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January 9, 2014

Mr. Steve Hendrix
Planning and Design Supervisor
Louisville Metro Planning and Design Services
444 S. 5th Street
Louisville, KY 40202

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**RE: 4626 Preston Highway, Louisville, KY 40213
Revised Detail District Development Plan, Sign Variance, Landscape Waivers**

Dear Mr. Hendrix:

Please be advised that Clean Energy is requesting approval of a Revised Detail District Development Plan, Sign Variance, Landscape Waivers, and Fencing Waiver for the proposed LNG Fueling Station at the above-referenced property. Clean Energy is the leading provider of natural gas fuel for transportation in North America and a global leader in the expansion and introduction of natural gas vehicles. As a result Clean Energy designs, builds, operates, and maintains natural gas fueling stations offering the latest in convenience, technology, and safety. Compared to diesel and gasoline, natural gas fuel is cheaper, cleaner, and greener. It is sourced domestically with supplies projected to last over 120 years. Clean Energy is committed to delivering the benefits of natural gas fuel to operators across America, at the same time Clean Energy is dedicated to protecting the environment by promoting sustainable clean-fuel transportation solutions.

Additionally, Clean Energy envisions a fueling network that enables trucks to operate on natural gas in all key markets across the Country. To make this goal a reality, Clean Energy is actively developing America's Natural Gas Highway, with LNG and CNG fueling stations at strategic locations along major interstate trucking corridors. Clean Energy respectfully requests the assistance of Louisville Metro to promote the benefits of natural gas by means of approving our requested Revised Detail District Development Plan Application for amendments to or deviations from the approved Plan Certain #09-087-85 and Case #B-90-87, Sign Variance to deviate from the maximum allowable sign area per façade, and Landscape Waivers to waive strict landscaping and fencing/screening regulations pertaining to the subject zone. Below is a project background and details associated with our request.

The station will be located at 4626 Preston Highway. The proposed fueling facility would serve as a new use that is complementary to existing uses in the area which are travel and transit oriented. Clean Energy's application would be to develop this property to include a 900 square-foot canopy with signage, fueling dispensers, card readers, two 42.7' tall above ground storage tanks, associated controls, equipment pads, interconnecting piping, electrical, light standards and safety systems.

Revised Detail District Development Plan

Initial discussions with Louisville Metro Planning and Design staff regarding the proposed project identified two entitlement applications were previously approved for the subject property: (1) Plan

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Certain #09-087-85, a rezone from R-5 (Residential District) Zone to C-1 (Commercial District) Zone; and (2) Case #B-90-87, a Variance request to allow the existing billboard located on the southeast corner of the subject property. During the Pre-Application Meeting held on May 28, 2013 regarding Clean Energy's proposal, staff indicated that any amendments to or deviations from the previously approved Plan Certain will require approval of a Revised Detailed District Development Plan. Clean Energy is not requesting deviations from any development standards or conditions placed on this property under the approved Plan Certain #09-087-85, however, Clean Energy's proposals introduces a new use to the property that was not part of the approved Plan Certain and will therefore require approval of a Revised Detail District Development Plan.

The proposed development will provide for safe and efficient vehicular transportation both within the development and the community. The onsite and offsite traffic patterns relative to the site will be maintained, however, Clean Energy will be utilizing new driveways for their proposed ingress and egress paths off Preston Highway and Grade Lane. Furthermore, the proposed development will utilize the large paved area onsite to conserve natural resources and provide open space, where feasible and/or practical. The overall site design and proposed land use is compatible with the intent and purpose of Land Development Code Section 5.3.2 Suburban Marketplace Corridor Form District (SMCFD) to promote high quality design and a more visually attractive environment in the SMCFD, accommodating relatively large volumes of traffic while providing for alternative travel modes. The LNG fueling facility is designed to accommodate future demands for LNG, an alternative (American) fuel.

Sign Variance Request

During review of the Sign Regulations in Code Section 8.3.2 of the Louisville Metro Land Development Code, Clean Energy found that its proposal will exceed the allowable sign area allotment. Clean Energy is proposing to construct and install its standard vertical tanks and canopy over the fueling area and incorporate its company name, logo and informational/directional verbiage on the canopy and tanks to aid in identifying the LNG product/facility. The proposed signs on the two above ground storage tanks will be considered attached signage (as defined in Land Development Code Section 8.1.2) and is permitted under Land Development Code Section 8.3.3 and Table 8.3.2. However, the prototypical package exceeds the allowable maximum sign area and will result in the need to obtain approval of the variance requested.

It is our understanding per Land Development Code Section 8.3.3.A (Permanent On-premise Signs for Non-residential Uses for Attached, Awning, Canopy and Marquee Signs) and Table 8.3.2, that for buildings with a façade area of less than 500 square feet, a maximum of (3) signs may be located on any one façade so long as the sign surface area of all signs on each facade does not exceed twenty (20) percent of the façade area of the building wall to which the sign is attached.

This would allow a total of 58.2 square feet of signage on the canopy and 109.6 square feet of signage on the two above ground storage tanks, for an overall total of 167.8 square feet of allowable signage for the project.

The total Clean Energy signage proposed is 193.2 square feet which includes 58.2 square feet of permitted canopy signage, 25.4 square feet of additional canopy signage, 54.8 square feet of allowable signage on Tank 1, and 54.8 square feet of allowable signage on Tank 2. Although Clean Energy intends to submit a sign application for the signs that are permitted by right, Clean Energy is seeking a variance for additional signage to assure fuel type identification to both consumers and emergency responders.

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Please note that Clean Energy is not requesting approval of any prohibited signs as described in Land Development Code Section 8.1.9 or any stand-alone ground or pole (freestanding) signs as described in Land Development Code Section 8.3.3.B (Permanent On-premise Signs for Non-residential Uses for Freestanding On-premise Signs). Furthermore, Clean Energy's request is not for signage associated with fuel price advertisement as with a traditional gasoline or automobile service station. The request is associated with fuel type identification and availability only.

Furthermore, Clean Energy is requesting approval to install vinyl applique signs on its canopy and tanks at the locations as indicated, with two illuminated signs mounted to the face of the canopy where noted. As per the attached Signage plan, please note the precise locations as referenced below:

On the North Side Elevation of the **Canopy:**

- Vinyl Logo & "Clean Energy" Vinyl Letter Set 18 Square Feet Advertising and "Natural Gas For Vehicles" 12.6 Square Feet Directional Vinyl Letter Set
(Total of 31.4 Square Feet proposed)
 - 21.6 Square Feet is allowed per Land Development Code Section 8.3.3 and Table 8.3.2
 - 9.8 Square Feet of additional canopy signage is requested

On the South Side Elevation of the **Canopy:**

- Illuminated Logo & "Clean Energy" Vinyl Letter Set 19.8 Square Feet Advertising and "Natural Gas For Vehicles" 12.6 Square Feet Directional Vinyl Letter Set
(Total of 32.4 Square Feet)
 - 21.6 Square Feet is allowed per Land Development Code Section 8.3.3 and Table 8.3.2
 - 10.8 Square Feet of additional canopy signage is requested

