

THE COUNTY COMMISSIONERS OF KENT COUNTY, MARYLAND

November 17, 2020
Legislative Session Day

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CODE HOME RULE
BILL NO. 7-2020

INTRODUCED BY: P. Thomas Mason, President of the Board of County Commissioners for Kent County, Maryland.

AN ACT to amend Article VI, *Special Provisions*, by creating a new Section 11, *Countywide Standards for Utility-Scale Solar Energy Systems*, in order to address landscape buffers, installation and maintenance, and setbacks to support required landscape buffers for utility-scale solar energy systems that may be located anywhere in the County ~~within said gateways as well as in other areas in the County.~~

THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


P. Thomas Mason, President

INTRODUCED, read first time, November 17, 2020, ordered posted and public hearing scheduled December 15, 2020, at 6:00 p.m. in the County Commissioners Hearing Room, R. Clayton Mitchell, Jr., Kent County Government Center, 400 High Street, Chestertown, Maryland.

By order of:


Sondra M. Blackiston, Clerk

PUBLIC HEARING

HAVING been posted and notice of time and place of hearing and copies having been made available to the public and the press, a public hearing was held on December 15, 2020. Reported favorably [with] amendments; read a second time and ordered to be considered on February 16, 2021, a legislative session day.

BILL NO. 7-2020, as amended by interlineation, indicated by **bold double underline** and ~~double strike-through~~
CAPITALS AND BOLD INDICATE MATTER ADDED TO EXISTING LAW (in the original CHR)
~~Strike through~~ indicates matter deleted from existing law (in the original CHR)

**A BILL ENTITLED CHR 7-2020 LANDSCAPE AND BUFFER REQUIREMENTS FOR
UTILITY-SCALE SOLAR ENERGY SYSTEMS**

**SECTION 1. NOW, THEREFORE, BE IT ENACTED BY THE COUNTY
COMMISSIONERS OF KENT COUNTY, MARYLAND THAT THE KENT COUNTY
LAND USE ORDINANCE IS HEREBY AMENDED AS FOLLOWS:**

ARTICLE VI.

SPECIAL PROVISIONS

SECTION 1. PARKING AND LOADING REQUIREMENTS

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**SECTION 11. COUNTYWIDE STANDARDS FOR UTILITY-SCALE SOLAR ENERGY
SYSTEMS**

A. SETBACKS TO ACCOMMODATE REQUIRED LANDSCAPE BUFFER

1. ~~75~~ **200** FEET FROM ANY LOT LINE.
2. ~~400~~ **200** FEET FROM ANY ROAD/AND OR RIGHT-OF WAY
3. **200 FEET FROM ANY ROAD/RIGHT-OF-WAY FROM ANY ROAD/RIGHT-OF-WAY WITHIN ½ MILE OF A TOWN OR VILLAGE BOUNDARY THAT IS THE GATEWAY INTO A TOWN OR VILLAGE**
4. ~~150~~ **200** FEET FROM ANY RESIDENTIAL USE OR ZONING DISTRICT, **INCLUDING RESIDENTIAL PROPERTIES SEPARATED BY ROADWAYS.**
5. **SETBACKS MAY BE REDUCED TO 100 FEET ~~THE MINIMUM REQUIRED~~ FOR NON-RESIDENTIAL DEVELOPMENT ~~(75)~~ WITH WRITTEN CONSENT FROM THE PROPERTY OWNERS WHOSE PROPERTY IS ADJACENT TO THE AREA IN WHICH THE SETBACK REDUCTION IS SOUGHT. THE PLANNING COMMISSION SHALL BE THE REVIEW AGENCY TO DETERMINE THE APPLICATION OF THIS PROVISION.**
6. **SETBACKS SHALL BE MEASURED FROM THE OUTERMOST EDGE OF THE NEAREST SOLAR PANEL STRUCTURE WITHIN THE SOLAR ARRAY INCLUDING SUBSTATIONS.**

B. INSTALLATION AND MAINTENANCE STANDARDS

SOLAR ARRAYS SHALL BE CONSTRUCTED AND MAINTAINED ACCORDING TO THE FOLLOWING:

