

**COUNTY OF CLEVELAND, NORTH CAROLINA**  
**AGENDA FOR THE BOARD OF ADJUSTMENT MEETING**

**November 29, 2018**

**4:00 PM**

**Commissioners Chambers**

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**Call to order and Establishment of a Quorum**

**Invocation and Pledge of Allegiance**

**Approval of Minutes**

Minutes from the August 30, 2018 Board of Adjustment meeting

**Cases**

Case 18-09: Request for Solar Farm at 172 Pony Barn Road

**Miscellaneous Business**

**Adjournment**

**COUNTY OF CLEVELAND, NORTH CAROLINA**

**AGENDA ITEM SUMMARY**

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**Minutes**

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**Department:**

**Agenda Title:** Minutes from the August 30, 2018 Board of Adjustment meeting

**Agenda Summary:**

**Proposed Action:**

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**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> 8-30-18_BOA_minutes.pdf	Minutes



**MINUTES**  
**CLEVELAND COUNTY BOARD OF ADJUSTMENT**  
**Commission Chambers – County Administrative Building**  
**311 East Marion St., Shelby, North Carolina**  
**Regular Meeting - 4:00 p.m.**  
**August 30, 2018**

<i><b>Members Present</b></i>	<i><b>Others Present</b></i>	<i><b>Others Present</b></i>
Jeff Ward, Chairman	Chris Martin, Senior Planner	Lynn Devine
Joyce Coleman, Vice Chairman	Henry Earle, Planner	Dana Donaldson
Paul Aulbach	Elliott Engstrom, County Attorney	Richard Brittain
Doug Lawing	Michael Fox, Cypress Creek (Applicant) Attorney	Greg Brittain
Tommy Brooks	Leon Leonhardt	Mike Fox
Thomas Fletcher (non-voting)	Grady McDaniel	Steve Evans
	Jimmy Carroll	Danny Obeler
<i><b>Members Absent</b></i>	Jaimee Ingram	Travis Jones
Bobby Watson	Ronald Ingram	Henry Peyton Gilbert
	Michael C. Funk	Diana Elliott
	Chris Devine	

**CALL TO ORDER AND ROLL CALL TO ESTABLISH QUORUM**

**Chairman Ward** called the meeting to order at 4:03 pm. He determined that quorum was present, with alternate member Tommy Brooks called up to vote, and alternate member Thomas Fletcher to observe only (not vote).

**INVOCATION AND PLEDGE OF ALLEGIANCE**

**Joyce Coleman** led the Invocation and **Chairman Ward** led the Pledge of Allegiance.

**APPROVAL OF JULY 26, 2018, MINUTES**

**Paul Aulbach** made the motion to approve the July 26, 2018 minutes. It was seconded by Joyce Coleman and unanimously carried.

**CASE #18-08 CUP: PONY BARN RD. SOLAR FARM**

Applicant: Apex Solar / Cypress Creek Renewables

Location: 172 Pony Barn Rd.

Parcel #'s: 35642, 59529, 57509, 35644, 35649, 3561, 35586, 35587, 35585, and 71199

**Chairman Ward** reviewed Board of Adjustment protocol with the public present in order to explain what is to be expected during an evidentiary hearing. Due to the numbers present, Chairman Ward said he may limit testimony to three minutes.

**Chris Martin** was sworn in to present a Staff Report on case 18-08. He asked the Board to review the application and consider the four criteria regarding endangering public health or safety, injuring adjoining property values, harmony with the area, and conformity with the Land Use Plan. The application submitted by Apex Solar/ Cypress Creek Renewables is for a solar farm spanning over multiple parcels covering 475 acres, with 350 acres developed as a solar facility. It will span from Fallston-Waco Rd., northeast across Pony Barn Rd., and to Hwy 182, East Stage Coach Trail. The parcels involved are owned by three parties, and are zoned Rural Agriculture which allows for both residential and non-residential uses. Solar Farms are allowed in Rural Agriculture with a Conditional Use Permit. Mr. Martin presented a Zoning Map and the site plan. The Land Use plan calls for low density residential uses in this area. The applicant has submitted all materials required (site plan with required screening and setbacks to meet code, a decommission plan, and completed application).

**Mr. Aulbach** inquired about waterways. Mr. Martin said they site plan shows that development stays out of the floodplains and wetlands.

**Chairman Ward** reviewed the Adjoiners list of property owners that were notified. Mr. Martin confirmed that they have all received proper notice of the hearing.

**Chairman Ward** opened the Public Hearing at 4:12 pm.

**Attorney Engstrom** pointed out that the Board may provide reasonable opportunity to those present to cross examine someone if they disagree. Those questions can be addressed to Chairman Ward, who may then direct them to Mr. Martin.

**Mike Fox**, attorney for applicant Cypress Creek, was sworn in. He stated that he would like to request a continuance of the Public hearing to the next meeting. Cypress Creek has received numerous questions and they wish to schedule a public meeting close to the site to view large maps of the development and meet with people individually. They can make changes to their plans based on the circumstances versus having to do that during the public hearing.

**Chairman Ward** stated that many people took time to come to this hearing.

**Attorney Engstrom** stated that if the public hearing is continued within six weeks it does not need new notice provided to adjoining property owners.

**Mr. Fox** said that his meeting would involve engineers and company representatives, solar panel samples and site plans, and a chance to answer questions. They would explain the project in detail.

**Attorney Engstrom** suggested closing the Public Hearing and voting on whether or not to continue the case. The public hearing can be reopened now or at the next meeting. The applicant may also withdraw the application and reapply.

**Chairman Ward** closed the Public Hearing at 4:20 pm.

The Board discussed that a lot of people showed up. Mr. Lawing inquired about the applicant's request for a continuance to Staff. Mr. Martin said staff had already mailed notice of the Public Hearing before they were made aware of a request for continuance by the applicant.

**Chairman Ward** requested a vote to hear the case today. It was voted 3 (three) in favor to hear the case today and (2) two in favor for a continuance to the next month.

**Mr. Martin** stated if the applicant withdraws the application they can reapply. Staff would provide the same notice and advertisement of the meeting. Attorney Engstrom said the applicant can withdraw at any time.

**Mr. Fox** requested to withdraw the application and reach out to the neighbors to make sure they are informed.

**Chairman Ward** asked the landowners present if they understood the decision and there was a reply of "yes."

**Chairman Ward** stated Case 18-08 CUP Solar Farm has been officially withdrawn.

### **ADJOURNMENT**

**Chairman Ward** entertained a motion to adjourn.

<p><b>Doug Lawing</b> made the motion to adjourn the meeting. It was seconded by Joyce Coleman and unanimously carried to adjourn at 4:30 pm.</p>
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Jeff Ward, Chairman

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Anna Parker, Administrative Assistant

# COUNTY OF CLEVELAND, NORTH CAROLINA

## AGENDA ITEM SUMMARY

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### Case 18-09

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**Department:**

**Agenda Title:** Case 18-09: Request for Solar Farm at 172 Pony Barn Road

**Agenda Summary:**

**Proposed Action:**

---

**ATTACHMENTS:**

File Name	Description
<input type="checkbox"/> 18-09_Staff_Report_172_Pony_Barn_Solar_Farm.pdf	Staff Report
<input type="checkbox"/> Apex_Zoning_Site_Plan_11-06-18.pdf	Site Plan
<input type="checkbox"/> 18-09_Aerial__LUP__Zoning_maps_172_Pony_Barn_Rd.pdf	Aerial Zoning and Land Use Maps
<input type="checkbox"/> 18-09_Adjoiners_172_pony_Barn_solar.pdf	Adjoiners List

## STAFF REPORT

To: Board of Adjustment Date: November 26, 2018

From: Chris Martin, Senior Planner

Via: Henry Earle, Planner

Subject: Conditional Use Permit Application 18-09

Summary Statement: Cypress Creek Renewables, under the name Apex Solar, LLC, is requesting a Conditional Use Permit to operate a 357 acre solar facility at 172 Pony Barn Road. They have submitted a completed application, a site plan, and a decommissioning plan.

