



**Amanda G. Gurren**  
90 State House Square  
Hartford, CT 06103-3702  
p 860 424 4338  
f 860 424 4370  
agurren@pullcom.com  
www.pullcom.com

July 12, 2021

**VIA ELECTRONIC FILING**

Melanie A. Bachman  
Executive Director/Staff Attorney  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

**Re: Petition 1424 - Petition of Southington Solar One, LLC for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction, Operation and Maintenance of a 4.725 +/- MW AC Solar Photovoltaic Electric Generating Facility Located at 1012 East Street, Southington, Connecticut**

Dear Ms. Bachman:

I am writing to you on behalf of our client, Southington Solar One, LLC (“Southington Solar One”), in connection with the above-referenced Petition. Specifically, Southington Solar One wishes to address the recent confusion regarding the Project’s compliance with Condition No. 8 of the Council’s May 21, 2021 Declaratory Ruling (the “Declaratory Ruling”), relating to an Amendment of Lease that demonstrates that the community garden is outside of the array area of the project site.

As the Council is aware, on June 29, 2021, Southington Solar One submitted a Land Title Survey Site Plan, referred to as “revised ALTA map and Lease Amendment” (hereinafter, the “ALTA Map”) that depicted the community garden outside of the boundaries of the array area. However, as the Council acknowledged in its July 7, 2021 correspondence to Southington Solar One, “no accompanying lease amendment was provided as was ordered by the Council in Condition No. 8.” As explained below, the reason for this is that the ALTA Map effectively acted as the requested Lease Amendment. Southington Solar One, however, did not accurately convey this information to the Council and wishes to correct this oversight.

By way of background, on September 3, 2020, Southington Solar One entered into a certain Lease Amendment and Assignment Agreement, attached hereto as Schedule 1 (the “Amendment”), with the subject landowner. The Amendment made a number of revisions to the lease, including but not limited to, adding the following provision to the description of the Leased Premises under “Exhibit A” of the lease:

Page 2

*A running description of the Leased Premises will be substituted upon the full completion of final engineering and a site survey.*

The referenced final “site survey” is the ALTA Map that Southington Solar One submitted to the Council on June 29, 2021. Because the ALTA Map effectively amended the description of the Leased Premises to distinguish the community garden from the boundaries of the solar array area of the project site, Southington Solar One believed that Condition No. 8 was satisfied, and as a result, a more “formal” lease amendment (in the traditional sense) was not necessary. Put another way, the Amendment was drafted in such a way that once the ALTA Map was amended, that was a self-actuating amendment of the Lease.

Southington Solar One acknowledges, however, that it failed to accurately convey this information to the Council and apologizes for any confusion that may have ensued as a result. While Southington Solar One believes that the ALTA Map effectively amended the lease in satisfaction of Condition No. 8, if the Council desires a more “traditional” lease amendment, Southington Solar One would be happy to provide the same.

Should you have any questions concerning this submittal, please contact me at your convenience. I certify that copies of this submittal have been made to all parties on the Petition’s Service List as of this date.

Sincerely,



Amanda G. Gurren

**LEASE AMENDMENT AND ASSIGNMENT AGREEMENT**

THIS LEASE AMENDMENT AND ASSIGNMENT AGREEMENT (the "Amendment and Assignment") is made as of September 3, 2020 (the "Effective Date"), by and among **VCP, LLC d/b/a Verogy**, a Connecticut limited liability company (the "Assignor"), **Southington Solar One, LLC**, a Connecticut limited liability company (the "Assignee"), and **Catholic Cemeteries Association of the Archdiocese of Hartford, Inc.**, a Connecticut corporation (the "Landlord").

- A. WHEREAS, Assignor and Landlord have entered into that certain Ground Lease, dated as of June 27, 2018 (the "Lease"), for that certain parcel of land located at 1012 East Street in Southington, Connecticut, which are identified as the "Leased Premises" or "Premises" in the subject Lease.
- B. WHEREAS, the Parties desire to amend the Lease to adjust the definition of the Leased Premises (or Premises) and to make other changes to the Lease.
- C. WHEREAS, upon such amendment, Assignor desires to sell, transfer and assign to Assignee all of its right, title and interest in the Lease and any assets associated therewith (collectively, the "Transferred Assets") in exchange for (i) good and valuable consideration, the receipt of which is hereby acknowledged, and (ii) Assignee's assumption of the Assumed Liabilities (as hereinafter defined);
- D. WHEREAS, Assignee desires to receive the Transferred Assets and to assume the contractual obligations of Assignor solely related to the Transferred Assets (collectively, the "Assumed Liabilities"), on the terms and conditions set forth in this Amendment and Assignment; and
- E. WHEREAS, consent is required from Landlord to such assignment and to release the Assignor of the Assumed Liabilities as set forth below and the Landlord countersigns this Amendment and Assignment for such purpose.

