

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

PSEG RENEWABLE TRANSMISSION LLC,

Petitioner,

v.

**THE RICHARD SMITH SNADER
TESTAMENTARY TRUST, et al.,**

Respondents.

Case No.: 1:26-cv-00793-ABA

**RESPONDENT CARROLL COUNTY’S MEMORANDUM IN OPPOSITION TO
PETITIONER’S MOTION FOR PRELIMINARY INJUNCTION
AND REQUEST FOR HEARING**

Respondent Board of County Commissioners for Carroll County (“Carroll County”), by and through undersigned counsel, files this Memorandum in Opposition to Petitioner’s Motion for Preliminary Injunction and states for cause as follows:¹

¹ Carroll County’s Answer to the Petition for Injunctive Relief is due on April 8, 2026—two days after the date of this filing. By submitting this Opposition to Petitioner’s Motion for Preliminary Injunction, Carroll County does not waive, and expressly reserves, its right to raise in a responsive pleading any defenses available under Federal Rule of Civil Procedure 12(b)(6), including but not limited to lack of jurisdiction.

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INTRODUCTION

This action represents the fourth time that Petitioner, PSEG Renewable Transmission LLC (“PSEG”), has come before this Court requesting mandatory injunctive relief in the form of long-lasting, unrestricted access to dozens of private properties along the proposed route of PSEG’s planned Maryland Piedmont Reliability Project (the “Project”). See *PSEG Renewable Transmission LLC v. Arentz Family, LP, et al.* (“PSEG 1”), No. 25-CV-1235-ABA; *PSEG Renewable Transmission LLC v. Alvi Properties, LLC, et al.* (“PSEG 2”), No. 25-CV-2296-ABA; *PSEG Renewable Transmission LLC v. Belfast Farms, LLC, et al.* (“PSEG 3”), No. 25-CV-03352-ABA. In each of those cases, this Court granted PSEG’s Motions for Preliminary Injunction over Respondents’ objections. Those decisions are currently on appeal before the Fourth Circuit.²

However, this case differs in a significant respect from the first three. In addition to seeking access to dozens more private properties, this is the first case in which PSEG has come before this Court requesting mandatory injunctive relief granting it unrestricted access to **public** property rights along the proposed route of the Project. Significantly, the legal authority relied upon by PSEG applies only to “private lands” and “private property.” The surveyor statute, Real Property §12-111(a), applies only to “private lands.” And Maryland’s eminent domain law applies only to condemning “private

² Carroll County adopts and incorporates the arguments raised by Appellants in *PSEG Renewable Transmission LLC v. Arentz Family, LP*, No. 25-1730 (4th Cir.), ECF 32-1. Oral arguments are scheduled to take place in the Fourth Circuit on May 5, 2026.

property” for public use. Neither statute applies to easement rights held by the County government here.

The easements held by the County are not “private land” and thus are not subject to the right-of-entry provisions of RP § 12-111(a). Indeed, PSEG has not offered any legal authority to support its claim that RP § 12-111(a) creates a right to violate the restrictions of publicly held easements—because the statute, by its express terms, does not do so.

For the reasons already stated by the Private Respondents in their Memorandum in Opposition to Petitioner’s Motion for Preliminary Injunction (ECF 14-2), as well as the additional reasons provided below, this Court should deny PSEG’s request for preliminary injunctive relief.

BACKGROUND

Carroll County adopts and incorporates the Statement of Facts provided by the Private Respondents in their Memorandum in Opposition to Petitioner’s Motion for Preliminary Injunction (*see* ECF 14-2 at 3–8) and submits the following additional facts:

PSEG seeks long-lasting, unfettered access to 33 tracts of land covered by 45 conservation easements or other instruments benefitting Carroll County and the public generally.³ ECF 1-23 at 3, 15–17. These include 37 forest-related conservation easements, 3 non-forested water resource protection easements, 2 floodplain management easements, a stormwater management easement, a stream-restoration easement, and an

³ Some parcels are encumbered by more than one type of easement.

agricultural land preservation easement.⁴ *Id.* at 4–5. These easements are generally for the purposes of preserving the natural beauty of the lands to which they apply, protecting and preserving the natural features of those lands, preserving land for agricultural uses, and providing for proper stormwater management. *See, e.g.*, Ex. 1 at 2. Each of these easements, held by Carroll County, are for the benefit of the County and the public generally.

The forest-related conservation easements specify that no trees or shrubs shall be cut down or destroyed without the County’s consent and that no plant materials shall be mowed, cut down, dug up, removed, or destroyed unless done so pursuant to a Forest Management Plan approved by the Maryland Department of Natural Resources. Ex. 1, ¶¶ 2, 3. These easements also prohibit “[a]ctivities which in any way could alter or interfere with the natural ground cover or drainage” and “[e]xcavation, dredging, or removal of loam, gravel, soil, rock, sand and other materials[,]” among other restrictions. Ex. 1, ¶¶ 6(d), 6(h).

The non-forested water resource protection easements and floodplain management easements prohibit “[s]oil disturbance by filling, grading, stripping of topsoil, plowing, cultivating, or other practices[,]” among other restrictions. Ex. 2, ¶ 1(a); Ex. 3, ¶ 1(a). The stormwater management easement and stream-restoration easement similarly prevent

⁴ Neither PSEG’s Petition nor its Motion for Preliminary Injunction included as exhibits the specific easements that PSEG claims are at issue in this case. Nor does PSEG specifically describe the easements at issue anywhere in its Petition or Motion. Therefore, for purposes of this Opposition, Carroll County relies on the list of easements provided by PSEG along with its February 17, 2026 letter notifying the County of PSEG’s intention to conduct cultural resource surveys on lands encumbered by these easements. *See* ECF 1-23 at 15–17.