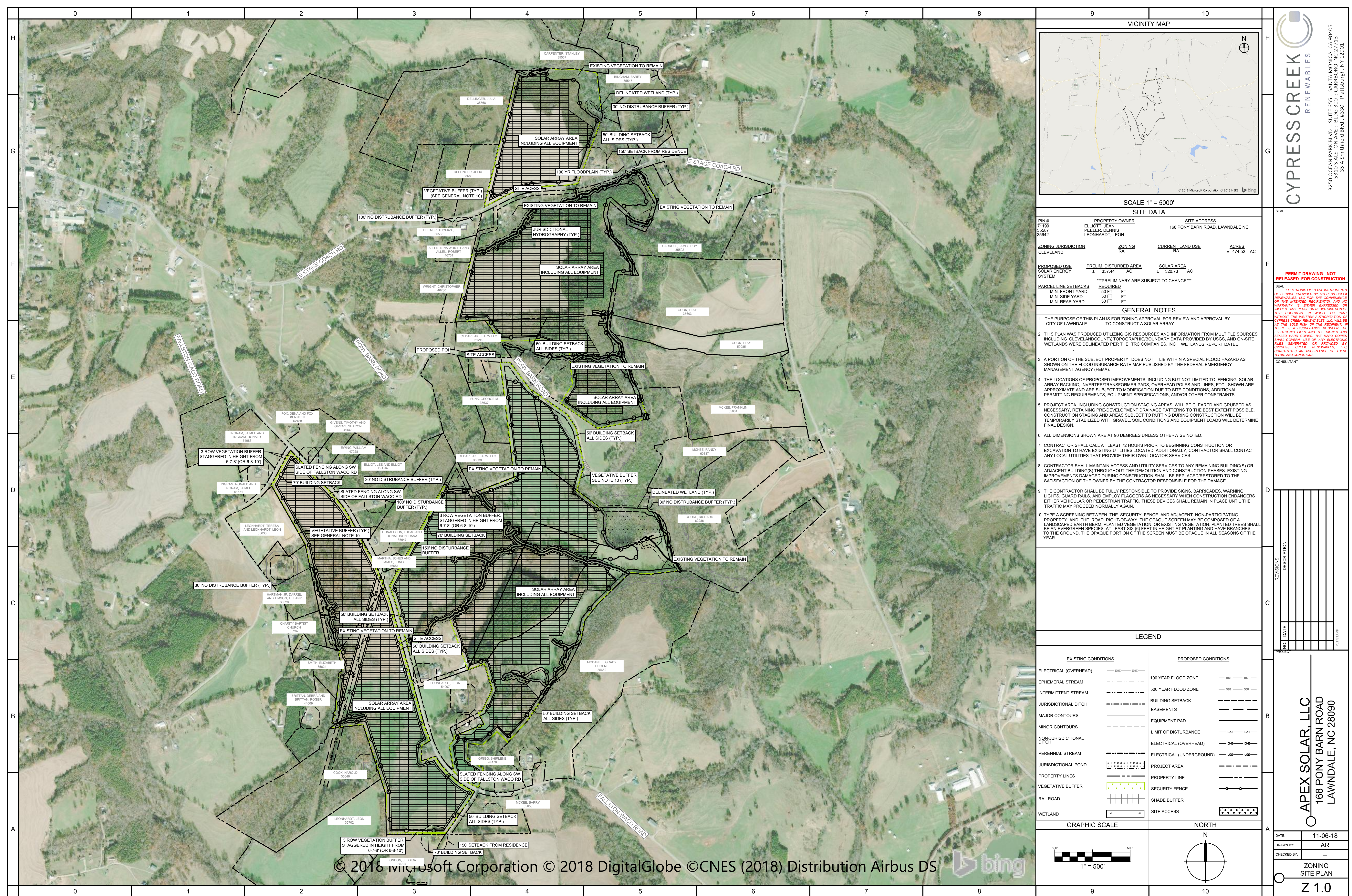
Review: The property for consideration is a combination of parcels 35642, 59529, 57509, 35644, 35649 and 3561, owned by D. Leon Leonhardt, as well as parcels 35586, 35587 and 35585 owned by Dennis Peeler and parcel 71199 owned by Jean Elliot. The properties are located mainly between East Stage Coach Trail to the north, Fallston-Waco Road to the west and south, and Plainsview Church Road to the east. The property is currently zoned Rural Agriculture, with a portion of parcel 71199 being zoned Residential. The land use plan calls this area Low Density Residential. The surrounding area consists mostly of large tracts of residential land. This case was submitted as Case 18-08 previously, and was withdrawn during the August 30, 2018 Board of Adjustment hearing.

Solar Facilities are a compliant use in the Rural Agriculture zoning district with the issuance of a Conditional Use Permit from the Board of Adjustment. There are required standards for Solar Farms that are described in Section 12-160 of the Cleveland County Development Code, and included in your packet.

