

County Council Of Howard County, Maryland

2021 Legislative Session

Legislative Day No. 15

Resolution No. 142-2021

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between the Howard County, Maryland and Terrapin Branch Solar, LLC, and 2800 Nixon's Farm Lane, LLC, for the generation of electricity on property owned by 2800 Nixon's Farm Lane, LLC located at 2800 Nixon's Farm Lane, West Friendship, Maryland

Introduced and read first time _____, 2021.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2021.

By order _____
Michelle Harrod, Administrator

This Resolution was read the third time and was Adopted ____, Adopted with amendments ____, Failed ____, Withdrawn ____, by the County Council on _____, 2021.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2021

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Terrapin Branch Solar, LLC, is a limited liability company organized and
2 existing under the laws of the State of Maryland, that engages in the solar generation of energy
3 (the “Facility Owner”); and
4

5 **WHEREAS**, 2800 Nixon’s Farm Lane, LLC (the “Landowner”), is a Maryland limited
6 liability company that owns, in fee simple, a parcel of real property in Howard County at 2800
7 Nixon’s Farm Lane, West Friendship, Maryland 21797, totaling approximately 87 acres,
8 described in the deed dated June 29, 2010 and recorded among the Land Records at liber 12565,
9 folio 00273 (the “Property”); and
10

11 **WHEREAS**, the County has established policies to support the implementation of
12 renewal energy projects located in Howard County; and
13

14 **WHEREAS**, the Facility Owner has entered into a Lease Agreement with the Landowner
15 for a portion of the Property and the Facility Owner is or will be the owner of certain personal
16 property located on the Property that will be used for the solar generation of electricity (the
17 “Project”); and
18

19 **WHEREAS**, under the Lease Agreement, the Facility Owner expects to use a portion of
20 the Property for the Project; and
21

22 **WHEREAS**, the Facility Owner has requested that the County permit the Facility Owner
23 to make payments in lieu of any County personal property taxes pursuant to Section 7-514 of the
24 Tax-Property Article of the Annotated Code of Maryland; and
25

26 **WHEREAS**, the Facility Owner has demonstrated to the County that an agreement for
27 payments in lieu of taxes is necessary to make the Project economically feasible; and
28

29 **WHEREAS**, in order to enable the Facility Owner to use the Property for the solar
30 generation of electricity and to meet the County’s goals, it is in the interest of the County to
31 accept payments in lieu of County personal property taxes subject to the terms and conditions of

1 the Payment in Lieu of Taxes Agreement (the "Agreement") attached to this Resolution as
2 "Exhibit 1".
3

4 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
5 Maryland this ____ day of _____, 2021, that:

6 (1) In accordance with Section 7-514 of the Tax-Property Article of the Annotated Code of
7 Maryland, the County shall abate all County personal property taxes for the Property
8 subject to the terms and conditions of the Payment in Lieu of Taxes Agreement (the
9 "Agreement") attached to this Resolution as "Exhibit 1".

10 (2) The County Executive is hereby authorized to execute and deliver the Agreement in the
11 name and on behalf of the County in substantially the form attached.

12 (3) The County Executive, prior to execution and delivery of the Agreement, may make such
13 changes or modifications to the Agreement as he deems appropriate in order to
14 accomplish the purpose of the transactions authorized by this Resolution, provided that
15 such changes or modifications shall be within the scope of the transactions authorized by
16 this Resolution; and the execution of the Agreement by the County Executive shall be
17 conclusive evidence of the approval by the County Executive of all changes or
18 modifications to the Agreement, and the Agreement shall thereupon become binding
19 upon the County in accordance with its terms.

Exhibit 1

Project: Terrapin Branch Solar at
Nixon's Farm - Howard
County Solar Project

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS PAYMENT IN LIEU OF TAXES AGREEMENT (this "PILOT Agreement") is made this ___ day of _____, 2021 (the "Effective Date"), by and among **HOWARD COUNTY, MARYLAND**, a body corporate and politic of the State of Maryland (the "County") on the one hand, and **Terrapin Branch Solar, LLC**, a limited liability company organized and existing under the laws of the State of Maryland, with offices at 2405 York Road, Suite 201, Lutherville Timonium, Maryland 21093 (the "Facility Owner"), and **2800 Nixon's Farm Lane, LLC**, with a mailing address of 17500 Frederick Road, Mt. Airy, Maryland 21771 (the "Landowner") on the other hand. Each of the County, the Facility Owner and the Landowner are a "Party" and, collectively, the "Parties".