On the West Side Elevation of the **Canopy:**

- Illuminated Logo & "Clean Energy" Vinyl Letter Set
(Total of 19.8 Square Feet)
 - 15 Square Feet is allowed per Land Development Code Section 8.3.3 and Table 8.3.2
 - 4.8 Square Feet of additional canopy signage is requested

On the East Elevation of **Tank 1:**

- Vinyl Logo and "Clean Energy" Vinyl Letter Set
(Total of 27.4 Square Feet)
 - 27.4 Square Feet (Up to 85.4 Square Feet) is allowed per Land Development Code Section 8.3.3 and Table 8.3.2

On the East Elevation of **Tank 2 (to be installed in 2-3 years when demand increases):**

- Vinyl Logo and "Clean Energy" Vinyl Letter Set
(Total of 27.4 Square Feet)
 - 27.4 Square Feet (Up to 85.4 Square Feet) is allowed per Land Development Code Section 8.3.3 and Table 8.3.2

On the West Side Elevation of **Tank 1:**

- Vinyl Logo and "Clean Energy" Vinyl Letter Set
(Total of 27.4 Square Feet)
 - 27.4 Square Feet (Up to 85.4 Square Feet) is allowed per Land Development Code Section 8.3.3 and Table 8.3.2

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On the West Side Elevation of **Tank 2** (to be installed in 2-3 years when demand increases):

- Vinyl Logo and “Clean Energy” Vinyl Letter Set
(Total of 27.4 Square Feet)
 - 27.4 Square Feet (Up to 85.4 Square Feet) is allowed per Land Development Code Section 8.3.3 and Table 8.3.2

The total signage being proposed includes 58.2 square feet of permitted canopy signage, 25.4 square feet of additional canopy signage, 27.4 square feet of allowable signage on the offloading elevation of Tank 1, 27.4 square feet of allowable signage on the offloading elevation of Tank 2, 27.4 square feet of allowable signage on the fueling side elevation of Tank 1, and 27.4 square feet of allowable signage on the fueling side elevation of Tank 2, for a total of 193.2 square feet of onsite signage.

Pursuant to Section 11.5B.1.B (Considerations for Variances) of the Louisville Metro Land Development Code, a variance may be granted by the Board of Zoning Adjustment when two criteria have been met. In this particular case, Clean Energy believes these two criteria as described in Land Development Code Section 11.5B.1.B have been met by the proposed signage package as it relates to the site and the use to be established on said site.

Variance Criteria 1 – Reasons that the granting of the variance:

a) *Will not adversely affect the public health, safety or welfare.*

The granting of the variance will not adversely affect the public health, safety or welfare of the community. The variance will actually result in substantial justice and improvement to the public safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. The surrounding area is zoned for commercial and general business uses which are typical at exits off of the national interstate system. Additionally, LNG engines can reduce noise by as much as 50% compared to diesel engines. Truck traffic and transportation of goods is common along this corridor and adjoining streets. Furthermore, the variance request for additional sign area is compatible with Guideline 3.A.28 of the Cornerstone 2020 Comprehensive Plan Goal to “Promote signs of a size and height adequate for effective communication and conducive to motor vehicle safety”. Therefore, the granting of the requested sign variance for the proposed LNG fueling station would not adversely affect the public health, safety or welfare of the Louisville Metro community. The additional signage will allow for quick identification of the facility for both potential patrons and emergency responders.

b) *Will not alter the essential character of the general vicinity.*

The granting of the variance will not alter the essential character of the general vicinity. This Variance request will be in harmony with the purpose and intent of Guideline 3.A.28 of the Cornerstone 2020 Comprehensive Plan to encourage signs that are integrated with or attached to structures wherever feasible and limit freestanding signs to monument style signs unless such design would unreasonably compromise sign effectiveness. The area inclusive of the subject site is characterized by larger parcels of land that are primarily accessed by a highly traversed, higher-speed roadway. The request for increased sign area on the canopy is necessary to ensure efficient communication with potential patrons of the fueling facility, as well as assist emergency responders with quickly identifying the location of the LNG facility. It should be noted the increased area not only provides better identification, but accommodates the directional statement “Natural Gas For Vehicles” which is approximately twelve square feet. This statement enhances communication and allows potential patrons to quickly identify the site as an alternative fueling

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facility. In addition, the increased sign area will not appear out of scale with the canopy and overall development of the site. The increased signage is compatible with the neighborhood inasmuch as the canopy structure will comply with all required setbacks upholding the visual integrity of the roadway corridor.

The request is to allow additional area for vinyl applique identification on a code-compliant canopy structure and said additional area will not introduce a visual incompatibility to the neighborhood. Furthermore, the provisions of Land Development Code Section 5.3.2 Suburban Marketplace Corridor Form District (SMCFD) are intended to promote high quality design and a more visually attractive environment in the SMCFD, accommodating relatively large volumes of traffic while providing for alternative travel modes. Clean Energy will support the intent of the SMCFD by providing a high-quality and attractive facility design that will maintain visual compatibility with the neighboring uses. Although Clean Energy's proposal will not provide a direct alternative mode of travel, it will allow for more diverse transportation methods and means in this community by providing LNG as a new alternative fuel option. Furthermore, the subject site is located on Preston Highway and is adjacent to the Interstate system (I-65/Dr. Martin Luther King, Jr. Expressway), both of which serves a high volume of commercial vehicles that can directly benefit from the use of an alternative (American) fuel. Therefore, the proposed LNG fueling station would be compatible with the area and not alter the essential character of the community.

c) *Will not cause a hazard or a nuisance to the public.*

The granting of the variance will not cause a hazard or a nuisance to the public. As indicated previously, the granting of the variance will actually result in substantial justice and improvement to the public safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality and are 50% quieter reducing noise pollution. Clean Energy's standard signage is designed to tastefully identify the site/use in a manner that will preserve property values by preventing unsightly and chaotic signage that has a blighting influence on the city. Furthermore, the additional signage will not cause a hazard or a nuisance to the public and is only intended to allow for quick identification of the facility for potential patrons and, more importantly, emergency responders.

d) *Will not allow an unreasonable circumvention of the requirements of the zoning regulations.*

The granting of the requested zoning variance will not allow an unreasonable circumvention of the requirements of the zoning regulations. It will, actually, allow for the establishment of an atypical use for alternative fuel which is consistent with the intent of the Zoning Regulations. Clean Energy is only requesting a variance to allow for an additional 25.4 square feet of signage on their canopy structure to accommodate its company name, logo and informational/directional verbiage on the canopy to aid in identifying the LNG product/facility. The distinctive design of the Clean Energy fueling facilities creates a particularly unique site condition in that there is no building on which to locate signage as would be typical of other business types, thus creating an unparalleled hardship limiting this facility to a minimal signage allowance on the canopy as well as on the two tanks. Several other properties within the same zoning district are developed with storefront businesses that are afforded more identification due to the presence of actual building wall, monument and freestanding signage.