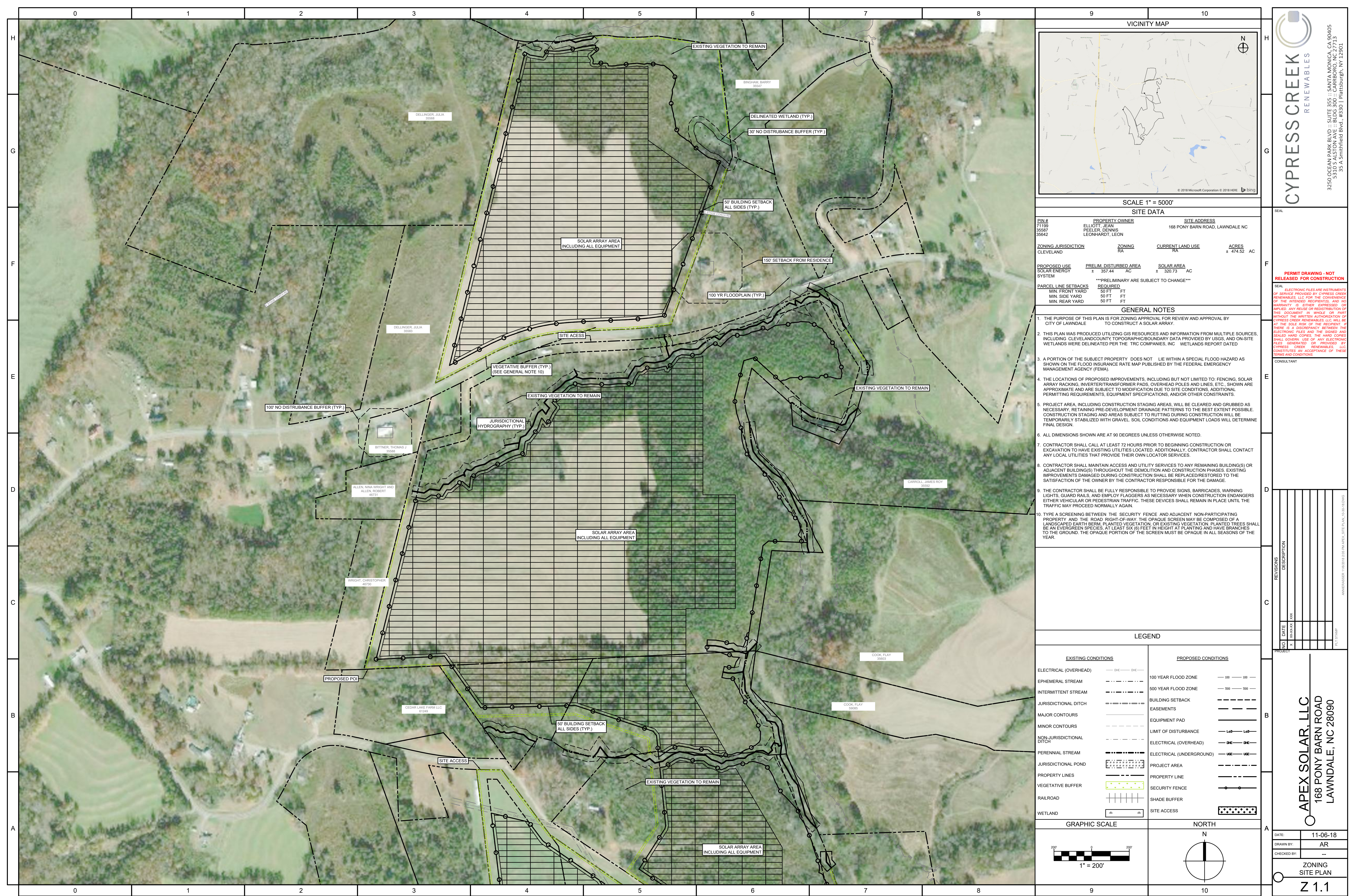
When issuing conditional use permits, the Board must consider the following four findings;

- (1) Will not materially endanger the public health or safety;
- (2) Will not substantially injure the value of adjoining or abutting property;
- (3) Will be in harmony with the area in which it is to be located; or
- (4) Will be in general conformity with the land use plan, thoroughfare plan, or other plans officially adopted by the board of commissioners.

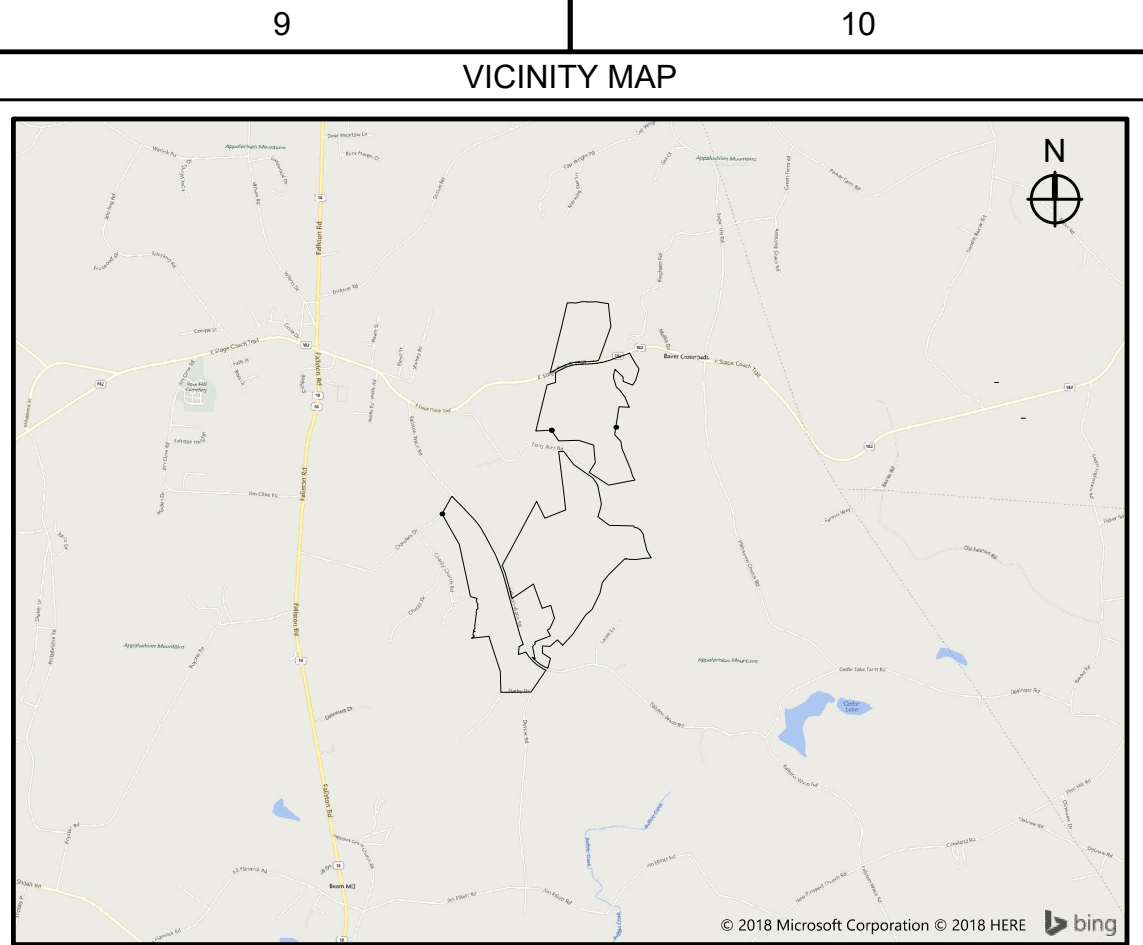
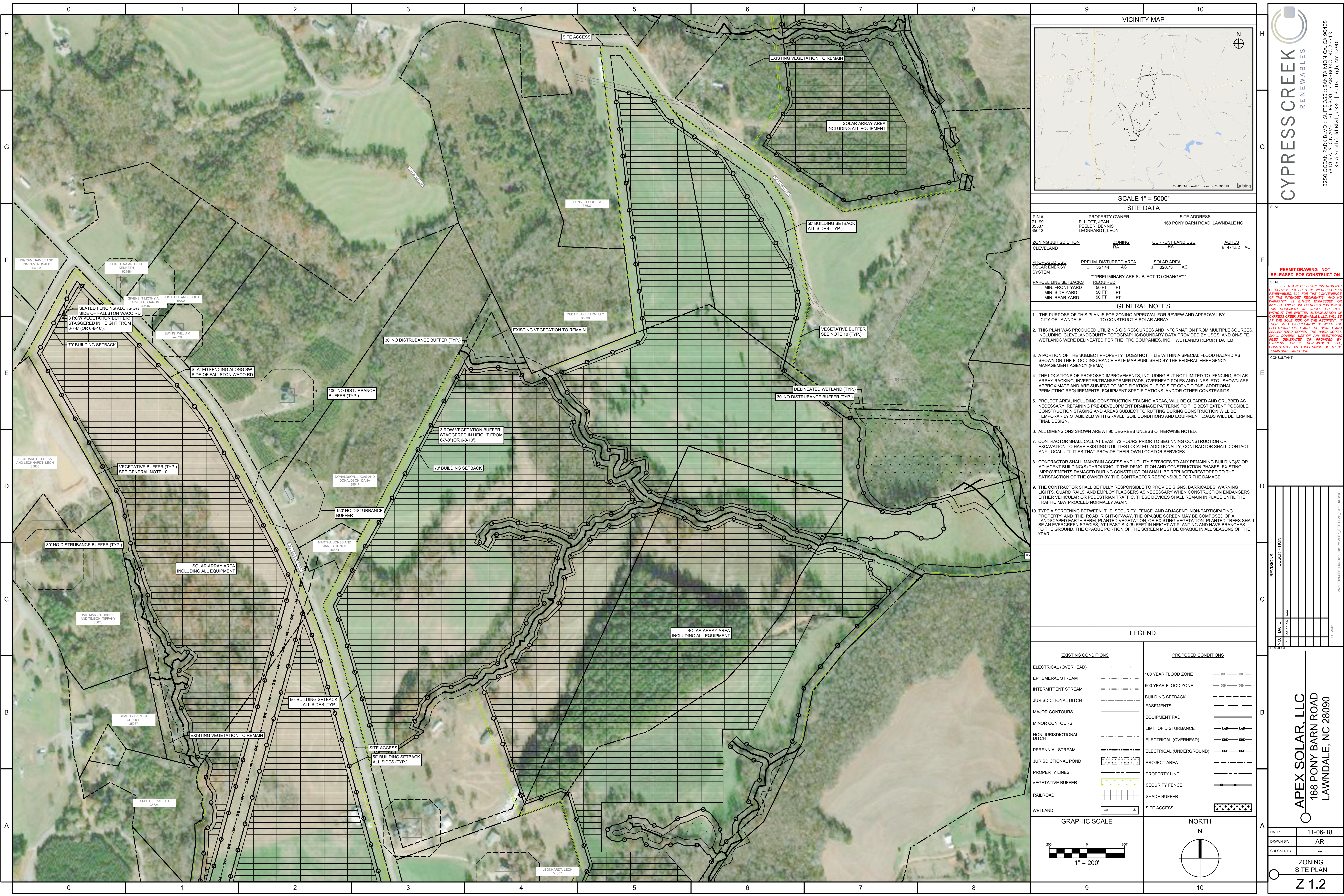












