

COUNTY COUNCIL
OF
TALBOT COUNTY, MARYLAND

2022 Legislative Session, Legislative Day No.: August 9, 2022

Bill No.: 1524 *AS AMENDED*


Expiration Date: October 13, 2022

Introduced by: Mr. Callahan, Mr. Leshner, Mr. Pack, Ms. Price

A BILL TO AMEND CHAPTER 190 OF THE TALBOT COUNTY CODE (ZONING, SUBDIVISION AND LAND DEVELOPMENT) REGARDING SOLAR ENERGY SYSTEMS

By the Council: August 9, 2022

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, September 13, 2022 at 6:30 p.m. at the Bradley Meeting Room, Talbot County Courthouse, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order: 
Susan W. Moran, Secretary

A BILL TO AMEND CHAPTER 190 OF THE TALBOT COUNTY CODE (ZONING, SUBDIVISION AND LAND DEVELOPMENT) REGARDING SOLAR ENERGY SYSTEMS

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND that Chapter 190 (Zoning, Subdivision and Land Development) shall be and is hereby amended as follows:

KEY	
Boldface	Heading or defined term
<u>Underlining</u>	Added to law by Bill
Strikethrough	Deleted from law by Bill
<u>Double Underlining</u>	Added by amendment
Double Strikethrough	Deleted by amendment
* * *.....	Existing law unaffected

* * *

§ 190-32.4. Solar energy systems.

A. General requirements. The following apply to all solar energy systems (SES)

1. Procedures for approval.
 - a. Small-scale SES require a building permit and a planting plan for screening.
 - b. Medium-scale SES require a major site plan, building permit, and a landscaping and screening plan.
 - c. Large-scale SES require a special exception, major site plan, building permit, a landscaping and screening plan, Reservation of Development Rights Agreement(s), and/or mitigation as set forth in Subsection (D) below.
 - d. Other site specific approvals, such as nontidal wetland permits, forest conservation plans, forest preservation plans, and habitat protection plans, are also required.

e. The removal of topsoil on agricultural land shall be minimized to the maximum extent practicable, and all topsoil shall remain on site unless otherwise addressed in a decommissioning plan as set forth in Subsection (C) below.

* * *

5. Site maintenance.

- a. The property owner and SES owner shall be jointly and severally responsible to maintain the SES site as follows:
 - i. Vegetation and ground cover shall be established and maintained ~~not to exceed 12 inches in height.~~
 - ii. Noxious weeds shall be controlled in accordance with state law.

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7. Public notice. Prior to filing an application for a site plan for medium- or large-scale SES or special exception for large-scale SES, an applicant shall:

- a. Erect a sign on the proposed, site notifying the public of the applicant's intent to construct a medium- or large-scale SES. The sign design and size shall be approved by the Planning Director.

* * *

8. Decommissioning. A decommissioning plan shall be required. The plan shall include:

- a. The expiration date of the contract, lease, easement, or other agreement for installation of the SES and a timeframe for removal of the SES within one year following termination of the use.
- b. A requirement that the operator and property owner provide written notice to the County whenever a SES is out of active production for more than six months.
- c. Except as otherwise provided in (8)(j) below, ~~Removal~~ removal of all above and underground equipment, structures, fencing and foundations. All components shall be completely removed from the subject parcel upon decommissioning to the maximum extent practicable, as determined by the Planning Director.
- d. Removal of substations, overhead poles, above ground electric lines located on-site or within a public right-of-way that are not usable by any other public or private utility.
- e. Except as otherwise provided in (8)(j) below, ~~Removal~~ removal of lot coverage and access roads associated with the SES.

- f. Re-grading and, if required, placement of like-kind topsoil after removal of all structures and equipment.
 - g. Re-vegetation of disturbed areas with native seed mixes and plant species suitable to the area or evidence of an approved nutrient management plan.
 - h. A recordable covenant executed by the property owner to reclaim the site in accordance with the decommissioning plan and associated approvals upon cessation of the use.
 - i. A requirement for County inspection and approval of the decommissioning and reclamation of the SES site.
 - j. For agricultural land, a plan for restoring the land to a condition suitable for permitted uses following decommissioning and reclamation of the SES site, which may include the retention of fencing and access roads if requested by the property owner and approved by the Planning Director.
 - k. The responsible party(ies) and an estimated cost schedule with line items for decommissioning, dismantling, and lawful disposal of all components. The plan must address site conditions after decommissioning and require recycling and reuse of materials, if possible.
9. The decommissioning plan and the estimated cost schedule provided for in (8)(k) above shall be updated and resubmitted to the Planning Director for review and approval every five years.
10. Financial assurance. The operator or property owner of a medium- or large-scale SES shall provide a bond, surety, letter of credit, lien instrument, funds to be held in escrow, or other financial assurance in a form and amount acceptable to the County to secure payment of 125% of the anticipated cost of removal of all equipment, structures, fencing, above or below ground level, and any accessory structures, and restoration of the site in accordance with the requirements of this section if use of the SES is discontinued continuously for one year. The financial assurance shall be provided prior to issuance of a building permit and shall be renewed so as to remain in full force and effect while the SES remains in place. The financial assurance shall require the obligor and the owner to provide at least 90 days' prior written notice to the County of its expiration or nonrenewal. The Planning Director may adjust the form and amount of the surety financial assurance as reasonably necessary from time to time to insure the ~~amount~~ same is adequate to cover the cost of decommissioning, removal and restoration of the site.