If the proposed development had an actual building, the dimensions on the North Elevation of the canopy could be 19' x 36' (presuming the building was the same size as the canopy in length and equal in height). In that instance, the allowed sign area on that façade of that building would be

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$(19 \times 36) \cdot 2 = 136.8$ square feet. However, since the canopy is only 3' high in "wall area" and is 36' long, the allowed sign area is only $(3 \times 36) \cdot 2 = 21.6$ square feet. On the North Elevation of the canopy we are requesting 31.4 square feet, well within the allowable 136.8 square feet which would be permitted a standard business on the main elevation facing the street (if our business had a full wall).

Clean Energy is not proposing off-site or freestanding signage, therefore, the proposed signage on the canopy and tanks are the only signage that would provide any sort of identification for the facility. Given the unique design of the fueling facility, the granting of this variance will not result in advantages or special privileges to Clean Energy, but merely allow for adequate visibility, identification, and communication – all of which are enjoyed by the neighboring properties in the same district.

Variance Criteria 2 – Additional consideration:

- a) *Whether the variance arises from special circumstances, which do not generally apply to land in the general vicinity.*

The granting of this variance to allow Clean Energy's deviation from the maximum allowable sign area in the C-1 (Commercial District) Zone per Land Development Code Section 8.3.3(B) (Permanent On-premise Signs for Non-residential Uses for Freestanding On-premise Signs) and Table 8.3.2 are due to special circumstances or conditions that do not apply generally to the land in the general vicinity. A literal interpretation of said provisions would deprive Clean Energy of rights commonly enjoyed by other properties of the same zoning district and in the same vicinity in which the property is located.

The distinctive design of the Clean Energy fueling facilities creates a particularly unique site condition in that there is no building on which to locate signage as would be typical, thus creating an unparalleled hardship limiting this facility to minimal signage allowance of the canopy locations totaling 58.2 square feet. Several other properties within the same zoning district are developed with storefront businesses that are afforded substantially more identification due to the presence of building wall and freestanding signage. Given the unique design of Clean Energy's LNG fueling facility, strict application of the zoning code precludes adequate visibility, identification, and communication – all of which are enjoyed by other properties within the same zoning district. It is for these unique hardships that Clean Energy seeks a variance to utilize greater than the maximum allowable space on the canopy as has been indicated on the signage plan.

- b) *Whether the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of land or would create an unnecessary hardship.*

Strict application of the provisions of Land Development Code Section 8.3.3(B) (Permanent On-premise Signs for Non-residential Uses for Freestanding On-premise Signs) and Table 8.3.2 would deprive Clean Energy of any reasonable use of this land as an LNG fueling station and would create an unnecessary hardship as it would preclude adequate visibility, identification, and communication. The distinctive design of the Clean Energy fueling facilities creates a particularly unique site condition in that there is no building on which to locate signage as would be typical, thus creating an unparalleled hardship limiting this facility to a minimal signage allowance of 58.2 square feet on the canopy and 109.6 square feet on the two tanks. Several other properties within the same zoning district are developed with storefront businesses that are afforded substantially more identification due to the presence of actual building wall, and freestanding signage. Clean Energy is not proposing off-site or freestanding signage, therefore,

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the proposed signage on the canopy and tanks are the only signage that would provide any sort of identification for the facility. If Clean Energy complies with the prescribed signage regulations, Clean Energy will be deprived of beneficial use of the land and will make no reasonable use of this property as an LNG fueling facility, therefore, the subject property will be eliminated as a viable candidate for this project.

c) *Whether the circumstances are the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought.*

The circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought. The characteristics of the subject site and proposed use of LNG fueling are unique and cannot be practically corrected. Due to the limited space available on the property, odd configuration of the lot, and existing onsite and offsite conditions, no reasonable improvements or alterations to the existing site will accommodate the installation of the LNG facility without exceeding the maximum sign area for the canopy. These existing conditions and unique characteristics of the site and use are not induced by any action of the applicant. The proposed sign variance is required to allow for the use of an alternative fuel with adequate signage for identification, and not for displaying fuel price advertisement. The LNG fueling station and tanks are designed to best fit within the existing operation and with a minimum impact to the site. Thus, allowing the additional sign area is the minimum relief necessary to allow for an LNG fueling station. This is in no means the result of an action of the applicant, it is rather the result of new technology related to an alternative (American) fuel.

Landscape Waiver Request to Allow an Easement to Encroach More Than 50 Percent into a Landscape Buffer Area (LBA) Along Grade Lane

During review of the Landscape Regulations in Code Section Chapter 10, Part 1 and Part 2 of the Louisville Metro Land Development Code, Clean Energy found that its proposal will not meet the landscape design requirements for the proposed development. This was later confirmed at the May 28, 2013 Pre-Application Meeting, where staff indicated a Landscape Waiver will be required for relief from the landscape buffer area requirements after review of the preliminary site plan provide by the Clean Energy representative.

It is our understanding per Land Development Code Chapter 10, Part 1 and Part 2, that: (a) any development site on which there is an increase in building area or impervious surface area by more than fifty (50) percent or where a structure has been demolished and a new structure has been built in its place shall fully comply with the tree canopy requirements set forth in this Part; and (b) No site development, building or structure shall be constructed nor vehicular use area (VUA) created unless landscaping is provided as required by the provisions of this part. In addition, Chapter 10, Part 2 states that any building, structure or VUA that in its entirety is removed and reconstructed, or relocated to a new on-site location, shall be considered new development.

Land Development Code Section 10.2.4 (Property Perimeter Landscape Buffer Areas) defines the C-1 District as being within Intensity Class 4 and requires: (a) A minimum 10-foot-wide Landscape Buffer Area with 3 Large (Type A), Medium (Type B), or Small (Type C) trees; and (b) A 3-foot-tall screen (per 100 linear feet) or a minimum 15-foot-wide Landscape Buffer Area with 2 Large (Type A), Medium (Type B), or Small (Type C) trees and a 3-foot-tall screen (per 100 linear feet). In addition to the required landscape buffer areas, the development is also subject to Vehicular Use Area (VUA) requirements for interior landscape areas, per Land Development Code Section 10.2.12. The required interior landscape area is 7.5 percent for VUA over 30,000 square feet or 100 parking spaces. The Clean Energy LNG

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fueling facility is unmanned, therefore, the majority of the site is provided as a vehicular use area with no parking provided. This specific site design is due to the nature of the LNG fueling facility and is not a result of any intentions of Clean Energy to circumvent any landscaping design standards. The subject property itself has unique site characteristics as it is oddly shaped lot with two street fronts (Preston Highway and Grade Lane) with the rear facing the Interstate. Clean Energy is maintaining the facility to meet yard setback requirements as prescribed in the Land Development Code and, due to the space constraints on the property, any additional interior landscaping requirements as they pertain to new development cannot be practically accommodated.

Pursuant to Section 11.8.2.A.1 (Justification for a Waiver) of the Louisville Metro Land Development Code, a waiver may be granted by the Planning Commission when four criteria have been met. In this particular case, Clean Energy believes these four criteria as described in Land Development Code Section 11.8.2.A.1 have been met by the proposed Landscape Waiver as it relates to the site and the use to be established on said site.

Waiver Criteria 1 - Will the waiver adversely affect adjacent property owners?

