

**At a Joint Public Hearings of the
Sussex County Board of Supervisors
and the Planning Commission
Held at the Sussex Central Elementary School Gymnasium on
Monday, June 3, 2024 at 6 pm**

BOARD MEMBERS PRESENT

Thomas W. Baicy, III
C. Eric Fly, Sr.
Alfred G. Futrell
Wayne O. Jones
Phyllis T. Tolliver
Rufus E. Tyler, Sr.
Steve D. White

PLANNING COMMISSIONERS PRESENT

Kevin Bracy
J. Lafayette Edmonds
Roger King
Elena Grinstead
Dennis P. Mason
Terry Massenburg
Andrew Mayes
Rudolph Shands

STAFF PRESENT

Richard Douglas, County Administrator
Danielle Powell, County Attorney
John Broderick, Director of Finance and Business Operations
Ernest Giles, Sheriff
Julius Hamlin, Division Superintendent
Michael Kessinger, Captain
Michael Poarch, Planner
Nick Sheffield, Emergency Services Chief
Beverly Walkup, Planning Director
Shilton R. Butts, Assistant to the County Administrator/
Clerk to the Board

1. Call to Order/Determine Quorum

Chairman Jones stated that in advance of the March 25, 2024, joint Planning Commission-Board of Supervisors meeting, public notices for the Blackwater Solar project public hearings were published in the print and online editions of the Petersburg Progress-Index in accordance with the time periods required by state law. However, County staff later confirmed with the newspaper that it is no longer generally circulated in Sussex County. For this reason, the Board of Supervisors at the Chairman's direction and with the recommendation of County Attorney, re-advertised and rescheduled the public hearing in the Sussex-Surry Dispatch.

Chair Massenburg called the June 3, 2024 Joint Public Hearings meeting of the Planning Commission to order.

Chairman Jones called the June 3, 2024 Joint Public Hearings meeting of the Sussex County Board of Supervisors to order.

2. Overview of Process and Public Hearing Rules

Chairman Jones stated that the purpose of the June 3, 2024 meeting is to conduct a public hearing on the Blackwater solar project. As listed on the agenda, first, the County's land use consultant for the application will provide the findings and recommendations on the conditional use permit and a rezoning application to construct a 600 MW solar energy project along with a 400 MW battery energy storage system in the County.

Following, the applicant, Blackwater Solar, will present its application.

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After the presentations, the Board and Planning Commission will then conduct the joint public hearing so that those in attendance will have the opportunity to provide their input. After everyone who desired to speak has done so, the joint public hearing will be closed. The Board and Planning Commission may, at that time, ask questions of the applicant, consultant and staff. In addition, according to the Board's bylaws, the applicant will have a chance to respond to any public comments if they choose to do so.

Chairman Jones stated the he didn't believe that either the Planning Commission or the Board intended to take any formal action this meeting. If so, both bodies would adjourn their meetings.

3. Summary of Rezoning and Conditional Use Permit Applications and Staff Findings/ Recommendations

Michael Zehner, Director of Planning and Community Development with the Berkley Group and the County's third party reviewer for the solar project for Blackwater Solar, provided a brief presentation.

Mr. Zehner stated that the proposed Blackwater Solar, LLC project will consist of a 600 megawatt (MW) Utility Scale solar facility and 400 MW Battery Energy Storage System on approximately 4,800 acres out of a total acreage of 8,355 acres.

The Zoning is Planned Unit Development (PUD) and General Agricultural (A-1). It's comprised of 18 parcels. The applicant is Clenera, LLC.

The proposed project is located on property in the Wakefield Planning Area approximately .5 mile from the Town of Wakefield at its closest point to town limits on Courtland Road (Rt. 628), and properties located in the area of Brittles Mill Road (Rt. 620), Barrett Church Road (Rt. 605), Turkey Pen Road (Rt. 729), Cedar Sign Post Road (Rt. 622), Walter Lanier Road (Rt. 740), Union Hill Road (Rt. 606), Beaverdam Road (Rt. 606), and Union Camp Drive (private) in the Wakefield Election District

The application is comprised of two applications, the Rezoning/Zoning Amendment Application #2024-02 and Conditional Use Permit (CUP) Application #2024-01.

Mr. Zehner stated that the Zoning Application is necessary because two of the parcels are zoned Planned Unit Development.

The applicant, Blackwater Solar, LLC, under ZA #2024-02 seeks to rezone Tax Parcel Number 78-A-19 and 60-A-15 containing a total of 1,279 acres from PUD to General Agricultural (A-1), originally intended to be developed as the Drumwright Mill Subdivision, a 500-lot planned residential community.

Parcel 60-A-15 is approximately 316 acres of mixed timber forest, with a pond (Drumwright Pond) located on the east/southeast boundary line shared with Parcel ID 78-A-19. A small number of residences are located near the pond, accessed via Cantina Way and Drumwrights Lane — both private roads which are accessible from Brittle's Mill Rd on the western boundary' of the parcel. A transmission line runs from east to west along the northern portion of the parcel. Parcel 78-A-19 is approximately 963 acres of mixed timber forest. The northeast portion of the parcel shares a boundary with 60-A-15. The parcel is predominantly surrounded by other mixed use or pine forest. Courtland Road bisects the parcel, running approximately north/south, intersecting the northern boundary of the parcel approximately 1/2 mile south of the southern boundary of Wakefield.

The reason for the rezoning is the current PUD zoning does not permit the intended use of a solar facility. Therefore, a request to rezone the properties to the A-1 zoning district which will allow this intended use with a Conditional Use Permit.

The two parcels are critical to the overall proposed project. The parcels comprise the existing transmission line. It serves as the point of interconnection for the solar facility and will also consist of the proposed substation, switchyard, and battery energy storage system (BESS), located on parcel 60-A-15. With the exception of buffers/setbacks, the remainder of parcel 60-A-15 would be developed with fenced solar facility components, and parcel 78-A-19 is proposed to be similarly developed.

Comprehensive Plan

The Wakefield Small Area Plan designates the Future Land Use as Residential and Agricultural, with the western portion of the parcels principally designated as Residential and the northern and eastern portions designated as Agricultural.

Mr. Zehner stated that the second application is for Conditional Use Permit Application #2024-01 Blackwater Solar, LLC including the two parcels subject to the rezoning and is predicated on the properties being rezoned. The Conditional Use Permit will apply to 18 parcels.

The Conditional Use Application is for a Solar Facility along with the battery energy storage component, substation, and switchyard for transmission grid. The applicant, Blackwater Solar, LLC, under CUP #2024-01 seeks a conditional use permit for a 600 megawatt (MW) Utility Scale solar facility and 400 MW Battery Energy Storage System on approximately 4,800 acres out of the total acreage of 8,355 acres.

The proposed project is located on property in the Wakefield Planning Area approximately .5 mile from the Town of Wakefield on Courtland Road (Rt. 628), and properties located in the area of Brittles Mill Road (Rt. 620), Barrett Church Road (Rt. 605), Turkey Pen Road (Rt. 729), Cedar Sign Post Road (Rt. 622), Walter Lanier Road (Rt. 740), Union Hill Road (Rt. 606), Beaverdam Road (Rt. 606), and Union Camp Drive (private) in the Wakefield Election District.

It's zoned General Agricultural (A-1) District and Planned Unit Development (PUD). It's comprised of 18 parcels: 115-A-12; 115-A-19; 132-A-2; 132-A-6; 60-A-15; 77-A-8; 78-A-11; 78-A-12; 78-A-13; 78-A-17A; 78-A-18; 78-A-19; 94-A-5; 95-A-1; 96-A-12; 132-A-3; 114-A-1; 13-5. It's located in the Wakefield Electin District. The applicant representative is Ed Rumler, Clenera, LLC.

