Shelby County
Board of Zoning Appeals

March 12, 2019 at 7:00 PM

*Package Publication Date – 3/6/19

Table of Contents

MEETING AGENDA

Shelby County Board of Zoning Appeals
March 12, 2019, 7:00 P.M.

CALL TO ORDER

ROLL CALL

APPROVAL OF MINUTES

Minutes from the February 12, 2019 meeting.

OLD BUSINESS

None.

NEW BUSINESS

BRIANE HOUSE, ATTORNEY FOR NATHHAN NIGH - REQUEST FOR CONTINUANCE – A request to continue the hearing of case BZA 19-01 – Speedway Solar, LLC: Special Exception & Development Standards Variances to a future meeting of the BZA. Mr. House represents Nathan Nigh, who owns property at the address 6948 N 600 E, Shelbyville.

BZA 19-01 – SPEEDWAY SOLAR, LLC: SPECIAL EXCEPTION – To allow for the development of a 199-megawat, 1,925-acre Commercial Solar Energy System (CSES) with a panel area of approximately 1,1014 acres in an A1 (Conservation Agricultural) District and A2 (Agricultural) District. **DEVELOPMENT STANDARDS VARIANCES** – To allow the start of construction of the CSES to occur more than two-years from the date of special exception approval and to allow the CSES to exceed the maximum lot coverage requirement (maximum 15% lot coverage permitted in the A1 & A2 Districts). Projections (solar panels) of structures (poles) attached to the ground apply toward lot coverage. The property is located in Hanover & Union Townships on Several parcels located between 500 N, 800 N, 500 E, and the County line

DISCUSSION

None.

ADJOURNMENT

The next regular meeting of the Shelby County Board of Zoning Appeals is scheduled for Tuesday, **April 9, 2019** at **7:00 PM.**

Staff Report

CASE NUMBER: 19-01
CASE NAME: SPEEDWAY SOLAR, LLC – SPECIAL EXCEPTION & DEVELOPMENT STANDARDS VARIANCES

PROPERTY DESCRIPTION

Location: Several parcels located between 500 N, 800 N, 500 E, and the County line, located in Hanover and Union Townships approximately 2.5-miles south of Morristown.

Property Size: Approximately 1792-acres (2.8 square miles) of total project area. Approximately 1,014-acres (1.6 square miles) of panel area.

Property Features: Primarily cropland. The property also includes tress, wetlands, waterways, and a legal drain.

Surrounding Development: Primarily cropland, a few scattered single-family residences, and an electrical substation.

Zoning Districts:

- A1 (Conservation Agriculture) – Per the UDO, this district is established for the protection of agricultural areas and buildings associated with agricultural production and is intended for low intensity general agricultural operations. When making decisions, the BZA should protect the integrity of land and operations within the A1 District.

- A2 (Agricultural) – Per the UDO, this district is established for general agricultural areas and buildings associated with agricultural production and is intended for low to medium intensity general agricultural operations. When making decisions, the BZA should protect the integrity of land and operations within the A2 District.

Comprehensive Plan Future Land Use: Agricultural – Per the UDO:

- Traditional farming practices as well as accessory residential and other agriculture related uses occur within this designation.

- This land use category is intended to preserve the existing rural character of the area, while limiting the occurrence of future development on, and subdivision of, natural areas and agricultural land.

- Facilities in agricultural areas should promote the rural character, whether using traditional construction and materials or employing modern agricultural technologies.

REQUESTS

- Special Exception - to allow for the development of a 199-megawat, 1,925-acre Commercial Solar Energy System (CSES) with a panel area of approximately 1,1014 acres in an A1 (Conservation Agricultural) District and A2 (Agricultural) District.

  Per the CSES Ordinance, the purpose of these (CSES) performance standards is to enable Shelby County to: regulate the permitting of commercial solar energy systems; be informed of the placement of commercial solar energy systems; preserve and protect public health and safety; allow for the orderly development of land; and protect property values in Shelby County.

- Variance of Development Standards - to allow the start of construction of the CSES to occur more than two-years from the date of special exception approval.

  Placing a time limit on the start of construction helps to ensure that the conditions of the property or surrounding area have not changed in a way that would no longer support approval of the special exception.

- Variance of Development Standards - to allow the CSES to exceed the maximum lot coverage requirement (maximum 15% lot coverage permitted in the A1 & A2 Districts). Projections (solar panels) of structures (poles) attached to the ground apply toward lot coverage.

  Lot coverage standards provide for open space, adequate area for on-site drainage, and consistent development patterns among adjacent properties.

CASE DESCRIPTION

Project Description

- The proposed facility includes solar panels, an existing substation, a new 1200 sq. ft. substation, power lines, 6-foot tall perimeter fencing, landscaping, and access roads.

- The solar panels would not exceed 20-feet in height, would be located at least 100-feet from all residential structures, and in most areas would be located over 150-feet from the edge of the road.

- Per the petitioner's calculations, the average surface area coverage across all parcels is 17% with a maximum parcel coverage of 27% and a minimum parcel coverage of 0%. The coverage calculations include all solar panels, site roads, piles, and fence posts.

- Groundcover would include maintained native or pastured grasses and legumes. Graining of livestock and crop production between the fence and the pubic roadways may occur during the operational phase of the project.

- The USDA Web Soil Survey classifies approximately 98% of the project site as Prime Farmland if Drained.

The Definition of a Special Exception

- The UDO defines a Special Exception as: The authorization of a use that is designated as such by this ordinance as being permitted in the district concerned if it meets special conditions, is found to be appropriate and upon application, is specifically authorized by the Board of Zoning Appeals. A Special Exception is regulated by IC 36-7-4-900.

- Comparison Table of Land Use Requests

	Rezoning	Use Variance	Special Exception
Approval Body	Recommendation: Plan Commission Final Approval: County Commissioners	BZA	BZA
Application	Approval permits all uses listed in the ordinance as permitted in that district.	Approval only permits the specific use applied for.	Approval only permits the specific use applied for.
Ordinance Intent	The Ordinance indicates that the proposed use is not permitted in the current zoning district. Approval bodies are given wide discretion in approval of rezonings.	The Ordinance indicates that the proposed use is not permitted in the zoning district. The BZA should only approve a variance if a practical difficulty exists in using the property for the purposes permitted by the ordinance.	The Ordinance indicates that the use is permitted in the zoning district but only under certain conditions, primarily that the use will not alter the character of the unique to the surroning area.

CSES (Solar) Ordinance

- In March of 2018 the Shelby County Plan Commission voted 6-0 to provide a favorable recommendation on adoption of the CSES Ordinance to the County Commissioners. In April of 2018 the County Commissioners voted 2-1 to adopt the Ordinance. The Ordinance became effective on April 2nd, 2018.

- The Ordinance amends the UDO to allow for CSES facilities in all Industrial Districts and as a Special Exception in all Agricultural and Commercial Districts.

- Prior to adoption of the CSES ordinance, the UDO would have only permitted commercial solar facilities as an electrical generation facility in the HI (High Impact) District. The HI District permits high intensity commercial uses such as amusement parks and casinos and high intensity industrial uses such as mining and biofuel production. However, the UDO would not have placed any restrictions on the development of commercial solar facilities, such as setback, landscaping, and decommissioning requirements.

- The Ordinance limits the height of solar panels to 20-feet, requires a 100-foot setback from panels to dwelling units, and requires a type "A" (light intensity) landscape buffer abutting agricultural (other than A1) and residential zoned properties.

- The Ordinance stipulates that CSES facilities shall be secured with a fence, shall not interfere with communications signals, shall be situated to eliminate glare, shall be labeled, shall include buried components when possible, shall shield lighting, and shall not include commercial signage.

- Subsequent to approval by the BZA, the Ordinance requires Technical Advisory Committee review and approval of drainage plans and Plan Commission Staff approval of an Improvement Location Permit.

Case History

- On November 8, 2018 the Board voted 3-2 to deny a Special Exception requested by the petitioner to allow for a CSES on the subject property. Reasons for denial cited in the Board's Findings of Fact include inconsistency with the Comprehensive Plan, inconsistency with surrounding rural land uses, the large footprint of the project, negative impacts to the natural habitat of the area, negative impacts to the enjoyment and value of surrounding properties, lack of a landscaping plan, and lack of a decommissioning plan. The Board did not hear the case for the development standards variance to allow for construction less than two years from the approval of the Special Exception.

- On November 29. 2018 the petitioner submitted a new petition. The UDO does not specify a time duration between the denial of a petition and re-submittal of a similar petition, other than the standard filing deadline that applies to all petitions.

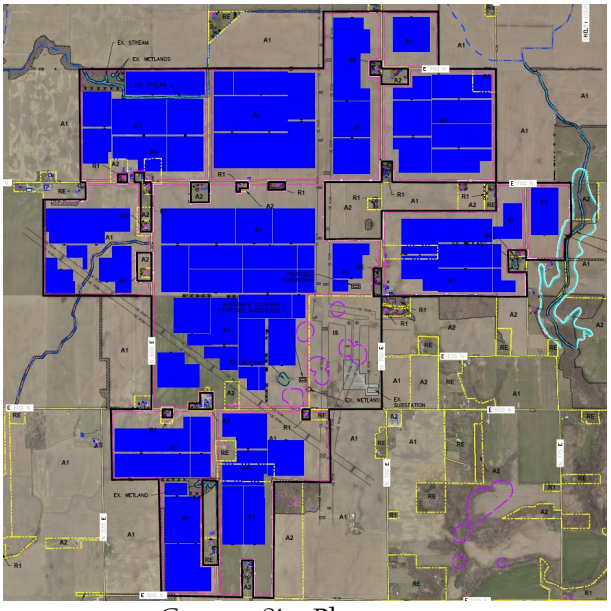
- On December 13, 2018 the petitioner filed a petition to appeal of the Board's decision with the Shelby County Circuit/Superior Court, however the petitioner agreed to a stay of the appeal until the conclusion of the current petition.

- A representative of an opponent of the petition raised a concern that the proposed solar facility did not comply with the maximum lot coverage requirement identified in the UDO. After review of the ordinance, Staff determined that the language of the ordinance provided a strong enough legal basis to require a variance. On February 5, 2019 the petitioner filed for a variance from the maximum lot coverage requirement. The petitioner missed the filing deadline for the February meeting for this variance and therefore Staff scheduled the hearing for the March meeting.

Differences Between the Previous Petition & Current Petition

- The total project area has increased from approximately 1,650 acres to approximately 1,792 acres, however the petitioner stated that the total number of solar panels has slightly decreased. The project area has increased to provide larger setbacks from the road and adjoining properties.

Previous Site Plan



Current Site Plan

- The petitioner has submitted additional information, including a Landscape Plan, Decommissioning Plan, Community Approval Survey, Lot Coverage Calculations, Visual Impact Analysis, Drainage Plan, Acoustic Assessment and Wildlife Impact Analysis.

Staff Case Study: North Star Solar Project – Chisago County, Minnesota

- The North Star Solar Facility covers approximately 800 acres in Chisago County, MN. Like the Speedway Solar project, the North Star project lies on farmland adjoining a few rural residential properties. The North Star project required approval from the Minnesota Public Utilities Commission rather than local zoning approval, however the approval process included analysis of impacts to surrounding land uses and a public input process.

- Minnesota Public Utilities Commission staff recommended approval of the project conditional on a landscaping plan to mitigate the visual impacts to adjacent residences, installation of an eight-foot wood pole and woven wire fence, and a vegetation management plan to benefit wildlife, enhance soil retention, and to reduce stormwater runoff.

- The Minnesota Public Utilities Commission granted a permit for the project in 2015. The project was completed and began operation in 2017.

- Staff spoke with the Director of the Chisago County Department of Environmental Services regarding his experience with the project. His comments included:

    - The solar farm is a 'benign land use' that tends to blend in with the landscape over time (similar to cell phone towers and utility poles).

    - The point of connection into the grid has the largest visual impact.

- Several homes near the project sold before and after installation of the solar farm. The County Assessor found no change to property values.

- Constructing the panels further back from the road mitigates aesthetic impacts more effectively than landscape buffering.

- The wood pole and wire fencing installed around the perimeter of the project blends into the rural landscape.

Supporting Documents Summary

Decommissioning Plan

- The Plan requires removal of all solar panels and underground conductors, demolition debris, fencing, and roads if the project does not produce electrical power for twelve (12) consecutive months.

- The Plan requires that the petitioner provide a bond to ensure removal per the requirements of the CSES Ordinance.

- The Plan includes provisions for agricultural soil reclamation. Restoration methods may include compaction reduction (deep tillage) and addition of organic matter. In most cases, existing soils will remain on site and drainage facilities will be maintained or improved.

- Plan Commission Staff has the power to administer and enforce the Plan. However, any amendment to the Plan would require a public hearing and approval by the BZA.

Landscape Plan

- The Landscape Plan exceeds the reequipments of the CSES Ordinance.

- Buffer Yard C - along the property lines of residential properties participating in the project, the Plan indicates one (1) canopy tree every forty-five (45) feet and two (2) ornamental or evergreen trees every fifty (50) feet.

- Buffer Yard C+ - along the property lines of residential properties *not* participating in the project, the Plan indicates one (1) canopy tree every forty-five (45) feet and one (1) ornamental or evergreen trees every eighteen (18) feet.

Visual Impact Analysis - common themes of the document include:

- The grey color of the panels would deviate from the earth tones of the surrounding environment; however, the muted grey tone of the panels does not provide a highly contrasting hue.

