

4. Public Hearing

Items 4.01 – 4.07 will be sent under separate cover.

- 4.01 Zoning Text Amendment #2020-02 Authorize Financial Contributions to Mega Site
Impacts of Solar Energy Facilities through Condition Use Permits Point Solar Facility
Public Comments
Board Comments
Action on Public Hearing (if any)
- 4.02 Solar Facility Permit Fee Schedule Ordinance
Public Comments
Board Comments
Action on Public Hearing (if any)
- 4.03 Zoning Text Amendment #2020-01, Cabin Point Solar Center, LLC
Public Comments
Board Comments
Action on Public Hearing (if any)
- 4.04 Conditional Use Permit Application #2020-01, Cabin Point Solar Facility
Public Comments
Board Comments
Action on Public Hearing (if any)
- 4.05 Facility Siting Agreement – Cabin Point Solar Center, LLC:
Public Comments
Board Comments
Action on Public Hearing (if any)
- 4.06 Facility Siting Agreement – Shands Energy Center, LLC (East Point Energy)
Public Comments
Board Comments
Action on Public Hearing (if any)
- 4.07 Proposed Increase in Courthouse and Courtroom Security Fees
Public Comments
Board Comments
Action on Public Hearing (if any)

CABIN POINT SOLAR LLC

Zoning Text Amendment

#2020-02

Cabin Point Solar LLC

Sussex County

Zoning Text Amendment 2020-02

Related to Conditional Use Permits for Solar Projects

Date: August 4, 2020

Board of Supervisors Meeting Date: September 17, 2020

Whereas the General Assembly enacted Chapter 385 of the 2020 Acts of Assembly, which allows localities to adopt reasonable regulations and provisions for the granting of special exceptions (or conditional use permits) for any solar photovoltaic (electric energy) project; and

Whereas, such provisions may include, but are not limited to the dedication of real property of substantial value or substantial cash payments, subject to limitations in the Va. Code Section 15.2-2288.8; and

Whereas, solar energy projects, particularly utility scale projects, can place unique burdens on the county and its citizens, while producing limited public benefits; and

Whereas, the Board finds it to be consistent with the County Comprehensive Plan, consistent with good zoning practices and in the best interest of the public welfare of county citizens to amend the Zoning Ordinance as set out herein.

Now Therefore, be it Ordained, by the Sussex County Board of Supervisors that the County Zoning Ordinance is hereby amended by adding the section below as follows:

Article XXIII Solar Facilities, Section 16-410

- a) In approving a conditional use permit for any solar photovoltaic (electric energy) project, the Board may include conditions that require (i) dedication of real property of substantial value or (ii) substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of a conditional use permit, so long as such conditions are reasonably related to the project.
- b) The Board may include other reasonable conditions as permitted by state law and as otherwise provided for in this Article.
- c) Once a condition is granted pursuant it shall continue in effect until a subsequent amendment changes the zoning on the property for which the conditions were granted. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

This Ordinance Shall take effect immediately upon adoption.

Adopted this __ day of _____, 2020 by the Sussex County Board of Supervisors

By: _____

Chair

Attest: _____

Clerk

Solar Facility Permit Fee Schedule Ordinance

Cabin Point Solar LLC

Sussex County Board of Supervisors

**Ordinance to Amend Building Code Permit Fee Schedule
Related to Solar Energy Facilities**

Whereas, pursuant to County Code § 8-23, the Board of Supervisors shall fix building code permit fees by ordinance; and

Whereas, the County is has received and is continuing to receive applications for significant, utility scale solar energy facilities; and

Whereas, the current building code fee schedule does not have a category of fees specifically applicable to solar voltaic panels; and

Whereas, under the current fee schedule, such panel installations would have to be treated as structures for which the applicable permit fee would be \$0.12 per square foot; and

Whereas, when applied to the square footage of panels in a large scale solar facility, the current fee could be excessive for the permitting work involved; and

Whereas, the Board would like to amend to building permit fee schedule to not charge a building permit fee for solar panels, but to instead apply reasonable fees through the electrical permitting process, which is more applicable to such facilities; and

Whereas, the current county electrical permit fee schedule does not have a category specific to solar voltaic panels and the Board desires to amend the County permit fee schedules to adopt permit fees more applicable to solar panels..

Now Therefore Be It Ordained by the Sussex County Board of Supervisors that the County building code permit fee schedule adopted pursuant to County Code § 8-23 is hereby amended as follows:

1. There shall be no base building permit fee applicable to solar panels.
2. The base electrical permit fee for solar panels shall be as follows:

<u>Solar PV Panel System Ratings</u>	<u>Electrical Permit Fee Schedule</u>
0-5,000 watts	\$50.00
5,001-10,000 watts	\$100.00
10,001-20,000 watts	\$200.00
20,001-30,000 watts	\$300.00
30,001-40,000 watts	\$400.00
40,001-1,000,000 watts	\$400.00 plus \$25.00 for each additional 10,000 watts over 40,000 watts
1,000,000-5,000,000 watts	\$2800.00 plus \$20.00 for each additional 10,000 watts over 1,000,000 watts
5,000,000-Larger watts	\$10,800.00 plus \$15.00 for each additional 10,000 watts over 5,000,000 watts

REFERENCES: *ONE (1) KILOWATT (kw)=1,000 WATTS (w)
*ONE (1) MEGAWATT (mw)=1,000,000 WATTS (w)

Be it further ordained the permit fee schedule as previously adopted remains in effect, subject only to the amendments adopted herein.

This Ordinance shall be effective immediately upon adoption.

Adopted this __ day of _____, 2020.

By _____

Board Chair

Attest: _____

Clerk

Zoning Text Amendment

#2020-01

Cabin Point Solar LLC

**Commission Report
Zoning Text Amendment 2020-01
Sussex County, Virginia**

**Report Date: August 4, 2020
Board of Supervisors Meeting Date: September 17, 2020**

APPLICATION SUMMARY

Proposal: Applicant's request for a Zoning Text Amendment to Article XXIII, Section 16-403(b) and (e) and Section 16-406(c) and (f).

Application Submitted: December 23, 2019
Revised February 27, 2020

Applicant: Gentry Locke
919 E. Main Street, Suite 1130
Richmond, Virginia

Representative: D. Scott Foster, Jr.
sfoster@gentrylocke.com
804-297-3709

BOARD OF SUPERVISORS ACTION

The Planning Commission has reviewed the Applicant's proposed zoning text amendments and recommends them for approval by the Board of Supervisors.

PROPOSED ZONING TEXT AMENDMENTS

The Applicant proposes Zoning Text Amendment to Article XXIII, Section 16-403(b) and (e) and Section 16-406(c) and (f).

ZONING ORDINANCE

In April 2019, the County Board of Supervisors amended the Zoning Ordinance (Articles I, XII, and XXIII) to address solar energy facilities (projects).

- Under ARTICLE I. GENERAL INFORMATION, Sec. 16-1 Definitions, definitions were added.
- Under ARTICLE XII. SITE PLAN REQUIREMENTS, Sec. 16-202 When required, this item was added at the end of the list:
 7. Utility-scale solar facilities.
- New ARTICLE XXIII. SOLAR FACILITIES was added.

COMMISSION ANALYSIS AND RECOMMENDATIONS

In the application materials dated December 23, 2019 and February 27, 2020 (Attachment A), the Applicant proposed amendments to Article XXIII, under Section 16-403(b) and (e) and Section 16-406(c) and (f).

1. Sec. 16-403 Zoning districts, item (b) states:

Medium and utility-scale solar facilities shall be permitted in zoning districts as follows:

Solar Facility	General Agricultural, A-1	Limited Industrial, I-1	General Industrial, I-2
<i>Medium-scale</i>	CUP	By-right	By-right
<i>Utility-scale</i>	CUP	-	CUP

The applicant requests that utility-scale solar facilities be allowed by CUP in Limited Industrial (I-1) districts to meet the intent of the April 2019 amendments.

Zoning Ordinance Article X. Limited Industrial District (I-1) states, “The primary purpose of the I-1 district is to permit certain industries, which do not in any way detract from residential desirability, to locate in any area adjacent to residential uses.”

Zoning Ordinance Article XI. General Industrial District (I-2) states, “The primary purpose of the I-2 district is to establish an area where the principal use of land is for heavy commercial and industrial operations, which may create some nuisance and which are not properly associated with, nor particularly compatible with, residential, institutional and neighborhood commercial service establishments.”

During the development of Article XXIII in 2019, the first proposal was to allow utility-scale solar in A-1 districts only. The Planning Commission and Board of Supervisors agreed that they would also allow utility-scale solar in I-2 districts at the March 4, 2019 joint work session.

The proposed amendment is a new policy action for the County to evaluate. Land use in the County is 90% agriculture and forestry, 5% residential, and 5% commercial, industrial, public and semi-public. Based on the limited number of parcels zoned I-1 and I-2, their limited total acreage, and their tendency to be co-located (Attachment B), **making an amendment to allow utility-scale solar in I-1 zoned property is in alignment with the practical intent of the amendments made in 2019.**

The commission recommends that this requested amendment be approved by the Board of Supervisors.

2. Sec. 16-403 Zoning districts, item (e) states:

Solar facilities should locate on brownfields, County-owned capped landfills, or near existing industrial uses, where feasible (but not within planning area boundaries).

The applicant requests that statement in parentheses be removed to meet the intent of the April 2019 amendments.

The County's Comprehensive Plan, Chapter IX: Land Use and Development, Section A. Introduction states:

The planning areas identified in this plan are: Jarratt/I-95/US Planning Area; Stony Creek/I-95/US301/VA Route 40 Planning Area; Sussex Courthouse/VA Route 40 Planning Area; Homeville/Wakfield/US 460 Planning Area; and Blackwater/Newville/Waverly/US 460 Planning Area.

The remaining areas of Sussex County are classified as rural areas.

The intent of this statement in parentheses in the Zoning Ordinance is to prevent locating solar facilities within the five (5) planning area boundaries (Comprehensive Plan Exhibit IX-A in Attachment B. Maps). The five (5) planning areas and their size are listed below:

- Jarratt/I-95/US Planning Area is 8.8 sq mi
- Stony Creek/I-95/US301/VA Route 40 Planning Area is 10 sq mi
- Sussex Courthouse/VA Route 40 Planning Area is 6.4 sq mi
- Homeville/Wakfield/US 460 Planning Area is 86.6 sq mi
- Blackwater/Newville/Waverly/US 460 Planning Area is 100.4 sq mi

Typically, planning areas are defined as "small planning areas" less than 20 sq. mi. and are not ideal locations for utility-scale solar facilities based on the potential as growth centers. The five (5) planning areas comprise 43% of the County, and the two (2) largest planning areas comprise 38% of the County. Given the large size of the Homeville/Wakfield and Blackwater/Newville/Waverly planning areas, special consideration should be given for allowable uses. **Amending the ordinance as recommended to delete the reference to planning areas and retain the references to brownfields, County-owned capped landfills, or near existing industrial uses would be in alignment with the practical intent of the amendments made in 2019.**

The commission recommends that this requested amendment be approved by the Board of Supervisors.

3. Sec. 16-406 Minimum development standards, item (c) states:

The minimum setback to property lines of parcels with dwellings shall be 200 feet. The minimum setback to all other property lines shall be 150 feet.

The applicant requests amending the statement as follows to meet the intent of the April 2019 amendments.

The minimum setback of solar facilities from property lines of parcels with dwellings shall be 200 feet. The minimum setback of solar facilities from all other property lines shall be 150 feet. These setback requirements shall not apply to internal property lines of those parcels on which a solar facility is located.

The proposed revisions add clarity that is in alignment with the intent.

The commission recommends that this requested amendment be approved by the Board of Supervisors.

4. Sec. 16-406 Minimum development standards, item (f) states:

The facilities shall be enclosed by security fencing on the interior of the buffer area (not to be seen by other properties) not less than seven (7) feet in height and topped with razor/barbed wire, as appropriate.

The applicant requests that statement in parentheses be revised as follows to meet the intent of the April 2019 amendments.

The facilities shall be enclosed by security fencing on the interior of the buffer area (to be screened from other properties) not less than seven (7) feet in height and topped with razor/barbed wire, as appropriate.

The proposed revision clarifies the intent of the statement.

The commission recommends that this requested amendment be approved by the Board of Supervisors.

ADDITIONAL PLANNING COMMISSION RECOMMENDATIONS

In addition, based on the growing interest in battery energy storage systems, the commission recommends the addition of these definitions to ARTICLE I. GENERAL INFORMATION, Sec. 16-1 Definitions:

Battery Energy Storage System (BESS) means a physical container providing secondary containment to battery cells that is equipped with cooling, ventilation, fire suppression, and a battery management system.

Battery Management System (BMS) means an electronic regulator that manages a battery energy storage system by monitoring individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fire, ground fault and DC surge, and door access and being able to shut down the system before operating outside safe parameters.

Decommissioning Plan means a plan to disconnect, remove, and properly dispose of equipment, facilities, or devices.

Solar PV panel coverage means the total acres covered by blocks of photovoltaic panels including spaces between panels but excluding wildlife corridors, mandated setbacks, wetlands, and other avoided natural or cultural features.

BOARD OF SUPERVISORS ACTION

The Board has three options:

1. Approve the Zoning Text Amendments with written reasons for its decision.
2. Deny the Zoning Text Amendments with written reasons for its decision.
3. Defer the Zoning Text Amendments for further discussion and consideration.

Attachments:

A – Zoning Text Amendment Application dated December 23, 2019 and February 27, 2020

B – Maps



GENTRY LOCKE
Attorneys

D. Scott Foster, Jr.

sfoster@gentrylocke.com

(804) 297-3709 (Direct Dial)

(757) 634 7592 (Cell)

February 27, 2020

Bart S. Nuckols
Director of Community Development
PO Box 1397
20135 Princeton Road
Sussex, Virginia 23884

Re: Solar Zoning Ordinance Text Amendment

Mr. Nuckols,

Pursuant to our discussion with Sussex County staff on December 12, 2019 and our subsequent discussion on February 18, 2020, please find the revised application for a Zoning Text Amendment for certain sections of Article XXIII of the Sussex County Zoning Ordinance. We believe these amendments address the issues identified by the applicant and County Staff and are supported by the language of the 2019 updates to the Sussex County Comprehensive Plan, the remainder of the Zoning Ordinance and the current zoning map of Sussex County. We ask that this Zoning Text Amendment be heard concurrently with the Conditional Use Permit Application and the "Substantially In Accord" determination at the April 2020 Sussex County Planning Commission meeting.

Below is a summary of the changes proposed in the enclosed redline document and Zoning Text Amendment Application originally filed on December 23, 2019.

Section 16-403(b): Adding "CUP" to the chart under I-1. This change would allow utility scale solar facilities in I-1, "Limited Industrial" zoning districts with a Conditional Use Permit. This change is supported by the other language of the zoning ordinance, the language of the 2019 update to the Comprehensive Plan, and the general distribution of I-1 zoned land throughout Sussex County.

Article X of the Zoning Ordinance titled "Limited Industrial District (I-1) states: "The primary purpose of the I-1 district is to permit certain industries, which do not in any way detract from residential desirability, to locate in any area adjacent to residential uses." Practically speaking, given the applicable setback and screening requirements, utility scale solar facilities meet the goal of this ordinance and do not detract from residential desirability. Once complete, they produce no noise, smells or pollution and with requisite setbacks and screening, they do not impair the aesthetics of residential areas. Furthermore, the Conditional Use Permit process allows for projects to be designed to minimize impacts on adjacent residential properties. These same

protections are in place for utility scale solar projects on land zoned A-1, in which large lot, low density residential development is distributed throughout the County.

In the 2019 update to the Comprehensive Plan, the new section on “Utility Scale Solar Facilities” states “(t)he County will consider solar facilities in districts zoned agricultural or industrial.” This section clearly intended for I-1 zoned property to be considered by the County. The Zoning Ordinance expands on this topic. Section 16-403 (e) specifically states that “Solar facilities should locate on brownfields, County-owned capped landfills or near existing industrial uses, where feasible.” It appears the only 1-2 zoned parcel in Sussex County is the site once considered for a coal fired power plant, owned by Old Dominion Electric Cooperative, and makes up a significant portion of the property that is the subject of the pending Conditional Use Permit Application filed along with this zoning text amendment application. As a result, in order to meet the goal of this ordinance and “locate near existing industrial uses,” this only leaves I-1 zoned property, where utility scale solar is not currently permitted. In order to rectify this situation, I-1 zoned property should be included.

The vast majority of the privately held land zoned I-1 in Sussex County is located adjacent to the site once considered for a coal fired power plant and the subject of the pending Conditional Use Permit application, as well as adjacent to the Waste Management landfill. Outside this area, I-1 zoned land is limited, with the two largest parcels owned being owned by the County and consisting of 198.93 and 152.81 acres, respectively. Beyond these two parcels, the remainder of the I-1 zoned land is disbursed throughout the county and for the most part are already in some light industrial use (grain processing, mining, heavy equipment towing and repair, peanut processing, etc.)

Section 16-403 (e): Eliminating the Parenthetical “(but not within planning area boundaries).” This change rectifies an inconsistencies in the Zoning Ordinance based on an inconsistency found within the Comprehensive Plan.

The comprehensive plan has conflicting language on what constitutes a Planning Area. Chapter IX: Land Use and Development, Section A. states:

“The planning areas identified in this plan are: Jarratt/I-95/US Planning Area; Stony Creek/I-95/US301/VA Route 40 Planning Area; Sussex Courthouse/VA Route 40 Planning Area; Homeville/Wakefield/US 460 Planning Area; and Blackwater/Newville/Waverly/US 460 Planning Area. The remaining areas of Sussex County are classified as rural areas.” (formatting slightly altered)

Chapter X, “Plan for the Future” then describes Rural Areas as a Planning Area:

“6. Rural Areas This planning area is expected to remain rural in nature with land reserved for agricultural use. Low density residential growth is anticipated in the form of strip development, one acre lots with private well and septic systems along the highway. Public utilities are not available to sustain intense residential development. Incidental commercial establishments may locate throughout this planning area in support of residential growth.”

On the map of the Planning Area Boundaries (Exhibit IX-A), the map legend refers to the five named planning areas, but then only refers to the remainder as "Rural Areas."

If the Rural Areas are in fact a Planning Area, all areas of the county are in a Planning Area it is impossible to satisfy the requirement that solar facilities be located outside planning area boundaries, and as a result, utility scale solar facilities are effectively banned. This was clearly not the County's intention when adopting the solar zoning ordinance.

The second conflict with the "(but not within planning area boundaries)" language exists for I-2 zoned land where utility scale solar is permitted with a Conditional Use Permit. As mentioned above, the only I-2 zoned land in the County is the site that had been considered for a coal fired power plant. That parcel is squarely within the Blackwater/Newville/Waverly/U.S. 460 Planning Area. Eliminating the reference to planning area boundaries rectifies this conflict within the existing language of the ordinance.

Section 16-406 (c): Clarification of setback language.

The changes to the first and second sentence clarify that the setback requirement as applies to the solar facility itself. The addition of the third sentence makes it clear that the setbacks only applies to the exterior boundaries of a solar facility and are inapplicable to internal property lines within the project area.

Section 16-406 (f): Clarification of standard for buffer area.

This is a practical change that clarifies this condition for site plan and inspection purposes allows for vegetation to be planted that once mature, will screen the security fencing. It also allows the security fencing to be visible in certain areas where necessary, like as entrances to the facility etc.

These amendments clarify the ordinance and effectuate the intent of the County when it was adopted. We respectfully request you support this amendment application. Please do not hesitate to contact me with any questions or revisions you may have.

Very truly yours,



Gentry Locke
By: D. Scott Foster, Jr.



Office of Community Development
P.O. Box 1397, Sussex, VA 23884
20135 Princeton Rd, Sussex, VA, 23884
Phone: 434-246-1043 / Fax: 434-246-2175

County of Sussex
P.O. Box 1397, Sussex, VA, 23884
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www.sussexcountyva.gov

Zoning Text Amendment Application

Please type or print legibly. Attach additional sheets, if necessary, to fully answer any of the following sections. Incomplete applications will not be scheduled by the Sussex County Planning Commission until deficiencies are corrected. **SUBMIT 1 COMPLETE ORIGINAL APPLICATION TO THE OFFICE OF COMMUNITY DEVELOPMENT.** Applicants are requested to contact the Office of Community Development at 434.246.1043 prior to submitting an application.

I. Action Requested

A. Text Amendment

1. Identify the specific section(s) number(s) of the Zoning Ordinance sought to be amended.
Article XXIII, Section 16-403(b), (e) and Section 16-406 (c) and (f).

- a) What is the existing text requested to be repealed, if any?
Please see the enclosed redline document.

- b) What is the proposed text, if any?
Please see the enclosed redline document.

2. State the reason(s) for the text amendment.
Please see the enclosed cover letter and summary of changes.

B. Application History

Have any previous applications been made for a similar text amendment?

Yes No If yes, please provide the file number(s):

II. Petitioner Information

Name(s): Cabin Point Solar Center, LLC/Ørsted Onshore North America, LLC

Registered Agent: Ryan Gilchrist, Director of Development

(Or Officer or Authorized Signatory, if Petitioner is not an individual)

Address: 321 East Main Street, Suite 300

City, State, Zip: Charlottesville, VA 22902

Telephone: 434 202 5096 Fax: _____

E-mail address: rgilchrist@incolnclean.com

III. Agent, if different from Petitioner

Name(s): D. Scott Foster, Jr.

Firm or Agency: Gentry Locke

Address: 919 E. Main Street, Suite 1130

City, State, Zip: Richmond, Virginia

Telephone: 804 297 3709 Fax: _____

E-mail address: sfoster@gentrylocke.com

IV. Items Required to be Submitted with an Application for Text Amendment

A. Application. A COMPLETED ORIGINAL APPLICATION FORM AND ONE COPY.

B. Submittal Fee. A non-refundable filing fee of \$500 payable to "County of Sussex". Fee is subject to change.

V. Certification

By my signature below, I certify that the information contained in this application is true and correct to the best of my knowledge at the time of the application. I acknowledge that I understand and have complied with all of the submittal requirements and procedures, and that this application is a complete application submittal. I further understand that an incomplete application submittal may cause my application to be deferred to the next posted deadline date.

Applicant Name: D. Scott Foster, Jr.
Print

D. Scott Foster, Jr. 12/23/19 and 2/27/20
Signature Date

ARTICLE XXIII

SOLAR FACILITIES

Sec. 16-401 Statement of intent

The purpose of this section is to establish requirements for construction and operation of solar facilities and to provide standards for the placement, design, construction, monitoring, modification, and removal of solar facilities; address public safety, minimize impacts on scenic, natural, and historic resources; and provide adequate financial assurance for decommissioning.

Sec. 16-402 Applicability

This article shall apply to all solar facilities constructed after the effective date of this article, including any physical modifications to any existing solar facilities that materially alter the type, configuration, or size of such facilities or other equipment.

Sec. 16-403 Zoning districts

(a) Small-scale solar facilities may be installed by-right in all zoning districts to provide electricity to individual structures; provided a site plan (as applicable) has been submitted to the zoning administrator for review and approval; all Federal, State and Local regulations have been followed; and the system is located upon the property or structure being served.

(b) Medium and utility-scale solar facilities shall be permitted in zoning districts as follows:

Solar Facility	General Agricultural, A-1	Limited Industrial, I-1	General Industrial, I-2
<i>Medium-scale</i>	CUP	By-right	By-right
<i>Utility-scale</i>	CUP	CUP-	CUP

(c) Medium-scale solar facilities may be installed in the Industrial Districts to provide electricity for use on-site for commercial and industrial applications; provided a site plan has been submitted to the zoning administrator for review and approval; all Federal, State and Local regulations have been followed; and the system is located on the property or structure to be served.

(d) Any commercial or industrial solar facility installed upon a roof top shall submit a site plan to the zoning administrator and an engineering study to the Building Official Office for review.

(e) Solar facilities should locate on brownfields, County-owned capped landfills, or near existing industrial uses, where feasible, ~~(but not within planning area boundaries):~~

Sec. 16-404 Applications and procedures

In addition to other requirements of the Sussex County Zoning Ordinance and Conditional Use Permit requirements, applications for a solar facility (medium-scale and utility-scale) shall include the following information:

- (a) Pre-application meeting. Schedule a pre-application meeting with the zoning administrator to discuss the location, scale and nature of the proposed use and what will be expected during that process.
- (b) Comprehensive Plan Review. A 2232 review by the County is required by the *Code of Virginia* (§15.2-2232) for utility-scale solar facilities. This Code provision provides for a review by the Planning Commission of public utility facility proposals to determine if their general or approximate location, character and extent are substantially in accord with the Comprehensive Plan or part thereof.
- (c) CUP application. A complete CUP application including:
 - 1. Documents demonstrating the ownership of the subject parcel(s).
 - 2. Proof that the applicant has authorization to act upon the owner's behalf.
 - 3. Identification of the intended utility company who will interconnect to the facility.
 - 4. List of all adjacent property owners, their tax map numbers, and addresses.
 - 5. A description of the current use and physical characteristics of the subject parcels.
 - 6. A description of the existing uses of nearby properties.
 - 7. A narrative identifying the applicant, owner or operator, and describing the proposed solar facility project, including an overview of the project and its location, approximate rated capacity of the solar facility project, the approximate number of panels, representative types, expected footprint of solar equipment to be constructed, and type and location of interconnection to electrical grid.
 - 8. Aerial imagery which shows the proposed location of the solar facility, fenced area, driveways, and interconnection to electrical grid with the closest distance to all adjacent property lines and dwellings along with main points of ingress/egress.
 - 9. Payment of the application fee and any additional review costs, advertising, or other required staff time.
- (d) Concept plan. A concept plan prepared by an engineer with a professional engineering license in the Commonwealth of Virginia, that shall include the following:
 - 1. A description of the subject parcels.
 - 2. Property lines and setback lines.
 - 3. Existing and proposed buildings and structures; including preliminary locations of the proposed solar panels and related equipment; the location of proposed fencing, driveways, internal roads, and structures; and the location of points of ingress/egress.
 - 4. The location and nature of proposed buffers and screening elements, including vegetative and constructed buffers.
 - 5. A grading plan.
 - 6. A landscaping maintenance plan.
 - 7. Existing and proposed access roads, drives, turnout locations, and parking.
 - 8. Location of substations, electrical cabling from the solar facility systems to the substations, ancillary equipment, buildings, and structures including those within any applicable setback.