The Zoning and Existing Zoning

The majority of the parcels subject to the project proposal are zoned A-1, General Agricultural, and 2 of the parcels are zoned PUD, Planned Unit Development. A utility-scale solar facility is not allowed as use within the PUD zoning district; therefore, the Applicant is seeking to rezone the PUD parcels to A-1, 78-A-19 and 60-A-15, and has filed a separate, concurrent application for rezoning in conjunction with the Conditional Use Permit request.

The project area is relatively flat and will require minimal grading. The Applicant has indicated that the development/disturbance area of the project, or at least 4,782.8 acres thereof, is comprised of the following uses: 4,040.2 acres or 84.5% Commercial Pine Plantations, 605.1 acres or 12.7% Mixed Forest, and 137.5 acres or 2.9% Traditional Agriculture.

The remainder of the parcel area is understood to be comprised of similar uses.

Description of Proposed Development

The "Project Area" or "Disturbance Area" will occupy roughly 4,800 acres spread out over a series of separate, fenced-in panel arrays defined by the County as "PV Pods", and a small battery storage area near the transmission line (roughly 30 acres). In total, the disturbance area for the project will not exceed 5,000 acres (further codified in the Proposed CUP Conditions).

The PV Pods will vary in size between 3 and 150 acres, with an average pod size of 50 acres. Each pod will be surrounded by a chain link fence, inside which are parallel rows of solar panels, support structures and racking, stormwater basins, electrical collection lines, transformers, inverters, and access roads.

The project infrastructure will consist of approximately 1.4 million solar photovoltaic modules (PV panels) mounted on steel racking structures, inverters, a transformer, and control cabinet, switch gear, meter, interconnection, and security fencing.

Energy generated will be connected to the grid at an existing 500 kV transmission line on the north side of the Project boundary. A new utility substation will be constructed to interconnect the project to the 500 kV line. The substation will be located within the project boundary but will be serviced,

maintained, and owned by Dominion Energy. The project has two pending interconnection applications with PJM – one for the solar facility, and one for the battery storage facility

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Construction Schedule

The Applicant expects solar construction to progress in three phases– each of which will comprise 200MW of solar. Phase 1 construction is scheduled to begin in the 3rd Quarter of 2025 and is expected to last 24 months. The timeline from the beginning of Phase 1 to the completion of construction is expected to take 3 years. The proposed battery energy storage facility will be constructed during the final 9 to 12 months of the scheduled construction period, to be finished at the same time as the full facility is operational in mid-2028.

Notable Aspects

PV panels will cover 1,500 acres or approximately 18% of the total project area (8,355 acres) or 31% of the development/disturbance area (4,800 acres).

A minimum setback of 150' from property lines and public rights of way, and 300' from residences is required. In addition, a minimum 50-foot undisturbed buffer is proposed from delineated wetlands.

The Applicant proposes 31 vehicular access points from the existing road network for access to the entire project area and will construct service roads within the project area with connecting access points to the PV Pods.

The Applicant has indicated that small to medium-sized animals will have access to the full site through wildlife-friendly fencing, while larger wildlife will have consistent access to over 40 miles of wildlife corridors and over 2,000 acres of preserved open space.

Adjacent and Surrounding Use

The project area abuts 118 parcels that are zoned A-1, including residences, agricultural and forestry uses, and a century farm. The project area is adjacent to the Big Woods Wildlife Management Area and the Airfield 4-H Conference Center, and is within four (4) miles of the Waverly Solar project and 0.5 miles from the town boundary of Wakefield. The Applicant has indicated that the proximity of the project to the Town “is necessary to comply with the requirement for proximity to the transmission line.”

Comprehensive Plan

As part of the Comprehensive Plan, most recently the County adopted Small Areas Plans as an addendum to the Plan. The subject properties are located in the Wakefield Small Area Plan. The Wakefield Small Area Plan designates the Future Land Use of the majority of the area under the application as Agricultural, with a small area of the northwestern portion designated as Residential.

Additionally, the Comprehensive Plan was amended on February 17, 2022 to adopt policy for solar and battery storage facilities.

A copy of the presentation was provided to the Board members and Planning Commission.

Staff Review and Comments

1) Rezoning/Conditional Zoning Application Amendment #2024-02, Blackwater Solar, LLC

Mr. Zehner stated that while the potential use and development of the property under PUD zoning is specifically referenced in the Comprehensive Plan, further research has revealed that water and sewer capacity is not available to accommodate high-density residential development in this area. Therefore, staff is of the opinion that there is no valid basis for the PUD zoning to remain in place.

Staff recommends that requested A-1 rezoning be approved.

2) CUP #2024-01, Blackwater Solar, LLC

Staff review was based on conformity with the Comprehensive Plan, specifically the Wakefield Small Area Plan and the Comprehensive Plan's policies for Utility-Scale Solar Facilities and Battery Energy Storage Facilities, as well as the purposes for the Zoning Ordinance.

Based upon review, staff recommends approval of the requested Conditional Use Permit with conditions to ensure consistency with applicable Comprehensive Plan policies and the purposes of the County's Zoning Ordinance.

It was noted that the application was subject to review by other County and State Agency Departments to include the following:

Other Reviewing Agencies/Departments:	
Virginia Department of Transportation (VDOT)	Chief of Fire and Rescue
Department of Conservation and Recreation (DCR)	Southampton County
Department of Historic Resources (DHR)	Department of Environmental Quality (DEQ)- No comment
Department of Wildlife Resources (DWR)	Department of Forestry (DOF)- No comment
Town of Wakefield	Sheriff Department- No comment

Staff recommended 47 conditions to be imposed on the CUP application.

1. The Applicant shall develop, construct, operate, and maintain the Project in substantial conformance with the conceptual plans (titled “Concept Plan, Blackwater Solar,” plan sheets C4.0 thru C4.8, dated April 27, 2023, (the “Concept Plan”, with the area shown thereon referred to herein as the “Site”), and these CUP Conditions. Substantial conformance will be determined by the Zoning Administrator based on his/her review of the final site plan application (the “Site Plan”). Deviations determined not to be in substantial conformance with the conceptual plans, or consistent with these Conditions as may be necessary or required, shall require review and approval as an amendment to the CUP, following the process for the granting of a CUP.
2. Project capacity shall be limited to a maximum of 600 MWac for the Solar Facility and 400 MWac for the BESF facility. The CUP permits the active developed area of the Site, within the fence line, to consist of up to 4,800 acres on Sussex County Tax Map Parcels 132-A-2, 132-A-3, 78-A-17A, 78-A-18, 94-A-5, 60-A-15, 78-A-19, 78-A-11, 78-A-12, 95- A-1, 115-A-12, 115-A-19, 132-A-6, 77-A-8, 78-A-13, 96-A-12, 114-A-1, and 13-5 (the “Project Parcels”).
3. The Applicant shall give the County written notice of any change in ownership or entities responsible for operations or asset management of the project within thirty (30) days after the change.
4. Prior to or in conjunction with Site Plan review, the Applicant shall submit details on the linear facilities (access roads, medium voltage collector systems, and telecom equipment) and associated easements which connect noncontiguous portions of the project, including secured easements, to the Zoning Administrator for approval. Approval of the Site Plan shall not be granted without prior approval of these connections by the Zoning Administrator, or without the existence of executed easements for the connections.
5. To accommodate wildlife crossing of the site, the Applicant shall refer to the Virginia Department of Wildlife Resources Commission’s most recent Solar Energy Facility Guidance in the design of the Site Plan, working with the Zoning Administrator to meet the intent, if not the letter of the Guidance. Individual fenced areas shall be limited to a maximum of 150 acres.
6. Setbacks shall be as required by the Ordinance, except where they exceed the requirements of the Ordinance, as shown on the Concept Plan or as may be included in the Site Plan. In all cases, setbacks shall be no less than the perimeter setback required by the Ordinance for the Project. There shall be no setbacks required between the internal lot lines of parcels in the Site.
7. For all streams and wetlands there shall be a minimum setback of 50’ for all installed equipment. Setbacks from wetlands shall include a minimum of 50’ undisturbed buffer. Greater setbacks from these features may be required to address specific site conditions with final setbacks to be determined in coordination with the Zoning Administrator at Site Plan approval, accounting for final detailed site and environmental studies and analysis. In no case shall these setbacks

be required to exceed 100' unless otherwise required by applicable regulations, statutes or ordinances. Erosion control and stormwater control measures shall not be placed in the undisturbed buffer, except for necessary stormwater outfall structures, as depicted and approved on the approved Site Plan. Required buffers shall remain undisturbed for the life of the project.

