



**Sussex County Planning Commission Meeting
Monday, June 2, 2025 at 6:00 P.M.
General District Courtroom at Sussex Judicial Center
15098 Courthouse Road, Sussex, VA 23884**

Agenda

A. CALL TO ORDER

B. ADOPTION OF AGENDA

C. APPROVAL OF MINUTES

- a. April 7, 2025

D. PUBLIC HEARING (S)

- a. Zoning Amendemnt #2025-01, Terry Namkung., applicant
 - i. Open Public Hearing
 - ii. Staff Findings/Recommendations
 - iii. Applicant Presentation
 - iv. Public Comments
 - v. Close Public Hearing
 - vi. Planning Commission Comments/Discussion
 - vii. Planning Commission Action
- b. Conditional Use Permit #2025-03, Greenvolt Power Actualize, LLC, applicant
 - i. Open Public Hearing
 - ii. Staff Findings/Recommendations
 - iii. Applicant Presentation
 - iv. Public Comments
 - v. Close Public Hearing
 - vi. Planning Commission Comments/Discussion
 - vii. Planning Commission Action

E. OLD BUSINESS

- a. None

F. NEW BUSINESS

- a. Sussex County Floodplain Ordinance Introduction

G. ADJOURNMENT



APPROVAL OF MINUTES

- April 7, 2025

**Minutes of the
SUSSEX COUNTY PLANNING COMMISSION MEETING**

**Monday, April 7, 2025 at 6:00 P. M.
General District Courtroom- Sussex Judicial Center
15098 Courthouse Road, Sussex, VA 23884**

PLANNING COMMISSIONERS PRESENT

Terry Massenburg, Chair
J. Lafayette Edmond, Vice Chair
Dennis P. Mason
Rudolph Shands
Kevin Bracy
Andrew Mayes
Elena Grinstead

PLANNING COMMISSIONERS ABSENT

Roger King

STAFF PRESENT

Beverly Walkup, Director of Planning
Michael Poarch, County Planner
Danielle Powell, County Attorney

CALL TO ORDER:

COMMISSIONER MASSENBURG, called the Planning Commission Meeting to order at 6:02 p.m.

ADOPTION OF AGENDA

ON THE MOTION OF COMMISSIONER EDMOND and seconded by COMMISSIONER SHANDS:
RESOLVED that the agenda be approved for the April 7, 2025 meeting with the addition of Commissioner Pay under New Business.

Voting aye: Commissioners Massenburg, Edmond, Shands, Bracy, Grinstead, Mason, and Mayes

(7-0)

APPROVAL OF MINUTES:

None

PUBLIC HEARING

MOTION TO OPEN PUBLIC HEARING:

ON THE MOTION OF COMISSIONER EDMOND and seconded by COMMISSIONER MASON:
RESOLVED to open the public hearing for Zoning Text Amendment #2025-01.

STAFF PRESENTATION

Beverly Walkup, Director of Planning, provided an overview of the errata sheet on the updates to the proposed ordinance as follows:

This Errata Sheet represents the revisions discussed during the Planning Commission's Public Hearing #1 on March 3, 2025. These revisions should be included in the motion to adopt subject to continued discussions.

- 1) ARTICLE I. IN GENERAL – Sec. 34.1 Definitions revised to add the definition for an Animal Sanctuary which is already included in the district uses but the definition was erroneously omitted. The definition is as follows:

Sec. 34.1 Definitions

Animal Sanctuary – A facility where animals are brought to live and to be protected for the rest of their lives with limited options for re-adoption. Types of facilities include, companion animal sanctuaries; wildlife sanctuaries; exotic animal sanctuaries; farmed animal sanctuaries; and cetacean sanctuaries.

- 2) ARTICLE I. IN GENERAL – Sec. 34.1 Definitions revised to add the definition for an Animal Shelter which is already included in the district uses but the definition was erroneously omitted. The definition is as follows:

Sec. 34.1 Definitions

Animal Shelter – A publicly or privately owned or operated facility where stray, lost, abandoned or surrendered animals – mostly dogs and cats – are housed until they are claimed by their owners or adopted. Publically operated facilities also have the municipal function of picking up stray dogs and cats, and investigating reports of animal abuse, dog bites or animal attacks.

- 3) ARTICLE I. IN GENERAL – Sec. 34.1 Definitions revised to add the definition for a Convenience Center which is already included in the district uses but the definition was erroneously omitted. The definition is as follows:

Sec. 34.1 Definitions

Convenience Center – A collection point for the temporary storage of solid waste provided for individual solid waste generators who choose to transport solid waste generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point may not receive waste from collection vehicles that have collected waste from more than one real property owner. A convenience center shall be on a system of regularly scheduled collections.

- 4) ARTICLE I. IN GENERAL – Sec. 34.1 Definitions revised to add the definition for a Data Center which is already included in the district uses but the definition was erroneously omitted. The definition is as follows:

Sec. 34-1 Definitions

Data Center – A building, group of buildings or dedicated space within a building used to house computer systems and associated components and infrastructure for power supply, data communication connections, environmental controls (e.g., air conditioning, fire suppression), and various security devices.

- 5) ARTICLE I. IN GENERAL – Sec. 34-1. Definitions revised to include a definition for a Special exception to be granted by the BZA to allow nonconforming structures to be repaired to its original condition if the structure has been vacant for a period longer than 2 years.

Sec. 34-1. Definitions

Special Exception - A Special Exception is a permit for the use and repair or restoration of a nonconforming structure that is not allowed as a matter of right due to the nonconformity, but may be permitted on a case-by-case basis by the Board of Zoning Appeals depending upon the location and condition of the structure.

- 6) ARTICLE II. ADMINISTRATION. DIVISION 6. NONCONFORMING USES – Sec. 34-67(b)(1) revised to allow a nonconforming structure to be expanded vertically provided it remains in the same footprint.

Sec. 34-67(b)(1). Repairs and maintenance

- (1)** Any building or structure that is conforming as to use, but is nonconforming as to the requirements of this chapter, including floor area, lot, yard, road frontage, setback, parking, loading spaces, fences, signs or height requirements, may be enlarged or structurally altered, if the alteration or enlargement complies with this chapter, except that the structure may be expanded vertically provided that it remains in the same footprint.

- 7) ARTICLE II. ADMINISTRATION. DIVISION 6. NONCONFORMING USES – Sec. 34-69(b) to allow a nonconforming structure to be damaged in any way to be replaced within two (2) years.

Sec. 34-69(b). Restoration and Replacement

(b) If a nonconforming structure is destroyed or damaged in any manner, it may be replaced in its current construction footprint without a variance provided that the structure has not been abandoned for a period longer than two years. If the structure has been abandoned for a period longer than two years, it shall be restored only upon the issuance of a special exception approved by the board of zoning appeals; provided, however, that:

(1) The owner of any residential or commercial building damaged or destroyed by a natural disaster or other act of God to repair, rebuild, or replace such building to eliminate or reduce the nonconforming features to the extent possible, without the need to obtain a variance. If such building is damaged greater than 50 percent and cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so. The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the local floodplain regulations adopted as a condition of participation in the National Flood Insurance Program. Unless such building is repaired, rebuilt or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of this chapter. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then there shall be an additional two years for the building to be repaired, rebuilt or replaced as otherwise provided in this subsection. For purposes of this section, the term "act of God" shall include any natural disaster or phenomena, including a hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake or fire caused by lightning or wildfire. For purposes of this section, owners of property damaged by an accidental fire have the same rights to rebuild such property as if it were damaged by an act of God. Nothing herein shall be construed to enable the property owner to commit an arson under Code of Virginia, § 18.2-77 or 18.2-80, and obtain vested rights under this subsection.

- 8) ARTICLE II. ADMINISTRATION. DIVISION 7. BOARD OF ZONING APPEALS - Sec. 34-127(a)(4) revised to allow the BZA the authority to grant a special exception for the use and repair of a structure that has been abandoned for a period longer than two years, on a case-by-case basis depending upon the location and condition of the structure.

Sec. 34-127(a)(4)

(4) Special Exception..... To hear and decide applications for special exception for the use and repair or restoration of a nonconforming structure destroyed or damaged in any manner in its current construction footprint that has been abandoned for a period longer than two years. The board may impose such conditions relating to the use provided for in the authorized special exceptions for which a permit is granted as it may deem necessary in the public interest and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. No such special exception may be granted except after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.

a. To revoke a special exception previously granted by the board of zoning appeals if the board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by Code of Virginia, § 15.2-2204. However, when giving any required notice to the owners, their agents or the occupants of abutting property and property immediately across the street or road from the property affected, the board may give such notice by first class mail rather than by registered or certified mail.

- 9) ARTICLE III. ZONING DISTRICTS. DIVISION 3. RURAL RESIDENTIAL DISTRICT, R-R – Sec. 247 revised to add Group Home as a permitted use in the R-R.

Sec. 247. Use regulations

In the Rural Residential district, (R-R), structures to be erected or land to be used shall be for one (1) or more of the following uses:

- (a) Permitted Uses:
 - (1) Agriculture, including livestock and poultry operation.
 - (2) Silviculture.
 - (3) Dwelling, single-family, detached, including modular units on an individual lot.
 - (4) Dwelling, single-family, attached or townhouse.
 - (5) Educational facility, primary/secondary.
 - (6) Church and associated facilities.
 - (7) Conservation area/nature preserve.

- (8) Public park or playground.
- (9) Home occupation in accordance with Article XXIV, Section 34-711.
- (10) Public safety service.
- (11) Family day home.
- (12) Construction office temporary.
- (13) Aquaculture.
- (14) Manufactured home, double-wide for single-family use on an individual lot with a permanent foundation approved by the Building Official.
- (15) Governmental service.
- (16) Greenhouse, private
- (17) Guest house.
- (18) Accessory uses/buildings, provided there is an existing principal use/structure already located on the subject property.
- (19) Stable, private.
- (20) Kennel, private, accessory to a single-family residence, not for compensation to the owner/resident.
- (21) Community recreation.
- (22) Garage apartment.
- (23) Real estate office, temporary.
- (24) Wayside stand.
- (25) **Group home.**

10) ARTICLE III. ZONING DISTRICTS. DIVISION 3. RURAL RESIDENTIAL DISTRICT, R-R - Sec. 34-250 revised to change the front setback as discussed during the Commission's work sessions to require a 60' front setback instead of the 100' setback consistent with the recommended reduction in lot size from 2 acres to 1 acre and width and frontage from 300' to 150' as follows:

Sec. 34-250. Setback regulations.

In the R-R district, structures shall be located 60 feet or more from any street right-of-way. This shall be known as the setback line. However, public utility distribution facilities and signs advertising the sale or rental of property may be erected up to the property line.

(11) ARTICLE III. ZONING DISTRICTS. DIVISION 4. GENERAL RESIDENTIAL DISTRICT, R-1 - Sec. 34-275 to add Community Center and Group Home as a permitted uses in the R-1.

Sec. 34-275. Use regulations.

In the R-1 General Residential District, structures to be erected or land to be used shall be for one or more of the following uses:

- (a) Permitted Uses:
 - (1) Dwelling, single-family, detached, including modular homes on an individual lot.
 - (2) Dwelling, two-family or duplex.
 - (3) Dwelling, single-family, attached or townhouse.

- (4) Church and associated facilities.
- (5) Educational facility, primary/secondary.
- (6) Public park or playground.
- (7) Home occupations, type 1 in accordance with Article XXIV, Section 34-711.
- (8) Accessory uses/buildings provided there is an existing primary use/structure already located in the subject property. Accessory buildings, such as carports, porches and stoops attached to the main building shall be considered part of the main building.
- (9) Public utility.
- (10) Community center.**
- (11) Community recreation.
- (12) Construction office temporary.
- (13) Family day home.
- (14) Governmental service.
- (15) Group home.**
- (16) Public safety service.
- (17) Real estate office, temporary.

11) ARTICLE III. ZONING DISTRICTS. DIVISION 5. HIGHER DENSITY RESIDENTIAL DISTRICT, R-2 – Sec. 34-350 to add Community Center and Group Home as a permitted uses in the R-2.

Sec. 34-350. Use regulations.

In the higher residential district R-2, structures to be erected or land to be used shall be for one (1) or more of the following uses:

- (a) Permitted Uses:
 - (1) Dwelling, single-family, detached, including modular homes on an individual lot.
 - (2) Dwelling, single-family, attached or townhouse.
 - (3) Dwelling, two-family or duplex.
 - (4) Dwelling, multi-family.
 - (5) Church and associated facilities.
 - (6) Educational facility, primary/secondary.
 - (7) Public park or playground.
 - (8) Home occupation, type 1 in accordance with Article XXIV, Section 34-711.
 - (9) Accessory uses/buildings provided there is an existing primary use/structure already located on the subject property. Accessory buildings, such as carports, porches and stoops attached to the main building shall be considered part of the main building.
 - (10) Public utility, neighborhood.
 - (11) Community center.**
 - (12) Community recreation.
 - (13) Construction office, temporary.

- (14) Family day home.
- (15) Governmental service.
- (16) Group home.**
- (17) Public safety service.
- (18) Real estate office, temporary.
- (19) Silviculture.

12) ARTICLE III. ZONING DISTRICTS. DIVISION 6. RURAL RESIDENTIAL-MANUFACTURED HOME PARK DISTRICT, RR-MHP – Sec. 34-402 revised to add single- and/or double-wide for clarity.

Sec. 34-402. Use regulations.

- (1) Manufactured/mobile home park, single- and/or double-wide**
- (2) Accessory uses except that no accessory building may be closer than ten feet from any adjoining property line.
- (3) Public utility, neighborhood.

13) ARTICLE III. ZONING DISTRICTS. DIVISION 11. PLANNED UNIT DEVELOPMENT DISTRICT, PUD – Sec. 34-547 to add Group Home as a permitted use in the PUD.

Sec. 34-547. Uses regulations.

The following uses and structures are allowed in the PUD district:

- (a) Permitted Uses:
 - (1) Assisted living facility.
 - (2) Bed and breakfast.
 - (3) Brewery, distillery, cidery.
 - (4) Carwash.
 - (5) Child day center.
 - (6) Church and associated facilities.
 - (7) Clinic.
 - (8) Club.
 - (9) Commercial accessory apartment.
 - (10) Commercial indoor amusement.
 - (11) Commercial indoor entertainment.
 - (12) Commercial outdoor swimming pool and tennis facility.
 - (13) Community center.
 - (14) Community recreation.
 - (15) Conservation area/nature preserve.
 - (16) Construction office temporary.
 - (17) Cultural service.
 - (18) Dwelling, single-family, attached or townhouse.
 - (19) Dwelling, single-family, detached.
 - (20) Dwelling, two-family or duplex
 - (21) Dwelling, multi-family.

- (22) Educational facility, primary/secondary.
- (23) Event center.
- (24) Family day home.
- (25) Garage apartment.
- (26) Governmental service.
- (27) Greenhouse, private.
- (28) Group home.
- (29) Guest house.
- (30) Home occupation, type 1.
- (31) Hospital.
- (32) Hotel.
- (33) Industry, type 1.
- (34) Life care facility.
- (35) Live/work unit.
- (36) Marina.
- (37) Medical facility.
- (38) Motor vehicle, parts/supply retail.
- (39) Motor vehicle repair service, minor.
- (40) Nursing home.
- (41) Office/institution.
- (42) Park and ride facility.
- (43) Public maintenance and service facility.
- (44) Public park or playground.
- (45) Public safety service.
- (46) Public utility, neighborhood.
- (47) Real estate office, temporary.
- (48) Restaurant.
- (49) Retail sales.
- (50) Retail service.
- (51) Silviculture.
- (52) Tattoo parlor.

14) ARTICLE IV. SUPPLEMENTARY REGULATIONS - Sec. 34-713 (47)(k) revised to permit shipping containers accessory to a bona-fide agricultural farm use provided they are shielded from the public road and adjacent residences.

Sec. 34-713 (47)(k). Shipping container.

- a. No shipping container shall be used as a residence.
- b. Shipping containers may serve as accessory structures to a permitted use in industrial zoning districts and as a conditional use in residential and commercial zoning districts.
- c. Shipping containers shall be placed or stored in areas depicted on an approved site plan.

- d. The exterior of the shipping container shall be maintained structurally intact.
- e. The exterior of a shipping container in residential and commercial districts must be painted in non-reflective, subtle, neutral or earth tones. The use of high intensity colors, metallic colors, black or fluorescent colors are prohibited.
- f. Shipping containers must comply with development criteria relating to setbacks for principal buildings in the industrial district where permitted and landscape buffer yards.
- g. Shipping containers shall not be stacked to exceed a total of three (3) containers or thirty-eight (38) feet in height in industrial zoning districts, whichever is less. Stacked containers must comply with the Virginia Statewide Fire Prevention Code, as amended.
- h. Shipping containers must be treated to limit or remove potential exposure to hazardous chemicals. A certification that these conditions have been remedied or are absent is required for new container applications.
- i. No shipping container shall be placed on or otherwise block or restrict access to fire hydrants, fire lanes or required parking spaces.
- j. Shipping containers associated with storage incidental and accessory to a residential primary use on a lot zoned A-1 may be permitted subject to a conditional use permit.
- k. **A shipping container may be permitted for use accessory to a bona-fide agricultural farm use provided they are shielded from view from a public road and adjacent residences.**

15) ARTICLE VI. SIGNS - Sec. 34-835(c) revised to allow the zoning administrator discretion as to the requirement for removal of a sign when the business is no longer operating, as follows:

Sec. 34-835(c). Removal of abandoned signs:

- (1) **At the discretion of the Zoning Administrator**, a sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which it advertises is no longer conducted on the premises.
- (2) If the owner or lessee fails to remove such sign, the Zoning Administrator shall give the owner a 30-day written notice to remove it.
- (3) Upon failure to comply with this notice, the Zoning Administrator may remove the sign at cost to the property owner.

Questions/Concerns from the Commission:

- Commissioner Massenburg raised a concern about excluding recovering drug addict(s) or incarcerated people from the definition of group home. She believes that a group home is necessary for recovering drug addicts or incarcerated people depending on their life circumstances.
 - Ms. Walkup stated that the definition mirrors the state's definition for a group home. However, the state permits group homes and will determine, and

regulate who is eligible to stay within a group home. Some of those individuals may be eligible under the state criteria.

- In addition to the group home, Commissioner Bracy mentioned whether a group home would accommodate people that have had strokes.
 - Ms. Walkup stated that typically those individuals would go to a nursing home, however, the state permits and determines who meets the eligibility requirements.
- Commissioner Grinstead asked is there a limit to expanding a nonconforming structure vertically?
 - Ms. Walkup stated that each zoning district has its regulations in regards to height limits, but typically it is 35 feet for residential.

MOTION TO CLOSE PUBLIC HEARING:

ON THE MOTION OF COMISSIONER BRACY, seconded by COMMISSIONER MASON carried: RESOLVED to close the public hearing for Zoning Text Amendment #2025-01.

Voting aye: Commissioners Massenburg, Edmond, Bracy, Grinstead, Mason, Mayes, and Shands (7-0)

Commission's Action on Zoning Text Amendment #2025-01, Sussex County, applicant

ON MOTION OF COMMISSIONER EDMOND, seconded by COMMISSIONER SHANDS and carried: RESOLVED that the Planning Commission recommends approval of Zoning Text Amendment #2025-01 to the Board of Supervisors. (4-3)

Voting aye: Commissioners Edmond, Mason, Mayes, and Shands

Voting Nay: Massenburg, Bracy, Grinstead

Ms. Walkup asked the reasons why some of the Commissioners voted in opposition for the Zoning Text Amendment.

- Essentially, Commissioner Massenburg didn't agree with the definition of a group home from her personal experience. She believes that a group home is necessary for recovering drug addicts or incarcerated people as each person has their own circumstances in life.
 - County Attorney noted we will look back on the state's definition for a group home. I can't find the term right now, but we will follow up with clarification on the state's definition.

- Commissioner Grinstead stated that her only question relates to the removal of abandon signs. She didn't agree with the "at the discretion of the Zoning Administrator" due to concern of some small town policies.
 - o Ms. Walkup noted that it was good that each person only had one concern out the entire proposed ordinance. Some localities have an issue with the Zoning Administrator having too much discretion. However, it is impossible to write a provision for every situation. She noted that the Zoning Administrator's decision is not final and can be appealed to the Board of Zoning Appeals.
- Commissioner Massenburg stated that it is not personal its business. She noted that everyone isn't going to agree on everything. She stated that her opinion is based on what she believes.
 - o Ms. Walkup noted that she doesn't take it personal, but it does concern me that we have been working on this for two years via a transparent process and it was her hope that we would be on the same page at this point.

New Business

Commissioners' Payroll

- Commissioner Massenburg stated her concern with the timeframe in which the Commissioners are receiving their checks. She questioned to why they can't get their checks direct deposit like the Board of Supervisors. She felt it is disrespectful to make the Commissioners drive to the Courthouse to pick up their check and that the Commissioners to wait 2 months to receive our checks.
- Commissioner Bracy noted that he hasn't had a problem until the mail started to slow up.
 - Ms. Walkup stated that Planning Staff is making changes in how we process our invoices. Mr. Poarch will prepare the invoice during each meeting and submit to Accounts Payable the following morning. She stated that she takes full responsibility for times that staff was delayed in submitting the invoice(s). However, I can't control how the mail runs. She mentioned that the Post Office

by the Courthouse is not being manned everyday which may result in the mail being sent out to a different distribution facility which could also cause a delay. She stated that the Board gets the same stipend every month which makes it more efficient for the Board to receive direct deposit. However, the Planning Commission is paid based on their attendance at each meeting, which can only be reported once the meeting occurs.

- Commissioner Massenburg noted that she'll see how it goes. If there are more issues, she will reach out to her Board representative to get it resolved.

ADJOURNMENT – The meeting adjourned at 7:37 P. M.

ON THE MOTION OF COMMISSIONER EDMOND, seconded by COMMISSIONER MASON and carried: RESOLVED that the Sussex County Planning Commission is hereby adjourned.

Voting aye: Commissioners Massenburg, Edmond, Bracy, Grinstead, Mason, Mayes, and Shands (7-0)

Submitted by: Michael Poarch

Approved by PC:



PUBLIC HEARING

- a. Zoning Amendment #2025-01, Terry Namkung, applicant**

STAFF REPORT

APPLICATION SUMMARY:

Applicant: Terry Namkung

Location: The property is located on the southern side of Chinquapin Road (Rt. 604), approximately 0.3 mile from General Mahone Highway (US Route 460) in Sussex County

Parcel Record Numbers: 44-A-52

APPLICATION:

The applicant, under Zoning Amendment (ZA) #2025-01, seeks to rezone 33.65 acres from General Agricultural (A-1) to Residential Estate (R-E) in order to have the ability to create up to twenty five (25) residential lots. The conceptual plan shows two lots will have frontage on Chinquapin Road, while other lots will accessed off two (2) internal road(s). The lots will be served by private well and septic systems. The anticipated use of the properties will consist of farmhouse style homes to reflect Sussex County's rural heritage. The applicant has proffered to do a community dog park on Lot 18 for the enjoyment of subdivision's residents and residents' of Sussex County.

ELECTION DISTRICT:

Wakefield Election District

SURROUNDING AREAS:

The property is currently wooded. It is immediately adjacent to Piney Grove Church. The remaining area around the site is mostly wooded/forestry and or agricultural. There are some residences that are sit approximately ¼ of a mile west of the proposal. The site is also located west of Norfolk Southern Railroad and is within close proximity to General Mahone Highway (US Route 460).

According to the Virginia Department of Conservation and Recreation (DCR), the site is located within the Manry Conservation Site. Conservation sites are tools for representing key areas of the landscape that warrant further review for possible conservation action, but do not represent managed or protected lands. DCR further states that project area is located within an ecological core area of at least 100 acres of continuous interior, natural cover that provide habitat for a wide range of species, from interior-dependent forest species to habitat generalists, as well as species that utilize marsh, dune, and beach habitats. Ecological cores are also not conservation easements and do not carry any legal protections.

BACKGROUND:

The 33.65-acre property was previously planned to be a 25 lot subdivision known as Sylvan Acres. The preliminary plat was approved back in 2007, however, the final construction plans and plat were never officially approved. The proposal become dormant despite the most recent extension that was granted on July 16, 2019 by previous staff. This extension expired on June 30, 2024. Due to the expiration, the new owner will have to abide by the County's current Subdivision Ordinance which requires all subdivisions for residential purposes be zoned residential.

COMPREHENSIVE PLAN REVIEW:

The current Comprehensive Plan Small Area Plan for Wakefield designates the future land use for this property as agricultural. However, the plan states that as the possibility of new employment sites in nearby Waverly arise along with increased business investment in Wakefield, the County should be supportive of additional housing development. The plan further recommends that the continuation of the current trend toward linear housing development on rural routes be limited. As recommended, the subject application proposes that all but two (2) lots will be accessed via an internal street to be constructed to state standards.

ORDINANCE REVIEW:

The R-E zoning designation if approved will require a one-acre minimum lot size with one hundred fifty (150) feet of road frontage per lot. Minimum setback requirements are seventy-five (75) feet from the right-of-way, twenty-five (25) foot side yards and a fifty (50) foot rear yard. All lots within the proposed subdivision are appropriately sized per the requested zoning.

STAFF CONCLUSIONS:**Strengths:**

1. The proposed rezoning provides for residential growth and increases the County's tax base.
2. The proposed subdivision will offer much needed new housing stock in the Wakefield area.
3. The property is not currently being used as part of any farming or forestry operation.
4. The property is in close proximity of U.S. 460 which is recommended for residential development with the Comprehensive Plan.

Weaknesses:

1. The property is bound by the Norfolk and Southern Railroad, which could be considered a hindrance to emergency access.

2. The proposed R-E district doesn't align with the future land use designation of the property.
3. The property is located within Manry Wakefield Conservation Site.
4. Any potential development within this area will impact an ecological core (C3) which is ranked as high significance.

AGENCY/DEPARTMENT COMMENTS:

Staff forwarded the application for comment to the following review agencies. Comments received are noted.

➤ **Department of Conservation and Recreation (DCR)**

The parcel is located within the Manry Wakefield Conservation Site which includes a 100 foot buffer. Any potential development within this area will impact an ecological core (C3) which is ranked as high significance. Any type of development should minimize their impacts to the environment.

STAFF RECOMMENDATION:

Based upon the strengths of the application, Staff recommends approval.

ATTACHMENTS:

- Agency comments
- Application



Outlook

Chinquapin Road Rezoning Map

From nhreview (DCR) <nhreview@dcr.virginia.gov>
Date Fri 5/23/2025 1:46 PM
To Beverly Walkup <bwalkup@sussexcountyva.gov>
Cc Michael Poarch <mpoarch@sussexcountyva.gov>

1 attachment (985 KB)
91880, SUSS, Chinquapin Road Rezoning.pdf

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

Beverly,

Here is the map for the Chinquapin Road Project showing the Manry Wakefield Conservation Site, the project area is completely within the conservation site. I have also included the National Wetland Inventory on the map, our Ecologists believes that in addition to the wetlands shown there are potentially more that may represent the rare communities associated with this conservation site.

To summarize the conversation we had on the phone. We discussed that Conservation sites are tools for representing key areas of the landscape that warrant further review for possible conservation action because of the natural heritage resources and habitat they support. Conservation sites are polygons built around one or more rare plant, animal, or natural community designed to include the element and, where possible, its associated habitat, and buffer or other adjacent land thought necessary for the element's conservation. **They are not conservation easements and do not carry any legal protections.**

The eastern big-eared bat is associated with this site, and we recommend coordination with DWR as it is state listed as endangered.

