PUBLIC  
MONTGOMERY COUNTY  
MARYLAND  
MY COMMISSION EXPIRES Sept 29, 2024

B. Quinlan  
Applicant's Signature

Subscribed and sworn before me this 5<sup>th</sup> day of FEB, 2021.

My commission expires on Sept 2024

Tyaliyah Hutton-Scott  
Notary Public

FOR PLANNING COMMISSION USE ONLY

☐ Application Form

☐ Fee Worksheet

☐ Application Fee

☐ Proposed Text Changes

☐ 30 copies of complete Application

## Section 4.26 Solar Energy Generating Systems

### Proposed Text Amendment

SEGS shall be permitted as a land use as specified in Sections 3.3 and 21.42 of this ordinance. However, SEGS shall be prohibited as a use in defined Priority Preservation Areas (except if the Priority Preservation Areas are in Mineral Overlay areas identified on the zoning map in which case SEGS shall be permitted), Rural Legacy Areas, and Antietam Overlay zones.



The text amendment to Section 4.26 Solar Energy Generating Systems provides language to narrow a broad prohibition of land use for Solar Energy Generating Systems that does not actually result in the preservation of land and is not consistent with the State's and County's goals for solar development and land preservation. The text amendment does not change the permitting requirements of a Solar Energy Generating System (SEGS). For these reasons as set forth in more detail to follow, the text amendment is justified and should be approved.

### Priority Preservation Area





#### Mineral Overlay area

As can be seen in the aerial photos above, much of land designated in the PPA that is also in the mining overlay area is already disturbed/developed as part of the mining process and the balance can and may be used in the future. As a result, the PPA designation in the mining overlay area does not preserve the land and therefore, the allowance of SEGS on the land does not impact any land preservation goals of the County.

The mining overlay area should have been excluded from the PPA when the PPA was designated, thereby avoiding the conflict between development and preservation. As evidenced from the Priority Preservation Area above, the mining pit was specifically excluded from the PPA while the remainder of the area designated as mineral overlay is in the PPA. The PPAs were established by resolution RS-08-015 which was adopted October 14, 2008. As can be seen in the aerial photo below, as far back as September 2005, essentially the same area that currently exists for the mining operations had been developed. The establishment of the PPA was specifically to exclude areas that were developed and therefore, these areas should have been excluded from the PPA. Furthermore, areas that were currently not developed, but part of future development in the mineral overlay area should have been omitted from the PPA as they were in all other parts of the County.





Aerial Photo Boonsboro Quarry September 2005

The text amendment is very narrowly focused and affects only one location. The area around the Boonsboro Quarry located on Benevola Church Road in Boonsboro is the only mineral overlay area in the County that is included in the PPA. The area is shown in the aerial photos above. All other mineral overlay areas have been excluded from the PPA.

The total of the area included in the PPA with mineral overlay area that is affected by the text amendment is approximately 165 acres of which approximately 83 acres is already developed. The designation of the PPAs included 40,000 acres to achieve 30,000 of permanently preserved lands to account for land that would be developed and not included in the agricultural reserve programs (approximately 20%). The 83 acres that would be permitted for solar development is about 0.2% of the PPA total area and can be considered as an area of the excess land that would be developed and not preserved.

The text amendment does not change the requirement for a Solar Energy Generating System to meet the design standards in Section 4.26 of the County Zoning Ordinance nor does it alter the permitting requirements for a SEGs. The land use regulations in Table 3.3(1) remain in-tact and any SEG in the PPA with a mineral overlay must comply with the regulations as determined by the zoning designation. The SEGs will be required to go through the same process currently in the regulations for the underlying land use which will include PPAs with a mineral overlay. There is no alteration to the SEGs requirements currently existing in the Zoning Ordinance.

The text amendment aligns the County's zoning code with the State's goals to utilize Mined lands (as defined by COMAR 26.21.01.01B). The State has established a category (Small, Brownfield and Other) in the community solar ordinance (COMAR 20.62 Community Solar Energy Generation Systems) to promote the utilization of Brownfield sites for solar development. Mined lands are included in the

definition of Brownfield sites. The legislation recognizes that lands designated for mining have or will be in the future significantly disturbed by mining activities and are therefore lands that will not be preserved and should be prioritized for solar use. Previously disturbed lands have limited beneficial uses and solar is a compatible use. The long-term nature of mining and solar operations are a good fit to make use of lands that will be mined in the future and provide an interim sustainable use for those lands. The text amendment makes the zoning ordinance consistent with State's goals.

The text amendment will make the zoning ordinance consistent with the solar development goals of the State while having no impact on the County's land preservation plan. The text amendment does not change the requirements for the SEGS to meet the County design requirements and land use permit. As a result, the text amendment should be approved.



**WASHINGTON COUNTY ZONING ORDINANCE  
STAFF REPORT AND ANALYSIS**

**ARTICLE 4.26**

**Proposal:** Application is being made to amend Article 4.26 of the Zoning Ordinance pertaining to the regulation of Solar Energy Generating Systems (SEGS) within Priority Preservation Areas (PPA) that have an Industrial Mineral Zoning designation.

