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October 18, 2024

Ms. Kathleen Byrne  
Director  
Office of Zoning and Administrative Hearings  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 200  
Rockville, Maryland 20850

Re: Terra Energy, LLC – Conditional Use Application No. CU–24–13

Dear Hearing Examiner Byrne:

We are submitting this letter in response to the October 11, 2024 post-hearing submission by Montgomery Countryside Alliance. First, we want to note that, Montgomery Countryside Alliance and Carolyn Taylor have had notice of this application for many months, have had access to all of the supporting materials Applicant submitted, were present at the Montgomery County Planning Board hearing and had an opportunity to present any evidence and conduct any cross-examination at the OZAH hearing. At the hearing, Ms. Taylor expressed support for the Battery Energy Storage System/Public Utility Structure Conditional Use. She asked various questions about the Data Center/Cable Communication System Conditional Use stating it was a decent use, but asked various questions about it which were answered. The October 11 submission now includes both a written statement about “concerns” and contains “background information.” It also includes 16 links to various third-hand news articles and reports. Applicant believes such material could and should have been presented at the hearing.

Moreover, the materials concern issues not applicable here (like ground water impact, use of agricultural land and climate change), they discuss facilities that are not located on an existing power transmission line as is this site, and concern those that do not have a closed water system as does this project. Overall, the comments are both irrelevant and immaterial to the circumstances of this case. They either should be stricken or given little to no weight.

With that said, Applicant will nonetheless address the comments made in the October 11 post-hearing submission because we believe none of them disproves or undercuts the testimony, exhibits and the extensive record that Applicant has submitted in support of the application, including reports from experts on the issues, and none prevents you from making the Conditional Use findings required for approval.

## I. Water

During the processing of this application, all relevant agencies of the federal, state and county government responsible for oversight and authorization of water use, were consulted and none has registered any opposition. Moreover, the Montgomery County Planning Commission Staff analyzed the water issue and concluded that this application would not adversely affect the Potomac River. Montgomery Countryside Alliance's references to water use by Northern Virginia data centers and others are inapplicable. As Applicant explained thoroughly at the hearing, (and see PreHearing Statement (Exhibit 26) and Exhibit G to that Statement) unlike the facilities in Northern Virginia and many other locations, the proposed facility here will have a closed water system resulting in no impact on the quantity or quality of water downstream, will not have the evaporation loss that occurs in non-closed water systems and will be returning all of the water to the Potomac at an acceptable temperature that will not affect the River. The results will be far superior to those of the last 70 years when a coal fired power plant operated on the site. As stated at the hearing, Applicant will have to obtain final permits for water withdrawal from the Maryland Department of the Environment once the final size of the proposed facilities, their location and the engineering details of the water system are determined. The condition proposed by the Montgomery County Planning Board to review these issues in more detail at the time of a subsequent Conditional Use Application Amendment, ensures compliance.

In terms of groundwater and the aquifer which the Countryside Alliance references, the claims also are irrelevant and immaterial. The water used for cooling will come from the Potomac River, not from any underground aquifer. Any well water from the aquifer will be very limited, for use only as normal drinking water and internal use for a very limited number of employees.

## II. Power

Here again, Applicant presented exhaustive information on the availability of electric power, both in terms of supply and transmission capacity. The huge number of data centers in Northern Virginia bears no relation to this single data center location. Moreover, Applicant provided data showing the huge amount of electric capacity available on the PJM power grid, and the ability of that grid to supply the power required for this location. The "will serve" letter from Potomac Edison (Exhibit 26B) confirms this and, as with water intake, once the data center facilities are finally engineered and Applicant can apply for construction permits, Applicant will have to obtain final approval of energy allocations. As Applicant's testimony and exhibits explain (See, e.g., Exhibits G and H to Applicant's Pre-Hearing Statement (Record Exhibit 26)), the design of this facility, with a closed water cooling system, substantially reduces power consumption. There is no evidence of any power shortage, but if that turned out to be the case, at the time Applicant seeks its power connection, Applicant would be limited in its power consumption to what the PJM can provide, thus providing the most certain assurance possible that the power supply would be satisfactory.

In terms of the power transmission grid, Countryside Alliance refers to other data centers where the grid does not exist, referencing a cost to taxpayers to construct necessary grid facilities. As Applicant testified at the hearing, this particular site is perfect for this type of use because the

power supply grid already exists. No additional transmission lines will be required and therefore there will be no cost to taxpayers of any sort.

### III. Carbon Emissions/AI/Climate Goals

Admittedly, data centers consume major amounts of electricity, although the design of this facility mitigates the normal power consumption. Electric power use does not necessarily translate into major carbon emissions, however, because the power provided comes from a wide variety of generator sources, increasingly from renewable sources. The elimination of coal plants which have been a major part of the nation's carbon emissions goal is in full play, evidenced right here by the demolition of the largest coal-fired power plant in the region. The reality is that we live in a digital world and that will continue to increase through our use of cell phones, computers, electronic records, etc. Everyone, including Countryside Alliance members, rely increasingly on data centers and everyone consumes electric power that contributes to carbon emissions, but Maryland and the country as a whole are working diligently to control these and electric power is increasingly coming from non-carbon sources. This data center will have no measurable impact on carbon emissions. In fact, the water cooling system and the proposed Battery Energy Storage System, will help to address the objective.

### IV. Impacts on the C&O Canal

Any new construction on this property will significantly reduce any visual impact on the C&O Canal compared to what has existed there for nearly 70 years. The buildings will be very low in height, the huge smokestacks will be removed, and the appearance of these buildings will be more sensitive to the area. The National Park Service is aware of the proposal and has voiced no objection.

