



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, BALTIMORE DISTRICT  
2 HOPKINS PLAZA  
BALTIMORE, MARYLAND 21201

CENAB-OPR-N

29 May 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,<sup>1</sup> NAB-2025-00117-M54 (TotalEnergies/Bloomington Hill Rd/Solar Project).<sup>2</sup>

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>3</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>4</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>5</sup> the 2023 Rule as amended,

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

<sup>3</sup> 33 CFR 331.2.

<sup>4</sup> Regulatory Guidance Letter 05-02.

<sup>5</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

The subject of this approved jurisdictional determination is for a privately owned approximately 64-acre parcel located on the northside of Bloomington Hill Road, Bloomington, Garrett County, Maryland (39.484646, -79.094910). The parcel is identified on the Maryland Department of Assessments and Taxation Map 0070 as Parcel 0001. The site is in the Appalachian Plateau physiographic province of Maryland. The Corps conducted a field review of the site on 16 August 2024.

## 1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

The Corps received a request for a No Permit Required (NPR) letter on 12 March 2025 for the subject site located on the northside of Bloomington Hill Road, Bloomington, Garrett County, Maryland. The information provided in the request package supplied by TRC Environmental Corporation (TRC) included a USDA Natural Resources Conservation Service Soil Survey map, USGS National Elevation and Hydrography map dataset, aerial imagery, photograph log, and wetland determination data forms.

On 16 August 2024, the Corps conducted a site visit of the entire approximate 64-acre area of review as identified in the enclosed plan drawing dated February 2025. The review area encompasses primarily early to mid-stage successional fallow herbaceous fields, with interspersed shrubby habitats to the south and deciduous forest to the north.

The soils on the site are mapped as Cookport channery loam (CtB), Gilpin channery silt loam (GnB2), stony land (SrF), and Very stony land (VsD) (U.S. Department of Agriculture, Natural Resources Conservation Service, WebSoil Survey, 2025). These soils are predominantly rated as non-hydric and are classified as well to moderately-well drained soils. Three (3) sample points dispersed across the study area was completed and evaluated by TRC and results are outlined in the Wetland and Surface Water Delineation Report dated November 2023. Soil profiles found no redoximorphic features or hydric soil indicators. The vegetation observed within this sample plots consisted primarily of facultative upland (FACU) and facultative (FAC) species and did not meet a

hydrophytic vegetation indicator. No wetland hydrology indicators or surface waters were observed. Drainage features onsite did not possess consistent bed and bank features, an ordinary high-water mark, wrack lines, or sediment sorting which would indicate evidence of a relatively permanent water.

Based on field observations, supplemental information reviewed by the Corps, and in accordance with the protocol contained within the 1) Eastern Mountains and Piedmont Regional Supplement Version 2.0 and 2) 1987 Corps Delineation Manual, the Corps did not observe any areas containing hydrophytic vegetation, hydric soils, wetland hydrology indicators, or relative permanent waters within the above-mentioned area of review. The Corps has determined that the area of review includes only dry land and no jurisdictional waters of the United States.

## 2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023)
- d. "Memorandum To The Field Between The U.S. Department Of The Army, U.S. Army Corps Of Engineers And The U.S. Environmental Protection Agency Concerning The Proper Implementation Of 'Continuous Surface Connection' Under The Definition Of 'Waters Of The United States' Under The Clean Water Act" (March 12, 2025)
- e. 1987 Corps of Engineers Wetland Delineation Manual
- f. Eastern Mountains & Piedmont Regional Supplement
- g. Field Indicators of Hydric Soils of the United States
- h. 2020 National Wetland Plant List

3. REVIEW AREA. The review area is comprised of a privately owned approximately 64-acre parcel located on the northside of Bloomington Hill Road, Bloomington, Garrett County, Maryland (39.484646, -79.094910). The parcel is identified on the Maryland Department of Assessments and Taxation Map 0070 as Parcel 0001.

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. N/A
5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. N/A
6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>7</sup> N/A
7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
  - a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A
  - b. The Territorial Seas (a)(1)(ii): N/A
  - c. Interstate Waters (a)(1)(iii): N/A
  - d. Impoundments (a)(2): N/A

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<sup>6</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>7</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

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- e. Tributaries (a)(3): N/A
- f. Adjacent Wetlands (a)(4): N/A
- g. Additional Waters (a)(5): N/A

8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

- a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>8</sup> N/A
- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). N/A

9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

- a. USGS Topographic Map, provided by requestor, within the 12 March 2025 NPR request package.
- b. Aerial Image of Site, provided by requestor, within the 12 March 2025 NPR request package.
- c. Photograph Log, provided by requestor, within the 12 March 2025 NPR request package.
- d. USFWS NWI Map, accessed by Corps on 7 April 2025.
- e. USGS NHD Map, provided by requestor, within the 12 March 2025 NPR request package.

