



Planning and Development Department

156 CHURCH STREET, HENDERSON, NC 27536

(252) 738-2080 / FAX 738-2089

Staff Report 09/10/2015

Owner: Claude T. Jackson

Applicant: ESA
Henderson NC, LLC &
ESA Henderson 2, LLC

Parcel ID: 0224 02021
& 0224 02026

Location:
Bearpond/Facet Road
intersection (behind
Bearpond Fire
Department)

Current Zoning: (L-I)
Light Industrial

Quasi-Judicial Hearing:
Previously approved a
CUP in 2014 which has
expired; variance hearing
date 9/10/2015

Prepared by:
Jordan McMillen

Description of Conditional Use Permit Request:

The applicant is requesting a variance from section 6.10 of the zoning ordinance which requires a separation of 1,000 feet between conditional uses listed within the section inclusive of solar farms.

Exhibits as follows:

- Exhibit 1.** Application & Justification
- Exhibit 2.** Aerial Property view and zoning map
- Exhibit 3.** Survey & Site Plan for ESA Henderson NC Solar Farm
- Exhibit 4.** Survey & Site Plan for ESA Henderson 2 Solar Farm
- Exhibit 5.** Variance Check Sheet

DRAFT Findings of Fact

1. The applicants were previously issued a conditional use permit with conditions to construct a 10 MW solar farm on tax parcel 0224 02021. The conditions were not met within 1 year of approval causing the CUP to expire.
2. The applicants revised their site plan and have divided the farm into 2 separate solar farm entities due to environmental issues (i.e. wetlands, beaver habitat) discovered on the property.
3. The applicants are requesting a variance from the 1,000 foot separation requirement within section 6.10 of the zoning ordinance between certain conditional uses.
4. The property is owned by Claude T. Jackson and the applicants are ESA Henderson NC, LLC & ESA Henderson 2, LLC.
5. The property is located directly behind 325 Bearpond Road, but access will be from Facet Road; Property more specifically identified as tax parcel 0224 02021.
6. The property consists of 68 +/- acres.
7. The lot is currently zoned (LI) Light Industrial.
8. The application requesting a variance was filed on August 13, 2015.
9. The adjoining property owners were notified on August 28, 2015.
10. The property was posted on August 28, 2015.

Staff Comments

The applicant previously applied for and was granted a conditional use permit on 8/14/2014 with conditions for a single 10 MW solar farm to be located on property owned by Claude Jackson. The conditions of approval included that the permit was issued only for parcel 0224 02021 and not 0224 02026, an 8 foot fence was to be constructed, an interconnection agreement was to be submitted and the appropriate NC DENR permits were to be submitted regarding the existing streams on the property. Due to a lengthy DENR review period the conditions were not met within 1 year and the conditional use issuance has expired. Additionally because of the NCDENR analysis locating wetlands and a beaver habitat on the property the applicants have divided the project into 2 separate solar farms (one 5 MW and one 2 MW) which would be accessed using a single driveway. While the farms appear as 1 solar farm, they would technically be separate farms operated by separate LLC entities and therefore would fall under the 1,000 foot separation requirement for certain conditional uses including solar farms. The applicants are requesting a variance to eliminate the separation distance and allow the solar farms to be located on adjoining parcels.

The property is zoned Light Industrial and is surrounded mostly by other industrial and commercial property. As a result of this, the visual impact is not as great as it could be with residential property next door. With the exception of a mobile home park owned by

the same property owner to the west of the property, no other residential property is located within 1,000 feet of the subject property. The applicant believes that approval of the variance will allow them to consolidate the location of the farm within the property to cut down on the visual impact of neighboring properties.

The board previously approved a 10 MW solar farm for this property which would be reduced to 2 separate farms totaling 7 MW. Due to a shared access point and its location within the LI zoning district it is reasonable to consider this request. If the variance is approved the applicants would be returning with 2 separate submittals for the solar farms.



Vance COUNTY

NORTH CAROLINA

Variance 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 #	<u>20150910-1</u>
Fee Paid	<u>CK# 22074</u>
BOA Date	<u>9/10/2015</u>

Property Owner Information

Property Owner: Claude Jackson
Mailing Address: 100 West Winds Road
City: Macon State: NC Zip Code: 27551
Phone #: (863) 657 - 2520 Fax #: () -
E-mail Address: verianandclaud@embarqmail.com

Applicant Information

Applicant: ESA Henderson NC, LLC, ESA Henderson 2, LLC
Mailing Address: 4150 St. Johns Parkway, Sute 1000
City: Sanford State: FL Zip Code: 32771
Phone #: (407) 268 - 6455 Fax #: (800) 755 - 0801
E-mail Address: lherold@esarenewables.com

