FORT GRATIOT PLANNING COMMISSION SPECIAL LAND USE REVIEW					
Project Name:	Portside Solar, LLC			Parcel ID:	Multiple-See Attached
File Number:	23-003	Meeting Date:	11/08/2023	Location:	Parts of Sections 5, 6, 7, 8, & 17

1. PROJECT SUMMARY

PROPERTY OWNER(S)	APPLICANT:	
Multiple – See Attached	Paul Harris, Portside Solar LLC	
	226 N. Morgan St, Ste 200, Chicago, IL 60607	
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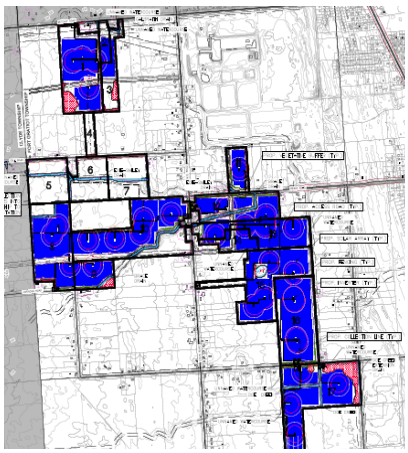
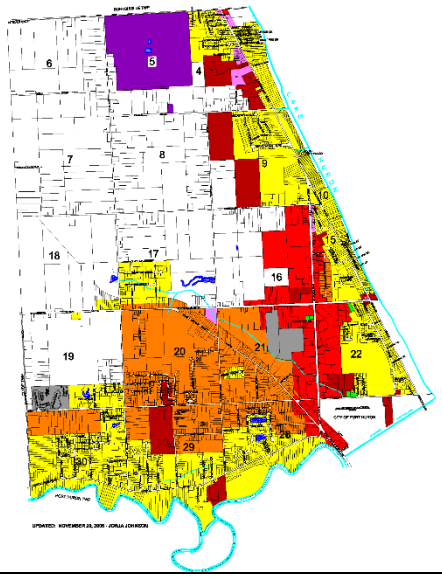
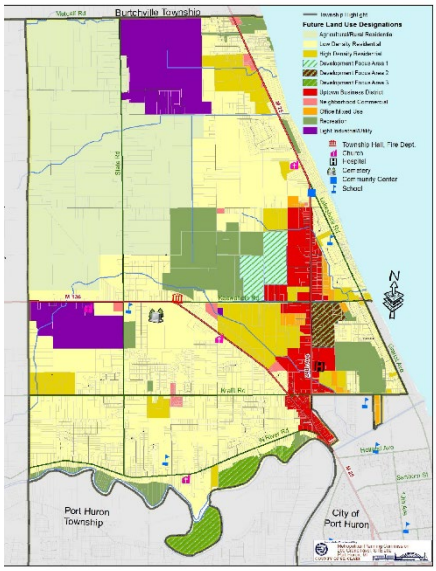
SUBJECT PARCELS	ZONING MAP	FUTURE LAND USE PLAN
		

The applicant, Portside Solar, LLC is requesting special land use approval to build a Large Principal-Use Solar Energy System, as defined in Ordinance 226, which was effective February 8, 2023. Portside Solar, LLC is part of Ranger Power, headquartered in Chicago, Illinois. The application was submitted by Ranger Power co-founder and president, Paul Harris, and Toby Valentino, Ranger Power Development Manager, has been the point of contact for the project.

The project is located on parts of 17 parcels in Fort Gratiot and six parcels in Clyde Township. Four of the Fort Gratiot participating parcels will contain no panels (identified as 4, 5, 6, and 7 on the site plans,) and the substation is existing and on a property in Clyde Township. The remainder of the Fort Gratiot participating parcels are proposed to consist of solar panels and inverters arranged in photovoltaic (PV) arrays, overhead transmission line to point-of-interconnection, underground electrical cables to collect the generated power and transmit it to the project substation, perimeter wildlife friendly fencing, landscaping, and screening, and gravel access roads to each PV array. Fencing surrounds the array sections and will be behind the required screening and landscaping. There are areas of existing wetlands which cannot be disturbed, and there is minimal lot clearing proposed or permitted for these sites. The project will include up to 100 MW (megawatts) of photovoltaic solar panels that will be sited within fenced areas. Of the 100 MW capacity generated by the project, approximately 75 MW on approximately 527 acres is proposed within Fort Gratiot. Land use within the Project Area is agriculture and undeveloped woodlots. According to the applicant, the participating parcels were selected based on land use, interest from landowners, and proximity to existing electrical grid infrastructure.

