At a Joint Public Hearing of the
Sussex County Board of Supervisors & Planning Commission
Held at the Sussex Central High School Auditorium on
Thursday, October 24, 2024 at 6 pm

BOARD MEMBERS PRESENT
Thomas W. Baicy, III
C. Eric Fly, Sr.
Alfred G. Futrell
Wayne O. Jones
Phyllis T. Tolliver
Steve E. White

BOARD MEMBERS ABSENT
Rufus E. Tyler, Sr.

PLANNING COMMISSIONERS PRESENT
Kevin Bracy
J. Lafayette Edmonds
Roger King
Dennis P. Mason
Terry Massenburg

PLANNING COMMISSIONER ABSENT
Elena Grinstead
Andrew Mayes
Rudolph Shands

STAFF PRESENT:
Richard Douglas, County Administrator
Jeff Gore, County Attorney
Ernest Giles, Sheriff
Michael Kessinger, Captain
Michael Poarch, Planner
Beverly H. Walkup, Planning Director
Shilton R. Butts, Asst. to the County Administrator/
Clerk to the Board of Supervisors (Virtual)

1. Call to Order/Determine Quorum

Chairman W. Jones determined a quorum and called the October 24, 2024 Joint Public Hearing to order for the Board of Supervisors.

Chair Massenburg determined a quorum called the October 24, 2024 Joint Public Hearing to order for the Planning Commission.

2. Overview of Process and Public Hearing Rules

Chairman Jones stated that the purpose of the October 24, 2024 joint public hearing of the Board of Supervisors and Planning Commission was to conduct a public hearing on the RWE/Big Pine Pine Solar, LLC application for a conditional use permit in the County.

He stated that the Public Hearing was to receive comments from the citizens. After the applicant's presentations, the Board and Planning Commission would then conduct the Joint Public Hearing where those in attendance would have the opportunity to provide their input. He clarified that it was not a question and answer (Q&A) session. Board members and Commissioners did not have to answer their questions. After everyone who wanted to speak had done so, he would close the joint public hearing. The Board and Commission may, at that time, ask questions of the applicant, consultant and staff. In addition, according to the Board's bylaws, the applicant would have a chance to response to any public comments if they chose to do so. The Board of Supervisors would be taking action at that time.

3. Summary of Conditional Use Permit Application and Staff Findings/Recommendations – Planning Staff

Luke Peters, with The Berkley Group, provided a summary of Conditional Use Permit Application #2-24 Big Pine Solar, RWE Clean Energy, LLC, applicant.

The Applicant is seeking a Conditional Use Permit (CUP) to construct a 150 megawatt (alternating current) photovoltaic solar energy generation facility. The project is located on 6 parcels, or portions thereof, totaling 2,187 acres, while the fenced area of development/disturbance totals approximately 1,050 acres.

The Project is situated northwest of the intersection of Route 625 (Newville Road) and Route 626 (Neblett Mill Road and Beef Steak Road). It's zoned General Agricultural (A-1). It's comprised of six parcels: 4-A-2, 25-A-3, 25-A-4, 25-A-6, 39-A-31, 39-A-32. The Project land totals 2,187 acres and is entirely zoned A-1, General Agricultural. There are areas of steep slopes (8% or greater) within the Project site.

The project is also adjacent to and/or in close proximity to Sussex I and II Correctional Facility, Sussex Service Authority, Atlantic Waste Management landfill, Waverly Solar, and the proposed Cabin Point Solar project. The project is located west of the Town of Waverly with project parcels and active developed areas located over 3 miles from the Town's boundaries.

There are environmental and natural resources.

- Historic Virginia Land Conservancy Conservation Easement: Situated 0.6 miles west of the site.

- Cherry Orchard Bog State Natural Area Preserve: Managed by the Virginia Department of Conservation and Recreation, located 2.1 miles west of the site.
- Neblett Millpond – Joseph Swamp – Dobie Swamp Stream Conservation Site: Located in the western portion of the site, this area has a biodiversity ranking of B3, indicating it is a high-priority stream conservation site supporting significant aquatic natural resources.
- Joseph Swamp Conservation Site: Situated at the northwestern corner of the site, also ranked B3, this site provides essential habitat and buffers for natural heritage resources.
- The state threatened loggerhead shrike has been observed within three miles of the site, leading to potential tree and shrub clearing restrictions from April 1 to July 31.
- According to the VDCR's model, Bachman's sparrow, Rafinesque's eastern big-eared bat, and red-cockaded woodpecker are potential residents of the site.

