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**Veterans Day Service at Galena Cemetery  
9/27/2016  
Regular Meeting**

**ATTACHMENTS:**

Description

Mayor and Council of Galena

Amuel F. Sessa, II  
Mayor  
Carlton L. Felty, Jr.  
Council Member  
John T. Carroll, Jr.  
Council Member  
Harry J. Pisapia,  
Council Member  
John W. Duhamell, Jr.  
Council Member



Sharon L. Weygar  
Town Manager & Zoning Administrator  
Barbara A. Sha  
Clerk/Treasurer  
Thomas N. Yeager  
Attorney

*Mayor and Council of Galena*  
101 S. Main Street, P. O. Box 279, Galena, Maryland 21635  
Telephone 410-648-5151 Fax 410-648-6937  
Website: [www.townofgalena.com](http://www.townofgalena.com) E-mail: [info@townofgalena.com](mailto:info@townofgalena.com)

September 15, 2016

Kent County Commissioners  
400 High Street  
Chestertown, MD 21620

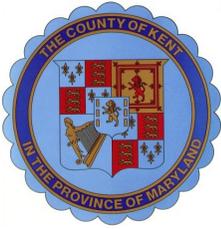
Dear Commissioners,

Please accept our invitation to our annual Veteran's Day Service at the Galena Cemetery on Wednesday, November 11, 2015 at 9:15 a.m. We would be honored if you could attend the service.

On behalf of the Mayor and Council of Galena,

William I. Blake

WIB/dac



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**NAACP Annual Banquet  
9/27/2016  
Regular Meeting**

**ATTACHMENTS:**

Description

NAACP Annual Banquet

HCB

+WA  
+RF+1

1



NAACP NATIONAL ASSOCIATION  
FOR THE ADVANCEMENT  
of COLORED PEOPLE

Unit #7021-B Kent County Branch  
P.O. Box 600  
Chestertown, Maryland 21620  
Email: [kentnaacp7021@yahoo.com](mailto:kentnaacp7021@yahoo.com)

Greetings,

It is that time of year again for annual NAACP Banquet, which provides our young adults with the financial help to attend a school of higher learning. Anyone with children of their own understands the high cost of education beyond the high school level. As parents we want to see our children reach every dream and goal that they aspire too, but sometimes finances prevent that from happening. We the members of the local branch of the NAACP believe that education is the key to become successful, productive citizens. We were able to support six of our local youths last year to attend the school of their choice. We want to continue to assist our local youth with this awesome endeavor; we can't do this without your help and support.

The annual Banquet is a great way for us to raise money for our scholarship fund. Purchasing an ad space in the banquet booklet demonstrates to our young adults how much we the community value their dreams and goals of furthering their education. Your ad or message can include *local business information, dedication to a memory of someone, a congratulation message, a message of appreciation, or a simple thank you.*

Enclosed you will find the fees for the ad space and dimensions. The process is simple... (1) decide the size of the space you desire, (2) what you want to write in that space, (3) and pay the fee on or before **September 23, 2016.**

**AD Submission:** on or before **September 23, 2016**

Email your ad: [kentnaacp7021@yahoo.com](mailto:kentnaacp7021@yahoo.com)  
Mail your ad to: Kent County NAACP Branch  
P.O. Box 600  
Chestertown, MD 21620

**Payment Submission:** no later than **September 23, 2016**

Complete the attached form and mail your check to:  
Kent County NAACP Branch  
P.O. Box 600  
Chestertown, MD 21620

We would like to invite you and your family to attend the Banquet on October 8, 2016. Ticket prices are \$30.00 per person and include your meal, and entertainment. Please use the form attached to pre-purchase your tickets.

It is imperative that we continue to give our children encouragement and hope to achieve what they think is impossible. Let it start with you today.

Thank you for your support thus far and we look forward to our continued partnership in the community. For more information contact us at our email address: [kentnaacp7021@yahoo.com](mailto:kentnaacp7021@yahoo.com)

Sincerely,  
NAACP Banquet Committee 2016

County Commissioners

Office

Date 9-20-16



NAACP NATIONAL ASSOCIATION  
FOR THE ADVANCEMENT  
of COLORED PEOPLE

Unit #7021-B Kent County Branch  
P.O. Box 600  
Chestertown, Maryland 21620  
Email: [kentnaacp7021@yahoo.com](mailto:kentnaacp7021@yahoo.com)

**Banquet Booklet Ad Space Form**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Please circle the ad size and price of your choice.

| <u>Ad Size</u>  | <u>Black &amp; White</u> | <u>Color</u> |
|---|--------------------------|--------------|
| Whole Page<br><small>(Full page ad dimensions 9.3 x 7.7)</small>  | \$200                    | \$250        |
| Half Page<br><small>(1/2 page ad dimensions 4.6 x 7.5)</small>    | \$100                    | \$150        |
| Quarter Page<br><small>(1/4 page ad dimensions 4.6 x 3.7)</small> | \$80                     | \$120        |
| Business Card size  | \$40                     | \$40         |

Please email your ad to [kentnaacp7021@yahoo.com](mailto:kentnaacp7021@yahoo.com) in PDF form if possible. If you are not able to email your ad, please mail it to:

Kent County Branch of NAACP  
P.O. Box 600  
Chestertown, Maryland 21620

Please send your payment to: NAACP of Kent County  
P.O. Box 600  
Chestertown, Maryland 21620

All Advertisements and payments must be received by **September 23, 2016.**

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Banquet Ticket pre-order form (Tickets will be mailed to the address provided below)

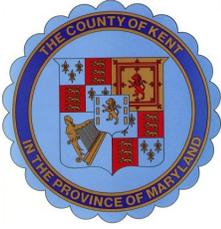
\_\_\_\_\_ Number of Tickets (\$30 per person)

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Please send your payment to: NAACP of Kent County  
P.O. Box 600 Chestertown, Maryland 21620



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## **Cecil County Map Amendment 9/27/2016 Regular Meeting**

### **ATTACHMENTS:**

Description

Cecil County Map Amendment

CC: Amy Moredock

**Office of the County Executive**

Tari Moore  
County Executive

Alfred C. Wein, Jr.  
Director of Administration

Office: 410.996.5202  
Fax: 410.996.1014

**Department of Planning and Zoning**

Eric Sennstrom, AICP, Director  
410.996.5220  
410.996.5225  
Fax: 410.996.5305

County Information  
410.996.5200  
410.658.4041



**CECIL COUNTY, MARYLAND**

Department of Planning and Zoning  
200 Chesapeake Boulevard, Suite 2300, Elkton, MD 21921

September 19, 2016

Hon. William W. Pickrum, President  
Board of County Commissioners of Kent County  
400 High Street  
Chestertown, MD 21620

RE: Map Amendment – 2010 Cecil County Comprehensive Plan

Dear President Pickrum:

Please be advised that pursuant to Act 521 of the 2013 Maryland Legislature, approved by the Governor on May 16, 2013, Cecil County Government is required to incorporate our locally adopted Growth Tier Map into our Comprehensive Plan by December 31, 2016. A copy of said map is enclosed for your information.

The Cecil County Planning Commission will review this item at their meeting of November 21, 2016 and will make a recommendation to County Council. Therefore, in accordance with Division I, Title 3, Subtitle 2, § 3-203(c) of the Land Use Article of the Annotated Code of Maryland, we are providing a copy of the map to your jurisdiction.

Sincerely,

Eric S. Sennstrom, Director  
Planning & Zoning

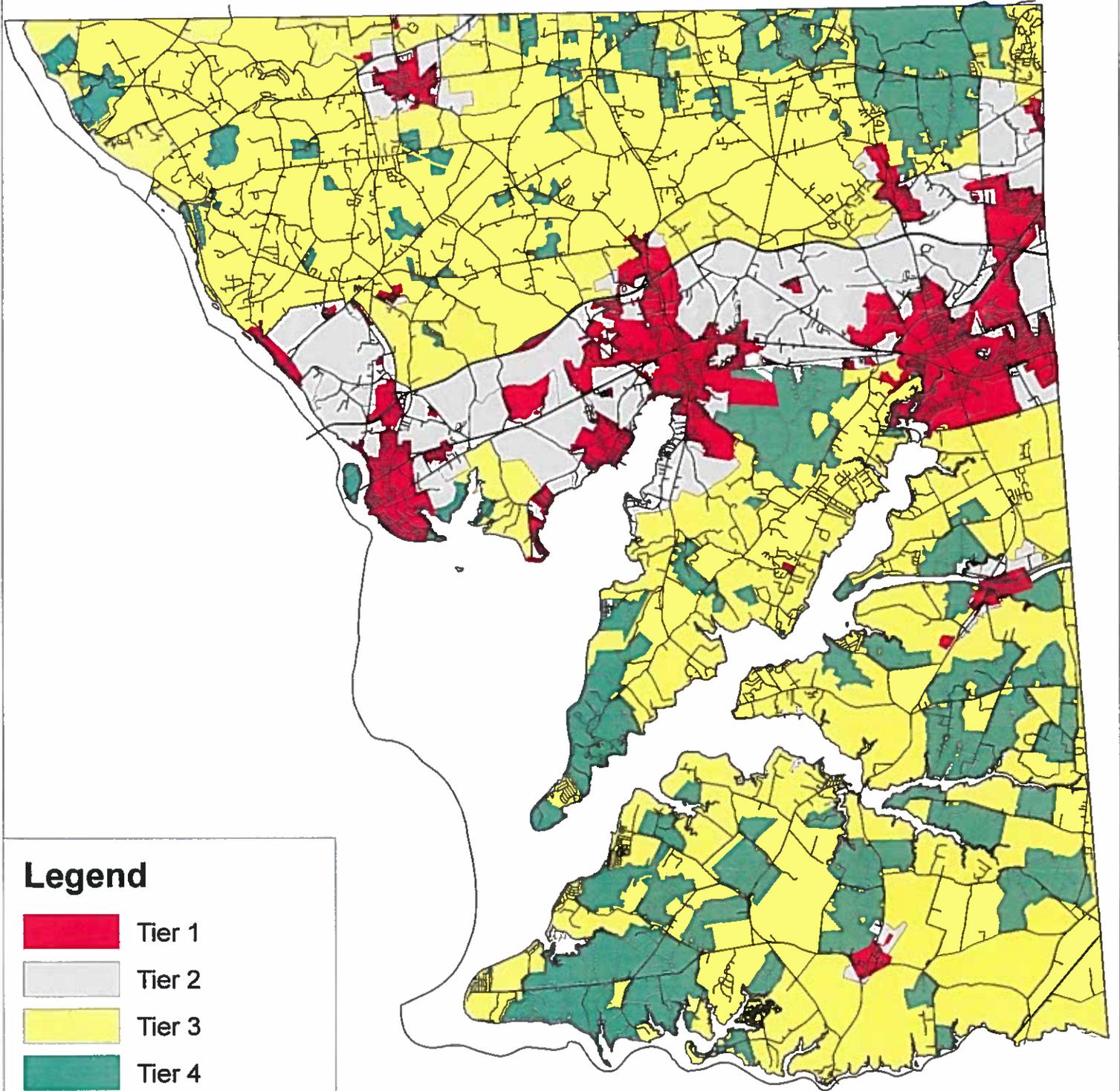
CC: Hon. Tari Moore – County Executive  
Alfred C. Wein, Jr. – Director of Administration

Enclosure

County Commissioners  
Office  
Date 09/22/16



# Map 3.6 - Cecil County Tier Map



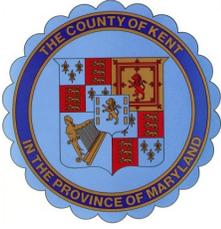
## Legend

-  Tier 1
-  Tier 2
-  Tier 3
-  Tier 4

December 10, 2012

0 1 2 4 Miles





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**Department of Natural Resources Grant Award for Park Entry Signs  
9/27/2016  
Regular Meeting**

**ATTACHMENTS:**

Description

Department of Natural Resources Grant Award for Park Entry Signs



**MARYLAND**  
DEPARTMENT OF  
NATURAL RESOURCES

CC Pat M  
Shannon B  
Jessica P

Larry Hogan, Governor  
Boyd Rutherford, Lt. Governor  
Mark Belton, Secretary  
Joanne Throwe, Deputy Secretary

September 13, 2016



The Honorable Stephen S. Hershey, Jr.  
Maryland Senate  
403 James Senate Office Building  
Annapolis MD 21401

Dear Senator Hershey:

It is a pleasure to inform you that the Department of Natural Resources has received a grant request for Program Open Space assistance in the amount of \$8,100 from Kent County for Kent County Park Signs. This project proposes the installation of park entry signs at nine County parks including: Bayside, Betterton Beach, Edesville, Francis Cann Woodlot, Kent Agriculture Center, Millington, Toal, Turners Creek, and Worton Arena. The total cost of this project is \$9,000.

This project is consistent with Program Open Space objectives and funding was approved and appropriated by the General Assembly, however, Board of Public Works approval is necessary prior to the commitment of funds. This project will be submitted to the Board for approval in the very near future and if approved, the local government may begin at their earliest opportunity.

Your continued support and interest in improving the quality of our parks and recreation for the citizens of Maryland is greatly appreciated. If you would like to receive confirmation of approval or desire any other information regarding this project, please contact me at (410) 260-8450.

Sincerely,

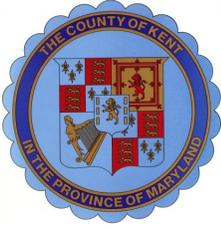
Hilary Bell  
Deputy Director  
Land Acquisition and Planning

HB:mls

cc: Hon. William Pickrum  
Myra Butler

County Commissioners  
Office

Date 09/22/16



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**Department of Natural Resources Grant Award for Worton Park  
Enhancement  
9/27/2016  
Regular Meeting**

**ATTACHMENTS:**

Description

Department of Natural Resources Grant Award of Worton Park Enhancement III



**MARYLAND**  
DEPARTMENT OF  
NATURAL RESOURCES

cc: Pat M  
Shannon B  
Jessica P.

Larry Hogan, Governor  
Boyd Rutherford, Lt. Governor  
Mark Belton, Secretary  
Joanne Throwe, Deputy Secretary

September 13, 2016

The Honorable Stephen S. Hershey, Jr.  
Maryland Senate  
403 James Senate Office Building  
Annapolis MD 21401



Dear Senator Hershey:

It is a pleasure to inform you that the Department of Natural Resources has received a grant request for Program Open Space assistance in the amount of \$23,400 from Kent County for Worton Park Enhancement III. This project proposes to construct improvements at Worton Park including the installation of 20 picnic tables, a new park entry sign, and three additional parking areas. The total cost of this project is \$26,000.

This project is consistent with Program Open Space objectives and funding was approved and appropriated by the General Assembly, however, Board of Public Works approval is necessary prior to the commitment of funds. This project will be submitted to the Board for approval in the very near future and if approved, the local government may begin at their earliest opportunity.

Your continued support and interest in improving the quality of our parks and recreation for the citizens of Maryland is greatly appreciated. If you would like to receive confirmation of approval or desire any other information regarding this project, please contact me at (410) 260-8450.

Sincerely,

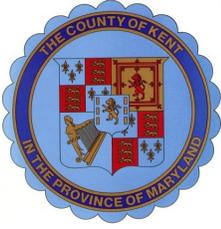
Hilary Bell  
Deputy Director  
Land Acquisition and Planning

HB:mls

cc: Hon. William Pickrum  
Myra Butler

County Commissioners  
Office

Date 09/22/16



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**Maryland Department of Commerce, Availability of Maryland State  
Ceiling  
9/27/2016  
Regular Meeting**

**ATTACHMENTS:**

**Description**

09.27.16 Maryland Department of Commerce, Maryland State Ceiling



Larry Hogan | Governor  
Boyd Rutherford | Lt. Governor  
R. Michael Gill | Secretary of Commerce  
Benjamin H. Wu | Deputy Secretary of Commerce



September 16, 2016

The Honorable William W. Pickrum  
President  
Board of County Commissioners  
of Kent County  
Kent County Government Center  
400 High Street,  
Chestertown, Maryland 21620

**SUBJECT: Availability of Maryland State Ceiling**

Dear Commissioner Pickrum:

Effective January 1<sup>st</sup> of each year the Department of Commerce (the “Department”) notifies each jurisdiction of their share of the Private Activity Bond allocation pursuant to Section 13-805 of the Financial Institutions Article of the Annotated Code of Maryland. On October 1<sup>st</sup>, all unused allocation reverts back to the Department where it is pooled in the Secretary’s Reserve and available for re-allocation until the December 31<sup>st</sup> expiration. Based upon issuance reports to the Department, the remaining unused amount of the Maryland State Ceiling for Private Activity Bonds in 2016 is **\$240,256,043**. Requests for re-allocation from the Secretary’s Reserve should be submitted to the Department in accordance with Section 13-801 et. seq. of the Financial Institutions Article of the Annotated Code.

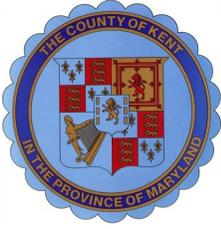
Should you have questions regarding the allocation, please contact D. Gregory Cole at 410-767-6376 or by e-mail at [gregory.cole@maryland.gov](mailto:gregory.cole@maryland.gov).

Sincerely,

D. Gregory Cole  
Senior Director, Office of Finance Programs

cc: Jamie Williams, Economic Development Coordinator  
Kent County Government

County Commissioners  
Office  
Date 69/19/14



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**Jamie Williams, Coordinator, Economic Development**  
**9/27/2016**  
**Regular Meeting**

**Item Summary:**

Request to modify the RLF LOC previously approved on June 29, 2016 for Just Right II, LLC.

**ATTACHMENTS:**

Description

Guaranty Agreement

Universal Note Security Agreement

# GUARANTY AGREEMENT

This Guaranty Agreement (this "Guaranty") is made as effective August 1, 2016 by John Roland "JR" Alfree (the "Guarantor") of Just Right II, LLC.

This Guaranty is being given to Eastern Shore Entrepreneurship Center, (the "Creditor") of 8737 Brooks Drive, Suite 101, Easton, Maryland 21601.

This Guaranty is being given for the benefit of the Guarantor and for John Roland "JR" Alfree (the "Debtor") of Just Right II, LLC.

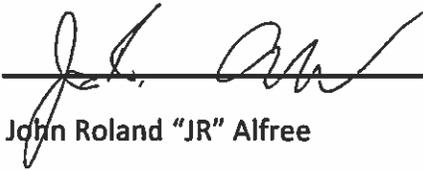
- I. **OBLIGATIONS.** This Guaranty is given by the Guarantor to induce the Creditor to extend credit to the Debtor, and in consideration of the Creditor doing so, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and further acknowledging that the Creditor intends to rely on this Guaranty in extending credit to the Debtor, the Guarantor absolutely and unconditionally guarantees prompt payment when due of all payments and liabilities of the Debtor to the Creditor, whether voluntary or involuntary and however and whenever arising, whether secured or unsecured, absolute or contingent, liquidated or unliquidated, and regardless of whether the Debtor may be liable individually or jointly with others, regardless of whether recovery upon any such obligation may be or hereafter become barred or otherwise unenforceable, including interest and charges, and to the extent not prohibited by law, all costs and attorney's fees incurred in attempting to enforce this Guaranty.
- II. **LIMITATION OF AMOUNT.** The liability of Guarantor pursuant to this Guaranty (Exclusive of any costs and expenses incurred by the Creditor to realize this Guaranty) shall not, at any time, exceed the sum of \$50,000.00
- III. **DURATION.** This is a continuing Guaranty and shall not be revoked by the Guarantor. This Guarantee will remain effective until all obligations guaranteed by this Guaranty are completely discharged.
- IV. **NOTICE OF DEFAULT.** The Creditor shall be required to notify the Guarantor of a default by the Debtor in the Debtor's commitments to the Creditor before proceeding against the Guarantor under this Guarantee.
- V. **CREDITOR PROVISIONS.** The Guarantor expressly waives diligence on the part of the Creditor in collection of any part of the debt or other obligation owed by the Debtor. Further, the Creditor has no duty to bring suit against the Debtor (for collection of the debt or other performance which is due) before proceeding against the Guarantor. The Guarantor waives notice of the acceptance of this Guaranty and of any and all such indebtedness and liability. The Guarantor waives presentment, protest, notice, demand, or action on delinquency in respect of any such indebtedness or liability, including any right to require the Creditor to sue or otherwise enforce payment. Any indebtedness of the Debtor

now or hereafter owed to the Guarantor is hereby subrogated to the indebtedness of the Debtor to the Creditor, and such indebtedness of the Debtor to the Guarantor, if the Creditor so requests, shall be collected, enforced, and received by the Guarantor as trustee for the Creditor and be paid over to the Creditor on account of the indebtedness of the Debtor to the Creditor, but without reducing or affecting in any manner the liability of the Guarantor under the provisions of this Guaranty.

- VI. **AUTHORITY TO ALTER OBLIGATION.** The Guarantor agrees that, without notice to the Guarantor, the Creditor may (a) change the terms of payment or performance by the Debtor to the Creditor, and/or (b) release any security. In either event, the Guarantor shall not be released from any responsibility to the obligations of the Debtor. Liability under this Guaranty is not dependent or conditioned upon this instrument being signed by any person or persons. The Guarantor's liability under this Guaranty is several and is independent of any other guarantees. Guarantees of others, if any, may be released or modified, with or without consideration, without affecting the liability of the Guarantor.
- VII. **ASSIGNMENT.** This Guaranty (a) shall bind the successors and assigns of the Guarantor (this Guaranty is not assignable by the Guarantor without the express written consent of the Creditor, and is not affected by the death of the Guarantor), (b) shall inure to the benefit of Creditor, its successors and assigns, and (c) may be enforced by any party to whom all or any part of the liabilities may be sold, transferred, or assigned by the Creditor.
- VIII. **FINANCIAL CONDITION.** The Guarantor agrees to provide the Creditor with information concerning the Guarantor's financial condition at any time upon reasonable request.
- IX. **ENTIRE AGREEMENT.** This Guaranty contains the entire agreement of the parties with respect to the subject matter of this Guaranty and there are no other promises or conditions in any other agreement, whether oral or written. This Guaranty supersedes any prior written or oral agreements between the parties with respect to the subject matter of this Guaranty.
- X. **AMENDMENT.** This Guaranty may be modified or amended, if the amendment is made in writing and is signed by both parties.
- XI. **SEVERABILITY.** If any provision of this Guaranty shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provisions of this Guaranty is invalid or unenforceable, but that by limiting such provision it would become valid or enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- XII. **WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Guaranty shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Guaranty.

