

PLANNING & INSPECTIONS DEPARTMENT
Craig N. Benedict, AICP, Director

Current Planning
(919) 245-2575
(919) 644-3002 (FAX)
www.orangecountync.gov



131 W. Margaret Lane
Suite 201
P. O. Box 8181
Hillsborough, NC 27278



July 1, 2016

RE: NOTICE OF NEIGHBORHOOD INFORMATION MEETING - Discussion and review of a Special Use Permit (Class A) application proposing development of a Solar Array-Public Utility.

To Whom It May Concern:

Please be advised the Orange County Planning Department has received a Special Use Permit application (Class A SUP) proposing the development of a *Solar Array-Public Utility* on a 27.3 acre portion (leased acreage) of a 52.1 acre parcel of property located off of US Highway 70. The application was submitted by ESA Renewables, Oakwood Solar Farm LLC, and the owners of the subject property.

The property subject to the proposed development, further identified utilizing Orange County Parcel Identification Number (PIN) 9835-02-9137, is located within the Cheeks Township of Orange County and is zoned:

- Rural Residential (R-1),
- Back Creek Protected Watershed Protection Overlay District, and
- Efland Cheeks Overlay District (ECOD) Pre-designated commercial area.

and is accessible via an access easement through an adjacent property located at 6517 US Highway 70, (PIN) 9835-10-3858. The easement area includes an existing driveway providing access to both 6517 US Highway 70 and the subject parcel. Please refer to the attached Site Assessment map for additional site details.

The application, submitted by ESA Renewables, Oakwood Solar Farm LLC, and the property owners, proposes the development of a commercial solar facility operated and managed by the Oakwood Solar Farm, LLC (an ESA partnership established for the project). This facility proposes to convert sunlight into electricity via ground-mounted Photovoltaic cell solar panels, which will be sold to a power company for the purpose of contributing to the power service grid for the surrounding area. Please see the attached site plans for additional information on the layout of the proposed solar arrays.

A *Solar Array-Public Utility* is classified by the Orange County Unified Development Ordinance (UDO) Section 5.2: *Table of Permitted Uses* as a permitted land use within the R-1 zoning district subject to the issuance of the Class A SUP.

You are receiving this letter because according to Orange County Land Records data you own property within 1,000 of the subject property proposed for development as a *Solar Array-Public Utility*.

The purpose of this letter is to inform you of the scheduling of a Neighborhood Information Meeting (NIM) for:

Date: Wednesday, July 27, 2016

Time: 6:00 p.m. to 8:00 p.m.

Location: Whitted Human Services Building
Meeting Room 230
300 West Tryon Street
Hillsborough, NC 27278

The purpose of the NIM is to allow local property owners and other interested parties to discuss/review/ask questions about the project and the permit review process. The applicant will have representatives on hand to review/answer questions about the project while members of the County Planning Department will be available to discuss the Class A SUP permit review process. Staff has included a Special Use Permit Fact Sheet providing information on the permit review process in advance of the NIM.

Please refer to the attached map showing the location of the Whitted Human Services Building and parking area(s).

Copies of the application, including the submitted site plan, can be viewed on the Orange County website at:

http://www.orangecountync.gov/departments/planning_and_inspections/index.php.

Per the Section 2.7 of the UDO, Class A SUP applications are initially reviewed by the Planning Board, who makes a recommendation on the projects approval and/or denial, and are then reviewed and acted upon by the Orange County Board of Commissioners (BOCC) after the holding of a previously scheduled/advertised public hearing.

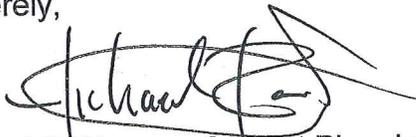
The Planning Board is tentatively slated to review this project at its August 3, 2016 regular meeting. The public hearing for the project is tentatively scheduled for Monday, September 12, 2016.

Please note additional notification of the date/time/location of both the Planning Board meeting and the BOCC public hearing shall be sent out to all property owners within 1,000 feet of the subject property as required under the UDO.

If you require additional assistance, or have questions related to the project or Class A SUP process, please contact a Planning Department staff member at (919) 245-2575.

We look forward to seeing you for the NIM on July 27, 2016 at the Whitted Human Services Building in Hillsborough.

Sincerely,



Michael D. Harvey, Current Planning Supervisor



Patrick Mallett, Planner II



Rachel McCook, Planner I



Molly Boyle, Planning Technician

Attachments:

- 1) Site Assessment of the subject property and easement location;
- 2) Site Plans illustrating the proposed solar array-public utility;
- 3) Vicinity Map for the NIM with directions to the Whitted Human Services Building; and
- 4) SUP Fact Sheet.

Site Assessment for PIN: 9835-02-9137 for proposed Solar Array Public Utility (Class A Special Use Permit), non-residential

Site Data

Zoning: Rural Residential (R1) and designated 10 Year Transitional Area on Future Land Use Map
 Acreage: 52.1 acres

Overlay Districts: Back Creek Protected Watershed Overlay District and Efland-Cheeks Hwy 70 Overlay District
 Deed: No deed reference found. Legal Reference: 10-E-451.
 Plat/Legal Description: N/O Hwy 70 (no plat found)

Building Setbacks for Special Use Permit (Class A)

100 ft. from all property lines
 50 ft. Type D Land Use Buffer shall be provided along any portion of the perimeter of the parcel and easements (see UDO, 5.10.3 C (2) (f))
 Maximum height: 40'

Notes:

(1) Private Road Justifications, Recorded Declarations, Restrictive Covenants, Bona Fide Farm status, use and building type (e.g. duplex units) will change subdivision and development requirements. (2) 80 ft. stream buffer graphically shown. (3) Floor Area Ratio (FAR) maximum for residential conditional use = 0.58. FAR maximum for non-residential use = 0.088. FAR maximum for non-residential conditional use = 0.100. Required minimum open space ratio = 0.84. Required minimum livability space ratio = 0.75. Required pedestrian/landscape ratio = 0.21.
 (2) BMP may be required

Environmental Features:

Streams located on lot. Stream buffer for stream to the east: 80 ft. (Method A). Stream buffer for stream to the west: 65 ft. (Method A). Six water bodies located to the west. Water body buffers: 65 ft. (Method A).

Slope: Slope of stream to the east: 8.8%. Slope of stream to the west: 6.4%. Slopes of water bodies to the west: ranging from 2.4% to 6.4%

100 and 500 year Floodplains

Base Flood Elevation (BFE) based on FIRM Map: 663
 County Freeboard: 665
 Minimum Finished Floor Elevation (FFE): 665
 Flood Panel: 9835J

