Report on Conditional Use Permit CUP-4-21 Dogwood Lane Solar, LLC (Apex Clean Energy Holdings, LLC) with Respect to Article 15.2-2232 of the Code of Virginia

Purpose of Review and Scope of Hearing

Purpose: To determine whether the request of Dogwood Lane Solar, LLC (Apex Clean Energy Holdings, LLC) for a Conditional Use Permit for a proposed solar energy facility ("the Application"), as a "public utility facility" under Virginia Code Section 15.2-2232(A), is substantially in accord with the *Lunenburg/Kenbridge/ Victoria Joint Comprehensive Plan 2019-2024* ("the Comprehensive Plan") relative to the general or approximate location, character, and extent of the proposed facility.

Scope of Hearing: Staff has recommended that the Planning Commission review the request for determination under Virginia Code Section 15.2-2232 prior to any review of a Conditional Use Permit (CUP) application. Therefore, the subject hearing is limited in scope to the determination of whether the request made in the Application, file number CUP-4-21, is 'substantially in accord' with the Comprehensive Plan. During this hearing phase, only those facts that pertain to the broader issues of the Comprehensive Plan will be discussed. Should the request be found to be in accord with the Comprehensive Plan, detailed examination of the Application as a Conditional Use Permit will be addressed in additional hearings before the Planning Commission, with a subsequent hearing before the Board of Supervisors. Should the request be found not to be in accord with the Comprehensive Plan, the Application will be dismissed, and no further hearing nor consideration of the Conditional Use Permit will be conducted; the facility proposed in the Application will not receive approval or permissions to build. The Applicant may appeal this action to the Board of Supervisors.

Project Description and Existing Conditions

Description: The facility proposed under CUP-4-21, having a rated capacity of 4 megawatts (4 MW), is classified as a Medium-Scale Solar facility (rated capacity greater than one megawatt (1 MW) and less than five megawatts (5 MW)). The facility is proposed to be developed on two (2) parcels, numbered 035-03-0-2C2 and 035-03-0-2C and owned by Richard W. Harris, currently zoned A-1, Agriculture District, and located in an area of the County having a current and future land use designation as *Agricultural*, characterized as areas "foreseen as slow growth, low density areas…expected to remain primarily agricultural, forest, and rural residential land uses."

The project site is located on the west side of Dogwood Lane, approximately 400' north of the intersection with Route 40, and has an approximate area of 32.48 acres. The site is currently undeveloped, comprised of timberland and open space. The project area of the site (the area within the site used for the construction and operation of the solar energy facility, including security fencing but excluding setbacks and buffer areas) totals approximately 15 acres. The Application indicates the installation of an estimated 9,396 to 13,624 photo-voltaic (PV) fixed tilt solar panels.

Preexisting Site Use/Economic Considerations: Preexisting or recent use of the site is not addressed within the Application; however, it appears that timber was harvested and the site replanted within the last 5-7 years. Adjacent uses and uses within the area are comprised of residential and agricultural uses. The Route 40 corridor between the towns of Victoria and Kenbridge, and the properties with frontage along Route 40 (not including the subject site, or properties adjacent thereto), are located within a designated Virginia Enterprise Zone.

Existing Topography: The Application contains a *Slopes* plan indicating topography of the site. Generally, the site slopes downward from south to north and east to west and it is expected that stormwater would generally flow in these directions. Slopes generally range between 0% to 15%.

Soils: According to the Application, on-site soils are moderately fine-grained sands, humus, and clay, including USGS soil category of Ultisols (red clay soils with high acidity). Soil types found on the property include the following classifications: 5B2 Cecil, 5C2 Cecil, 10C2 Helena, and 13C2 Lignum.

Transportation: The property has direct frontage along and access is proposed from Dogwood Lane; a 20-foot access road is proposed connecting to Dogwood Road through the middle of the fenced portion of the site, the only vehicular access point to the site. The plan indicates that this would be the singular access for construction also, with construction materials to be stored along the interior access road. The finished site would include three (3) parking spaces along the access road, along with a loading/unloading/turnaround space.

