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May 2, 2023

**VIA EMAIL: heatherh@co.kinggeorge.state.va.us**

Heather Hall, CZA Director  
Department of Community Development  
10459 Courthouse Drive, Suite 104  
King George, VA 22485

**RE: Birchwood Rezoning Project (the “Project”): Conditional Rezoning Application, Conditional Rezoning Amendment Application, and Special Exception Permit Amendment Application; County of King George, Virginia**

Heather:

I hope this finds you well. As you know, I represent Birchwood Power Partners, L.P. (“**Birchwood**”), in regard to the above-referenced and new zoning applications (collectively, the “**New Applications**”).

Previously, my client had filed certain zoning applications seeking (i) to conditionally rezone approximately 547 acres from A-1 and A-2 zoning to the Industrial (I) district; (ii) to amend existing proffers on a portion of Tax Map Parcel 21-50 (to replicate the proffers provided in Case # 22-07-Z04), and to amend a previously issued special exception permit applicable to Tax Map Parcel 21-50 and an associated easement to serve the uses Birchwood originally proposed for the Project (collectively the “**Prior Applications**”).

On November 14, 2022, the King George County Planning Commission approved Birchwood’s request to withdraw the Prior Applications. Pursuant to Section 5.3.6 of the King George County Zoning Ordinance, Birchwood may not file a “substantially similar” applications until May 14, 2023 (a period of six (6) months from the date the original application was withdrawn).

Since the date the Prior Applications were withdrawn, Birchwood has been working to substantially revise the Prior Applications so that they are narrowly tailored to restrict the use of the Project properties to one primary, permitted industrial use: **Data Center**. For the reasons described herein and as described in the New Applications, Birchwood is respectfully requesting confirmation that the changes to the New

Applications render them “substantially dissimilar” from the previous submittals such that the six-month filing restriction in Section 5.3.6 does not apply.

### **1. Changes to the Proposed Uses**

As originally proposed, the Prior Applications sought authorization for a number of primary, permitted industrial uses on the Property including warehouse, storage and distribution, light manufacturing, general office, laboratories and research, data centers, and manufacturing. Accessory uses related to these primary, permitted uses would also be permitted.

The New Applications include proffers restricting the primary use of the Property to data center uses, with permitted accessory uses thereto (including but not limited to necessary utilities). Other primary uses are prohibited.

### **2. Changes to the Generalized Development plan**

The New Applications include a revised Generalized Development Plan (“GDP”) that identifies the use of the Property as a data center campus with related accessory uses.

### **3. Changes to Traffic Information**

The New Application includes a traffic memorandum, titled Birchwood Project Data Center Phase 1 – Trip Generation Assessment, prepared by Bowman Consulting Group Ltd., and dated May 1, 2023 (the “Traffic Memo”). The Traffic Memo provides the anticipated trip generation calculations for the Project.

### **4. Changes to Water Supply**

The New Applications provide that all water necessary for rendering service to the data center and all other accessory or authorized uses on the Property will be provided via the surface water intake approved by the Virginia Department of Environmental Quality pursuant to VWP 17-0702. The emergency supply and potable water service supporting the Project will utilize Birchwood’s Ground Water Permit GW00187EU (or other non-community water sources) and will not be provided by KGCSA until public potable water service for domestic uses becomes available to the site in the future. When KGCSA or other applicable public body is able to provide a separate public water source, the Applicant will connect to the KGCSA system as agreed by the parties, permitted and/or required by the County.

The New Applications request Industrial zoning for the Property that is restricted to data center (and related accessory) uses and will include proposed proffers and supporting information related to this singular use, Birchwood believes the New Applications are not “substantially similar” to the Prior

Applications. While *some* of the same information will be provided in the New Applications, the purpose of such information is substantially different because it now only applies to a singular data center campus use.

We appreciate your time and attention to this matter, and happy to address any questions you may have.

Respectfully submitted,

A handwritten signature in blue ink, consisting of a large, stylized 'C' followed by a horizontal line extending to the right.

