



Planning and Development Department

156 CHURCH STREET, HENDERSON, NC 27536

(252) 738-2080 / FAX 738-2089

Staff Report 09/14/2017

Owner:
Dogwood Creek
Land Holdings

Applicant:
Cypress Creek
Renewables

Parcel ID:
0381 01001

Location:
3335 Glebe Road

Current Zoning:
AR

Public Hearing:
09/14/17

Prepared by:
Sam Hobgood

Description of Conditional Use Permit Request:

The applicant is requesting a modification of the site plan that was approved for a Conditional Use Permit by the Board of Adjustment on 6/11/2015.

Exhibits as follows:

- Exhibit 1.** Application
- Exhibit 2.** Original Site plan approved on 6/11/15 by the BOA. **(attached)**
- Exhibit 3.** Proposed modified Property Site plan. **(attached)**
- Exhibit 4.** Minutes from BOA Case No. 20150514-1
- Exhibit 5.** Adjoining owners map, surrounding zoning and 2013 Aerial
- Exhibit 6.** Current images of property.

DRAFT Findings of Fact

1. The request is for a modification from the original approved site plan. The modification consist of relocating the Point of Interconnection (POI) and establish a more opaque buffer on the east end of Glebe Road due to existing vegetation being removed during excavation, originally, it was to remain an existing buffer.
2. The property is owned by Dogwood Creek Land Holdings and is identified as tax parcel 0381 01001.
3. The property consists of 60.4 acres.
4. The property has been recently cleared of its existing vegetation.
5. The adjoining property owners were notified on August 30, 2017.
6. The property was posted on August 30, 2017.

Staff Comments

The applicant is proposing a modification for two areas. First, the Point of Interconnection is being relocated to the southeast side of the property, off of Glebe Road. The original location of the POI that was approved at the Conditional Use Permit hearing on June 11, 2015 was on the northwest side of Kelly Road (Exhibit 2). Second, the existing vegetation on the southeast side of the property, off of Glebe Road was to remain (Exhibit 2), however this buffer has been completely removed during the clearing process. The applicant is proposing a more opaque buffer to remedy the issue. The proposed buffer consists of 12' deciduous understory trees planted @ 18' OC, 6' evergreen understory trees planted @ 8' OC and 30" evergreen shrubs planted @ 8' OC. The vegetative buffer at this location consist of an area 100' by 35' (See Exhibit 3).

Staff feels these modifications are so extensive and have an adversely effect on surrounding areas, it requires the board's review and approval prior to work commencing.



Vance COUNTY

NORTH CAROLINA

Conditional Use Permit Application

Vance County Planning & Development Department

156 Church Street, Suite 3
Henderson, NC 27536
Ph: (252) 738-2080
Fax: (252) 738-2089

For Administrative Use Only:

Case #	
Fee Paid	
BOA Date	

Property Owner Information

Property Owner: Dogwood Creek Land Holdings

Mailing Address: 3250 Ocean Park Blvd Suite 355

City: Santa Monica State: Ca Zip Code: 90405

Phone #: (404) 705 - 5111 Fax #: () -

E-mail Address: kleffer@ccrenew.com

Applicant Information

Applicant: Cypress Creek Renewables

Mailing Address: 5310 S. Alston Ave Building 300

City: Durham State: NC Zip Code: 27713

Phone #: (919) 601 - 1135 Fax #: () -

E-mail Address: martin@ccrenew.com

Property Information *For multiple properties please attach an additional sheet.*

Property Address: _____

Tax Map Number: 0381 01001 PIN (parcel identification #): 0381 01001

Type of Petition: Conditional Use Permit Modification

Existing Zoning: A-R Proposed Zoning: _____

Acreage: 60+ Road Frontage: _____

Existing Use: Vacant, cleared and ready to start construction of solar farm once we finalize building permits

Deed Reference

- Metes and bounds description attached
- Site plan/sketch of proposal attached



Vance COUNTY

NORTH CAROLINA

Conditional Use Permit Application

Vance County Planning & Development Department

Statement of Justification

1. Application is hereby made for the following use: *Please explain below:*

Solar energy system, Already approved through CUP. Need to make modification to POI location and southern buffer.

2. The intent is to : *Check all that apply:*

- Construct a new structure for a conditional use;
- Repair the existing structure for the conditional use;
- Alter and/or expand the existing structure for the conditional use;
- Other

3. The following requirements have been provided: *Check all that apply:*

- Site plan;
- Property description;
- NC DOT entrance permit (if applicable);

4. Additional information:

Construction to be completed by Dec 31, 2017.