Portside Solar submitted an application packet consisting of an introduction, statements of compliance with Ordinance 226 for solar energy systems and Section 38-486- Required standards and findings for making determinations for special approval uses, site plans, sound and glint/glare studies, decommissioning plan, personal property tax assessment and projections, and real estate property value impact for adjacent properties report.

The Planning Commission will consider the public health, safety and welfare of the public, the statement of purpose of the district, compliance with Ordinance 226, Solar Energy Systems, all state and federal laws, and applicant submitted data, against the following standards in making a determination.

Sec. 38-486. Required standards and findings for making determinations.
The planning commission shall review the particular circumstances and facts of each proposed use in terms of the following standards and required findings, and shall find and record adequate data, information, and evidence showing that such a use on the proposed site, lot, or parcel meets the following requirements:

(1) Will be in accordance with the general objectives, intent, and purposes of this chapter.
a. Will be consistent with maintenance of the public health, safety, and welfare.
b. Will be of such location, size, and character that it will be in harmony with all applicable regulations of the zoning district in which it is to be located.

In January, 2023, the Fort Gratiot Board of Trustees, after recommendations from both the Fort Gratiot Planning Commission and the St. Clair County Metropolitan Planning Commission, adopted an Ordinance 226 regulating solar energy systems (SES.) The preliminary site plan meets the general requirements for Large Principal-Use SES. Additional county, state and federal approvals would be required prior to final approval and the commencement of construction.

Sec. 38-141. Statement of purpose. AG agricultural districts are those open areas of the township where farming, dairying, forestry operations, and other rural activities are found. Vacant land, fallow land and wooded areas also would be Included where such areas are interspersed among farms. Gradually, and based upon a logical comprehensive development plan, AG agricultural districts may be converted to other land uses. The AG agricultural district protects land needed for agricultural pursuits from encroachment by untimely and unplanned residential, commercial, and industrial development.

Following are the permitted uses and special approval uses identified for the AG district:

Sec. 38-142. - Permitted uses. (Permitted administratively, and in some cases, also with site plan approval.)
(1) Single-family detached dwellings.
(2) State-licensed residential facilities, as required by Section 16a of Public Act No. 184 of 1943 (MCL 125.286a).
(3) Family day care homes, as required by Section 16g of Public Act No. 184 of 1943 (MCL 125.286g).
(4) Farm buildings and greenhouses.
(5) Farms and agricultural activities including the raising or growing and storage or preservation of crops, sod, plants, trees, shrubs, nursery stock, and private stables, but not including feedlots or the raising of fur-bearing animals.
(6) Sale of agricultural products raised or grown on the farm premises including roadside stands for such sales, as regulated by section 38-679, and sale of agricultural related items such as seeds and fertilizers when carried on entirely within the dwelling or accessory buildings and only when carried on as an accessory use to a farm.
(7) Publicly owned and operated parks, parkways, and recreational facilities.
(8) Public and parochial elementary, intermediate, and secondary schools.
(9) Garage sales, yard sales, or similar types of sales, provided that no such sale shall take place for a period of more than seven days, and no residence shall be permitted more than two such sales per year.
(10) Accessory buildings, structures, and uses customarily incidental to any of the above uses when located on the same property.
(11) Roof-Mounted, Accessory Ground-Mounted, and Building-Integrated Solar Energy Systems as provided in sec. 38-636 (b.)
(12) Solar Energy Systems – Small Principal-Use subject to Site Plan Approval, as provided in sec. 38-636 (c.)

