

September 28, 2022

Via Email to: kbuckland@wareham.ma.us

Members of the Wareham Zoning Board of Appeals
c/o Kenneth Buckland
Director of Planning and Community Development
Memorial Town Hall
54 Marion Road
Wareham, MA 02571

Re: *Variance Petition, 0 Rt. 25, Parcel ID 115-1000*

Dear Members of the Wareham Zoning Board of Appeals:

Wareham PV I, LLC's petition for a variance from the 50' front, side and rear yard setback requirements in Section 594.1 of the Wareham Zoning-By-Laws is on the agenda for the Board's meeting tonight. Based on the discussion at the Board's last meeting, we want to make the following points, which we respectfully ask that Board members keep in mind as they further consider the petition:

- **The clear purpose of the 50' setback requirements in question is to protect residential abutters from the potential visual impacts from a Large Ground-Mounted Solar Energy Facility proposed to be located on an immediately adjacent parcel. Here, however, there are no residential abutters.¹**
 - The Property directly borders the Route 25 State Highway Layout to the south and Town of Wareham-owned property (including the Wareham Municipal Maintenance Facility) to the west.
 - Moreover, it is immediately bounded by wetland resource areas and cranberry bog to the east and woodlands to the north.

¹ The 50' front yard setback requirement applies only "where the lot [on which the Large Ground-Mounted Solar Energy Facility in question is proposed] abuts or is across the street from a *Residential* district or *residential* development. See Wareham Zoning-By-Laws Section 594.1.3 (emphasis added). Similarly, the 50' side and rear yard setback requirements apply only "where the lot abuts a *Residential* district." See Wareham Zoning-By-Laws Section 594.1.4 and 594.1.5 (emphasis added).

- In short, the setback requirements in question are protecting against an issue that does not actually exist, and in fact, the Property's relatively remote, visually buffered location make it a prime candidate for solar development.
- The "substantial hardship" to Wareham PV I, LLC arises directly out of the unusual shape of the Property. Specifically, the Property is shaped like a musical note, or an upside-down axe, and is only about 150 to 250 feet wide for most of its 0.58 mile length. Due to this unusual shape, the imposition of the 50' setback requirements in question would result in a 43% reduction in the number of solar panels that could be installed on the 22.4-acre Property, from 934 to 532. Compare the attached figure entitled "Original Proposal (submitted 8/2/2021), Proposed Solar Array, Wareham, MA" with the attached figure entitled "50' Setback Figure, Proposed Solar Array, Wareham, MA." A more uniformly shaped 22.4-acre parcel could accommodate 926 solar panels, along with an access drive and stormwater detention basin, even with the imposition of 50' front, side and rear yard setbacks and an additional 15' setback for fencing. See the attached figure entitled "Site Layout Comparison, Proposed Solar Array, Wareham, MA."
 - Wareham PV I, LLC wishes to be clear that we are not seeking to maximize profits by seeking relief from the 50' setback requirements. That is, we are not proposing to install as many solar arrays as we can on the Property, from boundary line to boundary line, without any setbacks. Instead, Wareham PV I, LLC has voluntarily incorporated the setbacks depicted in the attached figure entitled "Compromise Proposal (submitted 6/13/2022), Proposed Solar Array, Wareham, MA" into the revised site plan we have proposed to the Wareham Planning Board as part of our site plan review application, in order to accommodate Planning Board and citizen concerns.
- It is important to note that a variance from setback requirements constitutes a variance from dimensional—not use—requirements, and that the Massachusetts Supreme Judicial Court has held that where only a dimensional variance is involved, even relatively minor "hardship" can justify the granting of the requested variance. See, e.g., Marashlian v. Zoning Bd. of Appeals of Newburyport, 421 Mass. 719, 725–26 (1996) (even where locus could be used as restaurant, retail space or parking, "hardship" requirement was satisfied by showing that it would be "economically impractical," as result of unique conditions affecting locus, to provide number of parking spaces required by zoning bylaw; grant of dimensional variance was justified); Josephs v. Bd. of Appeals of Brookline, 362 Mass. 290, 293 (1972) ("hardship" requirement was satisfied by showing that as result of unique conditions affecting locus, alternatives for bringing fifteen-story building proposed on locus into compliance with off-street loading requirements would involve either excessively steep ramp or loss of usable space within proposed building; grant of dimensional variance was justified).