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

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- f. USDA NRCS Soil Survey Map, provided by requestor, within the 12 March 2025 NPR request package.
- g. Wetland and Surface Water Delineation Report dated November 2023, provided by requestor, within the 12 March 2025 NPR request package.
- h. LIDAR Image of Site, accessed by Corps on 7 April 2025.

10. OTHER SUPPORTING INFORMATION.

- a. The Corps conducted a site visit on 16 August 2024, with representatives from the Maryland Department of the Environment and TRC Environmental Corporation.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

Figure 1. Aerial Imagery of Study Area





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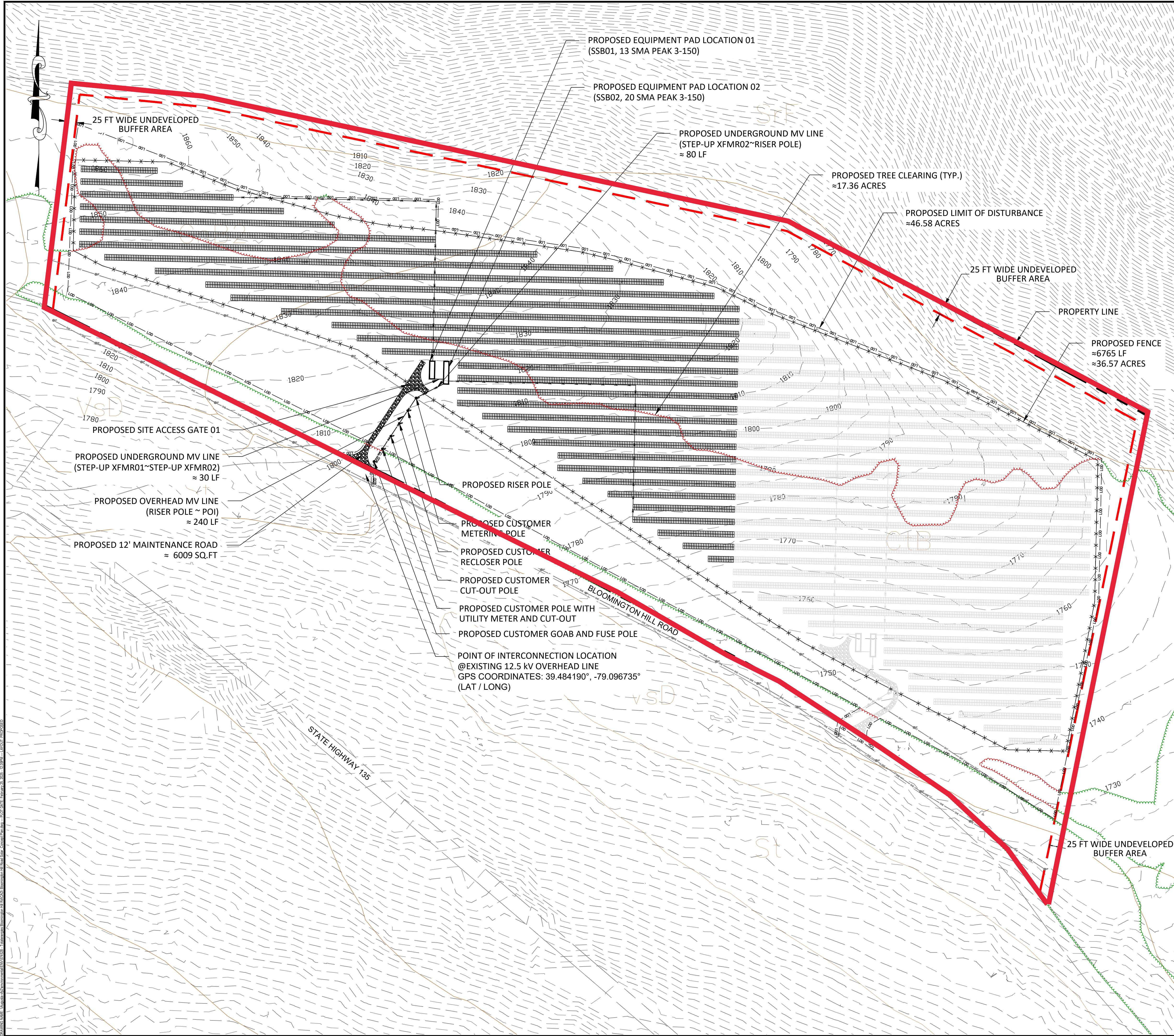
Photograph 1: Overlooking early to mid-stage successional fallow herbaceous fields with interspersed shrubby habitats, photo taken by Corps on August 16, 2024.