Sec. 38-143. - Special approval uses. (Only permitted after a public hearing per Chapter 38, Article 4)
The following uses may be permitted by the planning commission after public hearing and review of the proposed site plan, subject to the specified standards for each particular land use itemized in this section and subject to the general standards to guide the actions of the planning commission as specified in section 38-486. Approval of all uses is subject to the procedures set forth in article IV of this chapter.
(1) Group day care homes, as required by Section 16g of Public Act No. 184 of 1943 (MCL 125.286g).
(2) Feedlots and raising of fur-bearing animals as provided in section 38-501.
(3) Golf courses, not including driving ranges or miniature golf courses as provided in section 38-505.
(4) Summer housing and migratory labor camps used for seasonal labor, between April 1 and November 15, provided that any such building or structure complies with the following regulations:

a. All buildings or structures shall be maintained in a safe and sanitary condition and shall be furnished with a safe and sanitary water supply and with sewage disposal facilities which are no less than those required by the county and state health departments.

b. All buildings or structures shall be so located so as to comply with regulations for structures in an AG agricultural district as set forth in division 12, article III of this chapter, with the exception that no building shall be located nearer than 50 feet to any side property line.

(5) Airports, airfields, runways, hangars, beacons, and other facilities involved with aircraft operations as provided in section 38-525.
(6) Public utility buildings, telephone exchange buildings, electric transformer stations, but not including storage yards; when operation requirements necessitate the locating within the district in order to serve the immediate vicinity as provided in section 38-499.
(7) Home occupations as provided in section 38-502.
(8) Public and commercial stables, kennels and animals clinics as provided in section 38-508.
(9) Cemeteries when located on sites of 50 acres or more, as provided in section 38-524.
(10) Quarries, mining, and extraction as provided in section 38-496.
(11) Large scale outdoor recreational uses, as provided in section 38-507.
(12) Private noncommercial recreational areas as provided in section 38-506.
(13) Government buildings as provided in section 38-504.
(14) High pressure gas or high voltage electric transmission lines as provided in section 38-491.
(15) Gun clubs, shooting and archery ranges as provided in section 38-523.
(16) Public and private colleges and universities as provided section 38-510.
(17) Nursery schools, day nursery, and child care centers as provided in section 38-509.
(18) Uses similar to the uses described in this section.
(19) Accessory buildings, structures, and uses customarily incident to the uses described in this section.
(20) Solar Energy Systems – Large Principal-Use as provided in sec. 38-636 (d.)

(2) Will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, or that persons or agencies responsible for establishment of the proposed use shall be able to provide adequately any such service; will be of a nature that will make vehicular and pedestrian traffic no more hazardous than is normal for the district involved, taking into consideration vehicular turning movements in relation to routes of traffic flow, proximity and relationship to intersections, adequacy of sight distances, location and access of off-street parking and provisions for pedestrian traffic with particular attention to minimizing child-vehicle contacts in residential districts.
Solar arrays require little to no public services and generate minimal traffic once completed. Construction permits, bonds, and traffic control must be coordinated with the St. Clair County Road Commission, including documenting road conditions prior to beginning construction and a mechanism to hold the applicant responsible for any construction caused issues. Coordination with and approval from the Fort Gratiot Fire Department would be required if approved. The plan as proposed can be adequately served by existing services and conditions.

(3) Will be compatible with adjacent uses of land and the natural environment.

a. Will be of such location, size, and character that it will be in harmony with the appropriate and orderly development of the surrounding neighborhood.

b. Will be designed such that the location, size, intensity, site layout and periods of operation of any such proposed use shall eliminate any possible nuisance emanating there from which might be noxious to the occupants of any other nearby permitted uses, whether by reason of dust, noise, fumes, vibration, smoke, or lights.

c. Will be designed such that the proposed location and height of buildings or structures and location, nature and height of walls, fences and landscaping will not interfere with or discourage the appropriate development and use of adjacent land and buildings.

d. Will not cause substantial injury to the value of other property in the neighborhood in which it is to be located.

The USDA Natural Resources Conservation Center Land Capability and Farmland Classifications. The lands within the project are classified as follows:

Parcels & Proposed Use	Land Capability Class/Subclass	Farmland Classification
1-3: panels/other 4: no panels, underground only	2w, 3w and 4s	Farmland of local importance; and Prime farmland if drained
5-7: no panels, underground only 8-10: panels/other	2w, 3w	Farmland of local importance; and Prime farmland if drained
11-17: panels/other	2w, 3w, 5w & 7s	Farmland of local importance; and Prime farmland if drained; and Not prime farmland