9. Fencing or other methods of ensuring public safety.
 10. Eighteen sets (11"× 17" or larger), one reduced copy (8½"× 11") and one electronic copy of the concept plan, including elevations and landscape plans as required.
 11. Additional information may be required as determined by the zoning administrator, such as a scaled elevation view of the property and other supporting drawings, photographs of the proposed site, photo or other realistic simulations or modeling of the proposed project from potentially sensitive locations as deemed necessary by the zoning administrator to assess the visual impact of the project, landscaping and screening plan, coverage map, and additional information that may be necessary for a technical review of the proposal.
- (e) Concept plan compliance. The facility shall be constructed and operated in substantial compliance with the approved Concept Plan, with allowances for changes required by the Virginia Department of Environmental Quality (DEQ) Permit by Rule (PBR) process.
- (f) Decommissioning plan. A detailed decommissioning plan, certified by an engineer, which shall include the following:
1. The anticipated life of the project;
 2. The estimated decommissioning cost in current dollars;
 3. How the estimate was determined;
 4. The method of ensuring that funds will be available for decommissioning and removal;
 5. The method that the estimated decommissioning cost will be kept current; and
 6. The manner in which the project will be decommissioned and the site restored.
- The applicant shall provide a cost estimate for the decommissioning of the facility that shall be prepared by a professional engineer or contractor who has expertise in the removal of the solar facility. The decommissioning cost estimate shall explicitly detail the cost and shall include a mechanism for calculating increased removal costs due to inflation and without any reduction for salvage value. This cost estimate shall be recalculated every five (5) years and the surety shall be updated accordingly.
- (g) A proposed method of providing appropriate escrow, surety or security for the cost of the decommissioning plan.
- (h) Traffic study submitted with application modelling the construction and decommissioning processes. County staff will review the study in cooperation with VDOT.
- (i) An estimated construction schedule.
- (j) Wetlands, waterways, and floodplains shall be inventoried, delineated, and avoided.
- (k) Environmental inventory and impact statement regarding any site and viewshed impacts, including direct and indirect impacts to national and state forests, national or state parks, wildlife management areas, conservation easements, recreational areas, or any known historic or cultural resources within three (3) miles of the proposed project.
- (l) A visual impact analysis demonstrating project siting and proposed mitigation, if necessary, so

that the solar facility minimizes impact on the visual character of the County.

1. The applicant shall provide accurate, to scale, photographic simulations showing the relationship of the solar facility and its associated amenities and development to its surroundings. The photographic simulations shall show such views of solar structures from locations such as property lines and roadways, as deemed necessary by the County in order to assess the visual impact of the solar facility.
2. The total number of simulations and the perspectives from which they are prepared shall be established by the zoning administrator after the pre-application meeting.

Sec. 16-405 Neighborhood meeting

- (a) A public meeting shall be held prior to the public hearing with the Planning Commission to give the community an opportunity to hear from the applicant and ask questions regarding the proposed project.
 1. The applicant shall inform the zoning administrator's Office and adjacent property owners in writing of the date, time and location of the meeting, at least seven but no more than 14 days, in advance of the meeting date.
 2. The date, time and location of the meeting shall be advertised in the County's newspaper of record by the applicant, at least seven but no more than 14 days, in advance of the meeting date.
 3. The meeting shall be held within the County, at a location open to the general public with adequate parking and seating facilities which may accommodate persons with disabilities.
 4. The meeting shall give members of the public the opportunity to review application materials, ask questions of the applicant and provide feedback.
 5. The applicant shall provide to the zoning administrator summary of any input received from members of the public at the meeting.

Sec. 16-406 Minimum development standards

- (a) Location standards for utility-scale solar facilities. The location standards stated below for utility-scale solar facilities are intended to mitigate the adverse effects of such uses on adjoining property owners, the area, and the County.
 1. The minimum area of a utility-scale solar facility shall be two (2) acres, and the maximum area shall be less than 1,500 contiguous acres.
 2. The equipment, improvements, structures, and percent of acreage coverage of a utility-scale solar facility shall be shown on the approved concept plan and site plan. The percent of acreage coverage shall not exceed 65%.
 3. Provide an inventory of all solar facilities – existing or proposed – within a four (4) mile radius.
- (b) A utility-scale solar facility shall be constructed and maintained in substantial compliance with the approved concept plan.
- (c) The minimum setback of solar facilities from property lines of parcels with dwellings shall be 200 feet. The minimum setback of solar facilities from all other property lines shall be

150 feet. These setback requirements shall not apply to internal property lines of those parcels on which a solar facility is located.

- (d) The maximum height of the lowest edge of the photovoltaic panels shall be 10 feet as measured from the finished grade. The maximum height of primary structures and accessory buildings shall be 15 feet as measured from the finished grade at the base of the structure to its highest point, including appurtenances. The Board of Supervisors may approve a greater height based upon the demonstration of a significant need where the impacts of increased height are mitigated.
- (e) The facilities, including fencing, shall be significantly screened from the ground-level view of adjacent properties by a buffer zone at least 100 feet wide that shall be landscaped with plant materials consisting of an evergreen and deciduous mix (as approved by County staff), except to the extent that existing vegetation or natural land forms on the site provide such screening as determined by the zoning administrator. In the event, existing vegetation or land forms providing the screening are disturbed, new plantings shall be provided which accomplish the same. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method.
- (f) The facilities shall be enclosed by security fencing on the interior of the buffer area (~~not to be seen by~~ to be screened from other properties) not less than seven (7) feet in height and topped with razor/barbed wire, as appropriate. A performance bond reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the security fencing shall result in revocation of the CUP and the facility's decommissioning.
- (g) Ground cover on the site shall be native vegetation and maintained in accordance with the Landscaping Maintenance Plan in accordance with established performance measures. A performance bond reflecting the costs of anticipated landscaping maintenance shall be posted and maintained. Failure to maintain the landscaping shall result in revocation of the CUP and the facility's decommissioning. Incorporation of native plant species that require no pesticides, herbicides, and fertilizers or the use of pesticides and fertilizers with low toxicity, persistence, and bioavailability is recommended. The operator shall notify the County prior to application of pesticides and fertilizers. The County reserves the right to request soil and water testing.
- (h) The Applicant shall identify an access corridor for wildlife to navigate through the Solar Facility. The proposed wildlife corridor shall be shown on the site plan submitted to the County. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.
- (i) The design of support buildings and related structures shall use materials, colors, textures, screening and landscaping that will blend the facilities to the natural setting and surrounding structures.
- (j) The owner or operator shall maintain the solar facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the equipment and structures, as applicable, and maintenance of the buffer areas and landscaping. Site access shall be maintained to a level acceptable to the County. The project owner shall be responsible for the cost of maintaining the solar facility and access roads, and the cost of repairing damage to private roads occurring as a result of construction and operation.

- (k) A utility-scale solar facility shall be designed and maintained in compliance with standards contained in applicable local, state and federal building codes and regulations that were in force at the time of the permit approval.
- (l) A utility-scale solar facility shall comply with all permitting and other requirements of the Virginia Department of Environmental Quality.
- (m) The applicant shall provide proof of adequate liability insurance for a solar facility prior to beginning construction and before the issuance of a zoning or building permit to the zoning administrator.
- (n) Lighting fixtures as approved by the County shall be the minimum necessary for safety and/or security purposes to protect the night sky by facing downward and to minimize off-site glare. No facility shall produce glare that would constitute a nuisance to the public. Any exceptions shall be enumerated on the Concept Plan and approved by the zoning administrator.
- (o) No signage of any type may be placed on the facility other than notices, warnings, and identification information required by law.
- (p) All facilities must meet or exceed the standards and regulations of the Federal Aviation Administration (“FAA”), State Corporation Commission (“SCC”) or equivalent, and any other agency of the local, state or federal government with the authority to regulate such facilities that are in force at the time of the application.
- (q) At all times, the solar facility shall comply with the County’s noise ordinance.
- (r) Any other condition added by the Planning Commission or Board of Supervisors as part of a CUP approval.

Sec. 16-407 Decommissioning

The following requirements shall be met:

- (a) Solar facilities which have reached the end of their useful life or have not been in active and continuous service for a period of six (6) months shall be removed at the owner’s or operator’s expense, except if the project is being repowered or a force majeure event has or is occurring requiring longer repairs; however, the County may require evidentiary support that a longer repair period is necessary.
- (b) The owner or operator shall notify the zoning administrator by certified mail and in person of the proposed date of discontinued operations and plans for removal.
- (c) Decommissioning shall include removal of all solar electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and any other associated facilities, so that any agricultural ground upon which the facility and/or system was located is again tillable and suitable for agricultural or forestall uses. The site shall be graded and re-seeded to restore it to as natural a pre-development condition as possible or replanted with pine seedlings to stimulate pre-timber pre-development conditions as

indicated on the Preliminary Site Plan. Any exception to site restoration, such as leaving access roads in place or seeding instead of planting seedlings must be requested by the land owner in writing, and this request must be approved by the Board of Supervisors (other conditions might be more beneficial or desirable at that time).

- (d) The site shall be re-graded and re-seeded or replanted within 12 months of removal of solar facilities. Re-grading and re-seeding or replanting shall be initiated within a six-month period of removal of equipment.
- (e) Decommissioning shall be performed in compliance with the approved decommissioning plan. The Board of Supervisors may approve any appropriate amendments to or modifications of the decommissioning plan.
- (f) Hazardous material from the property shall be disposed of in accordance with federal and state law.
- (g) The estimated cost of decommissioning shall be guaranteed by the deposit of funds in an amount equal to the estimated cost in an escrow account at a federally insured financial institution approved by the County unless otherwise provided for in subsection 5 below.
 - 1. The applicant shall deposit the required amount into the approved escrow account before any building permit is issued to allow construction of the solar facility.
 - 2. The escrow account agreement shall prohibit the release of the escrow funds without the written consent of the County. The County shall consent to the release of the escrow funds upon on the owner's or occupant's compliance with the approved decommissioning plan. The County may approve the partial release of escrow funds as portions of the approved decommissioning plan are performed.
 - 3. The amount of funds required to be deposited in the escrow account shall be the full amount of the estimated decommissioning cost without regard to the possibility of salvage value.
 - 4. The owner or occupant shall recalculate the estimated cost of decommissioning every five years. If the recalculated estimated cost of decommissioning exceeds the original estimated cost of decommissioning by ten percent (10%), then the owner or occupant shall deposit additional funds into the escrow account to meet the new cost estimate. If the recalculated estimated cost of decommissioning is less than ninety percent (90%) of the original estimated cost of decommissioning, then the County may approve reducing the amount of the escrow account to the recalculated estimate of decommissioning cost.
 - 5. The County may approve alternative methods to secure the availability of funds to pay for the decommissioning of a utility-scale solar facility, such as a performance bond, letter of credit, or other security approved by the County.
- (h) If the owner or operator of the solar facility fails to remove the installation in accordance with the requirements of this permit or within the proposed date of decommissioning, the County may collect the surety and the County or hired third party may enter the property to physically remove the installation.

Sec. 16-408 Coordination of local emergency services

Applicants for new solar facilities shall coordinate with the County's emergency services staff to provide materials, education and/or training to the departments serving the property with emergency services in how to safely respond to on-site emergencies.

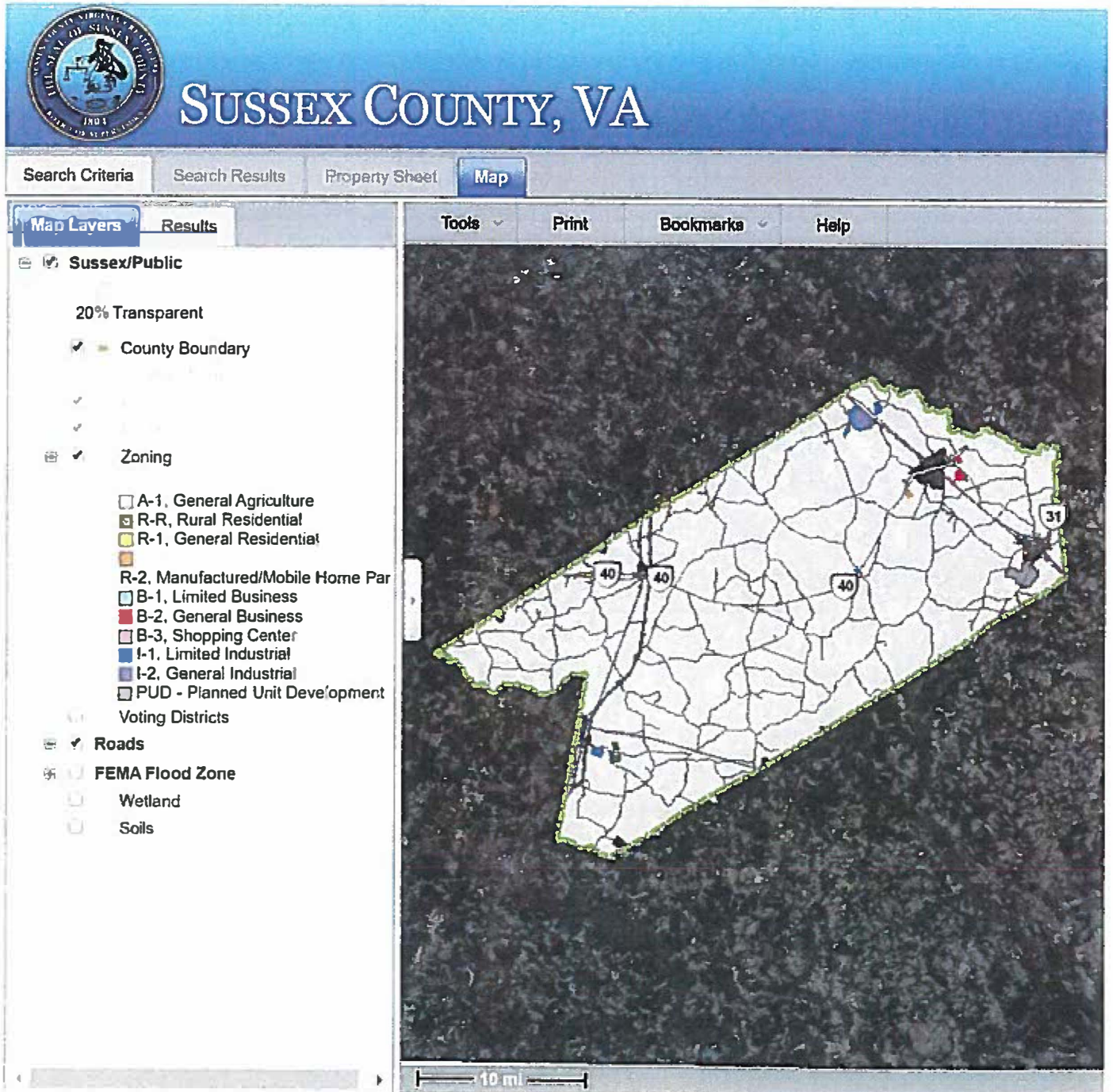
Sec. 16-409 Conditions

- (a) The Board of Supervisors may consider conditions addressing a proposed solar facility, including, but not limited to, the following:
1. A solar facility shall be constructed, maintained, and operated in substantial compliance with:
 - i. The development standards under this article.
 - ii. The approved concept plan.
 - iii. Any other conditions imposed pursuant to a Conditional Use Permit.
 2. The Conditional Use Permit may require the applicant to submit an erosion and sediment control plan for review by the County or by a qualified third party, however, the third party review shall not supersede any requirements imposed by state agencies. The applicant shall construct, maintain, and operate the solar facility in compliance with the approved plan.
 3. The Conditional Use Permit may require the applicant to submit a stormwater management plan for review by the County or by a qualified third party however, the third party review shall not supersede any requirements imposed by state agencies. The applicant shall construct, maintain, and operate the solar facility in compliance with the approved plan.
 4. The applicant shall pay a supplemental application fee to cover the actual cost of any review of the erosion and sediment control plan and the stormwater plan by a qualified third party.
 5. If the solar facility does not receive a building permit within eighteen (18) months of approval of the Conditional Use Permit, the Permit shall be terminated.
 6. If the solar facility is declared to be unsafe by the zoning administrator or building official, the facility must be in compliance within fourteen (14) days or the Conditional Use Permit shall be terminated, and system removed from the property.
 7. The owner and operator shall give the County written notice of any change in ownership, operator, or Power Purchase Agreement within thirty (30) days.

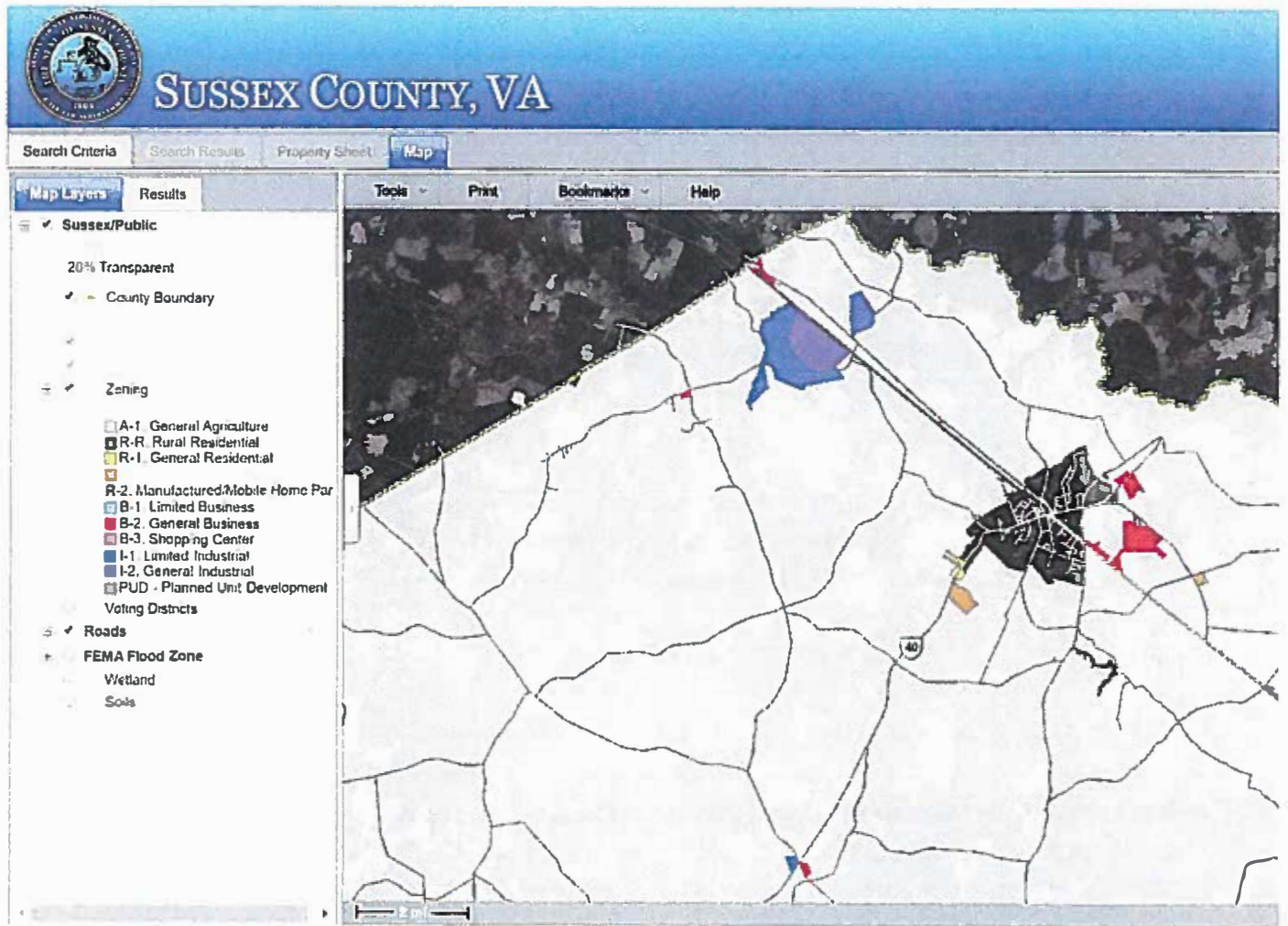
Sec. 16-410 – 16-420 Reserved

Attachment B. Maps

B1. Zoning Districts










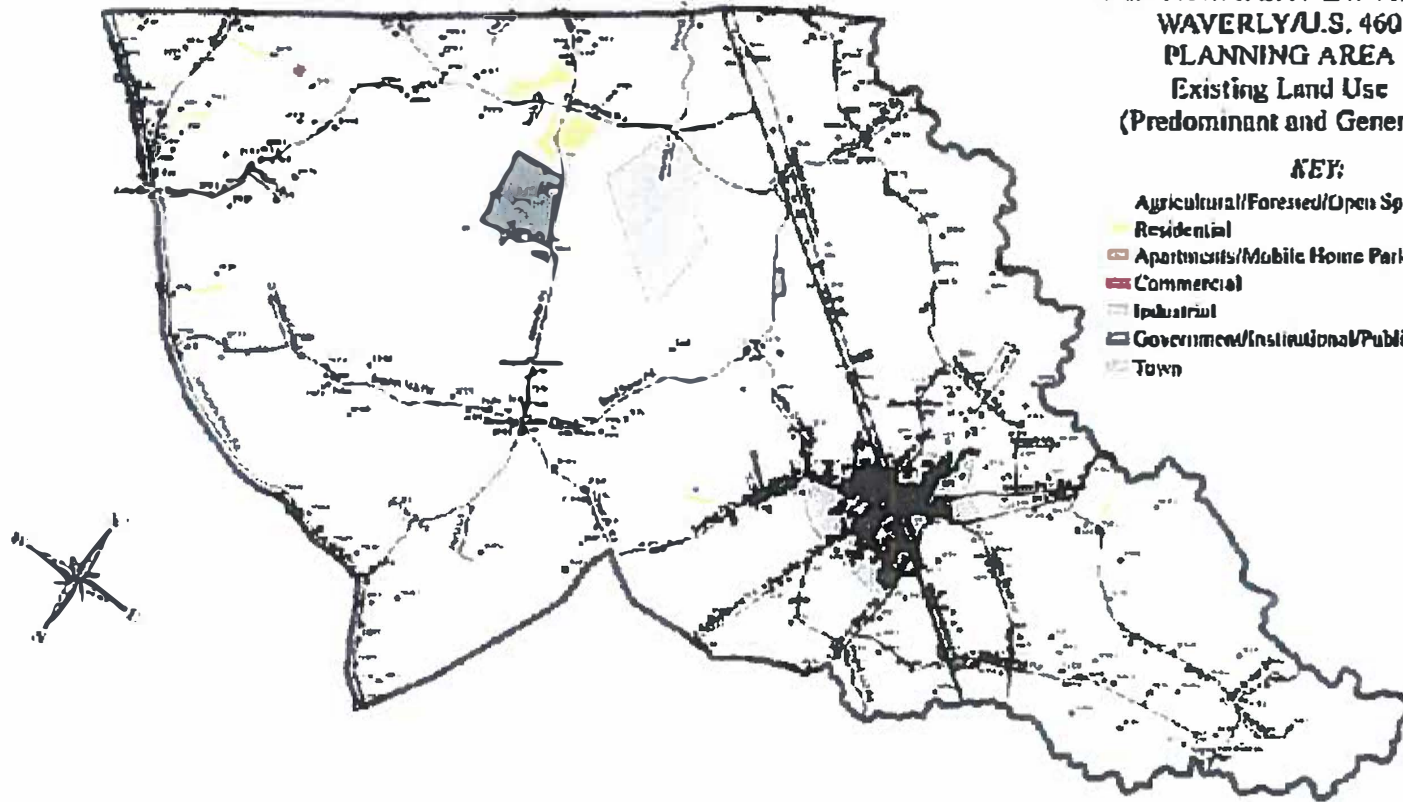
B2. Zoning Districts in the Planning Area



**EXHIBIT IX-F
BLACKWATER/NEWVILLE/
WAYERLY/U.S. 460
PLANNING AREA
Existing Land Use
(Predominant and General)**

KEY:

