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Springfield Planning Commission and Hearings Official
c/o Andrew Limbird, City of Springfield Development and Public Works Department
225 Fifth Street
Springfield, OR 97477

Re: Final rebuttal regarding appeal of site plan review and hillside development permits (Case Nos. 811-19-000084-TYP2 and 811-19-000085-TYP2)

Dear Commissioners and Hearings Official,

My law firm represents the Springfield Utility Board (“SUB”) regarding siting of SUB’s proposed Glenwood substation and transmission line. This letter constitutes SUB’s final rebuttal to the evidence and argument presented by Appellant Royal Blue Organics (“Appellant”) and Alberto Miranda in the appeals of SUB’s site plan review and hillside development permits. SUB is providing a single, consolidated final rebuttal to these two appeals because of the close connection between the permits.

SUB has provided a comprehensive response to the issues raised by Appellant and Mr. Miranda through SUB’s written submittals and hearing testimony. SUB’s July 9 packages provide a point-by-point response to Appellant’s appeal statements, including both evidence and argument. SUB supplemented these responses on July 16 with oral hearing testimony. SUB submitted additional evidence on July 30 to address issues discussed at the July 16 hearing, and SUB submitted a package of evidence on August 6 in response to the evidence presented by Appellant on July 30.

This rebuttal document discusses key issues raised in this proceeding and offers a framework for the Planning Commission’s and the Hearings Official’s respective decisions in these appeals. For the sake of brevity, this document does not repeat SUB’s earlier statements nor catalogue all evidence in these proceedings, but does identify the location of key evidence and argument in the record in order to aid your decision making process.

The organization of this rebuttal follows the order of the applicable criteria for site plan review at SDC 5.17-125, followed by the hillside development overlay criteria at SDC 3.3-500. Where a particular issue is relevant to multiple criteria, the rebuttal notes this and requests

duplicative or cross-referenced findings. Finally, this rebuttal addresses additional issues raised by Mr. Miranda's participation in the appeal hearing.

A. SDC 5.17-125(A): Metro Plan and zoning issues

SDC 5.17-125(A) is an oddly worded standard that asks whether the "zoning" is consistent with the Metro Plan and other relevant city plans. Site plan review does not involve changes to zoning, but rather review of plans for uses that are allowed in the local zone. That said, SUB recognizes that SDC 5.17-125(A) together with the catch-all code compliance criterion in SDC 5.17-125(C) require SUB to demonstrate that SUB's proposed development is consistent with the Metro Plan and the local zoning. This section of SUB's rebuttal therefore addresses Appellant's arguments related to the Metro Plan and the zoning of the subject property.

1. Metro Public Facilities and Services Plan

a. Acknowledgment of the 2015 plan amendment

SUB has explained that the Metropolitan Area Public Facilities and Services Plan ("PFSP") is part of the Metro Plan and that the city and the other Metro area governments amended the PFSP in 2015 to enable and guide the siting of SUB's proposed Glenwood substation and transmission line.¹ Because the PFSP specifically authorizes SUB's proposed use, Appellant attacks the validity of the 2015 PFSP amendment. Specifically, Appellant argues that the 2015 PFSP amendment is invalid because it was not properly "acknowledged" by the state Department of Land Conservation and Development ("DLCD").

On July 9, SUB produced 2015 correspondence between the city and DLCD demonstrating that DLCD did acknowledge the PFSP amendment in accordance with the acknowledgment procedures required by state law.² Nevertheless, at the appeal hearing on July 16, Appellant's attorney did not recognize these documents and continued to repeat the false claim that the PFSP amendment has not been acknowledged.

In support of his argument at the hearing, Appellant's attorney produced a list of plan amendments submitted by the city to DLCD in 2015 that does not include the PFSP amendment. City attorney Kristina Kraaz then testified that the Appellant's list was generated from an online DLCD database that is known to be incomplete. Appellant's acknowledgement argument therefore lacks merit and undermines Appellant's credibility because Appellant knew that its argument was factually inaccurate at least a week before Appellant repeated the argument at the hearing.

The Planning Commission and the Hearings Official should find that the 2015 PFSP amendment was properly acknowledged based on the notices produced by SUB. You should also find that the PFSP amendment is intended to facilitate siting of SUB's proposed substation and

¹ See SUB July 9 appeal response at 9-10; Ordinance 6341, included in SUB's July 30 package.