Ecological Cores are areas of at least 100 acres of continuous interior, natural cover that provide habitat for a wide range of species, from interior-dependent forest species to habitat generalists, as well as species that utilize marsh, dune, and beach habitats. Interior core areas begin 100 meters inside core edges and continue to the deepest parts of cores. Cores also provide the natural, economic, and quality of life benefits of open space, recreation, thermal moderation, water quality (including drinking water recharge and protection, and erosion prevention), and air quality (including sequestration of carbon, absorption of gaseous pollutants, and production of oxygen). Cores are ranked from C1 to C5 (C5 being the least significant) using nine prioritization criteria, including the habitats of natural heritage resources they contain. **These are also not conservation easements and do not carry any legal protections.**

You can not see the Manry Wakefield Conservation Site on the NHDE website because we do not make that information public. However, your county could get a subscription to NHDE that would allow you to view more information than the public site allows. If you are interest please email nhderegister@dcr.virginia.gov with an explanation of how you plan to use the data, as we would require a licensee agreement. You can also reach out to [Tyler Meader@dcr.virginia.gov](mailto:Tyler.Meader@dcr.virginia.gov) or (804) 225-2429, he is our Locality Liaison and works with localities to get access to our data for planning purposes.

Please let me know if you have any more questions,

Nicki Gustafson (*she/her*)
Project Review Assistant
Division of Natural Heritage
Virginia Department of Conservation and Recreation
600 E. Main Street, 24th Floor
Richmond, VA 23219
804-625-3979 | nicki.gustafson@dcr.virginia.gov



Chinquapin Road Rezoning



0 0.13 0.25 0.5 Miles



-  Project Area
-  National Wetlands Inventory
-  Manry Wakefield Conservation Site



Department of Conservation & Recreation

CONSERVING VIRGINIA'S NATURAL & RECREATIONAL RESOURCES

Virginia Natural Heritage Program

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Matthew S. Wells
Director

Andrew W. Smith
Chief Deputy Director



Frank N. Stovall
Deputy Director
for Operations

Darryl Glover
Deputy Director for
Dam Safety,
Floodplain Management and
Soil and Water Conservation

Laura Ellis
Deputy Director for
Administration and Finance

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

February 14, 2025

Michael Poarch
Sussex County Planning and Zoning Department
20135 Princeton Road
Sussex, VA 23884

Re: Chinquapin Road Rezoning

Dear Mr. Poarch:

The Department of Conservation and Recreation's Division of Natural Heritage (DCR) has searched its Biotics Data System for occurrences of natural heritage resources from the area outlined on the submitted map. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.

According to the information in our files, the Manry Wakefield Conservation Site is located within the project area, including a 100 foot buffer. Conservation sites are tools for representing key areas of the landscape that warrant further review for possible conservation action because of the natural heritage resources and habitat they support. Conservation sites are polygons built around one or more rare plant, animal, or natural community designed to include the element and, where possible, its associated habitat, and buffer or other adjacent land thought necessary for the element's conservation. Conservation sites are given a biodiversity significance ranking (B-rank) based on the rarity, quality, and number of element occurrences they contain; on a scale of 1-5, 1 being most significant. The Manry Wakefield Conservation Site has been assigned a B-rank of B2, which represents a site of very high significance. The natural heritage resources associated with this site are:

Coastal Plain Seasonal Pond (Swamp Tupelo - Overcup Oak Type)	G1G2/S1S2/NL/NL
Coastal Plain Swamp Tupelo Blackwater Swamp	G3/S3?/NL/NL
<i>Corynorhinus rafinesquii macrotis</i> Eastern Big-eared Bat	G3G4T3/S2/NL/LE

Coastal Plain Swamps are a diverse group of poorly-drained basin wetlands is characteristic of flat Coastal Plain terraces with fluctuating, seasonally perched water tables. Similar wetlands are scattered throughout the mid-Atlantic Coastal Plain. The best-documented examples of this group in Virginia are the Grafton Ponds, located on The Peninsula in York County, but other sizeable complexes occur on Coastal Plain terraces in Dinwiddie, Surry, Isle of Wight, Gloucester, and Matthews Counties. Also included are the seasonally exposed shores of Lake Drummond, a 1,287 ha (3,180 ac) natural basin in the Great Dismal Swamp. South of the James River, two community types in this group extend into the eastern Piedmont, where they are associated with hardpan soils. Most of these wetlands are seasonally flooded and are believed to be sinkhole features that formed through dissolution of underlying carbonate-rich, shell marl deposits. The marl deposits are too deep to influence soil or water chemistry of the depressions, which are strongly acidic in most examples. A few depressions in extreme southeastern Virginia appear to have originated from deep peat burn-outs. Although the term "vernal pond" has

been applied to some of the communities in this group, that name is a poor descriptor of the hydrology and the large size of many occurrences.

Vegetation in this group varies from forested to entirely herbaceous, representing a sizeable number of distinct community types. Depth and duration of seasonal inundation are apparently the most important factors influencing community composition and the degree to which woody species become established. Dry-season fires in adjacent uplands may spread into ponds and may be another factor limiting the invasion of woody species, although fire frequencies throughout the region have been much reduced in recent decades. Typical trees occurring in wooded ponds are red maple (*Acer rubrum*), sweetgum (*Liquidambar styraciflua*), swamp tupelo (*Nyssa biflora*), blackgum (*Nyssa sylvatica*), willow oak (*Quercus phellos*), overcup oak (*Quercus lyrata*), and bald cypress (*Taxodium distichum*). Shrubs that dominate some ponds include buttonbush (*Cephalanthus occidentalis*), swamp loosestrife (*Decodon verticillatus*), common persimmon (*Diospyros virginiana*), and fetterbush (*Eubotrys racemosus*). Herbs characteristic of these communities are well adapted to long periods of submersion. Included are southern waxy sedge (*Carex glaucescens*), cypress-swamp sedge (*Carex jooirii*), Walter's sedge (*Carex striata* var. *brevis*), long-tubercled spikerush (*Eleocharis tuberculosa*), square-stem spikerush (*Eleocharis quadrangulata*), creeping rush (*Juncus repens*), narrow-leaved seedbox (*Ludwigia linearis*), globe-fruited seedbox (*Ludwigia sphaerocarpa*), tall flat panic grass (*Coleataenia rigidula* ssp. *rigidula*), warty panic grass (*Kellochloa verrucosa*), mermaid-weeds (*Proserpinaca palustris* and *Proserpinaca pectinata*), short-bristled horned beaksedge (*Rhynchospora corniculata*), narrow plumegrass (*Erianthus strictus*), woolgrass (*Scirpus cyperinus*), and pale mannagrass (*Torreyochloa pallida* var. *pallida*).

Coastal Plain depression swamps and ponds are relatively rare, small-patch communities that provide important habitat for the state-rare chicken turtle (*Deirochelys reticularia*) and three state-listed amphibians: Mabee's salamander (*Ambystoma mabeei*), tiger salamander (*Ambystoma tigrinum*), and barking tree frog (*Hyla gratiosa*). In addition, the globally rare plants Harper's fimbriistylis (*Fimbriistylis perpusilla*) and pondspice (*Litsea aestivalis*) are confined to these habitats in Virginia.

The Eastern big-eared bat is named for its enormous ears twice the length of its head, is extremely rare in Virginia and is currently known only from the southeastern portion of the state. Although widespread throughout the southeast, they are never found in large numbers. These bats roost singly or in small groups in hollow trees or abandoned buildings. They forage only after dark primarily in mature forests of both upland and lowland areas along permanent bodies of water (NatureServe, 2009). The details of this bat's feeding behavior and much of its natural history remain a mystery. Lack of information regarding the ecology of the Eastern big-eared bat, and their sensitivity to disturbance, make them particularly vulnerable to destruction of roost sites and feeding areas where their presence goes undetected (Handley and Schwab 1991, Harvey 1992).

Threats to this species include forest destruction, particularly hollow tree removal, decreasing availability of abandoned buildings, and possibly, insecticides. Please note that this species is currently classified as endangered by the Virginia Department of Wildlife Resources (VDWR).

Due to the potential for this site to support populations of natural heritage resources, DCR recommends an inventory for rare communities in the study area. With the survey results we can more accurately evaluate potential impacts to natural heritage resources and offer specific protection recommendations for minimizing impacts to the documented resources.

DCR-Division of Natural Heritage biologists are qualified to conduct inventories for rare, threatened, and endangered species. Please contact Anne Chazal, Natural Heritage Chief Biologist, at anne.chazal@dcr.virginia.gov or 804-786-9014 to discuss availability and rates for field work.

DCR also recommends avoiding tree removal in bottomland habitats and assessing any large potential roost trees and/or abandoned structures on the property for bat presence/absence. DCR also recommends coordination with DWR, Virginia's regulatory authority for the protection of this species, if removal of potential roost habitat for the Eastern big-eared bat becomes necessary to ensure compliance with the Virginia Endangered Species Act (VA ST §§ 29.1-563 – 570).

In addition, development in the project area will impact an Ecological Core (C3) as identified in the Virginia Natural Landscape Assessment (<https://www.dcr.virginia.gov/natural-heritage/vaconvisvnl>). Mapped cores in the project area can be viewed via the Virginia Natural Heritage Data Explorer, available here: <http://vanhde.org/content/map>.

Ecological Cores are areas of at least 100 acres of continuous interior, natural cover that provide habitat for a wide range of species, from interior-dependent forest species to habitat generalists, as well as species that utilize marsh, dune, and beach habitats. Interior core areas begin 100 meters inside core edges and continue to the deepest parts of cores. Cores also provide the natural, economic, and quality of life benefits of open space, recreation, thermal moderation, water quality (including drinking water recharge and protection, and erosion prevention), and air quality (including sequestration of carbon, absorption of gaseous pollutants, and production of oxygen). Cores are ranked from C1 to C5 (C5 being the least significant) using nine prioritization criteria, including the habitats of natural heritage resources they contain.

Impacts to cores occur when their natural cover is partially or completely converted permanently to developed land uses. Habitat conversion to development causes reductions in ecosystem processes, native biodiversity, and habitat quality due to habitat loss; less viable plant and animal populations; increased predation; and increased introduction and establishment of invasive species.

DCR recommends avoidance of impacts to cores. When avoidance cannot be achieved, DCR recommends minimizing the area of impacts overall and concentrating the impacted area at the edges of cores, so that the most interior remains intact.

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species. The current activity will not affect any documented state-listed plants or insects.

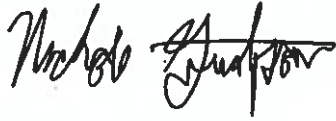
There are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity.

New and updated information is continually added to Biotics. Please re-submit a completed order form and project map for an update on this natural heritage information if the scope of the project changes and/or six months has passed before it is utilized.

The Virginia Department of Wildlife Resources (VDWR) maintains a database of wildlife locations, including threatened and endangered species, trout streams, and anadromous fish waters that may contain information not documented in this letter. Their database may be accessed <https://services.dwr.virginia.gov/fwis/> or contact Lee Brann at Lee.Brann@dwr.virginia.gov.

Should you have any questions or concerns, feel free to contact me at 804-625-3979. Thank you for the opportunity to comment on this project.

Sincerely,



Nicki Gustafson
Natural Heritage Project Review Assistant

Cc: Hannah Schul, VDWR

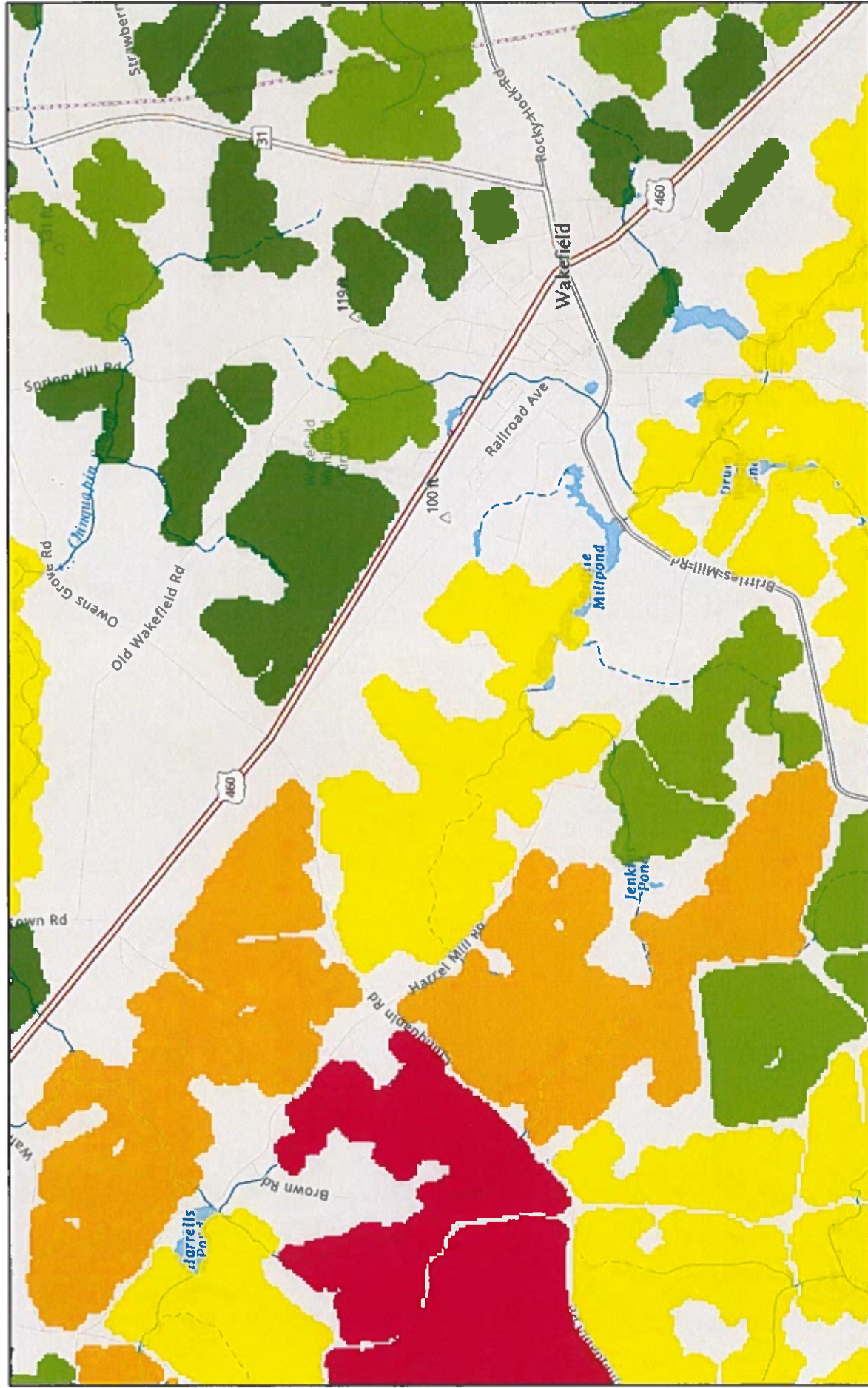
Literature Cited

Handley, C.O., and D. Schwab. 1991. Eastern big-eared bat. In Virginia's Endangered Species: Proceedings of a Symposium. K. Terwilliger ed. The McDonald and Woodward Publishing Company, Blacksburg, Virginia. p. 571-573.

Harvey, M.J. 1992. Bats of the Eastern United States. Arkansas Game and Fish Commission, Little Rock, Arkansas. pp.46

NatureServe. 2009. NatureServe Explorer: An online encyclopedia of life [web application]. Version 7.1. NatureServe, Arlington, Virginia. Available <http://www.natureserve.org/explorer>. (Accessed: March 31, 2010).

Ecological Core



May 27, 2025

Adjacent States

Ecological Cores

C1: Outstanding

C2: Very High

C3: High

C4: Moderate

C5: General

1:58,381

0 0.4 0.8 1 1.6 mi

0 0.5 1 2 km

VGIN, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/ NASA, USGS, EPA, NPS, USDA, USFWS, Esri, NASA, USGS, FEMA,



"Good Things Are Happening in Sussex County!"

Sussex County, Virginia

Planning and Zoning Department

APPLICATION FOR REZONING/CONDITIONAL ZONING AMENDMENT

This application should be used to petition for a change to the Official Zoning Map or for an amendment of zoning conditions. The following application requirements are consistent with the procedures set forth in Section 34-36, *Amendments*, of the Sussex County Zoning Ordinance, as amended.

A. APPLICATION FOR (CHECK ALL THAT APPLY):

☒ X Rezoning

☐ Conditional Rezoning (Are voluntary proffered conditions attached?): ☐ Yes ☐ No

Request to change the subject property(s) from the _____ to the _____ zoning district.

Proposed Use or Activity: _____

☐ Amendment to Conditional Zoning

Request to change conditional zoning as follows (Attach current and proposed conditions): _____

B. PROJECT DESCRIPTION:

Project Name: SYLVAN ACRES

Property Address (if any): 33.7 AC CHINQUAPIN ROAD WAKEFIELD VA 23888

Election District: 06 WAKEFIELD

Comprehensive Plan Designation: AGRICULTURAL

The rezoning will apply to 33.65 acres out of 33.65 total acres

Tax Parcel Identification # 44-A-52 Number of Acres to be Rezoned: 33.65

Requesting Zoning District Change from: A-1 to R-E

Tax Parcel Identification # _____ Number of Acres to be Rezoned: _____

Requesting Zoning District Change from: _____ to _____

Tax Parcel Identification # _____ Number of Acres to be Rezoned: _____

Requesting Zoning District Change from: _____ to _____

Proposed Utilities (check all that apply): Public Water ☐ Private Well ☒ X

Public Sewer ☐ Private Septic ☒ X



"Good Things Are Happening in Sussex County!"

Sussex County, Virginia
Planning and Zoning Department

C. APPLICATION INFORMATION:

Applicant(s) Name(s): TERRY NAMKUNG

Address: 413 ASHWAY COVE

City, State, Zip Code: NEWPORT NEWS VA 23606

Phone No.: 240-252-8525

Email: NAMKUNGT@GMAIL.COM

Fax No.: _____

Property Owner(s) Name(s): EMILE KHALAF

Address: 1156 WIVENHOE WAY

City, State, Zip Code: VIRGINIA BEACH VA 23454

Phone No.: 757-685-1752

Email: AKHALAF1@VERIZON.NET

Fax No.: _____

Applicants/Owners Affidavit (including compliance with all deed restrictions and covenants)

This application must be signed by the owner(s) of the subject property or must have attached written evidence of the owner's consent, which may be in the form of a binding contract of sale with the owner's signature or a letter signed by the owner(s), containing written authorization to act with full authority on the owner(s) behalf in filing this rezoning application. Signing this application shall certify the owner's compliance with all deed restrictions and covenants, and shall constitute the granting of authority of the County to enter onto the property for the purpose of conducting site analyses and compliance with Federal, State and County regulations.

Applicant: TERRY NAMKUNG

Printed or Typed Name

Owner: _____

Printed or Typed Name

Applicant: *Terry Namkung*

Signature

Date: 12-27

2024

Owner: _____

Signature

Date: _____

County of Sussex, Commonwealth of Virginia

County of Sussex, Commonwealth of Virginia

Subscribed and sworn to before me _____

_____, A Notary Public in and for
the County of Sussex, Commonwealth of Virginia,
this _____ day of _____, 20____

Subscribed and sworn to before me _____

_____, A Notary Public in and for
the County of Sussex, Commonwealth of Virginia,
this _____ day of _____, 20____

Notary Public

Notary Public

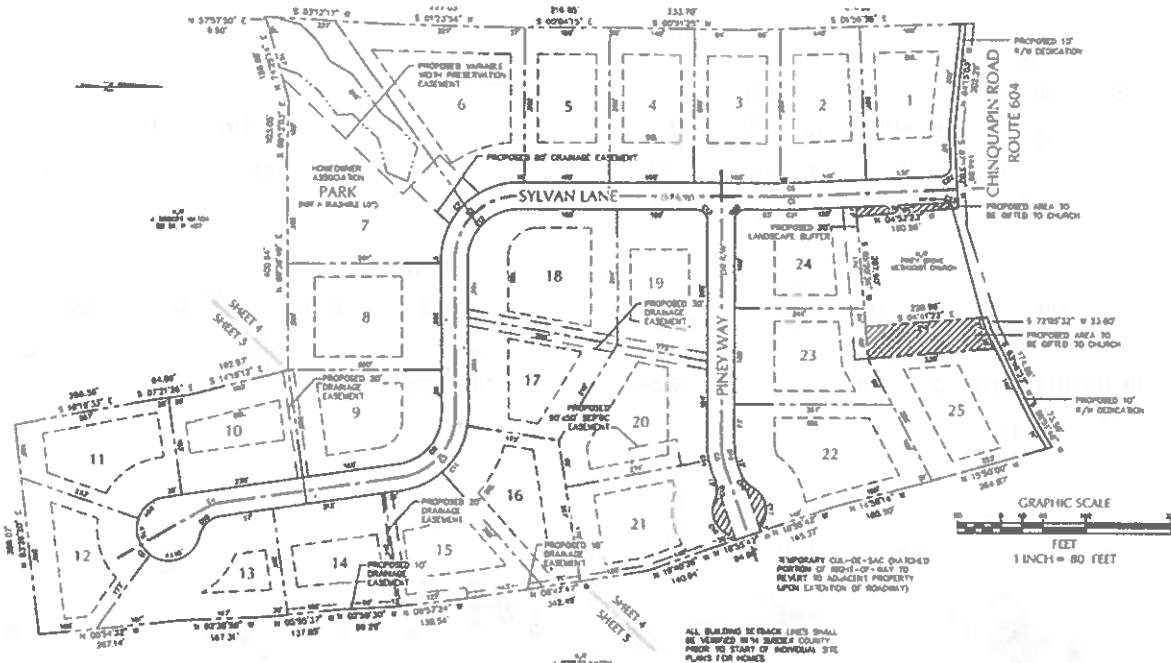
My Commission Expires _____

My Commission Expires _____

Statement of Reasons for Seeking Rezoning Amendment

Residential Development Proposal

I, Terry T. Namkung, Retired Air Force Veteran, am seeking a zoning amendment for the property located at **33.7 AC Chinquapin Road, Wakefield, VA 23888 (Tax Parcel Identification Number: 44-A-52)**. This request is submitted to ensure the property's development aligns with its highest and best use, while also contributing positively to the community and the long-term vision of Sussex County.



Top Reason for Approval:

1. Economic Growth and Increased Tax Revenue

The proposed development will significantly enhance Sussex County's economic strength by increasing the property tax base and generating additional business revenue. These funds will directly support essential public services such as schools, emergency services, and infrastructure improvements. By fostering financial sustainability for the county, this project serves as a long-term investment in the community's prosperity.

Supporting Reasons for Rezoning:

2. Alignment with Sussex County's Comprehensive Plan

The rezoning aligns with the county's strategic goals for orderly growth and residential development. It will bring new families, including retired military personnel, business owners, and educators, who will contribute to the local economy while maintaining Sussex County's rural hometown charm.

3. Efficient Land Use and Infrastructure Optimization

The development will make efficient use of existing infrastructure and utilities, leveraging current access points for sustainable and responsible growth.

4. Environmental and Aesthetic Considerations

Measures are in place to protect and enhance environmental resources, such as preserving wetlands, minimizing deforestation, and implementing stormwater management systems. Landscaping and architectural standards will ensure the development complements the county's character.

5. Community Engagement and Support

Feedback from local stakeholders has been incorporated to ensure alignment with community priorities and address any concerns raised by neighboring residents and businesses.

Concept Plan and Design Inspirations (Farmhouses):

The development emphasizes farmhouse-style homes that honor Sussex County's rural heritage while incorporating modern, sustainable features. These homes blend traditional elements, such as gable roofs and wrap-around porches, with contemporary layouts designed to meet the needs of today's families.

The project fosters a cohesive and welcoming community, attracting families who value a vibrant, rural lifestyle. This thoughtful design aligns with Sussex County's values, enhances the property's value, and complements the surrounding area. Visual representations of the farmhouse designs are included to illustrate the architectural character envisioned for the development.



Very Respectfully Submitted,


Dr. Terry T. Namkung, MBA

Spanning 33.65 acres, the property features gently rolling terrain, open fields, and a blend of wooded areas that provide natural privacy and beauty. Its manageable topography and integration with existing infrastructure make it perfectly suited for residential development. Located along a well-maintained rural road, the property preserves the peaceful, small-town atmosphere cherished by Sussex County residents, while ensuring accessibility for new homeowners.

Situated in a prime location near the heart of Sussex County, the property enjoys excellent connectivity through major thoroughfares like Route 460 and Interstate 95. This allows future residents easy access to schools, healthcare, essential services, and local businesses. The location strikes an ideal balance between rural charm and modern convenience, making it a perfect setting for families, retired military personnel, educators, and business owners to call home.

Currently zoned for agricultural and single-family residential use, this property embodies the principles outlined in Sussex County's Comprehensive Plan. By transitioning to enhanced

residential development, the property will provide much-needed housing opportunities that reflect the county's commitment to sustainable growth and community-focused development.

Environmental Features

The property's natural landscape, including mature trees and open spaces, offers a unique opportunity to create a community that integrates seamlessly with the environment. Plans for development include preserving green spaces, implementing stormwater management systems, and maintaining the integrity of the natural surroundings. These thoughtful measures will ensure the community respects and enhances its environmental setting.

Development Potential and Community Impact

This property represents more than just a residential development opportunity, it is the foundation for a thriving, close-knit community. By approving this rezoning application, the Planning Commission would enable the creation of a neighborhood that attracts families and individuals who value Sussex County's rural character and quality of life. The proposed single-family homes will bring new energy and vitality to the area, fostering a sense of belonging and pride among residents.

This development will also strengthen the social fabric of the county, creating spaces for neighbors to connect and thrive while contributing to public services like schools, emergency services, and infrastructure improvements. It is an investment in Sussex County's future, ensuring that the area remains a desirable place to live for generations to come.

A Vision for Community Growth

The property at 33.65 acres on Chinquapin Road embodies the best of Sussex County's past and future. By bringing together natural beauty, strategic location, and thoughtful planning, it provides a chance to establish a community that is both timeless and forward-looking. Approving this rezoning application is not just a step toward development; it is a commitment to fostering a vibrant, inclusive, and sustainable community that reflects the values of Sussex County.

Very Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Terry T. Namkung', with a stylized flourish at the end.