- XIII. **APPLICABLE LAW.** This Guaranty shall be governed by the laws of the State of Maryland. Any action arising from this Guaranty shall, at the option of the Creditor, be filed and resolved in the District and/or Circuit Court for Talbot County.
- XIV. **WAIVER OF JURY TRIAL.** The Guarantor hereby specifically waives trial by jury in any action brought on or with respect to this Guaranty or the loan secured hereby. This waiver is knowingly, willingly and voluntarily made by the Guarantor, and the Guarantor hereby represents that no oral or written statements have been made by any party to induce this waiver of trial by jury or to in any way modify or nullify its stated effect. The Guarantor further represents that he has been represented by independent counsel, selected of his own free will, in the signing of this Guaranty and in the making of this waiver and that he has had the opportunity to discuss this waiver with such counsel.
- XV. **ENFORCEMENT COSTS.** If upon the occurrence of an Event of Default: (a) the Creditor or holder of this Guaranty retains an attorney for collection of this Guaranty or this Guaranty is collected through any legal proceeding; (b) an attorney is retained to represent Creditor in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; (c) an attorney is retained to provide advice or other representation with respect to this Guaranty; or (d) an attorney is retained to represent Creditor in any proceedings whatsoever in connection with this Guaranty, then Guarantor shall pay to Creditor upon demand all reasonable attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "Enforcement Costs"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the underlying debt.
- XVI. **RECEIPT.** The Guarantor acknowledges receipt of a copy of this Guaranty.

Guarantor:

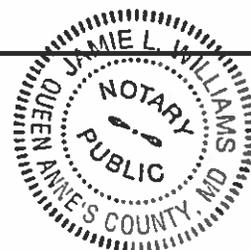
  
\_\_\_\_\_  
John Roland "JR" Alfree

8-1-16  
\_\_\_\_\_  
Date: August 1, 2016

NOTARY:

Sworn and subscribed to before me this 1st day of August 2016.

  
\_\_\_\_\_  
Notary Public, Jamie L. Williams  
My commission expires 12/21/2018



|   |   |  |
|---|---|--|
| <b>John Rowland Alfree</b><br><b>Just Right II, LLC.</b><br><b>337 High Street</b><br><b>Chestertown, Maryland 21620</b><br><b>EIN: 81-3291449</b><br><b>Easton, MD 21601</b> | <b>Kent County Revolving Loan Fund</b><br><b>c/o Eastern Shore Entrep. Center</b><br><br><b>8737 Brooks Drive, Suite 101</b><br><br><b>Easton, MD 21601</b> | Loan Number <u>KC-16-01</u><br>Date <u>August 1, 2016</u><br>Maturity Date <u>August 2023</u><br>Loan Amount \$ <u>50,000</u><br>Renewal Of <u>N/A</u> |
|---|---|--|

For value received, I promise to pay to you, or your order, at your address listed above the PRINCIPAL sum of Fifty thousand 00/100 Dollars \$ 50,000.00

Single Advance: I will receive all of this principal sum on \_\_\_\_\_ No additional advances are contemplated under this note.  
 Multiple Advance: The principal sum shown above is the maximum amount of principal I can borrow under this note. On August 1, 2016 I will receive the amount of \$ -0- and future principal advances are contemplated.  
 Conditions: The conditions for future advances are This agreement is for a line of credit, not to exceed \$50,000.  
Invoices will be submitted to the Eastern Shore Entrepreneurship Center for payment.

Open End Credit: You and I agree that I may borrow up to the maximum amount of principal more than one time. This feature is subject to all other conditions and expires on \_\_\_\_\_  
 Closed End Credit: You and I agree that I may borrow up to the maximum only one time (and subject to all other conditions).

INTEREST: I agree to pay interest on the outstanding principal balance from September 2016 at the rate of Five (5) % per year until Paid in full, no later than 8/2023.

Variable Rate: This rate may then change as stated below.  
 Index Rate: The future rate will be \_\_\_\_\_ the following index rate: \_\_\_\_\_

Frequency and Timing: The rate on this note may change as often as \_\_\_\_\_ A change in the interest rate will take effect \_\_\_\_\_

Limitations: During the term of this loan, the applicable annual interest rate will not be more than \_\_\_\_\_ % or less than \_\_\_\_\_ % The rate may not change more than \_\_\_\_\_ % each \_\_\_\_\_

Effect of Variable Rate: A change in the interest rate will have the following effect on the payments:  
 The amount of each scheduled payment will change.  The amount of the final payment will change.

ACCRUAL METHOD: Interest will be calculated on a \_\_\_\_\_ basis.

POST MATURITY RATE: I agree to pay interest on the unpaid balance of this note owing after maturity, and until paid in full, as stated below:  
 on the same fixed or variable rate basis in effect before maturity (as indicated above).  
 at a rate equal to \_\_\_\_\_

LATE CHARGE: If a payment is made more than 30 days after it is due, I agree to pay a late charge of Five (5) % of payment due

ADDITIONAL CHARGES: In addition to interest, I agree to pay the following charges which  are  are not included in the principal amount above:  
Any NSF fees associated with return check fees

PAYMENTS: I agree to pay this note as follows:  
 Interest: I agree to pay accrued interest \_\_\_\_\_

Principal: I agree to pay the principal \_\_\_\_\_

Installments: I agree to pay this note in 36 payments. The first payment will be in the amount of \$ payment will vary on funds use and will be due 1 month after funds utilized. A payment of \$ TBD will be due each month thereafter. The final payment of the entire unpaid balance of principal and interest will be due no later than August 2023

Unpaid Interest: If checked, any accrued interest not paid when due (whether due by reason of a schedule of payments or due because of Lender's demand) will become part of the principal thereafter, and will bear interest at the interest rate in effect from time to time as provided for in this agreement.

STATUTORY AUTHORITY: This loan is made under \_\_\_\_\_

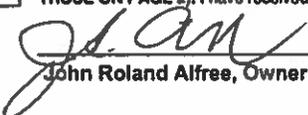
ADDITIONAL TERMS:

SECURITY: This note is separately secured by (describe separate document by type and date):  
**Personal Guarantee**  
(This section is for your internal use. Failure to list a separate security document does not mean the agreement will not secure this note.)

CONFESSION OF JUDGMENT: If checked, I agree to the paragraph on page 2 confessing judgment.  
 PURPOSE: The purpose of this loan is Building Repairs

SIGNATURES: I AGREE TO THE TERMS OF THIS NOTE (INCLUDING THOSE ON PAGE 2). I have received a copy on today's date.

Signature for Lender  
  
 Michael Thielke, Executive Director - ESEC

 8-1-16  
 John Roland Alfree, Owner



| DEBTOR NAME AND ADDRESS   | SECURED PARTY NAME AND ADDRESS |
|---|--------------------------------|
| John Rowland Alfree<br>Just Right II, LLC.<br>337 High Street<br>Chestertown, Maryland 21620<br>EIN: 81-3291449   |                                |
| Type: <input type="checkbox"/> individual <input type="checkbox"/> partnership <input type="checkbox"/> corporation <input type="checkbox"/><br>State of organization/registration (if applicable) _____<br><input type="checkbox"/> If checked, refer to addendum for additional Debtors and signatures. |                                |

**COMMERCIAL SECURITY AGREEMENT**

The date of this Commercial Security Agreement (Agreement) is August 1, 2016  
 SECURED DEBTS. This Agreement will secure all sums advanced by Secured Party under the terms of this Agreement and the payment and performance of the following described Secured Debts that (check one)  Debtor  John Roland Alfree, Owner (Borrower) owes to Secured Party:  
 Specific Debts. The following debts and all extensions, renewals, refinancings, modifications, and replacements (describe):

All Debts. All present and future debts, even if this Agreement is not referenced, the debts are also secured by other collateral, or the future debt is unrelated to or of a different type than the current debt. Nothing in this Agreement is a commitment to make future loans or advances.

**SECURITY INTEREST.** To secure the payment and performance of the Secured Debts, Debtor gives Secured Party a security interest in all of the Property described in this Agreement that Debtor owns or has sufficient rights in which to transfer an interest, now or in the future, wherever the Property is or will be located, and all proceeds and products of the Property. "Property" includes all parts, accessories, repairs, replacements, improvements, and accessions to the Property; any original evidence of title or ownership; and all obligations that support the payment or performance of the Property. "Proceeds" includes anything acquired upon the sale, lease, license, exchange, or other disposition of the Property; any rights and claims arising from the Property; and any collections and distributions on account of the Property. This Agreement remains in effect until terminated in writing, even if the Secured Debts are paid and Secured Party is no longer obligated to advance funds to Debtor or Borrower.

**PROPERTY DESCRIPTION.** The Property is described as follows:

- Accounts and Other Rights to Payment: All rights to payment, whether or not earned by performance, including, but not limited to, payment for property or services sold, leased, rented, licensed, or assigned. This includes any rights and interests (including all liens) which Debtor may have by law or agreement against any account debtor or obligor of Debtor.
- Inventory: All inventory held for ultimate sale or lease, or which has been or will be supplied under contracts of service, or which are raw materials, work in process, or materials used or consumed in Debtor's business.
- Equipment: All equipment including, but not limited to, machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts, and tools. The Property includes any equipment described in a list or schedule Debtor gives to Secured Party, but such a list is not necessary to create a valid security interest in all of Debtor's equipment.
- Instruments and Chattel Paper: All instruments, including negotiable instruments and promissory notes and any other writings or records that evidence the right to payment of a monetary obligation, and tangible and electronic chattel paper.
- General Intangibles: All general intangibles including, but not limited to, tax refunds, patents and applications for patents, copyrights, trademarks, trade secrets, goodwill, trade names, customer lists, permits and franchises, payment intangibles, computer programs and all supporting information provided in connection with a transaction relating to computer programs, and the right to use Debtor's name.
- Documents: All documents of title including, but not limited to, bills of lading, dock warrants and receipts, and warehouse receipts.
- Farm Products and Supplies: All farm products including, but not limited to, all poultry and livestock and their young, along with their produce, products, and replacements; all crops, annual or perennial, and all products of the crops; and all feed, seed, fertilizer, medicines, and other supplies used or produced in Debtor's farming operations.
- Government Payments and Programs: All payments, accounts, general intangibles, and benefits including, but not limited to, payments in kind, deficiency payments, letters of entitlement, warehouse receipts, storage payments, emergency assistance and diversion payments, production flexibility contracts, and conservation reserve payments under any preexisting, current, or future federal or state government program.
- Investment Property: All investment property including, but not limited to, certificated securities, uncertificated securities, securities entitlements, securities accounts, commodity contracts, commodity accounts, and financial assets.
- Deposit Accounts: All deposit accounts including, but not limited to, demand, time, savings, passbook, and similar accounts.
- Specific Property Description: The Property includes, but is not limited by, the following (if required, provide real estate description):

**USE OF PROPERTY.** The Property will be used for  personal  business  agricultural  \_\_\_\_\_ purposes.

|   |               |
|---|---------------|
| SIGNATURES. Debtor agrees to the terms on pages 1 and 2 of this Agreement and acknowledges receipt of a copy of this Agreement. |               |
| DEBTOR  | SECURED PARTY |
| John Roland Alfree, Owner<br><br>            |               |

**GENERAL PROVISIONS.** Each Debtor's obligations under this Agreement are independent of the obligations of any other Debtor. Secured Party may sue each Debtor individually or together with any other Debtor. Secured Party may release any part of the Property and Debtor will remain obligated under this Agreement. The duties and benefits of this Agreement will bind the successors and assigns of Debtor and Secured Party. No modification of this Agreement is effective unless made in writing and signed by Debtor and Secured Party. Whenever used, the plural includes the singular and the singular includes the plural. Time is of the essence.

**APPLICABLE LAW.** This Agreement is governed by the laws of the state in which Secured Party is located. In the event of a dispute, the exclusive forum, venue, and place of jurisdiction will be the state in which Secured Party is located, unless otherwise required by law. If any provision of this Agreement is unenforceable by law, the unenforceable provision will be severed and the remaining provisions will still be enforceable.

**NAME AND LOCATION.** Debtor's name indicated on page 1 is Debtor's exact legal name. If Debtor is an individual, Debtor's address is Debtor's principal residence. If Debtor is not an individual, Debtor's address is the location of Debtor's chief executive offices or sole place of business. If Debtor is an entity organized and registered under state law, Debtor has provided Debtor's state of registration on page 1. Debtor will provide verification of registration and location upon Secured Party's request. Debtor will provide Secured Party with at least 30 days notice prior to any change in Debtor's name, address, or state of organization or registration.

**WARRANTIES AND REPRESENTATIONS.** Debtor has the right, authority, and power to enter into this Agreement. The execution and delivery of this Agreement will not violate any agreement governing Debtor or Debtor's property, or to which Debtor is a party. Debtor makes the following warranties and representations which continue as long as this Agreement is in effect:

- (1) Debtor is duly organized and validly existing in all jurisdictions in which Debtor does business;
- (2) the execution and performance of the terms of this Agreement have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law or order;
- (3) other than previously disclosed to Secured Party, Debtor has not changed Debtor's name or principal place of business within the last 10 years and has not used any other trade or fictitious name; and
- (4) Debtor does not and will not use any other name without Secured Party's prior written consent.

Debtor owns all of the Property, and Secured Party's claim to the Property is ahead of the claims of any other creditor, except as otherwise agreed and disclosed to Secured Party prior to any advance on the Secured Debts. The Property has not been used for any purpose that would violate any laws or subject the Property to forfeiture or seizure.

**DUTIES TOWARD PROPERTY.** Debtor will protect the Property and Secured Party's interest against any competing claim. Except as otherwise agreed, Debtor will keep the Property in Debtor's possession at the address indicated on page 1 of this Agreement. Debtor will keep the Property in good repair and use the Property only for purposes specified on page 1. Debtor will not use the Property in violation of any law and will pay all taxes and assessments levied or assessed against the Property. Secured Party has the right of reasonable access to inspect the Property, including the right to require Debtor to assemble and make the Property available to Secured Party. Debtor will immediately notify Secured Party of any loss or damage to the Property. Debtor will prepare and keep books, records, and accounts about the Property and Debtor's business, to which Debtor will allow Secured Party reasonable access.

Debtor will not sell, offer to sell, license, lease, or otherwise transfer or encumber the Property without Secured Party's prior written consent. Any disposition of the Property will violate Secured Party's rights, unless the Property is inventory sold in the ordinary course of business at fair market value. If the Property includes chattel paper or instruments, either as original collateral or as proceeds of the Property, Debtor will record Secured Party's interest on the face of the chattel paper or instruments.

If the Property includes accounts, Debtor will not settle any account for less than the full value, dispose of the accounts by assignment, or make any material change in the terms of any account without Secured Party's prior written consent. Debtor will collect all accounts in the ordinary course of business, unless otherwise required by Secured Party. Debtor will keep the proceeds of the accounts, and any goods returned to Debtor, in trust for Secured Party and will not commingle the proceeds or returned goods with any of Debtor's other property. Secured Party has the right to require Debtor to pay Secured Party the full price on any returned items. Secured Party may require account debtors to make payments under the accounts directly to Secured Party. Debtor will deliver the accounts to Secured Party at Secured Party's request. Debtor will give Secured Party all statements, reports, certificates, lists of account debtors (showing names, addresses, and amounts owing), invoices applicable to each account, and any other data pertaining to the accounts as Secured Party requests.

If the Property includes farm products, Debtor will provide Secured Party with a list of the buyers, commission merchants, and selling agents to or through whom Debtor may sell the farm products. Debtor authorizes Secured Party to notify any additional parties regarding Secured Party's interest in Debtor's farm products, unless prohibited by law. Debtor agrees to plant, cultivate, and harvest crops in due season. Debtor will be in default if any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetland to produce or to make possible the production of an agricultural commodity, further explained in 7 CFR Part 1940, Subpart G, Exhibit M.

If Debtor pledges the Property to Secured Party (delivers the Property into the possession or control of Secured Party or a designated third party), Debtor will, upon receipt, deliver any proceeds and products of the Property to Secured Party. Debtor will provide Secured Party with any notices, documents, financial statements, reports, and other information relating to the Property Debtor receives as the owner of the Property.

**PERFECTION OF SECURITY INTEREST.** Debtor authorizes Secured Party to file a financing statement covering the Property. Debtor will comply with, facilitate, and otherwise assist Secured Party in connection with obtaining possession or control over the Property for purposes of perfecting Secured Party's interest under the Uniform Commercial Code.

**INSURANCE.** Debtor agrees to keep the Property insured against the risks reasonably associated with the Property until the Property is released from this Agreement. Debtor will maintain this insurance in the amounts Secured Party requires. Debtor may choose the insurance company, subject to Secured Party's approval, which will not be unreasonably withheld. Debtor will have the insurance provider name Secured Party as loss payee on the insurance policy. Debtor will give Secured Party and the insurance provider immediate notice of any loss. Secured Party may apply the insurance proceeds toward the Secured Debts. Secured Party may require additional security as a condition of permitting any insurance proceeds to be used to repair or replace the Property. If Secured Party acquires the Property in damaged condition, Debtor's rights to any insurance policies and proceeds will pass to Secured Party to the extent of the Secured Debts. Debtor will immediately notify Secured Party of the cancellation or termination of insurance. If Debtor fails to keep the Property insured, or fails to provide Secured Party with proof of insurance, Secured Party may obtain insurance to protect Secured Party's interest in the Property. The insurance may include coverages not originally required of Debtor, may be written by a company other than one Debtor would choose, and may be written at a higher rate than Debtor could obtain if Debtor purchased the insurance.

**AUTHORITY TO PERFORM.** Debtor authorizes Secured Party to do anything Secured Party deems reasonably necessary to protect the Property and Secured Party's interest in the Property. If Debtor fails to perform any of Debtor's duties under this Agreement, Secured Party is authorized, without notice to Debtor, to perform the duties or cause them to be performed. These authorizations include, but are not limited to, permission to pay for the repair, maintenance, and preservation of the Property and take any action to realize the value of the Property. Secured Party's authority to perform for Debtor does not create an obligation to perform, and Secured Party's failure to perform will not preclude Secured Party from exercising any other rights under the law or this Agreement.

If Secured Party performs for Debtor, Secured Party will use reasonable care. Reasonable care will not include any steps necessary to preserve rights against prior parties or any duty to take action in connection with the management of the Property.

If Secured Party comes into possession of the Property, Secured Party will preserve and protect the Property to the extent required by law. Secured Party's duty of care with respect to the Property will be satisfied if Secured Party exercises reasonable care in the safekeeping of the Property or in the selection of a third party in possession of the Property.

Secured Party may enforce the obligations of an account debtor or other person obligated on the Property. Secured Party may exercise Debtor's rights with respect to the account debtor's or other person's obligations to make payment or otherwise render performance to Debtor, and enforce any security interest that secures such obligations.

**PURCHASE MONEY SECURITY INTEREST.** If the Property includes items purchased with the Secured Debts, the Property purchased with the Secured Debts will remain subject to Secured Party's security interest until the Secured Debts are paid in full. Payments on any non-purchase money loan also secured by this Agreement will not be applied to the purchase money loan. Payments on the purchase money loan will be applied first to the non-purchase money portion of the loan, if any, and then to the purchase money portion in the order in which the purchase money Property was acquired. If the purchase money Property was acquired at the same time, payments will be applied in the order Secured Party selects. No security interest will be terminated by application of this formula.

**DEFAULT.** Debtor will be in default if:

- (1) Debtor (or Borrower, if not the same) fails to make a payment in full when due;
- (2) Debtor fails to perform any condition or keep any covenant on this or any debt or agreement Debtor has with Secured Party;
- (3) a default occurs under the terms of any instrument or agreement evidencing or pertaining to the Secured Debts;
- (4) anything else happens that either causes Secured Party to reasonably believe that Secured Party will have difficulty in collecting the Secured Debts or significantly impairs the value of the Property.

**REMEDIES.** After Debtor defaults, and after Secured Party gives any legally required notice and opportunity to cure the default, Secured Party may at Secured Party's option do any one or more of the following:

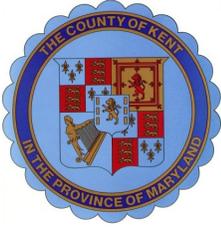
- (1) make all or any part of the Secured Debts immediately due and accrue interest at the highest post-maturity interest rate;
- (2) require Debtor to gather the Property and make it available to Secured Party in a reasonable fashion;
- (3) enter upon Debtor's premises and take possession of all or any part of Debtor's property for purposes of preserving the Property or its value and use and operate Debtor's property to protect Secured Party's interest, all without payment or compensation to Debtor;
- (4) use any remedy allowed by state or federal law, or provided in any agreement evidencing or pertaining to the Secured Debts.

If Secured Party repossesses the Property or enforces the obligations of an account debtor, Secured Party may keep or dispose of the Property as provided by law. Secured Party will apply the proceeds of any collection or disposition first to Secured Party's expenses of enforcement, which includes reasonable attorneys' fees and legal expenses to the extent not prohibited by law, and then to the Secured Debts. Debtor (or Borrower, if not the same) will be liable for the deficiency, if any.

By choosing any one or more of these remedies, Secured Party does not give up the right to use any other remedy. Secured Party does not waive a default by not using a remedy.

**WAIVER.** Debtor waives all claims for damages caused by Secured Party's acts or omissions where Secured Party acts in good faith.

