

LEGAL MEMORANDUM

TO: Ronald Brand, Director of Planning and Development, Town of Farmington

FROM: Sheldon W. Boyce, Jr., Esq.

DATE: October 1, 2020

RE: DRS's proposed alternate version for the draft resolution special use permit Condition No. 7 contained in Mr. Compitello's email of September 25

As requested, I have reviewed DRS's proposed alternate version for the draft resolution special use permit Condition No. 7 (soil sampling protocol) contained in Mr. Compitello's email of September 25, and have the following comments.

To begin with, DRS's proposed alternate version lacks specification and is so vague as to be practically unenforceable. What Sampling and Analysis Plan is meant? What does it consist of? What tests are to be conducted? And how many samples, and where? These issues may be disputed going forward without clear means for resolving differences.

The actual operational language of DRS's proposed alternate version only requires restoration of the land to "agricultural use"—which is arguably not the same standard as returning the land to the same current condition with Class 1-4 soils which is the premise for the grant of a special use permit as I understand it.

The results of the SAP testing under DRS's version are to be included in every *five*-year report required by Condition No. 25—which requires *three*-year reports, so the only time those two parameters coincide would seem to be at year 15 and 30, etc., and at the end of decommissioning.

"Significant deviation" is not defined by DRS in its alternate version, and there are no clear standards or requirements provided, so there could be disputes over what constitutes a significant deviation from benchmark soil sampling that is unacceptable. It won't matter much, though, because even if there is a significant deviation in soil sampling results, under DRS's version the system operators in such event are merely obligated to prepare *potential* explanations for the deviation—under DRS's version the actual reason for the deviation is not required to be provided to the Planning Board.

DRS's version provides the Planning Board no authority to investigate significant deviation issues independently, or revoke the Special Use Permit if there is significant contamination caused by solar equipment or operations.

In sum, should the special use permit be approved and go into effect with DRS's version of Condition No. 7, the Planning Board is effectively removed from any meaningful oversight of the condition of the Project Site during solar facility operations until the solar facility is to be decommissioned at some point in the future (determined by the property owner or system operator).