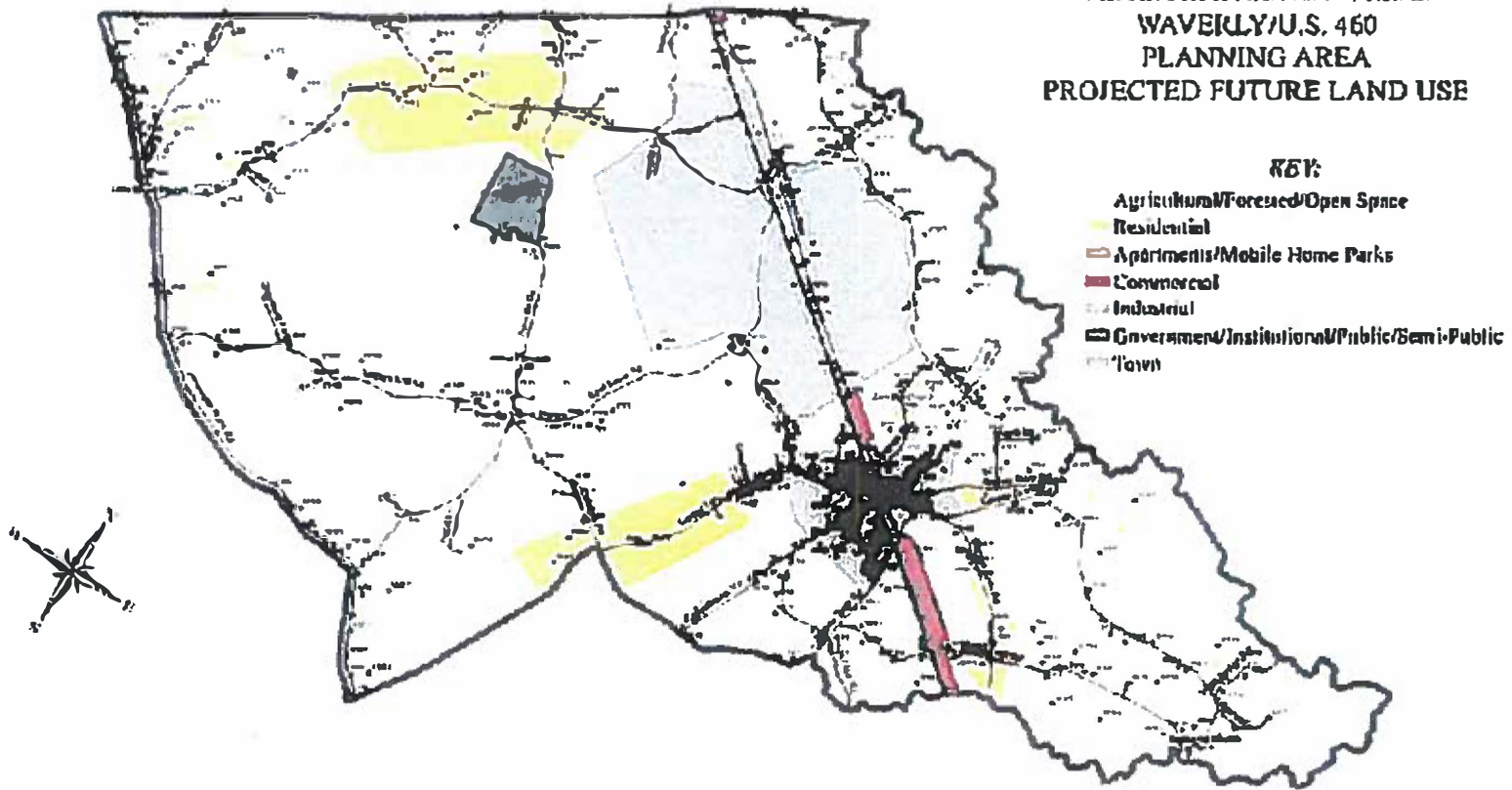
-  Agricultural/Forested/Open Space
-  Residential
-  Apartments/Mobile Home Parks
-  Commercial
-  Industrial
-  Government/Institutional/Public/Semi-Public
-  Town



BASE MAP SOURCE
AERIAL DATA CONSTRUCTION PERIOD: UNKNOWN, JULY 2011
SUSSEX COUNTY GIS DATABASE 2010

REVISED DATE APRIL 2010

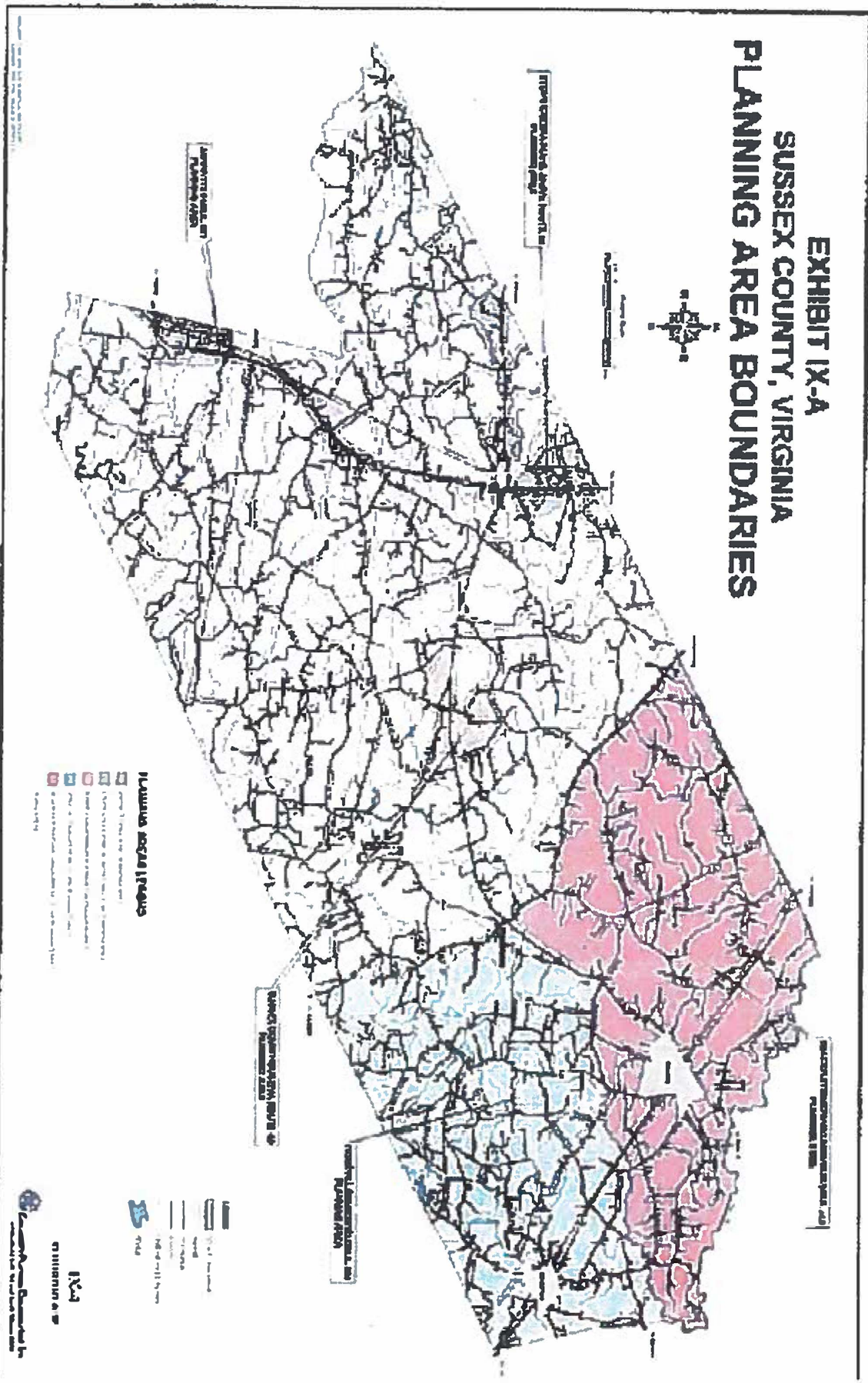
**EXHIBIT X-F
BLACKWATER/NEWVILLE/
WAVEILY/U.S. 460
PLANNING AREA
PROJECTED FUTURE LAND USE**



BASE MAP SOURCE:
MAYOR DATA CORP/LIMITS, CLEARING, WILDFIRE, JULY 2004
SUSSEX COUNTY GIS DATABASE, 2008

REVISED DATE APRIL, 2010

EXHIBIT IX-A SUSSEX COUNTY, VIRGINIA PLANNING AREA BOUNDARIES



- PLANNING AREA LEGEND**
- 1. Planning Area
 - 2. Social Region
 - 3. Interstate
 - 4. State Route
 - 5. County Boundary
 - 6. Planning Area Boundary
 - 7. Social Region Boundary



 VIRGINIA DEPARTMENT OF TRANSPORTATION

Conditional Use Permit Application

#2020-01

Cabin Point Solar LLC

**Commission Report
Cabin Point Solar Center
Conditional Use Permit 2020-01
Sussex County, Virginia**

**Report Date: August 4, 2020
Board of Supervisors Meeting Date: September 17, 2020**

APPLICATION SUMMARY

Project: Cabin Point Solar Center

Location: Located within the Waverly and Blackwater districts on both sides of Cabin Point Road in Sussex County, Virginia.

Parcel Record Numbers: 6-A-5, 6-A-6, 6-A-8A, 6-A-8B, 6-A-9, 6-A-10, 6-A-11, 6-A-12, 14-A-1, 15-A-1, and 15-A-2

Proposal: Applicant's request for a Conditional Use Permit for a 75 megawatt (MW) solar energy facility in A-1, I-1, and I-2 Zoning Districts

Application Submitted: December 23, 2019
Revised February 27, 2020

Applicant: Cabin Point Solar Center, LLC
Orsted Onshore North America, LLC
321 E. Main Street, Suite 300
Charlottesville, VA 22902

Representative: Ryan Gilchrist
434-202-5096
rgilchrist@lincolnclean.com

Chip Dicks/Scott Foster
Gentry Locke
804-225-5507
chipdicks@gentrylocke.com
Foster@gentrylocke.com

Owners: See Attachment A

PROPOSED DEVELOPMENT

The Applicant proposes to construct a 75 megawatt (alternating current) photovoltaic solar energy generation facility on 1,468 of 1,842 acres from 11 parcels. Equipment will be on 506 acres or 34% of the project area.

The project is in the Blackwater/Newville/Waverly planning area and generally bound to the north by the CSX Railroad south of General Mahone Highway (460), to the east by Beef Steak Road, to the south by the waste management facility and Newville Road, and to the west by Cabin Point Road and the 100-year floodplain.

The project infrastructure will consist primarily of solar photovoltaic modules mounted on steel racking structures, inverters, transformers, energy storage facilities, a substation, and security fencing. A Dominion transmission line crossing the project area allows for interconnection to the grid on site. No new buildings will be constructed, and no existing buildings utilized or expanded.

The Applicant proposes installing approximately 15 energy storage facilities, which are approximately the size of a shipping container and require a gravel or poured concrete pad foundation. Energy will be stored in lithium-ion batteries (or their functional equivalent) with cooling and fire suppression systems and off-site monitoring capabilities. Energy storage will be located next to the proposed substation as shown on the site plan.

The Applicant proposes setbacks of 200 feet from residential parcels and 150 feet from all other exterior parcel boundaries. The Applicant proposes to retain a 50-foot buffer of existing vegetation where possible and plant trees as necessary for a 50-foot buffer.

EXISTING CONDITIONS AND ZONING

The project area includes forested and cleared land and has primarily been used for timber production. The project area also includes streams, wetlands, and other water bodies. A section of the project area is in the 100-year floodplain. The flat site will require minimal grading and minimal new stormwater infrastructure.

The project area parcels are currently zoned A-1 Agricultural, I-1 Limited Industrial, and I-2 General Industrial. The future land use designation shows more of the project area as industrial and less agricultural (Attachment B).

Old Dominion Electric Cooperative (ODEC) currently owns eight (8) of the 11 parcels within the project area (**Attachment A**). A coal fired power plant was proposed for the site several years ago but was never constructed. The ODEC parcels are designated "Non-Tax Multiple Gov't," and are currently tax exempt. By approving this project and triggering the sale of the ODEC property, those parcels become taxable.

ADJACENT AND SURROUNDING USES

The project area is adjacent to 24 parcels (**Attachment A**) all zoned A-1, although eight (8) parcels to the west of project parcel 14-A-1 are shown as residential on the existing and future land use maps. These eight (8) parcels appear to be part of the neighborhood at the intersection of Cabin Point Road and Newville Road.

Excluding that neighborhood and the waste management facility to the south, the surrounding parcels appear to be forested with streams and surface waters. The future land use map designates these parcels as either agricultural or industrial.

COMPREHENSIVE PLAN CITATIONS

The Comprehensive Plan 2004-2005 update was adopted on October 20, 2005. The plan was amended April 2, 2019 to specifically address solar generating facilities. The plan describes the general trends and future preferences for development with emphasis on maintaining the rural character of the County.

Chapter II: Concerns and Aspirations, section B. Issues and Existing and Emerging Conditions (p.II-12), item 23. Utility-scale Solar Facilities states:

As used in this Comprehensive Plan, a utility-scale solar facility is a facility that generates electricity from sunlight which will be used to provide electricity to a utility provider or a large private user with a generating capacity in excess of one megawatt (1 MW). Sussex's abundant agricultural and forest land combined with its electrical infrastructure and transportation system appear to be attractive to the solar industry. These facilities are an industrial scale land use that occupy significant acreage. Many utility-scale solar facilities are located on agricultural or forested land that may have had other future land use potential or land use designations.

The County will consider solar facilities in districts zoned agricultural or industrial with preference for brownfields and County-owned capped landfills. The following site features should be addressed to mitigate the potential negative impacts of utility-scale solar facilities on County land use patterns as part of the evaluation of a Conditional Use Permit (CUP) application:

- The total size shall be larger than two (2) acres but less than 1,500 contiguous acres with no more than 65% PV panel coverage;
- Located outside planning areas or community hubs;
- Located outside forested areas to preserve forest resources;
- Further than three (3) miles from any village or town boundary;
- Further than two (2) miles from other existing or permitted solar facilities; and
- Proximity to residences; historic, cultural, recreational, or environmentally sensitive areas; and scenic viewsheds.

Chapter II: Concerns and Aspirations, section C. County Vision, item 2. Vision Statement on p.II-13 states:

Sussex County seeks to maintain its rural character and natural beauty. The County is intent upon protecting its forest resources, agricultural lands, and natural environmental systems. It will accomplish its objectives by: concentrating commercial and industrial development along US 460 and the I-95/US 301 corridor and in other areas where adequate infrastructure exist to support such development; balancing residential and commercial land uses; protecting and preserving view sheds; protecting and preserving the natural environment and surface and ground waters; promoting smart growth practices and prudent land use decisions; and discouraging over development and strip development along State maintained roads.

Chapter IX: Land Use and Development, section B. Land Use Conflicts (p.IX-2) lists several issues to consider in addressing land use conflicts:

Land use conflicts that occur in Sussex County are typical of similar Virginia counties that must balance the needs of, and activities associated with, agriculture, forestry, and conservation uses with residential, commercial, industrial, and public uses. With respect to land uses and development, the County must remain cognizant and carefully consider a variety of issues when making land use decisions. Issues relevant to solar facilities include:

- Encroachment of residential and other urban-level land uses into traditional agricultural and forestry areas.
- The balance between needed commercial and industrial development and the conversion of vacant land.

Chapter X: Plan for the Future, section A. Introduction provides guidance for each land use type. **Item 1. Agricultural and Forested Lands (p.X-1)** states:

Agricultural land is one of the most valuable of all-natural resources. Of major importance, and an objective of land use planning in Sussex County is to identify prime agricultural land and to preserve it from being developed for residential or other land uses. Once developed, it cannot easily be restored to its original condition (natures).

Item 3. Industrial Development (p.X-2) states:

Industry, which will provide much of the basic employment needed for anticipated growth, has more critical location requirements than other major land uses. Prime industrial sites should be located where they can be served by major transportation facilities, including major highways, railroads, and airports. Industries dependent upon the transportation of heavy materials and products require locations served by railroad facilities. Other types of industry may prefer locations near major highways to facilitate truck service and access by employees, and still others may seek location near the airport. In addition to transportation facilities, industries should be in locations where adequate public utilities and services can be provided. Other requirements include suitability of sites with respect to slope, drainage, and soil bearing capacity, and suitable buffering from residential or other incompatible uses.

Potential industrial sites are located on the fringe of the existing towns, along the corridors of U.S.301, I-95, and the CSX Railroad, in the western portion of the County, and along the U.S.

460 and Norfolk Southern Railroad in the eastern portion of the County. Also, areas on the north side of Cabin Point Road (State Route 602) may be suitable for industrial development. Sussex County is one of the few localities in Virginia that have been identified as having the potential and available acreage necessary to develop a mega industrial site.

This chapter also includes section C. **County-wide Goals and Objectives** clearly delineating 22 issues, each with one or two goals and several objectives (tactics). There are seven (7) issues and ten (10) goals relevant to the subject of solar facility siting.

Issue 1 Commercial and Industrial Development (p.X-10)

Goal 1: Promote economic development that will assure employment stability and provide ready access to needed goods and services in the County. Encourage local expansion and new industry location in the County to broaden the tax base and increase employment opportunities.

Goal 2: Sustainable commercial and industrial development in areas where such activities already occur or can be reasonably accommodated by public facilities and the County's natural systems and to encourage local support and patronage of County business.

Issue 2 Community Appearance (p.X-12)

Goal 1: Guide and support sound and attractive land use development with the County that will result in the least possible adverse fiscal and environmental impact.

Goal 2: Remain aesthetically pleasing while maintaining rural atmosphere, open spaces, and natural areas.

Issue 6 Growth Management (p.X-14)

Goal 2: Promote environmentally friendly development that is sustainable, aesthetically pleasing, and consistent with the County's rural image and character.

Issue 8 Infrastructure Carrying Capacity and Provision for Facilities and Services (p.X-16)

Goal 2: Ensure that public systems and services are sized, located, and managed to protect or restore the quality of areas of environmental concern or other fragile areas while providing adequate levels of service to meet the needs of citizens.

Issue 10 Land Development and Land Use Compatibility (p.X-18)

Goal 2: Ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and man-made features.

Issue 11 Natural Systems (p.X-20)

Goal 1: Preserve and develop forestry, agriculture, and related industry as important economic components of the County. Provide for the wise use of the County's nonrenewable earth and mineral resources, while protecting the beauty of the landscape.

Goal 2: Conserve protective functions of wetlands, flood plains, and other shoreline features for their natural storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.

Issue 21 Water Quality (p.X-26)

Goal: Maintain, protect, and where possible, enhance water quality of public waters.

In this chapter, section D. Planning Areas' Goals and Objectives provides specific goals and objectives under the 22 issues for each planning area. The **Blackwater/Newville/Waverly Planning Area goals and objectives** relevant to the subject of solar facility siting are below.

Issue 1 Commercial and Industrial Development (p.X-10)

Objective 5. Provide and maintain natural buffers such as open spaces, trees, and shrubbery between industrial and residential areas.

Issue 2 Community Appearance (p.X-12)

Objective 1. Utilize the County's Zoning Ordinance to prevent the location of incompatible land uses or other potential nuisances in the planning area.

Issue 11 Natural Systems (p.X-20)

Goal: To preserve and protect the predominately agricultural, forestall, and rural character of the Blackwater/Newville/Waverly Planning Area.

ZONING ORDINANCE PROVISIONS

On April 2, 2019, the County Board of Supervisors also amended the Zoning Ordinance (Articles I, XII, and XXIII) to permit solar energy facilities (projects) by Conditional Use Permit (Conditional Planned Use Development) in the A-1 Agricultural and I-2 General Industrial zoning districts.

- Under ARTICLE I. GENERAL INFORMATION, Sec. 16-1 Definitions, definitions were added.
- Under ARTICLE XII. SITE PLAN REQUIREMENTS, Sec. 16-202 When required, this item was added at the end of the list:
 - 7. Utility-scale solar facilities.
- New ARTICLE XXIII. SOLAR FACILITIES was added. The purpose of this section is to establish requirements for construction and operation of solar facilities and to provide standards for the placement, design, construction, monitoring, modification, and removal of solar facilities; address public safety, minimize impacts on scenic, natural, and historic resources; and provide adequate financial assurance for decommissioning.

General requirements for conditional use permits are provided in these sections:

- ARTICLE XV. ADMINISTRATION AND ENFORCEMENT, Sec. 16-274 requires a public hearing on conditional use permit.
- ARTICLE XV. ADMINISTRATION AND ENFORCEMENT, Sec. 16-275 states conditional use permits shall be reviewed by the county planning commission and subject to such conditions as the board of supervisors deem necessary to carry out the intent of this chapter.

CONCURRENTLY PROPOSED ZONING TEXT AMENDMENTS

The Applicant proposes Zoning Text Amendment to Article XXIII as follow:

- Section 16-403(b). The applicant requests that utility-scale solar facilities be allowed by CUP in Limited Industrial (I-1) districts to meet the intent of the April 2019 amendments.
- Section 16-403(e). The applicant requests that statement in parentheses be removed to meet the intent of the April 2019 amendments.
- Section 16-406(c). The applicant requests amending the statement for clarity.
- Section 16-406(f). The applicant requests amending the statement for clarity.

The commission recommended approval of these amendments.

STAFF ANALYSIS

Staff has analyzed the proposed project considering the recently 2019 and proposed amendments to the County's Comprehensive Plan and Zoning Ordinance. Analysis considerations include:

- The proposed project is:
 - Located in districts zoned agricultural and industrial, however the parcels are zoned A-1 Agricultural, I-2 General Industrial, and I-1 Limited Industrial
 - Less than 1,500 contiguous acres
 - Less than 65% PV panel coverage
 - In the Blackwater/Newville/Waverly planning area
 - On land primarily used for timber production
 - Further than three miles from the closest town boundary, the Town of Waverly
 - Approximately two (2) miles from a permitted solar facility
 - In an environmentally sensitive area with surface waters, an eagle's nest, and the Warwick Swamp Powerline Conservation Site, but mitigation measures are proposed to protect these areas
 - Adjacent to a neighborhood at the intersection of Cabin Point Road and Newville Road
 - Proximate to one Virginia Department of Forestry (DOF) conservation easement, containing the Joseph Pines Preserve, approximately 2.0 miles west of the project limits, and one Virginia Outdoors Foundation (VOF) conservation easement (Easement SUS-VOF-4123) approximately 2.6 miles south of the project limits
 - Proximate to 52 archaeological resources and 39 architectural resources within a 3-mile buffer of the project limits
- A Dominion transmission line crosses the property for interconnection to the grid.
- The adjacent landfill and industrial uses are compatible.
- The facility will generate minimal offsite noise, little glare, and no emissions or safety hazards.
- After the construction is complete, there will be limited ongoing maintenance, and the ingress/egress traffic will remain similar to current use patterns.
- The project will create temporary construction jobs and generate tax revenue.
- Solar energy generation facilities are a low intensity use that do not require County infrastructure or resources. The battery storage will require County services, such as emergency and fire personnel.

The Comprehensive Plan **Chapter XI: Tools for Managing Development**, section A. **Guide for Land Use Decision-Making** (p.XI-2) offers **general criteria to consider when evaluating a proposed development** or ordinance amendment.

The Commission, however, should also look beyond the plan and **consider whether proposed developments**, even if consistent with the plan, **advance the best interests of public health, safety, and general welfare**. This very general criterion calls for consideration of a wide range of issues, including, but not limited to **the potential impact of a development on:**

- **The natural environment** – i.e., how a proposed development might affect air quality, water quality, flooding, erosion, important natural areas, etc.;

The project area includes streams, wetlands, the 100-year floodplain, an eagle's nest the Warwick Swamp Powerline Conservation Site, natural heritage (Red Milkweed, Pine Barren Sandreed and Slender Nutrush). Mitigation includes avoiding any impacts during construction, including staging equipment.

The project is proximate to one Virginia Department of Forestry (DOF) conservation easement, containing the Joseph Pines Preserve, approximately 2.0 miles west of the project limits, and one Virginia Outdoors Foundation (VOF) conservation easement (Easement SUS-VOF-4123) approximately 2.6 miles south of the project limits.

Solar energy generation via solar panels is a low impact use that does not create emissions or water contamination. Proper grading and stormwater management, as required in the Grading Plan, Erosion and Sedimentation Plan, and Stormwater Management Plan, will mitigate negative impacts to natural areas.

The battery storage will be placed outside of environmentally sensitive areas with vegetation. Safety features, emergency management procedures, and training for first responders will minimize negative impacts on the natural environment.

- **Important natural resources** – i.e., how a proposed development might threaten or enhance the continued availability and efficient use of finite natural resources for agriculture or forestry;

The proposed project area is designated primarily as industrial in the Future Land Use Map, so the County has already planned for ending the agriculture or forestal use.

- **The transportation system** – i.e., whether any additional traffic generated by a proposed development can be safely and efficiently accommodated by the County's transportation facilities;

The safe and efficient accommodation of construction traffic will be managed according to the Transportation Plan. After construction is complete, there will be limited ongoing maintenance, and the ingress/egress traffic will remain similar to current use patterns.

- **The provision of utilities and services** – i.e., whether any additional demands for water supply, electricity, refuse collection, fire and police protection, education, health care, recreation, etc. generated by a proposed development can be safely and efficiently accommodated by public, community, or private utility and service systems;

Solar energy generation via solar panels does not place additional demands on County infrastructure or services.

The battery storage will require the involvement of emergency and fire personnel to attend training, create emergency management procedures, and be on alert to respond to potential hazards.