RECITALS

A. The County has established policies to support the implementation of renewal energy projects located in Howard County.

B. The Facility Owner has entered into a Lease Agreement (the "Lease Agreement") with the Landowner, the owner in fee simple of that parcel of real property in the County at 2800 Nixon's Farm Lane, West Friendship, Maryland 21797, totaling approximately 87 acres, described in the deed dated June 29, 2010, liber 12565, folio 00273 (the "Property"), to lease a portion of the Property.

C. The Facility Owner is or will be the owner of certain personal property located on the Property (the "Personal Property") that will be used for the solar generation of electricity (the "Project").

D. The Facility Owner has requested that the County permit the Facility Owner to make payments in lieu of any County personal property taxes pursuant to Section 7-514 of the Tax-Property Article of the *Annotated Code of Maryland* (the "Act"). Section 7-514 of the Act authorizes the County to agree to such payment in lieu of Property Taxes, as set forth below:

(a) *Agreement with owner of facility for generation of electricity.*

(1) The governing body of a county or municipal corporation may enter into an agreement with the owner of a facility for the generation of electricity that is located or locates in the county or municipal corporation for a negotiated payment by the owner in lieu of taxes on the facility.

- (2) An agreement for a negotiated payment in lieu of taxes under this section shall provide that, for the term specified in the agreement:
 - (i) The owner shall pay to the county or municipal corporation a specified amount each year in lieu of the payment of county or municipal corporation real and personal property tax; and
 - (ii) all or a specified part of the real and personal property at the facility shall be exempt from county or municipal corporation property tax for the term of the agreement.

F. The County Council of Howard County, Maryland approved the form of this PILOT Agreement by Resolution (CR__-2021), dated _____, 2021, a copy of which is attached hereto as Exhibit "A".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County, the Facility Owner, and the Landowner agree as follows:

1. Abatement of County Personal Property Taxes for Solar Generation of Electricity.
 - (a) From the Effective Date and continuing for a period of twenty (20) years from the Commercial Operations Date, the Personal Property taxes imposed on the Facility Owner, based on an assessment of the Personal Property located at the Project and used to generate and deliver electricity, shall be exempted as follows:
 - (i) From the Commercial Operations Date through ten years (10), 100% of County personal property taxes for the Personal Property shall be exempt, upon the condition that the Facility Owner pay to the County \$1 per year in lieu of such taxes; and
 - (ii) For years eleven (11) through twenty (20) after the Commercial Operations Date, 50% of County personal property taxes for the Personal Property shall be exempt, upon the condition that the Facility Owner pay to the County \$1 per year in lieu of such taxes.
 - (b) For purposes of this Agreement "Commercial Operations Date" shall mean the date on which the Project generates electric energy on a commercial basis, and the interconnection to the contracted local electric utility's electric grid has been authorized and is functioning in accord with all standards required by the utility.
 - (c) The exemptions are contingent on the following:
 - a. The Facility Owner must submit all required personal property tax returns to the Maryland State Department of Assessment and Taxation. The Personal Property tax abatement shall then be applied by the County.

- b. The Facility Owner must remain in good standing with the Maryland Department of Assessments and Taxation and pay any and all other County fees and assessment, and must submit an annual report to the County by July 31 of each year that details the operations of the Facility, including the amount of electricity generated during the preceding fiscal year, which begins on July 1 and ends on June 30.
- (d) The exemptions under Section 1(a) above applicable to less than a full taxable year shall be prorated on a per diem basis.

2. Representations and Warranties.

- (a) The County represents and warrants to the Facility Owner that it has the authority to abate the County Personal Property Taxes for property located in Howard County.
- (b) The Facility Owner represents and warrants to the County that it is eligible in all respects to enter into this PILOT Agreement and to make payments in lieu of taxes under the Act.
- (c) The Facility Owner, will develop, construct, and provide for the operation of the Project, at full buildout, which will generate up to 2 MWAC.
- (d) The Facility Owner covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

4. Term of Agreement.

- (a) This Agreement shall remain in effect until the earlier to occur of:
 - (i) the expiration of twenty (20) years from the Commercial Operations Date;
 - (ii) the date on which the Landowner ceases to be the fee simple owner of the Property;
 - (iii) the date on which the Facility Owner ceases operation of the Project;
 - (iv) any default by the Facility Owner under this PILOT Agreement, which shall include but is not limited to the failure of the Facility Owner to pay the County for any amounts due under this PILOT Agreement;
- (b) The County may terminate this Agreement for its convenience if at any time the County determines that such termination is in the best interest of the County. In the event of such termination, any exemption applicable to less than

a full taxable year shall be prorated on a per diem basis up to the date of termination.

