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July 5, 2024

Adam Brege  
Zoning Administrator  
Gustin Township  
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Re: Sapling Solar, LLC - Variance Requests

Dear Members of the Zoning Board of Appeals:

This application and request for approval of two variances is submitted by Sapling Solar, LLC (“Applicant”) in concert with the Applicant’s application for Special Land Use Permit and Site Plan approval (“SLUP Application”) to locally permit Applicant’s proposed Commercial Solar Energy System. Specifically, Applicant respectfully requests that the Township’s Zoning Board of Appeals (“ZBA”) approve variances from Gustin Township’s (“Township”) Ordinance No. 2023-01 (the “Solar Ordinance”) requirements related to minimum setbacks and maximum sound levels (collectively, the “Variance Requests”).

We respectfully ask that the Variance Requests be considered by the ZBA at the first available date.

## **I. INTRODUCTION & OVERVIEW**

### **a. The Applicant**

Applicant is a subsidiary of Ranger Power. Ranger Power is a utility-scale renewable energy development company headquartered in Chicago, Illinois, and focused on bringing well-sited, community-supported solar energy to states in the Midwest. Ranger Power has a development portfolio of approximately ten (10) gigawatts (GW) of active projects ranging in nameplate capacity from 50 megawatts (MW) to 400 MW.

Since 2017, Ranger Power has permitted more than 2,600 MW of utility-scale Power Purchase and Build-Own-Transfer agreements with leading power providers throughout the region. This represents some of the largest volumes of solar development in the Midwest.

Over 1,100 MW of solar projects developed by Ranger have moved into construction, 586 MW of which are now commercially operating—many of these projects represent the

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largest solar projects operating in their respective states. By the end of 2024, Ranger anticipates that nearly 1 GW of projects developed Ranger will be in commercial operation, delivering on their sustained value and trust to their partners.

Ranger is led by one of the most experienced teams in the renewable energy space. Their time-tested approach to development, which separates Ranger from the competition, involves working closely with landowners and communities to gain their support when bringing new investment and clean energy to the region.

Ranger is an industry leader because of the commitment to working closely with communities to ensure projects are a win-win. Ranger's projects represent a significant investment and a new clean energy resource that benefits local residents, business owners, and stakeholders by bringing in new investments and increasing the tax base, employment opportunities, and educational opportunities.

#### **b. The Property and The Project**

Applicant's proposed Commercial Solar Energy System ("Project") will include up to 215 MW of photovoltaic solar panels located entirely within the Township. There are 36 participating parcels included in the project, totaling approximately 1,427 acres (Project Area). Of this, solar panels have been sited within a fenced-in area of approximately 820 acres. 10 of the 40 participating parcels only contain proposed underground collection line and will not contain panels. Land use within the Project Area is primarily agriculture and undeveloped woodlots. The Project Area was selected based on land use, interest from landowners, and proximity to existing electrical grid infrastructure.

The Applicant has acquired the rights to develop, construct, and operate the up to 215 MW alternating current (AC) solar project located on 36 parcels of land owned by 24 private landowners. These land rights are granted either by easement agreements or by purchase option agreement. A list of participating parcels and landowners included in the Project is included in **Appendix C** of the SLUP Application. Memoranda of signed lease/easement agreements can be found in **Appendix A** of the SLUP Application. For instances where a memorandum of the signed lease/easement agreements are not available, a Permitting Consent Letter has been submitted in lieu.

The Project will consist of solar panels and inverters arranged in photovoltaic (PV) arrays. Associated facilities and infrastructure include the Project substation, operations and maintenance building (O&M), overhead transmission line to point-of-interconnection, underground electrical cables (collection) to the Project substation, perimeter fencing, landscape screening, and gravel access roads to each PV array and Project substation. The proposed locations of the solar arrays, inverters, collection lines, access roads, fencing, and other Project improvements within the Township are shown in the Site Plan in **Appendix B** of the SLUP Application.