Charles W. Payne, Jr.

cc: M. Ann Neil Cosby  
Kelly Lackey, Esquire, County Attorney  
Chris Miller, County Administrator



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June 8, 2023

VIA EMAIL: [HeatherH@co.kinggeorge.state.va.us](mailto:HeatherH@co.kinggeorge.state.va.us)

Heather Hall  
Director, Zoning Administrator  
King George Community Development Office

RE: Birchwood Properties Rezoning Application Review Coordination  
Tax Map: 21 Parcels 25, 33, 34, 43, 44, 47, 48, 48D, and 50 (2pt)

Dear Heather,

I hope this finds you well. Below is our response to King George County's May 18, 2023, planning staff comment letter and VDOT's comments provided in their May 31, 2023 letter addressing the above referenced zoning matter. In this regard, please find our responses to each staff comment, and we have revised the following documents, which are attached hereto:

- Revised Trip Generation Assessment prepared by Bowman Consulting Group Ltd.;
- Revised Global Proffer Statement (revised and redlined);
- Revised Proffer Amendment Statement (revised and redlined); and
- Revised Generalized Development Plan ("GDP").

## **PLANNING STAFF COMMENT RESPONSES**

### **Timing of Review**

We understand that you have requested an expedited review for this process and that you desire to be heard as early as possible by the Planning Commission and the Board of Supervisors. However, there are set review times of at least 90 days specified in the Code of Virginia for applicable Virginia Department of Transportation and Dominion Energy reviews. We cannot proceed with scheduling the application to be heard prior to the end of those review times or resolution of the issues required by those reviews, whichever comes first.

**Applicant's Response:** The Applicant maintains its request for an expedited review but understands the County's application review procedures, including for applicable VDOT and Dominion Energy matters.

### **Completeness of Application**

Community Development acknowledged receipt on May 3, 2023 of the application and the request for a determination that the application is not "substantially similar" to the applications withdrawn on November 14, 2022. In light of King George County's request for a traffic impact analysis as further described below, as well as initial comments from VDOT and Dominion Energy that additional information and coordination is needed with respect to 527 and 2232 review respectively, the application as filed is presently incomplete rendering the "substantial similar" determination under Zoning Code Section 5.3.6 moot. Should the application be supplemented or otherwise determined complete after the expiration of the six month period from November 14, the application will be deemed "filed" as of that date. The application has been under preliminary review as a courtesy and County staff is working to advance the above referenced items and other critical path issues of this coordinated review process.

**Applicant's Response: Understood.**

### **Transportation**

King George County is requesting that a traffic impact analysis be completed for this project prior to this application being brought to the Planning Commission and the Board of Supervisors. We do not agree with the assertion in the application that what is proposed does not meet the daily and peak hour thresholds for traffic, as described in the King George County Development Guide, for our option to request a traffic study in conjunction with the application. With respect to the site where Phase I improvements are generally described in the application and located on the Generalized Development plan, only the Phase I data center development was included in the trip generation analysis. Accessory uses as shown were not included in the analysis. This includes accessory uses that don't appear to have a de minimis trip generation rate (e.g. the office building and the fleet maintenance building). In addition, it is reasonable and customary to include in a traffic impact analysis all planned development being requested as a function of a rezoning application. This includes the four million square feet of data center space that is proposed in the application (and limited as such according to the proffers) for what is described as Development Area #2. It is also reasonable and customary to have to assume a certain square footage and/or trip generation rate for accessory uses and all uses that generate traffic on a site. This is particularly true in light of the fact that accessory uses are described to be allowable "without limitation" according to the language in the proffers including in your application.

We have received information from the Virginia Department of Transportation clarifying the Code of Virginia requirements, known as 527 review, for analyzing traffic for larger projects that include

proposed amendments to the Comprehensive Plan. The total size of this application when including all parcels and the number of trips generated according to the trip generation memorandum including in your application exceeds the thresholds for an elevated level of impact analysis and VDOT review. We have scheduled a meeting with VDOT for Monday, May 22 at 11:00 to discuss these issues further.

It is very important to King George County, VDOT and your team work at our scheduled meeting for Monday and afterward to clarify the requirements for traffic impact assessment, address the Code of Virginia designated timeframes for review, and establish methodological assumptions that meet the requirements of development for Development Area #2 as well as the cumulative transportation implications for the full build out as described in the application and limited in the proffer statement.

**Applicant's Response:** Please see revised Trip Generation Assessment that addresses the VDOT 527 threshold question.

**Pursuant to subsequent discussions with the County, the Applicant agrees to prepare and submit a County traffic impact analysis ("TIA"). The TIA will include a scoping agreement (intersections to be studied) among the County, Applicant and VDOT. The TIA will analyze the total anticipated traffic impacts of the proposed Project, including all permitted and accessory/supporting uses. The TIA will determine if there are impacts, and recommend mitigation measures for the same. The TIA will be completed prior to the first site plan approval for a data center use (please see revised Global Proffer Statement and revised Proffer Amendment Statement).**

### **Use and Accessory Uses**

As with all the applications that come to us, it is the responsibility of this department to provide objective decision making information on the merits and potential impacts of the project relative to King George County's policies for growth and development. We appreciate the level of information provided in the application. The proffers limiting the scope of development to data centers do reveal the primary nature of what is generally planned at the campus and helps us review this project effectively.