NOW, THEREFORE, the Parties agree as follows:

**AGREEMENT**

1. The foregoing recitals are hereby incorporated into and made a part of this Amendment and Assignment, including all defined terms referenced therein, with the same force and effect as if the same were herein repeated fully and at length. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed to such terms in the Lease.

2. Amendment of Section 1.1. Section 1.1 of the Lease is hereby deleted in its entirety and the following is hereby inserted in its place and stead:

Section 1.1 - Leased Premises. The Landlord hereby leases to the Tenant that certain portion of that certain parcel of land known as:

<b>Address</b>	<b>Parcel #</b>	<b>Parcel Size</b>
1012 East Street, Southington, CT 06489	079-023	+/- 102.92 acres

The parcel contains approximately +/- 102.92 acres of land, of which approximately forty (40) acres shall be leased to Tenant pursuant to this Lease, together with any and all improvements,

## Schedule 1

appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto and any right, title and interest of the Landlord in and to any land lying in the bed of any street, road or highway to the center line thereof in front of or adjoining said parcel of land, which is more particularly described in **Exhibit A**, attached hereto and made a part hereof (collectively the “Leased Premises” or “Premises”).

3. Amendment of Article 11. Article 11 of the Lease is hereby amended by adding the following as Section 11.6 to the Lease:

Section 11.6 - Termination After Commencement Date and During the Initial Term. Provided that Tenant is not in default under any term of this Lease, the occurrence of any one or more of the following events will constitute grounds for Tenant, at its option, to terminate this Lease after the Commercial Operation Date and during the Initial Term:

- (a) In the event of any Default of Landlord pursuant to Section 11.3; or
- (b) The occurrence of a Force Majeure or casualty event that Tenant, in its sole but reasonable discretion, is unable to overcome.

Termination shall be effective thirty (30) days after written notice of such termination from Tenant to Landlord. Following such termination, the parties shall be relieved of all further duties and obligations under this Lease, other than (i) the payment of any accrued and unpaid obligations owed by either party as of the later of the date of termination or the removal of the Solar Array and other improvements by Tenant (for the avoidance of doubt, Basic Rent shall be considered an accrued and unpaid obligation owed by Tenant to Landlord that must be paid until the later of the date of termination or the removal of the Solar Array and other improvements by Tenant); (ii) the removal of the Solar Array and other improvements by Tenant (pursuant to Section 12.1); (iii) any other obligations and liabilities that are expressly stated in this Lease to survive such termination; and (iv) only to the extent the Lease is terminated pursuant to subsection (b) of this Section 11.6, the Tenant shall pay the Landlord a termination fee equal to six (6) months of the Basic Rent owed in the month of such termination (i.e., Basic Rent owed during the month of termination multiplied by 6) (the “Termination Fee”). The Termination Fee, to the extent applicable, shall be paid by Tenant to Landlord on the first day of the month following the month wherein the later of the date of termination or the removal of the Solar Array and other improvements by Tenant occurs. For the avoidance of doubt, no Termination Fee or other duties or obligations, except those listed in (i), (ii), and (iii) above, shall be owed by Tenant to Landlord if the Lease is terminated pursuant to subsection (a) of this Section 11.6.

For purposes of this Lease, “Force Majeure” shall mean causes beyond the reasonable control of and without the fault or negligence of the party claiming Force Majeure, including but not limited to acts of God, flood, earthquake, storm, fire, lightning, explosion, power failure or power surge, the cutting of transmission or other lines, wires or cables to the Solar Array by persons other than Tenant’s employees or contractors, epidemic, war, revolution, riot, civil disturbance, change in law or applicable regulation subsequent to the Commencement Date and action or inaction that prevents the sale of electricity or other renewable energy byproducts from the Solar Array by any federal, state or local legislative, executive, administrative judicial agency or body, which in any of the foregoing cases, by exercise of due foresight such party could not reasonably have expected to avoid, and which, by the exercise of due diligence, it is unable to overcome.