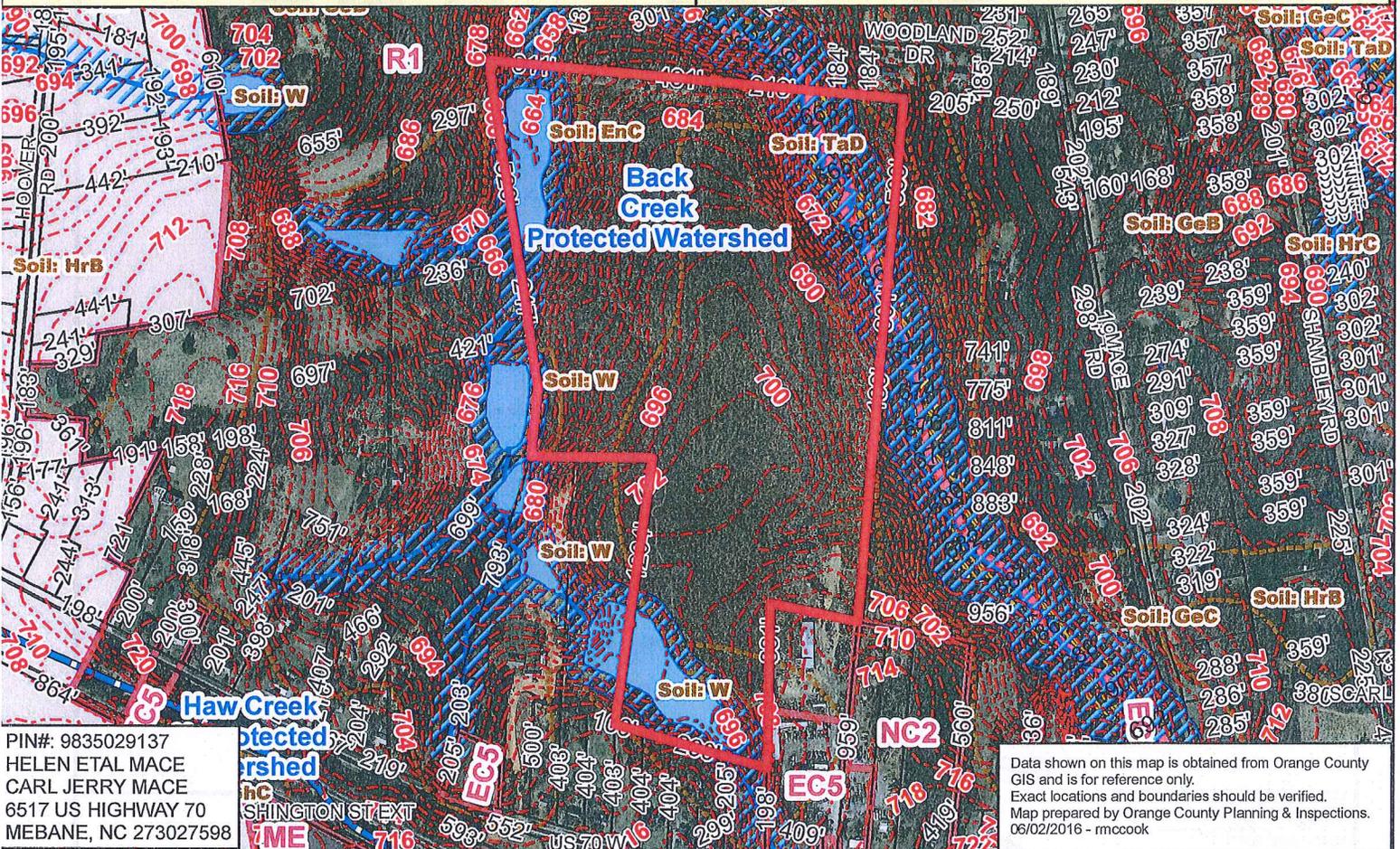
Impervious Surface Limits: 12% based on UDO (Sec. 4.2.6) - 272,337.12 sq. ft. of allowable impervious surface area

Note: On-site infiltration of the first inch of stormwater runoff, per UDO, Sec. 4.2.6 for non-residential use

Land Disturbance Thresholds (Erosion Control)

- 1) Erosion Control Application/Permit required if disturbing more than 20,000 sq. ft.
 - 2) Stormwater Management Application/Permit required if more than 21,780 sq. ft. (1/2 an acre) for commercial structures.
- ***Call OC Erosion Control at (919) 245-2586 for more information.

Date Site Assessment Completed: Updated 05/26/2016



PIN#: 9835029137
 HELEN ETAL MACE
 CARL JERRY MACE
 6517 US HIGHWAY 70
 MEBANE, NC 273027598

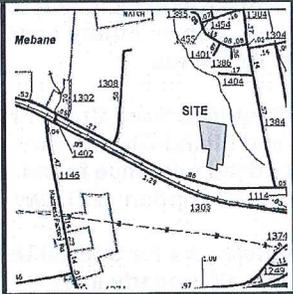
Data shown on this map is obtained from Orange County GIS and is for reference only. Exact locations and boundaries should be verified. Map prepared by Orange County Planning & Inspections. 06/02/2016 - rmcCook

| | | | |
|------------------------|---------------------|--|---|
| USGS Stream | 2' Contours (NCDOT) | City Limits | Floodway (Effective 02/02/07) |
| Soils Survey Stream | Parcels | ETJ | 500 Year Floodplains (Effective 02/02/07) |
| Floodplain Buffer 80ft | Zoning | Soils | Base Flood Elevation (Symbol) |
| Stream Buffer 80ft | Water Body | 100 YR Floodplain (Effective 02/02/07) | FIRM |
| Water Body Buffer 65ft | Watershed | | |

LEGEND

| | | | |
|------|----------------------------|------|------------------------|
| EIP | EXISTING IRON PIPE | OHE | OVERHEAD POWER |
| ER | EXISTING IRON ROD | PP | POWER POLE |
| EA | EXISTING AWE | LP | LIGHT POLE |
| ECM | EXISTING CONC. MONUMENT | TELE | TELEPHONE PEDESTAL |
| SR | SET 5/8" REBAR | WM | WATER METER |
| NPS | NO POINT SET | WV | WATER VALVE |
| EPK | EXISTING PARKER KALON NAIL | --- | SURVEYED LINE |
| EMX | EXISTING MAG NAIL | --- | ADJACENT PROPERTY LINE |
| ERRS | EXISTING RAILROAD SPIKE | --- | TIE LINE |
| RRRS | SET RAILROAD SPIKE | --- | DITCH |
| CP | CALCULATED POINT | --- | WETLAND FLAG |
| R/W | RIGHT OF WAY | | |
| MBL | MINIMUM BUILDING LINE | | |

NOTES:
 1. AREA BY COORDINATES
 2. THIS SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A TITLE COMMITMENT REPORT. GASKINS LAND SURVEYING, P.A. DOES NOT CLAIM THAT ALL MATTERS OF RECORD WHICH MAY OR MAY NOT AFFECT THIS PROPERTY ARE SHOWN HEREON.
 3. THIS A PARTIAL SURVEY OF THIS PROPERTY. THE PURPOSE OF THIS SURVEY IS TO SHOW THE WETLANDS, PONDS AND THEIR ASSOCIATED DEEDS. SOME LINES WERE SURVEYED (SOLID BOLD LINES) TO HELP DETERMINE HOW THE DEED DESCRIPTION FITS. OTHER LINES WERE NOT SURVEYED, MAPPED FROM DEED DESCRIPTIONS AND MAPS FOUND ON RECORD. THIS MAP IS NOT INTENDED TO BE A COMPLETE BOUNDARY SURVEY OF THIS PARCEL.



