

sPower Comments to Planning Commission Version of SUP Conditions

1. Section A, General:

> Section A (16) Should be deleted as recommended by staff allowing Cadmium Telluride panels

> Section A (21) Introductory paragraph should read:

“The Operators, prior to the start of construction of the Facility, and throughout its operation until the decommissioning is complete, shall guarantee the decommissioning and stabilization of the Property by providing and maintaining for the County’s benefit surety for performance of the decommissioning equal to the highest total estimated cost of decommissioning the Facility on the Property, subject to allowable credits and setoffs. Such surety must be irrevocable and must be maintained in full without decrease until the Facility decommissioning has been completed as required herein. The total estimated cost must be calculated by the Operators and include, at least, the following delineated by line item:”

> Section A (21) j iv. Should be revised to read:

“Costs for removal and disposal of all materials set forth above line itemed by category of facility. For example, “cost to remove conduit,” “cost to remove panels”, “cost to remove panel support structure”, “cost to remove inverter,” etc. Such costs may be reduced by any estimated credits or setoffs for recycling, reuse or otherwise.”

> Section A (21) j. vii. Should be revised to read:

“Costs to meet recycling requirements herein subject to anticipated credits or setoffs generated by the recycling.”

> Section A (21) k. Should be revised to read:

“The estimated costs shall be reduced by any credits or setoffs.”

> Section A (21) l. Should be revised to read:

“Prior to the issuance of a final site plan to construct the Facility, the Operator shall produce to the County an estimate of the above costs by line item and the surety guaranteeing the payment of those costs and decommissioning work. The amount of the surety is estimated to be \$10,487 per disturbed acre pursuant to the “Project Decommissioning and Site Restoration Cost Estimate” attached hereto as “Exhibit G”, which shall be subject to credits and offsets provided herein. The estimate shall be signed and sealed by a third party engineer licensed in Virginia

and shall include a statement by the engineer that “The total estimated cost provides for the complete decommissioning of the Facility and stabilization of the Property as defined and required in SUP 18-0001.”

> Section A (21) m. Should be revised to read:

“Surety for decommissioning shall be provided via a surety bond, in a form approved by the County, for the County’s benefit to guarantee the performance of the decommissioning work should the Facility be abandoned or should the decommissioning work not be diligently undertaken or performed according to the requirements herein or should the Special Use Permit be revoked, lapse, or be voided, all as determined solely by the County. Within six (6) months of the completion of the decommissioning work required herein by a person or entity other than the County or a contractor engaged by the County, as confirmed by the Zoning Administrator, the surety bond shall be released to the person identified as the owner of the Property in the land records of Spotsylvania County as of the date of the completed decommissioning or as otherwise directed by that owner of the Property.”

> Section A (21) n. Should be deleted in its entirety

> Section A (21) p. Should be revised as follows:

“Should the Special Use Permit be revoked, lapse, expire or be voided, the County may immediately exercise its rights under the surety bond for purposes of decommissioning the Facility.”

> Section A (21) r. Should be revised as follows:

“Should the surety bond guaranteeing the decommissioning work for any reason not be sufficient to complete the decommissioning work, the Operator, which includes all owners, occupants, and users of their Property, shall jointly and severally remain liable to the County for the difference between the surety bond amount and the amounts required to decommission the Property. The County shall not be liable to any party in any way for the funds drawn pursuant to the conditions set out herein and expended in relation to decommissioning.”

> Section A (21) s: Should be revised as follows:

“Should the Facility be abandoned, or should this Special Use Permit be revoked, lapse, expire, or be voided, or should the decommissioning work not be diligently undertaken or performed according to the requirements herein as determined solely by the County and should the County exercise its rights under the surety bond for the purpose of performing the decommissioning work herein and mobilize its contractors to perform the decommissioning work or otherwise incur liability to its contractors for the performance of the

decommissioning work, the Operator shall have no right to perform the decommissioning work required herein unless specifically authorized by the County in a writing that confirms that the County has incurred no liability to any contractors to perform the work or any such liability is transferrable as deemed acceptable by the County.”

2. Section B Construction:

> Section B (2) should be revised and follow the staff version:

“The Operator shall shuttle at least twenty percent (20%) of the workforce to and from the site during construction. Employees ride-sharing with a minimum of three (3) employees per vehicle may contribute to this requirement. Compliance with this requirement shall be demonstrated through the Operator’s monthly provision to the County of a transportation log which provides the following information: License Plate Number, Vehicle type (Oversize Load, heavy delivery, delivery, shuttle, employee vehicle carrying three (3) or more persons, employee vehicle carrying less than three (3) persons, or guest, which is someone not related to the Project or its construction), Entry time, and Exit time. “Oversize Load” shall be defined as any vehicle that requires a Hauling Permit from the Virginia Department Motor Vehicles”

> Section B (8): Should be deleted in its entirety as it will concentrate greater truck traffic for larger deliveries at other entrances

> Section B (9) should be revised and follow the staff version, especially in allowing certain work on Sundays:

“All construction activity on the Property shall be limited to the following:

a) All clearing, grading, and construction of the Property shall be limited to between the hours of 7:00 a.m. and 7:00 p.m. Monday through Friday and between 8:00 a.m. and 6:00 p.m. Saturday and Sunday.