**NOTICE AND ADDITIONAL DOCUMENTS.** Where notice is required, Debtor agrees that 10 days prior written notice will be reasonable notice to Debtor under the Uniform Commercial Code. Notice to one party is notice to all parties. Debtor agrees to sign, deliver, and file any additional documents and certifications Secured Party considers necessary to perfect, continue, or preserve Debtor's obligations under this Agreement and to confirm Secured Party's lien status on the Property.



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**Marty T. Holden, Deputy Director, Environmental Operations**  
**9/27/2016**  
**Regular Meeting**

ATTACHMENTS:

Description

Nicholson Water Plant

## **Nicholson Landfill Leachate Treatment System – Budget Estimate For Engineering and Construction Management Services**

Date: September 22, 2016

Marty,

Please excuse the rough nature of this “letter”. In the interest of time, I am not formalizing anything on letterhead or paying much attention to format.

Below is an outline of the services to be provided for each phase of work. Following the descriptions of work is a summary and breakdown of the estimated fee. Please note this is an estimate. As we have discussed, I expect to be able to refine the fee and get it closer to a hard number as the scope is refined. The fee is probably a little conservative/high at this time, but I’d rather be high now and be able to come down in lieu of the opposite.

The provided scope of work addresses the known pH and iron issues. VOCs will continue to be treated by the existing activated carbon system. Copper is also a constituent regulated by the NPDES discharge permit. It is not clear at this time whether copper is present in the influent to a level that would require treatment. It is clear that part of the copper issue has been the aggressive nature of the water and the water leaching the iron from brass fittings used for sampling. Additionally, there has not been adequate time to find the best approach to treat for copper. A system that removes copper, iron, VOCs, and adjusts pH is not a typical system and some time needs to be spent determining the most cost effective approach considering the constraints of the site (lack of water for backwashing, lack of sewer connection for backwash waste, etc.) Thus, the scope of work below does not capture the effort needed to add copper removal to the proposed treatment system. The addition of copper removal to the scope has the potential to impact the price provided below. Once questions about copper are answered, McCrone can refine its scope/effort and determine if there is need to adjust the fee.

Thank you for the opportunity to prepare a proposal for the County. McCrone hopes to continue it’s working relationship with the County. Please let me know if you have any questions.

### **McCrone**

Ryan J. Rangel, PE  
Project Manager

### **General Scope of Work**

#### ***Design Phase***

The following general items are covered by the design fee:

1. Survey of the area around existing building. Prepare deed mosaic based on found property corners. McCrone has surveyed the site in the past and hopes to use existing control.
2. Geotechnical Investigation – McCrone has allocated money to investigate the soils around the existing treatment building. Soils information is needed for any SWM device, proper foundation

design, and identification of soils to determine if they are suitable for reuse in utility trench backfill.

3. Preparation of plans and technical specifications for an iron removal system in a new building. Plans and specifications will cover the following:
  - a. New masonry building with wood truss roof.
  - b. New sedimentation equipment for iron removal.
  - c. New electrical/controls room.
  - d. New instrumentation to determine influent flow to the new system, concentration of iron, and pH. These parameters will be used to properly dose chemical.
  - e. New chemical feed and mixing system for pH adjustment, oxidation of iron, and coagulant to help settle iron.
    - i. There is the potential to replace the oxidizing chemical with a coffin style aerator. A VOC removal system on the air discharge from the aerator would have to be investigated.
  - f. New pumps to transfer clarifier effluent to the existing activated carbon system.
  - g. If chlorine is used to oxidize iron, a system to dechlorinate prior to pumping to the existing activated carbon. Chlorine will use up capacity in the activated carbon system.
4. Prepare a "front end" set of bidding documents in addition to the technical specifications. The front end will include typical sections such as Invitation to Bid, Information to Bidders, Summary of Work, Measurement and Payment, Agreement, General Conditions, Supplemental General Conditions, Submittal Requirements, Project Startup/Closeout, Bond Requirements, and typical affidavits and certifications.
5. New dewatering system with roof over it. Dewatering system will include iron sludge transfer pumps from the clarifier to the dewatering device.
  - a. Using a geotube seems to be the most simplistic and cost efficient way to do this at the moment. The geotube can be placed on a sloped slab and covered with a single sloped roof.
6. A new drain pump station to transfer liquid from the dewatering area and from the new building to the head of the new treatment system.
7. Site Plan development and permitting through the County P&Z process.
  - a. Site plan includes existing conditions, grading plan, building layout, piping plan, and stakeout plan.
8. Power/Controls/Lighting/HVAC for the new building and all new equipment.
9. Permits/Approvals – submit and resolve comments for the following permits:
  - a. Grading permit
  - b. Storm Water Management (SWM)
  - c. County Building Permit
  - d. MDE approval
10. Submittals to the County at 30/60/90 percent complete and a "final" submittal. Review meetings after each submittal to obtain County comments.

### **Bidding Services**

1. Assist with advertising in local newspaper and on E-Maryland market place.
2. Prepare CDs with PDFs of bid documents.
3. Track plan holders and distribute plans.
4. Attend and chair a pre-bid meeting.
5. Prepare and issue Addenda as needed during the bidding period.
6. Attend the bid opening.
7. Prepare a bid tabulation, investigate the low bidder, review the bids for adequacy, and prepare a recommendation of award.

### **Resident Project Representative Services**

McCrone has estimated a 10 month construction period. McCrone's scope and fee include providing a fulltime onsite resident project representative (RPR). The RPR will observe the contractor's daily work and confirm the contractor is installing approved materials in general conformance with the approved plans. The RPR will complete a daily construction diary, track inclement weather days, coordinate with the Engineer as needed, and track minor changes to the plans on a set of as-builts. The RPR will observe testing of materials (pipe, concrete, rebar placement, soils compaction, etc.).

### **Construction Services**

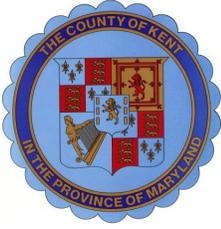
McCrone's scope of work and fee include the following construction services.

1. Organize, attend and chair a preconstruction conference including preparation of an agenda, preparation of minutes, and distribution of minutes.
2. Prepare a consolidated set of plans and specs that incorporate addenda into the permitted set of drawings/specs.
3. Provide benchmarks and a baseline of construction for the contractor's use.
4. Review and comment on the contractor's proposed schedule.
5. Review and comment on the contractor's proposed schedule of values used for invoicing.
6. Review shop drawings for all proposed equipment and materials. Electronic submittals are assumed.
7. Review Operations and Maintenance Manuals for major equipment.
8. Prepare field orders.
9. Prepare RFIs in response to questions submitted by the Contractor.
10. Prepare RFPs for additional services needed from the Contractor.
11. Prepare change orders for additions/subtractions to the contract.
12. Attend and chair 10 monthly progress meetings. Prepare agenda and minutes for each progress meeting.
13. Review and approve a monthly invoice from the Contractor.
14. Attend a substantial completion meeting and generate a letter of acceptance with punchlist following the meeting.

15. General coordination with the RPR, County, and Contractor during the 10 month project.

**Post Construction Services**

1. Prepare and distributed as-builts in PDF format based on data provided by the RPR and Contractor.
2. RPR visit site after substantial completion to confirm all punchlist items addressed.
3. Coordination of warranty items during the warranty period (1 year).
4. A couple of site visits to investigate warranty issues during the warranty period.
5. Final walkthrough meeting at the end of the warranty period to document warranty issues.



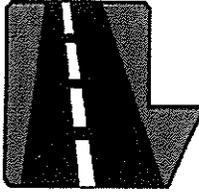
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**Traffic Barrier (Guardrail) Upgrade Contract  
9/27/2016  
Regular Meeting**

ATTACHMENTS:

Description

Quotation



**L.S. LEE, Inc.®**

152 S. Sumner St. - York, PA 17404  
Phone: (717) 854-7000 or 1-800-828-8590  
Fax: (717) 854-8000  
www.LSlee.com

Quality - Service - Integrity - Safety

QUOTATION

Contract #: Kent County DPW Loc1

County: DISTRICT 2

Location: TRAFFIC BARRIER UPGRADES

Letting Date: 4/23/2015

WE PROPOSE TO: FURNISH AND INSTALL

| <u>Item#</u> | <u>Description</u>                       | <u>Quantity</u> | <u>U/M</u> | <u>Unit Price</u> | <u>Extension</u>  |
|--------------|--|-----------------|------------|-------------------|-------------------|
| 6003         | Traffic Barrier W Beam Using 8 Foot Post | 200.00          | LF         | 20.00             | 4,000.00          |
| 6012         | Type C Traffic Barrier End Treatment     | 2.00            | EA         | 2,400.00          | 4,800.00          |
| 6025         | W Beam Barrier Reflective Delineators    | 3.00            | EA         | 3.00              | 9.00              |
|              |  |                 |            |                   | <u>\$8,809.00</u> |

NOTES: ALL MATERIAL TO BE GALVANIZED  
 ALL POSTS ARE MECHANICALLY DRIVEN  
 NOT RESPONSIBLE FOR PATCHING/SEALING POSTS  
 ALL EXISTING AND/OR NEW CONDUITS, CABLE & UNDERGROUND UTILITIES THAT  
 CONFLICT WITH OUR CONSTRUCTION SHALL BE RELOCATED BY OTHERS  
 BASED ON ONE MOBILIZATION  
 NOT RESPONSIBLE FOR ANY DAMAGE TO SIDEWALKS, CURBS OR RETAINING WALLS  
 HAND DIGGING OF POST HOLES WILL BE DONE ON A CONTINGENCY BASIS  
 SHOULD POST HOLES BE HAND DUG AS A RESULT OF UNDERGROUND UTILITIES  
 BILLING WILL BE BASED ON ACTUAL FIELD MEASUREMENTS AT UNIT BID PRICES  
 ALL HAND DUG HOLES WILL BE BILLED AT \$75 EACH

L. S. Lee, Inc.

MICHAEL B. COFFMAN

To accept above quoted prices, please sign and date below. Please fax accepted quote to (717) 854-8000. Thank you for your business.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE                      DATE

\_\_\_\_\_  
PRINTED NAME AND TITLE

The above prices include sales tax when applicable  
BOND NOT INCLUDED  
Lump Sum Contracts NOT Accepted  
Quotation subject to change after 30 days or until a  
mutually agreeable contract has been reached.

SITE # 1 LAID OUT BY: Carl Hinkel JOB#: QUOTE

CONTRACTOR: KENT CO.DPW STATE: MD DATE: 02/25/16

CONTACT PERSON: DANIEL VOSHELL CELL#: 410-924-7790

PHONE #: \_\_\_\_\_ FAX #: \_\_\_\_\_

CITY/TWP/BORO: MILLINGTON COUNTY: KENT

DIRECTIONS: HOWARD JOHNSON ROAD SOUTH BOUND PAGE: \_\_\_\_\_

RIGHT SIDE @ 500' SOUTH OF MILLINGTON ROAD @ WHITE PAINT GRID: \_\_\_\_\_

MARKED ON ROADWAY UTILITY CALL IN #: \_\_\_\_\_

\_\_\_\_\_ CALLED IN: \_\_\_\_\_

UTILITIES INFO: \_\_\_\_\_ WILL CLEAR AFTER: \_\_\_\_\_

\_\_\_\_\_ GOOD UNTIL: \_\_\_\_\_

TRAFFIC CONTROL: LIGHT FLAGGING

DESCRIPTION OF WORK: INSTALL NEW

200' - TBWB W/ 8' POST & 8" POLY BLOCK

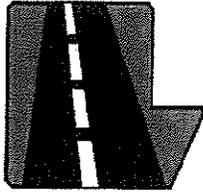
2- TYPE C ( X-LITE ) COMPLETE

3- WHITE DELINEATORS

JOB SITE SAFETY ANALYSIS 39.272475 -75.861595

FACE OF GUARD RAIL: 2' FROM: WHITE LINE

GRADE SHOULDER SLOPE EXTENDED ( 30" HEIGHT )



**L.S. LEE, Inc.<sup>®</sup>**

152 S. Sumner St. - York, PA 17404  
Phone: (717) 854-7000 or 1-800-828-8590  
Fax: (717) 854-8000  
www.LSlee.com

Quality - Service - Integrity - Safety

QUOTATION

Contract #: Kent County DPW Loc2

County: DISTRICT 2

Location: TRAFFIC BARRIER UPGRADES

Letting Date: 4/23/2015

WE PROPOSE TO: FURNISH AND INSTALL

| <u>Item#</u> | <u>Description</u>                                      | <u>Quantity</u> | <u>U/M</u> | <u>Unit Price</u> | <u>Extension</u>   |
|--------------|---|-----------------|------------|-------------------|--------------------|
| 6001         | Traffic Barrier W Beam Using 6 Foot Post                | 200.00          | LF         | 15.00             | 3,000.00           |
| 6005         | Traffic Barrier W Beam Panel                            | 50.00           | LF         | 12.00             | 600.00             |
| 6012         | Type C Traffic Barrier End Treatment                    | 4.00            | EA         | 2,400.00          | 9,600.00           |
| 6022         | Removal And Disposal Of Existing Traffic Barrier W Beam | 125.00          | LF         | 9.00              | 1,125.00           |
| 6025         | W Beam Barrier Reflective Delineators                   | 6.00            | EA         | 3.00              | 18.00              |
|              |   |                 |            |                   | <b>\$14,343.00</b> |

NOTES: ALL MATERIAL TO BE GALVANIZED  
 ALL POSTS ARE MECHANICALLY DRIVEN  
 NOT RESPONSIBLE FOR PATCHING/SEALING POSTS  
 ALL EXISTING AND/OR NEW CONDUITS, CABLE & UNDERGROUND UTILITIES THAT  
 CONFLICT WITH OUR CONSTRUCTION SHALL BE RELOCATED BY OTHERS  
 BASED ON ONE MOBILIZATION  
 NOT RESPONSIBLE FOR ANY DAMAGE TO SIDEWALKS, CURBS OR RETAINING WALLS  
 HAND DIGGING OF POST HOLES WILL BE DONE ON A CONTINGENCY BASIS  
 SHOULD POST HOLES BE HAND DUG AS A RESULT OF UNDERGROUND UTILITIES  
 BILLING WILL BE BASED ON ACTUAL FIELD MEASUREMENTS AT UNIT BID PRICES  
 ALL HAND DUG HOLES WILL BE BILLED AT \$75 EACH  
 EXCLUDES THE FURNISH/INSTALL/BACKFILL OF ANY POST SLEEVES REQUIRED

L. S. Lee, Inc.

MICHAEL B. COFFMAN

To accept above quoted prices, please sign and date below. Please fax accepted quote to (717) 854-8000. Thank you for your business.

\_\_\_\_\_  
COMPANY NAME

The above prices include sales tax when applicable  
BOND NOT INCLUDED

\_\_\_\_\_  
AUTHORIZED SIGNATURE                      DATE

Lump Sum Contracts NOT Accepted  
*Quotation subject to change after 30 days or until a mutually agreeable contract has been reached.*

\_\_\_\_\_  
PRINTED NAME AND TITLE

SITE # 2 LAID OUT BY: Carl Hinkel JOB#: QUOTE

CONTRACTOR: KENT CO.DPW STATE: MD DATE: 02/25/16

CONTACT PERSON: DANIEL VOSHELL CELL#: 410-924-7790

PHONE #: \_\_\_\_\_ FAX #: \_\_\_\_\_

CITY/TWP/BORO: MILLINGTON COUNTY: KENT

DIRECTIONS: CARROLL CLARK ROAD NORTH & SOUTH BOUND PAGE: \_\_\_\_\_

RIGHT SIDE @ 1 3/10 MILE NORTH OF MILLINGTON ROAD GRID: \_\_\_\_\_

@ WHITE PAINT MARKED ON ROADWAY ( THERE IS EXIST UTILITY CALL IN #: \_\_\_\_\_

GUARD-RAIL THERE ) CALLED IN: \_\_\_\_\_

UTILITIES INFO: \_\_\_\_\_ WILL CLEAR AFTER: \_\_\_\_\_

GOOD UNTIL: \_\_\_\_\_

TRAFFIC CONTROL: LIGHT FLAGGING

DESCRIPTION OF WORK: REMOVE & DISPOSE EXISTING TBWB & INSTALL NEW

NORTH BOUND

62.5' - REMOVE & DISPOSE EXISTING TBWB

2- TYPE C ( X-LITE ) COMPLETE

100' - TBWB W/6' POST & 8" POLY BLOCK

25' - PANEL ( FOR DOUBLE NESTING OVER PIPE )

SOUTH BOUND

62.5' - REMOVE & DISPOSE EXISTING

2- TYPE C ( X-LITE ) COMPLETE

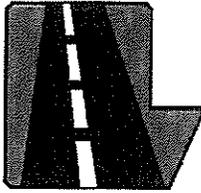
100' - TBWB W/6' POST & 8" POLY BLOCK

25' - PANEL ( FOR DOUBLE NESTING OVER PIPE )

JOB SITE SAFETY ANALYSIS 39.281315 -75.853483

FACE OF GUARD RAIL: 5' FROM: EDGE OF PAVEMENT

TAKE GRADE @ FACE OF GUARD-RAIL ( 30" HEIGHT )



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Fax: (717) 854-8000  
www.LSLee.com

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**QUOTATION**

Contract #: Kent County DPW Loc3

County: DISTRICT 2

Location: TRAFFIC BARRIER UPGRADES

Letting Date: 4/23/2015

WE PROPOSE TO: FURNISH AND INSTALL

| <u>Item#</u> | <u>Description</u>                       | <u>Quantity</u> | <u>U/M</u> | <u>Unit Price</u> | <u>Extension</u>   |
|--------------|--|-----------------|------------|-------------------|--------------------|
| 6001         | Traffic Barrier W Beam Using 6 Foot Post | 175.00          | LF         | 15.00             | 2,625.00           |
| 6005         | Traffic Barrier W Beam Panel             | 50.00           | LF         | 12.00             | 600.00             |
| 6012         | Type C Traffic Barrier End Treatment     | 4.00            | EA         | 2,400.00          | 9,600.00           |
| 6025         | W Beam Barrier Reflective Delineators    | 6.00            | EA         | 3.00              | 18.00              |
|              |  |                 |            |                   | <b>\$12,843.00</b> |

NOTES: ALL MATERIAL TO BE GALVANIZED  
 ALL POSTS ARE MECHANICALLY DRIVEN  
 NOT RESPONSIBLE FOR PATCHING/SEALING POSTS  
 ALL EXISTING AND/OR NEW CONDUITS, CABLE & UNDERGROUND UTILITIES THAT  
 CONFLICT WITH OUR CONSTRUCTION SHALL BE RELOCATED BY OTHERS  
 BASED ON ONE MOBILIZATION  
 NOT RESPONSIBLE FOR ANY DAMAGE TO SIDEWALKS, CURBS OR RETAINING WALLS  
 HAND DIGGING OF POST HOLES WILL BE DONE ON A CONTINGENCY BASIS  
 SHOULD POST HOLES BE HAND DUG AS A RESULT OF UNDERGROUND UTILITIES  
 BILLING WILL BE BASED ON ACTUAL FIELD MEASUREMENTS AT UNIT BID PRICES  
 ALL HAND DUG HOLES WILL BE BILLED AT \$75 EACH  
 EXCLUDES THE FURNISH/INSTALL/BACKFILL OF ANY POST SLEEVES REQUIRED

L. S. Lee, Inc.

MICHAEL B. COFFMAN

To accept above quoted prices, please sign and date below. Please fax accepted quote to (717) 854-8000. Thank you for your business.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PRINTED NAME AND TITLE

The above prices include sales tax when applicable  
BOND NOT INCLUDED

Lump Sum Contracts NOT Accepted

*Quotation subject to change after 30 days or until a mutually agreeable contract has been reached.*

SITE # 3 LAID OUT BY: Carl Hinkel JOB#: QUOTE

CONTRACTOR: KENT CO.DPW STATE: MD DATE: 02/25/16

CONTACT PERSON: DANIEL VOSHELL CELL#: 410-924-7790

PHONE #: \_\_\_\_\_ FAX #: \_\_\_\_\_

CITY/TWP/BORO: MASSEY COUNTY: KENT

DIRECTIONS: GOLTS ROAD NORTH & SOUTH BOUND PAGE: \_\_\_\_\_

RIGHT SIDE @ 1/2 MILE NORTH OF LEES CHAPEL ROAD GRID: \_\_\_\_\_

@ WHITE PAINT MARKED ON ROADWAY BOTH SIDES UTILITY CALL IN #: \_\_\_\_\_

\_\_\_\_\_ CALLED IN: \_\_\_\_\_

UTILITIES INFO: \_\_\_\_\_ WILL CLEAR AFTER: \_\_\_\_\_

\_\_\_\_\_ GOOD UNTIL: \_\_\_\_\_

TRAFFIC CONTROL: LIGHT FLAGGING

DESCRIPTION OF WORK: INSTALL NEW

NORTH BOUND

2- TYPE C ( X-LITE ) COMPLETE

75'- TBWB W/6' POST & 8" POLY BLOCK

25' - PANEL ( FOR DOUBLE NESTING OVER PIPE )

SOUTH BOUND

2- TYPE C ( X-LITE ) COMPLETE

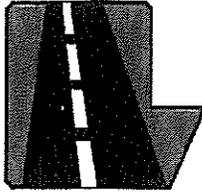
100' - TBWB W/6' POST & 8" POLY BLOCK

25' - PANEL ( FOR DOUBLE NESTING OVER PIPE )

JOB SITE SAFETY ANALYSIS 39.335661 -75.791938

FACE OF GUARD RAIL: 2' FROM: EDGE OF PAVEMENT

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QUOTATION

Contract #: Kent County DPW Loc4

County: DISTRICT 2

Location: TRAFFIC BARRIER UPGRADES

Letting Date: 4/23/2015

WE PROPOSE TO: FURNISH AND INSTALL

| <u>Item#</u> | <u>Description</u>                       | <u>Quantity</u> | <u>U/M</u> | <u>Unit Price</u> | <u>Extension</u>   |
|--------------|--|-----------------|------------|-------------------|--------------------|
| 6001         | Traffic Barrier W Beam Using 6 Foot Post | 200.00          | LF         | 15.00             | 3,000.00           |
| 6005         | Traffic Barrier W Beam Panel             | 100.00          | LF         | 12.00             | 1,200.00           |
| 6012         | Type C Traffic Barrier End Treatment     | 4.00            | EA         | 2,400.00          | 9,600.00           |
| 6025         | W Beam Barrier Reflective Delineators    | 8.00            | EA         | 3.00              | 24.00              |
|              |  |                 |            |                   | <b>\$13,824.00</b> |

NOTES: ALL MATERIAL TO BE GALVANIZED  
 ALL POSTS ARE MECHANICALLY DRIVEN  
 NOT RESPONSIBLE FOR PATCHING/SEALING POSTS  
 ALL EXISTING AND/OR NEW CONDUITS, CABLE & UNDERGROUND UTILITIES THAT  
 CONFLICT WITH OUR CONSTRUCTION SHALL BE RELOCATED BY OTHERS  
 BASED ON ONE MOBILIZATION  
 NOT RESPONSIBLE FOR ANY DAMAGE TO SIDEWALKS, CURBS OR RETAINING WALLS  
 HAND DIGGING OF POST HOLES WILL BE DONE ON A CONTINGENCY BASIS  
 SHOULD POST HOLES BE HAND DUG AS A RESULT OF UNDERGROUND UTILITIES  
 BILLING WILL BE BASED ON ACTUAL FIELD MEASUREMENTS AT UNIT BID PRICES  
 ALL HAND DUG HOLES WILL BE BILLED AT \$75 EACH  
 EXCLUDES THE FURNISH/INSTALL/BACKFILL OF ANY POST SLEEVES REQUIRED

L. S. Lee, Inc.

MICHAEL B. COFFMAN

To accept above quoted prices, please sign and date below. Please fax accepted quote to (717) 854-8000. Thank you for your business.

