

Caroline County

Department of Planning & Codes



Katheleen Freeman, Director
Crystal Dadds, Assistant Director of Codes

Health & Public Services Bldg.
403 South 7th Street, Suite 210
Denton, Maryland 21629-1335
Telephone: 410-479-8100
Facsimile: 410-479-4187

County Commission Staff Report, May 30, 2017

Staff Contact: Joseph Miller, Development Review
Matthew Kaczynski, Development Review

Item: Solar Power Plant Landscaping Maintenance Agreement (Property located at 4439 Bethlehem Road, Preston Map 52 Grid 15 Parcel 44)

Recommended Action: Commissioner Signature

Background:

As a condition of approval from the Board of Zoning Appeals, a landscape buffer is required to be planted to provide screening for the property along Bethlehem Road, and the shared property line with the property at 21643 Marsh Creek Road (Map 52 Grid 16 Parcel 344 Lot 3).

This landscape maintenance agreement ensures that these buffers will be maintained in good condition for as long as the solar power plant is on the property.

CAROLINE COUNTY, MARYLAND

SOLAR POWER PLANT

LANDSCAPING MAINTENANCE AGREEMENT

THIS SOLAR POWER PLANT LANDSCAPING MAINTENANCE AGREEMENT (the "Agreement"), dated this 16th of May, 2017, by and between TANGENT ENERGY SOLUTIONS, INC. a foreign corporation licensed to conduct business in the state of Maryland, (hereafter referred to as "Developer"), and the COUNTY COMMISSIONERS OF CAROLINE COUNTY, MARYLAND, a body politic and corporate and a political subdivision of the State of Maryland, hereinafter called "Grantee" or the "County".

WITNESSETH

WHEREAS, Sections 175-85. B (11) and J (17) of the Zoning Chapter of the Code of Public Laws of Caroline County, Maryland, require the provision of screening the project from adjacent properties and providing a maintenance plan;

WHEREAS, Developer is the applicant for a Special use Exception to construct a Solar Power Plant on certain property located in the 3rd Election District of Caroline County, Maryland ("Site"), and is required as a condition of approval to provide landscape plantings in accordance with a landscape plan prepared by Lane Engineering, entitled Tangent Energy Solutions – Preston Solar Array, which is on file with the Department of Planning & Codes ("Department") and a reduced copy of which is attached hereto as Exhibit A ("Plan");

Site Information:

Property Owners: Charles B. Blackshear, II and Lawrence E. Campanelli Trustees of the Trust of Charles B. Blackshear, III

Property Address: 4439 Bethlehem Road, Preston, MD 21655

Deed Reference: 635/85

Tax Map: 52 Grid: 15 Parcel: 44

Special Use Exception Number: 201600004

WHEREAS, Developer is responsible for the planting and long-term maintenance of the required landscaping to ensure the establishment of vegetative screening for the above described Solar Power Plant; and

WHEREAS, the parties hereto desire to delineate those responsibilities in some detail, and to specifically provide for landscaping within the said property and for its on-going maintenance in a healthy condition in accordance with the Plan, previously approved by the County.

NOW THEREFORE, in consideration of the foregoing promises and the mutual covenants and agreements hereinafter expressed, the parties hereto agree as follows:

1. Developer hereby covenants and agrees, at its sole cost and expense, to provide, install protect, maintain, and monitor the plantings proposed by the Plan in a manner which ensures the satisfactory establishment and continued growth of the plant material. Developer agrees to install and maintain the landscaping proposed by the Plan in accordance with the notes and specifications of the Plan and the following procedures and specifications.
 - a. Developer shall provide the Department, on behalf of the County, with a written notice when the plantings required by the Plan have been installed.
 - b. The Department shall conduct an inspection on all work and landscape installations shown on the Plan within ten (10) days of notification of completion by the Developer.
 - c. The Developer agrees to correct all deficiencies noted during inspection, especially the replacement of any dead plants or trees identified in the Plan.
 - d. Maintenance shall include a thorough initial watering with weekly watering thereafter for the first month after planting. Watering thereafter shall be on a bi-weekly basis for an additional two months. The total number of waterings to occur after planting shall be as often as is necessary to sustain the health of the plants.
 - e. Developer shall conduct an inspection on or before each anniversary of this Agreement during the term hereof. Any material that is 25% dead or more shall be considered dead and must be replaced. A tree shall be considered dead when the main leader has died back, or there is 25% of the crown dead. Replacements shall be made during the next planting period unless the landscape contractor agrees to an earlier date. A replacement shall be of the same size as the original installation with no additional soil additives to be used.
 - f. Developer shall be responsible for replacing any plantings which are damaged by vandalism, fire, as well as unauthorized removal, and for plant losses due to extraordinary weather conditions such as drought, severe freezing, and excessive wind damage during the term hereof.
 - g. Pruning shall include only work that is necessary to maintain the plants in their normal growth pattern.

written notice of such change is actually received by the other party, the last address of such party designated for notice shall remain such party's address for notice.