The King George County Zoning Ordinance provides for both ancillary and accessory uses that are incidental to the main use under the Industrial zoning district. We acknowledge that the full buildout of the proposed data center campus will require different types of uses to support the maintenance and operations of the main use. There is no objection to establishing a list of accessory uses that is tailored to this type of operation and documenting them similarly to how you have them included in the proffer statement. However, the Department is very interested in having this zoning case, should it be approved, document uses in such a way that informs the downstream site development and review process effectively as to use, accessory use, and the potential that more than one main use be accommodated on a site. If more than one main use will be needed on the site, particularly in Development Area #2, it will be more effective to address that now rather than at site plan review and/or later in the process. This will

minimize any future misalignment or conflict regarding appropriate ancillary and accessory uses for the site and minimize the need for further local legislative decisions by the Board of Supervisors regarding development rights related to use.

Also, we would like to ensure there is documented mutual understanding on what the interpretation of “without limitation” means in terms of accessory uses and development rights, as well as having the accessory use list in the proffer statement be clear as to its relationship to the ancillary and accessory use language in the Zoning Ordinance.

**Applicant’s Response:** As mentioned above, the Project’s accessory uses will be analyzed in the traffic impact analysis. In this regard, the Project’s accessory uses are limited to those customarily incidental to data center uses. Such customarily incidental, accessory uses are permitted by right under King George County Zoning Ordinance Sections 2.12.2 and 2.12.4. The Applicant’s Global Proffer Statement and Proffer Amendment Statement include a list of uses including:

- **Electrical generators (emergency generation).** Generators connected to the data center facilities’ emergency services. These generators are not expected to create any regular, daily traffic.
- **Distribution transmission and substations facilities.** Facilities connected to provide power to the data center facilities. These facilities are not expected to create any regular, daily traffic.
- **Enclosed battery storage facilities.** Facilities to store power for data center facilities. These facilities are not expected to create any regular, daily traffic.
- **Enclosed fuel storage facilities.** Facilities that store fuel for emergency generation. These facilities are not expected to create any regular, daily traffic.
- **General office and storage.** Approximately 30,000 square-foot office building with employee amenities including fitness center, cafeteria, conference space. Up to 50 employees will be stationed in this building at full campus buildout. These uses will be accounted for in the traffic impact analysis, but are expected to be nominal.
- **Logistics and maintenance facilities.** Approximately 30,000 square-foot multi-purpose building with loading/receiving dock. It houses common maintenance materials, equipment to support upkeep of the grounds, and a small fleet of vehicles (no more than a dozen) to support generator maintenance and part delivery. The vehicles would be mostly used on campus but could be occasionally sent off campus to service another campus in the region or receive additional supplies 10-20 employees will be

stationed in this building. This use will be accounted for in the traffic impact analysis, but is expected to be nominal.

- **Water and sewer facilities.** Facilities that directly support data centers including the following: Water intake/pump stations, water/wastewater treatment facilities (including water tanks), stormwater management system, ponds (resiliency, rainwater harvesting, stormwater management, etc.), and other related infrastructure. No employees will be stationed at these buildings, instead would sit in the logistics and maintenance facilities, *see above*. Accordingly, these facilities are not expected to create any regular, daily traffic.
- **Communication, broadband, fiber optic utilities.** Utilities to support the connectivity of the data center facilities. These facilities are not expected to create any regular, daily traffic.
- **Service stations.** A pump located at the logistics and maintenance facilities to fuel a small fleet of vehicles (as described above). Similarly, this use will be accounted for in the traffic impact analysis, but is expected to be nominal.
- **Fleet vehicle maintenance and repair facilities.** See logistics and maintenance facilities, this is not a different structure. Accordingly, this use will be accounted for in the traffic impact analysis, but is expected to be nominal.
- **Guardhouse.** Approximately 4,000 square-foot building with up to 5-10 employees that screen people and vehicles entering the campus. This use will be accounted for in the traffic impact analysis, but is expected to be nominal.
- **Rooftop solar energy systems.** Affixed to either building rooftops or above parking areas. Locations to be determined as part of site and building design and approval process with County. These facilities are not expected to create any regular, daily traffic.
- **Ski Lodge buildings.** A small data center which is a primary use. These buildings are kept colder and are almost entirely automated. There are no additional employees stationed at these facilities. These facilities are not expected to create any additional daily traffic.
- **Transportation.** Road network including entrances, truck turnaround, access roads and parking areas. These uses will be accounted for in the traffic impact analysis, but are expected to be nominal.