Existing Air Quality: Given the sparseness of development and traffic, existing air quality should be acceptable. While no sampling has been done, one can expect low levels of degradation in the area due to its limited accessibility and use.

Existing Demand for Emergency Services: The site and existing use poses no unique demands on emergency services at present.

Adjacent and Surrounding Uses: With the exception of the aforementioned Virginia Enterprise Zone designation for the Route 40 corridor, the areas surrounding the proposed project area share the same land use and zoning characteristics – rural, agricultural, forestry uses – as well as the same land use classifications.

Comprehensive Plan Citations

The Comprehensive Plan includes a *Special Policy Areas* discussion and recommendations on solar facilities (Chapter V, *Special Policy Areas*), as follows:

> ***Policy Area: Solar Facilities***
> *Solar Facilities are acres of raw farm land covered with solar panels which enable the owner of the solar facilities to capture sunlight, convert that sunlight into electrical energy and then sell that electricity to the utility company.*

Solar facilities are located in areas with availability of large tracts of land at low costs as well as available infrastructure (transmission lines) to support additional capacity. The existing land use of Lunenburg County could make the county's open areas an option for Solar Facilities. The County and the Towns should consider the development of alternative energy production while protecting agriculture, forestry lands and watersheds that the county enjoys.

Alternative energy production may be considered by the County and Towns as an attraction to expand employment opportunities and for companies interested in supporting solar development in communities where they are located.

Recommendations:
The County and Town Planning Commissions should consider safe development of solar energy that minimizes impacts to land uses, properties, and the environment, particularly for economic development purposes. They should develop reasonable conditions for the development of Solar Facilities which will protect the character of surrounding properties and will not limit future property development. Any County or Town planning measures which address Solar Facilities siting should also have an effective decommissioning plan developed and funded by the Solar developer before installation.

Additionally, the following Comprehensive Plan citations should be considered:

- Chapter V, *Special Policy Areas, Policy Area: Loss of Agricultural Land and Open Space*, references that "Future residential, commercial and industrial development should be encouraged to locate in areas where adequate public services are available or planned. Any development that does occur in the rural areas should be designed to incorporate significant open spaces and designed to minimize environmental impacts on the land and water resources," and that "Environmental impacts of any newly planned development area should be considered. It is essential to maintain a balance between development and preservation objectives throughout the area." This section recommends that "Commercial and/or industrial developments that are approved in the rural portions of the County should be consistent with the best interest of the community."

- Chapter V, *Special Policy Areas, Policy Area: Protection of Water Resources*, references that surface water resources within the County "provide recreational opportunities and are a critical component of the County's infrastructure and quality of life. As such, protection and enhancement of these water resources should be a primary object of the County and the Towns."

- Chapter V, *Special Policy Areas, Policy Area: Corridor Development*, notes that road corridors, including Route 40, "maintain a high level of service," and that "Future development along these roads should be planned and designed to ensure that the safety and capacity of these roads are maintained and managed," and further references that road corridors including Route 40 are important "as "gateways to the County and Towns" these roads create first impressions to visitors coming into the area. The views and character of development is visible from the roadways. Maintenance and enhancement of

these gateways can be critical to the success of the economic development and marketing activities in Lunenburg County, the Town of Kenbridge and the Town of Victoria."