² See city and DLCD notices included in SUB's July 9 package.

transmission line, and therefore provides important policy direction to land use permitting of these facilities. Finally, you should conclude that Appellant’s argument about the validity of the 2015 PFSP amendment is not only incorrect, but is an improper collateral attack on the city’s 2015 decision.

b. Interpretation of the 2015 amendment

Appellant also argues that SUB’s proposed location of its transmission line is inconsistent with the PFSP because the PFSP requires the transmission line to be located within the Interstate 5 right of way. SUB has explained that the text of the PFSP does not require the line to be located within the right of way. SUB has also produced documentation from the Oregon Department of Transportation (“ODOT”) that ODOT will not allow the line to be located in the right of way.³

Given the intent of the 2015 PFSP amendment, the text of this amendment and ODOT’s position, you should find that the only reasonable interpretation of the PFSP is that the PFSP authorizes SUB’s transmission line to be located generally adjacent and parallel to the I-5 right of way. Based on the diagrams in the record, you should find that SUB’s proposed transmission line is consistent with the PFSP.

Relatedly, you should find that the PFSP and SUB’s proposed alignment of the transmission line demonstrate compliance with the city’s transmission line siting standards at SDC 4.3-135. These rules allow a transmission line where permitted by the PFSP.

2. 2012 Glenwood Refinement Plan visual impact policies

Appellants argue that SUB’s proposed infrastructure is inconsistent with a series of policies in the 2012 Glenwood Refinement Plan that seek to minimize the visual impact of electrical infrastructure. These policies only apply to lots 300 and 1000 because these are the only lots on the subject property that are within the footprint of the 2012 refinement plan.⁴ The Hearings Official therefore has jurisdiction over this issue because lots 300 and 1000 are outside of city limits.

The Hearings Official should find that the city implemented the refinement plan visual impact policies with respect to SUB’s proposed transmission line in 2015 through the PFSP amendment. The PFSP is part of the Metro Plan, just like the Glenwood Refinement Plan, and the 2015 PFSP is a more recent and specific policy adopted by the Metro area governments. Compliance with the Glenwood Refinement Plan visual impact policies therefore must be assessed within the context of the 2015 PFSP amendment. The PFSP specifically authorizes SUB to locate the transmission line parallel to Interstate 5 and between the interstate and the nearby

³ See SUB July 9 appeal response at 9-10 and ODOT correspondence included in SUB’s July 9 package. See also SUB’s July 30 letter at 3 for further explanation of ODOT rules that support ODOT’s decision.

⁴ The footprint of the 2012 Glenwood Refinement Plan is limited to the “Phase 1” area identified in that plan, which is also called the “Glenwood Riverfront” in that plan.

rail line. SUB's proposed development plan, and SUB's related tree felling proposal, are designed to implement the PFSP and are consistent with the PFSP.

The Hearings Official should also find that SUB's implementation of the 2015 PFSP amendment is consistent with the visual impact policies of the Glenwood Refinement Plan based on the geography of the transmission route on lots 300 and 1000 and the design of the transmission structures. SUB has provided expert evidence from SUB's landscape architecture firm and SUB engineering staff demonstrating that the design of the transmission facilities appropriately minimizes the visual impact of the facilities consistent with the refinement plan policies. This evidence includes specific rebuttal to the claims of Appellant's attorney and arborist.⁵

Although Appellant has provided its own competing photosimulations of SUB's proposed transmission line, the Hearings Official should find that SUB's evidence is more persuasive because only SUB had access to the digital files used to design the transmission line facility, including PLS-CADD and KMZ files. SUB merged these files and georeferenced the resulting file into a Google Earth #D photograph of the transmission line site. The result is a to-scale, horizontally and vertically accurate photosimulation of the transmission pole and lines in their planned location.⁶ The appellant did not have access to these digital files. As a result, Appellant could not, and did not, generate its photosimulations from actual transmission line design information.

SUB has therefore demonstrated compliance with relevant visual impact policies both through its implementation of the 2015 PFSP amendment and through the specific design of its proposed transmission line.