WETLAND FLAGS AI-A18

| BEARING | LENGTH |
|-------------|--------|
| N19°43'04"W | 17.86 |
| N33°00'00"W | 45.90 |
| N06°31'27"W | 44.85 |
| N25°45'39"E | 25.01 |
| N51°37'56"W | 63.55 |
| N34°34'29"W | 59.04 |
| N03°46'28"E | 39.63 |
| N45°53'06"W | 64.06 |
| N38°45'51"W | 47.74 |
| N30°15'59"W | 66.77 |
| N03°11'03"W | 47.52 |
| N11°07'07"W | 70.70 |
| N87°13'36"E | 54.59 |
| N11°23'33"W | 10.12 |
| N03°37'01"E | 40.05 |
| S87°23'37"W | 11.38 |
| N43°05'48"W | 9.13 |

WETLAND FLAGS A19-A37

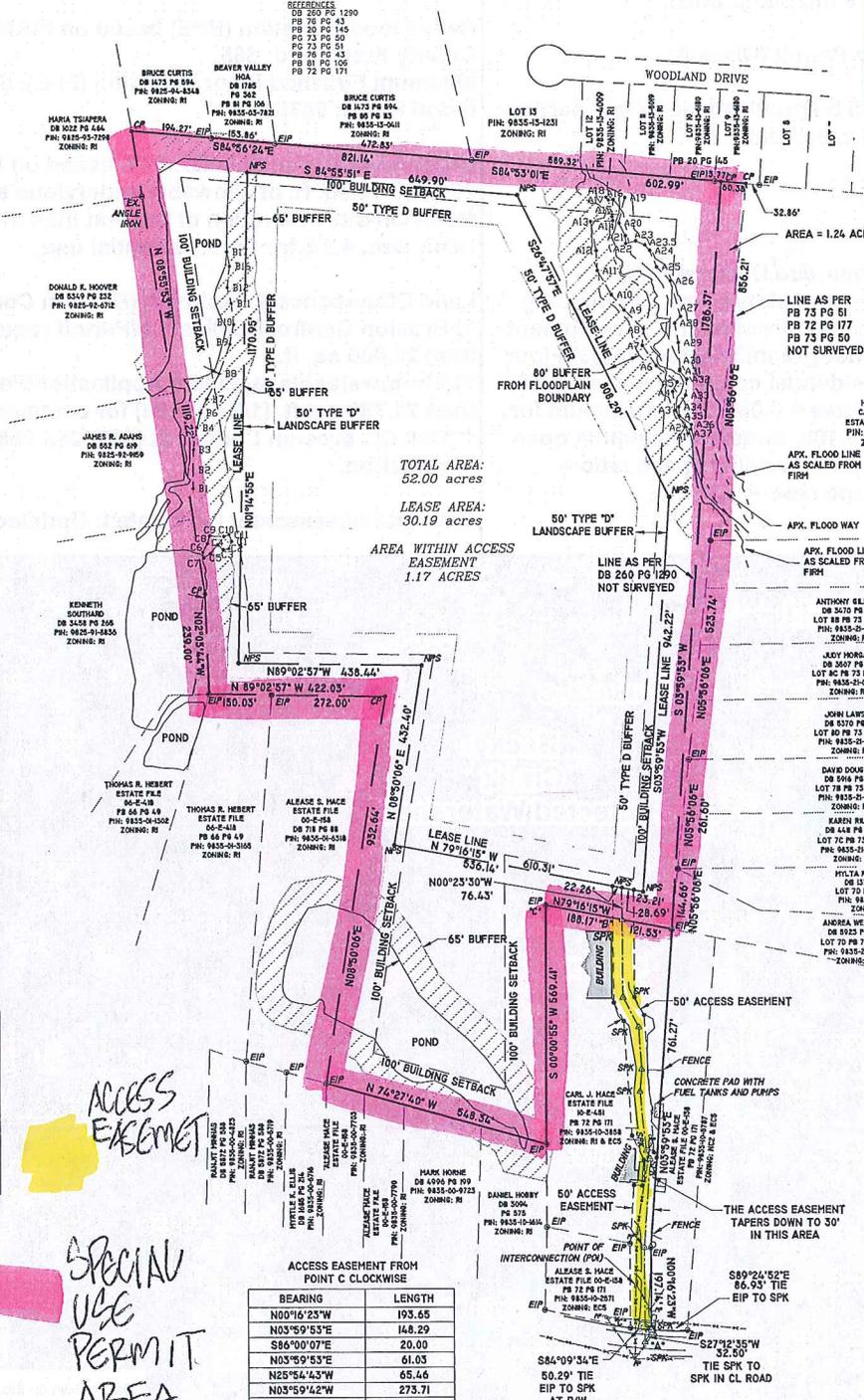
| BEARING | LENGTH |
|-------------|--------|
| S13°05'23"W | 62.76 |
| S26°58'50"E | 34.28 |
| S02°29'07"E | 18.22 |
| N75°32'48"E | 24.92 |
| S65°47'08"E | 23.96 |
| S40°43'35"E | 17.76 |
| S23°11'56"E | 42.65 |
| S44°18'27"E | 46.54 |
| S15°55'44"E | 88.63 |
| S41°45'45"W | 21.63 |
| S10°56'03"E | 47.37 |
| S03°21'21"E | 65.03 |
| S05°03'58"W | 4.90 |
| S40°23'15"E | 25.62 |
| S04°19'53"W | 38.25 |
| S31°32'34"W | 32.46 |
| S04°19'53"E | 21.61 |
| S54°10'20"E | 35.35 |
| S07°24'03"W | 10.83 |

WETLAND FLAGS BI-B17

| BEARING | LENGTH |
|-------------|--------|
| N00°13'57"E | 44.88 |
| N00°48'33"E | 48.38 |
| N09°48'27"E | 52.63 |
| N13°45'57"E | 36.99 |
| N25°52'09"E | 36.06 |
| N26°15'15"E | 67.48 |
| N20°05'41"E | 74.64 |
| N11°10'06"E | 48.00 |
| N05°56'22"W | 50.60 |
| N14°56'09"W | 39.68 |
| N06°22'18"E | 50.87 |
| N10°43'31"W | 34.76 |

WETLAND FLAGS CI-CI CLOCKWISE

| BEARING | LENGTH |
|-------------|--------|
| S22°30'58"W | 18.60 |
| S79°57'23"W | 15.22 |
| N49°30'29"W | 17.71 |
| S40°50'59"W | 27.43 |
| S55°33'02"W | 18.24 |
| N14°23'11"W | 13.30 |
| N28°41'22"E | 24.51 |
| N14°59'06"E | 18.74 |
| S87°32'45"E | 34.36 |
| N69°05'16"E | 13.01 |
| S22°16'18"E | 17.95 |



VICINITY SKETCH (NOT TO SCALE)



TIE FROM A TO B

| BEARING | LENGTH |
|-------------|--------|
| N00°16'23"W | 193.65 |
| N45°59'53"E | 148.29 |
| S86°09'07"E | 20.00 |
| N03°59'53"E | 61.03 |
| N25°54'43"W | 65.46 |
| N03°59'42"W | 273.71 |
| N28°14'25"W | 50.07 |
| N00°23'30"W | 277.55 |
| S79°16'15"E | 50.96 |
| S00°23'30"E | 255.32 |
| S28°14'25"E | 48.42 |
| S03°59'42"E | 328.35 |
| S25°54'43"E | 14.08 |
| S03°59'53"W | 215.47 |
| S00°16'23"E | 197.14 |
| N84°09'34"W | 50.29 |

ACCESS EASEMENT FROM POINT C CLOCKWISE

| BEARING | LENGTH |
|-------------|--------|
| N00°16'23"W | 193.65 |
| N45°59'53"E | 148.29 |
| S86°09'07"E | 20.00 |
| N03°59'53"E | 61.03 |
| N25°54'43"W | 65.46 |
| N03°59'42"W | 273.71 |
| N28°14'25"W | 50.07 |
| N00°23'30"W | 277.55 |
| S79°16'15"E | 50.96 |
| S00°23'30"E | 255.32 |
| S28°14'25"E | 48.42 |
| S03°59'42"E | 328.35 |
| S25°54'43"E | 14.08 |
| S03°59'53"W | 215.47 |
| S00°16'23"E | 197.14 |
| N84°09'34"W | 50.29 |

I, KENDALL E. GASKINS CERTIFY THAT THIS SURVEY IS OF AN EXISTING PARCEL OR PARCELS OF LAND AND DOES NOT CREATE A NEW STREET OR CHANGE AN EXISTING STREET.