“soil disturbance” and/or “excavation” of materials on the land. ECF 1-23 at 5.

The agricultural land preservation easement prohibits all activities on the property “other than Agriculture ... and residential uses[.]” Ex. 4 at 2. The easement also prohibits “excavation ..., including, but not limited to, dredging, mining and removal of soils, gravel, rock, sand, coal, and petroleum” and “diking, draining, filling, dredging or removal of any wetland ... except for maintenance of wildlife habitat with the approval of the County.” *Id.* at 4.

PSEG attempts to argue that its need to conduct the cultural resource surveys on Carroll County’s lands is an emergency situation that can only be rectified by granting PSEG “immediate access to” these properties. *See* ECF 3-6 at 29. But PSEG has known about the need to conduct these surveys for over a year, since, on March 26, 2025, the Power Plant Research Program (“PPRP”) “advised the PSC that it does not consider [PSEG]’s CPCN [Certificate of Public Convenience and Necessity] application to be administratively complete, in part because it” lacked these surveys. ECF 1, ¶ 64. Moreover, on September 11, 2025, the Public Service Commission (“PSC”) entered a Procedural Schedule that required PSEG to submit its updated analysis, including the results of the cultural resource surveys, to the PSC by March 2, 2026. ECF 1-17 at 7.

Yet, PSEG waited until February 17, 2026—**less than two weeks before its PSC-imposed deadline**—to provide formal notice to the County of PSEG’s “intent to conduct cultural resource surveys on” the identified properties encumbered by an easement. ECF 1-23 at 3. Even though PSEG had waited nearly a year to provide this notice to the County, it nonetheless requested a response within just seven days, imposing an arbitrary

deadline of February 24, 2026. *Id.* at 6. When the County had not responded—affirmatively or negatively—to PSEG’s letter by that date, rather than engage in further discussions or attempt to resolve any of the issues presented by PSEG’s request, PSEG filed this action and moved for a preliminary injunction on February 25, 2026—just **one day** after PSEG’s “deadline” for Carroll County to respond. *See* ECF 1-8, ¶ 40. This is a self-created “emergency.”

Now, PSEG’s deadline to submit its updated analysis to the PSC is more than a month overdue. But any need for “immediate access to” the County’s properties is due to PSEG’s delay of nearly a year to provide notice of its intent to conduct the surveys at issue. The emergency situation, created entirely by PSEG’s own actions, should not weigh in PSEG’s favor regarding whether to grant a preliminary injunction.

LEGAL STANDARD

“[P]reliminary injunctions are extraordinary interlocutory remedies that are granted in limited circumstances and then only sparingly.” *Sun Microsystems, Inc. v. Microsoft Corp.*, 333 F.3d 517, 524 (4th Cir. 2003). In determining whether to issue a preliminary injunction, a court must consider four factors: (1) whether the plaintiff “is likely to succeed on the merits,” (2) whether the plaintiff “is likely to suffer irreparable harm in the absence of preliminary relief,” (3) whether “the balance of equities tips in [plaintiff’s] favor,” and (4) whether “an injunction is in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008).

The “extraordinary and drastic remedy” of a preliminary injunction “may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *2311 Racing*

LLC v. NASCAR, LLC, 139 F.4th 404, 408 (4th Cir. 2025). This clear showing must be as to each of the four factors for a preliminary injunction; a “[f]ailure to establish just one of these factors dooms a motion for a ... preliminary injunction.” *Dillon-Capps v. Ohana Growth Partners, LLC*, 2025 U.S. Dist. LEXIS 24932, at *6 n.5 (D. Md. Feb. 12, 2025).

A mandatory preliminary injunction, which alters instead of preserving the status quo, is “disfavored, and warranted only in the most extraordinary circumstances,” and also requires an “even more searching” standard of review. *Id.* at *2; *Sun Microsystems, Inc.*, 333 F.3d at 525; *see also Am. Educ. Research Ass’n v. Dep’t of Educ.*, 2025 U.S. Dist. LEXIS 111436, at *9 (D. Md. June 12, 2025) (stating that mandatory preliminary injunctions are “particularly disfavored” and should only be granted when “the applicant’s right to relief [is] indisputably clear”).

ARGUMENT

I. The Court should preserve the status quo by denying the preliminary injunction.

Carroll County adopts and incorporates the Private Respondents’ argument that the Court should preserve the status quo by denying the mandatory preliminary injunction requested by PSEG. *See* ECF 14-2, Arg. § I.

II. PSEG is not likely to succeed on the merits.

PSEG is not likely to succeed on the merits of its sole cause of action in this case: injunctive relief pursuant to RP § 12-111(a).

A. RP § 12-111(a) is limited to a right to enter and survey on “private land.”

As an initial matter, with respect to the properties encumbered by conservation and other easements held by Carroll County, RP § 12-111(a) simply does not apply. By

its express terms, the statute applies only to “private land.” RP § 12-111(a)(1), (3). But Carroll County is a public entity—a county government organized under the laws of Maryland. Md. Const. Art. VII; Ch. 256, Acts of 1835; Ch. 19, Acts of 1836. Carroll County holds the easements at issue in this action in its capacity as a local government with all of the police powers vested in it by State law.