- Chapter VI, *Goals, Objectives, and Strategies*, B., *Economy and Employment*:
    - Goal: Promote the expansion of a diversified economy.
        - Objective 1: Encourage quality industries to locate within the County and Towns.
            - Strategy 4: County Government, and other parties, to promote the area to environmentally friendly industries.
        - Objective 2: Provide adequate land and resources for commercial and industrial uses.
            - Strategy 5: Guide community and industrial uses into areas with adequate public utilities and transportation access.
- Chapter VI, *Goals, Objectives, and Strategies*, C., *Land Use*:
    - Goal: Promote a balance of land uses that meet economic and demographic needs of Lunenburg County, the Town of Kenbridge and the Town of Victoria.
        - Objective 4: Encourage quality industries to locate within the County and Towns.
            - Strategy 1: Encourage industries to locate in the County and Towns' industrial parks or in areas where they are compatible to adjacent uses.
            - Strategy 2: Guide community and industrial uses into areas with adequate public utilities and transportation access.
            - Strategy 3: Work with interest groups to attract new industries to the locality. Encourage industries to locate in the industrial parks or in areas where they are compatible to adjacent uses.
            - Strategy 4: Liaise with the Chamber of Commerce, and other parties, to promote the area to environmentally friendly industries.
- Chapter VI, *Goals, Objectives, and Strategies*, F., *Natural Resources*:
    - Goal: Protect and preserve the natural resources of the community.
        - Objective 1: Prevent development in areas of critical environmental importance.
            - Strategy 1: Restrict development in flood plains, swamps and drainage ways.

- Strategy 2: Restrict development on soils that will not adequately support structures.
- Strategy 4: Identify and protect all open spaces which have recreational potential or which would enhance the environment in Lunenburg County, the Town of Kenbridge and the Town of Victoria.
- Strategy 5: Promote the preservation and planting of trees, shrubs and other natural foliage.

Applicant's Position

With respect to conformity with the Comprehensive Plan, the Applicant notes the following within the *Project Narrative*:

> Conformity with Lunenburg County Comprehensive Plan
> Section 15.2-2232 of the Code of Virginia provides that any *"public utility facility or public service corporation facility… whether publicly or privately owned, shall [not] be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the [applicable Planning Commission] as being substantially in accord with the adopted comprehensive plan or part thereof."*
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> The Applicant requests that the Planning Commission determine that the Project is substantially in accord with the 2019 – 2024 Lunenburg/Kenbridge/Victoria Joint Comprehensive Plan (CP). The Project supports the County's vision values, and goals, as outlined in the CP. In short, the Project diversifies the local tax base and provides significant local revenue that are not offset by demand for public services. Key themes relating to solar land use in the CP:
>
> **1. Promote the expansion of a diversified economy**
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> A primary goal of the CP is to *"Promote the expansion of a diversified economy"* (CP, pg. 123). Dogwood Lane Solar Farm will provide a significant boost to the local economy as evidenced by the construction of solar projects in the region including Halifax, Greensville, Sussex, and Southampton. Solar energy is among the fastest growing industries in the nation and is especially vibrant in the Commonwealth of Virginia. Further, most employers require access to non-fossil, renewable energy when deciding as to where to locate facilities.
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> The adoption of this growing field can lead to direct economic boosts during construction and long-term economic gains by the local economy and may serve to attract further business development to the region. Additionally, the Project will directly generate significant revenue for the County as described herein.

2. **Land Use: Promoting Balance and Clean-Living**

   An additional goal and related objective of the CP is to "promote a balance of land uses that meet economic and demographic needs" (CP p. 125); and to "promote a clean living environment" (CP p. 126). As mentioned elsewhere in this application, the nature of Virginia's Shared Solar program is to provide affordable renewable energy to Virginian's, and the power generated by this Project can be subscribed to by Lunenburg County residents. In addition, the construction methodology for this Project will have very little impervious service, estimated to be approximately 1.5% of the entire acreage that is being dedicated to the Project (see Section 5, Site Plan). Furthermore, by establishing native ground cover, the Project has the potential to increase water infiltration in the area and boost soil organic matter. We will also keep in place and work around natural vegetative buffering as much as possible, and the Project will install vegetative screening in areas to protect public viewsheds.