Photograph 2: Overlooking site along northside of Bloomington Hill Road, photo taken by Corps on August 16, 2024.







**SITE LOCATION MAP**

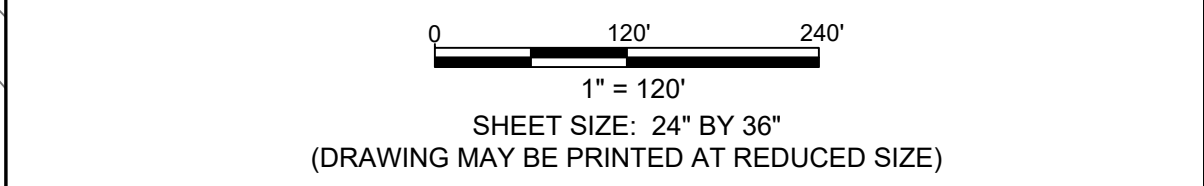
**LEGEND**

- PROJECT PARCEL BOUNDARY
- 25 FT UNDEVELOPED BUFFER BOUNDARY
- ABUTTER PARCEL BOUNDARY
- EXISTING 10FT MAJOR CONTOUR (FEET)
- EXISTING 5FT MINOR CONTOUR (FEET)
- SOIL TYPE BOUNDARY
- PROPOSED FENCELINE
- EXISTING TREELINE
- PROPOSED TREE CLEARING
- PROPOSED UNDERGROUND ELECTRIC
- PROPOSED OVERHEAD ELECTRIC
- EXISTING OVERHEAD ELECTRIC
- EXISTING OVERHEAD TELEPHONE
- LIMIT OF DISTURBANCE
- PROPOSED SOLAR PANEL ARRAY
- PROPOSED ACCESS ROAD
- EXISTING UTILITY POLE
- PROPOSED UTILITY POLE

**NOTES**

- THE PROJECT HORIZONTAL COORDINATES SYSTEM IS BASED ON NAD83 MARYLAND STATE PLANE (US SURVEY FEET). ELEVATIONS ARE BASED ON NAVD88 (US SURVEY FEET).
- ADJOINING PARCEL DATA OBTAINED FROM MARYLAND GIS DATABASE (HTTPS://DATA.IMAP.MARYLAND.GOV/).
- EXISTING UTILITIES ARE APPROXIMATE AND SHOULD BE VERIFIED BY CONTRACTOR. DIG SAFELY DELAWARE (811) SHALL BE NOTIFIED A MINIMUM OF 72-HOURS PRIOR TO COMMENCING ANY EXCAVATION.
- THIS IS A CONCEPT PLAN PROVIDED FOR PERMITTING ONLY. FINAL DESIGN SHALL BE MODIFIED TO SUPPORT CONSTRUCTION, MATCH FINAL ELECTRICAL INTERCONNECTION STUDIES, EQUIPMENT PURCHASED, AND POSSIBLE PERMIT CONSTRAINTS REVEALED DURING PROJECT'S REVIEW.
- THE VICINITY MAP IMAGE IS FROM THE UNITED STATES GEOLOGICAL SURVEY 7.5 MINUTE WESTERNPORT, MD TOPOGRAPHIC QUADRANGLE.
- THE TOPOGRAPHY SHOWN ON HEREON IS OBTAINED FROM LIDAR.
- GARRET COUNTY DOES NOT HAVE ANY REQUIRED ZONING SETBACKS OR SOLAR ORDINANCES, THEREFORE A 25 FOOT WIDE UNDEVELOPED BUFFER AREA IS SHOWN ON THE PLAN HEREON.