- **The County economy** – i.e., how a proposed development might affect employment opportunities and the general health of the Sussex County economy;

The project will create temporary construction jobs and limited ongoing maintenance jobs. The project will generate tax revenue, including new revenue from the eight (8) parcels currently owned by Old Dominion Electric Cooperative (ODEC) that are tax exempt. By approving this project and triggering the sale of the ODEC property, those parcels become taxable. There are also revenues from either the machinery and tools tax exemption decrease or the solar revenue share, as authorized by the 2020 General Assembly

- **Important historical, architectural, archeological, and cultural resources** – i.e., how a proposed development might threaten or enhance the continued existence and integrity of resources of architectural, archeological, or cultural significance;

The project area does not include resources of architectural, archeological, or cultural significance eligible for designation. The project is proximate to 52 archaeological resources and 39 architectural resources within a 3-mile buffer of the project limits. As a low impact use, the project will not threaten the existence of those resources. The risks of battery storage will be mitigated with passive and active controls, training of first responders, and emergency management procedures.

- **Neighboring development** – i.e., how a proposed development or development allowed by an amendment might affect living or working conditions in neighboring areas (including whether development might deter or enhance the appropriate development or conservation of neighboring property);

The project is adjacent to a neighborhood at the intersection of Cabin Point Road and Newville Road, the waste management facility to the south, and several forested parcels. The future land use map designates the adjacent parcels as either agricultural or industrial.

Solar energy facilities may be compatible with neighboring agricultural and rural uses if they are not located in proximity to, or within sight of, scenic routes or historic or recreational resources, and if they are appropriately screened from public rights-of-way and adjacent properties. Meeting or exceeding zoning district setbacks at the project boundary and existing or proposed vegetative screening will help to ensure that the surrounding area is buffered from the Project. The risks of battery storage will be mitigated with passive and active controls, training of first responders, and emergency management procedures.

- **Community function, character, and attractiveness** – i.e., how a proposed development or development allowed by an amendment might enhance the attractiveness and functional mix of land uses needed to meet the needs of future populations and avoid adverse impacts; and,

The project brings a new land use to the area on parcels designated as industrial in the future land use map and/or adjacent to a landfill. Adequate project setbacks, buffers, and screening are critical to avoiding adverse impacts.

- **Provision of affordable and convenient housing** – i.e., how a proposed development might affect people’s ability to find affordable housing reasonably accessible to their place of employment.

The proposed project and location have no impact on affordable and convenient housing.

Primary Issues

As part of the 2232 review process, staff identified a few issues that should be addressed in the CUP – setbacks, buffers, height, forest resources and site restoration, wildlife corridors, grading plan, battery storage, and the decommissioning plan.

Setbacks – The Applicant proposed 200-foot setbacks to property lines of external parcels with dwellings and 150-foot setbacks to all other external property lines in the revised application dated February 27, 2020. There may be references to a shorter setback remaining on maps and appendices to the application.

The commission recommends approving the 200-foot and 150-foot setbacks in accordance with the Zoning Ordinance, Article XXIII, Sec. 16-406.

Buffers – The Applicant proposes screening the facilities with a 100-foot buffer consisting of a mixture of existing vegetation where possible and new, native vegetation as necessary in the revised application dated February 27, 2020. There may be references to a shorter setback remaining on maps and appendices to the application.

The commission recommends approving 100-foot buffer as proposed February 27, 2020.

Height – The Applicant states the tallest point of the solar panel racking system at maximum tilt will be approximately 12’ off the surface of the ground in the revised application dated February 27, 2020.

The commission recommends, as indicated in the following conditions, that the greatest distance from the lower edge of the solar panels be 10’ off the surface of the ground to mitigate erosion issues.

Forest Resources and Site Restoration – The Applicant states the project area is currently 50% open land after being cleared for the coal fired power plant years ago and 50% pine timber. The Applicant proposes to minimize clearing to areas impacted by the project. The facility

lifecycle is 35 years, similar to the 40-year lifecycle of pine plantations thus impacting only one harvest cycle. The Applicant proposes to fully return the land to timber production upon decommissioning to preserve the County's forest resources.

The commission recommends approving the proposed impact to forest resources and site restoration plan.

Wildlife corridors – The Applicant did not indicate wildlife corridors on the site plan; however, there appear to be natural locations for corridors following streams and wetlands that are not obstructed by the proposed fencing.

The commission recommends approving wildlife corridors as proposed.

Grading Plan – The Applicant anticipates minimal grading will be necessary for the generally flat project area. A preliminary grading plan was provided (**Attachment A**).

The commission recommends all plans should be reviewed by a third party (County on-call engineer) prior to submission for review. Separate securities (cash escrow, letter of credit, insurance bond) should be posted for this work (grading, ESC, SWP) prior to any issuance of a land disturbance permit. The commission recommends site inspections required by law to be conducted by a third party at the expense of the applicant.

Battery Storage – The Applicant proposes installing approximately 15 energy storage facilities next to the proposed substation. Energy storage facilities are approximately the size of a shipping container and require a gravel or poured concrete pad foundation. Lithium-ion batteries (or their functional equivalent) with off-site monitoring capabilities will be used. The Applicant proposes to work with the County's Public Safety Coordinator to train first responders (fire and rescue) and create an emergency action plan.

The commission recommends approving battery storage in accordance with the conditions below.

Decommissioning Plan – A decommissioning plan was provided (**Attachment A**). The plan states that all solar panels, electrical components, fencing, any other associated equipment, facilities, and structures will be removed to a depth of at least 36 inches. Underground cabling buried deeper than 36 inches will be abandoned in place (approximately 46,000 linear feet).

The Zoning Ordinance calls for full removal of all materials, equipment, and waste. This requirement was created to allow for the return of lands to agricultural or forestal uses. The project area parcels are currently zoned A-1 Agricultural, I-1 Limited Industrial, and I-2 General Industrial, and the future land use designation shows more of the project area as industrial and less agricultural. Since the project area has a low probability of returning to agricultural or forestal use based on the location and use designations, staff recommends creating an exception to the requirement with the conditions.

The commission recommends:

- All materials, equipment, and waste be removed to in its entirety in accordance with the decommissioning plan.
- The Applicant specifically addresses the decommissioning and removal of battery storage.
- The Applicant specifies the restoration criteria (pre-timbered or post) and factors that cost into the decommissioning estimate and security.
- Requests from the landowners regarding site restoration (e.g. leaving access roads in place) be provided in writing.
- A decommissioning security, in a form approved by the County Attorney, should be received prior to issuance of the building permit.

Conditions

If the Planning Commission determines that the application furthers the Comprehensive Plan's goals and objectives and that it meets the criteria set forth in the Zoning Ordinance, then staff recommends the following conditions to mitigate the adverse effects of this utility-scale solar generation facility with any recommendation for approval.

1. The Applicant will develop the Project Site in substantial accord with the Conceptual Site Plan dated February 26, 2020 included with the application (**Attachment A**) and these conditions as determined by the Zoning Administrator. Significant deviations or additions including any enclosed building structures to the Preliminary Site Plan will require review and approval by the Planning Commission and Board of Supervisors.

As used in these conditions, the "Project Site" shall include the "Solar Facilities." The "Solar Facilities" shall mean the area(s) shown on the Conceptual Site Plan containing racking, panels, inverters, breakers, switches, cabling, transmission lines, transformers, energy storage facilities, and substation located within the perimeter fencing, and including all fencing.

2. Site Plan Requirements. In addition to all Virginia site plan requirements and site plan requirements of the Zoning Administrator, the Applicant shall provide the following plans for review and approval for the Solar Facility prior to the issuance of a building permit:
 - a. *Construction Management Plan.* The Applicant shall prepare a "Construction Management Plan" for each applicable site plan for the Solar Facility, and each plan shall address the following:
 - i. Traffic control methods (in coordination with the Virginia Department of Transportation [VDOT] prior to initiation of construction): i. Lane closures, ii. Signage, and iii. Flagging procedures.
 - ii. Site access planning. Directing employee and delivery traffic to minimize conflicts with local traffic.
 - iii. Site security. The Applicant shall implement security measures prior to the commencement of construction of Solar Facilities on the Project Site.
 - iv. Lighting. During construction of the Solar Facility, any temporary construction lighting shall be positioned downward, inward, and shielded to eliminate glare from all adjacent properties. Emergency and/or safety lighting shall be exempt from this construction lighting condition.
 - v. Water Supply. In the event that on-site wells are used during construction of the solar energy facility, the Applicant shall prepare and submit for review to the County hydrogeologic information necessary for the County to determine the potential impact to pre-existing users for the same aquifer proposed to be used for the solar energy facility and a plan to mitigate impacts to pre-existing users within the area of impact of the Project. If the County, in consultation with the Department of Environmental Quality, determines that the installation of a well will not adversely affect existing users, the Applicant may proceed with well construction in compliance with approval by the Department of Environmental Quality. At the end of the construction of the solar energy facility, the well shall not thereafter be used except only for personal toilet and

- lavatory facilities as required by the Uniform Statewide Building Code for operations and maintenance buildings.
- b. *Construction Mitigation Plan.* The Applicant shall prepare a “Construction Mitigation Plan” for each applicable site plan for the Solar Facility, and each plan shall address the effective mitigation of dust, burning operations, hours of construction activity, access and road improvements, and handling of general construction complaints as set forth and described in the application materials and to the satisfaction of the Zoning Administrator. Damage to public roads related to construction activities shall be repaired as soon as possible and not postponed until construction completion. The Applicant shall provide written notice to the Zoning Administrator of the plans for making such repairs, including time within which repairs will be commenced and completed, within thirty (30) days of any written notice received from the Zoning Administrator.
- i. Driving of posts shall be limited to 7:00 am to 6:00 pm, Monday through Saturday. Driving of posts shall be prohibited on state and federal holidays. The Applicant may request permission from the County Administrator to conduct post driving activity on Sunday, but such permission will be granted or denied at the sole discretion of the County Administrator.
 - ii. Other construction activity on-site shall be permitted Monday through Sunday in accordance with the provisions of the County’s Noise Ordinance.
 - iii. During construction, the setbacks may be used for staging of materials and parking. No material and equipment laydown area, construction staging area, or construction trailer shall be located within 200 feet of any property containing a residential dwelling.
 - iv. Construction lighting shall be minimized and shall be directed downward.
- c. *Grading plan.* The proposed Grading Plan, dated November 25, 2019, is provided with this application (**Attachment A**). The Applicant will submit a final grading plan (the “Grading Plan”) for review and approval by the Zoning Administrator. The Project shall be constructed in compliance with the Grading Plan as determined and approved by the Zoning Administrator or his designee prior to the commencement of any construction activities and a bond or other security will be posted for the grading operations. The grading plan shall:
- i. Clearly show existing and proposed contours;
 - ii. Note the locations and amount of topsoil to be removed (if any) and the percent of the site to be graded;
 - iii. Limit grading to the greatest extent practicable by avoiding steep slopes and laying out arrays parallel to landforms;
 - iv. An earthwork balance will be achieved on-site with no import or export of soil;
 - v. In areas proposed to be permanent access roads which will receive gravel or in any areas where more than a few inches of cut are required, topsoil will first be stripped and stockpiled on-site to be used to increase the fertility of areas intended to be seeded;
 - vi. Take advantage of natural flow patterns in drainage design and keep the amount of impervious surface as low as possible to reduce storm water storage needs.

- vii. Provide for the installation of all stormwater and erosion and sediment control infrastructure (“Stormwater Infrastructure”) at the outset of the project to ensure protection of water quality. Once all Stormwater Infrastructure is complete and approved by the VESCP authority, no more than 50 percent of the land disturbance areas as reflected on the Site Plan shall be disturbed without soil stabilization at any one time. Stabilization, for purposes of erosion and sediment control, shall mean the application of seed and straw to disturbed areas, which shall be determined by the VESCP authority.
- d. *Erosion and Sediment Control Plan.* The County will have a third-party review with corrections completed prior to County review and approval. The owner or operator shall construct, maintain, and operate the project in compliance with the approved plan. An E&S bond (or other security) will be posted for the construction portion of the project.
- e. *Stormwater Management Plan.* The County will have a third-party review with corrections completed prior to County review and approval. The owner or operator shall construct, maintain, and operate the project in compliance with the approved plan. A storm water control bond (or other security) will be posted for the project for both construction and post construction as applicable and determined by the Zoning Administrator.
- f. *Project Screening and Vegetation Plan.*
 - i. The proposed Landscape Maintenance Plan, dated November 2019, is provided with this application (**Attachment A**). The final plan will address the conditions below in item 4.b. The owner or operator shall construct, maintain, and operate the facility in compliance with the approved plan. A separate security shall be posted for the ongoing maintenance of the project’s land cover and vegetative buffers in an amount deemed sufficient by the Zoning Administrator. Failure to maintain the landscaping in accordance with the Landscape Maintenance Plan may result in the issuance of a notice of violation by the Zoning Administrator. The Applicant (or the operator) shall promptly communicate with the Zoning Administrator within 30 days of the date of the notice of violation and submit a plan in writing satisfactory to the Zoning Administrator to remedy such violation no later than 180 days after the date of the notice of violation. Failure to remedy the violation before the end of the 180-day cure period may result in revocation of the CUP.
 - ii. Ground cover shall be native vegetation where compatible with site conditions and, in all cases, shall be approved by the Zoning Administrator.
 - iii. Screening vegetation shall include pollinator plants where compatible with site conditions and, in all cases, shall be approved by the Zoning Administrator.
 - iv. Only EPA approved herbicides shall be used for vegetative and weed control at the solar energy facility by a licensed applicator. No herbicides shall be used within 150 feet of the location of an approved ground water well. The Applicant shall submit an herbicide land application plan prior to approval of the certificate of occupancy (or equivalent). The plan shall specify the type of herbicides to be used, the frequency of land application, the identification of approved groundwater wells, wetlands, streams, and the distances from land application areas to features such as wells, wetlands, streams and other bodies of water. The operator shall notify the County prior to application of pesticides and fertilizers. The County reserves the

right to request soil and water testing.

- g. The Applicant shall reimburse the County its costs in obtaining independent third-party reviews as required by these conditions.
- h. The design, installation, maintenance, and repair of the Solar Facility in accordance with the most current National Electrical Code (NFPA 70) available (2014 version or later as applicable).

3. Operations.

- a. *Permanent Security Fencing.* The Applicant shall install permanent security fencing, consisting of chain link, two-inch square mesh, six (6) feet in height, with one (1) foot of barbed wire on top, around the Solar Facilities prior to the commencement of operations of the Solar Facilities. A performance bond reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the fence in a good and functional condition will result in revocation of the permit.
- b. *Lighting.* Any on-site lighting provided for the operational phase of the Solar Facility shall be dark-sky compliant, shielded away from adjacent properties, and positioned downward to minimize light spillage onto adjacent properties.
- c. *Noise.* Noise will be compliant with the County's Noise Ordinance.
- d. *Ingress/Egress.* Permanent access roads and parking areas will be stabilized with gravel, asphalt, or concrete to minimize dust and impacts to adjacent properties.

Water Supply. After completion of construction, water may be purchased for the purpose of washing panels if the Applicant and the Sussex Service Authority enter into a mutually acceptable agreement.

4. Buffers.

- a. *Setbacks.*
 - i. "Principal Solar Facility Structure" shall include the "Solar Facilities" excluding the project roads and transmission poles.
 - ii. A minimum 150-foot setback shall be maintained from a Principal Solar Facility Structure to the street line (edge of right-of-way) where the Property abuts any public rights-of-way.
 - iii. A minimum 200-foot setback shall be maintained from a Principal Solar Facility Structure to the adjoining property line of a parcel with a dwelling.
 - iv. A minimum 150-foot setback shall be maintained from a Principal Solar Facility Structure to the adjoining property line of other parcels.
 - v. There shall be no setbacks between internal lot lines between parcels in the project area.
- b. *Screening.* The facilities, including fencing, shall be significantly screened from the ground-level view of adjacent properties by a buffer zone at least 100 feet wide that shall be landscaped with plant materials consisting of an evergreen and deciduous mix (as approved by County staff), except to the extent that existing vegetation or natural land forms on the site provide such screening as determined by the zoning administrator. In the event, existing vegetation or landforms providing the screening are disturbed, new plantings shall be provided which accomplish the same. Opaque architectural fencing may be used to supplement other screening methods but shall not be the primary method.

- c. Ancillary project facilities may be included in the buffer as described in the application where such facilities do not interfere with the effectiveness of the buffer as determined by the Zoning Administrator.
 - d. *Wildlife corridors.* The Applicant shall provide access corridors for wildlife to navigate through the Project Site. The proposed wildlife corridors shall be shown on the Site Plan submitted to the County. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.
5. Traffic.
 - a. The applicant shall comply with all Virginia Department of Transportation recommendations for traffic management during construction and decommissioning of the Solar Facility.
 - b. The roads shall be maintained in a safe operating condition during the construction phase and be brought back to the original condition, or improved, upon completion of the construction and decommissioning phases.
 6. Height of Structures. Solar Facilities shall not exceed 15' maximum (with a 10' maximum drip edge). Such height restriction shall not apply to meteorological stations, Battery Energy Storage System, lightning protection, substation, and electrical distribution or transmission lines.
 7. Inspections.
 - a. The Applicant will allow designated County representatives or employees access to the facility for inspection purposes with 24-hour notice.
 - b. The Applicant shall reimburse the County its costs in obtaining an independent third-party to conduct inspections required by local and state laws and regulations.
 8. Battery Storage.
 - a. Battery and energy storage facilities will be constructed, maintained, and operated in accordance with national industry standards and regulations including the National Electrical Code, International Fire Code of the International Code Council, and the National Fire Protection Association Fire Code. In the event of a conflict between the national industry standards and these Conditions, the national industry standards shall control so that as technology advances, updated technology may be used by the Applicant.
 - b. Battery cells shall be placed in a Battery Energy Storage System ("BESS") with a Battery Management System ("BMS").
 - c. The BESS will provide a secondary layer of physical containment to the batteries and be equipped with cooling, ventilation, and fire suppression systems.
 - d. Each individual battery will have 24/7 automated fire detection and extinguishing technology built in. The BMS will monitor individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fire, ground fault and DC surge, and door access and be able to shut down the system before Thermal Runaway takes place.
 - e. The BESS will be placed on an appropriate foundation and screened with vegetation outside of environmentally sensitive areas, as otherwise provided in the Siting Agreement.
 - f. Access to all batteries and electrical switchgear will be from the exterior for normal operation and maintenance. Access to the container interior will not be permitted while the system is in operation with the exception of safety personnel and first responders.

- g. Qualifications and experience from selected developers and integrators will be provided including disclosure of fires or other hazards at facilities.
 - h. Safety testing and failure modes analysis data from selected developers and manufacturers will be provided.
 - i. The latest applicable product certifications will be provided.
 - j. The batteries will be NFPA (National Fire Protection Agency) complaint.
 - k. The Applicant or any future owner shall be responsible for any environmental remediation required by the Department of Environmental Quality and the costs of such remediation. All remediation shall be completed in a timely manner.
 - l. Battery storage will be developed in collaboration with technical experts and first responders to utilize technology-appropriate best practices for safe energy storage systems including, but not limited to, the following:
 - i. Adequate access/egress for the first responders;
 - ii. Adequate facility signage (on battery chemistry and person to contact);
 - iii. Accessible Safety Data Sheets;
 - iv. System-specific emergency response plans;
 - v. Training for first responders on the type of system, potential hazards and risks, and system-specific emergency response plans;
 - vi. Adequate water sources and fire suppression appliances for the fire fighters;
 - vii. Adequate facility signage on Hazardous Materials present in the vicinity;
 - viii. Emergency lighting;
 - ix. Separate battery modules to make it easier to isolate a failed battery from the rest;
 - x. Sufficient disconnect and shutdown capability including a master kill switch to disable and discharge batteries;
 - xi. System-appropriate sensors and alarms;
 - xii. Air ventilation and fire suppression systems;
 - xiii. Drainage for water runoff; and
 - xiv. Other practices as recommended by experts or local first responders.
 - m. The Applicant or any future owner shall conduct regular on-site inspections of the battery units and submit a written report to the Zoning Administrator on their condition, at least once every six (6) months. The Applicant or any future owner shall conduct monthly inspections electronically of the battery units and submit a written report to the Zoning Administrator.
 - n. Upon approval of this CUP, Applicant agrees to pay County the sum of \$250,000.00, on or before June 30, 2021, as permitted under Virginia Code §15.2-2288.8. The County agrees to use these funds to increase fire and rescue capacity, the need for which is generated, in part, by this Project generally and by the Battery Storage facilities specifically. These funds are to be dedicated to fire and rescue related capital expenditures, including but not limited to a new fire and rescue vehicle and any needed capital improvements to the fire stations in the County.
9. Training.
- a. Prior to the end of construction of the Project Site, the Applicant, shall hold a series of training classes with the County's first responders (Fire and Rescue) to provide materials, education, and training on responding to on-site emergencies. The training classes shall be scheduled with the assistance of the County's designated Public Safety Coordinator. This includes specific technical training regarding the battery energy storage systems and how

- to respond to issues involving those systems so that the emergency service provider, the surrounding areas, and the environment are protected.
- b. The Applicant or any future owner or operator shall provide on-going training as deemed necessary by the Public Safety Coordinator.
 - c. In the event any upgrades or changes in technology associated with the Solar Facilities result in any change in emergency procedure, the Applicant or any future owner operator will notify the County Public Safety Coordinator, who may, at their discretion, schedule an additional training on the new equipment.
10. Compliance. The Solar Facilities shall be designed, constructed, and tested to meet relevant local, state, and federal standards as applicable.
11. Decommissioning.
- a. The Decommissioning Plan and Decommissioning Cost Estimate shall comply with Virginia Code Section 15.2-2241.2.
 - b. *Decommissioning Plan.* The proposed Decommissioning Plan, dated October 2019, is provided with this application (**Attachment A**). The Applicant shall submit a final Decommissioning Plan to the County for approval in conjunction with the building permit. The purpose of the Decommissioning Plan is to specify the procedure by which the Applicant or its successor would remove the Solar Facility after the end of its useful life and to restore the property. The Applicant shall specifically address the decommissioning and removal of battery storage.
 - c. *Decommissioning Cost Estimate.* The Decommissioning Plan shall include a decommissioning cost estimate prepared by a Virginia licensed professional engineer unless the Applicant is not required to provide a security or the County approves an alternative security arrangement (subsection c. (iv) and (v) below).
 - i. The cost estimate shall provide the gross estimated cost to decommission the Solar Facilities in accordance with the Decommissioning Plan and these conditions.
 - ii. The Applicant, or its successor, shall reimburse the County for an independent review and analysis by a licensed engineer of the initial decommissioning cost estimate.
 - iii. The Applicant, or its successor, will update the decommissioning cost estimate every five (5) years and reimburse the County for an independent review and analysis by a licensed engineer of each decommissioning cost estimate revision.
 - d. *Security.*
 - i. Prior to the County's approval of the building permit, the Applicant shall provide decommissioning security for the Full Decommissioning Cost in accordance with Virginia Code Section 15.2-2241.2.
 - ii. Upon the receipt of the first revised decommissioning cost estimate (following the 5th anniversary), any increase or decrease in the decommissioning security shall be funded by the Applicant, or refunded to Applicant (if permissible by the form of security), within ninety (90) days and will be similarly trueed up for every subsequent five year updated decommissioning cost estimate.
 - iii. The security must be received prior to the approval of the building permit and must stay in force for the duration of the life span of the Solar Facilities and until all decommissioning is completed. If the County receives notice or reasonably

believes that any form of security has been revoked or the County receives notice that any security may be revoked, the County may revoke the Conditional Use Permit and shall be entitled to take all action to obtain the rights to the form of security.

- iv. Notwithstanding the foregoing requirements in subsections (i)-(iii) above, an alternative security arrangement may be accepted by the County so long as it is a form acceptable to the County Attorney.
- e. *Applicant/Property Owner Obligation.* Within twelve (12) months after the cessation of use of the Solar Facilities for electrical power generation or transmission, the Applicant or its successor, at its sole cost and expense, shall commence decommissioning of the Solar Facilities in accordance with the Decommissioning Plan approved by the County. If the Applicant or its successor fails to decommission the Solar Facilities within twenty-four (24) months, the property owners shall commence decommissioning activities in accordance with the Decommissioning Plan. Following the completion of decommissioning of the Solar Facilities arising out of a default by the Applicant or its successor, any remaining security funds held by the County shall be distributed to the property owners in a proportion of the security funds and the property owner's proportionate acreage ownership of the Solar Facility. Upon completion of decommissioning and approval by the County, the County shall sign documentation releasing the decommissioning security.
- f. *Applicant/Property Owner Default; Decommissioning by the County.*
 - i. If the Applicant, its successor, or the property owners fail to timely decommission the Solar Facilities, the County shall have the right, but not the obligation, to commence decommissioning activities and shall have access to the property, access to the full amount of the decommissioning security, and the rights to the Solar Facilities equipment and materials on the property.
 - ii. If applicable, any excess decommissioning security funds shall be returned to the current owner of the property after the County has completed the decommissioning activities.
- g. *Site Access.* The County may enter the Project Site in accordance with Code of Virginia Section 15.2-2241.2. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.
- h. *Equipment/building removal.* All physical improvements, materials, and equipment related to Solar Facilities, both surface and subsurface components, shall be removed in its entirety in accordance with the Decommissioning Plan. The soil grade will also be restored following disturbance caused in the removal process. Perimeter fencing will be removed and recycled or re-used. The exception to removal of the materials and equipment would be upon written request from the current or future landowner or the County indicating areas where removal is not requested.
- i. *Infrastructure removal.* All access roads will be removed, including any geotextile material beneath the roads and granular material. The exception to removal of the access roads and associated culverts or their related material would be upon written request from the current or future landowner or the County to leave all or a portion of these facilities in place for

use by that landowner. Access roads will be removed within areas that were previously used for agricultural purposes and topsoil will be redistributed to provide substantially similar growing media as was present within the areas prior to site disturbance.