- Existing transmission lines and large lattice towers create a visual context of electrical infrastructure consistent with a commercial solar facility.

- The setback of the panels from the road would reduce the mechanical look of the panels, prevent a sense of visual enclosure, and help to maintain the natural colors, vegetation, textures, and undeveloped feel of the area.

- The panels would not block the view of trees, buildings, and the horizon.

- Natural vegetation and crops would provide a visual buffer between the panels and the road.

- The proposed landscaping would provide a visual buffer between the panels and existing residences and compliment the linear nature of other elements in the area.

- The linear nature of the panel layout and fencing would complement the linear nature of the roads and crop lines.

Drainage Plan

- The Plan recommends research and field investigation procedures to identify on-site drainage tiles.

- The Plan recommends mandatory maintenance of existing mutual drainage systems to protect surrounding properties and mandatory maintenance of on-site drainage systems to assure water table stability and to preserve continued farming activity after duration of the project.

- The Plan incudes provisions for drainage tile avoidance, drainage tile replacement, new subsurface drainage system installation, and managed vegetation cover.

Acoustic Assessment

- The sound study involved the use of receivers to measure existing sound levels at several locations within the project area during a 24-hour period. Prominent sounds observed included vehicular traffic, electrical buzzing from overhead transmission lines, and aircraft flyovers. A noise prediction model computer program was used to estimate noise sources associated with the operation of the proposed project. The study concluded that the noise from the facility would not exceed the EPA recommended guidance threshold.

Health & Safety Impacts

- The petitioner submitted a study regarding potential health and safety impacts of solar development conducted by the North Carolina Clean Energy Technology Center at NC State University.

- The study found that health and safety impacts of hazardous materials, electromagnetic fields, electric shock and arc flash, and potential fire negligible.

Wildlife Impact

- The wildlife impact analysis submitted by the petitioner states that research, field studies, and consultation with state and federal agencies identified no high-quality natural communities or natural habitat for endangered, threatened, or rare species within the project area.

Property Values

- The petitioner submitted a Property Value Impact Study conducted by professionals of a business advisory company specializing in valuation advisory services.

- The Study analyzes property value trends of land uses adjacent to seven existing solar facilities. One facility is situated on approximately 1,000-acres and the other six facilities range from 134-acres to 489-acres.

- The Study compared collectively nineteen (19) sales of properties (both residential and agricultural) adjacent to the solar farms to seventy (70) comparable sales. The study found no empirical evidence indicating a more favorable real estate impact on the comparable properties as compared to adjacent properties.

Contact with Residential Neighbors (as indicated by the petitioner)

- At the time of the writing of this Staff Report, the petitioner has initiated contract will all thirty-seven (37) homeowners abutting the project.

- Ten (10) of these homeowners are participating in the project and another ten (10) of these homeowners have signed a neighbor agreement. The remaining seventeen (17) of the abutting homeowners have either not responded, not agreed to the project, or are still in negotiations with the petitioner on conditions for supporting the project.

FINDINGS OF FACT

Per the UDO, in order to approve the Special Exception, a majority of the members of the Board must conclude that the evidence presented supports the following Findings of Fact:

1. The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.

2. The proposed special exception will not be injurious to the public health, safety, morals and general welfare of the community.

3. The proposed special exception is in harmony with all adjacent land uses.

4. The proposed special exception will not alter the character of the district; and

5. The proposed special exception will not substantially impact property value in an adverse manner.

6. In order to approve the Special Exception, a majority of the members of the Board must conclude that the evidence presented supports the following Findings of Fact:

Per the UDO and Indiana State Code, in order to approve each variance a majority of the members of the Board must conclude that the evidence presented supports the following Findings of Fact:

1. The approval of the variance will not be injurious to the public health, safety, morals and general welfare of the community.

2. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner.

3. The strict application of the terms of the ordinance will result in practical difficulties in the use of the property.

If the Board chooses to approve the special exception and variances, Staff recommends that the Board adopt the Petitioner's Findings of Fact and the petitioner's Proposed Conditions submitted to the case file.

APPLICANT INFORMATION

Applicant:	Speedway Solar, LLC 20 Jay Street #900 Brooklyn, NY 11201	Owner:	Property will be leased by applicant

Project Attorneys:	Mary E. Solada, Esq. Bingham Greenebaum Doll LLP 10 W Market St, 2700 Market Tower Indianapolis, IN 46204	Lee McNeely, Esq. McNeely Stephenson 2150 Intelliples Dr. Suite 100 Shelbyville, IN 46176

Proposed Conditions to Shelby County BZA Approval of Special Exception and Variances

Speedway Solar Commercial Solar Energy System

Cases BZA 2019-01

1. Petitioner expressly agrees to comply with the terms of the Decommissioning Plan Agreement as executed by it and submitted to the case file.

2. No solar panel shall be located closer than either (a) 150 feet from a non-participating property line, or (b) 300 feet from a non-participating residence.

3. No solar panel shall be located closer than 100 feet from a public road.

4. The Applicant's landscape plan shall consist of two categories:

A) **Landscape Buffer C:** The majority of the parcels included in the Project are zoned A1 or A2. Where the Project parcel being developed is adjacent to land zoned as A2 or a more intense land use, under the Ordinance, the Petitioner would install a minimum of Buffer Yard A, which requires one (1) canopy tree and one (1) ornamental or evergreen tree every seventy (70) feet of contiguous boundary with an adjacent lot. Landscape Buffer A would result in only two (2) total trees planted every 100 feet of contiguous boundary with an adjacent lot. However, Petitioner voluntarily commits to implementing Landscape Buffer C as the Project minimum for these parcels, unless otherwise waived or agreed to by the adjacent landowner; provided that Petitioner will install at minimum Buffer Yard A for these parcels. Landscape Buffer C requires one (1) canopy tree every forty-five (45) feet of contiguous boundary with an adjacent lot and two (2) ornamental or evergreen trees every fifty (50) feet of contiguous boundary with an adjacent lot. The voluntary use of Landscape Buffer C as the Project minimum (where Buffer Yard A would otherwise be required) results in the planting of six (6) total trees every 100 feet, representing an at least 300% increase in the total number of trees planted in the landscape buffer.

B) **Landscape Buffer C+:** A small number of the parcels included in the Project are adjacent to non-participating parcels on which residences are located. Most of these adjacent, non-participating parcels are in an A2 zoning district, and would be subject to Landscape Buffer A (described above) under Shelby County's Unified Development Ordinance. The site plan submitted as part of this application voluntarily applies Landscape Buffer C+ to these parcels. Petitioner shall implement this voluntary Landscape Buffer C+ for these adjacent, non-participating parcels on which residences are located, unless otherwise waived or agreed to by the non-participating landowner. Landscape Buffer C+ does not exist in Shelby County's Unified Development Ordinance and was voluntarily created specifically for this project. Landscape Buffer C+ will consist of one (1) canopy tree every forty-five (45) feet of contiguous boundary with an adjacent lot and one (1) ornamental or evergreen tree every 18 feet of contiguous boundary with an adjacent lot. Landscape Buffer C+ results in the planting of two (2) canopy trees and five (5) to six (6) ornamental or evergreen trees, or eight

(8) trees total, every 100 feet. The voluntary creation and use of Landscape Buffer C+ represents a 400% increase in the total number of trees planted over Landscape Buffer A.

5. Petitioner shall comply with Indiana Code requirements regarding legal drains except as otherwise approved by the County Drainage Board and any other necessary bodies.

6. Petitioner shall provide (i) exact array and equipment specifications; and (ii) specific landscape plan to the Zoning Administrator prior to the TAC meeting.

7. Petitioner shall not construct any additional phases or expand the Speedway Solar project in Shelby County.

8. Petitioner shall repair County roads damaged during construction or operations pursuant to the direction of the County Highway Superintendent.

9. No solar panel shall be located on land zoned in a Residential Estate (RE) district.

SPEEDWAY SOLAR, LLC APPLICATION FOR SPECIAL EXCEPTION APPROVAL
ARTICLE V – ORDINANCE SES-01 COMMERCIAL SOLAR ENERGY SYSTEM
Statement of Intent

Speedway Solar, LLC ("Applicant") is pleased to present this Special Exception Application ("Application") pertaining to its desire to develop a commercial solar energy system in Shelby County. We believe that the Project otherwise complies with all provisions of the Shelby County Ordinance and believe that the testimony presented at the hearing will re-affirm the findings of fact as submitted with the Application.

Applicant notes that its Application complies in all respects with the recently adopted County Ordinance for Commercial Solar Energy Systems and notes in particular that no variances of Development Standards are being requested, except for a Variance of Development Standards requesting a variance of the 2 year period to build to 4 years.

A Project summary, is as follows:

The Project will be an up to 199 megawatt solar energy generation project.

General Project Information	
Project Name:	Speedway Solar
Location:	Shelby County, Indiana
Project Footprint:	approximately 1,014 acres for panel area, 17 leases executed with 28 individual landowners
Project Ownership:	Speedway Solar, LLC
Interconnection Voltage:	345 kV
Interconnection Utility:	Duke Energy
Electrical POI:	Gwynneville 345kV Substation

SPECIAL EXCEPTION
FINDINGS OF FACT

Petitioner: SPEEDWAY SOLAR, LLC
Project Contact: Pete Endres, pete@rangerpower.com, (216) 538-5420;
Mary Solada, msolada@bgdlegal.com, (317) 635-8900; and Lee McNeely, J.L.McNeely@msth.com, (317) 825-5110

Case #: BZA #19-01

Location: Located across several parcels North of E 500 N and South of E 850 N, and between N 500 E and N 980 W (Approximate center of site Lat. 39.6203911, Long. -85.6612664).

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Special Exception. In accordance with Article 9, Section 9.13, E, 7 of the Shelby County Unified Development Ordinance (UDO), the Board of Zoning appeals shall make the following findings of fact.

1. **Comprehensive Plan:** *The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan.*

   The proposed special exception is consistent with the purpose of the zoning district and the Shelby County Comprehensive Plan. The Comprehensive Plan specifically identifies "Agricultural Enhancement and Preservation" as a stated goal for the County.[1] The proposed special exception, the Speedway Solar project (the "Project"), is consistent with and supports this goal as it directly enhances and preserves agricultural activities in the County for several reasons.

   First, the Project's anticipated useful life of at least 30 years represents a *temporary* land use and will not result in a permanent loss of land for agriculture. Second, it is important to note that the Project area amounts to less than one half of one percent (0.5%) of the agricultural farm land in the County. Therefore, the proposed special exception affects a minute portion of agricultural land relative to what is available in the County. Third, following the end of the Project's useful life, the Project will be fully decommissioned, and the underlying property fully restored per the proposed Decommissioning Plan Agreement, the Decommissioning Plan, and the Agricultural Soils Reclamation Plan. Fourth, since solar facilities are permitted in agricultural zones under the Shelby County ordinance, the Project area does not need to be rezoned, but rather remains zoned as agricultural. This is important as once the Project is decommissioned and the property is restored consistent with the Agricultural Soil Reclamation Plan, the land is available for future agricultural use. Since the property remains zoned as agricultural under the ordinance, the property is preserved as agricultural land and protected from other types of developments like subdivisions, shopping centers, and other intensive and irreversible developments. Fifth, agricultural soils will be preserved throughout the Project

[1] *Shelby County Comprehensive Plan* at 31.

life, resulting in fertile soils post-decommissioning. There will be limited soil disturbance associated with the Project. Existing soils will remain onsite and generally in place. Where soil is disturbed (e.g., due to trenching for underground conduits), the topsoil will be separated and placed back at the surface. During Project operation, the groundcover will be maintained as native or pasture grasses and legumes, which will improve water retention and allow the soil nutrient base to regenerate. Accordingly, the Project design, construction, operation, and decommissioning methods will actually support future agricultural activities similar to the resting of agricultural lands and amounts to "land banking" of the properties, which will ultimately encourage resumption of agricultural activity after the useful life of the Project.

The Comprehensive Plan also highlights farming as an economic component of the County. Specifically, the Plan states that: "farming in Shelby County is an integral part of the County's total economy. It is important to ensure that small scale farms can remain economically viable while also allowing the continued operation and expansion of larger farms."[2] The proposed special exception is consistent with this as the Project supports the economic viability of County farmers, while also supporting future generations of farmers in the County. Specifically, the Project provides landowners with stable, above-market land payments, which helps diversify landowners' income, supporting continued agricultural operations and multi-generational family land ownership, and prevents other uses of the land, like subdivision or clustered development. Moreover, when the Project is decommissioned, the land is available and has been preserved for farming by future generations.

Additionally, during the operational phase of the Project, Petitioner has also committed to opportunities for continued agricultural activities in and around the Project site. These include, but are not limited to, continued crop cultivation in buffer areas outside the Project fence along roadsides and leased ground not occupied by solar facilities, and grazing of sheep or other livestock within the panel areas.

Although the September 2006 Comprehensive Plan pre-dates the development of solar energy projects in the State of Indiana, there are a number of Comprehensive Plan references which underscore that the proposed use is consistent with the Comprehensive Plan. For example, the Plan Goals and Objectives seek to encourage business diversity and focus economic development efforts on providing a balanced variety of economic opportunities to keep pace with changes to the national and local economy.[3] The Project is consistent with this objectives as it provides diversified economic activity in the County, bringing new investment, jobs, and opportunities into the County, as well as supporting continued farming today and for future generations.