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- The Board can grant the requested variance without causing substantial detriment to the public good or nullifying or substantially derogating from the intent or purpose of the By-Laws. Again, the clear purpose of the setback requirements in question is to protect residential abutters from the potential visual impacts from a Large Ground-Mounted Solar Energy Facility located on an immediately adjacent parcel. The Property does not have any residential abutters, so granting the requested variance will not substantially harm the public or undercut the intent or purpose of Section 594.1.3, 594.1.4 or 594.1.5.

We look forward to discussing each of these points with the Board at tomorrow's meeting.

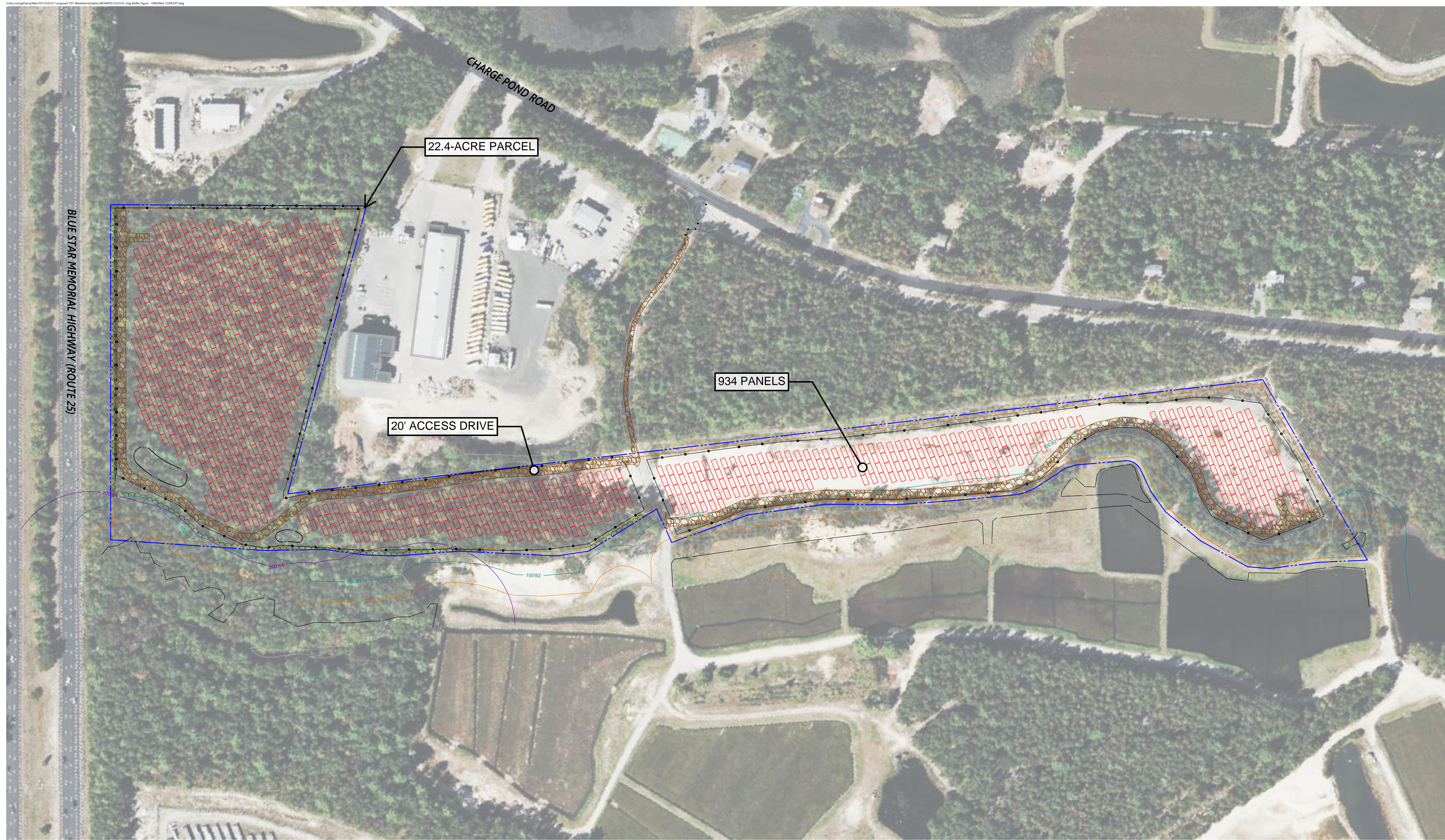
Sincerely,



Elizabeth F. Mason

Enclosures

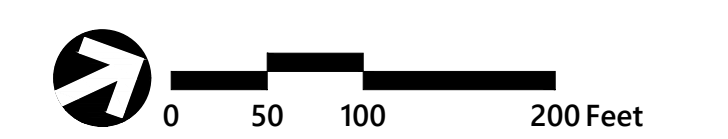
cc: David Fletcher
Haley Ordeval, Longroad Energy
Vanessa Kwong, Esq., Longroad Energy
Richard P. Bowen, Esq., Wareham Town Counsel