SITE DATA			
PIN # 71199 35587 35642	PROPERTY OWNER ELLIOTT, JEAN PEELER, DENNIS LEONHARDT, LEON	SITE ADDRESS 168 PONY BARN ROAD, LAWDALE NC ± 474.52 AC	
ZONING JURISDICTION CLEVELAND	ZONING RA	CURRENT LAND USE RA	ACRES ± 474.52 AC
PROPOSED USE SOLAR ENERGY SYSTEM	PRELIM. DISTURBED AREA ± 357.44 AC	SOLAR AREA ± 320.73 AC	***PRELIMINARY ARE SUBJECT TO CHANGE***
PARCEL LINE SETBACKS MIN. FRONT YARD MIN. SIDE YARD MIN. REAR YARD	REQUIRED 50 FT 50 FT 50 FT		

- GENERAL NOTES**
- THE PURPOSE OF THIS PLAN IS FOR ZONING APPROVAL FOR REVIEW AND APPROVAL BY CITY OF LAWDALE TO CONSTRUCT A SOLAR ARRAY.
  - THIS PLAN WAS PRODUCED UTILIZING GIS RESOURCES AND INFORMATION FROM MULTIPLE SOURCES, INCLUDING CLEVELAND COUNTY TOPOGRAPHIC BOUNDARY DATA PROVIDED BY USGS, AND ON-SITE WETLANDS WERE DELINEATED PER THE TRC COMPANIES, INC WETLANDS REPORT DATED
  - A PORTION OF THE SUBJECT PROPERTY DOES NOT LIE WITHIN A SPECIAL FLOOD HAZARD AS SHOWN ON THE FLOOD INSURANCE RATE MAP PUBLISHED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA).
  - THE LOCATIONS OF PROPOSED IMPROVEMENTS, INCLUDING BUT NOT LIMITED TO: FENCING, SOLAR ARRAY RACKING, INVERTER/TRANSFORMER PADS, OVERHEAD POLES AND LINES, ETC., SHOWN ARE APPROXIMATE AND ARE SUBJECT TO MODIFICATION DUE TO SITE CONDITIONS, ADDITIONAL PERMITTING REQUIREMENTS, EQUIPMENT SPECIFICATIONS, AND/OR OTHER CONSTRAINTS.
  - PROJECT AREA, INCLUDING CONSTRUCTION STAGING AREAS, WILL BE CLEARED AND GRUBBED AS NECESSARY, RETAINING PRE-DEVELOPMENT DRAINAGE PATTERNS TO THE BEST EXTENT POSSIBLE. CONSTRUCTION STAGING AND AREAS SUBJECT TO RUTTING DURING CONSTRUCTION WILL BE TEMPORARILY STABILIZED WITH GRAVEL. SOIL CONDITIONS AND EQUIPMENT LOADS WILL DETERMINE FINAL DESIGN.
  - ALL DIMENSIONS SHOWN ARE AT 90 DEGREES UNLESS OTHERWISE NOTED.
  - CONTRACTOR SHALL CALL AT LEAST 72 HOURS PRIOR TO BEGINNING CONSTRUCTION OR EXCAVATION TO HAVE EXISTING UTILITIES LOCATED. ADDITIONALLY, CONTRACTOR SHALL CONTACT ANY LOCAL UTILITIES THAT PROVIDE THEIR OWN LOCATOR SERVICES.
  - CONTRACTOR SHALL MAINTAIN ACCESS AND UTILITY SERVICES TO ANY REMAINING BUILDING(S) OR ADJACENT BUILDING(S) THROUGHOUT THE DEMOLITION AND CONSTRUCTION PHASES. EXISTING IMPROVEMENTS DAMAGED DURING CONSTRUCTION SHALL BE REPLACED/RESTORED TO THE SATISFACTION OF THE OWNER BY THE CONTRACTOR RESPONSIBLE FOR THE DAMAGE.
  - THE CONTRACTOR SHALL BE FULLY RESPONSIBLE TO PROVIDE SIGNS, BARRICADES, WARNING LIGHTS, GUARD RAILS, AND EMPLOY FLAGGERS AS NECESSARY WHEN CONSTRUCTION ENDANGERS EITHER VEHICULAR OR PEDESTRIAN TRAFFIC. THESE DEVICES SHALL REMAIN IN PLACE UNTIL THE TRAFFIC MAY PROCEED NORMALLY AGAIN.
  - TYPE A SCREENING BETWEEN THE SECURITY FENCE AND ADJACENT NON-PARTICIPATING PROPERTY AND THE ROAD RIGHT-OF-WAY. THE OPAQUE SCREEN MAY BE COMPOSED OF A LANDSCAPED EARTH BERM, PLANTED VEGETATION, OR EXISTING VEGETATION. PLANTED TREES SHALL BE AN EVERGREEN SPECIES, AT LEAST SIX (6) FEET IN HEIGHT AT PLANTING AND HAVE BRANCHES TO THE GROUND. THE OPAQUE PORTION OF THE SCREEN MUST BE OPAQUE IN ALL SEASONS OF THE YEAR.

