



# Staff Report

## Planning Commission

March 8, 2023

<b>Case #:</b>	C-23-1
<b>Applicant:</b>	Lily Pond Solar, LLC, and authorized representative of Lily Pond Solar, LLC, Itamar Sarussi
<b>CUP Request:</b>	To operate an 80-megawatt solar energy generating facility
<b>Property Location:</b>	North of Carson Rd. (Route 703); south of Reams Dr. (Route 606); west of Halifax Rd. (Route 604); and along Perkins Rd. (Route 605)
<b>Tax Map Parcels:</b>	All or a portion of Tax Map Parcel Nos. 61-3, 61-5, 61-6, 61-7, 61-24A, 62-24, 62-21, 62-22, 62-19, 62-20, 62-33A, 62-33, 62-3, 62-5, 62-6, 48-49, 48-52, 48-56, and 48-59
<b>Property Size:</b>	Approximately 1,891 +/- acres
<b>Magisterial District:</b>	Rowanty District
<b>Planning Commission Mtg.:</b>	March 8, 2023

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### CASE AND PROJECT OVERVIEW

The applicant, Lily Pond Solar, LLC, and authorized representative of Lily Pond Solar, LLC, Itamar Sarussi, are requesting to rezone properties containing approximately 1,891 +/- acres from A-2, Agricultural General, to SED, Utility Scale Solar Energy District. The SED, Utility Scale Solar Energy District, zoning classification allows for solar energy projects. The properties are generally located north of Carson Rd. (Route 703); south of Reams Dr. (Route 606); west of Halifax Rd. (Route 604); and along Perkins Rd. (Route 605). The properties are further defined as all or a portion of Tax Map Parcel Nos. 61-3, 61-5, 61-6, 61-7, 61-24A, 62-24, 62-21, 62-22, 62-19, 62-20, 62-33A, 62-33, 62-3, 62-5, 62-6, 48-49, 48-52, 48-56, and 48-59. As indicated in the Dinwiddie County Comprehensive Land Use Plan, the subject property is located within the Rural Conservation Area, which allows limited industrial, service, and utility uses for this general area.

Lily Pond Solar, LLC, a wholly owned subsidiary of Energix US, LLC, is proposing to design, construct and operate an 80-megawatt alternating current solar photovoltaic (PV) ground mounted electric generation project located on approximately 1,891 +/- acres. The applicant is seeking a rezoning approval from A-2, Agricultural, General, to Utility Scale Solar Energy District (SED) that allows for a utility scale solar energy projects upon receiving a conditional use permit.

In the time since the 2021 rezoning and conditional use permit application, Lily Pond Solar, LLC has revised the project application. The 2021 project proposed to utilize approximately 160 acres of active agricultural land (crop production), and the revised site plan shows a reduction of agricultural land utilized to approximately 40 acres. Additional project revisions include increased project setbacks to enhance the visual screening of the overall project. The proposed project setbacks have increased to 150 feet from all property boundaries and roads and due to the

road elevation of Halifax Road a 250-foot setback is proposed for the portion of the project located along Halifax Road. An additional project revision includes establishing a conservation easement for approximately 69 acres of historic battlefield areas. The conservation easement area is to remain undisturbed and current vegetation are to be maintained with these areas located outside the fenced solar project area.

The project is proposed on approximately 1,891 +/- acres consisting of 19 tax parcels with the solar panels sited on approximately 500 acres. The remainder of the property will include approximately 500 acres of conservation areas for buffers, setbacks, wildlife corridors, natural habitat, pollinator garden, and battlefield preservation. Most of the properties will be under long-term leases with some parcels providing right of way easements for electric collection/transmission lines, which are not included in the rezoning request. The Applicant proposes that 1,891 +/- acres will be rezoned to SED and utilized for the Project (see Rezoning Application, Table 1, List of Property Owners).

The point of interconnection with Dominion Power's transmission system will be located at a new substation/switchyard in the northern portion of the project site along the existing north-south transmission corridor. As shown on the Conceptual Master Plan, the proposed single portrait solar panels mounted to the single-axis tracking system are to be located on approximately 500 +/- acres dispersed throughout the 1,891-acre subject property due to environmental and cultural resource constraints. The single-axis tracking system entails the single portrait solar panels mounted on a framework that tracks the movement of the sun during the day. Visually, the facility is arranged with long rows of solar panels mounted on the racks which are mounted on posts pile driven into the ground. The solar photovoltaic electricity generation system consists of the photovoltaic panels, racking systems supporting the panels, inverters, breakers, switches, cabling, power transformers, electric substation, switchyard and generator tie-line and associated materials and equipment will be installed on portions of 1,891 +/- acres of the site (see Attachment, the Conceptual Master Plan dated Oct. 7, 2022).