Mr. Peters stated that the proposed development the applicant is seeking is a The Applicant is seeking a Conditional Use Permit (CUP) to construct a 150 megawatt (alternating current) photovoltaic solar energy generation facility. The project is located on 6 parcels, or portions thereof, totaling 2,187 acres, while the fenced area of development/disturbance totals approximately 1,050 acres.

The project infrastructure will consist of approximately 311,640 solar photovoltaic modules (PV panels) mounted on steel racking structures, inverters, a transformer, and control cabinet, switch gear, meter, interconnection, and security fencing. PV panels will be approximately 27% of the total project area.

The Big Pine Solar project is located in Sussex County, Virginia, bisected by Route 625 (Newville Road), north of the intersection of Route 625 and Route 626 (Neblett Mill Road and Beef Steak Road).

He stated that the project will be screened from view at ground level at all locations. A 150-foot buffer of existing vegetation will be maintained around the exterior of the Project's fencing. There are several locations where a berm will be built, and screening trees will be planted. Screening will be no less than 50 feet wide.

There are several locations where a berm will be built, and screening trees will be planted. Screening will be no less than 50 feet wide. The trees planted as part of this screening will be no less than five (5) to six (6) feet tall at planting and be in at least three staggered rows, no more than fifteen (15) feet apart.

Construction is anticipated to commence in Q2 2026 with the Project being energized and commercial operation being achieved by Q2 2027. The Application's Traffic & Route Evaluation Study indicates haul routes for construction traffic; the proposed haul routes indicate traffic from US Route 460, travelling to Route 602/Cabin Point Road, traffic would then access the site from Route 625/Newville Road or Route 626/Beef Steak Road and private roads therefrom.

Mr. Peters stated the County's Comprehensive Plan identifies the Project to be located within the Waverly Small Area Plan (SAP) area. (A map was included in the presentation).

It was noted that the Comprehensive Plan was amended in February 2022 to amend policies for solar and battery storage facilities.

He reviewed policies for Utility-Scale Solar Facilities and Battery Energy Storage Facilities.

The County will consider utility-scale solar facilities as a primary use in districts zoned agricultural or industrial with preference for brownfields and County-owned capped landfills. The total size shall be 100 acres or more but less than 5,000 contiguous acres.

Large contiguous projects are preferred over small decentralized or large discontiguous projects to prevent land fragmentation.

Laid out approximately on the project parcels.

Laid out with no more than 65% equipment and building coverage. L

Located outside planning areas or community hubs.

Located outside forested areas to preserve forest resources. Located outside prime agricultural land.

Further than three (3) miles from any village or town boundary.

Further than two miles from other existing or permitted solar facilities.

Located to minimize negative impacts in proximity to residences; historic, cultural, recreational, or environmentally-sensitive areas; and scenic viewsheds.

Located less than or equal to one mile from a transmission line

BESS is a primary use on a parcel contiguous to utility-scale solar facilities, other energy generation facilities, and substations.

Staff reviewed based on conformity with the Comprehensive Plan, specifically the Waverly 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.

With respect to the Waverly Small Area Plan:

- Impacts the agricultural economy or rural character of the area;
- Reduces the potential for the expansion of farm related activities or the preservation of agricultural lands from being developed for other land uses;
- Preserves environmentally sensitive areas; or

- Maintains the rural character of the Waverly Planning Area, supports existing farming operations, and protects productive agricultural lands from encroachment by industrial or commercial development.
- Based upon the existing use of Project parcels and adjacent parcels, as well as the use proposed and its size (perhaps specifically as it relates to areas of the Project within the Waverly Planning Area), Staff is of the opinion that it may not be fully in accord with the policies of the Comprehensive Plan and the specific Waverly Planning Area, if not be entirely contrary to such policies given the industrial nature of the use and the impact on agricultural and the rural character of the area.

With respect to Utility-Scale Solar Facilities Policies:

- The County's Comprehensive Plan identifies the Project to be located within the Waverly Small Area Plan (SAP) area
- Based upon information provided by the Applicant, the development area consists of Emergent Forests, Forests, Open Water, and Scrub or shrubbed areas. According to the Application materials, of the development area, approximately 40 acres or 2.4% consists of active agriculture production. The amount of prime farmland that is currently being used for agriculture that is impacted by the Project (within the fence) is .88% (40 acres) of the total Project area.
- The Project parcels and active developed area are located more than 3 miles from the Town of Waverly.
- Project parcels and active developed area are located more than 2 miles from the Waverly Solar project. The Cabin Point Solar project was formerly located in the area of the Project, however, the permit for the Cabin Point Solar project has expired and it is no longer relevant to this policy.
- The Project is located within 1 mile of a transmission line, being bisected by an existing 500kV transmission line.
- The project's proposed 150' perimeter buffer/setback, as well as 300' setback from residences, work to ensure consistency with this criteria. As noted, the Applicant has proposed wetland buffers and setbacks of varying widths, but no less than 50'. To ensure the protection of wetland resources, Staff is additionally recommending that there be a setback of 200' from wetlands and streams (proposed Condition #7).

