

**OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY, MARYLAND**

In the Matter of the Petition of
Atmosphere DC Dickerson Property Owner, LLC
for a Conditional Use to Operate a
Data Center (Cable Communications System)

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* Case No. 24-13.a.A
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**PETITIONER'S STATEMENT IN SUPPORT OF
APPLICATION AND STATEMENT OF OPERATIONS**

Petitioner, Atmosphere DC Dickerson Property Owner, LLC ("Petitioner"), hereby submits this Statement in Support of Application and Statement of Operations in connection with the Petition for an amendment to Conditional Use 24-13 to operate a data center (the "Petition"), on an approximately 110-acre parcel that includes parts of Lots 10 & 11 as shown on Plat Nos. 26317-26310, recorded among the Land Records for Montgomery County, Maryland (the "Subject Property"). The Subject Property is part of a larger, approximately 758-acre tract (the "Parent Tract") located on Martinsburg Road in Dickerson, Maryland owned by Terra Energy, LLC ("Terra").¹ The Hearing Examiner previously approved Conditional Use No. 24-13 by Report and Decision dated November 20, 2024 and Amendment thereto dated December 5, 2024 for the operation of a public utility (battery energy storage system) and data center (cable communications system) on the Parent Tract owned by Terra Energy, LLC (the "Original CUP Approval"). In furtherance of the Original CUP Approval, the Petitioner is amending the conditional use approval for the data center (cable communications system).

I. Subject Property/Existing Conditions

The Parent Tract is split-zoned Heavy Industrial (IH) and Agricultural (AR) and is located within the Agricultural Reserve Planning Area. The Subject Property is entirely zoned

¹ The Petitioner is the contract purchaser of the Subject Property.

IH. The Parent Tract is within the boundaries of the Agricultural and Rural Open Space Functional Master Plan, Approved and Adopted in 1980 (“AROS Master Plan”).

For more than 50 years, the Parent Tract served as the location for the Dickerson Power Plant, a major electric power generating facility. Multiple buildings including the large power plant structures and a smokestack remain on site. The Parent Tract still contains a coal fired power plant, decommissioned approximately four years ago, along with PEPCO power transmissions lines and power substations. In addition, the Parent Tract is improved with CSX railroad tracks, a former coal storage facility in the northwest corner and a water intake and water discharge facility along the Potomac River. The Parent Tract contains multiple forest stands, stormwater management facilities and ponds along with streams and wetlands, all as depicted on the approved Natural Resource Inventory filed as part of this Petition.

II. Surrounding Properties and Adjacent Development

Properties to the north, east and south of the Parent Tract are all zoned AR. The properties to the north and east consist of low-density residential development and agricultural uses, as well as existing First Energy transmission lines. The properties to the south are owned by the Montgomery County Government and consist of the County Incinerator and the County Composting Facility. The western boundary of the Parent Tract abuts the Potomac River, the C&O Canal, the C&O Canal towpath, and National Park Service properties. The western boundary of the Subject Property abuts the CSX railroad tracks that traverse the Parent Tract to reach the County Incinerator. The Subject Property is located within the boundaries of the AROS Master Plan. In connection with the Original CUP Approval, planning staff determined the neighborhood boundaries based on those properties that would be most impacted by the use located in the middle of the 750+-acre Parent Tract and limited the “neighborhood boundary” to

abutting and confronting properties. Staff identified only one approved conditional use/special exception in the defined neighborhood as S-235 for a public utility structure.

III. Proposed Development

Petitioner proposes to construct a data center campus on the Subject Property as envisioned in the Original CUP Approval. The campus will be constructed solely on IH-zoned property and only proposes utility structures and connections to be located in the AR-zoned portion of the Parent Tract which are permitted by right.

A data center/cable communications system centralizes information technology operations and equipment for the purposes of storing, processing, and disseminating data and applications. The data center campus will house computing infrastructure including servers, data storage drives, cooling equipment and power management devices for the purpose of housing digital records of every kind and website hosting to meet the demand for online storage. Visually, the data centers will look much like a warehouse.

The campus will be developed with 5 data centers, accessory administrative and storage buildings and associated surface parking areas. The campus will be accessed via an extension of the private road leading from Martinsburg Road to the site of the coal-fired decommissioned power plant.