The Project will use First Solar, Inc. advanced, thin-film PV solar panels that efficiently produce low voltage direct current electrical power delivered to inverters and transformers throughout the Site. The Project will be remotely and continuously monitored 24 hours a day to ensure proper operation. The Project will interconnect with a new Dominion Virginia Power substation located adjacent to the existing high voltage transmission line that parallels the east side of Perkins Road. The design, installation, and operations of the substation facility will comply with all applicable local, state, and national electrical standards and codes to ensure the safety and protection of the public. Regular grounds maintenance will be conducted in accordance with Dinwiddie County Code and the Conditional Use Permit conditions. A perimeter fence constructed in accordance with the Dinwiddie County Zoning Ordinance and the National Electric Code (NEC) will secure the solar project.

The proposed Project will be required to obtain additional permits from the U.S. Army Corps of Engineers (USACE) and the Virginia Department of Environmental Quality (VDEQ). A Notice of Intent (NOI) for a VDEQ's Small Renewable Energy Projects (Solar) Permit by Rule (PBR) (Virginia Administrative Code Title 9 Agency 15 Chapter 60 (9 VAC 15-60)) has been filed. This regulation contains requirements for solar-powered electric generation projects consisting of PV systems and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 150 megawatts.

## **ATTACHMENTS**

Lily Pond Solar, LLC CUP and Rezoning Application, includes Exhibit A - Conceptual Site Plan, dated Oct. 7, 2022

## **LAND USE AND ZONING ANALYSIS**

The area is generally rural and used for silviculture and agricultural purposes interspersed with rural residential lots. The site includes forested and open agricultural land, cleared utility corridors, commercial pine timber and wetland systems associated with Brick Kiln Branch, Rowanty Creek, and Perkins Pond that are interspersed throughout the Project area. Overhead electric transmission lines traverse the northern site area in a north-south direction, and the southeastern part of the site in a northeast-southwest direction. The point of interconnection with Dominion Power's transmission system will be located at a new substation/switchyard along the existing north-south transmission corridor near Perkins Road. The area is also constrained by isolated cultural resources and aquatic resources. The preliminary site design has been designed to minimize cultural resources and to minimize impacts to aquatic resources as much as possible.

The properties in the immediate area surrounding the subject land parcels include agricultural and forested land, and low-density single-family and institutional (a church is located on Perkins Road) residential land uses. Residential land use makes up 1.2% of the project site, agricultural land makes up 8.6% of the project site, planted pines make up 13.6% of the project site, mixed pine/upland forest make up 42.1% of the project site and wetlands make up 18.7% of the project site. The properties to the north, east, south and west are zoned A-2, Agricultural General.

The vast majority of the site (>99%) drains south and west into Rowanty Creek. A very small area on the east side of the site drains east into Jones Hole Swamp. The entire Site ultimately drains into the Nottoway River. The soils in the general area are Emporia-Mattaponi-Slagle with the majority of the properties having Emporia sandy loam. The hydric soils comprise less than 2 percent of the site and are associated with drainages. According to the FEMA Floodplain maps, a small area (62 acres) of Zone A (100-year floodplain) occurs along two tributaries: upstream of Jenkins Pond in the central part of the site and along Brick Kiln Branch in the southeast part of the Site.

A primary purpose of the SED zoning district is to outline the process and requirements for the construction, installation, and operation of solar energy projects in Dinwiddie County in a manner that promotes economic development and ensures the protection of health, safety, and welfare while also avoiding adverse impacts to agricultural lands, endangered species habitats, conservation lands, and other sensitive lands.

## **OVERVIEW OF IMPACTS**

In the application request for rezoning and a conditional use permit, the applicant submitted a Community Impact Analysis, Estimated Revenue Analysis, Natural Resources Survey, Preliminary Jurisdictional Determination (ACOE), Cultural Resources Survey, Landscaping Plan and Visual Impacts/buffer 3D Models, Traffic Analysis, FAA Study, and proposed Conditions for the Conditional Use Permit request. Fiscal Impact Report, a Decommissioning Plan and the Limited National Environmental Policy Act (NEPA) Review for the project/site. The proposed Project will be required to obtain additional permits from the U.S. Army Corps of Engineers (USACE) and the Virginia Department of Environmental Quality (VDEQ). A Notice of Intent

(NOI) for a VDEQ's Renewable Energy Projects (Solar) Permit by Rule (PBR) (Virginia Administrative Code Title 9 Agency 15 Chapter 60 (9 VAC 15-60) has been filed. This regulation contains requirements for solar-powered electric generation projects consisting of PV systems and associated facilities with a single interconnection to the electrical grid that are designed for, or capable of, operation at a rated capacity equal to or less than 150 megawatts. In addition, the construction will take place in accordance with the Virginia Department of Environmental Quality (VDEQ) and the Virginia Department of Transportation (VDOT).

### Fiscal Impact

The applicant's fiscal impact report identifies that under the current land use the Property generates approximately \$6,760.00 in annual real estate tax and a projected real estate tax revenue over 45 year project lifespan of \$304,186.00. With the new use, the solar facility, anticipated annual real estate tax generated from the reassessed value (based on a \$15,000.00 per acre reassessment value) of the Property is estimated to be \$224,083.50. Over the 45-year projected lifetime of the project, the estimated real estate tax generated totals \$10,083,758.00.

