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SUBMITTED WITH TOWN OF IPSWICH'S APPLICATION FOR GREEN COMMUNITIES DESIGNATION

Green Communities Division
Department of Energy Resources
100 Cambridge Street, Suite 1040
Boston, MA 02114

**RE: Certification of Compliance with Green Communities Act
Criteria For As-of-Right Siting and Expedited Permitting**

To Whom It May Concern:

In support of the Town of Ipswich's application to be designated a Green Community, this letter provides certification by Town Counsel for the Town of Ipswich that the Town's Zoning Bylaw complies with As-of-Right Siting (Criterion #1), and that the Town's permitting process complies with Expedited Permitting (Criterion #2) of the Green Communities Act, as described below. Criterion #1 of the Green Communities Act requires that towns must "provide for the as-of-right siting of renewable or alternative energy generating facilities, renewable or alternative research and development facilities, or renewable or alternative energy manufacturing facilities in designated locations." Criterion #2 requires that towns show they provide an expedited application and permitting process for as-of-right renewable energy facilities which does not exceed one year from the date of initial application to the date of final permit approval.

I. IPSWICH SATISFIES CRITERIA FOR AS-OF-RIGHT SITING

A. Ipswich Allows As-Of-Right Siting of Renewable Energy Facilities in the Form of Commercial-Scale Solar Collection Facilities in its Industrial District

Section V.D. of the Ipswich Protective Zoning Bylaw (the "Bylaw"), which is the Table of Use Regulations, allows "Solar Energy Collection Apparatus" by right in the Industrial

District, subject to Footnotes 17 and 36 to the Table. Footnote 17 applies only to the management of facilities on Town-owned land and does not limit the by-right use of private facilities in the Industrial District.

Footnote 36 makes clear that such facilities are subject to Section IX.Q., which specifies the plan submittal requirements for such facilities, and requires Site Plan Review of solar collection facilities as a principal use. The purpose of Section X. of the Bylaw, pertaining to Site Plan Review, is “to provide for Planning Board review of certain construction projects to ensure that sound site utilization principles are used to provide for and protect the public health, safety, and general well-being.” As stated in Section X.D.4., “Site Plan Review is an administrative review process that does not provide the Planning Board with discretionary power to deny the proposed use.” This scope of discretion is intended to place the bylaw within the limits of administrative site plan review applicable to by right uses under Prudential Ins. Co. of America v. Board of Appeals of Westwood, 23 Mass. App. Ct. 278, 281-282 (1986) (where the zoning bylaw clearly designates a use as allowed by right, power of the board under site plan review is “limited to imposing reasonable terms and conditions on the proposed use”).

B. Ipswich Allows As-Of-Right Siting Of Research and Development Facilities, Including Facilities for “Renewable or Alternative Energy” R&D.

Section V.D. of the Bylaw (the Table of Use Regulations) also allows the “[e]nclosed manufacturing of a product including processing, blending, fabrication, assembly, treatment and packaging,” by right in the Industrial and Limited Industrial Districts subject to Footnote 35 to the Table. That footnote expressly includes “the manufacture of products associated with alternative and renewable energy, including:

combined heat and power ... electric and hydrogen powered vehicles and associated technologies including advanced batteries and recharging stations ... [r]enewable energies include[ing] solar – photovoltaic (PV) and thermal, wind, biomass power conversion or thermal technologies including the manufacture of wood pellets, ultra-low emissions high efficiency wood pellet boilers and furnaces, low impact hydro – electric and kinetic, ocean thermal, wave or tidal, geothermal, landfill gas, fuel cells that use renewable energy, and advanced biofuels.

Site Plan Review requirements applicable to these facilities would also be pursuant to Section X., which does not give the Planning Board discretionary authority to deny by-right uses (see above).

C. Realistic Opportunity For Additional Development Of Solar Collection or Renewable Or Alternative R&D Facilities

As set forth in the Town’s Green Communities application under Criterion 1, the Industrial District includes at least three lots that are suitable for commercial scale solar

facilities, including 34 Mitchell Road (169,448 square feet of developable area), 23 Mitchell Road (95,832 square feet of developable area, and 22 Mitchell Road (94,961 square feet of developable area). These parcels, along with the entirety of the Town's Limited Industrial District provide "a realistic opportunity to locate renewable energy or alternative energy R&D ... facilities" as defined by the Green Communities program.