Schedule 1

4. Amendment of Section 14.13. Section 14.13 of the Lease is hereby deleted in its entirety and the following is hereby inserted in its place and stead:

Section 14.13 - Force Majeure. Except as otherwise specifically provided elsewhere in this Lease, in any case where either party is required to do any act (other than Tenant's obligation to pay Basic Rent or Additional Rent), the time for such performance shall be extended by the period of delays caused by Force Majeure.

5. Amendment of Exhibit A. Exhibit A of the Lease is hereby deleted in its entirety and the **Exhibit A** attached hereto is hereby inserted in its place and stead.

6. Update to Notice Information. The parties hereto provide notice to each other pursuant to Section 14.5 of the Lease of changed addresses to provide Notice pursuant to the Lease:

TO LANDLORD: Catholic Cemeteries Association of the Archdiocese of Hartford, Inc.  
700 Middletown Avenue  
North Haven, Connecticut 06473  
Attention: John Pinone  
Phone: 203-239-2557  
Email: jpinone@ccacem.org

*WITH A COPY TO:* Russo & Rizio, LLC  
10 Sasco Hill Road  
Fairfield, Connecticut 06824  
Attn: Raymond Rizio  
Phone: (203) 255-9928  
Fax: (203) 255-6618  
Email: ray@russorizio.com

TO TENANT: Southington Solar One, LLC  
c/o Verogy  
150 Trumbull Street, 4th Floor  
Hartford, CT 06103  
Attention: William Herchel  
Phone: (860) 288-7215  
Email: wherchel@verogy.com

*WITH A COPY TO:* Southington Solar One, LLC  
c/o Verogy  
150 Trumbull Street, 4th Floor  
Hartford, CT 06103  
Attention: Legal Department  
Phone: (860) 288-7215  
Email: legal@verogy.com

7. Additional Payment. Upon the next Contingency Payment being due from Tenant to Landlord pursuant to the terms of the Lease, Tenant shall make an additional payment of \$3,500.00 to Landlord.

8. Transfer of Transferred Assets; Acceptance of Transferred Assets. Assignor hereby sells, assigns, grants, conveys and transfers to Assignee all of Assignor's right, title and interest in and to the

## Schedule 1

Transferred Assets. Assignee hereby accepts such assignment and assumes all of Assignor's duties and obligations under the Assumed Liabilities and thereby agrees to pay, perform and discharge, as and when due, all of the obligations of Assignor under the Transferred Assets accruing on and after the Effective Date. This Amendment and Assignment shall be binding upon and shall inure to the benefit of the parties and their successors and assigns.

### 9. Indemnity.

a. Assignor will hold harmless, indemnify and defend Assignee, its members, officers, directors, agents, employees and assigns (each, an "Assignee Indemnified Party") from and against any and all claims, judgments, settlements, losses, damages, demands, suits, causes of action, liabilities, fines, penalties, costs and expenses (including, without limitation, court costs, attorney's fees, and other reasonable costs of suit or dispute resolution) ("Losses"), whether arising at law or in equity, due to or arising from any willfully wrongful acts or omissions on the part of Assignor with respect to any of the Transferred Assets prior to the Effective Date; provided that no Assignee Indemnified Party shall be entitled to indemnification for any consequential, incidental, indirect, special or punitive damages whatsoever. Indemnification pursuant to this Section 2 shall be an Assignee Indemnified Party's sole and exclusive source of recovery against Assignor of any kind for any and all Losses arising out of or directly or indirectly relating to this Amendment and Assignment.

b. Assignee will hold harmless, indemnify and defend Assignor, its members, officers, directors, agents, employees and assigns (each, an "Assignor Indemnified Party") from and against any and all Losses, whether arising at law or in equity, due to or arising from any willfully wrongful acts or omissions on the part of Assignee with respect to any of the Transferred Assets on and after the Effective Date; provided that no Assignor Indemnified Party shall be entitled to indemnification for any consequential, incidental, indirect, special or punitive damages whatsoever. Indemnification pursuant to this Section 2 shall be an Assignor Indemnified Party's sole and exclusive source of recovery against Assignee of any kind for any and all Losses arising out of or directly or indirectly relating to this Amendment and Assignment.