The project is subject to machinery and tools tax under Va. Code Sec. 58.1-3660 and HB 1297, and the M&T revenue is estimated to be approximately \$4,036,050.00 over 45 years. The revenue share option that assesses up to \$1,400.00 per megawatt of solar project capacity with an escalator of 10% every five years beginning in 2026 creates revenues of approximately \$8,212,868.00 over 45 years. Given the two taxing scenarios, over the 45-year useful life of the Project the direct fiscal impact to the County are \$14,000,00.00 to \$18,000,000.00. Additionally, the economic contribution will generate approximately \$6.5 million in direct (construction related activity), indirect, and induced incremental activity to the economy in Dinwiddie County.

### Community Impacts

The operational life of the Project is anticipated to be approximately 45 years. During operation there will be no staff on site and the Project will be monitored remotely 24 hours per day. Additionally, a few times per year trips to the site will be from vegetation and technical maintenance personnel. The Project site areas (solar panel arrays) will be enclosed by fencing with access only allowed by authorized personnel. The visual impacts to the adjoin property owners are to be mitigated by vegetative buffers and setbacks (150 feet from all property boundaries and roads and 250 feet from Halifax Road) as detailed in the preliminary landscaping plan. The Project's construction phase is estimated to be between nine and twelve months. Construction activities are proposed to be governed by conditions in the condition use permit, which will limit days and times of certain construction activities. The operational daytime noise is proposed to be at normal conversation level at the fence line with no noise emissions at night. Lily Pond will coordinate with VDOT to ensure traffic and road safety measures will be implemented in compliance with applicable VDOT requirements (see Transportation Impacts Section). All permits have to be obtained prior to commencement of construction including the conditional use permit, site plan approval, Comprehensive Plan accord, permit by rule, land disturbance, erosion and sediment control (E&S), stormwater management, building and electrical permits. E&S measures are required to ensure protection of downstream landowners and watersheds. Stormwater management facilities are installed to meet requirements for water quantity and water quality. Finally, at the end of the useful life of the Project, Energix will be required to decommission the project as set forth in an approved decommissioning plan.

### Cultural and Environmental Impacts

The applicant commissioned the attached Cultural Resources Survey and the Comprehensive Natural Resources Studies Report. More detailed investigations and applications will be prepared as part of the VDEQ Permit By Rule (PBR) and the USACE permit application and review process as required. In accordance with §10.1-1197.6 B 1 of the Code of Virginia, the Applicant has furnished to the VDEQ a notice of intent (NOI), (posted 5/16/2019; name change submitted 3/13/2020) that it intends to submit the necessary documentation for a PBR for a small renewable energy project. Once an application has been received by VDEQ, the Applicant will access the expertise from the sister agencies that will be involved in the review of the application, i.e., Department of Historic Resources (DHR), the Department of Game and Inland Fisheries (DGIF) and the Department of Conservation and Recreation (DCR).

The aquatic resources studies (between December 2018 and February 2020) have identified a number of potentially jurisdictional USACE and VDEQ wetlands/streams on the site. An approved jurisdictional determination by the USACE will be requested as part of the permit application process. Consultation with VDEQ's Virginia Water Protection (VWP) Permit Program will take place as part of the PBR process. The site does not contain federally designated critical habitat for any species. There are no documented occurrences of protected wildlife species on or within two miles of the Project boundaries.

The wetland and stream findings were submitted to US Army Corps Of Engineers Norfolk District and a Preliminary Jurisdictional Determination (PJD) has been received on February 8th, 2021. The PJD confirmed findings of the environmental consultant. The PJD letter is included in Exhibit H- Preliminary Jurisdictional Determination (ACOE). To ensure protection of the critical wetland habitat, wetland areas will be put into a conservation status by easement or otherwise approved by the County Attorney for the duration of the Project.

A Phase I archaeological and historic architectural survey of Project area has been completed. The archaeological fieldwork was conducted from August 19 to September 17, 2019, October 4 to November 17, 2019, and February 3–15, 2020, while the historic architectural fieldwork was conducted from August 22–29, 2019 and on February 18, 2020. Twelve newly recorded and two previously recorded historic architectural properties were documented during the Project survey. All of the newly recorded and one of the previously recorded historic architectural properties are located within the Project area of potential effects (APE) but are recommended not eligible for the National Register of Historic Places (NRHP) and no further consideration is recommended for these resources. The archaeological resources portion of the report did indicate that there are substantial prehistoric resources for a portion of the project area. Related to the Civil War Battlefield portions of the Reams Station I, Reams Station II, Boydton Plank Road, and Hatcher's Run battlefields (the battlefield boundaries as delineated by ABPP CWSAC) are within the Project area.

As stated in the Cultural Resources Survey, these portions “of the battlefields located inside the project area continue to retain their integrity of location, setting, feeling, and association”. (see the attached ABT, NPS, NPCA Comment Letter)

### School System, Public Safety, & Public Utilities Impacts

There are no impacts to the school system with the proposed rezoning allowing for construction of the solar energy generating facility. The potential impact on public safety with the rezoning

of the subject property include the proposed solar arrays, inverter and transformers, and electric substation and generators having to address fire protections as required by the applicable National and local Fire Code and Building Code. The impact on public utilities involves the electric substation, switchyard and the point of interconnection with the Dominion Energy transmission line.