= Corps Area of Review



**TRC**  
41 Spring Street  
Suite 102  
New Providence, NJ 07974  
Phone: 908.986.1700

**TotalEnergies**  
1201 LOUISIANA STREET, SUITE 1800  
HOUSTON, TX 77002

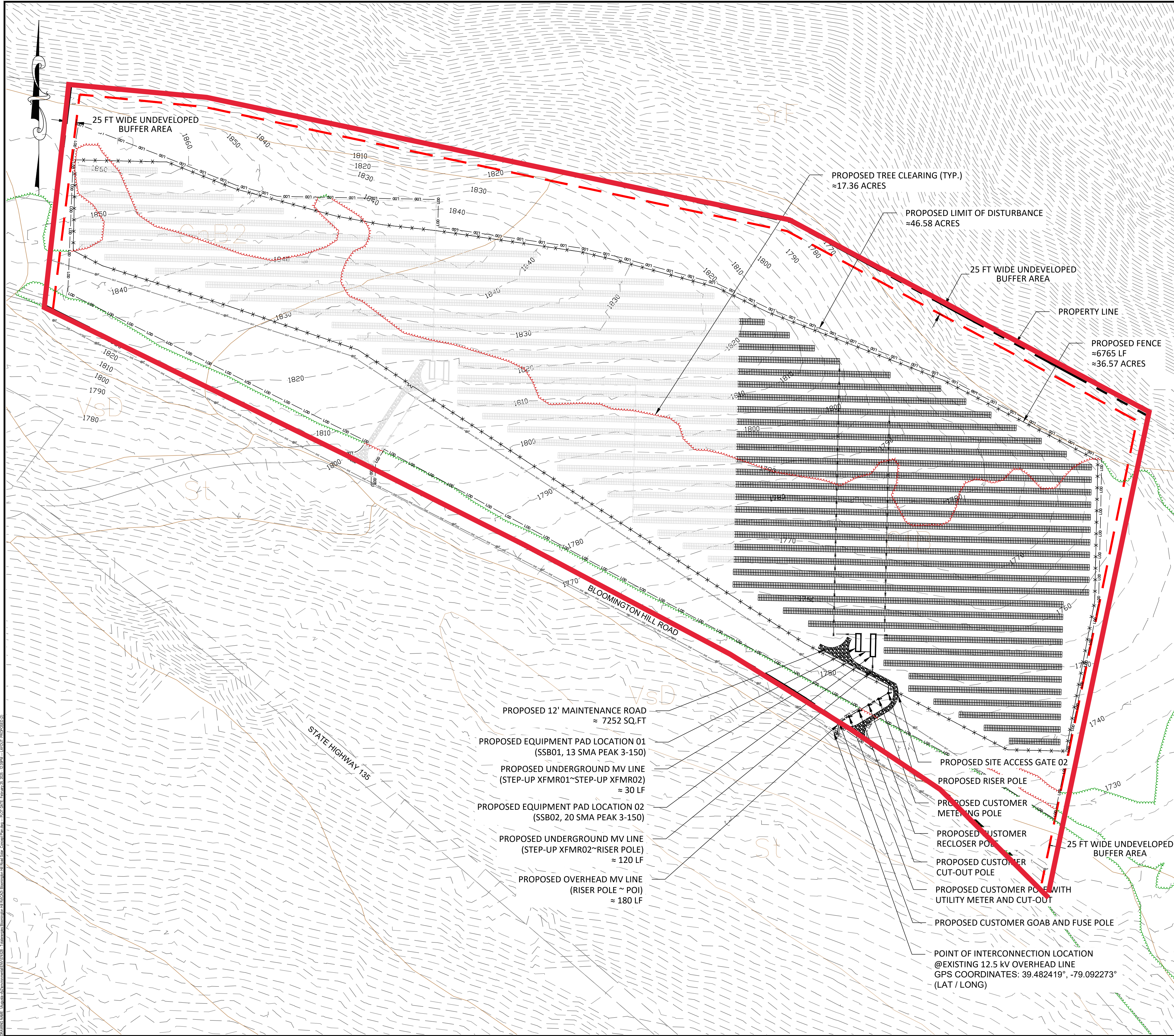
TRC Project No: 574528.0000.0000

Drawn by:	Design by:	Checked by:
TD	TD	CK

**PROPOSED CONCEPTUAL PLAN - PHASE 1**  
**MARYLAND COMMUNITY SOLAR**  
**BLOOMINGTON HILL ROAD SOLAR**  
**BLOOMINGTON HILL ROAD**  
**BLOOMINGTON, MARYLAND 21523**

Contract No:	574528
Scale:	AS NOTED
Date:	FEBRUARY 2025
Sheet:	3
Drawing No:	C-201





**SITE LOCATION MAP**

**LEGEND**

	PROJECT PARCEL BOUNDARY
	25 FT UNDEVELOPED BUFFER BOUNDARY
	ABUTTER PARCEL BOUNDARY
	EXISTING MAJOR CONTOUR (FEET)
	EXISTING MINOR CONTOUR (FEET)
	SOIL TYPE BOUNDARY
	PROPOSED FENCELINE
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= Corps Area of Review

**PROPOSED CONCEPTUAL PLAN - PHASE 2**

**MARYLAND COMMUNITY SOLAR**  
**BLOOMINGTON HILL ROAD SOLAR**  
**BLOOMINGTON HILL ROAD**  
**BLOOMINGTON, MARYLAND 21523**

Contract No:  
574528

Scale:  
AS NOTED

Date:  
FEBRUARY 2025

Sheet:  
4

Drawing No:  
C-202

41 Spring Street  
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**TRC**

**TotalEnergies**

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TRC Project No: 574528.0000.0000