LEGEND	
EXISTING CONDITIONS	PROPOSED CONDITIONS
ELECTRICAL (OVERHEAD)	100 YEAR FLOOD ZONE
EPHEMERAL STREAM	500 YEAR FLOOD ZONE
INTERMITTENT STREAM	BUILDING SETBACK
JURISDICTIONAL DITCH	EASEMENTS
MAJOR CONTOURS	EQUIPMENT PAD
MINOR CONTOURS	LIMIT OF DISTURBANCE
NON-JURISDICTIONAL DITCH	ELECTRICAL (OVERHEAD)
PERENNIAL STREAM	ELECTRICAL (UNDERGROUND)
JURISDICTIONAL POND	PROJECT AREA
PROPERTY LINES	PROPERTY LINE
VEGETATIVE BUFFER	SECURITY FENCE
RAILROAD	SHADE BUFFER
WETLAND	SITE ACCESS

**GRAPHIC SCALE**

1" = 200'

**NORTH**

DATE: 11-06-18

DRAWN BY: AR

CHECKED BY: --

ZONING SITE PLAN

**Z 1.2**

**CYPRESS CREEK RENEWABLES**

3250 OCEAN PARK BLVD. :: SUITE 355 :: SANTA MONICA, CA 90405  
5310 S ALSTON AVE. :: BLDG 300 :: CARROLLTON, TX 75006  
35 A Smithfield Blvd., #330 J Fatsburg, NY 12501

**PERMIT DRAWING - NOT RELEASED FOR CONSTRUCTION**

SEAL

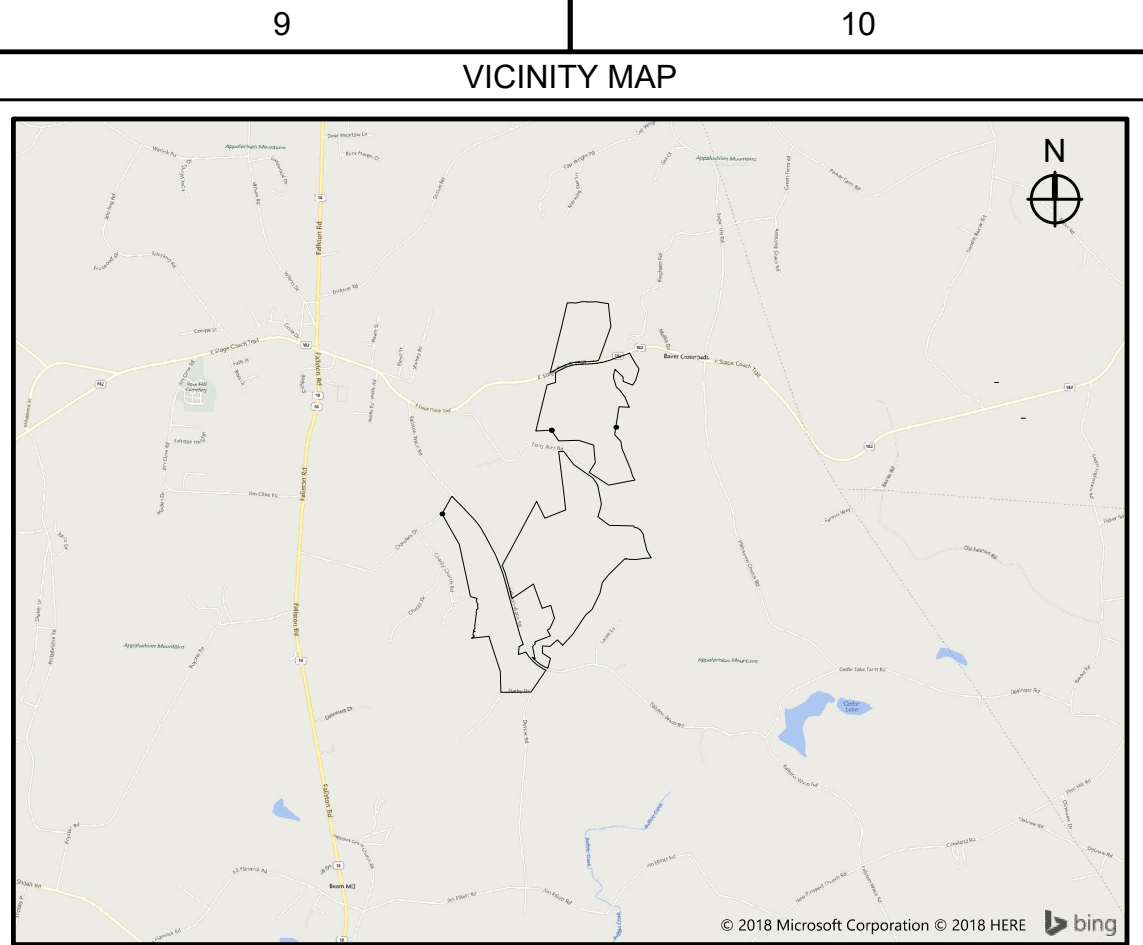
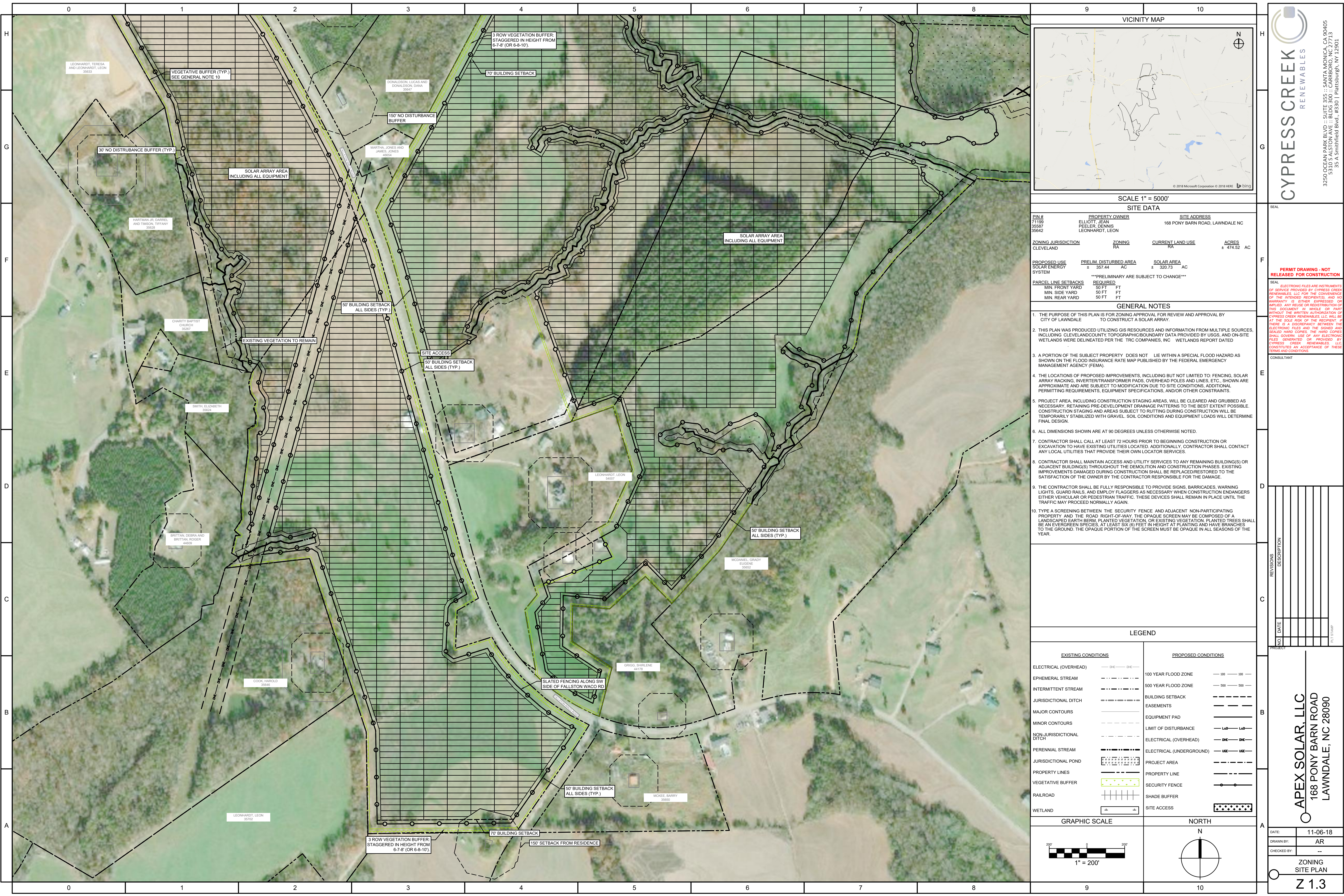
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CONSULTANT