The campus will be served by an on-site wastewater management system, well water for domestic purposes, and water drawn from the Potomac River for purposes of cooling the data centers. The Petition also proposes construction of an on-site electrical substation. First Energy, the utility that will provide electrical service to the campus, will construct a switch yard adjacent to the campus (at the Petitioner's expense) to allow the campus to utilize existing adjacent First Energy transmission lines.

Data centers operate 24 hours a day, although the active hours for most employees are 7 AM to 7 PM. Taking into account work shifts, the maximum number of employees at the data center at any one time is projected to be 85 and the total number of employees is projected to be approximately 250.

IV. Summary of Proof

Pursuant to Section 59.3.5.2.A of the Zoning Ordinance,² a Cable Communications System is defined as:

[A]n arrangement of antennas, cables, amplifiers, towers, microwave links, lines, wires, waveguides, laser beams, satellites, or any other conductors, converters, equipment, or structures designed, constructed and operated with the purpose of producing, transmitting, receiving, amplifying, storing, processing, or distributing audio, video, digital or other forms of electronic or electrical signals, programs and services in which the signals are distributed by wire or cable to subscribing members of the public. Cable Communications System does not include any similar system with cables that do not touch public rights-of-way and that serve only the occupants of a single property of land under common ownership or management.

In the Original CUP Approval, the Hearing Examiner found that a data center meets the definition of a cable communications system.

As detailed below, this Petition satisfies all of the requisite findings necessary for the Hearing Examiner to grant the proposed data center conditional use:

- 1. The proposed development satisfies any applicable previous approval on the subject site or, if not, that the previous approval must be amended.***

The Petition is solely for a data center campus as anticipated by and preliminarily approved under the Original CUP Approval, and will comply with all conditions thereof. The owner of the Parent Tract has or will submit the required application to request to modify Special

² All section and article references herein are to the Montgomery County Zoning Ordinance.

Exception (S-235), Public Utility, to remove the areas within this Petition from the existing approved Special Exception.

- 2. The proposed development satisfies the requirements of the zone, use standards under Article 59-3, and to the extent the Hearing Examiner finds necessary to ensure compatibility, meets applicable general requirements under Article 59-6;***

As discussed below, the Petition satisfies the development standards of the IH zone contained in Article 59.4, the use standards for a Cable Communications System contained in Article 59.3, and the applicable general development standards contained in Article 59.6.

i. Use Standards for Cable Communications System (Article 59.3)

Where a cable communications system is allowed as a conditional use, it may be permitted by the Hearing Examiner under Section 7.3.1, Conditional Use, and the following standards:

- a) Any proposed tower must be set back one foot for every foot of height of a tower from all property lines, measured from the base of the support structure.***

No tower construction is proposed with this Petition and as such this section is inapplicable.

- b) The location of the proposed community access centers or studios are consistent with the cable communications plan approved by the District Council.***

Petitioner is not proposing community access centers or a studio with this Petition and as such this section is inapplicable.

- c) Structures, buildings, and facilities in which or on which component elements of a Cable Communications System are located or which otherwise support the system, and which are operated by the entity operating the Cable Communications System under a franchise***

awarded by Montgomery County, may be allowed if approved by the Hearing Examiner.

The proposed use does not require a franchise by Montgomery County and as such this section is inapplicable.

d) Offices are prohibited in Residential zones as part of the Cable Communications System Use.

The data center will be located entirely within the IH Zone, not in a residential zone and the proposed administrative offices will be located within the Subject Property that is fully contained in the IH Zone. As such, this prohibition does not apply to this Petition.

e) Screening under Division 6.5 is not required.

No screening is required nor is any proposed. However, the area around the location for the data center is fully forested and proposed for conservation. The Parent Tract is also located several hundred feet from public roads and approximately one-half mile from the nearest house.

f) The transmission and distribution lines, wires, and cables that are component elements of a cable communications system are permitted uses in all zones and are not required to obtain conditional use approval.

Accordingly, any transmission or distribution lines or cables and wires are permitted uses and do not require approval from the Hearing Examiner.

ii. Development Standards in the IH Zone (Article 59.4)

To approve a conditional use, the Hearing Examiner must find that the petition meets the development standards of the IH zone, contained in Article 59.4 of the Zoning Ordinance. The table below compares the minimum development standards of the IH zone to what is proposed in this Petition. In summary, the proposed data center campus complies with the development standards of the zone.