### Transportation Impacts

With utility scale solar energy facilities generating very few vehicle trips after the initial construction period, the post-construction impacts on the existing transportation network are minimal. The proposed solar energy facility will generate substantial traffic during construction and have an impact on the secondary roads in the area. A majority of the traffic generated is truck traffic delivering materials to the site and traffic generated from construction vehicles and construction workers travelling to the site. The secondary roads in the general area of the site are not designed for large volumes of heavy traffic and as a result, increased road maintenance costs may arise.

To ameliorate the impacts of the increased traffic on area roads VDOT is recommending that a Construction Traffic Management Plan (CTMP) be required to account for the transportation impacts related to the development of the property. The CTMP includes (1) a plan to show proposed construction access routes to the development site from the State primary routes; (2) a pre-construction assessment of the condition of the secondary roadways to be used as a haul route to the facility with a commitment from the applicant to repair any damage caused during construction and to restore the roadways to pre-construction conditions; and (3) a plan to identify on-site areas suitable for parking for the construction workers and areas exist on-site to allow trucks to be unloaded and to turn around without having to back onto State maintained roadways.

Additionally, VDOT anticipates that multiple low-volume commercial entrances are required to serve the proposed solar energy facility. The low volume commercial entrance has to demonstrate that stopping sight distance based on the posted speed limit is available at the proposed entrance location. All future transportation related improvements for the construction entrances and commercial entrances will have to meet VDOT design and construction requirements and standards as part of VDOT's permitting process.

### **PLANNING COMMISSION ACTION**

The Planning staff has reviewed the request to rezone the property from A-2, Agricultural General to SED, Utility Scale Solar Energy District to allow for a solar energy-generating project and with the subject request, there are impacts and the Planning Commission ultimately must weigh those impacts against the benefits of the conditional use permit with attached conditions.

The Planning Commission should consider all of the following factors set forth in Zoning Ordinance Sec. 22-22:

As set forth in the Zoning Ordinance Sec. 22-22. (Conditional use permits generally), *“Any provisions of this Chapter which allow a use with a conditional use permit shall not prohibit the Board of Supervisors from denying an application for a particular permit upon finding, after public hearing, that the issuance of such permit would not be in compliance with the intent, purpose and design of this Chapter and/or Section 22-2 of this Code”*. Section 22-2. (Purpose and design of chapter) states that *“For the purpose of promoting the health, safety and general*

welfare of the public and of further accomplishing the objectives of Va. Code Section 15.1-427 of the Code of Virginia, 1950, as amended, the provisions of this chapter are hereby adopted as the zoning regulations of the County, together with the accompanying map. This Chapter has been designed:

- 1) *To provide for adequate light, air, convenience of access and safety from fires, floods and other dangers;*
- 2) *To reduce or prevent congestion in the public streets;*
- 3) *To facilitate the creation of a convenient, attractive and harmonious community;*
- 4) *To expedite the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements;*
- 5) *To protect against destruction of or encroachment upon historic areas; and*
- 6) *To protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation or loss of life, health or property from fire, flood, panic, or other dangers.”*

C-23-1 Conditional Use Permit Conditions:

1. The use of the property shall be limited to an 80-megawatt alternating current (MW AC) ground-mounted solar photovoltaic electric generating facility (the “Project”). The project site (the “Project Site”) shall consist of portions of fourteen (14) parcels of land identified as Dinwiddie County Tax Map Parcels (the “Project Parcels”) and consisting of approximately 1,891 acres will be rezoned to Utility Scale Solar Energy District (SED) and utilized for the Project. The Project will be developed in substantial conformity with the preliminary site plan as revised and dated October 2, 2022 and included with the CUP application (the “Conceptual Site Plan”). The Project Site shall include the areas shown on Conceptual Site Plan and as may be shown on the final site plan (the “Final Site Plan”) containing racking, panels, inverters, transformers, cabling, substation , switchyard, and supporting infrastructure (collectively, the “Solar Facilities”) to include stormwater management areas. Onsite battery energy storage devices shall not be allowed. Battery energy storage devices associated with inverters shall not be subject to this provision and shall be considered “supporting infrastructure”.
2. The Applicant (or “Owner” or “Operator”, which may be used interchangeably) shall develop the Project Site in substantial accord with the Conceptual Site Plan as determined by the Zoning Administrator. Significant deviations or additions, including any enclosed building structures not shown on the Conceptual Site Plan shall require review and approval by the Planning Commission.
3. Studies and Plans. Prior to or concurrent with the submission of the Site Plan, the Applicant will submit to the County the studies and plans as set forth in this Section 3.
  - (a) Construction Management Plan (the “Construction Management Plan”). Applicant will submit the Construction Management Plan, including the following items:

- i. Proposed construction schedule and hours of operation;
- ii. Project access planning for each entry to the Project and any required road improvements;
- iii. Project security measures to be implemented prior to the commencement of construction of the Solar Facilities;
- iv. Dust mitigation and any burning operations; and
- v. Handling of construction complaints via a project liaison (the “Project Liaison”).