II. IPSWICH SATISFIES CRITERIA FOR EXPEDITED PERMITTING.

In accordance with DOER's Guidance, to document compliance with the Green Communities Expedited Permitting (Criterion #2), by means of the "Standard One Year Process", towns must provide DOER "a letter from legal counsel affirming that nothing within the municipality's rules and regulations precludes issuance of a permitting decision within one year along with the language addressing approval procedures and associated timing from any applicable bylaws/ordinances or regulations."

This letter affirms that nothing within the Town of Ipswich's rules and regulations precludes issuance of a permitting decision for the siting and construction of an energy facility that meets Criterion #1 within one year. The following subsections review the approval procedures and associated timing under the Ipswich's applicable bylaws and regulation.

A. Site Plan Review under the Zoning Bylaw

As noted above, the purpose of Section X. of the Bylaw, pertaining to Site Plan Review, is "to provide for Planning Board review of certain construction projects to ensure that sound site utilization principles are used to provide for and protect the public health, safety, and general well-being." As stated in Section X.D.4., "Site Plan Review is an administrative review process that does not provide the Planning Board with discretionary power to deny the proposed use." Section X.D.3. requires the Planning Board to approve or disapprove the Site Plan application within 60 days.

B. Wetlands Protection Bylaw

Portions of the Industrial and Limited Industrial Districts may include land in wetlands buffer areas under the jurisdiction of the Ipswich Conservation Commission. If a developer seeks to build a solar photovoltaic facility or alternative/renewable R&D facility within jurisdictional areas of the Conservation Commission, nothing would preclude the issuance of an Order of Conditions in at most a few months. The Wetlands Protection Act, G. L. c. 131, § 40, establishes timelines for review of Notices of Intent. A hearing must be held within 21 days and a decision must be issued within 21 days of the hearing. If these deadlines are not met, the town loses its ability to prevent the applicant from applying for and receiving a superseding order of conditions from the Department of Environmental Protection (DEP). See *Oyster Creek Preservation, Inc. v. Conservation Comm'n of Harwich*, 449 Mass. 856, 864-866 (2007). If the Conservation Commission fails to meet these deadlines, it also runs the risk that it may be precluded from imposing conditions under the local bylaw. *Id.*

The local Wetlands Protection Bylaw also imposes deadlines for Commission action. These timelines would only apply where an issue arises under a more stringent provision of the bylaw, but not under the state's Wetlands Protection Act. The bylaw adopts the same timelines as the state wetlands statute. Under the bylaw, the public hearing must be held within 21 days of the filing of a Notice of Intent and a decision issued within 21 days of the close of the hearing. Resolution of issues arising under the local bylaw would most likely be concluded well before one year from the date of a Notice of Intent, and nothing in the procedures prevents such a conclusion.

C. Stormwater Management Bylaw

Section 193 of the Town Bylaws requires a stormwater permit for alterations of land in excess of 10,000 square feet which do not require Site Plan approval or an Order of Conditions from the Conservation Commission. In the unlikely event that a project would require such a permit, § 193-7.G. of the Town's General Bylaws requires the Permitting Authority to issue or deny such a permit within 30 days of the submission of a completed application.

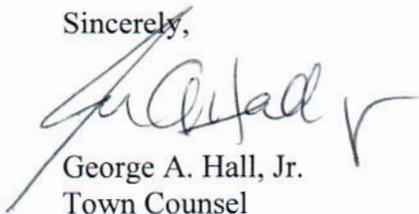
D. Building Permit

Under 780 CMR 111.1, action must be taken on an application for a local building permit within thirty days. There are no foreseeable circumstances when a building permit would be delayed for development in solar photovoltaic overlay district beyond one year.

III. CONCLUSION

As town counsel, we have reviewed zoning and other bylaws potentially applicable to the development of renewable energy facilities and alternative/renewable R&D facilities. We have concluded that Ipswich complies with Criteria ## 1 and 2, and can provide as-of-right siting of such facilities with an expedited permitting process well short of one year.

Sincerely,



George A. Hall, Jr.
Town Counsel

cc: Tony Marino, Town Manager