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Applicant made a comprehensive and diligent effort in designing and siting a facility that meets or exceeds the requirements of the Ordinance and Solar Ordinance. As sited, the Project optimizes efficient use of land to generate solar power, while avoiding impacts to natural resources or existing land uses. Additionally, as designed, the Project avoids impacts to wetlands, streams, and floodplains to the greatest extent practicable. The Project will install landscape screening in areas adjacent to non-participating residential parcels and public rights-of-way, where adequate screening does not already exist. The Applicant plans to coordinate with stakeholders and Township officials throughout Project permitting, construction, and operation.

Construction is expected to begin in 2026, with commercial operation anticipated in 2028. Exact construction and operation dates are dependent on receipt of necessary permits, equipment, and approvals.

### **c. The Special Use Permit Application, Site Plan Review and Applicant's Variance Requests**

As noted above, Applicant is submitting its Application to the Township Planning Commission for review and approval simultaneously with these Variance Requests. Under Section 5.5(F) of the Ordinance, relating to requirements for site plan submittal and approval procedure, "[w]here the applicant is dependent upon the granting of any variances by the Zoning Board of Appeals, said favorable action by the Zoning Board of Appeals shall be necessary before the site plan approval can be granted, or the site plan may be approved subject to favorable action by the Zoning Board of Appeals." Accordingly, Applicant requests the ZBA review and grant Applicant's Variance Requests in tandem with the Township Planning Commission's review and approval of Applicant's SLUP Application.

With respect to its Variance Requests, Applicant seeks a variance from the 45 dBA sound pressure level maximum stated in Solar Ordinance Section 7.31(C)(6), to allow for maximum sound levels of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent non-participating property. This standard is consistent with the sound limitation that the Michigan Public Service Commission will apply under Public Act 233 of 2023 ("PA 233"), when it becomes effective on November 29, 2024. Applicant also seeks relief from the minimum setback requirement of 200' from all property lines of non-participating lots under Solar Ordinance Section 7.31(C)(3), and to instead require minimum setbacks of 50' from non-participating property lines. Again, this brings the Township's regulation in line with the requirements of PA 233.

## II. ZONING ANALYSIS

### a. Applicant's Variance Requests Should be Granted.

Michigan's Zoning Enabling Act, MCL 125.3101 *et seq.* (the "Act") allows the Township to grant non-use variances where "practical difficulties" exist and when granting the variance allows "the spirit of the zoning ordinance [to be] observed, public safety secured, and substantial justice done." MCL 125.3604(7). The Act also allows the ZBA to "impose conditions" on the approval of any variance. These statutory sections are also reflected in the Township's Ordinance, which specifically permits the ZBA to grant "dimensional variances when the applicant demonstrates in the official record of the hearing that the strict enforcement of this Ordinance would result in practical difficulty." Section 8.4 of the Ordinance.

The Ordinance defines dimensional variance broadly as "[a] variance granted to provide relief from a specific standard in this Zoning Ordinance which usually relates to an area, dimension, or development requirement/limitation." Article 2 of the Ordinance. The Ordinance defines variance as "[a] modification of literal provisions of this Ordinance which the Zoning Board of Appeals is permitted to grant when strict enforcement of said provision would cause practical difficulty or unnecessary hardship." Article 2 of the Ordinance. Accordingly, Applicant's Variance Requests may be considered and granted by the ZBA.

Under the Ordinance, there are five (5) criteria for the ZBA to consider with respect to a variance request. Section 8.4 of the Ordinance. The following section analyzes each of these five (5) criteria in the context of Applicant's Variance Requests. Based on the information, analysis, and evidence submitted herein, the Applicant has demonstrated that it will experience practical difficulties if the Ordinance requirements for certain Project sound limits and setback requirements are strictly enforced, and we ask the ZBA to grant these minor variance requests at the first available hearing date.

