

MEMORANDUM

TO: Dinwiddie County Planning Commission

FROM: Jasdeep Singh Khaira, Esq., Gentry Locke Attorneys

DATE: February 24, 2023

SUBJECT: Analysis of Lily Pond Solar’s Conformity with the Dinwiddie County Comprehensive Plan

Members of the Planning Commission,

Attached is a memorandum in support of Lily Pond Solar’s request for a determination that their proposed project is “substantially in accord” with the Dinwiddie County Comprehensive Plan pursuant to Va. Code § 15.2-2232.

I. Summary

Lily Pond Solar, LLC (“Applicant”) requests that the Dinwiddie County (the “County”) Planning Commission review Lily Pond Solar (the “Project”) for conformity with the Dinwiddie County Comprehensive Plan (the “Plan”) pursuant to Va. Code § 15.2-2232. This request provides information needed for the County determination that the Project is “substantially in accord” with the Plan.

The Project is a solar electric generation facility with the capacity to deliver up to 80 megawatts (“MW”) of electricity to the electric transmission system that serves the County and surrounding area. The Project parcel identification numbers are 48-49, 48-52, 48-59, 61-5, 61-6, 62-24, 62-33, 61-24A, 62-21, 62-22, 62-5, 62-6, 62-33A, 62-20, 61-7, 62-3, 62-19, 48-56, and 61-3 (the “Parcels”). While these 19 parcels total approximately 1,891 acres, the arrays used for the Project will occupy less than 500 acres.

II. Va. Code §15.2-2232 “Substantially in Accord” Determination

Va. Code §15.2-2232 provides that the County’s Comprehensive Plan controls “the general or approximate location, character, and extent of each feature shown on the plan.” For any “public

utility facility” that is proposed after the adoption of the Comprehensive Plan, the County’s Planning Commission is tasked with determining whether the “*general location or approximate location, character, and extent thereof [of the public utility facility] . . . is substantially in accord with the adopted comprehensive plan or part thereof* (emphasis added).” Because the Project is considered a public utility facility pursuant to Va. Code § 56-232, the Planning Commission is called upon to determine if the proposed “general location or approximate location, character, and extent” of the Project is “substantially in accord” with the Plan. In this context, “substantially in accord” is interpreted to mean “*largely, but not wholly.*”¹

III. The Project’s Location is in Conformity with the Plan

The Project Complies with the Zoning Ordinance

The Dinwiddie County Zoning Ordinance (the “Ordinance”) is the primary tool used to implement the Plan. As a result, when evaluating a solar facility for conformity with the Plan, a foundational question to consider is how and whether the facility is permitted within the zoning district where it is proposed. The Ordinance defines a “solar energy project, project or solar energy farm” as follows:

(A) renewable energy project that either: (a) generates electricity from sunlight, consisting of one or more photovoltaic (PV) systems and other appurtenant structures and facilities within the boundaries of the site, or (b) utilizes sunlight as an energy source to heat or cool buildings, heat or cool water, or produce mechanical power by means of any combination of collecting, transferring, or converting solar generated energy, and (c) does not meet any of the following criteria: has a disturbance zone equal to or less than two acres, is mounted on or over a building or parking lot or other previously disturbed area, or utilizes integrated photovoltaics that blends into the outer surfaces of buildings, roadways and vehicles.²

The Project meets the solar energy project definition because it generates electricity from sunlight and consists of more than one photovoltaic system, which along with other appurtenant structures, will remain within the boundaries of the site. The Parcels are currently zoned

¹ The Albemarle County Land Use Law Handbook Kamptner/March 2022, p. E-2.

² Zoning Ordinance of Dinwiddie County, Virginia § 22-234.51.

Agricultural, General, A-2. As directed by the Ordinance, the Applicant has submitted a request to rezone the site from A-2 to SED the Utility Scale Solar Energy District (“SED”), which is a single use district with specific restrictions and requirements for solar energy projects.³ The Project complies with the Project design and application requirements required by the SED. Subject to the County’s approval of the rezoning to SED and pursuant to the negotiated terms of a Conditional Use Permit, constructing and utilizing a solar energy project is an acceptable use of the parcels within the SED, conforming to the Ordinance and, by extension, the Plan.

