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BEFORE THE HEARING EXAMINER FOR THE CITY OF SUMNER

Phil Olbrechts, Hearing Examiner

RE: Greenwater Battery Energy Storage System Conditional Use Permit CUP-2024-0003	FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION
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OVERVIEW

GREE bn, LLC BrightNight has applied for a Conditional Use Permit for approval of a new overhead transmission line (gen-tie) to connect a proposed 200-megawatt/800-megawatt hour Battery Energy Storage System (BESS) facility to the PSE White River substation. The scope of the project subject to this review includes five (5) proposed pole structures #12 through #8 of the gen-tie route within the project parcel. The conditional use permit is approved subject to conditions.

ORAL TESTIMONY

A computer-generated transcript of the July 10, 2024 hearing has been prepared to provide an overview of the hearing testimony. The transcript is provided for informational purposes only as Appendix A.

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EXHIBITS

Exhibits A-K on page 12 of the July 10, 2024 Staff Report are entered into the record. Additionally, the following exhibits are admitted:

- Ex. L July 10, 2024 Staff PowerPoint
- Ex. M August 1, 2024 SEPA MDNS

FINDINGS OF FACT

Procedural:

1. Applicant. GREE bn, LLC, BrightNight, 515 N. Flager Dr., Suite P-200, West Palm Beach, Florida 33401.
2. Hearing. The City held a public hearing on July 10, 2024 at 3 pm via the Zoom application. At the hearing the record was left open through August 8, 2024 for public/applicant comment¹ on the SEPA determination, which as yet had not yet been issued as of the date of the hearing. The hearing was subsequently extended through August 15, 2024 to account for the SEPA appeal period. No appeal was filed.

Substantive:

3. Site/Proposal Description. The Applicant has applied for a conditional use permit to construct a new overhead transmission line (gen-tie) to connect a proposed 200-megawatt/800-megawatt hour Battery Energy Storage System (BESS) facility to the PSE White River substation. The project proposes construction of new transmission poles for a proposed gen-tie route (approximately 1 mile long) and will include a total of 19 poles that would connect a proposed battery energy storage system (BESS) in the City of Sumner to the existing PSE Whiteriver substation located in Pierce County. The gen-tie will consist of three transmission line cables and a tension cable mounted on steel single-pole vertical aligned transmission towers. The ground will be excavated approximately 7 feet below ground surface and the proposed towers range from 65 feet to 125 feet tall and will be equipped with insulators and wire conductors designed to carry 230 kV. The scope of the project subject to this review includes five (5) proposed pole structures #12 through #8 of the gen-tie route within the project parcel (Ex. D). The proposed BESS will be located on four contiguous tax parcels (APN 9520000174, 9520000173, 9520000168, and 9520000152) in the City of Sumner, Washington. The

¹ SEPA conditions imposed through the threshold determination process can change the nature of the project so the public and applicant must be given an opportunity for comment in case those conditions affect their interests and concerns. The record must also be left open in case a SEPA appeal is filed to avoid having to conduct a second hearing in violation of the Regulatory Reform Act, Chapter 26.70B RCW, should a hearing on the SEPA appeal need to be held.

1 primary site address for the BESS is 1808 East Valley Highway East, Sumner,
2 Washington.

3 4. Characteristics of the Area. The surrounding land uses are comprised of
4 utilities, industrial and residential uses. Parcels to the south and west are in the City of
5 Sumner. Parcels to the north and east are located in unincorporated Pierce County.
6 Parcels to the south are zoned LDR-12 and NC and are a mix of single-family residential
7 uses and undeveloped lands. Parcels to the west are owned by the Cascade Water
8 Alliance and area zoned M-1 light industrial. Parcels to the north contain utility uses and
9 open space. Parcels to the east are zoned utility. The parcels to the east are owned by the
10 PSE White River Substation and residential homes as part of the Lakeland Hills Master
11 Plan.

12 5. Adverse Impacts. As mitigated and conditioned, there are no significant
13 adverse impacts associated with the project.

