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MEMORANDUM

TO: City Council of City of Angleton, Texas

THRU: J. Grady Randle and Otis Spriggs

FROM: Alexandra Tolbert

RE: Gambit Battery Park Special Use Permit

DATE: July 17, 2025

To the City Council of the City of Angleton, Texas,

- (A) There is an inquiry concerning whether the special use permit (“SUP”) under which Gambit Energy Storage, LLC (“Gambit”) operates its Gambit Energy Storage Park (the “Park”) should have been granted, in light of an alleged conflict between the zoning classification of the property and the use to which it is put.
- (B) There are also inquiries regarding the:
 - 1. Sufficiency of the terms contained in the amended SUP; and
 - 2. Gambit’s compliance therewith.

SHORT ANSWER:

- (A) Gambit Energy Storage Park is an energy storage system. The zoning classification of the Park does not prohibit the use of an energy storage system. It was reasonable for the City Council (“Council”) of the City of Angleton, Texas (alternately, “City” or “Angleton”) to construe the Code of Ordinances City of Angleton, Texas (the “Code”) in a manner consistent with the granting a SUP when Gambit applied for one in 2019 and such construction remains reasonable today.

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- (B) The methods and procedures by which the terms of the subject SUP were determined were reasonable and Gambit appears to be abiding by them.
1. The City complied with all public notice requirements and public engagement procedures before considering and adopting the 2019 SUP as well as the 2024 amendment thereto. Citizens had ample opportunity to provide comments and identify concerns at the appropriate junctures and after considering the same, Council arrived at the determination that is reflected in Ordinance No. 20240326-005, such being the right, duty, and power of Council to engage in this type of decision-making for the benefit of the City at large.
 2. An independent noise study conducted in March 2025 demonstrates Gambit is in compliance with the terms of the amended SUP.

BACKGROUND:

I. Gambit's operation of the Park has always been subject to the conditions contained in its SUP.

The project contemplating the Park was presented to the City in mid-2019 and Gambit applied for its SUP in December 2019,¹ which appeared as an agenda item for a City of Angleton Planning and Zoning Commission ("P&Z Commission") meeting on January 9, 2020, where the application was approved, subject to specific conditions which the P&Z Commission forwarded as recommendations to City Council to be considered at the next Council meeting on January 14, 2020. City Council approved the SUP, subject to the conditions recommended by the P&Z Commission, and Ordinance No. 20200114-004 ("Gambit SUP") was passed.² Section 2(a.) of the Gambit SUP required the construction of an "8-foot-tall masonry wall around the entire project perimeter . . . which will also aid with reducing noise."³ Further, section 2(f.) provided that a "sound study shall be conducted to determine the ambient noise level prior to the installation of the project. The sound level emitted from the energy storage park shall be no louder than the average ambient noise level prior to the installation of the project, as measured at 100 feet outside the parcel boundary and the nearest existing receptor."⁴ The requisite baseline sound study ("2020 Sound Study") was conducted in February 2020 by an independent environmental consulting firm, Dudek, Inc.⁵

The Park was constructed and had been in operation for some time when, in January 2024, Gambit approached the City regarding an amendment to the Gambit SUP to provide for the construction of an 18-foot-tall acoustical fence to aid in noise reduction. Gambit submitted its application for an amendment to the existing Gambit SUP, which was reviewed and approved by the P&Z Commission on March 7, 2024, who then forwarded its written approval and

¹ **Exhibit 1**, Gambit Energy Storage, LLC's Specific Use Permit Application.

² **Exhibit 2**, Ordinance No. 20200114-004.