As this Court noted in *PSEG I*, “the first and most important step in interpreting a statute is its text. *Scriber v. State*, 437 Md. 399, 410 (2014) (*quoting Stoddard v. State*, 395 Md. 653, 661 (2006)).” *PSEG I*, 788 F. Supp. 3d at 727. Here, the text of RP § 12-111(a) makes it explicitly clear that the statute applies only to “private land”:

Civil engineers, land surveyors, real estate appraisers, and their assistants acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain after every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry may:

- (1) Enter on ***any private land*** to make surveys, run lines or levels, or obtain information relating to the acquisition or future public use of the property or for any governmental report, undertaking, or improvement;
- (2) Set stakes, markers, monuments, or other suitable landmarks or reference points where necessary; and
- (3) Enter on ***any private land*** and perform any function necessary to appraise the property.

(Emphasis added.)

RP § 12-111(a) has been held to be in derogation of the common law and must be “strictly construed.” *State v. Rice*, 24 Md. App. 631, 634 (1975). In construing this statute, the former Court of Appeals of Maryland (now Supreme Court) cautioned against ignoring the “plain and obvious” language used by the General Assembly. *Id.* In the

absence of this statute, there is no common law right of entry for surveyors. *Mackie v. Mayor & Comm'rs of Elkton*, 265 Md. 410, 418 (1972).

In this case (unlike in *PSEG 1, 2, and 3*), at least as applies to Carroll County, PSEG does not seek to enter upon “private land.” Indeed, PSEG admits in its Petition that it has already entered onto the private lands subject to these easements to conduct forest delineation and other studies.⁵ Instead, PSEG seeks to violate the express terms of certain easements that are held by Carroll County for the purpose of protecting forestlands, water resources, and other public interests. Nothing in RP § 12-111(a) authorizes PSEG to violate or ignore the restrictions contained in these publicly held conservation and other easements. Indeed, RP § 12-111(a) has no application whatsoever to PSEG’s attempt to violate the easements held by Carroll County.

B. PSEG is not a “body politic or corporate having the power of eminent domain” over local governments.

Furthermore, PSEG cannot satisfy the requirements of RP § 12-111(a) because, first, it is not a “body politic or corporate having the power of eminent domain[.]” In interpreting a statute, courts “first and foremost strive to implement congressional intent by examining the plain language of the statute.” *United States v. George*, 946 F.3d 643, 645 (4th Cir. 2020) (quoting *United States v. Abdelshafi*, 592 F.3d 602, 607 (4th Cir. 2010)). If there is no ambiguity or “clearly expressed legislative intent to the contrary,” then the court must “apply the plain meaning of the statute, which is determined by

⁵ See ECF 1-23 at 6 (“PSEG has already completed or is in the process of completing surveys other than cultural resource surveys, such as forest stand delineation surveys, on the subject properties.”).

reference to the words' ordinary meaning at the time of the statute's enactment." *George*, 946 F.3d at 645 (internal quotation marks omitted).

RP 12-111(a) is limited to surveyors "acting on behalf of the State or of any of its instrumentalities or any body politic or corporate having the power of eminent domain." Here, the Public Service Commission has no power of eminent domain to condemn easements held by other governments, in this case the Carroll County government.

In *PSEG 1*, this Court cited Section 7-207 of the Public Utilities Article and RP § 12-101 *et seq.* concerning the Public Service Commission's power of eminent domain:

Under Public Utility Article section 7-207, until a CPCN has been issued, a transmission line carrying a voltage exceeding 69,000 volts cannot begin to be constructed, and no property can be "acquire[d] by condemnation, in accordance with Title 12 of the Real Property Article." Md. Code Ann., Pub. Util. Art. 7-207(b)(3). Title 12 is the portion of the Real Property code that governs "Eminent Domain." Md. Code Ann., Real Prop. § 12-101 *et seq.* In other words, as a matter of law no eminent domain can be exercised until *after* a CPCN has issued.

PSEG 1, 788 F. Supp. 3d at 729.

Section 7-207(b)(3) of the Public Utilities Article provides that "[u]nless a certificate of public convenience and necessity for the construction is first obtained from the Commission, and the Commission has found that the capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a person may not exercise a right of condemnation in connection with the construction of a generating station."

But Maryland's condemnation statute, RP § 12-101 *et seq.*, creates no authority to condemn easements held by local governments. Instead, it is explicitly limited to "acquisition of private property for public use." RP § 12-101(a). "All proceedings *for the*

acquisition of private property for public use by condemnation are governed by the provisions of this title and of Title 12, Chapter 200 of the Maryland Rules.” *Id.* The easements at issue here are unquestionably not “private property” under any conceivable definition.

Moreover, underlying constitutional authority of eminent domain speaks only to the taking of “private property” for “public use.” Md. Const. art. III, § 40. Unlike other jurisdictions that have addressed this situation,⁶ no provision in Maryland law authorizes the PSC or a holder of a CPCN to condemn easements held by local governments.

Moreover, even if such authority existed in Maryland law, a serious question would exist as to whether the PSC or a holder of a CPCN can condemn easements held by local governments. This is particularly true here where the local government obtained these easements for the perpetual benefit of the public to preserve forestland, protect water resources, and ensure proper stormwater management—all areas within the particular expertise of local government. In contrast, the PSC has no experience, expertise, or authority in determining the contours of forest conservation easements or proper storm water management, all areas where the General Assembly has mandated responsibility to the county governments.