8. The project shall provide for a 150' perimeter setback, as defined by the Ordinance, with encroachments allowed only where generally depicted on the Concept Plan. The setbacks areas shall include visual buffers to shield the Project from view. Visual buffers shall be comprised of 150' of existing natural vegetation where such vegetation exists as of March 25, 2024 (the date of the joint public hearing by Planning Commission and the Board of Supervisors), and there shall be minimal removal of existing buffer vegetation adjacent to road entry points. As a condition of approval of the Final Site Plan, Applicant will conduct a boundary tour with the Zoning Administrator to determine the locations of gaps in existing natural vegetation within a required buffer area and determine the necessary supplemental plantings to facilitate effective screening of the Project which shall be Blackwater Solar Revised Staff Recommendations 3 depicted on the Final Site Plan. All security fencing shall be installed on the interior of the vegetated buffer.
9. The Zoning Administrator may, in connection with Site Plan review and approval, require buffers to be supplemented with additional plantings of native and/or pollinator species where compatible with site conditions. Supplemental plantings of trees (approximately six (6) feet in height and 2.5 inches in caliper at time of planting) and shrubs shall be installed as required by the Zoning Administrator. A staggered double row of trees/shrubs shall be planted on 10-foot centers in the exterior 25 feet of the screening area. Tree and shrub seedlings shall be planted in the remaining screening area. Other perimeter plantings that effectuate sufficient visual screening may be approved by the Zoning Administrator, including, but not limited to native evergreen trees. Buffer plantings, both existing and supplemental planting, shall be maintained in good health to ensure sufficiency of the screening, as determined by the Zoning Administrator; damaged or deceased plant materials shall be replaced within a reasonable time, dictated by best practices, as determined by the Zoning Administrator.
10. As a condition of approval of the Final Site Plan for Project, on Project Parcels owned by Blackwater Solar, LLC, Blackwater Solar, LLC shall establish one or more easements for the benefit of the County to ensure all buffer areas (perimeter and wetland buffers), are protected through decommissioning of the Project. Applicant shall provide to County a list of parcels with their respective tax identification number of the parcels that it owns. For the remaining Project Parcels, to the extent practicable, Applicant will secure the same or similar protection of the buffer areas.
11. Applicant shall post a separate security for the ongoing maintenance of the Project's land cover and vegetative buffers in an amount deemed sufficient by the Zoning Administrator and provided by an issuer in an amount reasonably acceptable to the Zoning Administrator (who may rely on the opinion of a third-party) and in a form reasonably acceptable to the County Attorney. For areas of the Project Parcels that remain undeveloped and which are forested, prior to approval of the certificate of occupancy (or equivalent) the Applicant shall submit a

forest management plan outlining how these areas will be actively managed by the Applicant during the operation of the facility consistent with best practices to limit the wildfire risk.

12. As part of the Site Plan review, the Applicant shall submit a Construction Management Plan (“CMP”) with the final site plan, to include all entrances, in compliance with all Virginia Department of Transportation regulations and requirements during construction and decommissioning of the Solar Facility and in compliance with the Ordinance.
13. As part of the Site Plan review, the Applicant shall be required to submit a Construction Mitigation Plan, to be reviewed and approved by the Zoning Administrator. At a minimum this plan shall address and/or include:
 - a. A schedule for two (2) public open houses prior to the commencement of construction activities.
 - b. A construction schedule to include construction of the proposed sub-station to be constructed by Dominion Power.
 - c. Traffic control methods for all public roads to be used for ingress/egress (in coordination with the VDOT prior to initiation of construction) shall include, at a minimum, plans and procedures for lane closures, signage, flagging, and site entrance design.
 - d. Prohibition on construction delivery traffic on Turkey Pen Road.
 - e. Coordination with VDOT prior to initiation of construction on the appropriateness of the speed limit on any public access road and support a speed limit reduction, if necessary.
 - f. Site access planning, including procedures for directing and coordinating employee and delivery traffic. Construction Traffic shall be limited to 7:00 am to 9:00 pm, Monday through Saturday, or as may be approved by the County Administrator upon good cause shown by the Applicant. In all cases, construction delivery traffic shall be prohibited on Turkey Pen Road.
 - g. Site security; security measures shall be implemented prior to commencement of construction activities.
 - h. Lighting; during construction of the 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.
 - i. Hours of construction. 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, after consulting with the Board of Supervisors. All other construction activity shall be permitted Monday through Saturday. The Applicant may conduct construction activity on Sunday, in accordance with the County’s Noise Ordinance, so long as such activity does not occur within 500 feet of any residential dwelling.
 - j. Mitigation of dust.
 - k. Mitigation of burning operations.
 - l. Plans for staging and storage of materials and parking. During construction, the setback 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.
- m. The Applicant's final site design shall not inhibit an existing access route between Walter Lanier Road (Route 740) and the tract of land identified as Parcel 96-A-4. Applicant will not be responsible for the upkeep or improvement of this access route, except those portions, if any, which are utilized by the Project. Applicant makes no representation about any permissions necessary to use this access route.
 - n. Construction traffic consisting of non-passenger vehicles shall be prohibited from using the Route 606 (Beaver Dam Road) railroad crossing located next to Route 460 approximately 0.3 miles east of the Town of Waverly corporate limits
14. The Applicant shall submit a Road Repair Plan applicable to the routes contained in the CMP, in conjunction with the Site Plan application, to include procedures for maintenance and repair of applicable roadways during construction and decommissioning. Applicant shall be responsible for repairing any damage to roadways occurring during construction or following decommissioning of the project, or any portion thereof. The Road Repair Plan shall include a survey, including video documentation of pre-construction condition of applicable roadways for review and approval by the County. During construction, the roadways shall be monitored for damage caused by construction activity or traffic. The Applicant, once notified by the County of damages caused by Applicant or upon discovery of damage by Applicant during regular inspections, shall make repairs caused by construction traffic at the direction and in consultation with the County Administrator and VDOT within 30 days of written notice, subject to any required delays resulting from coordination with VDOT. After Project construction activities are completed, Applicant will provide a post-construction survey of roadways, including video documentation of the condition of the routes covered by the CMP, for review and approval by the County; the Applicant shall be required to repair any damage necessary to restore such roadways to equivalent or better condition as contained in the pre-construction survey.
15. Prior to approval of the site plan and commencement of construction, the Applicant shall provide a bond or other security, in an amount reasonably acceptable to the Zoning Administrator (who may rely on the opinion of a third-party) to cover 100% of the estimated costs of anticipated pre-construction improvements to be made to the public roads and/or public rights-of-way included in the CMP, as well as the anticipated cost of repairs to be necessary during construction and in a form reasonably to acceptable to the County Attorney. After pre-construction improvements have been completed, the amount of the bond/security shall be reduced equivalent to the costs of the pre-construction improvements. County will release bond once all construction is complete upon review and consent of VDOT.
16. The Applicant shall coordinate with the County's Sheriff Department prior to initiation of construction on speed monitoring plans and devices.
17. As part of the Site Plan review, the Applicant shall be required to submit a grading plan as part of the required Erosion and Sediment Control Plan. At a minimum this plan shall address:
- a. Clearly show existing and proposed contours;