Dr. Terry T. Namkung, MBA

Voluntary Proffer statement

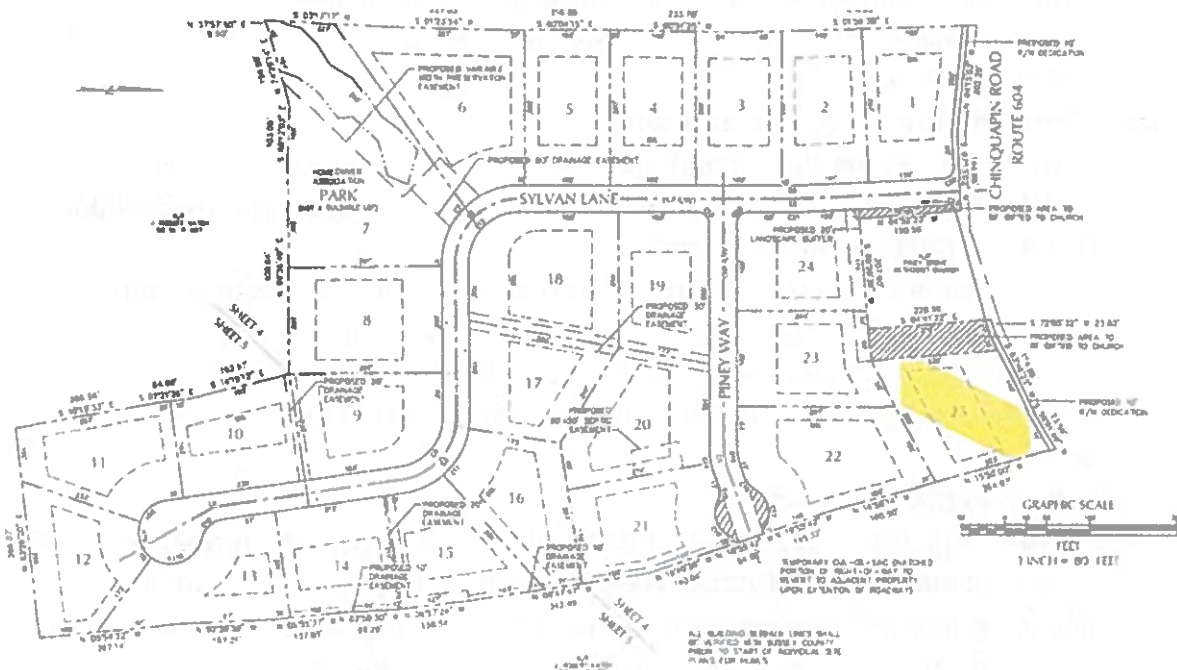
Updated Proffer Statement for Lot 25 Community Dog Park

Voluntary Proffer Statement

Property Address: 33.7 AC Chinquapin Road, Wakefield, VA 23888

Tax Parcel ID: 44-A-52

I, Terry T. Namkung, voluntarily offer the following proffers as part of the rezoning application for the above-referenced property. These proffers pertain specifically to **Lot 25**, designated as a **Community Dog Park**, within the proposed residential subdivision:



1. Community Dog Park Development:

- Lot 25 will be developed as a dedicated **community dog park** for the use and enjoyment of the subdivision's residents and residents of Sussex County.
- The dog park will include the following amenities:
 - **Fenced Exercise Area:** A large, secure area for dogs to run and play off-leash.
 - **Walking Paths:** Designated paths within the park for walking dogs on-leash.
 - **Agility Equipment:** Basic equipment such as ramps, tunnels, and hurdles for dog exercise and training.
 - **Seating and Shaded Areas:** Benches and shaded spots for owners to relax while their pets play.

- **Waste Disposal Stations:** Conveniently placed waste bag dispensers and trash bins to ensure cleanliness.
- **Landscaping:** Trees and shrubs will be planted to enhance aesthetics, provide shade, and maintain the rural character of the community.

2. Development Timeline:

- The construction and development of the community dog park will be completed following the construction of the eighth home within the subdivision.
- This ensures that the initial residential infrastructure is established while prioritizing the timely creation of the community space.

3. Valuation and Initial Development Costs:

- The total development cost of the community dog park, including fencing, agility equipment, landscaping, and walking paths, is valued at **\$25,000**.
- This cost will be borne by the developer and incorporated into the subdivision's development plan.

4. Long-Term Maintenance and Support:

- The dog park's long-term maintenance, including landscaping, repairs, cleaning, and waste disposal, will be funded by a **Community Management Group** formed by the residents of the subdivision.
- To supplement this effort, the group may also seek **donations** or organize community fundraisers to cover additional costs or improvements.
- Property insurance will be secured to cover liability and damage costs associated with the dog park, and donations may also be allocated to cover insurance premiums.

5. Dedication to the Community:

- Upon completion, Lot 25 will be designated as a **community amenity** for the benefit of both the subdivision's residents and Sussex County residents.
- Clear signage will be installed to indicate that the dog park is a shared community resource and to provide rules for safe and responsible use.

6. Binding and Enforceable Proffer:

- These proffers are made voluntarily and shall be binding upon the property and any successors in ownership.
- They are enforceable by Sussex County upon approval of the rezoning application.

Very Respectfully Submitted,



Dr. Terry T. Namkung, MBA



Re: Sylvan Acres CGP Coverage #VAR10G022

From Dr. Terry T. Namkung MBA <namkungt@gmail.com>

Date Thu 5/22/2025 5:29 PM

To Bob Kellam <rkellam@kgengineering.com>

Cc Michael Poarch <mpoarch@sussexcountyva.gov>; Beverly Walkup <bwalkup@sussexcountyva.gov>

 1 attachment (3 MB)

X06002_site- 2025 Calculations Only revision.pdf;

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

Hello Mr. Poarch,

Per our conversation, the dog park will be on lot 18. Mr. Kellam, will adjust the plans accordingly. This was communicated with Mr. Kellam and our builder.

Terry

On Wed, May 21, 2025 at 12:03 AM Bob Kellam <rkellam@kgengineering.com> wrote:

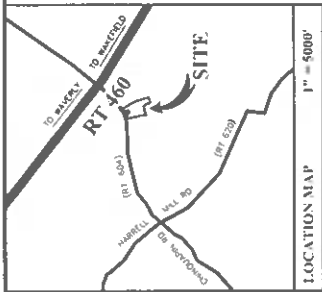
Michael;

I spoke to Dr. Namkung earlier today concerning the re-zoning application of Sylvan Acres. Dr. Namkung is currently out of the country so it may be timely if you include me on all emails to him concerning the re-zoning. I am planning to attend the public hearing on June 2, 2025. Is there a pre-meeting with staff prior to the public hearing? We are revising the plans and will be submitting them to the County, DEQ and VDOT as soon as they are completed. Please let me know if you need any additional information before the re-submittal of the revised construction plans. Thank you.

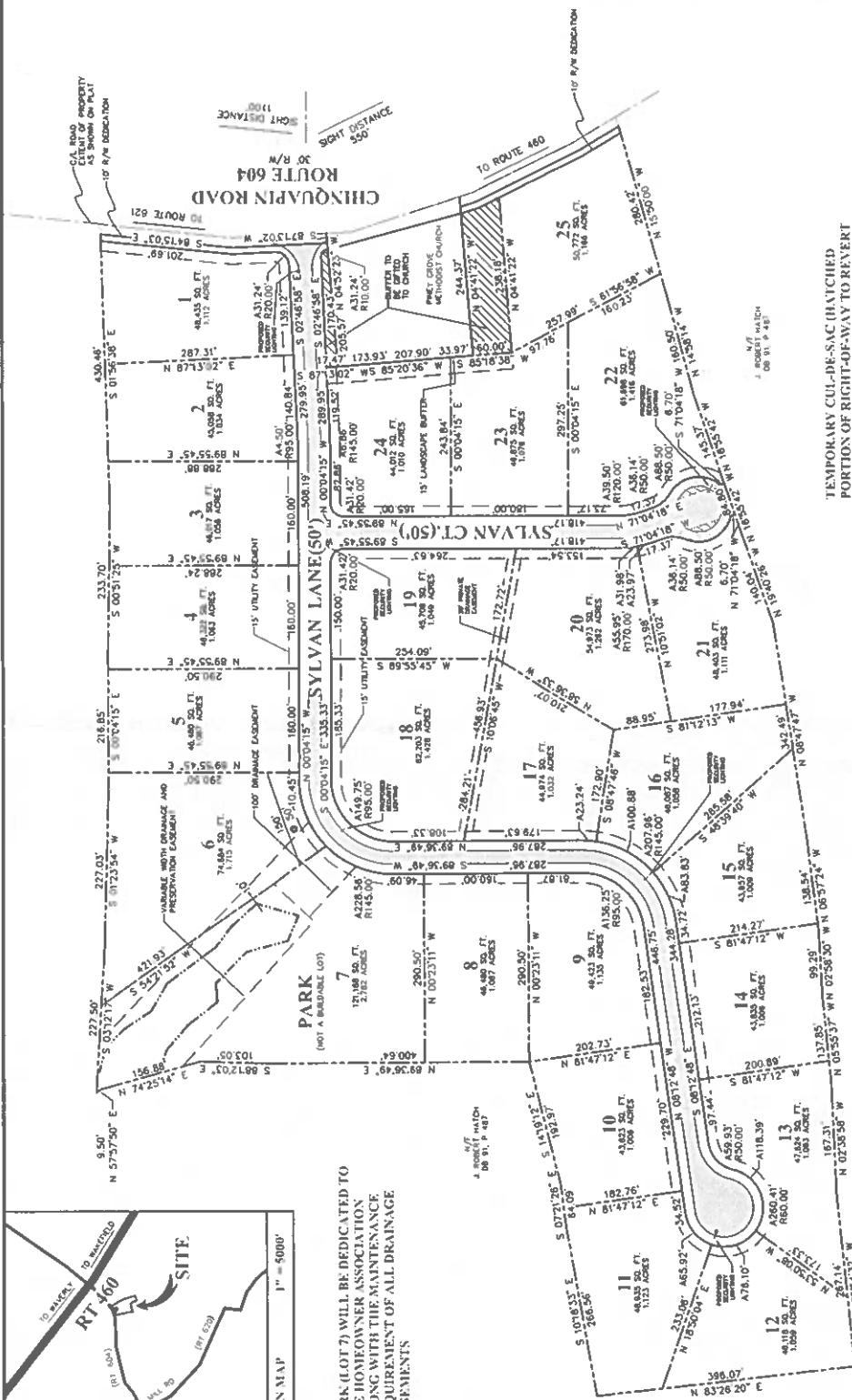
Bob



Robert Kellam PE
Principal
500 Central Drive Suite 113
Virginia Beach, VA 23454
(757) 340-0828 - Phone
(757) 340-1603 - FAX
rkellam@kgengineering.com



PARK (LOT 7) WILL BE DEDICATED TO THE HOMEOWNER ASSOCIATION ALONG WITH THE MAINTENANCE REQUIREMENT OF ALL DRAINAGE EASEMENTS



TEMPORARY CUL-DE-SAC (HATCHED)
PORTION OF RIGHT-OF-WAY TO REVERT
TO ADJACENT PROPERTY UPON
EXTENSION OF ROADWAY

PRELIMINARY SUBDIVISION
OF
SYLVAN ACRES
AS SHOWN ON PLAT OF PROPERTY OF RICHARD C. HAMLIN
(PLAT BOOK 17, PAGE 135)

VERMONT

SUSSEX COUNTY



FEET
1 INCH = 100 FEET
REVISED: 01/06/25

DEVELOPER:
TERRY HAWKING
413 ASHWAY
NEWPORT NEWS,
VERMONT, 25000

CURRENT OWNER:
EMILE S. KHALAF
VERMONT BEACH, VA
DB 216, P. 461
AST, 00001638



PUBLIC HEARING

- a. Conditional Use Permit #2025-03, Greenvolt Power Actualize, LLC, applicant

**STAFF REPORT****Conditional Use Permit Application Review for Winfield Solar
Sussex County, Virginia****Report Date: March 21, 2025, Revised April 25, 2025****Planning Commission Public Hearing Meeting Date: June 2, 2025****APPLICATION SUMMARY**

Project:	Winfield Solar, 76 MW
Affected Acreage:	Total Project Area: 962.1 acres Development/Disturbance Project Area: 506.3 acres Area Under Panel: 317.1 acres
Location:	The Project is located on the north and south sides of U.S. Route 40 (Sussex Drive). Phase 1 and Phase 2 will be located south of U.S. Route 40 while Phase 3 will be located north of U.S. Route 40.
Parcel Record Numbers:	6 parcels: 88-A-8, 88-A-34, 88-A-35, 89-A-2, 89-A-1, 88-A-29 (access easement)
Proposal:	Conditional Use Permit for Utility-Scale Solar Facility
Application Submitted:	February 26, 2024 Revised May 8, 2024 Revised March 7, 2025
Applicant:	Greenvolt Power Actualize, LLC
Representative:	Robert White Greenvolt Power Actualize, LLC bob@actualizesolar.com 919-636-8991
Owners:	West Hope Farm, LLC, Winfield Farm, LLC, Potts Tract, LLC.

PROPOSED DEVELOPMENT

The Applicant is seeking a Conditional Use Permit (CUP) to construct a 76 megawatt (alternating current) photovoltaic solar energy generation facility. The project is located on 6 parcels, or portions thereof, totaling 962 acres, while the fenced area of development/disturbance totals approximately 506 acres.

The project infrastructure will consist of approximately 179,000 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 cover 317 acres or approximately 33% of the total project area or 53% of the development/disturbance area.

The Applicant has indicated that the Project will interconnect to the Dominion distribution grid



and will not require the construction of substations. Each phase will have its own interconnection to the distribution grid, with Phase 1 – Winfield and Phase 2 – Optimist interconnecting on the south side of U.S. Route 40 (Sussex Drive), and Phase 3 – Potts, interconnecting on the north side of U.S. Route 40 (Sussex Drive). Interconnections will consist of 4 poles owned by Dominion and one pole owned by the Project. These poles will support the distribution connection line, transformers, circuit breakers and relays. The electric lines from the facility to the point of interconnection will be either underground or overhead. Phase 3 – Potts will connect to the distribution system on the using the same connection type.

The project will be screened from view at ground level at all locations where the project can be seen by the public and adjacent landowners. 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. 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. It is important to note that existing trees and vegetation were removed along a section of the Project's frontage along Sussex Drive/US 40 immediately prior to the Application being filed; the Applicant is proposing berming and tree planting within this area to account for these impacts.

All three Phases are anticipated to commence construction in the early spring of 2026. Phase 1 and 2 commercial operation will be achieved by the end of summer 2026. Phase 3 is anticipated to have commercial operation achieved by the end of 2026.

The Project includes several wildlife corridors throughout. Fencing will not be placed across the wildlife corridors so that they can readily be used by wildlife. The site contains several wetlands. Where electric collection lines cross wetlands they will either span the wetland overhead or be directionally bored under the wetland. These electric collection lines are necessary to connect the solar panels in various parts of the Project.

EXISTING CONDITIONS AND ZONING

The Project land totals 962 acres and are entirely zoned A-1, General Agricultural. The Applicant has indicated that the development/disturbance area of the project to be 506 acres. There are areas of steep slopes (8% or greater) within the Project site.

The County's Comprehensive Plan identifies approximately 50% of Phase 2 and the frontage of Phase 3 to be located within the Sussex Courthouse Small Area Plan (SAP) area, with the remainder of the project being in the Rural Area. Likewise, portions of Phase 2 and 3 are designated as Agricultural under future land use and the remaining portion is designated Rural Preserve, respectively. The Rural Preserve classification includes agricultural, forested, and remote rural residential uses and is most similar to the Agricultural, Forested, and Open Space classification in the planning areas and considers locations where agricultural zoning is in effect.

ADJACENT AND SURROUNDING USES

The project area abuts 37 parcels that are zoned A-1, including residences, agricultural and forestry uses, and portions of the Project are within one (1) mile of the Sussex Courthouse



community.

The area surrounding the Project includes mostly forests and farmland with some low-density single family residential dwellings. All adjacent properties are zoned A-1, General Agriculture.

ENVIRONMENTAL AND NATURAL RESOURCES

The Applicant contacted State agencies for a review of potential natural resources in and around the project area. The US Fish and Wildlife Service (USFWS) Information, Planning and Consultations System (IPaC) was consulted for any federally listed threatened and endangered species. The consultation report is in Exhibit J. The Northern Long Eared Bat (NLEB) was listed as threatened. Shortly after this consultation the NLEB status was changed from threatened to endangered. In order to address any impacts to the NLEB, the Project could avoid construction between May 15 and July 31, or the Project could conduct field surveys to characterize the risk to NLEB from the Project. The Project elected to conduct field studies. On the nights of June 17th to 23rd, 2023 and July 20th to 24th, 2023 Apogee, Inc. conducted a presence/absence mist-netting survey. Eleven (11) sites were surveyed for multiple nights with multiple nets at each site for a total of 60 net nights. A total of thirty-five (35) bats were captured. No threatened or endangered species were captured. A probable absence determination was made with regard to NLEB. The results suggest that the Project will not cause direct or indirect adverse effects to the species. These results were submitted to the USFWS who concurred with the findings.

According to the VDCR modeling, the state endangered Rafinesque eastern big-eared bat has potential to occur on the site. A survey for protected bat species was completed at the site. No threatened or endangered bats were captured. A probable absence determination was made with regards to threatened and endangered bats.

The federally and state endangered red-cockaded woodpecker has been observed in the vicinity of the site. Both observations are considered historic (greater than 30 years old). A survey was conducted onsite for the red-cockaded woodpecker. No red-cockaded woodpeckers were encountered during the field visit. Habitat for red-cockaded woodpeckers, as defined by the USFWS, does not currently occur on this site. The Project will coordinate with VDWR to mitigate any potential impact to the species including any potential time of year restriction on certain activities between April 1 and July 31.

The state threatened Bachman's sparrow has been observed in the vicinity of the site and VDCR predicts that there is suitable habitat for the species on site. The Project will coordinate with VDWR to mitigate any potential impacts to the species including any potential time of year restrictions on certain activities between April 1 and August 15.

Additionally, the Roanoke logperch, dwarf wedge mussel, and the Atlantic pigtoe have been observed on the outer limits of the three-mile study limit around the site. Several unnamed tributaries (to Hunting Quarter Swamp and Cabin Point Swamp) in the project area model out as potential habitat for state endangered Blackbanded Sunfish. The project site also models out as potential habitat for state threatened Mabee's Salamander. Due to the potential for this site to support populations of the barking tree frog and Mabee's salamander, DCR recommends an inventory for isolated ponds and the associated natural heritage resources in the parcel north of Route 40. With the survey results we can more accurately evaluate potential impacts to natural



heritage resources and offer specific protection recommendations for minimizing impacts to the documented resources. Additionally, due to the legal status of Mabee's salamander, DCR recommends coordination with Virginia's regulatory authority for the management and protection of this species, the VDWR, to ensure compliance with the Virginia Endangered Species Act (VA ST §§ 29.1-563 – 570). DCR also recommends a 300-meter upland forested buffer be preserved and protected surrounding the ponds.

According to DCR, the Anderson Branch Stream Conservation Site (SCS) is located within the project area. SCSs encompass stream/river reaches, waterbodies, and terrestrial contributing areas containing or associated with aquatic or semi-aquatic resources, including upstream and downstream reaches and tributaries up to 3-km stream distance from the aquatic resources. The size and dimensions of an SCS are based on the hydrology of the waterway and surrounding landscape, taking into consideration dam locations and whether the waterway is tidal. SCSs are also given a biodiversity significance ranking (B-rank) based on the rarity, quality, and number of element occurrences they contain. The Anderson Branch SCS has been given a B-rank of B3, which represents a site of high significance.

Based upon a review of the Virginia Department of Conservation and Recreation's Natural Heritage Data Explorer (NHDE) there are Ecological Cores within and surrounding the project site ranking as General, Moderate, and High (there are no areas ranking as Very High or Outstanding), and areas within and surrounding the project site ranking from Average to Outstanding for Forest Conservation Values (with Outstanding ranked areas generally following wetland and stream areas). While there are wetland crossings proposed based upon the Concept Plan, these are expected to be designed consistent with applicable state and federal regulations and the project otherwise excludes significant disturbance to any areas of wetlands, proposing buffers of varying width adjacent thereto. DCR recommends avoidance of impacts to cores. When avoidance cannot be achieved, DCR recommends minimizing the area of impacts overall and concentrating the impacted area at the edges of cores, so that the most interior remains intact.

Portions of the Project site contain prime farmland soils (247 acres within the fenceline) or soils of statewide importance (69 acres within the fenceline). The amount of prime farmland that is currently being used for agriculture that is impacted by the project (within the fence) is 14.9% (144.0 acres) of the total Project area.

The Virginia Department of Wildlife Resources (DWR) provides comprehensive recommendations for solar energy facility development to minimize impacts on wildlife and natural habitats. Developers are advised to use the Virginia Fish and Wildlife Information Service (VAFWIS) and coordinate with DWR Environmental Services for project assessments, especially when listed species, sensitive aquatic habitats, or bat roosts are involved. Key recommendations include preserving riparian buffers around streams and designated waters, protecting wildlife corridors through adaptive fencing, and using native vegetation for ground cover. Special attention should be given to potential effects like the "lake effect" on birds and thermal island impacts. DWR emphasizes avoiding impacts to forests, wetlands, and streams, incorporating erosion control measures, and favoring natural stream design and clear-span bridges over in-stream structures.

CULTURAL AND HISTORIC RESOURCES



A historic architecture study was conducted for the Project. The study was conducted for each phase individually. The study indicated that there were potentially 35 historic architectural resources within one (1) mile of the Project. Note that the total architectural resources identified in the reports are greater than 35 because there are resources that appear in more than one of the reports. After conducting the field studies, it was determined that 32 of the identified potential historic architectural resources do not appear to be eligible for the National Register of Historic Places and no further work is needed. Three (3) of the identified potential historic architectural resources appear to be potentially eligible for the National Register of Historic Places. However, the Project, as proposed, will have no adverse effect on those properties. Cultural and historical resource surveys are required at the state permitting level. These surveys will be submitted for approval and concurrence by VDHR.

ZONING ORDINANCE

The Application was reviewed to determine completeness and compliance with respect to the County's Zoning Ordinance, specifically to the requirements contained in Article VII, Solar and Battery Facilities. A memorandum from the Berkley Group, dated June 26, 2024, indicated that the Application as proposed and revised was both complete and compliant with respect to applicable submittal requirements of the Zoning Ordinance.

COMPREHENSIVE PLAN

The County's 2004-2005 Comprehensive Plan serves as a policy document to inform planning and land use decision making. The Comprehensive Plan is not a regulatory document but should be used when applicable to evaluate projects and applications. As part of the Comprehensive Plan, most recently the County adopted Small Areas Plans as an addendum to the Plan. Portions of the Project, along the north and south sides of Sussex Drive/US 40 near the intersection of Princeton Drive are located in the Sussex Courthouse Planning Area, while the remainder of the Project is located within the Rural Area Planning Area.

The future vision for the Sussex Courthouse Planning Area is as follows:

- *The Sussex Courthouse Planning Area is the geographic and civic center of Sussex County. This is the primary point of delivery for government services, which is the current and future driver of development in this area. For purposes of this plan, this district has been deemed the Civic Core. These government and educational facilities along with the convergence of several primary rural routes creates some potential for growth and development. Future planning efforts must also recognize the importance of the agricultural economy and local desire to maintain rural character.*
- *Future land use recommendations include the addition of some residential land uses to the Sussex Courthouse Planning Area as well as some limited growth in commercial and government uses and the proposal of strategies to ensure that agriculture continues to be profitable and thus the rural culture preserved. Future development in the area should be clustered as much as possible and be located outside of FEMA flood zones located along Anderson Branch and Thweat Branch.*



- *The primary land use within Sussex Courthouse will continue to be rural in nature and include large tracts of agricultural, forest, and open land uses. These areas are labeled as Agricultural on the future land use map. Development should be focused in designated areas and discouraged throughout most of the Planning Area. The main purpose of this land use classification is to facilitate existing and future farming operations, allow for expansion of farm related activity, reduce the effects of soil erosion, and protect watersheds to promote the continuation of farming as one of the most important sectors of the economy. As such, minimizing land subdivision, preserving environmentally sensitive areas and ensuring appropriate buffers around streams and intensive livestock operations will help preserve the overall rural character of the Planning Area. Additionally, areas within the FEMA-designated flood zones should not see any future development and should be used as a natural flood reserve area that act as a buffer between agricultural uses and waterways.*
- *The Sussex Courthouse Planning Area is the center of both the County's courts and administrative services, as well as its consolidated elementary, middle, and high school campus. As such, the modern and spacious school grounds will provide area residents with recreational facilities for many years to come. One of the primary objectives for the Planning Area will be to accommodate any expansion of public facilities and utilities necessary for maintenance and development of the Sussex County Government Center and the school complex.*
- *Unlike other Planning Areas in Sussex County, no industrial development of any kind is anticipated or recommended for the Sussex Courthouse Planning Area.*
- *Outside of sensitive environmental areas, it is the vision of Sussex County that rural areas remain rural, and that active agriculture maintains its importance in the community. A central objective of land use planning in Sussex County is to preserve this valuable land from being developed for residential or other land uses. Once developed, it cannot easily be restored to its original condition (nature). Areas reserved for agriculture on the land use map should be used for active agricultural and forestry enterprises, and best management practices should be observed relative to the land disturbance, support structures, and other facilities that such agricultural/rural operations require.*
- *Areas that are in forest preservation programs should be maintained to support the ecological balance between agriculture and forest. The County should consider the formation of a farmland conservation board to promote and manage conservation easements specific to the protection of active agricultural land.*

The Sussex Courthouse Small Area Plan designates the Future Land Use of the majority of the area under the application as Agricultural.

The Rural Area Planning Area establishes three different land use categories, Conservation, Rural Village, and Rural Preserve; the areas of the Project within the Rural Area Planning Area are designated as Rural Preserve. The future vision for the Rural Preserve land use category is as follows:



- *The Rural Preserve classification includes agricultural, forested, and remote rural residential uses. This category is most similar to the Agricultural, Forested, and Open Space classification in other planning areas and considers locations where agricultural zoning is in effect. Agricultural production and services as well as forest and timber land are predominant and are encouraged to expand. Limited, very low density residential and institutional uses are present along rural roads and arterial rural highways.*
- *Agricultural, forestal, recreational, and remote rural residential areas should be protected and preserved. In addition to allowing widespread agriculture production and forested uses, limited rural residential uses may be allowed at a gross density of one unit per five acres. Limited institutional uses such as religious assembly facilities and civic clubs serving the local rural population may also be allowed. Mining and extraction operations that locate according to the availability of natural resources should have strict limitations to avoid harmful effects on housing, farming, and conservation areas. Similarly, the potential siting of utility-scale solar facilities should follow guidance established in the County Comprehensive Plan that is detailed at the end of this section.*
- *Within these areas, farmers are encouraged to follow best management practices and take advantage of conservation and environmental programs as promoted by the Virginia Department of Agriculture and Consumer Services (VDACS). The main purpose of this land use classification is to facilitate existing and future farming operations, allow for the expansion of farm related activity, reduce the effects of soil erosion, and protect watersheds to promote the continuation of farming as one of the primary sectors of the economy. In planning for active agricultural use of parcels in the Rural Area, the County should consider the full scope of modern farming activities, including agritourism, on-site sales, food preparation, and events, and modify local regulations to more easily permit all activities that can help farmers maintain a profitable enterprise. Such activities have the added benefit of drawing visitors to the rural areas of Sussex County for tourism as well as providing additional income to farming operations. Large parcels will remain necessary for sustainable agricultural enterprises in the Rural Area.*
- *Outside of sensitive environmental areas, it is the vision of Sussex County that rural areas remain rural, and that active agriculture maintains its importance in the community. A central objective of land use planning in Sussex County is to preserve this valuable land from being developed for residential or other land uses. Once developed, it cannot easily be restored to its original condition. Areas of agricultural conservation should be used for active agricultural and forestry enterprises, and best management practices should be observed relative to land disturbance, support structures, and other facilities that such agricultural/rural operations require.*

In addition to the above policies and vision for the Rural Preserve land use designation within the Rural Area Planning Area, this Planning Area includes guidance for solar facilities. It is important to note that there are some distinctive differences between the two, as the guidance in the Rural Area Planning Area notes that "the total size shall be larger than two (2) acres but less than 1,500 contiguous acres," and there is no reference to project being located less than or equal to one (1) mile from a transmission line.



