

Kent County



Department of Planning Services Division of Planning

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STAFF RECOMMENDATION REPORT April 6, 2023

Application Number & Name	:	C-23-03 Hammondtown Woods Energy Initiative
Present Zoning District	:	AR (Agricultural Residential)
Present Use	:	Vacant - Wooded
Proposed Use	:	Same with Community Energy Generating Facility (Solar)
Area & Location	:	257.195 ± acres (Project Area = 43.46 ± acres) Located on the north side of Hammondtown Rd. (Co. Rd. 311), approx. 0.34± miles west of Farmington Rd. (Co. Rd. 314), south of Harrington

The applicant is proposing to install a solar facility with a project area of 43.46± acres. The site is currently an unimproved tree farm. In November 2022, the applicant applied for administrative approval of a Community Energy Generating Facility (Planning file number CEF-22-09), and subsequently mailed notification of the application to all property owners within 200' of the subject site. Kent County Planning received four objections to the application, and as required by Code the applicant is now seeking approval through the conditional use process.

I. STAFF RECOMMENDATION:

The staff recommends **APPROVAL** based on the information submitted as the application demonstrates compliance with the conditions for approval as outlined in Kent County Code Section 205-397.9 Community Energy Generating Facility, attached.

A. Code Requirements:

1. Prior to final plan approval, the operator or property owner shall provide a bond, surety, letter of credit, or other financial assurance in a form and amount acceptable to the Department of Planning Services to secure payment of one hundred percent (100%) of the anticipated cost of removal of all associated site improvements and restoration of the site to its predevelopment condition. The financial assurance shall remain in full force and effect as long as the solar facility remains in place. The

financial assurance shall be reviewed and renewed every five (5) years to ensure the amount reflects the current market.

2. Prior to final plan approval, KCD requirements must be met.

B. Recommendations:

1. To reduce potential impacts to wildlife, Staff recommends that the perimeter fencing be designed to allow small animals and birds to move under or through the fenced area. As noted in the attached comments from the Division of Fish and Wildlife, 3-4 strand smooth fencing (commonly known as deer fence) without barbed wire could meet this requirement. Further Staff recommends that the perimeter fencing be 7' high to deter deer from jumping over the fence and risking entanglement injuries. Gates should be installed on multiple sides of the fenced perimeter to allow egress for deer should they become trapped in the fenced area.
2. To protect the rural character of the surrounding area and reduce negative impacts to wildlife, Staff recommends that any artificial lighting be designed so that lamps and reflectors have cut-off shields and use down-lighting so that direct lighting does not illuminate the nighttime sky and is not visible from beyond the project site. All lighting should be of minimum necessary brightness consistent with operation safety and security, and should have automatic controls such as timers, photo-sensors, or motion detectors.
3. In an effort to create a habitat for pollinators and a variety of wildlife, aid in the reduction of soil erosion, protect water quality, and enhance the aesthetic beauty of the site, Staff recommends groundcover consisting of a native pollinator seed mix that includes a variety of herbaceous plants and grasses. Creating a pollinator habitat will also benefit the solar developer by reducing maintenance costs associated with mowing and spraying around the panels, as well as benefit neighboring farms by supporting insects that pollinate agricultural crops.
4. Application for building permits must be made within twenty-four (24) months of project approval. If no applications for building permits are received by the Department within twenty-four (24) months, the plan shall be considered invalid. However, the applicant may apply to the Department for reapproval of the project for an additional twenty-four (24) month period in accordance with the following procedures:
 - a. The Commission's staff shall review the original approved plan for consistency with all current provisions of this chapter. Such review may involve coordination with and review by applicable Development Advisory Committee (DAC) agencies. Based upon that review, the Director or designee will determine if the original plan meets current standards, or if the original recorded plan requires minor revisions in order to comply with current standards, or if the original recorded plan must be resubmitted as a new application subject to all appropriate review procedures, regulations, and fees.

- b. In the event that the Director of Planning Services or designee determines that the original approved plan is consistent with current policies and regulations, he/she shall reapprove the plan and provide written notice to the owner of reapproval. Such approval shall allow the issuance of building permits in accordance with all conditions of approval. The owner shall then have twenty-four (24) months from the date of such notice of reapproval to obtain building permits and commence construction.