- Class 2w soils have moderate limitations that restrict the choice of plants or that require moderate conservation practices; water in or on the soil interferes with plant growth or cultivation. In some soils, the wetness can be partly corrected by artificial drainage. Ponding, a high water table, and/or flooding affect these soils.
- Class 3w soils have severe limitations that restrict the choice of plants or that require special conservation practices, or both; water in or on the soil interferes with plant growth or cultivation. In some soils, the wetness can be partly corrected by artificial drainage. Ponding, a high water table, and/or flooding affect these soils.
- Class 4s: Soils have very severe limitations that restrict the choice of plants or that require very careful management, or both; limitations within the root zone, such as shallowness of the root zone, a high content of stones, a low available water capacity, low fertility, and excessive salinity or sodicity. Overcoming these limitations is difficult.
- Class 5w soils are subject to little or no erosion but have other limitations, impractical to remove, that restrict their use mainly to pasture, rangeland, forestland, or wildlife habitat; water in or on the soil interferes with plant growth or cultivation. In some soils, the wetness can be partly corrected by artificial drainage. Ponding, a high water table, and/or flooding affect these soils.
- Class 7s soils have very severe limitations that make them unsuitable for cultivation and that restrict their use mainly to grazing, forestland, or wildlife habitat; limitations within the root zone, such as shallowness of the root zone, a high content of stones, a low available water capacity, low fertility, and excessive salinity or sodicity. Overcoming these limitations is difficult.

USDA details and maps in Packet Attachment #7

Michigan Department of Agriculture and Rural Development (MDARD) Policy for Allowing Commercial Solar Panel Development on PA 116 Lands. In June, 2019 Governor Whitmer convened a workgroup chaired by Gary McDowell, then director of the Michigan Department of Agriculture and Rural Development, the agency administering the PA 116 preservation program, where a new policy allows for solar panels on preserved farmland if the land is necessary to complete a larger commercial solar farm was created. Farmers could not claim tax credits while using their land for solar power, but their preservation agreements could resume once their contracts with solar power developers ran out. At that point, the land would still be available for farming, state officials said. Landowners who take advantage of the policy must plant cover crops — include pollinator habitats — beneath the solar panels to reduce erosion and keep soil fertile. The policy also allows solar panels for personal use as long as they are consistent with the farming operation. "This administrative decision will not result in a loss of usable farmland," McDowell said in a statement. "The change ensures that Michigan's farmland is preserved so we can continue to feed our communities while also balancing the need to develop renewable energy sources."

The MDARD policy, last updated in March, 2023, determined that the placement of structures for commercial solar energy generation on property enrolled in the Farmland Development Rights Program is consistent with farming operations and is consistent with the purposes of the statute (MCL 324.36101; 324.36104 and 324.36104(a)) and may permit solar energy development on lands enrolled in the Farmland Development Rights Program as long as certain conditions are met. *(MDARD Policy in Packet Attachment #8)*

The 2020-2025 Master Plan land use plan identifies approximately 2,023 acres of active agricultural land and approximately 2,700 acres of vacant, open space and park land. The participating parcels included in the project area are approximately 875 acres, with a proposed panel potential acreage of 528. This is approximately 25% of farmed land, although agricultural would still remain the third largest percentage of land use in Fort Gratiot should the project be approved. *(Master Plan Land Use Map and Chart in Packet Attachment #10)*

Nuisances. When reviewing other uses permitted by right or special approval, and being recognized by the State of Michigan as an agricultural/agrivoltaic use, the proposed solar array is consistent with greenhouse and similar farming operations, and is not anticipated to produce the dust and vibration created by planting and harvesting, odor from livestock and herbicide, pesticide, and biosolid applications, or equipment traffic on the roadways.

Sound emanating from inverters, proposed to be a minimum of 350' from any property line, is shown as meeting the required 45 decibel maximum at the property line of a non-participating lot, and is limited to daylight times.

Any accessory structures required for the project cannot exceed the maximums for the district, 16'. The proposed panels do not exceed 11' at maximum tilt. No lighting is proposed, flashing or intermittent lights are prohibited, and any light fixtures, when present, must be downlit.

Throughout the life of the project, the applicant must not only comply with any site plan and special land use provisions and conditions, but to all ordinances, including section 38-634 – Performance Standards. This section defines nuisances and gives Fort Gratiot enforcement authority.

