

Appendix J

2022 Public Service Corporations and Public Utilities

Virginia State Code details uses defined as “public service corporations” and “public utilities” in Sections 56-1 and 56-265.1, respectively. Generally, these uses include utilities supplying electric power, natural gas, geothermal power, telephone services, water service, sewer service, and common carriers that transport passengers or property, which can be owned or operated by a public, private, or nonprofit entity. Furthermore, state code details numerous instances where these uses are exempt from being defined as a “public service corporation” or “public utility”, as specified in the aforementioned state code sections.

Furthermore, Section 15.2-2232 of the Code of Virginia requires the Planning Commission to review public service corporations and public utilities for being “substantially in accord with the adopted comprehensive plan.” When the Commission performs this review, they are to consider the “general or approximate location, character and extent” of the feature under review. Similar to the state code sections defining these uses, Section 15.2-2232 details certain exceptions, establishing circumstances where a use shall automatically be deemed to be “substantially in accord with the comprehensive plan”, primarily for by right telecommunications facilities and select solar energy facilities, and, therefore, these uses do not require review by the Planning Commission.

History and Background

Solar Energy Facilities

In 2015, in response to statewide initiatives announced by Virginia’s governor, staff from the Department of Planning and Zoning began receiving an increase in inquiries regarding the ability to develop solar facilities within the County. As a result, the Planning Commission and Board of Supervisors directed staff to study permitting solar development within the County and the Board subsequently amended the County Code to permit solar facilities within the County, including utility-scale solar energy facilities by right in the RC-1 (Rural Countryside) district and by Conditional Use Permit (CUP) in all other districts, along with adopting supplemental regulations for solar uses at various scales. Based on experiences from solar development within the County and in other localities around the state, the Board revisited these regulations in 2017 to revise the requirements regarding decommissioning plans and their associated sureties and in 2020 to require a CUP for utility-scale solar energy facilities in all zoning districts, including the RC-1 district, along



Gloucester Solar Electric Power Plant - Located off Rte. 14, the first Board approved utility-scale solar energy facility within the County.