Furthermore, the Comprehensive Plan includes an express goal of "[p]romot[ing] the protection and enhancement of local air and climate resources."[4] Under this Air Quality Goal, the Comprehensive Plan specifically states as objectives: "Encourage development patterns that minimize air pollution emissions"; "Support air-quality education and initiatives"; and "Investigate new technologies."[5] The proposed special exception, a solar electric generation

[2] *Shelby County Comprehensive Plan* at 136.
[3] *Shelby County Comprehensive Plan* at 38.
[4] *Shelby County Comprehensive Plan* at 64.
[5] *Shelby County Comprehensive Plan* at 64.

facility, is consistent with and furthers this goal and objectives by generating clean, renewable electricity, which improves the air quality of the County, and the region as a whole.

The proposed special exception is also consistent with the purpose of the zoning district, which is agricultural. As described above and throughout the Findings of Fact, the Project is compatible with and supports continued agricultural uses in the district.

Therefore, the Project's compatibility with current and future farming operations and contributions to the stated air quality goals in the Comprehensive Plan are wholly consistent with the purpose of the zoning district in which the Project is proposed to be sited, as well as the Comprehensive Plan.

2. **General Welfare:** *The proposed special exception will not be injurious to the public health, safety, and general welfare of the community.*

The Project will comply with all aspects of County Ordinance 2018-07 ("Ordinance") with the utmost emphasis during construction and operation on protection of public health and safety. The Project will include perimeter security fencing with a controlled point of ingress/egress, as well as a secondary emergency access location to facilitate emergency response, if needed. The Petitioner will also have detailed safety protocols for traffic management and public access around the Project. The Project will have 24/7 security monitoring during the construction period and 24/7 remote monitoring during the operations period. The selected contractor will have extensive experience with the installation of Commercial Solar Energy Systems ("CSES") and will operate under a Health and Safety Program for the Project that meets local, state and federal environmental, health and safety regulations, as well as their own stringent safety protocols for site personnel and the public, which will comply with applicable laws.

The Project does not present any likelihood of any toxic materials contaminating the soil or groundwater as there will be no exposure of such materials from the solar panels. The primary material in the panel itself is silicon, a very common earth element used in cement, ceramics, glass and many other products. The panels are encapsulated in an aluminum casing and tempered glass. Like in typical construction, limited materials (e.g., fuels, lubricants, adhesives) will be used onsite during construction; all materials will be properly stored and managed onsite and have very low risk for spills or contamination. The Project skid-mounted transformers will use a mineral oil, and a Spill Prevention, Contingency, and Countermeasure Plan will be prepared in accordance with applicable regulations (40CFR112). Site drainage patterns will also be generally retained onsite due to flexibility in PV solar designs, which allows for general preservation of topsoil and stabilized surfaces post-construction. The Project will obtain all appropriate approvals from the Indiana Department of Environmental Management and the Shelby County Soil and Water Conservation District ("SWDD"). The submitted Agricultural Drainage Plan also referenced which describes the proposed drainage practices. The Project will also comply with all applicable local, state, and federal construction and drainage requirements.

Solar panels generate electricity through absorption of sunlight and are designed to minimize/avoid light reflection, making glare minimal. Solar panels generate electricity at a very low voltage, and through a series of transformations, the electricity will be stepped up to

345 kV so that it can interconnect to the utility grid. The Project area contains several existing high-voltage transmission lines, including two 345 kV transmission lines and one 765 kV transmission line. Accordingly, the Project's highest voltage will be the same or lower than the existing infrastructure. Studies have concluded that the electric magnetic field levels at the boundaries of solar arrays and beyond 15 meters from inverters were not elevated above background levels.[6] The safety of the solar project is further supported by (i) the submitted Acoustic Assessment which finds that "the EPA guidance threshold is not exceeded at any studied representative noise sensitive receptor and thus, the Project is compliant with all applicable sound level thresholds and no sound reduction measures are recommended", and (ii) the submitted report authored by the North Carolina Clean Energy Technology Center titled "Health and Safety Impacts of Solar Photovoltaics" (May 2017). Attached please also find a letter from the Madison County Indiana Health Department, where an operational solar project is located, stating that the Department has "not received any complaints regarding the health and safety of solar powered facilities in Madison County."

The proposed investment of a minimum of $87.5MM and potentially over $175 MM will be a significant, long term addition to the County tax base, keeping County taxes low. In addition, the Project will represent a cutting-edge investment in the County, creating new jobs and workforce development opportunities.

3. **Harmony:** *The proposed special exception is in harmony with all adjacent land uses.*

The proposed special exception is in harmony with all adjacent land uses. The Project was specifically sited and designed with due consideration to the adjacent land uses. First, the Project is sited next to existing electric utility infrastructure – the Gwynneville 345kV substation, two 345 kV high voltage transmission lines, and one 765 kV high voltage transmission line. Therefore, electric infrastructure is already present in this area and the development of the Project is consistent with this existing use. Further, siting the Project adjacent to this existing electric infrastructure minimizes the need for additional infrastructure to be developed. No new long-distance overhead transmission lines are proposed for the Project.

The Project panel array area will be approximately 1,014.7 acres. This area is relatively small given the available agricultural land and land generally in Shelby County. Given the Project size, this area, which is specifically listed as a permitted district for solar under the Shelby County Ordinance, is the most suitable for this type of development in the County. This Project could not be sited, nor is it required to under the Ordinance, in an industrial zone as that would be neither feasible nor available.

Additionally, the Project does not result in adverse aesthetic impacts as the panels will be limited in height, setback from all residential properties, and the Project will have a landscaping plan that materially exceeds County requirements. Landscaping around the Project is categorized into Buffer Yard C and Buffer Yard C+, which are detailed in Petitioner's application. The Buffer Yard requirements result in a 300-400% increase in

[6] Guldberg, Peter (2012), *Study of Acoustic and EMF levels from Solar Photovoltaic Projects* prepared for Massachusetts Clean Energy Center.

ornamental and evergreen trees placed around the Project site, with more stringent landscaping focused adjacent to non-participating parcels. Reference is made to the submitted Landscape Plan which provides illustrations and further context.

The Petitioner has voluntarily submitted a "Visual Impact Assessment" that illustrates how the Project is compatible and in harmony with surrounding land uses. Importantly, the Project will be consistent with the views of the transmission lines and large lattice towers of the existing landscape. In addition, Speedway Solar has increased the setbacks from neighboring residences and property lines significantly beyond what is required under the ordinance to further minimize visibility from non-participating landowners and public roads/viewpoints. Moreover, the Petitioner has proposed a Landscaping Plan which proposes specific landscape buffers and landscaping plans that exceed all requirements under the Ordinance.

Additionally, during operation, the Project will not generate additional traffic in the area and there will be no discernible sounds, odors, or other impacts to adjacent land uses resulting from the Project. See the Acoustic Assessment, demonstrating that, from most areas, the Project will not result in any increase in sound levels and in the limited circumstance where it does increase sound level, the increase is significantly less than a "whisper." (See Table 1 and Table 7 of the Acoustic Assessment.) In addition, the Project will result in minimal new additional impervious surface area and will include planting native seed mixes. The Project was also sited to avoid impacts to sensitive natural resources, preserving the natural features in the area. The Project area is not considered a high-quality natural community and does not support a natural habitat for endangered, threatened or rare species. Based on desktop surveys, field work, and correspondences with state and federal agencies, the Project was designed to prevent potential impacts to wildlife by avoiding wetlands and tree clearing. Consultation by state and federal agencies support the conclusion that the Project will not adversely impact habitat or wildlife in the area.

During the operational phase of the Project, Petitioner has committed to opportunities for continued agricultural activities in and around the Project site. These include, but are not limited to, continued crop cultivation in buffer areas outside the Project fence along roadsides and leased ground not occupied by solar facilities, and grazing of sheep or other livestock within the panel areas. These activities support the harmony of surrounding agricultural activities and are in the express interest of area landowners.

Importantly, at the end of the Project's useful life, the Project will be fully decommissioned pursuant to the proposed Decommissioning Plan Agreement, the Decommissioning Plan, and Agricultural Soil Reclamation Plan, and the underlying land will be restored to its current use. Therefore, the Project represents a temporary land use. As noted above, the Project design for construction generally preserves topsoil properties, which support future agricultural activities following the fallow period during Project operations, similar to the resting of agricultural lands, with the implementation of appropriate invasive and weedy species management measures. As noted above, a very small percentage (0.5%) of County agricultural land will be taken out of active agricultural production during the Project life. After the Project life, the land will still be zoned as agricultural, further supporting agricultural land uses in the area and supporting agricultural use for future generations.

The Project also provides landowners with stable, above-market land payments, which helps diversify landowners' income, supporting continued agricultural operations and multi-generational family land ownership, and prevents other uses of the land, like subdivision or clustered development. Moreover, the Project doesn't affect adjacent uses of the land for agricultural or residential purposes.

Lastly, as discussed in Finding No. 1, the Shelby County Board of Commissioners developed and approved the use of commercial solar energy systems in certain zoning districts in Shelby County, including specifically, zoning districts A1 and A2. In doing so, language was developed to regulate setbacks, height limits, and landscape butters to ensure that such use comported with the requirements of the zoning district. The Project is consistent with the Shelby County Comprehensive Plan and fully complies with the special exception requirements for the zoning districts. Accordingly, the Project is in harmony with the adjacent land uses.

4. **Character of the District:** *The proposed special exception will not alter the character of the District.*

The proposed special exception will not alter the character of the district. The Shelby County ordinance specifically provides that agricultural districts are "permitted districts" for solar projects. In adopting the ordinance in April 2018, the Shelby County Board of Commissioners recognized commercial solar energy projects as a viable and acceptable use of land within the A1 and A2 zoning districts. Additionally, Petitioner has submitted a Decommissioning Plan Agreement, along with a Decommissioning Plan and Agricultural Soil Reclamation Plan, with the Application that legally and financially ensure that the Project will be fully decommissioned at the end of its useful life and remain available for agricultural use.

As detailed in the revised site plan provided with this application, Petitioner has also provided a detailed landscaping proposal that exceeds all requirements in the Ordinance. The landscaping proposal was developed based on County requirements for Buffer Yard C, which requires a mixture of ornamental and evergreen trees around the Project site, as well as a heightened standard of Buffer Yard C+. Petitioner has visited with the vast majority of abutters to the Project site and incorporated feedback from those meetings into the site design. See also the submitted Landscape Plan.

Given that the County adopted the Ordinance earlier this year and that this Application is wholly consistent with the Ordinance, the grant of the Special Exception will not be contrary to the general purposes served by the Ordinance nor the character of the district. As discussed above, due to the manner in which the panels are installed, surface drainage patterns will not be disrupted. See the submitted Agricultural Drainage Plan. Vegetation will be planted between rows of panels, which will support onsite water retention. Additionally, before construction commences, groundcover will be in place and maintained to support stormwater control and retention. The Project prepared a detailed drainage plan that assesses public and private drains both within and outside the Project footprint. To the extent possible, private drain tiles will be avoided or repaired during construction as damage occurs. Any issues that appear post-construction will be repaired immediately at the Project's expense.

The surrounding area will not be adversely impacted by sound or traffic during the operation of the Project.

5. **Property Value:** *The proposed special exception will not substantially impact property values in an adverse manner.*

The proposed special exception will not substantially impact property values in an adverse manner. The Project developer has developed utility-scale solar projects throughout the country and is unaware of any documented evidence of a material reduction in property values arising as a direct result of a solar project. To specifically understand the potential impacts of the proposed Project on property values, the Petitioner commissioned a third party independent real estate appraiser, CohnReznick, to conduct an independent analysis. The Petitioner has provided the report prepared by CohnReznick as an exhibit to this application. The report concluded that there is no documented evidence of a correlation between a decrease in property values and a commercial solar project. CohnReznick determined that its "studies of facilities of various sizes demonstrate that there is no measurable and consistent difference in property values for properties adjacent to solar farms when compared to similar properties locationally removed from their influence."[7] Specifically, the report concludes that properties adjacent to operating solar projects "were not adversely affected by their proximity to the solar farm," and further, "that properties surrounding other proposed solar farms operating in compliance with all regulatory standards will similarly not be adversely affected, in either the short or long term period."[8] Importantly, a surrounding property owner's perceived value of its agricultural land does not translate into an actual or substantial impact on property values.

Additionally, a local real estate broker, Nancy A. Smith, independently reviewed the Project, the Landscaping Plan, the Visual Impact Assessment, and CohnReznick property value study, and spoke with colleagues from counties that host solar projects, and "was unable to find any data that showed there would be either positive or negative effects on property values." She also concluded that "[t]he landscape plan for this project is certainly very extensive and [she] feel[s] will allow more than ample screen plantings to any adjacent properties." (See letter from Nancy A. Smith, Broker Associate, Carpenter Realtors.)

[7] *See Property Value Impact Study*, CohnReznick (November 1, 2018) at 3.
[8] *See Property Value Impact Study,* CohnReznick (November 1, 2018) at 63.

VARIANCE
FINDINGS OF FACT

Applicant: SPEEDWAY SOLAR, LLC
Project Contact: Pete Endres, pete@rangerpower.com, (216) 538-5420;
Mary Solada, msolada@bgdlegal.com, (317) 635-8900; and Lee McNeely, J.L.McNeely@msth.com, (317) 825-5110

Case #: 19-01

Location: Located across several parcels North of E 500 N and South of E 850 N, and between N 500 E and N 980 W (Approximate center of site Lat. 39.6203911, Long. -85.6612664).