Additionally, the Comprehensive Plan was amended on February 17, 2022 to amend policies for solar and battery storage facilities; the current policy is as follows:

23. Utility-Scale Solar Facilities

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

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

- *the total size shall be 100 acres or more but less than 5,000 contiguous acres;*
- *large contiguous projects are preferred over small decentralized or large discontinuous projects to prevent land fragmentation;*
- *laid out appropriately on the project parcels;*
- *laid out with no more than 65% equipment and building coverage;*
- *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 (2) miles from other existing or permitted solar facilities; and*
- *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 (1) mile from a transmission line.*

Battery energy storage facilities are also an industrial land use but require more safety requirements than solar facilities. The County will consider battery facilities as:

- *an accessory use to utility-scale solar facilities, other energy generation facilities, or substations; or*



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

PUBLIC/NEIGHBORHOOD MEETING COMMENTS RECEIVED

See the attached summary of the May 24, 2024 neighborhood meeting as provided by Greenvolt Power, dated June 11, 2024.

STAFF REVIEW AND COMMENTS

The subject Application is seeking a Conditional Use Permit for a utility-scale solar facility. For solar projects, the planning commission is not required to make a finding that the project is in substantial accord with the comprehensive plan. Instead, pursuant to 15.2-2316.9, a siting agreement, if approved by the Board of Supervisors, fulfills the requirement for a 2232 review. The Applicant has initiated the negotiation a siting agreement pursuant to Va. Code Section 15.2-2316.6 et seq., for separate consideration by the Board of Supervisors.

Further, per Sections 34-913/Sec. 16-409 and 34-914/16-410 of the Zoning Ordinance, conditions may be imposed on Conditional Use Permits for utility-scale solar and battery energy storage facilities that include, but are not limited to, the following:

- A solar facility shall be constructed, maintained, and operated in substantial compliance with:
 - The development standards under this article.
 - The approved concept plan.
 - Any other conditions imposed pursuant to a conditional use permit.
- The board of supervisors may, in its sole discretion, by conditional use permit, waive or modify requirements set out in this article for solar or battery storage facilities, based on unique site conditions, if it finds that such waiver or modification promotes good land use planning and is compatible with surrounding land uses, and as long as the project still otherwise complies with applicable state law and local ordinances.
- Dedication of real property of substantial value; or substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of a conditional use permit, so long as such conditions are reasonably related to the project.
- Other reasonable conditions as permitted by state law and as otherwise provided for in this Article.

Staff has reviewed the proposed project considering the relevant sections of the County's Zoning Ordinance as well as the Comprehensive Plan and offers the following for consideration by the Planning Commission and Board of Supervisors.

Comprehensive Plan

Based upon policies pertaining to the Sussex Courthouse Planning Area as part of the Sussex



Courthouse Small Area Plan, and future land use designations, as well as those pertaining to the Rural Preserve land use category with respect to the Rural Area Planning Area, consideration should be given to whether the proposed Project relative to the area:

- 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
- Constitutes industrial development not anticipated or recommended within the Sussex Courthouse Planning Area.

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 Sussex Courthouse 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 Sussex Courthouse 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 the guidance for solar facilities as included in the Rural Areas Small Area Plan, staff would recommend that these be considered, but would recommend that deference be given to the overarching policies for Utility-Scale Solar Facilities given their adoption following adoption of the Small Area Plans, and that location of the site in two Planning Areas. With regard to these overarching County-wide policies for utility-scale solar and battery energy storage facilities, the Planning Commission and Board of Supervisors should consider the following:

1. *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 Project parcels are zoned A-1; however, no parcels are considered to be brownfields nor County-owned capped landfills.

2. *The following site features have been reviewed and should be mitigated for potential negative impacts of utility-scale solar facilities on County land use patterns:*

- *the total size shall be 100 acres or more but less than 5,000 contiguous acres;*

The Project is greater than 100 acres. In total, the Project has an area of 962.1 acres (approximately 962 acres), which is inclusive of the active development area totaling approximately 506 acres.

- *large contiguous projects are preferred over small decentralized or large discontinuous projects to prevent land fragmentation;*

The Project is determined to constitute a large contiguous project and does not constitute a small decentralized project.



- *laid out appropriately on the project parcels;*

Generally, as proposed and laid out, staff is of the opinion that the Project is appropriately laid out based upon the proposed 150' perimeter buffer/setback.

- *laid out with no more than 65% equipment and building coverage;*

Based upon the proposed 962-acre project area and panel coverage of 317 acres, the proposed coverage is approximately 33%.

- *located outside planning areas or community hubs;*

The majority of the project is designated Agricultural with the exception of the portion of the project located in the Sussex Courthouse Planning Area and within 1 mile of Sussex Courthouse.

- *located outside forested areas to preserve forest resources;*

Based on information provided by the Applicant, the development area consists of Emergent Forests, Forests, Open Water, and Scrub or shrubbed areas.

- *located outside prime agricultural land;*

According to the Application materials, of the development area, approximately 246.7 acres or 25.6% consists of prime agricultural soils. The amount of prime farmland that is currently being used for agriculture that is impacted by the project (within the fence) is 14.9% (144 acres) of the total Project area.

- *further than three (3) miles from any village or town boundary;*

The Applicant states that portions of the proposed project area is approximately one (1) mile from the Sussex Courthouse.

- *further than two (2) miles from other existing or permitted solar facilities;*

The project is located more than two (2) miles from other existing or permitted solar facilities within the County.

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

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 wetlands buffers and setbacks of varying widths, but no less than 50'.

- *located less than or equal to one (1) mile from a transmission line.*



While the Applicant has indicated that the Project will connect to the distribution network in the vicinity of the Project, the Project is located approximately 10 miles from the nearest transmission line. Please note, no additional information regarding the sufficiency of the existing distribution network has been provided; through discussions, the Applicant has indicated that this would be evaluated and addressed with Dominion as part of project permitting.

Zoning Ordinance

The purpose of the County's Zoning Ordinance is to generally promote the health, safety or general welfare of the public and of further accomplishing the objectives of the Code of Virginia, § 15.2-2200, and to further the 11 specific purposes as referenced in the Zoning Ordinance, as follows:

- *To reduce or prevent congestion in the public streets;*

The Project will have three access points, all off U.S. Route 40. One access will be on the north side of U.S. Route 40 to access Phase 3. Two will be on the south side of U.S. Route 40 to access Phases 1 and 2.

VDOT provided several transportation-related comments for the project. All proposed entrances to public roads must comply with Appendix F of the VDOT Road Design Manual and will be reviewed during the site plan phase. The application lacks visual exhibits showing electrical line crossings and any new transmission lines that may run along or cross public roads. A culvert will be required to maintain roadside drainage, and VDOT must approve the installation and associated pipe sizing calculations.

- *To facilitate the creation of a convenient, attractive and harmonious community;*

As noted, the project proposes buffers and setbacks that should ensure consistency with this purpose.

- *To facilitate the provision of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements;*

As noted, given the number of access points and the conditions of roadways accessing areas of the project, conditions would be warranted to ensure appropriate construction traffic mitigation and the safety of the general public.

- *To protect against destruction of or encroachment upon historic areas;*

The project does abut identified historic resources within a 3-mile area; however, staff is of the opinion that there are no known project activities that would destroy or encroach upon historic resources.



- *To protect against one or more of the following: overcrowding of land, undue density of population in relation to the community facilities existing or available, obstruction of light and air, danger and congestion in travel and transportation, or loss of life, health, or property from fire, flood, impounding structure failure, panic or other danger;*

As noted, given the number of access points and the conditions of roadways accessing areas of the project, conditions would be warranted to ensure appropriate construction traffic mitigation and the safety of the general public.

- *To encourage economic development activities that provide desirable employment and enlarge the tax base;*

The project will undoubtedly enlarge the tax base, however, in and of itself it will not likely encourage long-term economic development activity that provides for long-term employment opportunities. The development of utility-scale solar facilities may result in short-term construction employment opportunities, and may result in increased economic activity during the period of construction.

- *To provide for the preservation of agricultural and forest lands and other lands of significance for the protection of the natural environment;*

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 246.7 acres or 25.6% consists of prime agricultural soils. The amount of prime farmland that is currently being used for agriculture that is impacted by the Project (within the fence) is 14.9% (144 acres) of the total Project area. Given Project impacts to active agricultural lands, staff is of the opinion that the Project may not serve to provide for the preservation of agricultural lands.

Additional Comments

Given the size and scale of the project, existing County staffing resources may be strained or insufficient to appropriately manage and monitor the project during development and operation. Should the Project be approved, a condition addressing the need for third-party inspections is recommended by Staff to mitigate this impact.

STRENGTHS	WEAKNESSES
1. Energy produced will be distributed by Dominion Energy from the distribution grid.	1. A portion of the buffer will need to be created and/or enhanced.
2. Will provide a source of energy to the Sussex County distribution grid.	2. A project of this size was not intended to be located outside of the transmission corridor to limit and



	predict the locations of utility scale solar.
3. No direct impact to any known cultural and/or historical resources.	3. The project is located within a DCR designated conservation site of high significance.
4. No endangered species were present within the project limits based on surveys that were conducted.	4. Significant amount of wetland throughout the project area.
5. Berms will be used along the public roads to better screen the project from public view.	5. Without further review, it is unknown whether existing distribution infrastructure can handle the additional distribution load capacity of the project without upgrading and/or running new lines 10 miles to the Sappony Substation.
	6. The project would result in a reduction in the amount of active farm and forested land within the County.

STAFF RECOMMENDATION

Based upon a review of the Application and the Staff comments provided herein, Staff recommends denial of the requested Conditional Use Permit. Principally, this recommendation is based upon the size of the project being larger at this location than what could reasonably be anticipated by County land use policies and the significant 10-mile distance of the Project from the transmission corridor when compared to the 1-mile or less preference established in County policies. Additionally, portions of the proposed Project are located within the Sussex Courthouse Planning Area and are inconsistent with the vision of the Planning Area.

Attachments:

- A. Staff Proposed Conditions dated March 21, 2025
- B. Winfield Solar Completeness and Compliance Review – Berkley Group dated June 26, 2024
- C. Agency Comments
- D. Revised CUP Application
- E. Neighborhood Meeting Summary
- F. Public Comments

Greenvolt Power Actualize, 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 site in substantial conformance with the conceptual plans (titled “Concept Plan, Winfield Solar,” plan sheets C1.0 thru C10.1, dated December 12, 2023), inclusive of the Application revision dated “Revised March 7, 2025”, 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, shall 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 76 MW for the solar facility. The CUP permits the active developed area of the Site, within the fence line, to consist of up to 506.3 acres on Sussex County Tax Map Parcels 88-A-8, 88-A-34, 88-A-35, 89-A-2, 89-A-1, and 88-A-29 (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 coterminous minimum setback and buffer of fifty feet (50'). Greater setbacks and/or buffers from these features may be required as identified on the Concept Plan or to address specific site conditions, with final setbacks/buffers to be determined through the Permit-by-Rule (PBR) process, including DEQ, DHR, DWR, DCR and DOE, accounting for final detailed site and environmental studies and analysis. All equipment and structures, including fencing, erosion control and stormwater control measures shall be located outside of the setback/buffer, and the buffer shall be undisturbed, 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. All stream and wetland mitigation requirements will be enforced through the PBR process.
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 and no removal or trimming (except for any trimming required for routine and ordinary maintenance). 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 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. 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. Mitigation of dust.
 - j. 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 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/Owner/Developer shall be required to submit a grading plan, to be reviewed and approved by the Zoning Administrator. A bond or other security, from an issuer and in a form approved by the Zoning Administrator, will be posted for the grading operations. 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 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.
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 flagged by County staff on a 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 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 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.
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 the respective portion of the Project in accordance with the Decommissioning Plan approved by the County.
32. If the Applicant fails to timely decommission either portion of the Project within twenty-four (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.
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 Solar facility 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 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.
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 Applicant has not applied for 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.
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.



MEMORANDUM Community Development Division

To: Beverly Walkup, Director of Planning
Michael Poarch, Planner II
Sussex County, VA

From: Michael Zehner, AICP, CFM, ENV SP, Director of Community
Development and Planning
Linds Edwards, ENV SP, Planner II

Date: June 26, 2024

Subject: Zoning Completeness and Compliance Review – Winfield Solar
Energy, 76 MW

OVERVIEW AND SUMMARY

As requested, on behalf of Sussex County we are providing a review to determine whether the application submitted by Winfield Solar, LLC ("the Applicant") for a 76 MW solar facility located on 5 parcels on the northern and southern side of Route 40, one mile west of Sussex Courthouse (cover letter dated February 26, 2024 and revised June 11, 2024; "the Application") is complete, as well as compliant, with respect to applicable requirements of the Sussex County Zoning Ordinance ("SCZO"). The Application has been reviewed for completeness and compliance with respect to the sections and subsections of the SCZO identified below. **Based upon our review, and detailed below, it is our opinion that the Application is both complete and compliant and meets the requirements of the SCZO.**

Please note, this review has only been performed to determine whether the Application includes all required materials and information, as well as materials and information necessary to conduct a complete review pursuant to § 15.2-2232, *Legal status of plan*, of the Code of Virginia and the SCZO, and to determine that the project meets applicable and objective requirements and standards of the SCZO. This review provides no opinion as to whether the project is in accord with the County's Comprehensive Plan and/or satisfies requisite findings associated with the review of a conditional use permit; those reviews would be completed should the Application proceed to further review.

ZONING COMPLETENESS REVIEW

Regulations applicable to the Application, as set forth in the SCZO and relevant to the completeness and compliance of the Application, are as follows, with the Berkley Group's interpretation of application completeness and/or compliance noted in **bold underlined type**:

Sec. 16-1, Definitions

Battery storage facility means a type of energy storage power station that uses a group of batteries to store electrical energy as a source of power on electrical grids.

Battery energy storage facilities (battery facilities) means one or more battery cells for storing electrical energy stored in a Battery Energy Storage System ("BESS") with a Battery Management System ("BMS"). Facilities are generally used to supplement grid storage capacity. Battery facilities may be permitted as:

- an accessory use to utility-scale solar facilities, other energy generation facilities, or substations; or
- a primary use on a parcel contiguous to utility-scale solar facilities, other energy generation facilities, and substations.

Solar facility, utility-scale means a ground-mounted facility that generates electricity from sunlight on a facility area of not less than 65 acres based upon the 100-acre minimum area requirement contained in Section 16-406(b)(1). In no case shall any utility-scale facility have a maximum coverage area of more than 65% in accordance with Section 16-406(b)(2). This size is approximately equivalent to a rated capacity of about one megawatt (MW) alternating current or greater (excluding Solar facility, multi-family shared). Facilities are generally used to provide electricity to a utility provider. These facilities typically include inverters, a substation, a switchyard, and a generator lead line (gen-tie line) to interconnect to a grid transmission line.

Compliant; based upon the generation capacity of the proposed facility (76 MW) and other aspects of the proposal, the facility is a utility-scale solar facility, as defined.

Sec. 16-403. Zoning districts

- c. Solar facilities shall be permitted in zoning districts as follows:

Solar Facility	General Agricultural, A-1	Limited Industrial, I-1	General Industrial, I-2	Residential Multi-Family, R-1
Multi-family shared	CUP	CUP	CUP	CUP
Medium-scale	CUP	By-right	By-right	-
Utility-scale	CUP	CUP	CUP	-

Compliant; the facility site is zoned A-1 Agricultural, and the Applicant is seeking a conditional use permit.

- d. Battery facilities shall be subject to a Conditional Use Permit and permitted as follows:
1. An accessory use to utility-scale solar facilities, other energy generation facilities, or substations; or
 2. A primary use on a parcel contiguous to utility-scale solar facilities, other energy generation facilities, and substations.

Battery Facility	General Agricultural, A-1	Limited Industrial, I-1	General Industrial, I-2	Residential Multi-Family, R-1
Primary use	CUP	CUP	CUP	-
Accessory use	CUP	CUP	CUP	CUP

Not applicable.

- e. Solar facilities should locate on brownfields, County-owned capped landfills, or near existing industrial uses, where feasible.

Not applicable at this time; the facility site is zoned A-1 Agricultural and is not located on or near brownfields, landfills, or existing industrial uses; however, these siting/location standards are subject to feasibility, and the project will be evaluated further through 2232 Review and consideration of the CUP.

Sec. 16-404, Conditional Use Permit process

- a. Pre-application meeting. A pre-application meeting shall be held with the zoning administrator to discuss the location, scale, and nature of the proposed use, what will be expected during that process, and the potential for a siting agreement.

Complete; we understand that a pre-application meeting between the Applicant or a representative and the Zoning Administrator was held.

- b. Neighborhood meeting. A public meeting shall be held prior to the public hearing with the Planning Commission to give the community an opportunity to hear from the applicant and ask questions regarding the proposed project.

Complete; a neighborhood meeting was held May 21, 2024.

- c. Submittal of the permit application and fees.
 - 1. There is a combined application for the 2232 review and CUP permit.
 - 2. There are separate fees for the 2232 review and CUP permit.

Complete; according to County staff, the permit application and fees have been submitted to the Zoning Administrator.

Sec. 16-405, Conditional Use Permit application

- a. Application packet including:
 - 1. Completed County application form and checklist.
 - 2. Documents demonstrating the ownership of the subject parcel(s).
 - 3. Proof that the applicant has authorization to act upon the owner's behalf.
 - 4. Identification of the intended utility company who will interconnect to the facility.
 - 5. List of all adjacent property owners, their tax map numbers, and addresses.
 - 6. A description of the current use and physical characteristics of the subject parcels.
 - 7. A description of the existing uses of nearby properties.
 - 8. A narrative identifying the applicant, owner, or operator, and describing the proposed solar facility project, including an overview of the project and its location, approximate rated capacity of the solar facility project, the approximate number of panels, representative types, expected footprint of solar equipment to be constructed, and type and location of interconnection to electrical grid.
 - 9. Aerial imagery which shows the proposed location of the solar facility, fenced area, driveways, and interconnection to electrical grid with the closest distance to all adjacent property lines and dwellings along with main points of ingress/egress.
 - 10. Payment of the application fee and any additional review costs, advertising, or other required staff time.

Complete; the Application includes all the required Application information.

- b. Concept plan. A concept plan prepared by an engineer with a professional engineering license in the Commonwealth of Virginia, that shall include the following:
1. Project title information including tax parcel number, zoning, owner names, address, and phone numbers.
 2. Neighboring property information including tax parcel number, zoning, and owner names.
 3. Existing wetlands, waterways, and floodplains.
 4. Locations and types of soils on site.
 5. Areas of steep slopes.
 6. Existing and proposed buildings and structures including preliminary locations of the proposed solar panels and related equipment.
 7. Existing and proposed points of ingress/egress including access roads, drives, turnout locations, and parking.
 8. Location of substations, electrical cabling from the solar facility systems to the substations, ancillary equipment, buildings, and structures including those within any applicable setback.
 9. Fencing or other methods of ensuring public safety.
 10. Locations of topsoil to be removed and preserved. **The locations of topsoil to be removed and preserved is not included within the Concept Plan or otherwise within the Application. However, as indicated by the Applicant, plans identify site soils and the locations of topsoil and topsoil to be removed will be identified on final permit plans, including plans for stockpiling. We are of the opinion that the Applicant's responses have addressed this requirement.**
 11. Locations of stormwater drainage and erosion and sediment control features.
 12. Setbacks.
 13. The location and nature of proposed buffers and screening elements, including vegetative and constructed buffers.

Complete/Compliant; the Concept Plan and Application complete and compliant.

- c. An estimated construction schedule.

Complete; the Application includes a construction schedule incorporating all required information and content.

- d. Environmental inventory and impact statement regarding any site and viewshed impacts, including direct and indirect impacts to national and state forests, national or state parks, wildlife management areas, conservation easements, recreational areas, or any known historic or

cultural resources within three (3) miles of the proposed project using information provided by the Virginia Department of Environmental Quality (DEQ), the Virginia Department of Conservation (DCR), Virginia Department of Wildlife Resources (DWR), Virginia Department of Historic Resources (DHR), and/or a report prepared by a qualified third party, such as ConserveVirginia or Virginia Cultural Resource Information System.

Complete; the Application includes an environmental inventory and impact statement incorporating all required information and content.

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

Complete; the Application includes a visual impact analysis and photographic simulations that incorporate all required information and content.

- f. Solar facility inventory. An inventory of all solar facilities – existing or proposed – within a four (4) mile radius.

Complete; the Application includes a map of all solar facilities within a 4-mile radius.

- g. Draft traffic study. The study shall include modelling the construction and decommissioning processes. County staff will review the study in cooperation with VDOT.

Complete; the Application includes a Draft traffic study incorporating all required information and coordination with VDOT.

- h. Draft landscaping plan. The plan shall indicate:

1. All ground cover, screening and buffering materials, landscaping, and elevations.
 - a. Ground cover shall be native vegetation where compatible with site conditions.
 - b. Screening vegetation shall include pollinator plants where compatible with site conditions.
 - c. Only EPA approved herbicides shall be used for vegetative and weed control at the solar energy facility by a licensed applicator. No herbicides shall be used within 150 feet of the location of an approved ground water well. The Applicant shall submit an herbicide land application plan prior to approval of the certificate of occupancy (or equivalent). The plan shall specify the type of herbicides to be used, the frequency of land application, the identification of approved groundwater wells, wetlands, streams, and the distances from land application areas to features such as wells, wetlands, streams, and other bodies of water. The operator shall notify the County prior to application of pesticides and fertilizers. The County reserves the right to request soil and water testing.
2. Locations of wildlife corridors.
3. Maintenance requirements.

Complete and compliant; the Application Includes a Draft landscaping and vegetation maintenance plan incorporating all required information and design elements.

- i. Draft decommissioning and reclamation plan. A detailed decommissioning and reclamation plan, certified by an engineer, which shall include the following:
 1. The anticipated life of the project. The applicant shall provide the basis for determining the anticipated life of the project.
 2. The estimated decommissioning and reclamation cost in current dollars. The applicant shall provide a cost estimate for the decommissioning and reclamation of the facility prepared by a professional engineer or contractor who has expertise in the removal of solar facilities. The decommissioning and reclamation cost estimate shall explicitly detail the cost without any reduction for salvage value.
 3. The method of ensuring that funds will be available for decommissioning and reclamation. A proposed method of providing appropriate escrow, surety, or security for the cost of the decommissioning and reclamation plan. The surety shall be updated

when the decommissioning and reclamation cost estimate is updated. The estimated cost of decommissioning shall be guaranteed by the deposit of funds in an amount equal to the estimated cost in an escrow account at a federally insured financial institution approved by the County unless otherwise provided for in subsection d below.

- a. The applicant shall deposit the required amount into the approved escrow account before any building permit is issued to allow construction of the solar facility.
 - b. The escrow account agreement shall prohibit the release of the escrow funds without the written consent of the County. The County shall consent to the release of the escrow funds upon on the owner's or occupant's compliance with the approved decommissioning and reclamation plan. The County may approve the partial release of escrow funds as portions of the approved decommissioning plan are performed.
 - c. The amount of funds required to be deposited in the escrow account shall be the full amount of the estimated decommissioning and reclamation cost.
 - d. The County may approve alternative methods to secure the availability of funds to pay for the decommissioning and reclamation of a solar facility, such as a performance bond, letter of credit, or other security approved by the County.
4. The method that the estimated cost will be kept current. The decommissioning and reclamation cost estimate shall include a mechanism for calculating increased removal costs due to inflation. This cost estimate shall be recalculated every five (5) years and the surety shall be updated accordingly. If the recalculated estimated cost exceeds the original estimated cost by ten percent (10%), then the owner or occupant shall deposit additional funds into the escrow account to meet the new cost estimate. If the recalculated estimated cost is less than ninety percent (90%) of the original estimated cost, then the County may approve reducing the amount of the escrow account to the recalculated estimate of cost.

Complete; the Application includes a decommissioning plan incorporating all required financial information and was prepared by a licensed engineer.

5. The manner in which the site will be decommissioned and reclaimed. This will include:

- a. Notice to the Zoning Administrator by certified mail and in person of the proposed date of discontinued operations and plans for removal.
- b. A traffic study submitted with application modelling the decommissioning processes. County staff will review the study in cooperation with VDOT.
- c. An estimated deconstruction schedule.
- d. Removal of all solar electric systems, buildings, cabling, electrical components, security barriers, roads, foundations, pilings, and any other associated facilities, so that any agricultural ground upon which the facility and/or system was located is again tillable and suitable for agricultural or forestall uses.
- e. The site shall be graded and re-seeded or replanted within 12 months of removal of solar facilities to restore it to as natural a pre-development condition as possible. Re-grading and re-seeding or replanting shall be initiated within a six-month period of removal of equipment. Any exception to site restoration, such as leaving access roads in place or re-seeded or replanted must be requested by the landowner in writing, and this request must be approved by the Board of Supervisors.
- f. Hazardous material from the property shall be disposed of in accordance with federal and state law.

Complete; the Application includes a decommissioning and reclamation plan incorporating all required information and design elements.

- j. Additional information may be required as determined by the Zoning Administrator, such as a scaled elevation view of the property and other supporting drawings, photographs of the proposed site, photo or other realistic simulations or modeling of the proposed project from potentially sensitive locations as deemed necessary by the Zoning Administrator to assess the visual impact of the project, landscaping plan, coverage map, and additional information that may be necessary for a technical review of the proposal.

Not applicable at this time.

Sec. 16-406, Minimum development and performance standards

- a. A utility-scale solar facility shall be constructed, operated, and maintained in substantial compliance with the approved concept plan with allowances for changes required by the Virginia Department of Environmental Quality (DEQ) Permit by Rule (PBR) or State Corporation Commission (SCC) permit process.

Compliance anticipated; the Applicant has specifically mentioned their intentions to comply with DEQ, and other agency, regulations.

- b. Location standards for utility-scale solar facilities. The location standards stated below for utility-scale solar facilities are intended to mitigate the adverse effects of such uses on adjoining property owners, the area, and the County.

1. The minimum area of a utility-scale solar facility shall be 100 or more.

Compliant; the facility is larger than 100 acres.

2. The equipment, improvements, structures, and percent of acreage coverage of a utility-scale solar facility shall be shown on the approved concept plan and site plan. The percent of acreage coverage shall not exceed 65%.

Compliant; the Application notes that the area of disturbance is approximately 502 acres, or 58.9% of the total site area.

- c. Height.

1. The maximum height of the lowest edge of photovoltaic panels shall be 10 feet as measured from the finished grade. The maximum height of the highest edge of photovoltaic panels shall not exceed 15 feet as measured from the finished grade.
2. The maximum height of other facility structures shall not exceed 15 feet. This limit shall not apply to utility poles or the interconnection to the overhead electric utility grid.
3. The Board of Supervisors may approve a greater height based upon the demonstration of a significant need where the impacts of increased height are mitigated.

Compliant; the Applicant notes the maximum height of the lowest edge of the solar modules will be ten feet (10') above the finished grade.