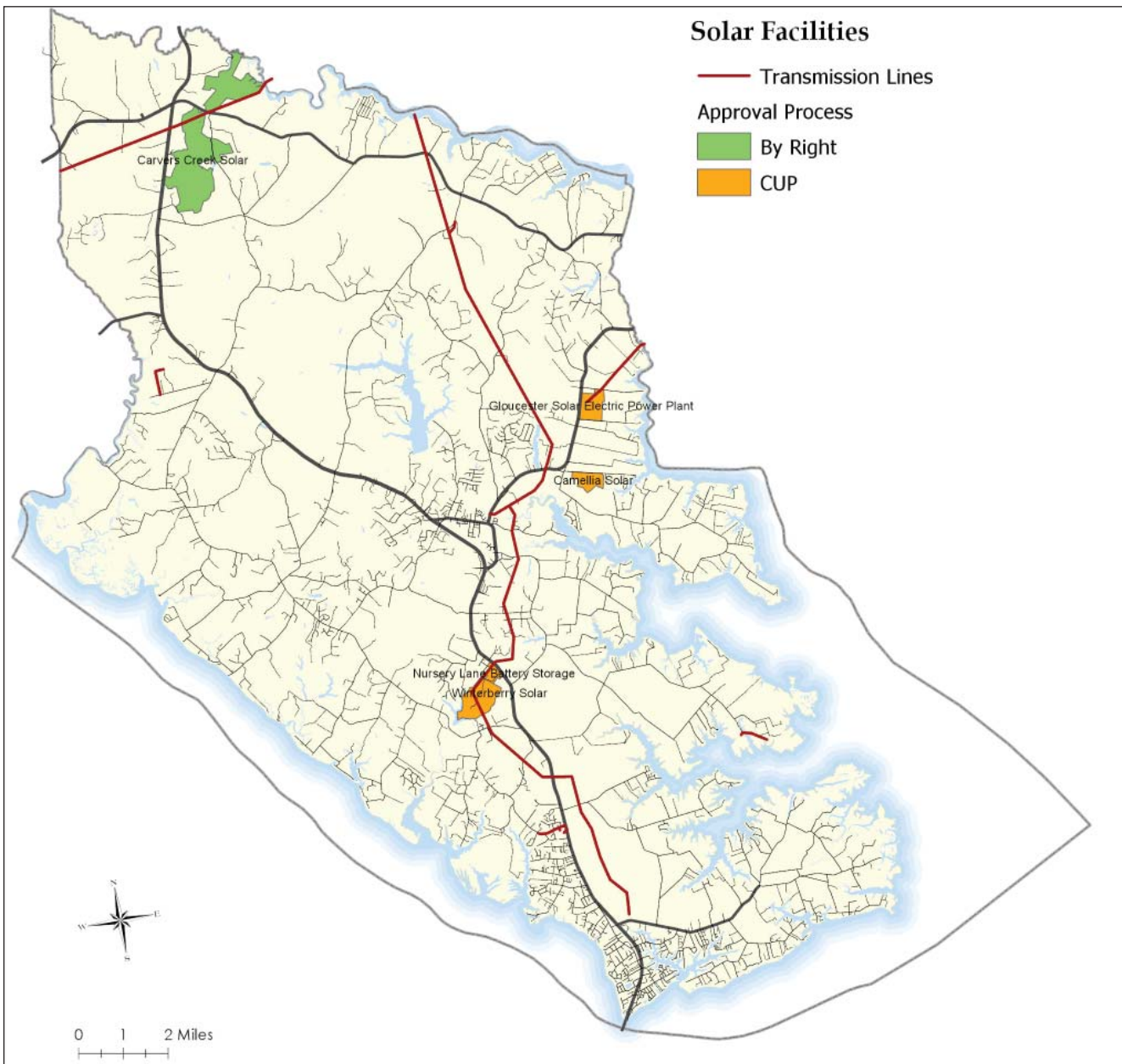


Aerial during construction of Gloucester Solar Electric Power Plant - Located off Rte. 14, the first Board approved utility-scale solar energy facility within the County. Source: SUKUT Construction.

with further revisions to the supplemental regulations for these uses. In 2021, after community opposition to the growing number of utility-scale solar energy facilities in the County, the Board adopted further revisions to these regulations, aligning the scales of solar development with state code and industry practices, limiting the location of solar energy facilities exceeding 25 kilowatts (kW) of electrical power, limiting the percentage of land area within the SC-1 (Suburban Countryside) and RC-1 districts that can be developed by solar facilities to two percent total land area, and further revising the supplemental regulations for these uses at all scales.

Since the Board adopted a solar ordinance in 2015, a number of applications have been reviewed by the Planning Commission and subsequently approved by the Board of Supervisors. In 2017, the Board approved the first utility-scale solar energy facility within the County, the Gloucester Solar Electric Power Plant, through the CUP process. In 2020, two additional utility-scale solar energy facilities were approved by the Board through the CUP process, the Winterberry Solar and Cow Creek Solar Facilities. In addition, the Carver's Creek Solar Facility, another utility-scale solar energy facility, was permitted as a by right use at the time of preliminary site plan approval in 2020 and, therefore, did not require review by the Planning Commission or Board of Supervisors. In 2021, the Camilla Solar Facility was also approved by the Board through the CUP process. For projects approved through the CUP process, customized conditions of approval were established for each project at the time of CUP approval. These conditions of approval, in addition to the applicable supplementary regulations for utility-scale solar energy facilities that existed at the time of CUP approval, have determined the development standards for