- j. *Reforestation.* The site will be replanted with pine seedlings to stimulate pre-timbered pre-development conditions as indicated on the Preliminary Site Plan. The exception to reforestation would be upon written request from the current or future landowner or the County indicating areas where reforestation is not requested.
 - k. *Partial Decommissioning.* If decommissioning is triggered for a portion of the Solar Facilities, then the Applicant or its successor will commence and complete decommissioning, in accordance with the Decommissioning Plan, for the applicable portion of the Solar Facilities; the remaining portion of the Solar Facilities would continue to be operational and subject to the Decommissioning Plan when the time comes. Any reference to decommissioning the Solar Facilities shall include the obligation to decommission all or a portion of the Solar Facilities whichever is applicable with respect to a particular situation.
12. The Conditional Use Permit shall be terminated if the solar facility does not receive a building permit within 18 months after the Applicant receives (a) any required state approvals; (b) any approvals of the regional transmission organization; and (c) any approvals required by the State Corporation Commission, but in no event more than thirty-six (36) months of approval of the Conditional Use Permit. Any timeframe under which the Commonwealth is under an Executive Order of the Governor declaring a statewide emergency will toll the timeframe specified in this condition.
13. If the Solar Facilities are declared to be unsafe, due to a violation of building or electrical codes, as determined by the fire marshal or building official, and the operator of the Facilities fails to respond in writing to such official within thirty (30) days, the County may revoke the right for the Facilities to continue operation until the unsafe condition is brought into compliance with the applicable building or electrical code. If the unsafe condition cannot be remedied within six (6) months, the Conditional Use Permit shall be terminated, and the Solar Facilities shall be decommissioned.
14. The owner and operator shall give the County written notice of any change in ownership or operation within thirty (30) days.

PLANNING COMMISSION RECOMMENDATION

Recommend approval of the application with the amended conditions (motion made by Commissioner Andrew Mayes and seconded by Commissioner Kevin Bracy)

I move that the Cabin Point Solar Center, LLC's proposed 75-megawatt photovoltaic Cabin Point Solar Center as described in 2020-01, sufficiently mitigates adverse impacts associated with the project if approved with the conditions as outlined herein and recommended by the Planning Commission.

Motion passed 5-3.

BOARD OF SUPERVISORS ACTION

The Board has three options:

- a. Recommend approval of the application with written reasons for its decision.
- b. Recommend denial the application with written reasons for its decision.
- c. Defer the application for further discussion and consideration.

Draft Board Actions

Planning Commission Recommendation: Option 1 – Recommend approval of the application with the stated (or amended) conditions

I move that the Cabin Point Solar Center, LLC’s proposed 75-megawatt photovoltaic Cabin Point Solar Center as described in 2020-01, sufficiently mitigates adverse impacts associated with the project if approved with the conditions as outlined herein and recommended by the Planning Commission.

Option 2 – Recommend denial of the application

I move that the Cabin Point Solar Center, LLC’s proposed 75-megawatt photovoltaic Cabin Point Solar Center as described in 2020-01, does not sufficiently mitigate the adverse impacts associated with the project and should therefore be recommended for denial. Among other concerns, the Planning Commission finds that,

1. The project area is in the Blackwater/Newville/Waverly planning area.
2. The project is located on land primarily used for timber production.
3. The project area includes water bodies, an eagle’s nest, and the Warwick Swamp Powerline Conservation Site with natural heritage resources.
4. The project is adjacent to a residential land use and near (within a 3-mile buffer of the project limits) the Joseph Pines Preserve, a Virginia Outdoors Foundation conservation easement, 52 archaeological resources, and 39 architectural resources.
5. The project includes battery storage.

Option 3 – Deferral of the application

I move that the Planning Commission defer a decision on Cabin Point Solar Center, LLC’s proposed 75-megawatt photovoltaic Cabin Point Solar Center as described in 2020-01, until the Planning Commission meeting scheduled to begin at _____ p.m. on _____, in the Board of Supervisors meeting room.

Attachments:

- A – 2020-01 Application, dated December 23, 2019 and February 27, 2020
- B – Maps

**CONDITIONAL USE PERMIT APPLICATION AND
SECTION 15.2-2232 REVIEW APPLICATION
Cabin Point Solar Center**

**Submitted By:
Cabin Point Solar Center, LLC**

**Submitted To:
Sussex County Planning Department**

**Submitted December 20, 2019
Revised February 27, 2019**

Project Summary

Cabin Point Solar Center, LLC ("Applicant") plans to construct a utility-scale solar energy generating facility (the "Project") rated at 75 Mega-watts Alternating Current (MWac). The Applicant is seeking a Conditional Use Permit (CUP) and "Substantially In Accord" ("SIA") determination to permit construction and operation of the Project.

Located within the Waverly and Blackwater districts of Sussex County on both sides of Cabin Point Road, the Solar Facility¹ (defined as the "Equipment / Improvements Area" in the site plan) itself will occupy approximately 506 acres within a Project Area of approximately 1,468 acres. This represents a 34% coverage of the Project Area. The project will be split between two general areas: one generally bound by CSX Railroad and General Mahone Highway (460) to the north, Warwick Road to the west and Cabin Point Road to the south and east; and the other south of Cabin Point Road in close proximity to the northern and western boundaries of the Waste Management facility. Four parcels are zoned A-1 Agricultural, Five I-1 Limited Industrial, and two I-2 General Industrial. The Applicant has an option to purchase eight parcels owned by Old Dominion Electric Cooperative (ODEC) totaling 1,236.77 acres. The Applicant has an option to lease the remaining parcels totaling 605.52 acres owned by Grayland Company, L.P.

The Project infrastructure will consist primarily of solar photovoltaic modules mounted on steel racking structures, inverters, transformers, a battery energy storage system (BESS), and security fencing. From an aesthetic and functional perspective, this project's infrastructure will be nearly identical to the First Solar project approved in 2019. Posts will be driven into the ground, racking attached to the posts, and modules placed on the racking. The tallest point of the racking system at maximum tilt will be approximately 12' off the surface of the ground. Depending on final system design, the racking system may rotate east to west to efficiently track the sun. All of the arrays will be wired together via inverters and connect to the Dominion grid on site. The BESS will be housed inside a series of containers similar to shipping containers, placed on a gravel or poured concrete pads. No new buildings will be constructed, and no existing buildings utilized or expanded. The inverters, which are the only components of the project that produce any noise, will be set well inside the Solar Facility and will be inaudible from outside the security fence. Once constructed, the Project will be monitored remotely and will be inspected and maintained regularly.

The location is optimal for a solar farm due in large part to its proximity to a Dominion transmission line and its adjacency to and compatibility with other industrial uses. The project will generate minimal offsite noise, little glare, and no emissions or safety hazards. After the construction is complete, there will be limited ongoing maintenance, and the ingress/egress traffic will remain similar to current use patterns. The project will adhere to all requirements found in the County Ordinance and state law and regulation throughout construction and operation.

¹ "Solar Facility" shall mean the photovoltaic panels, racking system, breakers, switches, cabling, transmission lines, transformers, sub-station, battery energy storage system, generator tie line, associated materials and equipment, laydown yards, access roads and fencing.

Applicant's Requests

Confirm the Project is "Substantially in Accord" with the 2019 update to the Comprehensive Plan and the 2004-2005 Comprehensive Plan

The Applicant requests that the County confirm the project is "Substantially in Accord" ("SIA") with the County's Comprehensive Plan as provided in Va. Code Section 15.2-2232.

Grant a Conditional Use Permit.

The Applicant asks that the County grant a Conditional Use Permit ("CUP") in accordance with Article XXIII of the County's Zoning Ordinance to construct, operate and decommission the Project with the enclosed CUP conditions that protect the County and its citizens. Utility scale solar projects are a permitted use with a Conditional Use Permit on General Agriculture ("A-1") and General Industrial ("I-2"). Upon approval of the proposed Zoning Text Amendment, utility scale solar projects will be permitted on Limited Industrial ("I-1") with a Conditional Use Permit.

A. Comprehensive Plan

Section 15.2-2232 (H) of the Code of Virginia provides as follows:

A solar facility subject to subsection A shall be deemed to be substantially in accord with the comprehensive plan if (i) such proposed solar facility is located in a zoning district that allows such solar facilities by right or (ii) such proposed solar facility is designed to serve the electricity or thermal needs of the property upon which such facility is located, or will be owned or operated by an eligible customer-generator or eligible agricultural customer-generator under Section 56-594 or by a small agricultural generator under Section 56-594.2. All other solar facilities shall be reviewed for substantial accord with the comprehensive plan in accordance with this section. However, a locality may allow for a substantial accord review for such solar facilities to be advertised and approved concurrently in a public hearing process with a rezoning, special exception, or other approval process.

Section 15.2-2232 (A) of the Code of Virginia provides metrics by which to determine if a solar project is "Substantially in Accord:"

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.* In connection with any such determination, the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by § 15.2-2204. (emphasis added)

These sections of Va. Code Section 15.2-2232 present the following question to the Planning

Commission: *Is the general or approximate **location, character** and **extent** of the proposed solar energy facility substantially in accord with the Comprehensive Plan or parts thereof?*

In Sussex County Comprehensive Plan Chapter II, Section B, Section 23, titled: "Utility-scale Solar Facilities" adopted in April of 2019 provides criteria for evaluation of the proposed facility's location, character and extent:

As used in this Comprehensive Plan, a utility-scale solar facility is a facility that generates electricity from sunlight which will be used to provide electricity to a utility provider or a large private user with a generating capacity in excess of one megawatt (1 MW). Sussex's abundant agricultural and forest land combined with its electrical infrastructure and transportation system appear to be attractive to the solar industry. These facilities are an industrial scale land use that occupies significant acreage. Many utility-scale solar facilities are located on agricultural or forested land that may have had other future land use potential or land use designations.

The County will consider solar facilities in districts zoned agricultural or industrial with preference for brownfields and County-owned capped landfills. The following site features should be addressed to mitigate the potential negative impacts of utility-scale solar facilities on County land use patterns as part of the evaluation of a Conditional Use Permit (CUP) application:

- the total size shall be larger than two (2) acres but less than 1,500 contiguous acres with no more than 65% PV panel coverage;
- located outside planning areas or community hubs;
- located outside forested areas to preserve forest resources;
- further than three (3) miles from any village or town boundary;
- further than two (2) miles from other existing or permitted solar facilities; and
- proximity to residences; historic, cultural, recreational, or environmentally-sensitive areas; and scenic viewsheds.

Below is a detailed analysis of nine criteria for determining whether the proposed solar facility's location, character and extent are substantially in accord with the Comprehensive Plan.

Location:

1. The County will consider solar facilities in districts zoned agricultural or industrial:
 - a. The subject parcels are zoned A-1, I-1 and I-2, satisfying this requirement.
2. Located Outside Planning Areas or Community Hubs: There is conflicting language within the Comprehensive Plan on this issue.
 - a. *Conflict 1.* It seems that comprehensive plan has conflicting language on what constitutes a "Planning Area."

Chapter IX: Land Use and Development, Section A. states:

"The planning areas identified in this plan are: Jarratt/I-95/US Planning Area; Stony Creek/I-95/US301/VA Route 40 Planning Area; Sussex Courthouse/VA Route 40 Planning Area; Homeville/Wakefield/US 460 Planning Area; and Blackwater/Newville/Waverly/US 460 Planning Area. The remaining areas of Sussex County are classified as rural areas." (formatting slightly altered)

Chapter X, "Plan for the Future" then describes Rural Areas as a planning area:

"6. Rural Areas This *planning area* is expected to remain rural in nature with land reserved for agricultural use. Low density residential growth is anticipated in the form of strip development, one acre lots with private well and septic systems along the highway. Public utilities are not available to sustain intense residential development. Incidental commercial establishments may locate throughout this *planning area* in support of residential growth." (emphasis added)

The Planning Areas Legend on the Planning Area Boundaries Map (Exhibit IX-A) refers to the five named planning areas and the remaining areas as "Rural Areas."

If the Rural Areas are in fact a Planning Area as stated in Chapter X, all areas of the county are in a Planning Area it is impossible to satisfy the requirement that solar facilities be located outside planning area boundaries.

- b. *Conflict 2.* As noted in criteria 1 above, the Comprehensive Plan states that the County "will consider solar facilities in districts zoned agricultural or industrial." In reviewing the zoning map for Sussex County, the only I-2 zoned land is located within a Planning Area boundary. The same is true for the majority, if not all, of the I-1 zoned land. As a result, the requirement that the county consider solar facilities on industrial zoned land and the requirement to be outside planning area boundaries is in conflict. Further, the comprehensive plan states a "preference for brownfields and County-owned capped landfills" as potential sites for solar facilities. These too, particularly brownfields,² are located within Planning Area boundaries as these boundaries cover the majority of the developed land within the County.
- c. *Conclusion:* Because this language is in conflict, we ask that you disregard the Planning Area factor when making a determination of whether this project is Substantially In Accord with the Comprehensive Plan.
3. Located outside forested areas to preserve forest resources. The Solar Facility is approximately fifty percent open land, fifty percent pine timber, with the cleared land primarily being ODEC parcels and forested land owned by Grayland Company, LP. Due to wetlands and other environmentally sensitive areas not suitable for development on the ODEC property, additional area was needed and certain adjacent and nearby forested areas were explored and found to be well suited for the Project. During the site development of this project, only those areas impacted by the project will be cleared, leaving as much standing timber as possible and additional trees will be planted where necessary to buffer adjacent properties from the Solar Facility.

The timber that would be cut as part of this project has been thinned once and is currently stocked with pine pulpwood and small pine logs. Market forces have delayed the final harvest of this timber and absent this project, the timber would be cut and replanted upon improvement of the market. The Conditional Use Permit for this project runs for 35 years, at which time, if the County does not renew the permit, the land will be returned to its current state. The life cycle of a pine plantation is approximately forty years, with thinning and

² Berkeley Group April 2, 2019 memo regarding Solar Energy Facilities refers to "Brownfields" as "former industrial or commercial sites containing low levels of environmental pollution such as hazardous waste and industrial byproducts." Page 6.

harvests throughout that time. Given these parallel timeframes, the potential risk to forested lands is roughly equal to one lifetime of a pine plantation. We believe that given the Solar Facility is only fifty percent forested, the relatively short timeframe of the project and the ability to fully return the land to timber production are sufficient factors to find that this project is not a long term threat to forest resources.

4. Located further than three (3) miles from any village or town boundary.
 - a. This project is greater than three miles from the closest town boundary, the Town of Waverly.
5. Located greater than two miles from existing or permitted solar facilities.
 - a. Ninety-Seven Percent (1,419 of 1468 acres) of the Project Area is greater than two (2) miles from the Waverly Solar project, which was permitted in 2019. Of the forty-nine (49) acres of Project Area within the two mile radius, a very small area actually contains elements of the Solar Facility, with the rest being open, buffer space. As a result, this project more than substantially conforms to the two mile distance requirement.
6. Proximity to residences; historic, cultural, recreational or environmentally-sensitive areas; and scenic viewsheds.
 - a. Residences: A few single family residences are located to the west of the project. The residences are well removed from the property line and screening and setbacks on the project site will mitigate negative impacts on these residences.
 - b. Historic, cultural and recreational areas: Archaeological studies required by the Department of Historic Resources (DHR) have been completed and made available to the County and any local historical society interested in the results. Archeological resources within the Project Area were evaluated as ineligible for inclusion in the National Register of Historic Places (NRHP) by DHR. No architectural resources were identified within the Project Area. No impacts to cultural or recreational areas are anticipated. DHR handles all regulation of these matters.
 - c. Environmentally Sensitive Areas: All streams, wetlands and other bodies of water have been mapped and will be protected during site development, construction and operation, in accordance with Department of Environmental Quality Requirements (DEQ). The eagle's nest currently on the site will be protected in accordance with Virginia and Federal law. DEQ administers all environmental permits and regulation of these matters. Native plant species will be replanted in accordance with the Zoning ordinance, allowing for the increased presence of rare or important varieties currently on site. Erosion and sediment control measures will be implemented in accordance with state and local requirements. The Warwick Swamp Powerline Conservation Site intersects the Project Area. The Applicant will work closely with DCR to implement best practices to avoid any impacts including within the Warwick Swamp Conversation Site. DCR has determined that the current activity will not affect any documented state-listed plants or insects.
 - d. Scenic Viewsheds: Once complete, the project will be screened from surrounding properties and thoroughfares by a natural buffer. Due to the topography of the Project location there will be no impact on long range vistas from ground level.

Character:

7. The total size shall be larger than two (2) acres but less than 1,500 contiguous acres
 - a. The Project Area will occupy approximately 1,468 acres, satisfying this requirement.
8. No more than 65% of the project will consist of PV panel coverage
 - b. Of the Project Area of 1,468 acres, the Solar Facility will occupy approximately 506 acres, resulting in 34% coverage, satisfying this requirement. The remaining area

consists of wetlands, forested areas, natural buffers, etc. and can be seen on the attached site plan.

Extent Thereof:

9. **Energy Storage:** This project includes a Battery Energy Storage System (BESS), which is not specifically mentioned, but is generally referenced in the definition of a solar facility in the Comprehensive Plan: “a Utility-scale solar facility is a facility that generates electricity from sunlight *which will be used to provide electricity to a utility provider or a large private user* with a generating capacity in excess of one megawatt (1 MW)” (emphasis added). The BESS will aid in efficient provision of electricity to the grid and improve the overall productivity of the facility and function as a key element of production, just like transformers, substations, etc. A full explanation of the various safety features, the BESS design and the Applicant’s commitments to train local emergency service providers are in the Conditional Use Permit narrative in section below. The energy storage associated with this project is similar in design and function with the project the Planning Commission found to be Substantially in Accord with the Comprehensive Plan in January. Given the broad definition of Solar Facility in the comprehensive plan, the fact that the BESS are integral to the function of the facility, the scope of this section of the Comprehensive Plan covers the nature and function of BESS and is therefore in substantial accord with the plan.

Conclusion:

This Project fully satisfies factors 1, 4, 6, 7 and 8 (five of nine). Those that are not in full agreement, factors 3, 5 and 9 (forest resources, two mile buffer, and energy storage), are almost completely satisfied. Factor 2, regarding the Planning Area Boundaries involves a clear discrepancy in the Comprehensive Plan and should be disregarded in favor of other conditions that can be satisfied. As a result, the Project is substantially in accord with the 2019 amendment to the Comprehensive Plan.

In addition to the 2019 amendment to the Comprehensive Plan cited above, the Project is supported by various sections of the Sussex County 2004-2005 Comprehensive Plan, which remain in effect, and are outlined below:

- A. Exhibit X-E is the Blackwater/Newville/Waverly/U.S. 460 Planning Area Future Land Use Map. The Project area is almost entirely within area projected for “Industrial Use.” Furthermore, the Project area only abuts two small areas projected for Residential Use, both of which are already built out and in residential use today. The remainder of the project is protected by a buffer of area projected for use as Agricultural/Forested/Open Space. This project is in clear conformity with the future land use envisioned for this area of Sussex County and is separated from those future areas of development that the Comprehensive Plan and Zoning ordinance endeavors to protect.
- B. While solar facilities were not specifically anticipated by the 2004-2005 Comprehensive Plan, their low intensity, low impact industrial use was. Chapter IX “Land Use and Development,” suggests that Sussex avoid development that creates congestion through poor planning of facility layouts and promote safe and efficient ingress and egress from all development.³ As planned, this project easily satisfies this recommendation.
- C. Chapter IX also suggests focusing on ensuring low intensity industrial uses, like solar facilities, that have limited to no impact on neighboring properties.⁴ Again, with the proper

³ Chapter IX, Land Use and Development, Page 1, Sussex County 2004-2005 Comprehensive Plan Update.

⁴ Id.

planning and layout as designed in this application, solar facilities can conform to this guideline. This chapter also acknowledges that the Blackwater planning area is the most likely to see commercial and industrial development, and as a result, "offers the greatest potential for continued future development."⁵ Our project is squarely within that planning area.

- D. When making land use decisions, Chapter IX recommends maintaining balance between areas needed for commercial and industrial development and the conservation of vacant lands.⁶ Concentrating uses such as solar adjacent to existing commercial uses accomplishes this goal. Other concerns can be addressed during the conditional use permit process.
- E. Chapter IX recommends consideration of the public cost associated with development to ensure that County citizens are not paying for improvements or infrastructure from which they do not benefit.⁷ Solar facilities do not generally require enhanced public infrastructure or other outlays by local governments once completed. Any staff or other resources required by the County are offset by tax or other negotiated contributions by the solar developer.
- F. Chapter X, "Plan for the Future" provides guidance for the land uses included in the zoning districts included in the solar zoning ordinance. With regard to agricultural lands, identification and preservation of "prime agricultural" land is a stated goal, as "once it is developed, it cannot easily be restored to its original condition (nature)."⁸ As stated elsewhere, solar use is a temporary one, and unlike most development, restoration to original condition is actually achievable. The plan specifically states "permitted uses are restricted to agricultural and others that are compatible with the existing land use pattern..." In adopting the Solar Facilities zoning ordinance and applying it to General Agricultural land, the County correctly endorsed its compatibility.
- G. Chapter X, with regard to Industrial Development, the County identifies areas that are suitable for industrial uses, and the considerations associated with siting those projects in given areas. Solar facilities conform to those considerations. This section identifies certain areas as potential industrial sites, both by general and specific reference.⁹ The location of this Project is within those areas.

Pursuant to the requirement of Va. State Code Section 15.2-2322 (H).(i), we ask that the Planning Commission confirm the solar project is substantially in accord with the Comprehensive Plan. As detailed above, this project is in significant agreement with the Comprehensive Plan, meeting both the letter and intent of the 2019 revision to the plan and the original 2004-2005 language. We appreciate your time and attention devoted to this analysis.

B. Conditional Use Permit Conditions

Please see proposed conditions attached.

Project Features

Land Use: The project area is currently zoned A-1 Agricultural, I-1 Limited Industrial, and I-2 General Industrial, but today the land is primarily used for timber production. A Zoning Text

⁵ Chapter IX, Land Use and Development, page 16, Sussex County 2004-2005 Comprehensive Plan Update.

⁶ Chapter IX, Land Use and Development, page 2, Sussex County 2004-2005 Comprehensive Plan Update.

⁷ Chapter IX, Land Use and Development, Page 15, Sussex County 2004-2005 Comprehensive Plan Update.

⁸ Chapter X, Plan for the Future, Page 1, Sussex County 2004-2005 Comprehensive Plan Update.

⁹ Chapter X, Plan for the Future, Pages, 2 and 13, Sussex County 2004-2005 Comprehensive Plan Update.

Amendment Application is pending that proposes inclusion of Solar Facilities on land zoned I-1 Limited Industrial with a Conditional Use Permit. The majority of the property is currently owned by Old Dominion Electrical Cooperative (ODEC). A coal fired power was proposed for the site several years ago, but was never constructed. The ODEC parcels are designated "Non-Tax Multiple Gov't," and are currently tax exempt. By approving this project and triggering the sale of the ODEC property, those 1,236.77 acres will come back on the tax rolls. As for the land that is currently zoned A-1 and in agricultural or timber use, according to NC State University, "[l]easing farmland for solar PV, particularly land that is not actively being farmed today, is a viable way to preserve land for potential future agricultural use."¹⁰

Setbacks: Section 16-406 of the Solar Ordinance requires a setbacks of 200 feet from any parcel with a dwelling and all other property lines require a setback of 150 feet. The Project will comply with this requirement for any parcel not part of the Project. Please see the attached Concept Plan.

Project Components:

- A. Within the security fence, the Solar Facility will consist of the following:
- a. Solar Panels: approximately 250,000 solar panels arranged north to south, that track the sun east to west throughout the day. The total "Solar Facility" which is the area covered by solar panels and all associated equipment, is expected to be approximately 700 acres. The remainder of the area will remain in a natural state or be maintained as low-lying natural vegetation.
 - b. Racking: metal frames to which the solar panels attach.
 - c. Piles: metal beams driven by a small pile driving machine to a depth of approximately ten feet. The racking is attached to these piles.
 - d. Inverters: electrical cabinets about the size of an SUV housing equipment that converts direct current (DC) to alternating current (AC) and controls voltage and related functions.
 - e. Collection lines: these electrical and communication lines are either mounted under the racking or buried.
 - f. Substation: a series of equipment that will step up voltage to tap into the existing transmission line.
 - g. Battery Energy Storage System (BESS): consists of lithium-ion batteries stored within sealed containers similar to shipping containers and are equipped with environmental protection, fire suppression and alarm systems.
 - h. Roads: unpaved, grassy or gravel driving aisles, and entrances to the Project from public roads.
 - i. Pyranometers: instruments for measurement of solar energy and related weather conditions.
 - j. Stormwater Infrastructure: Given the minimal site grading required, new drainage structures and facilities are unlikely to be required to support this project. Minor drainage grading and minor installation of limited infrastructure will be required for the access driveways and conveyance of water via swales and ditches to existing retention ponds. A stormwater management plan will be developed in accordance with the Sussex County Code and Commonwealth of Virginia requirements.