- d. Setbacks. Solar facilities shall meet all setback requirements for primary structures for the zoning district in which the facility is located and the requirements set forth below (the more restrictive requirements shall apply).

1. The minimum setback of structures and uses associated with the facility, including fencing, PV panels, parking areas, and outdoor storage, but not including landscaping and berming, shall be:
 - a. 150 feet from adjacent property lines.
 - b. 150 feet from all public rights-of-way.
 - c. 300 feet from a dwelling.
2. The Planning Commission or Board of Supervisors may require increased setbacks up to 400 feet in situations where the height of structures or the topography affects the visual impact of the facility.
3. These setback requirements shall not apply to internal property lines of those parcels on which a solar facility is located.
4. Access, erosion and stormwater structures, and interconnection to the electrical grid may be made through setback areas provided that such are generally perpendicular to the property line.
5. Vehicular access to the site shall be a minimum of 50 feet from the nearest dwelling located on adjacent property.

Compliant; the setbacks are accurately depicted on the submitted Concept Plan.

- e. Buffer. The buffer shall be located within the setbacks required under this Section and shall run around the entire perimeter of the property. The buffer shall be maintained for the life of the facility.

Compliance anticipated; the Application includes a buffer and vegetation maintenance plan.

- f. Screening. The facilities, including security fencing that is not ornamental, shall be screened from the ground-level view of adjacent properties or a public street in the buffer zone. Screening may also be required in other locations to screen specific uses or structures. A recommendation that the screening and/or buffer creation requirements be waived or altered may be made by the Planning Commission when the applicant proposes to use existing wetlands or woodlands to satisfy the screening requirement. The wetlands or woodlands shall be permanently protected as a designated buffer and the overall buffer shall measure at least 150 feet. Screening methods may include:
 1. Existing Screening: Existing vegetation, topography, buildings, open space, or other elements located on the site may be considered as part of the required screening. Existing trees and vegetation may be

retained within the buffer area except where dead, diseased, or as necessary for development or to promote healthy growth.

2. **Vegetative Screening:** In the event existing vegetation or landforms providing the screening are inadequate or disturbed, new plantings shall be provided in a landscaped strip at least 50 feet wide. Landscaping intended for screening shall consist of a combination of non-invasive species, pollinator species, and native plants, shrubs, trees, grasses, forbs, and wildflowers. Trees intended for screening shall consist of a combination of evergreen and deciduous trees that are 5-6 ft. in height at time of planting. A triple row of trees shall be placed on average at 15 ft. on center. A list of appropriate plant materials shall be available at the Planning Office. Species listed on DCR's Invasive Plant Species list shall not be used.

Compliance anticipated; the proposed Project includes both vegetative screening and utilization of the existing vegetation.

3. **Berming:** Berms shall generally be constructed with a 3:1 side slope to rise ratio, 4-6 ft. above the adjacent grade, with a 3 ft. wide top with appropriate pollinator-friendly native plants, shrubs, trees, forbs, and wildflowers. The outside edges of the berm shall be sculpted such that there are vertical and horizontal undulations to give variations in appearance. When completed, the berm should not have a uniform appearance like a dike.
4. **Opaque Architectural Fencing.** Fencing intended for screening shall be at least 75 percent visually solid as viewed on any line perpendicular to the fence from adjacent property or a public street. Such fencing may be used in combination with other screening methods but shall not be the primary method. A typical example is the use of wood privacy fencing and landscaping to screen structures such as substations. Depending on the location, ornamental features may be required on the fence. Fencing material shall not include plastic slats.
- e. **Security Fence.** The facilities shall be enclosed by security fencing not less than six (6) feet in height and topped with barbed wire, as appropriate. A performance bond reflecting the costs of anticipated fence maintenance shall be posted and maintained. Failure to maintain the security fencing shall result in revocation of the CUP and the facility's decommissioning.

Compliance anticipated; the proposed Project includes security fencing not less than 6 feet in height as well as a constructed berm.

- f. Ground cover on the site shall be native vegetation and maintained in accordance with the landscaping plan in accordance with established performance measures. A performance bond reflecting the costs of anticipated maintenance shall be posted and maintained. Failure to maintain the ground cover shall result in revocation of the CUP and the facility's decommissioning. The operator shall notify the County prior to application of pesticides and fertilizers. The County reserves the right to request soil and water testing.

Compliant; the Application addresses the ground cover regulation appropriately. Compliance with the performance bond requirement is anticipated and referenced by the Applicant.

- g. The Applicant shall identify access corridor(s) for wildlife to navigate through and across the Solar Facility. The proposed wildlife corridor(s) shall be shown on the site plan submitted to the County. Areas between fencing shall be kept open to allow for the movement of migratory animals and other wildlife.

Compliant; the Application addresses the wildlife corridor regulation appropriately and the dimensions of wildlife corridors are noted within the Plans.

- h. The design of support buildings and related structures shall use materials, colors, textures, screening, and landscaping that will blend the facilities to the natural setting and surrounding structures.

Compliance anticipated; the Applicant has indicated that the "Project does not anticipate needing any support buildings and thus none are proposed in the Application. If any support buildings are determined to be needed they will be included in the final site plan to be submitted to the County and be within the current project footprint and meet all of the requirements of the Sussex County Zoning Ordinance including using materials, colors, textures, screening and landscaping that will blend the support building to the natural setting and surrounding buildings."

- i. The owner or operator shall maintain the solar facility in good condition. Such maintenance shall include, but not be limited to, painting, structural integrity of the equipment and structures, as applicable, and maintenance of the buffer areas and landscaping. Site access shall be maintained to a level acceptable to the County. The project owner shall

be responsible for the cost of maintaining the solar facility and access roads, and the cost of repairing damage to private roads occurring as a result of construction and operation.

Compliance anticipated; the Owner shall maintain the solar facility in good condition.

- j. Inspections.
 - 1. The Applicant will allow designated County representatives or employees access to the facility for inspection purposes with 24-hour notice.
 - 2. The Applicant shall reimburse the County its costs in obtaining an independent third-party to conduct inspections required by local and state laws and regulations.

Compliance anticipated; the Applicant will allow for inspections.

- k. A utility-scale solar facility shall be designed and maintained in compliance with standards contained in applicable local, state, and federal building codes and regulations that were in force at the time of the permit approval.

Compliance anticipated with respect to all applicable local, state and federal codes and regulations.

- l. The applicant shall provide proof of adequate liability insurance for a solar facility prior to beginning construction and before the issuance of a zoning or building permit to the zoning administrator.

Compliance anticipated; liability insurance is not specifically mentioned in the Application, proof would be required prior to beginning construction.

- m. Lighting fixtures as approved by the County shall be the minimum necessary for safety and/or security purposes to protect the night sky by facing downward and to minimize off-site glare. No facility shall produce glare that would constitute a nuisance to the public. Any exceptions shall be enumerated on the Concept Plan and approved by the zoning administrator.

Compliance anticipated; the Applicant notes lighting will be dark-sky compliant and will face downward.

- n. No signage of any type may be placed on the facility other than notices, warnings, and identification information required by law.

Compliance anticipated; no signage is mentioned in the Application beyond emergency signage.

- o. At all times, the solar facility shall comply with the County's noise ordinance.

Compliance anticipated; the solar facility shall comply with the County's noise ordinance.

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

Compliant; the Application includes plans for coordination and education of local emergency services staff.

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

4. The site shall be re-graded and re-seeded or replanted within 12 months of removal of solar facilities. Re-grading and re-seeding or replanting shall be initiated within a six-month period of removal of equipment.
5. Decommissioning and reclamation shall be performed in compliance with the approved decommissioning and reclamation plan. The Board of Supervisors may approve any appropriate amendments to or modifications of the decommissioning plan.
6. Hazardous material from the property shall be disposed of in accordance with federal and state law.
7. If the owner or operator of the solar facility fails to remove the installation in accordance with the requirements of this permit or within the proposed date of decommissioning, the County may collect the surety and the County or hired third party may enter the property to physically remove the installation.

**Complete; the Application includes a decommissioning plan
Incorporating all required information and content.**

- r. Any other condition added by the Planning Commission or Board of Supervisors as part of a CUP approval.

**Not applicable; conditions will be considered as a part of the CUP
process.**

Stefanie K. Taillon
Acting Secretary of Natural and Historic Resources

Matthew S. Wells
Director

Andrew W. Smith
Chief Deputy Director



Frank N. Stovall
*Deputy Director
for Operations*

Darryl Glover
*Deputy Director for
Dam Safety,
Floodplain Management and
Soil and Water Conservation*

Laura Ellis
*Deputy Director for
Administration and Finance*

March 19, 2025

COMMONWEALTH of VIRGINIA
DEPARTMENT OF CONSERVATION AND RECREATION

Michael Poarch
Sussex County
20135 Princeton Road
Sussex, Virginia 23884

Re: Winfield Solar

Dear Mr. Poarch:

The Department of Conservation and Recreation's Division of Natural Heritage (DCR) has searched its Biotics Data System for occurrences of natural heritage resources from the area outlined on the submitted map. Natural heritage resources are defined as the habitat of rare, threatened, or endangered plant and animal species, unique or exemplary natural communities, and significant geologic formations.

According to the information in our files, the Anderson Branch Stream Conservation Site (SCS) is located within the project area. SCSs encompass stream/river reaches, waterbodies, and terrestrial contributing areas containing or associated with aquatic or semi-aquatic resources, including upstream and downstream reaches and tributaries up to 3-km stream distance from the aquatic resources. The size and dimensions of an SCS are based on the hydrology of the waterway and surrounding landscape, taking into consideration dam locations and whether the waterway is tidal. SCSs are also given a biodiversity significance ranking (B-rank) based on the rarity, quality, and number of element occurrences they contain. The Anderson Branch SCS has been given a B-rank of B3, which represents a site of high significance. The natural heritage resource associated with this SCS is:

Aquatic Natural Community

SC-Nottoway First Order Stream

G2G3/S2S3/NL/NL

The documented Aquatic Natural Community is based on Virginia Commonwealth University's *INSTAR* (*Interactive Stream Assessment Resource*) database which includes over 2,000 aquatic (stream and river) collections statewide for fish and macroinvertebrate. These data represent fish and macroinvertebrate assemblages, instream habitat, and stream health assessments. The associated Aquatic Natural Community is significant on multiple levels. First, this stream is a grade A per the VCU-Center for Environmental Sciences (CES), indicating its relative regional significance, considering its aquatic community composition and the present-day conditions of other streams in the region. This stream reach also holds a "Healthy" stream designation per the *INSTAR* Virtual Stream Assessment (VSS) score. This score assesses the similarity of this stream to ideal stream conditions of biology and habitat for this region. Lastly, this stream contributes to high Biological Integrity at the watershed level (6th order) based on number of native/non-native, pollution-tolerant/intolerant and rare, threatened or endangered fish and macroinvertebrate species present.

Threats to the significant Aquatic Natural Community and the surrounding watershed include water quality degradation related to point and non-point pollution, water withdrawal and introduction of non-native species. To minimize adverse impacts to the aquatic ecosystem as a result of the proposed activities, DCR recommends the implementation of and strict adherence to applicable state and local erosion and sediment control/storm water

management laws and regulations, establishment/enhancement of riparian buffers with native plant species and maintaining natural stream flow.

Based on the review of the project by a DCR biologist, there is also potential for isolated ponds to occur within the project area that could support Barking Treefrog (*Hyla gratiosa*, G5/S2S3/NL/NL) and Mabee's Salamander (*Ambystoma mabeei*, G4/S1S2/NL/LT) if suitable habitat exists on site. The Barking Treefrog ranges through the coastal plain from North Carolina to Florida and west to Mississippi and eastern Louisiana (NatureServe, 2009). There are disjunct populations in Delaware, Maryland, Kentucky and Tennessee, and southeastern Virginia (NatureServe, 2009). Across its range, it inhabits areas near shallow ponds in pine savannas and in low wet woods and swamps (Martof et al., 1980). In Virginia, this species breeds in fish-free vernal ponds (Pague & Young, 1991). When inactive during cold or dry seasons, they burrow under tree roots, vegetation, or in the soil; otherwise, this species is mostly arboreal and thus dependent on trees near the water (Pague & Young, 1991). Adult frogs feed on insects and other invertebrates; tadpoles consume primarily algae (VDGIF, 1993).

Major threats to the Barking treefrog include continued logging of native pine, destruction of breeding ponds, and over collecting (Pague & Young, 1991).

Mabbe's Salamander inhabits isolated depression wetlands in pine woods, open fields, lowland deciduous forests (Behler and King, 1979), pine savannas, low wet woods and swamps (Martof et. al., 1980). They breed in fish-free vernal ponds (Pague & Mitchell, 1991) where the eggs are attached to submerged plant material or bottom debris (Behler and King, 1979). This species migrates up to a few hundred meters between their breeding and nonbreeding habitats, although, some adults will remain at the breeding site after the pond dries. Concurrent with heavy winter and springs rains, mass movements of adults to the breeding ponds have been documented (TNC et. al., 1999). Adults and juveniles spend most of the year underground in the upland habitats, but return to the ponds to breed in February or March (VDGIF, 1994). Because of the amphibious life cycle, the presence of sufficient, suitable terrestrial and aquatic habitat is critical (VDGIF, 1994).

Threats to Mabee's salamander include habitat loss, habitat fragmentation, and habitat contamination (VDGIF, 1994). The wetland habitats can be degraded or destroyed by filling, draining, ditching, and changing land use in the groundwater recharge zones or by contamination with pesticides or other chemicals. The upland habitats can be compromised by residential, commercial and industrial development, incompatible forest management practices, and other changes. Loss of suitable continuous terrestrial habitat between breeding sites may fragment populations and lead to extirpation through such factors as environmental perturbations, disease, and inbreeding (VDGIF, 1994). Please note that this species is currently classified as threatened by the Virginia Department of Wildlife Resources (VDWR).

Due to the potential for this site to support populations of the barking treefrog and Mabee's salamander, DCR recommends an inventory for isolated ponds and the associated natural heritage resources in the parcel north of Route 40. With the survey results we can more accurately evaluate potential impacts to natural heritage resources and offer specific protection recommendations for minimizing impacts to the documented resources.

DCR-Division of Natural Heritage biologists are qualified to conduct inventories for rare, threatened, and endangered species. Please contact Anne Chazal, Natural Heritage Chief Biologist, at anne.chazal@dcr.virginia.gov or 804-786-9014 to discuss availability and rates for field work.

Due to the legal status of Mabee's salamander, DCR recommends coordination with Virginia's regulatory authority for the management and protection of this species, the VDWR, to ensure compliance with the Virginia

Endangered Species Act (VA ST §§ 29.1-563 – 570). DCR also recommends a 300-meter upland forested buffer be protected surrounding the ponds.

In addition, according to predicted suitable habitat modeling, there is also potential for Eastern big-eared bat (*Corynorhinus rafinesquii macrotis*, G3G4T3/S2/NL/LE) to occur in the project area if suitable habitat exists on site. The Eastern big-eared bat is named for its enormous ears twice the length of its head, is extremely rare in Virginia and is currently known only from the southeastern portion of the state. Although widespread throughout the southeast, they are never found in large numbers. These bats roost singly or in small groups in hollow trees or abandoned buildings. They forage only after dark primarily in mature forests of both upland and lowland areas along permanent bodies of water (NatureServe, 2009). The details of this bat's feeding behavior and much of its natural history remain a mystery. Lack of information regarding the ecology of the Eastern big-eared bat, and their sensitivity to disturbance, make them particularly vulnerable to destruction of roost sites and feeding areas where their presence goes undetected (Handley and Schwab 1991, Harvey 1992).

Threats to this species include forest destruction, particularly hollow tree removal, decreasing availability of abandoned buildings, and possibly, insecticides. Please note that this species is currently classified as endangered by the Virginia Department of Wildlife Resources (VDWR).

DCR recommends avoiding tree removal in bottomland habitats along Tweatt Branch and assessing any large potential roost trees and/or abandoned structures on the property for bat presence/absence. DCR supports continued coordination with DWR, Virginia's regulatory authority for the protection of this species, as stated in Exhibit D Environmental Resource Impact Analysis particularly if removal of potential roost habitat for the Eastern big-eared bat becomes necessary to ensure compliance with the Virginia Endangered Species Act (VA ST §§ 29.1-563 – 570).

Furthermore, the proposed project will impact an Ecological Core (C3) as identified in the Virginia Natural Landscape Assessment (<https://www.dcr.virginia.gov/natural-heritage/vaconvisvnl>). Mapped cores in the project area can be viewed via the Virginia Natural Heritage Data Explorer, available here: <http://vanhde.org/content/map>.

Ecological Cores are areas of at least 100 acres of continuous interior, natural cover that provide habitat for a wide range of species, from interior-dependent forest species to habitat generalists, as well as species that utilize marsh, dune, and beach habitats. Interior core areas begin 100 meters inside core edges and continue to the deepest parts of cores. Cores also provide the natural, economic, and quality of life benefits of open space, recreation, thermal moderation, water quality (including drinking water recharge and protection, and erosion prevention), and air quality (including sequestration of carbon, absorption of gaseous pollutants, and production of oxygen). Cores are ranked from C1 to C5 (C5 being the least significant) using nine prioritization criteria, including the habitats of natural heritage resources they contain.

Impacts to cores occur when their natural cover is partially or completely converted permanently to developed land uses. Habitat conversion to development causes reductions in ecosystem processes, native biodiversity, and habitat quality due to habitat loss; less viable plant and animal populations; increased predation; and increased introduction and establishment of invasive species.

DCR recommends avoidance of impacts to cores. When avoidance cannot be achieved, DCR recommends minimizing the area of impacts overall and concentrating the impacted area at the edges of cores, so that the most interior remains intact.

DCR recommends the development of an invasive species management plan for the project. DCR has reviewed the seed mixes and buffer plant list found on sheet C10.1 of Exhibit C- Project Map Set revised March 3, 2025,

using the Virginia Native Plant Finder and the Digital Atlas of the Virginia Flora. The following comments reference specific seed and plant list from sheet C10.1 "Landscaping Notes and Details." DCR supports the planting of Virginia native pollinator plant species that bloom throughout the spring, summer, and fall to maximize benefits to native pollinators in the buffer areas of the planned facility, as shown by the "Native Pollinator Buffer Mix", Ernst Custom Sussex County Solar Farm Seed Mix. DCR also supports the planting of native species in the screening zone outside of the perimeter fence as described in the "Recommended Buffer Plant List" as well as the inclusion of Virginia native species in the "Solar Native Pollinator Mix", VA Solar Pollinator Mix 3'-ERNMX-622, for use in the panel zone and in the "Detention Basin Mix", VA Southern Coastal Plain Detention Basin Mix-ERNX 864. DCR supports the use of Virginia ecotypes when possible.

In the "Solar Native Pollinator Mix" DCR recommends replacing Hairy Beardtongue with another Virginia native species, as it is currently on DCR- Division of Natural Heritage's rare plant watchlist and replacing Blue Gamma with a grass species native to Virginia. Guidance on plant species can be found here: <https://www.dcr.virginia.gov/natural-heritage/native-plants-finder>. In addition, Virginia native species alternatives to the non-native species listed in the Virginia Erosion and Sediment Control Handbook (Third Edition 1992), can be found in the 2017 addendum titled "Native versus Invasive Plant Species", here: <https://www.deq.virginia.gov/home/showpublisheddocument?id=2466>. Page 3 of the addendum provides a list of native alternatives for non-natives commonly used for site stabilization including native cover crop species (i.e., Virginia wildrye).

Under a Memorandum of Agreement established between the Virginia Department of Agriculture and Consumer Services (VDACS) and the DCR, DCR represents VDACS in comments regarding potential impacts on state-listed threatened and endangered plant and insect species. The current activity will not affect any documented state-listed plants or insects.

There are no State Natural Area Preserves under DCR's jurisdiction in the project vicinity.

New and updated information is continually added to Biotics. Please re-submit a completed order form and project map for an update on this natural heritage information if the scope of the project changes and/or six months has passed before it is utilized.

The Virginia Department of Wildlife Resources (VDWR) maintains a database of wildlife locations, including threatened and endangered species, trout streams, and anadromous fish waters that may contain information not documented in this letter. Their database may be accessed <https://services.dwr.virginia.gov/fwis/> or contact Lee Brann at Lee.Brann@dwr.virginia.gov.

Should you have any questions or concerns, feel free to contact me at 804-625-3979. Thank you for the opportunity to comment on this project.

Sincerely,



Nicki Gustafson
Natural Heritage Project Review Assistant

Cc: Hannah Schul, VDWR

Literature Cited

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Michael Poarch

From: Birge-wilson, Adrienne (DHR) <Adrienne.Birge-Wilson@dhr.virginia.gov>
Sent: Tuesday, March 26, 2024 3:10 PM
To: Michael Poarch
Cc: Michael Zehner; Linds Edwards; Luke Peters; Fowler, Jason C., PE (VDOT); Norris, Joshua (VDOT); Hypes, Rene (DCR); Bassett, Jay S. (DOF); Dowling, Zachary H. (DOF); Robb, Jaime Lynn B. (DEQ); Gwynn, Becky (DWR); Connolly, Jonathan (DHR); Nick Sheffield; Ernest Giles
Subject: RE: Winfield Solar CUP Application Review- 1st submittal

Some people who received this message don't often get email from adrienne.birge-wilson@dhr.virginia.gov. [Learn why this is important](#)

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Michael- DHR's comments are as follows:

Regarding archaeology, the Conditional Use Application Permit submitted to DHR for review and comment indicates that an archaeological survey is currently in-progress. DHR looks forward to reviewing the final report.

Regarding architectural resources, a Draft Architectural Survey was submitted in the *Exhibit O Draft Architectural Surveys Greenvolt Power Actualize, LLC – Conditional Use Permit Application* which included: Winfield – Phase 1 Section 1, Optimist – Phase 2 Section 2 and Potts – Phase 3 Section 3. However, DHR has not received the completed surveys for our review yet in accordance with DHR's *Guidelines for Conducting Historic Resources Survey in Virginia* (October 2011, Revised 2017) at https://www.dhr.virginia.gov/wp-content/uploads/2018/06/SurveyManual_2017.pdf.

Two bound copies and one digital copy of the resulting report should be submitted to our office for review and approval prior to proceeding with the project. It should be noted that all archival material for the architectural study must be submitted and approved by our Archives before we can complete our review of the report. Once we have the results of the surveys, we will be able to advise whether any further investigations and/or other actions are warranted.

V/R,

Adrienne Birge-Wilson

Architectural Historian | Review and Compliance Division

Department of Historic Resources

Email adrienne.birge-wilson@dhr.virginia.gov

Phone 804-482-6092

From: Kirchen, Roger (DHR) <roger.kirchen@dhr.virginia.gov>
Sent: Tuesday, February 27, 2024 3:56 PM
To: Birge-wilson, Adrienne (DHR) <Adrienne.Birge-Wilson@dhr.virginia.gov>
Subject: FW: Winfield Solar CUP Application Review- 1st submittal

This looks like it's 2023-5478

Roger W. Kirchen

Director, Review and Compliance Division

p: 804-482-6091

e: roger.kirchen@dhr.virginia.gov

From: Michael Poarch <mpoarch@sussexcountyva.gov>

Sent: Tuesday, February 27, 2024 10:51 AM

To: Michael Zehner <michael.zehner@bgllc.net>; Linds Edwards <linds.edwards@bgllc.net>; Luke Peters <luke.peters@bgllc.net>; Fowler, Jason C., PE (VDOT) <jason.fowler@vdot.virginia.gov>; Norris, Joshua (VDOT) <joshua.norris@vdot.virginia.gov>; Hypes, Rene (DCR) <rene.hypes@dc.virginia.gov>; Bassett, Jay S. (DOF) <jay.bassett@dof.virginia.gov>; Dowling, Zachary H. (DOF) <zach.dowling@dof.virginia.gov>; Robb, Jaime Lynn B. (DEQ) <jaime.robb@deq.virginia.gov>; Gwynn, Becky (DWR) <becky.gwynn@dwr.virginia.gov>; Kirchen, Roger (DHR) <roger.kirchen@dhr.virginia.gov>; Nick Sheffield <nsheffield@sussexcountyva.gov>; Ernest Giles <egiles@susova.us>

Cc: Beverly Walkup <bwalkup@sussexcountyva.gov>

Subject: Winfield Solar CUP Application Review- 1st submittal

Good Morning,

I hope everyone is doing well. We have received a conditional use permit application for a proposed solar facility referred to as Winfield Solar. As part of the review, we wanted to gather initial feedback or comments from each respective agency and/or department.

Brief Description

The Conditional Use Permit application is for Winfield Solar which proposes to develop a 76 MW solar generation facility. The project is located on the north and south sides of U.S. Route 40 (Sussex Drive) approximately one mile west of the the Sussex County Courthouse.

Please see zip file link below to access the documents for your review and reference. We would appreciate all comments or feedbacks prior to March 28 if possible. If you have any issues accessing the link below, please let us know.



Sincerely,

M. Poarch
County Planner
Sussex County Planning & Zoning Department

Michael Poarch

From: Brann, Lee (DWR) <Lee.Brann@dwr.virginia.gov>
Sent: Wednesday, April 17, 2024 11:17 AM
To: Michael Poarch
Cc: Strawderman, Nicole (DWR); Pinder, Michael (DWR); Kleopfer, John (DWR); Martin, Amy (DWR); Schul, Hannah (DWR); Reynolds, Richard (DWR)
Subject: ESSLog# 44971_Winfield Solar_DWR_HLB20240417

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Mr. Poarch,

We have reviewed the subject project that proposes to construct a solar energy facility in Sussex County. Several unnamed tributaries (to Hunting Quarter Swamp and Cabin Point Swamp) in the project area model out as potential habitat for state endangered Blackbanded Sunfish. The project site also models out as potential habitat for state threatened Mabee's Salamander.

To determine the presence or absence of Blackbanded Sunfish at the project site and to determine if suitable habitat for this species is present on site, DWR may wish to perform surveys in the abovementioned waters, with permission from the applicant. We standardly recommend protecting from impacts a naturally vegetated buffer of at least 300 ft on both sides of waters known to support listed aquatic species and, depending on the outcome of any Blackbanded Sunfish surveys, may recommend maintaining such a buffer on all sides of waters at the project site known to support Blackbanded Sunfish.

It is difficult to tell, from the information provided, whether suitable habitat for Mabee's Salamander is available at the project site. Therefore, we recommend that a habitat assessment for this species be performed throughout the project site. The habitat assessment should be performed by a qualified biologist and should clearly depict, via narrative and photographic description, all wetlands habitats on site along with the representative uplands whether proposed for impacts or not. This habitat assessment should be made available to Lee Brann at Lee.Brann@dwr.virginia.gov and John (JD) Kleopfer at John.Kleopfer@dwr.virginia.gov. The habitat assessment and associated correspondence should reference the five-digit ESSLog# in the subject line of this email. Upon review of the habitat assessment, we will make final comments regarding protection of Mabee's Salamanders associated with this project.

The project site is located in an area of the Commonwealth known to have a year-round presence of federally endangered state endangered Northern Long-Eared Bats (NLEB). However, because a June 2023 bat survey for this project, performed in accordance with FWS survey guidelines, did not detect the presence of NLEB at the project site during the survey period, we are not recommending a time of year restriction (TOYR) protective of NLEB for this project at this time.