The Shelby County Board of Zoning Appeals must determine that the following criteria have been met in order to approve an application for a Variance of Development Standards. Using the lines provided, please explain how your request meets each of these criteria.

1. **General Welfare:** The proposed variance will not be injurious to the public health, safety, and general welfare of the community.

   The Project development standards will comply with all other aspects of County Ordinance 2018-07 ("Ordinance") with the utmost emphasis during construction and operation on protection of public health and safety. The Project will include perimeter security fencing with a controlled point of ingress/egress, as well as a secondary emergency access location to facilitate emergency response, if needed. The Petitioner will also have detailed safety protocols for traffic management and public access around the Project. The Project will have 24/7 security monitoring during the construction period and 24/7 remote monitoring during the operations period. The selected contractor will have extensive experience with the installation of Commercial Solar Energy Systems ("CSES") and will operate under a Health and Safety Program for the Project that meets local, state and federal environmental, health and safety regulations, as well as their own stringent safety protocols for site personnel and the public, which will comply with applicable laws.

   The Project does not present any likelihood of any toxic materials contaminating the soil or groundwater as there will be no exposure of such materials from the solar panels. The primary material in the panel itself is silicon, a very common earth element used in cement, ceramics, glass and many other products. The panels are encapsulated in an aluminum casing and tempered glass. Like in typical construction, limited materials (e.g., fuels, lubricants, adhesives) will be used onsite during construction; all materials will be properly stored and managed onsite and have very low risk for spills or contamination. The Project skid-mounted transformers will use a mineral oil, and a Spill Prevention, Contingency, and Countermeasure Plan will be prepared in accordance with applicable regulations (40CFR112). Site drainage patterns will also be generally retained onsite due to flexibility in PV solar designs, which allows for general preservation of topsoil and stabilized surfaces post-construction. The submitted Agricultural Drainage Plan is also referenced which describes the proposed drainage practices. The Project will obtain all appropriate approvals from the Indiana Department of Environmental Management and the Shelby County Soil and Water Conservation District

("SWDD"). The Project will also comply with all applicable local, state, and federal construction and drainage requirements.

Solar panels generate electricity through absorption of sunlight and are designed to minimize/avoid light reflection, making glare minimal. Solar panels generate electricity at a very low voltage, and through a series of transformations, the electricity will be stepped up to 345 kV so that it can interconnect to the utility grid. The Project area contains several existing high-voltage transmission lines, including two 345 kV transmission lines and one 765 kV transmission line. Accordingly, the Project's highest voltage will be the same or lower than the existing infrastructure. Studies have concluded that the electric magnetic field levels at the boundaries of solar arrays and beyond 15 meters from inverters were not elevated above background levels.[1] The safety of the solar project is further supported by 1) the submitted Acoustic Assessment, demonstrating that, from most areas, the Project will not result in any increase in sound levels and in the limited circumstance where it does increase sound level, the increase is significantly less than a "whisper" (See Table 1 and Table 7 of the Acoustic Assessment.), and 2) the submitted report authored by the North Carolina Clean Energy Technology Center titled "Health and Safety Impacts of Solar Photovoltaics" (May 2017). Attached please also find a letter from the Madison County Indiana Health Department, where an operational solar project is located, stating that the Department has "not received any complaints regarding the health and safety of solar powered facilities in Madison County."

The proposed investment of $87.5MM to $175 MM will be a significant, long term addition to the County tax base, keeping County taxes low. In addition, the Project will represent a cutting-edge investment in the County, creating new jobs and workforce development opportunities.

Additionally, as Lot Coverage is partially defined in terms of impervious surface associated with primary or accessory structures, any lot coverage impacted by solar panels in this instance will not actually translate to impervious surfaces, since solar panels will be placed above the soil in its natural state, being pervious. Therefore, the Project will not have a negative effect on drainage. Applicant submitted an Agricultural Drainage Plan outlining methods to preserve and/or restore drainage across the Project site, which concludes that "implementation of mainline drainage restoration and pattern drainage systems at Speedway Solar will preserve and improve farmland quality, hydrology stabilization, water quality and provide overall watershed benefits to the local Shelby County watershed."

Use and Value: The requirements and development standards for the requested use as prescribed by the Shelby County Unified Development Ordinance will be met, other than a request to commence construction in four (4) years rather than the otherwise required two (2) years, and a deviation from the Lot Coverage standard.

The proposed variance will not substantially impact property values in an adverse manner. The Project developer has developed utility-scale solar projects throughout the country and is unaware of any documented evidence of a material reduction in property values arising as a direct result of a solar project. To specifically understand the potential impacts of the proposed Project on property values, the Petitioner commissioned a third party independent real estate appraiser, CohnReznick, to conduct an independent analysis. The Petitioner has provided the report prepared by CohnReznick as an exhibit to this application. The report concluded that

[1] Guldberg, Peter (2012), *Study of Acoustic and EMF levels from Solar Photovoltaic Projects* prepared for Massachusetts Clean Energy Center.

there is no documented evidence of a correlation between a decrease in property values and a commercial solar project. CohnReznick determined that its "studies of facilities of various sizes demonstrate that there is no measurable and consistent difference in property values for properties adjacent to solar farms when compared to similar properties locationally removed from their influence."[2] Specifically, the report concludes that properties adjacent to operating solar projects "were not adversely affected by their proximity to the solar farm," and further, "that properties surrounding other proposed solar farms operating in compliance with all regulatory standards will similarly not be adversely affected, in either the short or long term period."[3] Importantly, a surrounding property owner's perceived value of its agricultural land does not translate into an actual or substantial impact on property values.

A local real estate broker, Nancy A. Smith, independently reviewed the Project, the Landscaping Plan, the Visual Impact Assessment, and CohnReznick property value study, and spoke with colleagues from counties that hose solar projects, and "was unable to find any data that showed there would be either positive or negative effects on property values." She also concluded that "[t]he landscape plan for this project is certainly very extensive and [she] feel[s] will allow more than ample screen plantings to any adjacent properties." (See letter from Nancy A. Smith, Broker Associate, Carpenter Realtors.)

Additionally, as Lot Coverage is partially defined in terms of impervious surface associated with primary or accessory structures, any lot coverage impacted by solar panels in this instance will not actually translate to impervious surfaces, since solar panels will be placed above the soil in its natural state, being pervious. Therefore, the Project will not have a negative effect on drainage, and the relatively low level of the solar panels will not result in a visual impact upon the perceived open space afforded the otherwise agricultural vicinity. Attached hereto as Exhibit A are lot coverage calculations for Project facilities located on parcels included in the Project, including solar panels, site roads, piles, and fence posts. The average surface area coverage across all parcels is 17%, with a maximum coverage of 27% and a minimum coverage of 0.0%.

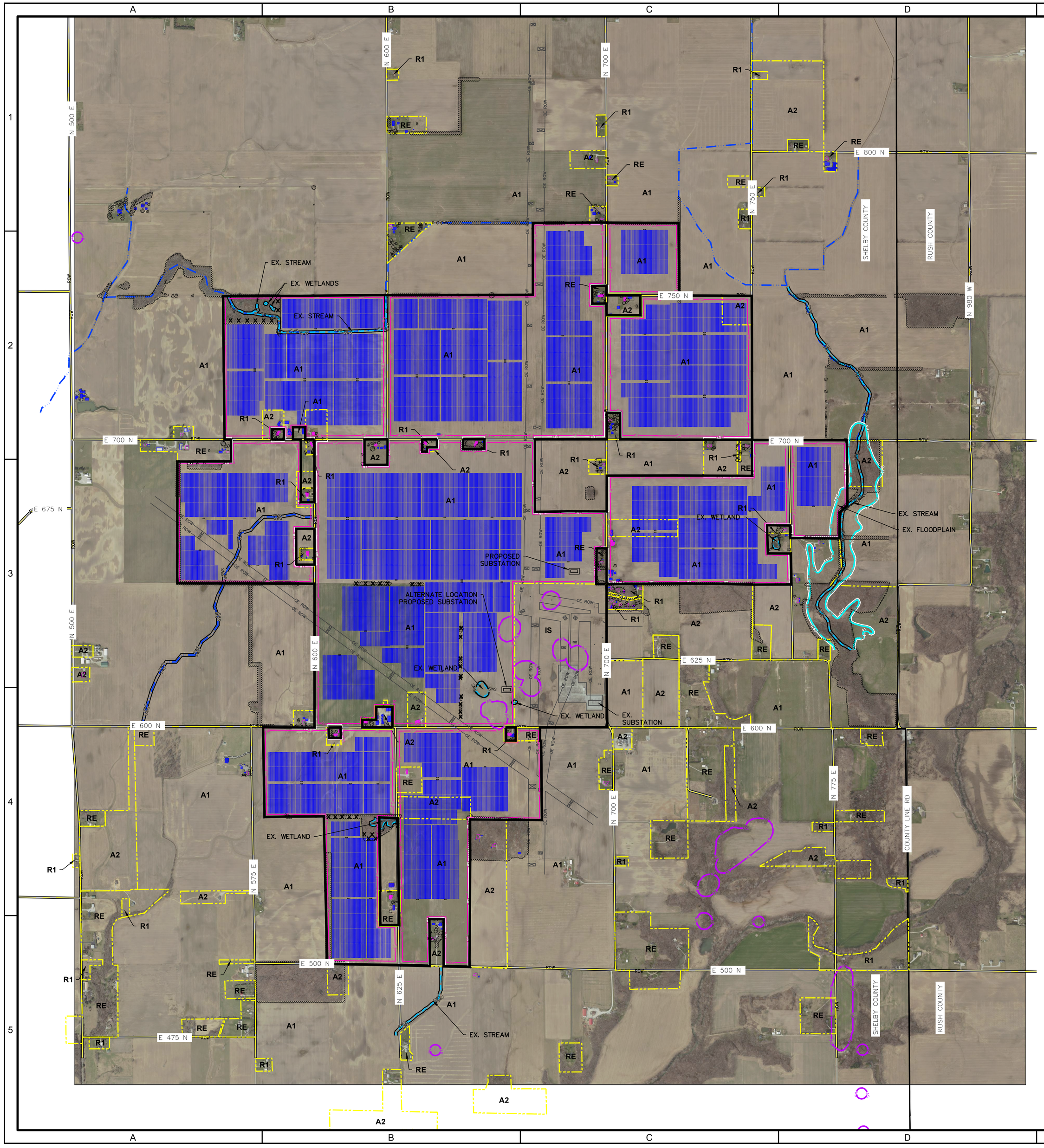
In April 2018, the Shelby County Board of Commissioners developed and approved the use of commercial solar energy systems in certain zoning districts in Shelby County, including specifically, zoning districts A1 and A2, in the County's Ordinance for Commercial Solar Energy Systems. In doing so, the County expressly provided that solar projects were acceptable uses in agricultural zones. Additionally, no provision of the County's Ordinance for Commercial Solar Energy Systems restricts or otherwise regulates lot coverage amounts.

2. **Practical Difficulty:** Granting the variance of the development standards to allow the Project represents a reasonable deviation from this specific Lot Coverage standard. Given the executed power contract of the Speedway Solar Project, and the fact that the County recently enacted an ordinance to allow solar projects in agricultural zones, a requirement to comply with the Lot Coverage standard represents a practical difficulty in the use of the property and adherence to the ordinance.

   Additionally, as Lot Coverage is partially defined in terms of impervious surface associated with primary or accessory structures, any lot coverage impacted by solar panels in this instance will not actually translate to impervious surfaces, since solar panels will be placed above the

[2] *See Property Value Impact Study*, CohnReznick (November 1, 2018) at 3.
[3] *See Property Value Impact Study,* CohnReznick (November 1, 2018) at 63.

soil in its natural state, being pervious. Without the Lot Coverage variance, no solar power project would be possible. Given the unique nature of the Project, strict compliance with the Lot Coverage provisions of the ordinance, therefore, would result in a practical difficulty in the use of the property for the purpose of the Project.