\_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_  
AUTHORIZED SIGNATURE                      DATE

\_\_\_\_\_  
PRINTED NAME AND TITLE

The above prices include sales tax when applicable  
**BOND NOT INCLUDED**  
 Lump Sum Contracts NOT Accepted  
*Quotation subject to change after 30 days or until a  
 mutually agreeable contract has been reached.*

SITE # 4 LAID OUT BY: Carl Hinkel JOB#: QUOTE

CONTRACTOR: KENT CO.DPW STATE: MD DATE: 02/25/16

CONTACT PERSON: DANIEL VOSHELL CELL#: 410-924-7790

PHONE #: \_\_\_\_\_ FAX #: \_\_\_\_\_

CITY/TWP/BORO: MILLINGTON COUNTY: KENT

DIRECTIONS: BIG STONE ROAD NORTH & SOUTH BOUND PAGE: \_\_\_\_\_

RIGHT SIDE @ 1200' NORTH OF RT 291 GRID: \_\_\_\_\_

@ WHITE PAINT MARKED ON ROADWAY BOTH SIDES UTILITY CALL IN #: \_\_\_\_\_

\_\_\_\_\_ CALLED IN: \_\_\_\_\_

UTILITIES INFO: \_\_\_\_\_ WILL CLEAR AFTER: \_\_\_\_\_

\_\_\_\_\_ GOOD UNTIL: \_\_\_\_\_

TRAFFIC CONTROL: LIGHT FLAGGING

DESCRIPTION OF WORK: INSTALL NEW

NORTH BOUND

2- TYPE C ( X-LITE ) COMPLETE

100' - TBWB W/6' POST & 8" POLY BLOCK

50' - PANEL ( FOR DOUBLE NESTING OVER 2 PIPES )

SOUTH BOUND

2- TYPE C ( X-LITE ) COMPLETE

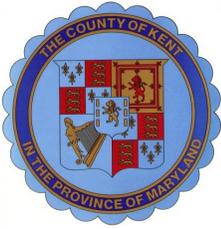
100' - TBWB W/6' POST & 8" POLY BLOCK

50' - PANEL ( FOR DOUBLE NESTING OVER PIPE )

JOB SITE SAFETY ANALYSIS 39.258442 -75.809446

FACE OF GUARD RAIL: 2' FROM: EDGE OF PAVEMENT

TAKE GRADE @ SHOULDER SLOPE EXTENDED ( 30" HEIGHT )



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**Maryland Broadband Cooperative**  
**9/27/2016**  
**Regular Meeting**

ATTACHMENTS:

Description

Maryland Broadband Cooperative



**NOTICE TO MEMBERS**  
**DESIGNATION OF MEMBER DELEGATES**

As provided at Section 3.05 of the Bylaws of Maryland Broadband Cooperative, Inc. (MDBC), each member of MDBC is required to certify to the Secretary of MDBC the name and address of the delegate which it designates to represent it at the annual meeting and any other member meetings of MDBC.

Therefore, we request that you take appropriate action through your board of directors or other appropriate governing body, and provide this information on the form below, certified by your secretary or other equivalent corporate officer. Please return this completed form to;

Patrick Mitchell, President/CEO  
Maryland Broadband Cooperative, Inc.  
2129A Northwood Drive  
Salisbury, MD 21801

County Commissioners  
Office  
Date 09/19/14



To: Secretary of Maryland Broadband Cooperative, Inc.

\_\_\_\_\_ (Member), is a  
(Insert full name of your organization)  
member of Maryland Broadband Cooperative, Inc, (MDBC), and has taken  
action under Section 3.05 of the MDBC Bylaws to designate the following  
person to act as its voting delegate at the Annual Meeting of MDBC and any  
other member meetings of MDBC:

Delegate's Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

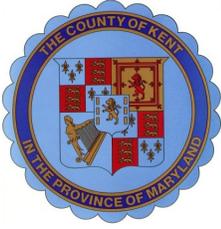
E-mail: \_\_\_\_\_

I, hereby certify the above to MDBC.

By:

\_\_\_\_\_  
Secretary (or equivalent corporate officer)

Date: \_\_\_\_\_, 2016



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**Salary Increase  
9/27/2016  
Regular Meeting**



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## **Coalition Against Bigger Trucks Request for Support Letter 9/27/2016 Regular Meeting**

### **Item Summary:**

Coalition Against Bigger Trucks - is a national non profit that advocates at the federal level against allowing heavier and longer double trucks on the interstates and local roads across our nation.

### **ATTACHMENTS:**

#### **Description**

Coalition Against Bigger Trucks (CABT)

## **Oppose Bigger Truck Amendments in THUD Appropriations Bill**

### **Prepared by CABT, April 2016**

Multiple amendments to increase the weight and length of trucks may be offered to the FY2017 THUD bill when it is considered on the Senate floor. These amendments include raising the federal truck weight limits on Interstates in certain states, as well as forcing all states to allow longer double-trailer trucks. Law enforcement leaders point out that heavier and longer trucks would endanger motorists and increase infrastructure damage.

#### **Congress Just Rejected Bigger Trucks Six Months Ago**

Congress voted to reject national increases in truck size and weight in November of 2015:

- **On Nov. 3, 2015**, the House rejected increasing truck weight limits from 80,000 pounds to 91,000 pounds on a 187-236 floor vote
- **On Nov. 10, 2015**, the Senate rejected increasing the length of double-trailer trucks as part of the surface transportation reauthorization bill on a 31-56 floor vote
- **On Nov. 18, 2015**, the U.S. Senate rejected increasing the length of double-trailer trucks on the omnibus spending bill on a voice vote

#### **USDOT Final Report Recommends No Changes in Truck Size and Weight**

On April 14 of this year, after more than two years of study, USDOT released its Final Truck Size and Weight Report to Congress and recommended that Congress not increase truck weight or length:

*"As such, the Department stresses that no changes in the relevant Federal truck size and weight laws and regulations should be made until these limitations are overcome."  
(pg. 21)*

The USDOT Final Report to Congress incorporates its Technical Reports published in June of 2015. The findings in its Technical Reports provide ample evidence to support USDOT's recommendation that Congress not approve increases in truck size or weight.

#### **Law Enforcement, Trucking Companies and the Public Oppose Bigger Trucks**

Congress rejected bigger-truck proposals in 2015 in large part because of opposition from national and local law enforcement including the National Troopers Coalition and the National Sheriffs Association:

*"The bottom line is bigger and heavier trucks make our roads and highways unsafe due to, among other things, greater stopping distances and higher risk of rollover." (Sept. 23, 2015 National Troopers Coalition letter to Congress)*

*"We are united nationwide in our opposition to both heavier and longer trucks. Please stand with the National Sheriffs' Association and its members and reject heavier and longer truck provisions." (Oct. 20, 2015 National Sheriffs' Association letter to Congress)*

Key segments of the trucking industry, including the Truckload Carriers Association (TCA), oppose heavier trucks. TCA, a major part of the trucking industry consisting of over 524,000 companies within the U.S., opposes heavier

trucks because it would benefit few companies while negatively affecting many others. In fact, TCA opposed the heavier-truck proposal rejected by Congress in 2015, and wrote the following in a letter of opposition:

*“Despite the fact that only 10-20 percent of truckload carriers would be able to take advantage of any increase, market pressures would require all carriers to invest in new equipment in order to remain competitive and any capital investment into existing equipment would yield little to no return.” (Sept. 16, 2015 TCA letter to Rep. Reid Ribble)*

### **Bigger Trucks Endanger Motorists**

**Heavier trucks:** While data is limited, the 2015 USDOT Technical Reports found heavier trucks with six axles—both 91,000-pound and 97,000-pound configurations—have alarmingly higher crash rates in the three states studied:

- Idaho - 99 percent higher crash rates for six-axle trucks up to 97,000 pounds
- Michigan - 400 percent higher crash rates for six-axle trucks up to 97,000 pounds
- Washington - 47 percent higher crash rates for six-axle trucks up to 91,000 pounds

Increasing the weight of trucks causes additional wear and tear on key safety components. The USDOT Technical Reports found that trucks weighing over 80,000 pounds had higher overall out-of-service (OOS) rates and 18 percent higher brake violation rates compared to those at or below 80,000 pounds.

**Longer double-trailer trucks:** Forcing states to allow longer double-trailer trucks would lead to a massive shift from single-trailer trucks to the longer double-trailer trucks. This is important because USDOT had already in its 2000 Comprehensive Truck Size and Weight Study concluded that multi-trailer trucks have an 11 percent higher fatal crash rate than single-trailer trucks. USDOT found in its 2015 Technical Reports that Double 33s need at least 22 feet longer to stop than conventional double-trailer trucks.

### **Bigger Trucks Increase Infrastructure Damage**

According to the 2015 USDOT Technical Reports, heavier and longer trucks would have negative impacts on infrastructure.

**Heavier trucks:** Increasing truck weight limits to 91,000 pounds would negatively affect more than 4,800 bridges, incurring up to \$1.1 billion in additional federal investment. Further, 97,000-pound trucks would negatively affect more than 6,200 bridges, incurring up to \$2.2 billion in additional funding.

**Longer double-trailer trucks:** USDOT found that Double 33s would require nearly 2,500 Interstate and other National Highway System bridges to be posted or face further damage, costing up to \$1.1 billion in immediate bridge strengthening or reinforcement.

### **USDOT Opposes Patchwork Exceptions**

USDOT has consistently opposed efforts by bigger-truck proponents to create a patchwork of states with bigger trucks. The Department’s 2004 Western Uniformity Scenario Analysis specifically criticizes this kind of piecemeal approach, finding that it makes enforcement and compliance more difficult, contributes little to productivity, and may have unintended consequences for safety and highway infrastructure.

## **USDOT Final Report to Congress Recommends No Changes in Current Truck Size and Weight Limits**

**Prepared by CABT, April 2016**

The U.S. Department of Transportation (USDOT) released its Final Report to Congress as part of the Department's MAP-21 Comprehensive Truck Size and Weight Limits Study in April of 2016. **The Department's conclusion after more than two years of study by many of the nation's foremost truck size and weight experts: there should be no changes in current truck size and weight limits.** There is simply not enough reliable data on which to base any changes in truck size or weight.

The USDOT Final Report to Congress incorporates by reference the study results and findings from the Technical Reports released in June of 2015. These findings, while incomplete, provide a sound basis for its recommendation that Congress not approve heavier or longer trucks. Attached are two tables provided by USDOT that summarize the key technical results of the study for each of the five study impact areas: modal shift, safety, pavement, bridges and compliance.

**NOTE:** USDOT did not study the impacts of heavier and longer trucks on local roads and bridges because of data limitations. This inability to analyze local data also means no safety findings were developed on state- and county-owned infrastructure. However, the Department notes the importance of future research to include these impacts.

### **USDOT Findings on Heavier Trucks**

#### Crash Rates

Heavier trucks with six axles—both 91,000-pound and 97,000-pound configurations—were found to have higher crash rates in limited state testing:

|            |   |   |
|------------|---|---|
| Idaho      | - | <b>99 percent higher crash rates for six-axle trucks up to 97,000 pounds</b>  |
| Michigan   | - | <b>400 percent higher crash rates for six-axle trucks up to 97,000 pounds</b> |
| Washington | - | <b>47 percent higher crash rates for six-axle trucks up to 91,000 pounds</b>  |

The Technical Reports summarized the findings as follows: *"In the three States where data could be analyzed, the crash involvement rate for the six-axle alternative configurations is consistently higher than the rate for the five-axle control vehicle. This consistency across States lends validity to this finding."*

However, USDOT states the following in its Final Report to Congress: *"Due to the limited number of States with suitable data, the analysis of crash rates cannot be extended to other States or used to draw meaningful conclusions on a national basis."*

**NOTE:** Crash rates off of Interstates and in more population-dense areas could be expected to be higher and, in turn, the number of crashes, injuries and fatalities could also increase. Despite limited operations of six-axle trucks, the most recent national database statistics publicly available, 2005-2009, shows an average of 131 fatalities per year in crashes involving six-axle trucks (TIFA).

### Truck Inspection Violations

USDOT found that heavier trucks had higher out-of-service and braking violations:

- Trucks weighing over 80,000 pounds had higher overall out-of-service (OOS) rates compared to those at or below 80,000 pounds.
- Trucks weighing over 80,000 pounds had brake violation rates that were 18 percent higher compared to those at or below 80,000 pounds.

NOTE: Out-of-service violations are a key indicator of truck safety. In fact, trucks with these violations are required to be taken off the highway because they are deemed to be a danger to the motoring public. A 1989 study found that, "Tractor-trailers with defective equipment were twice as likely to be in crashes as trucks without defects" (Jones, I.S. and Stein, H.S.; *Defective equipment and tractor-trailer crash involvement*, Accident Analysis and Prevention).

### Bridge Stress

USDOT found that thousands of Interstate and other National Highway System bridges could not accommodate heavier trucks. These bridges would require posting, reinforcement or replacement, costing billions of dollars. USDOT estimates the following:

- The 91,000-pound, six-axle configuration would negatively affect more than 4,800 bridges, costing up to \$1.1 billion
- The 97,000-pound, six-axle configuration would negatively affect more than 6,200 bridges, costing up to \$2.2 billion

NOTE: USDOT only studied 20 percent of the nation's bridges for this analysis. The remaining 80 percent are likely to be the most vulnerable to heavier trucks. In fact, only 1,360 of the bridges considered by USDOT are currently "structurally deficient" (i.e., likeliest to need repair and/or replacement with heavier truck weights), while 70,427 of total bridges are classified as "structurally deficient."

### Freight Diversion

USDOT found that heavier trucks would negatively affect rail-bound freight, and estimates the following:

- The 91,000-pound, six-axle configuration would negatively affect rail-bound freight by diverting more than 2.3 million tons of freight every year
- The 97,000-pound, six-axle configuration would negatively affect rail-bound freight by diverting more than 4.9 million tons of freight every year

NOTE: The Technical Reports incorrectly assume that railroads, to preserve market share, will simply reduce rates to a marginal cost level. This ignores the fact that railroads are both high fixed-cost businesses and highly capital-intensive. In fact, railroads typically reinvest 17 to 19 percent of operating revenues back into track, structures and equipment. This re-investment, which is a key driver of significant gains in safety and customer service, cannot be sustained by prices equal to marginal costs. If competitive markets required pricing at marginal cost, railroads would be forced to choose between two

unsustainable courses of action: Either (i) voluntarily exit markets through noncompetitive pricing, or (ii) reduce prices to marginal cost levels to compete in the short term, foregoing the ability to reinvest in the assets necessary to provide the services customers demand. Either way, the outcome will eventually be the same: a depleted rail industry and more freight diverted to our nation's highways.

ADDITIONAL NOTE: According to a 2007 study by Dr. Carl Martland ("Estimating the Competitive Effects of Larger Trucks on Rail Freight Traffic"), an increase in truck weight from the current 80,000-pound limit to 90,000 pounds—1,000 pounds lighter than one of the proposed configurations—could divert 10-15 percent of short line and regional railroad freight. Further, Dr. Martland's 2010 follow-up study concluded that an increase in truck weight to 90,000 pounds could divert more than 33 percent of general merchandise in rail freight traffic.

### **USDOT Findings on Longer Double-Trailer Trucks**

#### Crash Rates

USDOT could not come up with reliable crash rates for longer double tractor-trailers, and states the following in the Final Report to Congress: "*Scenario 4 (Twin 33 foot trailers @ 80,000 pounds) could not be analyzed due to its very limited operation in the U.S. at this time.*"

NOTE: In its 2000 study, USDOT concluded that multi-trailer trucks have a fatal crash rate that is 11 percent higher than single-trailer trucks. This conclusion was not refuted in the Department's most recently published study.

#### Stopping Distances

USDOT tested straight-line stopping distances for all truck configuration scenarios under several braking conditions: normal operating brakes, anti-lock braking system (ABS) malfunction and brake failure. They found consistently longer stopping distances for Double 33s than the truck configuration they are intended to replace, Twin 28s. Double 33s took 22 feet longer to stop than Twin 28s with normal operating brakes (252 feet vs. 230 feet); 22 feet longer to stop with ABS malfunction (252 feet vs. 230 feet); and 23 feet longer to stop with brake failure (272 feet vs. 249 feet).

#### Rollover

Double 33s shared the propensity of other doubles and triples to roll over during avoidance maneuvers. In fact, USDOT's standard test simulations produced near-rollover propensity in all of the multi-trailer vehicles, as well as the finding that all twins and triples "would be in danger of rolling over if a maneuver of this severity were performed on an actual vehicle."

#### Stability, Avoidance Maneuver and Off-Tracking

Double 33s were "on the verge of instability" (i.e., jackknifing) when the ABS on the lead dolly malfunctioned during the brake in a curve. Also, Double 33s did not perform as well as Twin 28s in

avoidance maneuvers. The greater length of Double 33s lowered the response slightly below that of Twin 28s. Double 33s had a low-speed off-tracking approximately 33-percent higher than Twin 28s.

#### Out-of-Service Violations

Twin-trailer configurations had the highest out-of-service (OOS) violation rates compared to tractor semitrailer and triple-trailer trucks. Further, twin-trailer configurations had OOS violation rates that were 58 percent higher than single-trailer trucks.

#### Pavement Damage

Double 33s would result in the largest lifecycle overall increase in pavement costs, increasing pavement damage by 1.8 to 2.7 percent compared to the base case truck configuration.

NOTE: USDOT's finding translates to \$1.2 billion to \$1.8 billion in estimated pavement damage per year. This calculation is based on state and local governments spending \$68 billion on pavements in 2012—\$41 billion by the states, and \$27 billion by counties and cities (2012 Highway Statistics and selected Cost Allocation studies; R.D. Mingo and Associates).

#### Bridge Stress

Double 33s would require nearly 2,500 Interstate and other National Highway System (NHS) bridges to be posted or face further damage, costing up to \$1.1 billion in immediate bridge strengthening or reinforcement.

NOTE: As stated above, USDOT only studied 20 percent of the nation's bridges for this analysis. The remaining 80 percent are likely to be the most vulnerable to Double 33s. In fact, only 1,360 of the bridges considered by USDOT are currently "structurally deficient" (i.e., likeliest to need repair and/or replacement with heavier truck weights), while 70,427 of total bridges are classified as "structurally deficient."

ADDITIONAL NOTE: USDOT did not include an estimate of bridge deck damage caused by Double 33s. Considering that state and local governments spend approximately \$14.3 billion every year in bridge rehabilitation, mostly on bridge decks, it is estimated that Double 33s will add an additional \$200 million to \$400 million per year in bridge costs (R.D. Mingo and Associates).