- b. Note the locations and amounts of topsoil to be removed (if any) and the percent of the site to be graded;
 - c. Limit grading to the greatest extent practicable, and except as may be necessary to accommodate anticipated and required stormwater management, by avoiding development of steep slopes (those greater than 15%);
 - d. An earthwork balance will be achieved on-site with no import or export of soil except for importing specific quality soils required for construction. Excavated materials may be used for landscaping, berming/screening, or similar, or may otherwise be stockpiled on site and stabilized;
 - e. For any areas of the Project Parcels that are in agricultural production (the production of crops or livestock) at the time of Final Site Plan approval, grading shall be minimized, and where grading is necessary, all topsoil shall be retained and reapplied to the areas from which it was removed.
 - f. 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 shall first be stripped and stockpiled on-site to be used to increase the fertility of areas intended to be seeded;
 - g. 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. Provide for the installation of all stormwater and erosion and sediment control infrastructure, including perimeter controls ("Stormwater Infrastructure") at the outset of construction of each area of the project (a "Project Phase") to ensure protection of water quality. Once all Stormwater Infrastructure for a given Project Phase is complete and approved by the Virginia Erosion and Sediment Control Program ("VЕСSCP") authority, no more than 300 acres of the land disturbance areas as reflected on the Site Plan associated with an individual Project Phase 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 VЕСSCP authority. When installing Stormwater Infrastructure for a given Phase, Applicant may remove trees, grub stumps and perform necessary grading and filling in those areas necessary for and in furtherance of the installation of the Stormwater Infrastructure.
18. The Applicant shall coordinate with state and federal agencies to avoid or limit impacts to any state and federally listed threatened and endangered species that may occur and have suitable habitats in the project area.
19. The Erosion and Sediment Control plan shall comply with the most recent version of the Virginia Erosion and Sediment Control Handbook at the time of construction. The County will have a third-party review with corrections completed prior to the County review and approval. The Applicant shall construct, maintain, and operate the project in compliance with the approved plan. The Applicant shall post a E&S performance bond (or other security) for the construction portion of the project, to be provided by an issuer in an amount reasonably acceptable to the Zoning Administrator (who may rely on the opinion of a third-party) and in a form reasonably acceptable to the County Attorney.

- a. To the maximum extent practicable, trees and stumps removed during the course of development shall be mulched on site, with such mulch to be used to mitigate and control stormwater runoff during construction.
 - b. To the maximum extent practicable, topsoil from the site should be maintained on site for use in areas where grading occurs that exposes unsuitable soils where erosion and sediment control vegetation will not take; soil analysis shall be performed to assess the adequate seed mix for exposed soils.
 - c. The stormwater control plan shall comply with the most recent State policies and regulations at the time of design and construction. The County shall have a third-party review with corrections completed prior to submittal for DEQ review and approval. The Applicant shall construct, maintain, and operate the project in compliance with the approved plan. Applicant shall post a stormwater control bond (or other security) provided by an issuer in an amount reasonably acceptable to the Zoning Administrator (who may rely on the opinion of a third-party) and in a form reasonably acceptable to the County Attorney.
 - i. Applicant shall design temporary sediment basins and permanent stormwater conveyance systems (primarily ditches and culverts) to accommodate flows associated with a twenty-five (25) year storm event.
20. Ground cover shall be native vegetation where compatible with site conditions and, in all cases, shall be approved by the Zoning Administrator, who may rely on the assistance of a third-party reviewer.
21. The Applicant shall submit a final Vegetation Management Plan for County approval as part of the building permit application. 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 Vegetation Management Plan shall include an herbicide land application plan, which 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 Applicant shall notify the County prior to application of pesticides and fertilizers if such applications are not approved in the Vegetation Management Plan. The County may require soil and water testing at Applicant's cost.
22. The Vegetation Management Plan and Landscaping Plan shall conform with requirements necessary for the Project to achieve Certified VA Pollinator-Smart designation, as defined in the Virginia Pollinator-Smart/Bird Habitat Scorecard.
23. The security for permanent security fencing shall be maintained as required by the Ordinance. The security shall be provided by an issuer in an amount acceptable to the Zoning Administrator (who may rely on the opinion of a third-party) and in a form reasonably acceptable to the County Attorney.
24. No fence or similar barrier shall cross the main channel of any stream or through a wetland identified on the Site Plan.

25. Permanent entrance roads and parking areas, as designated in the building permit application, shall be stabilized with gravel, asphalt, or concrete to minimize dust, and impacts to adjacent properties. Roads internal to the site that are not part of ingress/egress to the site may be compacted dirt.
26. All physically damaged panels or any portion or debris thereof shall be collected by the solar facility operator and removed from the site or stored on site in a location protected from weather and wildlife and from any contact with ground or water until removal from the site can be arranged; storage of damaged panels or portion or debris thereof shall not exceed thirty (30) days.
27. The Solar Facility may begin commercial operation in multiple stages as individual portions of the Solar Facility are completed. The date on which each portion of the Solar Facility becomes fully operational and begins selling power under the terms of a power purchase or offtake agreement is referred to herein as the “Solar Facility Commercial Operation Date.” Generation of test energy shall not be deemed commercial operation. The BESF may begin commercial operation after completion of that component of the Project. The date on which the BESF becomes fully operational and begins selling power under the terms of a power purchase or offtake agreement is referred to herein as the “BESF Commercial Operation Date.” Generation of test energy shall not be deemed commercial operation.
28. The Applicant shall provide a bank letter of credit, surety bond, or other form of security (the “Decommissioning Security”) for each component of the Project as a means of assuring payment of decommissioning costs provided by an issuer in an amount reasonably acceptable to the Zoning Administrator and in a form reasonably acceptable to the County Attorney. The Applicant shall post the Decommissioning Security prior to the Commercial Operation Date of each portion of the Solar Facility. The Decommissioning Security for the BESF shall be posted prior to BESF Commercial Operation Date. The Decommissioning Security shall include language that failure to renew the current commitment, or provide a new guarantor acceptable to the County, at least ninety (90) days prior to the termination date of the current commitment, will constitute an event of default. If the County receives notice that any form of security has been revoked and Applicant fails to reestablish adequate Decommissioning Security in compliance with this Condition within thirty (30) days after receipt of written notice of such revocation from the County or financial institution providing the letter of credit or surety bond, 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.
29. The Applicant shall submit final Decommissioning Plans to the County for the Solar Facility and BESF for approval in conjunction with the respective building permit for each component of the Project. The Applicant shall reimburse the County’s reasonable costs for an independent review and analysis by a licensed engineer of the initial decommissioning cost estimates. The Applicant shall update the decommissioning cost estimate every five (5) years and reimburse the County’s reasonable costs for an independent review and analysis by a licensed engineer of each decommissioning cost estimate revision.