Even if such authority existed, it likely would be subject to the “prior public use” doctrine, which generally prohibits condemnation of property already devoted to public use unless expressly authorized by statute or necessarily implied. Under the prior use

⁶ See, e.g., N.C. Gen Stat. 40A-84 (authorization condemnation of conservation easements)

doctrine, “property devoted to a public use cannot be taken and appropriated to another and different public use unless the legislative intent to take has been manifested in express terms or necessary implication.” *Florida East Coast Railway Co. v. City of Miami*, 321 So.2d 545, 547 (Fla. 1975).

This is consistent with the Maryland rule that condemnation authority is strictly construed and ambiguities in the grant of condemnation authority must resolved against the existence of such power. *See Mattingly v. Charlotte Hall Sch.*, 37 Md. App. 157, 161 (1977). No such authority exists in statute, either explicitly or by implication, to allow the PSC or a holder of a CPCN to condemn easements held by a county government.

Additionally, PSEG is not a “body politic.” Although that term is not defined in the Real Property Article, it has been defined elsewhere as a group of people who are given governmental authority that can only be exercised collectively, such as a board of education. *See Bd. of Cty. Sch. Comm’rs of Worcester Cty. v. Goldsborough*, 90 Md. 193, 203-04 (1899). PSEG does not satisfy this definition. It is a New Jersey-based transmission development company created in 2021 for the purpose of developing, constructing, and owning transmission projects. ECF 1, ¶¶ 7, 49.

PSEG is also not an instrumentality of the State of Maryland, nor is it in any way acting on behalf of or as part of the PPRP, which is a division of the Maryland Department of Natural Resources. In fact, the PPRP has a significant oversight role in the ongoing PSC proceedings. When the PSC receives an application for a CPCN related to the construction of a power plant, the PSC provides the application to the PPRP to “complete an independent environmental and socioeconomic project assessment report

and any additional required study and investigation concerning the application.” Md. Code, Nat. Res. § 3-306(a)(1), (b)(1)(i).

Though PPRP has the statutory duty to review PSEG’s CPCN application, this does not mean that PSEG—a transmission development company located in New Jersey—has somehow become an “instrumentality” or agent of PPRP or the State of Maryland. Further, even though PPRP has made certain recommendations to PSC about the incompleteness of PSEG’s initial CPCN application because of the absence or incompleteness of certain surveys, PPRP was not itself mandating or directing PSEG to complete the surveys.

Even if PPRP were requiring PSEG to conduct the surveys—which, again, it is not—that would not transform PSEG into an agent of the State. Section 3-306 of the Natural Resources Article is clear that PPRP is to conduct “an *independent* environmental and socioeconomic project assessment” of PSEG’s application. Md. Code, Nat. Res. § 3-306(a)(1), (b)(1)(i) (emphasis added). PSEG’s CPCN application is not being prepared on behalf of or for the benefit of PPRP. Merely because a State agency has statutory requirements to review a company’s application does not transform the company into a State agent. Moreover, the PPRP does not have the authority to grant the power of eminent domain. The PPRP instead makes recommendations and acts in an advisory role.

Furthermore, the plain language of RP § 12-111(a) applies only to an entity that *has* the power of eminent domain, not one that may obtain the power of eminent domain at some point in the future. Statutes related to eminent domain “are to be strictly construed.” *Davis v. Bd. of Educ.*, 166 Md. 118, 120 (1934); *see also Thornhill v. Aylor*,

2017 U.S. Dist. LEXIS 80330, *8-9 (W.D. Va. May 25, 2017); *United States v. 8,557.16 Acres of Land*, 115 F. Supp. 311, 314 (N.D.W. Va. 1935). This is particularly true when there is an invasion of property rights and when there may be significant intrusions on the rights of private property owners. *See Reading Area Water Auth. v. Schuylkill River Greenway Ass'n*, 100 A.3d 572, 579 (Pa. 2014) (“Because eminent domain is in derogation of private rights, any legislative authority for its use must be strictly construed in favor of the landowner.”); *Miles v. Tex. Cent. R.R. & Infrastructure, Inc.*, 647 S.W.3d 613, 619 (Tex. 2022) (“Because statutes conferring eminent-domain authority intrude on fundamental property rights, in instances of doubt as to the scope of the power, such statutes are strictly construed in favor of the landowner”) (internal quotation marks omitted); *Bd. of Cty. Comm’rs v. Lowery*, 136 P.3d 639, 647 (Okla. 2006) (“We adhere to the strict construction of eminent domain statutes . . . , mindful of the critical importance of the protection of individual private property rights”). In strictly construing RP § 12-111, the plain language is clear that an entity like PSEG must currently have the power of eminent domain, not some theoretical possibility that it could potentially obtain the power of eminent domain in the future.

To interpret the statute otherwise would invade the authority of the PSC to determine whether an entity like PSEG may be granted a CPCN and thereby obtain the power of eminent domain. PSEG has not obtained the power of eminent domain just because it was selected by PJM for the transmission line project and the Federal Energy Regulatory Commission (“FERC”) accepted the Designated Entity Agreement. Under Section 7-207(b)(3)(v) of the Public Utility Article of the Maryland Code, PSEG does not

have the power of eminent domain because such delegation occurs only “[o]n issuance of a” CPCN. It is not disputed that PSEG has not been granted a CPCN and, in fact, may never receive a CPCN. Its CPCN application is in the early stages of review, and there is still extensive discovery, briefing, hearings, and opportunities for members of the public and additional stakeholders to express their views at public hearings and in comments to the PSC.