The Project is not Located in the Planned Growth or Urban Areas

One of the Plan’s Policy Statements is to “maintain and enhance the County’s ability to coordinate a balanced land-use program among various types of residential, commercial, and industrial interest by encouraging development within areas defined as growth centers and/or growth corridors.”⁴ Another policy is to “[p]rotect and manage existing growth areas experiencing residential and commercial pressure...”⁵

The County is divided into three planning areas: (I) planned growth; (II) urban; and (III) rural conservation.⁶ The Plan states that the Planned Growth Area is designed to accommodate medium to high density, single-family and multifamily subdivision development, as well as complimentary service and convenience commercial activities and regional commercial centers.⁷ Industrial and manufacturing development is also encouraged in the Planned Growth Area and Urban Area along Highway 460 into Route 1; along Frontage Road and Blue Tartan Road; along Simpson Road, and Weakley Road, Flank Road, the Collier Railroad Yard, Church Road, and

³ Zoning Ordinance of Dinwiddie County, Virginia § 22-234.50.

⁴ Dinwiddie County Comprehensive Plan at XI-15

⁵ *Id.*

⁶ Dinwiddie County Comprehensive Plan at X-15

⁷*Id.*

Squirrel Level Road in general.⁸ The Plan describes the Urban Planning Area as containing medium to high-density residential, commercial, and industrial development. Sewer, water and roads are available for future growth with some upgrades and extensions needed to accommodate higher density residential and heavy commercial and industrial development.⁹

The Project is located north of Carson Road (State Route 703); south of Reams Drive (State Route 606); west of Halifax Road (State Route 604); and along Perkins Road (State Route 605). Based on the Plan's Development Concept Map,¹⁰ the Project does not fall within the Planned Growth or Urban Planning Area, meaning the Project does not restrict the County's ability to promote and approve development in the areas of the County that have been identified for concentrated development.

The Project is Located in the Rural Conservation Area

The Plan states that the Rural Conservation Area is to remain in the following least intensive land use categories: low density residential, agricultural, and natural Conservation Areas.¹¹ In the time since the Applicant submitted the initial application for the Project in 2021, the Applicant has worked with County Staff, elected officials, key stakeholders and the surrounding community to make significant design modifications to further enhance the project's suitability to the Rural Conservation Area. As an example, Applicant has drastically reduced the agricultural acreage within the Project site. Under the original application, the Project was planned to utilize nearly 160 acres of agricultural land. The Project was reconfigured and amended so that it will now occupy less than 40 acres of agricultural land (see Exhibit A). In order to ensure a net-

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at Map X-1.

¹¹ *Id.* at X-15.

zero impact to Dinwiddie County farmland, Applicant is actively working to avoid those 40 acres from the Project as possible upon final Site Design. Once the design is finalized, the Applicant will offset any agricultural acreage that remains in the Project by converting other unused area controlled by the Applicant into arable land suitable for agricultural production, which will be leased to a local farmer at no cost.

The Project has been designed and contain features that help support the “natural conservation” goal of the Plan. The Project will support pollinators by establishing pollinator gardens through the site to support local population of critical pollinator species such as butterflies, bees, monarchs, hummingbirds and more. Additionally, a special pollinator meadow will be planted on the corner of Halifax Road and Brick Road where the local beekeeper’s club will place and maintain honeybee hives. The Project has also been reconfigured to remove large continuous fenced areas and instead utilize smaller fenced areas to allow for wildlife movement. In total the Project features more than four miles of wildlife crossings and habitat between project arrays and preserves wide and vegetated areas of wetlands as additional wildlife corridors. The Applicant will plant wildlife forage species in and around the corridors to attract animals to use them.

Solar Facilities are also impermanent uses that preserve land use flexibility for the future. Unlike a subdivision or industrial facility, at the conclusion of the operational life of the solar farm, the facility will be decommissioned, and the land may again be suitable for agricultural or other uses. Additionally, when land is put in solar production, it actively excludes other intensive uses, like continued residential and industrial development, which may not conform to the vision of the Plan. The temporary solar use effectively ‘saves’ or ‘banks’ the land for 45 years and once the Project is decommissioned, the land can be either put back into timber and agricultural production or transitioned to another valuable use.

The Project Helps Protect the County's Historic Resources

One policy and goal listed in the Plan is to conserve and protect the County's historic resources.¹² To do this, the Plan calls for preservation and protection of the County's historic sites and cultural heritage and preservation of the County's scenic, cultural, and historic resources which are essential to both the County's rural and historic character and the overall quality of life.¹³ The Project is designed to protect and preserve the most critical historic resources within and nearby the Project. A Phase I Cultural Survey was carried out by a consultant to identify these resources. The Applicant has coordinated with the Virginia Department of Historic Resources (DHR) to discuss mitigation efforts and will avoid significant areas. The Applicant will continue to work with DHR and the Virginia Department of Environmental Quality through the Permit by Rule process. A conservation easement will be established for approximately 69 acres of areas associated with historic battlefields for the duration of the Project ensuring the land will remain undisturbed, with no clearing, grading, construction, or erection of any structures. Current vegetation will be maintained, and these areas will remain outside of the Project's fences and with vegetive screening to prevent impact to historic watershed.