Table 1: Conditional Use Development and Parking Standards (Heavy Industrial - IH)

Development Standard Section 59.4.8.3.C*	Permitted/ Required	Existing/Proposed
Minimum Lot Area	N/A	104.46 acres (approx.)
Maximum Density	N/A	N/A
Maximum Building Lot Coverage	N/A	N/A
Minimum Front Setback	10 feet	10 feet
Minimum Side Setback	30 feet	151 feet
Minimum Rear Setback	52.5 feet	653 feet
Maximum Height	70 feet	65 feet
Vehicle Parking Requirement (Section 59.6.2.4.B)	Warehouse - 1.5 spaces/1,000 sq. ft. = 78 spaces	284 spaces

iii. General Development Standards (Article 59.6)

Article 59.6 has the following applicable requirements pertaining to compatibility:

a) Site Access and Parking

Site access will be provided by an extension of the private road off Martinsburg Road, which is classified as a Rustic Road, and is several hundred feet from any other public roads. No additional right-of-way dedication is required, and no improvements to Martinsburg Road, or any public roads, are proposed or necessary to accommodate vehicle trips generated by the campus.

The data center will have approximately 284 parking spaces located on the Subject Property. The parking lots, due to grade and vegetation, will not be visible from outside the Subject Property. Petitioner is proposing a maximum of 250 employees at full buildout, with no more than approximately 85 employees on site at any one time. The proposed parking lots will

meet the requirements of the Zoning Ordinance as it pertains to landscaping and canopy coverage via the existing surrounding trees. Therefore, the area proposed for parking is adequate and will meet the requirements of the Zoning Ordinance.

b) Open Space and Recreation

The proposed use and zone do not require the provision of open space and recreation. Therefore, Division 6.3 for Open Space is inapplicable.

c) Landscaping and Lighting

A dense forested area surrounds the Parent Tract. The Subject Property on which the data center campus will be located is interior to the Parent Tract and an extensive distance from adjoining properties. The proposed data center campus is far enough away from neighboring properties that lighting and landscaping will not have any adverse effects on the neighboring properties. The Petitioner will install the required lighting and landscaping with each phase of the project in compliance with applicable Montgomery County lighting standards. Because of its distant proximity and location within an industrial area, the Petition is sufficient to ensure compatibility with Section 59.6.4.

d) Screening

The Parent Tract and Subject Property are fully surrounded by forested areas proposed to be placed into a conservation easement. They are several hundred feet from public roads and thousands of feet from residential properties, both of which are sufficient to appropriately screen the use without providing additional screening measures. As shown by cross-section plans included with the Petition, the campus will not be visible from the C&O Canal towpath.

e) Outdoor Display and Storage

The proposed use and zone do not require the review of Division 6.6 for Outdoor Storage.

f) Signs and Signage

No signage is proposed.

3. The proposed development substantially conforms with the recommendations of the applicable master plan;

The Subject Property is within the boundary of the AROS Master Plan. The AROS Master Plan refers to the Parent Tract as the “PEPCO site” and contains no specific recommendations or anticipation for any change of use. The proposed use is consistent with the IH-zoned portion of the Property and with the AROS Master Plan. The Master Plan emphasizes preservation of agriculture and rural open space. The proposed uses will be placed on the IH-zoned land. A switchyard constructed by First Energy to serve the campus will be constructed near existing transmission lines in the AR-zoned portion of the Parent Tract. Moreover, the forest on the Parent Tract in the AR Zone will be placed into a forest conservation easement by the owner. Keeping the project footprint within the heavy industrial zone protects the agricultural land from non-agricultural uses.

4. The proposed development is harmonious with and will not alter the character of the surrounding neighborhood in a manner inconsistent with the plan;

The entirety of the Subject Property is zoned Heavy Industrial (IH) and is surrounded by lands zoned IH and Agricultural Reserve (AR). Existing uses in this area, located on both zoning categories, include a Dual Fuel Combustion Turbine, two (2) Electrical Substations, a Waste Incinerator, a Landfill, a Mulching Facility, the C & O Canal, First Energy Transmission Lines, fuel oil storage, ash plant, and privately owned agricultural properties. These uses are all depicted on Exhibit “1”, attached. The impact of the proposed campus will be much less than the previous coal-fired power plant and existing uses surrounding the Subject Property. The proposed uses will be confined to the currently zoned IH portion of the Subject Property and will

be a distance of approximately 2,500 feet from the nearest residential property. Therefore, the use is compatible with the surrounding neighborhood in a manner consistent with the AROS Master Plan and will not adversely affect the character of the surrounding area.