³ *Id.*

⁴ *Id.*

⁵ *See Exhibit 3*, Gambit Battery Energy Storage Operational Noise Study, March 25, 2025, p. 1.

recommendations to City Council, who then considered and approved the amendment on March 26, 2024, and passed Ordinance No. 20240326-005,⁶ reflecting the terms of the Gambit SUP, as amended (“Amended SUP”). The terms of the original Gambit SUP remained in effect but were supplemented by some provisions relating to the construction of the sound barrier fence. Of particular note are Sections 2(2.) and 2(3.), which state that decibel level reports shall be submitted to the City biannually and that the decibel levels shall not exceed what is required by state or local law, nor shall they exceed the pre-Park levels when measured from 100 feet outside the boundaries of the Park.⁷

II. The City receives noise complaints about the Park.

The City has received several noise complaints regarding the sound from the cooling fans at the Park.⁸ The Complaints contend “that per the City of Angleton Code of Ordinances this project should have never been approved” because in “the City of Angleton Code of Ordinances within Article IV Section 28-81, Electrical Generating Plants are Prohibited [*sic*] on property zoned residential.”⁹ The Complaints assert that the current classification of the Park is inaccurate.¹⁰ As discussed below, the analysis propounded in the Complaints is not controlling nor is Council obliged to take any different or affirmative action in response thereto.

DISCUSSION:

III. Zoning classification applicable to the Park does not prohibit current use.

As the Complaints indicate, the type of facility the Park is considered to be matters greatly because, per the City’s zoning classifications, “Electrical Generating Plants” have far fewer allowable uses available while “Electrical Substations” and “Electrical Transmission Lines” may be authorized by way of a SUP application and approval in almost every type of zoning district:

Electrical Generating Plant	S															S				P
Electrical Substation	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S				P
Electrical Transmission Line	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S				P

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However, the Code does not provide definitions for all three of these types of facilities, only defining “*Electrical substation (high voltage bulk power)*: A subsidiary station in which

⁶ **Exhibit 4**, Ordinance No. 20240326-005.

⁷ *Id.*

⁸ *See, e.g., Exhibit 5*, Emails from Erik Daniel (**Exhibit 5.1**) to City Council Members, copying Chris Whittaker as City Manager and Otis Spriggs, Director of Development Services, March 3, 2024; (**Exhibit 5.2**) to Chris Peltier, a local developer, and City Council, copying Chris Whittaker, March 26, 2024; and (**Exhibit 5.3**) to Otis Spriggs and Kyle Reynolds, Assistant Director of Development Services, copying City Council and Chris Peltier, June 17, 2025 (collectively, the “Complaints”).

⁹ Exhibit 5.3.

¹⁰ *Id.*; *see also* Exhibit 5.1.

¹¹ City of Angleton Code of Ordinances § 28-81.

electric current is transformed.”¹² There is not a provision anywhere in the Code that defines what an Electrical Generating Plant is or how it differs from an Electrical Substation or an Electrical Transmission Line. Even if it did, the Park arguably falls under a distinct category entirely: energy storage systems (“ESS”).

To construe the meaning of a word or phrase in an ordinance, a court would “apply the same rules that are used to construe statutes,”¹³ which means it would “start with the plain and ordinary meaning of the ordinance's words, using any definitions provided by the enacting body. [It will] consider an ordinance as a whole, rather than isolated provisions, and . . . not give an undefined term a meaning that is out of harmony or inconsistent with other provisions, even though it might be susceptible to such a construction standing alone.”¹⁴

In looking towards various controlling authority (such as federal regulations,¹⁵ United States Supreme Court opinions,¹⁶ Texas statutes,¹⁷ Texas Supreme Court opinions,¹⁸ and Texas regulations¹⁹) for guidance, as well as drawing from a selection of informative and pertinent resources,²⁰ it becomes apparent that ESS are a relatively new frontier in the energy industry and have been the subject of an evolving definition..

The U.S. Energy Information Administration, however, describes the unique role ESS play in the larger picture of maintaining the integrity of the power grid at large:

ESSs are not primary electricity generation sources. They must use electricity supplied by separate electricity generators or from an electric power grid to charge the storage system, which makes ESSs *secondary* generation sources. ESSs use more electricity for charging than they can provide when discharging and supplying electricity. Because of this difference, EIA publishes data on both *gross generation*

¹² *Id.* at § 28-112.