To minimize adverse impacts of solar energy facilities upon wildlife and other natural resources, we recommend adherence to the project design, site development, and operational guidance found within the document at the following link:

<https://dwr.virginia.gov/wp-content/uploads/media/Solar-Energy-Facility-Guidance.pdf>

Thank you,



Lee Brann

Environmental Services Biologist

Wildlife Information and Environmental Services

P 804.367.1295

C 804.481.1934

Department of Wildlife Resources

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A 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228

www.VirginiaWildlife.gov

ESSLog# 44971_Winfield Solar_DWR_HLB20240812

From Brann, Lee (DWR) <Lee.Brann@dwr.virginia.gov>

Date Mon 8/12/2024 4:07 PM

To Michael Poarch <mpoarch@sussexcountyva.gov>

Cc Schul, Hannah (DWR) <Hannah.Schul@dwr.virginia.gov>; Strawderman, Nicole (DWR) <Nicole.Strawderman@dwr.virginia.gov>; Pinder, Michael (DWR) <Mike.Pinder@dwr.virginia.gov>; Cogar, Madison (DWR) <Madison.Cogar@dwr.virginia.gov>; Reynolds, Richard (DWR) <Rick.Reynolds@dwr.virginia.gov>

 1 attachment (311 KB)

Solar-Energy-Facility-Guidance.pdf;

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Mr. Poarch,

Thank you for providing us with the updated materials on the proposed Winfield Solar Project in Sussex County. The materials indicate that the only changes to the site layout/plan are the entrance layouts and the positioning of trees at the site. Provided that there has been no expansion or shifting of the project boundaries, DWR does not have any further recommendations to submit at this time concerning the protection of wildlife resources under our jurisdiction.

We note that the neither the Blackbanded Sunfish survey nor the bat survey performed for this project found any listed species at the site during the survey periods. Therefore, we are not recommending any additional protections for Blackbanded Sunfish or NLEBs for this project at this time. However, we continue to recommend maintaining undisturbed naturally vegetated buffers of at least 100 feet in width around all on-site wetlands and on both sides of all perennial and intermittent streams, as outlined in our standard Solar Energy Facility Guidelines. I've attached those guidelines again here in case that is helpful.

Please reach out if you have any other questions or concerns.

Thank you,



Lee Brann

Environmental Services Biologist

Wildlife Information and Environmental Services

 804.367.1295

 804.481.1934

Department of Wildlife Resources

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▲ 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228

www.VirginiaWildlife.gov

Fw: ESSLog# 44971_Winfield Solar_DWR_HLB20240812

From Schul, Hannah (DWR) <Hannah.Schul@dwr.virginia.gov>

Date Thu 3/20/2025 11:23 AM

To Michael Poarch <mpoarch@sussexcountyva.gov>

Cc Brann, Lee (DWR) <Lee.Brann@dwr.virginia.gov>; Strawderman, Nicole (DWR) <Nicole.Strawderman@dwr.virginia.gov>

 1 attachment (311 KB)

Solar-Energy-Facility-Guidance.pdf;

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Good morning Michael,

We have reviewed the Winfield Solar CUP Application Review 2nd Submittal revisions and Lee Brann's August 12, 2024, comments below are still valid.

Thank you,



Hannah Schul
Environmental Services Program Manager
(804) 968-8546

[Virginia Department of Wildlife Resources](https://dwr.virginia.gov/wies/environmental-services/)
7870 Villa Park Drive
P.O. Box 90778
Henrico, VA 23228

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<https://dwr.virginia.gov/wies/environmental-services/>

From: Brann, Lee (DWR) <Lee.Brann@dwr.virginia.gov>

Sent: Monday, August 12, 2024 4:07 PM

To: mpoarch@sussexcountyva.gov <mpoarch@sussexcountyva.gov>

Cc: Schul, Hannah (DWR) <Hannah.Schul@dwr.virginia.gov>; Strawderman, Nicole (DWR)

<Nicole.Strawderman@dwr.virginia.gov>; Pinder, Michael (DWR) <Mike.Pinder@dwr.virginia.gov>; Cogar, Madison (DWR) <Madison.Cogar@dwr.virginia.gov>; Reynolds, Richard (DWR) <Rick.Reynolds@dwr.virginia.gov>

Subject: ESSLog# 44971_Winfield Solar_DWR_HLB20240812

Mr. Poarch,

Thank you for providing us with the updated materials on the proposed Winfield Solar Project in Sussex County. The materials indicate that the only changes to the site layout/plan are the entrance layouts and the positioning of trees at the site. Provided that there has been no expansion or shifting of the project boundaries, DWR does not have any further recommendations to submit at this time concerning the protection of wildlife resources under our jurisdiction.

We note that the neither the Blackbanded Sunfish survey nor the bat survey performed for this project found any listed species at the site during the survey periods. Therefore, we are not recommending any additional protections for Blackbanded Sunfish or NLEBs for this project at this time. However, we continue to recommend maintaining undisturbed naturally vegetated buffers of at least 100 feet in width around all on-site wetlands and on both sides of all perennial and intermittent streams, as outlined in our standard Solar Energy Facility Guidelines. I've attached those guidelines again here in case that is helpful.

Please reach out if you have any other questions or concerns.

Thank you,



Lee Brann

Environmental Services Biologist

Wildlife Information and Environmental Services

P 804.367.1295

C 804.481.1934

Department of Wildlife Resources

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A 7870 Villa Park Drive, P.O. Box 90778, Henrico, VA 23228

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Solar Energy Facility Construction and Operation Recommendations

Wildlife Information and Environmental Services

September 29, 2023

I. Scoping for Wildlife Impact Assessment:

A. DWR data and resources

Step 1: Access the VA Fish and Wildlife Information Service (VAFWIS) from the DWR website at: <https://services.dwr.virginia.gov/fwis/index.asp>. Send an email to Support_VAFWIS@dwr.virginia.gov if you need to set up an account or need other assistance.

Step 2: Using the geographic search function, generate an Initial Project Assessment (IPA) report for the site using an at least 2 – mile buffer around project boundaries (action area), OR use the PBR (permit by rule) reporting feature. See the “help” section for instructions.

Step 3: Review the below information regarding data returned by VAFWIS and apply, as appropriate. Please see the end of the document for contacts regarding common wildlife species, the location of which may not be accurately depicted by VAFWIS which is most heavily populated by imperiled species and designated resource data.

Any project with a federal nexus (e.g., the project entails any federal funding, permits, or federal agency action) must comport with consultation requirements pursuant to Section 7 of the Endangered Species Act. To ensure such compliance, the project applicant or proponent should access the USFWS Virginia Field Office Project Review (IPaC) website at: <https://www.fws.gov/office/virginia-ecological-services/virginia-field-office-online-review-process>. Since listing of Atlantic Sturgeon, all hydraulic hopper dredging activities in the Chesapeake Bay, Atlantic Ocean, and major tributaries, regardless of time of year must be coordinated with NOAA Fisheries Service.

Data Returned by VAFWIS:

Species Observations (SppObs) – The Species Observation dataset includes all verified species documentations maintained by DWR. If the IPA results indicate that a *listed species* has been documented from the project area, it is possible that the species is present on the project site, if suitable habitat exists. Coordinate with DWR Environmental Services Staff, per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/>, as we may recommend conservation measures necessary to ensure compliance with the Endangered Species Act.

Threatened and Endangered Species Waters (TEWaters) – The Threatened and Endangered Species Waters (TEWaters) dataset includes the locations of waters from which *listed species* have been documented and which agency biologists have determined are currently occupied by such species. If work in the TEWater or its tributaries is proposed (ex: installation of crossings, soil borings, stream restoration, utility installation, etc.), we recommend coordination with DWR’s Environmental Services (ES) staff, per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/>, as we may recommend conservation measures necessary to ensure compliance with the Endangered Species Act.

Otherwise, we offer the below general guidance regarding protection of TEWaters:

a) If a waterbody is designated a TEWater due to the presence of listed fishes, mussels, snails, or crayfish, we recommend the following to best protect such listed aquatic species (and the resources upon which they depend) from harm that may result from nearby agriculture, silviculture, habitat management or restoration, and/or land development:

- We recommend protecting from impacts a natively vegetated riparian buffer of at least 100 ft on both sides of all intermittent tributaries to the designated water;
- We recommend protecting from impacts a natively vegetated riparian buffer of at least 200 ft on both sides of all perennial tributaries to designated waters; and/or
- We recommend protecting from impacts a natively vegetated riparian buffer of at least 300 ft on both sides of designated waters.

b) If a waterbody is designated a TE Water due to the presence of wood turtles, we recommend the following (in addition to the above), to best protect this listed semi-aquatic species (and the resources upon which it depends) from harm that may result from nearby silviculture, habitat management or restoration, and/or land development:

- Because wood turtles must have access to freshwater streams during hibernation as well as access to adjacent uplands, where they forage, mate, and nest, we recommend coordination with us not only for instream work, but also for any work in uplands adjacent to (within 900 feet of) the designated water.

Anadromous Fish Use Areas – The Anadromous Fish Use Areas (AnadFish Waters) dataset includes the locations of streams known to provide migratory and/or spawning habitats for anadromous fishes. We recommend coordination with DWR ES per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/> anytime work in designated AnadFish Waters and/or their tributaries is proposed. Otherwise, we offer the below general guidance regarding protection of AnadFish Waters:

- We recommend protecting from impacts a natively vegetated riparian buffer of at least 100 ft on both sides of all perennial tributaries to the designated water; and/or
- We recommend protecting from impacts a natively vegetated riparian buffer of at least 200 ft on both sides of the designated water.

Anadromous Fishes/Fish Passage Expert: Alan Weaver
804-367-6795 or Alan.Weaver@DWR.virginia.gov

Bat Occurrence Data Applications – These datasets depict regulatory buffers around those documented occurrences and landscape features that support listed bats. Any land development or forestry activities (habitat modifications) within a regulatory buffer should be coordinated with DWR ES, per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/>. For the species below, use the indicated applications to determine the location of hibernacula and roosts.

- Northern Long-eared Bat Regulatory Interactive Tool:
<https://dwr.virginia.gov/wildlife/bats/northern-long-eared-bat-application/>
- Little Brown and Tricolor Bat Hibernacula and Roosts:
<https://www.DWR.virginia.gov/wildlife/bats/little-brown-bat-tri-colored-bat-winter-habitat-roosts-application/>

Sea Turtle Nesting Beaches* – This dataset includes stretches of beach/shoreline in Virginia known to support nesting of sea turtles, all of which are federally- and state-listed. We recommend coordination with DWR ES, the USFWS and NOAA/National Marine Fisheries Service regarding any activities proposed on these designated beaches/shorelines. Otherwise, we support protection of these areas and adjacent shorelines from incompatible activities.

Wild Trout Waters – The Cold Water Streams dataset includes the locations of waters designated as cold water habitat. Many of these streams support wild trout populations. To best protect these waters and the species they are known to support, we recommend coordination with DWR ESS per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/> anytime work in designated Trout Waters and/or their tributaries is proposed. Otherwise, we offer the below general guidance regarding protection of Trout Waters:

- We recommend protecting from impacts a natively vegetated buffer of at least 100 ft on both sides of all perennial tributaries to the designated water; and/or
- We recommend protecting from impacts a natively vegetated buffer of at least 200 ft on both sides of the designated water.

Stockable Trout Waters – The Cold Water Streams dataset also includes the locations of waters currently stocked with trout by DWR as well as those suitable for stocking, but perhaps not currently stocked. To best protect these waters and the species they are known to or capable of supporting, we recommend coordination with DWR ESS per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/> anytime work in Stocked Trout Waters is proposed. Otherwise, we offer the below general guidance regarding protection of Trout Waters:

- We recommend protecting from impacts a natively vegetated buffer of at least 100 ft on both sides of all perennial tributaries to the designated water; and/or
- We recommend protecting from impacts a natively vegetated buffer of at least 200 ft on both sides of the designated water.

Trout/Trout Stream Expert: Steve Reeser
540-248-9360 or Steve.Reeser@DWR.virginia.gov

Colonial Waterbird (CWB) colonies – This DWR-maintained dataset includes documented locations of colonial waterbird colonies. To ensure protection of the colony and the species known to nest within it, we recommend coordination with DWR's ES per the protocols provided here: <https://dwr.virginia.gov/wies/environmental-services/> for any land development or timbering activities proposed to occur within 0.5 miles of a documented colony. Otherwise, we offer the below general guidance regarding protection of colonial waterbird colonies:

- We recommend preserving, planting and/or enhancing an undisturbed natively vegetated buffer of at least 500 ft around the waterbird colony. This provides the colony with a line of sight and habitat buffer, providing nesting activity protection as well as habitat protection to ensure suitability for future nesting seasons.

Bald Eagle Nests – This dataset includes the location of bald eagle nests, and their associated buffers, within Virginia. While we periodically update nest status or add new nests based on curated observations from citizens and/or our staff, we no longer update bald eagle nest data annually per flyover survey data. To ensure protection of bald eagles in compliance with the Bald and Golden Eagle Act, we recommend using the Center for Conservation Biology (CCB) [Eagle Nest Locator](#) to determine if any active eagle nests are known from the project area. If active bald eagle nests have been documented from the project area, we recommend that the project move forward in a manner consistent with [state and federal guidelines for protection of bald eagles](#); and coordination, as indicated, with the U.S. Fish and Wildlife Service regarding possible impacts upon bald eagles or the need for a federal bald eagle take permit.

Bald Eagle Concentration Area and Roosts (BECAR) - This dataset includes bald eagle concentration areas (defined as 660 feet landward or channelward of the shoreline) and documented roosting sites documented by VDWR and/or our partners. Significant habitat alteration, location of water-dependent facilities or other recreational and commercial activities within certain distances of eagle nests, concentration zones, or roosts may result in adverse impacts upon eagles. Therefore, we recommend that land owners comply with the Virginia [management guidelines for landowners](#); and that he or she coordinate with the U.S. Fish and Wildlife Service regarding possible impacts upon bald eagles or the need for a federal bald eagle take permit associated with activities on his or her property.

DWR Lands (boat ramps, WMA's, Fish Hatcheries, lakes)* – The DWR Lands dataset includes locations of all DWR facilities. We support development of easement restrictions protective of our facilities and access to them by the public and our staff; and the watersheds/drainages upstream of our hatcheries and fishing lakes.

** coming to VAFWIS very soon!*

B. DEQ Data and Resources

Coastal Avian Protection Zones: Permit-By-Rule (PBR) applicants need to identify whether the proposed site is located within a Coastal Avian Protection Zone (CAPZ; 9VAC15-60-60 *et seq.*). See <https://www.deq.virginia.gov/permits-regulations/laws-regulations/renewable-energy> to access DEQ's Coastal GEMS Online Application at: <https://gaia.vcu.edu/GemsMap/>.

II. Additional Wildlife Considerations

Wildlife passage and fencing:

Solar facilities typically incorporate perimeter fencing that may act as a barrier to ground-based wildlife movement. We recommend documenting wildlife travel corridors and observed passage prior to construction activities, and encourage the consultant/applicant to coordinate with DWR regarding wildlife fencing that would allow ingress and egress through the enclosure, as well as the development of wildlife corridors. Adaptive strategies may include lower fence height in wildlife corridors; dividing large sites into smaller fenced sub-parcels (approximately 40 acres maximum) to establish unfenced wildlife corridors; use of larger mesh fence at ground level (*i.e.*, "wildlife-permeable fencing"); and facilitating wildlife passage via ground-level openings or pipes (approximately 8-inch diameter) through the fence.

General fencing recommendations: We recommend that the fences enclosing solar facilities either be 61 inches or less in height, so that deer will have easy ingress and egress to/from the enclosure; or that the fences (including barbed wire if desired) be at least 96 inches in height, so that deer would not normally enter the site.

Fence design recommendations for deer management: Under certain conditions deer may seek refuge or become entrapped within fenced enclosures. To address this concern, perimeter fences around solar facilities should either be no more than 61" high OR greater than or equal to 96" (8') high. Fences lower than 61" should provide free ingress and egress of deer. Fences of heights between 61" and 8' are likely to entrap deer that are motivated to enter but not leave the enclosure. Fences over 8', if properly maintained, should exclude deer so that they do not become entrapped. Maintenance along the bottom of an exclusionary fence is critical to prevent deer incursions; fences should be erected tight to the ground and any gaps should be filled with rip rap or other barriers (except at purposeful wildlife crossings).

Hunting prohibition: Hunting deer is prohibited within any enclosure having fences higher than 61" (with certain exceptions not applicable to solar facilities). This prohibition is documented and explained in the Code of Virginia (29.1-525.1) and DWR regulations (4VAC15-90-291). Other than this prohibition, DWR does not regulate fencing of projects such as solar energy facilities.

Lake effect: It has been reported that contiguous aggregates of panels could result in an avian impact known as "lake effect," in which birds may mistake the reflective solar panels for a waterbody and attempt to land on or near the panel array. Waterbirds are especially at risk because some species require a running start on the water surface and cannot take off from the ground. Further research and study of available scientific literature is recommended. Post-construction monitoring may be recommended, if warranted by site-specific conditions.

Thermal-island effect: It has been reported that "thermal island" impacts may result from large solar facilities, similar to thermal islands resulting from large paved parking areas. To date, there has been little scientific investigation of this potential effect. Further research and study of available scientific literature is recommended. Post-construction monitoring may be recommended, if warranted by site-specific conditions.

Wetland and stream impacts: If the project entails instream work or wetland impacts, we anticipate that a Joint Permit Application (JPA) will be distributed for interagency review. We will review and provide additional comments on that application, as appropriate.

III. Vegetation Management:

Native species: We recommend that the applicant utilize native plants and seed mixes for vegetative ground cover, to the greatest extent possible. We recommend the consultant or applicant contact

DWR and DCR-DNH for guidance regarding native plantings and pollinator seed mixes.

Invasive species: We recommend that invasive species control be incorporated into the facility operation and mitigation plan(s). Post-construction monitoring for invasive species is recommended as warranted by site-specific conditions.

IV. Standard Site Development Recommendations:

To minimize overall impacts to wildlife and our natural resources, we offer the following comments about development activities:

We recommend that the applicant avoid and minimize impacts to undisturbed forest, wetlands, and streams to the fullest extent practicable. Avoidance and minimization of impact may include relocating stream channels as opposed to filling or channelizing as well as using, and incorporating into the development plan, a natural stream channel design and forested riparian buffers. We recommend maintaining undisturbed naturally vegetated buffers of at least 100 feet in width around all on-site wetlands and on both sides of all perennial and intermittent streams. We recommend maintaining wooded lots to the fullest extent possible. We generally do not support proposals to mitigate wetland impacts through the construction of stormwater management ponds, nor do we support the creation of in-stream stormwater management ponds.

We recommend conducting any in-stream activities during low or no-flow conditions, using non-erodible cofferdams or turbidity curtains to isolate the construction area, blocking no more than 50% of the streamflow at any given time (minimal overlap of construction footprint notwithstanding), stockpiling excavated material in a manner that prevents reentry into the stream, restoring original streambed and streambank contours, revegetating barren areas with native vegetation, and implementing strict erosion and sediment control measures. We recommend that instream work be designed and performed in a manner that minimizes impacts upon natural streamflow and movement of resident aquatic species. If a dam and pump-around must be used, we recommend it be used for as limited a time as possible and that water returned to the stream be free of sediment and excess turbidity. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap. To minimize harm to the aquatic environment and its residents resulting from use of the Tremie method to install concrete, installation of grout bags, and traditional pouring of concrete, we recommend that such activities occur only in the dry, allowing all concrete to harden prior to contact with open water. Due to future maintenance costs associated with culverts, and the loss of riparian and aquatic habitat, we prefer stream crossings to be constructed via clear-span bridges. However, if this is not possible, we recommend countersinking any culverts below the streambed at least 6 inches, or the use of bottomless culverts, to allow passage of aquatic organisms. We also recommend the installation of floodplain culverts to carry bankfull discharges.

We recommend that the stormwater controls for this project be designed to replicate and maintain the hydrographic condition of the site prior to the change in landscape. This should include, but not be limited to, utilizing bioretention areas, and minimizing the use of curb and gutter in favor of grassed swales. Bioretention areas (also called rain gardens) and grass swales are components of Low Impact Development (LID). They are designed to capture stormwater runoff as close to the source as possible and allow it to slowly infiltrate into the surrounding soil. They benefit natural resources by filtering pollutants and decreasing downstream runoff volumes.

We recommend that all tree removal and ground clearing adhere to a time of year restriction (TOYR) protective of resident and migratory songbird nesting from March 15 through August 15 of any year.

We recommend adherence to erosion and sediment controls during ground disturbance. To minimize potential wildlife entanglements resulting from use of synthetic/plastic erosion and sediment control matting, we recommend use of matting made from natural/organic materials such as coir fiber, jute, and/or burlap.

V. Additional Agency Coordination:

VDCR-DNH: The applicant should conduct a preconstruction desktop survey of natural heritage resources within the disturbance zone, and coordinate with VDCR-DNH regarding protection of these resources, as needed.

USFWS: If a proposed facility may involve impacts to federally-listed Threatened or Endangered species; or to other federally protected wildlife resources, the applicant should contact Troy Andersen, USFWS – Virginia Field Office, at troy.andersen@fws.gov or (804) 693-6694 ext. 2428 for guidance regarding completion of an online IPaC (Information Planning and Consultation) project assessment.

VI. Contacts:

DWR Environmental Services	DEQ Renewable Energy Program
Amy Martin, Manager Wildlife Info. and Env. Services (WIES) Amy.Martin@dwr.virginia.gov 804-367-2211	Susan Tripp Renewable Energy PBR Coordinator susan.tripp@deq.virginia.gov 804-664-3470



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

23116 Meherin Road
COURTLAND, VIRGINIA 23837

April 11, 2025

Michael Poarch
Community Development
Sussex County
P. O. Box 1397
Sussex, VA 23884

**RE: Winfield Solar
Tax Map #'s Assorted
Sussex Dr. (Route 40) & Optimist Rd. (Rt. 733)
Sussex County**

The Residency has completed its review of the subject conditional use application dated February 26, 2024, with revisions dated June 11, 2024, and received by the VDOT Land Development Office on March 7, 2025. We offer the following comments:

- 1) All entrances onto the public right of way must be designed in accordance with Appendix F of the VDOT Road Design Manual and will be reviewed during the site plan process.
- 2) Any utility installations within the public right of way will need to be owned and maintained by a public utility company registered with Virginia 811.
- 3) The application does not provide useable exhibits clearly showing proposed locations and types of overhead/underground electrical crossings, any new transmission lines, etc., that will cross or otherwise occupy the public right of way.

Additionally, the application makes reference to Phases 2 & 3 potentially interconnecting at the Sappony substation, located approximately 10 miles from the site to the west, and potentially using/upgrading existing Dominion infrastructure along Route 40. Based on the submitted materials, potential impacts from this to the VDOT right of way are not quantifiable.

- 4) A culvert will be required within the existing ditch lines to maintain roadside drainage. The minimum culvert size within State maintained right of way shall be 15" unless otherwise approved by the Department. Pipe sizing calculations should be submitted as part of the site plan.

9" of cover over the culvert pipe is required and the culvert pipe should extend a minimum of one foot beyond the toe of the stabilized slope.

- 5) Sight distance for entrances must be evaluated for compliance in accordance with Appendix F of the VDOT Road Design Manual. Sight distance lines shall be shown to scale on the site plans. Based upon the provided photographs, some of the proposed entrances appear to be deficient in both vertical and horizontal sight distance and may require final location adjustments or other mitigation measures during the site plan process.
- 6) VDOT will assist Sussex County in reviewing proposed Traffic Management Plans, roadway condition evaluations, and repair plans as necessary. It should be noted that no conditions or proffer document was received with this application for review. While the application references the applicant's intention to perform pre-and post-construction inspections, repair damages, etc., there were no conditions imposed to that effect. We would further recommend that any such guarantees be accompanied by a surety to bond the aforementioned repairs.

ADVISORY

- a) Upon final plan approval, a Land Use Permit will be required prior to performing any work within State maintained right of way limits or easements. Additional information about Land Use Permitting as well as the required forms can be found on the VDOT website at:

<https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/land-use-and-development/land-use-permits/>

If you have any questions, please contact me at 757-346-3068 or Joshua.Norris@vdot.virginia.gov.

Sincerely,



Joshua R. Norris
Land Use Engineer
Virginia Department of Transportation
Franklin Residency



June 11, 2024

Beverly Walkup
Director of Planning and Zoning
Sussex County Planning Department
20135 Princeton Road
P.O. Box 1397
Sussex, VA 23884

Re: Winfield Solar Project Neighborhood Meeting

Dear Ms. Walkup:

In accordance with the Sussex County Solar Ordinance Sec. 16-404(b), on Tuesday, May 21, 2024, Greenvolt Power Actualize, LLC held a neighborhood meeting to present the Winfield Solar Project to the community and answer any questions they may have. The meeting started at approximately 5:45 PM and lasted until about 7:15 PM and was held at Sussex Central High School at 21394 Sussex Drive, Stony Creek, VA 23882. We had four stations set up around the room displaying the project layout, visibility studies, landscaping plan and two copies of the application (See the attached photos of the setup). Five people attended the meeting: Nathan Young (a landowner in the Project) and his mother, another gentleman who did not give his name, Richard Douglas, the County Administrator, and Beverly Walkup, the County Director of Planning and Zoning. The gentleman that was not in some way involved in the Project or its approval had several questions including: the general location of the Project; he expressed concern about erosion and sedimentation from the Project; he asked who the landowners involved in the Project were; why we chose those landowners and not other landowners; he asked where we were selling our power; and he asked about visibility of the Project. I answered his questions explaining where the Project is located, why the particular landowners, that we would be selling the power locally, that we were going to screen the entire perimeter of the Project and showed him the screening locations as well as the visibility pictures, and showed him the preliminary locations of the erosion and sedimentation basins on the site and explained that after we received the Conditional Use Permit approval we would be submitting an erosion and sedimentation control permit application which would describe in detail all of the features and processes we would be using to ensure that there was no sediment runoff from the project. I spent a significant amount of time discussing the Project and answering questions with Richard Douglas and Beverly Walkup.

Prior to the meeting, we sent notices to all adjoining landowners. These were mailed on May 8, 2024 (see attached copies of letters). We also notified the County Director of Planning and Zoning and copied the County Administrator and County Planner (see attached copy of letter). The meeting was also advertised in the Sussex Surrey Dispatch on Wednesday, May 8, 2024 (see attached confirmation).

If you should have any questions about the information provided above, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

A handwritten signature in black ink, appearing to read 'R. White', with a long horizontal stroke extending to the right.