(b) Construction Traffic Management Plan/Traffic Mitigation Plan (the “CTMP”) and Road Repair Plan (the “Road Repair Plan”). The Applicant shall:

- i. Develop the CTMP in consultation with the County Planning Staff, the Virginia Department of Transportation (“VDOT”), the Dinwiddie County Sheriff’s Office, and the Virginia State Police to identify and expeditiously resolve or mitigate traffic issues that arise during the construction or decommissioning of the Solar Facilities, including but not limited to (A) lane closures, (B) signage, and (C) flagging procedures. Employee and delivery traffic shall be scheduled and managed so as to minimize conflicts with local traffic. Permanent access roads and parking areas will be stabilized with gravel, asphalt or concrete to minimize dust and impacts to adjacent properties. Traffic control methods shall be coordinated with VDOT prior to initiation of construction. The CTMP will identify on-site areas suitable for parking for construction workers and for trucks to be unloaded and to turn around without having to back onto public roadways during construction and decommissioning.
- ii. Develop the Road Repair Plan in consultation with VDOT to provide for repair of damage to public roads occurring within five hundred (500) feet of any entrance to the Project attributable to construction or decommissioning of the Solar Facilities. The Road Repair Plan shall provide that such repair restore the roads to conditions at least comparable to their conditions before the commencement of construction or decommissioning.

(c) Landscaping Plan (the “Landscaping Plan”) The Applicant shall submit the Landscaping Plan showing the Solar Facilities and the Project, including the security fence, screened from public rights-of-way and adjacent residential properties with existing or proposed vegetation, including the vegetative buffer surrounding the Project. The vegetative buffer shall be located outside of any public utility easement, if any, running along the property line. The vegetative buffer provided in the Landscaping Plan shall conform to the following requirements:

- i. The vegetative buffer will consist of trees and/or shrubs which at planting shall be a minimum of six (6) feet in height;
- ii. Existing vegetation will be maintained where possible and supplemented, as necessary;
- iii. The vegetative buffer will be regularly inspected and supplemented with additional plantings as necessary to replace dead trees and shrubs. To ensure this process is completed on a timely basis, Applicant will provide for an annual third-party inspection of the buffer which third-party will submit a report detailing the condition of the buffer and any needed replanting or supplementing due to thinning or vegetative attrition. A copy of this report will be provided to Applicant and County staff and Applicant will ensure the remedial measures are addressed.

Applicant shall also provide the following:

- iv. The Applicant shall submit renderings along with the Site Plan describing the buffer areas, specifically delineating the areas where existing vegetation is to be maintained or supplemented and areas where the vegetative buffer will be established;



- v. The Landscaping Plan for Halifax Road shall include sufficient landscaping to screen the solar panels from view by the motoring public driving along Halifax Road. The determination of satisfaction of this requirement shall be made by the Zoning Administrator as part of the approval of the Site Plan.
- vi. The Landscaping Plan will include the location, acreage and plan of care for a pollinator garden and bee cultivation area established in accordance with the Virginia Pollinator Smart guidelines. No plants on the Department of Conservation and Recreation's Invasive Plants Species List will be used.
- vii. Provisions for the establishment of the vegetative buffer in core areas either prior to or simultaneous with the commencement of construction of the Facility to ensure those new vegetative buffers are well-established prior to the completion of the Facility.
- viii. A twenty thousand dollar (\$20,000.00) landscaping bond will be posted for ten (10) years to ensure maintenance of the vegetative buffer in accordance with the Landscaping Plan. The bond shall be in a form acceptable to the County Attorney and shall be in place at the time of final site plan approval. The bond shall be replenished by Applicant in the event it is drawn upon by the County on or before December 31 of any given year during the first ten (10) years of the Project, calculated from the date of commencement of operation of the Project.

(d) Building and Electrical Plans. The Applicant shall submit building and electrical plans to the Building Official for approval.

(e) Final Environmental and Historic Survey Studies. The Applicant shall prepare and submit to the appropriate agencies (as applicable) the following studies and reports, and provide copies to the County:

- i. Wetland and Stream Delineation, including Preliminary Jurisdictional Determination from the Army Corps of Engineers;
- ii. Threatened and endangered species habitat assessment; and
- iii. Phase 1 archaeological and historical survey of the Project.

(f) Liability Insurance Certificate. The Applicant shall provide proof of adequate liability insurance for the Project.

(g) Grading Plan. The Project shall be constructed in compliance with the County approved grading plan (the "Grading Plan") as determined and approved by the Planning Director or its 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. Balance the earthwork on-site with no import or export of soil, with the exception of construction of any berms, if any, as otherwise provided herein;
- 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, provide that topsoil will first be stripped and stockpiled on-site to be used to increase the fertility of areas intended to be seeded; and
- 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.