Map AJ-1: Solar & Battery Storage Facility Approvals

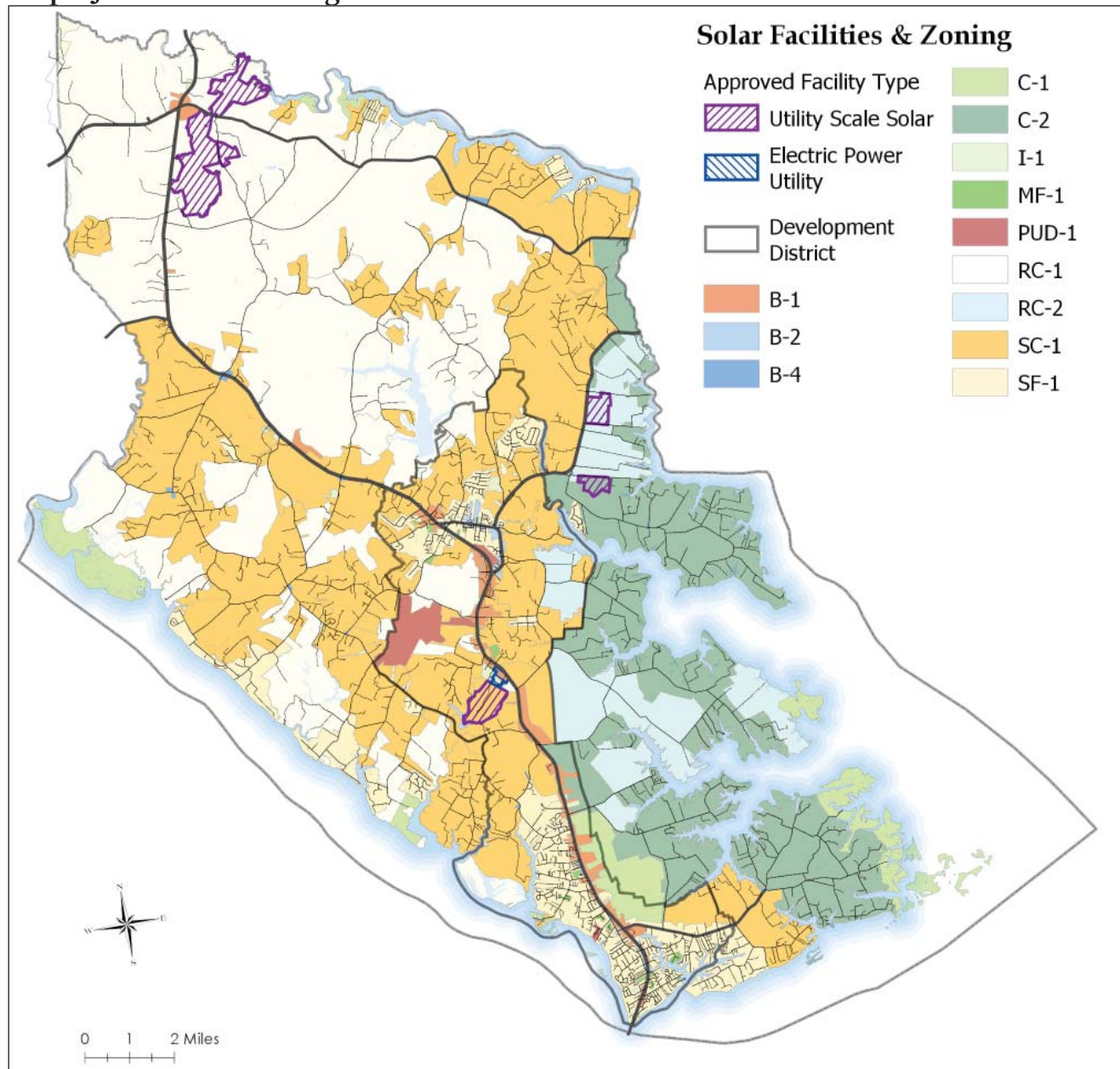


Data Sources: Gloucester County

Four solar facilities and one battery storage facility (classified as an electric power utility) have been approved for development or developed in Gloucester County since these uses were first added to the Zoning Ordinance in 2015 (for solar energy facilities) and 2021 (for electric power utilities). Gloucester Solar Electric Power Plant, Winterberry Solar, and Camellia Solar have been permitted through the Conditional Use Permit (CUP) process while Carvers Creek Solar was permitted as a by-right use. Nursery Lane Battery Storage (an electric power utility) has also been permitted through the CUP process.