KENDALL E. GASKINS L-3824

I, KENDALL E. GASKINS, CERTIFY THAT THIS PLAN WAS DRAWN UNDER MY SUPERVISION FROM A SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BOOK 261, PAGE 1226); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAINED FROM INFORMATION FOUND IN BOOK 261, PAGE 1226; THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000; THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH G.S. 47-30 AS AMENDED.

WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NUMBER AND SEAL THIS 3rd DAY OF MAY, A.D., 2016.

KENDALL E. GASKINS L-3824



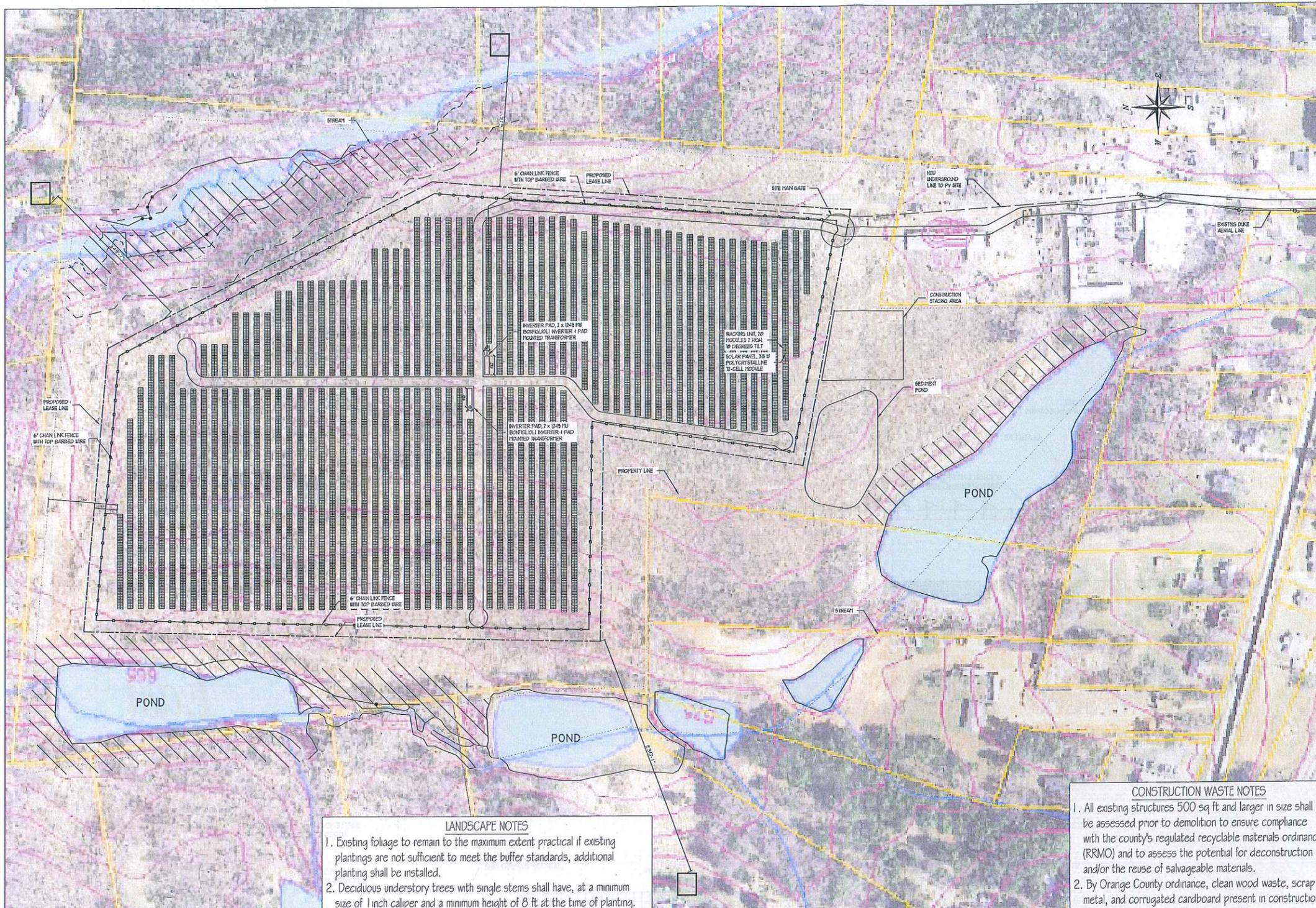
SURVEY FOR
OAKWOOD SOLAR FARM, LLC
 6517 U.S. HWY 70, MEBANE NC
 DEED BOOK
 TAX PARCEL PIN: 9835-02-9137
 ORANGE COUNTY - CHEEK'S TOWNSHIP

OWNER: JERRY CARL MACE & HELEN MACE ETAL

GASKINS LAND SURVEYING, P.A.
 PROFESSIONAL LAND SURVEYING
 Phone: 252-244-0999
 Fax: 252-244-0989

SURVEYED: KEG
 DRAWN: KEG
 CHECKED: KEG

APPROVED: KEG
 DATE: 5/3/16
 SCALE: 1"=200'

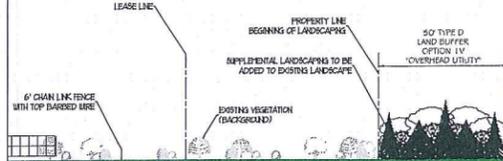
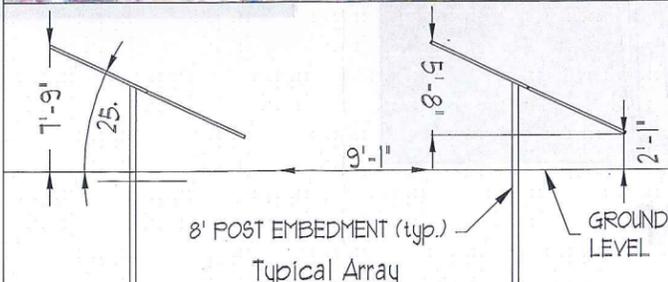


| SITE DATA | | | | | |
|---|----------------|--------------------|--|----------------|----------------|
| Pin # | Pin # Easement | Owner | Zoning | Parcel Acreage | Leased Acreage |
| 9835-02-9137 | 9835-10-3858 | Mace, Helen & Carl | R1 | 52.1 | 27.3 |
| Site Address | | | 6517 US HWY 70, Mebane, NC 27302 | | |
| Proposed Use | | | Ground Mount Solar Farm | | |
| Watershed | | | Back Creek and Efland-cheeks HWY 70 Overlay District | | |
| Impervious Land Area | | | 2.00 Acres (~7.33%) | | |
| Min. Setback Requirements | | | | | |
| | | | Front: | 40 ft. | |
| | | | Side: | 20 ft. | |
| | | | Rear: | 20 ft. | |
| Height of arrays to be less than 40 ft. Site will be surrounded by a 6 ft gate with 3 strands of barbed wire. | | | | | |

- NOTES**
- The purpose of this plan is for a special use permit application for review and approval by Orange County to construct a solar electric power plant. All information shown is for planning purposes only.
 - Existing improvements shown on this plan were taken from Orange County GIS.
 - The property shown does not contain special flood hazard areas subject to inundation by the 1% annual chance flood (i.e. 100 year event).
 - Location of underground utilities are approximate and must be field verified.
 - Copies of all permits and approved plans must be kept on site in a permit box that is conspicuously located and easily accessible during construction.
 - A sediment and erosion control plan will be approved by Orange County prior to beginning construction.
 - A driveway permit will be approved by NC DOT prior to beginning construction.
 - No lighting is proposed for this site.
 - Aluminum signs ("DANGER - HIGH VOLTAGE" and "DANGER - NO TRESPASSING") measuring 14" x 10" in size will be placed on permanent security fencing alternating every 100 ft around the array
 - Systems, equipment, and structures will not exceed 40 ft in height. Excluded from this requirement, however, are electric transmission lines and utility poles.