3. Glenwood zoning rules

Appellant argues that the portion of SUB's proposed transmission line on lots 300 and 1000 is inconsistent with the local Glenwood zoning rules that implement the 2012 refinement plan. Specifically, Appellant contends that the transmission line is not allowed in the local Glenwood Employment Mixed Use (GEMU) zone because the city's rules for this zone do not explicitly allow for "high impact facilities" such as SUB's proposed transmission line.

SUB requests that the Hearings Official find that SUB's proposed transmission line is consistent with the GEMU zone for two reasons. First, city staff have explained that the two parcels of the subject property in the GEMU zone are also subject to the city's Urbanizable Fringe (UF-10) overlay zone, and the UF-10 overlay explicitly allows high impact facilities.⁷ The city's Glenwood zoning rules provide that rules in other overlapping zones control to the extent that the Glenwood rules specifically reference the overlapping zoning rules. *See* SDC 3.4-225(A). The Glenwood rules state that the UF-10 rules apply to all property outside of city limits

⁵ *See* SUB July 9 appeal response at 11-13; SUB July 30 response letter at 3-4 and photos, images and July 9 letter from Richard Satre in SUB's July 30 package.

⁶ *See* SUB July 30 letter at 3-4.

⁷ *See* Staff Response to Appellant's Assignments of Error.

until annexation. SDC 3.4-245(C)(5). The Hearings Official should therefore find that SUB's proposed transmission line is permitted in the GEMU zone due to the relationship between the Glenwood zoning rules and the UF-10 overlay zone.

As an additional layer of protection to the city's decision, the Hearings Official should also find that the Glenwood zoning rules allow the Planning Director to conclude that SUB's proposed transmission line is a permitted use in the GEMU zone under the "use interpretation" provision in the Glenwood zoning rules at SDC 3.4-260. The city's code states that the uses listed as permitted in the Glenwood zones are merely "examples," and that the Planning Director may determine that additional uses are also permitted if a particular use meets the intent of the Glenwood zoning and has impacts similar to listed permitted uses in the relevant zone. *See* SDC 3.4-250 and 260. SUB explained in its July 9 letter why its proposed transmission line meets these standards.⁸ The Hearings Official should therefore find that it is appropriate and feasible for SUB and the city to demonstrate that the transmission line is consistent with the GEMU zoning rules through the city's Glenwood use interpretation procedure.

B. SDC 5.17-125(B): Capacity of local infrastructure

This criterion is designed to ensure sufficient public and private infrastructure to support the proposed use, such as local roads, sewer and water service. Appellant argues that SUB has not demonstrated compliance with this criterion because Tax Lot 1000 lacks access to a public road. This is a deceptive argument that is based on information that Appellant knows to be outdated.

SUB has explained that it now owns a contiguous tract of land that takes access directly from East 22nd Avenue as a result of SUB's settlement with Mr. Miranda. This tract includes lot 1000.⁹ Applicant has proposed improvement of a private access road through this tract as part of its site plan review application. The Planning Commission and Hearings Official should therefore find that SUB has secured access for its proposed development.

C. SDC 5.17-125(C): Compliance with other applicable regulations

This criterion is a catch-all standard that requires SUB to demonstrate compliance with other relevant regulatory requirements for SUB's proposed development. SUB responds to each of Appellant's arguments about other relevant standards below.

1. Landscaping, irrigation and erosion control (SDC 3.4-270(F))

Regarding the Glenwood landscaping standards at SDC 3.4-270(F), Appellant repeats its arguments from the tree felling permit appeal that SUB has proposed excessive tree removal. The Hearings Official should find that the city's tree removal permit decision demonstrates that SUB's tree removal is appropriate.

⁸ *See* SUB July 9 site plan review appeal response at 15-16

⁹ *See* SUB July 9 site plan review response at 13; SUB July 30 response letter at 4-5 and settlement agreement, stipulated court judgment and recorded property line adjustment survey included in July 30 package.

Appellant also questions the lack of a permanent irrigation system in SUB's revegetation plans. SDC 3.4-270(F) allows for alternative temporary irrigation systems designed by a landscape professional. SUB has explained that it has developed such a system for the property designed by SUB's landscape architecture firm, and the record includes SUB's proposed revegetation plan.¹⁰ The Hearings Official should find that SUB has demonstrated compliance with this criterion based on this evidence.

SUB also agrees to provide hand watering of new vegetation during the establishment period as needed. SUB requests that the Hearings Official include an additional condition of approval requiring this additional irrigation safeguard, and that the Hearings Official find that it is feasible for SUB to provide hand watering as needed given SUB's access to the property and willingness to perform this task.