30. Upon decommissioning of the Solar Facility or the BESF, all physical improvements, materials, and equipment related to the Project, both surface and subsurface components, shall be removed in their entirety; this requirement, and decommissioning in general, will not apply to the substation, switchyard, and associated equipment located on Tax Parcel 60-A-15. The soil grade shall also be restored following disturbance caused in the removal process in accordance with applicable Ordinance provisions.
31. Upon decommissioning, all access roads shall be removed, including any geotextile material beneath the roads and granular material. Topsoil shall be redistributed within areas that were previously used for agricultural purposes to provide substantially similar growing media as was present within the areas prior to access road construction. If the current or future landowner requests in writing that the access roads and associated culverts or their related material be exempt from removal, the Applicant shall provide an itemized list of exempt items and copies of request letters in the decommissioning land disturbance application for review and approval by the County.
32. Within twelve (12) months after the cessation of use of either the Solar Facility or the BESF for electrical power generation, storage or transmission, the Applicant, at their sole cost and expense, shall commence decommissioning of the respective portion of the Project in accordance with the Decommissioning Plan approved by the County.
33. If the Applicant fails to timely decommission either portion of the Project within twentyfour (24) months from the cessation of use of that portion of 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 right to dispose of the equipment and materials on the property, without incurring any financial liability to the owner of the Project or the property owner, and the County shall use reasonable efforts to secure salvage value (if any) for the property disposed of. Following the completion of decommissioning of the respective portion of the Project arising out of a default by the Applicant, any remaining Decommissioning Surety held by the County shall be released by the County to the designated beneficiary as identified in the Decommissioning Surety. Upon completion of decommissioning and approval by the County, the County shall sign documentation releasing the decommissioning security.
34. Upon a violation by the Applicant in their decommissioning obligations, the County may enter the 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.
35. In the event decommissioning is triggered for a portion of the Project and Applicant successfully completes decommissioning for that portion in accordance with the Decommissioning Plan, then the remaining portions may continue in operation as long as otherwise in compliance with the CUP and Ordinance.
36. Subject to the requirement that the County provide the Applicant with an estimate of the third-party costs prior the expense being incurred and comply with applicable Virginia public

procurement laws and regulations, the Applicant shall reimburse the County its reasonable costs in obtaining independent third-party reviews (when applicable County permit fees do not cover assumed costs) as required by these conditions and for the review of the site plan (including all specific plans thereof), Erosion and Sediment Control plan, road repair and improvement, decommissioning cost estimates, and bi-annual inspections during operations to verify compliance with all permits and approvals. The Applicant shall also fully fund any temporary or permanent signage as requested or required by the County or the Virginia Department of Transportation (“VDOT”), as well as any costs associated with traffic planning or traffic mitigation

37. The design, installation, maintenance, and repair of the Project shall be in accordance with the most current National Electric Code (NFPA 70) available (2014 version or later as applicable) and State Building Code at the time of construction.

38. Inspections.

- a. The Applicant shall allow designated County representatives or employees access to the facility for inspection purposes during normal business hours with 24-hour notice.
- b. The Applicant shall reimburse the County its reasonable costs in obtaining an independent third-party to conduct inspections required by local and state laws and regulations when those costs exceed the Applicant's building permit fee.

39. Emergency Access, Response, and Training.

- a. The Applicant shall submit an Emergency Response Plan (the “ER Plan”) with the submission of the site plan. The ER Plan shall include fire suppression methods that can be immediately deployed during both the construction and operation of the project and shall include other measures external to battery facility but on project site developed in consultation with the County Fire Chief to further mitigate any risk of spread beyond the project site. The ER Plan shall also include a program of education and training to be provided for County emergency response staff covering onsite emergency response, as well as information on how the facility will be designed, constructed, operated, and maintained to allow for access by County emergency response staff in the event of an emergency.
- b. Prior to the end of construction of the Project, the Applicant, shall hold training classes with the County's first responders (Fire and Rescue) to provide materials, education, and training on responding to on-site emergencies, to include the provision of information and any necessary equipment to allow first responders to gain access to any part of the facility in the event of an emergency. The training classes shall be scheduled with the assistance of the County's Public Safety Coordinator or designee.
- c. The Applicant shall provide on-going training as deemed necessary by the Public Safety Coordinator or designee.
- d. In the event any upgrades or changes in technology associated with the Solar facility results in any change in emergency procedure, including the manner of access to the facility, the Applicant shall notify the County Public Safety Coordinator, who may, at their discretion, schedule an additional training on the new equipment.

40. Compliance. The Solar facility shall be designed, constructed, and tested to meet relevant local, state, and federal laws as applicable.
41. The CUP shall terminate if the solar facility does not receive a building permit within 24 months after the Applicant receives all of the following: (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 forty-eight (48) months of approval of the CUP. The County Administrator, with a written request from the Applicant detailing the reasons for a requested extension, may approve an extension based upon his/her determination that any delay was not the result of actions of, or the inaction of, the Applicant.
42. If the Solar Facility 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 Applicant of the Facilities fails to respond in writing to such official within thirty (30) days after receipt of a written determination by the fire marshal or building official, the County may revoke the right for the Solar Facilities to continue operation until the unsafe condition is brought into compliance with the applicable building or electrical code. Any such written determination by the fire marshal or building official applicable to this Condition shall include what is required of Applicant to remedy or bring into compliance the unsafe condition at issue. If the unsafe condition cannot be remedied within six (6) months after receipt of a written determination by the fire marshal or building official, the Conditional Use Permit shall be terminated, and the Solar Facility shall be decommissioned.
43. The County may engage a professional construction project manager with demonstrated experience in the development of utility-scale solar projects. Reasonable costs of engaging the construction project manager shall be reimbursed by the Applicant so long as the County complies with the Virginia Public Procurement Act. The role of this project manager will be to serve as a primary point of contact between the County and the Applicant with respect to all aspects of the construction and development of the facility, to provide for Erosion and Sediment Control monitoring and inspection reports, and to assist the County and its staff and any associated third-party consultants in coordinating the compliant development of the facility consistent with all applicable local, state, and federal permits, ordinances, codes, regulations.
44. The Applicant shall provide an individual responsible for performing daily inspections of stormwater and erosion and sediment control practices and devices installed throughout construction. This individual shall coordinate with any professional engaged by the County for the purpose of inspecting or monitoring the Project and shall also coordinate, as necessary, with the local Soil and Water Conservation District, and the Virginia Department of Environmental Quality, to resolve any stormwater and erosion and sediment control issues that occur on site. Upon request, said individual shall provide a status report to the County.
45. Inclusive of conditions applicable to the Project in total, the BESF shall be subject to the following specific requirements:
 - a. Configuration: the BESF shall be configured so that battery cells shall be placed in a Battery Energy Storage System (“BESS”) with a Battery Management System (“BMS”).

The BESS shall provide a secondary layer of physical containment to the batteries and be equipped with cooling, ventilation, and fire suppression management systems as recommended by the BESF manufacturer.

- b. Construction, Maintenance and Operation: BESF shall be constructed, maintained and operated in accordance with applicable codes and standards including but not limited to the then applicable fire, electrical and building codes adopted by the County; National Fire Protection Association (NFPA) 855, Standard for the Installation of Stationary Energy Storage Systems, 2020 Edition and subsequent additions; Underwriters Laboratories (UL) 9540A Ed. 4-2019, Standard for Test Method for Evaluating Thermal Runway Fire Propagation in Battery Energy Storage Systems and subsequent editions; and, unless otherwise required by such regulations and codes:
 - i. Each individual battery shall have 24/7 automated fire detection; and, as applicable a fire suppression management as recommended by the BESF manufacturer. The BMS shall 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;
 - ii. The BMS shall be capable of shutting down the system before thermal runaway takes place;
 - iii. Access to all batteries and electrical switchgear shall be from the exterior for normal operation and maintenance. Access to the container interior shall not be permitted while the system is in operation except for safety personnel and first responders; and
 - iv. Signage shall include the following information: the type of technology associated with the battery energy storage systems; any special hazards associated; the type of suppression system installed in the area of the battery energy storage system; 24-hour emergency contact information, including reach-back phone number. Additionally, disconnect and other emergency shutoff information shall be clearly displayed on a light reflective surface.
 - c. In addition to the annual life and fire safety inspections required annually by the fire code and performed by County staff, the Applicant shall conduct semi-annual on-site self-inspections of the battery units and submit a written report to the Zoning Administrator on their condition.
46. Posting and release of bonds shall be in accordance with the procedures set forth in the Sussex County Zoning Ordinance, Subdivision Ordinance, Erosion & Sediment Control Ordinance and any other applicable local, state laws or regulations.
47. Applicant shall comply with the terms of the Siting Agreement and any violations thereof shall be a violation of this CUP.