5. *The proposed development will not, when evaluated in conjunction with existing and approved conditional uses in any neighboring Residential Detached zone, increase the number, intensity or scope of conditional uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area; a conditional use application that substantially conforms with the recommendations of a master plan does not alter the nature of an area;*

The Subject Property is zoned IH and not located in a residential detached zone. The proposed conditional use will not impact the low-density residential and agricultural uses in the area for the reasons stated above and will be less intense on the surrounding uses than historic heavy industrial uses on the Subject Property. Accordingly, the proposed development will not increase the number, intensity, or scope of conditional uses in a manner so as to adversely affect any residential area.

6. *The proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage, and other public facilities. If an approved adequate public facilities test is currently valid and the impact of the conditional use is equal to or less than what was approved, a new adequate public facilities test is not required. If an adequate public facilities test is required and:*
 - i. *if a preliminary subdivision plan is not filed concurrently or required subsequently, the Hearing Examiner must find that the proposed development will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, or*
 - ii. *if a preliminary subdivision plan is filed concurrently or required subsequently, the Planning Board must find that the proposed development will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, and storm drainage, and*

Staff previously determined at the time of the Original CUP Approval that adequate public facilities exist at the Subject Property to serve the proposed data center campus,

originally proposed as 7 data centers. The data center campus as proposed by this amendment will also be served by adequate public facilities. In this regard, the Property is served by an existing private well, which will only be used for domestic water needs. Water required for cooling the data center will be drawn from the Potomac River pursuant to a water appropriation permit issued by the Maryland Department of the Environment (“MDE”). As stated in the Water System Overview for the campus dated February 19, 2026, prepared by GAI Consultants (“GAI”) and included with this Petition, the maximum design flow for the cooling system is 500,000 gallons per day (GPD), with an average withdrawal of 69,300 GPD. These amounts are significantly less than the water utilized by the coal plant and are considered to be de minimus amounts by MDE according to GAI. The application for the water appropriation permit is pending review by MDE. The permit will be conditioned with maximum withdrawal limits, maximum discharge temperatures and requirements. Wastewater will be managed by an on-site package treatment facility installed as part of the project.

With regard to public roads, the Property is located in a Green Policy Area under the 2020-2024 Growth and Infrastructure Policy (“GIP”). The submitted Transportation Exemption Statement (TES) provided by the Petitioner indicates the proposed use will generate less than 50 net new peak hour trips, and therefore the Petitioner is exempt from the Local Area Transportation Review (LATR) under the GIP and from completing further transportation adequacy analysis. Roads and transportation facilities are adequate to support the Petition.

As noted, the campus will be accessed by an existing private road that connects to Martinsburg Road. No upgrades to or additional right-of-way dedication for Martinsburg Road are required to support the proposed use.

Finally, Petitioner has also submitted a Fire Department Access Plan and stormwater management plan for concurrent review with this Petition.

7. The proposed development will not cause undue harm to the neighborhood as a result of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in any of the following categories:

- i. the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;***
- ii. traffic, noise, odors, dust, illumination, or a lack of parking; or***
- iii. the health, safety, or welfare of neighboring residents, residents, visitors, or employees.***

Inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use necessarily associated with a particular use, regardless of its physical size or scale of operations.” Section 59.1.4.2. Non-inherent adverse effects are “adverse effects created by physical or operational characteristics of a conditional use not necessarily associated with the particular use or created by an unusual characteristic of the site.” *Id.* The physical and operational characteristics inherent to a cable communications system include: an access road; employee traffic; temporary construction traffic and noise; exhaust fan vibration and noise; back-up generator noise; and industrial appearance.

All proposed structures will be up to 2,400 to 2,500 feet from any residence. Because the data center will be water cooled, noise impacts are reduced compared to air-cooled data centers. In any case, final development will satisfy the County’s Noise Ordinance as demonstrated by the Noise Study prepared by Ramboll and included in this Petition. The Parent Tract surrounding the Subject Property has historically had an industrial appearance, but the data center will more closely resemble a warehouse as is consistent with industrial-zoned land.