(h) Erosion and Sediment Control Plan. Unless the County chooses not to opt out of the Erosion and Sediment control program, thereby delegating that authority to DEQ, the County may undertake a third-party review of the Erosion and Sediment Control Plan with corrections completed prior to the County's review and approval of the Site Plan. The Owner or Operator shall construct, maintain and operate the Project in compliance with the approved plan, posting an Erosion and Sediment Control bond (or other security) for the construction portion of the project.

(i) Stormwater Management Plan. The County may require 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) shall be posted for the project for both construction and post construction as applicable and determined by the Environmental Administrator. If the County chooses to opt out of Stormwater Management, DEQ will conduct all necessary Stormwater Management control review.

(j) Initial Groundwater Report. Prior to issuance of the building permit, the Applicant shall submit the initial groundwater monitoring report and confirm the schedule for updated reports as required by Section 22-234.67 of the Dinwiddie County SED District Regulations.

(k) Reimbursement for Third Party Reviews; Inspections. During the development of the Project, Applicant agrees to refund the County up to \$50,000 per year for any costs associated with the provision and/or employment of outside experts and consultants necessary to review specific technical issues related to the Project outside the County's expertise or for which the County has inadequate full-time staff. This provision shall commence upon submission of a Final Site Plan for approval by the Planning Director and continue through the date of commencement of commercial operation (the "Commercial Operation Date") for the Project, at which point this condition shall be deemed satisfied and the obligation will terminate. However, Applicant agrees to reimburse the County for up to the actual costs of employee time for inspection and other permit compliance duties, not to exceed 40 hours, in any calendar year during the life of the Project to off-set the costs to the County of inspections and other permit compliance duties. During this time, the County shall submit to Applicant invoices for such costs not less than quarterly and such invoices shall be paid within thirty (30) days of receipt.

4. Site Plan Features. The Final Site Plan will include and the Project will be developed in substantial conformity with the Conceptual Site Plan dated April 30th, 2021 and included with the CUP application and will include:

- (a) a 250-foot setback maintained from the fence line of the Project to the edge of the right-of-way where the Site abuts the public rights-of-way along Halifax Road:
- (b) a 150-foot wide setback for the remaining perimeter of the Project Site will maintained between the fenced solar arrays and the property lines of the adjoining properties.

- (c) A vegetative buffer of will surround the perimeter of the Project Site. Existing trees and vegetation will be retained where possible and additional vegetation added where necessary as provided in the Landscaping Plan;
- (d) wildlife corridors maintained between fenced areas to promote the travel and feeding of wildlife;
- (e) all access points, drives, turnouts, etc. that connect to Halifax Road and Perkins Road Road;
- (f) no setbacks for the electrical collection/transmission lines right of ways; and
- (g) a substation to be located on Tax Map Parcel 61-5.
- (h) landscaping along Halifax Road as otherwise provided herein and as depicted in the Landscaping Plan as part of the Final Site Plan.

5. **Limited Access to the Project.** The Project may have the access as shown on the Conceptual Site Plan but access shall not be allowed to the Project from either Lily Pond Road or Frog Lick Road.
6. **Lighting.** During construction of the Solar Facilities, any temporary construction lighting shall be positioned downward, inward, and shielded to minimize glare from all adjacent properties. Emergency and safety lighting shall be exempt from this construction lighting condition. Any onsite 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.
7. **Access and Inspections.** The Applicant and property owners shall allow designated County representatives or employees access to the facility at any time for inspection purposes. Access and Inspection. The Applicant will allow designated County representatives or employees access to the facility at any time for inspection purposes, with advance notice to the Owner or Operator of the Project and subject to reasonable site safety and security requirements to ensure safe inspection by the County. The Project may be inspected by the County Building Official on an annual basis to ensure compliance with applicable State Building and Electrical Codes. The Project shall be required to have the Solar Facilities inspected annually for three (3) years by the Zoning Administrator or their designee following the commencement of commercial operation in order to verify continued compliance with the Conditional Use Permit and the Zoning Ordinance, as applicable. Additional inspections shall be conducted as necessary in the event of complaints and shall not replace the inspections specified in this section.
8. **Training.** The Applicant shall arrange a training session with the Dinwiddie County Public Safety Departments to familiarize personnel with issues unique to a solar facility before operations begin and shall repeat such training on an as-needed basis not to exceed once per year.