- **Utilities**, refer above to
  - Distribution transmission and substations facilities
  - Water and sewer facilities
  - Communication, broadband, fiber optic utilities

These facilities are not expected to create any additional daily traffic.

**Also, the County is correct in stating that the above list is “without limitation”. However, “without limitation” is merely intended to cover any additional unforeseen incidental uses that are required to support and operate the data center facilities. Such uses will be accessory uses that are customarily incidental to the primary use of data center, as permitted by King George County Code Sections 2.12.2 and 2.12.4.**

**In addition, the Applicant may have to subdivide property that will be utilized as a substation and/or other electric transmission or distribution facility in support of the primary, permitted use of a data center. This may be a requirement of Dominion. As such, we want to ensure the use is authorized under the proposed rezoning. Thus, should “public use” be included in addition to data centers as a permitted use?**

### **Neighboring Uses to the School**

It was mentioned at the meeting that there were concerns for battery and fuel storage being shown on the site across from the school. The application would benefit from more information on the types or facilities that are planned, the nature of where they are located, and what steps will be taken to mitigate potential risks. This will be helpful in further assessing and communicating the approach to mitigating any potential hazards that exist as the zoning case is presented.

**Applicant’s Response:** The Applicant will not develop a campus centralized fuel storage system or a grid-scale Energy Storage System in Development Area #3. The data center buildings themselves house centralized fuel storage that connects to emergency generators that directly support the individual building. Each data center also includes emergency battery back-up power known as uninterrupted power supply or UPS. These systems are common components to mission critical facilities (i.e. hospitals, emergency service providers, utilities, etc.) and the Applicant will work with County code and fire officials to meet all applicable codes and regulations.

### **Fire Department Coordination**

We would like to continue to be involved in the coordination of public safety considerations and the provision of services required to meet the needs of the proposed development. In particular, it is our

desire to have the staff report and the decision-making information provided to the Planning Commission and Board of Supervisors include a summary of the strategy to resolve the timing and staging issues related to the pace of your potential development and the ability of the County to make available new Fire Department equipment and facilities that are needed to meet the demands of this project.

**Applicant's Response:** Pursuant to our May 26, 2023, call with the County and Fire Chief Moody, we agree to further coordinate with the department. We also confirmed during the call that the facilities will include fire suppression systems and relevant life safety systems. The Applicant has proffered \$1 million in cash to support EMS, and further proffered an emergency action plan, training and other support to occur at each site plan stage of development.

### **Dominion Energy Coordination**

We will continue to ensure the County's responsibilities for the 2232 review are conducted in light of the needs and improvements being planned. We understand you are having detailed conversations now with Dominion Energy regarding those issues and continued mutual information sharing will ensure we can address all the requirements needed on our end in timely fashion relative to our other review activities. We have reached out to Dominion to coordinate the 2232 review issues, but still need to get guidance from you on the nature of the conversations our other review activities. We have reached out to Dominion to coordinate the 2232 review issues, but still need to get guidance from you on the nature of the conversations our department can enter into with them regarding the review given the non-disclosure agreement you have with them.

**Applicant's Response:** The Applicant is comfortable with Dominion sharing the full plan for power distribution and transmission at the Birchwood campuses for the purpose of the 2232 compliance review.

### **Noise**

It was clarified in our meeting on May 16 that the proffered noise analysis was to be model-based rather than based on field testing of levels emitted after the building are in operation. In addition of this model output prior to a Certificate of Occupancy being issued, King George County will want to ensure there is a periodic monitoring and enforcement mechanisms in place for noise generation that may affect adjacent properties. It will be important to the County to have a mitigation strategy developed that addresses noise levels that exceed those levels included in the proffer statement in the locations described.

**Applicant's Response:** As noted in the Global Proffer Statement and Proffer Amendment Statement, the Applicant will provide a Sound Analysis prior to the issuance of a certificate of

occupancy permit for each data center building. The Applicant agrees to also conduct a Sound Analysis at the completion of the first phase of Building 1 and then at the time that all phases of each subsequent building is fully energized. The studies will measure normal operations during daytime and nighttime hours over a 24-hour period. This would provide for periodic testing up to the full campus build-out to ensure compliance with County requirements and the conditions of the Global Proffer Statement and the Proffer Amendment Statement.