Current Site Conditions

The project site is generally flat. Existing vegetation consists of forested pines, hardwoods and

¹⁰ N.C. Clean Energy Technology Center, N.C. State University "Balancing Agricultural Productivity with Ground-Based Solar Photovoltaic (PV) Development" (August 2017), p. 4

cleared land. Minimal grading is expected to be required and isolated to areas where access driveways are located, the areas where the piles are driven and cables are buried, as well as and around the inverter pads and interconnect areas. The project site is approximately half open land, half pine timber. When preparing the, the Applicant will only clear those areas necessary for the project site and will take care to protect existing timber resources where possible. Once cleared, the project area will be grubbed prior to grading.

Energy Storage Facilities

The peak production times of wind and solar resources are variable and do not always match up with when consumers need energy. Battery Energy Storage Systems (BESS) give energy providers the ability to store renewable energy during peak production times for distribution later when the utility grid is in need of additional capacity. BESS are safe due to stringent industry standards, regulations, and built-in safety mechanisms. The Applicant will cooperate with local fire departments to ensure they are properly trained and equipped to respond to emergencies associated with the BESS in the event one should occur, and has provided a Conditional Use Permit condition to this effect. Lithium-ion batteries do contain hazardous materials, so the BESS are housed within an air-tight aluminum casing and have redundant safety features that provide both active and passive mechanisms to prevent and contain fire including: the air-tight aluminum casings are housed in metal containers, about the size of a shipping container, which act as a secondary layer of physical containment, (ii) each individual battery has 24/7 automated fire detection and extinguishing technology built-in, and (iii) each container is equipped with cooling, ventilation, and fire suppression systems. The Applicant looks forward to working with the local fire department to provide training and create an emergency action plan.

Visual Impact

To protect the viewshed of adjacent neighbors, the Applicant will maintain the existing natural timber buffer. Where the natural timber buffer is thin or unable to properly buffer the project, additional native vegetation will be planted. As a result, this project will not be visible from the surrounding residential uses, primary or secondary roads. During the site plan approval process, the extent and nature of supplemental vegetation will be determined to address specific needs. Given the flat topography and existing vegetation, staff has agreed to waive the visual impact analysis recommended by Section 16-404 (I) in favor of clear conditions to be included in the Conditional Use Permit.

Decommissioning

The Project is a long-term (35-year) but temporary use because it will be removed at the end of the useful life of the solar panels.

- A. According to NC State University, “[m]odern solar facilities may be considered a temporary, albeit long-term, use of the land, in the sense that the systems can be readily removed from the site at the end of their productive life.” N.C. Clean Energy Technology Center, N.C. State University “Balancing Agricultural Productivity with Ground-Based Solar Photovoltaic (PV) Development” (August 2017), p. 4.
- B. Solar panels generally are warrantied to produce 80% of their power after 25 years, and generally have a useful life of 35 years.
- C. The Project can be readily removed because it has a relatively minimal effect on the land.
- D. A decommissioning plan is submitted as an exhibit to this application. Below are some highlights from that plan.
 - a. At the end of its useful life or a period of six (6) months of inactivity, the Project shall be removed at the owner or operator’s expense, subject to such extensions as approved by the Board of Supervisors in the event of required repairs requiring

- longer than the six (6) month period. The owner or operator will notify the zoning administrator of the proposed date of discontinued operations and plans for removal.
- b. Decommissioning will include the removal of all solar panels, electrical components, fencing, any other associated equipment, facilities and structures to a depth of at least 36 inches. Underground cabling buried deeper than 36 inches will be abandoned in place (approximately 46,000 linear feet) as this is the normal practice for abandonment of underground utility infrastructure.
 - c. Decommissioning will consist of the following:
 - i. Documentation of the site's preconstruction condition.
 - ii. Removal of solar arrays and above ground equipment.
 - iii. Removal of above ground transmission lines.
 - iv. Restoration of disturbed soil and establishment of vegetation to match pre-construction conditions.
 - v. Removal of roads and paths (subject to exception by the Board of Supervisors).
 - vi. Recycling and/or resale of project components, where possible. Other items will be disposed in accordance with local, state and federal regulations. Recycling or scrap value will not be included in the calculation of any surety securing the cost of decommissioning.
- E. Applicant will work with the County to ensure adequate financial is provided to cover the net cost of decommissioning the Project and preparing the land for the next use.

County Benefits

Tax Revenue

In a rural county like Sussex it is difficult to estimate the full economic impact of a solar project during and after construction, as the financial models available do not account for its specific economic features and business environment. By extension, it is also difficult to estimate the full impact on the County's tax revenue generated by general "economic activity" during construction and operation of the solar project. Additionally, at the time of filing of this application, various efforts are being made in the Virginia legislature to increase the values received by localities from solar facilities. A detailed model of potential revenues resulting from this legislation will be presented to the County once more details are known. As a result, we focus of our tax revenue analysis on the metrics that are easily quantifiable: taxes paid directly to the County by the operator of the Project and the owners of the land on which the project is located.

- A. **Real Estate Taxes.** Using data provided by the Sussex County Real Estate Database and the Commissioner of Revenue, our economic report estimates that once the use of the property changes, the annual real estate taxes generated by the property will be \$82,231.00 per year, for a total of \$2.9 million dollars (2019 dollars) over the thirty-five year life of the project. Today, the property generates \$14,304.00 per year, for a total of \$500,640 (2019 dollars) over thirty-five years.
- B. **Machinery and Tool Taxes.** Assuming a total capital investment of \$144,597,302, over the life of the project, under the current tax regime, will produce \$142,053 per year for the first five years, gradually reducing over time after that, for a total of \$2,503,289 over the thirty-five year lifespan of the project.

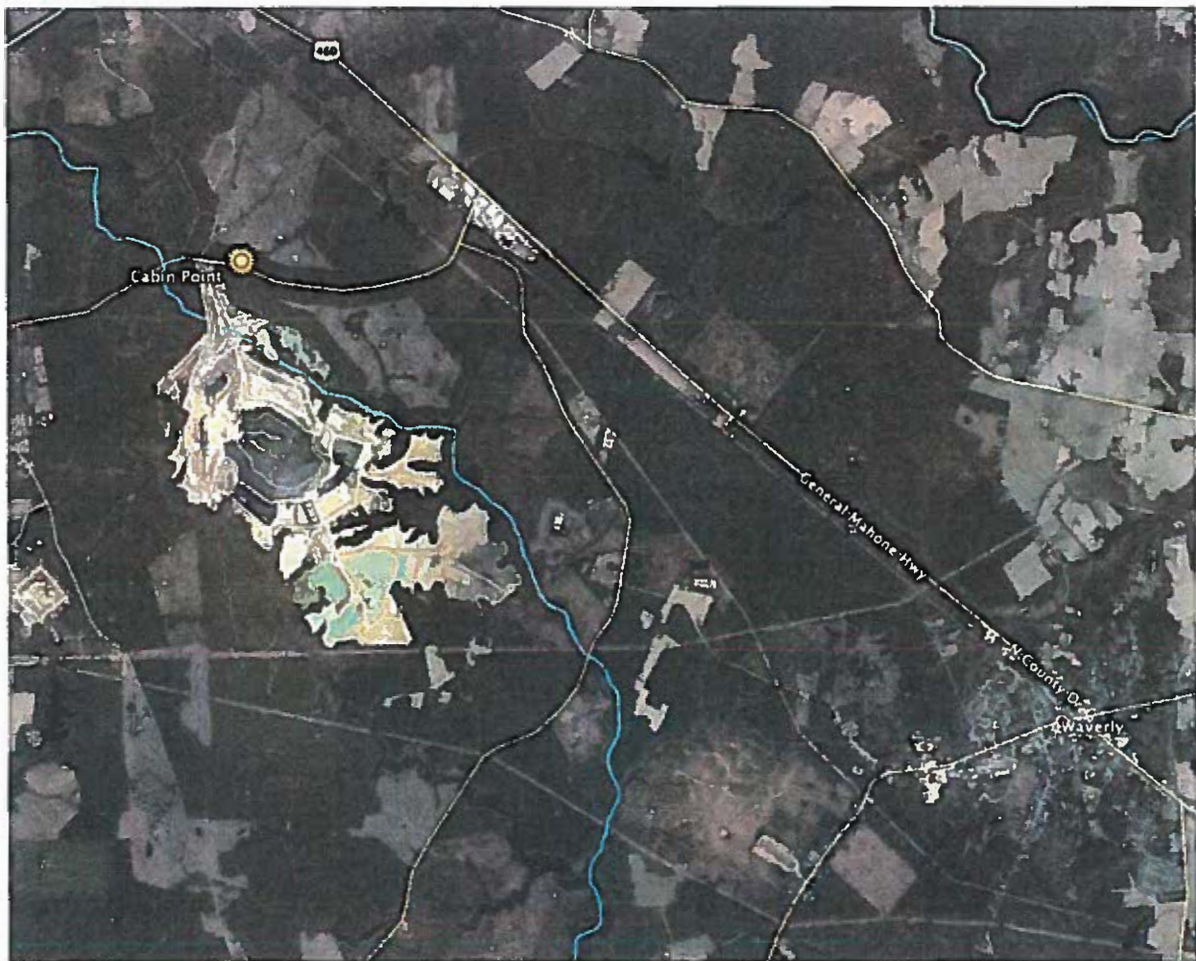
- C. **Cumulative Effect.** Cumulative additional revenue associated with this project will total \$5,381,368.00, or when averaged over the thirty-five year life of the project, \$153,753.37 per year.
- D. **Voluntary Payment Agreement.** Similar projects in other localities throughout Virginia have entered into Voluntary Payment Agreements with localities to offset potential costs to the County associated with the project. The terms of this agreement will be finalized prior to consideration of the application by the Board of Supervisors.

Employment

A 75MWac project typically results in approximately 150-200 construction level jobs for approximately 12-18 months. The construction team will endeavor to hire as many local jobs as possible that meet the skills requirements.

Site Location

The Project will be located within the Waverly and Blackwater districts of Sussex County on both sides of Cabin Point Road.



Conclusion

The Applicant is confident that the proposed location of the Project is ideal for a solar facility, and the Project will provide a significant economic benefit to Sussex County. The Project is consistent with the character of the surrounding area, and will not adversely affect the health, safety, or welfare of the residents of Sussex County. The Applicant is willing to tailor Conditional Use Permit conditions to address other pressing land use needs identified by the County and its citizens.

Contact Information

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Attachments

Please find enclosed:

- Proposed Conditional Use Permit Conditions
- Documents demonstrating the ownership of the subject parcels
- List of all adjacent property owners, their tax map numbers, addresses, and current land uses
- Concept Plan
- Overlay Map of Project Area over Planning Areas and distances from Town of Waverly and Waverly Solar
- Grading Plan
- Landscape Maintenance Plan
- Aerial Imagery
- Decommissioning Plan
- Traffic Assessment
- Construction Schedule

- **Wetlands Survey**
- **Environmental Inventory and Impact Statement**
- **Title Commitment**

Facility Siting Agreement

Cabin Point Solar LLC

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGE
ATTORNEY WORK PRODUCT

SOLAR FACILITY SITING AGREEMENT

This Solar Facility Siting Agreement (“Agreement”), dated as of September 17, 2020 (the “Effective Date”), is by and between **Sussex County, Virginia**, a political subdivision of the Commonwealth of Virginia (the “County”) and **Cabin Point Solar Center, LLC** a Virginia limited liability company (“Applicant”). The County and Applicant are herein each a “Party” and collectively, the “Parties”.

RECITALS

WHEREAS, the Applicant intends to develop, install, build, and operate a ground-mounted solar photovoltaic electric generating facility (“Project”) on certain parcel(s) of land identified as Sussex County Tax Map Parcels 6 A 5, 6 A 6, 6 A 8A, 6 A 8B, 6 A 9, 6 A 10, 6 A 11, 6 A 12, 14 A 1, 15 A 1, and 15 A 2 (collectively, the “Property”);

WHEREAS, Pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia titled “Siting of Solar Energy Facilities” Applicant and the County may enter into a siting agreement (“Siting Agreement”) for solar facilities in those census tracts which meet the eligibility requirements for designation as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation to the Internal Revenue Service;

WHEREAS, the Project is located in census tract number 51183870201 within Sussex County, and eligible for a designation as an opportunity zone;

WHEREAS, pursuant to Virginia Code § 15.2-2316.6 the Project is eligible for a Siting Agreement;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement to mitigate certain potential impacts of the Project.

WHEREAS, pursuant to Virginia Code § 58.1-2636 the County has not adopted an ordinance assessing a revenue share of up to \$1,400.00 per megawatt, as measured in alternating current (AC) generation capacity of the nameplate capacity of the Solar Facility (“Solar Revenue Share”), but may choose to do so at a later date;

WHEREAS, Pursuant to Virginia Code § 58.1-3660, if the County adopts the Solar Revenue Share, the solar photovoltaic (electric energy) systems associated with the Project, which are considered “certified pollution control equipment” will be exempt from all state and local taxation pursuant to Article X, Section 6 (d) of the Constitution of Virginia (the “Tax Exemption”);

WHEREAS, until such time as the County adopts a Solar Revenue Ordinance, such certified pollution control equipment will be subject to local machinery and tools taxation as provided by state law and local ordinance;

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WHEREAS, the Applicant, has agreed to the payments and financial terms contained herein;

WHEREAS, the County, pursuant to the requirement of Virginia Code § 15.2-2316.8 (B), the County has held a public hearing in accordance with subdivision A of Virginia Code § 15.2-2204 for the purpose of considering this Agreement, after which a majority of a quorum of the members of the Sussex County Board of Supervisors approved this agreement;

NOW, THEREFORE, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia, intending to be legally bound hereby and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the County and Applicant do hereby agree as follows:

Article I

Project Features, Conditions and Mitigation

1. CUP conditions. The Applicant acknowledges and agrees that it is subject to all the terms and conditions contained in any conditional use permit (“CUP”) approved by the Board of Supervisors for the Project. The CUP approved by the Board on September 17, 2020 is attached hereto as **Exhibit B**, and is hereby incorporated herein. Violation by the Applicant or by any of Applicant’s agents, assigns or successors in interest of any terms and conditions of the CUP or of any other applicable zoning requirements shall constitute a violation of this Agreement.

2. Annual valuation of real property. As a condition precedent to County approval of this Agreement, Applicant agrees to provide County with current copies of all real property lease agreements for the Property associated with the Project. Applicant may redact any information deemed confidential tax information or proprietary/trade secrets. However, Applicant shall at the minimum provide the annual lease payment amounts for each parcel being leased for the Project. Thereafter, should the payment terms be amended in any such lease agreements, the Applicant shall forthwith provide such information to the County. Applicant further agrees to include as a condition in any agreements transferring ownership of the Project entered into by Applicant a requirement that any successor in interest shall provide such information to the County.

3. Annual valuation of taxable equipment; independent verification. As a condition precedent to County approval of this Agreement, Applicant agrees to provide County with a list of capital equipment, including but not limited to solar photovoltaic equipment proposed to be installed, whether or not it has yet been certified as pollution control equipment by the State Corporation Commission or Virginia Department of Environmental Quality, all equipment related to any proposed battery storage facilities, and lists of all other taxable tangible property. Thereafter, on an annual basis, Applicant shall provide County with any updates to this information, including but not limited to all new or replacement solar panels and all other equipment. Applicant agrees to provide the County all information it may in the future provide to the Virginia State Corporation Commission for the Commission’s use in valuing such property for taxation purposes. In addition, Applicant shall provide an independent analysis and verification, prior to County approval of this

Sussex County – Cabin Point Solar Center, LLC

Solar Facility Siting Agreement

Page 2 of 11

8.20.20 DRAFT

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agreement, prepared by a licensed engineer or other qualified expert that affirms total MW generating capacity of the facility solely through the equipment listed and provided to the County. In the alternative to providing such analysis and verification, Applicant agrees to pay reasonable costs for the County to obtain it.

4. **Decommissioning and Periodic adjustment of Surety Bond.** The Parties agree that a surety bond to cover the costs of decommissioning Applicant's facilities is required as a condition in the CUP. Further, the Applicant recognizes the protection this provides for the County taxpayers and does not desire to shift that expense to them should the Applicant or its successors or the landowner not be able to comply with the decommissioning requirements; and County recognizes that the surety bond is an expense to be incurred by the Applicant encumbering funds that could otherwise go directly towards investing in the Project or other potential projects. In recognition of these factors, the Parties desire for the bond and the costs for such to accurately reflect the associated decommissioning costs being insured. Therefore, the Applicant, or its successor, agrees to update the gross estimated costs of decommissioning every five years and to reimburse the County for an independent review and analysis by a licensed engineer. The bond or surety amount shall be adjusted accordingly to ensure it accurately reflects the costs associated with decommissioning.

5. **Deed Conveying Right of Entry for Enforcement and Decommissioning.** Applicant shall execute an instrument satisfactory to the County Attorney that runs with and encumbers all parcels related to the Project until such time as terminated by the County, and that provides the County, its personnel and duly authorized agents the express right of entry upon the Project parcels for the purposes of inspecting solar panels, battery storage facilities and all appurtenant facilities and further authorizes the County to effect any and all tasks, as necessary, to decommission solar panels, battery storage equipment and all appurtenant facilities and restore the parcels to substantially the same condition that existed prior to construction of the solar facilities.

6. **Battery Storage.** The Applicant proposes installing approximately 15 energy storage facilities next to the proposed substation. Energy ("Battery") storage facilities are approximately the size of a shipping container and require a gravel or poured concrete pad foundation. Lithium-ion batteries (or their functional equivalent) with off-site monitoring capabilities will be used. The Applicant has agreed as a condition in the CUP to work with the County's Public Safety Coordinator to train first responders (fire and rescue) and create an emergency action plan. In addition to the CUP conditions, Applicant agrees to make the financial contribution as set out in the CUP and as permitted under Virginia Code § 15.2-2288.8.

7. **Broadband.** The Parties acknowledge that the County's citizens and businesses are largely underserved by accessible and affordable high-speed Internet ("broadband") and that addressing that problem is an important policy goal to improve education, health care and economic opportunity in the County. In an effort to expedite County plans to help close the "digital divide" and increase the availability of affordable broadband throughout the unserved and underserved areas in the County, which will in turn benefit the local economy and business including Applicant, Applicant agrees to make the financial contributions as set out in Article II and as permitted under Virginia Code § 15.2-2316.6

Article II

Payment Structure

1. Capital Payments.

1. After the Project has obtained commercial operation, except as otherwise provided herein, the Applicant shall make payments to the County as set forth on **Schedule A** attached hereto (each a "Payment" and collectively, the "Payments"). The Payments shall begin on _____ of the _____ calendar year following the commencement of Commercial Operation of the Project, the "Commercial Operation Date". The Payments shall continue on _____ of each year thereafter until the earlier of (the "Termination Date"); (i) the Applicant's commencement of the decommissioning of all or a material portion of the Project, or (ii) the 45th calendar year of commercial electricity generation of the Project in which the final payment on **Schedule A** is shown. The Parties acknowledge that, except as otherwise provided herein, the Applicant's obligation to make Payments shall be conditioned upon the Project beginning commercial operation. The Payments shall be made to the County in any year in one lump sum payment during the term of this Agreement. The Payments are separate and distinct from the amounts owed pursuant to any Solar Revenue Share Ordinance as provided by Virginia Code § 58.1-3660 and § 58.1-2636, any machinery and tools taxes on equipment pursuant to Article 2, Chapters 35 and 36 of Title 58.1 of the Code of Virginia and applicable County Ordinances, and all real estate taxes owed pursuant to Title III, Chapter 32 of the Sussex County, Virginia Code of Ordinances. Notwithstanding the above, Applicant agrees to make an initial payment to the County of \$250,000.00 on or before June 30, 2021, pursuant to the CUP and as permitted under Virginia Code § 15.2-2288.8. Thereafter, the remainder of The Payments shall ensue after the Commercial Operation Date as otherwise set forth herein and as shown on Schedule A.

2. **Statutory Structure of Payments; Statement of Benefit.** The Applicant agrees that by entering into this Agreement, pursuant to Virginia Code § 15.2-2316.6 et seq., the Payments are authorized by statute and that it acknowledges, it is bound by law to make the Payments in accordance with this Agreement. The Parties acknowledge that this Agreement is fair and mutually beneficial to them both. As of the date of this Agreement, the County has not adopted a Solar Revenue Share Ordinance, and the Payments under this agreement are not conditioned upon the County adopting such ordinance. However, should the County at a later date adopt a Solar Revenue Share Ordinance, then the County acknowledges that such action will result in the County forgoing a portion of its taxing authority pursuant to Virginia Code § 58.1-3660 (D) and Applicant agrees to be subject to such ordinance if adopted by the County. The parties agree that the funding provided pursuant to this Agreement is beneficial in that it will result in mutually acceptable, steady, predictable, accurate and reasonable payments to the County. Applicant acknowledges that this Agreement is beneficial to Applicant in allowing it to proceed with the installation of the Project with clear project design terms, which provide for mitigation of effects on the surrounding properties and the Sussex County community. Additionally, Applicant acknowledges that this Agreement provides for a clear and with a predictable stream of future payments to the County in values fair to both Parties.

3. Use of Payments by the County. The County plans to apply The Payments to

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critical infrastructure projects to improve citizen quality of life, including but not limited to expanding educational opportunities, health care (telehealth) and economic development through significant investments in broadband deployment throughout the County. Notwithstanding the above, the Payments may be used for any of the following purposes: (a) to fund the capital improvement program (CIP) of the County (b) to meet needs of the current fiscal budget of the County, (c) supplement or establish any fund for which the County maintains a balance policy; (d) support broadband funding, all as permitted § 15.2-2316.7.

Article III

Miscellaneous Terms

1. **Term; Termination.** This Agreement shall commence on the Effective Date and shall continue until the Termination Date. The Applicant shall have no obligation to make Payments after the Termination Date. The Payment due for the year in which the Project or material part thereof is decommissioned shall be prorated as of the Termination Date. The termination of this Agreement shall not limit the Applicant's legal obligation to pay local taxes in accordance with applicable law at such time and for such period as the Project remains in operation.

2. **Mutual Covenants.** The Applicant covenants to the County that it will pay the County the amounts due hereunder when due in accordance with the terms of this Agreement, and will not seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement. So long as Applicant is not in breach of this Agreement during its term, the County covenants to the Applicant that it will not seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement.

3. **No Obligation to Develop.** The Applicant has no obligation to develop the Project and this Agreement does not require any Payments until after the Commercial Operation Date. Any test energy or other energy produced prior to the Commercial Operation date shall not trigger payment under this paragraph. It is understood that development of the Project by Applicant is contingent upon a number of factors including, but not limited to, regulatory approvals, availability and cost of equipment and financing, and demand for renewable energy and renewable energy credits. No election by the Applicant to terminate, defer, suspend or modify plans to develop the Project shall be deemed a default of Applicant under this Agreement.

4. **Successors and Assigns.** This Agreement will be binding upon the successors and assigns of the Applicant, and the obligations created hereunder shall be covenants running with the Property upon which the Project is developed. If Applicant sells, transfers, leases or assigns all or substantially all of its interest in the Project or the ownership of the Applicant, this Agreement will automatically be assumed by and be binding on the purchaser, transferee or assignee. Upon such assumption, the sale, transfer, lease or assignment shall relieve the Applicant of all obligations and liabilities under this Agreement accruing from and after the date of sale or transfer, and the purchaser or transferee shall automatically become responsible under this Agreement. The Applicant shall execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

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5. **Memorandum of Agreement.** A memorandum of this Agreement, in a form acceptable to the County Attorney, shall be recorded in the land records of the Clerk's Office of the Circuit Court of the County of Sussex, Virginia. Such recordation shall be at the Applicant's sole cost and expense and shall occur as soon as reasonably practicable after the full execution of this Agreement. If the Applicant chooses to not develop the Project, in its sole discretion, the County shall execute a release of the memorandum filed in the aforementioned Clerk's Office.

6. **Notices.** Except as otherwise provided herein, all notices required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, by recognized overnight courier, or by commercial messenger to:

Sussex County, Virginia
20233 Thornton Square
Sussex, Virginia 23884
Attn: Larry Hughes, County Administrator

With a copy to:

Jeff Gore/Danielle Powell, County Attorney
Hefty Wiley & Gore, P.C.
100 West Franklin Street, Suite 300
Richmond, Virginia 23220

Cabin Point Solar Center, LLC
c/o Ryan Gilchrist
321 East Main Street, Suite 300 Charlottesville,
Virginia 22902

With a copy to:

John G. "Chip" Dicks
D. Scott Foster, Jr.
Gentry Locke
PO Box 780
Richmond, Virginia 23218

The County and Applicant, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices shall be sent.