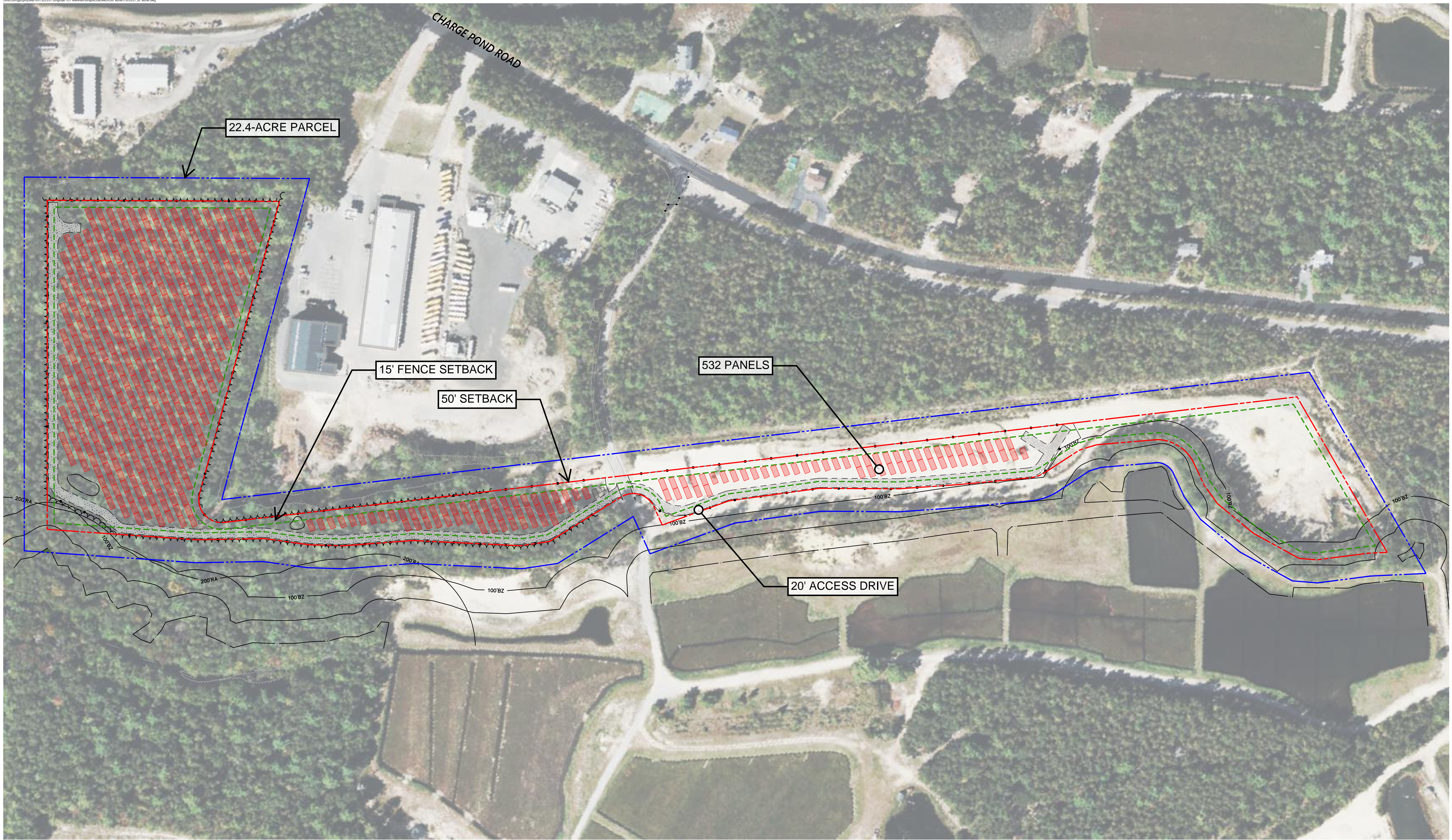


Original Proposal (submitted 8/2/2021)