14 A. Critical Areas. As mitigated and conditioned, the project is not anticipated to
15 cause any adverse impact to critical areas. The project site contains several types of
16 critical areas including aquifer recharge, seismic hazard, volcanic hazard, wetlands and
17 steep slopes. Conformance to the City's critical areas regulations assures that they are
18 adequately protected and development impacts are adequately mitigated. Staff have
19 found the proposal to comply with those regulations, there is no evidence to the contrary
20 and a finding of conformance is supported by substantial evidence in the record.
21 Pertinent critical area impacts are addressed in more detail as follows:

22 1. Wetlands and Streams. An intermittent non-fish-bearing stream (Type Ns)
23 and two Category III wetlands are located on and north of the proposed gen-tie route
24 (Ex. G). The non-fish bearing stream A is mapped as starting in the subject parcel
25 (APN 0520072004) and flowing west in a forest ravine through APN 9520000130
off-site, and travels along the east side of East Valley Highway into a culvert to the
tailrace canal west of the Dieringer Powerhouse. A Category III wetland is located on
the subject parcel (APN 0520072004) and on an adjacent off-site parcel (APN
9520000130) in the ravine associated with stream A. The edge of the wetland buffer
is approximately 130 feet north of one of the proposed gen-tie poles at its closet point.
The stream requires a 25-foot-wide buffer (SMC 16.56.100). However, the wetland
buffer of 150-feet is wider than the stream buffer in this location. The proposed project
is on an already developed site to avoid increasing the impact area. The project avoids
all impacts to wetlands, streams and their buffers to the greatest extent feasible.

2. Critical Aquifer Recharge Areas. As mitigated, the critical aquifer recharge
areas will not be adversely impacted. Three wellhead protection areas are mapped in
the project vicinity, and include County Springs, Dieringer Well, and Sumner Springs
(Ex. G). The Dieringer well is located within the project area, as well as the 6-month,
1-year, 5-year, and 10-year wellhead protection areas. According to the Department
of Ecology, no other wells are located within the project area. The entire project area

1 is within the 10-year wellhead protection area for Sumner Springs and the southern
2 portion is within the 10-year County Springs wellhead protection area. Parcels within
3 the City of Sumner in the project area also are in a DRASTIC zone rated 180-199,
4 which is defined as an aquifer recharge area by the City of Sumner. Construction of
5 utility lines or facilities are not prohibited or restricted under SMC 16.48.090 within
6 these areas, subject to critical areas review. However, best management practices
7 should be followed during construction to avoid fuel spills or introduction of other
8 contaminants that could enter the aquifer.

9 A SEPA mitigation measure (Ex. M) requires the substation to be designed with a
10 secondary containment/spill/fire protection mechanism. A further SEPA mitigation
11 measure requires the well protective radius area to be dedicated to the City with a
12 statutory warranty deed. The mitigation measure will require the area to be fenced
13 with a security gate and all structures are prohibited within the water main easements
14 or in the way of access. The water mains extend all the way through this site and under
15 the railroad to the west. A mitigation measure requires all existing and proposed
16 public water mains on site to have a recorded 15' wide public water main easement
17 centered on top of them dedicated if no easement currently exists. The City is also
18 requiring dedication of a 20-foot-wide access and utility easement between East
19 Valley Highway and the access gate to the well sanitary control area for City of
20 Sumner heavy equipment access to the public water source. Finally, a mitigation
21 measure requires the applicant to submit a hydrogeologic assessment (pursuant to
22 SMC 16.48.090.B).

23 3. Slopes. As conditioned, no impacts to or from steep slopes are anticipated. The
24 City of Sumner regulates two geological hazard areas, landslide and erosion areas and
25 seismic hazard areas. Seismic hazard areas are defined in SMC 16.52.060 and include
Earthquake-Induced Landslide Hazard Areas described in SMC 16.50.050 and
Liquefaction and Dynamic Settlement Hazard Areas. The west side of East Valley
Highway including the proposed location of the BESS and substation are a seismic
hazard area, as it has high dynamic settlement hazard and high liquefaction hazard
(Ex. G, Figure 7). Landslide and erosion hazard areas are defined in SMC 16.50.050
and include steep slope areas that have been mapped by the City of Sumner within the
project area (Ex. G, Figure 8). Pierce County also recognizes landslide hazard areas
(PCC 18E.80.020) and seismic hazard areas (PCC 18E.90.020). The site contains
moderate to very steep slopes (>50 percent slope) along the escarpment edge of the
east valley hillside. The slope gradient uphill averages 15 to 30 percent and elevation
ranges from approximately 230 to 630 feet. Both shallow and deep landslide
susceptibility areas have been mapped by Pierce County within the project area within
unincorporated Pierce County (Ex. G, Figure 8).