b) Pile driving within 500 feet of any residential property boundary shall cease no later than 5:00 p.m. daily and shall be prohibited all day on every Sunday.

c) Oversize load deliveries are prohibited on Orange Plank Road, West Catharpin Road, and Post Oak Road during prime school bus traffic between the hours of 6:10 a.m. and 8:40 a.m. and 2:45 p.m. and 4:30 p.m., or any amendment thereof due to inclement weather, during the Spotsylvania County Public Schools instructional year”

3. Section D. Burning and Fire, Rescue, and Emergency Management

> Section 2 should be deleted and reflect staff recommendations allowing burning as follows:

2. “The Operator shall use all due diligence to use or dispose of mulched timber waste off site prior to pit incineration.”

3. “The burning of timber waste shall be done only if via open pit incineration using incinerator 2018 model T-300 Trench burner or newer, in accordance with the manufacturer’s recommendations, a copy of which shall be provided to the Fire Marshal. The burning of waste other than timber waste is prohibited. Open pit incineration shall be done in accordance with the above-referenced Emergency Management Plan - Construction, except that any open pit incineration shall be set back a minimum of 3,000 feet from any boundary line of the Property. Trenches shall be maintained at depths in accordance with the trench burner specifications and such specifications shall be provided by the Operator to the Fire Marshal. The Operator shall be required to demonstrate sufficient access to proposed trench pit locations for Fire, Rescue, and Emergency Management (“FREM”) vehicles prior to the County issuance of any burning permit. Sufficient access shall be determined by an inspection from the Fire Marshal or designee.”

> **Section 6 should be deleted.** There is already a requirement for a 20 foot fire break around the entire site. The issue with a perimeter road requirement is it will cause a significant impact to wetlands and crossings for the same. We believe prior to final site plan approval we can address adequate FREM access to the entire site.

4. Section E Landscaping, Maintenance, Setbacks and Buffers

> **Section E 3 should be revised as follows:**

“No structure, improvement, or equipment, including but not limited to, solar arrays and supporting structures, shall be located within 415 feet of any residential home (not to include accessory uses) and shall include a minimum 100 foot vegetative buffer around the perimeter of the Property, all in accordance with those certain exhibits submitted by the Applicant titled “SUP 18-0001 Landscape and Buffer Area Plan” and “SUP 18-0001 Landscape and Buffer Details”, dated February 4, 2019, prepared by Kimley Horn and attached hereto and marked collectively as “Exhibit ___”. This shall not apply to construction or maintenance equipment, which is temporary in nature, during the periods when it is actively being used during construction or maintenance activities. This setback shall not apply along any boundary shared between the Property and another property owned by the Operator or as otherwise provided herein.”

> **Section 6 should be deleted as it relates to below Section 8**

> **Sections E 8 through 19 should be deleted and revised as follows:**

“Buffer plantings shall be planted in accordance with the GDP’s Landscaping Plan except that:

- a) Only earth, which is defined as soil, shall be used to create any berms on the Property.
- b) All landscaping and buffers shall be in accordance with those certain exhibits submitted by the Applicant titled "SUP 18-0001 Landscape and Buffer Area Plan" and "SUP 18-0001 Landscape and Buffer Details", dated February 4, 2019, prepared by Kimley Horn and attached hereto and marked collectively as "Exhibit ____".
- c) At site plan, all buffers and berms shall be designed by a certified landscape designer or landscape architect to minimize visibility, maximize survivability and stability, and minimize losses from deer or other wildlife consumption.
- d) All berms shall be landscaped with grass and/or other plantings
- e) Aside from landscaping provided in front of the berms, other plantings to provide a visual buffer shall be placed outside of any landscaped berm, relative to the interior of the Property boundary.
- f) Plant and tree species shall be installed as early as possible following establishment of erosion and stormwater management controls, and shall be selected based upon their ability to provide the desired screening after two (2) years of growth.
- g) A variety of native plants shall be used, which shall be environmentally friendly and compatible with local wildlife.
- h) Any supplemental plantings in buffer areas that are needed to provide additional screening shall be in conformance with the County's DSM. Determination as to whether these supplemental plantings, and whether trees or plants, are needed to meet the screening requirements set out herein, shall be solely at the discretion of the Director of Planning.
- i) Landscaped berms shall be located outside of any fencing, relative to the interior of the Property boundary.
- j) Landscaped berms shall be installed with each phase of the Facility's development during site grading and prior to the driving of pilings within 1,000 feet of the required berm.
- k) Understory vegetation and seeding shall conform with the County approved seed list.
- l) The planting on or within the Dominion easement, as set out in the GDP, on the north side of Catharpin Rd. shall be as depicted in the GDP and plantings shall be a minimum of four (4) feet tall at time of planting.
- m) The landscaping bond as required by Article 6 of the DSM shall be in effect for three (3) years after the planting of landscaping. Because the landscaping is to be done in phases, this bond will not be fully released until the last of the landscaping is completed and three (3) years has elapsed from that date."
- n) Operator shall be responsible for maintaining all planted trees and shrubs.