TOTAL SYSTEM DESCRIPTION:

SYSTEM SIZE (AC) 200 MW

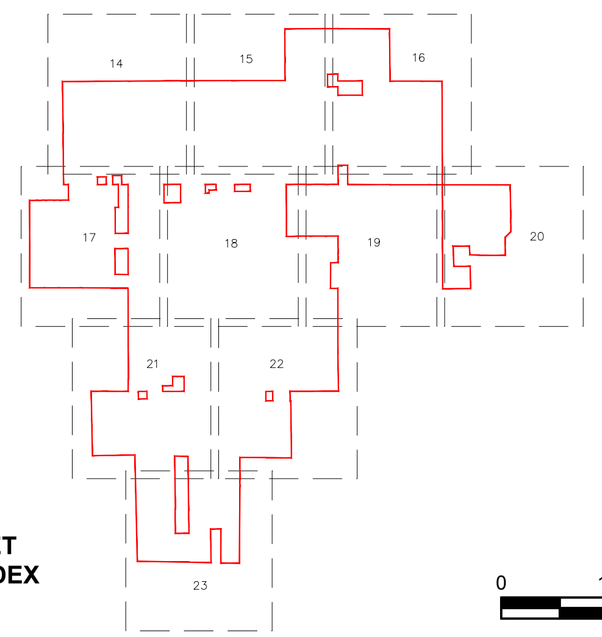
LEGEND:

- PROPERTY BOUNDARY
- COUNTY BOUNDARY
- PROPERTY SETBACK (FRONT, REAR, SIDE)
- LANDSCAPE BUFFER C
- LANDSCAPE BUFFER C+
- STREAM AND WETLAND SETBACK
- FLOODPLAIN SETBACK
- EXISTING ROADS RIGHT-OF-WAY (APPROX.)
- EXISTING UNPAVED ROADS (APPROX.)
- EXISTING STRUCTURES (BUILDINGS, BARNS, ETC.) (APPROX.)
- EXISTING RESIDENTIAL DWELLING
- EXISTING FLOOD PLAIN
- EXISTING STREAM
- EXISTING COUNTY REGULATED DRAIN
- EXISTING WETLAND
- EXISTING TREE / TREELINE (APPROX.)
- EXISTING TREES TO BE REMOVED
- EXISTING TRANSMISSION TOWERS (APPROX.)
- EXISTING OVERHEAD ELECTRIC RIGHT-OF-WAY (APPROX.)
- ARCHAEOLOGICAL SETBACKS
- PARCEL LINES
- PROPOSED TRACKER ROW
- PROPOSED INVERTER SKID

GENERAL NOTES:

1. APPROXIMATE LOCATIONS OF STRUCTURES, ELECTRIC TOWERS, OVERHEAD ELECTRIC LINES, TREE LINES ARE BASED ON PUBLICLY ACCESSIBLE GIS DATA AND AERIAL IMAGERY.
2. STREAM AND WETLAND DELINEATION WITHIN THE PROPERTY BOUNDARY WAS COMPLETED BY QUALIFIED ECOLOGISTS IN MAY AND SEPTEMBER 2018.
3. BEARINGS AND DISTANCES BASED ON PROPERTY BOUNDARY AND DO NOT REFLECT ACTUAL DEED / LEGAL DESCRIPTION.
4. RIGHT OF WAY WIDTHS ARE ASSUMED TO BE 33 FEET WIDE AND WILL REQUIRE VERIFICATION BY COUNTY.
5. THE PRECISE SITE BOUNDARIES FOR THE ARCHAEOLOGICAL FEATURES ARE CONSIDERED PRIVILEGED AND CONFIDENTIAL, AND NOT FOR PUBLIC DISCLOSURE, THEREFORE A 100 FOOT SETBACK WILL BE USED TO REPRESENT THESE AREAS ON BOTH THE EXISTING AND PROPOSED CONDITIONS MAPS.
6. ALL COMMERCIAL SOLAR ENERGY SYSTEMS EQUIPMENT IS LIMITED TO 20 FEET IN HEIGHT AND MUST BE SETBACK A MINIMUM OF 100 FEET FROM ANY RESIDENTIAL DWELLING UNIT.
7. LANDSCAPE BUFFERS ARE REQUIRED WHEN A PROPERTY IS BEING DEVELOPED ADJACENT TO AN EXISTING MORE INTENSE LAND USE. THE PROJECT ASSUMES LANDSCAPE BUFFER "C" WILL BE UTILIZED FOR ADJACENT PARCELS WITH PARTICIPATING RESIDENTS AND A MODIFIED AND STRICTER LANDSCAPE BUFFER "C+" WILL BE UTILIZED FOR ADJACENT PARCELS WITH NON-PARTICIPATING RESIDENTS.

SETBACK TYPE	REQUIRED DISTANCE
WETLAND	15 FT
STREAM	25 FT
FLOODPLAIN	25 FT
PUBLIC RIGHT-OF-WAY	33 FT
ARCHAEOLOGICAL BUFFER	100 FT
RESIDENTIAL DWELLING BUFFER	100 FT
LANDSCAPE BUFFER "A"	20 FT
LANDSCAPE BUFFER "B"	15 FT
LANDSCAPE BUFFER "C" CANOPY TREE	25 FT
LANDSCAPE BUFFER "C" ORNAMENTAL TREE	15 FT
A1 MIN. FRONT YARD	50 FT
A2 MIN. FRONT YARD	60 FT
A1 / A2 MIN. SIDE YARD FOR PRIMARY STRUCTURE	40 FT
A1 / A2 MIN. SIDE YARD FOR ACCESSORY STRUCTURE	10 FT
A1 / A2 MIN. REAR YARD FOR PRIMARY STRUCTURE	40 FT
A1 / A2 MIN. REAR YARD FOR ACCESSORY STRUCTURE	10 FT
RE MIN. FRONT YARD	50 FT
RE MIN. SIDE YARD FOR PRIMARY STRUCTURE	30 FT
RE MIN. SIDE YARD FOR ACCESSORY STRUCTURE	10 FT
RE MIN. REAR YARD FOR PRIMARY STRUCTURE	30 FT
RE MIN. REAR YARD FOR ACCESSORY STRUCTURE	10 FT
R1 MIN. FRONT YARD	35 FT
R1 MIN. SIDE YARD FOR PRIMARY STRUCTURE	15 FT
R1 MIN. SIDE YARD FOR ACCESSORY STRUCTURE	5 FT
R1 MIN. REAR YARD FOR PRIMARY STRUCTURE	30 FT
R1 MIN. REAR YARD FOR ACCESSORY STRUCTURE	5 FT
IS MIN. FRONT YARD	35 FT
IS MIN. SIDE YARD	15 FT
IS MIN. REAR YARD	20 FT



DWG SHEET KEY MAP INDEX
(1" = 3000')

N

1" = 1000'

0 1000 2000 3000

SCALE IN FEET

AECOM
525 VINE ST, SUITE 1800
CINCINNATI, OH 45202
513 651-3440

RANGER POWER
20 Jay Street, #900
Brooklyn, New York 11201

SPEEDWAY SOLAR
SHELBY COUNTY, INDIANA

SOLAR FACILITY DEVELOPMENT

PRELIMINARY NOT FOR CONSTRUCTION

JOHN D. PRIEBE, P.E.
PE-10000303

THE PROFESSIONAL WHOSE PERSONAL SEAL AND/OR SIGNATURE APPEARS ON THIS SHEET ASSUMES RESPONSIBILITY ONLY FOR WHAT APPEARS ON THIS SHEET AND DISCLAIMS ANY RESPONSIBILITIES FOR ALL OTHER DRAWINGS, SUPPLEMENTAL DRAWINGS, PLATS, SURVEYS, REVISIONS, SPECIFICATIONS, ESTIMATES, REPORTS, OR OTHER DOCUMENTS OR INSTRUMENTS NOT SEALED BY THE UNDERSIGNED PROFESSIONAL RELATING TO OR INTENDED TO BE USED FOR ANY PART OR PARTS OF THE PROJECT TO WHICH THIS SHEET REFERS.

ISSUED FOR PERMITTING	- DATE
ISSUED FOR BIDDING	- DATE
ISSUED FOR CONSTRUCTION	- DATE

REVISIONS

NO.	DESCRIPTION	DATE
△		
△		
△		
△		
△		

AECOM PROJECT NO:	60572505
DRAWN BY:	JCV
DESIGNED BY:	SM
CHECKED BY:	MLS
DATE CREATED:	12/03/2018
PLOT DATE:	12/03/2018
SCALE:	AS SHOWN
ACAD VER:	CIVIL 3D 2016

SHEET TITLE

PROPOSED CONDITIONS OVERALL MAP

13

Exhibit A to Special Exception Application

Additional Submittals

Applicant, Speedway Solar, LLC ("Speedway Solar"), provides the following additional submittals relative to this Special Exception Application for a 199 MW solar project (the "Project") in Hanover and Union Townships in Shelby County. The following submittals include revisions to the Project design, specific reports and analyses to support the Project's compliance with the Special Exception requirements, and present new information than that provided with the prior Application submitted on October 16, 2018, as amended and supplemented (Case #BZA 18-17).

1. **Decommissioning Plan Agreement:** Proposed Decommissioning Plan Agreement, along with a Decommissioning Plan and Agricultural Soils Reclamation Plan, is filed herewith for review and approval of BZA and its attorney.

2. **Revised Site Plan/Increased Setbacks:** Submitted herewith is a revised site plan. The site plan has been modified to reconfigure the site layout and further increase setbacks from Case #BZA 18-17. The revised setbacks meaningfully exceed County requirements. Specifically, Applicant proposes setbacks from solar panels equal to the greater of a) 300 feet from existing non-participating residential structures and b) 150 feet from a non-participating property line. Applicant has also maintained a setback of approximately 100 feet between solar panels and public roads. Applicant leased land to accommodate these increased setbacks. Notably, the Project panel array acreage has decreased compared to Case #BZA 18-17, as described further in the Findings of Fact. In many places around the Project perimeter there is sufficient buffer to support modern, commercial row crop cultivation.

3. **Wildlife Review:** See submitted memorandum from AECOM dated November 27, 2018 which concludes that the Project is not anticipated to result in any adverse impacts to the natural habitat or wildlife in the Project area. The Project area is not considered a high-quality natural community and does not support a natural habitat for endangered, threatened or rare species. Based on desktop surveys, field work, and correspondences with state and federal agencies, the Project was designed to prevent potential impacts to wildlife by avoiding wetlands and tree clearing. Consultation by state and federal agencies support Speedway's conclusion that the Project will not adversely impact habitat or wildlife.

5. **Detailed Landscape Plan:** Refer to site plan for detailed landscaping provisions which exceed Ordinance requirements. Specifically, the Applicant's landscape plan consists of two categories:

1) **Landscape Buffer C:** The majority of the parcels included in the Project are zoned A1 or A2 and would therefore be subject to Landscape Buffer A, which requires one (1) canopy tree and one (1) ornamental or evergreen tree every seventy (70) feet of contiguous boundary with an adjacent lot. Landscape Buffer A would result in only two (2) total trees planted every 100 feet of contiguous boundary with an adjacent lot. However, the site plan submitted as part of this application voluntarily establishes Landscape Buffer C as the Project minimum. Landscape Buffer C requires one (1) canopy tree every forty-five (45) feet of contiguous boundary with an adjacent lot and two (2) ornamental or evergreen trees every fifty (50) feet of contiguous boundary with an adjacent lot. The voluntary use of

Landscape Buffer C as the Project minimum results in the planting of six (6) total trees every 100 feet, representing an at least 300% increase in the total number of trees planted in the landscape buffer.

2) **Landscape Buffer C+:** A small number of the parcels included in the Project are adjacent to non-participating parcels on which residences are located. Most of these adjacent, non-participating parcels are in an A2 zoning district, and would be subject to Landscape Buffer A (described above) under Shelby County's Unified Development Ordinance. The site plan submitted as part of this application voluntarily applies Landscape Buffer C+ to these parcels. Landscape Buffer C+ does not exist in Shelby County's Unified Development Ordinance and was voluntarily created specifically for this project. Landscape Buffer C+ will consist of one (1) canopy tree every forty-five (45) feet of contiguous boundary with an adjacent lot and one (1) ornamental or evergreen tree every 18 feet of contiguous boundary with an adjacent lot. Landscape Buffer C+ results in the planting of two (2) canopy trees and five (5) to six (6) ornamental or evergreen trees, or eight (8) trees total, every 100 feet. The voluntary creation and use of Landscape Buffer C+ represents a 400% increase in the total number of trees planted over Landscape Buffer A.

6. **Visual Impact Assessment:** Although not required by the Ordinance, Applicant has commissioned a study, which will be submitted to the file by mid-December to support the finding that the proposed special exception is in harmony with all adjacent land uses and will not alter the character of the district. The study simulates what the Project would look like from different vantage points, incorporating landscape plans and facility components.

7. **Sound Study:** Although not required by the Ordinance, Applicant has commissioned a study, which will be submitted to the file by mid-December to support the finding that the proposed special exception is in harmony with all adjacent land uses and will not alter the character of the district.

8. **Drainage Plan/Drainage Best Management Practices:** Although not required by the Ordinance, Applicant has commissioned a plan to address drainage in and around the Project, which will be submitted to the file by mid-December.

SHELBY COUNTY
DECOMMISSIONING PLAN AGREEMENT

This Decommissioning Plan Agreement ("Agreement") dated as of March 1, 2019 ("Effective Date") by and between Speedway Solar, LLC, a Delaware limited liability company, qualified to do business in Indiana (the "Company") and the Shelby County Board of Zoning Appeals ("BZA") on behalf of Shelby County, Indiana.

RECITALS

WHEREAS, the Company desires to build a commercial solar energy system project in Shelby County, Indiana (the "Project");

WHEREAS, the Company has or will enter into certain Lease Agreements (collectively, the "Leases") with the landowners within the Project area (the "Landowners");

WHEREAS, pursuant to Section 12 of the Shelby County Ordinance for Commercial Solar Energy Systems (the "Ordinance"), the Company is required to post and maintain a financial assurance to cover the cost of decommissioning the Project, including demolition and removal of the Project facility (the "Net Removal Cost" as defined herein);

WHEREAS, the Company shall post a performance or surety bond or letter of credit for the Net Removal Cost upon the terms and conditions more fully set forth below;

WHEREAS, for purposes of this Agreement, "Generating Units" are defined to include, but not be limited to, solar panels, racks, inverters, piles, foundations, transformers and underground cable circuits.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
RESTORATION FUND ISSUANCE

Section 1.1 Agreement to Decommission; Restoration Fund Amount. Company shall decommission each Generating Unit and related improvements pursuant to the terms of this Agreement, with detailed Plan related thereto described in Attachment A attached hereto, which shall be deemed the decommissioning plan under Section 12 of the Ordinance. The Company shall decommission each Generating Unit and related improvements upon the discontinuation of use, which shall be deemed to occur upon the failure of such Generating Units to produce electricity for twelve (12) consecutive months, unless a plan outlining the steps and schedule for returning the Generating Units to service is submitted and approved by the Shelby County Board of Zoning Appeals (the "BZA") within the twelve (12) month discontinuation period. Decommissioning shall include: (i) removal from the property of each Generating Unit and related improvements installed or constructed by Company, (ii) fill in and compact all trenches or other borings or excavations made by Company on the property, (iii) leave the surface of the property free from debris, and (iv) use reasonable efforts to restore the Property to farmable

condition, as more particularly described in Attachment B (Agricultural Soil Reclamation Plan) attached hereto.