5. Assignment. This Agreement may not be assigned without the prior written approval of the County.

6. Entire Agreement. This PILOT Agreement represents the entire understanding and agreement of the Parties.

[Signature pages follow]

IN WITNESS WHEREOF, the County, the Facility Owner, and the Landowner by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

Name:

FACILITY OWNER:

Terrapin Branch Solar, LLC

By: _____
Name:

WITNESS/ATTEST:

Name:

LANDOWNER:

2800 Nixon's Farm Lane, LLC

By: _____
Name:

ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____
Calvin Ball
County Executive
Date: _____

APPROVED for Form and Legal
Sufficiency this _____ day
of _____, 202_

APPROVED by Department of Finance:

Gary W. Kuc
County Solicitor

Rafiu Ighile, Director

Reviewing Attorney:

Kristen Bowen Perry
Deputy County Solicitor

[Notaries continue on the following pages.]

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 202__, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, and [s/he] acknowledged that [s/he] executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and [s/he] further acknowledged the same to be the [his/her] act [on behalf of if corporate owner].

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 202__, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared _____, and [s/he] acknowledged that [s/he] executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and [s/he] further acknowledged the same to be the [his/her] act [on behalf of if corporate owner].

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

STATE OF MARYLAND, HOWARD COUNTY, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 2017, before me, the subscriber, a Notary Public of the State of Maryland, in and for the County aforesaid, personally appeared **Calvin Ball**, the County Executive of Howard County, Maryland, and he acknowledged that he executed the Payment in Lieu of Taxes Agreement for the purposes therein contained, and further acknowledged the same to be the act of Howard County, Maryland.

AS WITNESS my Hand and Notarial Seal:

Notary Public

My Commission Expires:

I CERTIFY THAT:

- (a) I am an attorney admitted to practice before the Court of Appeals of Maryland; and
- (b) I prepared the foregoing Payment in Lieu of Taxes Agreement.

Kristen Bowen Perry

Exhibit A

Council Resolution No. _____

Office of the County Auditor
Auditor's Analysis - REVISED

Council Resolution No. 142-2021

Introduced: September 8, 2021

Auditors: Owen Clark and Michael A. Martin

Fiscal Impact:

Assuming personal property taxes would be assessed without the passage of this legislation, our Office estimates the fiscal impact of this legislation is a property tax abatement of approximately \$219,000 over the 20-year term of this agreement. Details regarding this analysis are outlined in the table below.

Total Tax Abatement	
Years	Personal Property Taxes
1 - 10	\$ 165,767
11 - 20	53,390
Total	\$ 219,157

Our Office calculated this estimate using the Maryland State Department of Assessments & Taxation's (SDAT) assessment of the solar facility, provided to us by the solar developer for the tax year beginning July 1, 2019. Our Office has assumed the assets have a 30-year useful life and will depreciate annually by a conservatively stated 3.5 percent over the term of this agreement.

Per the Administration, the financial structure of this agreement and project were developed prior to knowledge that SDAT would assess personal property taxes on the solar equipment.

Our Office would like to note that although a payment in lieu of taxes (PILOT) agreement for personal property taxes has not been executed, the Director of the Department of Finance (Finance) has confirmed Finance has not been billing the solar facility for personal property taxes since the inception of the project. Our Office estimates this may have resulted in a total reduction of approximately \$178,000 in County personal property tax revenues since 2014. At this time, it is unclear if the County will seek to collect personal property taxes from prior years that were never collected.

NOTE: Since this PILOT is associated with an already operational solar facility, the Administration has noted that an Amendment to this agreement will be filed which clarifies that the personal property tax abatements will only be provided prospectively.

Purpose:

This legislation would allow for Terrapin Branch Solar, LLC (facility owner), and 2800 Nixon's Farm Lane, LLC (landowner), to enter into a PILOT agreement with the County for the generation of electricity on property owned by 2800 Nixon's Farm Lane, LLC. This is an Aggregate Net Metering project, which is typically used to off-set solar energy to non-profits, governments, or agricultural facilities.