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

Property Address: 611 Bearpond Road
Tax Map Number: PIN (parcel identification #): 022402021
Type of Petition: Variance
Existing Zoning: Light Industrial
Acreage: 68+ Acres Road Frontage: 2017 ft
Existing Use: Vacant

Deed Reference

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



Vance COUNTY

NORTH CAROLINA

Variance Application

Vance County Planning & Development Department

STATEMENT OF JUSTIFICATION

Application submitted for a variance from the Zoning Ordinance as follows: *Please explain below:*

We hereby request a variance to the 1,000 foot separation as outlined in Section 6.10 of the Vance County Zoning Code (Page 42). Additionally, we understand the Vance County is considering a 100 foot landscaping buffer, instead of 75 feet. We would also like to request a variance to allow a 75 foot buffer which allows us to utilize the existing buffer on site and provide screening from neighboring properties.

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

The Board of Adjustment does not have unlimited discretion in deciding whether to grant a variance. No change in permitted uses may be authorized by variance. Also, the Board may impose appropriate conditions on any variance, provided that the conditions are reasonably related to the variance.

Under the state enabling act, the Board shall vary ordinance provisions when unnecessary hardships would result from carrying out the strict letter of the ordinance. In order to determine whether a hardship is present the applicant shall provide an argument for the following items. In the following spaces, indicate the facts and the argument you plan to render, in order to convince the Board to properly determine that an unnecessary hardship exists from carrying out the strict letter of the ordinance.

- (1) THERE ARE UNNECESSARY HARDSHIPS THAT WOULD RESULT FROM THE STRICT ENFORCEMENT OF THIS ORDINANCE. The courts have developed four rules to determine whether, in a particular situation, "unnecessary hardships" exist. State facts and argument in support of each of the following:

- a. **The unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.** (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

Please see attachment.

- b. **The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.**

Please see attachment.



Vance COUNTY

NORTH CAROLINA

Variance Application

Vance County Planning & Development Department

- c. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing the property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

Please see attachment.

- d. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

Please see attachment.

Property Owners Signature

Claude T Jackson
Please sign in blue or black ink

Date 08/10/15

Applicants' Signature

[Signature]
Please sign in blue or black ink

Date 8/12/15

vision • vitality • variety



ESA Renewables, LLC

Variance County Variance Application - Attachment

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE

1(a) The solar project was originally approved under a conditional use permit in August 2014 as one single solar farm. Since then, we have the need to consolidate the system and utilize the existing landscaping buffer on site. Given the 1,000 foot requirement, we are not able to utilize the existing vegetation along US1 and Facet Road, and therefore requesting a variance to approximately 250 feet. Additionally, the two solar systems will also use the existing natural landscaping on site as an additional buffer. The variance requested provides for screening from neighboring properties.

