

PORTSIDE SOLAR SETTLEMENT PROPOSAL

I. Settlement Documents

- Consent Judgment
- Decommissioning Agreement
- Host Community Agreement

II. Consent Judgment

1. The Consent Judgment approves Portside's development of the solar facilities on the properties identified on the site plan and grants Portside the right to develop, construct, replace, repair and improve the facility components for the duration of the project.

- The Consent Judgment is an approval of the special land use permit and site plan.
- Development of the solar facility on the property shall be governed by the terms and conditions of the Consent Judgment.
- The construction, maintenance, repair and future improvements to the facility must comply with all applicable building and fire codes.

2. The Consent Judgment dictates all of the terms and conditions of the development notwithstanding any other provisions in the Township Zoning Ordinance.

3. Entry of the Consent Judgment is deemed to be an approval of the site plan that will be attached to and incorporated into the Consent Judgment.

4. The Township agrees to approve and authorize the Township Clerk to execute any Public Act 116 applications for any land that is included in the solar project. This provision is intended to assist land owners whose land may be eligible for Act 116 consideration.

5. Entry of the Consent Judgment is deemed to be an approval of the site plan, special land use request and authority for Portside to develop and operate the solar facility pursuant to the terms of the Consent Judgment.

6. Upon entry of the Consent Judgment, the Township agrees to issue all necessary zoning permit and building construction permits required by applicable building codes to enable Portside to construct the solar facility. Portside is obligated to apply to the construction code official, pay all applicable fees and submit required construction plans and specifications to comply with building codes and fire codes.

7. Portside intends to commence construction of the facility within 18 months of entry of the Consent Judgment but is afforded four six-month extensions by the Consent Judgment.

8. The Consent Judgment permits minor changes to the development without the need for an amendment to the Consent Judgment. Minor amendments include the relocation, increase and/or reduction in a number of structures, access drives, collection lines and the like all within the fence line of the facility. Portside agrees that it will not add any battery energy storage operations as part of the project unless it receives Township approval pursuant to the Zoning Ordinance.

9. Prior to the issuance of any permits, Portside and the Township will execute a Decommissioning Agreement which will bind Portside and any successors and will run with the land. The Agreement will be recorded with the St. Clair County Register of Deeds and will govern the decommissioning of the facility.

10. The Consent Judgment also contains the following additional provisions:

- (a) All landscape screening shall include a vegetative mix of native species including deciduous trees. The vegetative buffer shall be continuously maintained and Portside shall replace any dead material with the same or reasonably similar species as soon as commercially practicable.
- (b) 700' setbacks will be provided from invertors to all nonparticipating residential structures.
- (c) At least 30 days prior to commencing construction, Portside shall escrow \$50,000 with the Township for the purpose of enforcing the 45dba maximum sound limit. The monies may be used for professional fees related to sound monitoring and acoustical studies as well as legal expenses related to enforcement.

In the event it is determined that the invertor exceeds 45dba for a period of one hour at the property line of an adjoining nonparticipating lot, Portside must bring the converter into compliance and, if necessary, construct permanent sound walls within two months after receiving necessary construction approvals.

- (d) Portside must provide a water-testing plan to the Township prior to mobilization for construction which requires testing of water runoff from panels. The water testing plan will include an initial analysis within six months after completion of construction and then once every two years thereafter until decommissioning.
- (e) Portside may only use solar panels that are not manufactured with cadmium telluride as a panel component.
- (f) Portside must dispose of panels at a recycling center or landfill located outside of St. Clair County.
- (g) Portside is required to move panels that are physically damaged beyond repair as soon as commercially practicable.
- (h) Portside must respond to complaints from residential property owners within ten (10) days of receipt of a complaint.
- (i) Portside shall commission a roadway survey of the transportation routes to be used during the construction process and provide a copy of the survey to the Township and St. Clair County Road Commission. Following the completion of construction, Portside must restore the road to a substantially similar condition as reflected in the road survey and is required by the Road Commission. Portside will be responsible for all costs incurred in the road repair.
- (j) Prior to commencement of construction, Portside will execute a Host Community Agreement consistent with the requirements of Act 233.
- (k) Portside shall install perimeter fencing with a height of at least seven feet.
- (l) The solar panel components will not exceed a maximum height of 15' above ground when the arrays are at full tilt.
- (m) Portside will insure that all physical construction activities will occur between the hours of 7:00 a.m. and 7:00 p.m.
- (n) Portside will train at its sole cost and expense the Township Fire Department relating to the operation of the solar facility.