### **VDOT COMMENT RESPONSES**

1. As stated in the previous reviews, based on the cumulative projected total trips that were provided, this site will trip the threshold for a Chapter 527 Traffic Impact Analysis.

**Applicant Response:** Please see the revised Trip Generation Assessment. As a summary of Bowman's analysis: The Virginia Department of Transportation ("VDOT") Chapter 527 guidelines indicate that a 527 Traffic Impact Analysis is required for developments that are anticipated to generate 5,000 additional trips per day. This Project is expected to generate an increase of 1,144 trips per day over the trip potential of the existing zoning designations, and therefore, a Chapter 527 Traffic Impact Analysis is not required.

Note that the Applicant acknowledges the need for a King George County Traffic Impact Analysis. The TIA will be completed prior to the first site plan approval for a data center use (*please see revised Global Proffer Statement and Proffer Amendment Statement*).

2. The transportation proffer #2 could be interpreted as providing warranted improvements to only the entrance locations, which are already covered by VDOT requirements associated with the Access Management Regulations and the VDOT Road Design Manual. Therefore, the applicant may want to revise the proffer to also provide improvements identified within the entire study area of the required traffic analysis to include off-site intersection and roadway improvements that are identified in the study.

**Applicant Response:** Please see revised Global Proffer Statement and revised Proffer Amendment Statement.

3. It is recommended that the TIA be provided for review during the rezoning application process so the County can be informed during this process as to the location of necessitated transportation improvements.

**Applicant Response:** The TIA will be completed prior to the first site plan approval for a data center use (*please see revised Global Proffer Statement and revised Proffer Amendment Statement*).


4. For information purposes, and without the benefit of a TIA that would include directional distributions for the projected traffic increases, this rezoning could increase the daily traffic volume on Rt. 3 from approximately 20,000 AADT to over 25,000 AADT.

**Applicant Response:** Please see the revised Trip Generation Assessment. The TIA will be completed prior to the first site plan approval for a data center use (*please see* revised Global Proffer Statement and revised Proffer Amendment Statement).

**\*\* General Building Elevations.** For purposes of providing the County with the Project's general building features, please find enclosed the revised Global Proffer Statement with Exhibit D and the revised Proffer Amendment Statement with Exhibit C -- the general building features titled "Proposed Exterior Elevations", prepared by Penney Design Group (the "General Building Features").

If you have any questions regarding these responses, please feel free to contact my office. We appreciate your immediate attention to this matter.

Respectfully,



Charles W. Payne, Jr.

June 28, 2023

Heather Hall, CZA Director  
Department of Community Development  
10459 Courthouse Drive, Suite 104  
King George, VA 22485

**RE: Birchwood Power Partners, L.P. Zoning Cases (Comprehensive Plan Amendment Application Number Z-2023-00113; Conditional Rezoning Application Number Z-2023-00099; Proffer Amendment Application Number Z-2023-00101; and Special Exception Application Number Z-2023-00100)**

Dear Heather,

I hope this letter finds you well. As you are aware, my firm represents Birchwood Power Partners, L.P. (the "Applicant") in regard to the above-referenced zoning applications.

In accordance with the communications between the Applicant and the King George Department of Community Development and the response letter dated June 8, 2023, please find the revised application materials enclosed.

If you have any questions regarding these responses, please feel free to contact my office. We appreciate your time and attention to this matter.

Respectfully,



Logan P. Brunette

July 26, 2023

Louis Pancotti  
Interim Director and Zoning Administrator  
Department of Community Development  
10459 Courthouse Drive, Suite 104  
King George, VA 22485

**RE: Birchwood Power Partners, L.P. Zoning Cases (Comprehensive Plan Amendment Application Number Z-2023-00113; Conditional Rezoning Application Number Z-2023-00099; Proffer Amendment Application Number Z-2023-00101; and Special Exception Application Number Z-2023-00100)**

Dear Louis,

I hope this letter finds you well. As you are aware, my firm represents Birchwood Power Partners, L.P. (the "Applicant") in regard to the above-referenced zoning applications.

In accordance with the communications between the Applicant and King George County Department of Community Development, and with regard to revised proffer comments made to the King George County Planning Commission meeting on July 18, 2023, please find the revised application materials enclosed for the upcoming August 8, 2023, planning commission meeting.

If you have any questions regarding these responses, please feel free to contact my office. We appreciated your time and attention to this matter.

Respectfully,



Charles W. Payne, Jr.