The terms of the PILOT agreement are as follows:

- Years 1 - 10:
 - The facility owner will be exempt from paying 100 percent of the County's personal property taxes on the condition the facility owner pay the County \$1 per year in lieu of exempted taxes.

- Years 11 - 20:
 - The facility owner will be exempt from paying 50 percent of the County's personal property taxes on the condition the facility owner pay the County \$1 per year in lieu of exempted taxes.

Other Comments:

Pertaining to the abatement of this parcel's real property taxes, a PILOT agreement (via Council Resolution 90-2014) was authorized on July 25, 2014. However, the CR90-2014 agreement was never executed and a revised PILOT agreement was later passed via CR11-2018, which was executed. During the period of time prior to the passage of CR11-2018, Finance continued to operate as if CR90-2014 was signed and in force. As such, \$104,000 of real property tax revenue was abated without an executed agreement.

Our Office has an open inquiry with the solar developer of this project to confirm which customers are served by this solar project and where they are located. To the extent that these customers are located outside of Howard County, there may be County tax abatements that are benefiting non-County entities.

CR142-2021

Sayers, Margery

From: Robin Hessey <rmhessey@gmail.com>
Sent: Wednesday, December 1, 2021 4:44 PM
To: CouncilMail
Subject: CR140, CR141, CR142, and CR 143 take off the table and Vote YES Dec 6

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Members of the Howard County Council,

I am writing to enlist your help in passing four bills (or resolutions) critical for the future of solar power development in Howard County.

CR140, CR141, CR142, and CR 143 all give partial tax breaks to specific projects being proposed in Howard County. It is also important to note that these projects will continue to pay various other Howard County taxes and this is absolutely not a full abatement of their real and personal property tax.

If Howard Co. is serious about sustainability and about decreasing our carbon footprint in the face of the climate change crisis, then we need to bring these resolutions off the table, consider them, and vote YES on each of them.

Sincerely,

Robin Hessey
10768 McGregor Drive
Columbia, MD 21144

Sayers, Margery

From: Paige Getty <minister@uucolumbia.net>
Sent: Sunday, December 5, 2021 9:27 PM
To: CouncilMail
Subject: Support for CR140, CR141, CR142, and CR143 (solar power in Howard County)

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council Chair Walsh, Council Vice-Chair Jones, and Councilmembers Jung, Yungmann, and Rigby:

Please remove Council Resolutions 140, 141, 142, and 143 from the table and vote to pass them, granting PILOTs to the properties affected by those resolutions.

I write to you as a resident of District 4 (I live in Hickory Ridge in Columbia) and as the lead minister of the Unitarian Universalist Congregation of Columbia (District 3), which is a co-owner of OBIC—the Owen Brown Interfaith Center, an anchor customer of the community solar project that would benefit from CR140.

We are the project's customer because we believe that we must do what is in our power to combat the climate crisis, and solar power is one of the key tools to do that. But government must do its part to level the playing field so that solar power can compete with the entrenched power of dirty fuel sources. And this minimal tax break is one step in the right direction.

We'll continue doing our part. Please do yours.

Thank you,
Rev. Paige Getty

The Rev. Paige Getty, Minister
she / her / hers
Unitarian Universalist Congregation of Columbia
7246 Cradlerock Way
Columbia, Maryland 21045
(410) 381-0097, ext. 101
minister@uucolumbia.net

Sayers, Margery

From: Jung, Deb
Sent: Wednesday, November 10, 2021 11:49 AM
To: Sayers, Margery
Subject: FW: CR140-143

Testimony

From: Carl L <clatkin2000@gmail.com>
Sent: Wednesday, November 10, 2021 11:47 AM
To: Jung, Deb <djung@howardcountymd.gov>
Subject: CR140-143

[Note: This email originated from outside of the organization. Please only click on links or attachments if you know the sender.]

Dear Council Member Jung,
I strongly urge you to vote in favor of CR140, 141, 142, and 143. With unchecked climate change leading to a possible terrible future for our children and grandchildren, we need to act quickly. Please support these solar projects in Howard County.

Best regards,
Carl Latkin
6062 Red Clover Ln, Clarksville, MD 21029



HCCA

Howard County Citizens Association

Since 1961...