Another district court considered an analogous situation in *McCurdy v. Mt. Valley Pipeline, LLC*, No: 1:15-CV-03833-DAF, 2015 U.S. Dist. LEXIS 96062 (S.D.W. Va. July 23, 2015). There, the defendant sought to build an approximately 300-mile natural gas pipeline from West Virginia to Virginia. *Id.* at 1. The defendant was required to receive a CPCN before construction could begin, and the certification process with FERC required the defendant to conduct surveys and environmental studies along the proposed route. *Id.* at *2. Pursuant to the Natural Gas Act, 15 U.S.C. §§ 717, *et seq.*, a party may exercise “the right of eminent domain” over land needed for a project upon receiving a CPCN from FERC. *Id.* The court found that, without a CPCN or a conditional CPCN, which would provide defendant the power of eminent domain, the defendant was not permitted to enter plaintiffs’ properties to conduct the surveys required by FERC. *Id.* at *9-10. As in *McCurdy*, because PSEG has not received a CPCN—and may never be granted a CPCN—it does not have the statutory authority to exercise the right of eminent domain by entering Respondents’ properties to conduct surveys and other testing.

C. The easements at issue here were granted for the benefit and protection of the public, are authorized by law, and are perpetual in nature.

PSEG describes the easements at issue as “conservation easements.”⁷ ECF 1-23 at 3. Under Maryland law, a conservation easement creates an incorporeal property interest in the land, enforceable in both law and equity, akin to an easement or servitude. RP § 2-118(a); *see also Long Green Valley Ass’n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 660–61 (2012). Except for the temporary construction easement, the easements are perpetual in nature and binding on future owners of the property. *Long Green Valley Ass’n*, 205 Md. App. at 660. Such easements have been recognized as restrictive covenants or negative easements that impose enforceable limitations on the property. *Wetlands Am. Tr., Inc. v. White Cloud Nine Ventures, L.P.*, 782 S.E.2d 131, 138 (Va. 2016).

Conservation easements are authorized and enforced under State law. RP § 2-118 provides, in relevant part:

- (a)** Any restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, for any of the purposes listed in subsection (b) of this section whether drafted in the form of an easement, covenant, restriction, or condition, creates an incorporeal property interest in the water or land areas, or the improvement or appurtenance thereto, so restricted, which is enforceable in both law and equity in the same manner as an easement or servitude with respect to the water or land areas, or the improvement or appurtenance thereto, if the restriction is executed in compliance with the requirements of this article for the execution of deeds or the Estates and Trusts Article for the execution of wills.
- (b)** A restriction as provided in subsection (a) of this section may be for any of the following purposes:

⁷ The easements at issue include easements that are traditionally known as conservation easements, such as the forest conservation deeds of easement. The easements also include stormwater management deeds and temporary construction deeds. All of the deeds include enforceable limitations on the subject property.

- (1) Construction, placement, preservation, maintenance in a particular condition, alteration, removal, or decoration of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- (2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste, or other materials;
- (3) Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in a manner as to affect the surface or otherwise alter the topography of the area;
- (4) Removal or destruction of trees, shrubs, or other vegetation;
- (5) Surface use except for purposes of preserving the water or land areas, or the improvement or appurtenance thereto;
- (6) Activities affecting drainage, flood control, water conservation, erosion control, soil conservation, or fish or wildlife habitat preservation;
- (7) Preservation of exposure of solar energy devices; or
- (8) Other acts or uses having any relation to the preservation of water or land areas or the improvement or appurtenance thereto.

In its notice to the County, PSEG identified six different types of easements held by the County government that PSEG seeks to access: forest-related conservation easements, non-forested water resource protection easements, floodplain management easements, a stormwater management easement, a stream-restoration easement, and an agricultural land preservation easement. ECF 1-23 at 4–5. Each of the easements at issue are public easements, and their public character can hardly be disputed. Carroll County holds these easements in its capacity as a local government, in a public and not in a private capacity, for the benefit of the public. PSEG does not contest that these easements are authorized by law and, in some cases, legally mandated.

Forest Conservation Deeds of Easement. Carroll County administers a forest conservation easement program as part of its compliance with the Maryland Forest Conservation Act, Md. Code, Natural Resources § 5-1601, *et seq.* The Forest Conservation Act requires local governments to implement forest conservation programs, which frequently utilize permanent, recorded conservation easements to protect forests and sensitive areas. A forest conservation easement is “a benefit to the community, the environment, and the forest dwelling species.” *Shoemaker v. Bd. of Appeals for Anne Arundel Cty.*, No. 722, Sept. Term 2015, 2017 Md. App. LEXIS 206, at *19 (Feb. 22, 2017).

Carroll County’s forest conservation easement program, set forth in Section 150.13 of the County Code, provides for protection “in perpetuity” for “retained forest and any areas afforested or reforested” that are protected by a forest conservation easement:

§ 150.13 FOREST CONSERVATION EASEMENTS.

- (A) Any retained forest and any areas afforested or reforested, located within the net tract area of an approved FCP [forest conservation program], shall be protected by a forest conservation easement.
- (B) The easement shall restrict uses in areas of forest conservation to those uses that are designated and consistent with forest conservation.
- (C) The easement shall provide the county access for inspection.
- (D) The easement shall be deeded to the county, recorded in the Land Records of Carroll County, and remain in perpetuity.
- (E) The easement shall be conveyed to the county at the time of subdivision recordation, site plan approval, permit approval, or other final approval by the county, as applicable.