- 1. IF SOLVENTS ARE REQUIRED FOR CLEANING OF THE SOLAR MODULES, THEY MUST BE BIODEGRADABLE. ANY UNUSED SOLVENTS MUST BE REMOVED FROM THE SUBJECT PARCEL.**
- 2. ALL BROKEN OR WASTE SOLAR MODULES SHALL BE REMOVED FROM THE ~~SITE~~ SUBJECT PARCEL WITHIN ~~60~~ 30 DAYS OF BEING TAKEN OUT OF SERVICE, INCLUDING ANY LEACHING PANELS, AND THE SUBJECT PARCEL SHALL BE MAINTAINED IN GOOD ORDER.**
- 3. ALL WIRING NOT ON THE SOLAR ARRAYS SHALL BE UNDERGROUND EXCEPT WHEN NECESSARY TO CONNECT TO THE PUBLIC UTILITY.**
- 4. TRANSMISSION WIRES TO CONNECT THE PROJECT TO THE UTILITY INFRASTRUCTURE SHALL NOT CROSS A ROADWAY OVERHEAD.**
- 5. ANY REQUIRED UTILITY RIGHT OF WAY SHALL BE SECURED THROUGH AN EASEMENT, LEASE, SERVICE AGREEMENT OR OTHER LEGALLY BINDING DOCUMENT.**
- 6. THE SOLAR ARRAY SHALL BE ENCLOSED BY A FENCE OR OTHER APPROPRIATE BARRIER AT THE INTERIOR EDGE OF THE REQUIRED LANDSCAPE BUFFER OR IMMEDIATELY ADJACENT TO THE SOLAR ARRAY. THE FENCE OR BARRIER SHALL:**
 - a. SECURE THE FACILITY AT ALL TIMES TO PREVENT UNAUTHORIZED PERSONS OR VEHICLES FROM GAINING ACCESS.**
 - b. ALL ACCESS GATES WILL PROVIDE A SIGN THAT IDENTIFIES THE RESPONSIBLE PARTIES OR OWNERS WITH CURRENT CONTACT INFORMATION.**
- 7. NOISE GENERATED BY THE FACILITY SHALL BE LIMITED BY THE PROJECT DESIGN TO 45 DBA AS MEASURED AT THE PROPERTY LINE, TO BE INDICATED ON THE SITE PLAN BY THE ENGINEER, EXCEPT WHEN A BACK-UP GENERATOR IS NEEDED FOR MAINTENANCE. CONSTRUCTION ON THE SITE IS EXEMPT FROM THIS STANDARD.**
- 8. SOLAR ARRAYS, INCLUDING THE ELECTRICAL AND MECHANICAL COMPONENTS, SHALL CONFORM TO RELEVANT AND APPLICABLE LOCAL, STATE AND NATIONAL CODES.**
- 9. TO PROTECT ADJACENT PROPERTIES, AND NOT INTERFERE WITH ROADWAYS OR CREATE A SAFETY HAZARD, EVIDENCE SHALL BE**

PROVIDED THAT THE SOLAR PANELS ARE DESIGNED TO AVOID GLARE AND/OR REFLECTION WITH ANTI-REFLECTIVE COATING OR NON-GLARE TECHNOLOGY AND IF NECESSARY, HAVE BEEN EVALUATED WITH A SOLAR GLARE HAZARD AND ANALYSIS TOOL.

10. NON-ARRAY USES SUCH AS POWER STORAGE ARE NOT PERMITTED.

C. LANDSCAPE BUFFER FOR UTILITY-SCALE SOLAR ENERGY SYSTEMS

1. ANY UTILITY SCALE SOLAR FACILITY SHALL COMPLY WITH THE REQUIREMENTS OF THE FOREST CONSERVATION ACT. REFORESTATION PLANTING MAY BE INCORPORATED AS LANDSCAPING.
2. THE GROSS USABLE AREA FOR PANELS WILL EXCLUDE WETLAND AREAS THAT ARE REGULATED BY THE MARYLAND DEPARTMENT OF THE ENVIRONMENT OR THE U.S. DEPARTMENT OF THE INTERIOR. IMPACTS ASSOCIATED WITH ACCESS OR INTERIOR ROADS AND UTILITY CROSSINGS SHALL PROVIDE THE NECESSARY AUTHORIZATION FOR ANY DISTURBANCES.
3. EXISTING TOPSOIL SHALL NOT BE REMOVED FROM THE SITE.
4. A VEGETATED BUFFER THAT IS A MINIMUM OF 60 FEET WIDE AROUND THE PERIMETER OF THE SITE AREA FRONTING ON ROAD OR RIGHTS OF WAY THAT ARE CONSIDERED GATEWAYS TO TOWNS OR VILLAGES AND A MINIMUM OF 50 FEET FOR ALL OTHER APPLICATIONS. THIS BUFFER MAY BE LOCATED WITHIN THE SETBACK AND SHALL EXTEND AROUND THE ENTIRE PROJECT WITH THE EXCEPTION OF ANY BOUNDARIES CONTIGUOUS TO PRESERVED, FORESTED LANDS THAT ARE RECORDED ON A PLAT.
5. HEALTHY EXISTING VEGETATION WITHIN THE DESIGNATED BUFFER AREA MAY BE USED TO SATISFY THE SPECIFIC BUFFER STANDARDS.
6. NON-NATIVE PLANT MATERIAL SHALL NOT TOTAL MORE THAN 10% OF ALL PLANTINGS
7. WHERE A PHASED CONSTRUCTION PLAN IS PROPOSED, THE LANDSCAPE PLAN SHALL IDENTIFY THE PHASING OF THE PLANTINGS APPLICABLE TO EACH CONSTRUCTION PHASE.
8. NOT MORE THAN 25% OF ANY SINGLE PLANT SPECIES SHOULD BE INCLUDED IN THE BUFFER TO PROMOTE THE GROWTH OF A NATURAL LANDSCAPE AND AVOID MONOTONY AND UNIFORMITY OF THE BUFFER. THE VEGETATION SHALL BE THICKLY PLANTED AND OF SUCH SPECIES THAT IT WILL PROVIDE AN OPAQUE VISUAL