¹³ *Offs. Acting in Their Off. Capacities for City of Austin Dev. Servs. Dep't v. Austin Nightlife, LLC*, No. 03-22-00637-CV, 2023 WL 3010766, at *3 (Tex. App—Austin, Apr. 20, 2023).

¹⁴ *Id.*

¹⁵ *See, e.g.*, 172 FERC P 61132 (F.E.R.C.); 121 FERC P 61037 (F.E.R.C.); 130 FERC P 61056 (F.E.R.C.); 131 FERC P 61008 (F.E.R.C.).

¹⁶ *See, e.g.*, *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260 (2016), *as revised* (Jan. 28, 2016).

¹⁷ *See, e.g.*, Tex. Util. Code, Chapters 53 and 59; Public Utility Regulatory Act, Tex. Util. Code (“PURA”).

¹⁸ *See, e.g.*, *Pub. Util. Comm'n of Texas v. Texas Indus. Energy Consumers*, 620 S.W.3d 418 (Tex. 2021).

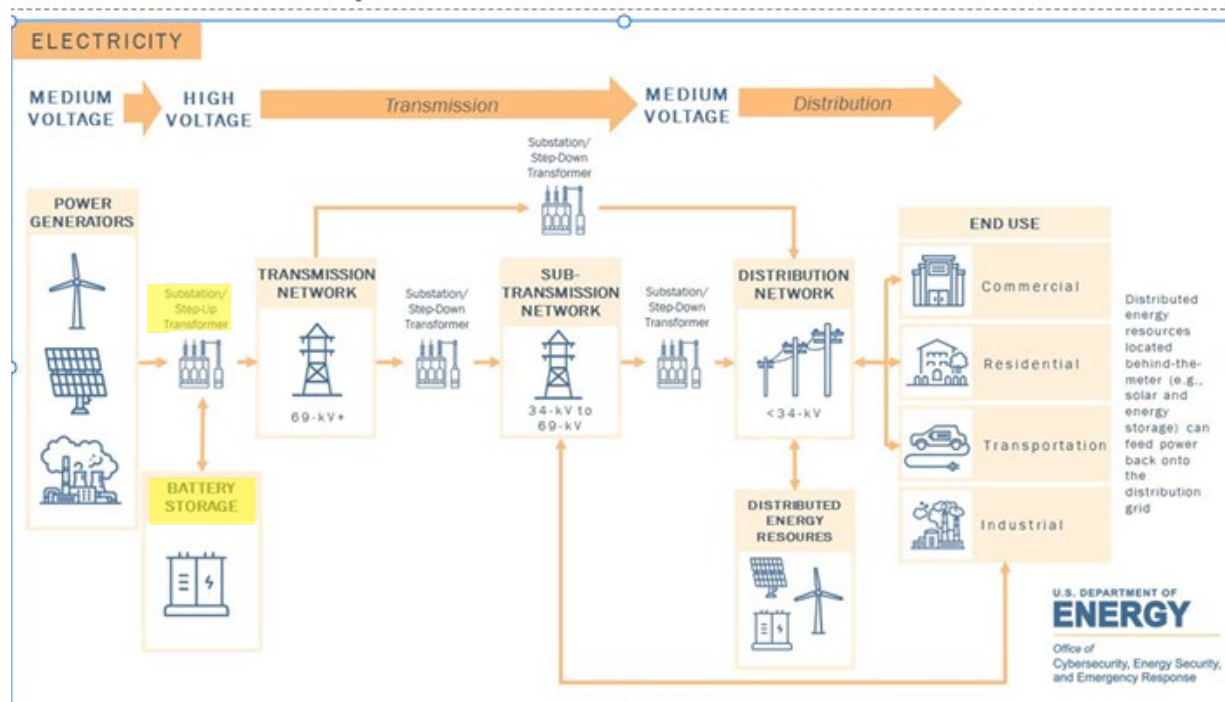
¹⁹ *See, e.g.*, Tex. Admin. Code, Chapter 25 – Public Utilities Commission Rules ; 2012 WL 1184364 (Tex. P.U.C.);