Appellant has also raised concerns about erosion associated with SUB's proposed development, including erosion associated with tree removal. Erosion control is one of the purposes of the Glenwood landscaping standards at SDC 3.4-270(F). Condition 1 of the city's tree felling decision requires SUB to obtain a Land and Drainage Alteration Permit ("LADP") before commencing tree felling. The LADP will require erosion control measures and establishment of erosion-controlling vegetation in disturbed areas. In addition, SUB will minimize erosion associated with tree felling by leaving tree stumps in place,¹¹ and SUB also has an erosion control plan for road improvement in the record.¹² The Hearings Official should therefore find compliance with erosion control requirements, including SDC 3.4-270(F) based on this evidence and the feasibility of SUB obtaining the LADP.

2. Riparian area and wetlands (SDC 4.3-110; 4.3-115; 4.3-117)

The city has multiple overlapping rules concerning the conservation of wetlands and riparian areas. In addition, disturbance of wetlands and waterways is heavily regulated by federal and state law. The Planning Commission and the Hearings Official should find that SUB has demonstrated compliance with all relevant water quality-related requirements based on the evidence in the record and the city's site plan review condition of approval requiring SUB to obtain the required federal and state environmental permits for its proposed wetland fill. The Planning Commission¹³ should find that it is feasible for SUB to obtain federal and state wetland permits based on the plan submitted by SUB with its joint permit application.

a. Stormwater standards (SDC 4.3-110)

Regarding the stormwater management standards at SDC 4.3-110, the Hearings Official and Planning Commission should find that SUB has demonstrated compliance with these standards based on SUB's stormwater management plan and the site plan review conditions of

¹⁰ See SUB July 30 response letter at 5 and SUB application materials

¹¹ See, e.g., SUB July 9 appeal response at 11.

¹² See access road erosion control plan included in SUB's July 9 package.

¹³ The wetland area is located on the proposed substation site on Tax Lot 101. This lot is within city limits and therefore under the Planning Commission's jurisdiction.

approval requiring construction and maintenance of SUB's proposed stormwater treatment facilities. The record reflects that SUB does not propose development near the slough drainage that the city has designated as a Water Quality Limited Watercourse, other than improvement of the existing road crossing.¹⁴ SUB's proposed stormwater management plan shows that it is feasible for SUB to comply with stormwater requirements.

b. Natural resource protection regulations (SDC 4.3-117)

City staff and the city attorney have explained that the wetland located on the substation site (Tax Lot 101) is not a "significant" wetland under the city's Goal 5 inventory and therefore the SDC 4.3-117 regulations do not apply to this wetland. The slough is also not recognized as significant in the city's Goal 5 program and therefore is also not subject to SDC 4.3-117. The Planning Commission's and Hearings Official's findings should recognize this.¹⁵

c. Water quality protection standards (SDC 4.3-115)

Assuming that the city's water quality protection regulations at SDC 4.3-115 apply to non-significant wetlands and other waters, the Planning Commission should find that SUB has avoided development of wetlands and protected wetlands within the meaning of SDC 4.3-115 through the development plan and mitigation plan that SUB has proposed to the Army Corps of Engineers and the Oregon Department of State Lands ("DSL"). An excerpt of SUB's plan is in the record.¹⁶

Appellant suggests that SDC 4.3-115 entirely prohibits development in wetlands, which would be a more stringent standard than required by federal and state environmental law. This interpretation is contrary to the PFSP, which specifies that SUB will place its proposed substation in a wetland area.¹⁷ This interpretation would also jeopardize other city infrastructure located in wetland areas.

The federal Clean Water Act and the Oregon Removal-Fill law both require an applicant for a wetland development permit to avoid and minimize impacts to wetlands to the extent practicable, taking into account the purpose of the applicant's proposed development. All impacts that cannot be avoided or minimized must be fully mitigated. The Planning Commission should find that SDC 4.3-115 sets a similar standard for impact avoidance and wetland protection. The Planning Commission should find that this interpretation is required in order to avoid a conflict with the PFSP and a result that would prohibit development of critical infrastructure at other locations throughout the city.