Notice if to Developer:
____TES Bird in Hand Solar LLC
P.O. Box 1140
Kennett Square, PA 19348

Notice if to County:

6. This Agreement shall be governed by the laws of the State of Maryland, without regard to its conflicts of law principles. Any action maintained by either party for the enforcement of interpretation of the terms of this Agreement shall be filed in the courts in Caroline County, Maryland.
7. Either County or the Developer shall have the right to waive any requirement contained in this Agreement that is intended for the waiving party's benefit, but, except as otherwise provided herein, such waiver shall be effective only if in writing executed by the party for whose benefit such requirement is intended. No waiver of any breach or violation of any term of this Agreement shall be deemed or construed to constitute a waiver of any other breach or violation, whether concurrent or subsequent, and whether of the same or of a different type of breach or violation.
8. Neither party shall have the right to assign that party's interest in this Agreement without the prior written consent of the other party.
9. Subject to the provisions of the any applicable law or regulation, including but not limited to the Maryland Tort Claims Act and Courts and Judicial Proceedings §5-303 MD Code Ann., the Developer agrees to indemnify and hold County harmless from any liability of any nature, legal or equitable, for or on account of any suits, in contract or in tort, actual or threatened, and from damages or payments, including costs and expenses to the extent covered by the negligent acts, errors or omissions on the part of the Developer, its employees, agents, servants and/or subcontractors. This indemnification shall not be deemed a waiver by any Party of any immunity, defense or limit of liability that may exist in law or otherwise in any third-party action brought against the Party.
10. If any term or provision of this Agreement is held to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining terms or provisions of this Agreement shall not be affected thereby, and in lieu of each such

illegal, invalid or unenforceable term or provision, there shall be added automatically to this Agreement a legal, valid or enforceable term or provision as similar as possible to the term or provision declared illegal, invalid or unenforceable.

11. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

IN WITNESS WHEREOF, the parties have executed this Agreement under their respective hands and seals as of the day and year first above written.

WITNESS:

[Signature]

Thomas D Hammond

GRANTOR(S):

[Signature]

Andrew E. Meserve

STATE OF MARYLAND, CAROLINE COUNTY, To Wit:

I hereby certify that, on this 16th day of May, 2017, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Thomas Hammond, the Grantor named in the forgoing instrument, and they executed the above instrument for the purposes therein contained.

AS WITNESS my hand and Notarial Seal: Heather Slayden

Notary Public, My Commission Expires: 4/25/19

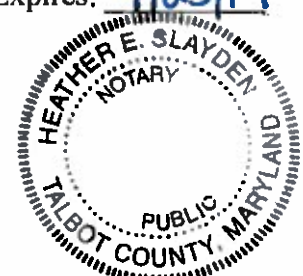


STATE OF MARYLAND, CAROLINE COUNTY, To Wit:

I hereby certify that, on this 16th day of May, 2017, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Andrew Meserve, the Grantor named in the forgoing instrument, and they executed the above instrument for the purposes therein contained.

AS WITNESS my hand and Notarial Seal: Heather Slayden

Notary Public, My Commission Expires: 4/25/19



ATTEST:

**COUNTY COMMISSIONERS OF
CAROLINE COUNTY, MARYLAND**

Jennifer M. Farina
Administrative Coordinator

Daniel J. Franklin, President

STATE OF MARYLAND, CAROLINE COUNTY, To Wit:

I hereby certify that, on this _____ day of _____, 2017, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Daniel J. Franklin, the President of the Declarant named in the forgoing instrument, and he duly acknowledged he executed the above instrument for the purposes therein contained and further acknowledged said instrument to be the act and deed of the County Commissioners of Caroline County.

AS WITNESS my hand and Notarial Seal: _____
Notary Public, My Commission Expires: _____

Approved for Legal Sufficiency:

Heather L. Price, County Attorney

After recording, mail this instrument to:
Caroline County Department of Planning and Codes
403 South 7th Street, Suite 210
Denton, Maryland 21629

Copy to be sent to the County Attorney