In the event of a force majeure or other event which results in the absence of electrical generation for twelve (12) months, by the end of the twelfth month of non-operation, Company must demonstrate to the BZA that the Project will be substantially operational and producing electricity within twenty-four (24) months of the force majeure or other event. If such a demonstration is not made to County's reasonable satisfaction, the decommissioning must be initiated within eighteen (18) months after the force majeure or other event. The approval of the BZA of such a plan may not be unreasonably withheld. County considers a force majeure to be due to the following causes: fire, earthquake, flood, tornado, ice storm, or other acts of God and natural disasters, and war, civil strife, terrorism or other similar violence.

Prior to the start of construction, Company shall deliver to BZA a performance or surety bond or letter of credit in a form and substance reasonably satisfactory to BZA (the "Restoration Fund") securing performance of the decommissioning obligations, which shall be equal to the estimated amount of removal costs of the Generating Units, if any, including reasonable professional fees related thereto and accounting for salvage value (the "Net Removal Cost"), shall be determined as follows: The Company shall retain a licensed professional engineer with knowledge of the operation and decommissioning of solar projects (a "Professional Engineer") to provide an estimate of the Net Removal Cost, which Professional Engineer shall be subject to reasonable approval of the BZA. If the Parties cannot agree on the Professional Engineer, then the BZA and the Company shall each select a Professional Engineer licensed in Indiana and the Professional Engineers thus selected shall select a third Professional Engineer which shall each provide an estimate of the Net Removal Cost. The amount of the Restoration Fund shall be an amount equal to the average of the three estimates of the Net Removal Cost which shall include a reasonable adjustment for inflation. The Company shall pay all fees in obtaining the estimates of the Net Removal Cost. Company shall keep the Restoration Fund, or a like replacement financial assurance, in force throughout the remainder of the term of this Agreement. (Note to Draft: This has worked well in other jurisdictions.)

Section 1.2 Restoration Fund Provider; Restoration Fund Beneficiaries. At least thirty (30) days prior to such delivery of the Restoration Fund to the BZA, the Company shall submit to the Planning Director the name of the rated provider of the Restoration Fund and the documents governing the issuance of the Restoration Fund, which documents shall be subject to the approval of the Planning Director, such approval not to be unreasonably withheld. The BZA shall be named as the beneficiary of the Restoration Fund, or a municipality should the Project land become incorporated, provided, however, that the disbursement of and rights to the Restoration Fund funds shall be governed by Article II below; and provided further, that the Landowners may also be beneficiaries of the Restoration Fund. The Company represents that it has not granted and the Company shall not grant to the Landowners or any other party rights to the Restoration Fund senior to the rights of the BZA to the Restoration Fund.

Section 1.3 Restoration Fund Requirements. After the initial five (5) year term and each five (5) years thereafter for the duration of the operation of the Project, the Company shall deliver to the BZA not later than sixty days (60) days prior to the expiration date of any posted Restoration Fund (the "Renewal Deadline"), a certificate of continuation extending the expiration date of the then-existing Restoration Fund for an additional period of five (5) years.

Such certificate of continuation shall include an updated estimate of the Net Removal Cost prepared by the Professional Engineer who provided the original estimate (as set out in Section 1.1) or if such engineer is unwilling or unable to provide a new estimate, a new Professional Engineer selected based on the process outlined in Section 1.1. Company shall thereafter amend the financial assurance if necessary to reflect the updated estimate. Company shall provide BZA written notice no later than thirty (30) days prior to the Renewal Deadline that the Renewal Deadline is approaching and that a certificate of continuation is forthcoming pursuant to the terms of this Section 1.3.

Section 1.4 Failure to Provide Restoration Fund. If the Company fails to provide the Restoration Fund or the certificate of continuation provided in Sections 1.2 and 1.3, the BZA shall provide written notice to Company and Company shall be afforded thirty (30) days' notice and opportunity to cure, prior to the BZA's declaring a default under this Agreement. If Company fails to provide the Restoration Fund or the certificate of continuation provided in Sections 1.2 and 1.3 after such thirty (30) days and the BZA declares an event of default hereunder, the BZA shall have the right to (a) seek any necessary injunctive relief available under applicable law to affect the providing of the Restoration Fund or any other requirement under this Agreement, (b) pay any premium necessary to continue the Restoration Fund, in which case Company shall reimburse the BZA for the amount of such premium, (c) draw on the Restoration Fund and deposit the drawn funds in a bank account and, at the BZA's election, apply such funds to the decommissioning of the Generating Units, and (d) seek all remedies at law. Company shall pay to BZA the BZA's attorney and professional fees and other costs with respect to the pursuit and implementation of such remedies for such an event of default.

ARTICLE II
DISBURSEMENT OF SECURITY

Section 2.1 Rights of BZA. In the event the Company and its lenders fail to decommission the Project in accordance with the requirements of the Ordinance, the BZA may, in its sole election, undertake the decommissioning of the Project. The BZA's election to decommission all or any portion of the Project shall not create an obligation to the Landowners, the Company or any other third party to complete the decommissioning of the entire Project. In the event the BZA elects to undertake the decommissioning of the Project, it may make a claim(s) upon the Restoration Fund to the Restoration Fund provider for the Net Removal Cost subject to the limitations set forth herein. Any claim made by the BZA upon the Restoration Fund shall be limited to such expenses incurred by the BZA for the removal of all structures and the restoration of the soil and vegetation with the Project, as set forth in the Ordinance, including reasonable professional fees (the "Decommissioning Obligations").

Section 2.2 BZA Cooperation. In the event the BZA elects not to undertake or complete the decommissioning of all or any portion of the Project, the BZA shall execute all documentation reasonably required or requested by the Restoration Fund, the Company and/or its lenders necessary to waive the BZA's rights to all or a portion of the Restoration Fund funds and to otherwise permit the Landowners to make claims against the Restoration Fund or at the option of the Landowners, return the Restoration Fund to Company. Additionally, the BZA and Landowners may enter into a "Letter of Understanding" (in recordable form) by which certain Project facilities such as access roads and out buildings, as deemed necessary or useful by Landowners, may be allowed to remain.

Section 2.3 Landowner Leases. The Company represents and agrees that all Leases for Generating Units shall contain terms that provide that the Generating Units are properly decommissioned upon expiration or earlier termination of the Project (except as otherwise allowed under Section 1.1 hereof or specifically provided in a Landowner Lease); provided, however, delivery of such terms of the Leases shall not relieve the Company of any of its obligations under this Agreement.

Section 2.4 Release of Restoration Fund. The Restoration Fund provider shall release the Restoration Fund when the Company has demonstrated to the reasonable satisfaction of the BZA that the Decommissioning Obligations have been satisfied.

ARTICLE III
SALVAGE VALUE

Section 3.1 BZA Right to Salvage Value of Generating Units. In the event the Company, its lenders or the Landowners fail to decommission the Project in accordance with the terms of the Ordinance and in addition to any rights to make a claim upon the Restoration Fund, the Generating Units within the Project shall be deemed abandoned and the BZA shall be entitled to apply the salvage value of the Generating Units located within the Project to any costs of decommissioning the Project in excess of the funds available under the Restoration Fund.

ARTICLE IV
OTHER RIGHTS OF BZA

Section 4.1 Other Relief. In addition to any other rights and remedies granted herein, the BZA shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Project. In addition, the BZA shall have the right to seek reimbursement from Company, its successors or assigns, for any costs of decommissioning the Project incurred by the BZA in excess of the funds available under the Restoration Fund and the salvage value of the Generating Units.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations, Warranties and Covenants of BZA. The BZA represents and warrants to the Company as follows:

a. The BZA has full power and authority, on behalf of the County, to deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly executed and delivered by the BZA and constitutes the legal, valid and binding obligation of the BZA, enforceable against the BZA and County in accordance with its terms.

c. The execution, delivery, and performance of this Agreement by the BZA will not, to the best of BZA's knowledge, violate any applicable law of the State of Indiana.

Section 5.2. Representations, Warranties and Covenants of Company. The Company represents and warrants to the BZA as follows:

a. The Company has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

ARTICLE VI
DISPUTES; DETERMINATIONS

Section 6.1 Default; Disputes. The breach of or default under this Agreement by the Company shall constitute a breach of the Shelby County Unified Development Ordinance, and any remedies set forth under the Shelby County Unified Development Ordinance shall be in addition to the remedies set forth in this Agreement. In the event of any dispute as to any amount to be paid pursuant to this Agreement, the right of the BZA to the Restoration Fund funds and the salvage value of the Generating Units shall take priority over the rights of the Landowners as set forth in this Agreement.

ARTICLE VII
TERM

Section 7.1 Term. The term of this Agreement shall commence on the date of this Agreement, and this Agreement and BZA's rights hereunder shall terminate upon the completion of the decommissioning of the Project in accordance with the terms of this Agreement. Upon termination of this Agreement, the BZA shall execute all documentation necessary or reasonably required in order to release and waive all claims to the Restoration Fund and the salvage value of the Generating Units upon the request of the Company.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 No Waiver; Remedies Cumulative. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 8.2 Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given

or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

If to Company:
Speedway Solar, LLC
Attn: Paul Harris, Vice President
20 Jay Street #900
Brooklyn, NY 11201

With a copy to:
Bingham Greenebaum Doll LLP
2700 Market Tower, 10 West Market Street
Indianapolis, Indiana 46204
Attn: Mary E. Solada, Esq.

If to the BZA:
Shelby County Board of Zoning Appeals
25 W. Polk Street Room 201
Shelbyville, IN 46176
Attn: Executive Director

All notices to the BZA shall include a copy
to Shelby County Attorney(s):

Mark W. McNeely, Esq.
McNeely Law Office
30 East Washington Street
Shelbyville, IN 46176

Section 8.3 Amendments. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by each of the parties hereto. Any amendment to this Agreement shall be subject to a public hearing and approved by the BZA.

Section 8.4 Successors and Assigns. (a) This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 7.1 herein; and (ii) be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(b) Except as provided in subsections (c), (d) (e) and (f) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the BZA, the BZA's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the

SHELBY COUNTY
DECOMMISSIONING PLAN AGREEMENT

This Decommissioning Plan Agreement ("Agreement") dated as of March 1, 2019 ("Effective Date") by and between Speedway Solar, LLC, a Delaware limited liability company, qualified to do business in Indiana (the "Company") and the Shelby County Board of Zoning Appeals ("BZA") on behalf of Shelby County, Indiana.

RECITALS

WHEREAS, the Company desires to build a commercial solar energy system project in Shelby County, Indiana (the "Project");

WHEREAS, the Company has or will enter into certain Lease Agreements (collectively, the "Leases") with the landowners within the Project area (the "Landowners");

WHEREAS, pursuant to Section 12 of the Shelby County Ordinance for Commercial Solar Energy Systems (the "Ordinance"), the Company is required to post and maintain a financial assurance to cover the cost of decommissioning the Project, including demolition and removal of the Project facility (the "Net Removal Cost" as defined herein);

WHEREAS, the Company shall post a performance or surety bond or letter of credit for the Net Removal Cost upon the terms and conditions more fully set forth below;

WHEREAS, for purposes of this Agreement, "Generating Units" are defined to include, but not be limited to, solar panels, racks, inverters, piles, foundations, transformers and underground cable circuits.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I
RESTORATION FUND ISSUANCE

Section 1.1 Agreement to Decommission; Restoration Fund Amount. Company shall decommission each Generating Unit and related improvements pursuant to the terms of this Agreement, with detailed Plan related thereto described in Attachment A attached hereto, which shall be deemed the decommissioning plan under Section 12 of the Ordinance. The Company shall decommission each Generating Unit and related improvements upon the discontinuation of use, which shall be deemed to occur upon the failure of such Generating Units to produce electricity for twelve (12) consecutive months, unless a plan outlining the steps and schedule for returning the Generating Units to service is submitted and approved by the Shelby County Board of Zoning Appeals (the "BZA") within the twelve (12) month discontinuation period. Decommissioning shall include: (i) removal from the property of each Generating Unit and related improvements installed or constructed by Company, (ii) fill in and compact all trenches or other borings or excavations made by Company on the property, (iii) leave the surface of the property free from debris, and (iv) use reasonable efforts to restore the Property to farmable

condition, as more particularly described in Attachment B (Agricultural Soil Reclamation Plan) attached hereto.