In order to issue a Conditional Use Permit, the Board shall consider each of the following conditions, and based on the evidence presented at the hearing(s) make findings in regards to each and must find that the issuance of the Conditional Use Permit is in the best interest of the county.

A. The use requested is among those listed as an eligible conditional use in the district in which the subject property is located.

Yes No

B. The use or development is located, designed and proposed to be operated so as to maintain or promote the public health or safety;

Yes No



Vance COUNTY

NORTH CAROLINA

Conditional Use Permit Application

Vance County Planning & Development Department

C. The use or development complies with all required regulations of the Zoning Ordinance and all applicable specific conditions and specifications;

Yes No

D. The use or development is located, designed and proposed to be operated so as to maintain or enhance the value of adjoining or abutting property, or that use or development is a public necessity;

Yes No

E. The use or development will be in harmony with the area in which it is located and will be in general conformity with the plan of development of the County.

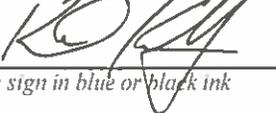
Yes No

Property Owners Signature


Please sign in blue or black ink

Date 8/24/17

Applicants' Signature


Please sign in blue or black ink

Date 8/24/17

Exhibit 4: Official minutes of June 11, 2015 Board of Adjustments hearing

VANCE COUNTY BOARD OF ADJUSTMENTS

The Vance County Board of Adjustments met at a regular and duly advertised meeting on June 11, 2015 at 4:00 p.m. in the Commissioners Meeting Room of the Vance County Administrative Building at 122 Young Street in Henderson, NC.

MEMBERS PRESENT

Thomas Shaw – Chairperson
Agnes Harvin
Ruth Brummitt
Phyllis Stainback – Vice Chairperson
Alvin Johnson, Jr.
Blake Haley

ALTERNATES PRESENT

Ruxton Bobbitt

MEMBERS ABSENT

Rev. Roosevelt Alston

STAFF PRESENT

Jordan McMillen, Planning Director
Jonathan Care, County Attorney
David Robinson, Planner

Chairperson Shaw introduced the second case explaining the order of business and gave an opportunity for board members to express any conflicts. Mr. Shaw declared the hearing reopened for the following case:

BOA CASE NO. 20150514-1; Sallie Ann Hildenbrand, Charles Davis, Virginia Craven, and Frederick Smith (property owners), Kelly Solar, LLC (applicant) – Conditional Use Permit to allow a solar farm at 3335 Glebe Road (Tax Parcel 0381 01001).

Chairperson Shaw swore in witnesses Keith Billy, Ronnie Perkinson, Mildred Henderson. Witnesses previously sworn in include Mr. Jordan McMillen, Mr. David Robinson, Mr. David York, Mr. Kevin Gorman, Mr. Tom Hester, Mr. John Price, Mr. Lee Wade, Ms. Sandra Reavis, and Mr. Preston Hargrove. Mr. Robinson presented the staff report and reviewed the draft findings of facts as follows:

Description of Conditional Use Permit Request:

The applicant is requesting a conditional use permit to allow construction of a 5 MW solar farm under the use category of “Solar Energy System, Large Scale”.

Findings of Fact

1. The request is for a conditional use permit to allow a 5 MW solar farm on a parcel zoned (A-R) Agricultural Residential.
2. The property is owned by Sallie Ann Hildenbrand, Charles Davis, Virginia Craven, and Frederick Smith.
3. The property is located at 3335 Glebe Road, on the northeast corner of Kelly Road and Glebe Road.
4. The property consists of 60.4 acres of which approximately 31 acres will be the array footprint.
5. The majority of the property is wooded and the applicant plans to clear 41 acres.
6. The application requesting a conditional use permit was filed on April 1, 2015.
7. The adjoining property owners were notified on May 29, 2015.
8. The property was posted on May 29, 2015.
9. The Board of Adjustment opened the hearing and heard testimony from staff, the applicant, and affected individuals at the May 14, 2015 hearing. The Board voted to table the hearing to allow the applicant to revise the site plan for consideration of screening and buffering concerns.

Staff Comments

Mr. Robinson provided an update on the staff report for the conditional use permit request. Mr. Robinson stated that all testimony and evidence at the May 14th hearing, including the findings of fact and staff report, carries over to this hearing.