### i. Variance Criteria Analysis Under Section 8.4

***CRITERIA 1:*** *The need for the requested variance is due to unique circumstances or physical conditions of the property involved that do not apply generally to other properties in the surrounding area, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship;*

***Response for Sound Limit Variance Request:*** Applicant's Project involves a unique land use and the Project will be sited on a unique configuration of parcels. As noted above, the uniqueness of utility-scale solar developments such as the Project prompted the Michigan Legislature to regulate this type of development

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through the adoption of PA 233. Despite the availability of PA 233, Applicant remains committed to working collaboratively with the Township and permitting the project locally, if possible. To that end, Applicant seeks a variance from the sound limits under the Solar Ordinance, as described above. The Project has been designed to minimize audible sound and to meet the sound requirements of PA 233. See Sound Modeling Study attached hereto as Exhibit 1. All equipment and components of Project infrastructure that produce sound will be sited within the Project Area to adhere to the average hourly decibel limit of 55 dBA as modeled at the at the nearest outer wall of the nearest dwelling located on an adjacent non-participating property. Accordingly, the Project will not cause any sound nuisance at nonparticipating residences and Applicant requests a variance from the 45 dBA sound pressure level to the maximum of 55 dBA (Leq (1 hour)) as provided for in PA 233.

**Response for Setback Variance Request:** The Solar Ordinance requires Commercial Solar Energy Systems to “be set back two hundred (200) feet from all property lines of non-participating lots.” Section 7.31(C)(3) of the Solar Ordinance. As noted above, the minimum setback distance required under PA 233 (as measured from the nearest shared property line of non-participating parties) is 50’. The Project has been specifically designed and sited to occupy non-contiguous lots to work around the unique land features of the Project Area. As such, the unique circumstances of the Project require a variance of the setback requirement under the Solar Ordinance from 200’ to 50’, consistent with PA 233.

**CRITERIA 2:** *Strict compliance with the regulations governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose, or would render conformity unnecessarily burdensome;*

**Response for Sound Limit Variance Request:** Strict compliance with the sound pressure level under the Solar Ordinance would unreasonably prevent Applicant from using the subject property for a permitted purpose—i.e., a Commercial Solar Energy System—as permitted under the Solar Ordinance and as regulated by PA 233. The Project design modifications and resources required for strict conformity with the Solar Ordinance are unduly burdensome in light of PA 233’s established sound limitation.

**Response for Setback Variance Request:** Strict compliance with the setback requirement under the Solar Ordinance would unreasonably prevent Applicant from using the subject property for a permitted purpose—i.e., a Commercial Solar Energy System—as permitted under the Solar Ordinance and as regulated by PA 233. The Project design modifications and resources required for strict conformity with the Solar Ordinance are unduly burdensome in light of PA 233’s established

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setback minimums. Further, due to the unique circumstance of the Project occupying non-contiguous lots, conformity with the 200 foot setback requirement under the Solar Ordinance renders the Project unworkable as currently designed.

**CRITERIA 3:** *Whether granting the requested variance would do substantial justice to the applicant as well as to other property owners in the district, or whether granting a lesser variance than requested would give substantial relief to the property owner and be more consistent with justice to other property owners;*

**Response for Sound Limit Variance Request:** Granting the requested variance to provide for the increased sound limit from 45 dbA to 55dBA (Leq (1 hour)) would do substantial justice to Applicant as it would enable Applicant to permit the project locally, in collaboration with the Township, which is beneficial to all parties. The Project will not produce any impactful sound that will create any hazardous or disturbing impacts on the surrounding area. The Project has been designed to minimize audible sound at non-participating parcel boundaries by siting Project inverters centrally within participating parcels. As demonstrated by the Project's Sound Modeling Study (Appendix D to the SLUP Application), sound levels will not exceed fifty-five (55) dBA (Leq (1 hour)) from an adjacent non-participating residence, in full compliance with the requirements of PA 233. Further, granting of a lesser variance than requested would not provide substantial relief as the Applicant's request is tailored to the exact requirements of PA 233.