Robert J. White
Greenvolt Power Actualize, LLC

Cc: Richard Douglas, County Administrator
Michael Poarch, Planner II

**Winfield Solar Project
Neighborhood Meeting
May 21, 2024**





May 8, 2024

Edward Jarratt
14148 Tyus Road
Stony Creek, VA 23882

Dear Edward:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Dallie Jarratt
14213 Courthouse Road
Waverly, VA 23890

Dear Dallie:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

May 8, 2024

Betty Bunn Prince
14499 Courthouse Road
Stony Creek, VA 23882

Dear Betty:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

May 8, 2024

Harold & Connie Young
14500 Optimist Road
Stony Creek, VA 23882

Dear Harold & Connie:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Scott Schubert
1475 Sweetbriar Drive
Jamison, PA 18929

Dear Scott:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Adirondack Timber Co
15 Piedmont Center
Suite 1250
Atlanta, GA 30305

To Whom It May Concern:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Harry Gordon
15019 Optimist Road
Stony Creek, VA 23882

Dear Harry:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Ruby C Upton
15062 Optimist Road
Stony Creek, VA 23882

Dear Ruby:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Byron Bishop
15476 Courthouse Road
Stony Creek, VA 23882

Dear Byron:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Arthur & Deborah Garter
15511 Emerald Road
Stony Creek, VA 23882

Dear Arthur & Deborah:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

Greenvolt Power

May 8, 2024

Raymond Foust Jr & Gilbert Foust
1609 Pinedale Drive
Raleigh, NC 27603

Dear Raymond & Gilber:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

William Melton
17486 Sussex Drive
Stony Creek, VA 23882

Dear William:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Robert & Helen Young
18056 Sussex Drive
Stony Creek, VA 23882

Dear Robert & Helen:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Lawrence & Florence Carter
18229 Sussex Drive
Stony Creek, VA 23882

Dear Lawrence & Florence:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

May 8, 2024

Carroll & Elnora Mason
18404 Sussex Drive
Stony Creek, VA 23882

Dear Carroll & Elnora:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

James & Rebecca Allen
18480 Sussex Drive
Stony Creek, VA 23882

Dear James & Rebecca:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Wachovia Bank NA
191 Peachtree Street NE
24th Floor
Atlanta, GA 30303

To Whom It May Concern:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

George & Barbara Rogers
19370 Princeton Road
Stony Creek, VA 23882

Dear George & Barbara Rogers:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Charles Briggs & Sheila Moss-Briggs
5700 Courthouse Road
Prince George, VA 23875

Dear Charles & Sheila:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

John & Nellie Spence
705 Terrace Drive
Hopewell, VA 23860

Dear John & Nellie:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

Greenvolt Power

May 8, 2024

Paul Higgins
P.O. Box 32
Waverly, VA 23890

Dear Paul:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

John H Clements
P.O. Box 433
Carson, VA 23830

Dear John:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

A handwritten signature in black ink, appearing to read 'R. White'.

Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Ronnie Burgess
P.O. Box 478
Waverly, VA 23890

Dear Ronnie:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

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Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 8, 2024

Mary & William Ruffin
17374 Sussex Drive
Stony Creek, VA 23882

Dear Mary & William:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

A handwritten signature in black ink, appearing to read 'R. White', with a long horizontal flourish extending to the right.

Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

May 8, 2024

Herbert Branch
18480 Sussex Drive
Stony Creek, VA 23882

Dear Herbert:

Greenvolt Power Actualize, LLC has proposed the Winfield Solar Energy Project (the "Project") to be located on Sussex Drive. You are one of the landowners that have property adjacent to the Project. There will be a neighborhood meeting by Greenvolt Power Actualize, LLC to discuss the Project and answer any questions you may have. This meeting will be on Tuesday, May 21, 2024 from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

If you should have any questions about the meeting or the Project, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,



Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC



May 10, 2024

Beverly Walkup
Director of Planning and Zoning
Sussex County Planning Department
20135 Princeton Road
P.O. Box 1397
Sussex, VA 23884

Re: Winfield Solar Project Neighborhood Meeting

Dear Ms. Walkup:

Greenvolt Power Actualize, LLC will be holding a neighborhood meeting to present the Winfield Solar Project to the community and answer any questions they may have. In accordance with the Sussex County Solar Ordinance Sec. 16-404(b) we have sent written notifications to all adjacent landowners and the meeting has been advertised in the Sussex Surrey Dispatch on Wednesday, May 8, 2024. The neighborhood meeting will be on Tuesday, May 21, 2024, from 5:45PM to 7:00PM. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882. After the meeting I will provide you with a summary of the input received during the meeting.

If you should have any questions about this meeting, you can contact me at 919-636-8991 or bob@actualizesolar.com

Thank you,

A handwritten signature in black ink, appearing to read 'R. White', with a long horizontal flourish extending to the right.

Robert J. White
Chief Development Officer
Greenvolt Power Actualize, LLC

Cc: Richard Douglas, County Administrator
Michael Poarch, Planner II

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Notices

NOTICE OF JOINT PUBLIC HEARING OF THE SUSSEX COUNTY BOARD OF SUPERVISORS AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION PROPOSED PRIORITY LIST FOR IMPROVEMENTS TO SECONDARY AND UNPAVED ROADS

Notice is hereby given pursuant to Section 33.1-70.01 of the Code of Virginia of 1950, as amended, that the Sussex County Board of Supervisors and the Virginia Department of Transportation will hold a joint public hearing on Thursday, May 16, 2024 at 6:00 p.m., or soon thereafter for the secondary and unpaved roads of Sussex County. The hearing will be held in the Sussex Central Elementary School Gymnasium located at 21392 Sussex Drive, Stony Creek, Virginia 23882.

The priority list of secondary and unpaved road improvement projects will be presented for public comment and any citizens with an interest in secondary and unpaved road project priorities are encouraged to attend and make their views known.

Once adopted, the priority list will serve as the basis of formulating the fiscal year 2025 through fiscal year 2030 Six-Year Secondary Road Improvement Plan as well as the fiscal year 2025 Secondary and Unpaved Road Construction Budget.

Persons wishing to speak at this public hearing should contact the Sussex County Administrator's Office by email at sricks@sussexcountyva.gov or (434) 246 1000, Monday through Friday, between the hours of 8:30 a.m. and 5:00 p.m.

Authorized by:
Richard Douglas, County Administrator
5/16/2024

PUBLIC MEETING WINFIELD SOLAR PROJECT

Greenvolt Power Actualize, LLC will conduct a neighborhood meeting on Tuesday, May 21, 2024 at 5:45PM until 7:00PM. The meeting will present information about the Winfield Solar Project proposed to be located on Sussex Drive west of the Courthouse Complex. The meeting will be held at Sussex Central High School, 21394 Sussex Drive, Stony Creek, VA 23882.

NOTICE OF PUBLIC HEARING

The following Hearings will be held by Claremont Town Council at Claremont Town Hall, 4115 Spring Grove Avenue, Claremont, VA 23889 on Wednesday, May 22, 2024.

At 7:00 pm a Hearing on the FY 2024-2025 Claremont Town budget of \$105,945.00, Claremont Water System budget of \$150,850.00, and Claremont Sewer System budget of \$32,770.00.

At 7:15 pm a Hearing on updating the fees to be charged for a Board of Zoning Appeals Hearing to \$290.00.

At 7:30 pm a Hearing for the Sewer Rate Schedule increases. Beginning August 2024, the monthly Sewer rate will increase to \$64.98. Following that, rates will increase by 2% for each of the next 3 fiscal years for rates of \$66.28 monthly in 2025-2026; \$67.71 monthly in 2026-2027; and \$68.96 monthly in 2027-2028. All interested parties are welcome to attend and present their views at each Public Hearing.

Laura Crowder, Town Clerk

Legals

Notice of Public Hearings Sussex County Board of Supervisors

Pursuant to Section 15.2-2204 of the Virginia Code, notice is hereby given that the Sussex County Board of Supervisors will hold a public hearing at its regular meeting on Thursday, May 16, 2024 beginning at 6:00 p.m. in the Sussex Central Elementary School - 21392 Sussex Drive, Sussex, Virginia 23884 in the Gymnasium to consider, and may take action upon, the following:

Zoning Text Amendment #2024-01: An Ordinance to amend Article V, Section 34-831, subsection (f) of the Sussex County Zoning Ordinance to allow one off-premises freestanding sign of unlimited height and area for businesses located within 1,000 feet of an interstate or limited access highway in addition to the permitted freestanding sign in the B-1 and B-2 districts. Currently, businesses located in the B-1 and B-2 districts and within 1,000 feet of an interstate or limited access roadway are permitted to have only one on-premises freestanding sign of unlimited height and area.

Amendment to Conditional Use Permit Application #2021-01: Pursuant to Article VII Section 34-907 of the Zoning Ordinance, the applicant, Virginia Electric and Power Company (Dominion Energy Virginia), seeks to amend Conditional Use Permit #2021-01 approved by the Board of Supervisors on May 3, 2021 for operation of a Battery Storage Facility known as Shands Energy, LLC on tax parcel number 64-A-21 and 64-A-23. The CUP amendment seeks to amend condition 6(c) to add clarity that the cooling, ventilation, and fire containment suppression system may be approved by the appropriate County Officials and condition 6 (d) to remove the term "built in" to technology approved by the appropriate County Officials for the fire extinguishing technology requirement. The site contains approximately 32.28 acres. The project is located on the north side of Rt. 40 (Sussex Drive) adjacent to an existing Dominion Energy Substation.

A copy of the proposed Ordinance amendment and proposed amendments to the Conditional Use Permit, along with supporting documentation are available for review in the Planning Department located at 20135 Princeton Road, Stony Creek, Virginia, during regular business hours Monday through Friday from 8:30 a.m. to 5:00 p.m., phone number (434) 246-1043.

All persons affected or interested are invited to be present at the public hearing of the Board of Supervisors to be held at the time and place stated above, when an opportunity will be given for them to be heard. Comments may also be submitted in writing to bwalkup@sussexcountyva.gov or via mail to the Department of Planning, P. O. Box 1397, 20135 Princeton Road, Sussex, VA 23884, no later than noon on Thursday, May 16, 2024. Any persons needing assistance or accommodations under the provisions of the American Disabilities Act should contact Michael Poarch at 434-246-1043 at least seven (7) days in advance of the hearing.

Submitted by: Beverly Walkup, Director of Planning
Advertisement Dates: Wednesday, May 8, 2024 and Wednesday, May 15, 2024

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Beverly Walkup

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Sent: Thursday, May 22, 2025 6:28 PM
To: Beverly Walkup
Cc: Richard Douglas; Shilton Ricks Butts; Michael Zehner; Michael Poarch; shands301@gmail.com; tmassenburg29@gmail.com; rogerking33@gmail.com; Kevin Bracy; Andy Mayes; deltea@aol.com; jlebigfoot@gmail.com; Steve White; Eric Fly; rotttrucks@aol.com; 'Rufus Tyler'; Thomas Baicy; phyllistolliver2@gmail.com; Wayne Jones; Molly Dowless; Frances Chambers; 'Otto Wachsmann'; bob@actualizesolar.com
Subject: Re: Winfield Solar

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I've decided not to worry about the issue of the citizen comment summary regarding the issue of 16-404(b)(5) compliance and the request to continue the June 2 public hearing. I withdraw any objections to that issue or any request to continue any hearing.

But all other comments I made in my last email remain regarding why any new report is needed and the issues with the report and my request for a copy of any new report.

Thank you.
Sent from my iPhone

On May 22, 2025, at 6:16 PM, Lawrence Diehl <ldiehl@barnesfamilylaw.com> wrote:

MRS. WALKUP: PLEASE MAKE THIS EMAIL PART OF THE RECORD IN THE GREENVOLT/WINFIELD SOLAR PROJECT MATTER:

Beverly- I have still not received the corrected and complete summary report of the neighborhood meeting which I have noted. I request that a full and accurate summary of my comments be submitted immediately. Otherwise the provisions of 16-404(b)(5) have not been complied with and I made many other concerns and objections they omitted in what you sent me. And without those full comments having been provided to Michael Poarch- his report which should consider these summary comments (otherwise the statutory requirements for disclosure would be meaningless which I believe Mr. Zehner agreed to in my conversation with him) - is incomplete- needs to be revised and the current June 2 public hearing CANCELLED until our ordinance and statutes are complied with. I'm sure you don't want to risk a later finding by a court of voiding the entire process due to noncompliance by Greenvolt and Beverly Group.

But once again, and pending the FOIA response to #2 which is pending, your planning Dept already did its report on this project last August. Why is a new report needed? Why is any possible flipping like a fish on a dock possible if your current recommendation of denying this project changes?

TO OUR PLANNING COMMISSION AND BOARD: I would ask each of you to wonder why any new report on Winfield is even needed. I've never heard of such a thing and in support of asking each of you to disregard any report that changes and flips its recommendations from its current denial report you have seen, I offer the following and I ask Mr. Poarch and the Beverly Group -how has anything be changed based on the following since the August-2024 report:

- *the location and size and nature of the land involved has not changed (no earthquakes, tornadoes or other events changing this land that I can recall)

- *the amount of acreage to be impacted has not changed.

- *the amount of forest acreage that us to be destroyed which the original report notes as a Weakness and reason to deny- has not changed)

- *the amount of agricultural land to be destroyed has not changed.

- *the classification of the agricultural land impacted as "prime land" which is entitled to enhanced protection per law has not changed.

- * the problems with the distance for the linking of the project to transmission lines has not changed.

- *the beautiful and scenic drive down route 40- south of the courthouse area-one of the prettiest drives in the county- which would forever be ruined by this project- has not changed.

- *our Comprehensive Plan giving priority to preserving our rural heritage- and the conditions of our Ordinance Section 15 and zoning ordinance- have not changed.

- *the August, 2024 report which analyzed as if mandated the requirements of Ordinance Section 15- have not changed.

- *the problems noted as to wildlife and environmental impacts has not changed.

- *the fact that Greenvolt was denied a solar zoning application in Dinwiddie County for noncompliance with the goals of their Comprehensive Plan (very similar to the goals of Sussex County) has not changed.

So based on the above why a new report is needed should be questioned by everyone. I sure hope our planning department and the Beverly Group doesn't change its recommendation.

But if they do, that is consistent with the total inconsistencies that I have noted with Beverly Group's (Michael Poarch) recent solar zoning reports on projects such as Clenera, RWE and Cassius Blue. As I recently said, I will be providing a more detailed analysis of why these reports are inconsistent, not in compliance with our county's Plan and solar ordinances, and should be given little serious consideration by our planning commission and board.

And I say that after about an hour recent telephone conversation with Beverly's Community Director, Michael Zehner, who the more he talked, the more he was unable to satisfactorily explain these inconsistencies and other safety issues I raised. After my conversation with him, notwithstanding his efforts to try to explain away my concerns, I actually came away even more convinced than ever that my concerns (and hopefully same as you on the planning commission and board) are legitimate. Mr. Zehner basically kept saying "well, that's how we do these reports and what we are required to do- that's it." Maybe so, but that seemed to avoid the issues I raised.

While he is certainly a very nice person and well qualified, he is qualified only within the limits of his area of expertise. But he simply doesn't get it as to how these reports, in my opinion, have many flaws. I can read English and I think I correctly understand the mandates of our Plan and solar ordinances. I don't think Mr. Zehner is an attorney and I say these reports have flaws having reviewed hundreds of business reports and evaluations over my 50 years of law practice.

I've often cross-examined these experts on such reports successfully in many court cases rendering them either worthless or to be given little weight. My forthcoming analysis will confirm these problems in the reports.

Anyway- in summary all I ask is that 16-404(b)(5) be complied with, that Berkley Group amend their report by considering the accurate citizen summary and that until that is done, the June 2 public hearing be continued. And I further request a copy of any new planning dept report with the hopes our planners have not flipped since, as I've summarized above- nothing has materially changed since the August, 2024 report. I guess my FOIA #2 response will show what's going on with all of this.

Thank you.

On May 15, 2025, at 2:55 PM, Lawrence Diehl
<ldiehl@barnesfamilylaw.com> wrote:

Ok but I thought one had been done last year which I received which recommended the denial of this project. My emails show that an August, 2024 public hearing had been cancelled at the request of the applicant. So why is there a new report? Is the recommendation to deny changed since nothing else in your last year report has changed- same problem with concerns about 503 acres of forest destruction and access to lines which were among the concerns. There were many others such as this being "prime" agricultural land which by statute is given priority to be protected. I sure hope you haven't changed or waffled on your previously stated concerns

So why a new report? Therefore, I request a copy of the 2024 report which I was sent last year as well as the "new" report which I sure hopes hasn't changed your initial recommendation of denial. If so, this would be a huge problem confirming the many inconsistencies in your reports in all solar projects which I have repeatedly raised.

So Get me BOTH reports please. You can send me last year's report NOW since that has been done but expired in my link I got from Michael on this.

But HERE IS ANOTHER MAJOR CONCERN. How can you himolf a public hearing on an incomplete report without the required neighborhood meeting on this NEW report? Citizens are entitled to meet and ask questions per our zoning laws at a REQUIRED neighborhood meeting. Any hearing held last year would not count since there is, apparently, a new report which citizens gave a right to review with the applicant at such a meeting.

And that also requires compliance with section 16-404(B)(5) with a SUMMARY of public comments resulting from the required hearing. Has that been done from last year's moot neighborhood meeting? That is important since those comments must be provided to your planning dept for input into your report. So if a new report, no neighborhood meeting on this last minute change, and no summary report per 16-404(B)(5)- any hearing can't be held. How can a report be done without that input? And remember the Virginia Court of Appeals held in the Wilson case that citizen concerns "must" be considered in a zoning issue. Mandatory- not discretionary. That can't be done if no new meeting or required summary report has been done.

I ASK THAT THE PUBLIC HEARING SET FOR JUNE 2nd CANCELLED AS BEING PREMATURE - there has been no neighborhood meeting on any new report, and without any summary report of citizen input being provided- you simply cannot ignore and leave out that input in any planning report. Any report leaving out such comments would be incomplete and premature.

I ASK THE CHAIR OF THE PLANNING COMMISSION TO REQUEST THE CANCELLATION OF THIS HEARING until all of the above has been complied with.

Maybe you should call me at my cell at 804-763-9631 on this since moving forward now would give anyone opposing this in litigation grounds to void any county action on a silver platter. That would be on you and Beverly Group and the county if you ignore the required procedures. No one wants that to occur.

Sent from my iPhone

On May 15, 2025, at 2:16 PM, Beverly Walkup
<bwalkup@sussexcountyva.gov> wrote:

The report has not been finalized. It will be ready for distribution a week prior to the

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Beverly Walkup

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Sent: Thursday, May 15, 2025 3:02 PM
To: Beverly Walkup
Cc: Richard Douglas; Shilton Ricks Butts; Michael Zehner; Michael Poarch; shands301@gmail.com; tmassenburg29@gmail.com; rogerking33@gmail.com; Kevin Bracy; Andy Mayes; deltea@aol.com; jlebigfoot@gmail.com; Steve White; Eric Fly; rotttrucks@aol.com; 'Rufus Tyler'; Thomas Baicy; phyllistolliver2@gmail.com; Wayne Jones; Molly Dowless; Frances Chambers; 'Otto Wachsmann'
Subject: Re: Winfield Solar

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MRS. WALKUP: And I definitely want the email below to be made a formal part of the record in the Winfield Solar matter to make sure the procedural defects are preserved in the record. Thank you
Sent from my iPhone

On May 15, 2025, at 2:55 PM, Lawrence Diehl <ldiehl@barnesfamilylaw.com> wrote:

Ok but I thought one had been done last year which I received which recommended the denial of this project. My emails show that an August, 2024 public hearing had been cancelled at the request of the applicant. So why is there a new report? Is the recommendation to deny changed since nothing else in your last year report has changed- same problem with concerns about 503 acres of forest destruction and access to lines which were among the concerns. There were many others such as this being "prime" agricultural land which by statute is given priority to be protected. I sure hope you haven't changed or waffled on your previously stated concerns

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And that also requires compliance with section 16-404(B)(5) with a SUMMARY of public comments resulting from the required hearing. Has that been done from last year's moot neighborhood meeting? That is important since those comments must be provided to your

planning dept for input into your report. So if a new report, no neighborhood meeting on this last minute change, and no summary report per 16-404(B)(5)- any hearing can't be held. How can a report be done without that input? And remember the Virginia Court of Appeals held in the Wilson case that citizen concerns "must" be considered in a zoning issue. Mandatory- not discretionary. That can't be done if no new meeting or required summary report has been done.

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I ASK THE CHAIR OF THE PLANNING COMMISSION TO REQUEST THE CANCELLATION OF THIS HEARING until all of the above has been complied with.

Maybe you should call me at my cell at 804-763-9631 on this since moving forward now would give anyone opposing this in litigation grounds to void any county action on a silver platter. That would be on you and Beverly Group and the county if you ignore the required procedures. No one wants that to occur.

Sent from my iPhone

On May 15, 2025, at 2:16 PM, Beverly Walkup <bwalkup@sussexcountyva.gov> wrote:

The report has not been finalized. It will be ready for distribution a week prior to the meeting.

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Sent: Thursday, May 15, 2025 1:42 PM
To: Michael Poarch <mpoarch@sussexcountyva.gov>; Beverly Walkup <bwalkup@sussexcountyva.gov>
Cc: Richard Douglas <rdouglas@sussexcountyva.gov>; Shilton Ricks Butts <sricks@sussexcountyva.gov>; Michael Zehner <michael.zehner@bgllc.net>
Subject: Re: Winfield Solar

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Just making sure my recent messages were not confusing. I DO need a copy of the Winfield planning report and recommendations as soon as you can in preparation for the public hearing on June 2nd. I thought I still had it but the report apparently expired and my link indicated it was not available. Do your cooperation on this would be appreciated. Thank you.

Sent from my iPhone

On May 15, 2025, at 10:28 AM, Lawrence Diehl
<ldiehl@barnesfamilylaw.com> wrote:

Oops- this link has now expired so I DO NEED you to send me a copy of your report and recommendations. Please disregard my last email indicating I thought I had the report. I will need it asap- thank you.

Sent from my iPhone

On Nov 6, 2024, at 12:00 PM, Michael Poarch
<mpoarch@sussexcountyva.gov> wrote:

Good Morning,

Please see attach link to the requested document.
<https://link.edgepilot.com/s/7ecadb28/ak8hoQeTbkiadT0MkZ6erQ?u=https://www.sussexcountyva.gov/uploads/docs/Winfield%2520Solar%2520Staff%2520Report%2520package.pdf>

Sincerely,

M. Poarch
County Planner
Sussex County Planning & Zoning Department

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Sent: Wednesday, November 6, 2024 8:53 AM
To: Beverly Walkup <bwalkup@sussexcountyva.gov>
Cc: Michael Poarch <mpoarch@sussexcountyva.gov>;
Richard Douglas <rdouglas@sussexcountyva.gov>;
Regina Sykes <rsykes@sussexcao.com>
Subject: Winfield Solar

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Beverly: I know you're busy, but I did request last week a copy of the planning dept. report on Winfield Solar (just the main part - don't need the attachments) recommending the denial of the project. I would very much appreciate your getting that to me asap, and I'll

make this a formal FOIA request - thank you.

Sent from my iPhone

Links contained in this email have been replaced. If you click on a link in the email above, the link will be analyzed for known threats. If a known threat is found, you will not be able to proceed to the destination. If suspicious content is detected, you will see a warning.

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Beverly Walkup

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Sent: Thursday, May 15, 2025 10:24 AM
To: Beverly Walkup; Michael Poarch; Michael Zehner; shands301@gmail.com; tmassenburg29@gmail.com; rogerking33@gmail.com; Andy Mayes; deltea@aol.com; jlebigfoot@gmail.com; Kevin Bracy; Eric Fly; Molly Dowless; Frances Chambers; 'Otto Wachsmann'
Cc: Richard Douglas; Steve White; 'Rufus Tyler'; rotttrucks@aol.com; phyllistolliver2@gmail.com; Thomas Baicy; Wayne Jones
Subject: Fwd: Flowers Solar, LLC Requests Rezoning

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MRS. WALKUP: Please make this email part of the file in the Winfield Solar project matter for all future public hearings - planning commission and Board- thank you.

To all: please note the below where the same company that is the applicant for Winfield was denied a Solar project in Dinwiddie. The reasons for the denial is pretty much the same reasons as apply to this application, but it's even worse since the forestry destruction is in prime forest designated area. This should be dead on arrival.

Thank you.

Sent from my iPhone

Begin forwarded message:

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Date: October 31, 2024 at 6:33:49 PM EDT
To: Molly Dowless <brickhill1747@gmail.com>, Frances Chambers <fchambers@nsacademy.org>, Eric Fly <cefly@icloud.com>, Tom Baicy <tbaicy@sussexcountyva.gov>, rotttrucks@aol.com, Steve White <steve.white@dbhds.virginia.gov>, phyllistolliver2@gmail.com, Otto Wachsmann <owachsmann@yahoo.com>, Angela McPhaul <amcphaul@town.waverlyva.us>, Franklin Cox <Fcox59@gmail.com>
Subject: Flowers Solar, LLC Requests Rezoning

Colombo has done it again. The owner of Flowers Solar is Greenvolt Power Actualize which was denied a solar project in Dinwiddie approximately. This is the same company that owns the Winfield proposed project, which so far was recommended to deny the project. I assume that's why the proposed joint hearing was cancelled in August, 2024-NINE MONTHS AGO!

Please read this denial below in Dinwiddie and for the same reasons deny this application.

Residents Not Happy, Planning Commission Votes Down

Source: thedinwiddiemonitor.com
<https://search.app/sGnoQdi85cVuJ3GB6>

Sent from my iPhone

Beverly Walkup

From: Lawrence Diehl <ldiehl@barnesfamilylaw.com>
Sent: Thursday, July 25, 2024 3:37 PM
To: Shilton Ricks Butts; Richard Douglas; Beverly Walkup; Michael Poarch; jeff@heftywiley.com; danielle@heftywiley.com; David Conmy
Cc: jonesfamily2@msn.com; Eric Fly; rotttrucks@aol.com; 'Rufus Tyler'; phyllistolliver2@gmail.com; steve.white@dbhds.virginia.gov; Thomas Baicy; Frances Chambers; Molly Dowless; 'Otto Wachsmann'; 'amayes@commonwealthenvironmental.com'; tmassenburg29@gmail.com; jlebigfoot@gmail.com; shands301@gmail.com; rogerking33@gmail.com; deltea@aol.com; bornajunker@hotmail.com
Subject: Winfield Farms Solar Project- August 5, 2024 Public Hearing

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

This is Lawrence Diehl, a resident of Waverly, Virginia, a Virginia attorney practicing almost 50 years and having done 100s of contracts over the years.

Shilton: Per the instructions in the public notice for the above specified public hearing, please make the following comments part of the record in the Winfield Farm solar project application. Thank you as always.

THE FOLLOWING IS NOT INTENDED TO PROVIDE LEGAL ADVICE TO THE COUNTY AND IS PRIMARILY DIRECTED TO MRS. POWELL AND MR. GORE AS ATTORNEYS FOR THE COUNTY FOR CONSIDERATION AS TO OUR MUTUAL GOAL OF MAXIMIZING THE LEGAL PROTECTION FOR SUSSEX COUNTY.

I have reviewed the relevant documents on this project. At the outset, let me say that the location of this proposed farm is right in the area of prime farm land of our county. Our Comprehensive Plan ("Plan") provides as its PRIMARY GOAL the preservation of the rural heritage and environment of our county. Reread it before August 5th- that's what it says. The proposed location of this site is directly in conflict with our county's goals and maintenance of prime farmland area. It is inconceivable to me that any reasonable person, and specifically the Planning Department, could recommend the approval of this project in light of our stated goal. Of course, it is probable the Planning Department will completely ignore our Plan, and use "magic words" only in saying this project is consistent with those goals and the voluminous other conditions of such a project. If the Plan has any substantive meaning, this project should be rejected by both the Planning Department and the Board of Supervisors. If our Plan means nothing to the Planning Department, and their only concern is \$\$\$\$- then the Department is being irresponsible and will most likely be asking for a "Waverly II" result- and everyone knows how that has ruined our county and resulted in huge DEQ fines. Don't let that happen- the substance of our carefully thought out goals in our plan should be given priority- not the empty, meaningless words that say "Oh- there is no problem with this project".