The granting of the landscape waiver will not adversely affect adjacent property owners. The subject property is located on an oddly shaped corner lot at the intersection of Preston Highway and Grade Lane and only has one adjoining property ("Bob Evans Restaurant") that is separated with an approximately 40-foot landscape buffer. There is currently very minimal landscaping provided onsite within the interior property line and the limited space available on the property precludes the introduction of additional landscaping onsite without an encroachment of an easement into required LBA along Grade Lane. However, there is existing landscaping provided within the public right-of-way between the subject property and the neighboring use and the Interstate that will not be affected or reduced by the proposed development. The area is designed with travel and transit oriented uses and Clean Energy's LNG fueling facility will be a complementary use to the community. Furthermore, all of the adjoining properties are non-residential uses with existing landscape buffers in place and Clean Energy's landscape waiver will not adversely impact their existing uses and operations. Clean Energy will actually enhance the visual attractiveness of the area by developing an otherwise vacant lot into a well-designed alternative fueling facility that provides a publicly beneficial use to the community.

Waiver Criteria 2 - Will the waiver violate the Comprehensive Plan?

The granting of this landscape waiver will be in harmony with the general purpose and intent of the Cornerstone 2020 Comprehensive Plan, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with or violate the comprehensive plan for development. The waiver will actually result in an improvement to the public health, safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. In addition, LNG engines can reduce noise by as much as 50% compared to diesel engines. The surrounding area is zoned for commercial uses which are typical at exits off of the national interstate system. Truck traffic and transportation of goods is common along this corridor and adjoining streets. Therefore, the proposed LNG fueling station would be in harmony and compatible with the area and will not alter the essential character of the neighborhood and since LNG is more environmentally friendly the use will not be detrimental to the public welfare, it will be beneficial over time.

Clean Energy's LNG fueling facility is accord with the Goals and Objectives of the Comprehensive Plan's Goal C2 (Air Quality) to "encourage energy facilities to achieve compliance with air quality standards through an appropriate mix of fuel sources and clean coal technology". While the proposed LNG fueling facility is not an energy facility, Clean Energy will help facilitate this Goal by promoting the use of a domestically sourced and environmentally sound fuel choice by providing LNG fuel to the local

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and regional industrial and transport-oriented businesses in Louisville. LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. The surrounding area is zoned for industrial and general business uses which are typical at exits off of the national interstate system, and the presence of an alternative fueling facility at this location will encourage the use of a more sustainable fuel type. The proposed fueling station is one of many Clean Energy facilities that play an integral part in making America's trucking industry greener as it will provide a reliable source of alternative fuel for LNG fueled commercial vehicles that transport goods along the Interstate system, all of which is a part of Clean Energy's goal in building America's Natural Gas Highway.

Waiver Criteria 3 - Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

The requested landscape waiver is the minimum necessary to afford relief to the applicant, Clean Energy. The proposed landscape waiver is required to allow for the use of an alternative fuel on the subject land. Clean Energy's design and equipment layout for all LNG fueling facilities are standardized which allows for adequate use of space on the property while maintaining effective onsite and offsite vehicular traffic circulation. The location of the facility on the property in relation to the surrounding conditions also poses a practical difficulty for Clean Energy as the facility is setback further than adjacent buildings on Preston Highway and Grade Lane to allow for adequate access and efficient vehicular maneuvering. Therefore, even with the requested landscape waiver to allow an easement to encroach more than 50 percent into the LBA along Grade Lane, the existing landscape provided in the public right-of-way will serve as sufficient landscape buffers. The high-quality design of Clean Energy's LNG fueling facility will visually create more open space on the property, in comparison to the previous use on the site, as there will be no actual enclosed building located on the facility. Due to existing conditions and the limited space available on the property, there is no feasible way to meet the landscaping requirements as they pertain to new development. Furthermore, all adjoining and adjacent properties are non-residential uses in nature and will not be adversely impacted by Clean Energy's proposal. Thus, the granting of the landscape waiver is the minimum relief necessary to allow for an LNG fueling station on the subject land.

Waiver Criteria 4 - Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The strict application of the landscape provisions as stated in Land Development Code Chapter 10, Part 1 and Part 2, would deprive the Clean Energy of the reasonable use of the land as an LNG fueling facility and would create an unnecessary hardship on Clean Energy. Due to the existing site conditions (almost completely paved), oddly shaped parcel with dual frontages, limited space available on the property, existing vehicular access points from Preston Highway and Grade Lane, no reasonable improvements or alterations to the existing site will accommodate the installation of the proposed LNG fueling facility without encroaching into, or diminishing, the required landscape areas for the desired use within the zone. Due to the distinctive design of the proposed facility required for adequate functionality, Clean Energy cannot comply with the prescribed landscaping regulations as they pertain to new development. If Clean Energy complies with the landscaping regulations for new development within their designated zoning and form district, the use of the property would be diminished to a point to eliminate this as a potential LNG fueling facility, therefore, Clean Energy will make no reasonable use for this property as an LNG fueling facility and, therefore, the subject property will be eliminated as a viable candidate for this project.

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Landscape Waiver Request to Allow the Pavement to Encroach Into the Required 20' Landscape Buffer Area Located Along the Expressway

During the Landscape and Tree Preservation Plan Review that staff conducted on December 5, 2013, staff indicated that an additional waiver to allow the pavement to encroach into the required 20' landscape buffer area (LBA) located along the Expressway will be needed. According to the Landscape Regulations in Code Section 10.2.7 (Expressway/Railroad Landscape Buffer Areas and Perimeter Plantings) of the Louisville Metro Land Development Code, Clean Energy is required to comply with the B.3 zoning intensity class landscaping requirements for the proposed development. Per Table 10.2.3 (Property Perimeter Landscape Buffer Areas), a 20' wide landscape buffer area is required along the Expressway. However, due to site constraints and the space necessary to provide for adequate onsite vehicular traffic circulation, a Landscape Waiver will be required for relief from LBA landscaping requirements along the boundary common with the Expressway.

The Clean Energy LNG fueling facility serves long haul trucks which requires adequate maneuvering space. The fueling station is designed to best fit within the property boundaries of this site with consideration to traffic circulation patterns and vehicular maneuvering, therefore, the majority of the site is provided as a vehicular use area. This specific site design is due to the nature of the LNG fueling facility and is not a result of any intentions of Clean Energy to circumvent any landscaping design standards. The subject property itself has unique site characteristics as it is oddly shaped lot with two street fronts (Preston Highway and Grade Lane) with the rear facing the Interstate/Expressway. Clean Energy is maintaining the facility to meet yard setback requirements as prescribed in the Land Development Code, however, due to the space constraints on the property, the proposed paved area (vehicular use area) will encroach into the required LBA along the boundary common with the Expressway. Encroachment is required for vehicle maneuvering (to accommodate over the road trucks with a large turn radius and trailer paths).

Pursuant to Section 11.8.2.A.1 (Justification for a Waiver) of the Louisville Metro Land Development Code, a waiver may be granted by the Planning Commission when four criteria have been met. In this particular case, Clean Energy believes these four criteria as described in Land Development Code Section 11.8.2.A.1 have been met by the proposed Landscape Waiver as it relates to the site and the use to be established on said site.

Waiver Criteria 1 - Will the waiver adversely affect adjacent property owners?