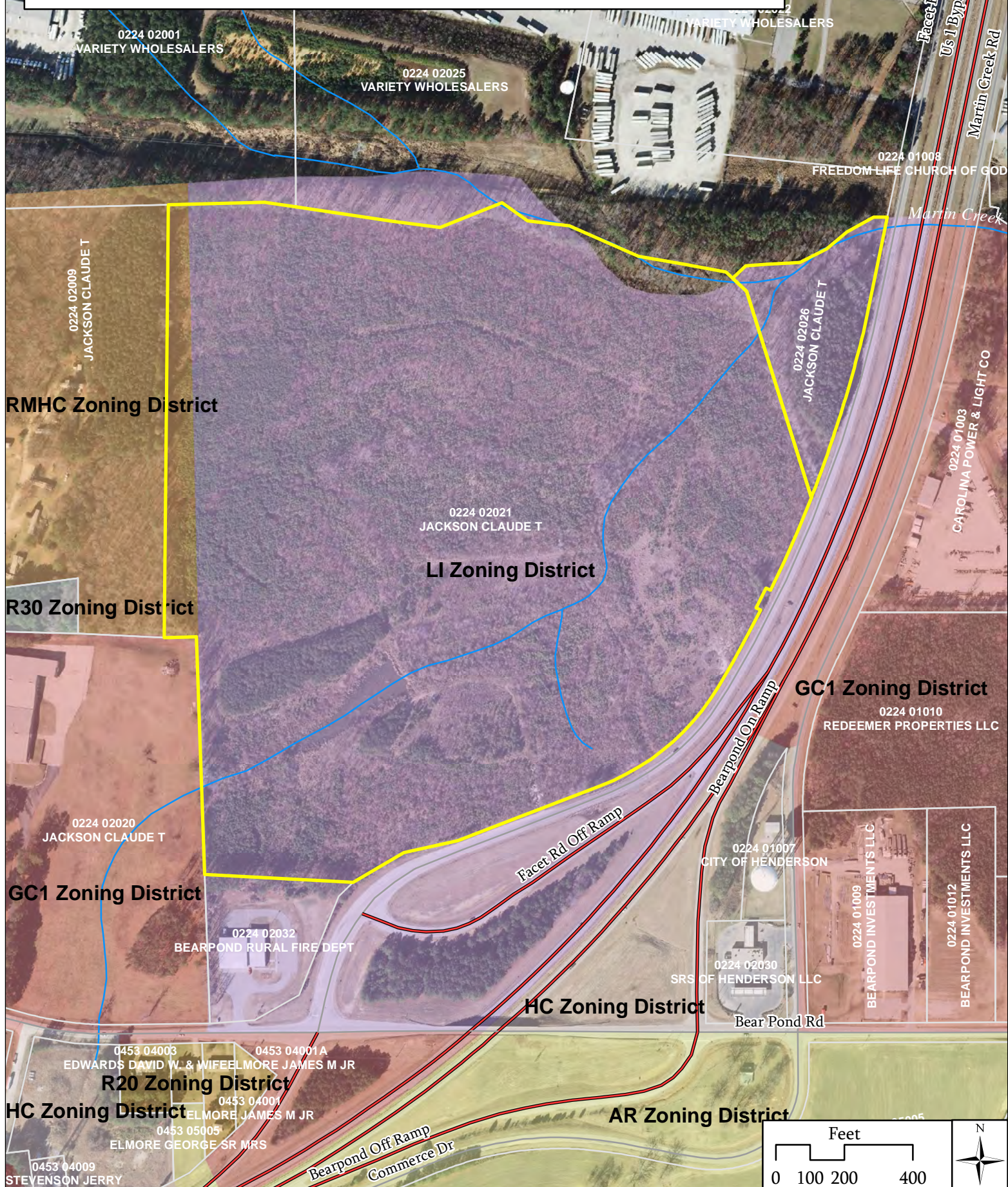
The site will adhere to the 75 foot landscaping buffer along US1 and Facet Road and will utilize existing vegetation. Additional vegetation and bushes will be placed where the current vegetation does not suffice. The property has an existing landscape buffer around the remaining borders, so the whole property will be screened from the neighbors. We understand that the County is considering modifying the landscaping buffer requirement from 75 feet to 100 feet. We would like to request a variance that allows the landscaping buffer to remain at 75 feet, which is in line with the current vegetation on site. The 75 foot requirement provides ample screening and is not visible from the neighboring properties.

1 (b) The hardship mainly results from the topography, shape of the property utility limitations and need to consolidate the system. There is an existing stream, beaver dam and wetland areas on site. In order to adhere to NCDOT and the Core of Engineers' buffer requirements, we need to reduce the 1,000 foot separation to approximately 250 feet between the two solar systems. As a result, we are asking for a variance to decrease the distance between the two systems so that we may utilize the existing landscaping buffer on the perimeter of the site as well as between both systems.