The PSC has recognized the importance of compliance with forest conservation easements in Carroll County: “The Project Owner shall comply with all provisions of the Property’s existing Forest Conservation Easement.” *Elk Development, LLC'S Application for a Certificate of Public Convenience and Necessity to construct A 2.125 MW Solar Photovoltaic Facility in Carroll County, Maryland*, No. 9747, 2025 Md. PSC Lexis 105, at *13–14 (PSC Nov. 24, 2025).⁸ The PSC’s regulations require an applicant seeking to construct transmission lines to provide a description of any agricultural resources to be affected by the project, including a list of all conservation easements impacted by the project. *See* COMAR 20.79.04.02; Md. Code, Pub. Util. § 7-207(f)(3)(2).

These requirements are consistent with well-established Maryland caselaw holding that public utilities require the consent of the easement holder to construct utilities:

If the appellee could have projected its pipes under and across the road without disturbing the surface or interfering in any way with the continued maintenance of the public easement, it would not have been necessary to obtain authority from any one except the owners of the fee. It, however, being necessary in this case to disturb the surface of the road, it became necessary to get that permission from the county commissioners of the various counties in which the roads were located, or the State Roads Commission, as the case might be.

PSC v. Md. Gas Transmission Corp., 162 Md. 298, 316 (1932).

⁸ 19. Forest Conservation - The Project Owner shall comply with all provisions of the Property's existing Forest Conservation Easement. For any clearing of forested area outside the existing Forest Conservation Easement, prior to the start of construction, the Project Owner shall prepare and submit (via electronic or U.S. mail) to the host county for approval and to the Maryland Department of Natural Resources (DNR) Forest Service for review, a Forest Stand Delineation as described by Natural Resources Article (NRA) 5-1604 and a Forest Conservation Plan as described by NRA 5-1605. The Project Owner shall also obtain approval for its Forest Conservation Plan from the host county and file it in the Docket no less than 45 days prior to the start of construction.

Elk Development, LLC'S Application for a CPCN, 2025 Md. PSC Lexis 105, at *13–14.

The scope of an easement is generally determined by the terms of its creation. *Miller v. Kirkpatrick*, 377 Md. 350, 351 (2003). The forest conservation deeds of easement utilized by Carroll County make clear that the purpose of the easements are to “protect existing and future forest cover; individual trees; streams and adjacent buffer areas; wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife”:

WHEREAS, the purpose of this Easement is to protect existing and future forest cover; individual trees; streams and adjacent buffer areas; wetlands and other sensitive natural features; and to maintain existing natural conditions to protect plant habitats, water quality and wildlife; and

WHEREAS, the purpose includes preservation of the natural beauty of the property subject to the Easement and prevention of any alteration or destruction that will detract from such natural beauty; and

WHEREAS, the purpose also includes the protection and preservation of natural features within the area of the Easement, which efforts are consistent with the terms and conditions of the approved plan and applicable law; and

WHEREAS, the parties intend that the conditions and covenants contained in this Easement shall run with the land in perpetuity and to be binding on all subsequent owners and occupants of the property; and

WHEREAS, the parties intend that a servitude be placed upon the property to create a conservation benefit in favor of the Grantee.

Ex. 1 at 2.

The restrictions in the forest conservation easements themselves are expressly designed to protect the open space character of the property. The easement provides that it is “a covenant real running with the land, and is granted to preserve, protect and maintain the general topography and natural character of the land.” *Id.* at 3. The express terms of the easement prohibit removal or destruction of any living trees or shrubs. *Id.* ¶

1. Construction, excavation, or grading is prohibited. *Id.* ¶ 6(a). Erection of any building or structural improvements above ground are prohibited. *Id.* ¶ 6(b). Activities that interfere with the ground cover are prohibited. *Id.* ¶ 6(d). Fences are prohibited without the written approval of the County. *Id.* ¶ 8. The construction of transmission lines, or even the surveying for purposes of constructing transmission lines, are completely inconsistent with the explicit restrictions of the forest conservation easements.

Forested and Non-Forested Buffer Water Resources Deeds of Easement.

Similarly, the forested and non-forested buffer water resources deeds of easement exist to protect the County’s water supply, current and planned reservoirs, and tributaries to the Chesapeake Bay. Both types of deeds have similar purposes and restrictions. These deeds recite the purpose of the easements as follows:

WHEREAS, Grantor's land is in an area which includes a tributary of a County reservoir, planned reservoir, other community water supply, or the Chesapeake Bay which needs to be protected from certain environmental changes based upon environmental and engineering studies; and

WHEREAS, Grantor's plans for development may adversely impact these existing or potential community water supply sources and the Chesapeake Bay without certain protective measures being taken.

Ex. 2 at 1. The forested buffer water resource deeds of easements prohibit any kind of soil disturbance, including filling, grading, “or other practices.” Ex. 5, ¶ 1(a). Cutting, clearing or grubbing of trees are prohibited except for “normal maintenance.” Ex. 5, ¶ 1(e).

Stormwater Management Easement. The stormwater management easement exists to protect land that exists or is needed to provide stormwater management facilities

to comply with the County's stormwater management requirements. Carroll County Code, Ch. 151. The express purpose of the Carroll County stormwater management ordinance is

to manage stormwater by using environmental site design (ESD) to the maximum extent practicable (MEP) to maintain after development as nearly as possible, the predevelopment runoff characteristics, and to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, and use appropriate structural best management practices (BMPs) only when necessary. This will help restore, enhance, and maintain the chemical, physical, and biological integrity of streams, minimize damage to public and private property, and reduce impacts of land development.