NO.	DATE	REVISIONS	DESCRIPTION
1	11-06-18		
2			
3			
4			
5			
6			
7			
8			
9			
10			

PROJECT: APEX SOLAR, LLC 168 PONY BARN ROAD LAWDALE, NC 28090





SITE DATA			
PIN # 71199 35587 35642	PROPERTY OWNER ELLIOTT, JEAN PEELER, DENNIS LEONHARDT, LEON	SITE ADDRESS 168 PONY BARN ROAD, LAWDALE NC	
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WETLAND	SITE ACCESS

**GRAPHIC SCALE**

1" = 200'

**NORTH**

N

**DATE:** 11-06-18

**DRAWN BY:** AR

**CHECKED BY:** --

**ZONING SITE PLAN**

**Z 1.3**

**CYPRESS CREEK RENEWABLES**

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CONSULTANT

**APEX SOLAR, LLC**

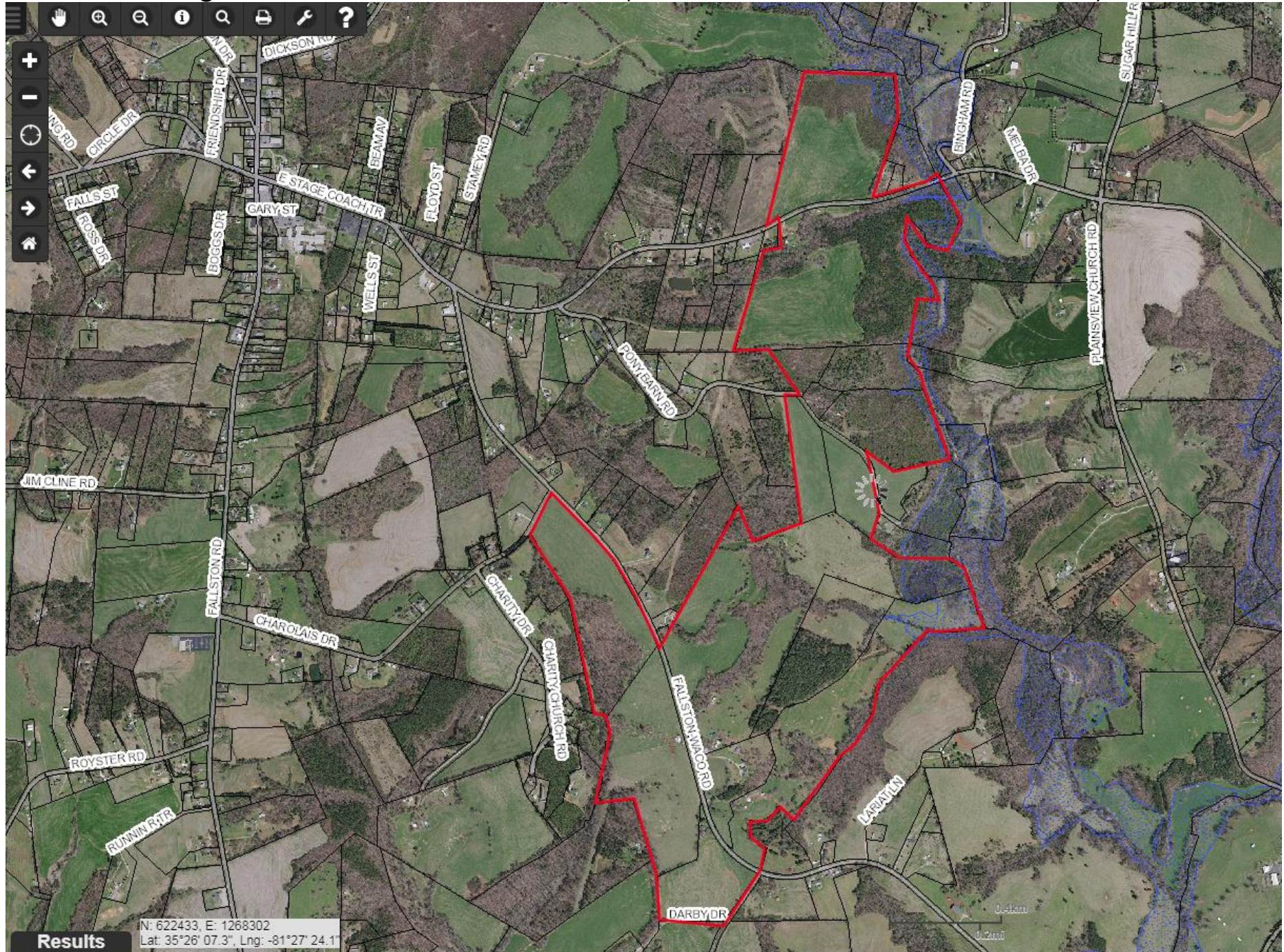
168 PONY BARN ROAD  
LAWDALE, NC 28090



2015 Aerial Image

18-09 CUP: Apex Solar Farm

172 Pony Barn Rd.





## Zoning Map

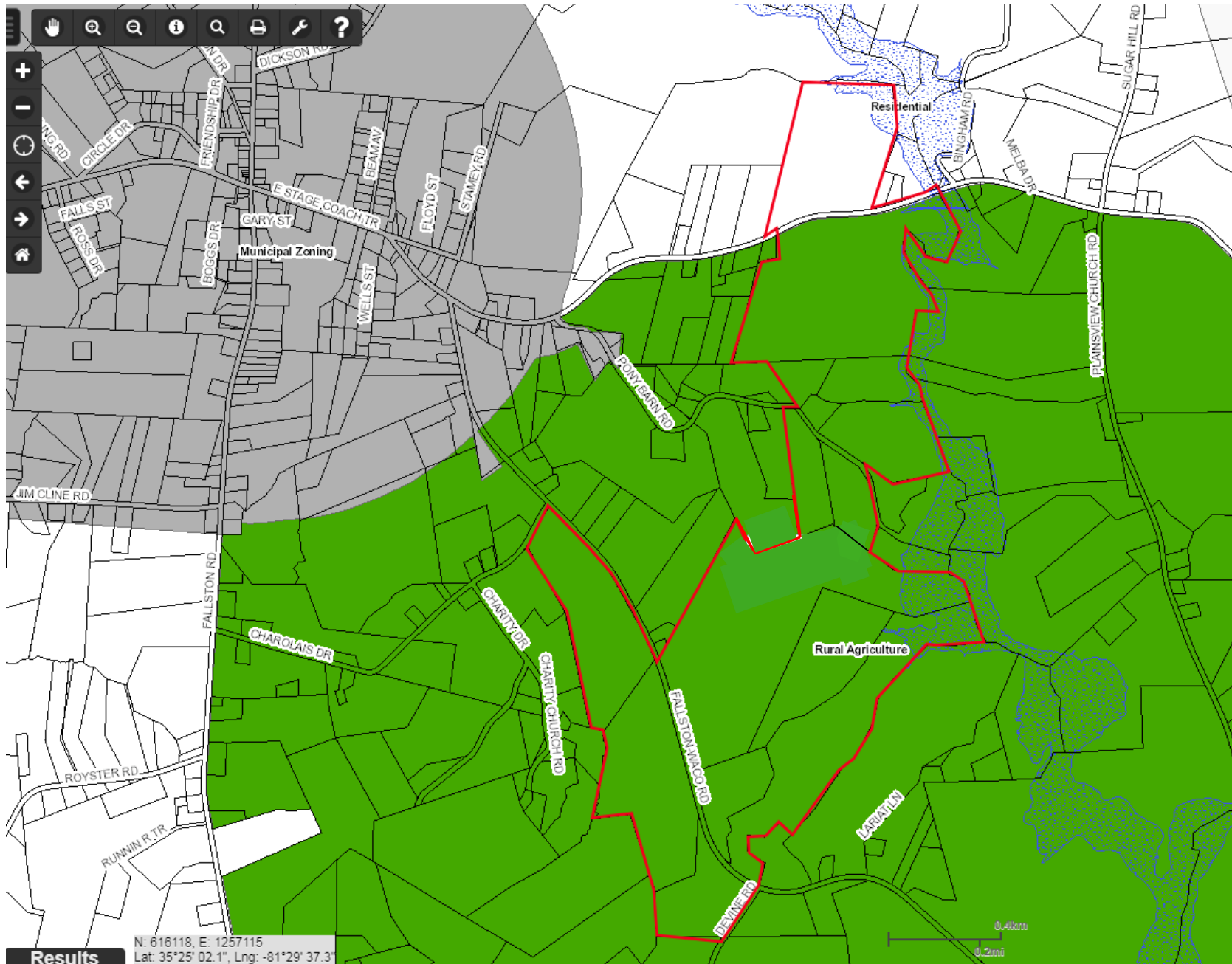
 Rural Agriculture

 Residential

 Fallston Municipal Zoning

18-09 CUP: Apex Solar Farm

172 Pony Barn Rd.

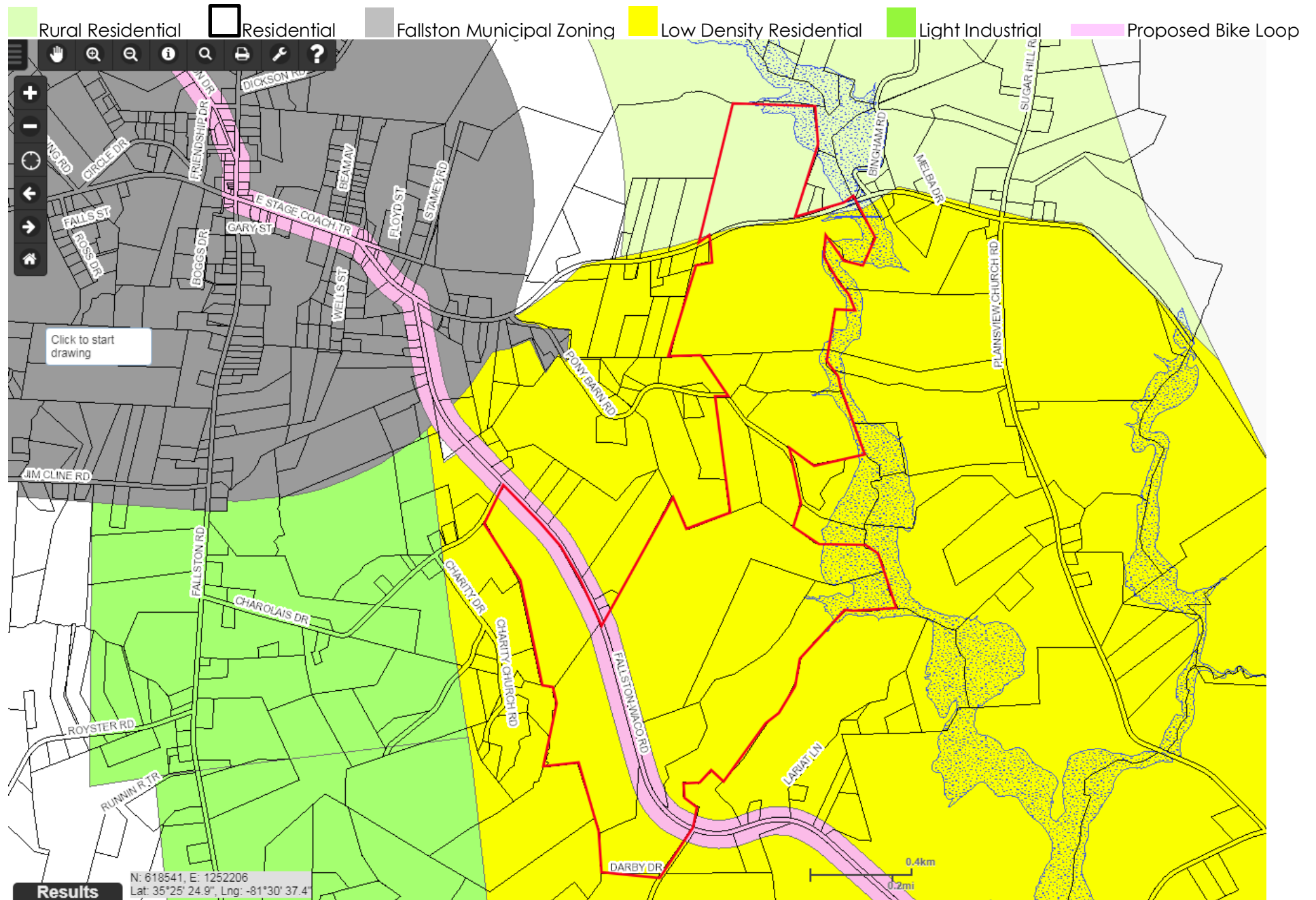




# Land Use Plan Map

18-09 CUP: Apex Solar Farm

172 Pony Barn Rd.





"Cleveland County  
Grows Greater"