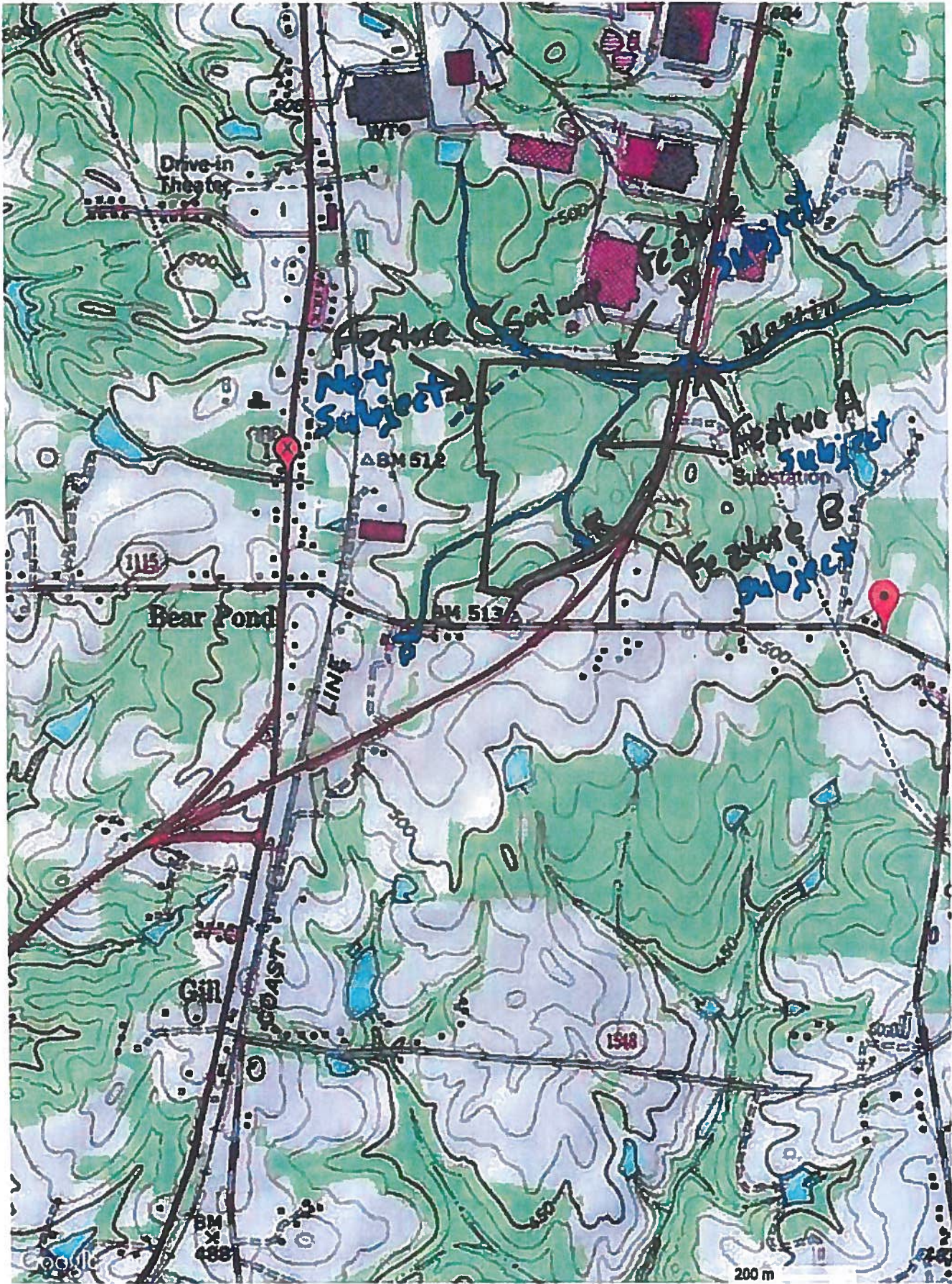
1 (c) The hardship did not result from actions taken by application or property owner, but by the change in topography over several years, recent wetland delineation by the Core of Engineers, utility regulations and system consolidation. We would like to consolidate the two sites and use existing landscaping so that the system isn't visible to neighboring properties.

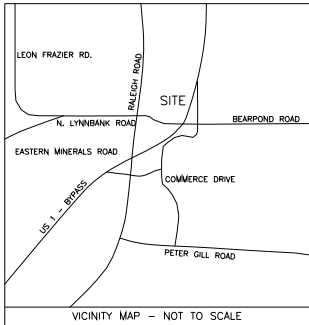
1 (d) The requested variance is consistent with the spirit, purpose and intent of the ordinance. We believe this is consistent with the variance because it provides for the required buffers and conditions of solar farms and provides the necessary screening from neighbors. We are reducing the impact of the site while utilize existing vegetation on site. Additionally, there will be an existing natural landscaping buffer between the two solar farms as well.

Variance Request
ESA Henderson NC & ESA Henderson 2



DWR 14-400





REFERENCES
BEING A PROPOSED DIVISION OF THE LAND DESCRIBED IN DEED BOOK 1149, PAGE 251
AND SHOWN IN PLAT BOOK "V", PAGE 379 AND A PORTION OF THE LAND
DESCRIBED IN DEED BOOK 1162, PAGE 269.

VARIETY WHOLESALERS
PIN 0224 02 001
PIN 0224 02 026

CURVE	RADIUS	TANGENT	LENGTH	CHORD	CH.BEARING
C-1	3689.72'	147.47'	294.78'	294.70'	S 23°50'28"W
C-2	686.20'	236.35'	455.24'	446.94'	S 50°10'36"W

NOTE:
This plat is subject to all
easements, agreements, and
rights-of-way of record prior
to the date of this plat.

NORTH REFERENCED TO N.C. GRID NORTH NAD 83/86

CLAUDE T. JACKSON
DEED BOOK 814, PAGE 270
PIN 0224 02 009

ESA HENDERSON , LLC
43.173 ACRES
BY THE COORDINATE METHOD

CERTIFICATION

I, Barry H. Oakes, do hereby certify that this map was drawn by me or under my direction and supervision from an actual field survey made by me or under my direction and supervision from references noted herein; that the ratio of precision as computed from latitudes and departures is 1:2, that the lines not actually surveyed are drawn as broken lines plotted from references noted herein; that this map was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, seal and registration number this day of , 2015.