**Staff Report Summary:** The purpose of this text amendment is to permit, as a special exception, the location of a SEGS on lands that fall both, within the County's designated PPA, and inside an Industrial Mineral Zoning District (IM).

**Analysis:**

The proposed amendment seeks to resolve a regulatory anomaly that is largely specific to the properties that are the subject of this rezoning. Martin Marietta's Boonsboro Quarry encompasses four parcels centered at 20301 and 20303 Benevola Church Road north of the Town of Boonsboro. The Industrial Mineral floating zone, established in 1999 (RZ-99-012), covers all four of these parcels, permitting the mining activities occurring at this location (at left below).

**IM Floating Zone**



**PPA**



Three out of the four properties also happen to fall within the County's Designated Priority Preservation Area (at right above). Only the pit in the upper right does not fall within a PPA. PPAs identify areas of agricultural and forestry resource land that would support agricultural production and timber harvesting for the present and future. They are required to be designated

within a County's Comprehensive Plan and be managed according to certain criteria in order to access State funding for agricultural land preservation programs (in addition to meeting other State and local regulatory requirements).

Mining lands are not automatically excluded from inclusion within a PPA. Reclaimed mining lands, in particular, hold some potential for adaptive reuse, including for agriculture or forestry purposes. Prince George's County, for example, created a policy in their 2012 Priority Preservation Area Functional Master Plan to target such lands for reclamation and reuse for agriculture or forestry enterprises, or agriculture support services. In more heavily developed portions of the State where land available for permanent land preservation is more limited, such as Prince George's County, there is some wisdom in including reclaimed lands such as these in the PPA.

#### **Quarry 2005**



The context of available agriculture and other resource lands for inclusion in the PPA in Washington County is, however, notably different than Prince George's County, as Washington County has a smaller footprint of existing development to work around in meeting its land preservation goals. The IM Zone was established on these properties in 1999, as previously noted, signaling their intention to be used for that purpose. In addition, as is also noted by the applicant in their justification statement, the extent of mining operations at the Beaver Creek Quarry encompassed a similar area of disturbance as the present day prior to the County's establishment of its PPA (2008). The photo at left shows the Quarry in 2005.

Therefore, the inclusion of three out of the four properties encompassing the Beaver Creek Quarry's IM Zoning District in the County's PPA (originally created in 2008), may have been unnecessary, when viewed in hindsight to achieve the County's long term land preservation goals. It also appears that other mining lands in Washington County were not included in the PPA besides those associated with the Beaver Creek Quarry. So, the possibility exists that their inclusion may have simply been an administrative error stemming from the very large number of properties that were considered for inclusion in the County's original PPA in 2008.

The applicant, Calvert Energy, LLC, is looking to establish a SEGS on a portion of the property encompassed by the Beaver Creek Quarry. Article 4.26 of the Zoning Ordinance



currently prohibits the establishment of a SEGS on a property that is located within a PPA. Its language reads as follows:

*SEGS shall be permitted as a land use as specified in Sections 3.3 and 21.42 of this Ordinance. However, SEGS shall be prohibited as a use in defined Priority Preservation Areas, Rural Legacy Areas and Antietam Overlay Zones.*

The applicant proposes to simply add an additional clause (underlined below) to this statement which would enable the location of a SEGS on lands that happen to fall within both a PPA and an IM Zoning District.

*SEGS shall be permitted as a land use as specified in Sections 3.3 and 21.42 of this Ordinance. However, SEGS shall be prohibited as a use in defined Priority Preservation Areas (except if the Priority Preservation Areas are in Mineral Overlay areas identified on the zoning map, in which case SEGS shall be permitted), Rural Legacy Areas and Antietam Overlay Zones.*

All other existing regulations which pertain to the establishment of SEGS throughout the County would remain intact. Mining regulation would also remain unchanged. The IM and PPA designations which overlap on this property are not known to exist elsewhere in the County, so the effect of this amendment would largely be specific to these properties and not lead to the proliferation of SEGS in places that the County finds incompatible with existing adjacent land uses.

Further, while the specific location of SEGS throughout the rural lands of Washington County is the subject of ongoing debate, many local residents may be less likely to object to their placement on brownfield sites where significant disturbance has occurred previously and there are limited options for their beneficial reuse after mining has ceased. This site therefore represents a viable location at which a SEGS could be placed to provide clean, renewable energy to Quarry operations and potentially also to other local residents. It would also aid in meeting Maryland's Renewable Portfolio Standard which mandates at least 14.5% of electricity sold in Maryland in 2028 and later must be from solar resources.

**Staff Recommendation:**

Staff recommends approval of this narrowly tailored text amendment. Aside from the information cited above in support of its approval, the limited acreage affected by this amendment would not impair the County's land preservation efforts to any significant degree with the removal of the Quarry lands from consideration for permanent preservation. Finally, to date, there has been

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no statements of opposition received by our Department objecting to the proposed amendment to the Zoning Ordinance.

Respectfully submitted,

Travis Allen  
Comprehensive Planner