As for improvement of the slough crossing, SDC 4.3-115(B)(8) permits private driveways to cross riparian areas when there is no other vehicle access. The Hearings Official

¹⁴ See SUB July 9 appeal response at 21.

¹⁵ The Planning Commission has jurisdiction over the wetland on Tax Lot 101 and the Hearings Official has jurisdiction over the slough crossing on Tax Lot 1000.

¹⁶ See 404 and removal-fill permit application excerpt included in SUB's July 30 package.

¹⁷ See diagrams in Ordinance 6341, included in SUB's July 30 package, and wetland delineation included in SUB's site plan review application materials

should find that the existing access road is the only existing vehicle access to Tax Lot 1000 and therefore SUB's proposed improvement to the slough crossing along this road is permitted pursuant to SDC 4.3-115(B)(8).

3. Screening of substation (SDC 4.4-110)

Appellant argues that the substation will not be adequately screened from view in violation of SDC 4.4-110. The Planning Commission should find that the city's site plan review condition of approval requiring additional screening of the substation ensures compliance with this standard, and that it is feasible for SUB to comply with this condition based on the availability of suitable screening materials. The Planning Commission should find that screening is not necessary on the east side of the substation because the substation will not be visible from this direction and SUB owns the land east of the substation.¹⁸

4. LMI zone frontage standard (SDC 3.2-420)

Appellant argues that the adjusted Tax Lot 3701 does not meet the frontage requirement for the Light-Medium Industrial District (LMI) zone. The Planning Commission should find that the LMI zone frontage requirements in SDC 3.2-420 are not applicable criteria under SDC 5.17-125(C) for several reasons. First, the development that SUB proposes through its site plan review application does not affect the frontage of the subject property. Second, you should find that the frontage requirements only apply to the creation of new lots or parcels, and neither lot 3701 nor lot 1100 is a new lot or parcel. Third, you should find that the boundary line adjustment between these two existing lots was lawfully approved by the city pursuant to Case No. 811-19-000076-TYP1, as required by court order.¹⁹ Relatedly, you should find that Appellant's frontage argument is an improper collateral attack on this decision.

5. Cross referenced findings on overlapping issues

SUB requests that the Hearings Official and the Planning Commission adopt additional findings regarding the issues below to ensure proper documentation of SUB's compliance with SDC 5.17-125(C).

- Property access: Appellant repeats its access argument described above as an argument against compliance with SDC 5.17.125(C). You should find that SUB has demonstrated compliance with all relevant city access requirements as relevant to SDC 5.17-125(C) for the reasons described in part B of this rebuttal above.
- Zoning: You should find that SUB has demonstrated that its proposed development is consistent with the uses allowed in the LMI and GEMU zones as relevant to SDC 5.17-125(C) for the reasons described in part A(3) above.

¹⁸ See SUB's July 9 site plan review appeal response at 22-23.

¹⁹ See property line adjustment decision included in SUB's July 9 site plan review appeal response package; stipulated general judgment included in SUB's July 30 site plan review appeal package.

- SDC 4.3-135 Transmission line siting standards: You should find that SUB has demonstrated compliance with these siting standards as relevant to SDC 5.17-125(C) for the reasons described in part A(1)(b) above, specifically because the proposed transmission line location is authorized by the PFSP.

D. SDC 5.17-125(D): Parking and ingress-egress

Appellant has not challenged SUB’s compliance with this criterion. However, to the extent that the ingress-egress standards in SDC 5.17-125(D) overlap with Appellant’s access argument, SUB requests that you find that SUB has appropriate ingress and egress to the subject property for the reasons described in part B above.

SUB also requests that you specifically incorporate the city staff’s findings regarding SDC 5.17-125(D) into your respective decisions.

E. SDC 5.17-125(E): Protection of certain physical features

This standard requires protection of various “physical features . . . as specified in [the city] Code or State or Federal law.” SDC 5.17-125(E) is therefore duplicative of SDC 5.17-125(C) as it relates to compliance with other relevant city code requirements. SUB therefore requests that the Planning Commission and the Hearings Official adopt findings that SUB complies with all local criteria concerning protection of physical features for the reasons outlined in your other findings.