²⁰ *See, e.g.*, National Conference of State Legislatures, *Electric Transmission Planning: A Primer for State Legislatures*, <https://www.ncsl.org/environment-and-natural-resources/electric-transmission-planning-a-primer-for-state-legislatures>, December 19, 2023; Stephen Ferrey, Law of Independent Power § 3:140 (2025); C. Ben Vila, Innovating around Regulatory Uncertainty: Contracting for Battery Energy Storage as a Transmission Asset within Restructured Markets, 36 Temp. Int'l & Comp. L.J. 151 (2021); 46 Tex. Prac., Environmental Law § 30:7 (2d ed.); Thomas Kagerer, *FERC Order 841 & EnergyStorage Resources*, 51 Tex. Env'tl. L.J. 285 (2021); Union of Concerned Scientists, *Frequently Asked Questions about Community-Level and Large-Scale Battery Energy Storage*, www.ucsusa.org/resources/energy-storage-FAQ (2021); U. S. Department of Labor, Occupational Safety and Health Administration, *Illustrated Glossary*, <https://www.osha.gov/etools/electric-power/illustrated-glossary>, last accessed July 3, 2025. This citation string is far from exhaustive. In fact, the sheer volume of detailed yet distinct approaches to/interpretations and applications of inconsistent terminology with widely varying resultant treatment is consonant with the conclusion that there are not specific, identifiable definitions of the terms at issue that can be looked to with any reliability.

and *net generation* by ESSs. Gross generation reflects the actual amount of electricity supplied by the storage system. Net generation is gross generation minus electricity used to recharge the storage system and the electricity consumed to operate the energy storage system itself. Net generation from ESSs is reported as negative in EIA data reports to avoid double counting the generation from charging sources for ESSs and the generation from ESSs. The difference between gross and net generation varies widely by type of ESS.²¹

The U. S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response (“CESER”) published an illustrative figure that places a battery storage ESS in a position similar to that of a substation:

Exhibit 1. U.S. Electric System Overview



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CESER also published an in-depth report analyzing the role of ESS in the current national power grid structure and marketplace which clearly distinguishes the role ESS inhabit in the larger scheme from that played by other types of facilities and, illustrative of the indefinite position of ESS in relation to more traditional energy generating facilities, concludes “[t]he relationship

²¹ U.S. Energy Information Association, *Electricity Explained: Energy Storage for Electricity Generation*, <https://www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php>, last updated August 28, 2023 (emphasis added).

²² U. S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response, *Learning Series: Energy Security & Resilience: Electricity Grid Backgrounder*, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.energy.gov/sites/default/files/2023-11/FINAL_CESER%20Electricity%20Grid%20Backgrounder_508.pdf, last accessed July 16, 2025 (highlights added for emphasis).

between storage and transmission (in terms of both investment as well as operation) is complicated and merits further examination.”

The Complaints acknowledge that the Park is an ESS, analogizing its function as thus to a more traditional power plant. However, as is inferable from the foregoing descriptions, this is not the only reasonable interpretation, and to conclusively state that ESS belong in one camp versus the other misses the mark.

The Complaints cite Gambit’s Notice of Self-Certification of Exempt Wholesale Generator Status²³ as evidence that it should be treated as an Electrical Generating Plant under the Code. However, this self-certification is to obtain exempt status under Federal Regulatory Energy Commission (“FERC”) rules and, as Gambit indicated in its self-certification, is not determinative of it being a “generator” facility, citing to FERC orders that indeed support this proposition.²⁴ In one FERC order, the authoring commissioner even stated, “We note that electricity storage devices . . . do not readily fit into only one of the traditional asset functions of generation, transmission or distribution. Under certain circumstances, storage devices can resemble any of these functions or even load.”²⁵

Not only do ESS outlie the more traditional models of energy resources thus casting them into the category of the nebulously difficult-to-define, the term “Electrical Generating Plant” also does not have a clear definition unsusceptible to varying comprehensions, either in the Code or in the relevant authority/literature more broadly,²⁶ making it more difficult still to assign with any confidence one identity or the other to the Park or its ilk.