- LANDSCAPE NOTES**
- Existing foliage to remain to the maximum extent practical if existing plantings are not sufficient to meet the buffer standards, additional planting shall be installed.
 - Deciduous understory trees with single stems shall have, at a minimum size of 1 inch caliper and a minimum height of 8 ft at the time of planting.
 - Multi-stemmed deciduous understory trees shall have a minimum height of 8 ft at planting.
 - Deciduous understory trees shall be planted at least 12 ft apart.
 - Evergreen understory trees shall have a minimum height of 6 ft at planting.
 - All shrubs to be cold hardy and heat tolerant.
 - Upright shrubs shall be a minimum of 15 inches at planting.
 - Shrubs shall not be planted closer than 3 ft at center. Shrubs shall not be planted closer than 3 ft to planted trees; however, no more than 25% of the root protection zone of an existing tree may be disturbed with new plantings.
 - Type D land use buffer diagram should be 100' long and 50' wide

- CONSTRUCTION WASTE NOTES**
- All existing structures 500 sq ft and larger in size shall be assessed prior to demolition to ensure compliance with the county's regulated recyclable materials ordinance (RRMO) and to assess the potential for deconstruction and/or the reuse of salvageable materials.
 - By Orange County ordinance, clean wood waste, scrap metal, and corrugated cardboard present in construction or demolition waste must be recycled.
 - By Orange County ordinance, all haulers of mixed construction and demolition waste that includes any regulated recyclable materials shall be licensed by Orange County.
 - Prior to any demolition or construction activity on site, the applicant shall hold a pre-demolition/pre-construction conference with the solid waste staff.
 - The presence of any asbestos containing materials and/or hazardous materials in construction and demolition waste shall be handled in accordance with any and all local state and federal regulations and guidelines.



| NOTE | REV. | DATE | REVISION DESCRIPTION | DRW | CHK | APP | REV. | DATE | REVISION DESCRIPTION | DRW | CHK | APP | LEGAL WARNINGS | REVISION | DRAWN | CHECKED | APPROVED | PROJECT NAME: | SCALE |
|---|------|------|----------------------|-----|-----|-----|------|------|----------------------|-----|-----|-----|----------------|----------|-------|---------|----------|--|------------------|
| DUKE ENERGY: INTERCONNECTION REQUEST SHEET SIZE AT FULL SCALE: 24" x 36" | | | | | | | | | | | | | | | | | | OAKWOOD SOLAR FARM, LLC | 1:1000 |
| | | | | | | | | | | | | | | | | | | ADDRESS: 6511 US 10, Mebane, NC 27302 | FORMAT 24" x 36" |
| | | | | | | | | | | | | | | | | | | | DRAWING N° |
| | | | | | | | | | | | | | | | | | | | G202 |
| | | | | | | | | | | | | | | | | | | | DATE 2016/05/25 |



ESA MANAGEMENT SERVICES, PLLC
 4150 St. Johns Parkway, Suite 1000
 Sanford, FL 32771 USA
 407.268.6455 tel | 800.755.0801 fax
 Lic: NCR P-1522

REVISION: 04JL
 DRAWN: DCDC
 CHECKED: DCDC
 APPROVED: DCDC
 ENGINEER: DAVID CLICK

SHEET TITLE: **SITE PLAN**

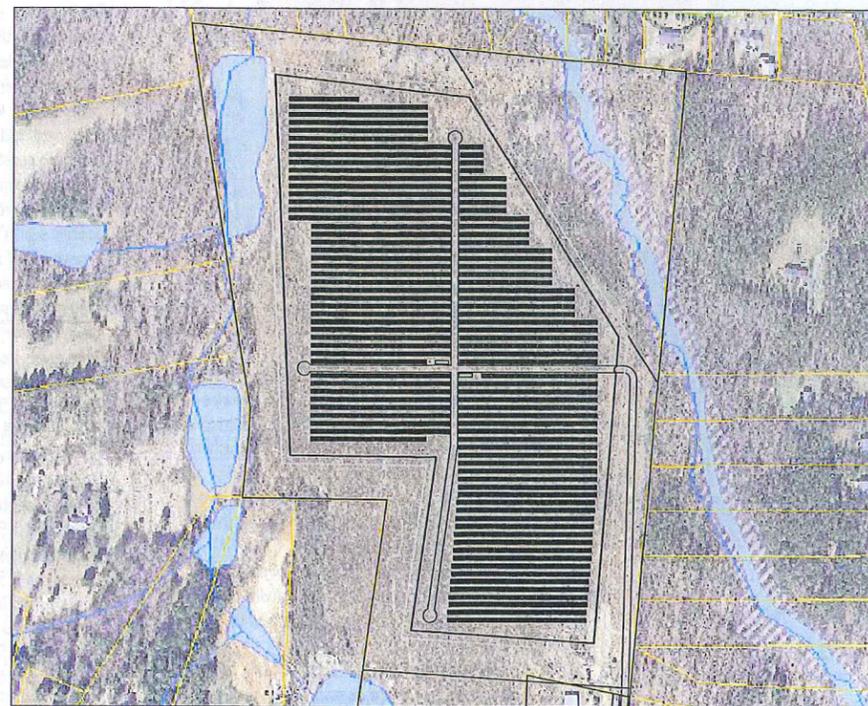
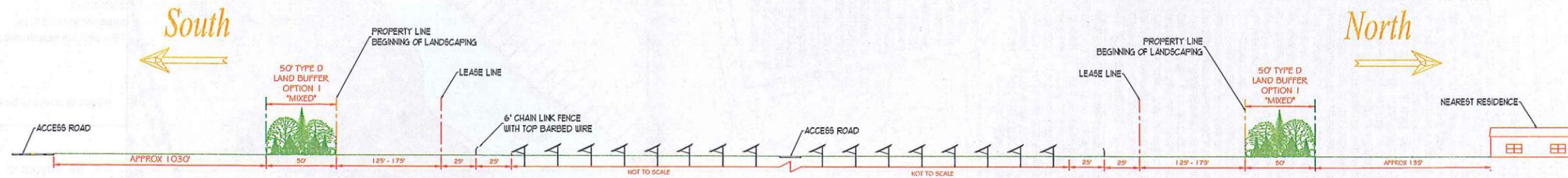
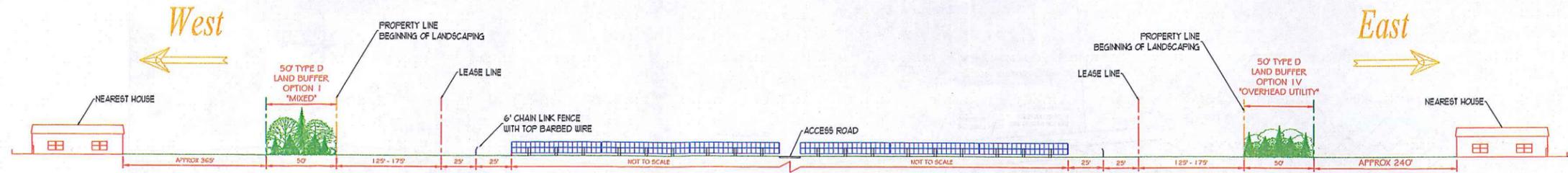
Type D Landscaping