PRELIMINARY PLAT

Barry H. Oakes, PLS L-3061

CERTIFICATION

I, Barry H. Oakes, certify to one or more of the following as indicated thus:

- This survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;
- This survey is located in such a portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;
- Any one of the following:
 - That the survey is of an existing parcel or parcels of land and does not create a new street or change an existing street.
 - That the survey is of an existing building or other structure, or natural feature, such as a watercourse; or
 - That the survey is a control survey.
- That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision.
- That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of the surveyor's professional ability as to provisions contained in (a) through (d) above.

Barry H. Oakes, PLS L-3061

NOTES:

- DISTANCES ARE HORIZONTAL GROUND DISTANCES.

Barry H. Oakes Surveying, P.A.

6650 Sidney Cottrell Road
P.O. Box 2059
Oxford, North Carolina 27565
Tel.# (919) 693-3260
Email: bhospo@gmail.com
C-1581

CLAUDE T. JACKSON
DEED BOOK 939, PAGE 256
PIN 0224 02 002

BEARPOND RURAL
FIRE DEPARTMENT
DEED BOOK 1037, PAGE 50
PLAT BOOK W, PAGE 956
PIN 0224 02 032

N.C.G.S. STATION "VEASEY"
NAD 83/86 SPC
NORTH = 919853.87
EAST = 2179101.70

PROPOSED DIVISION FOR:

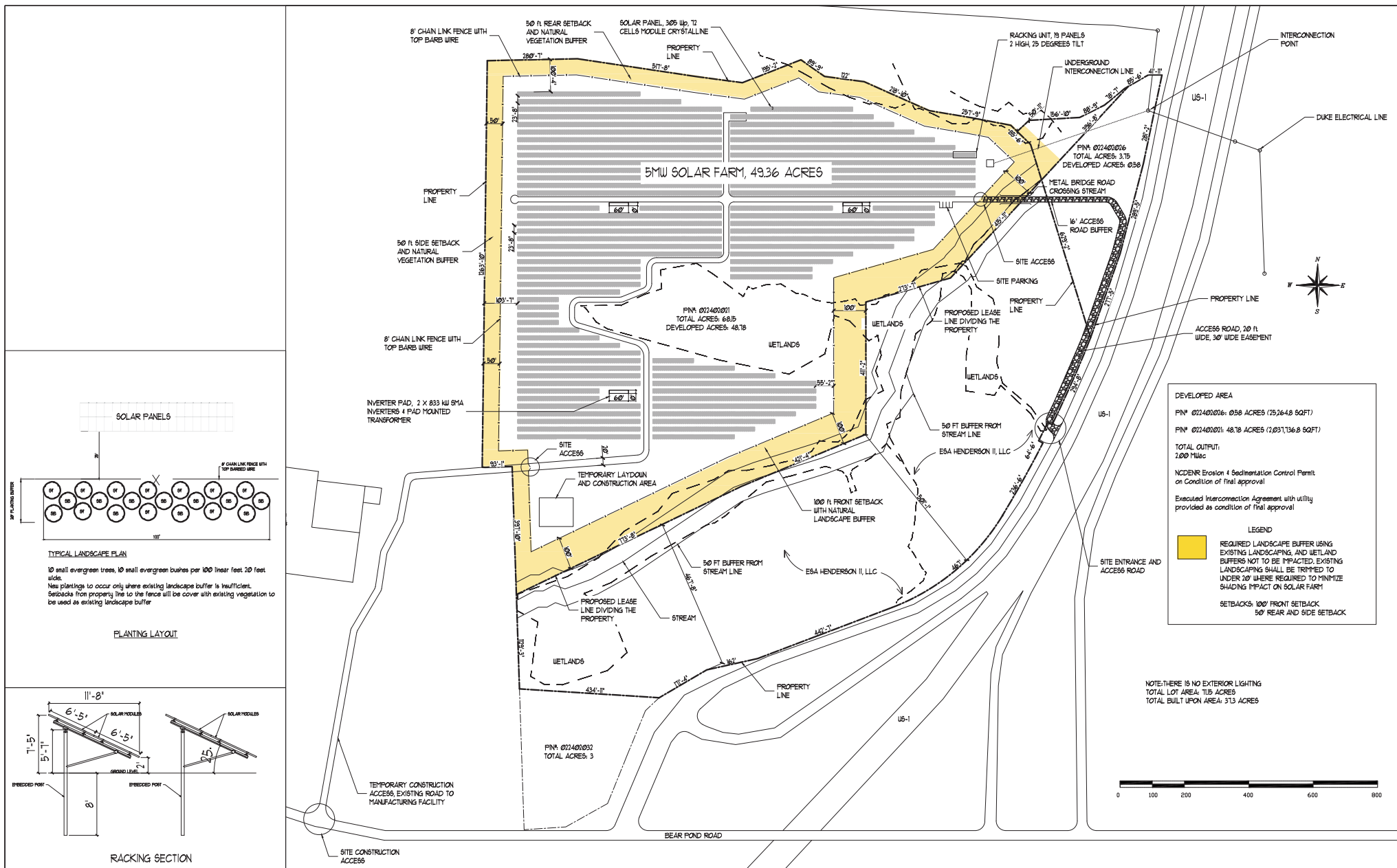
ESA HENDERSON , LLC
AND
ESA HENDERSON II , LLC