#### **Recommendations for Future Research**

USDOT recommends improvements for future research, including the following:

- Improve collection of truck weight data on state crash forms and in state databases
- Improve collection of truck configuration data on state crash forms and in state databases
- Improve weigh-in-motion (WIM) data
- Develop a methodology and analyze local infrastructure impacts

**Table 2 Study Results: Scenario Configuration Compared to Control Vehicle Heavier Single Semi-Trailer Trucks**

| Scenarios                    | Modal Shift |                       | Safety  |  |   | Bridge Projected One Time Costs | Pavement Changes In Life-Cycle Cost | Enforcement Program Costs and Effectiveness                              |
|------------------------------|-------------|-----------------------|---|--|---|---------------------------------|-------------------------------------|--|
|                              | Truck VMT   | Total Logistics Costs | Crash   | Vehicle Stability and Control  | Violations and Citations  |                                 |                                     |  |
| Five-axle truck @ 88k pounds | -0.6%       | -1.4%                 | No national data or results; no analysis completed.   | <ul style="list-style-type: none"> <li>Longer stopping distances</li> <li>No difference in vehicle path or tracking</li> </ul> | <ul style="list-style-type: none"> <li>Overall slightly higher violation rate and slightly lower out-of-service and citation rates</li> <li>Configurations over 80k pounds had 18% more brake violations and a higher number of brake violations per inspection</li> <li>Vehicle weight or configuration not predominant factors in predicting a violation</li> </ul> | \$ .4 B                         | +0.4% to +0.7%                      | -0.3%; Positive (185,000 more trucks could be weighed for the same cost) |
| Six-axle truck @ 91k pounds  | -1%         | -1.4%                 | No national data or results; significant crash rate increase (+47%) in the one State (WA) analyzed.           | 6-axle heavy truck configurations did not differ significantly from the control vehicle in any of the maneuvers.               | <ul style="list-style-type: none"> <li>Overall slightly higher violation, out-of-service and citation rates</li> <li>Configurations over 80k pounds had 18% more brake violations and a higher number of brake violations per inspection</li> <li>Vehicle weight or configuration not predominant factors in predicting a violation</li> </ul>                        | \$1.1 B                         | -2.4% to -4.2%                      | -0.4%; Positive (266,000 more trucks could be weighed for the same cost) |
| Six-axle truck @ 97k pounds  | -2%         | -3.2%                 | No national data or results; significant crash rate increases in the two States (ID +99%, MI +400%) analyzed. | 6-axle heavy truck configurations did not differ significantly from the control vehicle in any of the maneuvers.               | <ul style="list-style-type: none"> <li>Overall slightly higher violation, out-of-service and citation rates</li> <li>Configurations operating over 80k pounds had 18% more brake violations and a higher number of brake violations per inspection</li> <li>Vehicle weight or configuration not predominant factors in predicting a violation</li> </ul>              | \$2.2 B                         | -2.6% to -4.1%                      | -1.0%; Positive (625,000 more trucks could be weighed for the same cost) |

**Table 3 Study Results: Scenario Configuration Compared to Control Vehicle - Longer Combination Trucks**

| Scenarios                           | Modal Shift 1. |                       | Safety   |   |   | Bridge Projected One Time Costs | Pavement Changes in Life-Cycle Cost | Enforcement Program Costs and Effectiveness                              |
|-------------------------------------|----------------|-----------------------|--|---|---|---------------------------------|-------------------------------------|--|
|                                     | Truck VMT      | Total Logistics Costs | Crash  | Vehicle Stability and Control   | Violations and Citations  |                                 |                                     |  |
| Twin 33' trailers @ 80k pounds      | -2.2%          | -6.3%                 | N/A<br>[Configuration not in common use]   | <ul style="list-style-type: none"> <li>Did not perform as well as the control vehicle in avoidance maneuver</li> <li>Slightly longer stopping distance</li> <li>Path deviation not affected by the ABS malfunction</li> </ul>   | Twin trailers generally have higher vehicle inspection violation rates than five-axle 80k pound single trailers | \$1.1 B                         | +1.8% to +2.7%                      | -1.1%; Positive (653,000 more trucks could be weighed for the same cost) |
| Triple 28' trailers @ 105.5k pounds | -1.4%          | -5.1%                 | No national data or results; Decrease in crash rate (-42%) in one State (ID) analyzed.                   | <ul style="list-style-type: none"> <li>Did not perform as well as the control vehicle in avoidance maneuver</li> <li>Amplification of the third trailer's response was greater than in the control</li> <li>Some performance differences between the triples and twins in braking or in the ABS malfunction</li> <li>Off-tracking was greater than the control</li> </ul> | Sample size too small to conduct analysis   | \$0.7 B                         | +0.1% to 0.2%                       | -0.7%; Positive (452,000 more trucks could be weighed for the same cost) |
| Triple 28' trailers @ 129k pounds   | -1.4%          | -5.3%                 | No national data or results; Minimal decrease in crash rate (-1%) on one roadway (KS Turnpike) analyzed. | <ul style="list-style-type: none"> <li>Did not perform as well as the control vehicle in avoidance maneuver</li> <li>Amplification of the third trailer's response was greater than in the control</li> <li>Some performance differences between the triples and twins in braking or in the ABS malfunction</li> <li>Off-tracking was greater than the control</li> </ul> | Sample size too small to conduct analysis   | \$5.4 B                         | +0.1% to +0.2%                      | -0.7%; Positive (446,000 more trucks could be weighed for the same cost) |

1. Actual VMT numbers and costs for twins and triples are small but the percentages are higher.



## **National Organizations Opposing Truck Size & Weight Increases**

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National Sheriffs' Association

International Association of Chiefs of Police

National Association of Police Organizations

National Association of Emergency Medical Technicians

AAA

National Association of Counties

National League of Cities

National Association of Towns and Townships

National Association of County Engineers

American Public Works Association

International City/County Management Association

The U.S. Conference of Mayors

Greater Federation of Women's Clubs

Owner-Operator Independent Drivers Association

International Brotherhood of Teamsters

SMART Transportation Division

Truck Safety Coalition

Citizens for Reliable and Safe Highways

Road Safe America

Brain Injury Association of America

Parents Against Tired Truckers

American Short Line and Regional Railroad Association

Railway Supply Institute

Association of American Railroads

# The County Commissioners of Kent County

WILLIAM W. PICKRUM  
PRESIDENT  
CHESTERTOWN, MD

RONALD H. FITHIAN  
MEMBER  
ROCK HALL, MD

WILLIAM A. SHORT  
MEMBER  
STILL POND, MD

R. Clayton Mitchell, Jr.  
Kent County Government Center  
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[www.kentcounty.com](http://www.kentcounty.com)

SHELLEY L. HELLER  
COUNTY ADMINISTRATOR

THOMAS N. YEAGER  
COUNTY ATTORNEY

September 27, 2016

**DRAFT**

The Honorable Andy Harris  
1533 Longworth House Office Building  
Washington, DC 20510

Dear Congressman Harris:

The County Commissioners of Kent County, Maryland write to express our opposition to increases in tractor-trailer truck size and weight. Our concern is with the severe impact heavier and longer trucks will have on already weakening infrastructure, especially on local roads and bridges where these vehicles ultimately travel.

As you are well aware, nationally and in Maryland, our highway and local road pavements and bridges are deteriorating faster than we can repair or replace them. The U.S. Department of Transportation (USDOT) Comprehensive Truck Size and Weight Limit Study, released in April 2016, found that increases in truck weights would negatively impact more than 6,200 bridges nationwide, causing about another \$2 billion in projected bridge costs per year. The length of a truck also plays a powerful role in the damage that is done to our roads, bridges and infrastructure. There are 796 structurally deficient or functionally obsolete bridges in Maryland as of 2014, according to the Federal Highway Administration, or over 32 percent of all bridges statewide. The proposal for longer doubles, Twin 33s, which would require every state to allow two 33-foot trailers on their roads, could cost another \$1.2 billion to \$1.8 billion in additional pavement costs every year nationwide, according to the 2015 USDOT study.

There is currently a renewed push for Twin 33's (HR 4371) and we ask for your continued opposition to any increases in truck size and weight.



The Honorable Andy Harris  
September 27, 2016  
Page 2

Yours very truly,  
THE COUNTY COMMISSIONERS  
OF KENT COUNTY, MARYLAND

William W. Pickrum, President

Ronald H. Fithian, Member

William A. Short, Member

KCC:aeb

cc: The Honorable Stephen S. Hershey, Jr.  
The Honorable Jay A. Jacobs  
The Honorable Steven J. Arentz  
The Honorable Jeffery Ghrist

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THOMAS N. YEAGER  
COUNTY ATTORNEY

September 27, 2016

**DRAFT**

The Honorable Barbara Mikulski  
503 Hart Senate Office Building  
Washington, DC 20510

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September 27, 2016  
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COUNTY ADMINISTRATOR

THOMAS N. YEAGER  
COUNTY ATTORNEY

September 27, 2016

**DRAFT**

The Honorable Ben Cardin  
509 Hart Senate Office Building  
Washington, DC 20510

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The Honorable Ben Cardin  
September 27, 2016  
Page 2

Yours very truly,  
THE COUNTY COMMISSIONERS  
OF KENT COUNTY, MARYLAND

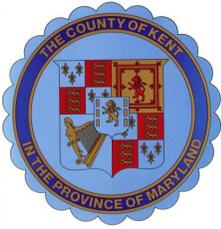
William W. Pickrum, President

Ronald H. Fithian, Member

William A. Short, Member

KCC:aeb

cc: The Honorable Stephen S. Hershey, Jr.  
The Honorable Jay A. Jacobs  
The Honorable Steven J. Arentz  
The Honorable Jeffery Ghrist



---

**Mills Branch Solar's Reply Brief to the Public Service Commission  
9/27/2016  
Regular Meeting**

ATTACHMENTS:

Description

Mills Branch Solar's Reply Brief

VENABLE<sup>®</sup>  
LLP

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T 410 244 7400 F 410.244.7742 www.Venable.com

September 20, 2016

F. William DuBois

T 410-244-5467  
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**VIA E-FILE AND HAND DELIVERY**

David J. Collins, Executive Secretary  
Maryland Public Service Commission  
William Donald Schaefer Tower  
6 St. Paul Street, 16th Floor  
Baltimore, MD 21202

**Re: Case No. 9411 – In the Matter of the Application of Mills Branch Solar, LLC  
for a Certificate of Public Convenience and Necessity to Construct a 60 MW  
Solar Photovoltaic Generating Facility in Kent County, Maryland**

Dear Executive Secretary Collins:

Enclosed please find for filing an original and seventeen (17) copies of Mills Branch Solar's Reply Brief in the above-captioned case. If you have any questions, please do not hesitate to contact me.

Very truly yours,



F. William DuBois  
*Counsel to Mills Branch Solar, LLC*

FWD/sgc  
Enclosures  
cc: Parties of record to Case No. 9411

County Commissioners  
Office  
Date 09/22/16

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF MARYLAND**

**THE APPLICATION OF MILLS BRANCH  
SOLAR, LLC FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY  
TO CONSTRUCT A 60 MW SOLAR  
PHOTOVOLTAIC GENERATING FACILITY  
IN KENT COUNTY, MARYLAND**

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**Case No. 9411**

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**APPLICANT'S REPLY BRIEF**

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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF MARYLAND**

**THE APPLICATION OF MILLS BRANCH  
SOLAR, LLC FOR A CERTIFICATE OF  
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TO CONSTRUCT A 60 MW SOLAR  
PHOTOVOLTAIC GENERATING FACILITY  
IN KENT COUNTY, MARYLAND**

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**Case No. 9411**

\* \* \* \* \*

**APPLICANT’S REPLY BRIEF**

The Applicant, Mills Branch Solar, LLC (“Mills Branch”), hereby replies to the other parties’ initial briefs. Contrary to various arguments made by the Project’s opponents:<sup>1</sup>

- (1) the Mills Branch Project (or, “Project”) will benefit the public interest, as it will deliver safe, clean, renewable electricity in support of State policy, particularly as expressed through the State’s Renewable Portfolio Standards;
- (2) the Project site is exceptionally suitable for construction of a solar project; and
- (3) “due consideration” of all factors, including Kent County’s position, requires issuance of the CPCN.

KKS and Kent County have also re-argued preemption. It was already settled law, but the inclusion of the argument again at this stage is inappropriate when it was already addressed by the Public Utility Law Judge (“PULJ”), at Kent County’s request, earlier in this

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<sup>1</sup> These are the Board of Commissioners of Kent County (“Kent County”), the Office of People’s Counsel (“OPC”), and Keep Kent Scenic, Inc. (“KKS”).

proceeding. A summary response is provided below, nevertheless. In addition, in taking a “kitchen sink” approach to opposing the Project, KKS has alone advanced a series of additional, meritless legal arguments, even going so far as bizarrely arguing at length that the Public Service Commission (“Commission”) cannot issue a CPCN to a merchant generating station. Obviously none merit serious consideration, but they are addressed as well.

It is a strange thing indeed that an entirely benign solar project – the single form of electric generation most preferred by the State – has become a focus of such intense opposition from a small group of individuals (representing a minority of the public commenters) due to them associating it with a wind project proposed by an affiliate of the Applicant.<sup>2</sup> That simply goes to show that there is an opposition group for everything. It is unfortunate, meanwhile, that the Application has also become something of a cause-celebre as a battle in a long-running conflict by county governments contesting the primacy of the State government. The Application is not, however, subject to review based on its

---

<sup>2</sup> KKS was created to oppose a wind project proposed by an affiliate of the Applicant. Applicant’s Response to the Petition to Intervene of Keep Kent Scenic, Inc. at 3-4 (Maillog No. 189147, filed Apr. 25, 2016). KKS views this proceeding as a battle in a war against wind turbines (see, e.g. Tr. of Pub. Hrg., at 37 (“To think that this project isn’t a Trojan Horse for the wind turbine project is plain naivete”), at 39 (“My wife and I operate a . . . farm on 291 near the southern boundary of where the Apex Wind Farm was originally proposed”), at 45 (“[O]nce preemption is granted to apex for a solar project, no subsequent CPCN application for wind . . . could be denied . . .”), at 46 (“Thus, the exercise of preemption here would effectively open the door to the . . . unregulated development of . . . wind farms throughout the Eastern Shore . . .”). It is not. It is an application to construct a solar generating station.

perceived symbolism, or because someone is irritated about a proposal to build a wind project, or as a proxy for tensions between State and local government.

The Project is an actual, real-life, harmless solar project of exactly the sort that the State seeks to attract. It will have enormous public interest benefits including positive environmental and economic impacts. Unlike other projects, it does not require acceptance of a tradeoff between accepting the benefits of solar but bearing loss of wetlands, forestation, and other resources. Considered on the facts, and on the law and policy of Maryland, the Project merits expeditious approval.

Finally, that approval should be subject to the conditions including the modifications proposed in the Applicant's Initial Brief: the modification of the Power Plant Research Program's ("PPRP") proposed Condition 3 (regarding the Forest Conservation Act), and the elimination of PPRP's proposed Condition 23 (regarding the Kent County Land Use Ordinance).

**I. THE MILLS BRANCH PROJECT WILL PROVIDE ENORMOUS PUBLIC INTEREST BENEFITS**

Each of the Project opponents have argued that the CPCN should be denied because they imagine there is no public interest served by the Project's construction and operation. They are wrong as a matter of fact and policy: as explained below, the Project furthers the public interest in important ways.

Moreover, it is interesting to note that many orders granting CPCNs do not contain any finding of any public interest being furthered or satisfied by the subject projects.<sup>3</sup> Therefore, either there is a public interest inherently satisfied through the construction of any generating station (namely, the public interest in increased generating capacity and associated lower energy costs), or there is no public interest standard. The question is immaterial as to this Project, however, because it includes very significant public interest benefits.

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<sup>3</sup> The following orders are examples of the many CPCNs for solar projects approved with no discussion of whether the project was in the public interest, and with the only areas of noted positive impacts being that the project is a source of solar renewable energy with limited construction jobs: *In re the Application of Todd Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 20.0 MW Solar Photovoltaic Generating Facility in Dorchester County, Maryland*, Order No. 87690, Case No. 9412 (July 28, 2016); *In re the Application of Gateway Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 12 MW Solar Photovoltaic Generating Facility in Worcester County, Maryland*, Case No. 9409 (proposed July 28, 2016); *In re 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*, Order No. 87556, Case No. 9405 (May 17, 2016); *In re the Application of Longview Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 20.0 MW Solar Photovoltaic Generating Facility in Worcester County, Maryland*, Order No. 87539, Case No. 9403 (May 10, 2016); *In re the Application of Dan's Mountain Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 18.36 MW Solar Photovoltaic Generating Facility in Frederick County, Maryland*, Order No. 87659, Case No. 9400 (July 11, 2016); *In re the Application of OneEnergy Sunfish Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 6.0 MW Solar Photovoltaic Generating Facility in Queen Anne's County, Maryland*, Order No. 87380, Case No. 9383 (Jan. 22, 2016); *In re the Application of Great Bay Solar I, LLC for a Certificate of Public Convenience and Necessity to Construct a 150.0 MW Solar Photovoltaic Generating Facility in Somerset County, Maryland*, Order No. 87321, Case No. 9380 (Dec. 21, 2015).

**A. The Public Interest in Renewable, Zero-Carbon Energy, in Fuel Diversity, and in Energy Security Will Be Furthered By the Project**

Claims that the Project does not further any Maryland public interest fly in the face both of the facts in the record and of the law and policy of Maryland and this Commission.<sup>4</sup> The Project provides numerous clear and significant benefits to the public in furtherance of the public interest. There are, as a matter of State law and policy, at least four public interest benefits that will be conferred by the Project (aside from reduced energy costs, which are addressed below): (1) reduced emissions; (2) a healthier environment; (3) increased energy security; and (4) decreased reliance on and vulnerability from imported energy sources. Among the reasons Maryland adopted its Renewable Energy Portfolio Standard was to “recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources” and to deliver “the benefits of electricity from renewable energy resources, including long-term decreased emissions, a healthier environment, increased energy security and decreased reliance on and vulnerability from imported energy sources . . . .” PUA § 7-702. Moreover, the General Assembly specifically made it the law of Maryland to recognize that all of these benefits “accrue to the public at large.” *Id.*

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<sup>4</sup> The purpose of the Project is to generate clean, renewable energy to provide additional clean merchant generating capacity to the PJM market generally, and Maryland in particular. (Company Ex. 9, at 3-1). This will “reduce Maryland’s reliance on importing electricity from other states, improve the region’s air quality, and assist in meeting Maryland’s renewable energy portfolio stand[ard]s.” (*Id.*). As Staff witness Wilson testified, the “project would contribute toward meeting th[e] goal[s]” of Maryland achieving 20 percent renewable energy by 2022 and 2 percent solar generation by the same year. (Wilson Rebuttal at 14).

The Commission has repeatedly and emphatically recognized the important benefits renewable and clean energy resources confer on the public at large. When it has gone in search of a public interest benefit to obtain for Marylanders in the course of merger proceedings, it has gone to renewable energy (and solar energy in particular) every single time. Most recently, in the Exelon-PHI merger, the Commission found a condition requiring construction of solar to be in the public interest and substantially relied upon it in approving the merger. *In re the Merger of Exelon Corporation and Pepco Holdings, Inc.*, Order No. 86990 at 80, Case No. 9361 (May 15, 2015) (“In light of the benefit that the generation of renewable resources provides to all Maryland citizens, we conclude that this condition is consistent with the public interest....”). Previously, in the Exelon-Constellation merger, the Commission wrote that it found “benefits to the state of Maryland that are broadly consistent with the public interest” in the form of renewable generation generally and solar generation specifically. *In re the Merger of Exelon Corporation and Constellation Energy Group, Inc.*, Order No. 84698 at 95-97, Case No. 9271. In the merger of FirstEnergy and Allegheny Energy, the Commission found the merger to satisfy the public interest standard through “four specific commitments,” which included a “commitment to develop, or provide substantial assistance in the development of, one or more Tier 1 renewable energy projects in Maryland,” which were anticipated to come in the form of solar generation. *In re the Merger of FirstEnergy Corp. and Allegheny Energy, Inc.*, Order No. 83788 at 36, Case No. 9233 (Jan. 18, 2011).

Further, when the Commission found that the natural gas generating station associated with the Dominion Cove Point project harmed the public interest when

considered on its own merits, what did it do? It required the applicant to provide funding to support “renewable and clean energy resources,” and “greenhouse gas reduction or mitigation programs” among other measures to yield a net positive public interest benefit outweighing the natural gas project’s direct harms. *In re 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 74 (May 30, 2014) (approving a project found to have had “considerable” negative impacts, including increased air emissions, consumption of greenhouse gas allowances, noise impacts, clear cutting of trees, and burdens on transportation infrastructure and waters of the State (at 71), “without the positive benefit of . . . contributing to the Maryland grid, or to the State’s efforts to curtail climate change . . . .” (at 72)). In other words, the Commission’s solution to an otherwise-harmful project was to require support for solar development.

The development of renewable energy generation, such as solar development is also in line with Maryland’s obligations under the U.S. Environmental Protection Agency’s Clean Power Plan, promulgated in August 2015. The Clean Power Plan aims to reduce national carbon emissions to 32% below 2005 levels by 2030. To help achieve this national goal, each state is required to meet a unique emission reduction target. Solar development helps Maryland reach its emission reduction target and comply with requirements of the federal Clean Power Plan by providing a source of emission-free energy generation.

Finally, KKS argues that the Project will not fall under the RPS. While the Commission has already determined it will not consider such arguments in a CPCN proceeding, there are several points that are relevant at this time: (1) the Project connects to the distribution system, not the transmission system, and so there is no serious argument it does not fall under the RPS; (2) the Commission just issued an order rejecting the petition for declaratory ruling that KKS points to for support; and (3) even the Great Bay Solar Project, which did connect at transmission voltage, was found in the public interest because of its contribution of solar power, which is consistent with the goals of the RPS even if it did not specifically qualify for the production of renewable energy credits. *In re the Application of Great Bay Solar I, LLC for a Certificate of Public Convenience and Necessity to Construct a 150.0 MW Solar Photovoltaic Generating Facility in Somerset County, Maryland*, Order No. 87321, at 26, Case No. 9380 (final Dec. 21, 2016) (“hereinafter *Great Bay Solar*”).

First, the Project connects to the distribution system. See, e.g., Tr. 192:20-22 (Utt) (discussing “the 69 kV *distribution line* that we would be interconnecting to...”); Tr. 206:8-14 (Utt) (stating that the proposed alternative site is “more distant from the *distribution line* that we would need to interconnect to...”). Specifically, the Project connects “into the Delmarva Power system at a tap of the Kennedyville-Massey 69-kV circuit.” Company Ex. 9 at 3-7. The CPCN statute itself distinguishes between lines based on whether they exceed 69kV. Lines that are 69-kV and below are distribution lines (not requiring a CPCN prior to construction) and lines over 69-kV are transmission lines (and therefore require a

CPCN). See PUA § 7-207(b)(3).<sup>5</sup> Importantly, while the Project “interconnection will require new and upgraded distribution line, new and upgraded substation/switching yard, and new metering and communication facilities.... [n]o facilities carrying a voltage in excess of 69 kV are involved in the project.” Company Ex. 9 at 3-7. As such, the project only involves distribution-level infrastructure and interconnection.