7. **Governing Law; Jurisdiction; Venue.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO ANY OF ITS PRINCIPLES OF CONFLICTS OF LAWS OR OTHER LAWS WHICH WOULD RESULT IN THE

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APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. THE PARTIES HERETO (A) AGREE THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING, AS BETWEEN THE PARTIES HERETO, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT AND TRIED ONLY IN THE CIRCUIT COURT OF SUSSEX COUNTY, VIRGINIA, (B) CONSENT TO THE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, AND (C) WAIVE ANY OBJECTION WHICH ANY OF THEM MAY HAVE TO THE LAYING OF VENUE OR ANY SUCH SUIT, ACTION, OR PROCEEDING IN SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION, OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

8. **Confidentiality;** This Agreement, once placed on the docket for consideration by the Sussex County Board of Supervisors, is a public document, subject to production under the Freedom of Information Act (FOIA). The County understands and acknowledges the Applicant, and as applicable, their associates, contractors, partners and affiliates utilize confidential and proprietary “state-of-the-art” information and data in their operations (“Confidential Information”), and that disclosure of any information, including, but not limited to, disclosures of technical, financial or other information concerning the Applicant or any affiliated entity could result in substantial harm to them and could thereby have a significant detrimental impact on their employees and also upon the County. The County acknowledges that during the development of this Agreement, certain Confidential Information may be shared with the County by the Applicant. Applicant agrees to clearly identify any information it deems to be Confidential and not subject to mandatory disclosure under the Virginia Freedom of Information Act or other applicable law as Confidential Information at the time it provides such information to the County. The County agrees that, except as required by law and pursuant to the County’s police powers, neither the County nor any employee, agent or contractor of the County will (i) knowingly or intentionally disclose or otherwise divulge any such confidential or proprietary information to any person, firm, governmental body or agency, or any other entity unless the request for Confidential Information is made under a provision of Local, State or Federal law. Upon receipt of such request but before transmitting any documents or information which may contain Confidential Information, the County will contact Applicant to review the request for information and associated documents to determine if any Confidential Information is at risk of disclosure. If Confidential Information exists, Applicant may intervene on behalf of the County and defend against disclosure of the Confidential Information. The County agrees to cooperate in this defense and to the extent allowed by law, work to protect the Confidential Information of the Applicant.

9. **Severability; Invalidity Clause.** Any provision of this Agreement that conflicts with applicable law or is held to be void or unenforceable shall be ineffective to the extent of such conflict, voidness or unenforceability without invalidating the remaining provisions hereof, which remaining provisions shall be enforceable to the fullest extent permitted under applicable law. If, for any reason, including a change in applicable law, it is ever determined by any court or governmental authority of competent jurisdiction that this Agreement is invalid then the parties shall, subject to any necessary County meeting vote or procedures, undertake reasonable efforts to

Sussex County – Cabin Point Solar Center, LLC

Solar Facility Siting Agreement

Page 7 of 11

8.20.20 DRAFT

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amend and or reauthorize this Agreement so as to render the invalid provisions herein lawful, valid and enforceable. If the Parties are unable to do so, this Agreement shall terminate as of the date of such determination of invalidity, and the Property and Project will thereafter be assessed and taxed as though this Agreement did not exist. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party.

10. **Entire Agreement.** This Agreement and any schedules or exhibits constitute the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof. No provision of this Agreement can be modified, altered or amended except in a writing executed by all parties hereto.

11. **Construction.** This Agreement was drafted with input by the County and the Applicant, and no presumption shall exist against any Party.

12. **Force Majeure.** Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that is due to any of the following causes, to the extent beyond its reasonable control: acts of God, accident, riots, war, terrorist act, epidemic, pandemic, quarantine, civil commotion, breakdown of communication facilities, breakdown of web host, breakdown of internet service provider, natural catastrophes, governmental acts or omissions, changes in laws or regulations, national strikes, fire, explosion, generalized lack of availability of raw materials or energy. For the avoidance of doubt, Force Majeure shall not include (a) financial distress nor the inability of either party to make a profit or avoid a financial loss, (b) changes in market prices or conditions, or (c) a party's financial inability to perform its obligations hereunder.

13. **Third Party Beneficiaries.** This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person shall have any right, benefit, priority or interest in, under or because of the existence of, this Agreement.

14. **Counterparts; Electronic Signatures.** This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail/PDF or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[signature page follows]

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the officers whose names appear below as of the Effective Date.

CABIN POINT SOLAR CENTER, LLC

By: _____
Name:
Title:

SUSSEX COUNTY, VIRGINIA

By: _____
Name:
Title: Chairman, Board of Supervisors

Approved as to form:

By: _____
County Attorney

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SCHEDULE A

(Attached Excel Spreadsheet)

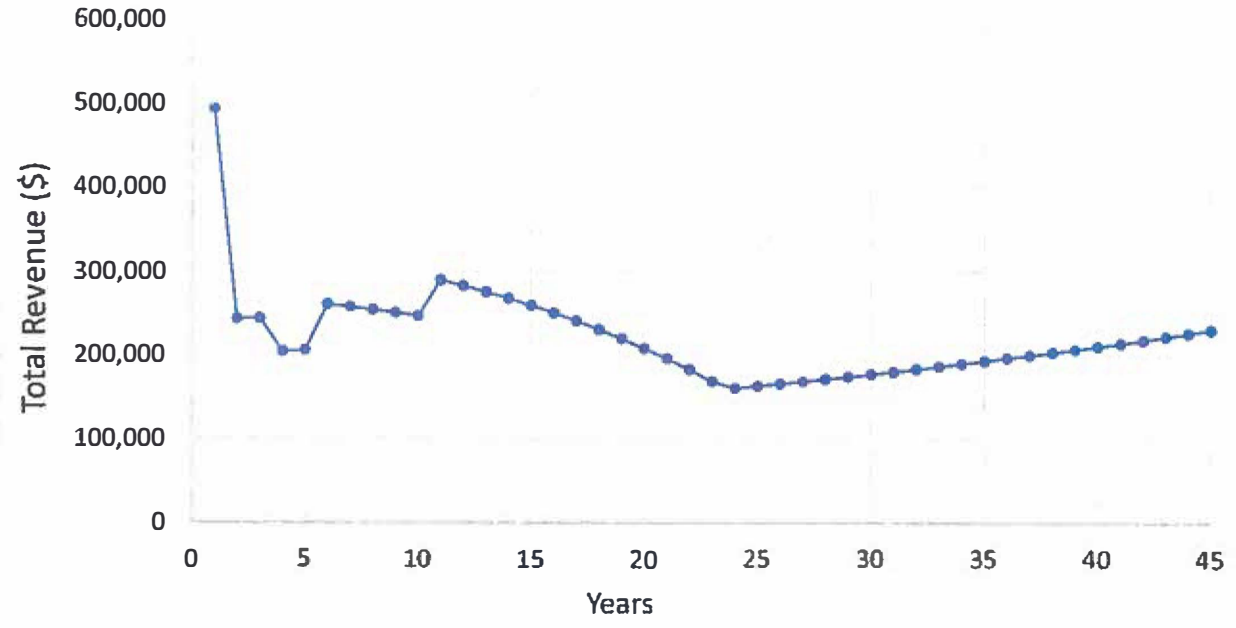
County Revenue over the 45 year lifespan = **\$9,997,115**

CapEx Breakout		Real Property		M&T		CUP Payment		Siting Agreement	
USD		45 Yr Total \$2,109,907		45 Yr Total \$3,445,475		45 Yr Total \$250,000		45 Yr Total \$4,191,733	
Battery Modules and Containers	13,360,000	Assessed Value / Acre	\$10,000	Appraised Value	\$116,246,000				
Power Conversion System	2,360,000	Project Size (acres)	506	M&T Exemption Yr 1-5	80%				
Energy Management System	1,291,000	Annual Appreciation	2%	M&T Exemption Yr 6-10	70%				
Balance of System	4,034,000			M&T Exemption Yr 11+	60%				
Engineering and Construction	4,666,000			Utility Assessment Ratio	94%				
Battery Subtotal	25,711,000	Millage	0.580	Yr 1 Assessed Value	109,387,486				
Solar Panels	32,160,000	Year		Depreciation					
Inverters	4,765,000	1	29,348	90	114,201	250,000		100,000	
Racking/Trackers	14,663,000	2	29,935	90	114,201	0		100,000	
Engineering and Construction	37,397,000	3	30,534	90	114,201	0		100,000	
Grid Attachment Facilities	1,550,000	4	31,144	90	114,201	0		60,000	
Solar PV Subtotal	90,535,000	5	31,767	89.73	113,858	0		61,200	
Grand Total	116,246,000	6	32,403	87.29	166,143	0		62,424	
		7	33,051	84.7	161,213	0		63,672	
		8	33,712	81.96	155,998	0		64,946	
		9	34,386	79.06	150,478	0		66,245	
		10	35,074	75.98	144,616	0		67,570	
		11	35,775	72.71	184,523	0		68,921	
		12	36,491	69.25	175,742	0		70,300	
		13	37,220	65.58	166,428	0		71,706	
		14	37,965	61.7	156,582	0		73,140	
		15	38,724	57.58	146,126	0		74,602	
		16	39,499	53.21	135,036	0		76,095	
		17	40,289	48.58	123,286	0		77,616	
		18	41,094	43.67	110,825	0		79,169	
		19	41,916	38.47	97,629	0		80,752	
		20	42,754	32.95	83,620	0		82,367	
		21	43,610	27.11	68,799	0		84,014	
		22	44,482	20.91	53,065	0		85,695	
		23	45,371	14.34	36,392	0		87,409	
		24	46,279	10	25,378	0		89,157	
		25	47,204	10	25,378	0		90,940	

M&T Tax and Real Property Tax are based on CapEx value.

Real Property		M&G		CUP Payment		Siting Agreement	
Year		Depreciation					
26	48,149	10	25,378	0	0	92,759	
27	49,111	10	25,378	0	0	94,614	
28	50,094	10	25,378	0	0	96,506	
29	51,096	10	25,378	0	0	98,436	
30	52,117	10	25,378	0	0	100,405	
31	53,160	10	25,378	0	0	102,413	
32	54,223	10	25,378	0	0	104,461	
33	55,307	10	25,378	0	0	106,551	
34	56,414	10	25,378	0	0	108,682	
35	57,542	10	25,378	0	0	110,855	
36	58,693	10	25,378	0	0	113,072	
37	59,867	10	25,378	0	0	115,334	
38	61,064	10	25,378	0	0	117,641	
39	62,285	10	25,378	0	0	119,993	
40	63,531	10	25,378	0	0	122,393	
41	64,802	10	25,378	0	0	124,841	
42	66,098	10	25,378	0	0	127,338	
43	67,420	10	25,378	0	0	129,885	
44	68,768	10	25,378	0	0	132,482	
45	70,143	10	25,378	0	0	135,132	

County Revenue



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EXHIBIT B

CONDITIONAL USE PERMIT

Shands Energy Center LLC

Facility Siting Agreement

Shands Energy Center LLC

SOLAR FACILITY SITING AGREEMENT

This Solar Facility Siting Agreement ("Agreement"), dated as of _____, 2020 (the "Effective Date"), is by and between **Sussex County, Virginia**, a political subdivision of the Commonwealth of Virginia (the "County") and **Shands Energy, LLC** a Virginia limited liability company ("Applicant") owned by East Point Energy, LLC. The County and Applicant are herein each a "Party" and collectively, the "Parties".

RECITALS

WHEREAS, the Applicant intends to develop, install, build, and operate a utility scale energy storage facility ("Project") on certain parcel(s) of land identified as Sussex County Tax Map Parcels _____ (collectively, the "Property");

WHEREAS, Pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia titled "Siting of Solar Energy Facilities" Applicant and the County may enter into a siting agreement ("Siting Agreement") for energy storage facilities in those census tracts which meet the eligibility requirements for designation as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation to the Internal Revenue Service;

WHEREAS, the Project is located in census tract number _____ within Sussex County, and eligible for a designation as an opportunity zone;

WHEREAS, pursuant to Virginia Code § 15.2-2316.6 the Project is eligible for a Siting Agreement;

WHEREAS, after negotiation between the County and the Applicant, the Parties desire to enter into this Agreement to mitigate certain potential impacts of the Project.

WHEREAS, the Applicant, has agreed to the payments and financial terms contained herein;

WHEREAS, the County, pursuant to the requirement of Virginia Code § 15.2-2316.8 (B), the County has held a public hearing in accordance with subdivision A of Virginia Code § 15.2-2204 for the purpose of considering this Agreement, at which a majority of a quorum of the members of the Sussex County Board of Supervisors approved this agreement;

NOW, THEREFORE, pursuant to Chapter 22, Title 15.2, Article 7.3 of the Code of Virginia, intending to be legally bound hereby and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the County and Applicant do hereby agree as follows:

1. CUP conditions. The Applicant acknowledges and agrees that it is subject to all the terms and conditions contained conditional use permit #2019-04 ("CUP") and any other conditional use permit approved by the Board of Supervisors for the Project. The CUP is attached

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hereto as **Exhibit A**, and is hereby incorporated herein. Violation by the Applicant or by any of Applicant's agents, assigns or successors in interest of any terms and conditions of the CUP or of any other applicable zoning requirements shall constitute a violation of this Agreement.

2. Annual valuation of real property. As a condition precedent to County approval of this Agreement, Applicant agrees to provide County with current copies of all real property lease agreements for the Property associated with the Project. Applicant may redact any information deemed confidential tax information or proprietary/trade secrets. However, Applicant shall at the minimum provide the annual lease payment amounts for each parcel being leased for the Project. Thereafter, should the payment terms be amended in any such lease agreements, the Applicant shall forthwith provide such information to the County. Applicant further agrees to include as a condition in any agreements transferring ownership of the Project entered into by Applicant a requirement that any successor in interest shall provide such information to the County.

3. Annual valuation of taxable equipment. As a condition precedent to County approval of this Agreement, Applicant agrees to provide County with a list of capital equipment, proposed to be installed. Thereafter, on an annual basis, Applicant shall provide County with any updates to this information.

4. Capital Payment. Applicant agrees to make, within one year of the Project Commercial Operation Date, a one-time \$50,000 contribution to the County for use in fire and rescue capital projects (the "Payment") Applicant agrees that by entering into this Agreement, pursuant to Virginia Code § 15.2-2316.6 et seq., the Payment is authorized by statute and it acknowledges, it is bound by law to make the Payment in accordance with this Agreement. The Parties acknowledge that this Agreement is fair and mutually beneficial to them both. The parties agree that the funding provided pursuant to this Agreement is beneficial in that it will help offset and mitigate any public safety potential impacts of the Project on the County, which will in turn also benefit Applicant. The Payment provides a fair value to both Parties. Notwithstanding the above, the Payments may, in the County's discretion, be used for any of the following purposes: (a) to fund the capital improvement program (CIP) of the County (b) to meet needs of the current fiscal budget of the County, (c) supplement or establish any fund for which the County maintains a balance policy; (d) support broadband funding, all as permitted § 15.2-2316.7.

5. Mutual Covenants. The Applicant covenants to the County that it will pay the County the amounts due hereunder when due in accordance with the terms of this Agreement, and will not seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement. So long as Applicant is not in breach of this Agreement during its term, the County covenants to the Applicant that it will not seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement.

6. No Obligation to Develop. The Applicant has no obligation to develop the Project and this Agreement does not require any Payments until after the Commercial Operation Date. Any test energy or other energy produced prior to the Commercial Operation date shall not trigger payment under this paragraph. It is understood that development of the Project by Applicant is contingent upon a number of factors including, but not limited to, regulatory approvals, availability

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and cost of equipment and financing, and demand for renewable energy and renewable energy credits. No election by the Applicant to terminate, defer, suspend or modify plans to develop the Project shall be deemed a default of Applicant under this Agreement.

7. Successors and Assigns. This Agreement will be binding upon the successors and assigns of the Applicant, and the obligations created hereunder shall be covenants running with the Property upon which the Project is developed. If Applicant sells, transfers, leases or assigns all or substantially all of its interest in the Project or the ownership of the Applicant, this Agreement will automatically be assumed by and be binding on the purchaser, transferee or assignee. Upon such assumption, the sale, transfer, lease or assignment shall relieve the Applicant of all obligations and liabilities under this Agreement accruing from and after the date of sale or transfer, and the purchaser or transferee shall automatically become responsible under this Agreement. The Applicant shall execute such documentation as reasonably requested by the County to memorialize the assignment and assumption by the purchaser or transferee.

8. Memorandum of Agreement. A memorandum of this Agreement, in a form acceptable to the County Attorney, may be recorded in the land records of the Clerk's Office of the Circuit Court of the County of Sussex, Virginia. Such recordation shall be at the Applicant's sole cost and expense and shall occur as soon as reasonably practicable after the full execution of this Agreement. If the Applicant chooses to not develop the Project, in its sole discretion, the County shall execute a release of the memorandum filed in the aforementioned Clerk's Office.

9. Notices. Except as otherwise provided herein, all notices required to be given or authorized to be given pursuant to this Agreement shall be in writing and shall be delivered or sent by registered or certified mail, postage prepaid, by recognized overnight courier, or by commercial messenger to:

Sussex County, Virginia
20233 Thornton Square
Sussex, Virginia 23884
Attn: County Administrator

Shands Energy, LLC
c/o Andrew Foukal
[Address]

The County and Applicant, by notice given hereunder, may designate any further or different persons or addresses to which subsequent notices shall be sent.

10. Governing Law; Jurisdiction; Venue. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF VIRGINIA, WITHOUT REGARD TO ANY OF ITS PRINCIPLES OF CONFLICTS OF LAWS OR OTHER LAWS WHICH WOULD RESULT IN THE

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APPLICATION OF THE LAWS OF ANOTHER JURISDICTION. THE PARTIES HERETO (A) AGREE THAT ANY SUIT, ACTION OR OTHER LEGAL PROCEEDING, AS BETWEEN THE PARTIES HERETO, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE BROUGHT AND TRIED ONLY IN THE CIRCUIT COURT OF SUSSEX COUNTY, VIRGINIA, (B) CONSENT TO THE JURISDICTION OF SUCH COURT IN ANY SUCH SUIT, ACTION OR PROCEEDING, AND (C) WAIVE ANY OBJECTION WHICH ANY OF THEM MAY HAVE TO THE LAYING OF VENUE OR ANY SUCH SUIT, ACTION, OR PROCEEDING IN SUCH COURT AND ANY CLAIM THAT ANY SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. THE PARTIES HERETO AGREE THAT A FINAL JUDGMENT IN ANY SUCH SUIT, ACTION, OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

11. Severability; Invalidity Clause. Any provision of this Agreement that conflicts with applicable law or is held to be void or unenforceable shall be ineffective to the extent of such conflict, voidness or unenforceability without invalidating the remaining provisions hereof, which remaining provisions shall be enforceable to the fullest extent permitted under applicable law. If, for any reason, including a change in applicable law, it is ever determined by any court or governmental authority of competent jurisdiction that this Agreement is invalid then the parties shall, subject to any necessary County meeting vote or procedures, undertake reasonable efforts to amend and or reauthorize this Agreement so as to render the invalid provisions herein lawful, valid and enforceable. If the Parties are unable to do so, this Agreement shall terminate as of the date of such determination of invalidity, and the Property and Project will thereafter be assessed and taxed as though this Agreement did not exist. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party.

12. Entire Agreement. This Agreement and any schedules or exhibits constitute the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties hereto with respect to the subject matter hereof. No provision of this Agreement can be modified, altered or amended except in a writing executed by all parties hereto.

13. Construction. This Agreement was drafted with input by the County and the Applicant, and no presumption shall exist against any Party.

14. Third Party Beneficiaries. This Agreement is solely for the benefit of the Parties hereto and their respective successors and permitted assigns, and no other person shall have any right, benefit, priority or interest in, under or because of the existence of, this Agreement.

15. Counterparts; Electronic Signatures. This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile, e-mail/PDF or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the officers whose names appear below as of the Effective Date.

SHANDS ENERGY, LLC

By: _____
Name:
Title:

SUSSEX COUNTY, VIRGINIA

By: _____
Name:
Title: Chairman, Board of Supervisors

Approved as to form:

By: _____
County Attorney

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ATTACHMENT A
CONDITIONAL USE PERMIT



At a regular meeting of the Board of Supervisors of the County of Sussex, held at the Courthouse thereof, on the 16th day of July 2020.

<u>PRESENT:</u>	<u>VOTE:</u>
C. Eric Fly, Sr.	aye
Marian D. Johnson	aye
Debbie P. Jones	aye
Wayne O. Jones	aye
Susan B. Seward	aye
Rufus E. Tyler, Sr.	aye

R-20-118: Approval of Agenda

ON MOTION OF SUPERVISOR D. JONES, seconded by W. JONES and carried: RESOLVED that the Sussex County Board of Supervisors hereby approves Conditional Use Permit #2019-04, East Point Energy, LLC, Applicant contingent upon the following conditions:

Conditions

1. The Applicant will develop the Project Site in substantial accord with the Conceptual Site Plan dated February 19, 2020 included with the application and these conditions as determined by the Zoning Administrator. Significant deviations or additions including any enclosed building structures to the Preliminary Site Plan will require review and approval by the Planning Commission and Board of Supervisors.
2. Site Plan Requirements. In addition to all Virginia site plan requirements and site plan requirements of the Zoning Administrator, the Applicant shall provide the following plans for review and approval for the Project prior to the issuance of a building permit:
 - a. *Construction Management Plan.* The Applicant shall prepare a "Construction Management Plan" for each applicable site plan for the project, and each plan shall address the following:
 - i. Traffic control methods (in coordination with the Virginia Department of Transportation [VDOT] prior to initiation of construction): i. Lane closures, ii. Signage, and iii. Flagging procedures.
 - ii. Site access planning. Directing employee and delivery traffic to minimize conflicts with local traffic.

- iii. **Site security.** The Applicant shall implement security measures prior to the commencement of construction on the Project Site.
 - iv. **Lighting.** During construction of the project, any temporary construction lighting shall be positioned downward, inward, and shielded to eliminate glare from all adjacent properties. Emergency and/or safety lighting shall be exempt from this construction lighting condition.
 - v. **Water Supply.** In the event that on-site wells are used during construction of the facility, the Applicant shall prepare and submit for review to the County hydrogeologic information necessary for the County to determine the potential impact to pre-existing users for the same aquifer proposed to be used for the solar energy facility and a plan to mitigate impacts to pre-existing users within the area of impact of the Project. If the County, in consultation with the Department of Environmental Quality, determines that the installation of a well will not adversely affect existing users, the Applicant may proceed with well construction in compliance with approval by the Department of Environmental Quality. At the end of the construction of the Battery Energy Storage facility, the well shall not thereafter be used except only for personal toilet and lavatory facilities as required by the Uniform Statewide Building Code for operations and maintenance buildings.
- b. **Construction Mitigation Plan.** The Applicant shall prepare a "Construction Mitigation Plan" for each applicable site plan for the project, and each plan shall address the effective mitigation of dust, burning operations, hours of construction activity, access and road improvements, and handling of general construction complaints as set forth and described in the application materials and to the satisfaction of the Zoning Administrator. Damage to public roads from construction activities shall be repaired with approval from VDOT as soon as possible and not postponed to construction completion. A construction mitigation bond (or other security) will be posted for the construction portion of the project.
- i. Construction activity on-site shall be permitted Monday through Sunday in accordance with the provisions of the County's Noise Ordinance.
 - ii. During construction, the setbacks may be used for staging of materials and parking. No material and equipment laydown area, construction staging area, or construction trailer shall be located within 200 feet of any property containing a residential dwelling.
 - iii. Construction lighting shall be minimized and shall be directed downward.
- c. **Grading plan.** The Applicant will submit a Grading Plan for review and approval by the Zoning Administrator. The Project shall be constructed in compliance with the County the Grading Plan as determined and approved by the Zoning Administrator or his designee prior to the commencement of any construction activities and a bond or other security will be posted for the grading operations. The grading plan shall:
- i. Clearly show existing and proposed contours;
 - ii. Note the locations and amount of topsoil to be removed (if any) and the percent of the site to be graded;
 - iii. Limit grading to the greatest extent practicable by avoiding steep slopes and laying out arrays parallel to landforms;
 - iv. An earthwork balance will be achieved on-site with no import or export of soil;

- v. In areas proposed to be permanent access roads which will receive gravel or in any areas where more than a few inches of cut are required, topsoil will first be stripped and stockpiled on-site to be used to increase the fertility of areas intended to be seeded;
 - vi. Take advantage of natural flow patterns in drainage design and keep the amount of impervious surface as low as possible to reduce storm water storage needs.
 - d. *Erosion and Sediment Control Plan.* The County will have a third-party review with corrections completed prior to County review and approval. The owner or operator shall construct, maintain, and operate the project in compliance with the approved plan. An E&S bond (or other security) will be posted for the construction portion of the project.
 - e. *Stormwater Management Plan.* The County will have a third-party review with corrections completed prior to County review and approval. The owner or operator shall construct, maintain, and operate the project in compliance with the approved plan. A storm water control bond (or other security) will be posted for the construction portion of the project.
 - f. *Project Screening and Vegetation Plan.*
 - i. The Applicant will submit a final Landscape Maintenance Plan for review and approval by the Zoning Administrator. The final plan will address the conditions below in item 4.b. The owner or operator shall construct, maintain, and operate the facility in compliance with the approved plan. The Applicant (or the operator) shall promptly communicate with the Zoning Administrator within 30 days of the date of the notice of violation and submit a plan in writing satisfactory to the Zoning Administrator to remedy such violation no later than 180 days after the date of the notice of violation. Failure to remedy the violation before the end of the 180-day cure period may result in revocation of the CUP.
 - ii. Ground cover shall be either gravel, concrete, or native vegetation where compatible with site conditions and, in all cases, shall be approved by the Zoning Administrator.
 - iii. Only EPA approved herbicides shall be used for vegetative and weed control at the energy storage facility by a licensed applicator. No herbicides shall be used within 150 feet of the location of an approved ground water well. The Applicant shall submit an herbicide land application plan prior to approval of the certificate of occupancy (or equivalent). The plan shall specify the type of herbicides to be used, the frequency of land application, the identification of approved groundwater wells, wetlands, streams, and the distances from land application areas to features such as wells, wetlands, streams and other bodies of water. The operator shall notify the County prior to application of pesticides and fertilizers. The County reserves the right to request soil and water testing.
 - g. The Applicant shall reimburse the County its costs in obtaining independent third-party reviews as required by these conditions.
 - h. The design, installation, maintenance, and repair of the project in accordance with the most current National Electrical Code (NFPA 70) that Sussex County has adopted (2014 version or later as applicable).
3. Operations.