c. In the event a party wishes to make a claim for indemnification under this Section 2, it shall promptly notify the indemnifying party in writing of the facts constituting the basis for such claim and the amount, to the extent known, of the claim asserted and all reasonably necessary or relevant information, assistance and authority to settle and/or defend any claim. In the event of a claim by a third party ("Third Party Claim"), provided that the indemnified party delivers timely notice to the indemnifying party of such Third Party Claim and makes no admission of liability with respect to such Third Party Claim, the indemnifying party shall assume on behalf of the indemnified party, and conduct with due diligence and in good faith, the defense of such Third Party Claim. Without relieving the indemnifying party of its obligations hereunder or impairing the indemnifying party's right to control the defense or settlement of a Third Party Claim, the indemnified party may elect to participate through separate counsel in the defense of a Third Party Claim, but the fees and expenses of such counsel shall be at the expense of such indemnified party; provided that in the event that (i) the indemnified party shall have reasonably concluded that there exists a material conflict of interest between the indemnifying party and the indemnified party in the conduct of the defense of a Third Party Claim or (ii) the indemnifying party shall not have employed counsel to assume the defense of such claim within a reasonable time after receipt of notice of the commencement of an action thereon, the indemnified party may elect to defend separately such Third Party Claim and the reasonable fees and expenses of counsel reasonably incurred shall be paid by the indemnifying party. No settlement that would impose any cost or expense upon a party seeking indemnification shall be made without such party's prior written

## Schedule 1

consent. No indemnifying party shall settle any Third Party Claim in a manner which would require any action or forbearance from action by the indemnified party without the prior written consent of the indemnified party, which consent shall not be unreasonably withheld, and no indemnified party shall settle any indemnity claim in a manner which would require any action or forbearance from action by any indemnifying party without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld.

10. Representations and Warranties of Assignor. Assignor hereby represents, warrants and covenants to and with Assignee that:

- a. Assignor is the sole owner of the Transferred Assets;
- b. Assignor has not heretofore transferred, conveyed, encumbered, assigned or pledged to any third party all or any portion of the Transferred Assets and the Transferred Assets are free and clear of any adverse claims and any liens, encumbrances or security interests;
- c. The execution of this Amendment and Assignment by Assignor to Assignee does not violate any agreement to which Assignor is a party;
- d. Assignor has obtained all consents, permissions or acknowledgements necessary or advisable, if any, in connection with Assignor's execution of this Amendment and Assignment; and
- e. Assignor is not in default in respect of, or under, as applicable the Transferred Assets.

11. Further Assurances. Assignor shall execute and deliver from time to time at the request of Assignee all such further instruments of transfer and assignment and further assurances as may be required in order to vest in and confirm to Assignee all of Assignor's right, title and interest in and to the Transferred Assets.

12. Governing Law. This Amendment and Assignment shall be construed under and in accordance with the laws applicable to contracts entered into and to be performed in Connecticut.

13. Severability. Any provision of this Amendment and Assignment that may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction


14. Counterparts. This Amendment and Assignment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Delivery of an executed counterpart of this Amendment and Assignment by facsimile or by electronic mail of a portable document format ("pdf") signature page shall be equally as effective as delivery of an original executed counterpart of this Amendment and Assignment.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment and Assignment as of the date first set forth above.

**ASSIGNOR:**

VCP, LLC d/b/a Verogy

By: 

Name: Brian Smith

Title: Member

**ASSIGNEE:**

Southington Solar One, LLC

By: 

Name: William Herchel

Title: Authorized Person

**LANDLORD:**

Catholic Cemeteries Association of the Archdiocese of Hartford, Inc.

By: 

Name: John Pinone

Title: Executive Director



**EXHIBIT A**  
**LEASED PREMISES**

**Address:** 1012 East Street, Southington, CT 06489

**Parcel No.:** 079-023

The “Leased Premises” is the area of the parcel contained within the red outline in the Aerial View on the following page, containing approximately 40 acres of land, together with any and all improvements, appurtenances, rights, privileges and easements benefiting, belonging or pertaining thereto and any right, title and interest of the Landlord in and to any land lying in the bed of any street, road or highway to the center line thereof in front of or adjoining said parcel area, and shall include additional reasonable areas necessary and appropriate for purposes of interconnection of the solar array to the electrical infrastructure of the local electric utility. For the avoidance of doubt, the “Leased Premises” area encompasses the proposed limits of disturbance and includes but is not limited to the areas within the red outline indicated as the solar arrays (broken into the “Western Array”, the “Central Array”, and the “Eastern Array”), a proposed security fence, a series of proposed stormwater basins, the proposed gravel access road, and the proposed vernal pool mitigation area.