HENDERSON TOWNSHIP, VANCE COUNTY, NORTH CAROLINA
DATE: AUGUST 7, 2015 SCALE: 1" = 150' FILE NO.: 15-035B



LEGEND		
EIP	Existing Iron Pipe	
IPS	Iron Pipe or Pin Set	
EIS	Existing Iron Spike	
NIS	New Iron Spike	
R/W	Right-of-Way	
EPK	Existing PK Nail	
PKS	New PK Nail	
ECM	Exist. Concrete Mon.	
PP	Power Pole	
CP	Computed Point	
MBL	Minimum Building Line	
ES	Existing Steel Spindle	
OHUL	Overhead Utility Line	
EN	Existing Nail	
EMN	Existing Magnetic Nail	
MNS	Magnetic Nail Set	
SSMH	Sanitary Sewer Manhole	
ST.SDI	Storm Sewer Drop Inlet	
RCP	Reinforced Concrete Pipe	
ERWD	Existing Right-of-way Disk	
ERB	Existing Rebar	
Centerline	Centerline	
Right-of-way	Right-of-way	
Property line (not surveyed)	Property line (not surveyed)	

COURSE	BEARING	DISTANCE
L-1	S 48°25'30"E	20.11'
L-2	S 13°24'07"E	35.90'
L-3	N 80°22'46"E	26.95'
L-4	S 46°04'55"E	38.60'
L-5	N 79°23'54"E	26.95'
L-6	N 51°10'18"E	12.10'
L-7	S 82°25'09"E	79.55'
L-8	S 30°23'15"E	45.00'
L-9	N 89°29'05"E	78.40'
L-10	N 50°50'33"E	82.77'
L-11	N 88°40'29"E	26.41'
L-12	S 55°17'19"E	44.88'
L-13	S 80°48'44"E	55.00'
L-14	S 77°22'59"E	37.13'
L-15	N 51°49'47"E	36.26'
L-16	S 72°39'31"E	28.53'
L-17	S 47°11'03"E	33.75'
L-18	N 81°55'49"E	40.86'
L-19	S 68°22'07"E	30.73'
L-20	S 31°18'15"E	64.79'
L-21	N 58°46'43"E	21.00'
L-22	N 42°17'01"E	89.99'
L-23	N 89°39'03"E	24.56'
L-24	N 57°57'11"E	153.97'
L-25	N 00°20'58"W	10.11'
L-26	N 87°24'53"E	65.66'



NOTE	REV.	DATE	REVISION DESCRIPTION	DRW	CHK	APP	REV.	DATE	REVISION DESCRIPTION	DRW	CHK	APP	LEGAL WARNING
DUKE INTERCONNECTION DRAWINGS FINAL FOR CONSTRUCTION SHEET SIZE AT FULL SCALE 24" X 36"	00	2/14/14	FIRST RELEASED	CL	JL	JL	10	2015/08/11	SETBACKS UPDATE	DC	JL	JL	<div><div></div><div>ESA RENEWABLES LLC</div><div>4150 St. Johns Parkway, Suite 1000 Sanford, FL 32771 phone: (407) 268-6455</div></div> <div><p>THIS DOCUMENT AND THE LOGO AND STYLING OF THE LOGO ARE THE PROPERTY OF ESA RENEWABLES, LLC. ANY REUSE OR REPRODUCTION OF THE PROPERTY, NAME, AND STYLING OF THE LOGO WITHOUT THE WRITTEN PERMISSION OF ESA RENEWABLES, LLC IS PROHIBITED. THE LOGO WILL REMAIN THE PROPERTY OF ESA RENEWABLES, LLC. IF YOU HAVE ANY COMMENTS OR QUESTIONS ABOUT THIS LOGO, PLEASE CONTACT US AT 4150 ST. JOHNS PARKWAY, SUITE 1000 SANFORD, FL 32771 PHONE: (407) 268-6455 WWW.ESARENEWABLES.COM</p></div>
	01	05/08/14	INTERCONNECTION REQUEST MODIFICATION	JL	JL	JL	11	2015/08/24	DEVELOPMENT AREA UPDATE	DC	JL	JL	
	02	06/10/14	ZONING MODIFICATIONS	JL	JL	JL							
	03	07/10/14	DOT DRAINAGE PERMIT	JL	JL	JL							
	04	07/17/14	WETLANDS / STREAMS	JL	JL	JL							
	08	12/01/14	SIZE MODIFICATION, FROM 10 TO 5 MWac	JL	JL	JL							
	09	06/15/15	SITE PLAN	JL	JL	JL							