- a. ***Permanent Security Fencing.*** The Applicant shall install permanent security fencing, consisting of chain link, two-inch square mesh, at least six (6) feet in height, with one (1) foot of barbed wire on top, around the project prior to the commencement of operations of the Project. A performance bond during the construction period reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the fence in a good and functional condition will result in revocation of the permit.
 - b. ***Lighting.*** Any on-site lighting provided for the operational phase of the Project shall be dark-sky compliant, shielded away from adjacent properties, and positioned downward to minimize light spillage onto adjacent properties.
 - c. ***Noise.*** Noise will be compliant with the County's Noise Ordinance.
 - d. ***Ingress/Egress.*** Permanent access roads and parking areas will be stabilized with gravel, asphalt, or concrete to minimize dust and impacts to adjacent properties.
4. **Buffers.**
- a. ***Setbacks.***
 - i. A minimum 300-foot setback shall be maintained from a project structure to the street line (edge of right-of-way) where the Property abuts any public rights-of-way.
 - ii. There shall be no setbacks between internal lot lines between parcels in the project area.
 - b. ***Screening.*** The existing vegetation surrounding the battery storage area shall be preserved for the life of the project. Any removal of existing vegetation shall require the approval by the County. If any existing vegetation (trees) die or are destroyed by a natural disaster and the project becomes visible to adjoining properties and from the road, the applicant shall replace the damaged trees at their expense to make the project area again non-visible.
 - c. Ancillary project facilities may be included in the buffer as described in the application where such facilities do not interfere with the effectiveness of the buffer as determined by the Zoning Administrator.
5. **Traffic.**
- a. The applicant shall comply with all Virginia Department of Transportation recommendations for traffic management during construction and decommissioning of the Project.
 - b. The roads shall be maintained in a safe operating condition during the construction phase and be brought back to the original condition, or improved, upon completion of the construction and decommissioning phases.
6. **Battery Storage.**
- a. Battery and energy storage facilities will be constructed, maintained, and operated in accordance with national industry standards and regulations including the National Electrical Code, International Fire Code of the International Code Council, and the National Fire Protection Association Fire Code. In the event of a conflict between the national industry

standards and these Conditions, the national industry standards shall control so that as technology advances, updated technology may be used by the Applicant.

- b. Lithium-Ion battery cells in a Battery Energy Storage System (BESS) with a Battery Management System (BMS) will be used.
- c. The BESS enclosure or cabinet will provide a secondary layer of physical containment to the batteries and be equipped with cooling, ventilation, and fire suppression systems.
- d. Each individual battery enclosure will have 24/7 automated fire detection and extinguishing technology built in. The BMS will monitor individual battery module voltages and temperatures, container temperature and humidity, off-gassing of combustible gas, fire, ground fault and DC surge, and door access and be able to shut down the system before Thermal Runaway takes place.
- e. The BESS will be placed on an appropriate foundation located in accordance with the Site Plan.
- f. Access to all batteries and electrical switchgear will be from the exterior for normal operation and maintenance. Access to the container interior will not be permitted while the system is in operation. Access shall not conflict with NFPA 855.
- g. Qualifications and experience from selected developers and integrators will be provided including disclosure of fires or other hazards at facilities.
- h. Safety testing and failure modes analysis data from selected developers and manufacturers will be provided.
- i. Any applicable product certifications will be provided.
- j. The Applicant or any future owner shall be liable for contaminants escaping battery cells or the BESS and shall be responsible for all remediation and the costs of remediation in a timely manner.
- k. Applicant will collaborate with Sussex County first responders to utilize technology-appropriate best practices for safe energy storage systems including, but not limited to, the following:
 - i. Adequate access/egress for the first responders;
 - ii. Adequate facility signage (on battery chemistry and person to contact);
 - iii. Accessible Safety Data Sheets;
 - iv. System-specific emergency response plans;
 - v. Training for first responders on the type of system, potential hazards and risks, and system-specific emergency response plans;
 - vi. Adequate supply of fire suppression appliances for the fire fighters;
 - vii. Adequate facility signage on Hazardous Materials present in the vicinity;
 - viii. Emergency lighting;
 - ix. Battery Racks installed according to NFPA 855 standards to make it easier to isolate a failed battery from the rest;

- x. Sufficient shutdown and isolation capability including a recloser.
 - xi. System-appropriate sensors and alarms;
 - xii. Air ventilation and fire suppression systems; and
 - xiii. Drainage for water runoff, if applicable.
- l. The Applicant or any future owner shall conduct monthly on-site inspections of the battery units and report on their condition.
- m. In the event the Code of Virginia is amended on or before July 1, 2022 to authorize contributions to localities for standalone energy storage projects through a conditional use permit in the manner that Va. Code Section 15.2-2288.8 allows as of the time of this Permit Application for solar photovoltaic projects, then Applicant agrees to make a one-time \$50,000 contribution to the County for use in fire and rescue capital projects within one year of the Project Commercial Operation Date.

7. Training.

- a. Prior to commissioning of the BESS, the Applicant, shall offer a series of training classes with the County's first responders (Fire and Rescue) to provide materials, education, and training on responding to on-site emergencies. The training classes shall be scheduled with the assistance of the County's designated Public Safety Coordinator. This includes specific technical training regarding the battery energy storage systems and how to respond to issues involving those systems so that the emergency service provider, the surrounding areas, and the environment are protected.
- b. The Applicant or any future owner or operator shall provide annual training as deemed necessary by the Public Safety Coordinator.
- c. In the event any upgrades or changes in technology associated with the Project result in any change in emergency procedure, the Applicant or any future owner operator will notify the County Public Safety Coordinator, who may, at their discretion, schedule an additional training on the new equipment.

8. Compliance. The facilities shall be designed, constructed, and tested to meet relevant local, state, and federal standards as applicable.

9. Decommissioning.

- a. *Decommissioning Plan.* The Applicant shall submit a Decommissioning Plan to the County for approval in conjunction with the building permit. The purpose of the Decommissioning Plan is to specify the procedure by which the Applicant or its successor would remove the Project after the end of its useful life and to restore the property.
- b. *Decommissioning Cost Estimate.* The proposed Decommissioning Cost Estimate dated January 8, 2020, for \$343,680, was prepared by ONE Environmental Group of Carolina, PLLC. Notwithstanding the forgoing, the Applicant is not required to provide a security if the County approves an alternative security arrangement (subsection c. (iv) below).
- i. The cost estimate shall provide the gross estimated cost to decommission the Project in accordance with the Decommissioning Plan and these conditions. The Decommissioning

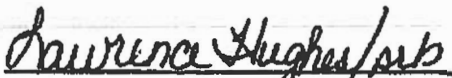
- Cost Estimate shall not include any estimates or offsets for the resale or salvage values of the Project equipment and materials.
- ii. The Applicant, or its successor, shall reimburse the County for an independent review and analysis by a licensed engineer of the initial decommissioning cost estimate.
 - iii. The Applicant, or its successor, will update the Decommissioning Cost Estimate every five (5) years and reimburse the County for an independent review and analysis by a licensed engineer of each decommissioning cost estimate revision.
- c. *Security.*
- i. Prior to the County's approval of the building permit, the Applicant shall provide decommissioning security in the form of a certified funds, cash escrow, Letter of Credit, bond, or parent guarantee for the Full Decommissioning Cost.
 - ii. Upon the receipt of the first revised decommissioning cost estimate (following the 5th anniversary), any increase or decrease in the decommissioning security shall be funded by the Applicant, or refunded to Applicant (if permissible by the form of security), within ninety (90) days and will be similarly trued up for every subsequent five year updated decommissioning cost estimate.
 - iii. The security must be received prior to the approval of the building permit and must stay in force for the duration of the life span of the Project and until all decommissioning is completed. If the County receives notice or reasonably believes that any form of security has been revoked or the County receives notice that any security may be revoked, the County may revoke the Conditional Use Permit and shall be entitled to take all action to obtain the rights to the form of security.
 - iv. Notwithstanding the foregoing requirements in subsections (a)-(iii) above, an alternative security arrangement may be accepted by the County so long as it is a form acceptable to the County Attorney.
- d. *Applicant/Property Owner Obligation.* Within twelve (12) months after the cessation of use of the Project for electrical power storage or transmission, the Applicant or its successor, at its sole cost and expense, shall commence decommissioning of the Project in accordance with the Decommissioning Plan approved by the County. If the Applicant or its successor fails to decommission the Project within eighteen (18) months, the property owners shall commence decommissioning activities in accordance with the Decommissioning Plan. Following the completion of decommissioning of the Project arising out of a default by the Applicant or its successor, any remaining security funds held by the County shall be distributed to the property owners in a proportion of the security funds and the property owner's proportionate acreage ownership of the Project. Upon completion of decommissioning and approval by the County, the County shall sign documentation releasing the decommissioning security.
- e. *Applicant/Property Owner Default; Decommissioning by the County.*
- i. If the Applicant, its successor, or the property owners fail to timely decommission the Project, the County shall have the right, but not the obligation, to commence decommissioning activities and shall have access to the property, access to the full amount of the decommissioning security, and the rights to the Project equipment and materials on the property.

- ii. If applicable, any excess decommissioning security funds shall be returned to the current owner of the property after the County has completed the decommissioning activities.
 - iii. The County may enter the Project Site in accordance with Virginia law. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.
- f. *Site Access.* The County has the right to enter the Project Site without further consent to engage in decommissioning. Nothing herein shall limit other rights or remedies that may be available to the County to enforce the obligations of the Applicant, including under the County's zoning powers.
- g. *Equipment/building removal.* All physical improvements, materials, and equipment related to Project, both surface and subsurface components, shall be removed in their entirety. The soil grade will also be restored following disturbance caused in the removal process. Perimeter fencing will be removed and recycled or re-used. The exception to removal of the materials and equipment would be upon written request from the current or future landowner or the County indicating areas where removal is not requested.
- h. *Infrastructure removal.* All access roads will be removed, including any geotextile material beneath the roads and granular material. The exception to removal of the access roads and associated culverts or their related material would be upon written request from the current or future landowner or the County to leave all or a portion of these facilities in place for use by that landowner. Access roads will be removed within areas that were previously used for agricultural purposes and topsoil will be redistributed to provide substantially similar growing media as was present within the areas prior to site disturbance.
- i. *Reforestation.* The site will be replanted with pine seedlings to stimulate pre-timbered pre-development conditions as indicated on the Preliminary Site Plan. The exception to reforestation would be upon written request from the current or future landowner or the County indicating areas where reforestation is not requested.
- j. *Partial Decommissioning.* If decommissioning is triggered for a portion of the Project, then the Applicant or its successor will commence and complete decommissioning, in accordance with the Decommissioning Plan, for the applicable portion of the Project; the remaining portion of the Project would continue to be operational and subject to the Decommissioning Plan when the time comes. Any reference to decommissioning the Project shall include the obligation to decommission all or a portion of the Project whichever is applicable with respect to a particular situation.
10. The Conditional Use Permit shall be terminated if the project does not receive a building permit within 18 months after the Applicant receives (a) any required state approvals; (b) any approvals of the regional transmission organization; and (c) any approvals required by the State Corporation Commission, but in no event more than thirty-six (36) months of approval of the Conditional Use Permit. Any timeframe under which the Commonwealth is under an Executive Order of the Governor declaring a statewide emergency will toll the timeframe specified in this condition.
11. If the Project is declared to be unsafe, due to a violation of building or electrical codes, as determined by the fire marshal or building official, and the operator of the Facilities fails to

respond in writing to such official within thirty (30) days, the County may revoke the right for the Facilities to continue operation until the unsafe condition is brought into compliance with the applicable building or electrical code. If the unsafe condition cannot be remedied within six (6) months, the Conditional Use Permit shall be terminated, and the Project shall be decommissioned.

12. The owner and operator shall give the County written notice of any change in ownership or operation within thirty (30) days.

A COPY TESTE:


Lawrence Hughes, Clerk

NOTICE OF PUBLIC HEARINGS

Sussex County Board of Supervisors

Notice is hereby given that the Sussex County Board of Supervisors will hold public hearings on Thursday, September 17th, 2020 beginning at 6:00 p.m. in the Sussex County Elementary School gymnasium, 21394 Sussex Dr, Waverly, Virginia 23890 on the items listed in this notice.

Citizens are encouraged to attend. If attending in person face coverings will be required and social distancing measures will be followed. Anyone needing assistance or accommodation under the provisions of the American Disabilities Act should call the County Administrator's Office at 434-246-1000.

A copy of the proposed Zoning Text Amendments, Conditional Use Permit Applications, Facility Siting Agreements and Solar Facility Permit Fee Schedule Ordinance, along with supporting documentation are available for review in the Community Development Office during regular business hours Monday thru Friday from 8:00 a.m. to 4:30 p.m. located at 20135 Princeton Road, Sussex Va. Phone number (434) 246-1000

Zoning Text Amendment to Authorize Financial Contributions to Mitigate Impacts of Solar Energy Facilities through Conditional Use Permits

Zoning Text Amendment #2020-02: Pursuant to authority granted by Chapter 385 of the 2020 Acts of Assembly, the Sussex County Board of Supervisors seeks to amend Article XXIII Section 16-410, Solar Facilities of the Zoning Ordinance to include reasonable Conditional Use Permit provisions related to any solar photovoltaic (electric energy) project, including but not limited to allowing for the dedication of real property of substantial value and provisions allowing for substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of a conditional use permit, so long as such conditions are reasonably related to the project. Once such conditions are granted, they shall continue in effect until a subsequent amendment changes the zoning on the property for which the conditions were granted. However, such conditions shall continue if the subsequent amendment is part of a comprehensive implementation of a new or substantially revised zoning ordinance.

Solar Facility Permit Fee Schedule Ordinance

Notice is hereby provided pursuant to Va. Code Section 15.2-1427 that the Sussex County Board of Supervisors will consider the adoption of an Ordinance to Amend Building Code Permit Fee Schedule Related to Solar Energy Facilities to create a new electrical permit fee applicable to solar panels and to clarify that the base building inspection permit fee does not apply to solar panels. Note that a public hearing is not required for the adoption of such ordinance, however, the Board in its discretion may choose to allow for public comment at the meeting and citizens are always invited to submit public comments to county administration in writing and to inspect the proposed ordinance as provided above.

Cabin Point Solar Facility

General Project Description: The Applicant proposes to construct a 75 megawatt (alternating current) photovoltaic solar energy generation facility on approximately 1,842 acres from 11 parcels. Equipment will be located on less than 50% of the project area. The project is in the Blackwater/Newville/Waverly planning area and generally bound to the north by the CSX Railroad south of General Mahone Highway (460), to the east by Beef Steak Road, to the south by the waste management facility and Newville Road, and to the west by Cabin Point Road and the 100-year floodplain. The project infrastructure will consist primarily of solar photovoltaic modules mounted on steel racking structures, inverters, transformers, energy storage facilities, a substation, and security fencing. A Dominion transmission line crossing the project area allows for interconnection to the grid on site. The Applicant proposes installing an energy storage facility as part of the project. Energy will be stored in lithium-ion batteries (or their functional equivalent) with cooling and fire suppression systems and off-site monitoring capabilities. Energy storage will be located next to the proposed substation as shown on the site plan. The Applicant proposes setbacks of 200 feet from residential parcels and 150 feet from all other exterior parcel boundaries. The Applicant proposes to retain a 50-foot buffer of existing vegetation where possible and plant trees as necessary for a 50-foot buffer. The project is identified on tax map numbers 6-A-5, 6-A-6, 6-A-8A, 6-A-8B, 6-A-9, 6-A-10, 6-A-11, 6-A-12, 14-A-1, 15-A-1, and 15-A-2 consisting of approximately 1,850+/- acres. The parcels in question are zoned A-1, Agricultural and I-1 Limited Industrial, and I-2 General Industrial and allow the proposed use with a conditional use permit. The proposed site of the project is generally situated within the Waverly and Blackwater districts on both sides of Cabin Point Road in Sussex County, Virginia.

The Public Hearings will be to consider applications for the following related to the Cabin Point Solar Facility:

Zoning Text Amendment #2020-01: Pursuant to Article XXIII Section 16-403, subsection (b) of the Zoning Ordinance, the applicant, Orsted Onshore North America, LLC (on behalf of Cabin Point Solar Center, LLC) seeks a zoning text amendment to allow solar energy facilities in the I-1 Limited Industrial district with a conditional use permit.

Conditional Use Permit Application #2020-01: Pursuant to Article XXIII Section 16-403, subsection (b) of the Zoning Ordinance, the applicant, Orsted Onshore North America, LLC (on behalf of Cabin Point Solar Center, LLC) seeks a conditional use permit to construct and operate the solar energy facility described above. The proposed CUP includes conditions to mitigate any adverse effects of the proposed facility to the affected parcels and immediately adjacent parcels as well as conditions to mitigate certain impacts and potential costs to the County and impacts on County services, including but not limited to conditions related to facility construction, facility operation, screening and buffers, traffic impacts, battery storage, fire and rescue training, and facility decommissioning, and a \$250,000 financial contribution to the County by the applicant for fire and rescue capital investments related in part to the facility and its battery storage component.

Facility Siting Agreement: Pursuant to Chapter 802 of the 2000 Acts of Assembly (Va. Code Sections 15.2-2316.6 et seq.), the Board of Supervisors and Cabin Point Solar Center, LLC have negotiated a siting agreement for the photovoltaic solar energy generation facility to be developed on parcels designated as tax map numbers 6-A-5, 6-A-6, 6-A-8A, 6-A-8B, 6-A-9, 6-A-10, 6-A-11, 6-A-12, 14-A-1, 15-A-1, and 15-A-2 consisting of approximately 1,850+/- acres. The siting agreement includes terms and conditions to mitigate the impacts of the facility, including financial contributions in the amount of approximately \$4.2 million to address capital needs of the County, including but not limited to the areas of fire, rescue and public safety and broadband. The hearing is to receive public comment on the proposed agreement prior to the Board's consideration and approval.

Shands Energy Center, LLC

Facility Siting Agreement: Pursuant to Chapter 802 of the 2000 Acts of Assembly (Va. Code Sections 15.2-2316.6 et seq.), the Board of Supervisors and Shands Energy Center, LLC have negotiated a siting agreement for the energy storage facility to be developed on parcels designated as tax map numbers 64-A-21 and 64-A-23 consisting of approximately 32.28 acres. The siting agreement includes terms and conditions to mitigate the impacts of the facility, including financial contributions in the amount of \$50,000 to address capital needs of the County, including but not limited to the areas of fire, rescue and public safety. The hearing is to receive public comment on the proposed agreement prior to the Board's consideration and approval.

Authorized by:

Lawrence Hughes, Interim County Administrator

BOARD ACTION FORM

Agenda Item: Public Hearing Item #4.07

Subject: Proposed Increase in Courthouse and Courtroom Security Fees

Board Meeting Date: September 17 2020

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Summary: Sheriff Giles is requesting an increase to the courthouse and courtroom current assessment fees. The request for increase will assist with the Courthouse security and courtroom security personnel, equipment and a possibility of venturing the E-ticket program.

The purpose of this hearing is to consider the amendment of Section 10-3 of the Sussex County Code as it relates to increasing the courthouse and courtroom security fee from \$10.00 to \$20.00 pursuant to Section 53.1-120 of the Code of Virginia.

A full copy of the Ordinance may be viewed at County Administration, 20135 Princeton Road, Sussex, Virginia 23884. The Notice of Public Hearing was properly advertised.

Attachments: Proposed Ordinance
A Copy of Sheriff Giles' Request
Copy of Advertisement

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ACTION: That the Board of Supervisors adopts ordinance of the he proposed increase in courthouse and courtroom security fees from \$10.00 to \$20.00 pursuant to Section 53.1-120 of the Code of Virginia.

MOTION BY: _____ **SECONDED BY:** _____

<u>Member</u>	<u>Aye</u>	<u>Nay</u>	<u>Member</u>	<u>Aye</u>	<u>Nay</u>
Fly	___	___	W. Jones	___	___
Johnson	___	___	Seward	___	___
D. Jones	___	___	Tyler	___	___
			White (Tie Breaker)	___	___

**AN ORDINANCE TO AMEND SECTION 10-3 OF CHAPTER 10 THE CODE OF
SUSSEX TO INCREASE THE COURTHOUSE AND COURTROOM SECURITY FEE
AS ALLOWED BY STATE CODE**

WHEREAS, in 1991, the Board of Supervisors adopted Section 10-3 of the Sussex County Code which imposes a courthouse and courtroom security fee for criminal and traffic cases; and

WHEREAS, the ordinance was last amended by the Board of Supervisors on June 20, 2002; and

WHEREAS, there has since been an amendment to state code, specifically Section 53.1-120 of the Code of Virginia, that provides localities the authority to increase the amount of courthouse and courtroom security fees a locality may assess; and

WHEREAS, the Board of Supervisors desires to update the County's Ordinances to reflect the increase as allowed by state law.

NOW, THEREFORE, be it ordained by the Board of Supervisors of Sussex County, that Section 10-3 of the Sussex County Code related to the courthouse and courtroom security fee is hereby amended and re-ordained as follows:

Chapter 10- COURT

Sec. 10-3.- Courthouse security personnel assessment

A fee of ~~\$10.00~~ \$20.00 is hereby levied and shall be assessed as part of the costs against each defendant for each conviction or violation of a statute or ordinance which shall be collected by the clerk of the court with other costs. The clerk shall remit the fees to the treasurer of this county. The treasurer shall hold such funds subject to appropriations by the board to the sheriff's office of this county for the funding of courthouse security personnel, and, if requested by the sheriff, equipment and other personal property used in connection with courthouse security.

(Code 1991, § 5-3; Ord. of 6-20-2002(2))

State law reference—Authority for above section, Code of Virginia, § 53.1-120. Courthouse and courtroom security fee authorized.

This amended ordinance shall take effect upon adoption.

Shilton Ricks Butts

From: Ernest Giles <egiles@sussexso.com>
Sent: Tuesday, July 7, 2020 10:20 AM
To: Larry Hughes; Shilton Ricks Butts
Subject: Fwd: Scanned from a Xerox Multifunction Printer
Attachments: Scanned from a Xerox Multifunction Printer.pdf

CAUTION: This email originated from outside of the organization. Do not follow guidance, click links, or open attachments unless you know the content is safe.

Good Morning to both of you. I'm respectfully requesting the courthouse and courtroom current assessment fees be addressed before the board of Supervisors. This request for increase will assist with the Courthouse security and courtroom security personnel, equipment and possibility of venturing the E-ticket program in which most jurisdictions have already implemented. An attached copy of SB 149 Chapter 602, an act to amend the reenact 53.1-120 code of Virginia, relating to courthouse and courtroom security; assessment. Please feel free to reach out to me, if any questions. Thank you in advance. Sheriff Giles

Forwarded message -----

From: <xerox@sussexcountyva.gov>
Date: Tue, Jul 7, 2020 at 9:57 AM
Subject: Scanned from a Xerox Multifunction Printer
To: <egiles@sussexso.com>

Please open the attached document. It was sent to you using a Xerox multifunction printer.

Attachment File Type: pdf, Multi-Page

Multifunction Printer Location:
Device Name: XRX9C934EB6E691

For more information on Xerox products and solutions, please visit <http://www.xerox.com>

SUSSEX COUNTY PUBLIC HEARING NOTICE OF

PROPOSED INCREASE IN COURTHOUSE AND COURTROOM SECURITY FEES

Notice is hereby given that the Sussex County Board of Supervisors will hold a public hearing on Thursday, September 17, 2020 at 6:00 p.m. in the Sussex Elementary School Gymnasium located at 21392 Sussex Drive, Stony Creek, Virginia 23882.

Due to the ongoing COVID health crisis and the limited space available due to social distancing practices, it is recommended that anyone wishing to comment on the Ordinance, may do so through written comment. Such comments may be forwarded to: Attention: Ms. Shilton R. Butts, PO Box 1397, Sussex, Virginia 23884 or email to sricks@sussexcountyva.gov. All comments must be received 3 days prior to the scheduled public hearing date. Anyone wishing to participate in the meeting may do so through the ZOOM meeting app. Invite information may be obtained by calling the Sussex County Administrative offices at 434-246-1000. If attending in person face coverings will be required and social distancing measures will be followed. Anyone needing assistance or accommodation under the provisions of the American Disabilities Act should call the County Administrator's Office at 434-246-1000.

The public hearing will be to consider the amendment of Section 10-3 of the Sussex County Code as it relates to increasing the courthouse and courtroom security fee from \$10.00 to \$20.00 pursuant to Section 53.1-120 of the Code of Virginia. A full copy of the Ordinance may be viewed at County Administration, 20135 Princeton Road, Sussex, Virginia 23884.

BY ORDER OF THE BOARD OF SUPERVISORS
SUSSEX COUNTY, VIRGINIA