The strengths to be: (1) Large, contiguous Project; (2) Will provide another source of energy to the transmission grid; (3) No direct impact to any known cultural and/or historical resources; (4) No endangered species were present within the project limits based on surveys that were conducted. (5) Located greater than 3 miles from the Town of Waverly; (6) Located more than 2 miles from the Waverly Solar facility; (7) The project serves to expand the base of tax-paying businesses in this area as opposed to the correctional facility and the service authority.

The weaknesses include the project is located within a DCR designated conservation site of high significance. . Significant amount of highly important wetlands throughout the project area.

Based upon a review of the Application and the Staff comments provided herein, Staff recommends approval of the requested Conditional Use Permit with conditions. Generally, Staff is of the opinion that the Project is consistent with the policies of the Comprehensive Plan and the purposes of the Zoning Ordinance with the imposition of reasonable conditions to mitigate any anticipated negative impacts.

Should the Planning Commission consider a recommending approval of the CUP, and should the Board of Supervisors consider approval of the CUP, Staff has provided 45 recommended conditions.

RWE Clean Energy, LLC, (the "Applicant") has applied (the "Application") to the Sussex County Board of Supervisors (the "County") for a Conditional Use Permit (the "CUP") to construct a Utility Scale Solar Facility (the "Solar Facility") and associated overhead and underground lines (collectively the "Project") as defined by Article 1, Section 34-1 of the Sussex County Zoning Ordinance (the "Ordinance") and permitted by Chapter 34, Section 34-907 of the Ordinance. The following conditions, which upon approval of the CUP, shall be in full force and effect. As used in these conditions, the term "Applicant" shall include the terms "Applicant, Owner, Developer, or Operator," and the successors and assigns thereof. The term "Zoning Administrator" shall include the designee of the Zoning Administrator. The terms "Project" and "Solar Facility" shall include the facility in its entirety.

The proposed CUP conditions (the "Conditions") are consistent with the Ordinance which shall apply to the Project. In the event of any conflict between the Ordinance and Conditions, the Conditions shall control. All terms and phrases used and not otherwise defined herein shall have the meanings ascribed to them in the Ordinance. The CUP, including any approved plans and CUP Conditions, shall run with the land and shall not be affected by a change in ownership of the Applicant or the Project, nor by any change in the Ordinance.

1. The Applicant shall develop, construct, operate, and maintain the Project in substantial conformance with the conceptual plans (titled "Concept Plan, Big Pine Solar," plan sheets 1 thru 3.2, dated June 5, 2024, Revised October 10, 2024), inclusive of the Application revision dated "Revised October 11, 2024", the "Concept Plan", with the area shown thereon referred to herein as the "Site"), and all assurances and commitments made within the Application materials, and the conditions imposed on the issued conditional use permit, as determined by the Zoning Administrator. Substantial conformance will be determined by the Zoning Administrator based on his/her review of the record. Deviations determined not to be in substantial conformance with the conceptual plans, or consistent with these Conditions as may be necessary or required, require review and approval as an amendment to the conditional use permit, following the process for the granting of a conditional use permit.

2. Project capacity shall be limited to a maximum of 150 MW for the solar facility. The CUP permits the active developed area of the Site, within the fence line, to consist of up to 1,050 acres on Sussex County Tax Map Parcels: 14-A-2, 25-A-3, 25-A-4, 25-A-6, 39-A-31, 39-A-32 (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.

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 200' for all installed equipment. Setbacks from wetlands shall include a minimum of 150' 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 300' unless otherwise required by applicable regulations, statutes or ordinances. Erosion control and stormwater control measures may be placed within the required setback, but 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, 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 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. The trees planted as part of this screening will be no less six (6) feet tall at planting and be in at least three staggered rows, no more than fifteen (15) feet apart. 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. 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.

11. 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.

12. As part of the site plan review, the Applicant shall be required to submit a construction management/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.
    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. 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.

e. 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.
f. Site security; security measures shall be implemented prior to commencement of construction activities.
g. 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.
h. 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.
i. 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.
j. Mitigation of dust.
k. Mitigation of burning operations.