## PLANNING DEPARTMENT

CHARLES F HARRY III ADMINISTRATIVE BUILDING  
PO BOX 1210 • 311 E MARION STREET • SHELBY NC 28151-1210  
www.clevelandcounty.com  
Telephone 704-484-4979

### PUBLIC HEARING NOTICE CERTIFICATION

**Case 18-09 CUP: Solar Farm by Apex Solar LLC/ Cypress Creek Renewables**  
Parcels 35642, 59529, 57509, 35644, 35649 and 3561, owned by D. Leon Leonhardt; parcels 35586,  
35587 and 35585 owned by Dennis Peeler; parcel 71199 owned by Jean Elliot

PARCEL	OWNER	MAILING ADDRESS	CITY, STATE, ZIP
35632	ANGELA & DENNIS MILNE		203 CHAROLAIS DR
<i>Applicant</i>	APEX SOLAR, LLC		5310 S ALSTON AVE BLDG 300
71199 & 60616	BARBARA AND JEAN ELLIOTT		PO BOX 191
35625	BARBARA FISHER		102 LEAFLOCK LN
35547	BARRY L BINGHAM		214 BINGHAM ROAD
35580	BILLY DELLINGER	MARY CONLEY, ETALS	1121 E STAGECOACH TR
61249 & 35638	CEDAR LAKE FARM LLC		PO BOX 6929
35627	CHARITY BAPTIST CHURCH TRUSTEE		113 CHARITY CH RD
52600	CHRISTIAN AND MICHAEL FUNK		PO BOX 1572
46728 & 46730	CHRISTOPHER S WRIGHT		2161 LYNN MOUNTAIN RD
<i>Applicant</i>	CYPRESS CREEK RENEWABLES		3250 OCEAN BLVD STE 355
35628	DARRELL EDGAR AND BERNADINE HARTMAN		117 CHARITY DR
35640	DENNIS AND DIANA ELLIOTT		3836 FALLSTON WACO RD
35585, 35586, 35587 & 35589	DENNIS DALE AND ELIZABETH PEELER		PO BOX 166
35676	DICE BRITTAIN		227 CHARITY DR
35702, 35633, 35641, 35642, 35644, 35649, 54007, 57509, 57863, 59529, & 61774	DOUGLAS AND TERESA LEONHARDT		PO BOX 580
35624	ELIZABETH ROXANNE SMITH		PO BOX 391
47028	EMILY AND WILLIAM B EWING JR		3864 FALLSTON-WACO RD
35603 & 59085	FLAY AND JANET COOKE		521 PLAINSVIEW CH RD
35604, 35613, 35650	FRANKLIN, BARRY, AND SUSAN MCKEE		3617 FALLSTON WACO RD
35652 & 35651	GRADY MCDANIEL		PO BOX 125




PARCEL	OWNER	MAILING ADDRESS	CITY, STATE, ZIP
35590 & 55090	GREGORY AND RICHARD BRITTAIN		1223 E STAGE COACH TRL
35669	IRMA FAYE GOFORTH		234 CHARITY CH RD
35623	JACQUELYN CHILDERS		392 MARTIN HILLS RD
59165 & 58890	JAMES & LUCILLE GREEN		PO BOX 126
35667	JAMES AND MARTHA JONES		3820 FALLSTON WACO RD
46654	JAMES AND MARTHA JONES		PO BOX 2658
35646	JAMES HAROLD COOK		PO BOX 395
35592	JAMES ROY CARROLL		1324 E STAGECOACH TRL
61780 & 44457	JANET AND WALTER NAHALEWSKI		PO BOX 564
44457	ANDREW AND AMBER CROSS		244 PONY BARN RD
35672	JEANETTE OWENS		3904 FALLSTON WACO RD
35662	JOE AND DONNA SMITH		PO BOX 550
61285 & 35731	JOEL & JESSICA LONDON		PO BOX 621
35617	JOHN E PORTER		1300 E STAGECOACH TRL
62488	KENNETH AND DENA FOX		1015 ALLENDALE DR
35647	LUCAS AND DANA DONALDSON		3824 FALLSTON WACO RD
35568 & 35583	MARY ELLEN CONLEY	DORIS D WILSON, ETALS	1121 E STAGECOACH TR
60837	RANDY MCKEE		PO BOX 389
52598	MELISSA & REGINALD LAWRENCE		112 WOODROW HOYLE RD
35637	MICHAEL AND GEORGE FUNK		PO BOX 127
35616	MICHAEL S HARRISON	LESLIE CARPENTER	1301 E STAGE COACH TRL
35591	MYRA CLARK		PO BOX 762
35582	NELSON AND APRIL MOSES		1142 E STAGECOACH TR
46731	NINA AND ROBERT ALLEN		PO BOX 263
52599	PAULA LEONHARDT	TANYA ERVIN-LEONHARDT	1140 EAST STAGECOACH
35698	PEGGY B COSTNER		4113 DEVINE RD
52300	RICHARD & MARY CARROLL		1316 E STAGECOACH TR
62019	RICHARD AND SARAH BRITTAIN		1225 E STAGECOACH TRL
62286	RICHARD H COOKE SR		5121 PARKWAY PLAZA BLVD
44609 & 35622	ROGER AND DEBRA BRITTAIN		229 CHARITY CH RD
61551 & 54983	RONALD AND JAIMEE INGRAM		PO BOX 726
35704	RUTH LONDON		4143 DEVINE RD
58114	SHANNON AND LORI BINGHAM		3600 FALLSTON WACO R
44178	SHIRLENE ROYSTER GRIGG	C/O TINA MEDLIN	PO BOX 6357
60922	SONYA PARTON	DONALD DELLINGER	235 CHARITY CHURCH R
35567	STANLEY D CARPENTER	JEFFREY S CARPENTER TRUSTEES	7698 PARKER FARM RD
44921	TAMMY GREEN MCKOWN		193 CAP WRIGHT ROAD
63523 & 35673	THOMAS & KAREN BESS		205 CHAROLAIS DR



PARCEL	OWNER	MAILING ADDRESS	CITY, STATE, ZIP
35588	THOMAS J BITTNER		3793 HOLLIS RD
49646	TIMOTHY AND SHARON GIVENS		3870 FALLSTON WACO RD

**CERTIFICATION**

I, Anna Parker, do hereby certify that the above listed adjoining property owners were mailed Public Hearing notices on 11/14/2018.

  
 Anna Parker