Mr. Robinson confirmed that the Board voted to table the case to allow the applicant to revise the site plan. Specifically, the Board asked the applicant to look at utilizing existing vegetation as a buffer. Since that hearing, the applicant has visited the site and conducted a shade analysis. The landscaping plan now features a planted buffer along Glebe Road, west of the driveway entrance as well as along Kelly Road from the intersection with Glebe Road north to where the array footprint ends. This buffer planting consists of two staggered rows of evergreen understory trees planted at a height of 6 feet. For every 100 feet, there are 3 staggered crape myrtle trees grouped together. Additionally, the plan shows a row of evergreen understory shrubs (planted at a height of 30 inches) in front of the understory trees and crape myrtles. The applicant proposes to plant a mixture of NC upland meadow mix all throughout the street yard within the 50’ setback area. A minimum of 50’ of existing vegetation will serve as screening on Glebe Road east of the driveway entrance. A minimum of 35’ of existing vegetation will serve as screening along the length of the eastern and northern property boundaries.

According to the applicant, there are restraints on the rear of the site that prevents them from shifting the array footprint north. Leaving the large pines along the road will throw significant shadows onto the array footprint. Evidence supporting this claim is a shade analysis showing the throw of shadows throughout the year from October through March. The applicant claims these shadows will make a significant portion of the arrays unproductive and inefficient. Additionally, the understory trees along the road frontages are mostly deciduous so during the colder months of the year the screening will not be effective.

The applicant has submitted a NCDENR erosion and sedimentation control permit to staff since the May 14th hearing. The applicant has also changed the location of the interconnection service poles. The site plan now shows the service poles being located to the north of the creek in the northwestern corner of the property.

Staff would like assurance from the applicant that the proposed planted buffer allows enough space for the plantings to grow healthfully without any significant chance of overcrowding and competition for resources.

Staff would also suggest that the submittal of the executed pages of the interconnection agreement with the utility be a condition of the release of the conditional use permit.

THOSE SPEAKING FOR THE REQUEST

David York (Attorney, Smith Moore Leatherwood LLP) – Mr. York confirmed that he and Mr. Kevin Gorman visited the site immediately following the May 14th hearing and met with several of the surrounding property owners. They discussed various areas where tree conservation was practical and feasible.

Mr. York wanted to confirm that the property appraisal testimony from Mr. Hester at the May 14th was adequately in the record. Mr. York then called on Mr. Gorman to provide an overview of the changes to the site plan.

Kevin Gorman (Project Manager, Bloc Design, PLLC) – Mr. Gorman stated that he looked at where existing vegetation could be used for buffering. He incorporated that where possible and also enhanced the proposed buffer plantings.

Mr. York asked Mr. Gorman to comment on the clustering of the plantings and whether the density is such that it will not endanger the health or viability of the plant material. Mr. Gorman confirmed that they increased the planting area from 30 feet wide to 50 feet wide, which provides more than enough space for the revised plantings.

Mr. Gorman continued that they included flowering material in the revised buffer to break up the monotony of the evergreen plantings.

Mr. Gorman submitted illustrations of the site with proposed plantings in place. Mr. Bobbitt asked how long it would take for the plantings to reach maturity shown in illustrations. Mr. Gorman said that the illustration reflects growth after a five year time period.

Ms. Harvin asked about the groundcover within the site. Mr. Gorman replied that it would be a mix consisting of Bahia grass, Bermuda, clover, and buckwheat.

Mr. York asked Mr. Gorman if the proposed buffer plantings provide more robust screening than the existing hardwoods and tall pine trees on the site. Mr. Gorman said the proposed buffer will screen the use of the site better than the existing vegetation.

Ms. Stainback sought clarification concerning the location of the driveway relative to Jason Reavis' house. Mr. Gorman said the new driveway will be located to the east of the existing driveway, due to sight distance requirements.

Mr. Bobbitt asked if the intent is to purchase or lease the property for the proposed use. He also asked if the applicants foresee abandonment of these farms after a 15 or 20 year lease. Mr. York replied that it is his understanding that the property will be bought from the current landowners but a lease arrangement will be in place between a property owner and operator. He also stated that the salvage value of the material on the farm far exceed the cost of removal.

Mr. York also stated that he would be willing to accept the installation of a drip irrigation system for the buffer plantings as a condition of approval.