Second, just two days after KKS filed its brief, the Commission issued an order rejecting a request that the Commission no longer certify solar projects connecting above 34kV. *In re Petition for Declaratory Ruling on the Eligibility of Tier 1 Solar Resources*, Order No. 87760 (September 8, 2016). There, the Commission wrote that “the General Assembly opted not to delineate a specific voltage of interconnection in Section 7-704(a)(2), and that the Commission has always certified qualified solar facilities that are located in Maryland . . . without regard to the voltage of the interconnecting line.” *Id.* at 2.

Third, the Commission has already made it clear that the benefits of developing solar and renewable energy in Maryland are not dependent on RPS eligibility. In the context of the Great Bay Solar project, the Order stated that the project responds to both Maryland’s “aggressive requirement for production of electricity by alternative means,

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<sup>5</sup> That is not to say that interconnections in Maryland at higher voltages are not eligible to produce renewable energy credits. The Commission itself recently granted renewable energy credit-production status to a waste-to-energy facility in Virginia that interconnected at far above 69kV, even though eligibility of waste-to-energy facilities is limited in the same manner eligibility of solar facilities is. Commission Letter Order Re ML#178208, Issued November 20, 2015 (granting RPS eligibility to a waste-to-energy facility located in Virginia, six miles from the Maryland border, connected at 230kV).

including solar, and Maryland's Renewable Portfolio Standard['s] call[ ] for 20 percent of Maryland electricity sales to be supplied from renewable energy sources by 2022" and "an ongoing need for power." Order No. 87760 at 26. Additional benefits of the project are "several hundred temporary construction and other, less skilled, jobs[;] property taxes paid to the County;" and a likely reduction in local nitrogen runoff as the project will replace soybean cultivation with solar panels and eventually native grasses. Id. at 10, 23. These are additional benefits are not only met but exceeded by the Mills Branch Project, as explained in Section I.C., below. Meanwhile, Great Bay had impacts to the environment, such as impacts to wetlands, critical areas, and endangered and threatened species (id.). The Commission correctly recognized that the public interest in renewable generation outweighed these impacts. Meanwhile, in contrast, such impacts are entirely absent from the Mills Branch Project.

Finally, KKS makes an argument based solely on a claim made by an entity in a filing made in a different proceeding: that if all of the solar generation already in the PJM queue for Maryland were to be built then the RPS would be satisfied. (KKS Initial at 57). Obviously that is beyond the record, but in this instance the problem with KKS going outside the record is not just the veracity of the claim – it might be true – the problem, instead, is the uselessness of the claim, which belies KKS's lack of context and understanding. The PJM queue is a meaningless metric. There are 800 MW of unbuilt onshore wind in the PJM queue for Maryland, representing a multiple of the amount that

has ever even applied for a permit.<sup>6</sup> Calvert Cliffs Unit 3 is in the PJM queue. Conowingo Dam has 1,000 MW of expansion in the PJM queue, including some that has been there for over 15 years. Perryman has not only many MW of unbuilt, unproposed natural gas in the queue (beyond the project that applied for and received a CPCN in Case No. 9136), it also has 142 MW of coal (!) that has been sitting in the queue for 15 years. Having a position in the PJM queue could hardly mean less for the prospects of a project ever getting built, or even for moving beyond a flicker of someone's imagination. And, in any event, when Maryland established the RPS it was not a declaration that renewables should be limited to the levels set forth; it was established as a level the State should reach. It is an important goal for the State of Maryland, and would be furthered by the Project.

**B. The Public Interest in Lower Energy Prices Will Be Furthered By the Project**

As Staff witness Wilson testified, the “additional generation capability of the project would be of benefit to Maryland . . . .” (Wilson Direct at 12). Company witness Mangum quantified that Maryland currently “only produces enough electricity to meet about 58 percent of its retail demand. As a result, the remainder must be imported from producers in other states.” (Company Ex. 3 at 1).

Meanwhile, the citizens of Kent County would particularly benefit from the Project because “[a]dding generation at a remote location such as this” avoids “cost associated with maintaining the transmission to deliver power to Kent County.” (Tr. 151 (Utt)). “If

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<sup>6</sup> All data from <http://www.pjm.com/planning/generation-interconnection/generation-queue-active.aspx>. Of course it is outside the record, but so is the thing to which it is responding.

you can generate . . . electricity in Kent County as opposed to needing to import it, then there is a benefit there to the local customers.” (Id.) The electricity generated by the Project will very likely be consumed in Kent County itself. (Id.) It is well established that “new renewable generation will diversify Maryland’s fuel mix and reduce the State’s exposure to fuel price volatility.” Case No. 9271, Order No. 84698 at 97.

OPC, in reflexively opposing something a company wants to do, has taken the facially absurd position in this proceeding that increasing generating resources provides no benefit to the public-at-large (and, implicitly, no benefit to its statutory clients, retail customers). OPC’s position is, of course, contrary to the above-stated record, contrary to common sense and prior Commission orders observing that increased generation yields lower prices, and contrary to OPC’s position in advocating for distribution utilities to be required to subsidize merchant power producers’ construction of new facilities. *See in re Whether New Generating Facilities are Needed to Meet Long-Term Demand for Standard Offer Service*, Order No. 84815, Case No. 9214 (April 12, 2012). It is also contrary to OPC’s statutory obligation to advocate for the interests of “residential and noncommercial users” of energy as a class. See PUA § 2-204.<sup>7</sup>

It is not only factual that adding generating capacity provides a public benefit through lowering the cost to consumers, it is also the policy of Maryland. The “Intent and findings” of Maryland’s Renewable Portfolio Standards law states that the General

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<sup>7</sup> Indeed, OPC’s brief itself was submitted in violation of law, as OPC’s powers are limited to advocacy to “protect the interests of residential and noncommercial users,” but OPC is advocating directly against their interest.

Assembly's intent in incentivizing renewable generation generally and solar generation specifically is to "lower the cost to consumers of electricity produced from these resources." PUA § 7-702. Construction of the Project provides an important public benefit of lower energy prices and, in particular, lower prices for electricity generated from solar resources.

**C. The Project Will Contribute Additional Public Interest Benefits Through Contributions to Wildlife Habitat, Forestation, Agricultural Land Preservation, and Economics**

The Project will provide benefits to wildlife, particularly from the planting of grass in the Project area and from the creation of pollinator habitat. (Tr. 292-293 (Harriott)). In addition, the planting of trees for purposes of visual screening in compliance with Condition 13 will yield afforestation on the Project site. Company Ex. 12 (Utt Rebuttal) at 8. Benefits to the County as a result of afforestation include "habitat quality benefits," "water quality benefits," and assisting the County in meeting watershed improvement goals. (Tr. 344:21-245:1 (Moredock)). If any additional afforestation is required for FCA compliance, those benefits will only multiply.

The Project, with PPRP's proposed Condition 21(b), will actually lead to a net benefit on the narrow issue of agricultural land, by ensuring that there will be 349 acres of land placed into farmland preservation. This is land that would otherwise not be preserved, and the land constituting the Project site is itself not presently protected and need not be kept in agricultural production anyway. (Tr. 356-357 (Moredock)). No other solar project, or generating station project of any kind in Maryland, has yielded agricultural preservation.

PPRP's analysis found that "there are positive benefits to the State and [Kent] County associated with the [Project]." (Hall Direct, at 5:4-5.) These benefits include:

- increased State and Kent County tax revenues, including corporate income tax payments, income tax revenues on lease payments to landowners, and real property tax revenues; (Hall Direct, at 5:1-4)
- higher economic output; (Hall Direct, at 4:18-29) and
- a net benefit from construction through construction worker payrolls and subsequent consumption expenditures, local purchases of common construction materials, and associated multiplier effects, without any offsetting increased demand for housing or public services (Hall Direct, at 4:1-12).

Meanwhile, PPRP found that there is "no evidence to suggest that property values [off-site] will be affected by the Project." (Hall Direct, at 14:29-15:1). In short, PPRP found a series of positive economic benefits of the Project, without any offsetting negative impacts.

The Project will provide a benefit by generating electricity without producing air emissions. The Project "will have an overall positive effect on air quality by creating a new emissions-free source of power generation that can be used in the region . . . ." (Company 9 at 4-1). "[T]he operation of a solar PV facility does not produce air emissions." (PPRP Ex. 3 at 7). "Electricity generated by solar PV facilities represents a way of meeting the region's growing demand for electric power without emitting combustion-related air pollutants." (Id.)

**D. Public Comment Was Strongly In Favor of the Project**

Notwithstanding the lengthy comments from a small group at the public hearing,<sup>8</sup> the overwhelming majority of public comments were in favor of approval of the Project. This included individuals living and working directly adjacent to the proposed site, throughout Kent County, and throughout the State of Maryland, as well as the Chesapeake Climate Action Network (CCAN). In total, 127 letters of support for the project were received by the Commission, while only 16 letters of opposition were filed. In its letter, CCAN noted that the Project “has the chance to play a key role in securing” Maryland’s position “as a leader in the growing clean technology sector and establish itself as a regional hub for clean energy jobs and clean energy investments.” (Letter from Mike Tidwell, Executive Director, CCAN dated June 14, 2016). Benefits of the Project specified by

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<sup>8</sup> Supporters of the Project came to the public hearing as well. See, e.g., June 21, 2016 Tr. 46:20-47:22 (Mr. Kohl):

I am an adjacent property owner to the proposed project. Our property which is Angelica Nurseries, abuts most of the western side of this project. About a third of the representative perimeter of the Mills Branch Solar will touch our land. I’m here to support this project. I very much support renewable energy such as solar. In this county I would much rather see consolidated well-screened large projects than to see the five-acre fields without screening popping up all over.

I do not believe this will in any way detract from the value of my farm land. To the contrary, I believe it may be a benefit to know that this land, this neighbor, will not mind the smell of mushroom compost or the sound of a diesel irrigation pump for the next 30 years.

I think this is a great opportunity for Kent County that we could be proud of, not to mention the significant boost of tax revenue from this parcel of land. To top that off, this project is reversible. After 30 years it is still possible to return this land to farming. Thank you.

CCAN include “injecting significant investment into the local economy, providing 30 years of revenue for schools and government services and creating up to 100 jobs during construction and a handful of permanent positions” in addition to the environmental benefits of reducing “climate-warming greenhouse gas emissions that are equivalent to those emitted by burning approximately 600 train-car loads of coal per year, or 18,000 train-car loads of coal over the life of the project.” Id.

## **II. THE SELECTED SITE IS EXCEPTIONALLY SUITABLE FOR CONSTRUCTION OF A SOLAR PROJECT**

There are numerous considerations to siting a solar project in Maryland, and there simply are not that many viable sites. “[O]nly about 0.1 percent of the state’s agricultural land is suitable for solar farm development due to site conditions or development standards.” (Company Ex. 9 citing Dorchester County Planning Commission, 2015).

Numerous factors can render land unbuildable for solar, or mean that its construction would come only with significant impacts to the environment. Maryland’s extensive coastline and wetlands are a particularly significant limiting factor. (See Company E. 11, Utt Supplemental). So is the lack of available capacity on electrical transmission/distribution lines in much of Maryland. (Id.). Further, it is notable that there are many means available to preserve parcels of agricultural land, and much land has been put into preservation programs. The Project site, however, has not.

Against this backdrop, the Project site is remarkably suitable to solar development. The purported “alternative site,” however, is not, as construction there would involve impacts to wetlands, forests, and sensitive species, among other problems.

**A. The Selected Site Has Numerous Special Characteristics That Make It Suitable for Solar Development**

The Project site is uniquely well-suited to utility-scale solar development for several reasons, including that:

- it is inland, away from coastal areas;
- it is located entirely outside the Chesapeake Bay Critical Area;
- it has minimal wetlands. In fact, no wetlands will be directly impacted. The only aspect that will affect even a wetland buffer is the placement of some fence posts in the buffer area of low-quality wetland;
- it is undeveloped;
- it is unforested;
- it is near existing electric infrastructure with capacity to take the Project's electric generation without addition of new linear facilities (i.e., transmission or distribution lines).

Company Ex. 11 (Utt Rebuttal) at 3.

The site is also among a small portion of the State's agricultural land that is suitable for development of solar generation. The vast majority of Maryland's farmland is not suitable for solar development because it is not located close to transmission capacity, has some form of agricultural or other easement, or has poor terrain quality. Company Ex. 9 at 4-15.

**B. There Are Numerous Means of Preserving Agricultural Land, and None Have Been Applied to this Project Site, But the Project Will Yield Preserved Agricultural Land**

There are numerous programs that pay land-owners to limit their potential uses of their land or provide other mechanisms to do the same while conferring other financial compensation such as tax deductions and tax credits. These include the Kent County Agricultural Land Preservation Program (purchase of development rights); Maryland Agricultural Land Preservation Foundation (purchase of easements); Rural Legacy, Green Print, Forest Legacy; or trusts such as the Maryland Environmental Trust, Maryland Historical Trust, or the Kent Land Trust. Company Ex. 9 at 2-52. None of these programs apply to the Project site; the land is in no such program.<sup>9</sup>

However, the Project, with PPRP's proposed Condition 21(b), will actually lead to a net benefit on the narrow issue of agricultural land preservation, by ensuring that there will be 349 acres of land placed into farmland preservation. This is land that would otherwise not be preserved, as the land constituting the Project site is itself not presently protected and currently need not be kept in agricultural production. (Tr. 356-357 (Moredock)). That achieves permanent preservation of land. Meanwhile, if the land

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<sup>9</sup> Acceptance of the County's and KKS's arguments would have the perverse effect of putting all of the restrictions of these programs onto the Project site but without any of the compensation to landowners that is supposed to come with it. It would, thereby, call into question the propriety of these programs even being used in Kent County: if Kent County's position is that all agricultural land must, as a matter of law, be limited to agricultural use or to outright disuse, then there is absolutely no reason to waste public funds paying a privileged subset of land-owners to do what those who are not being paid must also do.

preserved is off-site, then that would potentially be additive to the future non-solar uses of the Project site (since the solar generating station is a temporary use of the properties).

**C. The Idea of “Moving” the Project Is Misguided Both As A Matter of Law and Fact**

*1. The CPCN Process Does Not Provide for an Alternatives Analysis for Generation*

There is no alternatives analysis required in the generating station CPCN process. And, as a practical and factual matter, none have been performed. If the law required an alternatives analysis for issuance of a CPCN for construction of an electric generating station, it would say so. That it does not is a very clear statement that none is needed. This is particularly plain to see from the fact that the Public Utilities Article requires consideration of “alternatives to the construction of a new transmission line” (PUA § 7-209), but does not include any parallel requirement for electric generation. Similarly, the Commission adopted regulations specifically requiring an alternatives analysis for transmission routes. COMAR 20.79.04.03. There are no such requirements for generating stations, and no CPCN proceeding in at least 15 years has included an alternatives analysis.

*2. The “Alternative” Site Is Inferior and Probably Unbuildable*

Project opponents have proposed an area east of Route 301 as an alternative site. That location, however, would certainly not be prudent, and likely would not be feasible, because construction there would involve impacts to wetlands, forests, and endangered species (among other environmental impacts). PPRP Witness Harriott confirmed that State documentation indicates the proposed alternative site:

- contains green infrastructure (while the Project site does not) (Tr. 293:15-295:5);
- contains endangered species habitat that would be a “red flag” (while the Project site does not) (Tr. 295:6-300:5);
- contains “a lot of mapped wetlands” including forested wetlands (Tr. 296:11-298:1); and
- contains potential forest-interior dwelling species (while the Project site contains none) (Tr. 301:17-302:15).

PPRP witness Harriott ultimately confirmed that based on the State documentation, he “would be concerned” about a potential project at the alternative site. Tr. 302:22-303:18. On top of all of that, the purported “alternative site” would require construction of new linear infrastructure in order to interconnect to the electric system. Tr. 206:8-14 (Utt) (stating that the proposed alternative site is “more distant from the distribution line that we would need to interconnect to...”).

The record plainly demonstrates that the selected site is superior to the proposed alternative site in every way (other than its County zoning status). The alternative site exhibits considerable environmental value that would be lost, which is in stark contrast to the proposed Project. Indeed, that “alternative site” might not even be a buildable location at all, given the wetlands, species, and forest values contained on the property. And, in any event, it is within the SCHAs and in proximity to historic sites.

**D. Construction of a Solar Project Will Not Impact Kent County’s “Rural Character”**

Even the construction of *the entire Renewable Portfolio Standards’ solar requirement*, if fulfilled using only ground-mounted utility-scale systems on the Eastern Shore, would itself consume only 0.6% of available agricultural land on the Eastern Shore. (Hall Direct, at 7:11-14). Solar generating stations are common to agricultural and rural areas. Company Ex. 4, Brady Rebuttal at 8. The Project is vastly different from a generating station along the lines of a coal-burning, oil-burning, or natural-gas burning generating station that would involve much larger and taller facilities, large amounts of traffic or additional linear facilities to deliver fuel to the facility, and externalities such as air emissions. And, the Project will be secluded by vegetative screening next to a tree farm.

**E. There Are No Adverse Impacts to Historic Resources or Esthetics Associated with the Project**

*1. No Historic Properties Will Be Impacted*

The Maryland Historic Trust (“MHT”) itself concluded that the Project “will have *no effect on historic properties* eligible for listing in the National Register of Historic Places.” (PPRPEx. 13, Letter from Elizabeth Hughes, State Historic Preservation Officer (July 6, 2016) (emphasis in original)). Furthermore, “the undertaking will not affect historic properties in accordance with Maryland historic preservation law.” (Id.) MHT made this finding despite the fact that its review was undertaken on the presumption that there would be no visual screening for the Project.<sup>10</sup>

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<sup>10</sup> The materials before MHT: a Phase 1A Archaeological Study, a Phase 1 Archaeological Study, a Determination of Eligibility for NRHP Listing Report, and a Visual Effects Report

KKS has now latched onto an argument (KKS Initial, at 24) that, contrary to MHT's clear finding, a railroad – an industrial facility! – will somehow be negatively affected by having its route pass by a solar farm.<sup>11</sup> The line is a “private for profit freight carrier.” (KKS Ex. 5, at No. 7, p. 3). Portions of the line have “deteriorated” and are “overgrown.” (Id.)<sup>12</sup> It is used to haul industrial specialty chemicals (it passes a chemical plant), Perdue and Willards Agri-Service products, coal, liquid propane, electrical transformers, etc. ([www.mdde.com](http://www.mdde.com) (a government website) cited by KKS Ex. 5). Where the railroad passes the Project site, the site has “been used for dumping . . . , as evidenced by old overgrown debris piles.” (PPRP Ex. 11, Harriott Direct, at 5:13-14). KKS's argument is flatly contradicted by the MHT, and simply lacks credibility.

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(which are in the present record) all conservatively did not include the mitigation provided by visual screening. (See Company 5, Company 6, and attachments to Company 9.) They all assumed the Project would be fully visible from relevant receptors. PPRP Witness Gray confirmed the understanding that MHT did not account for visual screening when it found no impact. (August 29 Tr. 81 (Gray)).

<sup>11</sup> One can only imagine how KKS would react to an attempt to site a private, commercial railroad track hauling industrial specialty chemicals through Kent County.

<sup>12</sup> A picture of a forest stand along the railroad track is at Figure 2.2-10 of the Applicant's ERD. It shows it consists of waste trees and vines. See also Figure 13 of Stantec attachment to the ERD, providing a view from the Project boundary near the railroad looking east toward another forest stand. KKS has pretended that the railroad is a new development in the proceeding, but it is not. The railroad was mentioned numerous times in the Applicant's ERD (see, e.g., 2-1, 2-6, 2-31, 2-43, 2-52, 2-60, etc.), and is discussed in the Applicant's submittals to MHT. (See, e.g., Architectural and Visual Assessment, Mills Branch Solar Project, Kent County Maryland, at 1.1, 1.3, 3.0, 4.19, etc.). KKS used it to cross-examine a witness (PPRP witness Gray) who was not among the historic/heritage witnesses in the proceeding and was supposed to be answering questions about a landscaping plan; it is, therefore, unsurprising that the witness was unable to speak with specificity about the railroad.

Meanwhile, the letter from Ms. Gail Owings, the Executive Director of Eastern Shore Heritage, Inc. (“ESHPI”) and immediate past Kent County Planning and Zoning Director (Tr. 323:8-13) does not support KKS’s arguments (beyond the contradictory evidence in the record from PPRP, MHT, and the Applicant) for two reasons: (1) it does not actually say what KKS attributes to it, and (2) it carries with it concerns of credibility and conflict of interest. First, the letter does not say that an “adverse effect” to the SCHAs will result from the Project. Actually, it does not even say that an “adverse effect” to the SCHAs even could result from the Project. Rather, it says that:

[the] solar project has the potential to undermine the integrity of the [SCHAs]. Landscaping cannot mitigate this impact. The concern for the integrity of important agricultural resources increase [sic] when considering the cumulative impact of potential future solar projects in areas not planned for solar projects. Therefore we support Kent County’s position that the project should be subject to local policies governing the location of solar projects as local comprehensive planning considers these cumulative impacts. We urge you to respect the work of county citizens and government by following the regulations found in the Kent County Land Use Ordinance . . . .

As an initial matter, it is unclear what “potential to undermine the integrity” is even supposed to mean in this context; whatever it is, it is not a statement that there is an “adverse effect.”<sup>13</sup> More significantly, however, the full context of the letter makes it clear that the actual subject of Ms. Owings’s letter is simply to advocate that the zoning ordinance that she wrote (Tr. 323:8-13 (Moredock)) not be preempted, and is leveraging the specter of non-existent “potential future solar projects” as support.<sup>14</sup> Meanwhile, while

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<sup>13</sup> Indeed, it is not even a statement that the “integrity” will be “undermined,” whatever that means, only that there is some unexplained “potential.”