A running description of the Leased Premises will be substituted upon the full completion of final engineering and a site survey.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK;  
LEASED PREMISES VISUAL TO FOLLOW]

Schedule 1

Aerial View:

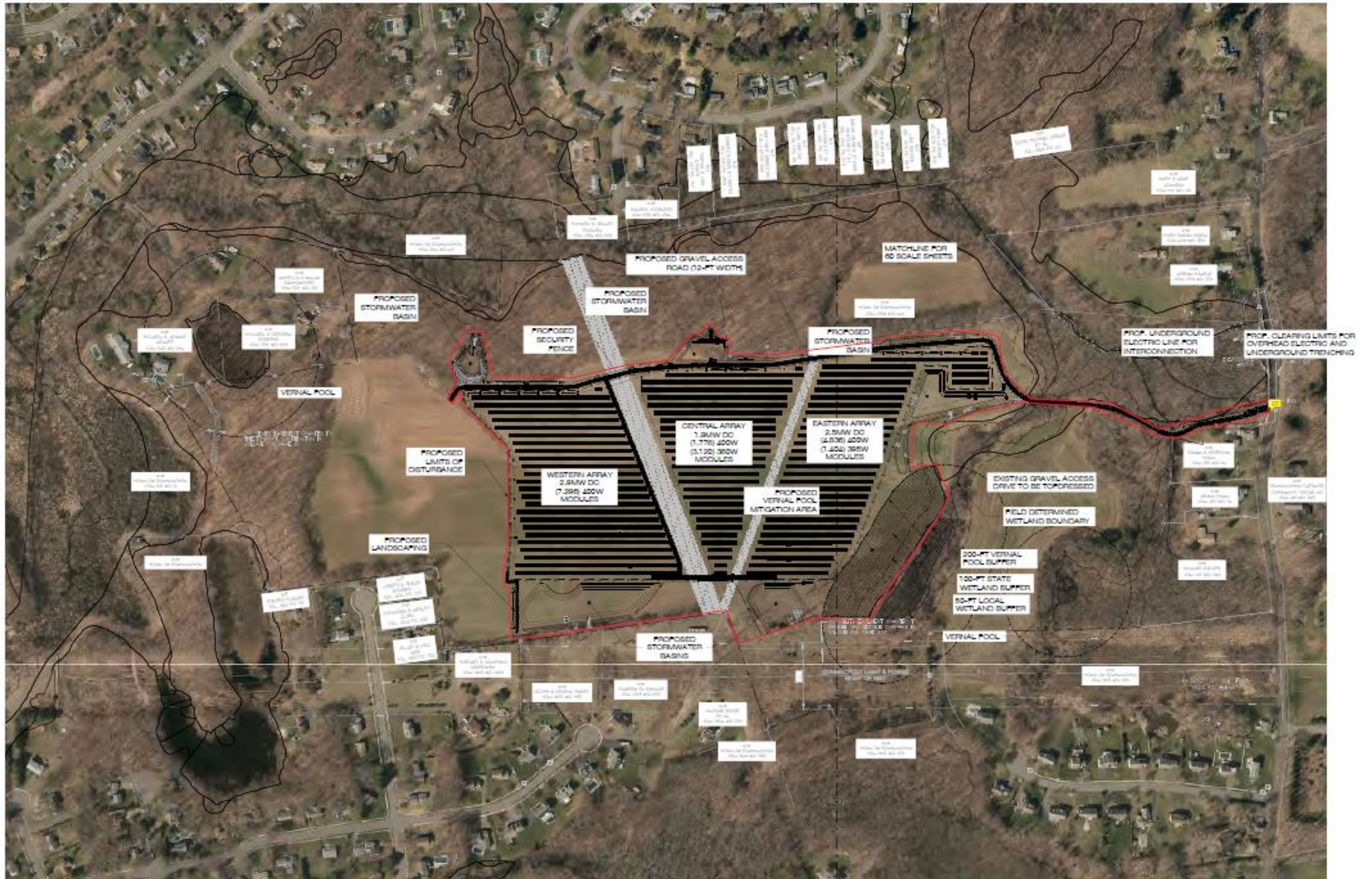


Exhibit A