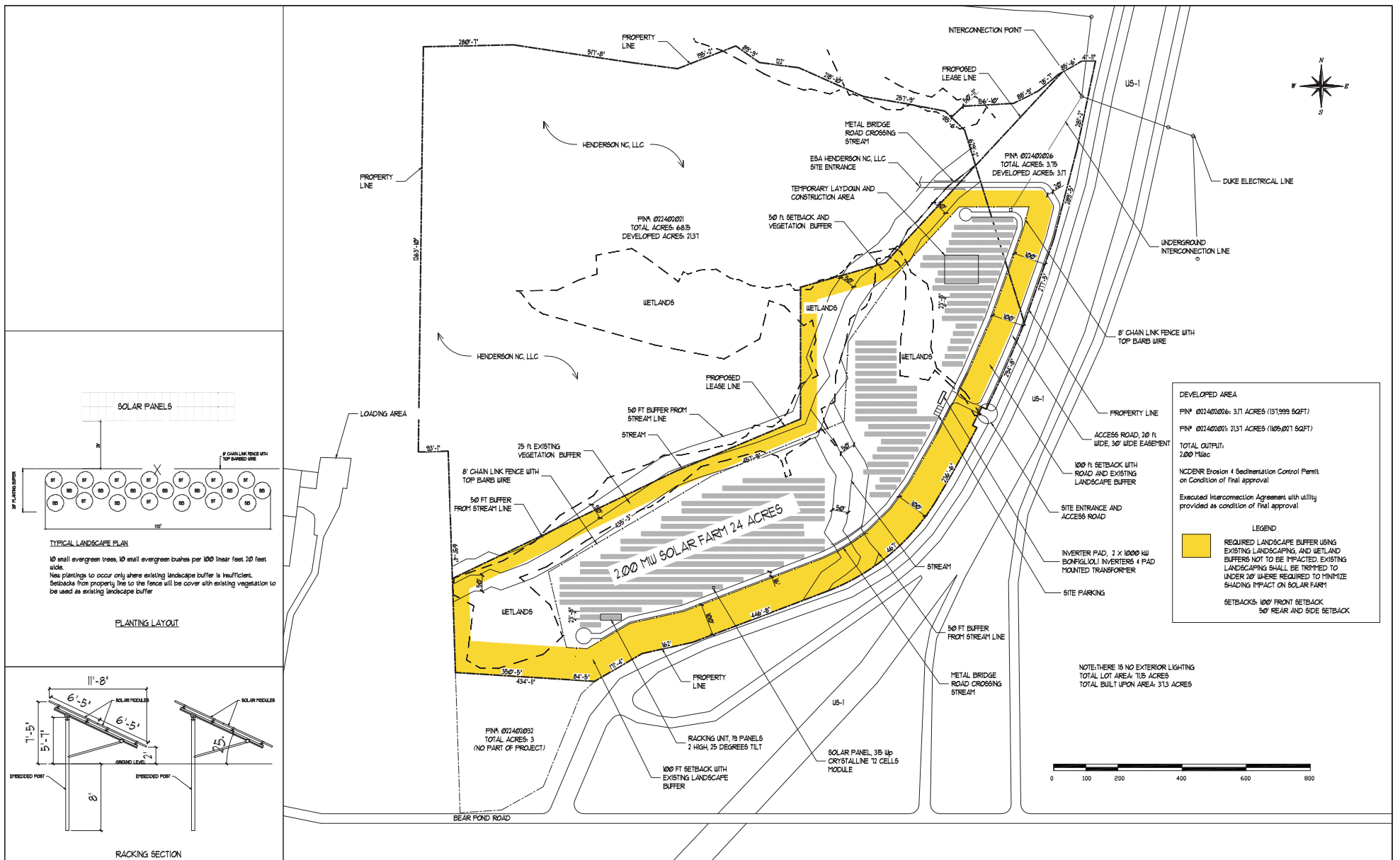
REVISION	DRAWN	CHECKED	APPROVED	PROJECT NAME:
11	DC	JL	JL	ESA HENDERSON NC, LLC, GROUND MOUNT SOLAR FARM
ENGINEER:	DAVID CLUCK			ADDRESS: 611 BEARPOND ROAD, HENDERSON, NC 27535
				SHEET TITLE: SITE PLAN