KKS witness Watson claimed there is an “adverse effect” as defined under the Maryland Heritage Law regulations, it was already shown at pages 28 to 34 of the Applicant’s Initial Brief that the claim is impossible both because there are no impacts to historic properties and because the law does not apply to the Project in the first place.

Second, there are significant concerns as to the purpose and reliability of the letter. To begin with, the circumstances of its arrival in the case are notable. Here is the known sequence of events:

- (1) March 31<sup>st</sup>, PPRP sent Ms. Owings a consultation letter (Hall Supplemental, at 2) (KKS falsely claims (see KKS Initial at 25) that PPRP witness Hall had not “consulted with ESHI” before filing his testimony);
- (2) April 26<sup>th</sup>, the Public Utility Law Judge denied Kent County’s (joined by KKS) motion on preemption;
- (3) May 26<sup>th</sup>, intervenors (including KKS) filed their testimony;
- (4) May 31<sup>st</sup>, PPRP witnesses Gray and Hall were told by Ms. Owings that she “had not received” the letter;
- (5) sometime between May 31<sup>st</sup> and June 2<sup>nd</sup>, PPRP emailed the letter to Ms. Owings and received her acknowledgement of receipt;
- (6) June 10<sup>th</sup>, the Applicant filed rebuttal testimony;

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<sup>14</sup> Ms. Owings does not even claim, however, that the construction of both this Project and imagined future projects would have an adverse effect. She only claims it has more “potential to undermine the integrity . . . .”

(7) June 17<sup>th</sup>, surrebuttal testimony was filed; and

(8) June 19<sup>th</sup>, after the close of parties' ability to provide evidence, PPRP received a letter (copying PSC Executive Secretary David J. Collins) from Ms. Owings dated June 16, 2016, and then filed it the next day.

Ms. Owings was never offered as a witness. She was, therefore, never subject to examination. Under these circumstances, KKS's claim of her as a "reliable witness" is certainly not true.<sup>15</sup> Her letter was sent after it was too late for any party to respond, but just in time for it to be used at hearing. It came more than two weeks after the conversation where she indicated she "had not received" the first consultation letter from PPRP. And, on top of everything else, she wrote in defense of a land use ordinance that she herself had authored.

The record is clear that there are no impacts to historic properties. The law is clear that the Project is not subject to Maryland Heritage Law review, and, in any event, there is no impact to the SCHAs.

Finally, a CPCN has been granted to a solar project that was identified as actually having direct impacts on numerous historic properties in the absence of vegetative screening. *In re the Application of OneEnergy Baker Point Solar, LLC for a Certificate of Public Convenience and Necessity to Construct a 9.0 MW Solar Photovoltaic Generating Facility in Frederick County, Maryland*, Order No. 87652, at 31-33, Case No. 9399 (final

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<sup>15</sup> Indeed, it is very telling that KKS's entire case relies on something written by an individual who KKS describes as a "reliable witness[]" (see KKS Initial at 40), but who KKS was careful not to actually call as a witness.

July 6, 2016). It was approved even though the project “is ‘surrounded by an unusually-high concentration of known historic properties,” on which it was expected to have a “significant adverse visual impact,” unless vegetative screening was provided. And, another CPCN was granted to a solar project in a Heritage Area and in close proximity to Antietam National Battlefield. *In re the Application of Maryland Solar LLC for a Certificate of Public Convenience and Necessity to Construct a 20 MW Solar Photovoltaic Generating Facility in Washington County, Maryland*, Proposed Order, finalized as Commission Order No. 84377 (Case No. 9272). Taking the view that this Project has a negative impact on historic properties or heritage areas, much less denying the Application on such a ground, would be a complete contradiction of very clear Commission precedent.

Moreover, Kent County itself, after re-writing its KCLUO to remove zoning restrictions from its own projects (see Tr. 333:22-334:17 (Moredock)) located a solar project almost across the street from a historic church, in an agricultural area, and did so without vegetative screening. Tr. 335:23-337:16 (Moredock); Tr. 432:23-435:6 (Watson). There is no indication anyone (including ESHI and KKS witness Watson) had any concern that doing so could have impacted the historic church or degraded the area. It is hard to imagine what surer sign there could be that there is no legitimate concern about impacts to historic resources.

2. *It Simply Is Not Credible That a Solar Farm With Vegetative Screening, Next to a Tree Farm of More Than Twice the Size, Will Have Visual Impacts*

Arguments that vegetative screening will not work or will have negative impacts are incorrect. Vegetative screening is used and encouraged by Kent County and by its

residents. The Project site is adjacent to, and surrounded on two sides by, a more than 800-acre tree farm (about 2.5 times the size of the Project). (See Company Ex. 9, at Figure 2.1-4; see also Maryland State Dept. of Assessments and Taxation for acreages of Angelica Nurseries, Inc. properties). The tree farm covers the northwest boundary of the site, and lies between the site and the scenic byway that is two miles away. (Id.) The part of the northern boundary not already screened by the tree farm has an electric distribution line, railroad track, and informal dump. (Id. at 3-7).

KKS is wrong in arguing that “long range views from the National Scenic Byway and vistas of Kent County” will be affected by “high screening landscape” resulting from the Project. (KKS Initial Brief at 26). The record flatly contradicts the argument. The ERD states that “[a]lthough [figure 2.4-8] identifies a portion of the project site within the view shed of MD 213, the site was not found to be visible from this road during a September 2015 site review.” Company Ex. 9 at 2-56 and 2-60.

Furthermore, it is simply not credible to suggest that any purported “long range views” (if they even exist in the first place) would be affected, given: (1) the sheer distance – 2 miles – between the site and the National Scenic Byway, and (2) the fact that you would have to look through a tree farm before you could even see most of the site from the road. (See Company Ex. 9 at Figure 2.1-1; Figure 2.1-4).

In any event, Mills Branch could today plant a vegetative screen without need for approval from anyone. Vegetative screens can be – and in fact often are – put in place at any time, without any approval from the County whatsoever:

Q, Would any sort of County approval be required to create a vegetative screen between the interior of the property and a road front?

A. No. Oftentimes farmers will plant hedge rows or remove hedge rows, and the only time that a County approval might be required is if a very large area of vegetation is *removed*...

Tr. 356:11-17 (Moredock) (emphasis added).

Visual screening is useful tool, as recognized by both PPRP and MHT in this case. See PPRP Ex. 13 (Letter from MHT Officer Elizabeth Hughes, clearly rejecting the idea that visual screening is useless and suggesting “solutions that will minimize the visibility of the facilities on the landscape”); PPRP Ex. 7 (Hall Direct) at 9 (“We recognize that visual screening is a very important issue for local communities, and therefore PPRP has bolstered its approach to this issue.”). KKS’s assertion that the vegetative screening proposed for the Project will be “an obviously man-made vegetative barrier that is unlike anything in Kent County,” is patently untrue. The County itself requires visual screens in a variety of places. The County Land Use Ordinance defines a screen as “a structure or planting consisting of fencing, berms, and/or deciduous or coniferous trees or shrubs providing a continuous view obstruction from within a site or property.” KCLUO at 472. In the Agricultural Zoning District, all accessory farm dwellings are required to be landscaped and screened from adjacent properties. *Id.* at 12. Furthermore, the Company provided photographs of other road frontages in Kent County which feature vegetative screening similar to that proposed for the Project site. Company Ex. 21, at Exhibit F.<sup>16</sup>

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<sup>16</sup> At the hearing when these photographs were put into evidence, the Company offered – in response to a request made by KKS prior to the hearing – to have a witness authenticate the documents and testify as to the veracity of whether and where the photographs were

The Applicant has provided two rounds of vegetative screening plans and visual simulations that demonstrate that the Project will be appropriately screened. Company Exhibit 21. KKS, at pages 31 et seq. of KKS Initial, uses various extra-record materials to challenge the visual simulations that were in the Application. If KKS had an actual quarrel with the visual simulations it could have challenged them with responsive evidence this spring or on cross-examination this summer. It did no such thing. Instead, KKS sandbagged and now has impermissibly dropped things into its brief. Now, it does not really matter in the end; those materials still are not in the record and still would not impact the outcome if they were. The Applicant has provided a sound vegetative screening plan that uses native plant species, and PPRP's condition will help assure compliance.

**III. DUE CONSIDERATION OF ALL OF THE FACTORS, INCLUDING THE POSITIONS OF THE KENT COUNTY COMMISSIONERS, REQUIRES ISSUANCE OF THE CPCN**

The Commission is to give "due consideration" to a number of factors, among which one is the "recommendation of the governing body of [the] county." § 7-207(e). Nearly every CPCN project has negative impacts on at least one factor, and many of the approved solar farm projects have had negative impacts to wetlands, forests, or other resources. See, e.g., *Great Bay Solar*, Order No. 87321, at 9, 13, 15 (approving CPCN despite possible presence of "various animal and plant species, including rare, threatened, and endangered species;" the need for some tree removal; and impacts to wetlands and the critical area;

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actually taken. Tr. 99:23-100:18 (DuBois/J. Sober). At hearing, however, KKS did not ask for such authentication or object on that basis.

and, noting that “the new substation and the bases of overhead tie lines will be permanent features in the Kings Creek Critical Area”).<sup>17</sup> The question the Commission has posed is not whether a project has no negative impacts; it is whether the “benefits of the generating facility, including the economic benefits, outweigh the environmental, safety, and societal costs of siting the generating facility . . . .” *In re 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*, Order No. 86372, at 63 (May 30, 2014) (approving a project found to have had “considerable” negative impacts, including increased air emissions, consumption of greenhouse gas allowances, noise impacts, clear cutting of trees, and burdens on transportation infrastructure and waters of the State (at 71), “without the positive benefit of . . . contributing to the Maryland grid, or to the State’s efforts to curtail climate change . . . .” (at 72). The Commission is to give the recommendation of a county government “due consideration” among the other factors to which the Commission must also give “due consideration.” §§ 7-207 and 7-208. The

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<sup>17</sup> See also, e.g., *in re the Application of Gateway Solar, LLC*, at 9, 23 (proposed July 28, 2016) (noting that there would be impacts to wetlands and the only benefit of the project is a “limited benefit” to the economy from the creation of construction jobs and the project’s contribution to Maryland’s Renewable Energy Standards Portfolio); *in re the Matter of the Application of Dan’s Mountain Solar, LLC*, Order No. 87659, at 6, 15 (final July 11, 2016) (noting that 50 to 70 acres of forest habitat will need to be cleared from the site and that rare, threatened species will likely be impacted by the project); *in re the Application of OneEnergy Dorchester, LLC for a Certificate of Public Convenience and Necessity to Construct a 15.5 MW Solar Photovoltaic Generating Facility in Dorchester County, Maryland*, Order No. 87012, at 7, Case No. 9370 (final June 9, 2015) (finding that there are wetlands on the site and that the Applicant has submitted an application to “either use or fill some or all of the nontidal wetland”).

Commission is not to give a county government veto power over a project. Here, the Project offers significant benefits with the only countervailing factor being the matter of a county's zoning restrictions. Few CPCNs have so clearly merited approval.

**A. The Kent County Commissioners' Recommendation Is Only One Factor, and Must Be Understood in Context**

Accepting Kent County's recommendation – that its Land Use Ordinance be applied to proposed generating stations in Kent County – would mean that the only power plants of any kind allowed in Kent County would be utility-scale solar projects owned by Kent County, nonprofits, or agricultural businesses, or potentially in the 2% of Kent County in which other persons are allowed to own solar projects. "Potentially" must be emphasized for two reasons: (1) of the two projects Kent County (and KKS) have pointed to as examples of their encouragement of solar development in that 2% of Kent County, neither actually has State and Kent County approvals to construct; and (2) even if those two projects end up getting approved, it appears there might not be any other viable sites in that 2% of Kent County, given the environmental characteristics discussed above, the presence or absence of access to electric infrastructure, and the presence of existing development.

Kent County's purpose in opposing the Project is to seek to enforce the Kent County Land Use Ordinance ("KCLUO"). Petition to Intervene of the County Commissioners of Kent (maillog No. 182913, filed Jan. 28, 2016). Through the KCLUO, Kent County's government has sought to systematically exclude energy projects from Kent County. Natural gas, nuclear, coal, and oil generation are all entirely precluded. (See KCLUO at 470. Special exceptions in certain zoning districts are available for "public utilities" which

is defined as “Uses or structures for the public purpose, transmission and distribution (*but not power generation*); fuel transmission and distribution (*but not manufacture or storage*)...(emphasis added)). Commercial-scale wind is entirely precluded. (See KCLUO at 480. The only wind energy permitted in any of the County’s zoning districts are “small” wind energy systems defined as “A wind turbine mounted on a free standing wind tower or building for the purpose of generating energy for use on site and not for sale and includes windmills that are used for pumping water or other purposes.”).

Solar generation has been given odd treatment. It is allowed anywhere in Kent County, and at any size, but only if it is owned by the county, nonprofits, and agribusinesses and used for net metering, including virtual net metering.<sup>18</sup> (See Kent County Land Use Ordinance Section 305.5.) Kent County allowed this under its KCLUO specifically “so that [the County] would be able to construct solar farms or solar power plants . . . without having to consider them utility scale solar projects.” (Tr. 333:22-334:17 (Moredock)).<sup>19</sup> The County has proceeded to build itself erstwhile utility-scale projects in the Agricultural Zoning District—the same district it says the Project should not be built in. (Tr. 331

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<sup>18</sup> So, for example, 60 megawatts of solar in this location would be permissible under the zoning ordinance if it were chopped up into two-megawatt increments allocated to different government entities, nonprofits, and agricultural businesses receiving no more than two megawatts each.

<sup>19</sup> This distinction between what type of entities are allowed to make use of a site runs counter to Maryland land use law, which prohibits zoning regulations from distinguishing permissible uses of land based on either the “ownership” of the property or the “purposes of the owners or occupants.” *County Comrs. of Queen Anne’s County v. Days Cove Reclamation Co.*, 122 Md.App. 505, 528 (1998) (invalidating a county land use ordinance that allowed either “Queen Anne’s County or a multi-jurisdictional regional authority” to develop a landfill but prohibited private entities from doing so).

(Moredock)). These County-owned Projects do not have to provide Forest Conservation Act afforestation. (See also Tr. 332 (Moredock)). Indeed, the only conditions applicable to a Kent County-owned system in the Agricultural Zoning District are: (1) one-to-one replacement of trees that are removed; (2) registration with the Department of Emergency Services; and (3) compliance with height limits (all of which are requirements with which the Project easily complies.)

**B. Due Consideration of All of the Other Factors Strongly Supports Approval**

Again, the recommendation of the county government is only one of the many factors that the Commission must consider when evaluating a proposed project. As discussed at length in the Company's Initial Brief, due consideration of each of the other factors outlined in § 7-207(e) strongly supports Project approval. Company Initial Brief at 13-25.

**The stability and reliability of the electric system (§7-207(e)(2)(i)).** The Project will promote the stability and reliability of the electric system, including through providing more capacity within Kent County that will not be subject to line loss and similar issues. The Project's compliance with Delmarva and PJM interconnection requirements will "assure no adverse impact to the reliability and stability of the electric . . . system" while "[t]he additional generation capability of the [P]roject would be of benefit to Maryland and the PJM system." (Wilson Direct, at 12:19-23).

Kent County argues that the Commission cannot make a determination on the issue of reliability and stability of the electric system because as of May of this year (the date of

the data request response relied upon by the County), there was an outstanding PJM Interconnection, LLC Facility Study. Kent County Brief at 4. While that is no longer the case, the point is entirely irrelevant because Staff has accounted for such a scenario in its proposed licensing conditions, as it often does on similar projects for the same reason. PPRP's proposed licensing Condition 8 requires that "Prior to the commencement of construction, Mills Branch Solar shall provide the PPRP and the PSC with the final studies, approvals, and permits associated with the interconnection request with PJM and Delmarva Power and Light."<sup>20</sup> As such, prior to the commencement of Project construction, the Commission will have the opportunity to review and evaluate any and all outstanding studies and agreements and address any concerns at that time.

**Economics (§7-207(e)(2)(ii)).** All of the actual economic impact analysis done shows that the Project will have positive economic benefits to the State and to Kent County. These analyses are discussed and cited in detail in the Company's Initial Brief at pp. 16-17. To briefly reiterate, PPRP's analysis found positive benefits including (1) increased State and Kent County tax revenues, (2) higher economic output, and (3) a net benefit from construction through payrolls and subsequent consumption expenditures, local purchases of materials and associated multiplier effects. Hall Direct at 4-5. Both of the Company's reports – the Environmental Consulting & Technology, Inc. ("ECT") Environmental Review Document ("ECT ERD," Company Ex. 9) and "Economic and Fiscal Contribution that Mills Branch Solar Would Make to Kent County and Maryland," (Company Ex. 3)

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<sup>20</sup> This same condition is imposed on virtually every single CPCN granted by the Commission.

(the “Magnum Analysis”) found similar positive economic benefits from the Project.<sup>21</sup> In addition, the Magnum analysis found the Project would “aid in satisfying a larger proportion of Maryland’s retail electricity demand through in-state production [and] assist in diversifying Kent County’s economy to protect it against seasonal swings in employment and unemployment.” Company Ex. 3 at iii.

Without relying on any actual analysis, on brief KKS and Kent County simply reiterate statements made in witness Hickman’s Direct Testimony regarding a “critical mass” of agricultural land in the region and resulting decreases in agricultural production. KKS Initial Brief at 22-24; Kent County Brief at 4. The report that witness Hickman relied upon, as well as his testimony, was comprehensively rebutted by PPRP witness Estomin as thoroughly discussed in the Company’s Initial Brief at pp. 18-19. Then, as yet another example of KKS’s problem of serially misrepresenting the record, KKS claims in its brief that KKS witness Hickman testified that the removal of any large parcel from “agricultural development” will have a “disastrous impact on the agricultural business in Kent County,” and cites Hickman Direct at 3-4 for it. That, however absolutely does not appear in KKS

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<sup>21</sup> KKS also does things like falsely state that Applicant witness Mangum “admits the project will result in an economic loss to Kent County.” (KKS Initial at 36). In fact, to the contrary, the Mangum Analysis found that the Project “would be beneficial to Maryland’s overall market for electricity production,” would “strengthen Kent County’s economy,” and would “make a positive economic and fiscal contribution to Kent County and the state of Maryland as a whole.” (Company Ex. 3 at i-iii). “In short, the [Project] would aid in satisfying a larger proportion of Maryland’s retail electricity demand through in-state production; assist in diversifying Kent County’s economy to protect it against seasonal swings in employment and unemployment; provide a boost to the County’s Construction industry; and make a positive economic and fiscal contribution to Kent County and the state of Maryland as a whole.” (Id. at iii).

witness Hickman's written testimony there or anywhere else, and nor did he say any such thing on the stand.

In addition, record evidence shows: (1) the Project's direct impact on agricultural land use is tiny in context, regardless of whether the chosen context is Maryland generally, the Eastern Shore in particular, or the arbitrary choice of Kent County more specifically (see Company Initial Brief at 19); (2) Kent County farmland is available in such significant quantities that thousands of acres of Kent County farmland are currently kept out of cultivation by Kent County farmers and the United States Department of Agriculture pursuant to the "Conservation Reserve Program" – including land managed by witness Hickman himself (see *Id.*); (3) the construction of *the entire Renewable Portfolio Standards' solar requirement*, if fulfilled using only ground-mounted utility-scale systems on the Eastern Shore, would itself consume only 0.6% of available agricultural land on the Eastern Shore (see *Id.* at 20); and (4) the Project, with PPRP's proposed Condition 21(b), will actually lead to a net benefit on the narrow issue of agricultural land, by ensuring that there will be 349 acres of land placed into farmland preservation. This is land that would otherwise not be preserved, and the land constituting the Project site is itself not presently protected and need not be kept in agricultural production anyway. (*Id.*)

KKS has now also invented yet another economic argument against the Project, that is also contradicted by the record and that defies common sense. KKS now claims that the Project will harm tourism in Kent County. (KKS Initial at 23). KKS cites no evidence for its claim and, indeed, there is none. Moreover, very simply, it defies credulity to imagine that someone who would have spent tourist dollars in Kent County would boycott the

county or no longer find it worth visiting because it has a vegetatively-screened solar generating station located well away from waters, the scenic byway, and tourist infrastructure of any kind.

**Esthetics (§7-207(e)(2)(iii)).** The Project will not have esthetic impacts. See detailed discussion at Company Initial Brief, 22-24. Even without any vegetative or other screening, “views of the solar array from outside the project area will be limited.” (Hall Direct at 9:15-16). Nevertheless, despite the limited (without-screening) visibility, Mills Branch has committed to significant vegetative screening of the Project. This includes acceptance of PPRP’s proposed landscaping Condition 13. As discussed in Section II.E.2, supra, KKS cannot credibly argue that this screening will “become a major visual intrusion with its circle of trees and shrubs.” KKS Initial Brief at 21. Rather, the landscaping and screening has been designed to blend with the rural landscape of Kent County, where other road frontages feature similar vegetative screening (See Company Ex. 21), further ensuring the Project will not have any visual impacts on the surrounding area.

While KKS attempts to create the illusion that there will be a perimeter fence outside of the landscaping (KKS Initial Brief at 21, 28), that is not the case. In reality, the Project’s fencing will be setback, behind vegetative screening. PPRP Ex. 3, Appendix to ERD (specifically, the Site Plan provided in response to PPRP Data Request 2-1. See also landscaping plan provided in response to PPRP Data Request 3-4.).

**Historic sites (§7-207(e)(2)(iv)).** After two rounds of extensive submittals to the Maryland Historic Trust, both of which are in the record in this proceeding, and both of which indicate an absence of potential effects on historic resources, the MHT concluded

that the Project will have no effect on historic properties. See Brady Rebuttal at 4-5; see also attachments to same; see also Company Ex. 9, Appendix A and Appendix C; PPRP Ex. 13. There are no properties listed in the National Register of Historic Places within one mile of the project site (PPRP Ex. 3 at 38) and, as discussed in Section II.E.1., supra, KKS's argument that a "historic railroad line" will be effected not only lacks credibility, but is completely contradicted by the MHT. Nothing indicates that the Project will have any impact to any historic site.