Property value impact. The applicant has submitted a Real Estate Adjacent Property Real Estate Impact Report in Appendix I. Research shows a variety of impacts, from minimal to great, and much of it anecdotal, due partly to the fact that the use is relatively new to Michigan markets, with little to no data in St. Clair County.

(4) Will promote the use of land in a socially and economically desirable manner; will relate harmoniously with the physical and economic aspects of adjacent land uses as regards prevailing shopping habits, convenience of access by prospective patrons, continuity of development, and need for particular services and facilities in specific areas of the township.

The surrounding areas include the Great Lakes Water Authority water treatment facility, public parks, rural residential and active farms. Public Act 116 ("PA 116") was originally enacted with the goal of encouraging and preserving farmland in Michigan. Under PA 116, farmers could enter into agreements with MDARD to keep certain lands restricted to agricultural use for at least 10 years. In exchange, the landowners receive tax breaks and exemptions from special assessments. The prior interpretation of PA 116 had the effect of restricting solar development, but under MDARD's new policy, farmers can rent land to solar companies for energy developments while keeping the land enrolled in the PA 116 program. Essentially, the PA 116 status is paused while the land is leased for a solar installation, and upon full decommissioning, the remaining years are restarted and the tax incentives return. If a farmer chooses to sell the land, it could be developed into uses such as a subdivision, which permanently destroy the farmland. This policy is intended to encourage farmers to help preserve farmland, as the solar arrays are considered temporary in nature, and if enrolled in PA 116, the land is guaranteed to remain in the preservation inventory for the life of the project, plus the term of the PA 116 agreement, while helping meet state renewable energy goals.

CONSIDERATIONS:

The decision to approve or deny **MUST** be accompanied by findings of fact and reasons for such. A few items of note for the Planning Commission to consider are whether the applicant has reasonably demonstrated compliance with or satisfactorily answered, and compatibility with Fort Gratiot's goals and missions, include:

- Panel component safety
- Panel end of life plan
- Reasonable land use percentage
- Preserving farmland by permitting a long-term temporary use
- Property value impacts
- Renewable energy initiatives

Relationship Between the Master Plan and Zoning

The Michigan Zoning Enabling Act, Public Act 110 of 2006, provides that "the zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability" and "to limit the improper use of land." This Master Plan is adopted to help provide a strong legal basis for the Township's zoning ordinance and thus contains a zoning plan element which details the zoning district and use regulations of the ordinance.

However, adoption of the master plan does not directly control land use. Such control is left to the zoning ordinance (including the zoning map), to land division regulations, and to other local ordinances. Implementation of the master plan is carried out through final decisions on rezonings, special land use permits, site plan and plat approvals, as well as by the expenditure of township funds on various capital improvements.

State Initiatives

Pursuant to Executive Directive No. 2020-10 issued by Governor Gretchen Whitmer on September 23, 2020, *Building a Carbon-Neutral Michigan*, Acting under sections 1 and 8 of article 5 of the Michigan Constitution of 1963, subsection 1 states, "Michigan will aim to achieve economy-wide carbon neutrality no later than 2050, and to maintain net negative greenhouse gas emissions thereafter. To ensure steady progress toward this ultimate statewide goal, and to prevent irreparable harm to our ecosystem, residents, and businesses in the interim, the state will aim to achieve a 28% reduction below 1999 levels in greenhouse gas emissions by 2025." (full directive submitted in 10/10/2023 packet) There have been several actions taken by state and federal departments calling for activities which will meet these goals, and many Michigan communities are seeing requests for projects like Portside Solar as a result.

On November 2, 2023, the Michigan House of Representatives passed House Bills 5120 (with 24 last minute amendments introduced late Thursday night) and 5121, which preempt local control over siting and regulation of renewable energy projects and gives control to the Michigan Public Service Commission, unless the municipality has a "compatible renewable energy ordinance," meaning language which is no more restrictive than PA 342 of

2016, the Clean and Renewable Energy and Energy Waste Reduction Act, Part 8. The bills are expected to pass sometime before November 9, 2023.

This is an important development, as there are parts of the Fort Gratiot ordinance which are more restrictive and may not meet the "compatible" threshold. The biggest threats to Fort Gratiot in the bills are the decommissioning and lack of required notices to adjacent property owners. Fort Gratiot requires 100% of the decommissioning costs upfront, the state only requires 25% at the start of full commercial operation, after construction is complete.