### V. Procedural Legality

There is no legal requirement for a formal site plan for the Hearing Examiner to conclude that Conditional Use approval “will not be a detriment to the neighborhood and will not adversely affect the public interest” or to make the other findings for approval. Nothing in the Zoning Ordinance precludes a two-step approval process as proposed here, and the very term “conditional use” provides for approval with any suitable conditions. As noted at the hearing, a two-step land use approval process is common in Montgomery County. A Local Map Amendment application is reviewed by OZAH and approved by the Montgomery County Council, rezoning land and providing certain conditions to that approval. Those conditions almost always require a subsequent Preliminary Plan of Subdivision and/or a detailed Site Plan, at which time specific site related issues are examined. The findings required for LMAs under Section 59.7.2.1.E, including conformity with the master plan, compatibility with existing and approved development, and adequacy of public facilities, all are made at the time of the Local Map Amendment approval with the recognition that details as to each of them will be addressed at a subsequent phase. Similarly, many of the zones in Montgomery County require an initial submission and approval of a Sketch Plan, which again, is a generalized approval making these same findings, (see Section 59.7.3.3.E), again with a universal requirement that the project will require subsequent Preliminary Plan and Site Plan approval with greater detail on each issue.

The two-step process recommended here by the Montgomery County Planning Commission, endorsed by the Montgomery County Planning Board and agreed to by Applicant is appropriate here given the need for the initial approval before undertaking the huge expense of detailed site and building design. This process is consistent with the procedures cited above. The proposed condition of a subsequent Conditional Use approval amendment for the exact buildings and facilities, as well as the proposed conditions limiting the number of employees, the height of the buildings and the avoidance of impact on adjoining agricultural land, all ensure satisfaction of the standards for Conditional Use approval.

#### VI. Attachments to the Submission.

Countryside Alliance attaches two documents and 16 links to various news articles. As noted above, those articles are hearsay, many from newspapers which are hardly reliable evidence, they are not subject to cross examination because of their post-hearing submission and, when examined, they contain irrelevant and immaterial information. They should be stricken from the record or given little to no weight. Applicant does not believe these materials require explicit rebuttal but, if you were to believe so, Applicant and its experts are prepared to return and explain why every one is either irrelevant or immaterial to the proposed operation.

Finally, Applicant acknowledges the letter to Applicant from the Office of the County Executive (Attachment 16 to the Countryside Alliance submission) advising Applicant of various issues and recommendations that Applicant should consider. Applicant has done exactly that and only sees these comments as supportive of the application.

#### VII. Inherent/Non-Inherent Effects

Montgomery County Planning Commission Staff and the Montgomery County Planning Board found that the proposed uses “will not cause undue harm to the neighborhood as a result of a non-inherent adverse effects alone or in the combination of an inherent and a non-inherent adverse effect” in any of the relevant categories. Staff identified the inherent physical and operational characteristics of the proposal to be access, construction noise, backup generator noise, exhaust fans, vibration and noise, traffic generated by employees and industrial appearance. Applicant agrees that these inherent effects will have no adverse impact. Additionally, Applicant believes power consumption also is an inherent effect for any industrial type use, including data centers, and carbon emissions, as well, are inherent effects for any such use, irrespective of location. Similarly, the withdrawal of groundwater is inherent for any use in this area of the county where WSSC does not provide public water. Finally, given the circumstances of the proposed closed water intake/cooling process for this project, this also is an inherent feature of more contemporary data center facilities. Even if it were considered to be a non-inherent effect, the information presented in the written materials and at the hearing demonstrates that there will be no adverse effect on:

- the use, peaceful enjoyment, economic value or development potential of abutting and confronting properties or the general neighborhood;
- traffic, noise, odors, dust, illumination or lack of parking or;

- the health, safety or welfare of neighboring residents, visitors or employees.

#### VIII. Miscellaneous

The attachment to the Countryside Alliance post-hearing submission, in footnote 14, references issues they had asked Applicant to examine last July and it includes 11 recommendations for Applicant to consider. Those issues have been considered as requested and Applicant has incorporated at least 8 of the 11 recommendations. The other three - diesel backup, LEED certified buildings and energy from RECs, may be considered in the future but are not critical for finding compatibility of the proposed project. Overall, the Applicant is proud that it has incorporated so many suggestions from Countryside Alliance and from the County Executive. Deferral or rejection of any others does not affect the overall findings of compatibility.

Countryside Alliance also attached sections of the Zoning Ordinance relating to Communication Facilities (Section 3.5.2, 3.6.7 and 7.3.1.) All of these have been addressed through the review process with the Montgomery County Planning Commission and the Montgomery County Planning Board, and in the written submission/testimony provided, with the possible exception of paragraphs 3.5.2.A.2.b and c. With respect to these, the Montgomery County Cable Communications Plan concerns county funding of public facilities and is not applicable here. Similarly, the operation of this facility does not require a franchise from Montgomery County, as do some cable communication facilities such as cable TV.

#### Conclusion

In conclusion, Applicant believes the record, including the Planning Board and the Montgomery County Planning Staff's support, and the proposed conditions, justify approval of the two conditional uses subject to the conditions proposed by the Montgomery County Planning Board and agreed to by Applicant. They are located in a heavy industrial zone, will provide important public utility services, will result in the clean-up of a former heavy industrial site, and are located on a site of such size and location as to avoid any impact on neighboring properties.

Respectfully submitted,



Robert R. Harris

cc: Carolyn Taylor  
Jeffrey Ferrel  
James Clifford