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February 21, 2022

Via Electronic Mail
Naples Planning Board
Town of Naples
15 Village Green Lane
PO Box 1757
Naples, ME 04055

Re: ISM Solar/River Road Solar Project
30 River Road
Map R12, Lot 41

Dear Members of the Board:

On behalf of ISM Solar, the following is a request for a one-year extension of the Planning Board's June 16, 2020, Major Site Plan Review approval ("Site Plan Approval") for the proposed solar project at 30 River Road. For the following reasons, we respectfully suggest that such an extension is permitted under the Naples Land Use Ordinance and is appropriate given several circumstances outside of ISM Solar's control.

Ordinance Provision

Section 909 of the Ordinance provides that:

...if no substantial start is made in construction or in the use of the property within one year of the date of the [Site Plan Approval], the Authority granted in the [Site Plan Approval] shall lapse and become void. One-year extensions may be granted by the Planning Board, in its sole discretion, only upon written application by the owner of the property.

The Ordinance is silent on the timing of when an extension must be requested and, unlike other similar municipal ordinance provisions, does not require a request for an extension to be submitted prior to the one-year anniversary of the issuance of the initial approval.¹

¹ Although the Ordinance states that an approval is "void" if not extended, as the Ordinance does not require extension requests to be filed during the initial one-year period, an after-the-fact extension has the

Instead, the decision of whether to issue a one-year extension, either during the term of the initial approval or after-the-fact, is within the “sole discretion” of the Planning Board. As there are no specific standards to guide the Planning Board in its decision, the Board should consider the support for the proposed project, any changes in the Ordinance that would impact the findings in the initial Site Plan Approval, and the circumstances related to the timing of the request for an extension.

30 River Road Project

The project site is one of the handful of parcels in Town to be included in the original Solar Farm Overlay District due to the fact that it has already been subject to industrial use as a gravel quarry. Unlike most solar projects, therefore, this project will allow for a new and beneficial use of the site. The project is not located within the shoreland zone, and will not impact any wetlands or vernal pools. ISM Solar agreed to re-route an existing snowmobile trail, and the project will have no visibility from any great pond, other navigable water, or public road and, as noted by the Planning Board during its review, the project meets all Site Plan review standards. In fact, when developing the existing solar ordinance, the Planning Board noted that this project is exemplary of exactly what the Town wants in a solar project.

Given the quality of siting, potential for re-use of an existing commercial site, and the minimal impacts of the proposed development, the Planning Board voted unanimously to approve the project at its June 16, 2020, meeting.

Compliance with Ordinance Provisions, Existing and Proposed

The primary reason for the one-year permit term is to ensure that developers do not seek Planning Board approval years before they intend to proceed, thus depriving the Town with the right to modify applicable ordinance provisions governing certain forms of development. Although the Town is considering enactment of a moratorium on solar development, neither the moratorium nor a new ordinance has yet been enacted. To date, there has been no substantive change in the Ordinance governing solar developments, and so an after-the-fact extension of the Site Plan Approval will not have the effect of avoiding compliance with newly-enacted standards.

Further, the project was designed and permitted while the Town was contemplating changes to its regulation of solar projects. As such, our understanding is that the project approved by the Planning Board is likely to comply with the requirements of any newly enacted solar ordinance.

Timing of Request

There are several reasons for the timing of ISM Solar’s request. The chief reason we have not started construction is the ongoing Covid pandemic and its effects on the supply chain

legal effect of going back to the permit term and extending the approval. As such, if the Planning Board exercises its discretion to grant such an extension, that avoids any “voiding” of the initial approval.

February 21, 2022

Page 3

and the labor force. The cost and availability of panels and technicians dramatically interfered with initial construction planning and logistics, making it unrealistic for us to commence construction within one year of our approval.

Second, ISM Solar, along with other solar developers, have been delayed due to the lengthy process of obtaining authorization from Central Maine Power to connect to the distribution grid. Following an initial analysis from CMP, it then has engaged in several rounds of modifications to its cost estimates, as well as the terms and conditions of connecting this project to the grid. These industry wide delays have been well documented, are the subject of formal investigations by the Public Utility Commission, and are entirely outside of the control of ISM Solar. In fact, after over two years, CMP has still not issued a final plan, cost, or timeframe to connect the River Road project.

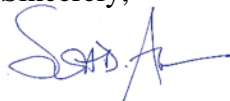
Third, ISM Solar initially submitted its application for a one-year extension back in early December. Confusion regarding the status of the proposed moratorium, however, precluded ISM from meeting with the Planning Board at that time. After discussions with the town attorney, we have confirmed that, although a moratorium on solar permits will be considered by voters at town meeting, no moratorium is in effect. As such, the Planning Board may currently consider ISM's request.

Finally, as noted above, the Ordinance provides that an extension is required only if a permit holder has not "substantially started" the project within one year. We have previously provided information to the Code Officer that we did, in fact, "substantially start" this project prior to June 16, 2021. Nautilus Solar, the future operation of the project, had already committed to purchase the panels as of June of last year. This expense is well in excess of 30% of project costs. A letter from Nautilus Solar is attached at Exhibit "A." ISM Solar has also incurred significant engineering expenses in preparation for construction, as well as interconnection and other fees paid to CMP.

Accordingly, we respectfully request that the Board grant a one-year extension of the June 16, 2020, Site Plan Approval. In the alternative, we ask that the Planning Board, in consultation with the Code Enforcement Officer, determine that ISM Solar "substantially started" this project prior to the one-year anniversary of the Site Plan Approval, which would avoid the need for an after-the-fact extension.

Thank you for your consideration of our request and we ask to be placed on the agenda for the March 15th meeting, and will be available for questions and can provide you with any additional information.

Sincerely,



Scott D. Anderson

SDA/mtt
Enclosure

February 21, 2022

Page 4

cc: Greg Lucini, ISM Solar
Jean Friend, ISM Solar

Exhibit A



396 Springfield Ave., 2ND Floor
Summit, NJ 07901
NautilusSolar.com

December 23, 2021

ISM Solar Development, LLC
940 Waterman Ave,
East Providence, RI 02914

Attention: Greg Lucini

Re: ISM Solar Development, LLC (“ISM Solar”) River Road Solar Project

Dear Mr. Lucini,

Nautilus US Power Holdco, LLC (“Nautilus Solar”) has a contract to purchase the River Road Solar Project, located at 30 River Road in Naples, Maine, from ISM Solar. As part of that agreement, Nautilus Solar has made financial commitments to procure modules and equipment for the River Road project. The financial commitment was made as part of our larger purchase of solar modules for our solar projects under development in Q3 2020. The value of the modules exceeds 30% of the expected project costs.

Sincerely yours,

Nautilus US Power Holdco, LLC

By: Eric Paul

Name: Eric Paul

Title: Executive Director, Origination

Date: December 23, 2021