The granting of the landscape waiver will not adversely affect adjacent property owners. The subject property is located on an oddly shaped corner lot at the intersection of Preston Highway and Grade Lane and only has one adjoining property ("Bob Evans Restaurant") that is separated with an approximately 40-foot landscape buffer. There is currently very minimal landscaping provided onsite within the interior property line and the limited space available on the property precludes the introduction of additional landscaping onsite. However, there is existing landscaping provided within the public right-of-way between the subject property and the neighboring use and the Interstate/Expressway that will not be reduced by the proposed development. Approval of the waiver will allow the pavement to encroach into the required 20' LBA along the boundary common with Interstate/Expressway, which will not affect any adjacent property owners or cause a negative visual impact.

The area is designed with travel and transit oriented uses and Clean Energy's LNG fueling facility will be a complementary use to the community. Furthermore, all of the adjoining properties are non-residential uses with existing landscape buffers in place and Clean Energy's landscape waiver will not adversely impact their existing uses and operations. Clean Energy will actually enhance the visual attractiveness of

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the area by developing an otherwise vacant lot into a well-designed alternative fueling facility that provides a publicly beneficial use to the community.

Waiver Criteria 2 - Will the waiver violate the Comprehensive Plan?

The granting of this landscape waiver will be in harmony with the general purpose and intent of the Cornerstone 2020 Comprehensive Plan, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with or violate the comprehensive plan for development. The waiver will actually result in an improvement to the public health, safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. In addition, LNG engines can reduce noise by as much as 50% compared to diesel engines. The surrounding area is zoned for commercial uses which are typical at exits off of the national interstate system. Truck traffic and transportation of goods is common along this corridor and adjoining streets. Therefore, the proposed LNG fueling station would be in harmony and compatible with the area and will not alter the essential character of the neighborhood and since LNG is more environmentally friendly the use will not be detrimental to the public welfare, it will be beneficial over time.

Clean Energy's LNG fueling facility is accord with the Goals and Objectives of the Comprehensive Plan's Goal C2 (Air Quality) to "encourage energy facilities to achieve compliance with air quality standards through an appropriate mix of fuel sources and clean coal technology". While the proposed LNG fueling facility is not an energy facility, Clean Energy will help facilitate this Goal by promoting the use of a domestically sourced and environmentally sound fuel choice by providing LNG fuel to the local and regional industrial and transport-oriented businesses in Louisville. LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. The surrounding area is zoned for industrial and general business uses which are typical at exits off of the national interstate system, and the presence of an alternative fueling facility at this location will encourage the use of a more sustainable fuel type. The proposed fueling station is one of many Clean Energy facilities that play an integral part in making America's trucking industry greener as it will provide a reliable source of alternative fuel for LNG fueled commercial vehicles that transport goods along the Interstate system, all of which is a part of Clean Energy's goal in building America's Natural Gas Highway.

Waiver Criteria 3 - Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

The requested landscape waiver to allow the pavement to encroach into the required 20' landscape buffer area along the boundary common with the Expressway is the minimum necessary to afford relief to the applicant, Clean Energy. The proposed landscape waiver is required to allow for the use of an alternative fuel on the subject land. Clean Energy's design and equipment layout for all LNG fueling facilities are standardized which allows for adequate use of space on the property while maintaining effective onsite and offsite vehicular traffic circulation. The location of the facility on the property in relation to the surrounding conditions also poses a practical difficulty for Clean Energy as the encroachment into the landscape buffer area is necessary to allow for adequate access and efficient vehicular maneuvering. However, there is existing perimeter landscaping along the property boundary common with the Expressway, therefore, even with the requested landscape waiver, the existing landscape provided in the public right-of-way will serve as sufficient landscape buffers. The high-quality design of Clean Energy's LNG fueling facility will visually create more open space on the property, in comparison to the previous use on the site, as there will be no actual enclosed building located on the facility. Due to existing conditions and the limited space available on the property, there is no feasible way to reduce the pavement on the westerly side of the property (along the Expressway) to meet the landscaping requirements as they pertain to new development. Furthermore, all adjoining and adjacent properties are

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non-residential uses in nature and will not be adversely impacted by Clean Energy's proposal. Thus, the granting of the landscape waiver is the minimum relief necessary to allow for an LNG fueling station on the subject land.

Waiver Criteria 4 - Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The strict application of the landscape provisions as stated in Land Development Code Section 10.2.7, would deprive the Clean Energy of the reasonable use of the land as an LNG fueling facility and would create an unnecessary hardship on Clean Energy. Due to the existing site conditions (almost completely paved), oddly shaped parcel with dual frontages, limited space available on the property, existing vehicular access points from Preston Highway and Grade Lane, no reasonable improvements or alterations to the existing site will accommodate the installation of the proposed LNG fueling facility without encroaching into, or diminishing, the required landscape areas for the desired use within the zone. Due to the distinctive design of the proposed facility required for adequate functionality, Clean Energy cannot comply with the prescribed landscaping regulations as they pertain to new development. If Clean Energy complies with the landscaping regulations for new development within their designated zoning and form district, the use of the property would be diminished to a point to eliminate this as a potential LNG fueling facility, therefore, Clean Energy will make no reasonable use for this property as an LNG fueling facility and, therefore, the subject property will be eliminated as a viable candidate for this project.

Landscape Waiver Request to Allow the Distance between Interior Landscape Areas to be More Than 120'

During the Landscape and Tree Preservation Plan Review that staff conducted on December 5, 2013, staff indicated that an additional waiver to allow the distance between Interior Landscape Areas (ILA) to be more than 120' will be needed. According to the Landscape Regulations in Code Section 10.2.12 (Vehicular Use Area Interior Landscape Areas) of the Louisville Metro Land Development Code, Clean Energy is required to comply with the 120' maximum distance between ILA for the proposed development, which is determined by measuring both radially from the closest perimeter landscaping area curb edge, and lineally in each row of parking spaces from the closest curb edge of each ILA. Since Clean Energy is not proposing any parking spaces, the distance between ILA is measured from the closest perimeter landscaping area curb edge. Due to the space necessary to provide for adequate onsite vehicular traffic circulation, a Landscape Waiver is required for relief from the maximum distance restrictions for the ILA on the property.

The Clean Energy LNG fueling facility serves over the road, long haul trucks, therefore, the majority of the site is provided as a continuous vehicular use area. The fueling station is designed to best fit within the property boundaries of this site with consideration to traffic circulation patterns and vehicular maneuvering. No additional interior landscaping areas can be feasibly accommodated due to the equipment layout and the area required for vehicle maneuvering. This specific site design is due to the nature of the LNG fueling facility and is not a result of any intentions of Clean Energy to circumvent any landscaping design standards. The subject property itself has unique site characteristics as it is oddly shaped lot with two street fronts (Preston Highway and Grade Lane) with the rear facing the Interstate/Expressway. Clean Energy is maintaining the facility to meet yard setback requirements as prescribed in the Land Development Code, however, due to the space constraints on the property, the proposed development will exceed the maximum allowable distance between ILA of 120'.

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Pursuant to Section 11.8.2.A.1 (Justification for a Waiver) of the Louisville Metro Land Development Code, a waiver may be granted by the Planning Commission when four criteria have been met. In this particular case, Clean Energy believes these four criteria as described in Land Development Code Section 11.8.2.A.1 have been met by the proposed Landscape Waiver as it relates to the site and the use to be established on said site.