11. The Consent Judgment will be binding on Portside as well as its successors and assigns.

12. The Consent Judgment once signed and approved by the Court will be recorded with the St. Clair County Register of Deeds, shall be deemed to be a covenant running with the land and shall bind all properties in perpetuity.

13. Portside will have the right to assign all of its rights and obligations pursuant to the terms of the Consent Judgment and Agreements as long as the successor acknowledges in writing its obligation to assume all of Portside's obligations under the Consent Judgment and Agreements and provide equivalent financial security for the decommissioning of the solar facility.

14. Pursuant to the terms of the Consent Judgment, the St. Clair County Circuit Court retains continuing jurisdiction to insure both parties abide by the terms and conditions of the Consent Judgment. In the event there is a dispute regarding compliance and the Court rules in favor of one of the parties, the prevailing party is entitled to recover costs and attorney fees in pursuing the matter in Circuit Court.

15. The Consent Judgment provides that both parties forever release the other from any liability for claims and damages costs, interest or attorney fees arising out of this litigation. All claims brought by Portside against Fort Gratiot Township and the Planning Commission are forever barred.

16. The Consent Judgment may not be amended except by written agreement submitted by both parties. The Township is under no obligation now or in the future to ever agree to an amendment although may do so upon Board approval.

III. Decommissioning Agreement

1. At the time of execution of the Consent Judgment, the Township and Portside Solar will sign a Decommissioning Agreement ("Agreement").

2. The Agreement sets forth the terms and conditions for the removal of all above grade structures, concrete, piping, facilities and other materials related to the project.

3. The Agreement requires Portside to provide financial security for the estimated actual cost of decommissioning the project once it is abandoned. As of the date of the Agreement, the estimated actual cost is \$674,344.40.

4. Portside will be required at the time of execution of the Agreement to provide an irrevocable letter of credit which guarantees the Township that in the event Portside or its successor fails to perform its obligations once the project is abandoned, the Township will have sufficient funds to contract for decommissioning.

The letter of credit will be revised every five (5) years to update the estimated decommissioning cost. Portside will be required to reimburse the Township for fees expended by the Township to retain an expert in decommissioning. In the event there is a dispute between the parties regarding the amount of the letter of credit, the Court will determine the appropriate amount.

5. The project will be deemed abandoned when it is no longer operating for a continuous period of twelve (12) consecutive months. The Agreement provides that in the event the project is not operational as the result of an act of God, or an order of the Michigan Public Service Commission, Portside or its successor will be entitled to an extension of time before decommissioning is required. Decommissioning must occur within 365 days from receipt of a demolish permit from the Township.

6. In the event Portside or its successor defaults in decommissioning the project, the Township has the right to make a claim on the letter of credit, contract for decommissioning services and have all of the equipment and materials removed from the site. In such an event, the Township is required in its discretion to obtain the best price for selling, recycling or scrapping the equipment and materials relating to the decommissioning. To the extent that funds remains after the Township decommissions the site, those funds must be returned to Portside or its successor.

IV. Host Community Agreement

1. At the time of signing the Consent Judgment, Portside Solar and the Township will execute a Host Community Agreement (“Agreement”).

2. Within thirty (30) days after commencement of the operation of the project, Portside will pay to the Township an impact fee of \$2,000 per megawatt of nameplate capacity. The total amount of the impact fee will approximate \$150,000 (\$2,000 x 75 megawatts of nameplate capacity).

3. The impact fee may be used by the Township as it deems appropriate for police, fire, public safety or other infrastructure reasonably calculated to mitigate any potential impact from the solar project.