A condition of approval will require the applicant to submit a geotechnical study
prepared by a professional engineer, geologist, engineering geologist, or
hydrogeologist, licensed by the state of Washington with expertise in geotechnical
engineering prepared in accordance with submittal requirements set forth under

1 section 16.50.090 SMC prior to permit issuance. Further studies may be required due
2 to the location of the BESS and substation within the seismic hazard area.

3 B. Fire. As mitigated, adequate fire protection services will be provided. The
4 SEPA MDNS (Ex. M) provides seven mitigation measures to ensure fire service is
5 adequately provided. These measures include the applicant submitting a final
6 comprehensive Fire Response Plan approved by East Pierce Fire and Rescue prior to
7 permit issuance, two new onsite fire hydrants, the design of drive aisles with widths to
accommodate fire department turning radius standards, fire access gates, compliance
with 2021 IBC and IFC standards including NFPA 855 standards, the submittal of a
hazard mitigation plan, the submittal of a Decommissioning Plan and a Commission
Plan and a site design with a secondary containment/spill/fire prevention mechanism.

8 C. Screening and Compatibility. As conditioned and mitigated, the project will
9 be compatible with surrounding uses. A SEPA mitigation measure will require the
10 applicant to project fencing around the project perimeter with a six-foot slatted fence.
11 A condition of approval will require that prior to permit issuance, the applicant will
12 submit a revegetation plan to replace vegetation removed to promote drainage control
13 and prevent erosion during and after construction. Conditions of approval will also
ensure compatibility by ensuring aesthetic impacts are mitigated through the use of non-
corrosive steel pole structures with a consistent color tone. Finally, a condition of
approval will require the project to comply with the noise regulations of SMC 8.14.

14 D. Pedestrian Safety. As mitigated, the project will ensure pedestrian safety. A
15 mitigation measure requires the applicant to complete frontage improvements along
East Valley Highway to include street lighting to the City's standards.

16 E. Historical and Cultural Resources. As mitigated, the project will ensure
17 preservation of historical and cultural resources. A SEPA mitigation measure will
18 require the applicant to contact the City, the Washington Department of Archeology
19 and Historic Preservation, the Puyallup Tribe of Indians and the Muckleshoot Indian
20 Tribe in the event of an inadvertent discovery of human skeletal remains or artifacts of
possible historic, cultural or archeological value. In the event of an inadvertent
discovery, all work will stop and the site will be secured and protected from further
disturbance until the State provides notice to proceed.

21 CONCLUSIONS OF LAW

22 **Procedural:**

23 1. Authority of Hearing Examiner. Conditional use permits are Type V
24 decisions requiring a public hearing and decision by the hearing examiner (SMC
18.56.030.I and SMC 18.56.020.F).

25 **Substantive:**

1 2. Zoning Designation. Low Density Residential 1200 (LDR-12).

2 3. Review Criteria. The criteria for a conditional use permit are governed by
3 of law.

4 **SMC 18.48.050:** *The director or hearing examiner shall be guided by the following*
5 *criteria in granting an administrative or conditional use permit:*

6 A. *The proposed use will not be materially detrimental to the public welfare or injurious*
7 *to the property or improvements in the vicinity of the proposed use or in the district in*
8 *which the subject property is situated;*

9 4. The criterion is met. The project as mitigated and conditioned in not
10 anticipated to have any adverse impacts and will not be injurious to the public or
11 detrimental to the public welfare in that critical areas will be protected, adequate fire
12 services will be provided, the project will be adequately screened and will be compatible
13 with surrounding uses, pedestrian safety is ensured and historical and cultural resources
14 will be preserved as described in Finding of Fact No. 5.