Where vegetation is non-existent:

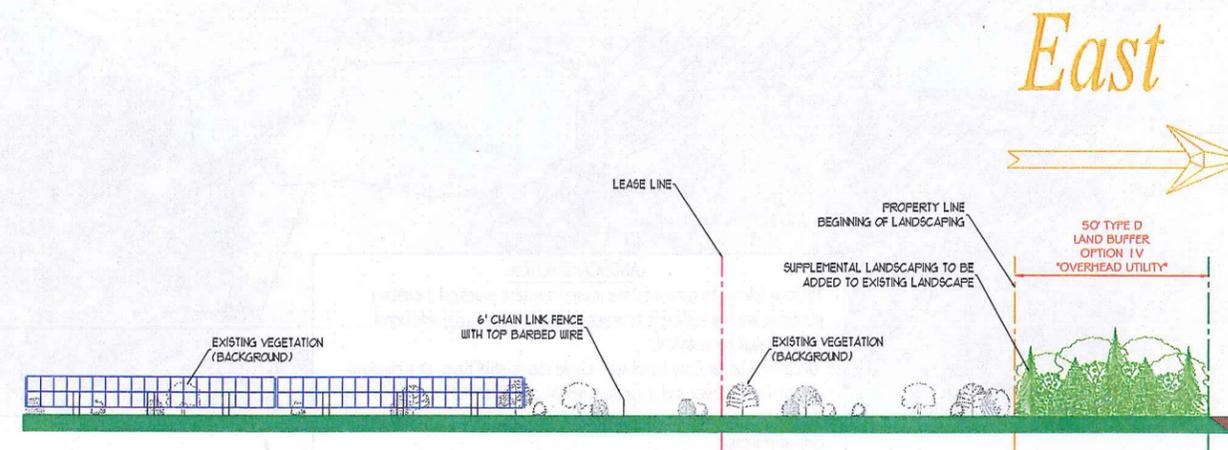
- 6 Canopy Trees
- 1 Evergreen Tree
- 4 Deciduous Understory
- 9 Evergreen Understory
- 10 Shrub Trees

Where vegetation exists:

- 0 Canopy Tree
- 0 Evergreen Tree
- 12 Deciduous Understory
- 9 Evergreen Understory
- 53 Shrub Trees



SECTION KEY MAP



NOTE

SITE DEVELOPMENT DRAWING
PRELIMINARY, NOT FOR CONSTRUCTION
SHEET SIZE AT FULL SCALE: 24" x 36"

| REV. | DATE | REVISION DESCRIPTION | DRW. | CHK. | APP. | REV. | DATE | REVISION DESCRIPTION | DRW. | CHK. | APP. | REV. | DATE | REVISION DESCRIPTION | DRW. | CHK. | APP. |
|------|-----------|----------------------|------|------|------|------|------|----------------------|------|------|------|------|------|----------------------|------|------|------|
| 00 | 10/6/2022 | SITE DEVELOPMENT | JL | DC | DC | | | | | | | | | | | | |

THIS DOCUMENT AND THE IDEAS AND DESIGN INCORPORATED HEREIN ARE THE PROPERTY OF ESA MANAGEMENT SERVICES, LLC. NO PART OF THIS DOCUMENT IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE EXPRESS WRITTEN AUTHORIZATION FROM ESA MANAGEMENT SERVICES, LLC. IT IS STRICTLY FORWARDED TO YOU AS A CONSIDERATION OF THESE SERVICES UNLESS THEY HAVE THE APPROVAL OF THE LICENSED PROFESSIONAL, EXPRESSLY IN WRITING.



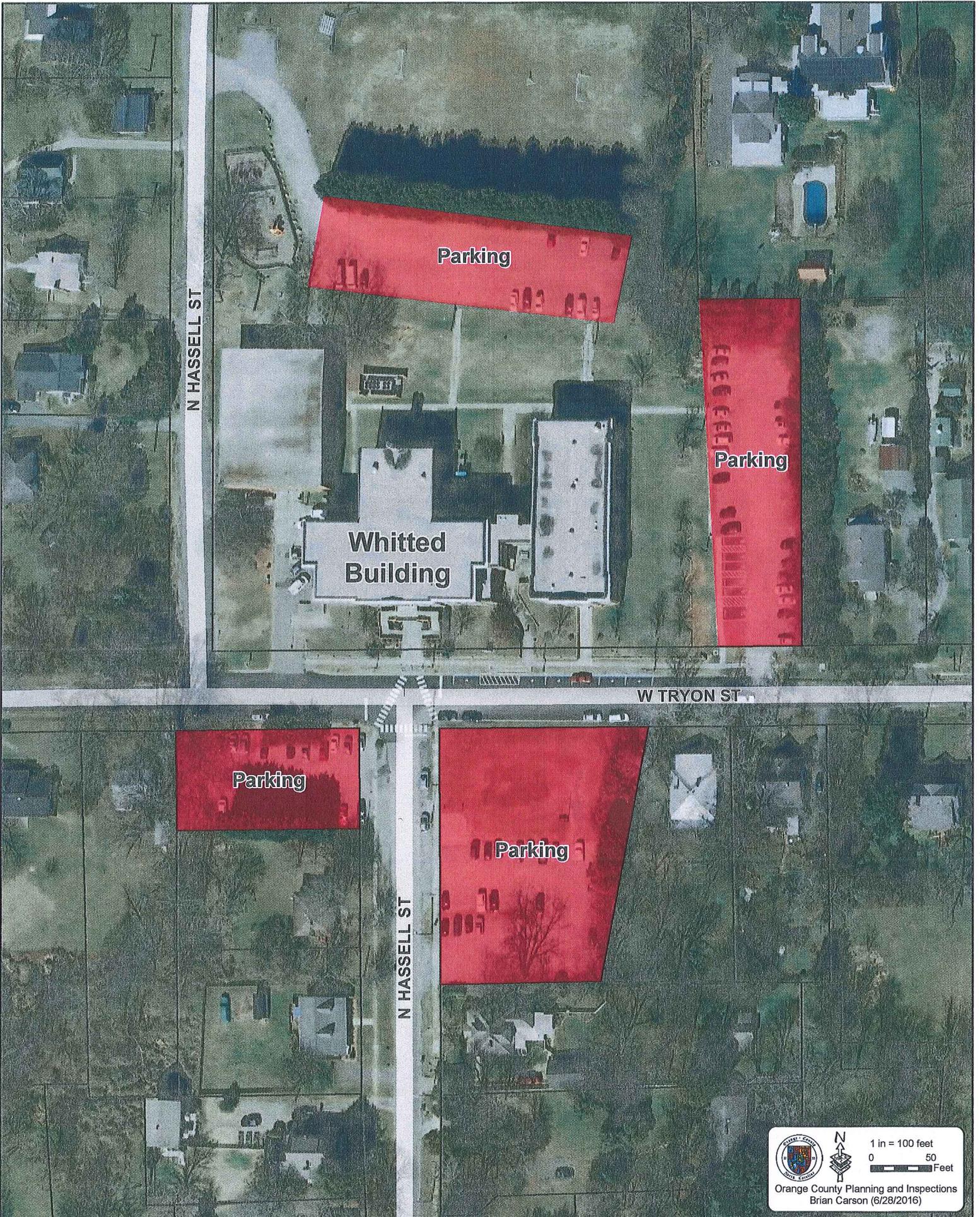
ESA MANAGEMENT SERVICES, PLLC
4150 St. Johns Parkway, Suite 1000
Sanford, FL 32771 USA
407.268.6455 tel | 800.755.0801 fax
Lic: NCH P-1522