D. Large-scale SES. The following requirements apply to large-scale SES:

1. Location.

- a. Large-scale SES are prohibited in the RC Zoning District.

b. A parcel of agricultural land upon which a large scale SES designed to produce more than two megawatts (2 MW) of power is proposed to be sited shall be evaluated on the Talbot County Maryland Agricultural Land Preservation Foundation (“MALPF”) evaluation criteria. The Stewardship Practices in Section B.3 thereof shall be excluded from the final score. If the parcel’s final score exceeds 240, the large scale SES shall not be sited on the parcel, notwithstanding any other provision of this chapter to the contrary. This subsection (b) shall not apply to any large scale SES that was granted a special exception by the Board of Appeals or had an active PJM New Services Queue number assigned prior to October 11, 2022 and that does not exceed 375 acres enclosed by a fence or developed with photovoltaic panels.

2. Mitigation.

a. Large-scale SES ~~in the AC, WRC or CP Zoning Districts~~ shall provide mitigation as follows:

i. Any large-scale SES, or portion thereof, proposed to be sited on agricultural land shall provide mitigation through an offset payment. The amount of the offset shall be determined by multiplying the amount of acres taken out of agricultural use by a per-acre fee. The per-acre fee shall be equivalent to the average of the accepted Round One offers for agricultural land preservation easement acquisitions in the County by the ~~Maryland Agricultural Land Preservation Foundation (“MALPF”)~~¹ for the most recent funding cycle in which such Round One offers were accepted preceding the date on which the pre-application for SES approval is filed with the County. All offset payments shall be applied toward the County’s contribution to the MALPF Matching Funds Program, which shall be used to purchase agricultural land easements in the County. The offset payment shall be paid to the County prior to the issuance of the SES building permit.

ii. Any large-scale SES, or portion thereof, proposed to be sited on land other than agricultural land shall provide mitigation through a Reservation of Development Rights Agreement approved by the County and recorded among the land records of Talbot County, reserving development rights on an equivalent area of land in the AC, WRC, RC or CP Zoning District.

b. The required mitigation through the Reservation of Development Rights Agreement shall remain in place and shall be extended as necessary until the SES is abandoned or discontinued, the decommissioning plan has been implemented, the work inspected and approved by the County and applicable portions of the project area have been converted back to active agricultural production.

c. Upon termination of the original lease term and any extensions, if the SES is to remain active, mitigation shall be provided pursuant to requirements in effect at that time.

¹ Editor’s Note – This language was deleted after passage as redundant given the abbreviation of “MALPF” in the new Subsection (D)(1)(b) added by amendment.

3. Development rights.

- a. An approved SES not subject to (2)(a)(i) above shall utilize development rights equal to the number of rights attributable to the project area with a minimum reservation of one development right. The property owner shall set aside the requisite number of development rights by a Reservation of Development Rights Agreement approved by the County and recorded among the land records of Talbot County. The Agreement shall restrict development and density rights on the balance of the property to the extent the SES has used those rights for the SES until the SES has been removed, the decommissioning plan has been implemented and the site has been inspected and approved by the County. The number of rights placed under reservation shall be calculated using the base density multiplied by the total area of land encumbered by the SES and all its appurtenances.

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SECTION TWO: AND BE IT FURTHER ENACTED, that if any provision of this Bill or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Bill which can be given effect without the invalid provision or application, and for this purpose the provisions of this Bill are declared severable.

SECTION THREE: AND BE IT FURTHER ENACTED, that the Talbot County Department of Planning and Zoning and the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, may make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation included in this Bill, as finally adopted, that are incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FOUR: AND BE IT FURTHER ENACTED, that this Bill shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1524 having been published, a public hearing was held on Tuesday, September 13, 2022 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 North Washington Street, Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: October 11, 2022 *AS AMENDED*

By Order Susan W. Moran
Susan W. Moran, Secretary

Callahan	-	Aye
Divilio	-	Aye
Leshner	-	Aye
Price	-	Nay
Pack	-	Aye

EFFECTIVE DATE: December 10, 2022