3. **Protecting Natural Resources**

   A primary goal of the CP is to *"Protect and preserve the natural resources of the community."* (CP p. 130). Embracing Projects like Dogwood Lane Solar Farm over higher-polluting alternatives helps to ensure a better quality of essential resources such as air and water. Solar facilities conform to the physical characteristics (including wetlands and topography) of the land. While they may displace agricultural or silviculture uses in their immediate footprint, they do not permanently alter the land in a way that would preclude it from returning to its current use at the end of the solar facility's life.

Staff Analysis and Comments

Staff has reviewed and analyzed the Application and the above referenced Comprehensive Plan citations to determine whether the project is substantially in accord with the Comprehensive Plan.

With respect to the *Solar Facilities* policy area, Staff is of the opinion that the proposed facility can be characterized as safe development that minimizes, or will minimize through reasonable conditions, impacts to land uses, properties, and the environments.

With respect to the *Loss of Agricultural Land and Open Space* policy area, Staff finds it notable that the project site is in close proximity to the Route 40 corridor; while there is not significant commercial development in this area currently, it is not unanticipated given the Enterprise Zone designation. Generally, significant areas of the project will remain undeveloped and the project is designed to minimize environmental impacts, and/or such impacts will be minimized through reasonable conditions.

With respect to the *Protection of Water Resources* policy area, Staff is of the opinion that the project will be subject to Virginia Department of Environmental Quality regulations and permitting, which will work to ensure protection of the County's water resources.

With respect to the *Corridor Development* policy area, Staff is of the opinion that the proposed development, including the construction phase, will not negatively impact the level of service, safety, or capacity of the Route 40 corridor. Additionally, it is not anticipated that the proposed development will be visible from Route 40.

With respect to applicable *Economy and Employment* goals, objectives, and strategies. Staff is of the opinion that the proposed development works to expand a diversified economy within the County, and would constitute an environmentally friendly industrial use, primarily due to the proposed scale of operation, generally sited in an area with adequate and necessary utility access.

With respect to applicable *Land Use* goals, objectives, and strategies, while the area has adequate and necessary utility access and constitutes a more environmentally friendly industrial use, it is not inherently compatible with adjacent uses, which are almost entirely residential and agricultural. Significant setbacks and buffers/screening work to mitigate for this incompatibility and additional reasonable conditions should be considered as part of the review of the Conditional Use Permit.

With respect to applicable *Natural Resources* goals, objectives, and strategies, Staff is of the opinion that the proposed development does not negatively impact natural resources of the County, especially areas of critical environmental importance. Staff acknowledges that the project works to promote the preservation of existing trees by retaining existing vegetated areas along the periphery of the site, and would suggest that additional reasonable conditions to support the long-term maintenance of these areas be considered as part of the review of the Conditional Use Permit. Additionally, Staff would suggest that further review and consideration be given as part of the review of the Conditional Use Permit to the potential impacts of the project on the isolated wetland to the east.

Staff Conclusions and Recommendations

Staff has analyzed the applicable elements of the Comprehensive Plan referenced above, and the proposed location, character, and extent of the project appears to be consistent with the overall policies, goals, objectives, and strategies of the Comprehensive Plan, or reasonably expected with the imposition of conditions as part of the review of the Conditional Use Permit. Subject to further review of the Conditional Use Permit, Staff is of the opinion and recommends that the proposed utility-scale solar facility is substantially in accord with the Comprehensive Plan, or parts thereof.

As noted at the beginning of this Report, the question before the Planning Commission with this 2232 review is whether the general location or approximate location, character, and extent of the proposed solar energy facility is substantially in accord with the Comprehensive Plan or part thereof. Staff suggests that the Planning Commission consider all relevant portions of the

Comprehensive Plan in its analysis, and carefully and thoroughly document the reasons and basis for the action which the Commission takes. Options for Commission action are as follows:

1. By motion, determine that the application is substantially in accord with the Comprehensive Plan, with written reasons for the decision;

2. By motion, determine that the application is not substantially in accord with the Comprehensive Plan, with written reasons for the decision; or

3. By motion, defer action on the review at this time and continue for further discussion and consideration (within the 60-day window).