9. Compliance. The Solar Facility shall be designed, constructed, and tested to meet all relevant local, state, and federal standards as applicable.
10. Groundwater Monitoring. To establish the current groundwater quality and levels of specific element contaminants, groundwater monitoring shall take place prior to and upon completion of construction of the Project throughout the area of the Project. Groundwater monitoring shall take place every five (5) years of the operation of the Project, and upon completion of decommissioning, with each report provided to the Zoning Administrator.
11. Signage. Warning signage shall be placed on the Solar Facilities to the extent required by any local, state or federal law or regulation. The Solar Facilities shall not be used for displaying any advertising except for reasonable identification of the Owner and Operator of the Project. All signs, flags, streamers or similar items, both temporary and permanent, are prohibited on the Solar Facilities except as follows: (a) manufacturer's or installer's identification; (b) appropriate warning signs and placards; (c) signs that may be required by a governmental agency; and (d) signs that provide a 24-hour emergency contact phone number and warn of any danger.
12. Agricultural Use Value Program and Applicable Taxes and Fees. For any Project Parcel that has been part of the Agricultural Use Value program pursuant to Virginia Code Sections 58.1-3230 and 58.1-3231 during the past five years, all penalties and interest payments that are due to the County will be paid within ninety (90) days of issuance of the CUP.
13. Project Components and Design. The Solar Facilities shall comply with generally accepted national environmental protection and product safety standards for the use of solar panels and associated technologies for solar photovoltaic projects. The Project shall be constructed in compliance with the requirements of the most current Virginia Building and Electrical Codes in effect upon issuance of the building permit. The total height of the Solar Facilities shall not exceed 18 feet above the ground when orientated at maximum tilt. This height limitation shall not apply to the power poles, substation equipment and the connections to the existing transmission lines on the Property. Any electrical wiring used in the Project shall be underground (trenched) except:
  - (a) wiring directly connecting individual panels or arrays of panels,
  - (b) where necessary to avoid natural obstacles, wetlands or electrical interference, or
  - (c) where wiring is brought together for interconnection to system components, substations, and/or the local utility power grid.
14. Decommissioning.
  - a. Decommissioning Plan. The Applicant shall submit a decommissioning plan (the "Decommissioning Plan") to the County in the form of a written agreement for approval in conjunction with the building permit. The Decommissioning Plan shall be in the form of a written agreement acceptable to the County, shall comply

with Virginia Code Section 15.2-2241.2, as amended, and the Zoning Ordinance, and shall set forth the joint and several responsibilities of the Applicant and all the successors and assigns of the Applicant (the “Responsible Party”). The purpose of the Decommissioning Plan is to specify the procedure by which the Responsible Party would remove the Solar Facility after the end of its useful life and restore the property for agricultural uses.

- b. Decommissioning Cost Estimate. The Decommissioning Plan shall include a decommissioning cost estimate (the “Decommissioning Cost Estimate”) prepared by a Virginia licensed professional engineer.
  - i. The Decommissioning Cost Estimate shall provide the gross estimated cost to decommission the Solar Facilities in accordance with the Decommissioning Plan and these Conditional Use Permit Conditions. The decommissioning cost estimate may include any estimates or offsets for the resale or salvage values of the Solar Facilities equipment and materials.
  - ii. The Responsible Parties shall reimburse the County for an independent review and analysis by a Virginia licensed professional engineer of the initial Decommissioning Cost Estimate.
  - iii. The Responsible Party shall update the Decommissioning Cost Estimate every five (5) years from the Commercial Operation Date and reimburse the County for an independent review and analysis by a Virginia licensed professional 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 Decommissioning Cost Estimate. A financial security (the “Financial Security”) shall be provided in accordance with Virginia Code Section 15.2-2241.2 and the Zoning Ordinance.
  - ii. Upon the receipt of the first revised Decommissioning Cost Estimate (following the 5th anniversary from The Commercial Operation Date, if there is any increase in the Decommissioning Cost Estimate, the Financial Security shall be increased by the Applicant, or its successors and assigns, within ninety (90) days and shall be similarly trued up for every subsequent five year updated Decommissioning Cost Estimate.
  - iii. The Financial 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 the County receives notice that the Financial Security may be revoked, the County may give a notice of violation in accordance with these Conditional Use Permit Conditions and if the violation is not cured, the County shall be entitled to take all action to obtain the rights to such financial 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.
- d. Applicant Obligation. Within six (6) months after the cessation of use of the Solar Facilities for electrical power generation, the Applicant or its successors and assigns, at their sole cost and expense, shall commence decommissioning of the Solar Facilities in accordance with the Decommissioning Plan approved by the County. Following the completion of decommissioning of the entire Solar Facilities arising out of a default by the Applicant, or its successors and assigns, any remaining Financial Security held by the County shall be distributed to the Owner or Operator of the Solar Facility.
- e. Applicant; Decommissioning by the County.
  - i. If the Applicant, or its successors or assigns, fail to timely decommission the Solar Facilities, the County shall have the right, but not the obligation, to commence decommissioning activities and shall have full access to the property and access to the full amount of the Financial Security.
  - ii. If applicable, any excess Financial Security shall be returned to the Owner or Operator, or their successors or assigns, after the County has completed the decommissioning activities.
  - iii. Prior to the issuance of any permits, the Applicant shall deliver a legal instrument to the County granting the County the right to access the property to complete the decommissioning upon the Applicant, Owner or Operator's default. Such instrument(s) shall bind the Applicant and their successors, heirs, and assigns. 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. Equipment/building removal. All physical improvements, materials, and equipment related to Solar Facilities, both surface and subsurface components, shall be removed in their entirety. The soil grade shall also be restored following disturbance caused in the removal process. Perimeter fencing shall be removed and recycled or re-used. The County in its sole discretion may grant an exception to removal of the materials and equipment upon written request from the current or future landowner indicating areas where removal is not desired.
- g. Infrastructure removal. All access roads shall be removed, including any geotextile material beneath the roads and granular material. The County in its sole discretion may grant an 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 to leave all or a portion of these facilities in place for use by that landowner. Access roads shall be removed within areas that were previously used for agricultural purposes and topsoil shall be redistributed to provide

substantially similar growing media as was present within the areas prior to site disturbance.