In the event of a force majeure or other event which results in the absence of electrical generation for twelve (12) months, by the end of the twelfth month of non-operation, Company must demonstrate to the BZA that the Project will be substantially operational and producing electricity within twenty-four (24) months of the force majeure or other event. If such a demonstration is not made to County's reasonable satisfaction, the decommissioning must be initiated within eighteen (18) months after the force majeure or other event. The approval of the BZA of such a plan may not be unreasonably withheld. County considers a force majeure to be due to the following causes: fire, earthquake, flood, tornado, ice storm, or other acts of God and natural disasters, and war, civil strife, terrorism or other similar violence.

Prior to the start of construction, Company shall deliver to BZA a performance or surety bond or letter of credit in a form and substance reasonably satisfactory to BZA (the "Restoration Fund") securing performance of the decommissioning obligations, which shall be equal to the estimated amount of removal costs of the Generating Units, if any, including reasonable professional fees related thereto and accounting for salvage value (the "Net Removal Cost"), shall be determined as follows: The Company shall retain a licensed professional engineer with knowledge of the operation and decommissioning of solar projects (a "Professional Engineer") to provide an estimate of the Net Removal Cost, which Professional Engineer shall be subject to reasonable approval of the BZA. If the Parties cannot agree on the Professional Engineer, then the BZA and the Company shall each select a Professional Engineer licensed in Indiana and the Professional Engineers thus selected shall select a third Professional Engineer which shall each provide an estimate of the Net Removal Cost. The amount of the Restoration Fund shall be an amount equal to the average of the three estimates of the Net Removal Cost which shall include a reasonable adjustment for inflation. The Company shall pay all fees in obtaining the estimates of the Net Removal Cost. Company shall keep the Restoration Fund, or a like replacement financial assurance, in force throughout the remainder of the term of this Agreement. (Note to Draft: This has worked well in other jurisdictions.)

Section 1.2 Restoration Fund Provider; Restoration Fund Beneficiaries. At least thirty (30) days prior to such delivery of the Restoration Fund to the BZA, the Company shall submit to the Planning Director the name of the rated provider of the Restoration Fund and the documents governing the issuance of the Restoration Fund, which documents shall be subject to the approval of the Planning Director, such approval not to be unreasonably withheld. The BZA shall be named as the beneficiary of the Restoration Fund, or a municipality should the Project land become incorporated, provided, however, that the disbursement of and rights to the Restoration Fund funds shall be governed by Article II below; and provided further, that the Landowners may also be beneficiaries of the Restoration Fund. The Company represents that it has not granted and the Company shall not grant to the Landowners or any other party rights to the Restoration Fund senior to the rights of the BZA to the Restoration Fund.

Section 1.3 Restoration Fund Requirements. After the initial five (5) year term and each five (5) years thereafter for the duration of the operation of the Project, the Company shall deliver to the BZA not later than sixty days (60) days prior to the expiration date of any posted Restoration Fund (the "Renewal Deadline"), a certificate of continuation extending the expiration date of the then-existing Restoration Fund for an additional period of five (5) years.

Such certificate of continuation shall include an updated estimate of the Net Removal Cost prepared by the Professional Engineer who provided the original estimate (as set out in Section 1.1) or if such engineer is unwilling or unable to provide a new estimate, a new Professional Engineer selected based on the process outlined in Section 1.1. Company shall thereafter amend the financial assurance if necessary to reflect the updated estimate. Company shall provide BZA written notice no later than thirty (30) days prior to the Renewal Deadline that the Renewal Deadline is approaching and that a certificate of continuation is forthcoming pursuant to the terms of this Section 1.3.

Section 1.4 Failure to Provide Restoration Fund. If the Company fails to provide the Restoration Fund or the certificate of continuation provided in Sections 1.2 and 1.3, the BZA shall provide written notice to Company and Company shall be afforded thirty (30) days' notice and opportunity to cure, prior to the BZA's declaring a default under this Agreement. If Company fails to provide the Restoration Fund or the certificate of continuation provided in Sections 1.2 and 1.3 after such thirty (30) days and the BZA declares an event of default hereunder, the BZA shall have the right to (a) seek any necessary injunctive relief available under applicable law to affect the providing of the Restoration Fund or any other requirement under this Agreement, (b) pay any premium necessary to continue the Restoration Fund, in which case Company shall reimburse the BZA for the amount of such premium, (c) draw on the Restoration Fund and deposit the drawn funds in a bank account and, at the BZA's election, apply such funds to the decommissioning of the Generating Units, and (d) seek all remedies at law. Company shall pay to BZA the BZA's attorney and professional fees and other costs with respect to the pursuit and implementation of such remedies for such an event of default.

ARTICLE II
DISBURSEMENT OF SECURITY

Section 2.1 Rights of BZA. In the event the Company and its lenders fail to decommission the Project in accordance with the requirements of the Ordinance, the BZA may, in its sole election, undertake the decommissioning of the Project. The BZA's election to decommission all or any portion of the Project shall not create an obligation to the Landowners, the Company or any other third party to complete the decommissioning of the entire Project. In the event the BZA elects to undertake the decommissioning of the Project, it may make a claim(s) upon the Restoration Fund to the Restoration Fund provider for the Net Removal Cost subject to the limitations set forth herein. Any claim made by the BZA upon the Restoration Fund shall be limited to such expenses incurred by the BZA for the removal of all structures and the restoration of the soil and vegetation with the Project, as set forth in the Ordinance, including reasonable professional fees (the "Decommissioning Obligations").

Section 2.2 BZA Cooperation. In the event the BZA elects not to undertake or complete the decommissioning of all or any portion of the Project, the BZA shall execute all documentation reasonably required or requested by the Restoration Fund, the Company and/or its lenders necessary to waive the BZA's rights to all or a portion of the Restoration Fund funds and to otherwise permit the Landowners to make claims against the Restoration Fund or at the option of the Landowners, return the Restoration Fund to Company. Additionally, the BZA and Landowners may enter into a "Letter of Understanding" (in recordable form) by which certain Project facilities such as access roads and out buildings, as deemed necessary or useful by Landowners, may be allowed to remain.

Section 2.3 Landowner Leases. The Company represents and agrees that all Leases for Generating Units shall contain terms that provide that the Generating Units are properly decommissioned upon expiration or earlier termination of the Project (except as otherwise allowed under Section 1.1 hereof or specifically provided in a Landowner Lease); provided, however, delivery of such terms of the Leases shall not relieve the Company of any of its obligations under this Agreement.

Section 2.4 Release of Restoration Fund. The Restoration Fund provider shall release the Restoration Fund when the Company has demonstrated to the reasonable satisfaction of the BZA that the Decommissioning Obligations have been satisfied.

ARTICLE III
SALVAGE VALUE

Section 3.1 BZA Right to Salvage Value of Generating Units. In the event the Company, its lenders or the Landowners fail to decommission the Project in accordance with the terms of the Ordinance and in addition to any rights to make a claim upon the Restoration Fund, the Generating Units within the Project shall be deemed abandoned and the BZA shall be entitled to apply the salvage value of the Generating Units located within the Project to any costs of decommissioning the Project in excess of the funds available under the Restoration Fund.

ARTICLE IV
OTHER RIGHTS OF BZA

Section 4.1 Other Relief. In addition to any other rights and remedies granted herein, the BZA shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Project. In addition, the BZA shall have the right to seek reimbursement from Company, its successors or assigns, for any costs of decommissioning the Project incurred by the BZA in excess of the funds available under the Restoration Fund and the salvage value of the Generating Units.

ARTICLE V
REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations, Warranties and Covenants of BZA. The BZA represents and warrants to the Company as follows:

a. The BZA has full power and authority, on behalf of the County, to deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly executed and delivered by the BZA and constitutes the legal, valid and binding obligation of the BZA, enforceable against the BZA and County in accordance with its terms.

c. The execution, delivery, and performance of this Agreement by the BZA will not, to the best of BZA's knowledge, violate any applicable law of the State of Indiana.

Section 5.2. Representations, Warranties and Covenants of Company. The Company represents and warrants to the BZA as follows:

a. The Company has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.

b. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

ARTICLE VI
DISPUTES; DETERMINATIONS

Section 6.1 Default; Disputes. The breach of or default under this Agreement by the Company shall constitute a breach of the Shelby County Unified Development Ordinance, and any remedies set forth under the Shelby County Unified Development Ordinance shall be in addition to the remedies set forth in this Agreement. In the event of any dispute as to any amount to be paid pursuant to this Agreement, the right of the BZA to the Restoration Fund funds and the salvage value of the Generating Units shall take priority over the rights of the Landowners as set forth in this Agreement.

ARTICLE VII
TERM

Section 7.1 Term. The term of this Agreement shall commence on the date of this Agreement, and this Agreement and BZA's rights hereunder shall terminate upon the completion of the decommissioning of the Project in accordance with the terms of this Agreement. Upon termination of this Agreement, the BZA shall execute all documentation necessary or reasonably required in order to release and waive all claims to the Restoration Fund and the salvage value of the Generating Units upon the request of the Company.

ARTICLE VIII
MISCELLANEOUS

Section 8.1 No Waiver; Remedies Cumulative. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 8.2 Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given

or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

If to Company:
Speedway Solar, LLC
Attn: Paul Harris, Vice President
20 Jay Street #900
Brooklyn, NY 11201

With a copy to:
Bingham Greenebaum Doll LLP
2700 Market Tower, 10 West Market Street
Indianapolis, Indiana 46204
Attn: Mary E. Solada, Esq.

If to the BZA:
Shelby County Board of Zoning Appeals
25 W. Polk Street Room 201
Shelbyville, IN 46176
Attn: Executive Director

All notices to the BZA shall include a copy
to Shelby County Attorney(s):

Mark W. McNeely, Esq.
McNeely Law Office
30 East Washington Street
Shelbyville, IN 46176

Section 8.3 Amendments. This Agreement may be amended, supplemented, modified or waived only by an instrument in writing duly executed by each of the parties hereto. Any amendment to this Agreement shall be subject to a public hearing and approved by the BZA.

Section 8.4 Successors and Assigns. (a) This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 7.1 herein; and (ii) be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.

(b) Except as provided in subsections (c), (d) (e) and (f) below, no Party to this Agreement shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other Party. In those instances in which the approval of a proposed assignee or transferee is required or requested: (i) such approval shall not be unreasonably withheld, conditioned, or delayed; and (ii) without limiting the foregoing, in the case of the BZA, the BZA's approval may not be conditioned on the payment of any sum or the performance of any agreement other than the

agreement of the assignee or transferee to perform the obligations of the Company pursuant to this Agreement. For the avoidance of doubt, no direct or indirect change of control of the ownership interests of Company, or any other sale of direct or indirect ownership interests in the Company (including any tax equity investment or passive investment) shall constitute an assignment requiring the consent of the BZA under this Agreement

(c) Company may, without the consent of the BZA, but upon notice to BZA, assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement to any affiliate or subsidiary or, with the consent of the BZA (not to be unreasonably withheld), a company or other entity that acquires substantially all of the assets of the Company. So long as an assignee assumes in writing all assigned obligations under this Agreement, Company may (with the consent of the BZA, not to be unreasonably withheld) be released from liability for the assigned obligations hereunder. Notwithstanding the above, with prior written notice to the BZA but without the need for consent of the BZA, Company may assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement, to a (i) public utility or (ii) any other company or other entity, provided in either instance that such assignee or an affiliated company shall have comparable experience to the Company in constructing and operating a solar project in the United States and a net worth of a minimum of $10,000,000 as confirmed by audited financial statements as of the most recent fiscal year.

(d) Company will not be required to obtain consent of the BZA for or in connection with (i) a corporate reorganization of Company or any of its direct or indirect affiliates, or (ii) a sale or transfer of equity interest of any direct or indirect affiliate of Company.

(e) Any transfer or assignment pursuant to this Section shall be subject to the assignee agreeing in writing to be bound by the terms of this Agreement.

(f) Company may, also, without the prior approval of the BZA, enter into any partnership or contractual arrangement, including but not limited to, a partial or conditional assignment of equitable interest in the Company or its parent to any person or entity, including but not limited to tax equity investors, or by security, charge or otherwise encumber its interest under this Agreement for the purposes of financing the development, construction and/or operation of the Project (any of the foregoing actions, a "Collateral Assignment") and BZA shall agree to execute and deliver any reasonably requested estoppels related to a Collateral Assignment. Promptly after making such encumbrance, Company shall notify the BZA in writing of the name, address, and telephone and facsimile numbers of each party in favor of which Company's interest under this Agreement has been encumbered (each such party, a "Financing Party" and together, the "Financing Parties"). Such notices shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving the BZA such initial notice regarding either an Assignment or a Collateral Assignment, Company shall promptly give the BZA notice of any change in the information provided in the initial notice or any revised notice. The Company shall, in the event of any such Collateral Assignment, remain bound to the terms of this Agreement unless otherwise agreed by the BZA.

Section 8.5 Counterparts; Effectiveness. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to matters covered by this

Agreement and supersedes any and all prior agreements and understandings, written or oral, relating to decommissioning of the Project.

Section 8.6. Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 8.7 Headings. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 8.8 Governing Law. This Agreement shall be governed by, and construed in accordance with the laws of the State of Indiana, without regard to its conflicts of laws provisions. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in Shelby County, Indiana.

IN WITNESS WHEREOF, this Agreement has been duly executed on the date and year first written above.