Carroll County Code, § 151.001(a).

Chapter 151 was enacted “pursuant Md. Code, Environment Article, Title 4, Subtitle 2.” *Id.* § 151.001(b). Section § 4-401 of the Environment Article requires each county to adopt a stormwater management program. The county stormwater management programs must comply with detailed regulations promulgated by the Maryland Department of the Environment. Md. Code, Env. § 4-403; COMAR 26.17.02.01, *et seq.*

The express terms of the stormwater management easement prohibit “erection of structures (including fences, retaining walls, and sheds of any kind) or any earthwork which could result in redirection of surface runoff within the facility[.]” Ex. 6, ¶ 2.

Temporary Construction Stream Restoration Easement. The County also enjoys temporary construction easements. These easements allow the County to temporarily “cross and occupy” various private properties during stream restoration projects being conducted as part of stream restoration plans approved by the County's Soil Conservation District. Ex. 7 at 1.

In PSEG's February 17, 2026 letter notifying Carroll County of its intent to enter onto lands encumbered by these easements, PSEG described the "cultural resource surveys" that it seeks to undertake. *See* ECF 1-23 at 3. These "surveys" potentially include shovel test pits with backfilling, removing sod, and shifting the soil over a tarp:

The surveyors look for artifacts during the walk and only if large concentrations of artifacts are found during a pedestrian walk would the surveyors conduct a shovel test pit, using hand shovels to create a hole that is approximately 1.5 feet in diameter and on average about 18 inches deep. After sifting the soil, the hole would be backfilled and tamped down. In wooded or grassy locations where soil visibility is poor, the shovel test pit would be completed at 50-foot intervals with hand shovels as described above, and it would be promptly backfilled. Efforts would be made to minimize any impacts of the survey work, such as removing the sod cap of grass in one piece to be replaced upon backfilling, sifting the soil over a tarp to avoid loose soil on grass or vegetation, parking off-site if requested, and when surveying farm fields, traversing between crop rows and otherwise minimizing crop damage.

Id.

PSEG repeatedly describes these activities as "non-invasive." ECF 1 at 3 ("Petition for Injunctive Relief to Obtain Temporary Access to Properties for Performing Non-Invasive Field Surveys Pursuant to Md. Code Ann., Real Property § 12-111"); ECF 3-6 at 24 ("[T]he cultural resource surveys that PPRP and the PSC have directed the Company to conduct ... are non-invasive."); *id.* at 25 ("The cultural resource surveys will thus have a temporary, *de minimis* impact on soil and are non-invasive in nature."). But "invasiveness" is not the relevant test, and the easements at issue here contain no such term. Instead, the question is whether these activities violate conditions of the County's conservation easements. The answer is yes, in multiple respects. Indeed, PSEG would not be seeking relief from this Court under RP § 12-111 if PSEG did not intend to violate the

County's rights under the easements.

Specifically, the restrictions of the easements that PSEG intends to violate include the following:

- a. Prohibitions in the forest conservation easements on digging up or removing any plant materials, including brush, weeds, or undergrowth, performing any excavation, or engaging in any activities "which alter the natural ground cover"; Ex. 1;
- b. Prohibitions in the forested and non-forested water buffer easements against soil disturbance and cutting, clearing, or grubbing of trees; Ex. 2; Ex. 5; and
- c. Prohibitions in the stormwater management easement against the "erection of structures (including fences, retaining walls, and sheds of any kind) or any earthwork which could result in redirection of surface runoff within the facility"; Ex. 6.

Furthermore, although in its Petition PSEG seeks a court order allowing it to conduct only "cultural resource surveys" on Carroll County's lands, the need for such surveys is predicated upon PSEG's effort to construct transmission lines in the proposed right-of-way. PSEG's request cannot be viewed in a vacuum. The need for these surveys is entirely predicated on PSEG's ultimate goal: to construct high-volume transmission lines, including in areas protected by public easements such as forest conservation easements, forested and non-forested water buffer easements, and a stormwater management easement. PSEG's desired construction would flagrantly violate these easements in multiple respects, including:

- a. Prohibitions in the forest conservation easements against removal or destruction of living trees and shrubs, construction, excavation or grading, building any structure or improvement above ground, interference with ground cover, and construction of fences;
- b. Prohibitions in the forested and non-forested water buffer easements against soil disturbance and cutting, clearing, or grubbing of trees; and

- c. Prohibitions in the stormwater management easement against the “erection of structures (including fences, retaining walls, and sheds of any kind) or any earthwork which could result in redirection of surface runoff within the facility[.]”

PSEG does not allege that the easements are invalid, not binding, or unenforceable, or that they are contrary to the public interest. Each of these easements was carefully designed, supported, and approved in an exhaustive process before the County’s planning, zoning, environmental, and other regulatory agencies, as well as reviewed by State Agencies, the soil conservation district, and other stakeholders. All of this occurred after intensive staff review and public hearings. Most of the easements are accompanied by detailed engineering and site plans delineating the public protections built into the easements. All of the subject easements substantially advance the public interest, including the protection of sensitive forest conservation areas, the protection of the water supply and the tributaries to the Chesapeake Bay, and preventing runoff and insuring adequate stormwater management.