Proposed Solar Array

Wareham, MA





22.4-ACRE PARCEL

15' FENCE SETBACK

50' SETBACK

532 PANELS

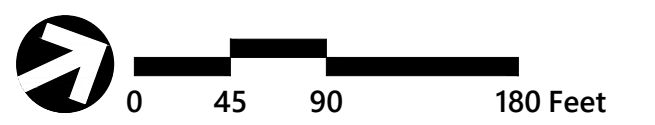
20' ACCESS DRIVE

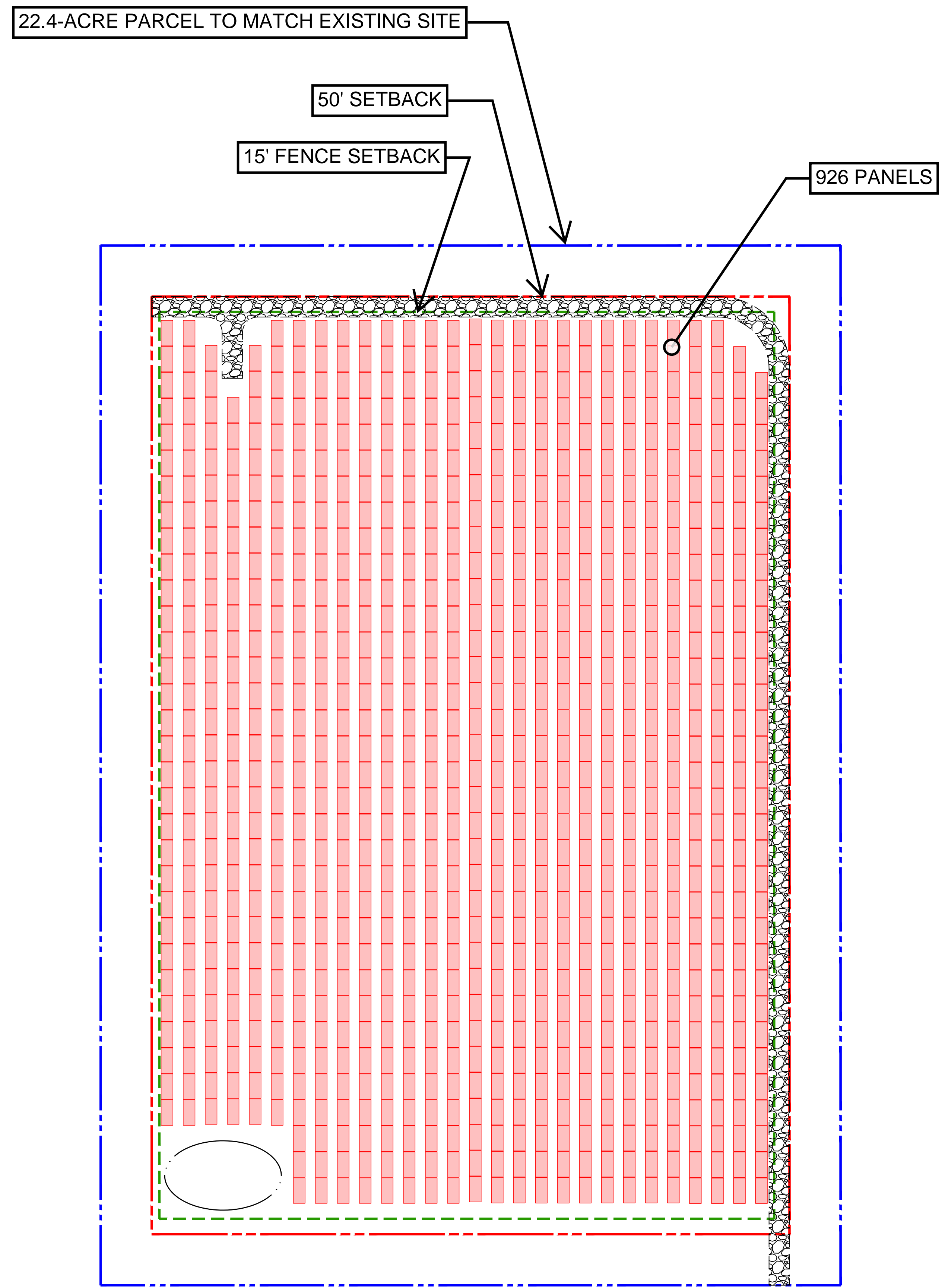
CHARGE POND ROAD

50' Setback Figure

Proposed Solar Array

Wareham, MA





Site Layout Comparison

Proposed Solar Array

Wareham, MA