BARRIER THAT OBSCURES THE UTILITY SCALE SOLAR ARRAY FROM SIGHT ONCE THE VEGETATION REACHES MATURITY OR WITHIN FIVE YEARS, WHICHEVER COMES FIRST. A MIX OF EVERGREEN AND DECIDUOUS TREES, SHRUBS AND BENEFICIAL HABITAT SHALL BE INCLUDED:

- a. **A MINIMUM OF TWO STAGGERED ROWS OF EVERGREEN TREES THAT AT INSTALLATION SHALL BE AT LEAST 6 FEET IN HEIGHT, EACH PLANTED NO MORE THAN 10 FEET APART. EVERGREEN TREE SPECIES SHALL BE A VARIED MIXTURE OF COMPATIBLE TYPES AND ACHIEVE A HEIGHT OF EIGHT FEET IN A MINIMUM OF 2 YEARS.**
 - b. **IN ADDITION TO THE EVERGREEN TREES, NATIVE DECIDUOUS OR SHADE TREES WITH A MINIMUM SIZE AT INSTALLATION OF 2-INCH CALIPER SHALL BE INTERSPERSED TO ENHANCE THE EVERGREEN SCREENING ALONG WITH UNDERSTORY TREES WITH A MINIMUM SIZE OF INSTALLATION OF 1-INCH CALIPER OR 6 FEET IN OVERALL HEIGHT OR GREATER IF REQUIRED BY THE PLANNING COMMISSION TO ADDRESS GATEWAY AREAS.**
 - c. **SHRUBS WITH A MINIMUM SIZE AT INSTALLATION OF 24 INCHES IN HEIGHT OR 30 INCHES IN SPREAD.**
 - d. **THE BUFFER SHALL INCLUDE A FLOWERING GROUND COVER FOR POLLINATORS, WARM SEASON GRASSES AND OTHER BENEFICIAL HABITAT. THE GROUND COVER SEED MIXTURE SHALL INCLUDE A MINIMUM OF 10 PLANT SPECIES WITH A MINIMUM OF 2 FLOWERING SEASONS. LAWNS OUTSIDE THE REQUIRED BUFFER ARE DISCOURAGED; PLANTINGS FOR POLLINATORS ARE ENCOURAGED IN ALL PLANTED AREAS.**
 - e. **THE HEIGHT OF PROPOSED PLANTING MAY REQUIRE ALTERNATIVES BASED UPON THE SITE ELEVATION AND VISIBILITY FROM ADJACENT PROPERTIES AND ROADS AND/OR RIGHTS OF WAYS. IF NECESSARY, AN ELEVATION OR PERSPECTIVE ILLUSTRATION EXHIBIT SHALL BE PROVIDED WITH VIEWPOINTS FROM RELEVANT LOCATIONS AROUND THE SITE FOR THE PLANNING COMMISSION TO CONSIDER.**
- D. A LANDSCAPE BERM SHALL BE PROVIDED AT A MINIMUM OF THREE (3) FEET HIGH TO ASSIST IN SCREENING. THE DESIGN OF THE BERM SHALL BE SUCH THAT THE NATURAL DRAINAGE PATTERNS OF THE SITE WILL NOT BE ALTERED. THE BERM REQUIREMENT MAY BE WAIVED IN PART OR TOTAL SUBJECT TO THE FOLLOWING CONDITIONS:**