II. **BACKGROUND INFORMATION:**

- The applicant is proposing to install a solar facility with a project area of 43.46± acres of the total 257.195± acres.
- Pursuant to Kent County Code Section 205-397.9, the applicant notified the owners of neighboring properties located within 200' of the subject site via certified mail on November 29, 2022, and allotted 30 days to receive responses. In response to the mailing, Kent County Planning Department received the following three objections to the project:
 - *Loss of all woods land. I don't know how it would affect my home with all of these solar panels around my home and family I am concerned. I fully reject this project.*
 - *It would be nice if you were able to leave a tree buffer along the road to minimize the impact on the visual environment of the preserved forests surround the property.*
 - *I feel this would destroy the wetland, the forest and animals, the forest is needed for them. Not sure all this is safe for people living here.*
 - *I'm against cutting down the trees when there is open land for sale. It will affect property values and wildlife habitat. If any part of my land is wanted or needed it will not be for sale.*

Based on the neighbors' objections, the application could not be approved administratively, and the applicant is now seeking approval through the conditional use process. If approved, the Community Energy Generating Facility will 43.46± acres of the total 257.195± acre parcel.

- The subject site is zoned AR (Agricultural Residential) and is located outside of the Growth Zone overlay district. The character of the area within a quarter mile of the subject site is predominantly residential, agricultural, and wooded in nature.
- The applicant has submitted a plan showing the required six-foot-high four-season landscaping buffer on all sides of the solar facility, which will provide a visual barrier for nearby residences.
- The applicant has submitted a Solar Facility Decommissioning Plan, as well as a Decommissioning Cost Analysis for the purpose of establishing the amount for financial assurance. As required by Code Section 205-397.9(L), a bond, surety, letter of credit, or other

financial assurance shall be provided by the operator or property owner to secure payment of 100% of the anticipated cost of removal of all associated site improvements, as well as restoration of the site to its pre-development condition. Based on the Decommissioning Cost Analysis submitted, financial assurance shall be provided in an amount equal to \$180,200.00.

II. AGENCY COMMENTS:

A. KENT COUNTY DEPARTMENT OF PUBLIC WORKS, Engineering Division

Contact: Brian L. Hall, Engineering Project Manager II (302)744-2430

Comment:

1. The Engineering Division grants “Approval, With No Objection to Recordation”.

B. DELAWARE DEPARTMENT OF TRANSPORTATION

Contact: Joshua J. Schwartz (302)760-2768

Comment:

1. The access shall follow 8.5 MISCELLANEOUS ENTRANCES from the DelDOT Development Coordination Manual.

C. KENT CONSERVATION DISTRICT

Contact: Kate Owens (302)608-5370

Requirements:

1. A Stormwater Assessment Study must be submitted and a pre-application meeting must occur prior to submitting a sediment and stormwater detailed plan application.
2. A detailed sediment and stormwater management plan must be reviewed and approved by Kent Conservation District prior to any land disturbance (i.e. clearing, grubbing, filling, grading, etc.). The review fee and a completed Application for a Detailed Plan are due at the time of plan submittal to the District’s office.
3. The following notes must appear on the record plan:
 - The Kent Conservation District reserves the right to enter private property for purposes of periodic site inspection.
 - The Kent Conservation District reserves the right to add, modify, or delete any erosion or sediment control measure, as it deems necessary.
 - A clear statement of defined maintenance responsibility for stormwater management facilities.

ADVISORY COMMENTS TO THE APPLICANT:

1. KCD does not recommend this site for development due to the mass clearing of woods that will result in extensive stormwater management with a limited of outfall.
2. A letter of no objection to recordation will be provided upon approval of a Sediment and Stormwater Management Plan.

III. OWNER/ APPLICANT:

The owner shall be aware of and be prepared to comply with all comments regarding this project stated in this report and any additional requirements that may be placed by the Levy Court through the Conditional Use process. All comments and conditions must be addressed prior to commencement of operations.

This recommendation was made without the benefit of public testimony and is based on the information presented when the application was received by the Department of Planning Services. The Regional Planning Commission shall give considerable weight to public testimony received during public hearing in considering its recommendation to Levy Court in this matter.

ENC: Data Sheet
Exhibit A- Location and Zoning Map
Decommissioning Plan & Cost Analysis
Kent County Code Section 205-397.9
DFW comments
Site Plan