**Aviation safety (§7-207(e)(2)(v)).** No party has alleged any adverse impact to aviation safety from the Project. PPRP "concluded the project will not have an adverse effect upon air navigation." (PPRP Ex. 3 at 36). Copies of the Application were provided to the Federal Aviation Administration and Maryland Aviation Administration (see certificate of service of Application) and neither raised any concern.

**Air and water pollution (§7-207(e)(2)(vi)).** No party has raised concerns regarding air or water pollution impacts from the Project. In fact, the Project "will have an overall positive effect on air quality by creating a new emissions-free source of power generation that can be used in the region . . . ." (Company 9 at 4-1). Similarly, there will be no water pollution impacts from Project operation, and very minimal impacts from Project construction. (Company Ex. 9 at 4-3).

**Timely disposal of wastes (§7-207(e)(2)(vii)).** The Company has demonstrated that waste generated during construction will be "insignificant in comparison to available regional disposal capacity," that no hazardous wastes will be generated, and that operation of the Project will not result in significant amounts of waste. (Company Ex. 9 at 4-16).

No party has raised any concern with regard to waste from the Project, and in accordance with PPRP Condition 21(a), Mills Branch will develop a decommissioning plan.

The evidence put forth by the Applicant and by PPRP shows that for each of the above factors, the Project either has no effect, or actually has a *positive* effect. Due consideration of each factor individually and taken as a whole overwhelmingly favors granting a CPCN for the Project.

#### **IV. KKS MAKES FRIVOLOUS AND INCORRECT LEGAL ARGUMENTS**

##### **A. A “Person” Is a Proper Applicant for a CPCN**

KKS argues that the Commission does not have jurisdiction over this CPCN application because Mills Branch is not a “public service company” as that term is defined in the PUA. KKS Initial Brief at 40-44. While KKS cites numerous PUA provisions in efforts to strip the Commission of its legislatively-granted authority, it ignores the one provision at issue in this case: § 7-207. Section 7-207 states that “[u]nless a [CPCN] for the construction is first obtained from the Commission, a person may not begin construction in the State of... a generating station.” § 7-207(B)(1)(i)(1) (emphasis added). “Person” is defined as “an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.” PUA § 1-101(u).

The Commission has previously recognized the General Assembly’s specific intent in amending the PUA to allow the Commission to grant CPCNs to “persons” to construct generating stations, while (at the time of the amendment) maintaining that only an “electric company” was qualified to apply for a CPCN to construct a transmission line:

In 1999, as part of legislation restructuring Maryland's electricity markets, the General Assembly amended the companion provision defining our authority to issue CPCNs for generating stations to allow a "person," rather than just an electric company, to construct one.

Case No. 9198, *In re the Application of the Potomac Edison Company on Behalf of Path Allegheny Transmission Company, LLC for a CPCN to Construct the Maryland Segments of a 765 kV Electric Transmission Line and a Substation in Frederick County, Maryland*, Order No. 82892 at 6 (Sept. 9, 2009).<sup>22</sup>

Simply put, § 7-207 grants the Commission exclusive authority to issue a CPCN to a "person" to construct a generating station in the State. To illustrate, the Commission has issued numerous generating station CPCNs to persons who are not "electric companies," "gas companies," or anything of the like. Mills Branch is clearly a "person" under the PUA, and KKS' attempt to contort other irrelevant sections of the law to strip the Commission of its jurisdiction over this proceeding must be rejected.

#### **B. Issuance of a CPCN Preempts Local Zoning**

Kent County requested argument on whether the KCLUO is preempted by issuance of a CPCN. KKS intervened and participated in that argument. The Public Utility Law Judge ("PULJ") hearing this case ruled properly that the CPCN statute preempts local land use. KKS is substantively wrong to assert otherwise now, and shows a remarkable lack of respect for the tribunal in pretending none of that ever happened.

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<sup>22</sup> The General Assembly has since further amended the statute to allow the Commission to grant a CPCN to construct a transmission line to a person, provided that the applicant is either an electric company or "on the start of commercial operation of the overhead transmission line, will be subject to regulation as a public utility by an officer or an agency of the United States". PUA 7-207(b)(3).

As the PULJ previously recognized, the Maryland Court of Appeals has held that the CPCN statutory scheme “preempt[s] by implication county zoning ordinances.” *Howard County v. Potomac Electric Power Co.*, 319 Md. 511 at 513, 573 A.2d 821 (1990).<sup>23</sup> In *Howard County*, after the PSC had issued a CPCN authorizing construction of a transmission line, the electric company petitioned the Boards of Appeals of both Howard County and Montgomery County for special exceptions to their respective zoning requirements to permit construction of the line segments in their respective counties. *Id.* at 513-518. Montgomery County granted the special exception subject to conditions, while Howard County denied the special exception. *Id.* On an appeal of both decisions, the Court of Appeals held the CPCN law preempted local land use and zoning requirements, finding that “it is clear that, in the field of public utility service, the General Assembly intended to grant broad powers to the PSC to execute its principal duty of assuring adequate electrical service statewide.” *Id.* at 524.<sup>24</sup> The Court of Appeals noted that although counties can participate in the PSC public hearings,

the PSC is entitled to recognize the broader public interest of providing safe and reliable electric service to larger areas . . . When . . . an exercise of local authority obstructs the fundamental purpose of [the PSC laws], we must conclude that these local powers were not intended to exist concurrently with those of the PSC.

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<sup>23</sup> *East Star, LLC v. County Comm’r of Queen Anne’s County*, 203 Md. App. 477, 484-486 (2012)(explaining that “[p]reemption by implication occurs when a local law ‘deals with an area in which the [General Assembly] has acted with such force that an intent by the State to occupy the entire field must be implied’”).

<sup>24</sup> The PULJ pointed out in the April hearing on the preemption issue that PSC powers are to be construed liberally. Transcript from Hearing on Preemption, Case No. 9411, at 70 (April 26, 2016).

*Id.* at 528. Importantly, the local zoning law was preempted even though Montgomery County approved the transmission line. The preemption of local law even when the local law and the CPCN law were not in conflict shows that the Court of Appeals understood the CPCN law to comprehensively displace local zoning law, i.e. the entire field of siting decisions for energy infrastructure is exclusively under the authority of the PSC. It is irrelevant whether the local zoning laws operate as an effective moratorium over a project or whether there is a way for a project to comply with both the local law and the CPCN law.

The holding in *Howard County* applies to generating stations because the court found that CPCN law occupied the entire field of energy infrastructure siting decisions. Field preemption does not require a case-by-case determination of preemption. The law at issue in *Howard County* does not differentiate between transmission and generation and applies the same to both types of infrastructure.<sup>25</sup> Thus, the preemption recognized by the Court of Appeals also applies to generating stations. In the April 26, 2016 hearing the PULJ specifically stated that it is immaterial the decision involved a transmission line because “the decision would have been the same” if it was about a generating station. Transcript from Hearing on Preemption, Case No. 9411, at 69 (April 26, 2016).

Preemption of local zoning law in the context of PSC energy infrastructure decisions continues to be the law. The General Assembly restructured the energy industry subsequent

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<sup>25</sup> At the time of the decision in the *Howard County* case, the CPCN law was contained at Maryland Code Art. 78, §§ 54A and 54B. The two sections have been recodified at Public Utilities Article §§ 7-207 and 7-208 without substantive modification to the provisions discussed in *Howard County*.

to the *Howard County* decision but declined to counteract the preemption holding. Rather, the General Assembly, while legislating with the background of preemption, made affirmative steps to keep siting decisions for generation facilities with the PSC. More recently, the Maryland Department of Legislative Services stated that “If a commercial wind-powered generating facility is granted a [CPCN] by the [PSC] the generating facility may be constructed without regard to local zoning rule, regulation, law, or ordinances.” See Fiscal and Policy Note of HB 116 (2011 session) at page 1-2 (“If [the] PSC grants an exemption from CPCN requirements, local zoning ordinances may restrict wind development. If a facility is granted a CPCN, wind facilities may be constructed as licensed.”).

The PSC recently reaffirmed its view that its CPCN authority “supersede[s] what normally would be a local land use decision.” Md. P.S.C. Case No. 9198, *In re the Application of the Potomac Edison Company on Behalf of PATH Allegheny Transmission Company, LLC for a Certificate of Public Convenience and Necessity to Construct the Maryland Segments of a 765 kV Electric Transmission Line and a Substation in Frederick County, Maryland*, Order No. 82892 at 8 (Sept. 9, 2009). Consistent with this affirmation, the PULJ noted in the April 26, 2016 hearing that “[it is] significant that in all the years since [the *Howard County* decision] there hasn’t been another case that has overturned [the decision].” Transcript from Hearing on Preemption, Case No. 9411, at 69 (April 26, 2016).

As explained in the April 26, 2016 hearing, KKS’s reliance on *Maryland Reclamation Associates, Inc. v. Harford County*, 994 A.2d 842 (Ct. App. Md. 2010) is inapposite. The court in *Maryland Reclamation Associates, Inc.* found the local zoning

laws were not preempted because “as part of the specific requirements to obtain a permit to operate a rubble landfill, an Applicant is required to attest to compliance with local zoning laws.” *Id.* at 863. Thus, the court found there was no conflict between local zoning and the state statute and the General Assembly did not intend to occupy the field. *Id.* In contrast, in the field of electricity infrastructure siting decisions there is no express requirement to comply with local zoning in anticipation of a CPCN permit and the Maryland Court of Appeals determined the General Assembly intended the PSC to occupy the entire field.

The only new thing KKS has thrown at the wall is an argument that the Court of Appeals was wrong in *Howard County* and that there is no such thing as implied preemption by CPCN because the Natural Resources Article includes express preemption for sites identified in the inventory under Section 3-306.1. However, the presence of express preemption in one statute regarding a specific context does not preclude the presence of implied preemption under a separate statute regarding a different context. *McCormick v. Medtronic, Inc.*, 219 Md. App. 485 (2014). And, the express preemption in Nat. Res. Art. § 3-306.1 only reinforces that the implied preemption of the *Howard County* decision applies to CPCN issuance. That decision found implied preemption relying solely on the CPCN statute, making no reference whatsoever to the Nat. Res. Art. provision’s express preemption (which was in place at the time of the decision).<sup>26</sup>

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<sup>26</sup> In any event, express preemption applies to the Project. First, as explicitly recognized by the Court of Appeals in *Howard County*, the Express Powers Act, which supplies the legal basis for counties’ zoning authority, notes that **local zoning does not** “preempt or supersede the regulatory authority of any unit of State government under any public general

### **C. The Maryland Heritage Law Does Not Apply**

As explained at pages 28 to 30 of the Applicant's Initial Brief, the Maryland Heritage Law, including its "no feasible and practical alternative" requirement, does not apply to permitting or licensing, including issuance of a CPCN. KKS is simply wrong. The statute itself is clear enough in only applying to State agency "activities," not private activities. The legislative history shows that the General Assembly considered applying the law to permitting and licensing, and decided not to do so.

### **D. The Agricultural Land Preservation Fund Law Does Not Restrict Use of the Project Site**

Using the project site for a solar installation does not violate the Agricultural Land Preservation Fund Law ("ALPFL"). The project site is not subject to an agricultural

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law." Md. Code Ann. Local Gov't § 10-324(c)(4). *See Howard County* at 529 (relying on the same statute, which was formerly codified as § 5 of Article 25A).

Second, the Natural Resources Article relied upon by KKS itself expressly preempts the Project. The rigorous site review that, pre-restructuring, could be done either to create a list of pre-approved power plant sites or to approve sites on a case-by-case basis through CPCN, now works entirely through the CPCN process. Post-restructuring, PPRP and the Commission no longer maintain a list of pre-approved sites for generating stations. (See, e.g., "Ten-Year Plan (2014-2023) of Electric Companies in Maryland," Public Service Commission (August 2014) ([http://www.psc.state.md.us/wp-content/uploads/2014\\_2023\\_TYP\\_Final1.pdf](http://www.psc.state.md.us/wp-content/uploads/2014_2023_TYP_Final1.pdf)). After electric restructuring and the influx of CPCN applications from merchant generators, PPRP determined that maintaining such a list was no longer appropriate. See Case No. 8888, Memorandum in Support of the Proposed Deferral filed by PPRP (ML # 83673)(June 18, 2002) at 9-15. Instead, PPRP now undergoes the detailed environmental site review of proposed project sites solely through the CPCN process. *Id.* Thus, every site that is reviewed and approved by PPRP through the CPCN process is "certified as suitable by the Secretary of [DNR]" and as such, may be "used and operated for electric generating and associated on-site transmission purposes without regard to any local zoning rule, regulation, law, or ordinance." NR § 3-306.1. That there is no "inventory" list is just the natural result of the progression of the Siting Law in the wake of electric restructuring.

easement of any kind and its use as a solar installation will not prohibit Kent County from achieving its agricultural preservation goals in the Priority Preservation Area.

Importantly, the land use restrictions under the ALPFL are inapplicable to land not covered by an easement or participating in an agricultural preservation district. AG § 2-513 (“A landowner *whose land is subject to an easement* may not use the land for any commercial, industrial, or residential purpose”); COMAR 15.15.01.03 (the landowner as a condition of establishment of an agricultural preservation district, “agrees not to use the land for any commercial, industrial, or residential purpose, except as otherwise permitted by Agriculture Article, §2-513, Annotated Code of Maryland”). The project site is not subject to an agricultural easement, nor is it a participant in an agricultural preservation district. Thus, the land use restrictions and penalties imposed by the ALPFL are simply inapplicable to the project site and a nonagricultural use of the project site cannot be a violation under the ALPFL.

Locating the Project in a Preservation Priority Area (“PPA”) is not a violation of the ALPFL because the PPA does not create enforceable preservation quotas and is designed to accommodate non-agricultural use. Unlike agricultural preservation districts, the PPA is *not* an area where non-agricultural uses are by definition generally prohibited. COMAR 15.15.01.03; AG § 2-518. Rather, the PPA is the area on which the county has chosen to focus its conservation efforts by using its zoning power and the tools available under the ALPFL, i.e. easements. AG § 2-518(e). The ALPFL directs that counties with PPAs “shall” set their agricultural preservation goal to “equal at least 80% of the remaining undeveloped land in the [PPA]” and “shall” include an evaluation of the county’s progress toward that

goal each time the county's comprehensive plan is updated. AG § 2-518(e)-(f). But there is no enforceable consequence for not meeting the preservation goal. Thus the failure to preserve any farm land in a PPA does not constitute a violation of the ALPFL.

The ALPFL contemplates that the PPA will accommodate some non-agricultural uses. The ALPFL's 80% preservation goal (not mandate) implicitly acknowledges that at least 20% of the PPA will be non-agricultural use. Thus simply locating a non-agricultural use in the PPA is not a violation of the ALPFL. AG §2-518 (stating that a PPA "may" consist of "multiple unconnected parcels of land").

The location of the Project in the PPA will not prohibit Kent County from reaching its 80% preservation goal. It actually helps Kent County preserve farm land. According to the Comprehensive Plan, the PPA in Kent County consists of most of the land zoned Agricultural Zoning District or Resource Conservation District. KKS Post Hearing Brief at 15. A substantial portion of Kent County is zoned for agricultural use; specifically 117,000 acres.<sup>27</sup> The project utilizes only 0.3% of the cropland in Kent County, and 0.3% of land in the Agricultural Zoning District. Since the PPA includes the Agricultural Zoning District and areas zoned Resource Conservation District, the Project makes up an even smaller percentage of the PPA.<sup>28</sup> Under any measure the Project does not constitute 20%

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<sup>27</sup> The 117,000 number is the number used by Mr. Mowell, representing Kent County, in the April 26, 2016 hearing. Transcript from Hearing on Preemption, Case No. 9411, at 54 (April 26, 2016).

<sup>28</sup> The total acreage of the Agricultural Zoning District and the Resource Conservation District is 154,796 acres. Kent County Ex. 4, Moredock Direct at 4. The entire Project (370 acres) would comprise 0.24% of that. The total limits of disturbance (330 acres) would constitute 0.21%.

of the PPA. Thus, using the Project site for a solar array does not prohibit Kent County from achieving its preservation goals in the PPA. In fact, the siting of the Project will *benefit* Kent County's preservation goals because the Applicant has agreed to preserve 349 acres of currently unpreserved land through an easement within the PPA. Due to the Project, Kent County gains 349 acres of land preserved for agricultural use and does not lose any land already preserved.

**V. THE CPCN SHOULD BE EXPEDITIOUSLY ISSUED**

The CPCN should be issued expeditiously to comply with statutory requirements and the Commission's regulations.<sup>29</sup> The statute requires a final Commission determination on the Application within 90 days after the conclusion of hearing (which would be November 28, 2016), and regulations require it within 365 days of the Application (which would be December 14, 2016).

Section 7-208(f) requires that the Commission provide final action on a CPCN "[w]ithin 90 days after the conclusion of the hearing on an application." As to generating stations, the Commission has in place a regulation that provides that "[u]nless otherwise directed by the Commission, a decision on an application for a [CPCN] for the construction of an electric generating station shall be rendered not later than 365 days from the date a complete application is filed." COMAR 20.79.01.05

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<sup>29</sup> The Applicant requested a waiver of the two-year requirement at pages 5-6 of its Application.

The purpose of the two-year requirement is to “allow sufficient time for the environmental, ecological, and other impacts of generating station construction to be thoroughly investigated.” *See* Case No. 8938, *In re the Application of Clipper Windpower, Inc. for a Certificate of Public Convenience and Necessity to Construct a 101 MW Generating Facility in Garrett County, Maryland*, Maillog No. 85409 (Oct. 17, 2002) (granting Motion for Waiver of PUA § 7-208(b)(1)<sup>30</sup> over the objection of intervening parties where the state agencies had agreed to a procedural schedule “which contemplates issuance of an order in less than two years”). In this proceeding, not only did the parties all agree to a procedural schedule leading to issuance of an order in less than two years, there was then one delay of the evidentiary hearings, and then the addition of an extra evidentiary hearing two months after the first one closed. There has been abundant review and procedure in the past year.

The two-year requirement has been waived for projects much larger than the instant matter, even where parties including intervenors and OPC opposed the waiver. Case No. 9127, *In re the Application of Unistar Nuclear Energy, LLC and Unistar Nuclear Operating Services, LLC for a Certificate of Public Convenience and Necessity to Construct a Nuclear Power Plant at Calvert Cliffs in Calvert County, Maryland*, Order No. 82741 (June 26, 2009) (affirming April 28, 2009 Proposed Order of Public Utility Law Judge granting co-applicants’ Motion to Waive Two-Year Notice Requirement Prior to

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<sup>30</sup> In 2013, PUA § 7-208 was amended to include, among other changes, a new subsection (a). As a result, all references to PUA § 7-208(b) made prior to that amendment taking effect are effectively citing to the current § 7-208(c). The language of that subsection was not amended.

Construction despite opposition from OPC and Maryland Public Interest Research Group, Nuclear Information and Research Service, Public Citizen, and Beyond Nuclear at Nuclear Policy Research Institute). The Commission routinely grants such requests, consistent with a finding that its review can be conducted in less than two years. *See, e.g.*, Case No. 9318, *In re 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*, Order No. 86372 (May 30, 2014) (granting waiver of requirement to request CPCN at least two years before beginning construction pursuant to § 7-208(b)(1)); Case No. 9351, Order No. 86607 (September 3, 2014) (stating that the requested waiver was granted in a May 22, 2014 prehearing conference); Case No. 9314, Order No. 85683 (May 31, 2013) (indicating that Church Hill Solar Farm LLC's request was granted in a February 11, 2013 prehearing conference); Case No. 9272, Order No. 84059 (May 26, 2011) (granting Maryland Solar LLC's request).

In the alternative, the two-year notice requirement does not apply. Section 7-207 applies to a person seeking to construct a "generating station" in Maryland. Section 7-208, which is the statute including the notice requirement, applies to construction of "a generating station and its associated overhead transmission lines designed to carry a voltage in excess of [69kv] or exercising the right of condemnation in connection with the construction." (emphasis added, internal numbering omitted). The Project does not include overhead transmission lines in excess of 69kv and does not include condemnation.

Therefore, on the face of §§ 7-207 and 7-208, arguably only § 7-207 applies. This would mean that § 7-208's two-year requirement would be inapplicable.

#### **VI. TWO CHANGES SHOULD BE MADE IN THE CONDITIONS**

Issuance of the CPCN should be subject to the conditions including the modifications proposed in the Applicant's Initial Brief: the modification of PPRP's proposed Condition 3 (regarding the Forest Conservation Act), and the elimination of PPRP's proposed Condition 23 (regarding the Kent County Land Use Ordinance). PPRP carries the burden of proof that a condition should be imposed. *Re Potomac Edison Co.*, 83 Md. P.S.C. 272 (Oct. 6, 1992). It has not met that burden as to Condition 3 (as written) and Condition 23, for the reasons stated in the Applicant's Initial Brief. In particular, as to Condition 23, to the extent PPRP's goal was to ensure that the Applicant will obtain a Sediment and Erosion Control Permit, the condition should simply be modified to say that the Applicant shall obtain a Sediment and Erosion Control Permit.

#### **VII. CONCLUSION**

The CPCN should be issued expeditiously to comply with statutory requirements and the Commission's regulations.

*[signature page follows]*

Respectfully submitted,

A handwritten signature in black ink that reads "F. William DuBois". The signature is written in a cursive, slightly slanted style.

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**CERTIFICATE OF SERVICE**

I hereby certify that this 20th day of September, 2016, copies of the foregoing were sent by electronic mail and by first class mail, postage pre-paid, to the parties identified on the August 2, 2016 service list in Commission Case No. 9411.

A handwritten signature in black ink that reads "Francis William DuBois" followed by a stylized flourish.

Francis William DuBois