| REVISION | DRAWN | CHECKED | APPROVED |
|----------|-------|---------|----------|
| 03 | SM | DC | DC |

PROJECT NAME: **MACE-OAKWOOD SOLAR FARM**
ADDRESS:
SHEET TITLE: **SITE PLAN**

SCALE 1:2000
FORMAT 24" x 36"
DRAWING N° **G202**
DATE 10/6/2022

Whitted Building (300 W. Tryon St.)



N HASSELL ST

Parking

Whitted Building

Parking

W TRYON ST

Parking

N HASSELL ST

Parking



1 in = 100 feet
0 50 100 Feet

Orange County Planning and Inspections
Brian Carson (6/28/2016)



Orange County Planning and Inspections Department

SPECIAL USE PERMIT FACT SHEET

The purpose of this fact sheet is to provide a breakdown of Orange County's Special Use Permit submittal and review process.

The information contained herein provides an explanation on the nature of the permit proceedings, the presentation of evidence, burden of proof, what constitutes testimony and who can present evidence, and your rights with respect to challenging a decision to either approve or reject a SUP application.

1. *What is a Special Use Permit?*

A Special Use Permit (SUP) is a permit allowing for the establishment of certain uses, in certain districts, that are considered worthy of additional scrutiny in their proposed location. Such uses typically require special review for design, location, and impact on surrounding properties.

Orange County has 2 different categories of SUP, specifically:

- i. **Class A** reviewed and acted upon by the Board of County Commissioners (BOCC), with a recommendation from the Planning Board, and
- ii. **Class B** reviewed and acted upon by the Orange County Board of Adjustment.

2. *What is considered a 'Special Use'?*

A SUP is required for those specific land uses identified within the Orange County Unified Development Ordinance (UDO) Table of Permitted Uses contained within Section 5.2.

These uses are identified in the UDO's Table of Permitted Uses with an 'A' for Class A SUP and a 'B' for a Class B SUP. Some uses may be permissible in certain districts without restriction (referred to as "uses by right"), but require the SUP in districts where their impact calls for special consideration. Applicants are entitled to be granted a SUP if they can show that specific standards would be met.

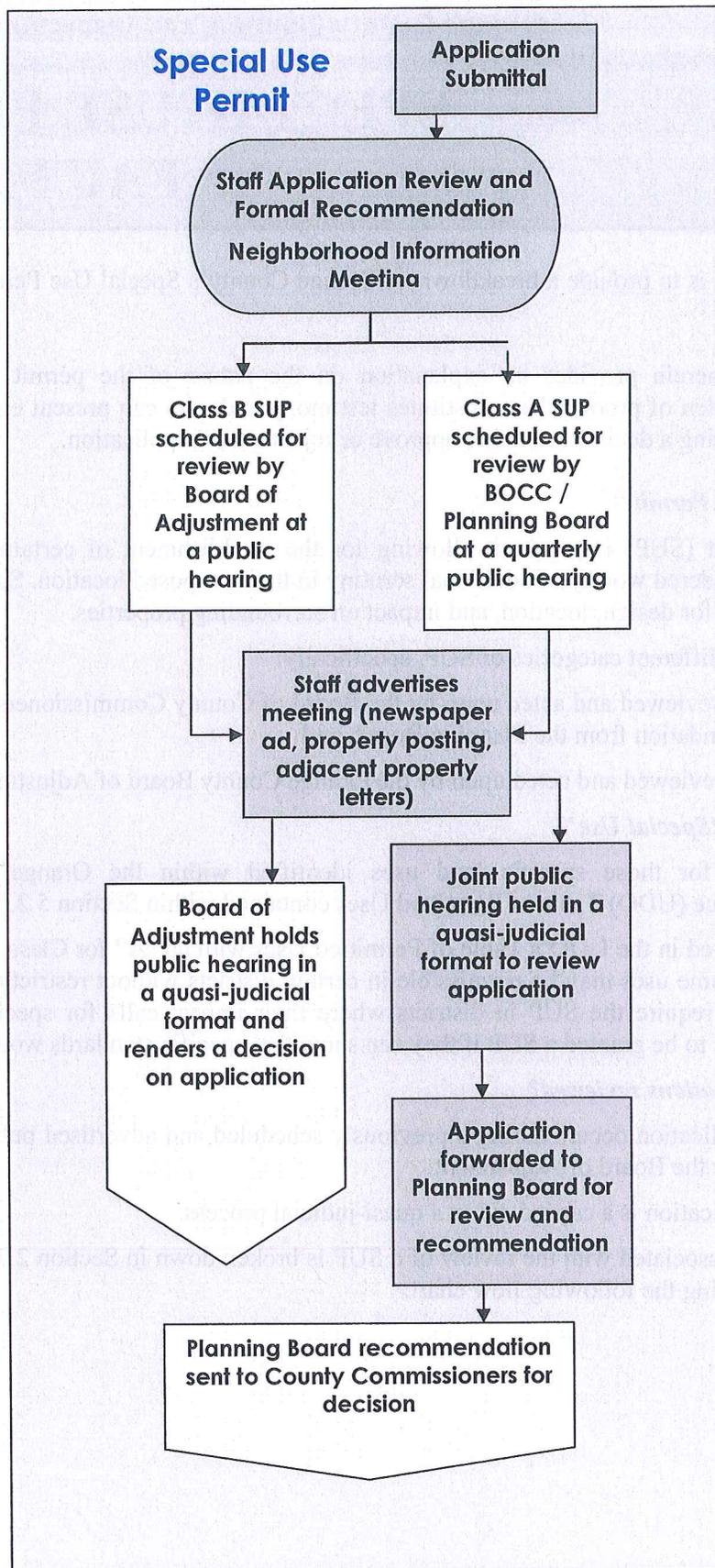
3. *When are such applications reviewed?*

Review of a SUP application occurs during a previously scheduled and advertised public hearings held by either the BOCC or the Board of Adjustment.

The review of an application is carried out in a quasi-judicial process.

The typical cadence associated with the review of a SUP is broken down in Section 2.7 of the UDO and can be summarized using the following flow chart:

Special Use Permit



4. *What does quasi-judicial process mean?*

Quasi-judicial decisions arise in a variety of local government settings.

During a quasi-judicial hearing, the Board (i.e. BOCC or Board of Adjustment) responsible for rendering a decision acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at the public hearing and then makes a determination on whether the permit can be issued based on the competent, substantial, and material evidence presented.