- h. **Partial Decommissioning.** If decommissioning is triggered for a portion of the Solar Facilities, then the Applicant or its successor or assigns shall 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 subject to the Decommissioning Plan. In the event of a partial decommissioning, the financial security shall be reduced in direct proportion to the proportion of the Project being decommissioned. 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.

15. Permits, reports, etc.

- a. **Regular Reports.** Prior to the Commercial Operation Date of the Project, the Applicant shall submit a report annually to the County Administrator outlining the permitting and development plan progress for the Project. After the Commercial Operation Date, the Applicant shall submit an annual operational report to the County Administrator.
- b. All applicable federal, state, and local permits shall be obtained and filed with the Dinwiddie County Planning Department prior to the Commercial Operation Date. This Conditional Use Permit is effective only upon receipt by the Dinwiddie County Planning and Zoning Department of all such permits.
- c. All applicable federal, state, and local permits shall be maintained in good standing by Owner or Operator. Owner or Operator shall provide copies of such permits to Dinwiddie County Planning and Zoning Department during operations. Failure to maintain all applicable permits shall be grounds for revocation of this Conditional Use Permit.
- d. Copies of violations and/or reports to or from applicable federal and state agencies shall be made available to Dinwiddie County upon request of the County.

16. Project Liaison. The Applicant will designate at least one public liaison (the “Liaison”), will publicize a toll-free phone number and email address for communication with the Liaison during construction, and will post such information on a temporary sign at each major access point to the Solar Facilities. The Applicant shall, at a minimum, publish this information on the Operator’s website and provide the Zoning Administrator with the same information for publication on the County’s website and other social media. The Liaison shall act as a point of contact between citizens and construction crews. The Liaison shall be available in person and by phone during active construction hours and

shall respond to any questions related to the Solar Facilities or the Project within 72 hours. The Liaison role shall commence at the initial preconstruction meeting. The Liaison shall prepare a monthly report detailing any complaints, complaint date, resolution, and resolution date of any inquiries. The Liaison shall provide a copy of the report to the Zoning Administrator on the first business day of each month throughout the construction period and for an additional six (6) months following the Commercial Operation Date.

17. Compliance with laws. All operations pursuant to this conditional use permit shall be conducted in compliance with all applicable federal, state and local laws and regulations. In the event of a conflict, the CUP Conditions control.
18. Annual review. This CUP shall be reviewed a minimum of once per calendar year to evaluate compliance with conditions contained herein.
19. Violations and Revocation. At all times, all activities conducted on the Project Site shall be in conformance with the CUP and all federal, state and local laws, regulations and ordinances. In the event of a conflict, the CUP Conditions control. A violation of any type continuing for 60 days from the date a written notice of violation (“NOV”) is mailed to the Applicant’s point of contact, as designated in writing to the Zoning Administrator, may result in revocation of this CUP if the Operator has failed to meet with the Zoning Administrator and submit a plan to address the violations cited in the NOV. With respect to any road repairs necessitated by the Operator’s use of the roads during construction, any such repairs shall be made within a reasonable period of time after obtaining approval from VDOT. Failure to comply with any and all conditions as approved by the Board of Supervisors may result in this CUP being revoked after a public hearing by the Board.
20. Successors and Assigns. The CUP and the Conditions shall apply to the Applicant and any successors or assigns of the Applicant.

### **Planning Commission Recommendation**

Since this is a zoning matter, the standard statement regarding the Planning Commission’s recommendation on this zoning matter must be read. In order to assist, staff prepared the following motions:

#### ***Motion to recommend approval to the Board of Supervisors with conditions:***

**BE IT RESOLVED, that in order to assure compliance with Virginia Code Section 15.2-2286(A) (7) it is stated that the public purpose for which this Resolution is initiated is to fulfill the requirements of public necessity, convenience, general welfare and good zoning practice, I move that conditional use permit request, C-23-1, as presented, be recommended for approval with conditions to the Board of Supervisors.**

#### ***Motion to recommend disapproval to the Board of Supervisors:***



**BE IT RESOLVED, that in order to assure compliance with Virginia Code Section 15.2-2286(A) (3) & (7) and Zoning Ordinance Sections 22-22 and 22-2 it is stated that the public purpose for which this Resolution is initiated is to fulfill the requirements of public necessity, convenience, general welfare and good zoning practice, I move that conditional use permit request, C-23-1, as presented, be recommended for disapproval to the Board of Supervisors as the issuance of a conditional use permit would not be in compliance with the intent, purpose, and design of the Dinwiddie County Zoning Code.**