15 **SMC 18.48.050.B:** *The proposed use shall meet or exceed the performance standards*
16 *that are required in the district it will occupy;*

17 5. The criterion is satisfied. The proposal is not required to meet the
18 performance standards of the LDR zone district in relation to items like required off-
19 street parking, fencing and landscape yards. Performance standards found under SMC
20 18.12.080 are not applicable to proposed transmission lines. Height is exempt for
21 proposed transmission lines under section 18.32.020(A) SMC. However, as noted in
22 Finding of Fact No. 5C, conditions of approval ensure compatibility with surrounding
23 uses through screening, vegetation, and aesthetics including the materials and color
24 palette of the proposed transmission towers. The project will also be conditioned to
25 comply with the noise regulations of SMC 8.14.

SMC 18.48.050.C: *The proposed development shall be compatible generally with the*
surrounding land uses in terms of traffic and pedestrian circulation, building and site
design;

 6. As mitigated and conditioned, the criterion is satisfied. The proposal would
not create a noticeable impact on vehicular traffic or pedestrian circulation outside of
temporary construction impacts. The facility serves as an electrical power supply
intended to improve regional energy reliance and capacity. The proposed development
is generally compatible with surrounding land uses in terms of building and site design
and with pedestrian circulation as determined in Finding of Fact No. 5C and D.

1 **SMC 18.48.050.D:** *The proposed use shall be in keeping with the goals and policies of*
2 *the Sumner comprehensive plan;*

3 7. This criterion is met. The project is in keeping with the goals and policies of
4 the City of Sumner Comprehensive Plan as described in Section 5 on pages 5-6 and on
5 page 9 of the Staff Report (Ex. A), adopted herein as if set forth in full.

6 **SMC 18.48.050.E:** *All measures have been taken to minimize the possible adverse*
7 *impacts which the proposed use may have on the area in which it is located.*

8 8. This criterion is met. The project avoids direct impacts to the onsite wetlands,
9 streams and buffers. No compensatory mitigation is necessary (See Finding of Fact No.
10 5A). Adequate fire services will be provided as described in Finding of Fact No. 5B. The
11 project is compatible with surrounding uses (See Finding of Fact No. 5C). The project
12 proponent will employ best management practices during construction to further avoid
13 or reduce temporary environmental impacts. Consultation with Sumner Comprehensive
14 Plan policies include several goals under the environment element that promotes
15 protection and enhancement (See Ex. A, page 9). All historical and cultural resources
16 will be protected in the event of an inadvertent discovery (See Finding of Fact No. 5E).

12 DECISION

13 Based upon the application and Findings of Fact and Conclusions of Law, the requested
14 conditional use permit is approved, subject to the following conditions:

- 15 1. All development actions for this project shall conform to the city requirements
16 for erosion control established in chapter 16.05 SMC.
- 17 2. All development actions for this project shall conform to city requirements for
18 landslide development standards established in chapter 16.50 SMC.
- 19 3. Prior to permit issuance, the applicant shall submit a geotechnical study prepared
20 by a professional engineer, geologist, engineering geologist, or hydrogeologist,
21 licensed by the state of Washington with expertise in geotechnical engineering
22 shall be prepared in accordance with submittal requirements set forth under
23 section 16.50.090 SMC. Further studies may be required due to the location of
24 the BESS and substation within the seismic hazard area.
- 25 4. Prior to permit issuance, the applicant shall submit a revegetation plan to replace
vegetation removed to promote drainage control and prevent erosion during and
after construction.
5. Aesthetic impacts shall be mitigated with the following conditions:
 - i. Materials of pole structures shall be steel and corrosive protected.

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ii. The color tone of the pole structures shall be consistent throughout the project.

6. The zoning classification of EDNA for this project is Class A and shall comply with noise regulations under SMC 8.14.

7. The project shall comply with the 19 SEPA Mitigation Measures from the August 1, 2024 SEPA Mitigated Determination of Non-Significant Impact.

Dated this 26th day of August 2024.



Phil A. Olbrechts
City of Sumner Hearing Examiner

Appeal Right and Valuation Notices

Appeals of this decision may be filed with the City Council subject to SMC 18.56.180.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.