"Company"

Speedway Solar, LLC

By: Adam Cohen
Name: Adam Cohen
Its: President

Figure 3A
KOP 1 - Existing Conditions

For Demonstration Purposes Only

Figure 3B
KOP 1 - Visual Simulation

For Demonstration Purposes Only

Figure 4A
KOP 2 - Existing Conditions

For Demonstration Purposes Only

Figure 4B
KOP 2 - Photo Simulation

For Demonstration Purposes Only

Figure 5A
KOP 3 - Existing Conditions

For Demonstration Purposes Only

Figure 5B
KOP 3 - Photo Simulation

Figure 6A
KOP 4 - Existing Conditions

For Demonstration Purposes Only

Figure 6B
KOP 4 - Photo Simulation

Figure 7A
KOP 5 - Existing Conditions

Figure 7B
KOP 5 - Photo Simulation (Grass)

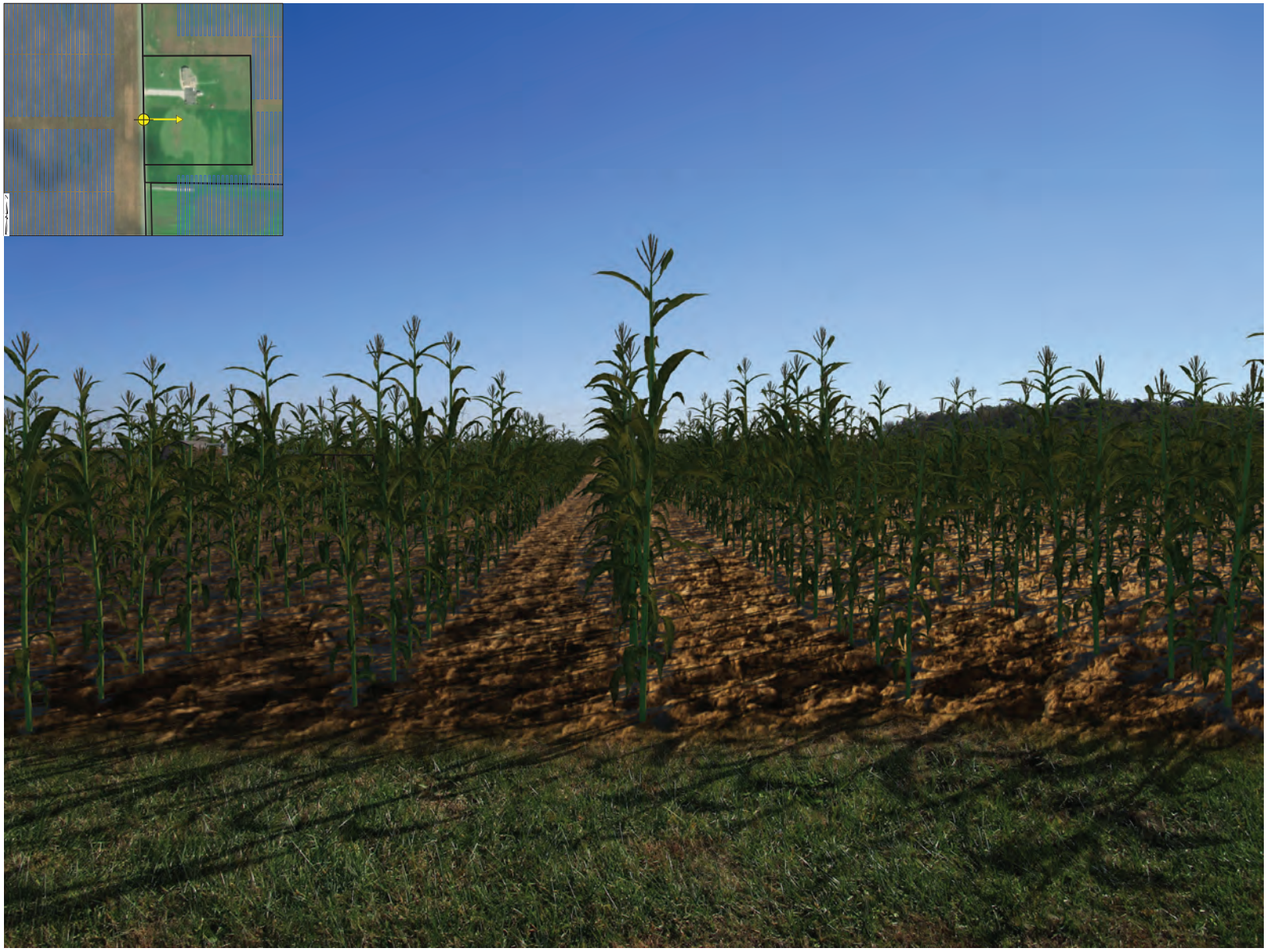
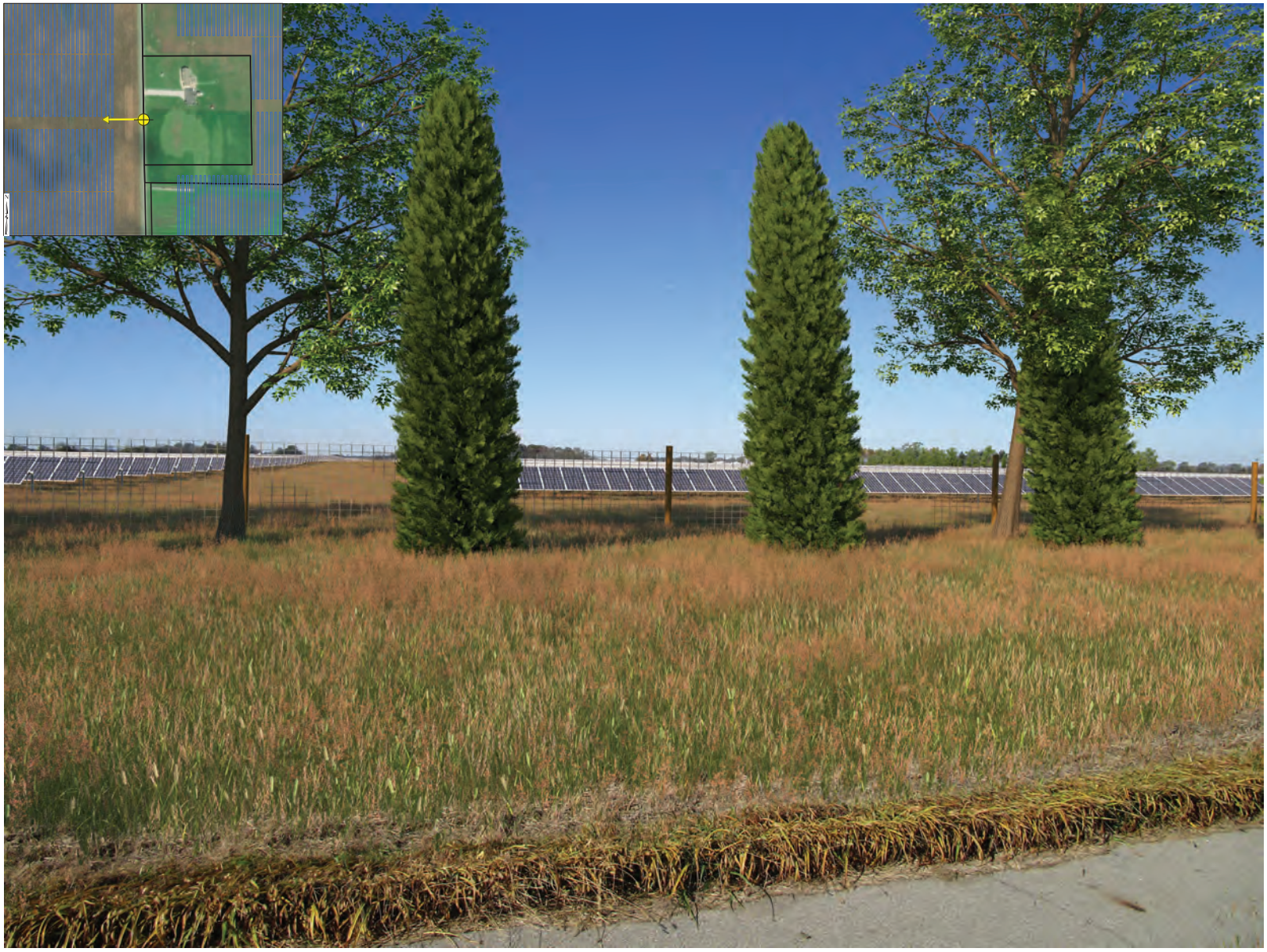


Figure 7C
KOP 5 - Photo Simulation (Corn)

For Demonstration Purposes Only

Figure 8A
KOP 6 - Existing Conditions



For Demonstration Purposes Only

Figure 8B
KOP 6 - Photo Simulation

Figure 9A
KOP 7 - Existing Conditions

For Demonstration Purposes Only

Figure 9B
KOP 7 - Photo Simulation

Figure 10A
KOP 8 - Existing Conditions

For Demonstration Purposes Only

Figure 10B
KOP 8 - Photo Simulation (Grass)

For Demonstration Purposes Only

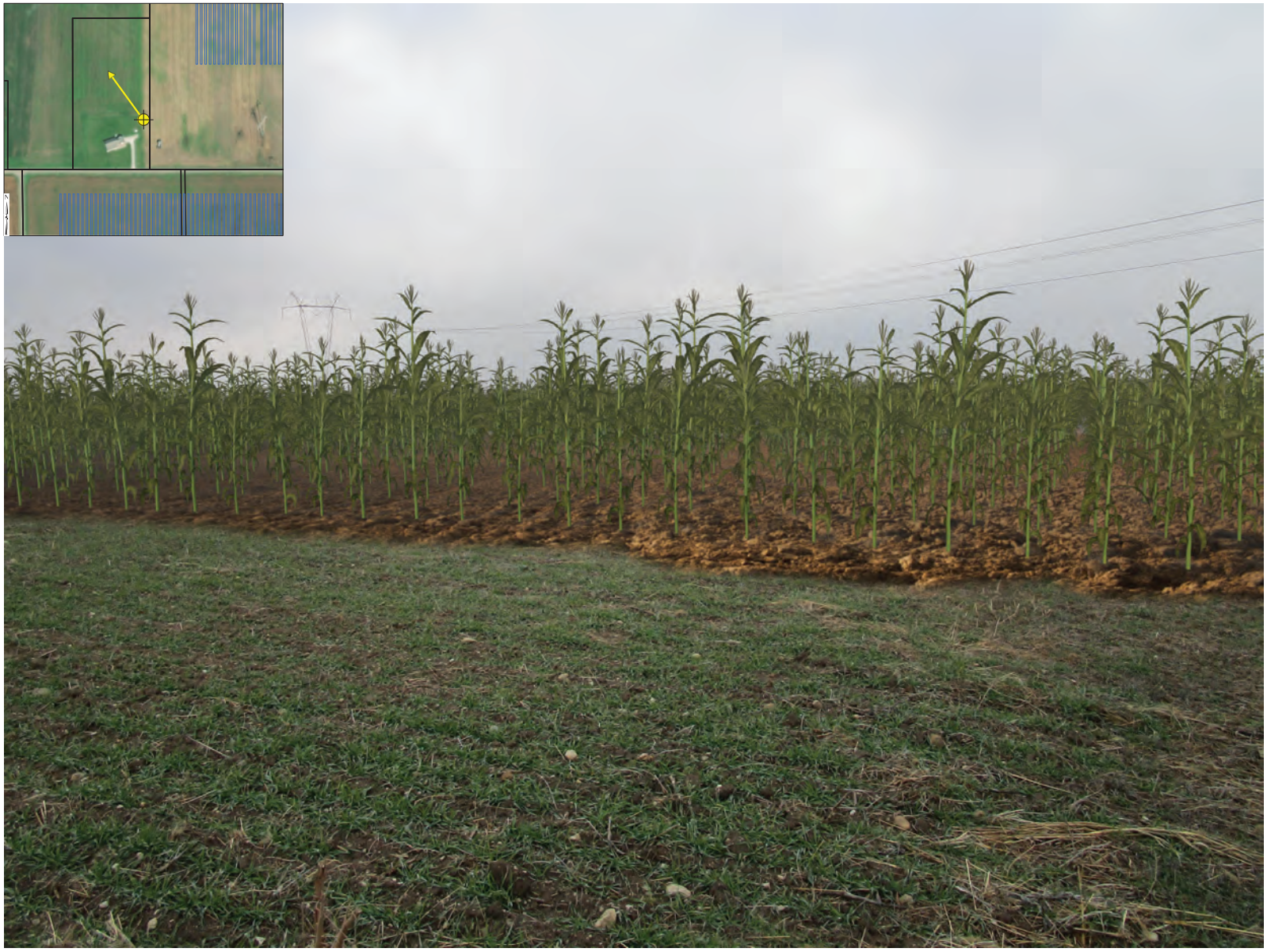
Figure 10C
KOP 8 - Photo Simulation (Corn)

For Demonstration Purposes Only

Figure 11A
KOP 9 - Existing Conditions

For Demonstration Purposes Only

Figure 11B
KOP 9 - Photo Simulation (Grass)



For Demonstration Purposes Only

Figure 11C
KOP 9 - Photo Simulation (Corn)

For Demonstration Purposes Only

Figure 12A
KOP 10 - Existing Conditions

For Demonstration Purposes Only

Figure 12B
KOP 10 - Photo Simulation (Grass)

For Demonstration Purposes Only

Figure 12C
KOP 10 - Photo Simulation (Corn)