There was inquiry of the statement that the application was reviewed by several agencies referencing VDOT, DCR and question of their approval.

There was inquiry of Southampton County review.

There was inquiry of the statement that Zoning Administrator had the authority to adjust the setbacks and who was the Zoning Administrator. There was inquiry as to what the Zoning Administrator could adjust.

There was inquiry of Condition #34 and operation; questions regarding project shutdown or passing of CUP and changes of payment.

4. Applicant Comments Regarding Rezoning and Conditional Use Permit Applications

Mr. Ed Rumler, Clenera (Project Lead Developer) was in attendance.

Mr. Rumler addressed the inquiries of the agencies commentary on the local application. He stated that it was pre-emptive to a State permitting process. Mr. Rumler noted that each agency would have a public process to submit commentary and requests, either mitigation or changes to the project based on a host of surveys at the State level. It was noted that the State agencies have not provided an opinion on the project yet. He noted that no application was submitted to Southampton County. Mr. Rumler addressed if 70% of the project shutdown. He noted that almost all that goes in to building and operating the solar projects are done upfront. He stated that it is huge capital investment during construction, after which, it's **relatively limited** costs to operate. He noted that it operates with zero input from fuel costs. It just generates electricity from the sun, once it's in the ground, it operates essentially at \$0. There will be no reason to shut. He noted that these projects operate for 20+ years. He noted shutting it down early is highly irregular.

Mr. Rumler stated that a lot of protections have been put in place to avoid destroying the County, as a lot of the narratives have suggested. They have used concerns and feedback received from the community. He discussed planting vegetation. He discussed the issues of the impact of waterways and wetlands and flooding to neighboring properties. Mr. Rumler stated that they have a plan, with a consultant, to design via the **conditions** that protects the County. Mr. Rumler discussed Erosion and Sediment and Stormwater Management and systems designs to uptake enough water. He noted that there were amendments to the CUP conditions to protect the County. They have agreed to hire an onsite construction monitor, a county representative, to make sure the construction is being done properly. They will monitor construction every day. He noted that there is phased construction built into the CUP conditions, as well. It was noted that these were voluntary measures not conditions required DEQ. He stated that they were exempt from the DEQ Panel and Impervious surface requirement; however, they agreed to comply with it. They also voluntarily agreed to increase the storm intensity.

Mr. Rumler discussed traffic and road damage. He stated that they agreed to post bond for the anticipated road repairs. It was noted that the County Code requires road repairs to be fixed as damages are done. He spoke on habitat. There is 3,000 acres left standing for wildlife. There is 40 miles of wildlife corridors with wildlife friendly fencing up to medium size animals.

He discussed the lack of trust with the County and Clenera that he would like to build. He noted that protections in the CUP conditions are legally binding.

Scott Foster, Gentry Locke, Land Use and Renewable Energy Practice was in attendance. Attorney Foster noted that he would be focusing on the legal side of standards and approach of conformity to the Comprehensive Plan.

Attorney Foster stated that the Board of Supervisors (the "Board") and Planning Commission are charged by State Code and the County's Zoning Ordinance for reviewing Solar facilities. He stated pursuant to Code 15.2-2232, Solar Projects must be determined to be substantially in accord with the Plan.

Attorney Foster reviewed what he referred to as the right way to determine if the project is in accord with the Comprehensive plan. He noted that, first, substantially has been interpreted to mean largely, but not whole, which means it's not a strict compliance test. For the Board and the Planning Commission to find that the project is in substantial accord with the Comprehensive Plan is not necessary for the proposal to be in complete alignment with the Plan or even every element of a relevant policy that's within that Plan. He stated that the bright line test is reserved for compliance with the Zoning amendment, in which this project fully complies with the zoning amendments. He noted that this was a separate and distinct analysis. Attorney Foster stated that instead the question of Comp Plan conformity is much more of a balancing test. Positive findings of substantial accord requires only that the general or approximate location character and extent of the proposed public facility is substantially in accord or compliance, that is not every feature, not every portion of the project area; not every component of the Plan has to strictly conform to the letter of the Plan.

5. Joint Public Hearing on Conditional Use Permit and Rezoning Applications

A. Board of Supervisors Action to Open Public Hearing

ON MOTION OF SUPERVISOR TYLER, seconded by SUPERVISOR WHITE and carried: RESOLVED that Sussex County Board of Supervisors hereby open the Joint Public Hearing on the Conditional Use Permit and Rezoning Application. All Board members present voted aye.

B. Planning Commission Action to Open Public Hearing

ON MOTION OF COMMISSIONER EDMONDS, seconded by COMMISSIONER BRACY and carried: RESOLVED that Sussex County Planning Commission hereby open the Joint Public Hearing on the Conditional Use Permit and Rezoning Application. All Commissioners present voted aye.

C. Public Comments

Comments were heard from:

- Lawrence Diehl - Lawyer for 30 years; addressed Attorney Foster comments on checklist; Substantial conformance-any measure may be weighed heavily on certain criteria; PC vote was 6-1; if not the PH would not have been re-conducted; money can't be considered as matter of law; no indemnification clause to protect the county; trucks ruin railroad; assignments may be

to anyone; no bond amounts; have not identified subcontractors; Condition. 47-Siting Agreement now part of CUP.

- Brian Laine - Town of Wakefield has not approved anything regarding solar farm; Purcell home sites never built; now the town can provide water; vote no; non-compliant with Comp Plan; less than .5 mile from town limits; Concerned with Battery Storage & Wakefield residents in close proximity; Appreciates PC support; Solar & Battery Storage still in infancy. Not certain of impacts; Fines imposed on solar by DEQ; Californian external runaway; nearby businesses/residences evacuated still burning over 2 weeks. Toxicity while burn impact to Fire Dept. and shared services.
- Pete Stith - 44 BC-Julius Cesar was killed by Brutus; Fear or courage? He stated individual board concerns, as follows: Baicy-Stony Creek; needs; Tolliver-Recreation; Futrell-Seniors; Fly-Widows, old people, kids; Tyler-Folks having the worst of times; employment, training; education; White-Volunteers; Jones-Economic; Reserve fund-keep dipping State will come in; Road issues are typical.
- Brad Monahan - Importance of agriculture; Water quality versus soil quality; Controversial flyer-most people will never see the farm; Volunteer fireman in Surry-calls have increased due to solar facilities; Traffic accident in Surry; Vote No.
- Leverette Pope - 73 year resident; Familiar with Waverly Solar; Truck traffic, safety, speed, roads, impacts to citizens; Not good for wildlife; Don't destroy Sussex County.
- Steve Paden - New to county, love the area, beautiful; Would like to see it stay that way; Large area-devastate natural habitat; Crops do not benefit; Businessman wants to see incentives to businesses here.
- Frances Chambers - 3rd generation 1892 home (Prospect Street); Will not withstand crippling effects; the county is desperate for revenue; Vote No; puts people in harm's way.
- Lane Chambers - 1 Tim. Love of money is the root of all evil.

Virtual Zoom meeting was hacked. Virtual meeting ended.