**Response for Setback Variance Request:** Granting Applicant's variance request to reduce the setback requirements from 200' to 50' would provide substantial relief to Applicant as it would enable Applicant to permit the project locally, in collaboration with the Township, which is beneficial to all parties. Further, granting the variance request of a 50' setback would still be a larger setback than is required for other developments in the Agricultural Residential District. Thus, granting Applicant's variance request to reduce the setback requirements would provide substantial relief to Applicant that is still more restrictive than the setback requirements for other developments in the district. Also, granting of a lesser variance than requested would not provide substantial relief as the Applicant's request is tailored to the exact requirements of PA 233.

**CRITERIA 4:** *The need for the requested variance is not the result of action of the property owner or previous property owners (self-created).*

**Response for Sound Limit Variance Request:** The requested variance from the 45 dBA sound limit under the Solar Ordinance to the 55 dBA (Leq (1 hour)) as permitted under PA 233 is not the result of action of the property owners or previous property owners. Instead, it is the result of the unique circumstances of



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the Property Area and the project design to occupy non-contiguous parcels, which makes the most efficient and effective use of the Property Area while accommodating all unique land features.

**Response for Setback Variance Request:** Applicant's request for a variance from the 200' setback under the Solar Ordinance to a 50' setback is not the result of action of the property owners or previous property owners. Instead, it is the result of the unique circumstances of the Property Area and the project design to occupy non-contiguous parcels, which makes the most efficient and effective use of the Property Area while accommodating all unique land features.

**CRITERIA 5:** *That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district and will not impair an adequate supply of light and air to adjacent property, unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Gustin Township.*

**Response for Sound Limit Variance Request:** The Project will not cause an adverse impact on the surrounding properties, property values or the use and enjoyment of the property in the neighborhood or zoning district. The Project will produce no odor, dust, vibrations, smoke or other nuisance situations. The Project has been designed to minimize audible sound at non-participating parcel boundaries by siting Project inverters centrally within participating parcels. As demonstrated by the Project's Sound Modeling Study (Appendix D to the SLUP Application), sound levels will not exceed fifty-five (55) dBA (Leq (1 hour)) from an adjacent non-participating residence (not just the property line). Accordingly, the requested variance to slightly increase the sound limit will not impair adequate supply of light and air to the adjacent properties, unreasonably increase the congestion in public streets, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township. See the Glare Study (Appendix F to the SLUP Application). Lastly, as demonstrated by the Real Estate Adjacent Property Value Impact Report (Appendix G to the SLUP Application), solar facilities of similar size and in similar rural areas in Michigan and across the Midwest have consistently been shown to have no measurable impact on property values in the surrounding area.

**Response for Setback Variance Request:** Applicant's request for a variance from the 200' setback under the Solar Ordinance to a 50' setback will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or Agricultural Residential District. The Project will produce no odor, dust, vibrations, smoke or other nuisance situations.

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**The Project has been designed to minimize audible sound at non-participating parcel boundaries by siting Project inverters centrally within participating parcels. As demonstrated by the Project's Sound Modeling Study (Appendix D to the SLUP Application), sound levels will not exceed fifty-five (55) dBA (Leq (1 hour)) from an adjacent non-participating residence (not just the property line). Accordingly, the requested setback variance will not impair adequate supply of light and air to the adjacent properties, unreasonably increase the congestion in public streets, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the Township. See the Glare Study (Appendix F to the SLUP Application). Lastly, as demonstrated by the Real Estate Adjacent Property Value Impact Report (Appendix G to the SLUP Application), solar facilities of similar size and in similar rural areas in Michigan and across the Midwest have consistently been shown to have no measurable impact on property values in the surrounding area.**

### III. CONCLUSION

In conclusion, we respectfully request that the above analysis and the attached supporting evidence be considered by the ZBA and that the Applicant's Variance Requests be approved, subject to any reasonable conditions and limitations set by the ZBA. The Variance Requests are necessary to avoid the practical difficulties that will be experienced by the Applicant if strict compliance with the sound limits and setback requirements of the Solar Ordinance is required. Thank you in advance for your timely attention to this Application and we look forward to working with the Township and ZBA throughout the permitting process.

Sincerely,

Michael Vogt

MV:kme

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