Put differently a quasi-judicial decision is one that requires the board hearing the matter to find facts and make decisions by applying those facts to the standards in the Unified Development Ordinance.

5. *Who may speak or present evidence at the public hearing?*

Both individual applicants and those individuals supporting, or opposed to, the application are encouraged to attend. Individuals may represent themselves or be represented by an attorney and they may have expert witnesses testify for them.

The cost for attorneys or expert witnesses is borne by the individual seeking counsel or expert testimony, not the County. The County will not pay for, or reimburse, expenses incurred by an individual in their quest to support or oppose a SUP application.

While not required by State or County regulations, all parties with an interest in a SUP application are strongly advised to have an attorney represent them.

Engineers, architects, real estate agents, planners and other non-attorneys may only appear as expert witnesses; they may not represent an applicant or those opposed to an application.

Only those with standing may speak or present evidence.

6. *What are the responsibilities of the applicant?*

The applicant bears the ultimate responsibility for producing and submitting competent, substantial, and material evidence for the body reviewing the application to conclude the proposal complies with applicable County regulations.

If they fail to submit evidence demonstrating compliance, the request is denied.

If, however, the applicant proves they comply, and there is insufficient evidence submitted to the board hearing the case demonstrating they do not comply, the applicant is entitled to have the application approved.

7. *What standards must be met by the applicant?*

All applicants must show compliance with the General Standards for all SUPs, as detailed within Section 5.3.2 of the UDO, and any specific development standards associated within the proposed use.

The General Standards, as contained in Section 5.3.2, read as follows:

- (a) *The use will maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted;*
- (b) *The use will maintain or enhance the value of contiguous property (unless the use is a public necessity, in which case the use need not maintain or enhance the value of contiguous property); and*
- (c) *The location and character of the use, if developed according to the plan submitted, will be in harmony with the area in which it is to be located and the use is in compliance with the plan for the*

physical development of the County as embodied in these regulations or in the Comprehensive Plan or portion thereof, adopted by the Board of County Commissioners

8. *How are decisions made?*

Members of the board rendering the decision must make their decision solely on the competent, material and substantial evidence presented at the hearing, both for and against an application.

Members cannot consider information obtained through independent research or undisclosed *ex parte* communications, meaning members cannot have private discussions with individuals who support or object to a specific application.

9. *What exactly is ex-parte communication and why is it not allowed?*

Persons affected by a decision have the legal right to hear all of the information presented to members of a board who will be rendering a decision on an SUP application, specifically they have a right to know all of the "facts" being considered.

Therefore members of the decision-making body are not allowed to discuss the case or gather evidence outside of the hearing (what the courts term *ex parte* communication). Only facts presented to the full board at the hearing may be considered.

This is an important point to remember when such applications are being reviewed. Members of the board rendering the decision are prohibited from discussing the matter or receiving comment on a proposal.

These members are not trying to be rude or unsympathetic to your concerns. They are prohibited from engaging in the conversation in the first place as they are required to guarantee an impartial hearing where the 'facts' are weighed as they are presented as to whether or not an application should be granted.

10. *You previously indicated decisions are based on evidence. Does this mean those presenting evidence at a SUP hearing have to be under oath?*

In a word, yes. All testimony, including from County staff, offered during the public hearing where a SUP is reviewed must be under oath.

All persons wishing to speak will be given a reasonable time in which to be heard, however groups are encouraged to select a spokesperson to speak for the group in order to avoid repetitive testimony.

11. *Can people just speak to offer their opinion on the application?*

Inflammatory, irrelevant, repetitive and incompetent testimony and hearsay is not permitted and the chairman of the board hearing the matter has the right to limit and restrict such comments during the public hearing.

For more information please refer to Section 2.7.7 (D) of the UDO.

12. *What constitutes 'competent, substantial, and material evidence' allowing for the approval or a denial of a SUP?*

Breaking down what constitutes evidence can best be summarized as follows:

- i. **Competent evidence:** legally admissible under the rules of evidence unless admitted without objection, or appears to be sufficiently trustworthy and is admitted under such circumstances that it is reasonable for the decision-making body to rely upon it. Evidence that can be subjected to cross-examination, inspection, explanation and rebuttal (i.e. expert testimony).

For example a realtor who has professional experience and accreditation can offer an opinion if a specific project will or will not impact the value of adjacent property. An individual with no background in the field cannot offer a 'competent' opinion on the

subject. In this case it would not be considered as 'competent' evidence and would be inadmissible.

- ii. Substantial evidence: evidence that which a 'reasonable mind' would regard as sufficiently supporting a specific result.

Would this persuade the average person to make a certain conclusion? Does it do more than speculate?

- iii. Material evidence: evidence that is relevant to the issue being considered.

For example if a board is reviewing an application for a kennel (i.e. a place where dogs/cats are housed and cared for a period of time) an individual who is opposed may submit documentation denoting noise complaints from other kennels throughout Orange County. This could be construed as 'material evidence'.

Documentation denoting animals have died in kennels throughout the county and, as a result, this specific application should be denied is not relevant to the case at hand as it has no specific relationship to what is being proposed. This would be deemed immaterial evidence and would not be admissible.

As a general rule, anyone with knowledgeable information (i.e. relevant) to the case may provide factual information, but only experts may provide opinion testimony.

Even expert testimony must be competent (i.e. the expert has qualifications relevant to the issue) and material before the decision-making board can rely on it.

Hearsay evidence is testimony that the witness does not know of his or her own personal knowledge, including that which someone else told the witness and the use or introduction of signed petitions and letters.

The board may only hear testimony that focuses on the applicable standards and criteria established in the UDO. Unless they are a qualified expert, witnesses are not competent to testify about the impact of a proposed land use on the value of nearby property, the danger to public safety resulting from increases in traffic or other matters that require special training or expertise like the level of noise that will be generated.

13. *Can conditions be imposed on a SUP?*

Generally, the board hearing the application may attach conditions to the approval of an SUP as it relates to compliance with applicable standards. For example, a condition may require the applicant to increase the size of a required setback or land use buffer in order to ensure the project complies with that specific standard as detailed within the UDO. The Board cannot impose conditions addressing an issue not related to an existing standard such as establishing hours of operation, color of buildings, etc.

Conditions cannot require the applicant to take action with regard to a piece of property that is not a part of the application being considered, and conditions cannot require the alteration of a special use permit previously issued to a third party.

14. *Is there a record of the proceedings?*

Complete records must be kept of the hearings. Detailed minutes must be kept noting the identity of witnesses and giving a complete summary of their testimony. Any exhibits presented are retained by the board and become a part of the file on that case. An audio recording of the hearing is also made.

15. *How are parties notified of the decision?*

The board rendering a decision on the application is required to make a formal decision on the application (i.e. approve or deny) in writing and shall be based on the determination of facts and their application to the specific standards for the particular use and the general standards contained in the

UDO. This includes providing specific details on the board's conclusions on each applicable standard for a given SUP. Even if the application is denied, there is an obligation to make a detailed finding identifying the evidence utilized to deny the application.

The written decision must be signed and becomes effective upon filing with the Planning Department. A copy of the written decision must be delivered to the applicant, property owner, and others as required by State law.

16. Are decisions on SUP applications subject to further review?

Yes. Decisions of the BOCC or Board of Adjustment on a SUP application are subject to by the Superior Court. Appeal applications must be filed within 30 days with the court from the date the decision is made available. Please refer to NCGS 160A-393 and Section 2.12.5 (A) of the UDO for additional information.