- ???Linda Chitwood - Solar Phone charger-efficiency of it is really low and ineffective due to the weather; re-charge via wall??.
- Leroy Hardy/Dr. Buck Woodard - Nottoway Indians Tribe erased from 1870 census; Would like to conduct survey; Areas have been lost (Indian reservations); Solar farm larger than a number of reservations left in Virginia today.
- Buddy Faison, Assomoosik Hunt Club - Handout; Size of solar project; Page 5 map-area for wildlife is area of wetland (undeveloped area); Project will impact Blackwater/Nottoway Rivers; Airfield Lake-Map against Wakefield & Assomoosick swamps; How will power get from west to east without disturbance; area not intended to be disturbed.
- Brady Horn- Local 147-rep. 1300 members; Training center on Cabin Point; Infrastructure/Job creation guarantees apprenticeships to build middle class; Volunteer EMS-get paid staff; Need infrastructure & power-attracts other businesses; Could put half of graduating class to work; Young folk leaving county; the project may keep them here; Supports project.
- Charles Skilly- Electrician Union-1350 members; 19 counties/5 cities; Earn while you learn program; Try/Trade Agent- 15% apprentices (30 to 40% on project this size)

Could open additional spots for Sussex-work for several skills; Supports project.

- Raymond-Where is power going-rather the jobs than panels; Jobs-what jobs- will company work with workforce development; Assignments-Human rights violation; Logging trucks not limited to project area (impact to road repairs); Cost benefit analysis; Not opposed-but concerned.
- Terry Foster- Grew up here/went to school; Trees are gone; Nottoway River is high; Member of Nottoway Tribe; Not good for county; Apply for grants (AARPA); Don't need to destroy lands/farms-they don't grow anything; Solar came in 1982-where is it; Jobs are temporary; Not enough thought-allow public to vote on something of this magnitude
- Franklin Dowless- Some were opposed-understatement; Native grasses-no grass (all trees) Not good for wildlife; Traffic, questionable river streams.
- Molly Dowless- Wrong project in wrong place; Sussex, Southampton, Richmond, Newport News (not in my back yard) Wide number of speeches; Has not witnessed a gang of more unified citizens since 911; Vote No.
- Patrick Bergman- Electrical workers member; Expert in this field; huge opportunity-project like this is a path forward; Apprenticeship on construction/maintenance; Supports project.
- Mark Owen- Family Farms; has been here for a few generations; Destroying 8,000 acres is unbelievable; Income versus cost, liability, safety, presentation, wildlife thrives; please don't destroy it.
- Skylar Zone, Energy Right- Clean energy/best projects; Profitable and cheapest way to create new icon on energy grid; Counter misinformation-UVA, Va Teach and other states long term sustained income; Give back tax cut; VA imports close to 5 GW because we don't generate enough energy; Don't let Richmond take authority; Bigger project/larger profit.
- Paula Peck- 2 years of citizens overwhelmingly asking to say no; Extreme needs but this is not the way to do it; Ecosystem will be disrupted-concern for diseases.
- Meade Fronfelter- Concerned with why County Administration pushing this issue so hard; Find other ways to generate jobs and revenue.
- Bessie- Panels will kill the land; Energy going to Northern Virginia; Where will panels go when they are not worth anything; Will developer buy land when it's good for nothing; Prayer, decisions not for ourselves but for the community.
- Thomas Woirwich-Did not get canvassed by Mayor; Owners should be here-everyone here is judging them.
- Marci Drewery- Westervelt Timber-don't care, have much bigger holdings; Clear cutting doesn't work-sterilizing grounds to get this project done; Taxes should be raised on Westervelt.
- Chester Carter-1990 major decision in Sussex County Landfill-leaders went against the majority or people. People protested; Not the best fit for Sussex County; Tobacco money could have built infrastructure; Food tax was killed because of manipulation of message.

Jason Fowler (VDOT) responded to a question on the road conditions and the process included in the application to review prior to construction.

D. Planning Commission Action to Close Public Hearing

ON MOTION OF COMMISSIONER EDMONDS, seconded by COMMISSIONER BRACY and carried: RESOLVED that the Sussex County Planning Commission hereby close the Public Hearing on the Conditional Use Permit and Rezoning Applications. All Commissioners present voted aye.

E. Board of Supervisors Action to Close Public Hearing

ON MOTION OF SUPERVISOR FUTRELL, seconded by SUPERVISOR WHITE and carried: RESOLVED that the Sussex County Board of Supervisors hereby close the Public Hearing on the Conditional Use Permit and Rezoning Applications. . All Board members present voted aye.

6. Board of Supervisors and Planning Commission Questions/Comments for Applicant and/or Staff

Planning Commission Chair Massenburg asked the Planning Commission if they had any questions.

Commissioner Bracy supports citizens' fight against solar. Mentioned review of Planning Commission's By Laws.

Board of Supervisors Chairman Jones asked the Board members if they had any questions.

Supervisors Baicy inquired about contractors/subcontractors; background checks; liability would be on contractors; road repairs; who approves quality.

7. Planning Commission Action on Rezoning and Conditional Use Permit Applications

A. Rezoning/Zoning Amendment #2024-02

ON MOTION OF COMMISSIONER BRACY, seconded by COMMISSIONER KING and carried: RESOLVED that the Sussex County Planning Commission hereby deny the Rezoning/Zoning Amendment #2024-02, Black Solar, LLC applicant.

Voting aye: Commissioner Edmonds

Voting nay: Commissioners Bracy, Grinstead, King, Mason, Massenburg, Maye, Shands

B. Conditional Use Permit Application #2024-01, Blackwater Solar, LLC

ON MOTION OF COMMISSIONER BRACY, seconded by COMMISSIONER GRINSTEAD and carried: RESOLVED that the Sussex County Planning Commission hereby deny Conditional Use Permit Application #2024-01, Blackwater Solar, LLC, applicant.

Voting aye: Commissioner Edmonds

Voting nay: Commissioners Bracy, Grinstead, King, Mason Massenburg, Mayes, Shands

8. Adjournment of Planning Commission

ON MOTION OF COMMISSIONER EDMONDS, seconded by COMMISSIONER MASON and carried: RESOLVED that the Sussex County Planning Commission hereby adjourned the June 3,

2024 Joint Planning Commission and Board of Supervisors meeting. All Commissioners present voted aye.

9. Overview of Proposed Blackwater Solar Siting Agreement

County Attorney Powell gave an overview of the proposed Blackwater Solar Siting Agreement.

Siting agreements enable localities to negotiate a wide range of terms and conditions with the applicant proposing to construct a solar energy (or battery storage) project greater than 5 MWac in power generation. Terms and conditions of the siting agreement may include, but are not limited to: (i) mitigation of any impacts of such solar project or energy storage project; (ii) financial compensation to the host locality to address capital needs set out in the (a) capital improvement plan adopted by the host locality, (b) current fiscal budget of the host locality, or (c) fiscal fund balance policy adopted by the host locality; or (iii) assistance by the applicant in the deployment of broadband, as defined in § 56-585.1:9, in such locality.

The proposed agreement with Blackwater Solar, LLC is attached. It is estimated to be a 600 MWac for the Solar Facility and 400 MWac for the Battery Energy Storage Facility. Blackwater Solar proposes to make a one-time payment of \$900,000 to the County for the solar facility and an additional \$100,000 related to the battery storage facility, within 90 days of approval of the project zoning application and conditional use permit. Blackwater Solar has also agreed to initial milestone payments prior to beginning commercial operation. Thereafter, Blackwater Solar has agreed to make annual payments for the anticipated 35-year operational life of the project. Total projected Siting Agreement payments are \$56,344,324. All projected Siting Agreement Revenues are shown in detail on the Agreement Exhibit. Such payments are in addition to real estate and machinery and tools taxes, and all other applicable local fees or taxes. Including taxes, the projected revenue for the county over the 35-year period is approximately \$191,921,657.