In its Petition and Motion for Preliminary Injunction, PSEG refers to Carroll County’s written comments to the PSC filed on April 25, 2025, and oral comments made at a hearing before the PSC on June 10, 2025. ECF 1, ¶¶ 65–66; ECF 3-6 at 10–11. In both the written and oral comments, various County representatives stated that they agreed with the PPRP’s determination that PSEG’s application for a CPCN was incomplete due to it lacking “critical field studies.” *See* ECF 1, ¶¶ 65–66; ECF 3-6 at 10–11. PSEG appears to rely on these comments by County representatives to support its position that conducting the cultural resource surveys on lands encumbered by an

easement held by the County does not violate the terms of the easements. *See* ECF 3-6 at 24–25. But this is untrue.

Carroll County has consistently taken the position that PSEG must comply with the legal requirements of the CPCN application process. But this does not mean that Carroll County supports this specific right-of-way chosen by PSEG or agrees to waive the County’s rights under easements it holds for the public (even if it could). Carroll County does not and never has agreed to waive or modify the easements, and it is legally doubtful that it could do so. Moreover, Carroll County has never supported the right-of-way chosen by PSEG. It has insisted that the right-of-way be subject to all appropriate legal scrutiny.

At the time that Carroll County made its written and oral comments to the PSC in April and June 2025, respectively, regarding “critical field studies,” PSEG had not notified the County of its intention to conduct any surveys on lands encumbered by a public easement. The relevant considerations regarding the need for such studies and the methods by which they will be conducted are obviously different when the properties to be surveyed are private properties located in the County versus public property rights held by the County itself. Neither of the County’s representatives who made written or oral comments about the importance of conducting these field studies ever suggested that the County would agree to modify or extinguish the contractual or statutory rights or restrictions associated with the County’s public easements. *See generally* ECF 3-1 (Carroll County’s written comments); ECF 3-4 (Carroll County’s oral comments). Nor did either of these representatives have the legal authority to agree to any such

modification or extinguishment, even if they had intended to do so, which they did not.⁹

In summary, the relief that PSEG requests would violate the express terms of the County's easements. RP § 12-111(a), which is limited by its express terms to only "private land," does not negate PSEG's obligation to comply with these easements or otherwise provide it with any right to enter upon *public* lands.

D. PSEG did not make "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry" onto the lands subject to easements held by Carroll County.

Finally, PSEG does not satisfy the other criterion of RP § 12-111(a) that the entity seeking entry onto the property must first make "every real and bona fide effort to notify the owner or occupant in writing with respect to the proposed entry[.]" As described above, even though PSEG was aware of the need for it to conduct cultural resource surveys since at least March 26, 2025, it nonetheless waited to provide notice to Carroll County until February 17, 2026—nearly a year later and just two weeks before PSEG's deadline to submit an updated analysis to the PSC. Moreover, in its written notice, PSEG requested that Carroll County respond within seven days. Then, when Carroll County did not meet that impossible deadline, PSEG filed suit **the next day**. Surely, providing one letter, with one week to review and respond to it, and then filing suit within 24 hours of that deadline not being met, cannot constitute "every real and bona fide effort to notify

⁹ The County's written comments were submitted by Christopher Heyn, Director of Planning & Land Management for the County. ECF 3-1 at 4. The County's oral comments at the PSC hearing were made by Timothy F. Maloney, undersigned counsel for the County. ECF 3-4 at 3. Neither of these individuals have the authority to legally bind the County regarding any modification or extinguishment of a public easement held by the County.

the owner or occupant in writing with respect to the proposed entry[.]”

* * *

For these reasons, and the additional reasons asserted in the Private Respondents’ Memorandum in Opposition to Petitioner’s Motion for Preliminary Injunction, *see* ECF 14-2, Arg. § II, and in the Private Respondents’ Memorandum in Support of Motion to Dismiss, *see* ECF 13-2, § IV.A, PSEG is not likely to succeed on the merits of its claim for injunctive relief pursuant to RP § 12-111(a).

III. PSEG has not shown that it will suffer irreparable harm absent injunctive relief.

Carroll County adopts and incorporates the Private Respondents’ argument that PSEG has not shown that it will suffer irreparable harm absent injunctive relief. *See* ECF 14-2, Arg. § III.

IV. The balance of equities does not warrant granting PSEG’s requested injunctive relief.

Carroll County adopts and incorporates the Private Respondents’ argument that the balance of equities does not warrant granting PSEG’s requested injunctive relief. *See* ECF 14-2, Arg. § IV.

V. PSEG’s requested mandatory preliminary injunction would not be in the public interest.

As discussed in Part II, *supra*, the easements at issue here substantially advance the public interest. PSEG’s requested relief would violate the restrictions of these easements that were put in place to protect natural resources and preserve natural beauty. Therefore, granting the injunction would not be in the public interest.

Additionally, Carroll County adopts and incorporates the Private Respondents' argument that granting the mandatory preliminary injunction would not be in the public interest. *See* ECF 14-2, Arg. § V.

CONCLUSION

For the reasons expressed herein, as well as those stated in the Private Respondents' Memorandum in Opposition to Petitioner's Motion for Preliminary Injunction (ECF 14-2) and Private Respondents' Memorandum in Support of Motion to Dismiss (ECF 13-2), Respondent Carroll County respectfully requests that this Court deny PSEG's Motion for Preliminary Injunction.

Respectfully submitted,

/s/

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Commissioners for Carroll County

REQUEST FOR HEARING

Respondent Board of County Commissioners for Carroll County requests a hearing on Petitioner's Motion for Preliminary Injunction and Respondent's Opposition.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 6, 2026, a copy of the foregoing was served on all counsel of record via the Court's ECF system.

/s/

Kaitlin E. Leary