Waiver Criteria 1 - Will the waiver adversely affect adjacent property owners?

The granting of the landscape waiver will not adversely affect adjacent property owners. The subject property is located on an oddly shaped corner lot at the intersection of Preston Highway and Grade Lane and only has one adjoining property ("Bob Evans Restaurant") that is separated with an approximately 40-foot landscape buffer. There is currently very minimal landscaping provided onsite within the interior property line and the limited space available on the property precludes the introduction of additional interior landscaping areas onsite. However, there is existing landscaping provided within the public right-of-way between the subject property and the neighboring use and the Interstate/Expressway that will not be reduced by the proposed development. Additionally, the required perimeter tree planting and landscaping will be provided to help screen the proposed facility from adjacent properties and the public right-of-way. Approval of the waiver will allow the distance between interior landscape areas to be more than 120', which will not affect any adjacent property owners or cause a negative visual impact.

The area is designed with travel and transit oriented uses and Clean Energy's LNG fueling facility will be a complementary use to the community. Furthermore, all of the adjoining properties are non-residential uses with existing landscape buffers in place and Clean Energy's landscape waiver will not adversely impact their existing uses and operations. Clean Energy will actually enhance the visual attractiveness of the area by developing an otherwise vacant lot into a well-designed alternative fueling facility that provides a publicly beneficial use to the community.

Waiver Criteria 2 - Will the waiver violate the Comprehensive Plan?

The granting of this landscape waiver will be in harmony with the general purpose and intent of the Cornerstone 2020 Comprehensive Plan, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with or violate the comprehensive plan for development. The waiver will actually result in an improvement to the public health, safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. In addition, LNG engines can reduce noise by as much as 50% compared to diesel engines. The surrounding area is zoned for commercial uses which are typical at exits off of the national interstate system. Truck traffic and transportation of goods is common along this corridor and adjoining streets. Therefore, the proposed LNG fueling station would be in harmony and compatible with the area and will not alter the essential character of the neighborhood and since LNG is more environmentally friendly the use will not be detrimental to the public welfare, it will be beneficial over time.

Clean Energy's LNG fueling facility is accord with the Goals and Objectives of the Comprehensive Plan's Goal C2 (Air Quality) to "encourage energy facilities to achieve compliance with air quality standards through an appropriate mix of fuel sources and clean coal technology". While the proposed LNG fueling facility is not an energy facility, Clean Energy will help facilitate this Goal by promoting the use of a domestically sourced and environmentally sound fuel choice by providing LNG fuel to the local and regional industrial and transport-oriented businesses in Louisville. LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. The surrounding area is zoned for industrial and general business uses which are typical at exits off of the national interstate system, and the presence of an alternative fueling facility at this location will encourage

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the use of a more sustainable fuel type. The proposed fueling station is one of many Clean Energy facilities that play an integral part in making America's trucking industry greener as it will provide a reliable source of alternative fuel for LNG fueled commercial vehicles that transport goods along the Interstate system, all of which is a part of Clean Energy's goal in building America's Natural Gas Highway.

Waiver Criteria 3 - Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

The requested landscape waiver to allow the distance between interior landscape areas to be more than 120' is the minimum necessary to afford relief to the applicant, Clean Energy. The proposed landscape waiver is required to allow for the use of an alternative fuel on the subject land. Clean Energy's design and equipment layout for all LNG fueling facilities are standardized which allows for adequate use of space on the property while maintaining effective onsite and offsite vehicular traffic circulation. The location of the facility on the property in relation to the surrounding conditions also poses a practical difficulty for Clean Energy as the paved vehicular use area onsite is necessary to allow for adequate access and efficient vehicular maneuvering. However, there is existing and proposed perimeter landscaping along the property lines, therefore, even with the requested landscape waiver for increased distance between the ILA, the existing and proposed landscape areas will serve as sufficient landscape buffers and screening. The high-quality design of Clean Energy's LNG fueling facility will visually create more open space on the property, in comparison to the previous use on the site, as there will be no actual enclosed building located on the facility. Due to existing conditions and the limited space available on the property, there is no feasible way to reduce the distance between ILA without increasing the paved area on the property elsewhere, which is not practical. Furthermore, all adjoining and adjacent properties are non-residential uses in nature and will not be adversely impacted by Clean Energy's proposal. Thus, the granting of the landscape waiver is the minimum relief necessary to allow for an LNG fueling station on the subject land.

Waiver Criteria 4 - Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The strict application of the landscape provisions as stated in Land Development Code Section 10.2.12, would deprive the Clean Energy of the reasonable use of the land as an LNG fueling facility and would create an unnecessary hardship on Clean Energy. Due to the existing site conditions (almost completely paved), oddly shaped parcel with dual frontages, limited space available on the property, existing vehicular access points from Preston Highway and Grade Lane, no reasonable improvements or alterations to the existing site will accommodate the installation of the proposed LNG fueling facility without exceeding the maximum allowable distance between ILA for the desired use within the zone. Due to the distinctive design of the proposed facility required for adequate functionality, Clean Energy cannot comply with the prescribed landscaping regulations as they pertain to new development. If Clean Energy complies with the landscaping regulations for new development within their designated zoning and form district, the use of the property would be diminished to a point to eliminate this as a potential LNG fueling facility, therefore, Clean Energy will make no reasonable use for this property as an LNG fueling facility and, therefore, the subject property will be eliminated as a viable candidate for this project.

Landscape Waiver Request to Allow an Easement to Encroach More than 50 Percent into a Landscape Buffer Area (LBA)

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During the Landscape and Tree Preservation Plan Review that staff conducted on December 5, 2013, staff indicated that an additional waiver to allow an easement to encroach more than 50 percent into a landscape buffer area (LBA) will be needed. According to the Landscape Regulations in Code Section 10.2.4(B) (Property Perimeter Landscape Buffer Areas) of the Louisville Metro Land Development Code, utility easements (e.g., drainage, sewer, gas/electric) are allowed to encroach into as much as 50 percent of the required width of property perimeter Landscape Buffer Areas (LBA) provided the required screening can still be achieved and the design of such facilities is compatible with the purpose of the Landscape Buffer Area. Due to the proposed permanent easement for constructing and perpetually maintaining sewer and drainage on the property along the boundary common with Preston Highway that will encroach into the required LBA by more than 50 percent, a waiver will be required.

The Clean Energy LNG fueling facility is unmanned and serves long haul trucks, therefore, the majority of the site is provided as a continuous vehicular use area. The fueling station is designed to best fit within the property boundaries of this site with consideration to traffic circulation patterns and vehicular maneuvering. The encroachment of the easement by more than 50 percent into the required LBA is circumstantial and is not intended to purposefully deviate from the prescribed landscaping regulations in Section 10.2.4. The easement is required for construction and maintenance of the storm sewer and drainage required for the site and cannot be practically relocated due to location of existing utilities, limited space available on the property, as well as the equipment layout. This specific site design is due to the nature of the LNG fueling facility and is not a result of any intentions of Clean Energy to circumvent any landscaping design standards. The subject property itself has unique site characteristics as it is oddly shaped lot with two street fronts (Preston Highway and Grade Lane) with the rear facing the Interstate/Expressway. Clean Energy is maintaining the facility to meet yard setback requirements as prescribed in the Land Development Code, however, due to the space constraints on the property, the proposed utility easement will encroach more than 50 percent into the LBA along Preston Highway.