Solar facilities are discussed on pages 283-287.

Map AJ-2: Solar & Zoning



Data Source: Gloucester County Planning and Zoning Department

Utility-scale solar facilities were originally permitted by-right in the RC-1 district and by Conditional Use Permit (CUP) in all other districts. However, after community feedback and numerous revisions to the solar ordinance, these facilities (utility-scale and community-scale solar energy facilities) are currently permitted by CUP only in the RC-1 and SC-1 districts with a maximum allowable land area of 2% of total acreage in each of these districts to be utilized by these uses. In addition, electric power utilities are permitted by CUP in all districts.

Solar facilities and zoning are discussed on pages 283-287.

each individual solar energy facility approved through the CUP process within the County to date. Although Carver's Creek Solar Facility did not have additional CUP conditions associated with the project, subsequent final site plan submittals were required to meet the applicable supplementary regulations for utility-scale solar energy facilities that existed at the time of preliminary site plan approval.

Additional small-scale, private solar energy facilities, permitted by right in all zoning districts, have been established within the County as well. These facilities, producing 25 kW or less of electrical power, are typically established as accessory, roof-mounted residential structures or adjacent structures to residences and often solely serve the uses on the lot they are located. As a result, the Board of Supervisors and Planning Commission have not expressed concern regarding these small-scale solar energy facilities and are generally supportive of them. Although the Zoning Ordinance been amended multiple times to address larger facilities, including, but not limited to, utility-scale solar energy facilities, concerns remain for these uses and potential impacts generated by larger facilities in the districts where they are permitted. These concerns are not as focused towards the development standards for these uses, but rather, the guidance from the Comprehensive Plan to be utilized by the Planning Commission and Board of Supervisors when evaluating applications for these uses on a case-by-case basis, especially evaluation of utility-scale solar energy facilities.

Other Utilities

In 2020, due to an inquiry to locate a battery energy storage facility within the County, the Board of Supervisors directed staff to study how to update the Zoning Ordinance to appropriately regulate battery energy storage facilities and other public utilities not previously contemplated as potential uses in the County. In addition, since the Zoning Ordinance classified all utilities (other than solar energy facilities) as “uses required for the provision and maintenance of public utilities”, which were not defined in the ordinance and were permitted by right in all districts, all utility uses were included within staff's considerations. In 2021, the Board amended the Zoning Ordinance, defining and regulating electric power utilities and nuclear power utilities as well as clarifying what specific utility uses fall under the definition of “uses required for the provision and maintenance of public utilities”.



Example of a battery energy storage facility like that approved by Conditional Use Permit on Nursery Lane adjacent to the Winterberry Solar Facility in 2021.

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Since the establishment of the “electric power utility” use in the Zoning Ordinance in 2020, the Board has approved one application for this type of use through the CUP process, the Roadview Battery Storage Facility, approved in 2021, which was proposed to be located adjacent to the Winterberry Solar Facility. Similar to the CUP applications approved for solar energy facilities, a unique set of conditions of approval were established for this application, which establish the development standards for this project.

Although the County has addressed how to regulate other utility uses in the Zoning Ordinance, in a similar fashion as solar energy facilities, concern continues to be expressed by the Planning Commission and Board of Supervisors regarding what guidance to use from the Comprehensive Plan to evaluate other utilities, such as battery storage facilities and other, newly emerging utilities.