And if part of the rationale that this meets some of the Plan criteria- by example- the 150' buffer- first, that does not take away the ruining of prime farm land within the area proposed. Second, I'm 75 years old and have bi-focals- and I have previously stated I to a tape measure and measured 150' in brush areas, forest areas and other types of proposed buffer areas. In everyone, you can see through them-all 150'- and the unsightly interior area that would be created by the installation of solar panels. The argument that this protects the integrity of the rural nature of the project is a joke. Don't buy it for one instance. Go out and do what I did, measure the distance and you will see what I mean. So when the applicant comes in with all these glossy pictures or data on this- those are false representations and only the real world of what this will look like in ruining prime farm land should be relied upon. And remember- once this prime farm land is ruined- it will be useless farm land for 30+ years and probably forever since no one in their right mind actual believes such land can be restored to its original soil qualities at the end of this project in 30 or so years. If you believe that- hey- I've got a bridge in Brooklyn to sell you- cheap too!

But in the even this project is somehow approved because of the main focus on \$\$\$ rather than the real goals of our Plan, here, at the very least, are legal provisions or conditions that are strongly suggested to be made part of any CUP or other project agreement. They are meant to provide maximum protection to the County. I suggest these based on 50 years of legal experience and only want the best for the county and not ignoring these critical legal principles just to make this project go forward with ease, but less legal protection. Many of these I previously presented to the County relevant to the Blackwater Solar project, but hopefully, now that you have had a chance to consider them more carefully, you will agree each of these should be made part of the applicant project. So please understand- I am trying to help the County and making positive suggestions to protect the County by considering the following:

1. **ASSIGNMENT OF PROJECT TO A THIRD PARTY:** There should absolutely be a provision or condition that the responsibilities for the building, operation, construction and management of this project cannot be assigned to any third party. That was in the Blackwater proposal and should never be omitted from any such project. In the alternative, there should be a condition that if there is to be an assignment to any third party- that must be approved by a majority of the vote of the Board. Why? Here is why- and follow me on this since this is critical to the protection of the county.

When I raised this issue for the Blackwater project, it is my recollection that Mrs. Powell responded (and I could not do rebuttal since our rules do not permit it) that the terms of any assignment would be that the new assignee would be responsible and bound by all of the CUP or agreement conditions. But that is not a responsible reason. Just because there is words on paper or language to that effect does not mean the assignee is really a responsible entity. ***It could be assigned to anyone without limits unless the clause I am suggesting is put into the conditions.*** The county should know the owner of any such entity, their history related to solar farms since so many are now being sued or fined, their insurance coverage, their management or construction experience, their history of prior solar litigation, their officers or employees who would take over the project- all of these are things any responsible attorney would and should recommend to be considered by the Board if any possible assignment of the project is done, or possibly be done by leaving any restrictions from the CUP. Anything less would be irresponsible and provide the County with no protection over such an important action- that is- the 30 years of the life of this project. The County is relying on THIS applicant if the project is approved. Merely relying on something that says any assignee will take over the project according to all conditions provides the County without any assurance that can be done. To rely only on words without the ability to have actual input into such a decision is just a risk the County should never take. The County should have the right to investigate such an important possible action by the applicant and not leave it to bare words on a CUP or agreement. While I respect Mrs. Powell on her advice, this should be included since her response is really not responsive to the protection the County needs.

2. **INDEMNIFICATION CLAUSE:** I have done 1000s of contracts over my 50 years of law practice and cannot recall a single one that does not have the protection of an indemnification provision. What does that mean? That means that if any third party sues on this project, and the County is likely made a party to the suit, that the applicant would take responsibility for any liability or damages arising out the suit and indemnify, or pay back to the County any damages assessed against them. Since the County is not directly involved in supervising the project, whether at its construction stage, or management or operation stage, which could last for 30+ years, the County should not have to pay for such damages over which it has no direct control. And if a judgment is assessed against the County- and think about this- and I hope the County Attorney has also- this could very likely impact of the cost of its liability insurance premiums and other related costs. And it is not enough to merely rely on provisions that the applicant will make sure possible environmental problems or other problems will be promptly taken care of within time limits. Third parties suing the applicant, subcontractors or County don't care about those assurances. Another eg.- what about liability of the uninsured driver of a solar truck injuring school children? Yes- we all heard about that event and if the County was ever sued over these types of damages, why should the County be legally responsible or risk paying damages, even if shared by others- over acts they don't control? So yes- an indemnification clause should be mandatory in any final CUP or agreement- **omitting that and exposing the County to liability risk without an indemnification agreement by the applicant would be**

irresponsible. The County should be protected by including a provision that is contained in virtually all contracts.

3. **IDENTITY OF SUBCONTRACTORS:** Let me start this one out by asking- how many of you would agree to a medical surgery, but not knowing the identity of your surgeon? How many would merely rely on the umbrella hospital corporation saying "Oh- don't worry about that- it will be someone just fine."? The Answer: No One. When important procedures are being done- any reasonable person would want to know , IN ADVANCE, the identity of the person so that person can be checked out. Nothing less.

Same with a solar project. This project, or any solar project, should not even be considered to be approved unless the specific identity of each and every subcontractor is made known to the County- whether the Planning Department or BOS. That would include truck companies doing transportation, contractors, electricians, solar panel installers, land clearance companies, land restorers, management or operation companies- and there are probably others. It is not enough for the applicant to merely tell the Planning Depart and the County "Oh- well- we don't have their names yet, but you can be assured they will be reputable and experienced as to each of their functions."

If the applicant doesn't even know who will be doing their project- they have no business going forward on it until they know. The County should use due diligence, and nothing less, in know exactly their names, functions, number of employees, solar experience, litigation experience, insurance coverage, how employees are screened-trained-and selected, management history- -etc. If the County doesn't know this NOW and before the project is improved- it should know. Why?

Because it is generally the subcontractors who have performed the work that has risen to the huge number of law suits resulting in huge judgments or fines- and I provided you a few months ago- a detailed Memo summarizing just the tip of the iceberg of law suits and fines around the country arising from solar project damages- and since that Memo there have been many more. I am sure, or at least hope, your County Attorney has researched these as I have. So it seems that it would be irresponsible to give the applicant a blank check on who and how their subcontractors are selected. No- the County should have the right to know and have the obligation to research who is going to build project that impact on County for 30+ years.

And if the applicant says "well, we'll tell you when they are selected" or " that's just not how these projects work" or "its too early for that" or any other anticipated excuses- than that should raise a red Flag to all of you and nothing should be approved or go forward until the County can do its due diligence in knowing and investigation who these subcontractors are- with specifics- not general future promises. The County should not care what has been done in other projects- it should do all it can to minimize damages and so what if this isn't the way its done in other counties or states. Too bad- it should be the way its done in Sussex County and to know who is performing heart surgery on the County is certainly not too much to ask.

Have such promises been given in the past and have they worked? This BOS approved the Waverly solar projects which had the same promises. That has been a disaster, resulting in a 6 figure DEQ fine- one of the largest ever imposed as you probably know- due to the negligence of its runoff and other environmental problems arising from" subcontractor" construction. That should be a lesson to all of you – the County needs to, and should have the due diligence obligation, based on prior problems and litigation experience around the country- to screen and investigate those who will be performing "HEART SURGERY" on our County. Anything less would be irresponsible. **IN SUMMARY- THIS PROJECT, IF IT EVEN GOING TO BE APPROVED IN CONCEPT, SHOULD NOT HAVE ANY APPROVAL UNTIL AND UNLESS A FULL OPPORTUNITY TO IDENTIFY AND INVESTIGATE THE SUBCONTRACTORS IS PROVED BY THE APPLICANT. IF THEY DON'T KNOW NOW, HOW THE COUNTY CAN APPROVE THIS IS QUESTIONABLE.**

I THANK YOU FOR YOUR CONSIDERATION OF THE ABOVE AND REMEMBER- IF THE PROJECT IS EVEN BEING CONSIDERED- I WOULD AT LEAST HOPE THE ALL 3 SUGGESTIONS ABOVE – WHICH I AM MAKING IN A POSITIVE MANNER FOR THE PROTECTION OF OUR COUNTY- WOULD BE MADE PART OF ANY CUP OR AGREEMENT.



NEW BUSINESS

a. Sussex Floodplain Ordinance Update Introduction

DIVISION 13. FLOODPLAIN OVERLAY DISTRICT

Subdivision I. General Provisions

Sec. 34-595. Statutory authorization and purpose.

Va. Code § 15.2-2283 specifies that zoning ordinances shall be for the general purpose of promoting the health, safety, or general welfare of the public and of further accomplishing the objectives of § 15.2-2200 which encourages localities to improve the public health, safety, convenience, and welfare of their citizens. To these ends, flood ordinances shall be designed to provide for safety from flood, to facilitate the provision of flood protection, and to protect against loss of life, health, or property from flood.

In accordance with these directed provisions, this ordinance is specifically adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.

The purpose of these provisions is to prevent: the loss of life, health, or property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- A. Regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
- B. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
- C. Requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or floodproofed against flooding and flood damage; and,
- D. Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(Ord. No. 2016-01, § 1.1, 4-21-2016)

Sec. 34-596. Applicability.

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of Sussex County and identified as areas of special flood hazard *identified by the community or* shown on the flood insurance rate map (FIRM) or included in the flood insurance study (FIS) that are provided to the County of Sussex by FEMA.

(Ord. No. 2016-01, § 1.2, 4-21-2016)

Sec. 34-597. Compliance and liability.

- (a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.
- (b) The degree of flood protection sought by the provisions of this division is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.
- (c) This ordinance shall not create liability on the part of the Sussex County or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(Ord. No. 2016-01, § 1.3, 4-21-2016)

Sec. 34-598. Records.

Records of actions associated with administering this ordinance shall be kept on file and maintained by or under the direction of the Floodplain Administrator in perpetuity.

(Ord. No. 2016-01, § 1.4, 4-21-2016)

Sec. 34-599. Abrogation and greater restrictions.

To the extent that the provisions are more restrictive, this ordinance supersedes any ordinance currently in effect in flood-prone districts. To the extent that any other existing law or regulation is more restrictive or does not conflict it shall remain in full force and effect.

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances, or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

(Ord. No. 2016-01, § 1.5, 4-21-2016)

Sec. 34-600. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

Sec. 34-601. Penalty for Violations.

- (a) Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the County of Sussex shall be guilty of the appropriate violation and subject to the penalties therefor.
- (b) The Virginia Uniform Statewide Building Code (VA USBC) addresses building code violations and the associated penalties in sections 104 and 115. Violations and associated penalties of the Zoning Ordinance of Sussex County are addressed in Article II, Section 34-28 of the Zoning Ordinance.
- (c) In addition to the penalties set forth in subsection (b) of this section, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this division shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the county to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

(Ord. No. 2016-01, § 1.7, 4-21-2016)

Sec. 34-602. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Appurtenant or accessory structure means a non-residential structure which is on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures are not to exceed *600 square feet*.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation means the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the base flood is the 1% annual chance flood.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Board of Zoning Appeals means the board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

Coastal A Zone means flood hazard areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet.

Development means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, *temporary structures*, mining, dredging, filling, grading, paving, excavation, drilling or other land-disturbing activities or permanent or temporary storage of equipment or materials.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing construction means structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975 for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures" and "pre-FIRM."

Flood or flooding means:

- (1) A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters; or,
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 - c. Mudflows which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

Flood Insurance Rate Map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) means a report by FEMA that examines, evaluates and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain or flood-prone area means any land area susceptible to being inundated by water from any source.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point within the community.

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or,
 - a. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - b. By an approved state program as determined by the Secretary of the Interior; or,
 - c. Directly by the Secretary of the Interior in states without approved programs.

Hydrologic and Hydraulic Engineering Analysis means analyses performed by a licensed professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letters of Map Change (LOMC) means a Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (1) Letter of Map Amendment (LOMA) - An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a land as defined by meets and bounds or structure is not located in a special flood hazard area.

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- (2) Letter of Map Revision (LOMR) - A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (3) Conditional Letter of Map Revision (CLOMR) - A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study.

Lowest adjacent grade means the lowest natural elevation of the ground surface next to the walls of a structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean Sea Level means the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988 to which base flood elevations shown on a community's FIRM are referenced.

New construction means structures for which the start of construction commenced on or after the effective start date of this floodplain management ordinance and includes any subsequent improvements to such structures. Any construction started after effective date of community's first floodplain management ordinance adopted by the community and before the effective start date of this floodplain management ordinance is subject to the ordinance in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance."

Post-FIRM structures mean for floodplain management purposes, a structure for which construction, or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map

Pre-FIRM structures mean for floodplain management purposes, a structure for which construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) 400 square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light duty truck; and,
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

Repetitive Loss Structure means a building covered by a contract for flood insurance that has incurred flood-related damages on two occasions in a 10-year period, in which the cost of the repair, on the average, equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incidence of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

Severe repetitive loss structure - a structure that:

- (1) Is covered under a contract for flood insurance made available under the NFIP; and
- (2) Has incurred flood related damage –
 - a. For which 4 or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000, and with the cumulative amount of such claims payments exceeding \$20,000; or
 - b. For which at least 2 separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

Shallow flooding area means a special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Special flood hazard area means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Subdivision III, Section 34-645 of this ordinance.

Start of construction - For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. – 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. It also means flood-related damages sustained by a structure on two occasions in a 10-year period, in which the cost of the repair, on the average, equals or exceeds 25 percent of the market value of the structure at the time of each such flood event.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.
- (3) Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Secs. 34-603—34-618. Reserved.

Subdivision II. Administration

Sec. 34-619. Designation of the Floodplain Administrator.

The *Floodplain Administrator* is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- (1) Do the work themselves. In the absence of a designated floodplain administrator, the duties are conducted by the County of Sussex chief executive officer.
- (2) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- (3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 CFR 59.22.

(Ord. No. 2016-01, § 2.1, 4-21-2016)

Sec. 34-620. Duties and Responsibilities of the Floodplain Administrator.

- (a) The duties and responsibilities of the floodplain administrator shall include, but are not limited to:
 - (1) Review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SFHA).
 - (2) Interpret floodplain boundaries and provide available base flood elevation and flood hazard information.
 - (3) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
 - (4) Review applications to determine whether all necessary permits have been obtained from the federal, state or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the state.
 - (5) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA.
 - (6) Advise applicants for new construction or substantial improvement of structures that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that federal flood insurance is not available on such structures; areas subject to this limitation are shown on Flood Insurance Rate Maps as Coastal Barrier Resource System areas (CBRS) or otherwise protected areas (OPA).

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- (7) Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
 - (8) Inspect, or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if noncompliance has occurred or violations have been committed.
 - (9) Review elevation certificates and require incomplete or deficient certificates to be corrected.
 - (10) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the county, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
 - (11) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - a. Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map change; and
 - b. Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
 - (12) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
 - (13) Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.
 - (14) Administer the following requirements related to proposed work on existing buildings:
 - a. Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
 - b. Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the noncompliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
 - (15) Undertake, as determined appropriate by the floodplain administrator due to the circumstances, other actions which may include, but are not limited to, issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under NFIP flood insurance policies.
 - (16) Notify the Federal Emergency Management Agency when the corporate boundaries of the county have been modified and:
 - a. Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

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- b. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the board of supervisors for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to the Department of Conservation and Recreation (division of dam safety and floodplain management) and FEMA.
- (17) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
 - (18) It is the duty of the floodplain administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the county, whether or not those hazards have been specifically delineated geographically (e.g., via mapping or surveying).

(Ord. No. 2016-01, § 2.2, 4-21-2016)

Sec. 34-621. Use and Interpretation of FIRMs.

The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- (1) Where field surveyed topography indicates that adjacent ground elevations:
 - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as a special flood hazard area and subject to the requirements of these regulations;
 - b. Are above the base flood elevation, the area shall be regulated as a special flood hazard area unless the applicant obtains a letter of map change that removes the area from the SFHA.
- (2) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- (3) Base flood elevations and designated floodway boundaries on FIRMs and in the FIS shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
- (4) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in the FIS.
- (5) If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:
 - a. Upon the issuance of an Letter of Final Determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 - b. Prior to the issuance of an letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 34-645 and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

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- c. Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(Ord. No. 2016-01, § 2.3, 4-21-2016)

Sec. 34-622. Jurisdictional Boundary Changes.

- (a) The county floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to the department of conservation and recreation (division of dam safety and floodplain management) and FEMA.
- (b) In accordance with 44 CFR 59.22(a)(9)(v), all NFIP participating communities must notify the Federal Insurance Administration and optionally the state coordinating office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.
- (c) In order that all flood insurance rate maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority, must be included with the notification.

(Ord. No. 2016-01, § 2.4, 4-21-2016)

Sec. 34-623. District Boundary Changes.

The delineation of any of the floodplain districts may be revised by the county where natural or manmade changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A completed LOMR is a record of this approval.

(Ord. No. 2016-01, § 2.5, 4-21-2016)

Sec. 34-624. Interpretation of District Boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the zoning officer. Should a dispute arise concerning the boundaries of any of the districts, the board of zoning appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.

(Ord. No. 2016-01, § 2.6, 4-21-2016)

Sec. 34-625. Submitting Model Backed Technical Data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The community may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(Ord. No. 2016-01, § 2.7, 4-21-2016)

Sec. 34-626. Letters of Map Revision.

When development in the floodplain causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a conditional letter of map revision or a letter of map revision.

Examples include:

- (1) Any development that causes a rise in the base flood elevations within the floodway.
- (2) Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
- (3) Alteration or relocation of a stream (including, but not limited to, installing culverts and bridges).

(Ord. No. 2016-01, § 2.8, 4-21-2016)

Secs. 34-627—34-644. Reserved.

Subdivision III. Establishment of Zoning Districts

Sec. 34-645. Description of Special Flood Hazard Districts.

- (a) Basis of districts.

The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for Sussex County prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated 7/7/2009, and any subsequent revisions or amendments thereto.

- (b) The County of Sussex may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks, or approximate study methodologies.
- (c) The boundaries of the SFHA districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the county offices.
- (1) The Floodway District is in an AE Zone and is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 5 of the above-referenced FIS and shown on the accompanying FIRM.

The following provisions shall apply within the floodway district of an AE zone:

- a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the County of Sussex endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.

If Article III, Section 3.1.a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article IV.

- b. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.
- (2) The AE or AH zones on the FIRM accompanying the FIS shall be those areas for which one percent annual chance flood elevations have been provided and the floodway has not been delineated. The following provisions shall apply within an AE or AH zone where FEMA has provided base flood elevation:
- a. The current FIRM/FIS shows no AH zones within the county.
 - b. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30, AE, or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the County of Sussex.
 - c. Development activities in Zones A1-30 and AE or AH on the county's FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies, with the county's endorsement, for a conditional letter of map revision, and receives the approval of the Federal Emergency Management Agency.
- (3) The A zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply:
- a. The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one percent annual chance floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Floodprone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall

determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high-water marks, or detailed methodologies, and hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.

The floodplain administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to or above the base flood level plus 12 inches.

During the permitting process, the floodplain administrator shall obtain:

1. The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and
2. If the structure has been floodproofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been floodproofed.

Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 5 lots or five acres, whichever is the lesser.

- (4) The AO zone on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM. The current FIRM/FIS shows no AO zones within the county.
- (5) The Coastal A zone shall be those areas, as defined by the VA USBC, that are subject to wave heights between 1.5 feet and three feet, and identified on the FIRM as areas of limits of moderate wave action (LiMWA). The current FIRM/FIS shows no LiMWA lines within the county.
- (6) The VE or V zones on FIRMs accompanying the FIS shall be those areas that are known as coastal high hazard areas, extending from offshore to the inland limit of a primary frontal dune along an open coast or other areas subject to high velocity waves. The current FIRM/FIS shows no V or VE zones within the jurisdiction.

(Ord. No. 2016-01, § 3.1, 4-21-2016)

Sec. 34-646. Overlay Concept.

- (a) The floodplain districts described in section 34-645 shall be overlays to the existing underlying districts as shown on the official zoning map, and, as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
- (b) If there is any conflict between the provisions or requirements of the floodplain districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
- (c) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(Ord. No. 2016-01, § 3.2, 4-21-2016)

Secs. 34-647—34-662. Reserved.

- CODE OF ORDINANCES
Chapter 34 - ZONING
ARTICLE III. - ZONING DISTRICTS
DIVISION 13. - FLOODPLAIN OVERLAY DISTRICT
Subdivision IV. District Provisions

Subdivision IV. District Provisions

Sec. 34-663. Permit and Application Requirements.

- (a) *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of this ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the county subdivision regulations set forth in chapter 26. Prior to the issuance of any such permit, the floodplain administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (b) *Site plans and permit applications.* All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:
- (1) The elevation of the base flood at the site.
 - (2) The elevation of the lowest floor (including basement) or, in V zones, the lowest horizontal structural member.
 - (3) For structures to be floodproofed (nonresidential only), the elevation to which the structure will be floodproofed.
 - (4) Topographic information showing existing and proposed ground elevations.

(Ord. No. 2016-01, § 4.1, 4-21-2016)

Sec. 34-664. General Standards.

The following provisions shall apply to all permits:

- (1) New construction and substantial improvements shall be built in accord with this ordinance and to the VA USBC, and anchored to prevent flotation, collapse or lateral movement of the structure.
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

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- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions of subsection (a) of this section, in all special flood hazard areas, the following additional provisions shall apply:

- a. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U.S. Army Corps of Engineers, the state department of environmental quality, and the state marine resources commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the department of conservation and recreation (division of dam safety and floodplain management), other required agencies, and the Federal Emergency Management Agency.
- b. The flood-carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(Ord. No. 2016-01, § 4.2, 4-21-2016)

Sec. 34-665. Elevation and Construction Standards.

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with section 34-645(c), the following provisions shall apply:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) in Zones A1-30, AE, AH and A with detailed base flood elevations shall have the lowest floor, including basement, elevated to at least one foot (12 inches) above the base flood level.
- (2) *Nonresidential construction.*
 - a. New construction or substantial improvement of any commercial, industrial, or nonresidential building (or manufactured home) shall have the lowest floor, including basement, elevated to at least one foot (12 inches) above the base flood level.
 - b. Nonresidential building located in all A1-30, AE, and AH zones may be floodproofed in lieu of being elevated, provided that all areas of the building components below the elevation corresponding to the BFE plus one foot (12 inches) are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the county building official.
- (3) *Space below the lowest floor.*

In Zones A, AE, AH, AO, and A1-A30, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

- a. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
- b. Be constructed entirely of flood-resistant materials below the regulatory flood protection elevation.
- c. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 1. Provide a minimum of two openings on different sides of each enclosed area subject to flooding.
 2. The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 3. If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
 4. The bottom of all required openings shall be no higher than one foot above the adjacent grade.
 5. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 6. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined in this subsection (3).

(4) **Accessory Structures.**

Accessory structures in the SFHA shall comply with the elevation requirements and other requirements of Subdivision IV.

- a. Not be used for human habitation;
- b. Be limited to no more than 600 square feet in total floor area;
- c. Be useable only for parking of vehicles or limited storage;
- d. Be constructed with flood damage-resistant materials below the base flood elevation;
- e. Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
- f. Be anchored to prevent flotation;
- g. Have electrical service and mechanical equipment elevated to or above the base flood elevation;
- h. Shall be provided with flood openings which shall meet the following criteria:

1. There shall be a minimum of two flood openings on different sides of each enclosed area; if a building has more than one enclosure below the lowest floor, each such enclosure shall have flood openings on exterior walls.
2. The total net area of all flood openings shall be at least 1 square inch for each square foot of enclosed area (non-engineered flood openings), or the flood openings shall be engineered flood openings that are designed and certified by a licensed professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.
3. The bottom of each flood opening shall be 1 foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.
4. Any louvers, screens or other covers for the flood openings shall allow the automatic flow of floodwaters into and out of the enclosed area.

(5) *Standards for manufactured homes and recreational vehicles.*

- a. In all designated special flood hazard areas, all manufactured homes placed, or substantially improved, on individual lots or parcels must meet all the requirements for new construction, including the elevation and anchoring requirements in Section 34-664 and 34-665.
- b. All recreational vehicles placed on sites must either:
 1. Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or
 2. Meet all the requirements for manufactured homes in subsection (5)a of this section.

(Ord. No. 2016-01, § 4.3, 4-21-2016)

Sec. 34-666. Standards for Subdivision Proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and;
- (4) Base flood elevation data shall be obtained from other sources or developed using detailed methodologies, and hydraulic and hydrologic analysis, comparable to those contained in a flood insurance study for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed **five lots** or five acres, whichever is the lesser.

(Ord. No. 2016-01, § 4.4, 4-21-2016)

Secs. 34-667—34-686. Reserved.

Subdivision V. Variances; Continuing Uses

Sec. 34-687. Existing Structures in Floodplain Areas.

Any structure or use of a structure or premises must be brought into conformity with these provisions when it is changed, repaired, or improved unless one of the following exceptions is established before the change is made:

- (a) The floodplain manager has determined that:
 - (1) Change is not a substantial repair or substantial improvement AND
 - (2) No new square footage is being built in the floodplain that is not complaint AND
 - (3) No new square footage is being built in the floodway AND
 - (4) The change complies with this ordinance and the VA USBC AND
 - (5) The change, when added to all the changes made during a rolling 5-year period does not constitute 50% of the structure's value.
- (b) The changes are required to comply with a citation for a health or safety violation.
- (c) The structure is a historic structure and the change required would impair the historic nature of the structure.

(Ord. No. 2016-01, art. V, 4-21-2016)

Sec. 34-688. Variances; factors to be considered.

- (a) Variances shall be issued only:
 - (1) Upon a showing of good and sufficient cause;
 - (2) After the board of zoning appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant; and
 - (3) After the board of zoning appeals has determined that the granting of such variance will not result in unacceptable or prohibited increases in flood heights, additional threats to public safety, or extraordinary public expense; and will not create nuisances, cause fraud or victimization of the public, or conflict with local laws or ordinances.
- (b) While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the board of zoning appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.
- (c) Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (d) In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of this chapter and consider the following additional factors:

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- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the 100-year flood elevation.
 - (2) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - (5) The importance of the services provided by the proposed facility to the community.
 - (6) The requirements of the facility for a waterfront location.
 - (7) The availability of alternative locations not subject to flooding for the proposed use.
 - (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
 - (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site.
 - (12) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (13) No variance shall be granted for an accessory structure exceeding 600 square feet.
 - (14) Such other factors which are relevant to the purposes of this ordinance.
- (e) The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
 - (f) Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in unacceptable or prohibited increases in flood heights, additional threats to public safety, or extraordinary public expense; and will not create nuisances, cause fraud or victimization of the public, or conflict with local laws or ordinances.
 - (g) Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief.
 - (h) The board of zoning appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the 100-year flood elevation:
 - (1) Increases the risks to life and property; and
 - (2) Will result in increased premium rates for flood insurance.
 - (i) A record shall be maintained of the notification provided for in subsection (f) of this section as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

(Ord. No. 2016-01, art. VI, 4-21-2016)

Secs. 34-689—34-705. Reserved.

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