Fort Gratiot:

(1) Decommissioning: A decommissioning plan is required at the time of application, with periodic administrative review, regulated as follows:
   a. The decommission plan shall include:
      i. The anticipated manner in which the project will be decommissioned, including a description of which above-grade and below-grade improvements will be removed, retained (e.g. access drive, fencing,) or restored for viable reuse of the property consistent with the zoning district; and
      ii. The projected decommissioning costs for removal of the SES (net of salvage value in current dollars) and soil stabilization, less the amount of the surety bond posted with the State of Michigan for decommissioning of panels installed on PA 116 lands; and
      iii. The method of ensuring that funds will be available for site decommissioning and stabilization in the form of surety bond, irrevocable letter of credit, or cash deposit.
   b. A review of the amount of the performance guarantee based on inflation, salvage value, and current removal costs shall be completed every 5 years, for the life of the project, and approved by the board.
   c. An SES owner may at any time:
      i. Proceed with the decommissioning plan approved by the or Planning Commission and remove the system as indicated in the most recent approved plan; or
      ii. Amend the decommissioning plan with Zoning Administrator approval and proceed according to the revised plan.
   d. Decommissioning an SES must commence when the soil is dry to prevent soil compaction and must be complete within 12 months after abandonment. An SES that has not produced electrical energy for 12 consecutive months shall prompt an abandonment hearing.

MPSC:

A decommissioning plan that includes financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, in an amount at least equal to the estimated cost of decommissioning the facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning hired by the applicant. The financial assurance could be posted in increments as follows:

- At least 25% by the start of full commercial operation.
- At least 50% by the start of the fifth year of commercial operation.
- 100% by the start of the tenth year of commercial operation.

Notification of a project is only required to be in a newspaper of general circulation or the comparable digital alternative, which is inconsistent with the Zoning Enabling Act. In the state version, as passed, there are larger minimum setbacks, but no requirement for screening from adjacent parcels or road rights-of-way, and 10 decibels higher maximum sound levels.

See *Legislative Analysis Complete to 10/30/2023* in Packet Attachment #9. Two amendments not included in the LA are page 7, 150' is 300' regarding nonparticipating property setbacks, and page 10, the bills were passed with immediate effect.

ACTIONS: Regardless of the action taken, the decision MUST be accompanied by reasons for such action.

1. Deny the request; or
2. Approve the request as presented; or
3. Approve the request with specific conditions per Section 38-487.

** Or any other action as determined by the Planning Commission. Action should include the reasons and basis for the decision clearly and accurately. Section 38-488 requires a decision within 30 days of public hearing.*

Reasons: Demonstrated compliance/non-compliance/other with the provisions in Section 38-486, Required standards and findings for making determinations, specifically: _____

If conditional approval is determined, Special Land Use conditions may be imposed: Upon review of the application and receiving comment during the public hearing, and comments received via email, mail, or otherwise, if the Planning Commission finds sufficient evidence to approve, conditions are recommended.

Sec. 38-487. If the facts in the case establish that the findings and standards set forth in this chapter apply to the proposed use, and have been met, the planning commission may impose such reasonable conditions of use as is determined necessary to protest the best interest of the township and the surrounding property, and to achieve the objectives of this chapter. Conditions imposed shall meet all the following requirements:

(1) Be designed to protect natural resources, the health, safety, and welfare and the social and economic wellbeing of those who will use the land use or activity under consideration, residents, and landowners immediately adjacent to the proposed land use or activity, and the community as a whole; and

(2) Be related to the valid exercise of the police power, and purposes which are affected by the proposed use or activity; and

(3) Be necessary to meet the intent and purpose of this zoning chapter, be related to the standards established in the chapter for the land use or activity under consideration, and be necessary to ensure compliance with those standards.

Possible Conditions, based on 38-487 (1) – (3), including, but not limited to:

- 300’ setback from an occupied dwelling to the closest panel.
- 400’ setback from inverter to property lines.
- Panel water runoff testing.
- Parcels #4/74-20-006-4001-400, #5/74-20-006-4005-000, #6/74-20-006-4004-000 and #7/74-20-006-3012-000 are proposed to only contain underground collection lines; adding panels would constitute an expansion of the footprint and would require an additional special land use approval.
- Any other conditions as the Planning Commission determines.