THOSE SPEAKING AGAINST THE REQUEST

Ronnie Perkinson (Property owner, 4201 Glebe Road) – Mr. Perkinson stated that there is a gully in the middle of the subject property. Additionally, Mr. Perkinson stated that he does not believe the soil is suitable for the proposed buffer plantings.

Mr. Perkinson asked that the Board require a 100 foot setback. He also requested that a \$1,000,000 bond be placed on the company to ensure removal of infrastructure at the end of the life of the solar farm.

Mildred Henderson (Property owner, 3156 Kelly Road) – Ms. Henderson echoed Mr. Perkinson's comment concerning the unproductive nature of the proposed site's soil. She said the tobacco that was planted there 36 years ago did not

produce. She does not believe that the buffer plantings will be able to grow given the quality of the soil. She also said did not believe that the solar farm fit within the community.

John Price (Property owner, 3775 Glebe Road) – Mr. Price asked the Board to consider a 100 foot setback. He also asked that the existing vegetation within the 100 foot setback remain.

Mr. Price also had a concern that there will be runoff from the solar farm which would be damaging to the local waterways.

Mr. Jordan McMillen stated that any conditions that are made as part of the conditional use permit have to be reasonable within the zoning ordinance. He continued to say Vance County has regulations that the Board has to work within.

Mr. Gorman addressed some of the comments made by adjacent property owners. In terms of the topography of the site, Mr. Gorman said that the locations of the arrays were based on the elevation.

Ms. Harvin asked if the applicant has completed soil analyses on other projects. Mr. Gorman stated that he has and the tests typically determine the pH of the soil. Ms. Harvin asked if soil is ever replaced on project sites. Mr. Gorman said that they cannot plant landscaping in muck. He said that there is vegetation growing out there now so there should not be any issue with the specified buffer plantings.

Mr. Bobbitt asked Mr. Gorman to explain how skimmer basins work. Mr. Gorman explained how the skimmer basins are put in place and that they have to remain in place until NC DENR determines that adequate groundcover is present on the site. Mr. Bobbitt asked how often NC DENR visits sites. Mr. Gorman said it depends on how many projects they have going on at any given time, but that a self-inspection report is now available.

Mr. York asked Mr. Gorman whether the impervious surface resulting from a residential development substantially exceed the impervious surface of the proposed solar farm. Mr. Gorman stated there would only be a slight increase in impervious surface with the solar farm and it would be much less than a residential development.

Ms. Stainback asked where existing vegetation will remain on eastern boundary of the site. Mr. Gorman explained that approximately 35 feet of existing vegetation will remain, with a timbered area separating the solar farm and the existing vegetation which will be used as a shade buffer. The vegetation in the shade buffer will have to be managed over time.

Mr. York concluded by saying he objects to any opposing testimony relating to the impact of this proposed use on property values. NC General Statutes 160A 393 prohibits a person from giving opinion about scientific, technical, or other specialized subjects; specifically, that the use of a property in a particular way would affect values of other properties unless the person testifying is in fact an expert in the subject. Mr. York continued to say that the Board has not heard any competent evidence that this use would be harmful to property values in this area, is unsafe, or cause detriment to the public welfare.

Ms. Stainback asked if the applicant looked at using existing vegetation for the screening and buffering requirements. Mr. York confirmed that they had and that the results of the shadow study indicate that using existing vegetation would make a significant portion of the array unproductive.

Mr. Jonathan Care reminded the Board that anything that was presented as hearsay is not under consideration and anything that was offered that wasn't entered as evidence is not under consideration as well.

BOARD DISCUSSION

Ms. Stainback asked staff what would be the fine per day if the plants do not reach the required height. Mr. McMillen stated that the buffer plantings have to reach a height of 8 feet within three years. The applicant has proposed material that will be planted at 6 feet. If the plants do not reach the required 8 feet, they will be subject to a \$100 per day fine as outlined in the zoning ordinance. Mr. Care stated that the applicant will have to meet and maintain the required height.

Chair Shaw proceeded to go through the conditional use permit checklist.

Ms. Harvin stated that she is not convinced that any solar farm is in harmony with the surrounding area. However, she believes the solar developers are making a strong effort to provide appearance conditions that will help the harmony of the development.

Mr. Johnson made a motion to deny the request for the conditional use permit. Ms. Harvin asked on what grounds is that motion made. Mr. Shaw stated that you must go through the findings and provide specific reasons to deny the request.