1. A MINIMUM OF TWO STAGGERED ROWS OF EVERGREEN TREES THAT AT INSTALLATION ARE AT LEAST 8 FEET IN HEIGHT AND PLANTED NO MORE THAN 10 FEET APART
 2. INTERSPERSED SHADE TREES HAVE A MINIMUM SIZE AT INSTALLATION OF 2.5-INCH CALIPER
 3. UNDERSTORY STORY TREES WITH A MINIMUM SIZE AT INSTALLATION OF 1.5-INCH CALIPER OR 6 FEET IN OVERALL HEIGHT
 4. SHRUBS WITH A MINIMUM SIZE AT INSTALLATION OF 30 INCHES IN HEIGHT.
 5. THE LANDSCAPING PLAN IS DEEMED TO SCREEN ELEVATIONS OF THE SITE ADEQUATELY WITHIN 2 YEARS.
- E. IRRIGATION SHALL BE PROVIDED TO ASSIST IN MAINTAINING PLANT MATERIALS IN A HEALTHY CONDITION FOR ALL NEWLY CREATED LANDSCAPE BUFFER AREAS. PLANTS SHALL BE WATERED IN A MANNER ADEQUATE TO ENSURE ESTABLISHMENT AND SURVIVAL. THE LANDSCAPE PLAN SHALL INCLUDE A WATERING SCHEDULE APPROPRIATE FOR THE PROPOSED PLANTINGS, WHICH MAY INCLUDE SERVICE BY ON-SITE IRRIGATION OR WATER TRUCK, UNTIL THE PLANT MATERIAL IS SUFFICIENTLY ESTABLISHED TO SURVIVE ON NATURAL SOIL MOISTURE. AN IRRIGATION SYSTEM IS SUBJECT TO THE FOLLOWING:
1. THE IRRIGATION SYSTEM SHALL BE DESIGNED TO PREVENT RUNOFF, LOW HEAD DRAINAGE, OVERSPRAY, OR OTHER SIMILAR CONDITIONS WHERE IRRIGATION WATER FLOWS ONTO NONTARGETED AREAS SUCH AS ADJACENT PROPERTIES, ROADWAYS, OR STRUCTURES.
 2. ALL AUTOMATIC IRRIGATION SYSTEMS SHALL BE DESIGNED TO MINIMIZE WATER USAGE AND SHALL BE MANUALLY SHUT OFF DURING WATER EMERGENCIES OR WATER RATIONING PERIODS.
 3. AN ALTERNATIVE FORM OF IRRIGATION FOR A PARTICULAR SITE MAY BE APPROVED THROUGH THE APPLICABLE REVIEW PROCESS UPON DETERMINING THAT UNDERGROUND IRRIGATION IS NOT NECESSARY OR AVAILABLE FOR THE TYPE OF PLANT MATERIAL BEING PROPOSED.
- F. A MAINTENANCE AGREEMENT FOR THE LANDSCAPE PLAN SHALL BE PROVIDED WITH A SURETY OR OTHER FINANCIAL ASSURANCE TO

COVER REPLACEMENT OF THE PLANTINGS AND IRRIGATION SYSTEMS. ALL PLANTINGS SHALL BE MAINTAINED IN A LIVE, HEALTHY CONDITION FOR THE DURATION OF THE SOLAR ARRAY LIFE AND SHALL BE REPLACED BY THE SOLAR ARRAY OPERATOR AS NECESSARY WITH APPROPRIATELY SIZED PLANT MATERIAL AS NECESSARY TO MAINTAIN ALL REQUIRED BUFFERING STANDARDS.

- G. THE SURETY MAY BE PROVIDED ON A PHASED BASIS PER THE LANDSCAPE PHASING PLAN AND SHALL BE HELD BY THE COUNTY FOR A PERIOD OF THREE-YEARS FOLLOWING PLANTING, AFTER WHICH THE COUNTY, UPON SATISFACTORY INSPECTION OF THE LANDSCAPE BUFFER MAY RELEASE 50% OF THE SURETY, AND THE REMAINING 50% MAY BE RELEASED AFTER AN ADDITIONAL TWO YEARS. THE COUNTY THEN RESERVES THE RIGHT TO INSPECT AND REQUIRE REPLACEMENT FOR THE DURATION OF THE SOLAR ARRAY.
- H. ENTRANCES TO THE PROJECT SHOULD BE DESIGNED TO ENSURE THAT NEIGHBORING PROPERTIES, PUBLIC RIGHTS-OF WAYS AND ROADS ARE NOT EXPOSED TO AN UNSCREENED VIEW THROUGH THE ENTRANCEWAY. THE USE OF A WIRE MESH OR CHAIN-LINK GATE OR FENCE WITH VINYL INTERWOVEN STRIPS IS NOT ACCEPTABLE.
- I. THE PROJECT SHALL COMPLY WITH ALL APPLICABLE FEDERAL AND STATE REGULATIONS, INCLUDING BUT NOT LIMITED TO OBTAINING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FROM THE PUBLIC SERVICE COMMISSION IF REQUIRED, AND IN THE REMOVAL AND DISPOSAL OF THE UTILITY SCALE SOLAR ARRAY AND ALL OF ITS COMPONENTS.
- J. THE PROJECT SHALL COMPLY WITH ALL OTHER APPLICABLE REGULATIONS, AS CONTAINED IN THE PUBLIC LAWS OF KENT COUNTY.
- K. THE PROJECT SHALL COMPLY WITH THE BOND-RELATED REQUIREMENTS BELOW:
1. A BOND, SURETY LETTER, OR OTHER FINANCIAL INSTRUMENT FOR REMOVAL OF ALL SOLAR-RELATED STRUCTURES AND NON-VEGETATIVE IMPROVEMENTS ON THE SITE AND FOR THE RESTORATION OF THE SITE TO ITS PRE-PROJECT CONDITION