Section 15.2-2232 Review

As previously discussed, the Code of Virginia Section 15.2-2232, requires the Planning Commission to review public service corporations and public utilities for being “substantially in accord with the adopted comprehensive plan.” Furthermore, when the Commission performs this review, they are to consider the “general or approximate location, character and extent” of the feature under review. Similar to the state code sections defining these uses, Section 15.2-2232 details certain exceptions, establishing circumstances where a use shall automatically be deemed to be “substantially in accord with the comprehensive plan”, primarily for by right telecommunications facilities and select solar energy facilities, and, therefore, these uses do not require review by the Planning Commission.

The Planning Commission has only reviewed one project specifically under Section 15.2-2232 of the Code of Virginia. Although the Gloucester Solar Electric Power Plant was approved as a CUP by the Board of Supervisors in 2017, the Resolution approving this application did not explicitly reference Section 15.2-2232 and, therefore, the applicant for this project requested the Planning Commission review the project to determine it as being “substantially in accord with the adopted comprehensive plan.” As a result, in 2018, the Commission reviewed

§ 15.2-2232. Legal status of plan.

“Whenever a local planning commission recommends a comprehensive plan or part thereof for the locality and such plan has been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless a feature is already shown on the adopted master plan or part thereof or is deemed so under subsection D, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the commission as being substantially in accord with the adopted comprehensive plan or part thereof.”

the Gloucester Solar Electric Power Plant and determined that the “general location or approximate location, character, and extent of the Solar Facility is substantially in accord with the Gloucester County Comprehensive Plan.”

Resolutions approving solar energy and battery storage facilities submitted subsequent to the Gloucester Solar Electric Power Plant have contained language reflecting Section 15.2-2232 to confirm substantially in accord with the adopted comprehensive plan during the Planning Commission's review of the CUP application. In addition, since the Carver's Creek Solar Facility was permitted as a by right project at the time of preliminary site plan approval, it was determined that this project was substantially in accord with the adopted comprehensive plan as a result of its by right zoning status, which had been recently adopted by the Board of Supervisors. Therefore, the Planning Commission has not been approached by any additional solar energy facility developers or other utility providers seeking a determination of substantially in accord with the adopted comprehensive plan for projects not associated with CUP applications since 2018. However, based upon the Commission's experience reviewing solar energy and battery storage facilities for substantially in accord with the adopted comprehensive plan, the Commission has continued to express concern regarding the limited guidance the Comprehensive Plan has to offer for the Planning Commission's mandated review under Section 15.2-2232 of the Code of Virginia.

Comprehensive Plan Criteria

In 2021, due to the ongoing concern regarding the limited guidance the Comprehensive Plan offers for the various uses classified as “public service corporations” or “public “utilities”, the Planning Commission requested that staff develop criteria for these uses to assist the Commission during future reviews in accordance with Section 15.2-2232 of the Code of Virginia. After reviewing the relevant state code sections along with the 2016 Comprehensive Plan, staff determined what uses were classified as “public service corporations” or “public utilities” and which of these uses were not already addressed in other chapters of the Comprehensive Plan, including the Transportation and Community Facilities chapters (Chapters 5 and 6, respectively). At a Joint Meeting between the Board of Supervisors and Planning Commission, the Gloucester County Attorney recommended a Vision Statement for how these uses should generally be located, which was supported by the Planning Commission and the Board of Supervisors. At subsequent Planning Commission meetings, County staff and the Planning Commission developed criteria based upon the zoning and/or future land use classification these uses may be proposed to be located within, general criteria for all uses classified as “public service corporations” or “public utilities”, and specific criteria for certain uses where greater concern exists. The Board of Supervisors adopted this appendix as Appendix J of the Comprehensive Plan (2022 Public Service Corporations and Public Utilities Amendment) at their September 6, 2022 meeting. During the adoption process, the Board removed the Vision Statement originally recommended by the County Attorney since the uses reviewed under the adopted criteria should also be “substantially in accord with” the Comprehensive Plan's Vision Statement and Board of Supervisor's Vision Statement for 2035, both included in the Introduction of the Comprehensive Plan (Chapter 1).