The Voice Of The People of Howard County

Date: 20 September 2021

Subject: HCCA Testimony AGAINST CR140 - 143

My name is Stu Kohn and I reside in Laurel. I am the President of the Howard County Citizens Association, HCCA. We have major problems with CR140 thru 143 and request that the Council asks serious questions and receive satisfactory answers before you begin to think about voting on these Resolutions. They are as follows:

- What is the impetus of these Resolutions?
- We see that a Fiscal Impact Analysis was posted a few days ago and although not required because it is a Resolution is appreciated. We find it interesting that the Auditor's office has asked the "Office of Community Sustainability to provide additional background which omits estimates and assumptions so its fiscal impact data can be appropriately verified." They state they are "unsure whether the Administration's estimates noted above consider the \$1 payment for personal property and the \$1 payment for real property tax abatements due to the County each year." Furthermore, the Auditor's Office states, "They are unable to perform a similar analysis on the personal property tax abatements referenced in the Administration's testimony until additional information is obtained from the Office of Community Sustainability."

The HCCA strongly recommends that until such information is obtained because at this time is inconclusive these Resolutions should be tabled. We would hope the public should be permitted to testify when the Fiscal Impact Analysis has been completed.

- Why should the solar companies be given an incredible break in their Property Taxes? The Resolution states, "50% of County Real Property taxes shall be exempt, upon the condition that the Landowner pay the County \$1 per year in lieu of such exempted taxes; and for years eleven (11) through twenty (20) after the Commercial Operations Date, 25% of County Real Property taxes shall be exempt, upon the condition that the Landowner pay to the County \$1 per year in lieu of such exempted taxes"?

Please tell us why are we given away the farm? Why do the Facility Owner and Solar Company deserve a break today or in the future? Why is the County not given tax exemptions for a barber, hair stylist, grocery store owner, restaurants, or even me, etc.?

Is it fair that the Facility Owner will in addition to receiving Agricultural Preservation Funding when Solar is a commercial enterprise to replace land designated for Agricultural Preservation only to lease to Solar Companies and receives lower taxes because it's farmland? With these Resolutions they will pay \$1 a year instead of the already much lower taxes because it's a farm. How much is the County losing?

- Why should the Facility Owner be given a major break from the Commercial Operations Date through ten years (10), 100% of County personal property taxes for the Personal Property shall be exempt, upon the condition that the Facility Owner pay to the County \$1 per year in lieu of such taxes; and For years eleven (11) through twenty (20) after the Commercial Operations Date, 50% of County personal property taxes for the Personal Property shall be exempt, upon the condition that the Facility Owner pay to the County \$1 per year in lieu of such exempted taxes.
- What will be the County's formula for the Facility owner to have the County accept payments in lieu of real and personal property taxes as stated on Page 1 lines 29 thru 31?
- When will reimbursement be made by the property owner from the Agricultural Preservation Funding which they previously received and now they are being paid by the solar companies? We understand the County has invested approximately \$175 million dollars in Agricultural Preservation Program which is stellar, but it needs to be paid back now! Will you commit to ensuring that the number of acres supported by Solar on Agricultural Preservation land will immediately be paid back? You owe it to all the taxpayers and voters!

It is imperative the aforementioned questions be asked by you in the Work Session as you need to ascertain all the facts before your decision on these Resolutions. The answers to the proposed questions need to be most compelling as it is your obligation for the interest of all.



Stu Kohn
HCCA President



**HOWARD COUNTY COUNCIL
AFFIDAVIT OF AUTHORIZATION
TO TESTIFY ON BEHALF OF AN ORGANIZATION**

I, Stu Kohn, have been duly authorized by
(name of individual)

Howard County Citizens Association to deliver testimony to the
(name of nonprofit organization or government board, commission, or task force)

County Council regarding CR140-143 to express the organization's
(bill or resolution number)

support for / opposition to / request to amend this legislation.
(Please circle one.)

Printed Name: Stu Kohn

Signature: _____

Date: 16 September 2021

Organization: Howard County Citizens Association

Organization Address: Ellicott City, MD. 21041

Ellicott City, MD. 21041

Number of Members: 500

Name of Chair/President: Stu Kohn

*This form can be submitted electronically via email to
councilmail@howardcountymd.gov no later than 2 hours prior to the start of the
Public Hearing.*