SHALL BE SUBMITTED, TO BE BASED ON BONA FIDE WRITTEN ESTIMATES PREPARED BY THIRD-PARTY CONSULTANTS;

2. THE COST ESTIMATE SHALL ADDRESS PROVISIONS FOR THE SAFE REMOVAL AND PROPER DISPOSAL OF ALL COMPONENTS OF THE PROJECT, INCLUDING ANY COMPONENTS CONTAINING HAZARDOUS OR TOXIC MATERIALS INCLUDING LEACHATES;
3. AN ESTIMATE FOR REVIEW BY COUNTY SHALL BE SUBMITTED;
4. BOND SHALL BE MAINTAINED FOR THE LIFE OF THE PROJECT;
5. BONDING MAY BE IN COORDINATION WITH OTHER REQUIRED BONDING BY THE STATE OF MARYLAND, PSC, PULJ, PPRP, ETC.;
6. IN THE EVENT THAT NO OTHER BONDING IS REQUIRED, THEN A BOND IN FAVOR OF THE COUNTY SHALL BE REQUIRED;
7. SAID BONDING SHALL INCLUDE AN ESCALATOR PROVISION BASED ON CHANGES TO THE COST OF RESTORATION, WHICH SHALL BE EVALUATED AND UPDATED EVERY FIVE YEARS;
8. SAID BOND SHALL BE FOR 110% OF THE ABOVE ESTIMATE(S) AND/OR UPDATED ESTIMATE(S) FROM FIVE-YEAR REVIEWS;
9. SAID BOND SHALL BE REDEEMABLE BY THE COUNTY UPON A FINDING THAT THE PROJECT HAS BEEN ABANDONED, WITH OR WITHOUT NOTICE FROM PROJECT OPERATORS, IF PROJECT HAS, IN FACT, BEEN ABANDONED BY ITS OPERATORS; AND
10. THE PROJECT WILL BE CONSIDERED TO BE ABANDONED, IF THERE IS NO ELECTRIC GENERATION PROVIDED TO THE GRID FOR A PERIOD OF TWELVE (12) CONSECUTIVE MONTHS.

SECTION 2. BE IT FURTHER ENACTED BY THE COUNTY COMMISSIONERS OF KENT COUNTY THAT IF ANY SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE, WORD, PROVISION OR APPLICATION OF THIS CODE HOME RULE BILL SHALL BE FOUND TO BE INVALID, ILLEGAL, UNCONSTITUTIONAL, OR UNENFORCEABLE, THAT SUCH FINDING SHALL NOT AFFECT OR UNDERMINE THE VALIDITY OF ANY OTHER SECTION, SUBSECTION, SENTENCE, CLAUSE, PHRASE, WORD, PROVISION OR APPLICATION IN THIS BILL OR CHAPTER 222.

SECTION 3. BE IT FURTHER ENACTED by the County Commissioners of Kent County that this Act shall take effect on the 26th day of February, 2021.

Read Third Time February 16, 2021

PASSED this 16th day of February, 2021

Failed of Passage _____

By order of:


Sondra M. Blackiston, Clerk

(SEAL)



THE COUNTY COMMISSIONERS
OF KENT COUNTY, MARYLAND


P. Thomas Mason, President


Ronald H. Fithian, Member


Robert N. Jacob, Jr., Member

ORDERED a fair summary thereof of the entire bill shall be published in at least one newspaper of general circulation in the County, not less than three times at weekly intervals within a four-week period.