Pursuant to Section 11.8.2.A.1 (Justification for a Waiver) of the Louisville Metro Land Development Code, a waiver may be granted by the Planning Commission when four criteria have been met. In this particular case, Clean Energy believes these four criteria as described in Land Development Code Section 11.8.2.A.1 have been met by the proposed Landscape Waiver as it relates to the site and the use to be established on said site.

Waiver Criteria 1 - Will the waiver adversely affect adjacent property owners?

The granting of the landscape waiver will not adversely affect adjacent property owners. The subject property is located on an oddly shaped corner lot at the intersection of Preston Highway and Grade Lane and only has one adjoining property ("Bob Evans Restaurant") that is separated with an approximately 40-foot landscape buffer. There is currently very minimal landscaping provided onsite within the interior property line and the limited space available on the property precludes the introduction of additional interior landscaping areas onsite. The placement of the easement at the proposed location is necessary for adequate operation and maintenance of the site in terms of sewer and drainage requirements. The encroachment of the easement into a LBA does not adversely affect adjacent property owners as there is existing and proposed landscaping provided between the subject property and the neighboring use and the Interstate/Expressway that will mitigate any visual impacts as a result of the proposed development. Additionally, perimeter landscaping will be provided, where feasible, to help screen the proposed facility from the public right-of-way. Approval of the waiver will allow the utility easement to encroach more than 50 percent into a LBA along the boundary common with Preston Highway, which will not affect any adjacent property owners or cause a negative visual impact.

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The area is designed with travel and transit oriented uses and Clean Energy's LNG fueling facility will be a complementary use to the community. Furthermore, all of the adjoining properties are non-residential uses with existing landscape buffers in place and Clean Energy's landscape waiver will not adversely impact their existing uses and operations. Clean Energy will actually enhance the visual attractiveness of the area by developing an otherwise vacant lot into a well-designed alternative fueling facility that provides a publicly beneficial use to the community.

Waiver Criteria 2 - Will the waiver violate the Comprehensive Plan?

The granting of this landscape waiver will be in harmony with the general purpose and intent of the Cornerstone 2020 Comprehensive Plan, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with or violate the comprehensive plan for development. The waiver will actually result in an improvement to the public health, safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. In addition, LNG engines can reduce noise by as much as 50% compared to diesel engines. The surrounding area is zoned for commercial uses which are typical at exits off of the national interstate system. Truck traffic and transportation of goods is common along this corridor and adjoining streets. Therefore, the proposed LNG fueling station would be in harmony and compatible with the area and will not alter the essential character of the neighborhood and since LNG is more environmentally friendly the use will not be detrimental to the public welfare, it will be beneficial over time.

Clean Energy's LNG fueling facility is accord with the Goals and Objectives of the Comprehensive Plan's Goal C2 (Air Quality) to "encourage energy facilities to achieve compliance with air quality standards through an appropriate mix of fuel sources and clean coal technology". While the proposed LNG fueling facility is not an energy facility, Clean Energy will help facilitate this Goal by promoting the use of a domestically sourced and environmentally sound fuel choice by providing LNG fuel to the local and regional industrial and transport-oriented businesses in Louisville. LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. The surrounding area is zoned for industrial and general business uses which are typical at exits off of the national interstate system, and the presence of an alternative fueling facility at this location will encourage the use of a more sustainable fuel type. The proposed fueling station is one of many Clean Energy facilities that play an integral part in making America's trucking industry greener as it will provide a reliable source of alternative fuel for LNG fueled commercial vehicles that transport goods along the Interstate system, all of which is a part of Clean Energy's goal in building America's Natural Gas Highway.

Waiver Criteria 3 - Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

The requested landscape waiver to allow an easement to encroach more than 50 percent into a landscape buffer area (LBA) is the minimum necessary to afford relief to the applicant, Clean Energy. The proposed landscape waiver is required to allow for the use of an alternative fuel on the subject land. Clean Energy's design and equipment layout for all LNG fueling facilities are standardized which allows for adequate use of space on the property while maintaining effective onsite and offsite vehicular traffic circulation. The location of the easement is necessary to effectively construct and maintain sewer and drainage for the operation of the proposed facility. Additionally, the location of the facility on the property in relation to the surrounding conditions also poses a practical difficulty for Clean Energy as the paved vehicular use area onsite is necessary to allow for adequate access and efficient vehicular maneuvering. However, there is existing and proposed perimeter landscaping along the property lines, therefore, even with the requested landscape waiver for the encroachment of the easement into the LBA

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along the boundary common with Preston Highway, the existing and proposed landscape areas will serve as sufficient landscape buffers and screening.

The high-quality design of Clean Energy's LNG fueling facility will visually create more open space on the property, in comparison to the previous use on the site, as there will be no actual enclosed building located on the facility. Due to existing conditions and the limited space available on the property, there is no feasible way to relocate the utility easement to prevent encroachment into the LBA by less than 50 percent. Furthermore, all adjoining and adjacent properties are non-residential uses in nature and will not be adversely impacted by Clean Energy's proposal. Thus, the granting of the landscape waiver is the minimum relief necessary to allow for an LNG fueling station on the subject land.

Waiver Criteria 4 - Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The strict application of the landscape provisions as stated in Land Development Code Section 10.2.4(B), would deprive the Clean Energy of the reasonable use of the land as an LNG fueling facility and would create an unnecessary hardship on Clean Energy. Due to the existing site conditions (almost completely paved), oddly shaped parcel with dual frontages, limited space available on the property, existing vehicular access points from Preston Highway and Grade Lane, no reasonable improvements or alterations to the existing site will accommodate the installation of the proposed LNG fueling facility without exceeding the maximum allowable utility easement encroachment into a LBA for the desired use within the zone. Due to the distinctive design of the proposed facility required for adequate functionality, Clean Energy cannot comply with the prescribed landscaping regulations as they pertain to new development. If Clean Energy complies with the landscaping regulations for new development within their designated zoning and form district, the use of the property would be diminished to a point to eliminate this as a potential LNG fueling facility, therefore, Clean Energy will make no reasonable use for this property as an LNG fueling facility and, therefore, the subject property will be eliminated as a viable candidate for this project.

Landscape Waiver Request to Allow the Fencing/Screening for Service Structures to Have Less Than 80 Percent Opacity

During the Landscape and Tree Preservation Plan Review that staff conducted on December 5, 2013, staff indicated that an additional waiver to allow the fencing/screening to have less than 80 percent opacity will be needed for the proposed development. According to the Landscape Regulations in Code Section 10.2.6 (Other Uses And Structures Requiring Screening) of the Louisville Metro Land Development Code, Clean Energy is required to provide screening around all service structures (e.g., propane tanks, dumpsters, heating/air conditioning units, electrical transformers, telecommunications boxes) that exceed 42 inches in height and 42 inches in width or are visible from adjoining property when located on roofs. Staff indicated the two above ground storage tanks are considered service structures, and will therefore, require screening. Additionally, per Code Section 10.4.9 (Walls and Fences), walls or fences used to satisfy such screening requirements shall be at least 80 percent opaque. However, due to fire protection requirements and regulations, a Landscape Waiver will be required for relief from meeting the 80 percent opacity requirement for screening around the two above ground storage tanks. Furthermore, OSHA standards prohibit the creation of a "confined space" which will prevent opaque screening around the tanks.