10. Fiscal Analysis

Roland Kooch, Davenport & Company, LLC, gave brief fiscal analysis.

Mr. Kooch as the Financial Advisor to Sussex County provided an overview of the County's existing Debt Profile which incorporates both tax supported debt and lease obligations; analyze the County's potential Debt Capacity and Debt Affordability; and an update to the County's multi-year funding strategy for its identified Capital Investment needs. He also provided a preliminary estimate of how solar revenue could be applied toward funding the County's identified future capital needs and/or other potential obligations.

Mr. Kooch noted that if the Solar Project was approved, the County could use the Solar Revenues to pay for the estimated Pay-Go and Debt Service and requirements from its CIP using Solar Revenues. As such, the County's budget will experience additional capacity as the County's existing debt service declines from the FY 2025 level of approximately \$1,500,000.

This additional capacity could be used for operational expenditures, or additional Pay-Go projects that the County may have. Details of estimated application Solar revenues were review.

He noted that if approved, the County would begin receiving payments from the Project beginning on June 30, 2024 (FY25).

Mr. Kooch reviewed that the County is currently considering the Blackwater Solar Project that is estimated to bring approximately \$192 million in revenues to the County over the next 40 years through a combination of "one-time" Site Agreement payments and recurring revenues from the taxation of the Project.

He reviewed what the revenues from the Project could be used to fully fund without the need to for an increase in additional revenues for the County's Capital Budget.

He reviewed the use of the estimated revenues to fund the equipment (Fire/EMS and Sheriff Vehicles; 2 Fire Stations (Waverly & Stony Creek); School Roof and HVAC; Courthouse/Admin Project; and Stony Creek Waste Water Treatment Plant.

A booklet of Debt Capacity and Affordability Analysis was provided to the Board.

11. Public Hearing on Proposed Siting Agreement

Michael Zehner reiterated highlights and provided a brief background regarding the Siting Agreement and the adoption pursuant to Virginia Code 15.2-2283 Purpose of Zoning Ordinances. Key details were reviewed regarding the proposed Siting Agreement. It was noted that there were two separate legal documents to be considered. The Siting Agreement was constructed to incorporate the CUP and the CUP conditions as an exhibit in the Siting Agreement. **It was discussed that the Siting Agreement was constructed that if you violated the CUP, you violated the Siting Agreement. If the Siting Agreement was violated, the CUP would be violated.**

Mr. Zehner asked that the Board approve the application. He also asked the Board to consider a deferral of the application until June 20th.

A. Action to Open Public Hearing

ON MOTION OF SUPERVISOR WHITE, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors opened the Public Hearing on the Proposed Siting Agreement.

B. Public Comments

Public comments were heard from:

- Larry Diehl - Money not important; CUP vs. Siting Agreement; Indemnification
- Millard "Pete" Stith - County doesn't have bond rating; encouraged the Board to put the money where their mouth is to get County the things they needed; integrity does not replace needed improvements;

- Dr. Woodard - Phase I has not been undertaken before CUP vote; reviewed a slide - Nottoway Tribe reservation.
- Walter Lanier - Money; this not the only project; opposed because of size and location.
- Frances Chambers - Temperatures of batteries; fire considered; HAZMAT; FEMA information; Wakefield not considered in Siting Agreement - Wakefield infrastructure; continuous traffic; generic recommendations on EMS training; not enough people to fight fire; BESS; Wakefield responsible for safety; Wakefield not receiving money.
- Franklin Dowless - Money; why localities selected for location of solar farms
- Molly Dowless - Not opposed to Solar - more strategic locations; PC voted twice at the meeting; find other ways to make money; other opportunities.
- Mark Owen - Anti-Solar; preserve County; project located in wrong place and too large; vote no.
- Renee Hyatt (DCR) - Responded to Supervisor Fly's question; documented National Heritage Resources; Developer worked to avoid some habitat; Additional surveys need to be done; only making recommendations; have no regulatory authority.

C. Action to Close Public Hearing

ON MOTION OF SUPERVISOR FUTRELL, seconded by SUPERVISOR TOLLIVER and carried: RESOLVED that the Sussex County Board of Supervisors hereby close the Public Hearing on the Siting Agreement. All Board members present voted aye.

12. Questions/Comments for Applicant and/or Staff

Supervisor Fly discussed expenses (18%); fiduciary responsibility, losing money in year 30.

13. Board of Supervisors Consideration of the Blackwater Solar Project

County Attorney Powell stated that she would like to address a comment that Supervisor Baicy made during the Public Hearing in regards to the Conditional Use Permit Zoning Application regarding bonds. It was noted that the bond amounts are not included. There was discussion of the Board not approving Bonds and it being delegated to the Zoning Administrator, as well as who provides the bond amounts.

County Attorney Powell mentioned that there was an issue about the assignment. She noted that page 4 of the Siting Agreement speaks to assignment.

A. Rezoning Application

Chairman Jones asked for a motion to defer the application until the Board's regular meeting on June 20, 2024. Supervisor Tyler made the motion. There was inquiry as to whether a second was made. There being no second to the motion, the motion to defer to the BOS June 20, 2024 meeting failed.

Attorney Foster addressed Chairman Jones and requested that the Application for the CUP and Rezoning be respectfully withdrawn given the deferral failed. Attorney Foster stated that they look forward to working with the Board.

The Clerk of the Board asked for clarification and was advised that the CUP/Rezoning Application was withdrawn.

Supervisor Fly made the motion, seconded by Supervisor White to reject the CUP/Rezoning Application. There was discussion of whether the withdrawal of CUP/Rezoning application was made prior to the motion for rejection.

Chairman Jones advised that the County Attorney needed to confirm the actions of the meeting. He later noted that the Board needed to enter Closed Session because there were two issues that the Board needed the advice of Counsel.

Supervisor Tyler made the motion to enter Closed Session at the request of Counsel. There was discussion of the motion on the floor Supervisor Fly made. There was discussion of each Supervisor being liable.

There was discussion of whether the withdrawal of CUP/Rezoning application was prior to the motion for rejection and whether the Board needed to enter Closed Session.

ON MOTION OF SUPERVISOR JONES, seconded by SUPERVISOR TYLER and carried: RESOLVED that the Sussex County Board of Supervisors hereby enter Closed Session for consultation with legal counsel requiring the provision of legal advice by such counsel, pursuant to Virginia Code Section 2.2-3711(A)8, Blackwater Solar, LLC.

Voting aye: Supervisors Jones, Tyler

Voting nay: Supervisors Baicy, Fly, Futrell, Tolliver, White

The motion failed.

County Attorney Powell researched the County Ordinance. She read that Section 34-36(b) states that an application for an amendment may be withdrawn at any time, provided that if the request for withdrawal is made after the publication of the notice of public hearing, no application for the reclassification of all or any part of the same property shall be filed within three months of the withdrawal date. There shall be no refund of rezoning fees in the case of withdrawal.

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR WHITE and carried: RESOLVED that the Sussex County Board of Supervisors hereby reject the CUP/Rezoning application submitted for Blackwater Solar, LLC.

Voting aye: Supervisors Baicy, Fly, Futrell, Tolliver, White

Voting nay: Supervisors Jones, Tyler

ON MOTION OF SUPERVISOR FLY, seconded by SUPERVISOR TYLER and carried:
RESOLVED that the Sussex County Board of Supervisors hereby finds no need to vote on the
Siting Agreement due Conditional Use Permit being rejected; and

FURTHER RESOLVED that the Board of Supervisors hereby adjourn the June 3, 2024 Joint
Public Hearing at 11:21 p.m. All Board members present voted aye.

DRAFT