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VIA EMAIL: conrads@sherwoodoregon.gov; RutledgeE@SherwoodOregon.gov

Hearings Officer Joe Turner
c/o Sean Conrad & Eric Rutledge
City of Sherwood Planning Dept.
22560 SW Pine Street,
Sherwood, OR 97140

RE: *Meadowlark Energy Storage LLC / Conditional Use Permit / Site Plan Review*
City File 785-26-000057-PLNG

Dear Hearings Officer Turner:

This office represents the applicant in the above-stated matter. As we discussed at the hearing, the applicant has two areas of concern regarding conditions of approval: Condition B.2 and Condition B.3. This letter addresses those two conditions. The applicant's goal is to arrive at a set of conditions that meets the needs of both the city and the landowner, PGE.

We have had productive conversations with staff that led us to believe that the applicant can meet the needs of both the city and PGE. We understand city staff suggested that 15,000 s.f. of landscaping along SW Langer Farms Parkway meets their needs. We further understand that the city staff is willing to be flexible in the location of such landscaping so long as it serves its intended purpose. The Applicant agrees to extend the landscaping north along the curve of SW Langer Farms Parkway, allowing for additional landscape to compensate for areas where the available width is constrained by the access driveway.

Meadowlark is willing to achieve the city's screening objectives under Section SZCDC 16.82020.D(4) in a manner consistent with PGE's requirements. This would include screening the riser-pole enclosure in a manner that complies with PGE standards, keeping trees and shrubs outside a 25 ft clear zone from the substation perimeter fence, and using low-growth and low-fuel species within the corridor.

I. Facts.

We have attached a photo set of the subject property taken earlier today. This photo set shows the current on-site conditions as viewed from the public ROW. The images reveal that the access road is something in the nature of a "chip seal" surface. The surface appears to be of impervious nature, and capable of accommodating heavy truck traffic.

II. Legal Analysis

This letter addresses those Condition B.2 and Condition B.3, which are set forth below:

> **B. Prior to issuance of a building permit**
> *** * * * *.**
> **2. Submit a landscape and irrigation plan to city staff for review and approval. The landscape plan shall include a minimum 20-foot-wide landscape area between the sidewalk along SW Langer Farms Parkway and the access driveway/riser pole location. The width of the landscaping and types of planting may be modified if aerial and/or underground utilities limit or prohibit landscaping. The landscape plan shall provide for a combination of ground cover, bushes and trees to create a continuous visual landscape corridor. Tree density and spacing shall meet the parameters detailed under Section 16.140.060.A.4, to ensure that sufficient visual impact is minimized. The irrigation plan shall be designed in accordance with section 16.92.040.C. (Note: The driveway along SW Langer Farms Parkway will need to be relocated to accommodate the minimum amount of required landscaping.)**
>
> **3. The applicant shall provide city staff with a plan to bring the existing gravel driveway, from the entrance/exit on SW Langer Farms Parkway to the location the three riser poles, to the surface standards required in section 16.94.010.G.**

The staff report attempts to justify the imposition of Condition B.2. by tying it to SZCDC 16.82.020(D)(4).

> ***D. Additional Conditions In permitting a conditional use or modification of an existing conditional use, additional conditions may be applied to protect the best interests of the surrounding properties and neighborhoods, the City as a whole, and the intent of this Chapter. These conditions may include but are not limited to the following:***
> **** * * * *.***
> ***4. Requirements for the location, number, type, size or area of vehicular access points, signs, lighting, landscaping, fencing or screening, building height and coverage, and building security.***

The staff report states the following:

> The PGE substation site is devoid of any landscaping along its property edge adjacent to the sidewalk. In addition, an approximately 12-foot-wide gravel driveway is located parallel to the sidewalk along SW Langer Farms Parkway for a distance of approximately 700 feet. The driveway varies in distance from the adjacent sidewalk, with distances between 4 feet to approximately 15 feet. The current lack of landscaping, existing driveway and existing security fencing create a harsh visual condition of the substation site from those travelling along SW Langer Farms Parkway and is not in keeping with the city's best interest to landscape private property along its major streets for the benefit of its residents and visitors.

As we noted at the hearing, conditions of approval must relate to the impact of the proposed development, not to the impact of a prior development. *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998), *aff'd w/o op*., 153 Or App 414, 960 P2d 397, *rev den*., 327 Or 620(1998) (where a previous, unappealed development is not part of the conditional use approval proposal in question, a local government cannot require a conditional use permit for that development as part of its evaluation of the proposed use.). *See also Goodman v. City of Portland*, 19 Or LUBA 289, 295-8 (1991) (Conditions affecting property not subject to the application are not permissible, even if that property is in common ownership.).

The staff report concedes that the concern that staff raises is not the presence of three new 55-foot-tall poles located along existing poles that are much taller. Rather, staff is focused on the "harsh visual condition of the substation site from those travelling along SW Langer Farms Parkway." Staff expressed concerns that motorists traveling on SW Langer Farms Parkway view the sub-station as being visually unappealing.