The Petition proposes back-up diesel generators for data center equipment and smaller generators for facility operations such as lighting. In this regard, all data centers require robust and immediate back-up power solutions to ensure continuous, uninterrupted operations. In the event of a major power grid failure, even momentary outages can lead to significant data loss, operational disruptions, and severe financial implications for data center users. Diesel back-up generators are the most reliable and proven technology capable of delivering instantaneous, high-capacity power upon grid interruption. These generators are crucial for maintaining the integrity of sensitive data, supporting essential cooling systems, and ensuring continuous connectivity that our data center clients depend on 24/7. To mitigate environmental impact, all generator equipment that backs up the servers and cooling equipment will be outfitted with advanced emission control technologies, specifically Selective Catalytic Reduction (SCR) systems to significantly reduce NOx emissions and Diesel Particulate Filters (DPF) to capture particulate matter. Additional information regarding the diesel back-up system and its emission capture technology will be included in the Petitioner's Pre-hearing Submission.

During review of the Original CUP Approval, planning staff did not identify any non-inherent adverse effects. Because the proposed development will be screened by existing trees and grade, it will have a limited visual impact and will not cause any objectionable noise, fumes, or illumination or decrease in the economic value of surrounding properties. The data center use will have no adverse effect on road congestion or safety because of the limited on-site personnel. Therefore, the proposed development will not cause undue harm to the neighborhood from either non-inherent adverse effects or a combination of inherent or non-inherent adverse effects.

8. *Any structure to be constructed, reconstructed, or altered under a conditional use in a Residential Detached zone must be compatible with the character of the residential Neighborhood.*

This Petition does not propose to construct, reconstruct, or alter any structure within a Residential Detached Zone. All structures will be constructed within the IH zone.

9. *The fact that a proposed use satisfies all specific requirements to approve a conditional use does not create a presumption that the use is compatible with nearby properties and is not sufficient to require conditional use approval.*

The Petition satisfies all specific requirements for the conditional use and, as discussed above and in the Land Planning Report prepared by VIKA, is compatible with nearby properties.

10. *In evaluating the compatibility of an agricultural conditional use with surrounding Agricultural or Rural Residential zoned land, the Hearing Examiner must consider that the impact does not necessarily need to be controlled as stringently as if it were abutting a Residential zone.*

The Petition does not propose an agricultural conditional use.

V. Development Schedule

The proposed data center will be constructed in a single phase. Below is the development phasing and construction sequence:

- Pre-construction meeting
- Installation of sediment control devices
- Demolition of existing improvements
- Clearing and grading
- Construction of retaining walls and buildings
- Construction of surface parking, stormwater management facilities
- Installation of landscaping and stabilization of site
- Final inspections

VI. Written Reports

A traffic statement prepared by Langan, a Land Use & Planning Report prepared by VIKA, a Noise Study prepared by Romboll, and a Water System Overview prepared by GAI

have been submitted with this Petition. Any additional expert reports will be submitted with the Pre-hearing Submission.

VII. Initial List of Witnesses

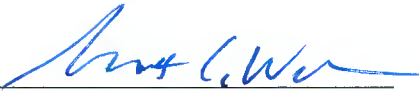
The Petitioner intends to call the following witnesses at the public hearing but reserves the right to call additional witnesses as necessary.

1. Mr. Chuck McBride, with Atmosphere Data Centers, will testify as to the proposed use and operations, as well as some planning and design aspects of the project.
2. Mr. Joshua Sloan, with VIKA Maryland, LLC, will testify as an expert in land planning and landscape architecture on the project's compliance with the requirements for forest conservation and environmental guidelines, the intent and requirements of the Zoning Ordinance, the proposed landscape design, compatibility of the proposed development with the surrounding Neighborhood, and the project's substantial compliance with the Master Plan.
3. Mr. Alex Andrews, with Langan, will testify as to the civil engineering aspects of the data center use, including but not limited to, for forest conservation, stormwater management and utilities serving the site.

Date: 5/26/26

Respectfully submitted,

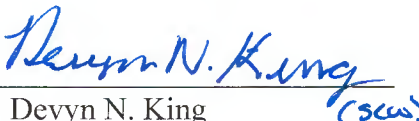
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Exhibit 1 - Property Map



Legend:

- A: Atmosphere's ~110-acre proposed data center campus
- B: FirstEnergy transmission lines
- C: Terra's Agricultural Reserve land
- D: Pepco substations
- E: Deactivated coal-fired power plant currently owned by Terra
- F: Rockland Capital's natural gas combustion turbine power plant
- G: Montgomery County's waste-to-energy facility
- H: Montgomery County's composting facility
- I: Martinsburg Road and Power Plant access road intersection
- J: Rockland Capital fuel oil storage
- K: Proposed Battery Energy Storage System Project Site (separate ownership)
- L: GenOn MD. Ash