These criteria have been developed to provide the Commission with appropriate guidance to assess the “general or approximate location, character and extent” of a use under review as they seek to determine whether this use is “substantially in accord with the adopted comprehensive plan.” In addition, the criteria were prepared with the ability for the Planning Commission to use them at their discretion, recognizing that certain uses may not neatly fit within the criteria but may still be appropriate for the proposed location or application if multiple criteria may conflict for uses with unique characteristics and, therefore, flexibility in applying the criteria would be necessary to determine whether these uses are “substantially in accord with the adopted comprehensive plan.”

Zoning District/Future Land Use Types

The Planning Commission may utilize the following zoning district and future land use type recommendations at their discretion when evaluating all public service corporations and public utilities for substantially in accord or consistency with the Comprehensive Plan.

1. Agricultural
 - a. Public service corporations/public utilities should be evaluated for appropriateness on a case-by-case basis in agriculturally zoned areas based upon the location, extent, and character and any applicable criteria detailed in the Comprehensive Plan.
 - b. When public service corporations/public utilities are proposed in agricultural districts, special consideration shall be given to the location of these uses relative to wetlands, prime farmland, forestland, natural heritage sites, and other natural areas.
2. Residential
 - a. Public service corporations/public utilities are generally not appropriate in residential districts unless the use directly serves other uses in the district, specifically (but not exclusively), the residential uses.
 - b. When public service corporations/public utilities are proposed in residential districts, the PC's review of public service corporations/public utilities will be reviewed based upon the location, extent, and character and any applicable criteria detailed in the Comprehensive Plan.
 - c. When public service corporations/public utilities are proposed in residential districts, special consideration shall be given to the location of these uses relative to areas containing parks, schools, other public facilities/amenities, and natural heritage sites.
3. Multifamily
 - a. Public service corporations/public utilities are generally not appropriate in multifamily districts unless the use directly serves other uses in the district, specifically (but not exclusively), the multifamily residential uses.
 - b. When public service corporations/public utilities are proposed in multifamily districts, the PC's review of public service corporations/public utilities will be reviewed based upon the location, extent, and character and any applicable criteria detailed in the Comprehensive Plan.
 - c. When public service corporations/public utilities are proposed in multifamily districts, special consideration shall be given to the location of these uses relative to areas containing higher density housing (greater than 4 units per acre), parks, schools, and other public facilities/amenities, and natural heritage sites.
4. Conservation
 - a. Public service corporations/public utilities are generally not appropriate in conservation districts unless the use directly serves another use in the district.
 - b. When public service corporations/public utilities are proposed in conservation districts, the PC's review of public service corporations/public utilities will be reviewed based upon the location, extent, and character and any applicable criteria detailed in the Comprehensive Plan.
 - c. When public service corporations/public utilities are proposed in conservation districts, special consideration shall be given to the location of these uses relative to wetlands, prime farmland, forestland, natural heritage sites, and other natural areas.
5. Business/Mixed Use
 - a. Public service corporations/public utilities are generally appropriate in **business zoned areas along Route 17** as long as the location, extent, and character are not inconsistent with other criteria detailed in the Comprehensive Plan.
 - b. Public service corporations/public utilities should be evaluated for appropriateness on a case-by-case basis in **business zoned areas not along Route 17** based upon the location, extent, and character and