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Pursuant to Section 11.8.2.A.1 (Justification for a Waiver) of the Louisville Metro Land Development Code, a waiver may be granted by the Planning Commission when four criteria have been met. In this particular case, Clean Energy believes these four criteria as described in Land Development Code Section 11.8.2.A.1 have been met by the proposed Landscape Waiver as it relates to the site and the use to be established on said site.

Waiver Criteria 1 - Will the waiver adversely affect adjacent property owners?

The granting of the landscape waiver will not adversely affect adjacent property owners. The subject property is located on an oddly shaped corner lot at the intersection of Preston Highway and Grade Lane and only has one adjoining property ("Bob Evans Restaurant") that is separated with an approximately 40-foot landscape buffer. The proposed LNG storage tank compound is centered on the property and is setback a minimum of approximately 85 feet from any exterior property line. Additionally, the property is a corner lot whereby two sides are not abutting neighboring properties and the roadways serve as large buffers precluding visual blight for adjacent property owners.

The area is designed with travel and transit oriented uses and Clean Energy's LNG fueling facility will be a complementary use to the community. Furthermore, all of the adjoining properties are non-residential uses with existing landscape buffers in place and Clean Energy's landscape waiver will not adversely impact their existing uses and operations. Potentially adverse visual impacts are mitigated by the use of a decorative wrought iron fence in place of a chain link fence. Clean Energy will actually enhance the visual attractiveness of the area by developing an otherwise vacant lot into a well-designed alternative fueling facility that provides a publicly beneficial use to the community.

Waiver Criteria 2 - Will the waiver violate the Comprehensive Plan?

The granting of this landscape waiver will be in harmony with the general purpose and intent of the Cornerstone 2020 Comprehensive Plan, and will not be injurious to the neighborhood, detrimental to the public welfare, or in conflict with or violate the comprehensive plan for development. The waiver will actually result in an improvement to the public health, safety and welfare because LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. In addition, LNG engines can reduce noise by as much as 50% compared to diesel engines. The surrounding area is zoned for commercial uses which are typical at exits off of the national interstate system. Truck traffic and transportation of goods is common along this corridor and adjoining streets. Therefore, the proposed LNG fueling station would be in harmony and compatible with the area and will not alter the essential character of the neighborhood and since LNG is more environmentally friendly the use will not be detrimental to the public welfare, it will be beneficial over time.

The proposed waiver is not a request to deviate from the character of the C-1 District and is consistent with Compatibility Policy 9 which aims to protect the character of roadway corridors and limit "visual intrusions". The proposed location of the LNG storage tanks is well within the confines of the private property with the closest distance from the tank compound to an exterior property line being approximately 85 feet. Furthermore, the tanks and related protective fencing will be compliant with the height limitations for the C-1 District. The large separation from compound to the roadway corridor coupled with the compliant heights will effectively serve as a method of screening to ensure there is no visual intrusion or development that is out of character with other properties in the vicinity.

Furthermore, Clean Energy's LNG fueling facility is accord with the Goals and Objectives of the Comprehensive Plan's Goal C2 (Air Quality) to "encourage energy facilities to achieve compliance with air quality standards through an appropriate mix of fuel sources and clean coal technology". While the proposed LNG fueling facility is not an energy facility, Clean Energy will help facilitate this Goal by

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promoting the use of a domestically sourced and environmentally sound fuel choice by providing LNG fuel to the local and regional industrial and transport-oriented businesses in Louisville. LNG vehicles emit up to 30% less greenhouse gas emissions than gasoline or diesel vehicles, thereby improving local air quality. The surrounding area is zoned for industrial and general business uses which are typical at exits off of the national interstate system, and the presence of an alternative fueling facility at this location will encourage the use of a more sustainable fuel type. The proposed fueling station is one of many Clean Energy facilities that play an integral part in making America's trucking industry greener as it will provide a reliable source of alternative fuel for LNG fueled commercial vehicles that transport goods along the Interstate system, all of which is a part of Clean Energy's goal in building America's Natural Gas Highway.

Waiver Criteria 3 - Is extent of waiver of the regulation the minimum necessary to afford relief to the applicant?

The requested landscape waiver to allow the fencing/screening to have less than 80 percent opacity is the minimum necessary to afford relief to the applicant, Clean Energy. The proposed landscape waiver is required to allow for the use of an alternative fuel on the subject land. Clean Energy's design and equipment layout for all LNG fueling facilities are standardized which allows for proper fire and safety protection measures. The proposed wrought iron fencing and retaining wall around the service structures, or above ground storage tanks, are necessary to provide an adequate containment area and an additional layer of protection for the tanks and associated equipment. Additionally, the proposed fencing/screening cannot meet the opacity requirements as OSHA standards prohibits the creation of a "confined space" with regards to LNG. Furthermore, the proposed and existing landscaping onsite and in the public right-of-way will provide for adequate screening of the service structure. All adjoining and adjacent properties are non-residential uses in nature and will not be adversely impacted by Clean Energy's proposal. Thus, the granting of the landscape waiver is the minimum relief necessary to allow for an LNG fueling station on the subject land.

Waiver Criteria 4 - Has either (a) the applicant incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect) or would (b) the strict application of the provisions of the regulation deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant?

The strict application of the landscape provisions as stated in Land Development Code Section 10.2.6 and 10.4.9, would deprive the Clean Energy of the reasonable use of the land as an LNG fueling facility and would create an unnecessary hardship on Clean Energy. The standard design for a Clean Energy LNG Fueling Facility includes a low containment wall with wrought iron fencing on top to ensure adequate protective measures are in place. Clean Energy places high importance on safety and has determined the best methods for containment. Altering the design for screening purposes creates an unnecessary hardship since the physical location of the compound is well within the property line boundaries and is separated from the nearest right-of-way a minimum of 85 feet. This large separation distance minimizes visibility of the tanks and reduces the need to provide screening with a material that is 80 percent opaque.

Due to the distinctive design of the proposed facility required for adequate functionality and safety, Clean Energy cannot comply with the prescribed screening requirements as they pertain to service structures. If Clean Energy complies with said regulations for new development within their designated zoning and form district, the use of the property would be diminished to a point to eliminate this as a potential LNG fueling facility, therefore, Clean Energy will make no reasonable use for this property as an LNG fueling facility and, therefore, the subject property will be eliminated as a viable candidate for this project.

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Should you have any questions in regard to the approval requests or Clean Energy's overall business objective, please contact me directly at (949) 437-9022 or (562) 343-6953. Thank you in advance for your time and consideration.

Sincerely,

CLEAN ENERGY



Monica Ultreras
National Planning Manager

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Attachments