Because of the uncertainty that surrounds such facilities and their role in the big picture energy industry, as long as Council had a reasonable basis upon which to rest its decision to grant the SUP and that their determination was not otherwise clearly in violation of the Code, in granting the SUP, Council was authorized to act as it saw fit in this exercise of its most fundamental power.

IV. The terms contained in the original SUP and the 2024 amendment were result of proper Council action.

As a home-rule city, Angleton’s authority is broad, emanating from Article XI, Section 5, of the Texas Constitution and encompassing the “full power of local self-government.”²⁷

The City’s Charter embraces this authority, stating,

The City shall have the power of local self-government to the fullest extent permitted by law, and shall have all powers possible for a City to have under the constitution and laws of the State of Texas as fully and completely as though they

²³ **Exhibit 6**, FERC Notice of Self-Certification of Exempt Wholesale Generator Status – Gambit Energy Storage, LLC.

²⁴ 83 FERC ¶ 61,106 (1998); 131 FERC ¶ 61,008 at ¶ 7 (2010)

²⁵ 130 FERC ¶ 61056 (F.E.R.C.), 2010 WL 198394.

²⁶ See, e.g., n. 20-22, *supra*.

²⁷ Tex. Loc. Gov’t Code § 51.072.

were specifically enumerated in this Charter, with all of the implied powers necessary to carry into execution those powers and those express and implied powers necessary for the government, interests, health, welfare, and good order of the City and its inhabitants.²⁸

This power is frequently borne out by the actions of Council, in whom “[t]he determination of all matters of policy and the exercise of all powers of local self-government shall be vested,”²⁹ and it is at City Council meetings that this authority is primarily exercised. There are certain parameters on how Council meetings shall be conducted, arising from both the City’s Code³⁰ as well as the Texas Open Meetings Act (“TOMA”).³¹

The Code grants Council the authority to review an application for (among other things) SUPs and lays out the procedure that shall be followed when employing that authority:

(g) City council authority and consideration:

(1) City council authority: The city council, after receiving a recommendation by the planning and zoning commission and after public hearings required by law, may amend, supplement, or change the regulations of this chapter or the boundaries of the zoning districts on the zoning map.

(2) Applications forwarded to the city council: After consideration by the planning and zoning commission, all zoning applications shall be automatically forwarded to the city council for a public hearing following appropriate public hearing notification as prescribed in subsection (c) above.

(3) City council action on zoning, rezoning or text amendment requests: After a public hearing is held before the city council regarding the zoning application, the city council may:

- a. Approve the request in whole or in part (if the city council approves the request, then subsection (g)(5) will apply);
- b. Deny the request in whole or in part;
- c. Table the application to a future meeting (and specifically citing the city council meeting to which it is tabled); or
- d. Refer the application to the planning and zoning commission for further study.³²

The degree of discretion Council is permitted to utilize is otherwise unspecified but inherent in the engagement of analysis prior to settling on one of the above courses of action.³³ “When the ultimate and unrestrained objective of an official's duty is to interpret collateral law, a

²⁸ Charter of the City of Angleton, Texas § 2.01.

²⁹ *Id.* at § 3.07.

³⁰ *See id.* at Art. II, Div. 2-3.

³¹ *See generally* Tex. Gov’t Code, Ch. 551.

³² City of Angleton Code of Ordinances § 28-24(g).