13. The Applicant shall submit a Construction Traffic Management Plan (CTMP) to include entrances and comply with all Virginia Department of Transportation conditions for the traffic management plan during construction and decommissioning of the Solar Facility.

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 ("Grading Plan"), to be reviewed and approved by the Zoning Administrator. The Applicant shall post a bond or other security for grading operations, from an issuer 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. The Project shall be constructed in compliance with the Grading 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 will 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 ("Stormwater Infrastructure") at the outset of the project to ensure protection of water quality. Once all Stormwater Infrastructure is complete and approved by the VESCP authority, no more than 300 acres of the land disturbance areas as reflected on the Site Plan shall be disturbed without soil stabilization at any one time. Stabilization, for purposes of erosion and sediment control, shall mean the application of seed and straw to disturbed areas, which shall be determined by the VESCP authority.

18. The Applicant shall coordinate with state and federal agencies to avoid or limit impacts to the maximum extent practicable 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 an 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.

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 the 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 flagged by County staff on the Site Plan.

25. Permanent entrance roads and parking areas, as designated in the building permit application, will 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 Applicant shall provide a bank letter of credit, surety bond, or other form of security (the "Decommissioning Security") for 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. 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 of the Decommissioning 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.

28. The Applicant shall submit a final Decommissioning Plan to the County for approval in conjunction with the building permit. 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 will update the decommissioning costs 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.

29. Upon decommissioning of the Solar Facility, all physical improvements, materials, and equipment related to the Project, both surface and subsurface components, shall be removed in their entirety. The soil grade shall also be restored following disturbance caused in the removal process in accordance with applicable Ordinance provisions.

30. 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.

31. Within twelve (12) months after the cessation of use of the Solar Facility for electrical power generation or transmission, the Applicant, at their sole cost and expense, shall commence decommissioning of Project in accordance with the Decommissioning Plan approved by the County.

32. If the Applicant fails to timely decommission the Project within twenty-four (24) months from the cessation of use 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 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. Inspections.

    a. The Applicant will 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 by 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.

38. 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 the facility, but on the project site, developed in consultation with the County Fire Chief and intended to further mitigate any risk of spread of fire 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 Site, 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 will notify the County Public Safety Coordinator, who may, at their discretion, schedule an additional training on the new equipment.

39. Compliance. The Solar Facility shall be designed, constructed, and tested to meet relevant local, state, and federal standards as applicable.

40. The CUP shall terminate if the solar facility does not receive a building permit within 18 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 24 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. Applicant shall comply with the terms of the Siting Agreement and any violations thereof shall be a violation of this CUP.

Beverly Walkup, Planning Director, provided the Board and Commission with a copy of the revised condition. She noted that the only change that staff requested from the applicant is that GWR also be inserted in the Condition 7 and the consultant in regards to the wetlands.

4. Applicant Comments Regarding Conditional Use Permit Application

RWE provided comments regard Big Pine Solar location and site plan. She discussed solar operations and benefits.

5. Joint Public Hearing on Conditional Use Permit Application

A. Board of Supervisors Action to Open Public Hearing

ON MOTION OF SUPERVISOR BAICY, seconded by SUPERVISOR FUTRELL and carried: RESOLVED that the Sussex County Board of Supervisors hereby open the Public Hearing on the public hearing on the on the RWE/Big Pine Solar Conditional Use Permit Application #2024-04. All Board members present voted aye.

Inaudible

B. Planning Commission Action to Open Public Hearing

ON MOTION OF COMMISSIONER BRACY , seconded by COMMISSIONER EDMONDS and carried: RESOLVED that the Sussex County Planning Commission hereby open the Public

Hearing on the public hearing on the on the RWE/Big Pine Solar Conditional Use Permit Application #2024-04. All Commissioners present voted aye.