50000

FORMAT: 24" x 36"

DRAWING N°
G-202

DATE: 2015/08/11



NOTE	REV.	DATE	REVISION DESCRIPTION	DRW	CHK	APP	REV.	DATE	REVISION DESCRIPTION	DRW	CHK	APP	LEGAL WARNING	 ESA RENEWABLES LLC 4150 St. Johns Parkway, Suite 1000 Sanford, FL 32771 phone: (407) 268-6455 <small>ESA Renewables, LLC is a registered Professional Engineering Firm in the State of Florida, License No. 12549. The Engineer assumes no liability for errors or omissions in the design or for any damage caused by the professional negligence of the Engineer or any other persons.</small>	REVISION	DRW	CHECKED	APPROVED	PROJECT NAME:	SCALE
SITE PLAN DRAWING DRAWINGS NOT READY FOR CONSTRUCTION SHEET SIZE AT FULL SCALE 24" X 36"							00	11/04/14	SITE DEVELOPMENT	CL	JL	JL	THE DRAWING AND THE WORK HEREON ARE HEREBY GIVEN UNDER THE ASSUMPTION THAT ALL OF THE INFORMATION ON WHICH THIS DESIGN IS BASED, INCLUDING THE DATA, HAS BEEN OBTAINED FROM THE APPROPRIATE SOURCES AND IS ACCURATE AND COMPLETE. THE ENGINEER ASSUMES NO LIABILITY FOR ERRORS OR OMISSIONS IN THE DESIGN OR FOR ANY DAMAGE CAUSED BY THE PROFESSIONAL NEGLIGENCE OF THE ENGINEER OR ANY OTHER PERSONS.		04	DC	JL	JL	ESA HENDERSON 2, LLC ADDRESS: 611 BEARPOD ROAD, HENDERSON, NC 27535	1/1500 FORMAT: 24" x 36"
							01	02/04/15	INTERCONNECTION DRAWINGS	JL	JL	JL								DRAWING N°
							02	06/25/15	SITE PLAN	JL	JL	JL								G-202
							03	08/12/15	SETBACKS UPDATE	JL	JL	JL								DATE: 09/02/2015
							04	09/02/15	DEVELOPMENT AREA UPDATE	DC	JL	JL								SHEET TITLE SITE PLAN

Variance Check Sheet

A variance may be granted by the Board if evidence that is presented by the applicant persuades the Board to reach the following conclusions:

1. The unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

	True	False		True	False		True	False	TOTAL
Brummitt:	<input type="checkbox"/>	<input type="checkbox"/>	Johnson	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Haley:	<input type="checkbox"/>	<input type="checkbox"/>	Shaw:	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 2:	<input type="checkbox"/>	<input type="checkbox"/>	
Harvin:	<input type="checkbox"/>	<input type="checkbox"/>	Stainback:	<input type="checkbox"/>	<input type="checkbox"/>				

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

	True	False		True	False		True	False	TOTAL
Brummitt:	<input type="checkbox"/>	<input type="checkbox"/>	Johnson	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Haley:	<input type="checkbox"/>	<input type="checkbox"/>	Shaw:	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 2:	<input type="checkbox"/>	<input type="checkbox"/>	
Harvin:	<input type="checkbox"/>	<input type="checkbox"/>	Stainback:	<input type="checkbox"/>	<input type="checkbox"/>				

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

	True	False		True	False		True	False	TOTAL
Brummitt:	<input type="checkbox"/>	<input type="checkbox"/>	Johnson	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Haley:	<input type="checkbox"/>	<input type="checkbox"/>	Shaw:	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 2:	<input type="checkbox"/>	<input type="checkbox"/>	
Harvin:	<input type="checkbox"/>	<input type="checkbox"/>	Stainback:	<input type="checkbox"/>	<input type="checkbox"/>				

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

	True	False		True	False		True	False	TOTAL
Brummitt:	<input type="checkbox"/>	<input type="checkbox"/>	Johnson	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 1	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Haley:	<input type="checkbox"/>	<input type="checkbox"/>	Shaw:	<input type="checkbox"/>	<input type="checkbox"/>	Alternate 2:	<input type="checkbox"/>	<input type="checkbox"/>	
Harvin:	<input type="checkbox"/>	<input type="checkbox"/>	Stainback:	<input type="checkbox"/>	<input type="checkbox"/>				