- any applicable criteria detailed in the Comprehensive Plan.
- c. Public service corporations/public utilities should be evaluated for appropriateness on a case-by-case basis in **mixed-use zoned areas** based upon the location, extent, and character and any applicable criteria detailed in the Comprehensive Plan.
- 6. Industrial
 - a. Public service corporations/public utilities are generally appropriate in industrially zoned areas as long as the location, extent, and character are not inconsistent with other criteria detailed in the Comprehensive Plan.
- 7. PUD
 - a. If specific public service corporations/public utilities are proposed in PUD districts, these uses should be clearly listed in the PUD ordinance.
 - b. In PUD districts where public service corporations/public utilities are not clearly listed as permitted uses in PUD districts (but not expressly prohibited by the district), the PC's review of public service corporations/public utilities will be reviewed based upon guidance for other types of districts (residential, business, etc.) and specific guidance (distance, location, etc.) provided within the Comprehensive Plan.
 - c. When public service corporations/public utilities are proposed in PUD's, special consideration shall be given to the location of these uses relative to areas containing higher density housing (greater than 4 units per acre), parks, schools, other public facilities/amenities, and natural heritage sites.

General Criteria for All Uses

The Planning Commission may utilize the following criteria at their discretion when evaluating all public service corporations and public utilities for substantially in accord or consistency with the Comprehensive Plan.

1. When siting public service corporations or public utilities within Gloucester County, these uses **should**:
 - a. Be located within 1 mile of the uses they directly serve or facilities they are required to directly connect to as part of their regular operations.
 - b. Encourage utility provision to the maximum number of users possible where utility expansion does not conflict with other general or specific criteria for the utility or the district in which it is located.
 - c. Be located outside of wetlands, RPA features, and 100-foot RPA buffers.
 - d. Consider the location, extent, and character of the development when located in proximity to residential, recreational, educational, and other facilities for human use.
 - e. Preserve the rural character unless proposed in conjunction with a larger development.
 - f. Avoid dam break inundation zones.
2. When siting public service corporations or public utilities within Gloucester County, these uses **should not negatively impact**:
 - a. County roadways
 - b. Cultural and historic resources
 - c. Visual resources
 - d. Surface water or ground water resources
 - e. Natural heritage sites, endangered species, and wildlife corridors

Criteria for Specific Uses

The Planning Commission may utilize the following criteria at their discretion when evaluating specific public service corporations and public utilities (where applicable) for substantially in accord or consistency with the

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Comprehensive Plan.

1. Electric Utilities (including heat and light companies)
 - a. Electric utilities, including those providing heating and lighting services, **should not:**
 - i. Pose a danger to residents or visitors due to hazards resulting from fire at the facility beyond that typically experienced by other uses within the district.
 - ii. Have significant impacts on the quantity of vehicles on or quality of traffic flow through roadways within the County as a result of service vehicles entering and/or exiting maintenance office sites.
 1. Solar Facilities
 - a. Solar facilities **should not:**
 - i. Be developed on areas containing slopes of 15% grade or greater.
2. Natural/Manufactured Gas
 - a. Natural and manufactured gas utilities **should not:**
 - i. Pose a danger to residents or visitors due to hazards resulting from fire at the facility beyond that typically experienced by other uses within the district.
3. Geothermal Energy
 - a. Geothermal energy utilities **should not:**
 - i. Pose a danger to residents or visitors due to hazards resulting from fire at the facility beyond that typically experienced by other uses within the district.
4. Telephone Services
 - a. Telephone utilities, including wireless communication facilities and internet services, **should not:**
 - i. Have significant impacts on the quantity of vehicles on or quality of traffic flow through roadways within the County as a result of service vehicles entering and/or exiting maintenance office sites.
5. Sewer Service Facilities
 - a. Sewerage utilities **should:**
 - i. Encourage public sewer expansion primarily within the County's Development District unless development necessitating expansion outside of the Development District demonstrates the ability for the public sewer system and other public facilities and services to accommodate this expansion.
6. Water Service Facilities
 - a. Water utilities **should:**
 - i. Encourage public water expansion primarily within the County's Development District unless development necessitating expansion outside of the Development District demonstrates the ability for the public water system and other public facilities and services to accommodate this expansion.
7. Common Carries (transporting passengers or property)
 - a. Common carrier utilities **should not:**
 - i. Have significant impacts to the quantity of vehicles on or quality of traffic flow through roadways within the County.