C. Public Comments

1. Larry Diehl – Opposes project due to performance and track record of RWE; and Comprehensive Plan guidance as follows:
   a. Protect forest resources
   b. Remain rural in nature
   c. Timber land – directly contradictory
   d. Distance from Waverly & Waverly Solar
   e. Money is irrelevant to CUP
   f. Georgia project – environmental issues
2. Lynn Norton – 22377 Cabin Point – Opposes project due to following:
   a. Hideous solar panels
   b. Lots of Clearing
   c. Pollutes clean county air
   d. Increases traffic
   e. Not good for peace of mind
3. Molly Dowless – Opposes project for environmental reasons and 45 conditions are too many.
4. David Tucker – 6251 Old Stage Hwy, IOW County, VA – Opposes project due to the following:
   a. School bus and fire incident in IOW County
   b. Money is being used as a bartering tool
   c. NC average project size 8.8 mw vs. VA at 38 mw
   d. Panel position loses energy
   e. Nuclear is better – referenced Surry and Chesapeake stations
5. Curtis Stancil – Adjacent Landowner - Approval recommended – majority of property is in timberland, except small portion.
6. Chase Dovall – Opposes project due to the following:
   a. Active gravesite on property
   b. DWR decommissioning of Mill Pond
   c. Home values will decrease
   d. Does not want to see solar farm
7. Lisa Garrison – Cabin Point Road – Opposes due to the following:
   a. Lives near access point
   b. Adjacent to land with endangered fish
   c. Safety on Cabin Point Road
   d. Truck traffic has increased
   e. Two to three year process
   f. What is the future of industrial solar facilities with regard to decommissioning and impact on land
8. Candy Spire (23530 Cabin Point) – Opposes due to the following:
   a. Half mile from Cabin Point/Newville

b. Safety concern with traffic
c. Agrees with other speakers
d. Production will go to other areas – how much will go to local residents
e. Will it drop her taxes
f. Where will solar panels go
g. Did not get a letter

9. Nathan Young (Stony Creek) – Approval recommended for the following:
   a. Energy comes from grid like now
   b. Anything developed in County brings traffic
   c. Does not impact timber jobs that last 1 week
   d. Screening required
   e. Changed boundaries to be in compliance
10. Leon Dillard Sr. – Approval recommended for the following:
   a. Born and Raised here; left and came back; still no progress/things are actually worse
   b. Old Jefferson School closed, auto parts, super market
   c. Still dodging same pot holes – no road improvements
11. Seth Adams – Opposes due to the following:
   a. Adverse environments affects
   b. No benefit to citizens
   c. Do not believe solar is the answer
   d. Traffic from landfill, corrections facility has increased current traffic
   e. Money spent to protect wetlands
   f. 45 conditions are too many
12. Pete Stith (Chesterfield but has property interests in Jarratt with the Old Jefferson School) – Approval recommended –believes solar is good for the County and will bring much needed revenue to sustain itself instead of spending reserves to balance budget
13. Leroy Hardy, Jr. – Southampton (Nottoway Indian Tribe of VA) – would like to be consulted concerning potential archeological sites
14. Kerrine Bryan and Steve Romine – RWE Rebuttal – 1) Panels are safe and not toxic (80% recyclable); 2) No impact to property values; 3) Generating extra revenue with no burden.

The applicant asked for a rebuttal. Planning Commission Chair Massenburg inquired as to whether this was appropriate.

D. Planning Commission Action to Close Public Hearing

ON MOTION OF COMMISSIONER EDMOND, seconded by COMMISSIONER MASON and carried: RESOLVED that the Sussex County Planning Commission hereby close the public hearing on the on the RWE/Big Pine Solar Conditional Use Permit Application #2024-04. 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 Public Hearing on the Conditional Use Permit Application #2024-04. All Board Members present voted aye.

BOS Comments:

a. Why Sussex?
b. Will leases be maintained on property that is removed from the application?
c. If portion is decommissioned, will it reduce the long-term revenue?
d. Condition 41?
e. How will complaints be resolved?

Some discussion was inaudible.

The staff report and a copy of the CUP Application #2024-04 was provided to the Board members.

F. Planning Commission Action on Public Hearing Item

ON MOTION OF COMMISSIONER BRACY, seconded by COMMISSIONER MASON and carried: RESOLVED that the Sussex County Planning Commission hereby deny the RWE/Big Pine Solar Conditional Use Permit Application #2024-04.
Voting aye: Commissioners Bracy, King, Mason, Massenburg
Voting nay: Commissioner Edmond

6. Adjournment

A. Planning Commission

ON MOTION OF COMMISSIONER EDMOND, seconded by COMMISSIONER MASON and carried: RESOLVED that the Sussex Planning Commission hereby adjourn the October 24 2024 Joint Public Hearing of the Board of Supervisors and the Planning Commission at 7:54 p.m. All Commissioners present voted aye.

B. Board of Supervisors

ON MOTION OF SUPERVISOR FLY, second by SUPERVISOR WHITE and carried: RESOLVED that the Sussex County Board of Supervisors hereby adjourn the October 24, 2024 Joint Public Hearing of the Board of Supervisors and the Planning Commission at 7:54 p.m. All Commissioners present voted aye.