As PGE noted at the hearing and again in a letter submitted today, there are operational and security concerns with placing landscaping too close to the substation. Meadowlark Energy Storage LLC supports PGE's comments regarding physical security at the Sherwood substation. Reliable operation of the substation is essential to the city and to the Meadowlark project. The Meadowlark project interconnects with the substation and will share access road up to the point of change of ownership of

the structures. Meadowlark's site plan must be designed in a manner that respects PGE's security requirements. As PGE notes and our photos confirm, the existing corridor between the sidewalk and the substation perimeter fence is in places narrower than 20 feet. For this reason, the landscape strip and relocation of the driveway is not feasible in the manner that Condition B.2 contemplates.

Since the hearing, we have had productive conversations with staff that lead us to believe that there is room for a compromise solution. From our perspective, it is reasonable for the city to desire some visual screening of the new facilities proposed as part of this CUP. City staff suggested that 15,000 s.f. of landscaping along SW Langer Farms Parkway meets their needs. The Applicant agrees to extend the landscaping north along the curve of SW Langer Farms Parkway, allowing for additional landscape area where the available width is constrained by the access driveway that will not be relocated.

Meadowlark is willing to achieve the city's landscaping / screening objectives under Section SZCDC 16.82.020.D(4) in a manner consistent with PGE's requirements. This would include screening the riser-pole enclosure in a manner that complies with PGE standards, keeping trees and shrubs outside a 25 ft clear zone from the substation perimeter fence, and using low-growth and low-fuel species within the corridor. including screening the riser-pole enclosure, keeping trees and shrubs outside a 25ft clear zone from the substation perimeter fence, using low-growth and low-fuel species within the corridor. The total additional landscaping shall include up to 15,000 SF and comply with PGE's security and operational restrictions. The Applicant agrees to submit a landscape plan and irrigation plan for City staff review and approval prior to construction.

The staff report attempts to justify the imposition of Condition B.3 by tying it to SZCDC 16.94.010(G)(4):

> ***16.94.010 General Requirements G. Surface and Drainage***
>
> ***1. All parking and loading areas shall be improved with a permanent hard surface such as asphalt, concrete or a durable pervious surface. Use of pervious paving material is encouraged and preferred where appropriate considering soils, location, anticipated vehicle usage and other pertinent factors.***

The staff report states the following:

> FINDING: Access to the riser pole location is provided by a driveway, extending from the front gate of the substation north, for approximately 700 feet. The driveway is located between the substation's security fence and the sidewalk along SW Langer Farms Parkway. Along the 700-foot distance, the driveway varies in distance from the sidewalk, with the closest point of the driveway approximately 4 feet from the sidewalk and the furthest point approximately 15 feet from the sidewalk. After approximately 700 feet, the driveway turns northwest, for approximately 500 feet, running parallel to the substation's security fence.
>
> As part of the site plan review of the project, deficiencies in the code are

> identified and conditions included to bring those deficiencies into compliance with development standards of the Sherwood Zoning and Community Development Code. The existing gravel driveway does not meet the surface standards of this code section. Therefore, staff recommends a condition to bring the portion of the existing gravel driveway, from the entrance/exit on SW Langer Farms Parkway to the location of the three riser poles, up to current surface standards which requires asphalt, concrete, or a durable pervious surface. As discussed in section D.4 (page 13 of this report), the driveway will need to be relocated to accommodate required landscaping along SW Langer Farms Parkway.
>
> Condition B.3: The applicant shall provide city staff with a plan to bring the existing gravel driveway, from the entrance/exit on SW Langer Farms Parkway to the location of the three riser poles, to the surface standards required in section 16.94.010.G.

We do not understand the access road to be a "parking and loading area" as that phrase is used in SZCDC 16.94.010(G)(4). While there is perhaps an occasional need to be able to park one vehicle near the three poles for inspection and maintenance purposes, the required "parking and loading area" space needed for such purpose is quite small (perhaps 10 x 25 ft).

Furthermore, the current chip seal road surface qualifies as a "permanent hard surface" within the meaning of SZCDC 16.94.010(G)(4). Although the code provides three examples of "permanent hard surface" (asphalt, concrete, and durable pervious surface) the code does not make these examples exclusive. The current impervious access road surface also meets the definition. In addition, moving the road is not warranted because the landscaping proposed in that area of the site would not assist in screening the poles contemplated by this CUP. The increased usage of the access road as a result of this project will be de-minimus (once a month or less).

Having said that, and depending on further details, however, Meadowlark and PGE could be amenable to designs incorporating certain paving options for the access road, depending on material and design complying with PGE security and operational restrictions. We request that this be accomplished within the existing footprint of the access driveway from the location of the approach road located on the southeastern portion of the site, and traveling north 700 feet +/- to the proposed location of the three poles at issue. We have attached soils information for the hearings officer's consideration.

We thank the hearings officer for hearing this case.

Sincerely,

VF LAW

/s/ *Andrew H. Stamp*

Andrew H. Stamp
Of Counsel

ASTA:ssch
Exhibits 1-30

WARNING
CAUTION

NOTICE
WARNING
ADVERTENCIA

WARNING
ADVERTENCIA