Draft Planning Commission Actions

Option 1 - Applicant's proposal is substantially in accord with the Comprehensive Plan

I move that Dogwood Lane Solar, LLC's proposed 4-megawatt photovoltaic solar energy facility, as described in the conditional use permit application CUP-4-21, is substantially in accord with the Lunenburg County Comprehensive Plan, or parts thereof, for the following reasons:

1. The proposed solar facility can be characterized as safe development that minimizes, or will be expected to minimize through conditions, impacts to land uses, properties, and the environments.

2. The location of the proposed solar facility, while in a less developed area, is in close proximity to the Route 40 corridor, where some level of commercial development is anticipated; and further, significant areas of the project will remain undeveloped and the project is designed to minimize environmental impacts, and/or such impacts will be minimized through reasonable conditions.

3. The project will be subject to Virginia Department of Environmental Quality regulations and permitting, which will work to ensure protection of the County's water resources.

4. The proposed development, including the construction phase, will not negatively impact the level of service, safety, or capacity of the Route 40 corridor. Additionally, it is not anticipated that the proposed development will be visible from Route 40.

5. The proposed development works to expand a diversified economy within the County, and would constitute an environmentally friendly industrial use, primarily due to the proposed scale of operation, generally sited in an area with adequate and necessary utility access.

6. The area of the proposed project has adequate and necessary utility access and the project constitutes a more environmentally friendly industrial use; while not

inherently compatible with adjacent uses, which are almost entirely residential and agricultural, significant setbacks and buffers/screening will work to mitigate for this incompatibility and additional conditions can considered as part of the review of the Conditional Use Permit.

7. The proposed development does not negatively impact natural resources of the County, especially areas of critical environmental importance. Further, the project works to promote the preservation of existing trees by retaining existing vegetated areas along the periphery of the site.

The Secretary of the Planning Commission is directed to communicate the Planning Commission's findings to the Board of Supervisors.

<u>Option 2 - Applicant's proposal is not substantially in accord with the Comprehensive Plan</u>

I move that Dogwood Lane Solar, LLC's proposed 4-megawatt photovoltaic solar energy facility, as described in the conditional use permit application CUP-4-21, is not substantially in accord with the Lunenburg County Comprehensive Plan, or parts thereof, for the following reasons:

1. The proposed solar facility cannot be characterized as safe development and does not minimize impacts to land uses, properties, and the environment.

2. The location of the proposed solar facility is a rural area, the amount of undeveloped area within the project is insufficient and the project is not designed to minimize environmental impacts.

3. Despite being subject to Virginia Department of Environmental Quality regulations and permitting, the project will have negative effects on the County's water resources.

4. The proposed development, including the construction phase, will negatively impact the level of service, safety, and capacity of the Route 40 corridor. Additionally, the development will be visible from Route 40, and would not be considered an enhancement to the corridor, thereby being detrimental to the County's economic development and marketing activities.

5. The proposed development does not work to expand a diversified economy within the County, and, given the scale of the proposal, would not constitute an environmentally friendly industrial use; furthermore, utility and transportation access to support the development are inadequate.

6. The proposed project is not compatible with adjacent residential and agricultural uses; setbacks and buffers/screening are insufficient, and cannot be improved in a manner that would improve the compatibility of the project with adjacent uses.

7. The proposed development negatively impacts natural resources of the County, especially areas of critical environmental importance such as existing stands of trees and the isolated wetland to the east of the project site.

The Secretary of the Planning Commission is directed to communicate the Planning Commission's findings to the Board of Supervisors.

Option 3 – Deferral of the application

I move that the Planning Commission defer a decision on Dogwood Lane Solar, LLC's request under Va. Code § 15.2-2232 regarding its proposed 4-megawatt photovoltaic solar energy facility, as described in the conditional use permit application CUP-4-21, until the Planning Commission meeting scheduled to begin at _____ p.m. on _____, in the _____ meeting room.