In order to address the issues that Appellant has specifically identified under SDC 5.17-125(E), SUB requests the following findings:

- Tree preservation: You should find that the city’s tree felling permit ensures tree preservation consistent with SDC 5.17-125(E). SUB’s tree felling plan does preserve significant clusters of trees and shrubs.²⁰ To the extent that tree felling permit allows removal of trees, you should find that these trees are not “significant” within the meaning of SDC 5.17-125(E) because the city has specified a transmission line in this area in the PFSP and tree removal is necessary for the safe operation of the line.
- Wetlands and riparian area: SUB requests that you adopt findings that SUB complies with all relevant city wetland and water quality-related protection standards for the reasons described in in part C(2) above. SUB also requests that

²⁰ See diagrams, photos and images included in SUB’s July 30 site plan review package.

you find that SUB's permit applications to the Army Corps and DSL will ensure SUB's compliance with federal and state wetland development laws.

- Slope protection: You should find that the evidence presented by SUB's geotechnical consultant and SUB staff demonstrates that SUB's proposed development will protect slopes.²¹ This evidence is more persuasive than the documents prepared by Geoscience for Appellant because SUB's evidence includes actual subsurface exploration, sampling and lab testing. SUB's geotechnical consultant also draws from his experience with other nearby properties in assessing the subject property. Appellant's evidence is not credible given Appellant's track record of making nonfactual claims, and because Appellant's consultant appears to have trespassed on SUB and/or EWEB property to take photographs and view portions of the site.

Relatedly, you should find that SUB's proposed development will minimize erosion for the reasons described in part C(1) above.

F. SDC 3.3-500 Hillside Development Overlay criteria

The city's hillside development regulations are generally designed to ensure that residential land divisions result in lots that can be safely developed with homes. *See* SDC 3.3-520. These rules therefore have limited applicability to SUB's proposed development. That said, the city's hillside development rules require SUB to perform certain studies that include recommendations to ensure safe construction.

The Planning Commission and Hearings Official should find that SUB has commissioned all required studies, including geotechnical analysis, grading plans, revegetation plans and a development plan.²² You should also find that these studies meet the requirements of SDC 3.3-530 and that SUB has agreed to adhere to the conclusions of these reports.²³

As noted above, Appellant has provided competing information about slope stability on the property and recommendations for further study. For the reasons described in part E above, you should find that SUB's geotechnical studies are more credible than Appellant's information.

You should also find that SDC 3.3-530 does not require SUB to follow the recommendations in the Geoscience letters. If the city believes that an applicant's reports are

²¹ *See* geotechnical reports included in SUB's hillside development and site plan review applications, additional geotechnical analysis related letter from SUB staff included in SUB's July 30 package, and response to Appellant's Geoscience evidence in SUB's August 6 package.

²² *See* SUB hillside development permit application materials; July 9 hillside development appeal response package; additional geotechnical analysis related letter from SUB staff included in SUB's July 30 package, and response to Appellant's Geoscience evidence in SUB's August 6 package.

²³ *See, e.g.*, letter from SUB staff included in SUB's July 30 package.

inadequate, SDC 3.3-530 allows the city to require peer review of applicant's reports. City staff did not do so in this case. Geoscience's commentary therefore is not peer review authorized by SDC 3.3-530. The record reflects that SUB's geotechnical engineer did nevertheless consider Geoscience's commentary and explain why this commentary is inaccurate.²⁴

G. Response to additional issues raised by Alberto Miranda

1. Mr. Miranda's participation in the appeal

Mr. Miranda's name is not included in the site plan review and hillside development permit appeals filed by Royal Blue Organics. Mr. Miranda however provided testimony that was critical of SUB's proposal at the July 16 appeal hearing and this testimony was consistent with arguments made by Royal Blue Organics. Mr. Miranda also discussed his "coffee employees" at the hearing. Royal Blue Organics, Cafeto Coffee and Café Mam are three businesses or assumed business names associated with land owned by Mr. Miranda adjacent to SUB's proposed development (adjusted Tax Lot 3701). Café Mam filed the companion appeal of SUB's tree felling permit.