The Project will not adversely affect the County's environment

One goal the Plan provides is protect the County's environment.¹⁴ The objectives to achieve this goal include: protecting the environment and conserving resources for future uses; assuring that new development minimizes adverse impacts on the natural and/or built environment; protecting and preserving the County's agricultural lands and activities; protecting the availability, quantity and quality of Lake Chesdin, all surface water and groundwater resources; maintaining

¹² Dinwiddie County Comprehensive Plan at XI-1, XI-6.

¹³ *Id.* at XI-6.

¹⁴ *Id.*

and enhancing the agricultural resources as an integral sector in the County; and protecting and preserving the natural and physical environment.¹⁵ The Plan also states that because Dinwiddie County is an “attainment jurisdiction” under the Clean Air Act, the County must remain vigilant on air quality issues and future land uses that could affect local air quality.¹⁶

The Project has been designed to include extensive erosion control practices and stormwater management infrastructure during construction and operation to ensure the Project does not impact the Rowanty Creek watershed. Rowanty Creek is a tributary to the Nottoway River and thus will not impact Lake Chesdin, which is identified as an important resource by the Plan. These practices and design features were designed to comply with or exceed the Virginia Department of Environmental Quality regulations applicable to the Project. Once the Project is complete and the site is fully vegetated and stormwater infrastructure is installed, the Applicant expects the Project to be a net benefit to the watershed compared to the current use of the land.

Except for second hand vehicle air emissions created during the construction, the Project will not create any airborne emissions nor will it utilize any ground or surface water. Regarding soil, the Project effectively “banks” the underlying land for 45 years allowing the soil, and the microbes and organic matter within it, to replenish, which will improve the soil quality. The Project’s pollinator habitat around the Project and the native seed mixes used throughout the Project improve rainwater absorption rates and improve local water quality. Additionally, as previously mentioned the Project has made significant design modifications to create a net-zero impact to the County’s total farmland.

¹⁵ *Id.*

¹⁶ *Id.* at X-6.

The Project ensures the County’s scenic beauty is protected by screening the Project from view through the use of extensive setbacks from nearby properties and roads and a comprehensive buffering plan, as detailed in the permit application. The Project has increased setbacks to 150 feet from all property boundaries and roads with a small section of Halifax Road having a proposed setback of 250 feet due to road elevation. In areas where existing vegetation does not provide sufficient screening, the screen will be supplemented with additional vegetation planted at six feet in height, which exceeds the four feet minimum requirement required by the County Ordinance.¹⁷

IV. The Project’s Character, and Extent are in Conformity with the Plan.

The Project will Provide Economic Benefits to the County

A major goal for the County is “strengthening the economic base of the County through broad-based economic development.”¹⁸ The Project represents an opportunity to generate significant tax revenue which allows for increased investment in County services and infrastructure without the offsetting costs associated with increased demand for public utilities, solid waste disposal, human services, or public education that are often associated with other types of development. The revenues from the Project can be directly allocated to local schools and core county services and local infrastructure improvements. As explained in greater detail in the Applicant’s Conditional Use Permit Application, the Project will voluntarily pay the greater sum between the Machinery and Tools Tax and Revenue Share every year to ensure that the County is receiving the maximum benefit that the project can provide. The Applicant’s current calculations show that this would result in the payment of Machinery and Tools Tax revenue for the first 11

¹⁷ Zoning Ordinance of Dinwiddie County, Virginia § 22-234.65.

¹⁸ Dinwiddie County Comprehensive Plan at XI-6.

years of the Project and Revenue Share for the remainder of the Project's 45-year lifetime, amounting to a total value to the County of around \$18,597,903.00.

The Project would also support local workers through construction jobs and ongoing operations and maintenance jobs. The Applicant, as they have in other projects in Virginia, prefers to use as much local labor and contractor support as possible when constructing their projects. Additionally, employers are increasingly looking to operate in localities that can provide access to carbon-free energy. The Project has the potential to attract future businesses and employers that are seeking to set roots in areas that support clean renewable energy.

V. Conclusion

Pursuant to the requirement of Va. State Code §15.2-2232, the Applicant asks that the Planning Commission confirm that the Project is substantially in accord with the Plan. As detailed above, this project is in conformance and helps implement the Plan.

EXHIBIT A