Mr. Haley asked if the Board felt as though the applicant has addressed the concerns that arose in the May 14th hearing. Ms. Harvin stated she believes the applicant has made a strong effort to increase screening's robustness, except on the east side. Ms. Harvin asked the applicant to address the concern of the eastern boundary's buffer. Mr. Gorman clarified that there would be a 35' buffer consisting of existing vegetation along the eastern boundary.

Mr. Bobbitt said it is tough to make a decision given the opposition to the proposed project. However, the Board must use an ordinance with regulations. The Board has to decide whether the proposed project and the evidence that was presented meet the criteria in the ordinance.

DECISION: Mr. Bobbitt made a motion to approve the conditional use permit request. Included in this motion are the conditions that the applicant submits the executed pages of the interconnection agreement to county staff, install a drip irrigation system to water buffer plantings, and establish groundcover to prevent water runoff within the site. Ms. Brummitt seconded the motion. VOTES: 7-0.

ADJOURNMENT: There being no further business, Chair Shaw declared the meeting adjourned.

Solar Farm Adjacent Owners

Legend

-  Dogwood Creek (Solar Farm)
-  Roads
-  Adjoining Owners (Solar Farm)
-  Tax Parcels

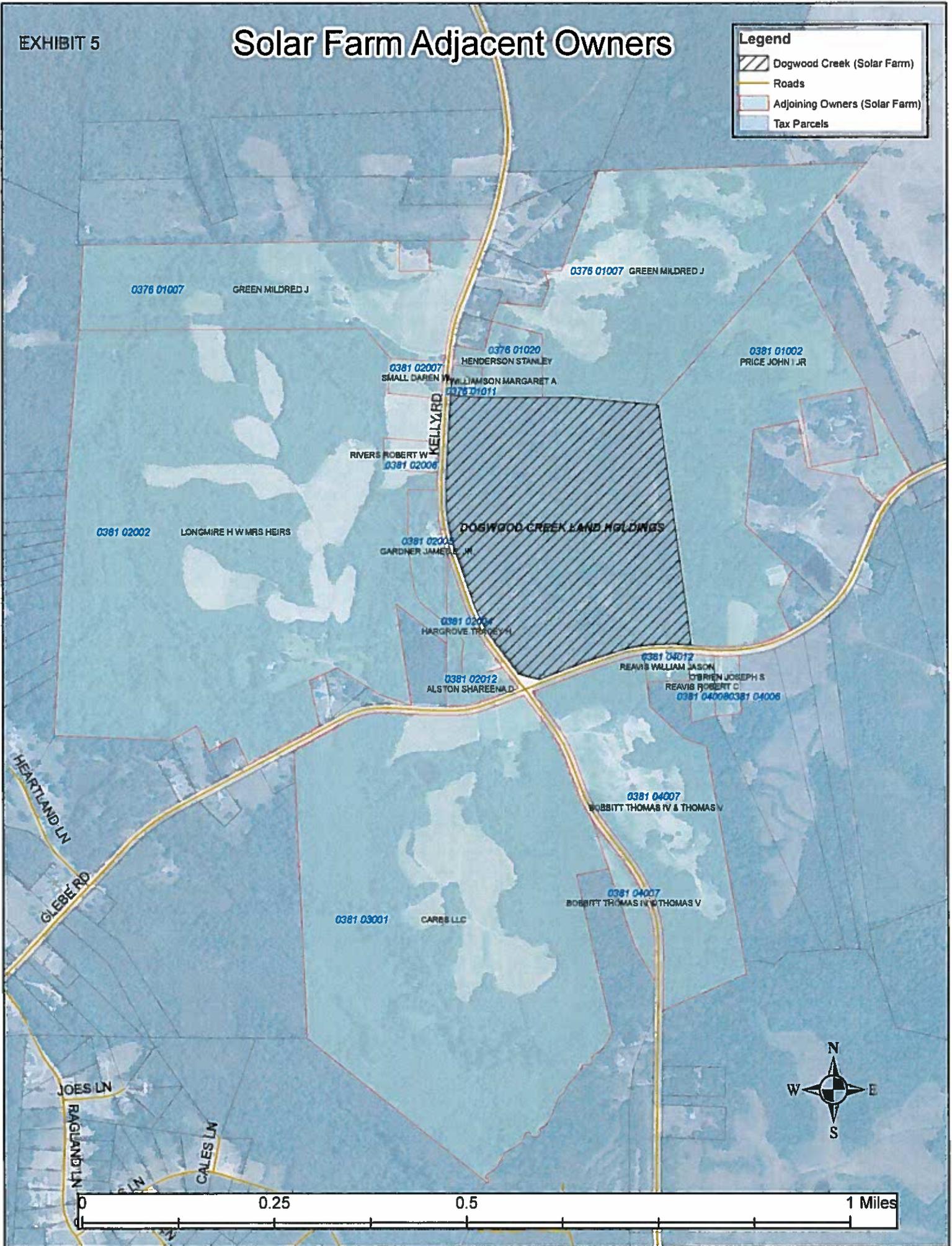
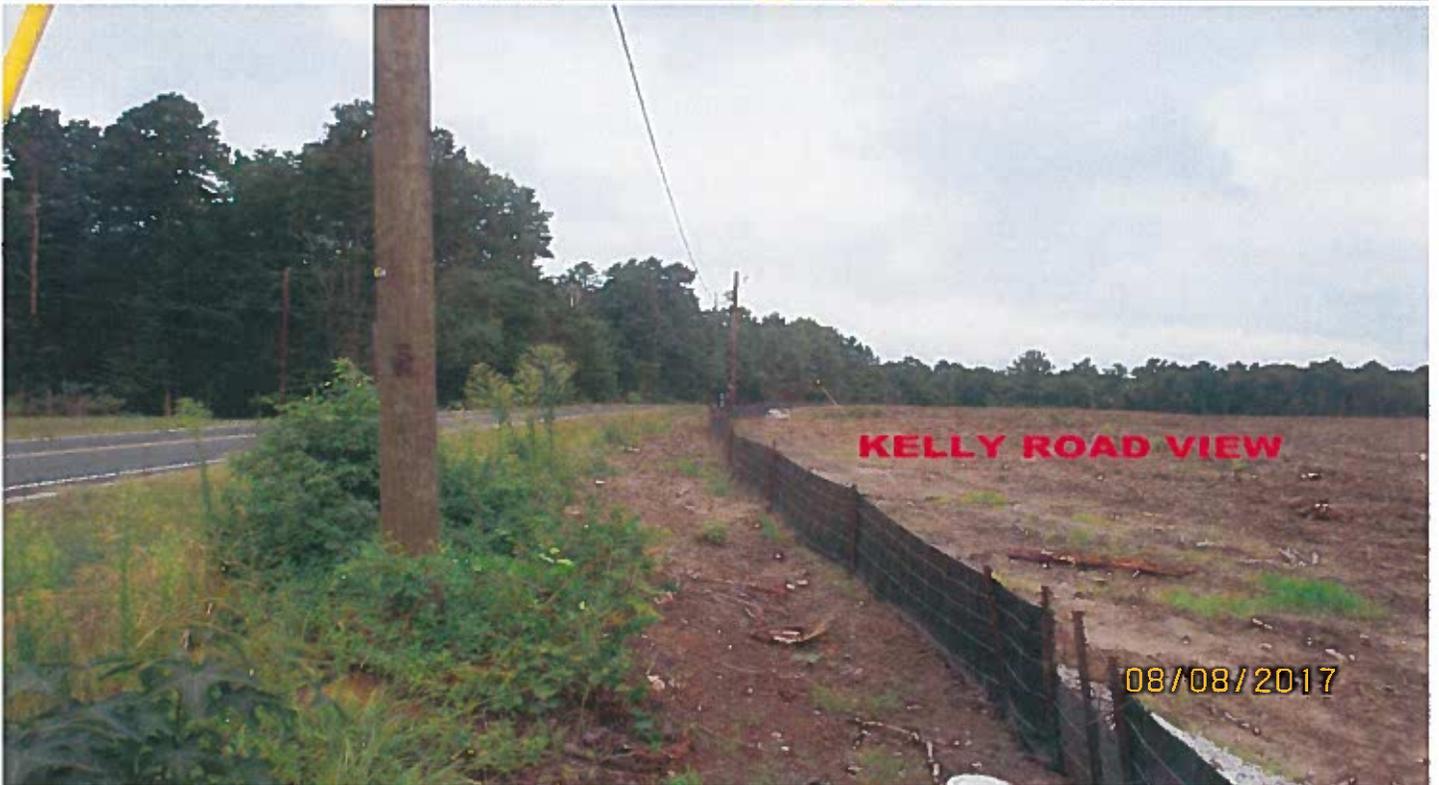


Exhibit 6: Current images of property





Kelly & Glebe Intersection

08/08/2017