SUB has explained that Mr. Miranda agreed to sell SUB tax lots 1100, 1000 and a portion of Tax Lot 3701. The stipulated court judgment and settlement agreement in the record show that SUB paid Mr. Miranda \$2,000,000 for this property and also agreed to grant Mr. Miranda an easement to facilitate Cafeto's truck traffic on the edge of the property. As part of this settlement, Mr. Miranda agreed not to pursue any appeal of SUB's land use permits for the project and not to encourage anyone else to object to these permits.²⁵

2. Issues raised by Mr. Miranda

This portion of SUB's rebuttal summarizes and responds to the issues raised by Mr. Miranda at the July 16 hearing.

a. Visual impact of the transmission line

Consistent with Appellant's arguments, Mr. Miranda argued that SUB's proposed transmission line will negatively impact local views. Specifically, Mr. Miranda argued that the transmission line will degrade the viewshed from I-5. For the reasons described in part A(2) above, the Hearings Official should reject Mr. Miranda's argument and conclude that the transmission line is consistent with the visual impact policies in the Glenwood Refinement Plan. The city and the other Metro area governments specifically authorized SUB to locate its transmission line along I-5 because this area is already visually impacted by the freeway and the

²⁴ See Foundation Engineering letter included in SUB's August 6 package.

²⁵ See settlement agreement included in SUB's July 30 package.

associated cut in the local hillside, as well as billboards and existing utility infrastructure. The transmission line is therefore consistent with the existing landscape along the freeway.

b. Safety issues associated with freeway vehicle accidents

Mr. Miranda stated that vehicles may crash into the substation after losing control on I-5. He also expressed concern that his “coffee employees” may witness such an accident. SUB investigated the local crash history on I-5 in 2017. ODOT’s records show that there were only three vehicle incidents on the local stretch of I-5 from 2006-2015 and none involved a vehicle departing from the roadway.²⁶ The Planning Commission and Hearings Official should therefore find that the substation does not significantly increase safety risks associated with vehicles on I-5 and that Mr. Miranda’s testimony does not affect SUB’s compliance with applicable criteria.

c. Wetland restoration

Mr. Miranda also requested or implied that the Planning Commission and Hearings Official should require SUB to restore wetlands on the property. You should find that SUB has demonstrated compliance with all relevant city wetland and water quality requirements for the reasons described in part C(2) above. These rules do not require restoration of wetlands as a condition of site plan review, hillside development, or tree felling permits, nor do they require on-site mitigation of wetland impacts.

As explained in July 16 testimony from SUB’s landscape architect Richard Satre, the Army Corps and DSL now favor off-site mitigation of wetland impacts because on-site mitigation projects have generally not been successful. These federal and state agencies therefore believe that funding of larger scale wetland mitigation banks is the most ecologically beneficial form of mitigation. Consistent with this analysis, SUB’s wetland development permit application to the Corps and DSL calls for off-site mitigation of impacts to wetlands on the property.

d. Tree felling

Mr. Miranda also expressed concern over tree felling associated with SUB’s proposed development, arguing that the property contains the last stand of native trees in Glenwood. There is no evidence in the record to support this statement. On the contrary, the photographs and satellite images in the record indicate that the trees proposed for removal are not distinct from surrounding trees that will remain on the property and in the surrounding area.²⁷ The Planning Commission and Hearings Official therefore should find that SUB has demonstrated compliance with relevant tree protection requirements for the reasons described in part E above.

e. Alternative project location

Finally, Mr. Miranda requested that the Hearings Official and the Planning Commission require or persuade SUB and EWEB to commit to a “better project.” This comment presumably means that Mr. Miranda would like to see different electrical infrastructure or a different location

²⁶ See SUB July 30 letter at 3 and ODOT correspondence included in July 30 letter.

²⁷ See images included in SUB’s July 30 package.

for the infrastructure needed to serve the Glenwood area. The Hearings Official and the Planning Commission should find that this comment is an improper collateral attack on the Metro governments' 2015 PFSP decision regarding the location of the substation and transmission line.

H. Conclusion and request for findings

The record shows that SUB has demonstrated compliance with all applicable criteria for the site plan review and hillside development permits, and that SUB has successfully rebutted all of Appellant's and Mr. Miranda's arguments on appeal. SUB respectfully requests that the Planning Commission and the Hearings Official affirm the staff's decisions in these appeals. SUB further requests that you adopt consistent and complementary findings of fact and conclusions of law for the portion of the subject property within your respective jurisdictions. Finally, SUB requests that you use this rebuttal as an outline for your findings on the issues addressed in this rebuttal document.

Sincerely,

A handwritten signature in cursive script, appearing to read "M. J. Gelardi".

Michael J. Gelardi