³³ *Cf. Schroeder v. Escalera Ranch Owners' Ass'n, Inc.*, 646 S.W.3d 329, 335 (Tex. 2022) (in discussing a planning and zoning commission review and approval of preliminary plats, the Court recognized that “this determination is a discretionary one that necessarily involves interpret[ing] and constru[ing] ... applicable ordinances.” (internal quotes omitted)).

misinterpretation is not overstepping such authority; it is a compliant action even if ultimately erroneous.”³⁴

The meeting minutes from both the January 14, 2020 meeting,³⁵ during which the original Gambit SUP was approved and the March 25, 2025 meeting,³⁶ during which the amendment to it was approved, indicate the applicable requirements were satisfied. Absent some violation of TOMA, or if the Council Members’ discretionary acts conflict with the law itself,³⁷ or other similar incident that might render the actions of Council void or voidable, the enactment of an ordinance will usually stand. “Courts will generally defer to the interpretation of the agency, like the Commission, charged with enforcing an ordinance when that interpretation is reasonable.”³⁸

The Complaints do not take issue with the Code itself but instead rely on a contrary construction and application which is subjectively preferable to the complainant. This is not a compelling basis to reverse an action of Council that was considered, discussed, and approved by vote.³⁹

V. Gambit appears to be in compliance with the terms of the amended SUP.

The 2020 Sound Study provided the baseline pre-construction acoustic conditions of the property where the Park is now situated.⁴⁰ During the four years that passed since the SUP was granted, the City received noise complaints about the operation of the Park. Gambit was made aware of these complaints and in response applied for an amendment to its SUP to provide for an additional sound barrier.⁴¹

The eighteen-foot acoustical barrier wall was constructed once it was approved by Council as an amendment to the Gambit SUP.⁴² This wall was in place when the same engineering consultant firm that performed the 2020 Sound Study conducted another sound study in February of 2025, the report for which was issued on March 25, 2025 (“2025 Sound Study”).⁴³ The results from the 2025 Sound Study indicate Gambit and the Park to be in compliance with the terms of the Amended SUP.⁴⁴

If this turns out to be inaccurate, however, such noncompliance would be a matter to be addressed in the realm of continued enforcement of the *valid* Amended SUP. If there are in fact

³⁴ *Hall v. McRaven*, 508 S.W.3d 232, 242 (Tex. 2017).

³⁵ **Exhibit 7**, City Council Meeting Minutes, January 14, 2020.

³⁶ **Exhibit 8**, City Council Meeting Minutes, March 25, 2025.

³⁷ *Schroeder v. Escalera Ranch Owners' Ass'n, Inc.*, 646 S.W.3d 329, 332 (Tex. 2022)

³⁸ *Howeth Invs., Inc. v. City of Hedwig Vill.*, 259 S.W.3d 877, 907 (Tex. App.—Houston [1st Dist.] 2008).

³⁹ It also would not be a sufficient basis in a declaratory judgment pleading to bypass the City’s sovereign immunity. (The Supreme Court of Texas has been clear that the UDJA does not waive immunity when a plaintiff seeks a declaration of rights under a statute or challenges a governmental entity’s actions under a statute or ordinance. *Martinez v. Northern*, No. 01-22-00435-CV, 2023 WL 162743, at *9 (Tex. App.—Houston [1st Dist.] Jan. 12, 2023), review denied (June 16, 2023))

⁴⁰ See Exhibit 3.

⁴¹ See Exhibit 4.

⁴² *Id.*

⁴³ See Exhibit 3.

⁴⁴ *Id.* at p. 7.

violations of the Amended SUP conditions on the use of the property as the Park, the City could proceed accordingly via the channels of enforcement provided for in the Code.⁴⁵

CONCLUSION

City Council, acting within its full discretion, using a reasonable interpretation of the relevant terms in the Code, in compliance with all applicable local, state, and federal laws and regulations, approved the original Gambit SUP and then the Amended SUP. If there are existent or continuing violations of the terms of the Amended SUP, the City can follow proper enforcement procedures to address that concern.

⁴⁵ *E.g.*, City of Angleton Code of Ordinances §§ 28-24(h) and 28-133